

Electronically Filed  
Nov 13 2020 05:54 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY CLARKE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 80130

Dist. Court No. CR19-1352

Appeal from a Guilty Plea  
Second Judicial District Court, Washoe County  
Honorable David Hardy, District Court Judge

JOINT APPENDIX

Tracie K. Lindeman, Esq.  
Nevada Bar No. 5049  
P.O. Box 3733  
Carson City, NV 89702  
(775) 297-4877  
tlindeman@appellatesolution.com  
Attorney for Appellant

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RPD RP19-004180

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2019-08-06 08:29:49 AM  
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Christopher J. Hicks  
#7747  
One South Sierra Street  
Reno, NV 89501  
(775) 328-3200

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

\* \* \*

THE STATE OF NEVADA,

Plaintiff,

Case No.: CR19-1352

v.

Dept. No.: D15

ANTHONY CLARKE,

Defendant.

\_\_\_\_\_ /

INFORMATION

CHRISTOPHER J. HICKS, District Attorney within and for the  
County of Washoe, State of Nevada, in the name and by the authority  
of the State of Nevada, informs the above entitled Court that ANTHONY  
CLARKE, the defendant above-named, has committed the crime of:

BURGLARY, a violation of NRS 205.060, a category B felony,  
(50424) in the manner following, to wit:

That the said defendant, ANTHONY CLARKE, on or about March  
2, 2019, within the County of Washoe, State of Nevada, did willfully  
and unlawfully enter Taste of Chicago, located at 1st and Lake  
Street, Reno, Nevada, with the intent then and there to commit  
larceny therein after being convicted of petit larceny on December

JA 001

1 28, 2015 out of the Reno Municipal Court and after having been  
2 convicted of petit larceny on October 20, 2015 out of the Reno  
3 Municipal Court.

4  
5 All of which is contrary to the form of the Statute in such  
6 case made and provided, and against the peace and dignity of the  
7 State of Nevada.

8  
9 CHRISTOPHER J. HICKS  
District Attorney  
10 Washoe County, Nevada

11  
12  
13  
14  
15 By: /s/ Mariah Northington  
MARIAH NORTHINGTON  
16 14247  
DEPUTY DISTRICT ATTORNEY

1           The following are the names of such witnesses as are known  
2 to me at the time of the filing of the within Information:

3  
4 CHRIS CAPRIOLI, RENO POLICE DEPARTMENT,  
5 CHRISTOPHER A. GOOD, RENO POLICE DEPARTMENT,  
6 KATHERINE MARIE TYRRELL,  
7 DANIEL NICOLINI, RENO POLICE DEPARTMENT,  
8 BRIGIT MCGURK, RENO POLICE DEPARTMENT,  
9 STEVE PETO,  
10 SHERI MARTINOVICH,  
11 TASTE OF CHICAGO,

12                           AFFIRMATION PURSUANT TO NRS 239B.030

13           The party executing this document hereby affirms that this  
14 document submitted for recording does not contain the social security  
15 number of any person or persons pursuant to NRS 239B.030.

16  
17 CHRISTOPHER J. HICKS  
18 District Attorney  
19 Washoe County, Nevada

20  
21 By: /s/ Mariah Northington  
22 MARIAH NORTHINGTON  
23 14247  
24 DEPUTY DISTRICT ATTORNEY

25 PCN: RPD0048360C; RPD0050563C-CLARKE  
26

JA 003

\* \* \*

Defendant.

## JA 004



1           B. I waive my right to trial by jury, at which trial the  
2 State would have to prove my guilt of all elements of the offense  
3 beyond a reasonable doubt.

4           C. I waive my right to confront my accusers, that is, the  
5 right to confront and cross examine all witnesses who would testify  
6 at trial.

7           D. I waive my right to subpoena witnesses for trial on my  
8 behalf.

9           4. I understand the charge against me and that the  
10 elements of the offense which the State would have to prove beyond a  
11 reasonable doubt at trial are that on March 2, 2019, or thereabout,  
12 in the County of Washoe, State of Nevada, I did, willfully and  
13 unlawfully enter Taste of Chicago, located at 1st and Lake Street,  
14 Reno, Nevada, with the intent then and there to commit larceny  
15 therein after being convicted of petit larceny on December 28, 2015  
16 out of the Reno Municipal Court and after having been convicted of  
17 petit larceny on October 20, 2015 out of the Reno Municipal Court.

18           5. I understand that I admit the facts which support all  
19 the elements of the offense by pleading guilty. I admit that the  
20 State possesses sufficient evidence which would result in my  
21 conviction. I have considered and discussed all possible defenses  
22 and defense strategies with my counsel. I understand that I have the  
23 right to appeal from adverse rulings on pretrial motions only if the  
24 State and the Court consent to my right to appeal in a separate

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1 written agreement. I understand that any substantive or procedural  
2 pretrial issue(s) which could have been raised at trial are waived by  
3 my plea.

4 6. I understand that the consequences of my plea of guilty  
5 are that I may be imprisoned for a period of one to ten years in the  
6 Nevada State Department of Corrections and that I am eligible for  
7 probation. I may also be fined up to \$10,000.

8 7. In exchange for my plea of guilty, the State, my  
9 counsel and I have agreed to recommend the following: Both parties  
10 stipulate to recommend 12 to 36 months in the Nevada State Department  
11 of Corrections.

12 8. I understand that, even though the State and I have  
13 reached this plea agreement, the State is reserving the right to  
14 present arguments, facts, and/or witnesses at sentencing in support  
15 of the plea agreement.

16 9. Where applicable, I additionally understand and agree  
17 that I will be responsible for the repayment of any costs incurred by  
18 the State or County in securing my return to this jurisdiction.

19 10. I understand that the State, at their discretion, is  
20 entitled to either withdraw from this agreement and proceed with the  
21 prosecution of the original charges or be free to argue for an  
22 appropriate sentence at the time of sentencing if I fail to appear at  
23 any scheduled proceeding in this matter OR if prior to the date of my  
24 sentencing I am arrested in any jurisdiction for a violation of law  
25 OR if I have misrepresented my prior criminal history. I understand  
26 and agree that the occurrence of any of these acts constitutes a

1 material breach of my plea agreement with the State. I further  
2 understand and agree that by the execution of this agreement, I am  
3 waiving any right I may have to remand this matter to Justice Court  
4 should I later withdraw my plea.

5 11. I understand and agree that pursuant to the terms of  
6 the plea agreement stated herein, any counts which are to be  
7 dismissed and any other cases charged or uncharged which are either  
8 to be dismissed or not pursued by the State, may be considered by the  
9 court at the time of my sentencing.

10 12. I understand that the Court is not bound by the  
11 agreement of the parties and that the matter of sentencing is to be  
12 determined solely by the Court. I have discussed the charge(s), the  
13 facts and the possible defenses with my attorney. All of the  
14 foregoing rights, waiver of rights, elements, possible penalties, and  
15 consequences, have been carefully explained to me by my attorney. My  
16 attorney has not promised me anything not mentioned in this plea  
17 memorandum, and, in particular, my attorney has not promised that I  
18 will get any specific sentence. I am satisfied with my counsel's  
19 advice and representation leading to this resolution of my case. I  
20 am aware that if I am not satisfied with my counsel I should advise  
21 the Court at this time. I believe that entering my plea is in my  
22 best interest and that going to trial is not in my best interest. My  
23 attorney has advised me that if I wish to appeal, any appeal, if  
24 applicable to my case, must be filed within thirty days of my  
25 sentence and/or judgment.

26 ///

1           13. I understand that this plea and resulting conviction  
2 will likely have adverse effects upon my residency in this country if  
3 I am not a U. S. Citizen. I have discussed the effects my plea will  
4 have upon my residency with my counsel.

5           14. I offer my plea freely, voluntarily, knowingly and  
6 with full understanding of all matters set forth in the Information  
7 and in this Plea Memorandum. I have read this plea memorandum  
8 completely and I understand everything contained within it.

9           15. My plea of guilty is voluntary and is not the result  
10 of any threats, coercion or promises of leniency.

11           16. I am signing this Plea Memorandum voluntarily with  
12 advice of counsel, under no duress, coercion, or promises of  
13 leniency.

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1           17. I do hereby swear under penalty of perjury that all of  
2 the assertions in this written plea agreement document are true.  
3

4                   AFFIRMATION PURSUANT TO NRS 239B.030

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

7           DATED this 21<sup>st</sup> day of August, 2019.

8  
9                   Anders Claes  
10                  DEFENDANT

11  
12                   \_\_\_\_\_  
13                  TRANSLATOR/INTERPRETER

14           Kaeli  
15           Attorney Witnessing Defendant's Signature

16           [Signature]  
17           Prosecuting Attorney  
18  
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1 4185  
2 STEPHANIE KOETTING  
3 CCR #207  
4 75 COURT STREET  
5 RENO, NEVADA  
6

7 IN THE SECOND JUDICIAL DISTRICT COURT  
8 IN AND FOR THE COUNTY OF WASHOE  
9 THE HONORABLE EGAN WALKER, DISTRICT JUDGE

10 --oOo--

11 STATE OF NEVADA,	)	
	)	
12 Plaintiffs,	)	
	)	
13 vs.	)	Case No. CR19-1352
	)	
14 ANTHONY CLARKE,	)	Department 7
	)	
15 Defendant.	)	
_____	)	

16  
17  
18 TRANSCRIPT OF PROCEEDINGS

19 ARRAIGNMENT

20 August 21, 2019

21 9:00 a.m.

22 Reno, Nevada  
23

24 Reported by: STEPHANIE KOETTING, CCR #207,  
Computer-Aided Transcription

1 APPEARANCES:

2 For the State:

3 OFFICE OF THE DISTRICT ATTORNEY  
4 By: AMANDA SAGE, ESQ.  
5 P.O. Box 30083  
6 Reno, Nevada

7 For the Defendant:

8 OFFICE OF THE PUBLIC DEFENDER  
9 By: LORENA VALENCIA, ESQ.  
10 350 S. Center  
11 Reno, Nevada  
12  
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1                   RENO, NEVADA, August 21, 2019, 9:00 a.m.

2

3                                   --oOo--

4                   THE CLERK: Case number CR19-1352, State versus  
5 Anthony Clarke. Matter set for arraignment. Counsel and the  
6 Division, please state your appearance.

7                   MS. SAGE: Amanda Sage for the State.

8                   MS. LOPEZ: Jenny Lopez for the Division.

9                   MS. VALENCIA: Good morning, your Honor. Lorena  
10 Valencia for Mr. Clarke, who is present.

11                  THE COURT: Good morning, Ms. Valencia. Good  
12 morning, again, Mr. Clarke. This is the time and date set  
13 for continued arraignment. Ms. Valencia, what is your  
14 client's intention?

15                  MS. VALENCIA: Your Honor, my client is intending  
16 to plead guilty. However, if I may have the Court's  
17 indulgence, he had a couple of questions?

18                  THE COURT: Take a moment.

19                  MS. VALENCIA: Okay. Thank you, your Honor.  
20 Thank you, your Honor.

21                  THE COURT: Can you confirm if you're in receipt  
22 of the information, I think we did it last time, and that his  
23 name is correctly spelled and whether or not he'll waive a  
24 formal reading?



1 MS. VALENCIA: Yes, your Honor. We are in receipt  
2 of the information. His name is spelled correctly on line 12  
3 and he understands the contents and waives a formal reading.  
4 I do have a copy of the guilty plea memorandum.

5 THE COURT: If you could briefly summarize the  
6 negotiations, please?

7 MS. VALENCIA: Yes, your Honor. Mr. Clarke will  
8 plead guilty to the sole count of burglary. He understands  
9 that it is a minimum and maximum of one to ten years in the  
10 Nevada State Department of Corrections, he's eligible for  
11 probation, and he may be fined up to \$10,000.

12 In exchange for his plea, both parties will  
13 stipulate to recommend 12 to 36 months in the Nevada State  
14 Department of Corrections. Your Honor, Court's indulgence?  
15 I apologize. There was some writing on the front, we would  
16 like it to be clear.

17 THE COURT: No problem. Things are going fine.  
18 Don't worry about it. Ms. Sage, did that correctly state the  
19 negotiations?

20 MS. SAGE: It did, your Honor.

21 THE COURT: Sir, would you please raise your right  
22 hand and take the oath of a witness?

23 (Mr. Clarke sworn at this time.)

24 THE COURT: Sir, is your true and correct name

1 Anthony Clarke?

2 THE DEFENDANT: Yes.

3 THE COURT: Mr. Clarke, I have in front of me the  
4 information you heard Ms. Valencia and I just discuss. It  
5 accuses you of the crime of burglary. How do you wish to  
6 plead to that allegation?

7 THE DEFENDANT: Guilty.

8 THE COURT: Before I can accept your plea of  
9 guilty, let's talk about the constitutional rights you waive,  
10 that is, you give up when you plead guilty. Please  
11 understand that you have the right to have this allegation  
12 proven beyond a reasonable doubt by the State at a speedy and  
13 public jury trial right here in this room where 12 jurors  
14 have to unanimously agree that you are in fact guilty. When  
15 you plead guilty, no trial is going to happen. Do you  
16 understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Ms. Valencia is with you this morning.  
19 She or someone from her office would be with you if you  
20 wanted to go to trial, even if you can't afford an attorney.  
21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: If you wanted to go to trial, Ms.  
24 Valencia could help you confront witnesses and evidence

1 against you. All that means is you could look people in the  
2 eye during direct and cross examination, ask questions  
3 through her and examine items of evidence. You could even  
4 make people come to court and bring evidence with them, even  
5 if they don't want to come, through a court order called a  
6 subpoena. Again, when you plead guilty, no trial is going to  
7 happen and so none of that confrontation will occur. Do you  
8 understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: You have the right to remain silent  
11 this morning and throughout trial. You can literally say  
12 nothing. No one can comment on your silence or use it  
13 against you in any way. You can even go to trial and testify  
14 on your own behalf if you want. When you plead guilty this  
15 morning, however, you tell me from your own lips, judge, I  
16 did exactly what they say I did, and you give up the right to  
17 remain silent. Is that what you want to do?

18 THE DEFENDANT: Yes.

19 THE COURT: Has anybody promised you anything or  
20 threatened you in any way to force you to enter a plea of  
21 guilty?

22 THE DEFENDANT: No.

23 THE COURT: Tell me what you did to commit this  
24 offense.

1 MS. VALENCIA: Your Honor, he would like me to  
2 speak on his behalf, but he did commit the underlying  
3 elements.

4 THE COURT: The elements are on or about  
5 March 2nd, 2019, he did willfully and unlawfully enter Taste  
6 of Chicago located at First and Lake with the intent then and  
7 there to commit larceny therein after being convicted of  
8 petty larceny on December 28th, 2015, out of Reno Muni Court,  
9 and after having been convicted of petty larceny on October  
10 20, out of Reno Muni Court.

11 So are you prepared to state as an officer of the  
12 court there is proof that you're aware of adequate to prove  
13 those elements beyond a reasonable doubt?

14 MS. VALENCIA: Yes, your Honor.

15 THE COURT: I will accept that representation.  
16 Mr. Clarke, what's your understanding of the penalty I can  
17 impose in this case?

18 THE DEFENDANT: 1 to 10 or 12 to 36 months.

19 THE COURT: It is between 1 and 10 years. The  
20 maximum sentence, if you will, is 40 to 120 months that I can  
21 give. It's actually a little more than 40. It can be a  
22 range. But you're hoping for the sentence you gave me, I  
23 understand. I just want you to know that nobody can promise  
24 that to you. The attorneys have made an agreement, it's a

1 contract about what they're going to represent to me, but up  
2 to the maximum, I can give you any penalty. Do you  
3 understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: It's a fine up the \$10,000 I think you  
6 mentioned as well. I have in front of me a different  
7 document. I saw you sign it. It's the guilty plea  
8 memorandum. Were you able to read this document before you  
9 signed it?

10 THE DEFENDANT: Yes.

11 THE COURT: Was your attorney able to answer any  
12 questions you had about this document?

13 THE DEFENDANT: Yes.

14 THE COURT: Are you satisfied with her services?

15 THE DEFENDANT: Yes.

16 THE COURT: Is it still your desire to enter a  
17 plea of guilty?

18 THE DEFENDANT: Yes.

19 THE COURT: There's a factual basis for your plea,  
20 it's freely, knowingly and intelligently entered, and I'll  
21 accept your plea of guilty. We'll set a date and time for  
22 sentencing.

23 THE CLERK: Yes, your Honor. Sentencing scheduled  
24 for October 7th at 9:00 a.m. in Department 15.

1 MS. VALENCIA: Your Honor, Mr. Clarke was  
2 wondering if he could waive his PSI and go forward sooner.

3 THE COURT: Unfortunately, Mr. Clarke, no. As to  
4 sooner, you can raise that issue with Judge Hardy if you  
5 want. But this is a serious offense, particularly for the  
6 judge making a decision. What I mean by that is this is a  
7 petty larceny, it's a multiple petty larceny that became a  
8 burglary because of the priors.

9 But Judge Hardy needs the best information before  
10 he decides whether to give you a prison sentence, and if so,  
11 how long, or to make a probation decision. So I would not  
12 allow that to occur. We'll set a sentencing date. The door  
13 is always open for you to seek a more expeditious sentencing  
14 with Judge Hardy if he disagrees with me about the waiver of  
15 the PSI. I invite you to raise that issue with him.

16 MS. VALENCIA: Thank you, your Honor.

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1 STATE OF NEVADA           )  
                                  ) ss.  
2 County of Washoe        )

3       I, STEPHANIE KOETTING, a Certified Court Reporter of the  
4 Second Judicial District Court of the State of Nevada, in and  
5 for the County of Washoe, do hereby certify;

6       That I was present in Department No. 7 of the  
7 above-entitled Court on August 21, 2019, at the hour of 9:00  
8 a.m., and took verbatim stenotype notes of the proceedings  
9 had upon the arraignment in the matter of THE STATE OF  
10 NEVADA, Plaintiff, vs. ANTHONY CLARKE, Defendant, Case  
11 No. CR19-1352, and thereafter, by means of computer-aided  
12 transcription, transcribed them into typewriting as herein  
13 appears;

14       That the foregoing transcript, consisting of pages 1  
15 through 10, both inclusive, contains a full, true and  
16 complete transcript of my said stenotype notes, and is a  
17 full, true and correct record of the proceedings had at said  
18 time and place.

19  
20       DATED: At Reno, Nevada, this 26th day of September 2019.

21  
22                                   S/s Stephanie Koetting  
23                                   STEPHANIE KOETTING, CCR #207  
24

1 CODE 2490  
2 WASHOE COUNTY PUBLIC DEFENDER  
3 LORENA VALENCIA, BAR NO. 14292  
4 350 S. CENTER ST., 5TH FLOOR  
5 RENO, NV 89501  
6 (775)337-4800  
7 ATTORNEY FOR DEFENDANT

8  
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

10  
11 IN AND FOR THE COUNTY OF WASHOE

12  
13 STATE OF NEVADA,

14  
15 Plaintiff,

16  
17 vs.

Case No. CR19-1352

18  
19 ANTHONY CLARKE,

Dept. No. 15

20  
21 Defendant.  
22 \_\_\_\_\_/

23  
24 **MOTION FOR SELF-REPRESENTATION AND AFFIDAVIT**

25 COMES NOW, ANTHONY CLARKE, at present by and through counsel,  
26 JOHN L. ARRASCADA, Washoe County Public Defender, and LORENA  
VALENCIA Deputy Public Defender, and hereby moves this Court for an Order  
permitting Mr. Clarke to represent himself. This Motion is made and based upon  
the Sixth Amendment to the United States Constitution, and Article 1, Section 8 of  
the Nevada Constitution, as interpreted in *Faretta v. California*, 422 U.S. 806, 95  
S.Ct. 2525, 45 L.Ed.2d 562 (1975); and *Harris v. State*, 113 Nev. 799, 942 P.2d 151  
(1997) and *Hooks v. State*, 124 Nev. 48, 176 P.3d 1081 (2008).

///



## POINTS AND AUTHORITIES

### I. Statement of the Case

Mr. Clarke has been accused of Burglary, a felony. Mr. Clarke waived his preliminary hearing on August 1, 2019. Mr. Clarke entered his plea of guilty on August 21, 2019, and sentencing was scheduled for October 7, 2019. At the sentencing hearing, Mr. Clarke informed the Court and counsel that he wanted to represent himself. Mr. Clarke's sentencing hearing was moved to October 14, 2019. Mr. Clarke, through counsel is also filing a Motion for a Young Hearing as well as this Motion for Self-Representation.

### II. Statement of Facts

On October 10, 2019, Mr. Clarke confirmed with the undersigned during an I-Web visit that he wants to move forward and represent himself. He believes there is a conflict of interest between himself and the Public Defender's office, alleging that he was misled by counsel causing him to waive his preliminary hearing.

### III. Argument

The accused in a criminal case has the right to represent himself, if he chooses to do so knowingly. Faretta v. California, *supra*. Mr. Clarke need not show that he has the skill and expertise of an attorney, but must make his choice knowingly and voluntarily, aware of the dangers of self-representation. Denial of the right of self-representation for a defendant who makes a timely, unequivocal request is reversible error. McKaskle v. Wiggins, 465 U.S. 168, 104 S.Ct. 944, 79 L.Ed.2d 122 (1984).

1 Mr. Clarke is making his request before being sentenced in this case. His  
2 request is timely because it has been made before sentencing and is not being  
3 made to obtain an improper delay.  
4

5 Mr. Clarke has previously represented himself in California in 1990, and  
6 was approved to represent himself by Department 3 of the Second Judicial District  
7 Court in CR17-1138 in 2017. Furthermore, Mr. Clark has displayed the ability to  
8 read, write, and understand the English language. Mr. Clarke has been present  
9 and engaged in every stage of his Court proceedings.  
10

#### 11 **IV. Conclusion**

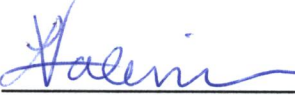
12 At the request of the Defendant, it is respectfully requested this Court  
13 conduct a canvass of the Defendant to determine if he unequivocally, voluntarily,  
14 and intelligently waives his right to the assistance of counsel.  
15

#### 16 **AFFIRMATION PURSUANT TO NRS 239B.030**

17 The undersigned does hereby affirm that the following document does not  
18 contain the social security number of any person.  
19

20 Dated this 11th day of October, 2019.

21 JOHN L. ARRASCADA  
22 Washoe County Public Defender

23 By:   
24 LORENA VALENCIA  
25 Deputy Public Defender  
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AFFIDAVIT OF COUNSEL

STATE OF NEVADA     )  
  )ss.  
COUNTY OF WASHOE    )

I, LORENA VALENCIA, having been duly sworn hereby depose and state the following to be true under penalty of perjury, except as to those matters stated upon information and belief. As to those matters, I believe them to be true:

- 1.     Your Affiant is a licensed Nevada attorney, in good standing, and presently counsel of record for Mr. Clarke in CR19-1352;
- 2.     Your Affiant was told by Mr. Clarke over an I-Web visit that he wished to represent himself at which time the foregoing Motion was filed;
- 3.     Your Affiant has been informed and believes that Mr. Clarke represented himself in CR17-1138.
- 4.     Your Affiant has been informed and believes that Mr. Clarke represented himself in 1990 in a California Criminal Case and that he reads, writes and understands the English language, and has been

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engaged in all prior proceedings in this case and wishes to represent himself.

Further your affiant sayeth naught.

LORENA VALENCIA

Subscribed and sworn to before me this 11<sup>th</sup> day of October, 2019.

NOTARY PUBLIC



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**CERTIFICATE OF SERVICE**

I certify that I am an employee of the WASHOE COUNTY PUBLIC DEFENDER'S OFFICE, and that on the 11th day of October, 2019, I electronically served, a true copy of the attached document, addressed to:

DEPUTY DISTRICT ATTORNEY  
Electronic Service

/s/Brianda Gomez  
BRIANDA GOMEZ

1 CODE 2490  
2 WASHOE COUNTY PUBLIC DEFENDER  
3 LORENA VALENCIA, BAR NO. 14292  
4 350 S. CENTER ST., 5<sup>TH</sup> FLOOR  
5 RENO, NV 89501  
6 (775)337-4800  
7 ATTORNEY FOR DEFENDANT

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

12 THE STATE OF NEVADA,

13 Plaintiff,

14 v.

CASE NO. CR19-1352

15 ANTHONY CLARKE,

DEPT NO. 15

16 Defendant.

17 \_\_\_\_\_/

18 **MOTION FOR A YOUNG HEARING**

19 COMES NOW, ANTHONY CLARKE, at present by and through counsel,  
20 JOHN L. ARRASCADA, Washoe County Public Defender, and LORENA  
21 VALENCIA, Deputy Public Defender, and hereby moves this Court for a closed  
22 hearing to determine whether a conflict exists between Mr. Clarke and appointed  
23 counsel. This Motion is made and based upon the Sixth Amendment and  
24 Fourteenth Amendment to the United States Constitution, Article 1, Section 8 of  
25 the Nevada Constitution, the attached Points and Authorities, and any oral or  
26 documentary evidence as may be presented at a hearing on this matter.

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## POINTS AND AUTHORITIES

### I. Summary of Facts

Mr. Clarke has been accused of Burglary, a felony. Mr. Clarke waived his Preliminary hearing on August 1, 2019. Mr. Clarke entered his plea of guilty on August 21, 2019, and sentencing was scheduled for October 7, 2019. His Sentencing hearing was continued to allow for motions to be filed regarding Mr. Clarke's request for a Young Hearing and to represent himself. Mr. Clarke's Sentencing hearing was moved to October 14, 2019.

Mr. Clarke alleges insufficient performance by his assigned counsel and alleges that he was misled by counsel at the Justice Court stage of his proceedings, which led to him waiving his preliminary hearing. Therefore, Mr. Clarke is filing this Motion for a Young Hearing along with a Motion for Self-Representation.

### II. Statement of Law and Argument

Rather than simply assigning new counsel or transferring the case to another office upon the mere allegation by a defendant of insufficient performance by assigned counsel, the trial court has an obligation to hold a hearing on the record to establish if a true conflict exists. See generally Young v. State, 120 Nev. 963 (2004). At the hearing, the Court must conduct an inquiry into the alleged conflict, although the attorney-client privilege should not be invaded unless absolutely necessary. In Young, the Court stated, “. . . the district court need not invade the attorney-client privilege unless absolutely necessary; however, the district court's respect for the privilege should not prevent it from engaging in a genuine inquiry into the quality of defense counsel's representation.” Id., at 971. Appellate review of a trial court's decision on the issue contains a three-part analysis: (1) the extent of the conflict between the defendant and counsel, (2) the adequacy of the trial court's inquiry into the defendant's complaint, and (3) the timeliness of the motion and the extent of any inconvenience or delay. Id., at 965.

1 The burden is on the defendant to show sufficient cause to be entitled to a  
2 substitution of court-appointed counsel at public expense. See Garcia v. State, 121  
3 Nev. 327, 337 (2005)(“[A] defendant in a criminal trial does not have an unlimited  
4 right to the substitution of counsel. Absent a showing of sufficient cause, a  
5 defendant is not entitled to the substitution of court-appointed counsel at public  
6 expense.”).

7 Here, the Defendant has requested the Court remove his present appointed  
8 counsel alleging conflicts of interest. The Defendant does not request that new  
9 counsel be appointed at public expense, but requests leave to represent himself.  
10 The trial court should review his request in light of the above criteria and citations  
11 to law. The case law is clear that a defendant is not entitled to a specific attorney  
12 of his choosing. Young, at 969. Nor can the defendant create a conflict by his own  
13 intransigence, refusal to communicate or engage in meaningful discussion with  
14 counsel, or otherwise unilaterally bootstrap a change of counsel. Indeed, the  
15 Nevada Supreme Court has stressed that a defendant “may not, as a matter of  
16 law, create a conflict requiring substitution of appointed counsel.” Id., at 971. It  
17 seems clear from this comment that the Supreme Court wanted to discourage  
18 defendants from being able to delay criminal proceedings simply by refusing to  
19 deal with their court-appointed counsel. The Supreme Court has also stated “[a]  
20 defendant cannot base a claim of inadequate representation upon his refusal to  
21 cooperate with appointed counsel. Such a doctrine would lead to absurd results.”  
22 Gallego v. State, 117 Nev. 348, 363 (2001)(citing Thomas v. State, 94 Nev. 605, 608  
23 (1978) and Shaw v. United States, 403 F.2d 528, 529 (8th Cir. 1968)).

24 In order for the trial court to grant a substitution of counsel at tax-payer  
25 expense it must make a finding that “counsel and defendant are so at odds as to  
26 prevent presentation of an adequate defense.” Gallego, at 363 (citing State v.  
Stenson, 132 Wash.2d 688, 940 P.2d 1239 (1997)). The level of acrimony must be



1 more than a disagreement over strategy or tactics. In United States v. Moore, 159  
2 F.3d 1154, 1160 (9th Cir. 1998), the Court found that there was a conflict but  
3 described it as “irreconcilable.” In United States v. D’Amore, 56 F.3d 1202, 1206  
4 (9th Cir. 1995), the Court found there was a conflict but stated that the  
5 relationship between counsel and the appellant “showed a complete breakdown of  
6 communications which substantially interfered with the presentation of an  
7 adequate defense.”

8 Not every disagreement between counsel and a defendant should rise to the  
9 level of a conflict necessitating new counsel. The United States Supreme Court in  
10 Morris v. Slappy, 461 U.S. 1, 103 S.Ct. 1610 (1983), stated that the Sixth  
11 Amendment to the United States Constitution, applicable to the States via the  
12 Fourteenth Amendment, does not guarantee “a right to a meaningful attorney-  
13 client relationship.” Id., at 13. The Court goes on to say “[n]o court could possibly  
14 guarantee that a defendant will develop the kind of rapport with his attorney –  
15 privately retained or provided by the public – that the Court of appeals thought  
16 part of the Sixth Amendment guarantee of counsel.” Id., at 13-14. In Gallego, the  
17 Nevada Supreme Court held that disagreements over trial strategies are not  
18 conflicts of interest necessitating substitution of counsel. Gallego v. State, 117  
19 Nev. at 363. “The mere loss of confidence in . . . appointed counsel does not  
20 establish ‘good cause’. Good cause is not ‘determined solely according to the  
21 subjective standard of what the defendant perceives’.” Gallego, at 363 (citing  
22 Thomas v. State, supra.).

23 Here, in the event the Defendant seeks appointment of new County  
24 provided counsel upon the ground of a conflict of interest alleged or perceived by  
25 him to exist between himself and appointed counsel, the Court should determine  
26 the question of whether to appoint new counsel in accordance with the guidance  
provided in the legal authorities cited herein.

1 Other legal citations and points which the Court may wish to consider  
2 include the following:

3 Nevada Rule of Professional Conduct 2.1, entitled “Advisor”, reads:

4 “In representing a client, a lawyer shall exercise independent  
5 professional judgment and render candid advice. In rendering advice,  
6 a lawyer may refer not only to law but to other considerations such as  
7 moral, economic, social and political factors that may be relevant to  
8 the client's situation.”

9 Thus, the assigned defense counsel should exercise independent judgment,  
10 not merely act as a conduit for any argument or legal theory which the client  
11 insists on presenting, especially if the argument of legal theory which the client  
12 insists upon is not based in law or fact (see Rule 3.1, below). The defense counsel  
13 should also be candid when rendering advice or assessments to the client, even  
14 where the client disagrees with the candid advice or assessment of the attorney or  
15 even where the client becomes agitated or upset upon hearing the candid advice or  
16 assessment. (That said, note that the defense counsel, under Rule 3.1 may, even  
17 when in disagreement with the position of the client, “so defend the proceeding as  
18 to require that every element of the case be established.”).

19 Nevada Rule of Professional Conduct 3.1, entitled “Meritorious Claims and  
20 Contentions,” reads as follows:

21 “A lawyer shall not bring or defend a proceeding, or assert or  
22 controvert an issue therein, unless there is a basis in law and  
23 fact for doing so that is not frivolous, which includes a good faith  
24 argument for an extension, modification or reversal of existing  
25 law. A lawyer for the defendant in a criminal proceeding, or the  
26 respondent in a proceeding that could result in incarceration,  
may nevertheless so defend the proceeding as to require that  
every element of the case be established.”

27 Thus, under Rule 3.1, the assigned defense counsel may, and should, “so  
28 defend the proceeding as to require that every element of the case be established,”  
29 but should balance that obligation with the prohibition against frivolous assertions

1 or arguments for which there is no basis in law or fact. A defense attorney's  
2 refusal to abide by a client's insistence on pursuing a defense or legal position  
3 which has no substantial basis in law or fact does not of itself create a conflict of  
4 interest necessitating substitution of counsel.

5 Nevada Rule of Professional Conduct 3.3, entitled "Candor Toward the  
6 Tribunal," provides that "a lawyer shall not knowingly:

7 (1) Make a false statement of fact or law to a tribunal or fail to correct  
8 a false statement of material fact or law previously made to the tribunal by the  
9 lawyer;

10 (2) Fail to disclose to the tribunal legal authority in the controlling  
11 jurisdiction known to the lawyer to be directly adverse to the position of the client  
and not disclosed by opposing counsel."

12 Thus, under Rule 3.3, the assigned defense counsel must not knowingly  
13 mislead the Court on a legal or factual issue. A defense attorney's refusal to abide  
14 by a client's request to knowingly mislead a Court as to a legal or factual issue  
15 does not of itself create a conflict of interest necessitating substitution of counsel.

16 Due to Mr. Clarke's allegations of insufficient representation and  
17 allegations of being misled by his appointed counsel, an inherent conflict exists. No  
18 assessment of these allegations has been made, and a hearing on whether one  
19 exists is appropriate in this matter.

### 20 III. Conclusion

21 At the request of the Defendant, it is respectfully requested this Court set a

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1 hearing to determine whether a true conflict exists between appointed counsel and  
2 Mr. Clark.

3 **AFFIRMATION PURSUANT TO NRS 239B.030**

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

6 Respectfully submitted.

7  
8 Dated this 11th day of October, 2019.

9  
10 JOHN L. ARRASCADA  
11 Washoe County Public Defender

12 By: /s/ Lorena Valencia  
13 LORENA VALENCIA  
14 Deputy Public Defender  
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**CERTIFICATE OF SERVICE**

I certify that I am an employee of the WASHOE COUNTY PUBLIC DEFENDER'S OFFICE, and that on the 11th day of October, 2019, I electronically served, a true copy of the attached document, addressed to:

DEPUTY DISTRICT ATTORNEY  
Electronic Service

/s/Brianda Gomez  
BRIANDA GOMEZ

4185  
**SUNSHINE LITIGATION**  
151 Country Estates Circle  
Reno, Nevada 89512

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE  
BEFORE THE HONORABLE DAVID N. HARDY, DISTRICT JUDGE

-o0o-

STATE OF NEVADA,	:	
	:	
Plaintiff,	:	
	:	
vs	:	Case No. CR19-1352
	:	
ANTHONY CLARKE,	:	Dept. No. 15
	:	
Defendant.	:	
	:	

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TRANSCRIPT OF PROCEEDINGS

**EVIDENTIARY HEARING RE: YOUNG/SENTENCING**

WEDNESDAY, OCTOBER 23RD, 2019

Reno, Nevada

Reported By: ERIN T. FERRETTO, CCR #281

A P P E A R A N C E S

FOR THE PLAINTIFF:

MARIAH NORTHINGTON, ESQ.  
Deputy District Attorney  
One South Sierra Street  
Reno, Nevada

FOR THE DEFENDANT:

LORENA VALENCIA, ESQ.  
Deputy Public Defender  
350 S. Center Street  
Reno, Nevada

THE DEFENDANT:

Present

PAROLE AND PROBATION:

JENNY LOPEZ

1                                -o0o-

2            RENO, NEVADA, WEDNESDAY, OCTOBER 23RD, 2019, 3:30 P.M.

3                                -o0o-

4  
5  
6            THE COURT: Just remain seated, please.

7            Where is our State's attorney?

8            (Off the record.)

9            THE COURT: Mr. Clarke, there are two -- we're on  
10 the record in Case No. CR19- 1352.

11            There are two critical virtues that everyone  
12 should expect of their judges. One is that the judge be  
13 actually impartial and the other that the judge appear to  
14 be impartial. And so when I talked to your attorneys, I  
15 think, *Well, I know I'm actually impartial, but I wonder*  
16 *about what message is communicated when you see us just*  
17 *go in and talk*, and we did exactly what I said. We  
18 talked a little bit about at least one other lawyer and  
19 then we kind of went into the differences between the  
20 District Attorney's Office and the Public Defender's  
21 Office. We actually talked a little bit about my life  
22 and circumstances, and the name *Mr. Clarke* never came up  
23 once.

24            And I promise you I can rule for or against your



1 attorney every day of the week. I might not meet with  
2 counsel again under this circumstance, if I thought about  
3 it, so I hope you'll trust my attempt, Mr. Clarke --

4 THE DEFENDANT: Of course I do.

5 THE COURT: -- to appear impartial.

6 Ms. Northington, welcome. I thank you for coming.  
7 We are here on --

8 MS. NORTHINGTON: Thank you, your Honor.

9 THE COURT: We are here on Mr. Clarke's request to  
10 represent himself. Mr. Clarke is pre-sentencing, having  
11 entered a plea of guilty, and there are two features of  
12 today's hearing. One is whether Mr. Clarke actually  
13 intends to represent himself with full awareness of its  
14 risks, and the second is whether he is seeking to  
15 substitute counsel, which is a different question.

16 And the State's attorney should be present for a  
17 *Faretta* canvass. *Faretta* is the case name for the  
18 questions I must ask if someone chooses to represent  
19 himself or herself. If this hearing also slips into, *I*  
20 *want a new attorney because my attorney is not being*  
21 *effective, I'm not communicating with my attorney,*  
22 *there's a breakdown in our relationship,* then the State's  
23 attorney is excluded from the hearing.

24 And let's begin, Mr. Clarke, on the first, whether

1 you wish to represent yourself. I'm just going to ask  
2 you to remain seated for a moment, just don't stand.

3 I notice in the motion for self-representation  
4 that Mr. Clarke has previously undertaken self-  
5 representation, at least twice that I'm aware of. Is it  
6 your desire to represent yourself, Mr. Clarke?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Is it your desire that I replace your  
9 current attorneys with new attorneys?

10 THE DEFENDANT: No.

11 THE COURT: So you want to represent yourself?

12 THE DEFENDANT: Yes.

13 THE COURT: Okay. You are entitled to represent  
14 yourself. It would be err for me to deny self-  
15 representation, but I'm required to determine if your  
16 choice is informed and you get to choose after our  
17 conversation whether it's wise.

18 I'll begin by saying just colloquially that I  
19 think it's unwise. As a general rule, we don't pull our  
20 own teeth, we go to the dentist. Most of us don't change  
21 our own oil, we go to the car mechanic. And there is  
22 something powerful about legal education and experience.

23 Counsel, unless you tell me otherwise, I will just  
24 pull up the *Faretta* script and begin asking questions.

1           Okay. Mr. Clarke, please stand, face my clerk,  
2           raise your right hand and be sworn.

3           (Defendant sworn.)

4           THE COURT: I'm going to ask you to be seated  
5           again, Mr. Clarke. You may remain seated while you  
6           respond to the court's questions.

7           Do you intend to represent yourself at sentencing  
8           or do you intend to pursue on your own behalf some  
9           withdrawal of your plea?

10          THE DEFENDANT: I intend to withdraw my plea and  
11          go directly to trial.

12          THE COURT: Ms. -- I'm going to get this wrong  
13          because we don't have great familiarity with each  
14          other -- Ms. Northington --

15          MS. NORTHINGTON: Yes, your Honor.

16          THE COURT: -- the plea to which Mr. Clarke pled  
17          guilty -- excuse me -- the crime for which Mr. Clarke  
18          pled guilty is burglary --

19          MS. NORTHINGTON: Correct.

20          THE COURT: -- felony charge. Will there be a  
21          different amended information with additional or new  
22          counts should this matter go to trial?

23          MS. NORTHINGTON: Should the matter to proceed to  
24          trial, your Honor, the only change would be the potential

1 to seek habitual criminal treatment. That decision has  
2 not been definitively made yet, but that's the only  
3 change I could foresee.

4 THE COURT: Mr. Clarke, can you tell me in your  
5 own words what you believe the State means when she tells  
6 me she might seek habitual criminal designation?

7 THE DEFENDANT: You're asking me how I perceive  
8 that?

9 THE COURT: What does that mean to you when --

10 THE DEFENDANT: It means to me that they're trying  
11 to give me -- habitual criminal means I'm a career  
12 criminal and they will seek more time in prison as a  
13 result of my past convictions.

14 THE COURT: That's right. So the choice to seek  
15 habitual criminal designation belongs to the State, I  
16 don't encourage or discourage. The State will make its  
17 own choice, whatever it is, but it is a request of the  
18 court. It is the court that determines whether somebody  
19 should be sentenced as a habitual criminal. Sometimes I  
20 do; sometimes I don't.

21 The habitual criminal statute contemplates a much  
22 lengthier time in prison. There are different categories  
23 of habituation. Does Mr. Clarke fall within the highest  
24 life imprisonment category?

1 MS. NORTHINGTON: Yes, your Honor.

2 THE COURT: Do you know when you would make that  
3 decision?

4 MS. NORTHINGTON: Your Honor, it depends on  
5 whether or not the withdrawal of plea actually occurs.  
6 At that point, I'd say within the week of withdrawal of  
7 plea and setting of trial.

8 THE COURT: Should Mr. Clarke file a motion to  
9 withdraw his plea, will the State be opposing it?

10 MS. NORTHINGTON: Yes, your Honor.

11 THE COURT: And whenever we saw each other last, I  
12 went into the office and read the statute for withdrawing  
13 of plea. There are certain standards that have to be met  
14 and I would just entertain them as they are presented to  
15 me.

16 Let me have just a moment here.

17 Ms. Northington, will you tell me a little bit  
18 more about the factual allegations underlying the  
19 burglary? I just read the Information again, it refers  
20 to Mr. Clarke's entry into a business called Taste of  
21 Chicago but what is the police narrative?

22 MS. NORTHINGTON: Your Honor, it's very brief and  
23 quite simple. The defendant was walking by the sidewalk  
24 of the Taste of Chicago pizza restaurant down here in

1 downtown.

2 THE COURT: Is this the tips --

3 MS. NORTHINGTON: Yes. He saw the tip jar was not  
4 being manned through the window -- it's all on  
5 surveillance -- he hops inside, reaches inside, grabs the  
6 money and takes off.

7 THE COURT: It was all of 30 or \$35, something  
8 like that?

9 MS. NORTHINGTON: Yes, your Honor. I think it was  
10 37.

11 THE COURT: \$37.

12 Mr. Clarke, the questions I'm going to ask are  
13 required by the Nevada Supreme Court, and I'm just going  
14 to ask them as set forth by the rule. And I do the  
15 *Faretta* canvass so infrequently that where is it? That's  
16 a question without an answer, counsel. I have a canvass.

17 Oh, my gosh. Why didn't I grab this before I came  
18 to the bench? It's always right here.

19 Mr. Clarke, tell me what you understand burglary  
20 to be.

21 THE DEFENDANT: Burglary, to be an entering a  
22 place with the intent to commit a petty larceny, larceny.

23 THE COURT: I'm reading from Supreme Court Rule  
24 253 at the moment. Isn't it the intent -- entering a

1 building with the intent to commit a felony?

2 MS. NORDVIG: Or petty larceny.

3 THE COURT: Or petty larceny.

4 MS. NORTHINGTON: I think, your Honor, with petty  
5 larceny there has to be two prior convictions of petty  
6 larceny.

7 THE COURT: And the Information sets forth priors,  
8 I saw that.

9 Do you know what the possible sentence is for  
10 burglary, Mr. Clarke?

11 THE DEFENDANT: Three to 120 months -- 3 or 1 to  
12 10, you know. That's the way I look at it on here but,  
13 your Honor, I have no access to books or court so I'm  
14 kind of --

15 THE COURT: So you previously signed a Guilty Plea  
16 Memorandum that sets forth the possible penalty, probably  
17 a 1-to-10.

18 MS. NORTHINGTON: That's correct, your Honor.

19 THE COURT: 1 to 10 years in the Nevada Department  
20 of Corrections, it is probation eligible, and you could  
21 also be charged a fine not to exceed \$10,000.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: Okay. And you understand that the

1 State may request that you be sentenced as a habitual  
2 criminal --

3 THE DEFENDANT: I do.

4 THE COURT: -- if you were found guilty?

5 THE DEFENDANT: I do.

6 THE COURT: And the worst habitual sentence would  
7 be life in prison?

8 THE DEFENDANT: I do.

9 THE COURT: Okay. Do you understand, Mr. Clarke,  
10 that you have the absolute constitutional right to be  
11 represented by effective counsel, counsel to effectively  
12 assist you at no expense to you at public expense?

13 THE DEFENDANT: Yes.

14 THE COURT: You understand you have that right?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand that the attorneys  
17 who represent you at the moment are licensed to practice  
18 law in the state of Nevada, they are skilled -- I want to  
19 say this gently -- that there's a high level of  
20 professionalism in the Public Defender's Office and the  
21 attorneys are skilled both as trial technicians and as  
22 legal strategists.

23 Do you understand that?

24 THE DEFENDANT: Yes.



1           THE COURT: If this matter goes to trial, and I  
2 know I have to review a motion to withdraw and make a  
3 decision on that, but just hypothetically if this case  
4 goes to trial, do you intend to call any witnesses?

5           THE DEFENDANT: Your Honor, my witnesses were  
6 available but now they're not because I wasn't advised to  
7 have witnesses present at a mandatory status conference.  
8 So now they're not available so I don't know if I'll have  
9 an opportunity to call witnesses.

10          THE COURT: Let's say you found a witness and  
11 called a witness, how do you anticipate examining that  
12 witness, what would you do?

13          THE DEFENDANT: First, I wouldn't lead with my  
14 question. I would ask in their words what happened --  
15 what happened, that type of stuff.

16          But, again, your Honor, I have no access to books.  
17 I have no access to rules of court or anything. I'm  
18 sitting in the county jail with a Washoe Legal who only  
19 does civil. I have no access to criminal law.

20          THE COURT: Do you understand, Mr. Clarke, that  
21 the court will not issue subpoenas, act as the  
22 investigator or assist you in preparing your defense in  
23 any way -- do you understand that?

24          THE DEFENDANT: Yes.

1 THE COURT: Counsel, have any witnesses been  
2 subpoenaed for the defense?

3 MS. VALENCIA: No, your Honor.

4 THE COURT: Because he's entered a plea of guilty  
5 and we're set for sentencing obviously?

6 MS. VALENCIA: Correct, your Honor.

7 THE COURT: Do you have -- do you understand that  
8 you have the right to confront by cross-examination the  
9 State's witnesses, should this matter go to trial?

10 THE DEFENDANT: Yes, I do.

11 THE COURT: How do you intend to do that?

12 THE DEFENDANT: Well, I won't to badger the  
13 witness, first of all. I'll just ask them in their own  
14 words what they -- in terms of what they seen and -- in  
15 their own words.

16 THE COURT: Have you ever examined a witness in  
17 court before?

18 THE DEFENDANT: Yes.

19 THE COURT: When?

20 THE DEFENDANT: 1990 in LA County, 13 different  
21 officers on the stand. I did the whole trial. Also did  
22 in Polaha's court.

23 THE COURT: Did that case go the trial?

24 THE DEFENDANT: No. It was -- the District

1 Attorney decided not to respond to my writ of habeas  
2 corpus, came down to the county jail and told me if I  
3 plead guilty to the misdemeanor he'd release me, and I  
4 pled guilty to the misdemeanor and he released me.

5 THE COURT: Why do you want to represent yourself,  
6 Mr. Clarke?

7 THE DEFENDANT: Because I have no representation,  
8 even though I had a warm body next to me. At this point,  
9 there was no investigation done, there was no  
10 investigator sent to the scene because -- and when I  
11 first arrived, I was arrested on this case, they asked me  
12 if I wanted appointment of counsel and I told them no on  
13 this case.

14 Then when I get arrested on a bench warrant for  
15 not appearing, come to find out the Public Defender's  
16 Office went in and may have negotiated a plea under what  
17 they called a mandatory status conference. And that  
18 right there, I didn't want to have a mandatory status. I  
19 wanted to go directly to preliminary hearing because the  
20 witness was relevant. Now I'm stuck in the position that  
21 I have no access to anything.

22 And then the other reason I have to represent  
23 myself is because when I first appeared what they call --  
24 what they call in this state the first appearance, the

1 State of Nevada was being represented on the other side  
2 of the video screen, I was not being represented by  
3 counsel, so that kind of struck me strange. So when I  
4 get in the letter in the mail, you have a mandatory  
5 status conference coming up, and I get to the window to  
6 the lower court, the justice court, all I get is a piece  
7 of paper saying, "mandatory status conference" and they  
8 came up with this. But the mandatory status conference  
9 memorandum, which is dated 2001, says I should be present  
10 with witnesses, along with my attorney, along with the  
11 District Attorney's Office -- a representative from the  
12 District Attorney's Office and me, but they had that  
13 alone on their own, so I had a problem with that.

14 Then --

15 THE COURT: Okay. I just wanted to get a sense.  
16 You're expressing dissatisfaction with your attorney's  
17 performance; is that accurate -- have I heard you  
18 correctly?

19 THE DEFENDANT: It's really been more than that.

20 THE COURT: I know. I don't want the details. I  
21 just want to get the sense of why you want to represent  
22 yourself, and you're telling me because you don't believe  
23 your attorneys are doing what they should and you can do  
24 a better job.

1           Is that your belief?

2           THE DEFENDANT: I believe that I can do a better  
3 job based on the fact -- only based on the fact that the  
4 job -- the job that's been done now, it's nothing.

5           THE COURT: Do you understand that the court will  
6 not provide any special privileges to you or extra or  
7 library privileges to you just because you represent  
8 yourself?

9           THE DEFENDANT: I understand.

10          THE COURT: Okay. Do you understand that it is  
11 almost always unwise for an accused to represent himself  
12 or herself?

13          THE DEFENDANT: Yes.

14          THE COURT: Why do you think that is?

15          THE DEFENDANT: Because when one represents  
16 himself, he has a client for a fool.

17          THE COURT: I'm smiling not at you, I'm smiling  
18 because of how historically well grounded that statement  
19 is. It actually first, as I understand it, comes from  
20 President Lincoln. It may even predate him. *He who*  
21 *represents himself has a fool for a client.*

22          I'm a trained lawyer and a judge, and two years  
23 ago I attempted to represent myself in very small thing  
24 and I realized in about ten minutes I should not

1 represent myself. I'm not trying to share my personal  
2 life with you, but I deeply believe it's unwise to  
3 self-represent, and I just wanted you to hear me say  
4 that.

5 THE DEFENDANT: I agree with you, but I have no  
6 other choice because what I believe I have is an  
7 obstruction of justice.

8 THE COURT: Do you understand the State's attorney  
9 will be experienced, professional, and will provide no  
10 special opportunities for you simply because you  
11 represent yourself?

12 THE DEFENDANT: Yes.

13 THE COURT: Her job is to obtain your conviction  
14 if she believes she has evidence and she will attempt do  
15 so with all of her ability, the State's attorney?

16 THE DEFENDANT: I understand that. Also, could I  
17 say one thing?

18 THE COURT: Yes.

19 THE DEFENDANT: She also has an obligation to seek  
20 out the truth.

21 THE COURT: Do you understand that at the  
22 conclusion, if this case goes to trial -- I understand  
23 right now I'm ahead of myself but I'm not going to do two  
24 *Faretta* canvasses -- do you understand that the lawyers

1 work with the court in settling jury instructions -- do  
2 you know what jury instructions are?

3 THE DEFENDANT: I do.

4 THE COURT: Do you understand you'll be  
5 responsible for presenting, according to the rules, your  
6 own written jury instructions at the end of trial or be  
7 able to disagree legally with the State's jury  
8 instructions?

9 THE DEFENDANT: Yes.

10 THE COURT: Have you ever prepared jury  
11 instructions?

12 THE DEFENDANT: Yes.

13 THE COURT: In California?

14 THE DEFENDANT: Yes.

15 THE COURT: Sorry to ask this, Mr. Clarke, but how  
16 old are you?

17 THE DEFENDANT: I'm 62.

18 THE COURT: Sixty-two. How many years of school  
19 have you completed?

20 THE DEFENDANT: I've never graduated from school.

21 THE COURT: So you do not have a high school  
22 degree?

23 THE DEFENDANT: Never graduated from school.

24 THE COURT: How far did you get in your education?

1 THE DEFENDANT: Fifth grade.

2 THE COURT: Fifth grade?

3 THE DEFENDANT: (No audible response.)

4 THE COURT: Where were you -- where were you  
5 raised?

6 THE DEFENDANT: LA County.

7 THE COURT: Do you believe that you read and write  
8 with some fluency?

9 THE DEFENDANT: Yes.

10 THE COURT: I should observe that -- I should  
11 comment that I observe you writing as I've asked  
12 questions and that you have a whole series of papers in  
13 front of you. I have no reason to disbelieve that you  
14 can read or write, I'm just required to ask the question.  
15 Okay.

16 Do you understand that if I allow you to represent  
17 yourself, I may order that your attorneys to stay on the  
18 case as advisory counsel to speak with you privately as  
19 your case progresses?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you want that?

22 THE DEFENDANT: No.

23 THE COURT: If you -- I may or may not order  
24 standby counsel. You don't have to use them if you don't



1 want, but I want you to understand that is a resource  
2 available to you so that you can consult privately, ask  
3 questions and receive assistance.

4 THE DEFENDANT: Can I interject?

5 THE COURT: Yes.

6 THE DEFENDANT: If you -- if the court decides to  
7 have a standby counsel, I wouldn't want them from this  
8 office.

9 THE COURT: You don't get to pick who your  
10 appointed attorney is, that's a separate inquiry.

11 THE DEFENDANT: Okay.

12 THE COURT: We may need to go there if I appointed  
13 standby counsel. At this point, I just want you to  
14 understand I may appoint standby counsel for you.

15 Do you understand I have a responsibility to  
16 manage the courtroom, to enforce the rules, and to ensure  
17 that there is dignity and order in the proceedings?  
18 Which means that if you're disruptive in any way, if you  
19 act outside of procedures, that I may respond in a way  
20 that you don't like, I might do so in the presence of the  
21 jury, and I might even terminate your right of self-  
22 representation if you become disruptive or hostile to the  
23 process.

24 Do you understand that?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: If you are represented by counsel and  
3 you are convicted, either through plea or through jury  
4 verdict, you have the right to question your attorney's  
5 performance. I'm not suggesting that you should or  
6 would, but we call that a post-conviction petition in  
7 which you allege you received ineffective assistance of  
8 counsel.

9 Are you familiar with that concept?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that if you  
12 represent yourself you cannot complain that you were  
13 ineffective in representing yourself?

14 THE DEFENDANT: Yes.

15 THE COURT: You cannot come back to the court and  
16 say, "Judge, it was a really unwise decision, I didn't  
17 know what I was doing, I lied to you during the *Faretta*  
18 canvass, I can barely read and I did not represent myself  
19 well"; do you understand you're waiving that entire  
20 argument?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Okay. For me to order that you  
23 represent yourself, I must be satisfied that you  
24 understand your rights, that you understand your trial

1 obligations or obligations pre-sentence, and that your  
2 waiver of counsel is freely and voluntarily made.

3 Is there anything you want to say that would help  
4 me understand and be persuaded that you understand your  
5 rights, you understand your obligations, and you're  
6 making your own free choice?

7 THE DEFENDANT: Your Honor, I am making my own  
8 free choice and I do understand. I'm doing it willingly,  
9 not compulsory.

10 THE COURT: What defense do you anticipate you  
11 will have at trial?

12 THE DEFENDANT: Well, since I haven't had an  
13 opportunity to get full discovery, at this point I'm  
14 looking at the procedural flaws right now, but if it --  
15 when I have full discovery I will have a better  
16 understanding of how I'm going to represent the case to  
17 the court.

18 THE COURT: According to the rule, if I deny the  
19 request for self-representation, I have to make specific  
20 findings. Those findings are that Mr. Clarke lacks the  
21 skills to such a degree that there will be significant  
22 impediment to case processing. Another finding I could  
23 make is that Mr. Clarke has been disruptive in court.  
24 Another finding that I could make is that he lacks

1 essential English language skills and is unable to  
2 communicate clearly. Or I could deny the right because  
3 it is untimely and I would postpone proceedings. All of  
4 these rules contemplate self-representation at trial and  
5 we're not there. I have a guilty plea after a canvass  
6 and a signed Guilty Plea Memorandum, but those are the  
7 findings that I would have to make.

8 All right. Is there anything else you wish to  
9 say, Mr. Clarke?

10 THE DEFENDANT: I'd like to, first of all, thank  
11 you for allowing me to come into your court and I  
12 appreciate you. And you are fair throughout the system.  
13 You are fair and I'm kind of like enjoying your bench.

14 THE COURT: Stick around long enough. Everybody  
15 seems to have a different opinion if they stick around  
16 long enough.

17 THE DEFENDANT: Me and Polaha got along pretty  
18 well.

19 THE COURT: All right. To the State's attorney,  
20 is there anything you wish to say?

21 MS. NORTHINGTON: No, your Honor.

22 THE COURT: Should I grant the request for self-  
23 representation? I still have to pursue some normalcy in  
24 the case, and right now we are past the day set for entry

1 of judgment and imposition of sentence. It seems to me I  
2 should reset entry of judgment and imposition of sentence  
3 and then create a deadline for filing anything that would  
4 cause the plea to be vacated.

5 Do you agree, counsel?

6 MS. NORTHINGTON: Yes.

7 THE COURT: Okay. Ms. Clerk, please set entry of  
8 judgment and imposition of sentence for 30 days from now.

9 THE CLERK: Let's do November 25th at 9:00 a.m.

10 THE COURT: Okay. Mr. Clarke, I don't -- I find  
11 you to be articulate and intelligent, and you're familiar  
12 with some of what we do. I don't have any negative  
13 feelings about you personally but I do have a negative  
14 feeling about you representing yourself. I just don't  
15 think it's wise. I don't like it. You're ready to be  
16 sentenced on a felony that's traceable to a \$35 grab --  
17 grab-and-run, and I don't know what your sentence will  
18 be. The State is probably going to ask for prison. If I  
19 looked --

20 I don't remember, counsel, do you even remember  
21 what the Division recommended?

22 MS. NORTHINGTON: Your Honor, I do not remember  
23 what the Division recommended but I'm pretty sure it was  
24 a joint recommended sentence pursuant to the

1 negotiations, if I'm remembering correctly.

2 THE COURT: I'm looking at the PSI.

3 MS. VALENCIA: The PSI was different than the  
4 direct recommendation.

5 MS. NORTINGTON: Your Honor, the joint counsel  
6 recommendation was going to be the minimum. I'm not sure  
7 what P & P recommended. I hadn't look at it yet.

8 THE COURT: Thank you, Ms. Northington, for your  
9 candor. I really appreciate that.

10 So the recommendation, based upon the lengthy  
11 criminal history, is for 36 to 96, the negotiations are  
12 12 to 36.

13 Ms. Lopez, you're standing?

14 MS. LOPEZ: That's correct, your Honor.

15 THE COURT: I don't ever predict my sentence. I  
16 want to be careful what I say here. I have two competing  
17 concerns. You have something like 37 or more criminal  
18 convictions and you've got a \$35 grab-and-run, does that  
19 result in a lengthy prison sentence? Maybe not. Maybe.  
20 Maybe not, though. Could it result in a 12-to-30?  
21 Absolutely it could. That's what the attorneys thought  
22 it should be. Could it result in probation? It doesn't  
23 appear that you're susceptible to supervision, so I don't  
24 know.

1           I guess that's all I'll say. I don't want you to  
2 represent yourself because you think that I am going to  
3 impose the maximum. I just don't know what your sentence  
4 is going to be, I truly don't. I don't think it's wise,  
5 but I think you passed the standard for self-  
6 representation and I'm compelled to grant your motion  
7 even though I think it's unwise and you shouldn't do it.  
8 But I don't get to be the -- there's a limit to my  
9 authority.

10           But I am going to appoint the Public Defender to  
11 be standby counsel. You don't have to talk to them if  
12 you don't want, but I really have a lot of confidence in  
13 my aggregate experience with the public defenders. I  
14 admire their work, along with the State's attorney. I  
15 just admire what they do day in and day out, and I'm  
16 going to make them available to talk to you along the  
17 way. But you don't have to talk to them if you don't  
18 want to.

19           THE DEFENDANT: I appreciate you.

20           THE COURT: So if you want to withdraw your plea,  
21 you're going to file a motion of some type, and that  
22 motion is going to have to be filed no later than next  
23 Friday, which is nine calendar days from today.

24           And to the State, I'll have you file any

1 opposition by the following Friday. I know rules  
2 contemplate additional time but we just need to get it  
3 fully briefed so I can make a decision.

4 MS. NORTINGTON: Understood.

5 THE COURT: Are you able to meet that deadline?

6 MS. NORTINGTON: Yes, your Honor.

7 THE COURT: Then I'll make a decision about  
8 whether your request to withdraw is denied or granted.  
9 If it's denied, you're coming to me for sentencing on  
10 your own.

11 And what happens to the negotiation if he  
12 represents himself? I can't imagine that's breached and  
13 would cause the State to argue for a different sentence.

14 MS. NORTINGTON: Your Honor, if the motion to  
15 withdraw plea is denied and we go forward to sentencing,  
16 the State will stand by the negotiations.

17 THE COURT: So we'll either go to sentencing  
18 without an attorney and you'll represent yourself, or  
19 you'll go to trial representing yourself.

20 THE DEFENDANT: Your Honor?

21 THE COURT: Yes, Mr. Clarke.

22 THE DEFENDANT: Before we close, could I ask the  
23 court a question?

24 THE COURT: Yes.



1 THE DEFENDANT: I was actually coerced in the  
2 lower court to sign this agreement, and I was  
3 threatened -- I was threatened through e-mail.

4 THE COURT: Are we getting into some territory  
5 where we should go into a sealed session and exclude the  
6 State?

7 MS. VALENCIA: I think so, your Honor. And I  
8 believe this would go towards the appointment of standby  
9 counsel, being the Public Defender's Office versus the  
10 Alternate Public Defender's Office.

11 THE COURT: I think that's fair. I need you to  
12 leave the courtroom, counsel, but don't leave the  
13 rotunda.

14 MS. NORTHINGTON: Will do.

15 THE COURT: At this point, Ms. Reporter, the  
16 transcript will be marked as sealed, please.

17 Ms. Lopez, if you'll step out as well, please.

18 (Mr. Northington and Mr. Lopez exited courtroom.)

19 (The hearing continued and is filed separately.  
20 under seal.)  
21  
22  
23  
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1                                -o0o-

2            RENO, NEVADA, WEDNESDAY, OCTOBER 23RD, 2019, 4:43 P.M.

3                                -o0o-

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6            THE COURT: All right. Ms. Northington and  
7            Ms. Lopez have returned. We now mark the transcript as  
8            no longer sealed.

9            The dates the court previously announced remain  
10           effective. My oral pronouncement regarding self-  
11           representation remains effective and it will be  
12           memorialized in a written order.

13           My decision regarding standby counsel and Mr.  
14           Clarke's request for the appointment of different standby  
15           counsel will be the subject of an order that I will enter  
16           very soon.

17           That's it. All right?

18           MS. NORTHINGTON: Thank you, your Honor. If I may  
19           make one more point?

20           THE COURT: Yes.

21           MS. NORTHINGTON: I do want to apologize to  
22           everybody in the room for my tardiness. There's no  
23           excuse. We just had a mis-calendar, so I apologize.  
24           That's all.

1           THE COURT: Thank you for saying that. I don't  
2 know you but I presume the best about every attorney  
3 until they prove otherwise. And some attorneys I know to  
4 always be punctual and some are always running a little  
5 late, and so I'll accept that.

6           I should tell you, Ms. Northington, that I had a  
7 2 o'clock set and I was in my office -- and I pride  
8 myself on my punctuality, it's one of the few things I  
9 can control -- I was in my office just looking at files,  
10 minding my own business, waiting for my next case. And  
11 my administrative assistant knocked on the door today and  
12 said, "It's 2:10, Judge, what are you doing?" I had no  
13 excuse. I just missed it.

14          MS. NORTHINGTON: You don't know this about me,  
15 but I also pride myself on my punctuality. I played  
16 sports for many years, and if you're not ten minutes  
17 early, you're late. So I do apologize.

18          THE COURT: When I was 17 I was in basic training.  
19 Staff Sergeant Pond used to scream at us that if you're  
20 early, you're on time; if you're on time, you're late.

21          MS. NORTHINGTON: Yep.

22          THE COURT: I've never forgotten that.

23          THE DEFENDANT: Marine?

24          THE COURT: US Army. I wasn't tough enough to be

1 a Marine.

2 MS. NORTHINGTON: Thank you, your Honor.

3 MS. VALENCIA: Thank you, your Honor.

4 THE COURT: All right. Good night.

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1     STATE OF NEVADA             )  
                                  )   ss.  
2     COUNTY OF WASHOE         )

3  
4                     I, ERIN T. FERRETTO, an Official Reporter  
5     of the Second Judicial District Court of the State of  
6     Nevada, in and for the County of Washoe, DO HEREBY  
7     CERTIFY:

8                     That I was present in Department No. 15 of  
9     the above-entitled Court on WEDNESDAY, OCTOBER 23RD,  
10    2019, and took verbatim stenotype notes of the  
11    proceedings had upon the matter captioned within, and  
12    thereafter transcribed them into typewriting as herein  
13    appears;

14                    That the foregoing transcript is a full,  
15    true and correct transcription of my stenotype notes of  
16    said proceedings.

17                    That I am not related to or employed by any  
18    parties or attorneys herein, nor financially interested  
19    in the outcome of these proceedings.

20  
21                    DATED: This 2nd day of April, 2020.

22  
23                                     /s/ Erin T. Ferretto

24                                     \_\_\_\_\_  
                                   ERIN T. FERRETTO, CCR #281

4185  
**SUNSHINE LITIGATION**  
151 Country Estates Circle  
Reno, Nevada 89512

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE  
BEFORE THE HONORABLE DAVID N. HARDY, DISTRICT JUDGE

-oOo-

STATE OF NEVADA,	:	
	:	
Plaintiff,	:	
	:	
vs	:	Case No. CR19-1352
	:	
ANTHONY CLARKE,	:	Dept. No. 15
	:	
Defendant.	:	
	:	

=====

**\*\*\* SEALED \*\*\***

TRANSCRIPT OF PROCEEDINGS

**EVIDENTIARY HEARING RE: YOUNG/SENTENCING**

WEDNESDAY, OCTOBER 23RD, 2019

Reno, Nevada

Reported By: ERIN T. FERRETTO, CCR #281

\*\* SUNSHINE LITIGATION \*\* JA 066

A P P E A R A N C E S

FOR THE PLAINTIFF: Not Present

FOR THE DEFENDANT: LORENA VALENCIA, ESQ.  
Deputy Public Defender  
350 S. Center Street  
Reno, Nevada

THE DEFENDANT: Present

PAROLE AND PROBATION: Not Present

1                                -o0o-

2                RENO, NEVADA, WEDNESDAY, OCTOBER 23RD, 2019, 4:35 P.M.

3                                -o0o-

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6                THE COURT: I now turn to the standards under a  
7                decision that we refer to as *Young* which establishes the  
8                boundaries for replacing current counsel with new  
9                counsel.

10                Do you wish to be heard, Mr. Clarke, on who your  
11                standby counsel should be?

12                THE DEFENDANT: Alternate Public Defender's  
13                Office, I don't know her name, but she represented me  
14                when I was before Polaha; other than that, I don't know  
15                her name.

16                THE COURT: Well, I don't appoint lawyers by name,  
17                I either appoint the Public Defender or the Alternate  
18                Public Defender, then the conflict group, and then they  
19                have the ability to assign an attorney to the case.

20                THE DEFENDANT: Could I ask a question?

21                THE COURT: Yes.

22                THE DEFENDANT: I've heard never of -- I've heard  
23                of alternate, but what is a conflict attorney?

24                THE COURT: It's a group of attorneys who receive



1 appointments when a defendant is conflicted -- when  
2 there's a conflict of interest in the Public Defender's  
3 and the Alternate Public Defender's, so it's a third  
4 level of attorneys at public expense.

5 THE DEFENDANT: Okay. Before I was represented by  
6 Alternate Public Defender. We had a conflict but the  
7 conflict was resolved between us. At this point, since  
8 my life is on the line, I might go to the conflict  
9 attorneys, your Honor.

10 THE COURT: Yeah, but you don't get to choose.  
11 This is not a buffet. I have to have a reason to excuse  
12 your current attorneys.

13 THE DEFENDANT: Okay.

14 THE COURT: What's the basis for that?

15 THE DEFENDANT: That I was coerced into taking the  
16 deal.

17 THE COURT: How were you coerced?

18 THE DEFENDANT: Well, first I signed the deal on  
19 August 1st. I didn't get discovery in the case until --  
20 hand-delivered discovery until 10/11/19. I didn't get  
21 the opportunity to review the videotapes and so-called  
22 crime until 10/8/19 so I had no idea what was in the  
23 discovery.

24 THE COURT: So you entered a plea before you

1 reviewed the videotapes?

2 THE DEFENDANT: That, and the fact that I had no  
3 discovery at all. Two months after I entered the plea I  
4 get the discovery.

5 THE COURT: You don't strike me as a man who is  
6 easily coerced.

7 THE DEFENDANT: Well, under the circumstances -- I  
8 can explain it to you. After -- after -- I stepped into  
9 the courtroom, I asked to have the lineup. I asked not  
10 to be present in the court, because they could identify  
11 me. The attorney who did the notice of waiver to appear  
12 in court on preliminary hearing also said that I had -- I  
13 was identified in a lineup and the witnesses were present  
14 to testify in the preliminary hearing.

15 Come to find out, there was no lineup. And she  
16 walks into the room, while I was in Department 4 in the  
17 back, she comes in and she says the witnesses will be  
18 here and you've been identified in a lineup. Okay. So I  
19 signed the plea.

20 I asked the attorney on the record, who were the  
21 people that will appear, and she said they don't know. I  
22 asked them to do a lineup, and she said there was no  
23 lineup done.

24 Then when I get into the higher court -- I wasn't

1 in front of you, I was in front of another judge -- I  
2 asked the attorney of record to see if I can keep the  
3 negotiation down from a B felony burglary to a C, and the  
4 State attorney sent me this back threatening me -- I took  
5 it as a threat, that if I didn't accept the deal they  
6 would take it to the second degree burglary in an e-mail.  
7 So I signed and I entered a plea on the 21st.

8 You know, this is -- mind me, I have no books, I  
9 have no way of understanding what's going on with the  
10 statutes. I have no understanding of what's going. Then  
11 I file a writ of habeas corpus, Judge, and it was cleaned  
12 out, sent back by the clerk. They suspended the writ of  
13 habeas corpus, but I had an opportunity to have someone  
14 bring you an *ex parte* motion. I don't know if you have  
15 it in front of you, but that explains from the beginning  
16 to the end.

17 And one more note is that when I first was  
18 arrested on this case, through Court Services I told them  
19 I don't want to be represented by counsel, but they  
20 appointed counsel anyway. What they ended up doing is  
21 coming up with a prison sentence, I'm going to be doing  
22 prison before I had an opportunity to be heard.

23 So my thing is this. Right from the beginning I  
24 was denied a fair trail. No one ever said anything about

1 the \$300 in my pocket. They claim -- there is a lot of  
2 stuff going on.

3 THE COURT: All right.

4 THE DEFENDANT: There's a lot.

5 THE COURT: Let me hear from Ms. Valencia. You're  
6 in a difficult situation because you don't want to  
7 disclose privileged information, but I need you to  
8 balance the information before me, if necessary, if  
9 applicable.

10 MS. VALENCIA: Thank you, your Honor.

11 Your Honor, due to the allegations made by  
12 Mr. Clarke, I believe that in and of itself is an innate  
13 conflict, but for court -- for the court's understanding,  
14 Mr. Clarke had -- was present at an MSC where we had  
15 representation from our office, talked with him about his  
16 case, go over the negotiations. At that time, we set the  
17 preliminary hearing.

18 He is correct the attorney who was covering the  
19 preliminary hearing went and visited him at the jail  
20 prior to signing the waiver of the preliminary -- or of  
21 appearance at preliminary hearing.

22 The day of preliminary hearing there was also an  
23 attorney present from our office who was prepared to go  
24 forward. My understanding was the State had their

1 witnesses that they needed that day to go forward with  
2 preliminary hearing, negotiations were made, were  
3 presented to Mr. Clarke.

4 The only information I have about a lineup is that  
5 Mr. Clarke had wanted one, requested one; whereas, our  
6 office informed him that if he's worried about  
7 identification at preliminary hearing, that there's a way  
8 to go forward and that's with the waiver of preliminary  
9 hearing. There was no -- no lineup done by the police  
10 officers. We don't -- I don't know of a time where we  
11 request one be done.

12 However, he was represented at the preliminary  
13 hearing, it got waived up to District Court. At that  
14 time, it was set for arraignment. I believe another  
15 representation -- another attorney was present from our  
16 office to represent Mr. Clarke, went over the Guilty Plea  
17 Memorandum.

18 He wanted to know if we could do further  
19 negotiations, so the arraignment got continued. We  
20 reached out to the District Attorney. The District  
21 Attorney informed us that they are not -- they're not  
22 going to budge from their negotiations; that they were  
23 prepared at preliminary hearing to go forward with their  
24 witnesses, and that they could legally have proceeded

1 with a habitual or burglary second, they had believed at  
2 that time.

3 Then we did come to arraignment. I believe it was  
4 held in another department that was covering for this  
5 department that day. I was present. I went over the  
6 Guilty Plea Memorandum. I attempted to answer  
7 Mr. Clarke's questions prior. I had set up an iWeb with  
8 him. He had further questions that morning. I tried to  
9 answer those questions.

10 When we were before the judge, I confirmed whether  
11 he wanted to go forward or if he wanted to -- or if he  
12 wanted to ask for another continuance to give me time to  
13 answer his questions to satisfaction. He informed me he  
14 wanted to go forward and at that point we went through  
15 with his entry of plea.

16 THE COURT: Was a video produced after the waiver  
17 and did the video contain any exculpatory value?

18 MS. VALENCIA: Your Honor, I believe that the  
19 video was provided prior to the preliminary hearing. We  
20 did review it in our office. I wasn't the attorney  
21 covering but we have notes of it. Just knowing my office  
22 and the attorneys that covered, I know that -- actually I  
23 can't speak because I wasn't there, however, there are  
24 notes that it's been reviewed. My understanding is that

1 those notes would have been presented to Mr. Clarke  
2 before the preliminary hearing.

3 THE COURT: What is your understanding of what the  
4 video depicts?

5 MS. VALENCIA: Your Honor, I can't necessarily say  
6 that it has exculpatory evidence. It depicts an  
7 individual going in and reaching their hand into a jar  
8 and then leaving.

9 THE COURT: And how was Mr. Clarke arrested after  
10 the fact?

11 MS. VALENCIA: Your Honor, my understanding is  
12 that a witness had followed him. They got into an  
13 altercation. The witness actually roughed up Mr. Clarke.  
14 And I believe the police officers were on scene after  
15 that -- or at that point.

16 THE COURT: The allegation of a conflict or  
17 coercion on its own is insufficient. How would you  
18 describe the relationship between you and Mr. Clarke --  
19 the working professional relationship between you and Mr.  
20 Clarke?

21 MS. VALENCIA: Your Honor, I believe that at times  
22 it can be difficult in terms of communication. I do try  
23 to respond and to communicate with him. I don't -- I  
24 understand if clients think that we don't respond quick

1 enough, that we don't -- sometimes I have to give answers  
2 that they don't like to hear, and I -- I don't know, your  
3 Honor, if that's sufficient or if you want more  
4 information.

5 THE COURT: Are you able to respond in a civil and  
6 professional manner to Mr. Clarke?

7 MS. VALENCIA: Yes, your Honor.

8 THE COURT: Have there ever been any events in  
9 which there's been hostility or name calling or --

10 MS. VALENCIA: No, your Honor.

11 THE COURT: -- disruptive words?

12 MS. VALENCIA: No, your Honor. Mr. Clarke has  
13 been -- has never personally attacked me as an  
14 individual. There's been no name calling, no -- nothing  
15 that I would take personally.

16 When I indicated that I believed the allegations  
17 of coercion are an innate conflict is in the sense that  
18 these are allegations and an issue that I believe should  
19 be assessed; however, for us to represent that matter to  
20 go forward, I believe there's an innate conflict. I  
21 could approach it professionally but --

22 THE COURT: A conflict isn't created just because  
23 he doesn't like you or want your representation.

24 MS. VALENCIA: No, your Honor. I guess I'm



1 referring to the allegations of coercion by my office and  
2 attorneys in my office. Obviously I'm denying that that  
3 occurred.

4 THE COURT: Who were the attorneys who represented  
5 him in the Justice Court?

6 MS. VALENCIA: I believe Ms. Pusich had at the  
7 original MSC and Ms. Bertschy had at the preliminary  
8 waiver.

9 THE COURT: If I appointed you as a standby  
10 counsel, could you respond professionally and civilly to  
11 Mr. Clarke's questions?

12 MS. VALENCIA: I could, your Honor. One  
13 concern -- I don't know if this is appropriate to bring  
14 up at this time, please let me know, but is -- as standby  
15 counsel, I'm there to help and communicate as required.  
16 However, even as counsel I've felt treated like a law  
17 clerk or a secretary, not as an attorney, so Mr. Clarke  
18 requesting me to do stuff outside of --

19 THE COURT: You don't have to do any of that  
20 stuff.

21 MS. VALENCIA: Correct, your Honor. So as long as  
22 he understands as standby counsel I'm not there to --

23 THE COURT: You are available to share your  
24 expertise, not to make copies for him.

1 MS. VALENCIA: Yes.

2 THE COURT: All right. I've heard everything I  
3 need to hear. Does anybody else feel I missed something  
4 before I close this session?

5 MS. VALENCIA: I do not, your Honor.

6 THE COURT: Mr. Clarke?

7 THE DEFENDANT: Yes, I would. I was concerned  
8 about the 13 prior convictions that they allege I have,  
9 and I asked the attorney of record if they can reach out  
10 to LA County because LA County passed a law or the  
11 initiative Proposition 47 which allows individuals who  
12 didn't have a serious or violent felony to have that  
13 felony conviction reduced to a misdemeanor.

14 THE COURT: I'm familiar with it.

15 THE DEFENDANT: Okay. I fall into that. I don't  
16 have 13 prior convictions.

17 Secondly, I asked the attorney of record to  
18 contact LA Public Defender's Office to get those records;  
19 she told me that I should do it myself.

20 THE COURT: What?

21 THE DEFENDANT: I should do it myself. That's in  
22 an e-mail.

23 Also in an e-mail on 10/13/19 I asked why wasn't I  
24 represented at the first appearance, in the Reno Justice

1 Court? And the attorney of record said, someone should  
2 have been there to represent me, but there was no one  
3 there.

4 On 9/27/19, I asked the attorney of record to help  
5 me with my PSI. She said she would but I never got help,  
6 so I walked through the PSI interview and I incriminated  
7 myself.

8 On 8/26 she said she had received my kites and she  
9 would set up an iWeb and we talk about the questions I  
10 had about the PSI, that never happened. So I'm sitting  
11 in front of an interview with probation and parole and  
12 the first question she asked me is about my prior  
13 convictions. And she also said that if I did not  
14 cooperate with her, that she would report me to the  
15 judge.

16 So I'm sitting -- I'm just -- I'm just -- I don't  
17 know which way to turn because I have no way -- I'm doing  
18 my best now with what I have, but as I stand now, I  
19 don't -- it's like the mandatory status conference in  
20 particular, I've read it and I understand what it says.  
21 It's a mandatory status conference 2001, and it was  
22 issued by the Supreme Court in Nevada. But the Reno  
23 Justice Court, the mandatory status conference, the way  
24 it's written, says I have a right to be sitting down with

1 my attorney, along with a representative of the District  
2 Attorney, along with discovery and any witnesses  
3 available. Okay. That didn't happen, but I get a letter  
4 in the mail from the counsel obviously saying bring all  
5 your witnesses that you may believe that could help you  
6 in your case, but when you get there, the mandatory  
7 status conference already took place. So I'm really  
8 confused about the procedures and the way they were  
9 applied to me. And then if I had an opportunity to do it  
10 all over again, that wouldn't happen.

11 THE COURT: I've given you sufficient time, I've  
12 listened carefully, and I will now invite  
13 Ms. Northington, the State's attorney in.

14 Would you grab her, please?

15 MS. VALENCIA: Ms. Northington, your Honor?

16 THE COURT: I'd like Ms. Nordvig to --

17 MS. VALENCIA: Oh, Ms. Nordvig. Oh, yeah.

18 THE COURT: I didn't want Deputy Coss to leave the  
19 courtroom.

20 \* \* \* \* \*

1     STATE OF NEVADA             )  
                                      )   ss.  
2     COUNTY OF WASHOE         )

3  
4                     I, ERIN T. FERRETTO, an Official Reporter  
5     of the Second Judicial District Court of the State of  
6     Nevada, in and for the County of Washoe, DO HEREBY  
7     CERTIFY:

8                     That I was present in Department No. 15 of  
9     the above-entitled Court on WEDNESDAY, OCTOBER 23RD,  
10    2019, and took verbatim stenotype notes of the  
11    proceedings had upon the matter captioned within, and  
12    thereafter transcribed them into typewriting as herein  
13    appears;

14                    That the foregoing transcript is a full,  
15    true and correct transcription of my stenotype notes of  
16    said proceedings.

17                    That I am not related to or employed by any  
18    parties or attorneys herein, nor financially interested  
19    in the outcome of these proceedings.

20  
21                    DATED:   This 2nd day of April, 2020.

22  
23                                       /s/ Erin T. Ferretto

24                                       \_\_\_\_\_  
                                      ERIN T. FERRETTO, CCR #281

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

STATE OF NEVADA,

Plaintiff,

Case No.: CR19-1352

vs.

ANTHONY CLARKE,

Dept. No.: 15

Defendant.

**ORDER GRANTING MOTION FOR SELF-REPRESENTATION**

Before this Court is Defendant Anthony Clarke's Motion for Self-Representation, dated October 11, 2019. On October 23, 2019, this Court held a hearing for the purpose of conducting a canvass to determine if Mr. Clarke unequivocally, voluntarily, and intelligently waives his right to counsel. This Court has considered all moving papers and the evidence presented at the hearing; it now finds and orders as follows:

**I. Background**

Mr. Clarke is charged with the offense of Burglary, in violation of NRS 205.060. The State alleges that on March 2, 2019, Mr. Clarke entered the Taste of Chicago restaurant with the intent to commit larceny therein after having been convicted of petit larceny on two prior occasions. On August 21, 2019, Mr. Clarke pled guilty to the offense, subject to an agreement that the State recommend a sentence of 12 to 36 months imprisonment. At his intended sentencing hearing, Mr. Clarke orally informed this Court he wished to

1 represent himself. Subsequently, Mr. Clarke filed a written motion stating there is a  
2 conflict between himself and the Washoe County Public Defender's Office and requesting  
3 his defense counsel be released without substitution of new counsel. In addition, during  
4 the October 24, 2019, hearing, Mr. Clarke indicated his intent to seek the withdrawal of his  
5 guilty plea and, if it is granted, proceed to trial.

6 Mr. Clarke previously represented himself in California in 1990, and was approved  
7 to represent himself by Department 3 of the Second Judicial District Court in case number  
8 CR17-1138 in 2017.

## 9 II. Principles of Law and Analysis

### 10 A. Self-Representation

11 A criminal defendant has the right to self-representation under the Sixth  
12 Amendment of the United States Constitution and the Nevada Constitution. U.S. Const.  
13 amend. VI; Faretta v. California, 422 U.S. 806, 818-19 (1975); Nev. Const. art. 1, § 8, cl. 1.

14 This right is unqualified, so long as the defendant can satisfy the court that his or her  
15 waiver of the right to counsel is knowing and voluntary. Baker v. State, 97 Nev. 634, 636,  
16 637 P.2d 1217, 1218 (1981); Faretta, 422 U.S. at 835; see also Vanisi v. State, 117 Nev. 330,  
17 337, 22 P.3d 1164, 1169-70 (2001). In making this determination, the court may consider  
18 whether the case is so complex that permitting the defendant to represent him or herself  
19 would amount to a denial of a fair trial. Vanisi, 117 Nev. 341, 22 P.3d 1171-72. "In  
20 deciding whether a defendant has knowingly and intelligently decided to represent  
21 himself, the trial court is to look not to the quality of his representation, but rather the  
22 quality of his decision." Id. at 341, 22 P.3d at 1172 (quoting Bribiesca v. Galaza, 215 F.3d  
23 1015, 1020 (9th Cir. 2000)). "In order for a defendant's waiver of right to counsel to  
24 withstand constitutional scrutiny, the judge need only be convinced that the defendant  
25 made his decision with a clear comprehension of the attendant risks." Graves v. State, 112  
26 Nev. 118, 124, 912 P.2d 234, 238 (1996) (citing Faretta, 422 U.S. at 835-36). Thus, the record  
27 should establish the accused was "made aware of the dangers and disadvantages of self-  
28

1 representation," such that he "knows what he is doing and his choice is made with eyes  
2 open." Faretta, 422 U.S. at 835.

3 A court may also deny a request for self-representation if the request is untimely,  
4 equivocal, or made solely for purposes of delay. Vanisi, 117 Nev. at 338, 22 P.3d at 1170  
5 (citing Tanksley v. State, 113 Nev. 997, 1001, 946 P.2d 148, 150 (1997)). In addition, the  
6 court may consider the defendant's pretrial activity if it indicates he or she will be  
7 disruptive in the courtroom. Tanksley, 113 Nev. at 1001, 946 P.2d at 150.

8 In the present case, Mr. Clarke is unequivocal is his request to be permitted to  
9 represent himself. This Court has had the opportunity to observe his demeanor during  
10 multiple hearings and concludes he has been prepared, articulate, and respectful, without  
11 any notable disruptions. While Mr. Clarke's request to represent himself was first made at  
12 what would have been his hearing on the imposition of sentence, this Court does not find  
13 it to be untimely or made for the purpose of delay as it was made in a reasonable time  
14 before trial, if any, and is unlikely to cause a significant change in the timeline of the  
15 proceedings. See Lyons v. State, 106 Nev. 438, 445, 796 P.2d 210, 214 (1990), *abrogated on*  
16 *other grounds by* Vanisi, 117 Nev. 341, 22 P.3d at 1172. Thus, this Court's primary focus is  
17 on whether Mr. Clarke's waiver of his right to counsel is knowing and voluntary.

18 On October 24, 2019, this Court conducted a Faretta canvass to apprise Mr. Clarke  
19 "fully of the risks of self-representation and of the nature of the charged crime so that [his]  
20 decision [was] made with a clear comprehension of the attendant risks." Johnson v. State,  
21 117 Nev. 153, 164, 17 P.3d 1008, 1016 (2001). Pursuant to SCR 253(1), this Court made a  
22 "specific, penetrating, and comprehensive inquiry" to determine whether Mr. Clarke  
23 understood these potential consequences. This Court noted concern regarding  
24 Mr. Clarke's limited formal education, but also observed him reading, writing, and  
25 communicating clearly during the hearing. In addition, this Court noted Mr. Clarke's  
26 previous experience with legal proceedings, including representing himself on two prior  
27 occasions.



1 Mr. Clarke indicated he had previously discussed the consequences of self-  
2 representation with appointed defense counsel. This Court warned Mr. Clarke it was  
3 unwise to represent himself and listed the dangers and disadvantages associated with this  
4 choice. Based upon Mr. Clarke's answers, this Court concludes he is competent to waive  
5 his constitutional right to be represented by an attorney and is waiving that right freely,  
6 voluntarily, and knowingly. Finally, this Court concludes Mr. Clarke has a full  
7 appreciation and understanding of the waiver and its consequences. Accordingly,  
8 Mr. Clarke's Motion for Self-Representation is granted.

9 B. Standby Counsel

10 This Court concludes it is appropriate to appoint standby counsel so there will be  
11 no delay should this Court later terminate Mr. Clarke's self-representation. During the  
12 October 24, 2019, hearing, Mr. Clarke indicated his preference that standby counsel not be  
13 a member of the Washoe County Public Defender's Office. As such, this Court also  
14 initiated a closed Young hearing at the conclusion of the Faretta canvas.

15 A defendant in a criminal trial does not have an unlimited right to substitution of  
16 counsel. Gallego v. State, 117 Nev. 348, 362, 23 P.3d 227, 237 (2001), *abrogated on other*  
17 *grounds by Nunnery v. State*, 127 Nev. 749, 263 P.3d 235. Absent a showing of adequate  
18 cause, a defendant is not entitled to reject court-appointed counsel and request  
19 substitution of other counsel at public expense. *Id.* However, where there is a "complete  
20 collapse of the attorney-client relationship," a refusal to substitute counsel violates a  
21 defendant's Sixth Amendment rights. Young v State, 120 Nev. at 968-69, 102 P.3d at 576  
22 (citing United States v. Moore, 159 F.3d 1154, 1158 (9th Cir. 1998)).

23 Mere loss of confidence in appointed counsel does not establish good cause for  
24 substitution. Gallego, 117 Nev. at 363, 23 P.3d at 27. Rather, good cause exists under  
25 circumstances where there is a "complete breakdown of communication, or an  
26 irreconcilable conflict which could lead to an apparently unjust verdict." *Id.* (quoting 3  
27 LaFave, Criminal Procedure, § 11.4(b), at 555). "Attorney-client conflicts justify the grant  
28

1 of a substitution motion only when counsel and defendant are so at odds as to prevent  
2 presentation of an adequate defense." Id.

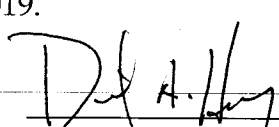
3 While Mr. Clarke articulated a loss of confidence in his appointed counsel, the  
4 issues he described during the hearing on this matter did not rise to the level of an actual  
5 conflict sufficient to warrant substitution. Counsel has been in contact with Mr. Clarke on  
6 multiple occasions, and they remain able to professionally communicate and discuss his  
7 legal options. While this Court acknowledges Mr. Clarke's concerns, it does not find such  
8 a lack of communication or animosity exists as to prevent standby counsel from providing  
9 advice upon request. Further, counsel is willing and able to advocate on behalf of  
10 Mr. Clarke should such a role become necessary. Accordingly, Mr. Clarke's request for  
11 substitution of standby counsel is denied. The Washoe County Public Defender's Office is  
12 appointed to provide standby counsel in this matter.

13 C. Motion to Withdraw Guilty Plea

14 Mr. Clarke indicated that if his Motion for Self-Representation was granted, he  
15 would seek to withdraw his plea of guilt. If Mr. Clarke intends to pursue this course of  
16 action, he shall file an appropriate motion no later than November 1, 2019, at 5:00 p.m.  
17 The State shall respond no later than November 8, 2019, at 5:00 p.m.

18 **IT IS SO ORDERED**

19 **DATED** this 24 day of October, 2019.

20  
21   
22 DAVID A. HARDY  
23 District Judge  
24  
25  
26  
27  
28

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

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTHONY CLARKE,

Defendant.

Case No. CR19-1352

Dept. No. 15

NOTICE OF FILINGS RECIEVED

Please take notice, on November 1, 2019, this Court received the attached pro se  
document(s), as follows:

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CR19-1352  
DC-09900089-179-147  
STATE VS. ANTHONY CLARKE (D1 5 Pages  
District Court 11/01/2019 01:54 PM  
3585  
Washoe County  
RRI/ALP

Anthony Clarke #1910622

FILED

Washoe County Jail

2019 NOV -1 PM 3:54

Reno, Nevada 89512

JACQUELINE  
CLERK OF DISTRICT COURT

BY

Petitioner In Pro se:

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

PETITION FOR WRIT OF HABEAS

CASE NO CR19-1352

CORPUS:

RLR19-100494

DECLARATION OF Anthony ATTACHED

IN RE: Anthony Clarke,

NRS 34.430. NRS 34.390

Petitioner.

PETITION FOR WRIT OF HABEAS CORPUS

AD TESTIFICANDUM

Petitioner Clarke is a pretrial detainee - his liberty is restrained  
by Darin Balaram, Washoe County Sheriff, at 911 E Parr Blvd Reno, NV.

I. Background

Clarke is charged with the offense of Burglary, in violation of N.R.S.  
205.060. The State alleges that on March 2, 2019, Clarke entered the Taste  
of Chicago restaurant with the intent to commit larceny therein after  
been convicted of petit larceny on two prior occasions.

GROUND 1

PETITIONER ALLEGES A DEPRIVATION OF RIGHTS "GUARANTEED" BY THE DUE  
PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT

STATEMENT OF LAW AND ARGUMENT

(1 of 3 pg.)

JA 088

1. It is insufficient evidence to support a burglary charge. The  
2. evidence only show that Clarke entered the restaurant and that at one  
3. point asked a customer if the restaurant was open. Surveillance footage  
4. inside the restaurant revealed Clarke waited for the customer to  
5. turn her head wherein he reached into the tip jar, obtain cash and  
6. depart the scene.

7. State's contention that he entered with the intent to commit larceny  
8. therein is pure speculation given that he had \$ 377.00 on his person when  
9. entering the restaurant.

#### 10. AUTHORITY

11. Criminal intent formulated after lawful entry will not satisfy burglary  
12. statute. NRS 205.060 State v. Adams, 1979. 581 P.2d

13.  
14. One of the essential elements of burglary is the entry of a building with the  
15. intent to commit grand or petit larceny or any other felony NRS 205.060. subd. 1  
16. Sheriff, Clark County, v. Hicks, 1973 506 P.2d 766. 89 Nev. 78.

#### 17. 18. GROUND 2

19. PETITIONER ALLEGES A DEPRIVATION OF RIGHTS "GUARANTEED" BY THE DUE PROCESS

#### 20. CLAUSE OF THE FOURTEENTH AMENDMENT

#### 21. STATEMENT OF THE LAW AND ARGUMENT

22. AldiKen alleges: "obstruction of justice" by his previously assigned counsel  
23. Kendra G. Bertschy, bond # NV 13071 and alleges that he was misled by counsel  
24. at the justice level of proceedings, which induced him waiving his statutory right  
25. to a preliminary hearing.

#### 26. Sequence of Events:

27. Ms. Bertschy on July 30, 2019 during a I-Web visit with Clarke at WCJ  
28. discussed details of the line-up. It was revealed counsel was reading from

1 work product. I was agreed by both sides to go forward with the line-up,  
2 and waive appearance at preliminary.

3 July 31, 2019, counsel visited Clarke at WCJ in order have him sign a notice  
4 of waiver of appearance for preliminary hearing. We were still in agreement  
5 line-up prior to preliminary hearing."

6 August 1, 2019 Clarke was transported to Reno Justice Court Dept # 4  
7 wherein he was placed in the hallway near Department # 4. Moments before  
8 the start of prelim counsel entered the room from the court room door and  
9 said to Clarke you were identified in a line-up and the witnesses are hear,  
10 do you want to sign the waiver? Clarke signed thinking he was identified  
11 in a line-up and witnesses were present at court.

12 On October 23, 2019, Ms. Valencia, advised this Court that it was no line -  
13 up conducted and Clarke was advised as such. Clarke was never advised.  
14 If Clarke had been told the truth he would had not signed the waiver.  
15 Moreover, it simply is no proof Clarke was advised of no line-up was  
16 conducted as attested by appointed attorney of record Ms. Bertschy.  
17 Due Process is violated and Clarke is prejudice.

18 CONCLUSION

19 VERIFICATION

20 This Court should dismiss all charges in this case.

21 I declare under penalty of perjury that the above is true and correct.

22 DATE Nov 1, 2019

151 Anthony Clarke  
ANTHONY Clarke Prisoner  
IN PRO SE NATURAL PERSON

23  
24 This document does not contain the social security number of any person.

25 DATED Nov 1, 2019

151 Anthony Clarke  
PETITIONER IN PRO SE  
NATURAL PERSON

26  
27

28

DECLARATION IN SUPPORT OF HABEAS CORPUS

I am the Petitioner in this action, and declare the following:  
On March 2, 2019, I entered Taste of Chicago restaurant to order food and drink at one point I asked a customer Sheri Martinovich, if the restaurant was open. She replied IDK "Nigger". Surveillance inside the restaurant show me waiting for the customer to turn her head then I reached into the tip jar removed the cash and walked out the door, out of retaliation for what was said to me. (see Ex - A.)  
Obstruction of Justice by appointed counsel Kendra G. Bertsch.  
I was advised by counsel that I would have a line-up prior to preliminary hearing in the RJC August 1, 2019. Counsel walked into the hallway behind Deot #4 moments before the prelim and said to me You were identified in a line-up and witness are hear. I signed the waiver. thinking I was identified in a line up and witnesses were at the court. I learn later while in court October 23, 2019 it was no line-up held and according to Ms. Valencia, I was informed of this. I was never told the truth. If I was armed with that information prior to signing the waiver I would have not signed, but went to prelim. If it is any doubt the Surveillance footage of 8-1-19 will show what happened.

I declare under penalty of perjury that the above is true and correct.

DATE Nov 1, 2019

1st Anthony Clarke  
Anthony Clarke Petitioner



# RENO POLICE DEPARTMENT STATEMENT

FOR POLICE USE ONLY:  
CASE NO: 19-480  
TAKEN BY: McGook 14824

## PERSON MAKING STATEMENT

NAME OF PERSON MAKING STATEMENT: <u>Sher Martinovich</u>		OTHER NAMES USED:	
CITY: <u>Reno</u> STATE: <u>NV</u> ZIP: <u>8951</u>			
RACE: <input checked="" type="checkbox"/> WHITE <input type="checkbox"/> INDIAN <input type="checkbox"/> BLACK <input type="checkbox"/> ASIAN <input type="checkbox"/> OTHER	SEX: <input type="checkbox"/> MALE <input checked="" type="checkbox"/> FEMALE	HEIGHT:	WEIGHT:
OCCUPATION AND WHERE EMPLOYED: <u>Store Mgr</u>		HAIR:	EYES:
WORK/SCHOOL ADDRESS:		WORK HOURS:	DAYS OFF:
INVOLVEMENT: <input type="checkbox"/> DRIVER <input type="checkbox"/> COMPLAINANT <input type="checkbox"/> PASSENGER <input type="checkbox"/> VICTIM <input checked="" type="checkbox"/> WITNESS	MY LOCATION WHEN EVENT OCCURRED: <u>180 E 1st St Reno</u>		

## WRITTEN STATEMENT

1 I came out of the bar exiting the  
2 restaurant w/ my food. stopped  
3 at hostess station, to ask for a  
4 spoon. Hostess went to the back  
5 to get one. to my right a man came  
6 in (black) & asked me if the  
7 restaurant was open, I looked at  
8 him & said I DK. 7 next thing  
9 hostess returns from my left w/  
10 my spoon & yells: "Where's my  
11 tips?" "I'm stunned" IDK?  
12 Guy is gone. I ran after him  
13 outside & others from inside stopped  
14 him. Police arrive.

DATE & TIME OF STATEMENT: <u>3/2/19 940pm</u>	NO PAGES IN STATEMENT:	SIGNATURE OF PERSON MAKING STATEMENT: 
FOR POLICE USE ONLY: REL TO:	DATE: <u>3/2/19</u>	BY:

DISSEMINATION RESTRICTED TO CRIMINAL JUSTICE AGENCIES ONLY. SECONDARY DISSEMINATION IS PROHIBITED.

Printed 2/12/15



CR19-1352  
DC-0960089175-148  
STATE VS. ANTHONY CLARKE (01 2 Pages)  
District Court 11/01/2019 01:54 PM  
Washoe County  
ncc  
01/01/2019

1 Anthony Clarke #1910622

2 Washoe County Jail

3 Reno Nevada 89512

FILED

2019 NOV -1 PM 3:54

JACQUELINE [Signature]  
CLERK OF DISTRICT COURT

BY

4 IN Pro se:

5  
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8  
9 STATE OF NEVADA,

10 Plaintiff,

CASE No. CR19-1352

11 v.

12 Anthony Clarke Natural Person,

13 Defendant. 1

14 DISCOVERY

15 Comes Now Anthony Clarke, the natural person in pro-se hereby  
16 move the District Attorney office of Washoe County and or Mariah  
17 Northington, Deputy District Attorney of Washoe County to turn over  
18 all Brady Material to Anthony Clarke, who is representing him -  
19 self in the above mentioned criminal case number.

20 1. The names of persons who were prosecution witnesses at the  
21 scheduled preliminary hearing in the Reno Justice Court on  
22 August 1, 2019 in Department # 4.

23 2. A full and complete copy of "Definition Pertaining to habitual  
24 criminals (not NRS 207.010).

25 3. All body camera evidence regarding Clarke's arrest on 3-2-19  
26 by Reno Police Department.

27 //

(1 of 2 pages)

JA 093

1, 4) The names of all prosecution witnesses the District Attorney's office  
2, intend to use at trial. Along with any exculpatory evidence that  
3, may exonerate a defendant and could be used to impeach a govern-  
4, ment witness. Brady, 373 U.S. 83 (1963).

5, 5) A complete copy of the Mandatory Status Conference for Reno  
6, Justice Court.

7,  
8, DATED: November 1, 2019

9, Anthony Clarke #1910622  
10, Anthony Clarke Defendant in Pro Se.  
Natural Person

11,  
12, AFFIRMATION PURSUANT TO NRS 239B.030

13,  
14, This document does not have the social security numbers of any  
15, person

16,  
17, DATED: November 1, 2019

Anthony Clarke  
Anthony Clarke #1910622  
Defendant in Pro Se  
Natural Person

CR19-1352  
STATE VS. ANTHONY CLARKE (D1 2 Pages)  
District Court 11/01/2019 01:54 PM  
Washoe County  
2280  
rpt rltg

1. Anthony Clarke #1910622

2. Washoe County Jail

3. Reno Nevada 89512

4.

5. Defendant In Pro se:

6.

7. IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8.

IN AND FOR THE COUNTY OF WASHOE

9.

10. THE STATE OF NEVADA

11.

Plaintiff,

12.

v.

CASE NO CR 19-1352

13.

Anthony Clarke. Natural Person,

Dept No: 15

14.

defendant.

15.

16.

MOTION TO DISMISS

17.

Comes Now, Anthony Clarke the natural person acting in pro se, hereby moves this

18.

Court for an Order for a Dismissal of the above entitled case based on insufficient

19.

evidence to support a charge of burglary.

20.

This Motion is made and based upon the attached Points and Authorities, and

21.

any oral or documentary evidence as may be presented at the hearing on

22.

this matter.

23.

I. Background

24.

Clarke is charged with the offense of Burglary, in violation of N.R.S. 205.060. The

25.

State alleges that on March 2, 2019, Clarke entered the Taste of Chicago resta-

26.

urant with the intent to commit larceny therein after having been convicted

27.

of petit larceny on two prior occasions, but evidence only show that he

28.

11

1 entered the restaurant and that at one point asked a customer if  
2 the restaurant was open. Surveillance footage inside the restaurant  
3 revealed Clarke waited for the customer to turn her head wherein  
4 he reached into the tip jar, obtained the cash and depart the  
5 scene.

6 State's contention that he entered with the intent to commit larceny  
7 therein is pure speculation given that he had \$ 377.00 on his  
8 person when entering the restaurant.

9 AUTHORITY IN SUPPORT

10 Criminal intent formulated after lawful entry will not satisfy burglary  
11 statute. N.R.S. 205.060 State v. Adams, 1978, 581 P.2d 868. 94 Nev. 503.

12  
13 One of the essential elements of burglary is the entry of a building with  
14 the intent to commit grand or petit larceny, or any felony N.R.S 205.060,  
15 subd. 1. Sheriff. Clark County v. Hicks, 1973 506 P.2d 766. 89 Nev. 78.

16 Clarke has suffered prejudice

17 CONCLUSION

18 Charges should be dismissed with prejudice.

19 DATE Nov. 1, 2019

151 Anthony Clarke

Anthony Clarke Defendant  
IN PRO SE Natural Person

21 I declare under penalty of perjury that the above is true and correct.

22 DATED Nov 1, 2019

151 Anthony Clarke

Anthony Clarke Defendant  
In Pro Se Natural Person

24 This document does not contain the Social Security numbers of any person.

25 DATE Nov, 1 2019

Respectfully submitted,

Anthony Clarke

Anthony Clarke Defendant  
IN PRO SE Natural Person

CR19-1352  
DC-0590089179-150  
STATE VS. ANTHONY CLARKE (01 4 Pages)  
District Court 11/01/2019 01:54 PM  
Washoe County  
2485  
for  
rcl/clm

1. Anthony Clarke #1910622

2. Washoe County Jail

3. Reno, NV 89512

5. Defendant In Pro se:

FILED

2019 NOV -1 PM 3: 54

JACQUELINE  
CLERK OF THE COURT

BY: [Signature]

7. IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8. IN AND FOR THE COUNTY OF WASHOE

9. STATE OF NEVADA

10. Plaintiff,

11. CASE NO: CR19-1352

13. Anthony Clarke,

Dept No 13

14. Defendant,

16. Motion to Withdraw Guilty Plea

17. COMES NOW, Anthony Clarke, a natural person, hereby moves  
18. this Court for an Order permitting Clarke to withdraw Guilty Plea. This  
19. motion is based on any oral or documentary evidence as may be presented  
20. at a hearing on this matter. And authority attached.

21. POINTS AND AUTHORITIES

22. 1. Statement of the case

23. Clarke is accused of Burglary, a felony. Clarke waived his preliminary  
24. hearing on August 1, 2019. Clarke entered his plea of guilty on August 21, 2019,  
25. and sentencing was scheduled for October 7, 2019. At the sentencing  
26. hearing, Clarke informed the Court and counsel that he wanted to represent

1 himself. Clarke's Sentencing hearing was moved to October 14, 2019.

2 INTRODUCTION:

3 Clarke alleges insufficient performance by his assigned counsel Kendra G. Ber-  
4 tschy, NV Bond # 13071, and alleges that he was misled by appointed counsel at  
5 the Justice Court stage of his proceedings, which led to him waiving his prelim-  
6 inary hearing. Therefore, Clarke is filing this motion to Withdraw Guilty Plea.

7 Sequence of Events:

8 Declaration of Anthony Clarke

9 Ms. Bertschy and Clarke came into contact July 30, 2019 during an I-Web  
10 visit. We discussed in detail the line-up. Ms. Bertschy advised me she was reading  
11 notes about the line-up from another attorney. We both agreed the line-up and  
12 waiver to be present in the preliminary hearing was a good idea.

13 On July 31, 2019, Ms. Bertschy visited me at the Washoe County Jail. During this visit  
14 I signed the notice of waiver of appearance for preliminary hearing. I and Ms. Ber-  
15 tschy were in agreement that a line-up will be conducted prior to the preliminary  
16 hearing.

17 August 1, 2019, I was transported to RJC Dept #4 wherein I was placed  
18 in the hall way next to the courtroom. Moments before Preliminary hearing, Ms. Ber-  
19 tschy entered the room from the courtroom and said to me you were identified in a  
20 line-up and the witnesses are hear, do you want to sign the waiver? I signed  
21 the waiver thinking I was identified in a line-up and the witnesses were  
22 there.

23 August 21, 2019, I entered my guilty plea in the Second Judicial District Court.  
24 I asked the newly assigned attorney Ms. Valencia if I could see the line up  
25 evidence and who were the witnesses at the preliminary hearing. I was told this is  
26 not available.

Sentencing was scheduled for October 7, 2019. Ms Maizie Pusich, was the attorney of record. I asked her the same questions, but got no answer but: I dont have that information.

On October 23, 2019. Ms. Valencia, advised this Court that it was no line-up conducted and Mr. Clarke was so advised. This is a misrepresentation of the facts. I was not advised a line-up was not conducted.

If I had Known a line-up never happened, I would not had signed the waiver in the Justice Court. After all of this I became suspicious, as to why appointed counsel would "promise" me a line-up prior to the prelim and then mislead me into thinking I was identified in a line-up that never took place. I was coerced. I decided to withdraw my plea as soon as possible because I was mislead by a state appointed counsel because they want to move me through the process as fast as possible forget about due process.

I declare under penalty of perjury that the above is true and correct.

Date 11-23-19

151 Anthony Clarke  
Anthony Clarke Natural Person  
Defendant In Pro se

Coercion occurs when a defendant is induced by promises or threats which deprives the plea of the nature of a voluntary act."

Citina: Doe v. Woodford, 508 F.3d 563, 570 (9th Cir. 2007).

Clarke should be allowed to withdraw his plea.

Request that the district court conduct a evidentiary hearing into the issue raised.

This document does not contain the social security no# of any person.

11-13-19

151 Anthony Clarke  
Anthony Clarke Natural Person  
Defendant In Pro se.

DECLARATION OF ANTHONY CLARKE

I am the defendant in this case and declare the following:  
Evidence is insufficient to support a charge of burglary, charge was  
alleged as defendant on March 2, 2019, entered the Taste of Chicago  
restaurant with the intent to commit larceny therein after having  
been convicted of petit larceny on two prior occasions, but  
evidence only show that I entered the restaurant and at one point  
asked a customer if the restaurant was open. The customer said IDK  
"Nigger". Surveillance show me waiting for the customer to turn her  
head then I reached into the tip jar, removed the cash and left  
the restaurant.

I entered the restaurant to see if it was open, so I could order food  
and drink, but after being called a name inside, I decided retaliate  
and take the money out the tip jar. However, it was given back to Mr. Peto  
when confronted outside the restaurant.

The States contention that I entered the restaurant with intent  
to commit larceny therein is pure speculation given the fact no  
evidence support this claim and, I had \$ 377.00 on my person  
when entering the restaurant.

Without late discovery this exculpatory evidence would had not  
been revealed.

I declare under penalty of perjury that the above is true and  
correct.

Date 11.13.2019

151 Anthony Clarke

Defendant In Pro se, Natural Person

This document does not contain the social security number of any person.

Date 11.13.2019

151 Anthony Clarke

DEFENDANT IN PRO SE  
Natural Person



1 CODE  
2 Christopher J. Hicks  
3 #7747  
4 One South Sierra Street  
5 Reno, NV 89501  
6 (775) 328-3200  
7 Attorney for Plaintiff

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

12 \* \* \*

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No: CR19-1352

15 v.

Dept: D15

16 ANTHONY CLARKE,

17 Defendant  
18 \_\_\_\_\_/

19 **OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW PLEA**

20 COMES NOW, the State of Nevada, by and through CHRISTOPHER J.  
21 HICKS, District Attorney of Washoe County, and MARIAH NORTHINGTON,  
22 Deputy District Attorney, and hereby opposes Defendant's Motion to  
23 Withdraw Plea. Said opposition is based upon the following points and  
24 authorities and all pleadings, papers and documents on file herein and  
25 any testimony taken at a hearing on the matter.

26 ///

///

///

///

///

1 **POINTS AND AUTHORITIES**

2 **I. STATEMENT OF THE CASE**

3 This matter stems from the events that occurred on March 2,  
4 2019, when ANTHONY CLARKE ("Defendant") entered the Taste of Chicago  
5 restaurant and stole the money out of the tip jar. On March 4, 2019,  
6 Reno Justice Court found probable cause to hold the Defendant. On  
7 March 5, 2019, the Criminal Complaint was filed, charging Burglary, a  
8 violation of NRS 205.060, a category B felony.

9 On March 25, 2019, the Defendant failed to appear for the  
10 Mandatory Status Conference ("MSC"), and a Bench Warrant was issued.  
11 On July 12, 2019, that Bench Warrant was executed, and an MSC was set  
12 for July 18, 2019. At that MSC, the defense set this matter for a  
13 Preliminary Hearing for August 1, 2019. On July 31, 2019, the  
14 defense a Notice of Waiver of Appearance for Preliminary Hearing,  
15 pursuant to NRS 178.388 and *State vs. Sargent*, 122 Nev. 210, 128 P.3d  
16 1052 (2006), waving the Defendant's right to be present at the  
17 Preliminary Hearing. On August 1, 2019, the Defendant executed a  
18 Preliminary Hearing Waiver. Pursuant to negotiations, the Defendant  
19 was to plead to Burglary and the parties would jointly recommend a  
20 sentence of 12 to 36 months in the Nevada Department of Corrections.

21 The Information and Waiver were filed in District Court on  
22 August 6, 2019. The initial Arraignment was held on August 14, 2019,  
23 at which time the Defendant requested a one-week continuance. At the  
24 August 21, 2019 Arraignment, the Defendant was canvassed by the Court  
25 and entered his guilty plea. The Defendant signed the Guilty Plea  
26 Memorandum on August 21, 2019.

1           Sentencing was set for October 7, 2019. At the October 7, 2019  
2           Sentencing hearing, the Defendant indicated he wanted a *Young*  
3           Hearing. Defense counsel requested a one-week continuance to allow  
4           further discussion with the Defendant. Sentencing was continued to  
5           October 14, 2019. On October 11, 2019, defense counsel filed a  
6           Motion for Self-Representation and a Motion for *Young* Hearing. On  
7           October 14, 2019, the Court set a *Young* Hearing on October 23, 2019.

8           At the October 23, 2019 hearing, the Court executed a *Faretta*  
9           canvass, and then held a closed *Young* Hearing. The Court then filed  
10          its Order on October 24, 2019, granting the Defendant's request to  
11          represent himself. The Court's Order then instructed that any Motion  
12          seeking to withdraw his guilty plea must be filed no later than  
13          November 1, 2019. On November 1, 2019, the Defendant filed the  
14          following documents: Motion to Withdraw Guilty Plea, Motion to  
15          Dismiss Case, Motion for Discovery, and Petition for Writ of Habeas  
16          Corpus Ad Testificandum.

## 17       **II.    ARGUMENT**

18          NRS 176.165 allows a Defendant to withdraw a plea of guilty  
19          prior to the imposition of sentence. A District Court's ruling on a  
20          motion to set aside a guilty plea is discretionary and will not be  
21          reversed absent a clear abuse of discretion. *Bryant v. State*, 102  
22          Nev. 268, 272, 721 P.2d 364, 368 (1986); *Wilson v. State*, 99 Nev.  
23          362, 664 P.2d 328 (1983). The Nevada Supreme Court has changed its  
24          rulings over the years regarding exactly what the Court can consider  
25          when determining whether to allow a Defendant to withdraw a guilty plea  
26          prior to sentencing. The law has been, since 1969, that the Court may

1 grant such a motion "where for any substantial reason the granting of  
2 the privilege seems 'fair and just'." *State v. Second Judicial District*  
3 *Court*, 85 Nev. 381, 455 P.2d 923 (1969).

4 However, the inquiry into what is "fair and just" has change over  
5 time. In *Crawford v. State*, 117 Nev. 718, 30 P.3d 1123 (2001), the  
6 Nevada Supreme Court focused on 'fair and just' in the context of  
7 whether the plea was knowing, intelligent and voluntary. In 2015, the  
8 Nevada Supreme Court abrogated their decision in *Crawford* in *Stevenson*  
9 *v. State*, 131 Nev. Adv. Op. 61, 354 P.3d 1277, (2015). In *Stevenson*,  
10 the Nevada Supreme Court stated that they were disavowing *Crawford's*  
11 exclusive focus on the validity of the entry of a plea and found that a  
12 court should consider the totality of the circumstances to determine  
13 whether permitting withdrawal of a guilty plea before sentencing would  
14 be fair and just.

15 **a. DEFENDANT VOLUNTARILY, KNOWINGLY, AND INTELLIGENTLY ENTERED**  
16 **HIS GUILTY PLEA, AND THERE IS NO SUBSTANTIAL FAIR OR JUST**  
17 **REASON TO ALLOW WITHDRAWAL OF HIS GUILTY PLEA**

18 The Defendant's contention is that he was misled by his attorney.  
19 The Defendant asserts that his attorney promised him a line-up that  
20 would occur prior to or at the time of the Preliminary Hearing. The  
21 Defendant further asserts that on August 1, 2019, he was transported to  
22 the hallway next to a courtroom in the Reno Justice Court, and was told  
23 by his attorney that he was identified in that hallway in a lineup, and  
24 that is the only reason he signed the Preliminary Hearing Waiver.  
25 Then, in the Declaration attached to the Motion, the Defendant asserts  
26 that on March 2, 2019, he did enter the Taste of Chicago restaurant,

1 but only stole the money from the tip jar as retaliation after being  
2 purportedly offended by a customer in the store.

3 The State would like to note certain irregularities in the  
4 Defendant's Motion. First, in the Reno Justice Court, in-custody  
5 Defendants are never taken into the hallways. They are transported  
6 from the cells directly to the courtrooms via sally ports. As such,  
7 the State is unsure how this allegedly fabricated hallway line up  
8 actually occurred. Additionally, the State is unsure why a line up  
9 would have been promised or even requested, given that in his own  
10 Declaration, the Defendant contends his only dispute with the charge is  
11 that he did not form the intent to steal the money until after he was  
12 offended by a customer in the store. Therefore, given the facts of the  
13 charge and the Defendant's own statements, the State cannot see any  
14 potential relevance of a line up.

15 **b. DEFENDANT FAILS TO DEMONSTRATE HIS COUNSEL WAS INEFFECTIVE**

16 It seems to the State that the Defendant's Motion might be based  
17 upon an assertion of ineffective assistance of counsel. The Nevada  
18 Supreme Court addressed the issue of ineffective assistance of counsel  
19 as a basis to withdraw a guilty plea in *Molina v. State*, 120 Nev. 185,  
20 87 P.3d 533 (2004) in which the court stated:

21 The question of whether a criminal defendant has  
22 received ineffective assistance of counsel presents  
23 mixed questions of law and fact, and is subject to  
24 independent review. We review claims of ineffective  
25 assistance of counsel under the two-part test set  
26 forth in *Strickland v. Washington*. (citations  
omitted). Under *Strickland*, the defendant must  
demonstrate that his counsel's performance was  
deficient, i.e. it fell below an objective standard  
of reasonableness, and that the deficient

1 performance prejudiced the defense. However, in  
2 order to eliminate the distorting effects of  
3 hindsight, courts indulge in a strong presumption  
4 that counsel's representation falls within the broad  
5 range of reasonable assistance. *Id* at 190.

6 In *Molina* the Defendant based his motion to withdraw his guilty  
7 plea on the fact that he only met with his defense counsel once,  
8 that they only discussed the evidence the evening before trial, and  
9 that his defense counsel failed to adequately discuss the options of  
10 proceeding to trial and failed to provide a defense. At a hearing  
11 on the matter, the defense attorney testified to the communications  
12 with Molina regarding all of his allegations. The defense attorney  
13 testified that he discussed the lack of a defense and that the  
14 State's offer was the best he could obtain, and that it was Molina  
15 who decided it was in his best interest to accept the plea  
16 agreement. The defense attorney then went over the plea agreement  
17 and all of its consequences with Molina prior to the plea.

18 Upon review of *Molina*, the Nevada Supreme Court upheld the  
19 denial of the motion to withdraw his guilty plea, finding that the  
20 District Court carefully canvassed Molina on his understanding of  
21 the proceedings, the nature of the charges, and the possible  
22 penalties, and the fact that Molina signed a plea agreement  
23 memorializing the negotiations and manifested an understanding of  
24 its terms. Also, during the canvass of the defendant, he  
25 affirmatively admitted his guilt in connection with the charges and  
26 failed to demonstrate that his attorney's performance was deficient  
under *Strickland*. *Molina* at 191.

1           In this case, the Defendant waived his preliminary hearing on  
2 August 1, 2019, with the understanding that he would enter a guilty  
3 plea to the charge of Burglary with a jointly recommended sentence  
4 of 12-36 months in the Nevada Department of Corrections. At that  
5 point, the Defendant had the video surveillance from the restaurant  
6 and made the decision to accept plea negotiations. Then on August  
7 21, 2019, the Defendant was carefully canvassed by this Court and  
8 admitted to committing the crime alleged with the intent alleged,  
9 and plead guilty, as reflected in this Court's Minutes as well as  
10 the Guilty Plea Memorandum. During this canvas, the Defendant  
11 admitted his guilt, acknowledged the negotiations, told the Court he  
12 was aware of the potential penalty, indicated he had sufficient time  
13 to speak to his counsel, and that he was satisfied with the  
14 representation of counsel. This Court found that the Defendant's  
15 plea was knowing, voluntary and intelligent. See Court Minutes.

16           There is nothing in the record, or common knowledge, to support  
17 the Defendant's contention that he was promised a line up in the  
18 hallway of the Reno Justice Court and was told that said line up  
19 occurred. Further, there is nothing in the record to support his  
20 assertion that an alleged line up is what caused him to waive, given  
21 that the crime itself was captured on video surveillance and the  
22 Defendant himself concedes that he took that money. Just like in  
23 the *Molina* case, the Defendant fails to set out reasonable,  
24 credible, or adequate grounds to illustrate that the performance of  
25 his attorney fell below an objective standard of reasonableness and  
26 that the deficient performance prejudiced the Defendant by allowing

1 him to enter a guilty plea to the crime committed with a joint  
2 recommendation of the minimum sentence.

3 **C. DEFENDANT'S POTENTIAL CLAIM OF FACTUAL INNOCENCE IS BELIED**  
4 **BY THE FACTS**

5 Although not addressed in the substantive portion of the  
6 Defendant's Motion, in his Declaration he asserts that there is  
7 insufficient evidence to support a charge of Burglary because,  
8 according to the Defendant, he entered the restaurant, asked a  
9 customer if it was open, and when the customer allegedly offended  
10 him, he then stole the money out of the tip jar. He bases this  
11 contention on the sole assertion that he had \$377 dollars on his  
12 person when entering the restaurant. However, that is not true.

13 After leaving the restaurant with the tip money, the owner of  
14 the restaurant, Steve Peto, was able to stop the Defendant from  
15 getting away until police arrived. After being detained by the  
16 police, a search of the Defendant's person found a total of \$35  
17 dollars, the \$35 he stole from the tip jar. Per booking records,  
18 the Defendant had \$0 on his person when he was booked into the  
19 Washoe County Jail. Thus, all the facts establish that, contrary to  
20 the Defendant's contention, he had no money on him when he entered  
21 that restaurant. Further, even if he did, the video surveillance  
22 shows the Defendant walking by the restaurant on the sidewalk,  
23 peering through the large windows, where it can clearly be seen  
24 there is no worker standing behind the counter and there is a tip  
25 jar full of cash. After the Defendant walks in the front door of  
26 the restaurant, he walks up to the counter, stands next to the



1 customer, and as soon as the customer turns her head, he reaches in  
2 and steals the cash out of the tip jar. This entire series of  
3 events, from the moment the Defendant walks into the restaurant  
4 until he has the tip money in hand, takes 7 seconds. Although it is  
5 possible that the Defendant's statement of events occurred, it is  
6 not probable, especially given the fact that the Defendant had no  
7 money on him when he entered that restaurant.

8 The Nevada Supreme Court has established that withdrawal of a  
9 guilty plea may be warranted when there is a "credible claim of  
10 factual innocence and [a] lack of prejudice to the state." *Mitchell*  
11 *v. State*, 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993). In this  
12 case, there is no credibility to the Defendant's self-serving  
13 declaration that there is insufficient evidence to support the  
14 Burglary charge.

15 Additionally, the Defendant's extensive criminal history reveals  
16 that he has been through the system on numerous prior occasions and  
17 understands the pressures of a pending criminal case. The Court in  
18 *Stevenson* made the observation that, "Moreover, time constraints and  
19 pressure from interested parties exist in every criminal case and there  
20 is no indication in the record that their presence here prevented  
21 Stevenson from making a voluntary and intelligent choice among the  
22 options available." *Stevenson*, *supra* at 1281. That is exactly the  
23 case here. The Defendant was presented with his options by his defense  
24 counsel, including the potential for the imposition of Habitual  
25 Criminal Treatment, and he chose to enter a plea with a joint  
26 recommendation of the minimum sentence. The Defendant's buyer's

1 remorse is not a just and fair reason to allow him to withdraw his  
2 plea. As pointed out in *Stevenson*, "The guilty plea is not a  
3 placeholder that reserves [a defendant's] right to our criminal  
4 system's incentives for acceptance of responsibility unless or until a  
5 preferable alternative later arises...[r]ather, it is a grave and solemn  
6 act, which is accepted only with care and discernment."

### 7 **III. CONCLUSION**

8 Based on the totality of the circumstances as described above,  
9 ANTHONY CLARKE has failed to carry his burden to demonstrate that his  
10 plea was not voluntarily, intelligently and knowingly entered, and that  
11 it would be fair and just to allow him to withdraw his plea. There has  
12 been no fair and just reason provided that is supported by any evidence  
13 which would allow the Defendant to withdraw from his guilty plea.  
14 Thus, the State asks the court to deny the Defendant's Motion or, in  
15 the alternative, set the matter for an evidentiary hearing so that the  
16 Defendant can present evidence to meet his burden to demonstrate a fair  
17 and just reason to allow the withdrawal of his guilty plea.

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1                   AFFIRMATION PURSUANT TO NRS 239B.030

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

4                   Dated this 8<sup>th</sup> day of November, 2019

5                                   CHRISTOPHER J. HICKS  
6                                   District Attorney  
7                                   Washoe County, Nevada

8  
9                                   By: /s/ Mariah Northington  
10                                  MARIAH NORTHINGTON  
11                                  14247  
12                                  DEPUTY DISTRICT ATTORNEY  
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Pursuant to NRCP 5(b), I certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing at Reno, Washoe County, Nevada, a true copy of the foregoing document, addressed to:

7	Washoe County Detention Facility
	Anthony Clarke, Inmate #1910622
8	911 Parr Blvd.
9	Reno, NV 89512

DATED this 8th day of November, 2019.

2 | | /s/ Janelle Yost  
 | | JANELLE YOST

1 CODE  
2 Christopher J. Hicks  
3 #7747  
4 One South Sierra Street  
5 Reno, NV 89501  
6 (775) 328-3200  
7 Attorney for Plaintiff

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

12 \* \* \*

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No: CR19-1352

15 v.

Dept: D15

16 ANTHONY CLARKE,

17 Defendant

18 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

19 COMES NOW, the State of Nevada, by and through CHRISTOPHER J.  
20 HICKS, District Attorney of Washoe County, and MARIAH NORTHINGTON,  
21 Deputy District Attorney, and hereby opposes Defendant's Motion to  
22 Dismiss. Said opposition is based upon the following points and  
23 authorities and all pleadings, papers and documents on file herein and  
24 any testimony taken at a hearing on the matter.

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1 **POINTS AND AUTHORITIES**

2 **I. STATEMENT OF RELEVANT PROCEDURAL HISTORY**

3 This matter stems from the events that occurred on March 2,  
4 2019, when ANTHONY CLARKE ("Defendant") entered the Taste of Chicago  
5 restaurant and stole the tip money out of the tip jar. On March 4,  
6 2019, Judge Sullivan of Reno Justice Court found Probable Cause to  
7 hold the Defendant. On March 5, 2019, the Defendant was charged via  
8 Criminal Complaint with Burglary, a violation of NRS 205.060, a  
9 category B felony.

10 On March 25, 2019, the Defendant failed to appear for the  
11 Mandatory Status Conference ("MSC"), and a Bench Warrant was issued.  
12 On July 12, 2019, that Bench Warrant was executed, and an MSC was set  
13 for July 18, 2019. At that MSC, the defense set this matter for a  
14 Preliminary Hearing for August 1, 2019. On August 1, 2019, the  
15 Defendant executed a Preliminary Hearing Waiver. Pursuant to  
16 negotiations, the Defendant was to plead guilty to Burglary and the  
17 parties would jointly recommend a sentence of 12 to 36 months in the  
18 Nevada Department of Corrections.

19 The Information and Waiver were filed in District Court on  
20 August 6, 2019. At the August 21, 2019 continued Arraignment, the  
21 Defendant was canvassed by the Court and entered his guilty plea.  
22 The Defendant signed the Guilty Plea Memorandum on August 21, 2019.  
23 Sentencing is currently scheduled on November 25, 2019. On November  
24 1, 2019, the Defendant filed the following documents: Motion to  
25 Withdraw Guilty Plea, Motion to Dismiss Case, Motion for Discovery,  
26 and Petition for Writ of Habeas Corpus Ad Testificandum.

1   **II.    ARGUMENT**

2           The Defendant's contention is that there is insufficient  
3 evidence to support the Burglary charge. The State is unsure what  
4 procedural mechanism the Defendant's Motion is based upon. This  
5 matter did not proceed to a Preliminary Hearing due to the  
6 Defendant's Waiver, and therefore there has not yet been an  
7 evidentiary based hearing in this matter to establish whether there  
8 is sufficient evidence to hold the Defendant for trial, given his  
9 acceptance of plea negotiations and subsequent guilty plea.  
10 Therefore, it would be the State's position that this requested  
11 relief be denied at this time, or held in abeyance, until this Court  
12 rules on the Motion to Withdraw Guilty Plea, at which time the  
13 procedural posture of this case will be settled.

14   **III.   CONCLUSION**

15           Based on the current procedural posture of this case, the State  
16 respectfully requests that this Motion be denied, or alternatively,  
17 that this Motion be held in abeyance pending this Court's ruling on the  
18 Motion to Withdraw Plea.

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1                                AFFIRMATION PURSUANT TO NRS 239B.030

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

4                    Dated this 8<sup>th</sup> day of November, 2019

5                                CHRISTOPHER J. HICKS  
6                                District Attorney  
7                                Washoe County, Nevada

8  
9                                By: /s/ Mariah Northington  
10                                MARIAH NORTINGTON  
11                                14247  
12                                DEPUTY DISTRICT ATTORNEY  
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Pursuant to NRCP 5(b), I certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing at Reno, Washoe County, Nevada, a true copy of the foregoing document, addressed to:

7 Washoe County Detention Facility  
Anthony Clarke, Inmate #1910622  
8 911 Parr Blvd.  
9 Reno, NV 89512

DATED this 8th day of November, 2019.

2 | | /s/ Janelle Yost  
JANELLE YOST

1 CODE  
2 Christopher J. Hicks  
3 #7747  
4 One South Sierra Street  
5 Reno, NV 89501  
6 (775) 328-3200  
7 Attorney for Plaintiff

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

12 \* \* \*

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No: CR19-1352

15 v.

Dept: D15

16 ANTHONY CLARKE,

17 Defendant

18 STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

19 COMES NOW, the State of Nevada, by and through CHRISTOPHER J.  
20 HICKS, District Attorney of Washoe County, and MARIAH NORTHINGTON,  
21 Deputy District Attorney, and hereby responds to Defendant's Petition  
22 for Writ of Habeas Corpus. Said Response is based upon the following  
23 points and authorities and all pleadings, papers and documents on file  
24 herein and any testimony taken at a hearing on the matter.

25 ///

26 ///

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1 POINTS AND AUTHORITIES

2 **I. STATEMENT OF RELEVANT PROCEDURAL HISTORY**

3 This matter stems from the events that occurred on March 2,  
4 2019, when ANTHONY CLARKE ("Defendant") entered the Taste of Chicago  
5 restaurant and stole the tip money out of the tip jar. On August 1,  
6 2019, the Defendant executed a Preliminary Hearing Waiver. Pursuant  
7 to negotiations, the Defendant was to plead guilty to Burglary and  
8 the parties would jointly recommend a sentence of 12 to 36 months in  
9 the Nevada Department of Corrections. The Information and Waiver  
10 were filed in District Court on August 6, 2019. The initial  
11 Arraignment was held on August 14, 2019, at which time the Defendant  
12 requested a one-week continuance. At the August 21, 2019  
13 Arraignment, the Defendant was canvassed by the Court and entered his  
14 guilty plea. The Defendant signed the Guilty Plea Memorandum on  
15 August 21, 2019. Sentencing is currently scheduled on November 25,  
16 2019. On November 1, 2019, the Defendant filed several documents,  
17 including this Petition for Writ of Habeas Corpus Ad Testificandum.

18 **II. ARGUMENT**

19 NRS 34.700(1) provides, in pertinent part, that "...a pretrial  
20 petition for a writ of habeas corpus based on alleged lack of  
21 probable cause or otherwise challenging the court's right or  
22 jurisdiction to proceed to the trial of a criminal charge **may not be**  
23 **considered unless...**(a) The petition and all supporting documents are  
24 **filed within 21 days after the first appearance** of the accused in the  
25 district court..." (emphasis added).

26 ///

1       The Defendant had his first District Court appearance at his  
2 August 14, 2019 Arraignment, which was continued to August 21, 2019  
3 at the defense's request. Therefore, the Defendant had until  
4 **September 4, 2019** to file a pretrial Petition for Writ of Habeas  
5 Corpus. This filing, on November 1, 2019, is therefore barred.

6       Further, procedurally, it is the State's position that this  
7 Petition cannot be considered because, as demonstrated by the  
8 language of NRS 34.700, such pretrial Petitions are to be filed prior  
9 to the entry of the guilty plea and when a matter is set for a trial.  
10 There have not yet been any evidentiary based hearings in this case,  
11 given the Defendant's waiver of his Preliminary Hearing. Therefore,  
12 it would be the State's position that this requested relief be denied  
13 at this time, or held in abeyance, until this Court rules on the  
14 Motion to Withdraw Guilty Plea.

### 15 **III. CONCLUSION**

16       Based on the current procedural posture of this case, the State  
17 respectfully requests that this Petition be denied as untimely pursuant  
18 to NRS 34.700, or alternatively, that this Petition be held in abeyance  
19 pending this Court's ruling on the Motion to Withdraw Plea.

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1                   AFFIRMATION PURSUANT TO NRS 239B.030

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

4                   Dated this 8<sup>th</sup> day of November, 2019

5                                   CHRISTOPHER J. HICKS  
6                                   District Attorney  
7                                   Washoe County, Nevada

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9                                   By: /s/ Mariah Northington  
10                                  MARIAH NORTINGTON  
11                                  14247  
12                                  DEPUTY DISTRICT ATTORNEY  
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Washoe County Detention Facility  
Anthony Clarke, Inmate #1910622  
911 Parr Blvd.  
Reno, NV 89512

DATED this 8th day of November, 2019.

/s/ Janelle Yost

---

JANELLE YOST

1 CODE  
2 Christopher J. Hicks  
3 #7747  
4 One South Sierra Street  
5 Reno, NV 89501  
6 (775) 328-3200  
7 Attorney for Plaintiff

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

12 \* \* \*

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No: CR19-1352

15 v.

Dept: D15

16 ANTHONY CLARKE,

17 Defendant

18 **STATE'S RESPONSE TO DEFENDANT'S MOTION FOR DISCOVERY**

19 COMES NOW, the State of Nevada, by and through CHRISTOPHER J.  
20 HICKS, District Attorney of Washoe County, and MARIAH NORTHINGTON,  
21 Deputy District Attorney, and hereby responds Defendant's Motion for  
22 Discovery. Said response is based upon the following points and  
23 authorities and all pleadings, papers and documents on file herein and  
24 any testimony taken at a hearing on the matter.

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1 **POINTS AND AUTHORITIES**

2 **I. STATEMENT OF RELEVANT PROCEDURAL HISTORY**

3 This matter stems from the events that occurred on March 2,  
4 2019, when ANTHONY CLARKE ("Defendant") entered the Taste of Chicago  
5 restaurant and stole the tip money out of the tip jar. On August 1,  
6 2019, the Defendant executed a Preliminary Hearing Waiver. Pursuant  
7 to negotiations, the Defendant was to plead guilty to Burglary and  
8 the parties would jointly recommend a sentence of 12 to 36 months in  
9 the Nevada Department of Corrections. The Information and Waiver  
10 were filed in District Court on August 6, 2019. The initial  
11 Arraignment was held on August 14, 2019, at which time the Defendant  
12 requested a one-week continuance. At the August 21, 2019  
13 Arraignment, the Defendant was canvassed by the Court and entered his  
14 guilty plea. The Defendant signed the Guilty Plea Memorandum on  
15 August 21, 2019. Sentencing is currently scheduled on November 25,  
16 2019. On November 1, 2019, the Defendant filed several documents,  
17 including this Motion for Discovery.

18 **II. ARGUMENT**

19 The State has provided discovery to Defendant in compliance with  
20 NRS 174.235 and *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963).  
21 To date, the following items have been discovered to the defense:  
22 Certified Copies of the Defendant's Petit Larceny convictions, the  
23 Body Camera Footage from all responding Officers, the Probable Cause  
24 Sheet, the Police Report, the video surveillance from Taste of  
25 Chicago, the Evidence Release relating to the \$35, and the Witness  
26 Statements of Katherine Tyrrell, Steve Peto, and Sheri Martinovich.



1 There has been no further evidence generated or received. The State  
2 recognizes its continuing duty to disclose discovery.

3 As to the Defendant's specific requests, the State will address  
4 each of them below:

- 5 1. Defendant's request for the names of the prosecution's witnesses  
6 for the August 1, 2019 Preliminary Hearing - The defense is  
7 aware of all the State's witnesses from the Police Reports and  
8 Witness Statements, as well as the Witness List that is provided  
9 as part of the August 6, 2019 Information.
- 10 2. Defendant's request for the definition of Habitual Criminal  
11 other than NRS 207.010 - The State is unsure what evidence the  
12 Defendant is requesting.
- 13 3. Defendant's request for the body camera footage - All body  
14 camera footage was provided to the Defendant through his  
15 previously appointed counsel. Given that the Defendant is now  
16 representing himself with the Public Defender's Office as stand-  
17 by counsel, the undersigned attorney is unsure, procedurally  
18 speaking, how the Defendant himself now views that evidence.  
19 The undersigned spoke with the Washoe County Jail, and they have  
20 indicated that is something the Defendant would have to  
21 facilitate with Jail Staff.
- 22 4. Defendant's request for the names of all the prosecution's  
23 witnesses - Please see Item 1. Defendant's request for all  
24 exculpatory and impeachment evidence - The State is aware of its  
25 obligations under NRS 174.235 and *Brady*.

1 5. Defendant's request for a "complete copy of the Mandatory Status  
2 Conference for Reno Justice Court" - The State is unsure what  
3 exactly the Defendant is requesting.

4 **III. CONCLUSION**

5 Due to the disclosure of all discovery in this case, as well as  
6 the fact that the State is aware of its duties pursuant to NRS 174.235  
7 and *Brady*, the State respectfully requests that this Motion be denied.  
8  
9

10 AFFIRMATION PURSUANT TO NRS 239B.030

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

13 Dated this 8<sup>th</sup> day of November, 2019

14 CHRISTOPHER J. HICKS  
15 District Attorney  
16 Washoe County, Nevada  
17

18 By: /s/ Mariah Northington  
19 MARIAH NORTHINGTON  
20 14247  
21 DEPUTY DISTRICT ATTORNEY  
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Pursuant to NRCP 5(b), I certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing at Reno, Washoe County, Nevada, a true copy of the foregoing document, addressed to:

7	Washoe County Detention Facility
	Anthony Clarke, Inmate #1910622
8	911 Parr Blvd.
9	Reno, NV 89512

DATED this 8th day of November, 2019.

2 | | /s/ Janelle Yost  
 | | JANELLE YOST

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

STATE OF NEVADA,

Plaintiff,

Case No.: CR19-1352

vs.

ANTHONY CLARKE,

Dept. No.: 15

Defendant.

**ORDER DENYING MOTION TO WITHDRAW GUILTY PLEA**

Before this Court is Defendant Anthony Clarke's opposed Motion to Withdraw Guilty Plea, dated November 1, 2019. This Court has considered all moving papers and the evidence presented at the hearing; it now finds and orders as follows:

**I. Background and Procedural History**

On March 2, 2019, police officers detained Mr. Clarke following a report of a fight. Police interviewed Steve Peto, the owner of the Taste of Chicago restaurant. Mr. Peto alleged Mr. Clarke entered the restaurant, stole money from the tip jar, then attempted to run away. Mr. Clarke is charged with the offense of Burglary, in violation of NRS 205.060. The State alleges Mr. Clarke entered the Taste of Chicago restaurant with the intent to commit larceny therein, after having been convicted of petit larceny on two prior occasions.

1 On August 6, 2019, Mr. Clarke waived his preliminary examination. Subsequently,  
2 on August 21, 2019, he pled guilty to the offense, subject to an agreement that both  
3 Mr. Clarke and the State stipulate to recommend a sentence of 12 to 36 months  
4 imprisonment in the Nevada State Department of Corrections. However, at his intended  
5 sentencing hearing, Mr. Clarke orally informed this Court he wished to represent himself  
6 and withdraw his plea of guilt. Following a Faretta canvas, this Court granted  
7 Mr. Clarke's motion for self-representation and appointed the Washoe County Public  
8 Defender's Office as standby counsel.

## 9 II. Principles of Law and Analysis

10 NRS 176.165 permits a defendant to move to withdraw his or her plea of guilt  
11 before sentence is imposed. In determining whether such a plea may be withdrawn, a  
12 court must consider the totality of the circumstances to determine whether permitting  
13 withdrawal would be "fair and just." Stevenson v. State, 131 Nev. 598, 603, 354 P.3d 1277,  
14 1281 (2015); see also State v. Dist. Ct., 85 Nev. 381, 385, 455 P.2d 923, 926 (1969) ("granting  
15 of the motion to withdraw one's plea before sentencing is proper where for any substantial  
16 reason the granting of the privilege seems fair and just.").

17 Mr. Clarke argues he was misled by his defense counsel, improperly inducing his  
18 guilty plea. Specifically, Mr. Clarke alleges he pled guilty based upon defense counsel's  
19 representation prior to his preliminary hearing waiver that witnesses were prepared to  
20 testify he had been identified in a lineup. However, no lineup was conducted. Mr. Clarke  
21 states he would not have pled guilty had he known no lineup evidence existed. During a  
22 closed Young hearing, defense counsel asserted there were no case notes indicating  
23 Mr. Clarke was advised regarding the existence of a lineup.

24 As an attachment to his motion, Mr. Clarke provided a declaration in which he  
25 argues the evidence is insufficient to support the charge of burglary. He acknowledges he  
26 took tip money from the Taste of Chicago restaurant, but asserts he did not enter the  
27 establishment with the intent to do so. Rather, he states he entered the restaurant to see if  
28 it was open, but decided to take the money after he was called a racial slur once inside.

1 After considering the record in this action as a whole, this Court concludes there is  
2 not a substantial fair and just reason supporting withdrawal of Mr. Clarke's plea. On  
3 August 21, 2019, Mr. Clarke signed a guilty plea memorandum indicating he had  
4 considered and discussed all possible defenses and defense strategies with his counsel. He  
5 further affirmed his plea was made freely, voluntarily, knowingly, and with a full  
6 understanding of all matters set forth in the Information. During his arraignment on the  
7 same day, Mr. Clarke affirmed he understood his rights, his attorney was able to answer  
8 any questions he had, and he was satisfied with her services. He appeared to be aware  
9 and engaged during this exchange, as shown when he prompted defense counsel to ask if  
10 he would be permitted to waive his PSI and proceed to sentencing early. At no point did  
11 he raise concerns that he had been unable to review discovery related to a lineup. During  
12 his presentence investigation interview, performed on September 10, 2019, Mr. Clarke  
13 admitted to committing the offense to which he pled, stating he needed money for drugs.  
14 He indicated he would like to be sent to a treatment program. Again, he did not mention  
15 any issues arising from his plea, information not relayed to him by counsel, or an alleged  
16 lineup.

17 The first time Mr. Clarke mentioned the existence of a lineup was in the context of a  
18 motion for substitution of counsel on October 7, 2019, the day he was scheduled to be  
19 sentenced. At this point, Mr. Clarke listed a number of disagreements with defense  
20 counsel, including her refusal to provide him with lineup evidence. However, he did  
21 not indicate his plea turned on the existence of such a lineup. Subsequently, in a pro se  
22 Petition for Writ of Habeas Corpus filed on November 1, 2019, Mr. Clarke indicated he  
23 had been told his counsel and the State agreed to perform a lineup before his preliminary  
24 hearing occurred, which caused him to waive his originally scheduled preliminary  
25 hearing. In this petition, Mr. Clarke appears to express frustration that counsel did not  
26 follow through with arranging such a lineup but, confusingly, later told him the  
27 lineup had actually occurred. When considered within the context of the entire  
28

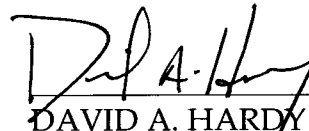
1 record, these communications raise questions as to consistency of Mr. Clarke's beliefs  
2 regarding the centrality of the lineup evidence to his plea.

3 Finally, there are significant logical inconsistencies in Mr. Clarke's argument.  
4 Mr. Clarke was represented by a different public defender when he waived his  
5 preliminary hearing than when he entered his guilty plea. It is unlikely two counsel were  
6 similarly mistaken as to the existence of a lineup when a third counsel has stated no such  
7 notation exists in either counsel's notes. In addition, a lineup could not have been  
8 conducted outside of Mr. Clarke's presence. It is difficult to understand how Mr. Clarke,  
9 who has significant experience with law enforcement, would have believed he was  
10 identified in a lineup when he never participated in one. Finally, police records indicate  
11 Mr. Clarke was immediately chased and held by the owner of the restaurant and  
12 there is surveillance video showing him committing the alleged theft. This evidence is  
13 consistent with Mr. Clarke's arguments that the primary issue at trial would be his intent  
14 rather than mistaken identity. Thus, it is not apparent why Mr. Clarke's decision to plead  
15 guilty would have turned upon the existence of a lineup identification.

16 After considering the totality of the circumstances, this Court finds there is  
17 insufficient evidence to conclude Mr. Clarke entered his plea of guilt due to a mistaken  
18 belief additional inculpatory evidence existence. Accordingly, there is no substantial fair  
19 and just reason to permit Mr. Clarke to withdraw his plea prior to sentencing.  
20 Mr. Clarke's Motion to Withdraw Guilty Plea is denied.

21 **IT IS SO ORDERED**

22 **DATED** this 21 day of November, 2019.

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25 **DAVID A. HARDY**  
26 District Judge  
27  
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7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,**  
8 **IN AND FOR THE COUNTY OF WASHOE**  
9

10 **STATE OF NEVADA,**

**Case No. CR19-1352**

11 **Plaintiff,**

12 **v.**

**Dept. No. 15**

13 **ANTHONY CLARKE,**

14 **Defendant.**  
15 \_\_\_\_\_/

16 **PROPOSED CORRECTIONS TO PSI REPORT PROVIDED AT SENTENCING**  
17

18 **SEE ATTACHED**

19 **///**

20 **///**

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Anthony Clarke #1910622

Nov 25, 2019

Washoe County Jail

Case No# CR19-1352

Reno, NV 89512

THE HONORABLE DAVID A HARDY  
DEPARTMENT XV, WASHOE COUNTY

SECOND JUDICIAL DISTRICT COURT

PSI: 581476

PENALTY: By imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$ 10,000.

The Defendant has an agreement for a stipulated 12-36 months in prison.

The Defendant respectfully request that this Court order corrections in the Presentence Investigation Report Pursuant to NRS 176.156,

① In case no# A197623 is not me, ② A904766 is not a Felony, ③ A915126 is not a Felony, ④ YA004838 is not a Felony, ⑤ BA094-372 is not a Felony, ⑥ YA032139 is not me, ⑦ On Page 7 of the PSI under the date 5/18/13 has no Court case number, ⑧ RCR2016 085899 is not a Felony, On Page 10 of the PSI states I was arrested but no disposition.. This is not me.

CONCLUSION

These should be changed.

Respectfully submitted,  
Anthony Clarke

1 **CODE: 1696**

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

10 **STATE OF NEVADA,**

**Case No. CR19-1352**

11 **Plaintiff,**

**Dept. No. 15**

12 **vs.**

13 **ANTHONY CLARKE,**

14 **Defendant.**

15 \_\_\_\_\_/  
16 **10/14/19 SENTENCING CONTINUANCE EXHIBIT**  
17

18 **SEE ATTACHED**

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## **Exhibits**

**HEARING: 10/14/19 SENTENCING CONTINUANCE**

**TITLE: STATE OF NEVADA VS. ANTHONY CLARKE**

**PLTF: STATE OF NEVADA**

**DDA: N. MacLellan**

**DEFT: ANTHONY CLARKE**

**DPD: L. Valencia**

**Case No: CR19-1352**

**Dept. No: 15**

**Clerk: A. Dick**

**Date: 10/14/19**

<b>Exhibit No.</b>	<b>Party</b>	<b>Description</b>	<b>Marked</b>	<b>Offered</b>	<b>Admitted</b>
1	STATE	Prior Conviction Misdo	10/14/19	NO OBJECTION	10/14/19
2	STATE	Prior Conviction Misdo	10/14/19	NO OBJECTION	10/14/19

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RENO MUNICIPAL COURT  
**CASE SUMMARY**  
**CASE No. 15CR-15211**

**CITY OF RENO**  
vs.  
**ANTHONY CLARKE**

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Location: **Citation**  
Filed on: **10/19/2015**  
Booking Number: **15-17171**  
Process Control Number: **RPD1512936C**

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**CASE INFORMATION**

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Offense	Citation	Deg	Date	Case Type:
1. 8.10.040 Petit Larceny, Value Less than \$650	15-22978	M	10/17/2015	Misdemeanor Arrest

**Statistical Closures**  
10/20/2015 Guilty Plea with Sentence (before trial)

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**PARTY INFORMATION**

---

<b>Plaintiff</b>	<b>CITY OF RENO</b>
<b>Defendant</b>	<b>CLARKE, ANTHONY</b> DOB: 04/13/1959 Age: 56

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DATE	EVENTS & ORDERS OF THE COURT
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**DISPOSITIONS**

10/20/2015	<b>Plea</b> (Judicial Officer: Nash Holmes, Dorothy) 1. 8.10.040 Petit Larceny, Value Less than \$650 Nolo Contendere
10/20/2015	<b>Disposition</b> (Judicial Officer: Nash Holmes, Dorothy) 1. 8.10.040 Petit Larceny, Value Less than \$650 Found Guilty
10/20/2015	<b>Imposed</b> (Judicial Officer: Nash Holmes, Dorothy) 1. 8.10.040 Petit Larceny, Value Less than \$650 10/17/2015 (M) 8.10.040 (56404)

Sentence to Confinement  
Agency: Washoe County Jail  
Term: 45 Days  
Comment: CTS, C/C

**EVENTS**

10/17/2015	Bail Set At: \$ 500.00
10/19/2015	 Formal Complaint Filed With the Court
10/20/2015	Rights Explained <i>Defendant appeared, explained his/her rights by the Judge and indicated that he/she understood them completely.</i>
10/20/2015	 Judges Notes

**HEARINGS**

10/19/2015	<b>CANCELED In Custody Video Arraignments (8:30 AM)</b> (Judicial Officer: Nash Holmes, Dorothy) <i>Arraignment/Hearing Continued by Court</i>
10/20/2015	<b>In Custody Video Arraignments (8:30 AM)</b> (Judicial Officer: Nash Holmes, Dorothy) <i>Held</i>

JA 138

No. CR19-1352  
STATE

vs.

Anthony Clarke  
State Ex. 1

Admitted: 10/19, 20 19  
JACQUELINE BRYANT, CLERK

By adick  
Deputy

I hereby certify this as a true and correct copy of the original in the records of the Reno Municipal Court, Reno, Washoe County, Nevada, and that the Clerk of the Court is the custodian of the original record and that I am authorized to make this certification.

RENO MUNICIPAL COURT

By [Signature]  
Deputy Clerk of the Court



RENO MUNICIPAL COURT

**CASE SUMMARY**

**CASE No. 15CR-18116**

**CITY OF RENO**  
vs.  
**ANTHONY CLARKE**

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Location: **Citation**  
Filed on: **12/28/2015**  
Booking Number: **15-20865**  
Process Control Number: **RPD1516400C**

**CASE INFORMATION**

<b>Offense</b>	<b>Citation</b>	<b>Deg</b>	<b>Date</b>	<b>Case Type:</b>
1. 8.10.040 Petit Larceny, Value Less than \$650	15-27286	M	12/26/2015	Misdemeanor Arrest

**Statistical Closures**  
12/29/2015 Guilty Plea with Sentence (before trial)

**PARTY INFORMATION**

<b>Plaintiff</b>	<b>CITY OF RENO</b>
<b>Defendant</b>	<b>CLARKE, ANTHONY</b> DOB: 04/13/1959 Age: 56



<b>DATE</b>	<b>EVENTS &amp; ORDERS OF THE COURT</b>
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**DISPOSITIONS**

12/28/2015	<b>Plea</b> (Judicial Officer: Gardner, William) 1. 8.10.040 Petit Larceny, Value Less than \$650 Nolo Contendere
12/28/2015	<b>Disposition</b> (Judicial Officer: Gardner, William) 1. 8.10.040 Petit Larceny, Value Less than \$650 Found Guilty
12/28/2015	<b>Imposed</b> (Judicial Officer: Gardner, William) 1. 8.10.040 Petit Larceny, Value Less than \$650 12/26/2015 (M) 8.10.040 (56404)

Sentence to Confinement  
Agency: Washoe County Jail  
Term: 90 Days  
Comment: CTS

**EVENTS**

12/26/2015	Bail Set At: \$ 500.00
12/28/2015	 Formal Complaint Filed With the Court
12/28/2015	 Pre-trial Services Assessment Report
12/28/2015	Judges Notes
12/28/2015	Rights Explained <i>Defendant appeared, explained his/her rights by the Judge and indicated that he/she understood them completely.</i>
12/28/2015	Present in Court: <b>FOR THE CITY OF RENO: FOR THE DEFENSE: CONWAY</b>
12/29/2015	Case Completely Closed

**HEARINGS**

12/28/2015	In Custody Video Arraignments (8:30 AM) (Judicial Officer: Gardner, William)
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JA 140



I hereby certify this as a true and correct copy of the original in the records of the Reno Municipal Court, Reno, Washoe County, Nevada, and that the Clerk of the Court is the custodian of the original record and that I am authorized to make this certification.

RENO MUNICIPAL COURT

By

  
Deputy Clerk of the Court

RENO MUNICIPAL COURT  
**CASE SUMMARY**  
**CASE No. 15CR-18116**

| *Held*

No. CR19-1352  
STATE

vs.

Anthony Clarke  
State Ex. 2

Admitted: 10/14, 2019  
JACQUELINE BRYANT, CLERK

By ADAM  
Deputy

I hereby certify this as a true and correct copy of the original in the records of the Reno Municipal Court, Reno, Washoe County, Nevada, and that the Clerk of the Court is the custodian of the original record and that I am authorized to make this certification.

RENO MUNICIPAL COURT

By [Signature]  
Deputy Clerk of the Court



4185  
**SUNSHINE LITIGATION**  
151 Country Estates Circle  
Reno, Nevada 89512

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE  
BEFORE THE HONORABLE DAVID N. HARDY, DISTRICT JUDGE

-oOo-

STATE OF NEVADA,	:	
	:	
Plaintiff,	:	
	:	
vs	:	Case No. CR19-1352
	:	
ANTHONY CLARKE,	:	Dept. No. 15
	:	
Defendant.	:	
	:	

=====

TRANSCRIPT OF PROCEEDINGS

**SENTENCING**

MONDAY, NOVEMBER 25TH, 2019

Reno, Nevada

Reported By: ERIN T. FERRETTO, CCR #281

A P P E A R A N C E S

FOR THE PLAINTIFF:

MARIAH NORTHINGTON, ESQ.  
Deputy District Attorney  
One South Sierra Street  
Reno, Nevada

FOR THE DEFENDANT:

In Pro Per

ALSO PRESENT:

LORENA VALENCIA, ESQ.  
Deputy Public Defender  
350 S. Center Street  
Reno, Nevada

PAROLE AND PROBATION:

ROBERT GLASS

1 -o0o-

2 RENO, NEVADA, MONDAY, NOVEMBER 25TH, 2019, 11:10 A.M.

3 -o0o-

4  
5  
6 THE COURT: We'll now turn to Mr. Clarke,  
7 CR19-1352.

8 Ms. Valencia, if you'll actually pass the bar and  
9 just stand there --

10 MS. VALENCIA: Okay.

11 THE COURT: -- versus standing next to the aisle.  
12 And you are not required to do or say anything, but if at  
13 any time Mr. Clarke wishes to consult with you privately,  
14 I will give that opportunity.

15 Mr. Clarke appears on his own behalf.

16 I am so embarrassed --

17 MS. NORTINGTON: Ms. Northington.

18 THE COURT: I know, I'm looking at the notes, I  
19 didn't acknowledge you when I saw all the attorneys out  
20 there who were here and going off cases.

21 So Ms. Northington is present. You have read,  
22 Mr. Clarke and Ms. Northington, the order I entered  
23 denying the motion to withdraw the guilty plea. It  
24 speaks for itself. I have nothing else to say.

1           This is the time set for entry of judgment and  
2 imposition of sentence.

3           Mr. Clarke, have you had a chance to review the  
4 Presentence Investigation Report? And, if so, do you  
5 have any corrections to make?

6           MR. CLARKE: Yes, I do, your Honor.

7           THE COURT: Please.

8           MR. CLARKE: May I pass this to you?

9           THE COURT: No, I don't want -- Deputy, just if  
10 you'll -- let's see -- I'm not going to tell you how to  
11 do your job.

12           Hand it to Ms. Valencia, if you would please,  
13 Mr. Clarke.

14           Ms. Valencia will hand it to Ms. Northington.  
15 Is there a copy for me?

16           MR. CLARKE: No. I don't have access to copy  
17 machines.

18           THE COURT: Tell me what it is, please.

19           MR. CLARKE: Correction of some of the facts found  
20 in the PSI report.

21           THE COURT: Okay.

22           THE DEFENDANT: And I pointed out a few things  
23 that I could under the time and --

24           MS. NORTHINGTON: Your Honor, may I approach?

1 THE COURT: Thank you.

2 THE DEFENDANT: First page -- give me a second to  
3 get it together here. Give me a moment.

4 It says I have 10 felony convictions. I've never  
5 been convicted for 10 felonies in my life. And I can  
6 point out a few things on page four.

7 In 1977 -- they start from 1977, each one of these  
8 on page four, they have no case numbers at all.

9 On page seven where it says 8/2/12 in Hawthorne,  
10 California, they counted them as felonies but they're  
11 misdemeanors.

12 Also, on 5/18/13 it says first-degree burglary is  
13 a felony but there's no case number.

14 The same thing applies up under that, it says  
15 4/12/15, disorderly conduct, there's no case number, a  
16 misdemeanor.

17 The same thing up under that shoplifting,  
18 misdemeanor, there's no case number.

19 THE COURT: So your position is that if there's no  
20 case number the crime did not occur?

21 MR. CLARKE: I'm saying it's not me.

22 THE COURT: Okay.

23 THE DEFENDANT: Also, if you look at page eight,  
24 each one of the Nevada convictions has case numbers.



1           Page nine, they claim it's a felony but it was  
2 reduced to a misdemeanor; in fact, it was reduced to a  
3 gross misdemeanor.

4           THE COURT: Which one are you referring to, sir?

5           THE DEFENDANT: The Reno case number, CR16-1968 on  
6 page nine.

7           And on page ten, under CR17-1138, that's a  
8 misdemeanor -- wait. Excuse me. No, that's correct.

9           THE COURT: Okay.

10          THE DEFENDANT: Then you have the instant case,  
11 which is a CR19-1352.

12          And the PSI report also indicates that I have  
13 47 -- 37 misdemeanors. That's not true, your Honor. I  
14 don't have 37 misdemeanors.

15          It also says I have prison 13 times. I've only  
16 had one prison number and that's a C number back in  
17 California. I've never had 13 convictions in prison.

18          At this point, your Honor, may I speak?

19          THE COURT: Yes, sir.

20          THE DEFENDANT: I'd like to invoke my right to  
21 counsel, Ms. Valencia.

22          THE COURT: No. We're past that.

23          THE DEFENDANT: Okay.

24          THE COURT: We've gone past that. And when I had

1 the *Faretta* canvass, I was very clear. You may proceed  
2 on your own behalf as you requested.

3 THE DEFENDANT: Okay. On page ten it says that I  
4 was arrested for following --

5 THE COURT: Ms. Northington -- excuse me, sir --  
6 Ms. Northington, are you aware of any authority which  
7 would compel me to reconstitute counsel simply upon his  
8 request?

9 MS. NORTHINGTON: No, your Honor.

10 THE COURT: Thank you.

11 I should note that I believe that there is  
12 some either uninformed choices that we examined during  
13 the *Faretta* canvass or there's intentional gamesmanship,  
14 one of the two, and based upon the entirety of this  
15 record, his request for counsel at the moment of his  
16 sentencing will be denied.

17 MS. NORTHINGTON: Your Honor, if I may, I do  
18 remember at the *Faretta* canvass that occurred on  
19 October 23rd, and I believe you specifically indicated to  
20 him that should this matter proceed to sentencing today  
21 he would be proceeding in proper person and he  
22 acknowledged that at that time.

23 THE COURT: Thank you.

24 You may continue. I want to hear from you but I

1     also want to create a record.

2             THE DEFENDANT:   Okay.   Page ten of the PSI, it  
3     says that I was arrested for the following charges, was  
4     never convicted.   I have no recollection of any of that.  
5     And that's what I want to bring to the court's attention.

6             THE COURT:   Thank you.

7             Anything else?

8             THE DEFENDANT:   No, your Honor.

9             THE COURT:   Do you have any comments about the  
10    underlying sentence -- or the sentence that you wish the  
11    court to impose?

12            THE DEFENDANT:   Well, your Honor, I'd like to say  
13    that I admit to my guilt, I did it, I'm not trying to  
14    minimize what I did, but I'm -- I'm 60 years old and I  
15    have a drug problem.   And I understand that I must pay  
16    for my crime.   And I'm sincere here today and I've always  
17    been sincere.

18            I took a few steps where I could at the county  
19    jail to enroll in classes.   I also contacted a few people  
20    that can possibly help me enroll.   I'm basically -- I'm  
21    willing to take my punishment, you know, straight out.   I  
22    did what I did.   And I'd like to apologize to the  
23    victims.   I'd like to apologize to my family, my  
24    children.   And I appreciate the court.   I submit it on

1       that.

2               THE COURT:  You're very likeable.

3               THE DEFENDANT:  I try my best.  It's my  
4       personality.  It's naturally like this.  This is not a  
5       fake.  I don't have to -- I don't have to fake.

6               And I've never had a program.  I've never had a  
7       program.  I successfully completed one in Los Angeles  
8       County.  It was an outpatient program, I successfully  
9       completed it, and I'd like to try again if it's possible,  
10      you know.  I can even do five years' probation.

11              Also, I have two jobs lined up.  I could verify  
12      those.  I do what I can do and I would love to have an  
13      opportunity to do it again.

14              THE COURT:  In a moment, Ms. Northington, let me  
15      turn to the Division because I know you're bound -- well,  
16      I believe that you have negotiations which will govern  
17      your comments.

18              MS. NORTHINGTON:  Yes, your Honor.

19              THE COURT:  To the Division, Mr. Clarke has  
20      suggested that you got his Presentence Investigation  
21      Report wrong in many respects, do you have any response  
22      to him?

23              MR. GLASS:  Your Honor, during -- on September 10,  
24      2019, when he was interviewed, he was presented his

1 Nevada criminal history. Unfortunately, his California  
2 history was not presented and all his California cases  
3 were based off his NCIC record that we had. And a lot of  
4 his offenses were -- didn't have any case numbers back  
5 from the 1970s to I think the 80s.

6 THE COURT: I think his first one was 1980.

7 MR. GLASS: And he had -- let's see. I believe --  
8 he had 1977 when he started.

9 THE COURT: Oh. I thought I saw the rape charge  
10 in 1980. Let me look to see if I missed --

11 MR. GLASS: He's had --

12 THE COURT: Oh. I was looking at the wrong page.  
13 You're correct, 1977.

14 MR. GLASS: That's when it started, from May 1977,  
15 and most of those cases look like those cases --

16 THE COURT: But you would confirm that this  
17 information was gleaned from the NCIC report?

18 MR. GLASS: Yes, your Honor. Unfortunately, it's  
19 very difficult to get the case disposition from  
20 California. Usually they incur charges when you're  
21 requesting documents and at this point the Division  
22 doesn't pay for court documents.

23 THE COURT: Okay. Anything else?

24 MR. GLASS: Then he did participate in treatment,

1 looks like as stated on -- there was -- the court's  
2 indulgence -- it was a substance abuse treatment in  
3 Nevada for PCP and methamphetamine, but he did not  
4 complete it.

5 THE COURT: And so the Division is recommending  
6 36 to 96 months, which is more than what the attorneys  
7 negotiated. Can you shed any light on why the 36-to-96?

8 MR. GLASS: From the recommendations, they are  
9 doing it based off the 10 felony convictions.

10 THE COURT: So it's just a formula where the data  
11 is inputted -- I don't mean to say *just inputted* because  
12 not I'm implying anything wrong about it, but this was  
13 pushed through that matrix that you use and that's what  
14 the result was?

15 MR. GLASS: Correct, your Honor.

16 THE COURT: Ms. Clerk will cause this document to  
17 be admitted -- marked and admitted.

18 Let me look at the next one.

19 There is a handwritten letter that I'd like to be  
20 admitted, Ms. Clerk, to include a ACCS form indicating  
21 five substance abuse treatment classes.

22 Ms. Northington?

23 MS. NORTHINGTON: Thank you, your Honor. Very  
24 briefly.

1           As to the defendant's challenges to the PSI, I was  
2           unaware that he was going to make such challenges. But  
3           while I was sitting here listening to it, I did review  
4           his NCIC from California and Nevada, and based on my very  
5           brief overview it seems to be consistent with what is  
6           reflected in the PSI regarding a criminal history dating  
7           back to 1977 with at least 10 felonies since.

8           This case was negotiated to a joint recommendation  
9           of 12 to 36 months with Mr. Clarke's previous counsel,  
10          Ms. Valencia; that negotiation was based primarily on two  
11          balancing factors. One is the defendant's egregious  
12          lifelong criminal history, which shows that since 1977  
13          he's either been committing crimes or in prison or about  
14          to commit crimes with the facts of this case. He went  
15          into a store -- I'm sorry -- a restaurant and he stole  
16          \$35.

17          THE COURT: So who negotiated the case on State's  
18          behalf?

19          MS. NORTHINGTON: I did.

20          THE COURT: Were you aware that he had 47 prior  
21          criminal convictions at the time of you negotiated this  
22          case?

23          MS. NORTHINGTON: I was aware that he had an  
24          extensive criminal history, but I was not aware of the

1 specifics. The California criminal history is very  
2 difficult to read with how we run it, but I was aware  
3 that he did have an extensive criminal history.

4 THE COURT: I'm asking you, because you told me  
5 that there was this balance, what appears to be de  
6 minimis conduct in isolation with his a longitudinal  
7 criminal history --

8 MS. NORTINGTON: Yes.

9 THE COURT: -- and I'm glad you're here as the  
10 negotiating attorney, but the Division is asking that I  
11 remove him from our community because after 47 times it's  
12 just too many.

13 MS. NORTINGTON: I understand, and I can  
14 understand why they gave that recommendation. I respect  
15 their recommendation but it was negotiated due to the  
16 facts of the case. It was \$35. The \$35 was returned to  
17 the victim that night.

18 The victims in this case are the Taste of Chicago  
19 restaurant and the store clerk that was working. She has  
20 been notified of today; she did not want to be here  
21 today.

22 It was primarily because of the facts of the case  
23 that we negotiated it for the sentence that we negotiated  
24 it for.



1 THE COURT: You say the \$35 was returned, but it  
2 was returned after the owner had chased him and tackled  
3 him, and then there was some person-to-person contact?

4 MS. NORTINGTON: Yes.

5 THE COURT: It seems to me to be a dangerous set  
6 of ingredients.

7 MS. NORTINGTON: I would agree with you, your  
8 Honor.

9 THE COURT: Anything else?

10 MS. NORTINGTON: No, your Honor. Thank you.

11 THE COURT: Thank you.

12 THE DEFENDANT: Yes, your Honor, may I speak?

13 THE COURT: Yes.

14 THE DEFENDANT: Specifically about the money being  
15 returned, Mr. Pito received the money from me as soon as  
16 I came out the door. He didn't have to chase me. Him  
17 and his customer came out -- first the customer came out  
18 and Mr. Pito came. He asked for the money and I gave it  
19 back. This is what the video shows.

20 The witnesses testified in their own statement  
21 that -- I'm not trying to have a trial, I'm just bringing  
22 the facts to the court's attention that was not submitted  
23 into evidence -- the customer came out and then Mr. Pito  
24 came out, asked me for the money. I gave him the money.

1 Not only did I give him that money, there was other money  
2 that was also -- I had over \$600 on me. When I left,  
3 350 -- 377, which I was booked into the county jail with,  
4 but the money was given back and they didn't have to  
5 fight me and none of that, because Mr. Pito gave a  
6 witness statement saying that he held me down and I  
7 refused to aggress towards him. The money was already  
8 given back.

9 And there was another issue that I don't like --  
10 that I'm going to bring to the court's attention. There  
11 was more than Mr. Pito there -- it was him, one of his  
12 workers and a customer. They were all on the scene when  
13 the police arrived.

14 And this is the last point I'd like to make. I  
15 don't want to argue the case. I admit to what I've done  
16 but it was a report of a fight that took place, not a  
17 report of a tip jar being taken. But when the police  
18 arrived, no one spoke about a fight. The actual fact was  
19 that not only was money given back to him, money out of  
20 my pocket was also taken. I would say two-thirds,  
21 almost \$400 taken from me. Again, I deserved it because  
22 of what I've done. But that's all I'd like to say.

23 THE COURT: Thank you.

24 THE DEFENDANT: I'm kind of nervous.

1 THE COURT: You're doing great.

2 THE DEFENDANT: Thank you.

3 THE COURT: It is the judgment of this court that  
4 Mr. Clarke be adjudicated guilty of the offense. He will  
5 pay a \$25 administrative assessment fee, a \$3 DNA  
6 administrative assessment, an attorney's fee of \$500.

7 He is sentenced to a minimum of 28 months in the  
8 Nevada Department of Corrections, with a maximum of  
9 96 months. That top tail is very important, because  
10 after 43 years of substantial criminal energy, not all of  
11 which are substantial crimes but there's been a pattern  
12 of just criminality, somebody needs to make the decision  
13 about whether our community continues to be imperiled.

14 Now, I have just given you a sentence you don't  
15 like, I'm confident, but I meant what I said. I've very  
16 much enjoyed having you in court, and watching and  
17 listening to you. I think you have done well vindicating  
18 your own interests. But it is time, Mr. Clarke, from my  
19 perspective, to remove you from our community so that we  
20 don't have these types of crimes occurring.

21 THE DEFENDANT: May I ask a question, please?

22 THE COURT: Yes, sir.

23 THE DEFENDANT: What was that sentence again, your  
24 Honor?

1 THE COURT: Ms. Clerk?

2 THE CLERK: 28 --

3 THE COURT: To 96?

4 THE CLERK: Correct.

5 THE COURT: 28 to 96, which is less than the  
6 Division of Parole & Probation has recommended.

7 THE DEFENDANT: Okay. Your Honor, thank you. I'd  
8 like to submit a notice of appeal.

9 THE COURT: You do whatever you wish.

10 THE CLERK: Credit?

11 THE COURT: Yes. Credit for time served,  
12 Ms. Clerk, I don't have -- here it is.

13 MR. GLASS: Yes, your Honor. Credit for time  
14 served is 136 days.

15 THE COURT: 136 days.

16 Ms. Valencia, you can hand him a document.

17 MS. VALENCIA: Yes, your Honor. It's the notice  
18 of appeal that he just referenced. Would you like it --

19 THE COURT: We will take it. I'll make sure the  
20 judgment of conviction is entered first, and then file  
21 the notice of appeal.

22 Thank you. Hand it to the clerk, please.

23 MS. NORTHINGTON: Thank you, your Honor.

24 THE COURT: Thank you, Mr. Clarke.

1           Thank you, Ms. Northington.

2           All right, Mr. Silverberg. I've waited as long as  
3 I can.

4           You're free to go, Mr. Clarke.

5           THE DEFENDANT: Thank you.

6                   \* \* \* \* \*

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1     STATE OF NEVADA             )  
                                  )   ss.  
2     COUNTY OF WASHOE         )

3  
4                     I, ERIN T. FERRETTO, an Official Reporter  
5     of the Second Judicial District Court of the State of  
6     Nevada, in and for the County of Washoe, DO HEREBY  
7     CERTIFY:

8                     That I was present in Department No. 15 of  
9     the above-entitled Court on MONDAY, NOVEMBER 25TH, 2019,  
10    and took verbatim stenotype notes of the proceedings had  
11    upon the matter captioned within, and thereafter  
12    transcribed them into typewriting as herein appears;

13                    That the foregoing transcript is a full,  
14    true and correct transcription of my stenotype notes of  
15    said proceedings.

16                    That I am not related to or employed by any  
17    parties or attorneys herein, nor financially interested  
18    in the outcome of these proceedings.

19  
20                    DATED:   This 2nd day of April, 2020.

21  
22                                     /s/ Erin T. Ferretto

23                                     \_\_\_\_\_  
                                   ERIN T. FERRETTO, CCR #281

1 **CODE 1850**

2  
3  
4  
5  
6  
7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
8 **IN AND FOR THE COUNTY OF WASHOE**  
9

10 **STATE OF NEVADA,**

11 **Plaintiff,**

**Case No. CR19-1352**

12 **vs.**

**Dept. No. 15**

13 **ANTHONY CLARKE,**

14 **Defendant.**

15 **/**

16 **JUDGMENT OF CONVICTION**

17 The Defendant having entered a plea of guilty and no legal cause being shown as to why  
18 judgment should not be pronounced against him, the Court rendered judgment as follows:

19 1. That Anthony Clarke is guilty of the crime of BURGLARY, a violation of NRS  
20 205.060, a category B felony, as charged in the Information, and that he be punished by  
21 imprisonment in the Nevada Department of Corrections for a minimum term 28 of months to a  
22 maximum term of 96 months, with 136 days credit for time served.

23 2. It is further ordered that the Defendant shall pay the statutory \$25.00 administrative  
24 assessment fee, \$3.00 as an administrative assessment for obtaining a biological specimen and  
25 conducting a genetic marker analysis, and reimburse the County of Washoe the sum \$500.00 for  
26 legal representation.

27 **///**

28 **///**

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3. Anthony Clarke is hereby advised:

**Any fine, fee or administrative assessment imposed today (as reflected in this Judgment of Conviction) constitutes a lien, as defined in Nevada Revised Statutes (NRS 176.275). Should you not pay these fines, fees, or assessments, collection efforts may be undertaken against you.**

Dated this 25<sup>th</sup> day of November, 2019.

  
DISTRICT JUDGE



Anthony Clarke # 1910622  
WASHOE COUNTY Jail  
Reno, NV 89512

FILED

2019 DEC -4 PM 2:13

JACQUELINE BRYANT  
CLERK OF THE COURT

BY [Signature]  
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

CASE NO CR19-1352

v.

Dept: 15

Anthony Clarke,

Defendant.

NOTICE OF APPEAL

Clarke Now Give Notice of Appeal in re a guilty plea  
in the above entitled case number which was entered  
On November 25, 2019, In the Second Judicial District  
Court

This document contains no persons social security  
number.

I declare under penalty of perjury that the above is true  
and correct.

DATED 11.26.19

151 Anthony Clarke  
Anthony Clarke

CR19-1352  
STATE VS ANTHONY CLARKE (D1 2 Pages)  
District Court 12/04/2019 02:13 PM  
Washoe County  
v.11110622

PROOF OF SERVICE

I, Anthony Clarke, declare the following:

I sent the attached Notice of Appeal to:

CLERK OF THE CLERK  
Second JUDICIAL District  
COURT  
75 COURT Street Reno, NV 89501

I declare under the penalty of perjury that the above is true and correct.

DATED: 11.26.19

/s/ Anthony Clarke  
Anthony Clarke  
In Pro se real Person

## **CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 13th day of November 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Jennifer P. Noble, Chief Appellate Deputy  
Washoe County District Attorney's Office

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

Anthony Clarke (#1192204)  
Northern Nevada Correctional Center  
P.O. Box 7000  
Carson City, Nevada 89702

Tracie K. Lindeman, Esq.