IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

CLEMON HUDSON, Appellant, vs. THE STATE OF NEVADA, Respondent.	S.C. CASE NO. 82231

Electronically Filed
Aug 06 2021 05:30 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL FROM A JUDGMENT OF CONVICTION PURSUANT TO LOZADA V. STATE AND DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) EIGHTH JUDICIAL DISTRICT COURT THE HONORABLE JUDGE CARLI KIERNY, PRESIDING

~~~~~~

APPELLANT'S APPENDIX TO THE OPENING BRIEF VOLUME X

~~~~~~

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IN THE SUPREME COURT OF NEVADA

CLEMON HUDSON, Appellant, vs. THE STATE OF NEVADA Respondent.	CASE NO. 82231

APPELLANT'S APPENDIX

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 6th August, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD
Nevada Attorney General

CLARK COUNTY DISTRICT ATTORNEY'S OFFICE

CHRISTOPHER R. ORAM, ESQ.

BY:

/s/ Nancy Medina
An Employee of Christopher R. Oram, Esq.

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Electronically Filed
6/20/2018 10:19 AM
Steven D. Grierson
CLERK OF THE COURT

MEMO
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Nevada Bar No. 11245
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2657 Windmill Parkway #613
Henderson, Nevada 89074
Telephone: (702) 675-4613
Facsimile: (702) 446-8215
Email: alexis@plunkettfirm.com
Attorney for Defendant Yerandy Gonzalez

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. CLEMON HUDSON, Defendant.	CASE NO.: C-15-309578-2 DEPT. NO.: 18 Sentencing Date: June 21, 2018 Sentencing Time: 9:00am

SENTENCING MEMORANDUM
ON BEHALF OF DEFENDANT CLEMON HUDSON

COMES NOW, the Defendant, CLEMON HUDSON, by and through his attorney of record, ALEXIS A. PLUNKETT, ESQ. of the LAW OFFICE OF ALEXIS PLUNKETT, and hereby submits the following Sentencing Memorandum for the Court's consideration.

DATED this 20 day of June, 2018.

LAW OFFICE OF ALEXIS PLUNKETT

ALEXIS PLUNKETT, ESQ.
Nevada Bar No. 11245
2657 Windmill Parkway #613
Henderson, Nevada 89074
Attorney for Defendant

Docket 82231 Document 2021-22962

Case Number: C-15-309578-2

SENTENCING MEMORANDUM

I. Introduction.

This matter comes before the Court upon a guilty verdict following jury trial. This office was brought on after the jury verdict and did not represent Mr. Hudson at trial. Mr. Hudson's family has retained an attorney separate from this office to pursue any type of appellate or post-conviction review opportunities.

II. We are respectfully requesting that this Court consider the attached exhibits and counsel's oral argument at sentencing before making a decision.

This office was brought on for sentencing alone and was considering a continuance to complete a full sentencing memorandum and obtain Mr. Hudson's relevant medical records, which were recently ordered. This Court will not have a criminal calendar as of July 2018, and it is our understanding that a continuance would result in a different judge sentencing Mr. Hudson and his co-defendant, as opposed to this trial Court. Therefore, we have decided to move forward with a shorter sentencing memorandum and are requesting the Court's consideration for our oral argument regarding a possible sentence.

i. Complete Lack of Criminal History

As evidenced by the PSI, Clemon Hudson has absolutely no criminal history whatsoever—no felony convictions, no misdemeanor convictions, no prior prison terms, no probation, no parole, and no arrests at all prior to the instant matter. Mr. Hudson is not affiliated with a gang and does not have an illicit drug problem.

ii. Family support

Clemon Hudson has an incredible amount of family support, and this is evidenced by the attached support letters and those who plan to be in attendance at sentencing. *See* Exhibit A; support letters. Mr. Hudson was raised in a two-parent home and grew up playing sports and going to church. *See* Exhibit B; church certificate. *See* Exhibit C; photos. Mr. Hudson has a

two-year-old daughter who lives locally with her mother.

Mr. Hudson was diagnosed with Attention Deficit Hyperactivity Disorder as a child and is not currently seeking treatment, but we believe this issue could have affected Mr. Hudson's thinking and thought process in general. We ordered Mr. Hudson's relevant medical records on an emergency basis but did not receive them prior to the sentencing date.

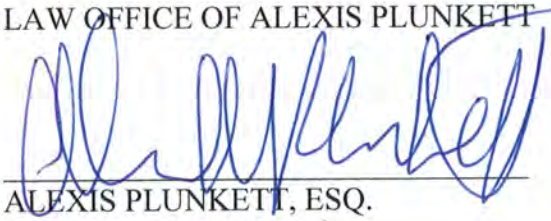
III. Conclusion

We respectfully request that this Court consider Mr. Hudson's extensive family support and complete lack of criminal history in making a sentencing decision. Further, this office represents inmates at parole release hearings and handles ancillary inmate issues and occasional civil rights cases—plain and simple, this is *not* the type of the case where the Board will grant parole (based on the underlying facts alone).

In our extensive experience, Mr. Hudson could be a model inmate for his entire prison term and his likelihood of being granted parole is *still* incredibly, incredibly small. We ask that this Court consider the back number in deciding a sentence as opposed to the front number, because we genuinely believe that Mr. Hudson is likely to expire whatever sentence imposed. We believe in light of all circumstances, an appropriate sentence in this matter would include thirty (30) years at the back end with Mr. Hudson expected to expire rather than parole. Thank you for your consideration.

DATED this 20 day of June, 2018.

LAW OFFICE OF ALEXIS PLUNKETT



ALEXIS PLUNKETT, ESQ.
Nevada Bar No. 11245
2657 Windmill Parkway #613
Henderson, Nevada 89074
Attorney for Defendant

CERTIFICATE OF EMAIL

I hereby certify that service of the above and forgoing was made this 20 day of June, 2018, by email to:

CLARK COUNTY DISTRICT ATTORNEY

Email: Motions@clarkcountyda.com

BY: _____

Electronically Filed
6/20/2018 11:13 AM
Steven D. Grierson
CLERK OF THE COURT

EXHS

ALEXIS A. PLUNKETT, ESQ.
Nevada Bar No. 11245
LAW OFFICE OF ALEXIS PLUNKETT
2657 Windmill Parkway #613
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Facsimile: (702) 446-8215
Email: alexis@plunkettfirm.com
Attorney for Defendant Clemon Hudson

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. CLEMON HUDSON, Defendant.	CASE NO.: C-15-309578-2 DEPT. NO.: 18 Sentencing Date: June 21, 2018 Sentencing Time: 9:00am

EXHIBITS IN SUPPORT OF SENTENCING MEMORANDUM ON BEHALF OF DEFENDANT CLEMON HUDSON

COMES NOW, the Defendant, CLEMON HUDSON, by and through his attorney of record, ALEXIS A. PLUNKETT, ESQ. of the LAW OFFICE OF ALEXIS PLUNKETT, and hereby submits the following Exhibits in support of his Sentencing Memorandum.

DATED this 20 day of June, 2018.

LAW OFFICE OF ALEXIS PLUNKETT

ALEXIS PLUNKETT, ESQ.
Nevada Bar No. 11245
2657 Windmill Parkway #613
Henderson, Nevada 89074
Attorney for Defendant

Case Number: C-15-309578-2

CERTIFICATE OF EMAIL

I hereby certify that service of the above and forgoing Exhibits in Support of Sentencing Memorandum was made this 20 day of June, 2018, by email to:

CLARK COUNTY DISTRICT ATTORNEY

Email: Motions@clarkcountyda.com

BY: _____

EXHIBIT A

Parents of Clemon Hudson

Mr. & Mrs. Clemon Hudson

5713 Eugene Ave

Las vegas, Nv. 89108

Honorable Judge Bailus

C-15-309578-2

Dear Judge Mark Bailus,

First we would like to address the court with a sincere and honest apology on behalf of our son Clemon Hudson.

We want to let everyone know how Godly sorrowful we are especially to Officer Roberts for the injury he encountered.

We would like to give some insight of the type of parents Clemon was raised by. We have been a sounding pillar of the community for over 20 plus years here in our home. I, Karen(mom) have been serving in the ministry for many years as a Sunday School Teacher even before Clemon was born. we taught Clemon values of great morals, respect and kindness toward all people. Clemon (dad) have always been there help guiding him in the right direction, and most of all taught Clemon the importance of working to make a living for himself. We would have never imagine anything of this magnitude to happen to our family of this sort. We truly don't know how he got so far off track from what he was taught, but we do feel that this incident has shaken Clemon to his very core and feel he realized how quick things can happen and spend out of control.

We are grateful to God that Clemon did not shoot anyone, we realized that Clemon made an irresponsible decision being involved in dealing with a gun and going to someone home with it.

It is our pray that Officer Roberts find it in his heart to forgive our son for his careless action.

Your Honor please consider this letter on behalf of our son Clemon Hudson.

Sincerely,

Clemon & Karen Hudson

May 25, 2018

Angela Merritt
3631 Winkler Ave. Ext 428
Fort Myers, FL 33916
772-444-5998
angelanm@leeschools.net

FROM: (Angela Merritt)

My name is Angela Merritt, and I am a cousin to Clemon Lamar Hudson. I am the daughter of Edward and JoAnn Merritt. I have known Lamar ever since he was born. I have seen how he interacts with family members and at family functions such as church events and family reunions. Clemon Lamar Hudson is an intelligent young man, who has shown the family he can overcome and succeed through many of life's obstacles. He is still a young man full of life, with spontaneity, peace, and love for his family.

I am a teacher in Fort Myers, Florida. I have been teaching for the past 17 years at Dunbar High School as an English Teacher. After teaching for the past 17 years in the educational system and seeing what I see with our youth, I understand the tragedy that occurs to many of our youth today. I know that our children are our future and they need saving. Also, I have never heard of, or witnessed Lamar act out of character or become disrespectful in any capacity.

The information contained in this statement is true and accurate to the best of my knowledge, belief and recollection. I submit this statement of my own free will, and no one has persuaded or coerced me to submit it.

Character reference letter for court

Tyler Mark Hudson
5713 Eugene Ave
Las Vegas, NV 89108
June 4, 2018

Re: Clemon Hudson
#C-15-309578-2

To: The Honorable Judge Mark Bailus
My name is Tyler Hudson sibling of Clemon Hudson
Clemon and I have been raised by two loving and respectful parents in the same family unit, for whatever length of time that I can recall, we have been brought up in the fear and reverence of the Lord.

our whole family was shocked of the news of my sibling being involved in such seriousness of this kind, he has never been stuck in an unfortunate situation and never been the sort to do anything that would cause our folks any huge dissatisfaction. as Clemon's only youthful sibling, I lived intimately with him growing up and I can state that he has dependably driven an exceptionally positive way of life; showing me all that I know originating from skateboarding to baseball, to driving and notwithstanding helping me with my math homework. he is likewise an exceptionally given sibling who adored his music so much he would have yielded all that he have to me.

Clemon has never been included with ransacking and unquestionably doing as such with weapons, did not have any criminal record. he has clarified to me amid our discussions that what he did was a major objection to where we originate from, he is my big brother, my spine. I counsel with him about things in life generally, he gives advice to me when I really need someone to talk to. Furthermore, now he isn't with me, I miss him in particular!!!

it is my earnest expectation the court takes this letter notwithstanding the present case, despite everything, I trust Clemon Hudson to be a respectable individual and a better person due to being away from his family.

Sincerely,
Tyler Hudson

Edward & JoAnn Merritt
19174 Mendota St.
Detroit, MI 48221
313-342-6765

To Whom It May Concern,

My name is JoAnn Merritt one of ten aunts to **Clemon Lamar Hudson,** on his father's side, who is Clemon Hudson jr. I retired from Gale Research as an Associate Editor for 15 years. I truly love this young man. He is the only young man who has demonstrated at a young age his desire to take care of me. That was truly amazing since he was only ten years old at that time, for a young man to make a vow of that magnitude to me his aunt. I am now 70 plus years young, and I believed that he would, if he could, in his own loving way.

We were pleased and honored when asked to write a character reference for Lamar. We are aware of the serious infractions he is faced with. Yet, we feel compelled to offer our opinion and observation of **Clemon Lamar Hudson**. My Husband Edward Merritt now retired from Ford Motor Co in 2007 as a Service Engineer for 30 years and I have known him every since he was born to Karen and Clemon Hudson jr. Both of Lamar's parents were raised to teach children to honor and respect to others and their property. I know because of his up-bringing that he is truly remorseful of his actions.

Overall and in conclusion, we respectfully request that this character reference be considered in your decision regarding an appropriate sentence in this chase.

Sincerely yours,
Edward and JoAnn Merritt

Gmail Karen Hudson <kcaregiver77@gmail.com>

Character letter

1 message

joyce tipke <joycetipke3@gmail.com> Fri, Jun 8, 2018 at 12:19 AM
To: kcaregiver77@gmail.com

June 07, 2018
From: Joyce Ann Tipke
Career: Caregiver
State: Spokane WA

Ch: letter Judge Mark Bailus
In Connection with
Clemon Lamar Hudson
C-15-3095782

I Joyce Tipke, The Oldest Aunt on his mother side of the family.
I have Known Clemon Lamar Hudson all his life, he is the second born of the family.
I baby set him on many occasions, he grew up in a very loving family and strong supported family, we are godly family,
The nephew I know is a sweet and caring person that has Respect man kind.
Our family is under a hardships at this moment, and our heart are burden, the young man we the family know is not a thug or a threat to anyone,and hope that you as a person of honest and moral will see our family member as human that made a poor decisions that deserves a fair chance in life,
I know without a doubt this has made a very wise person out of (Clemon Lamar Hudson).
Thank you for listening to my plee.

Joyce Ann Tipke.

Gmail

Karen Hudson <kcaregiver77@gmail.com>

(no subject)

1 message

adrian Elias <adriandawn23@yahoo.com> Thu, Jun 7, 2018 at 10:01 PM
To: "kcaregiver77@gmail.com" <kcaregiver77@gmail.com>

Adrian D. Elias
1929 Merze Ave
Henderson, NV 89011
702-901-1956
Adriandawn23@yahoo.com

June 7,2018

The honorable Judge Mark Bailus
RE: Sentencing of Clemen Hudson
C-15-309578-2

I am Adrian Elias, Mr. Hudson's older cousin. I'm 28 years old, moved here from California in 2003. I attended Valley High School where I graduated in June of 2008. I proceeded my education as I attended College Of Southern Nevada while studying Criminal Justice. After a few semesters I placed my dreams on hold to start a family with my fiancé of 5 years. I'm well aware of the charges Mr. Hudson is facing. However, I'm more than happy to offer an endorsement of Mr. Hudson's good character.
I've been around around Mr. Hudson for all of his life. Even though we are cousins we grew up much more like siblings. Our parents raised us in church where we attended every Sunday. We're a very close family. Mr. Hudson have always been a positive and generous person. I remember one summer weekend I spent with his family, Mr. Hudson and his brothers had all got new toys and he got a new basketball and court. Me being a female I wasn't basketball savvy. However, Mr. Hudson would invite me outside to play basketball with him and friends. He would be eager to teach me how to do tricks and make different shots. Even when I become flustered and wanting to give up, he wouldn't let me. He would encourage me to keep trying! Told me it's ok to not make the basket but to keep trying. He's such an positive and light energy to be around! I can go on and on about the person Mr.Hudson is but this is just an small instance, along with many others giving an example of Mr. Hudson's reputation of love and generosity in our family.
Thank you for you're time your honor.

Sent from Yahoo Mail for iPhone

Cherise A. Merritt
4824 Capitol Ave
#2
Omaha, NE 68132

To whom it may concern.

I am one of Clemon Lamar Hudson's older cousin and pleased to have the opportunity to let you know of my personal experience with my cousin Lamar.

I am currently residing in Omaha Nebraska, and a few years ago I had the pleasure of living with my Uncle Clemon in Las Vegas Nevada. This encounter was the first time I was able to visit with my younger cousins for longer periods of time and was able to truly get to know my cousins heart and spirit.

Our parent raised us to do right, be honorable, decent and in order. This is not restricted to just inside the house but in this world as well. My Uncle Clemon Hudson raised his sons to walk in this exact light. I witnessed Lamar attending Sunday school every Sunday as well as working on the Church property Saturday mornings putting together "go" bags and handing them out to the homeless. He also displayed this kind of enthusiasm at home, I know this because I was his baby sitter sometimes.

This is Lamar, a kind, mindful, polite, young man

Cherise Merritt
Treasury Analysis, Corporate Finance

Gmail

Karen Hudson <kcaregiver77@gmail.com>

Clemon Lamar Hudson

1 message

Renee Hazziez <hazziezrenee@yahoo.com> Wed, Jun 6, 2018 at 7:40 PM
Reply-To: "hazziezrenee@yahoo.com" <hazziezrenee@yahoo.com>
To: "Kcaregiver77@gmail.com" <Kcaregiver77@gmail.com>

Greetings addressing the court respectfully,
I'm writing this letter in regards to Clemon Lamar Hudson. I've known this young man and his family for many years since he was a child. He comes from a very blessed beautiful family, salt of the earth. He has always been a respectful young man with a good heart. I'm sure you see letters of this sort alot. Truly this is not a hard hearted young man. He is a young man who always was close to family and doing honorable things. It saddens my heart that he has found himself in this predicament. He comes from a very solid foundation and loving wonderful family. Truly I love this young man dearly and am praying God's best for him. I love him dearly and his family. He has never been anything but a kind respectful young man. My prayers and heart are definitely with him. Thank you for taking time to read this letter. Very Sincerely, Renee Hazziez

Renee Hazziez
Employed Las Vegas Conventions

Sent from Yahoo Mail on Android

June 6, 2018

The Honorable Mark B. Bailus
Department XVIII
Eighth Judicial District Court
330 S. 3rd St.
Las Vegas, NV 89101

Dear Judge Bailus:

My name is Juanita Watson, and I am writing a letter on behalf of my cousin, Clemon Lamar Hudson. I am the mother of one daughter and a son-in-law, grandmother of seven and great-grandmother of three. I am a Contracts Administrator for a commercial real estate company based in Santa Monica, CA.

Lamar, as he is affectionately called by his family, is my first cousin, my uncle's son. I have known him his entire life. This young man grew up in a two-parent Christian home, and has been sheltered, shielded and protected by his loving family who have surrounded and supported him his entire life.

Lamar is a very kind, gentle young man and it is always a pleasure visiting his home in Las Vegas, NV. The whole family is very loving, warm and welcoming and we always have a wonderful time together whether during holidays or summer vacations, since Lamar was born. I miss him very much and I pray he comes home soon.

Thank you.

Juanita Watson

Juanita Watson

June 5, 2018

To Whom It May Concern:

My name is Evelyn Williams and I am the younger sister of Karen Hudson and the youngest of Clemon Jr's aunts. The purpose of this letter is to bare witness to the positive character of Clemon Lamar Hudson Jr. I have a son very close in age to Clemon, who we affectionately refer to by his middle name "Lamar", and my son and the rest of his cousins grew up together in Vegas like brothers. Ever since Lamar was a kid he has always been a mild mannered, calm and even-tempered individual. I can honestly not remember a time when I saw him angry. Lamar grew up in a devout Christian household with two loving entrepreneurial parents and a very intelligent older brother who set a great example for both of his younger brothers. Prior to this incident Lamar never had any problems with the law or any other area.

From as far back as I can remember Lamar has always been a smart brave young man and a leader of his younger cousins. As a child he taught himself and the rest of the boys how to skateboard, mastering many difficult tricks. He also taught himself how to do all types of flips on and off the trampoline. I always admired that he had such a bright and determined mind. Lamar was obedient, never disrespectful, and very helpful around the house. Our family has always been very close; growing up Lamar never missed a family gathering. He was always there to make us smile.

Lamar is an important part of this family and we miss him terribly. While I can't explain this situation, I know Lamar is remorseful for the decisions he made.

Since he's been away, he's been blessed with a beautiful daughter who will suffer without a father as she grows older. I know Lamar would do anything to care and be a good example for her and if given the opportunity I truly do not believe he would make the same mistakes ever again. If given the opportunity I know Lamar would be an outstanding citizen positively to society and taking care of his beautiful baby girl. Please consider this letter from someone who has been able to watch Lamar grow from an infant as you make any further decisions about his life.

Respectfully,

Evelyn Williams

June 8, 2018

Judge Mark Bailus,

Regarding: Clemon Hudson - C-15-309578-

He is a well-mannered and very respectful young man. He was brought up in a home with love, sound teaching, and strong morals. He also attended sunday school and church services every sunday.

At the mercy of the court, I'm asking that Clemon be given the lightest sentence possible, because he has no criminal record beside this, and I personally believe that he would do better if he is given the opportunity. I've known him for almost twenty years, and I have known him to be a mild mannered person. I feel this was an awakening moment for him.

Please consider this character letter on his behalf.

Edna Samuel
family friend

To Whom This May Concern,

This letter is a character reference of Clemon Lamar Hudson. Clemon Lamar has been a shy young man. He was always willing to learn and very attentive in attending Believers in Christ Ministries. Lamar has always been positive in working with others, but has a reserve attitude of being often to himself, not normally being with a crowd or group. He mostly stay close to home, strength, always fair, honest, kind appreciation for family and caring for others. He has respect for the authority and reference for faith in God.

I am Pastor Tapplin, whom which has served him and his family while being a part of Believers in Christ Ministries. He has helped feed the Homeless, Cleaned the church and participated in helping with the Children's Ministry. I think his character, respect, attitude and behavior was always good and well to be around. His family has always taught and showed Lamar the best way to handle himself in crisis and difficult situations. I believe he has the right upbringing and manners to make positive decisions. I would rule in favor of Clemon Lamar being a positive child and adult in his community. I believe his fear and respect for authority have a heart as a believer to conduct himself in a community to be positive and honorable. His behavior and judgement receive favorable results in what he say or do.

Sincerely

Michael Tapplin

Senior Pastor Michael Tapplin

Contessa Handy
5609 Deodar Dr.
Las Vegas, NV 89108

June 2, 2018

The Honorable Judge Mark Bailus
Clark County Regional Justice Center
200 Lewis St.
Las Vegas, Nevada 89101

Re: Sentencing of Clemon Lamar Hudson, III, Case No. C-15-309578-2

Dear Judge Mark Bailus,

My name is Contessa Handy, a dearest and close aunt of Clemon Lamar Hudson, III. I have been in his life all his earthly beings. I know Clemon to be a young man of strong moral character who treats others with courtesy and respect. I admire that in him! He joined church and was baptized at an early age. His upbringing involved his Christian parents, relatives, and family friends. The parents, being very protective and close-knit to their children, instilled Christian and Family values at a very early age, taking them to Church; Sunday school; Bible study; hosting weekly Prayer meetings in their home where other families and neighbors were invited to attend; family gatherings; feeding and clothing the homeless; and, by parents interpretation, a part of God's plan of action ("A family that pray together, stay together"). We will never want him to think that the family will stop loving him and God want forgive him because that will be ludicrous!

Clemon attended Western high school in Las Vegas, Nevada. Some of his greatest high school sports attributes were playing varsity football and baseball. He really excelled in those two varsity levels. In his pastime, he enjoys playing video games, champion of "All."

Just seeing Clemon in jail attire, the battered look on his face, scared and confused, brought tears to our eyes, especially his parents. He's trying to be strong for the family but found it very hard to look our way. We believe he realizes that he made a grave mistake and being incarcerated is a reality. We love him and will always be there for him.

I would like to thank you for your time in reading family and friends character reference letters about my nephew. I hope they have provided helpful context for understanding the type of person Clemon truly is.

Your Honor, please take under consideration this is his first offence. He has never been in trouble before.

Thanking you in advance!

Sincerely,

Contessa Handy

EXHIBIT B

1612

Certificate of Appreciation

This certificate is awarded to

Clemon Hudson

From The

Believers In Christ Ministries

Michael A. Tapplin — Signature of Senior Pastor

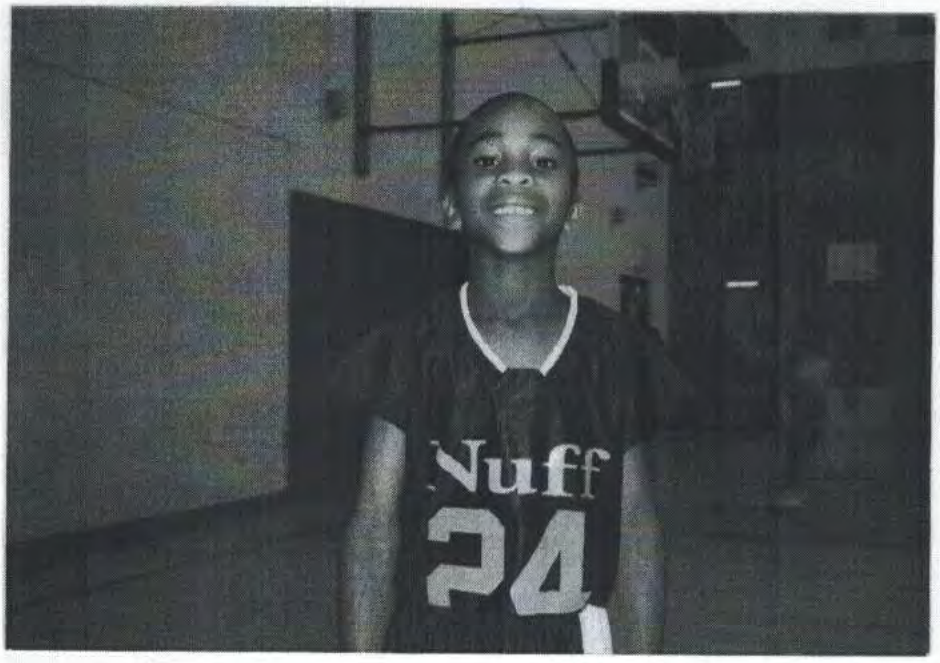
21 Sept. 2008 — Date

BELIEVERS IN CHRIST Ministries

EXHIBIT C


BRAVO
1




Nuff
24



Electronically Filed
9/25/2018 9:58 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. STEVEN TURNER, CLEMON HUDSON, Defendants.	CASE#: C-15-309578-1 C-15-309578-2 DEPT. XVIII

BEFORE THE HONORABLE MARK B. BAILUS DISTRICT COURT JUDGE

THURSDAY, JUNE 21, 2018

RECORDER'S TRANSCRIPT OF PROCEEDINGS
SENTENCING

APPEARANCES:

For the State:	JOHN L. GIORDANI, III, ESQ. Chief Deputy District Attorney
For the Defendants:	
Steven Turner	TEGAN C. MACHNICH, ESQ. ASHLEY L. SISOLAK, ESQ. Deputies Public Defender
Clemon Hudson	ALEXIS A. PLUNKETT, ESQ.
ALSO PRESENT:	ERIC CLARKSON WILLOUGHBY GRIMALDI BARBARA ROBERTSON MELISSA ROBERTSON JEREMY ROBERTSON Victim Impact Speakers

RECORDED BY: ROBIN PAGE, COURT RECORDER

THURSDAY, JUNE 21, 2018, AT 9:49 A.M.

THE COURT: Case number C309578, State versus Steven Turner and Clemon Hudson. Counsel, state your appearances, please.

MR. GIORDANI: Good morning, Your Honor, John Giordani on behalf of the State.

MS. PLUNKETT: Good morning, Judge, Alexis Plunkett for Clemon Hudson.

MS. MACHNICH: Tegan Machnich and Ashley Sisolak for Mr. Turner.

MS. SISOLAK: Thank you, Your Honor.

THE COURT: And we're going to do this in order as they appear on the calendar. And so Mr. Turner is first on calendar. Now, counsel, I've been notified that we're going to have victim impact statements.

MR. GIORDANI: That is correct, Your Honor.

THE COURT: I called the cases together so the -- will the parties stipulate that the statements that are made today by the victims are to be applied to both Defendants; is that correct?

MR. GIORDANI: Yes, Your Honor.

THE COURT: Do the parties stipulate to that?

MS. PLUNKETT: Yes, Your Honor.

MS. SISOLAK: Yes, Your Honor.

MS. MACHNICH: That's absolutely fine, Your Honor. We actually would be fine with the State making -- and I don't know if the

State's argument is substantially different for both co-defendants. We would have no opposition to them just -- us going State, Defense, Defense.

THE COURT: I don't want to do that because they're co-defendants and they're going to have separate issues for appellate review, so I want to keep the record as clean as I can.

MS. SISOLAK: Understood, Your Honor.

THE COURT: That's why I'm asking parties to stipulate. And at the end of each victim impact statement I'll give the Defense an opportunity to ask questions of that victim as they make their statement; okay?

MR. GIORDANI: Yes. And our only request would be that the victims be able to speak last.

THE COURT: That's correct. Well, it's going to be last as to Mr. Turner. Oh, I see what you're saying.

MR. GIORDANI: No, just once at the end of the whole thing is what we would ask.

THE COURT: Okay. So, you want me -- I think what the State is requesting -- as long as the Defense doesn't have a problem I'm going to do the preliminary matters together. Then you want both the Defense counsel to make their argument at the same time?

MR. GIORDANI: Yeah, that's how we would do it on a --

THE COURT: Okay.

MR. GIORDANI: -- typical co-defendant --

THE COURT: So, both Defense counsel will then make your

argument at the same time, and then we'll do the victim statements.

Is that satisfactory with everyone?

MR. GIORDANI: Yes.

MS. MACHNICH: Yes, Your Honor.

MS. PLUNKETT: Yes, Judge.

THE COURT: All right. Thank you. This is the time set for entry of judgement and imposition of sentence. Is there any legal cause or reason why judgement should not be pronounced at this time?

MS. MACHNICH: No, Your Honor.

MS. PLUNKETT: No, Judge.

THE COURT: State?

MR. GIORDANI: Thank you, Your Honor.

THE COURT: No, no. Is there any reason we shouldn't go forward --

MR. GIORDANI: No.

THE COURT: -- at this time?

MR. GIORDANI: No.

THE COURT: Thank you.

Mr. Turner, by verdict of the jury, I hereby adjudge you guilty of the offenses of Count 1 conspiracy to commit burglary, Count 2 attempt burglary while in possession of a firearm or deadly weapon, Counts 3 and 4 attempt murder with use of a deadly weapon, and Count 5 battery with use of a deadly weapon resulting in substantial bodily harm.

Mr. Hudson, by verdict of the jury, I hereby adjudge you guilty

of Count 1 conspiracy to commit burglary, Count 2 attempt burglary while in possession of a firearm or deadly weapon, Counts 3 and 4 attempt murder with use of a deadly weapon, and Count 5 battery with use of a deadly weapon resulting in substantial bodily harm.

State, what's your position on sentencing?

MR. GIORDANI: Thank you, Your Honor. I won't rehash the entirety of the facts; you sat through a lengthy trial in this case, but what I will do is remind the Court of a couple of things that came out during the trial.

First off, there were two confessions given, one by each Defendant, that were heavily redacted in order to be presented to the jury, but I want to remind the Court that those statements are not invalid for any reason or suppressed for any reason, and in those statements both of these Defendants confessed that they were going over to this home of Eric Clarkson and Willoughby Grimaldi in order to commit a dope rip or a robbery.

As Your Honor's fully aware, they went over there heavily armed. They went -- Mr. Turner went with an SKS rifle or what was referred to a couple times as an AK-47. Mr. Hudson went with a shotgun.

When they got to that home they repeatedly tried to get in through the front door, the side door -- or -- side window and the back door. Police are called, then you have that ten-minute -- ten or so minute 9-1-1 call in which the victims, who are present here in court today, were absolutely terrified that there were armed men outside their home trying

to get in.

Officers Robertson and Grego-Smith respond to the call, get to that home. They do what they're trained to do, they approach tactically, they get to the back door, and without warning as soon as that door is opened Mr. Turner fires his SKS rifle striking Mr. -- or -- Officer Robertson, dropping him to the ground. Mr. Hudson then fires his shotgun and because Officer Robertson went to the ground, he missed entirely. It went over, narrowly missing the victims as well.

There were two other rounds fired from that SKS rifle. There were no other rounds fired by the shotgun and that's because Officer Grego-Smith put himself between his downed partner and the assailants, and returned fire. And you'll recall one of those rounds struck the shotgun, rendering it inoperable. So, you know, I can speculate as to whether he would have kept firing. I won't do that. He fired at least one round, and that round was intended to kill.

When you shoot a shotgun -- I don't know if Your Honor's shot a shotgun before, but when you do you would understand you shoot that at a human being, your intent is one thing and one thing only and that's to kill.

The return fire from Officer Grego-Smith caused Mr. Turner to drop his gun like a coward and flee. And then Mr. Hudson was struck in his gun, went down, and was apprehended on the scene by the K-9 units. It was shortly thereafter, three hours later that Mr. Turner was caught on the perimeter. He had that frag in his leg. He then was taken into custody and ultimately gave those statements that I discussed

earlier.

What I'm asking this Court to do is sentence each Defendant generally to the same sentence. As to Mr. Turner, because he actually struck Officer Robertson changing his life forever, I'm asking for 16 to 40 years. That is eight to 20 on one count of attempt murder with use of a deadly weapon, and a consecutive eight to 20 on the other count of attempt murder with use of a deadly weapon. I believe that is an appropriate sentence. It's in the midrange for each count.

I do believe that these victims should be treated separately because one of the issues that you'll recall that the Defense raised and the Defendants actually said in their statements generally was they didn't know who they were shooting at. And my -- first I think that's a joke and frankly just inaccurate, but even if you accept that as true, they're either shooting at Clarkson and Willoughby or they're shooting at Officer Grego-Smith and Officer Robertson.

So, in any event, whatever you accept as their mindset at the time, there are two victims at least, and those two victims should be treated separately. They're separate crimes. That's why I'm asking for consecutive terms on the attempt murder with use of a deadly weapon.

I'll end with this, Your Honor. This crime changed Officer Robertson's life forever. It changed Metro's approach to things. And I can just say there are a number of officers in the courtroom in support. This crime had a major impact on the law enforcement community.

If -- anyone who's here on this case in support of the officers would you please stand briefly?

As you can see, Your Honor, this crime didn't just impact Officer Robertson. It didn't just impact Officer Grego-Smith. It didn't just impact Eric Clarkson and Willoughby Grimaldi, but it impacted the law enforcement community.

You guys can have a seat.

This -- whatever their mindset was at the time, this was egregious, egregious conduct. Had that bullet that came out of that SKS rifle gone two centimeters to the right, we would be sitting here on a first degree murder felony murder case. And during a felony murder, of course, if someone dies it doesn't matter whether it's intentional, unintentional or accidental. By the grace of God he didn't die. I understand that, and that's why I'm not asking for the minimum of 20; what it would be on a first of, course.

I think 16 to 40 years is appropriate as to Mr. Turner because he's the one who actually struck Officer Robertson. As to Mr. Hudson, while I believe he had the same exact intent and the only reason he didn't strike anyone is because his firearm was hit by Officer Grego-Smith's return fire, I do believe that there should be a little less on the bottom for him. So, as to him I'm asking for 14 to 40, and that's two years off the bottom on his sentence.

With that, I will submit it to the Court and just remind the Court that we have five victim speakers and ask them to speak at the very end once everyone else has. Thank you, Your Honor.

THE COURT: Thank you.

Mr. Turner, before your attorney speaks is there anything

you'd like to tell the Court on your own behalf before I pronounce sentence?

MS. SISOLAK: Your Honor, I have a letter I'd like to read for Mr. Turner. He's incredibly nervous, and based upon the fact that this was a trial case and there is a mandatory appeal, I would ask that I be able to read the statement.

THE COURT: That's fine.

MS. SISOLAK: Thank you, Your Honor.

First and foremost I would like to apologize to everyone involved in this case, to the officers, the homeowners. I'm deeply sorry. None of this was supposed to happen. There is no excuse. I allowed my judgement to be clouded and I put myself and others in a position none of us should ever be in. I also want to apologize to my family. I was raised better than this, and I feel I let you all down.

To the Court, I ask you to show leniency as to -- as you see fit. I have no prior convictions. I was a functioning member of society, and I made a bad decision. I have to deal with the consequences for the rest of my life.

I've thought about this day for the last 1,022 days to be able to tell you all how deeply sorry I am, and I hope one day you will all forgive me. Thank you.

THE COURT: Thank you.

Mr. Hudson, before your attorney speaks is there anything you'd like to tell the Court on your own behalf before I pronounce sentence?

MS. PLUNKETT: Judge, I've advised him to not make a statement.

THE COURT: Thank you.

Who is going to be making the argument on behalf of Mr. Turner?

MS. MACHNICH: I --

MS. SISOLAK: Ms. Machnich will be, Your Honor.

MS. MACHNICH: Yes. May I proceed?

THE COURT: You may.

MS. MACHNICH: Your Honor, this case is a tragedy all around, and at no point during the process, during the trial, during the sentencing will we be trying to say that lives were not changed and affected for the rest of their lives.

We know that the homeowners will likely never feel safe in their homes and have bad memory. We know that the officers who were present on scene -- and from the witness notice that turned out to be several hundred officers -- but specifically the officers directly affected in this case will be scarred forever.

Officer Grego-Smith had to fire his service weapon and be present when his fellow officer went down, not knowing if he would get back up. And Officer Robertson sustained a very, very serious injury that he made clear during trial, and made just clear from the documentation, affected his life, affected his family, affected his children, his wife.

And none of us are trying to downplay what happened here. Mr. Turner has wanted to take responsibility for this. Your Honor recalls

pretrial and the fact that there was a contingent offer. Mr. Turner did not want to put anyone through this process and he was ready to take responsibility at that time and he is ready to take responsibility today.

So, without downplaying any of the suffering by any of the victims, their families, their futures -- and this will stay with each and every one of them for the rest of their lives. This will also stay with Mr. Turner for the rest of his and his family for the rest of theirs. He has some family members present, including his mom who's been involved throughout this entire case. Mr. Turner's life will never be the same. He made a very bad decision; possibly the worst decision in -- I would say what would be the worst decision of his life.

He came from a situation where he was working. He had family, a fiancé, a loving mother; he had people in his life; a loving father, cousins. Everyone was there for him, and he made this choice. And he has never shied away from this choice and the fact that it was a decision that he made.

Now, that being said, Mr. Turner is someone who did not have a criminal history. He was not someone -- I believe there was a submittal on a DUI that would have been dismissed. He had nothing else in his history. He was not someone who toted around guns or knew anything about them, dealt with them on a normal basis. He is not someone who went out and robbed people on a normal basis. He is not someone who was terrorizing the community. This was completely out of character for him.

And because of his complete lack of criminal history -- who

he -- I -- you've observed him through the entire trial, Your Honor, before trial, all of his demeanor in court, the fact that he has taken responsibility. We are going to ask for something substantially less than the State is. And we believe that an adequate sentence in this case -- because I don't think there's a good sentence.

This is someone who's never been to jail substantially before, much less prison. A year in prison is going to feel like ten years in prison to him because he's not acclimated to that; he doesn't know. And as much as we don't want to say that it's easier for people who have been there before, it is easier for people who have been there before.

We're asking for an eight to 20-year sentence on this. We have no problem with Your Honor dispersing that amongst the counts how you deem fit, no problem punishing him for each of the counts so that he feels the specific impact of what he has done to each of the victims. But eight to 20 years, that is the maximum on a small habitual criminal treatment; someone who gets maxed out on having committed three or more felonies when they come before a District Court judge in sentencing. Mr. Turner is not a habitual criminal.

So, when we're looking at the reasons for sentencing and we're looking at recidivism, Mr. Turner has learned his lesson. And any amount of time -- the time he spent already, he has already learned that lesson to never ever, ever make a decision anything like what he did this night again.

Then there's retribution and the fact that these officers and homeowners went through a lot and will continue to go for a -- go through

a lot forever.

But eight to 20 years is a long time. And for an officer-involved shooting there is a very good chance that he's not going to parole anywhere near the bottom number. So, with eight to 20 years he would do almost certainly more than eight years, substantially more than eight years.

I would also note that my reading of the PSI -- and I know that some of that comes off a little bit convoluted in the concurrent and consecutive. My reading is that P and P recommends a ten to 40-year sentence, and while I do believe that that is a little high based on his criminal history, we are also -- it's substantially lower than what the State is asking for here.

I will also note, on the scoresheet for P and P he came back borderline; that's borderline for probation, obviously nowhere near what we're asking for in this case, but that's how well he did prior to what happened here because obviously the gravity of this offense is huge.

So, Your Honor, I'll wrap it up, but I know that you had a chance to review the letters that we submitted this week from his family. It was between 14 and 16 letters from family, friends. And just point out that he is also a son. He is a cousin. He is a friend. He is someone who will eventually return to his life, and we would ask that that not be after some of his older family members pass away.

Your Honor, we are not downplaying the seriousness of this and the impact on these victims. And I know they're going to get up here and they're going to have compelling stories. Your Honor has heard

many of those compelling stories because Your Honor sat through this trial. And I'm sure that they'll be very honest with what they say and how it's affected them, but I ask Your Honor to look at what is fair and just, given Mr. Turner's criminal history and his taking responsibility from the beginning. Thank you.

THE COURT: Thank you.

Counsel, you'd be -- wish to be heard on mitigation on behalf of Mr. Hudson?

MS. PLUNKETT: Yes, Judge, and as I stated, I advised him, due to the mandatory appeal, to not give a statement today. But on behalf of Mr. Hudson and myself I want to say how horribly sorry I am to the officers who were directly involved, to the entire Metro police force, to the homeowners.

This is -- as Ms. Machnich said this is a horrible case that ended in a guilty verdict, a jury trial. And I'm so sorry that everyone even has to be here today. And I believe we are here today -- and I was not the attorney that represented him at trial. I believe we are here because Mr. Hudson got some very bad advice, and I don't believe that we should be here at a sentencing following a jury verdict, but hopefully that will be addressed on appeal. I want to point out I submitted a Sentencing Memorandum to Your Honor where --

THE COURT: I reviewed all the matters submitted to the Court.

MS. PLUNKETT: Thank you, Judge. And Mr. Hudson is someone who has a lot of family support as evidenced by the letters.

This is someone who grew up in a good home, a church going home, a two-parent home. How we got here is shocking.

This is someone with no criminal history whatsoever; no felonies, no misdemeanors, no gross misdemeanors, no prior arrests for any offense, juvenile or adult, until this instance. This is not someone who has any history with drug abuse, illicit drug abuse. This is someone with no gang affiliation. This is someone who is a good person who has been convicted of a hideous offense.

And this is not someone who is committing recurring sex offenses where the likelihood of committing that offense again is so high. This is not someone that was committing offenses to support a drug habit. This is not someone who, as Mr. Turner's lawyer pointed out, was terrorizing the community repeatedly. This is someone who made a terrible, terrible mistake.

And this is someone that I genuinely believe that if he is released today, if he is released at the end of 40 on the back end, that regardless of that he will never do anything even close to this ever again in his life. He has a two-year-old daughter.

And what I am looking at is slightly different than what Mr. Turner's lawyer is arguing for. I am in the unique position where I frequently represent inmates at parole revocation and release hearings. I appear in front of the commissioners on a regular basis. I know that this is not something where either of these gentlemen will get a first parole. This is not something where they will get a mandatory parole. I honestly, genuinely believe that whatever sentence Your Honor hands

down today, that these two gentlemen will expire that sentence and do the full amount of time.

And so what I believe is appropriate here is something more along the lines of 30 years on the back end. I'm asking Your Honor to not consider the front end. Don't consider whether it's eight, ten, 12 because as a parole attorney, that is simply not going to happen. If he expires on a 30-year sentence his two-year-old will be an adult when he is released from prison. That is a very, very serious amount of prison time, and I believe it is appropriate here.

I've tried cases in front of Your Honor. I'm not asking for leniency. I'm genuinely trying to be reasonable considering the factors involved with who Mr. Hudson is and how he got to this place and his complete lack of criminal history. And I would submit it on that, Judge.

THE COURT: Do we have the victims available?

MR. GIORDANI: Yes, there are five. I'm going to start with Eric Clarkson.

MS. SISOLAK: And, Your Honor, do you prefer that we remain here or would you like to give the victims the entire floor? Court's discretion.

THE COURT: Typically, what I do is I have them come to the podium to speak and to be sworn in unless the parties have some other preference.

MS. SISOLAK: No, Court's preference. Some judges prefer that we have a seat and allow them the floor. I just wanted to make sure we're not --

THE COURT: If you want to have a seat -- you don't have to stand through the entire proceedings.

MS. SISOLAK: Oh.

THE COURT: I mean, if you -- because there are going to be five speakers; it's my understanding.

MS. SISOLAK: Thank you, Your Honor.

ERIC CLARKSON

[having been called as a victim speaker and being first duly sworn, testified as follows:]

THE COURT CLERK: Please state and spell your name for the record.

THE VICTIM IMPACT SPEAKER: Eric Clarkson, E-R-I-C C-L-A-R-K-S-O-N.

THE COURT: Sir, you may proceed.

THE VICTIM IMPACT SPEAKER: I want to start by thanking Your Honor and the jury for finding these two men guilty on all charges. I want to thank the Deputy District Attorney's Office and its staff for working tirelessly for the last almost three years to bring these two men to justice. Your Honor, I also want to thank all the first responders to the event, but most of all a tremendous thank you to Officers Grego-Smith and Robertson.

Your Honor, my roommate and I are survivors, not victims. With that being said, I know now that surviving and actually living one's life are very different things.

My personal and professional lives were destroyed that night,

Your Honor. I'm afraid to date or have sex with anyone in fear that they too will try to murder me. I am no longer comfortable being out in the GLBT community since this happened, as my fears are now greater than the desire to perform. This is my livelihood I'm speaking of.

Your Honor, before this happened I was living and working as a transgender female impersonator and stand-up comedian. Both of those dreams, dreams I was living have ended now until somehow, sometime I feel safe living and working as my true self again.

Your Honor, I am no longer comfortable inviting friends or acquaintances over to my home. I am no longer comfortable showering in my own home because of a window that faces out. I am no longer comfortable sleeping in my bedroom because of a window that faces my patio. It's the window in which I first saw a shadow of a man that night. Every night since this happened while lying in bed I hear noises on my patio and I open my eyes. I look towards that same window up to 100 times per night. My eyes just open and focus like that night is happening all over again.

Your Honor, I have lost -- I -- we, my roommate and I have lost dozens of friends and even family members. They are simply too freaked out or afraid of being around us or in our home anymore, even jokingly saying things like just in case they come back to finish the job I don't want to be there.

Your Honor, my roommate and I are not lovers; we're just best friends, but we chose to sleep in the same bed for three months after this happened because we were both afraid to sleep alone.

Your Honor, I've always been proud of my abilities to bounce back in life, but the health of my best friend has spiraled out of control due to the graphic things he saw that night. It's killing him slowly, and I simply cannot help him. He suffers from severe PTSD, as do I, and has flashbacks from that night.

Your Honor, every time I walk by my back door or back window or back kitchen window I am compelled to look in the backyard, and I never had this fear before. Every time there's a loud noise I get nervous and sometimes even cry. Even hearing gunshots on TV is too much. New Year's Eve and the Fourth of July were my two favorite holidays prior to this happening; now they are my least favorite because of the PTSD.

Your Honor, I wonder sometimes if I will have to change my name and move out of state that I don't have -- so that I don't have to worry about this happening to us again.

Mr. Clemon did not know me or us prior to this happening. He had never met me, but was willing -- or coerced into these crimes by Mr. Turner. And if Mr. Turner has that kind of mind power to coerce people into such heinous situations and crimes, I feel I have absolute reason to worry about a smaller sentence and early release or even revenge after release.

They tried to harm us, Your Honor, but instead they physically harmed a Metro officer; someone who came to our home when we needed and called for help.

Sometimes I think about hurting them, Your Honor, and I've

never wanted to harm another living soul ever in my life until now, and feeling this way is terrible.

Please, Your Honor, consider imposing the longest possible sentences onto these two men. And please allow my roommate, Willough [phonetic], and I to try and slowly rebuild our lives free from worry or fear. Thank you.

THE COURT: Thank you.

Any questions?

MS. MACHNICH: Not on behalf of Mr. Turner.

MS. PLUNKETT: No, Judge.

THE COURT: Thank you.

MR. GIORDANI: Willoughby Grimaldi.

THE COURT: Counsel, before the next speaker can you approach?

[Bench conference -- not transcribed]

WILLOUGHBY GRIMALDI

[having been called as a victim speaker and being first duly sworn, testified as follows:]

THE COURT CLERK: Would you please state and spell your name for the record?

THE VICTIM IMPACT SPEAKER: My full name is Willoughby Potter de Grimaldi, but W-I-L-L-O-U-G-H-B-Y, last name Grimaldi, G-R-I-M-A-L-D-I.

THE COURT: And you may proceed, sir.

THE VICTIM IMPACT SPEAKER: Thank you. To begin I

would like to start by thanking the Court and Your Honor for passing a guilty verdict on all accounts against these two criminals.

These past 33 months have been some of the darkest days of my life. I have lived in fear not only day-to-day, but minute-to-minute; the horror of the events of that night haunting every corner of my mind. My best friend cannot even console me due to the fact that she too has flashbacks and tons of guilt when we did nothing to deserve this.

Unable to move or run away into hiding, I continue to endure living in the same place where so much violence occurred, and all for nothing. While constantly visiting therapists, I replay that night -- I don't look out -- I'm sorry -- I replay that night unable to let it go. There are no windows in our home that I don't look out wondering if someone is outside waiting to kill us.

I should be happy to be alive, yet somehow I feel like I did die that night. I'm just a ghost wandering in pain for all eternity. This is not living. I'm just going through the motions.

In the last many months I have learned the difference between justice and hate. I understand that a crime of passion, even if committed based in hate, does not equal a federally recognized hate crime. Nevertheless, I cannot continue to live as a victim and replay the events of that night.

It may be true that my heart is struggling to recover. The rage and fear -- I'm sorry -- the rage and fear in my heart are like an everlasting tug of war leaving me feeling empty. I know there is some questions that will never be answered, yet the questions still haunt me.

Why? What hate would cause someone to act this way? I guess we'll never know.

Our lives were shattered that morning, and since then my health and physical abilities have plummeted leaving me disabled, hopeless, and at a loss for -- feeling fully stressed. Our lives have been completely altered forever. And although the PTSD and memories affect us both differently, we will somehow leave this courtroom today as survivors instead of just victims.

I believe in our justice system, and I beg Your Honor to please pass the longest available sentence on these two in order to keep this kind of ignorance and hate off of our streets. I feel anything less than 50 years is still not enough time to learn how bad this action actually was.

I would like to take one final moment to greatly thank the first responding officers as well, who took on gunfire and everlasting trauma that ultimately saved our lives and brought these two criminals to justice. We are both eternally grateful to you and to all the police officers who responded, put their lives on the line day in and day out. And to the Deputy District Attorney and the whole team who worked tirelessly in this case, thank you all. Between the jury and yourself, Your Honor, thank you. I trust that justice will be served today, and that we will begin to heal one more time.

THE COURT: Any questions?

MS. MACHNICH: Not on behalf of Mr. Turner.

MS. PLUNKETT: No, Judge.

THE COURT: Thank you, sir.

MR. GIORDANI: Barbara Robertson.

BARBARA ROBERTSON

[Having been called as a victim speaker and being first duly sworn, testified as follows:]

THE COURT CLERK: Please state and spell your name for the record.

THE VICTIM IMPACT SPEAKER: Barbara Robertson, B-A-R-B-A-R-A R-O-B-E-R-T-S-O-N.

THE COURT: You may proceed.

THE VICTIM IMPACT SPEAKER: First of all, I'd like to thank Your Honor for letting me speak today. Jeremy wanted to be a fireman or a police officer from the time he was a little boy. From the time he applied and graduated from the police academy, the first question I was always asked is aren't you afraid for him to be a police officer? My answer was always no. I trust in all the training he has had. As his mother I completely supported him. I knew he would become an excellent officer. I am proud to call Office Robertson my son and hero.

Fast forward to September 4, 2015, a mother's worst nightmare happened. I was awakened by a telephone call from my daughter-in-law telling me Jeremy had been shot in the leg, and asked if I could come over to watch my 18-month-old grandson so she could go to the hospital.

I remember as I was driving over their house -- over to their house crying because as much as I wanted to watch my grandson, I also really wanted to be at the hospital with my son. At the time I was not

aware of the severity of his injury.

After arriving at their house, I then had to call my daughter to tell her about her brother. She lived in Bakersfield, California at the time and was devastated. Not only did I have to worry about Jeremy, I also had to worry about her driving to Las Vegas by herself to be here for all of us.

The news was on at the house and there was continuous coverage of the shooting. I was trying to stay strong for my grandson, as he didn't understand anything that was going on. It became apparent that this was a very serious incident, and I worried the other suspect would not be found.

I was finally able to go to the hospital, but wasn't prepared to see my son in the condition he was in. The pool of blood on the floor as he -- as they wheeled him to surgery will forever be in my memory. It wasn't until he came out of surgery and the doctor talked to us that I realized how lucky we were that he was alive. The doctor informed us it would be a long road to recovery and that there was a strong possibility that he would have to walk with a cane for the rest of his life.

My daughter-in-law was pregnant at the time with my second grandchild. I was now worried that the trauma, physical and emotional, that she was going through could be detrimental to the baby. She is like another daughter to me, so I needed to be there for her along with Jeremy. Trying to balance everything was overwhelming at times.

It broke my heart to see Jeremy in so much pain and never complain. A mother is supposed to protect their children, and I felt like a

complete failure, as there was nothing I could do but be there for him and the family. The worst part was having to watch him go through the changing of his wound VAC every three days for about four months. The exit wound from the bullet was left to heal from the inside out and was at least four inches deep. I can't even imagine the pain associated with pulling out the packing and replacing it with clean material. He would have so much anxiety on those days. It was hard to watch.

Everyday things we do on our own were difficult or impossible for Jeremy to do by himself. Jeremy so enjoys the role of being a husband and father. He was very excited about having another child. He and his son had a great relationship. They loved playing with each other and rolling around on the floor together. Unfortunately, his injury has put limitations on what he can and cannot do with his son and daughter.

Jeremy was separated from his son for 11 days while he was in the hospital. This was hard on both of them and the family. When he was able to go home he wasn't even able to pick him up. That was something his son just couldn't understand. Even walking around his dad he had to be extremely careful so he wouldn't unplug the wound VAC machine. His dad wasn't able to put him to bed like he had done every night before September 4th because his room was upstairs. Jeremy stayed downstairs for more than three months. His son went from being a good eater, willing to try anything, to being a very picky eater; that still continues today. He continues to worry that bad guys will hurt his father again.

Through his recovery process the family chose to stay positive and do whatever we could for Jeremy. The courage Jeremy displayed through the recovery process amazes me each and every day. The pain continues to this day and will be with him every day of his life. Dealing with a leg that is an inch shorter than the other is not an easy task. Walking with a noticeable limp has put stress on his other leg and hip. He never complains, but I can see he is in pain.

I have learned that depression and PTSD are real. Something as simple as the kids making loud noises can be agitating.

Jeremy was willing to agree to a plea deal for Mr. Turner and Hudson. He just wanted to move on. They repeatedly turned the offer down and drug this out for almost three years.

These young males will be able to walk out of prison as the same person physically. However, Jeremy, along with his family have been forever changed both physically and mentally because of their decision in the early morning of September 4th.

They have not been willing to step up and take responsibility for their actions, which is very disappointing. It is hard for me to believe they were at the house only to steal marijuana with the type of firepower they had on them. Shots were fired as soon as they heard the door opening. There were other options that they could have taken, but they made the choice to disregard the life of the person opening the door.

I wish no ill will on these two, but feel they need to be held accountable. I am asking the Court to sentence both of them to the maximum sentence allowed by law. I hope that this will be long enough

for them to reflect on their actions and come out ready to change and be productive citizens. Again, Your Honor, thank you for letting me have the opportunity to speak.

THE COURT: Thank you, ma'am.

Are there any questions?

MS. MACHNICH: None on behalf of Mr. Turner.

Thank you, ma'am.

MS. PLUNKETT: No, Judge.

THE COURT: Thank you.

MR. GIORDANI: Melissa Robertson.

MELISSA ROBERTSON

[having been called as a victim speaker and being first duly sworn, testified as follows:]

THE COURT CLERK: Please state and spell your name for the record.

THE VICTIM IMPACT SPEAKER: Melissa Robertson, M-E-L-I-S-S-A R-O-B-E-R-T-S-O-N.

THE COURT: Please proceed.

THE VICTIM IMPACT SPEAKER: Hello, my name is Melissa Robertson. I am the wife of Officer Jeremy Robertson. I want to thank the Court for allowing me to speak today. On the day my husband was shot I was four months pregnant and had an 18-month-old son. A week and a half earlier my son had undergone emergency surgery and was still recovering. This was my husband's first night back after taking care of our son during his post-surgery recovery.

The day my husband was shot was one of the hardest and scariest days of my life. I had to see my husband in pain and anguish with blood on the floor. I had to wait for four hours while they replaced his femur with a metal rod, and I had to wait with him in a hospital for 11 days while he tried to recover enough to be able to take a few steps. My family and friends were worried about me because they didn't want to see the stress and emotions of the situation hurt me or the baby.

But that's not the only hard days I've had to face since this tragedy. Not only did I have to take care of an 18-month-old son while pregnant, but I had to take care of a husband who was bound to a wheelchair for months. And for a while I was the main caregiver for my son, and I still had to work full-time while trying to save enough days for maternity leave. And I was now taking on all of my husband's daily responsibilities for our household.

I did not sleep in the same bed as my husband for months because he couldn't even walk up the stairs and he had to sleep in a hospital bed in our living room. To this day he still has trouble trying to kneel to do bath time or get on the floor to play with our kids like he used to with my son before he was shot.

Both of my kids were greatly affected when my husband was shot. It breaks my heart to think that my two-year-old daughter, who is a big daddy's girl and looks just like him, almost never got to meet her daddy. My son though is the one that was affected the most. Kids are very intuitive, so although my son was only 18 months old, he knew something was wrong. During the 11 days my husband was in the

hospital my son stopped eating and became fixated on bad guys. To this day he still doesn't eat much when he used to eat or try anything. And sometimes he still randomly brings up bad guys and how they hurt his daddy.

While I'm glad that justice was served and I believe they deserve whatever punishment is given to them, I also hope they use this as an opportunity to better themselves.

I had a lot of hate in my heart towards them for a couple years, and it's very hard to let go of that. Even now I fight anxiety and depression because of everything that I and my family have had to go through. I still have nightmares about what could have happened and what did happen, and I have had many sleepless nights since. While I still battle with these lasting emotions, I can forgive. It has taken me a very, very long time, but I have finally forgiven.

Although my husband has -- still lives with lasting side effects both mentally and physically, I am grateful because his name is not on memorials and on T-shirts along with other fallen officers that we've tragically lost.

I will forever have a scar on my heart because of the pain that has been caused, but all those scars are permanent reminders of pain and suffering. They also remind me of the value of life, love, and my family.

My hope is that the Court gives the maximum sentence allowed because although this may be their first crime, it only takes one offense to affect someone's lives the way that mine and my family's has

been affected.

I hope they work hard to better themselves and learn from their mistakes. I hope they took a good look inside and truly take responsibility and reflect on what they did and come out with a better understanding of what it means to be a good member of society. They're still going to have a chance at life after this, and I don't want them to waste it and make any more reckless and horrible actions like they did that night.

Thank you again for allowing me to speak. Thank you to my family and to my wonderful husband. What he's been through is tragic, and his recovery has been nothing short of a miracle. And without him I'd be falling apart. So, thank you again.

THE COURT: Thank you.

Any questions?

MS. MACHNICH: No questions on behalf of Mr. Turner.

Thank you, ma'am.

THE COURT: Thank you.

MS. PLUNKETT: No, Judge.

MR. GIORDANI: Officer Robertson.

JEREMY ROBERTSON

[having been called as a victim speaker and being first duly sworn, testified as follows:]

THE COURT CLERK: Please state and spell your name for the record.

THE VICTIM IMPACT SPEAKER: Jeremy Robertson,

J-E-R-E-M-Y R-O-B-E-R-T-S-O-N.

Good morning, Your Honor, I thank you for allowing me this opportunity today to address the Court. First I'd like to thank again the Court for allowing me to speak today. I'd also like to thank the State for the great job and time it took to put this case together. I also want to thank everyone here that is here supporting me today.

The events that occurred on September 4th, 2015 will always be an impact on my life. That night Turner and Hudson made a choice to go to a house and, from what they say, steal some weed. They chose to go to that house and take with them some hefty firepower with a rifle and a shotgun. They and they alone are the ones that set things in motion that morning. They chose where to go, they chose what firearms to bring, and they chose to have those firearms ready to use.

I opened the door and was immediately met with a gunshot that hit me in the right upper thigh shattering my femur causing me to fall to the floor. I will never forget the moment I finally realized what had happened and thinking immediately to my wife who was four months pregnant at the time and my little boy who was 18 months. My mind raced to thinking of them and how I needed to do everything I could to survive so I could see them again.

I will never forget the pain of being rolled over by responding officers and then them carrying me out of the house holding my dangling leg. I will never forget laying on the table in trauma with all the doctors and nurses surrounding me, and just praying that I would keep my leg and one day be able to walk again.

One of my fellow officers started calling my wife while I was laying on the trauma table. Not wanting to scare her I asked for the phone so I could talk to her myself. She was woken up around 4:30 a.m. with me on someone else's phone -- dazed trying to figure out why I would call on someone else's phone -- and having to tell her that I had been shot and to call my mom to come watch our son so she could come down to the hospital.

I spent 11 days in the hospital. Some of the days, especially the first few days after the incident and surgery, I was in a daze and not coherent to what was going on around me. I woke with family and friends surrounding me. I also woke to the pain that was in my leg, and seen a tube attached that I later found out to be a wound VAC.

My son was allowed to visit the first day after the event, but then due to him becoming sick he was not allowed to visit for my safety. This was very hard for me and was very emotional, as I want to spend time with him. I have a very great bond with my son.

The wound VAC that was attached to me stayed attached for several months as my injury healed from the inside. The wound VAC was a love-hate relationship, as it helped me heal and protected me from infection, but the dressings had to be changed every three days and was very painful.

I survived a pretty bad gunshot, but then every three days after had to endure the dressing change that consisted of a tech removing the tape to expose the wound and then pulling out foam pieces that were packed inside the wound. The tech then had to spray and

clean the inside of the wound and then pack it with new foam and tape. This event would last about an hour.

And the reason why I bring it up is to relay that just surviving the gunshot was not the only thing. I had to endure the pain from the wound for months. The pain was so bad I had to be put on anxiety medication because I was -- would start freaking out about the next dressing change.

When I finally got released from the hospital I was transported home on a gurney and was taken inside where a hospital bed awaited me inside my dining room. I was not allowed to put any weight on my leg for two months, and had to have someone by me to help me with the simplest of things. I had to have family help me use the restroom, shower, eat and et cetera. I couldn't sleep in the same bed with my wife, and was stuck sleeping in the dining room in a hospital bed for months.

My son had a hard time with this, as he could not play with Daddy the way he was used to. Interactions became careful, Daddy's leg, don't pull that tube, don't do this and that. My son became afraid to be around me.

I was finally allowed to start physical therapy in November. I still had the wound VAC attached to me, and started the yearlong process of learning how to walk again. I was told by my surgeon to expect to walk with at least a cane for the rest of my life, but I did not like that idea, nor did my physical therapist. My therapist along with myself pushed myself hard to do everything we could to get my leg to do what it used to. I went to therapy three times a week, three hours each visit, and

many times left in tears from the pain and stretching and massaging that had to be done.

As I was getting better it became apparent that my right leg was shorter than the other leg. The titanium rod the surgeon had placed inside my leg was shorter than my left leg. I now have to wear an insole or have special boots made to counterbalance this.

I am very thankful that my therapist did not want to see me using a cane and pushed me hard to be able to walk without assistance. I wish I could say that I could walk every day without pain, but that would be a lie. Every day I wake up sore with leg issues, back issues, and have to stretch things out before I start my day. During the day the muscles tighten up and throughout the day I need to stretch out. This will be an issue for the rest of my life. My body has protected the hurt leg and now caused problems for my good leg due to counterbalancing, putting all the weight on my left leg.

I am very thankful to be alive and be here for my family, but it is not, nor will it ever be, the same. I don't have full range of motion in my leg like I used to. I can't sit on the floor and play with my kids like I used to. Even though I get around, I know as I get older I'll have the issues with my leg, and I am sure it will get worse as I get older.

As I stated at the beginning, Hudson and Turner both were the ones who made the poor decision to do something that they knew was wrong. My belief is if we had not shown up as officers those homeowners would be dead and this would be a totally different trial -- or -- had been a different trial.

Today Hudson and Turner will get sentenced and spend the time given to them, which I hope is the max time allowed, but when that time is up they get to walk out and start their life with nothing in their way. I'm not so lucky. I don't get to wait some years and then all the things wrong with me caused from getting shot go away. I will forever have to live with the pain, with the -- live with the emotional and PTS part.

My son knows something bad happened, and even though we never told him exactly what happened he still once in a while tells me when I put him to bed at night no bad guys are going to hurt Daddy. My family and I have to live with this for the rest of our lives. We don't get to do the same, get to do some years, and then erase it all.

The reason why I bring all these things up, reference the healing process and the forever life-changing effects I have to deal with is just to remind the Court and Turner and Hudson that one mistake can cause a lifetime of pain and suffering.

I will continue to get better. This event has not broken me or my family, but has made us stronger and built a stronger bond. This may surprise the families of Turner and Hudson and themselves, but I forgive you. Don't get me wrong, I hated you guys for a long time, but I grew up going to church and know that living with hate will not help me. The offense that occurred on 9/4/15 has happened and there's no going back from that now. The only way is to move forward.

I could see from the few times I was at court during the trial that both Turner and Hudson have family and friends that care for them. Please, to you the family of Turner and Hudson continue to love and

support them. I know that you will get -- that they will get out one day and they will get the opportunity to start life over and be part of this community.

I would like to see Turner and Hudson take the time in prison to better themselves, take classes, learn trade if they offer it. They'll have to pay for the poor decision they made, but I want them to better themselves and come out of this a better person who can function within our community. Stay away from the people in prison that will only bring you down, and surround yourself with positive people not looking for trouble. A quote I've heard -- and I don't remember who said it -- you want to know what your life will look like or live like when you get older, look at your friends. You need to surround yourselves with the people that will care for you and support you, not bring you down.

I've had the opportunity since being shot to work with a program called Hope for Prisoners who help people getting out of prison take classes and help them then find a job and get them to be part of the community and not reoffend. This program is several weeks long, and towards the end officers come in and have the opportunity to talk to them and mentor them. I've had the privilege on several occasions to be part of this, and also being part of the graduation at the end of the course -- sorry -- at the end of the course. The program has a great success rate with hardly any of the graduates reoffending.

I hope this is something that you, Turner and Hudson, will be interested in doing when you are released, as it will help you become a better citizen to yourself, family, and the community. You will have a

chance to live life. Please don't screw it up again.

Your Honor, I thank you for the opportunity here. Like I said before, one incident, one choice can make -- decide someone's life. My life will never be the same. And I agree with the State with what they have suggested for punishment. Thank you.

THE COURT: Thank you.

Any questions?

MS. MACHNICH: Nothing on behalf of Mr. Turner.

MS. PLUNKETT: No, Judge.

THE COURT: We'll be in a short recess.

THE COURT MARSHAL: Court's in recess.

[Recess taken at 10:48 a.m.]

[Proceedings resumed at 10:55 a.m.]

THE COURT MARSHAL: Remain standing. Court's back in session.

THE COURT: Please be seated.

THE COURT MARSHAL: Judge?

MS. DEMONTE: I can take notes, I guess.

THE COURT MARSHAL: All right. I'll see if I can --

THE COURT: Are you standing in, counsel?

MS. DEMONTE: I can. I don't know where Mr. Giordani went. I mean, we're at the point where it's just taking notes.

MS. LUZAICH: He'll be right back, Judge, if you don't mind; two seconds. Thank you.

[Bench conference -- not transcribed]

THE COURT: State, do you know where counsel went?

MS. DEMONTE: I do not.

THE COURT: Did you text him?

MS. DEMONTE: Huh? Other people are. I can see everyone on their phone.

THE COURT: All right. We'll be in a short recess. As soon as counsel arrives let me know.

[Recess taken at 10:59 a.m.]

[Proceedings resumed at 11:00 a.m.]

THE COURT MARSHAL: Remain seated. Court's back in session.

MR. GIORDANI: Sorry.

THE COURT: Please be seated.

As to Mr. Turner, in accordance with the laws of the State of Nevada this Court does now sentence you, as to Count 1, to 364 days in the Clark County Detention Center.

As to Count 2, to confinement in the Nevada Department of Corrections for a maximum term of 72 months with minimum parole eligibility of 16 months. Count 2 is to run concurrent with Count 1.

As to Count 3, to confinement in the Nevada Department of Corrections for a maximum term of 48 months with minimum parole eligibility of 30 -- I'm sorry -- with minimum parole -- retract. As to Count 3, to confinement in the Nevada Department of Corrections for a maximum term of 120 months with a minimum parole eligibility of 48 months. A consecutive term of 36 months for the use of -- a maximum

term -- 120 months for the deadly weapon to run concurrent with Count 2.

As to Count 4, to confinement in the Nevada Department of Corrections for a maximum term of 120 months with a minimum parole eligibility of 36 months. A consecutive term of 36 months for use of -- a maximum of 120 months for the deadly weapon consecutive to Count 3.

As to Count 5, the maximum, to confinement in the Nevada Department of Corrections for a maximum term of 120 months with a minimum parole eligibility of 36 months concurrent with Count 2.

As to Counts 3 and 4, as to the 36 months and maximum of 120 months for the use of a deadly weapon, the Court considered the information described in paragraphs A through E in NRS 193.165 in determining the length. The aggregate sentence as to Mr. Turner is a maximum of 480 months with minimum parole eligibility of 168 months.

As to Mr. Hudson, in accordance with the laws of the State of Nevada this Court does now sentence you, as to Count 1, to 364 days in the Clark County Detention Center.

As to Count 2, to confinement in the Nevada Department of Corrections for a maximum term of 72 months with a minimum parole eligibility of 16 months.

As to Count 3, to confinement in the Nevada Department of Corrections for a maximum term of 120 months with the minimum parole eligibility of 48 months. A consecutive term of 36 months for the use of -- a maximum term of 120 months for the deadly weapon. And Count 3 is to run concurrent with Count 2.

As to Count 4, to confinement in the Nevada Department of Corrections for a maximum term of 120 months with minimum parole eligibility of 48 months. A consecutive term of 36 months for the use of -- and the minimum term of 120 months for the deadly weapon. And Count 4 is to run consecutive to Count 3.

As to the use of a deadly weapon, the Court considered the information described in paragraphs A through E in NRS 193.165 in determining the length.

As to Count 5, to confinement in the Nevada Department of Corrections for a maximum term of 120 months with the minimum parole eligibility of 36 months to run concurrent with Count 4. The aggregate sentence is a maximum term of 480 months with minimum parole eligibility of 168 months.

Counsel, if my math is incorrect I need to know at this point.

MR. GIORDANI: Court's brief indulgence.

MS. MACHNICH: Your Honor, I think it was just -- and it may have been that I just was writing it incorrectly. For Mr. Turner, Count 4 I had --

THE COURT: The same as Count 3; a maximum of 120, minimum of 48 with an additional 36 consecutive as regarded by law.

MS. MACHNICH: I had 36 to 120 and 36 to 120.

MS. PLUNKETT: As did I on Count 4.

THE COURT: No, it's supposed to be -- both the sentences should be identical. It should be, as to Count 2, a max of 72, a minimum of 16 concurrent with Count 1. Count 3 a max of 120, a minimum of 48

with a consecutive 36. That count's concurrent to Count 2. Count 4 is a max of 120 with a minimum of 48 with a consecutive of 36, and that's to be consecutive to Count 3. And Count 5 is a max of 120 with a minimum of 36 concurrent to Count 4.

MR. GIORDANI: That looks accurate, Your Honor.

THE COURT: Okay.

MR. GIORDANI: Fourteen to 40 on each.

THE COURT: That's correct.

MS. SISOLAK: Thank you, Your Honor.

MR. GIORDANI: And as to credit for time served, I believe --

THE COURT: Well, wait, we're not there yet, counsel.

MR. GIORDANI: Oh, I'm sorry.

THE COURT: I further impose $25.00 as an administrative assessment fee, $150.00 for a DNA analysis fee, $3.00 for a DNA administrative assessment fee. This is as to Mr. Turner. The Court does not impose a fine. No restitution.

MR. GIORDANI: Oh, as to that, Your Honor, we were requesting $9,000.00 -- I'm sorry -- $9,099.98 to Jeremy Robertson. One of the two defense counsel has the proof. Most of his bills were covered by insurance for the department.

THE COURT: Okay. It wasn't in the Presentence Investigation Report.

MR. GIORDANI: Yeah, I don't want to speak out of turn, but I believe that sir probably -- well, can I have the Court's brief indulgence?

THE COURT: Sure.

MR. GIORDANI: Sorry, Your Honor. I spoke to Officer Robertson. He wasn't contacted by P and P. I think that his understanding was he submitted it to our office, my victim/witness advocate and it would get to the Court. So, that's what our request is; $9,099.98.

THE COURT: Say it again, please.

MR. GIORDANI: $9,099.98.

THE COURT: State, are you -- not State. Defense, are you objecting to the amount of restitution?

MS. PLUNKETT: Judge, I've seen the bill, and I don't believe I have any objection on behalf of --

THE COURT: All right.

MS. PLUNKETT: -- Mr. Hudson.

THE COURT: Thank you.

What about -- counsel?

[Colloquy between counsel]

THE COURT: All right. Well, I can order it. If you have an objection you can file a motion to reduce it if you feel it's inaccurate.

MR. GIORDANI: Understood.

MS. MACHNICH: It -- that's fine, Your Honor.

MS. PLUNKETT: Your Honor, we'd have no objection.

THE COURT: Okay. Thank you.

MR. GIORDANI: And I'd ask -- it's just jointly and severally.

THE COURT: I will, counsel.

The Court further orders you to pay restitution to Officer

Robertson in the amount of $9,099.98 jointly and severally with your co-defendant, Turner.

MR. GIORDANI: And credit for time served?

THE COURT: Credit for time served in the amount of 1,022 days.

MR. GIORDANI: Thank you, Your Honor.

MS. SISOLAK: Thank you, Your Honor.

MS. PLUNKETT: Thank you, Judge.

MS. MACHNICH: Thank you, Your Honor.

THE COURT: Now, I -- pronounced the sentence as to Mr. Hudson yet?

MS. MACHNICH: Yes, you did.

MR. GIORDANI: Yes.

THE COURT: Okay. So I just need to do the imposition of fines and restitution, credit for time served?

MR. GIORDANI: Yes.

THE COURT: Okay. So as -- that was as to Mr. Turner. As to Mr. Hudson, $25.00 is the administrative assessment fee, $150.00 for the DNA analysis fee, $3.00 for a DNA administrative assessment fee. The Court orders you to pay restitution to Officer Robertson in the amount of $9,099.98 jointly and severally with your co-defendant, Mr. Turner. Credit for time served in the amount of 1,022 days.

Is there anything further? I've pronounced sentence in both Defendants; correct?

MR. GIORDANI: You have.

THE COURT: Imposed fines, restitution, and credit for time served?

MR. GIORDANI: Yes, Your Honor.

THE COURT: As to both Defendants; correct?

MR. GIORDANI: Yes, Your Honor.

THE COURT: Okay. Is there anything further, counsel?

MR. GIORDANI: Not on behalf of the State.

THE COURT: Anything further, counsel?

MS. MACHNICH: No, Your Honor, thank you.

THE COURT: Thank you.

MS. SISOLAK: Thank you, Your Honor.

MS. PLUNKETT: Thank you, Judge.

[Proceedings concluded at 11:12 a.m.]

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

Trisha Garcia
Court Transcriber

Electronically Filed
7/2/2018 11:35 AM
Steven D. Grierson
CLERK OF THE COURT

JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CLEMON HUDSON
#7025101

Defendant.

CASE NO. C-15-309578-2

DEPT. NO. XVIII

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor) in violation of NRS 205.060; COUNT 2 – ATTEMPT BURGLARY WHILE IN POSSESSION OF A FIREARM OR DEADLY WEAPON (Category C Felony) in violation of NRS 205.060.4; COUNT 3 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.010, 200.030, 193.330, 193.165; COUNT 4 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.010, 200.030, 193.330, 193.165; and COUNT 5 – BATTERY WITH USE OF A

Jury Trial
☐ Dismissed (during trial)
☐ Acquittal
☐ Guilty Plea with Sent. (during trial)
■ Conviction

SF

DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony) in violation of NRS 200.481, and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor) in violation of NRS 205.060; COUNT 2 – ATTEMPT BURGLARY WHILE IN POSSESSION OF A FIREARM OR DEADLY WEAPON (Category C Felony) in violation of NRS 205.060.4; COUNT 3 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.010, 200.030, 193.330, 193.165; COUNT 4 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.010, 200.030, 193.330, 193.165; and COUNT 5 – BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony) in violation of NRS 200.481, thereafter, on the 21st day of June, 2018, the Defendant was present in court for sentencing with counsel ALEXIS PLUNKETT, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the $25.00 Administrative Assessment Fee, $9,099.98 Restitution to be paid jointly and severally with Co-Defendant to VC2253860 – Jeremy Robertson, and $150.00 DNA Analysis Fee including testing to determine genetic markers plus $3.00 DNA Collection Fee, the Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows: **COUNT 1** – THREE HUNDRED SIXTY-FOUR (364) DAYS in the Clark County Detention Center (CCDC); **COUNT 2** - a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of SIXTEEN (16)

MONTHS, CONCURRENT with COUNT 1; **COUNT 3** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS, plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT 2; **COUNT 4** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS, plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONSECUTIVE to COUNT 3; **COUNT 5** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS, CONCURRENT with COUNT 2; with ONE THOUSAND, TWENTY-TWO (1022) DAYS credit for time served. The AGGREGATE TOTAL sentence is FOUR HUNDRED EIGHTY (480) MONTHS MAXIMUM with a MINIMUM PAROLE ELIGIBILITY OF ONE HUNDRED SIXTY-EIGHT (168) MONTHS.

DATED this 26 day of June, 2018.

MARK B. BAILUS
DISTRICT COURT JUDGE

Electronically Filed
10/25/2018 9:39 AM
Steven D. Grierson
CLERK OF THE COURT

014
CHRISTOPHER R. ORAM, ESQ.
Nevada Bar #004349
520 S. Fourth Street, 2nd Floor
Las Vegas, Nevada 89101
(702) 384-5563

Attorney for Petitioner
CLEMON HUDSON

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

CLEMON HUDSON,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

CASE NO. A-18-783635-W
DEPT. NO. XXIX

PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION)

DATE OF HEARING: December 18, 2018
TIME OF HEARING: 8:30 am

1. Name of institution and county in which you are being presently imprisoned or here and how you are presently restrained of your liberty: High Desert State Prison, Clark County, Nevada.

2. Name and location of court which entered the judgment of conviction under attack: Eighth Judicial District Court, Clark County, Nevada.

3. Date of Judgment of Conviction: July 2, 2018.

4. Case number: C-15-309578-2

(a) Length of sentence:(b)If sentence is death, state any date upon which execution is scheduled: Mr. Hudson was sentenced on June 21, 2018 as follows: An aggregate total of a maximum of 480 months with a minimum of 168 months. Mr. Hudson received 1,022 days credit for time served.

Case Number: A-18-783635-W

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

Yes _____ No __X__

If "yes" list crime, case number and sentence being served at this time:

7. Nature of offense involved in conviction being challenged: Conspiracy to Commit Burglary, Attempt burglary while in Possession of a Deadly Weapon, Attempt Murder with use of a Deadly Weapon, and Battery with use of a Deadly Weapon resulting in substantial bodily harm.

8. What was your plea? (Check one)

(a) Not guilty __X__

(b) Guilty _____

(c) Guilty but mentally ill _____

(d) Nolo contendere _____

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty but mentally ill was negotiated, give details: N/A

10. If you were found guilty after a plea of not guilty was the finding made by: N/A

(check one)

(a) Jury __X__

(b) Judge without a jury _____

11. Did you testify at the trial? Yes _____ No __X__

12. Did you appeal from the judgment of conviction?

Yes _____ No __X__

13. If you did appeal, answer the following: N/A

(a) Name of court:

(b) Case number or citation:

(c) Result:

(d) date of result:

14. If you did not appeal, explain briefly why you did not: Mr. Hudson received ineffective assistance of counsel for failure to file a timely notice of appeal preserving Mr. Hudson's appellate rights.

15. Other than a direct appeal from a judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? Yes _____ No X

16. (a) (1) Name of court: N/A

(2) Nature of proceedings:

(3) Grounds raised:

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

(5) Result:

(6) Date of result:

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: _____

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

(1) Name of court: _____

(2) Nature of proceeding: _____

(3) Grounds raised: _____

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

(5) Result: _____

(6) Date of Result: _____

(7) If known, citations of any written opinion or date of orders entered pursuant to such result:

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

(1) Name of court: _____

(2) Nature of proceeding: _____

(3) Grounds raised: _____

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

(5) Result: _____

(6) Date of Result: _____

(7) If known, citations of any written opinion or date of orders entered pursuant to such result:

_____

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

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

(1) First petition, application or motion?

Yes _____ No _____

(2) Second petition, application or motion?

Yes _____ No _____

(3) Third or subsequent petitions, application or motions?

Yes _____ No _____

Citation or date of decision: _____

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten page in length.)

_____

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other post-

conviction proceeding? If so, identify: No

18. If any of the grounds listed in No. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included in on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five typewritten pages in length.) N/A

19. Are you filing this petition more than 1 year following the filing of the judgement of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) No. This Petition is timely filed.

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgement under attack? Yes _____ No __X__

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: At trial: Craig Mueller, At sentencing: Alexis Plunkett

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgement under attack.

Yes _____ No __X__

If yes, specify where and when it is to be served, if you know:

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting the same.

(a) This Petition has been filed for the purposes of stopping the one year time limitation since issuance of the Judgment of Conviction. The undersigned was recently retained to represent Mr. Hudson and has yet to receive the file from prior counsel. Thus, Petitioner would respectfully raise issues as they become necessary. Additionally, Petitioner would respectfully request this Court allow the undersigned to supplement this petition by setting a briefing

schedule.

Wherefore, Petitioner prays that this Honorable Court allow the undersigned to Supplement this Petition as necessary.

DATED this 24 day of October, 2018.

Respectfully submitted

CHRISTOPHER R. ORAM, ESQ.
Nevada Bar #004349
520 S. Fourth Street, 2nd Floor
Las Vegas, Nevada 89101
(702) 384-5563

Attorney for Petitioner
CLEMON HUDSON

VERIFICATION

Under the penalty of perjury, the undersigned declares that he is an attorney licensed to practice law in the State of Nevada and I am the attorney for the petitioner in the above entitled matter.

I have read the foregoing Petition, know the contents thereof, and Petitioner, authorizes me to commence this Petition for Writ of Habeas Corpus (post-conviction).

Dated this 17 day of October, 2018.

CHRISTOPHER R. ORAM, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that on the 14 day of October, 2018 I served a true and correct copy of the foregoing document entitled **PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)** to the Clark County District Attorney's Office by sending a copy via electronic mail to:

CLARK COUNTY DISTRICT ATTORNEY
motions@clarkcountyda.com

I, an employee of the Law Office of Christopher R. Oram, Esq., hereby certify that on this 14 day of October, 2018, I did deposit in the United States Post Office at Las Vegas, Nevada, in a sealed envelope with postage fully pre-paid thereon, a true and correct copy of the above and foregoing **PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**, addressed to the following:

Warden, High Desert State Prison
P.O. Box 650
Indian Springs, Nevada 89070

Adam Paul Laxalt
Nevada Attorney General
100 N. Carson Street
Carson City, Nevada 89701-4717

Nancy Mahon
An Employee of Christopher R. Oram, Esq.

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus | **COURT MINUTES** | **December 18, 2018**

A-18-783635-W State Of Nevada, Plaintiff(s)
vs.
Clemon Hudson, Defendant(s)

December 18, 2018 **8:30 AM** **Petition for Writ of Habeas Corpus**

HEARD BY: Jones, David M **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Michaela Tapia

RECORDER: Melissa Murphy-Delgado

PARTIES PRESENT:
Demonte, Noreen C. — Attorney for Plaintiff
Oram, Christopher R — Attorney for Defendant

JOURNAL ENTRIES

- Mr. Oram advised Deft. had different counsel for both trial and sentencing. Further, Mr. Oram noted he had written to both previous counsel, Craig Mueller, Esq., and Alexis Plunkett, Esq., who both claimed they did not have Deft's file and stated the other counsel had it. State offered to provide Mr. Oram with copies of all discoverable material but could not provide any work product. COURT ORDERED, matter CONTINUED; Mr. Mueller and Ms. Plunkett are to appear and explain why they do not have Deft's file.

NDC

CONTINUED TO: 1/29/19 8:30 AM

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Craig Mueller, Esq., (MUELLER HINDS & ASSOCIATES) and Alexis Plunkett, Esq. 12/21/18 /mt

A-18-783635-W State Of Nevada, Plaintiff(s)
vs.
Clemon Hudson, Defendant(s)

January 29, 2019 08:30 AM Petition for Writ of Habeas Corpus

HEARD BY: Jones, David M COURTROOM: RJC Courtroom 15A

COURT CLERK: Maldonado, Nancy

RECORDER: Murphy-Delgado, Melissa

REPORTER:

PARTIES PRESENT:

Bernard B. Zadrowski	**Attorney for Plaintiff**
Christopher R Oram	**Attorney for Defendant**

JOURNAL ENTRIES

Alexis Plunkett, Esq. also present.

Defendant NOT present, noting Defendant is in Federal custody. Mr. Oram advised he did not have a file noting that Ms. Plunkett had not requested the file from the prior attorney. Mr. Oram further advised that Mr. Mueller is not present and is in trial. Mr. Oram requested the State turn over their file. State had no objections. COURT ORDERED, the State turn over the file within 45 DAYS. COURT FURTHER ORDERED, matter SET for Status Check.

03/12/19 8:30 AM STATUS CHECK

Electronically Filed
12/18/2019 9:14 AM
Steven D. Grierson
CLERK OF THE COURT

SUPP
CHRISTOPHER R. ORAM, ESQ.
Nevada State Bar #004349
520 S. Fourth Street, 2nd Floor
Las Vegas, Nevada 89101
(702) 384-5563

Attorney for Defendant
CLEMON HUDSON

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

THE STATE OF NEVADA, Plaintiff, vs. CLEMON HUDSON, Defendant.	CASE NO. A-18-783635-W DEPT. NO. 29

SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

COMES NOW, Defendant, CLEMON HUDSON, by and through his counsel of record, CHRISTOPHER R. ORAM, ESQ., hereby submits his supplemental brief in support of Defendant's Petition for Writ of Habeas Corpus.

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CHRISTOPHER R. ORAM, LTD.
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LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623

Case Number: A-18-783635-W

This Supplement is made and based upon the pleadings and papers on file herein, the Points and Authorities attached hereto, and any oral arguments adduced at the time of hearing this matter.

DATED this 18th day of December, 2019.

Respectfully submitted

/s/ Christopher R. Oram, Esq.
CHRISTOPHER R. ORAM, ESQ.
Nevada Bar #004349
520 S. Fourth Street, 2nd Floor
Las Vegas, Nevada 89101
(702) 384-5563

Attorney for Petitioner
CLEMON HUDSON

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STATEMENT OF THE CASE

Mr. Hudson was charged by way of Indictment on September 23, 2015 as follows: Count 1: Conspiracy to Commit Burglary; Count 2: Attempt Burglary while in possession of a firearm or deadly weapon; Count 3: Attempt Murder with use of a deadly weapon; Count 4: Attempt Murder with use of a deadly weapon; Count 5: Battery with use of a deadly weapon resulting in substantial bodily harm; and Count 6: Discharging firearm at or into occupied structure, vehicle, aircraft, or watercraft. On October 1, 2015, Mr. Hudson was arraigned, pled not guilty and waived the sixty day rule.

On August 28, 2017, Mr. Hudson filed a motion to sever his case from co-defendant Steven Turner. Co-defendant Turner joined Mr. Hudson's motion on September 13, 2017. The State filed an opposition on September 18, 2019. The district court denied the motion for severance on October 12, 2017. Mr. Hudson renewed his motion for severance, but was again denied on November 16, 2017.

Mr. Hudson's trial began on April 16, 2018. On the first day of trial, the State filed an Amended Indictment dismissing count six. On April 27, 2018, the jury found Mr. Hudson guilty of all charges.

Mr. Hudson was sentenced on July 21, 2018, to an aggregate total of a maximum of 480 months with a minimum 168 months. Mr. Hudson received 1,022 days credit for time served. The Judgment of Conviction was filed July 2, 2018.

No direct appeal was filed on Mr. Hudson's behalf. On October 25, 2018, Mr. Hudson filed a timely post-conviction Petition for Writ of Habeas Corpus. Thereafter, a supplemental briefing scheduled was set.

STATEMENT OF THE FACTS

Mr. Eric Clarkson was friends with Mr. Turner (JT Day 3 p. 57-58). Mr. Clarkson did not know Mr. Hudson (JT Day 3 p. 80). Mr. Clarkson resided with his best friend Mr. Willoughby Potter de Grimaldi at a house located at 6729

Oveja Circle, Las Vegas, Clark County, Nevada (JT Day 3 p. 59-61, 92).

On September 4, 2015, around 3:30 a.m., Mr. Clarkson was in his bedroom watching television before going to sleep (JT Day 3 p. 61). Once Mr. Clarkson got into bed, he heard his metal outdoor patio furniture being moved outside (JT Day 3 p. 63-64). This caused Mr. Clarkson to look out the window where he saw a young African American man outside on the patio (JT Day 3 p. 65). Then, Mr. Clarkson grabbed his phone, let his roommate know what he saw and contacted 911 to report that someone was in his backyard (JT Day 3 p. 65). Moments later, Mr. Clarkson and Mr. Grimaldi heard someone banging on the front door and Mr. Grimaldi saw a figure outside (JT Day 3 p. 68, 97-98).

When Mr. Grimaldi went to the back window, he saw a shirtless African American man with a billed cap on his head, racking a shotgun (JT Day 3 p. 95, 119). When Mr. Grimaldi looked out the window, he saw a tall African American man with an afro wearing basketball shorts (JT Day 3 p. 98-99). Mr. Grimaldi then saw a third person out of the corner of his eye, describing the man as African American with a spiky afro (JT Day 3 p. 101-102). Mr. Grimaldi did not recognize any of the three individuals (JT Day 3 p. 104). Mr. Clarkson then relayed this information to the 911 operator (JT Day 3 p. 96-97).

When two police officers arrived (Officer Malik Grego-Smith and Officer Jeremy Robertson) Mr. Clarkson let them in the front door (JT Day 3 p. 71). Mr. Clarkson and Mr. Grimaldi explained to officers how to open the back door and then Officer Robertson opened the back door (JT Day 3 p. 71-72). Mr. Clarkson and Mr. Grimaldi recalled that immediately after the back door was opened there were gunshots (JT Day 3 p. 74-75, 107-108). Mr. Grimaldi had previously told detectives it was his belief that an officer fired the first gunshot, but testified at trial the first shots came from outside on the patio (JT Day 3 p. 124, 126-127). Mr. Clarkson and Mr. Grimaldi both saw different types of bullets enter their home (JT Day 3 p. 75, 107-108). After the shots were fired, Mr. Clarkson and Mr. Grimaldi

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hid in a bedroom (JT Day 3 p. 76).

Officer Malik Grego-Smith, along with Officer Jeremy Robertson, responded to a dispatch call regarding a prowler at the Oveja circle residence (JT Day 5 p. 62, 65). After requesting dispatch inform the homeowner to open the front door, Officer Grego-Smith and Officer Robertson enter the residence (JT Day 5 p. 70). Once in the residence, the officers developed a plan to "clear the backyard" to see if anyone was out there (JT Day 5 p. 72). Officer Robertson was to open the back door, and as he opened the door, Officer Grego-Smith would go through and Officer Robertson would follow (JT Day 5 p. 73). Officer Grego-Smith drew his weapon and as he stepped outside two shots were fired from outside on the patio, one striking Officer Robertson (JT Day 5 p. 73, 76). Officer Grego-Smith returned fire towards the patio, firing twelve shots (JT Day 5 p. 76; JT Day 7 p. 29-30).

Officer Grego-Smith testified he turned his flashlight on right when he started shooting and saw "a light-skinned black male with no shirt and purple basketball shorts" on the patio (JT Day 5 p. 78). The man was approximately three to four feet from him (JT Day 5 p. 90). Officer Grego-Smith recalled yelling, "Don't move, keep your hands up, don't move or I'll fucking shoot you." (JT Day 5 p. 80). Officer Grego-Smith immediately radioed dispatch to inform them that shots had been fired and Officer Robertson had been shot (JT Day 5 p. 80). When back up arrived, Officer Grego-Smith entered the backyard area and witnessed Mr. Hudson being taken into custody (JT Day 5 p. 82). Officer Grego-Smith testified at trial that Mr. Hudson was not the shirtless African American man he had seen in the backyard when he turned on his flashlight (JT Day 5 p. 86).

Officer Jeremy Robertson recalled he had just opened the back door to the patio of the residence when he was shot and fell to the ground (JT Day 5 p. 120). Officer Robertson was struck in the upper thigh, fracturing his femur (JT Day 5 p.

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122, 128).[1]

Sergeant Joshua Bitsko, a K-9 officer, responded to the Oveja residence (JT Day 4 p. 127, 135). Upon arriving at the residence, Sargeant Bitsko learned from the air unit that the suspect was laying in the backyard with a rifle next to him (JT Day 4 p. 140). A Beretta .25 caliber handgun was also located nearby (JT Day 4 p. 81). Sargeant Bitsko deployed his police dog into the backyard who located and began biting the suspect (JT Day 4 p. 140-143). The suspect complied with all commands, was taken into custody and identified as Clemon Hudson (JT Day 4 p. 32, 143-145).

Police secured a perimeter around the crime scene approximately a mile and a half by a mile wide in order to search for additional suspects (JT Day 4 p. 153). Detective Jeremy Vance spent approximately three and a half hours driving around the perimeter looking for the suspect described by officer Grego-Smith (JT Day 4 p. 153).

After being notified of a call concerning a suspicious person in a backyard, Detective Vance came upon Mr. Turner and began to question him (JT Day 4 p. 154-158). Detective Vance noticed Mr. Turner was injured given the blood on his pants (JT Day 4 p. 158). When questioned about the injury, Mr. Turner indicated his leg was caught on a fence at his friend's house (JT Day 4 p. 158). Detective Vance believed the injury was caused by a gunshot wound (JT Day 4 p. 158-159).[2]

Ms. Stephanie Fletcher, a senior crime scene analyst with the Las Vegas Metropolitan Police Department responded to the Oveja Circle residence (JT Day

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[1] Officer Robertson was struck by fire from the SKS file, which the State alleged at trial was fired by Mr. Turner.

[2] After being taken into custody, Mr. Turner was transported to the hospital regarding his leg injury. At the hospital, the physician treated Mr. Turner for a gunshot wound with apparent stippling (JT Day 9 p. 7-8).

5 p. 6). Twelve Speer .9 millimeter[3] cartridge casings were recovered from the dining room area (JT Day 5 p. 14). There were three 7.62 rifle cartridge casings located on the backyard patio area (JT Day 5 p. 15). Analysts did not locate any expended shotgun shells or .25 caliber casings (JT Day 5 p. 16). Analysts located numerous shotgun pellets in the living room of the residence as well as pieces of a shotfun round located on top of the front window sill (JT Day 5 p. 32-34). Firearms recovered from the scene included a SKS rifle, a Mossberg 12-gauge shotgun and a Beretta .25 caliber handgun (JT Day 4 p. 78, 81).

Ms. Gayle Johnson, a forensic scientist with the Las Vegas Metropolitan Police Department, conducted latent print testing on several items (JT Day 6 p. 17-25). With regard to an AK-47 firearm,[4] the analyst was unable to develop any suitable prints for testing (JT Day 6 p. 20). Two latent prints were recovered from a shotgun, both belonging to Mr. Hudson and located in the metal area above the trigger (JT Day 6 p. 23-24). DNA testing was conducted with regard to the firearms (JT Day 6 p. 29-48). No conclusions could be made about the DNA located on the rifle, the Mossberg shotgun or the Beretta handgun (JT Day 6 p. 35, 39-41).

A Toyota Camry located outside the residence was registered to Mr. Hudson's mother (JT Day 7 p. 50-51).

When analysts recovered the shotgun the State alleged Mr. Hudson to be holding, it was inoperable due to damage sustained (JT Day 7 p. 118-122). A fragment was removed from the shotgun, but analysts were unable to determine what weapon the fragment originated (JT Day 7 p. 136).

In September of 2015, Mr. Craig Jex was employed as a Detective with the Las Vegas Metropolitan Police Department (JT Day 6 p. 58). Mr. Jex documented

[3] This is the brand and caliber used by the Las Vegas Metropolitan Police Department (JT Day 5 p. 14-15).

[4] This particular firearm is also referred to as an "SKS rifle" by the parties and is referred to as such in the Amendment Indictment.

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Officer Robertson's injuries at the hospital (JT Day 6 p. 60-61). While at the hospital, Mr. Jex came into contact with Mr. Hudson and conducted an interview with him (JT Day 6 p. 61).

Mr. Jex testified Mr. Hudson relayed to him that he went to the house to obtain marijuana that night and no one was supposed to be home (JT Day 6 p. 65, 86). Mr. Hudson told him there was only one other person involved and the plan was to break in the back window of the residence (JT Day 6 p. 66-67, 74). When Mr. Jex questioned Mr. Hudson as to whether he brought and carried the shotgun, he indicated he did (JT Day 6 p. 66-67, 76-78). Mr. Hudson informed Mr. Jex that there was an SKS rifle and a shotgun in the backyard (JT Day 6 p. 76). Mr. Hudson also told Mr. Jex that he had also brought a small firearm in his shoe (JT Day 6 p. 78-80).

During the interview, Mr. Hudson told Mr. Jex he was not sure if he fired the shotgun, but if he did, he fired once (JT Day 6 p. 77, 88). Mr. Hudson indicated he shot towards the bottom of the window (JT Day 6 p. 78). It was Mr. Hudson's belief that the officers started shooting first (JT Day 6 p. 90).

Detective Eduardo Pazos conducted an interview with Mr. Turner (JT Day 6 p. 96-97). Mr. Turner told police that "someone came to pick him up" around midnight and it was just the two of them in the car (JT Day 6 p. 101, 104). When Mr. Turner got in the car, he saw two guns in the back (JT Day 6 p. 103-104). Mr. Turner indicated the SKS rifle belonged to his uncle (JT Day 6 p. 102, 105).

Mr. Turner explained to Detective Pazos that when he entered the backyard of the residence, shots were fired (JT Day 6 p. 105). When the shots were fired, he hopped over the wall to the back of the house (JT Day 6 p. 105). Mr. Turner told Detective Pazos that after he hopped over the wall, he sat on a couch he found in the neighborhood for a while and than began walking to a friends house (JT Day 6 p. 105). As he was walking to a friends house, he encountered police (JT Day 6 p. 105).

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Mr. Turner told Detective Pazos he had been in the house before and knew who lived there (JT Day 6 p. 108). Mr. Turner admitted he was there to steal weed and if there was any money in the house, he would have taken that as well (JT Day 6 p. 108-110). Mr. Turner denied having a gun in his hand during the incident or firing a weapon (JT Day 6 p. 116-117). Mr. Turner indicated that when the shooting began, he ran away (JT Day 6 p. 112-113, 116).

ARGUMENT

I. STANDARD OF REVIEW FOR INEFFECTIVE ASSISTANCE OF COUNSEL.

To state a claim of ineffective assistance of counsel that is sufficient to invalidate a judgment of conviction, petitioner must demonstrate that:

1. counsel's performance fell below an objective standard of reasonableness,
2. counsel's errors were so severe that they rendered the verdict unreliable.[5]

Lozada v. State, 110 Nev. 349, 353, 871 P. 2d 944, 946 (1994). (Citing *Strickland v. Washington,* 466 U. S. 668, 104 S. Ct. 205, (1984)). Once the defendant establishes that counsels performance was deficient, the defendant must next show that, but for counsels error the result of the trial would probably have been different. *Strickland,* 466 U.S. at. 694, 104 S. Ct. 2068; *Davis v. State*, 107 Nev. 600, 601,602, 817 P. 2d 1169, 1170 (1991). The defendant must also demonstrate errors were so egregious as to render the result of the trial unreliable or the proceeding fundamentally unfair. *State v. Love*, 109 Nev. 1136, 1145, 865 P.2d 322, 328 (1993), citing *Lockhart v. Fretwell*, 506 U. S. 364,113 S. Ct. 838 122 2d, 180 (1993); *Strickland*, 466 U. S. at 687 104 S. Ct. at 2064.

[5] To preclude any argument by the State that Mr. Hudson has not contended counsel violated the *Strickland* standard, every argument presented below is based upon this standard.

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The United States Supreme Court in *Strickland v. Washington*,466 U.S. 668, 104 S. Ct. 2052 (1984), established the standards for a court to determine when counsel's assistance is so ineffective that it violates the Sixth Amendment of the U.S. Constitution. *Strickland* laid out a two-pronged test to determine the merits of a defendant's claim of ineffective assistance of counsel.

First, the defendant must show that counsel's performance was deficient. This requires a showing that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment. Second the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction resulted from a breakdown in the adversary process that renders the result unreliable. The Nevada Supreme Court has held "claims of ineffective assistance of counsel must be reviewed under the "reasonably effective assistance" standard articulated by the United States Supreme Court in *Strickland v. Washington*, requiring the petitioner to show that counsel's assistance was deficient and that the deficiency prejudiced the defense." *Bennett v. State*, 111 Nev. 1099, 1108,901 P.2d 676, 682 (Nev. 1995), and *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 Nev. 1996).

In meeting the prejudice requirement of ineffective assistance of counsel claim, Mr. Hudson must show a reasonable probability that, but for counsel's errors, the result of the trial would have been different. Reasonable probability is probability sufficient to undermine confidence in the outcome. *Kirksey v. State*,

112 Nev. at 980. "Strategy or decisions regarding the conduct of defendant's case are virtually unchallengeable, absent extraordinary circumstances." *Mazzan v. State*, 105 Nev. 745,783 P.2d 430 Nev. 1989); *Olausen v. State*, 105 Nev. 110,771 P.2d 583 Nev. 1989).

The Nevada Supreme Court has held a defendant has a right to effective assistance of appellate counsel on direct appeal. *Kirksey v. Nevada*, 112 Nev. 980, 923 P.2d 1102 (1996).

The constitutional right to effective assistance of counsel extends to a direct appeal. *Burke v. State*, 110 Nev. 1366, 1368, 887 P.2d 267, 268 (1994). A claim of ineffective assistance of appellate counsel is reviewed under the "reasonably effective assistance" test set forth in *Strickland v. Washington*, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984). Effective assistance of appellate counsel does not mean that appellate counsel must raise every non-frivolous issue. See *Jones v. Barnes*, 463 U.S. 745, 751-54, 77 L. Ed. 2d 987, 103 S. Ct. 3308 (1983). An attorney's decision not to raise meritless issues on appeal is not ineffective assistance of counsel. *Daniel v. Overton*, 845 F. Supp. 1170, 1176 (E.D. Mich. 1994); *Leaks v. United States*, 841 F. Supp. 536, 541 (S.D.N.Y. 1994), aff'd, 47 F.3d 1157 (2d Cir.). To establish prejudice based on the deficient assistance of appellate counsel, the defendant must show that the omitted issue would have a reasonable probability of success on appeal. *Duhamel v. Collins*, 955 F.2d 962, 967 (5th Cir. 1992); *Heath*, 941 F.2d at 1132. In making this determination, a court must review the merits of the omitted claim. *Heath*, 941 F. 2d at 1132.

In the instant case, Mr. Hudson's proceedings were fundamentally unfair.

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Mr. Hudson received ineffective assistance of counsel.

II. MR. HUDSON WAS WRONGFULLY DEPRIVED OF HIS RIGHT UNDER ESTABLISHED LAW TO A DIRECT APPEAL AND HEREBY REQUESTS RELIEF PURSUANT TO *LOZADA V. STATE*, 110 NEV. 349, 871 P.2D 944 (1994) AND NRAP 4(c).

In this case, Mr. Hudson was deprived of his right to a direct appeal based upon counsel's rendering of ineffective assistance. As such, Mr. Hudson should be permitted to file an untimely notice of appeal. Here, given the serious nature of the offenses for which he has been convicted and the lengthy sentence received, Mr. Hudson naturally desired to appeal the instant conviction. Due to counsel's failure, Mr. Hudson never received such an opportunity. In circumstances such as this, the Nevada Supreme Court has held the defendant must be granted an untimely direct appeal. This Court should find as such, and file a notice of appeal for him as set forth in NRAP 4(c).

A. STATE AND FEDERAL AUTHORITY PERMITS AN UNTIMELY DIRECT APPEAL UNDER THE CIRCUMSTANCES.

In *Lozada v. State,* 110 Nev. 349, 354, 871 P.2d 944 (1994), the Nevada Supreme Court explained, "an attorney has a duty to perfect an appeal when a convicted defendant expresses a desire to appeal or indicates dissatisfaction with a conviction.". If counsel fails to file an appeal after a convicted defendant makes a timely request, the defendant was entitled to the *Lozada* remedy, which consisted of filing a post-conviction petition with assistance of counsel in which the actual appellate claims could be raised. *Id.* Such a claim did not require any showing of merit as to the issues sought to be raised. As such, it is sufficient to receive the relief contemplated by *Lozada* if a petition shows that the defendant was deprived of his right to a direct appeal without his consent. *Id.* at 357.

The remedy contemplated by *Lozada* has been largely subsumed by revisions to the Nevada Rules of Appellate Procedure (NRAP), though the basis for obtaining relief remains generally the same. Under NRAP 4(c), an untimely notice of appeal may be filed if:

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A) A post-conviction petition for a writ of habeas corpus has been timely and properly filed in accordance with the provisions of NRSs 34.720 to 34.830, asserting a viable claim that the petitioner was unlawfully deprived of the right to a timely direct appeal from a judgment of conviction and sentence; and

B) The district court in which the petition is considered enters a written order containing:

i) specific findings of fact and conclusions of law finding that the petitioner has established a valid appeal-deprivation claim and is entitled to a direct appeal with the assistance of appointed or retained appellate counsel;

ii) if the petitioner is indigent, directions for the appointment of appellate counsel, other than counsel for the defense in the proceedings leading to the conviction, to represent the petitioner in the direct appeal from the conviction and sentence; and

iii) directions to the district court clerk to prepare and file – within 7 days of the entry of the district court's order – a notice of appeal from the judgment of conviction and sentence on the petitioners behalf in substantially the form provided in Form 1 in the Appendix of Forms.

The Nevada Supreme Court has been clear – counsel has a constitutional duty to file a direct appeal in two circumstances: when requested to do so and when the defendant expresses dissatisfaction with his conviction, and that the failure to do so in those circumstances is deficient for purposes of proving ineffective assistance of counsel. *Lozada*, 110 Nev. at 354–57; *Davis v. State,* 115 Nev. 17, 20, 974 P.2d 658, 660 (1999) ("[I]f the client does express a desire to appeal, counsel is obligated to file the notice of appeal on the client's behalf.").

To prove ineffective assistance of counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 Led.2d 674 (1984); *Warden v. Lyons*, 100 Nev 430, 432–33, 683 P.2d 504, 505 (1984). Generally, both components of the inquiry must be shown, but in some instances, such as when the petitioner has been deprived of the right to appeal due

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to counsel's deficient performance, the second component – prejudice – may be presumed. *See Lozada*, 110 Nev. at 356–57. *See also Rodriguez v. United States*, 395 U.S. 327, 328, 23 L. Ed 2d 340, 89 S. T. 1715 (1969) (presuming prejudice when counsel failed to file a notice of appeal against his client's wishes). The petitioner must demonstrate the underlying facts by a preponderance of the evidence. *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). *See also Toston v. State*, 127 Nev. 971, 976, 267 P.3d 795 (2011).

In *Toston*, the Nevada Supreme Court provided guidance as to the meaning of "when the defendant expresses dissatisfaction with his conviction". *See generally*, 127 Nev. at 978–79. The Nevada Supreme Court explained:

> [T]rial counsel has a duty to file a direct appeal when the client's desire to challenge the conviction or sentence can be reasonably inferred from the totality of the circumstances, focusing on the information that counsel new or should have known at the time. *Cf Flores v. Ortega*, 528 U.S. at 480 (discussing circumstances in which counsel must consult with a client regarding an appeal). In determining whether counsel knew or should have known that his client wanted to appeal the conviction, the courts may consider whether the conviction arose from a jury trial or a guilty plea, "both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." *Toston*, 127 Nev. at 979 (footnotes omitted).

Thus, when a defendant has been convicted pursuant to a jury verdict, counsel has a constitutional duty to inform the client of the right to appeal. *Lozada* 110 Nev. at 356. Counsel's failure to do so is deficient performance for purposes of proving an ineffective assistance of counsel claim. *Roe v. Flores-Ortega*, 528 U.S. 470, 477–81, 120 S. Ct. 1029 (2000).

B. MR. HUDSON WAS DEPRIVED OF HIS RIGHT TO A DIRECT APPEAL AND SHOULD BE PERMITTED AN OPPORTUNITY FOR AN UNTIMELY DIRECT APPEAL.

In order to prevail, Mr. Hudson must demonstrate by a preponderance of the evidence that 1) he filed a timely post-conviction Petition, and 2) his attorney had a duty to perfect an appeal because Mr. Hudson either expressed a desire to appeal, indicated dissatisfaction with his conviction, or his desire to challenge the

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conviction or sentence can be reasonably inferred from the totality of the circumstances. *See Lozada v. State,* 110 Nev. at 354–57; *Toston*, 127 Nev. at 976–79. Mr. Hudson need not demonstrate prejudice as it is presumed. *Lozada*, 110 Nev. at 356–57.

First, in this case, there is no question that Mr. Hudson filed a timely post-conviction petition. Mr. Hudson's Judgment of Conviction was filed on July 2, 2018. On October 25, 2018, Mr. Hudson filed a timely Petition noting he received ineffective assistance of counsel for counsel's failure to preserve his appellate rights (Petition, p. 3). Supplemental briefing was thereafter permitted. Thus, Mr. Hudson can demonstrate he began a timely post-conviction proceeding.

Next, Mr. Hudson can demonstrate that he was deprived of a direct appeal due to ineffective assistance of counsel not only because he expressed a desire that his direct appeal be perfected, but also because his desire to challenge the conviction can be reasonably inferred from the totality of the circumstances. Attached for this Court's review is a declaration from Mr. Hudson confirming he expressed his desire to counsel that an appeal be filed on his behalf (Exhibit A). Further, the nature and severity of the offenses, including the fact that Mr. Hudson proceeded to trial, demonstrates his desire to continue to challenge the conviction.

Additionally, counsel's own statements demonstrate not only Mr. Hudson's desire for an appeal, but counsel's awareness that an appeal was to be filed. During Mr. Hudson's sentencing on June 21, 2018, counsel stated:

> Yes, Judge, and as I sated, I advised him, **due to the mandatory appeal**, to not give a statement today. (emphasis added) (Reporter's Transcript of Sentencing, p. 14) (Exhibit B).

Counsel continued,

> I believe we are here because Mr. Hudson got some very bad advice, and I don't believe that we should be here at a sentencing following a jury verdict, but hopefully **that will be addressed on appeal**. (Emphasis added) (Reporter's Transcript of Sentencing, p. 14) (Exhibit B).

Unfortuantely. for reasons unknown to Mr. Hudson, counsel failed to

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preserve his direct appeal. Mr. Hudson submits the totality of the circumstances demonstrating his desire for preservation of his direct appeal rights are obvious from a plain review of the record. Even *assuming arguendo* that is not the case, Mr. Hudson is evidentiary hearing where he can establish counsel failed to preserve his direct appeal rights because he has raised a colorable claim of ineffective assistance. *See Smith v. McCormick*, 914 F.2d 1153, 1170 (9th Cir. 1990).

Here, Mr. Hudson received ineffective assistance of counsel concerning his right to file an appeal because he requested an appeal be filed and counsel failed to do so. In such a case, prejudice is presumed. This Court should therefore grant the petition and file a notice of appeal on Mr. Hudson's behalf pursuant to NRAp 4(c).

III. MR. HUDSON RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR FAILURE TO OBJECT TO THE DISTRICT COURT'S PRESENTATION OF INSTRUCTION NUMBER 38 REGARDING FLIGHT TO THE JURY.

In the instant case, trial counsel failed to object to the district court's giving of instruction number thirty-eight, regarding flight (JT Day 9 p. 22).

THE FLIGHT INSTRUCTION

INSTRUCTION NO. 32:

> The flight of a person immediately after the commission of a crime, or after he is accused of a crime, is not sufficient in itself to establish his guilt, but is a fact which, if proved, may be considered by you in light of all other proved facts in deciding the question of his guilt or innocence. Whether or not evidence of flight shows a consciousness of guilt and the significance to be attached to such a circumstance are matters for your deliberation (Jury Instruction No. 32).

In the instant case, a review of the record demonstrates the jury should not have been instructed on flight.

"[A] district court may properly give a flight instruction if the State presents evidence of flight and the record supports the conclusion that the defendant fled with consciousness of guilt and to evade arrest." *See Rosky v. State*, 121 Nev. 184, 199, 111 P.3d 690, 699–700 (2005). While the Nevada Supreme Court reviews the

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district court's decision to issue a jury instruction for an abuse of discretion, "[b]ecause of the possibility of undue influence by [a flight] instruction, this court carefully scrutinizes the record to determine if the evidence actually warranted the instruction." *See Weber v. State,* 121 Nev. 554, 582, 119 P.3d 107, 126 (2005).

In *Guy v. State*, 108 Nev. 770, 839 P.2d 578 (1992), the Nevada Supreme Court noted that district courts should not use a flight instruction where there is not overwhelming evidence that the flight was related to an attempt to avoid arrest because of its inherently prejudicial nature.

In *Miles v. State*, 97 Nev. 82, 624 P.2d 494 (1981), the Nevada Supreme Court reasoned that:

> However, a flight instruction may give undue influence to one phase of evidence, therefore the appellate court will carefully scrutinize it to be certain that the record supports the conclusion that appellant's going away was not just a mere leaving but was with a consciousness of guilt and for the purpose of avoiding arrest. 97 Nev. 82, 85. *See also Potter v. State*, 96 Nev. 875, 619 P.2d 1222 (1980) and *Theriault v. State*, 92 Nev. 185, 547 P.2d 668 (1976).

In *Miles*, this Court determined the flight instruction was proper where after one hour passed, Mr. Miles left the area of the crime and was arrested several months later in a neighboring state. 97 Nev. at 85.

In *Weber*, 121 Nev. at 582, the Nevada Supreme Court explained that a jury may properly receive an instruction regarding flight so long as it is supported by the evidence, but "signifies something more than a mere going away." *Id.* In *Weber*, the Nevada Supreme Court found evidence of flight where the defendant left the Las Vegas area on a bus, traveling to California, Oregon, Washington, Idaho and Utah. *Id.* The defendant in *Weber* also purchased items for a disguise. *Id.*

In *Guy,* the Nevada Supreme Court found a flight instruction improper where the defendant engaged in a high speed automobile chase two weeks after the offense was alleged to have been committed. 108 Nev. at 773. In *Guy*, the Nevada Supreme Court noted that given Guy's criminal proclivities, there were

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numerous reasons why he would flee from police and assuming consciousness of guilt and fear of arrest arising from the offense for which he was on trial was pure speculation. *Id.* at 777.

A review of the entire record reveals that Mr. Hudson did not flee the scene with consciousness of guilt and to evade arrest. The record does not establish that Mr. Hudson ran away to another jurisdiction, was arrested in a neighboring state or attempted to flee in any way other than necessary to accomplish the crime itself. In fact, Mr. Hudson was located at the scene of the offense and did not move from the time officers told him to stay where he was (JT Day 4 p. 140, JT Day 5 p. 82). The record at trial makes clear that Mr. Hudson complied with all commands and was taken into custody at the scene (JT Day 4 p. 32, 143-145).Whereas, with regard to co-defendant Turner, when he fled the scene, it caused police to secure a perimeter around the crime scene approximately a mile and a half by a mile wide (JT Day 4 p. 153). Yet, the court made no distinguishment that the instruction concerning flight applied to only Mr. Turner and not Mr. Hudson.

Clearly, the evidence adduced at trial did not warrant the giving of a flight instruction. As the Nevada Supreme Court noted in *Guy*, the giving of a flight instruction is inherently prejudicial. Trial counsel should have objected to this improper and highly prejudicial instruction. Based on the foregoing, Mr. Hudson received ineffective assistance of counsel for failure to object to the giving of this instruction.

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IV. MR. HUDSON RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR FAILURE TO OBJECT TO THE DISTRICT COURT'S GIVING OF INSTRUCTION NUMBERS 40 AND 50 IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.[6]

Mr. Hudson received ineffective assistance of counsel for failing to object to these jury instructions at trial.

A. THE REASONABLE DOUBT INSTRUCTION

INSTRUCTION NO. 40

The trial court's reasonable doubt instruction given improperly minimized the State's burden of proof. The jury was given the following instruction on reasonable doubt:

> A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel and abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt, to be reasonable, must be actual, not mere possibility or speculation (Instruction Number 40).

The instruction given to the jury minimized the State's burden of proof by including terms "It is not mere possible doubt, but is such a doubt *as would govern or control a person in the more weighty affairs of life*" and "Doubt, to be reasonable, must be *actual*, not mere possibility or speculation." This instruction inflates the constitutional standard of doubt necessary for acquittal, and the giving of this instruction created a reasonable likelihood that the jury would convict and sentence based on a lesser standard of proof than the constitution requires. *See Victor v. Nebraska*, 511 U.S. 1, 24 (1994) (Ginsburg, J., concurring in part); *Cage v. Louisiana*, 498 U.S.39, 41 (1990); *Estelle v. McGuire*, 502 U.S. 62, 72 (1991). Mr. Colvin recognizes that the Nevada Supreme Court has found this instruction to be permissible. *See e.g. Elvik v. State*, 114 Nev. 883, 985 P.2d 784 (1998);

[6] The undersigned has raised this issue to the Nevada Supreme Court numerous times and acknowledges that the Court has always denied the issue. The issue is presented because the Court may reconsider its previous decisions and because this issue must be presented to preserve it for federal review.

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Bolin v. State, 114 Nev. 503, 960 P.2d 784 (1998).

B. EQUAL AND EXACT JUSTICE

The trial court's "equal and exact justice" instruction improperly minimized the State's burden of proof. The court provided the following instruction to the jury:

INSTRUCTION NO. 50

> Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law, but whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions with the sole, fixed and steadfast purpose of doing equal and exact justice between the defendant and the State of Nevada (Instruction Number 50).

By informing the jury that it must provide equal and exact justice between the defendant and the State, this instruction created a reasonable likihood that the jury would not apply the presumption of innocence in favor of Mr. Hudson and would thereby convict and sentence based on an lesser standard of proof than the constitution requires. *Sullivan v. Louisiana,* 508 U.S. 275, 281 (1993).

Based on the foregoing, Mr. Hudson would respectfully request this Court reverse his convictions.

V. MR. HUDSON IS ENTITLED TO A REVERSAL OF HIS CONVICTIONS BASED UPON CUMULATIVE ERROR.

In *Dechant v. State*, 10 P.3d 108, 116 Nev. 918 (2000), the Nevada Supreme Court reversed the murder conviction of Amy Dechant based upon the cumulative effect of the errors at trial. In *Dechant*, the Nevada Supreme Court provided, "[W]e have stated that if the cumulative effect of errors committed at trial denies the appellant his right to a fair trial, this Court will reverse the conviction." *Id*. at 113 citing *Big Pond v. State*, 101 Nev. 1, 3, 692 P.2d 1288, 1289 (1985). The Nevada Supreme Court explained that there are certain factors in deciding whether error is harmless or prejudicial including whether 1) the issue of guilt or innocence is close, 2) the quantity and character of the area and 3) the

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gravity of the crime charged. *Id.*

Based on the foregoing, Mr. Hudson would respectfully request that this Court reverse his conviction based upon cumulative errors of counsel.

VI. MR. HUDSON IS ENTITLED TO AN EVIDENTIARY HEARING.

A petitioner is entitled to an evidentiary hearing where the petitioner raises a colorable claim of ineffective assistance. *Smith v. McCormick*, 914 F.2d 1153, 1170 (9th Cir.1990); *Hendricks v. Vasquez*, 974 F.2d 1099, 1103, 1109-10 (9th Cir.1992). *See also Morris v. California*, 966 F.2d 448, 454 (9th Cir.1991) (remand for evidentiary hearing required where allegations in petitioner's affidavit raise inference of deficient performance); *Harich v. Wainwright*, 813 F.2d 1082, 1090 (11th Cir.1987) ("[W]here a petitioner raises a colorable claim of ineffective assistance, and where there has not been a state or federal hearing on this claim, we must remand to the district court for an evidentiary hearing."); *Porter v. Wainwright*, 805 F.2d 930 (11th Cir. 1986) (without the aid of an evidentiary hearing, the court cannot conclude whether attorneys properly investigated a case or whether their decisions concerning evidence were made for tactical reasons).

In the instant case, an evidentiary hearing is necessary to question trial counsel. Mr. Hudson's counsel fell below a standard of reasonableness. More importantly, based on the failures of trial counsel, Mr. Hudson was severely prejudiced, pursuant to *Strickland v. Washington*, 466 U. S. 668, 104 S. Ct. 205, (1984), as he was deprived of his right to file a direct appeal.

Under the facts presented here, an evidentiary hearing is mandated to determine whether the performance of trial counsel was effective, to determine the prejudicial impact of the errors and omissions noted in the petition, and to ascertain the truth in this case.

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CONCLUSION

Wherefore, Mr. Hudson respectfully requests this Court grant his Petition finding he received ineffective assistance of counsel.

Dated this 18th day of December, 2019.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of December, 2019, I served a true and correct copy of the foregoing document entitled **SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)** to the Clark County District Attorney's Office by sending a copy via electronic mail to:

CLARK COUNTY DISTRICT ATTORNEY
motions@clarkcountyda.com

BY:

/s/ Nancy Medina
An employee of Christopher R. Oram, Esq.

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EXHIBIT A

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DECLARATION OF PETITIONER

Clemon Hudson does hereby declare:

1. That Declarant is the Defendant in case C-15-309578-2 and that counsel has been retained to assist Declarant with a post-conviction Petition for Writ of Habeas Corpus and a potential claim that he was deprived of a direct appeal.

2. That on June 21, 2018, Declarant was sentenced in the above entitled matter. The Judgment of Conviction was filed on July 2, 2018.

3. Prior to the Judgment of Conviction being filed, Declarant had discussed with counsel that he desired to file a direct appeal challenging his conviction.

4. Declarant specifically asked his sentencing counsel to file a direct appeal on his behalf.

5. Declarant was of the belief that an appeal would be filed on his behalf in this matter.

6. It was at all times Declarant's expressed intention to counsel that a direct appeal be filed in the above entitled manner.

7. Once declarant learned he had lost his right to an appeal for counsel's failure to file, he began the process of obtaining alternative counsel to assist him in filing a timely post-conviction petition.

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

12/12/19
Executed on (date)

Signature

EXHIBIT B

Electronically Filed
9/25/2018 9:58 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. STEVEN TURNER, CLEMON HUDSON, Defendants.	CASE#: C-15-309578-1 C-15-309578-2 DEPT. XVIII

BEFORE THE HONORABLE MARK B. BAILUS DISTRICT COURT JUDGE

THURSDAY, JUNE 21, 2018

RECORDER'S TRANSCRIPT OF PROCEEDINGS
SENTENCING

APPEARANCES:

For the State:	JOHN L. GIORDANI, III, ESQ. Chief Deputy District Attorney
For the Defendants:	
Steven Turner	TEGAN C. MACHNICH, ESQ. ASHLEY L. SISOLAK, ESQ. Deputies Public Defender
Clemon Hudson	ALEXIS A. PLUNKETT, ESQ.
ALSO PRESENT:	ERIC CLARKSON WILLOUGHBY GRIMALDI BARBARA ROBERTSON MELISSA ROBERTSON JEREMY ROBERTSON Victim Impact Speakers

RECORDED BY: ROBIN PAGE, COURT RECORDER

THURSDAY, JUNE 21, 2018, AT 9:49 A.M.

THE COURT: Case number C309578, State versus Steven Turner and Clemon Hudson. Counsel, state your appearances, please.

MR. GIORDANI: Good morning, Your Honor, John Giordani on behalf of the State.

MS. PLUNKETT: Good morning, Judge, Alexis Plunkett for Clemon Hudson.

MS. MACHNICH: Tegan Machnich and Ashley Sisolak for Mr. Turner.

MS. SISOLAK: Thank you, Your Honor.

THE COURT: And we're going to do this in order as they appear on the calendar. And so Mr. Turner is first on calendar. Now, counsel, I've been notified that we're going to have victim impact statements.

MR. GIORDANI: That is correct, Your Honor.

THE COURT: I called the cases together so the -- will the parties stipulate that the statements that are made today by the victims are to be applied to both Defendants; is that correct?

MR. GIORDANI: Yes, Your Honor.

THE COURT: Do the parties stipulate to that?

MS. PLUNKETT: Yes, Your Honor.

MS. SISOLAK: Yes, Your Honor.

MS. MACHNICH: That's absolutely fine, Your Honor. We actually would be fine with the State making -- and I don't know if the

State's argument is substantially different for both co-defendants. We would have no opposition to them just -- us going State, Defense, Defense.

THE COURT: I don't want to do that because they're co-defendants and they're going to have separate issues for appellate review, so I want to keep the record as clean as I can.

MS. SISOLAK: Understood, Your Honor.

THE COURT: That's why I'm asking parties to stipulate. And at the end of each victim impact statement I'll give the Defense an opportunity to ask questions of that victim as they make their statement; okay?

MR. GIORDANI: Yes. And our only request would be that the victims be able to speak last.

THE COURT: That's correct. Well, it's going to be last as to Mr. Turner. Oh, I see what you're saying.

MR. GIORDANI: No, just once at the end of the whole thing is what we would ask.

THE COURT: Okay. So, you want me -- I think what the State is requesting -- as long as the Defense doesn't have a problem I'm going to do the preliminary matters together. Then you want both the Defense counsel to make their argument at the same time?

MR. GIORDANI: Yeah, that's how we would do it on a --

THE COURT: Okay.

MR. GIORDANI: -- typical co-defendant --

THE COURT: So, both Defense counsel will then make your

argument at the same time, and then we'll do the victim statements.

Is that satisfactory with everyone?

MR. GIORDANI: Yes.

MS. MACHNICH: Yes, Your Honor.

MS. PLUNKETT: Yes, Judge.

THE COURT: All right. Thank you. This is the time set for entry of judgement and imposition of sentence. Is there any legal cause or reason why judgement should not be pronounced at this time?

MS. MACHNICH: No, Your Honor.

MS. PLUNKETT: No, Judge.

THE COURT: State?

MR. GIORDANI: Thank you, Your Honor.

THE COURT: No, no. Is there any reason we shouldn't go forward --

MR. GIORDANI: No.

THE COURT: -- at this time?

MR. GIORDANI: No.

THE COURT: Thank you.

Mr. Turner, by verdict of the jury, I hereby adjudge you guilty of the offenses of Count 1 conspiracy to commit burglary, Count 2 attempt burglary while in possession of a firearm or deadly weapon, Counts 3 and 4 attempt murder with use of a deadly weapon, and Count 5 battery with use of a deadly weapon resulting in substantial bodily harm.

Mr. Hudson, by verdict of the jury, I hereby adjudge you guilty

of Count 1 conspiracy to commit burglary, Count 2 attempt burglary while in possession of a firearm or deadly weapon, Counts 3 and 4 attempt murder with use of a deadly weapon, and Count 5 battery with use of a deadly weapon resulting in substantial bodily harm.

State, what's your position on sentencing?

MR. GIORDANI: Thank you, Your Honor. I won't rehash the entirety of the facts; you sat through a lengthy trial in this case, but what I will do is remind the Court of a couple of things that came out during the trial.

First off, there were two confessions given, one by each Defendant, that were heavily redacted in order to be presented to the jury, but I want to remind the Court that those statements are not invalid for any reason or suppressed for any reason, and in those statements both of these Defendants confessed that they were going over to this home of Eric Clarkson and Willoughby Grimaldi in order to commit a dope rip or a robbery.

As Your Honor's fully aware, they went over there heavily armed. They went -- Mr. Turner went with an SKS rifle or what was referred to a couple times as an AK-47. Mr. Hudson went with a shotgun.

When they got to that home they repeatedly tried to get in through the front door, the side door -- or -- side window and the back door. Police are called, then you have that ten-minute -- ten or so minute 9-1-1 call in which the victims, who are present here in court today, were absolutely terrified that there were armed men outside their home trying

to get in.

Officers Robertson and Grego-Smith respond to the call, get to that home. They do what they're trained to do, they approach tactically, they get to the back door, and without warning as soon as that door is opened Mr. Turner fires his SKS rifle striking Mr. -- or -- Officer Robertson, dropping him to the ground. Mr. Hudson then fires his shotgun and because Officer Robertson went to the ground, he missed entirely. It went over, narrowly missing the victims as well.

There were two other rounds fired from that SKS rifle. There were no other rounds fired by the shotgun and that's because Officer Grego-Smith put himself between his downed partner and the assailants, and returned fire. And you'll recall one of those rounds struck the shotgun, rendering it inoperable. So, you know, I can speculate as to whether he would have kept firing. I won't do that. He fired at least one round, and that round was intended to kill.

When you shoot a shotgun -- I don't know if Your Honor's shot a shotgun before, but when you do you would understand you shoot that at a human being, your intent is one thing and one thing only and that's to kill.

The return fire from Officer Grego-Smith caused Mr. Turner to drop his gun like a coward and flee. And then Mr. Hudson was struck in his gun, went down, and was apprehended on the scene by the K-9 units. It was shortly thereafter, three hours later that Mr. Turner was caught on the perimeter. He had that frag in his leg. He then was taken into custody and ultimately gave those statements that I discussed

earlier.

What I'm asking this Court to do is sentence each Defendant generally to the same sentence. As to Mr. Turner, because he actually struck Officer Robertson changing his life forever, I'm asking for 16 to 40 years. That is eight to 20 on one count of attempt murder with use of a deadly weapon, and a consecutive eight to 20 on the other count of attempt murder with use of a deadly weapon. I believe that is an appropriate sentence. It's in the midrange for each count.

I do believe that these victims should be treated separately because one of the issues that you'll recall that the Defense raised and the Defendants actually said in their statements generally was they didn't know who they were shooting at. And my -- first I think that's a joke and frankly just inaccurate, but even if you accept that as true, they're either shooting at Clarkson and Willoughby or they're shooting at Officer Grego-Smith and Officer Robertson.

So, in any event, whatever you accept as their mindset at the time, there are two victims at least, and those two victims should be treated separately. They're separate crimes. That's why I'm asking for consecutive terms on the attempt murder with use of a deadly weapon.

I'll end with this, Your Honor. This crime changed Officer Robertson's life forever. It changed Metro's approach to things. And I can just say there are a number of officers in the courtroom in support. This crime had a major impact on the law enforcement community.

If -- anyone who's here on this case in support of the officers would you please stand briefly?

As you can see, Your Honor, this crime didn't just impact Officer Robertson. It didn't just impact Officer Grego-Smith. It didn't just impact Eric Clarkson and Willoughby Grimaldi, but it impacted the law enforcement community.

You guys can have a seat.

This -- whatever their mindset was at the time, this was egregious, egregious conduct. Had that bullet that came out of that SKS rifle gone two centimeters to the right, we would be sitting here on a first degree murder felony murder case. And during a felony murder, of course, if someone dies it doesn't matter whether it's intentional, unintentional or accidental. By the grace of God he didn't die. I understand that, and that's why I'm not asking for the minimum of 20; what it would be on a first of, course.

I think 16 to 40 years is appropriate as to Mr. Turner because he's the one who actually struck Officer Robertson. As to Mr. Hudson, while I believe he had the same exact intent and the only reason he didn't strike anyone is because his firearm was hit by Officer Grego-Smith's return fire, I do believe that there should be a little less on the bottom for him. So, as to him I'm asking for 14 to 40, and that's two years off the bottom on his sentence.

With that, I will submit it to the Court and just remind the Court that we have five victim speakers and ask them to speak at the very end once everyone else has. Thank you, Your Honor.

THE COURT: Thank you.

Mr. Turner, before your attorney speaks is there anything

you'd like to tell the Court on your own behalf before I pronounce sentence?

MS. SISOLAK: Your Honor, I have a letter I'd like to read for Mr. Turner. He's incredibly nervous, and based upon the fact that this was a trial case and there is a mandatory appeal, I would ask that I be able to read the statement.

THE COURT: That's fine.

MS. SISOLAK: Thank you, Your Honor.

First and foremost I would like to apologize to everyone involved in this case, to the officers, the homeowners. I'm deeply sorry. None of this was supposed to happen. There is no excuse. I allowed my judgement to be clouded and I put myself and others in a position none of us should ever be in. I also want to apologize to my family. I was raised better than this, and I feel I let you all down.

To the Court, I ask you to show leniency as to -- as you see fit. I have no prior convictions. I was a functioning member of society, and I made a bad decision. I have to deal with the consequences for the rest of my life.

I've thought about this day for the last 1,022 days to be able to tell you all how deeply sorry I am, and I hope one day you will all forgive me. Thank you.

THE COURT: Thank you.

Mr. Hudson, before your attorney speaks is there anything you'd like to tell the Court on your own behalf before I pronounce sentence?

MS. PLUNKETT: Judge, I've advised him to not make a statement.

THE COURT: Thank you.

Who is going to be making the argument on behalf of Mr. Turner?

MS. MACHNICH: I --

MS. SISOLAK: Ms. Machnich will be, Your Honor.

MS. MACHNICH: Yes. May I proceed?

THE COURT: You may.

MS. MACHNICH: Your Honor, this case is a tragedy all around, and at no point during the process, during the trial, during the sentencing will we be trying to say that lives were not changed and affected for the rest of their lives.

We know that the homeowners will likely never feel safe in their homes and have bad memory. We know that the officers who were present on scene -- and from the witness notice that turned out to be several hundred officers -- but specifically the officers directly affected in this case will be scarred forever.

Officer Grego-Smith had to fire his service weapon and be present when his fellow officer went down, not knowing if he would get back up. And Officer Robertson sustained a very, very serious injury that he made clear during trial, and made just clear from the documentation, affected his life, affected his family, affected his children, his wife.

And none of us are trying to downplay what happened here. Mr. Turner has wanted to take responsibility for this. Your Honor recalls

pretrial and the fact that there was a contingent offer. Mr. Turner did not want to put anyone through this process and he was ready to take responsibility at that time and he is ready to take responsibility today.

So, without downplaying any of the suffering by any of the victims, their families, their futures -- and this will stay with each and every one of them for the rest of their lives. This will also stay with Mr. Turner for the rest of his and his family for the rest of theirs. He has some family members present, including his mom who's been involved throughout this entire case. Mr. Turner's life will never be the same. He made a very bad decision; possibly the worst decision in -- I would say what would be the worst decision of his life.

He came from a situation where he was working. He had family, a fiancé, a loving mother; he had people in his life; a loving father, cousins. Everyone was there for him, and he made this choice. And he has never shied away from this choice and the fact that it was a decision that he made.

Now, that being said, Mr. Turner is someone who did not have a criminal history. He was not someone -- I believe there was a submittal on a DUI that would have been dismissed. He had nothing else in his history. He was not someone who toted around guns or knew anything about them, dealt with them on a normal basis. He is not someone who went out and robbed people on a normal basis. He is not someone who was terrorizing the community. This was completely out of character for him.

And because of his complete lack of criminal history -- who

he -- I -- you've observed him through the entire trial, Your Honor, before trial, all of his demeanor in court, the fact that he has taken responsibility. We are going to ask for something substantially less than the State is. And we believe that an adequate sentence in this case -- because I don't think there's a good sentence.

This is someone who's never been to jail substantially before, much less prison. A year in prison is going to feel like ten years in prison to him because he's not acclimated to that; he doesn't know. And as much as we don't want to say that it's easier for people who have been there before, it is easier for people who have been there before.

We're asking for an eight to 20-year sentence on this. We have no problem with Your Honor dispersing that amongst the counts how you deem fit, no problem punishing him for each of the counts so that he feels the specific impact of what he has done to each of the victims. But eight to 20 years, that is the maximum on a small habitual criminal treatment; someone who gets maxed out on having committed three or more felonies when they come before a District Court judge in sentencing. Mr. Turner is not a habitual criminal.

So, when we're looking at the reasons for sentencing and we're looking at recidivism, Mr. Turner has learned his lesson. And any amount of time -- the time he spent already, he has already learned that lesson to never ever, ever make a decision anything like what he did this night again.

Then there's retribution and the fact that these officers and homeowners went through a lot and will continue to go for a -- go through

a lot forever.

But eight to 20 years is a long time. And for an officer-involved shooting there is a very good chance that he's not going to parole anywhere near the bottom number. So, with eight to 20 years he would do almost certainly more than eight years, substantially more than eight years.

I would also note that my reading of the PSI -- and I know that some of that comes off a little bit convoluted in the concurrent and consecutive. My reading is that P and P recommends a ten to 40-year sentence, and while I do believe that that is a little high based on his criminal history, we are also -- it's substantially lower than what the State is asking for here.

I will also note, on the scoresheet for P and P he came back borderline; that's borderline for probation, obviously nowhere near what we're asking for in this case, but that's how well he did prior to what happened here because obviously the gravity of this offense is huge.

So, Your Honor, I'll wrap it up, but I know that you had a chance to review the letters that we submitted this week from his family. It was between 14 and 16 letters from family, friends. And just point out that he is also a son. He is a cousin. He is a friend. He is someone who will eventually return to his life, and we would ask that that not be after some of his older family members pass away.

Your Honor, we are not downplaying the seriousness of this and the impact on these victims. And I know they're going to get up here and they're going to have compelling stories. Your Honor has heard

many of those compelling stories because Your Honor sat through this trial. And I'm sure that they'll be very honest with what they say and how it's affected them, but I ask Your Honor to look at what is fair and just, given Mr. Turner's criminal history and his taking responsibility from the beginning. Thank you.

THE COURT: Thank you.

Counsel, you'd be -- wish to be heard on mitigation on behalf of Mr. Hudson?

MS. PLUNKETT: Yes, Judge, and as I stated, I advised him, due to the mandatory appeal, to not give a statement today. But on behalf of Mr. Hudson and myself I want to say how horribly sorry I am to the officers who were directly involved, to the entire Metro police force, to the homeowners.

This is -- as Ms. Machnich said this is a horrible case that ended in a guilty verdict, a jury trial. And I'm so sorry that everyone even has to be here today. And I believe we are here today -- and I was not the attorney that represented him at trial. I believe we are here because Mr. Hudson got some very bad advice, and I don't believe that we should be here at a sentencing following a jury verdict, but hopefully that will be addressed on appeal. I want to point out I submitted a Sentencing Memorandum to Your Honor where --

THE COURT: I reviewed all the matters submitted to the Court.

MS. PLUNKETT: Thank you, Judge. And Mr. Hudson is someone who has a lot of family support as evidenced by the letters.

This is someone who grew up in a good home, a church going home, a two-parent home. How we got here is shocking.

This is someone with no criminal history whatsoever; no felonies, no misdemeanors, no gross misdemeanors, no prior arrests for any offense, juvenile or adult, until this instance. This is not someone who has any history with drug abuse, illicit drug abuse. This is someone with no gang affiliation. This is someone who is a good person who has been convicted of a hideous offense.

And this is not someone who is committing recurring sex offenses where the likelihood of committing that offense again is so high. This is not someone that was committing offenses to support a drug habit. This is not someone who, as Mr. Turner's lawyer pointed out, was terrorizing the community repeatedly. This is someone who made a terrible, terrible mistake.

And this is someone that I genuinely believe that if he is released today, if he is released at the end of 40 on the back end, that regardless of that he will never do anything even close to this ever again in his life. He has a two-year-old daughter.

And what I am looking at is slightly different than what Mr. Turner's lawyer is arguing for. I am in the unique position where I frequently represent inmates at parole revocation and release hearings. I appear in front of the commissioners on a regular basis. I know that this is not something where either of these gentlemen will get a first parole. This is not something where they will get a mandatory parole. I honestly, genuinely believe that whatever sentence Your Honor hands

down today, that these two gentlemen will expire that sentence and do the full amount of time.

And so what I believe is appropriate here is something more along the lines of 30 years on the back end. I'm asking Your Honor to not consider the front end. Don't consider whether it's eight, ten, 12 because as a parole attorney, that is simply not going to happen. If he expires on a 30-year sentence his two-year-old will be an adult when he is released from prison. That is a very, very serious amount of prison time, and I believe it is appropriate here.

I've tried cases in front of Your Honor. I'm not asking for leniency. I'm genuinely trying to be reasonable considering the factors involved with who Mr. Hudson is and how he got to this place and his complete lack of criminal history. And I would submit it on that, Judge.

THE COURT: Do we have the victims available?

MR. GIORDANI: Yes, there are five. I'm going to start with Eric Clarkson.

MS. SISOLAK: And, Your Honor, do you prefer that we remain here or would you like to give the victims the entire floor? Court's discretion.

THE COURT: Typically, what I do is I have them come to the podium to speak and to be sworn in unless the parties have some other preference.

MS. SISOLAK: No, Court's preference. Some judges prefer that we have a seat and allow them the floor. I just wanted to make sure we're not --

THE COURT: If you want to have a seat -- you don't have to stand through the entire proceedings.

MS. SISOLAK: Oh.

THE COURT: I mean, if you -- because there are going to be five speakers; it's my understanding.

MS. SISOLAK: Thank you, Your Honor.

ERIC CLARKSON

[having been called as a victim speaker and being first duly sworn, testified as follows:]

THE COURT CLERK: Please state and spell your name for the record.

THE VICTIM IMPACT SPEAKER: Eric Clarkson, E-R-I-C C-L-A-R-K-S-O-N.

THE COURT: Sir, you may proceed.

THE VICTIM IMPACT SPEAKER: I want to start by thanking Your Honor and the jury for finding these two men guilty on all charges. I want to thank the Deputy District Attorney's Office and its staff for working tirelessly for the last almost three years to bring these two men to justice. Your Honor, I also want to thank all the first responders to the event, but most of all a tremendous thank you to Officers Grego-Smith and Robertson.

Your Honor, my roommate and I are survivors, not victims. With that being said, I know now that surviving and actually living one's life are very different things.

My personal and professional lives were destroyed that night,

Your Honor. I'm afraid to date or have sex with anyone in fear that they too will try to murder me. I am no longer comfortable being out in the GLBT community since this happened, as my fears are now greater than the desire to perform. This is my livelihood I'm speaking of.

Your Honor, before this happened I was living and working as a transgender female impersonator and stand-up comedian. Both of those dreams, dreams I was living have ended now until somehow, sometime I feel safe living and working as my true self again.

Your Honor, I am no longer comfortable inviting friends or acquaintances over to my home. I am no longer comfortable showering in my own home because of a window that faces out. I am no longer comfortable sleeping in my bedroom because of a window that faces my patio. It's the window in which I first saw a shadow of a man that night. Every night since this happened while lying in bed I hear noises on my patio and I open my eyes. I look towards that same window up to 100 times per night. My eyes just open and focus like that night is happening all over again.

Your Honor, I have lost -- I -- we, my roommate and I have lost dozens of friends and even family members. They are simply too freaked out or afraid of being around us or in our home anymore, even jokingly saying things like just in case they come back to finish the job I don't want to be there.

Your Honor, my roommate and I are not lovers; we're just best friends, but we chose to sleep in the same bed for three months after this happened because we were both afraid to sleep alone.

Your Honor, I've always been proud of my abilities to bounce back in life, but the health of my best friend has spiraled out of control due to the graphic things he saw that night. It's killing him slowly, and I simply cannot help him. He suffers from severe PTSD, as do I, and has flashbacks from that night.

Your Honor, every time I walk by my back door or back window or back kitchen window I am compelled to look in the backyard, and I never had this fear before. Every time there's a loud noise I get nervous and sometimes even cry. Even hearing gunshots on TV is too much. New Year's Eve and the Fourth of July were my two favorite holidays prior to this happening; now they are my least favorite because of the PTSD.

Your Honor, I wonder sometimes if I will have to change my name and move out of state that I don't have -- so that I don't have to worry about this happening to us again.

Mr. Clemon did not know me or us prior to this happening. He had never met me, but was willing -- or coerced into these crimes by Mr. Turner. And if Mr. Turner has that kind of mind power to coerce people into such heinous situations and crimes, I feel I have absolute reason to worry about a smaller sentence and early release or even revenge after release.

They tried to harm us, Your Honor, but instead they physically harmed a Metro officer; someone who came to our home when we needed and called for help.

Sometimes I think about hurting them, Your Honor, and I've

never wanted to harm another living soul ever in my life until now, and feeling this way is terrible.

Please, Your Honor, consider imposing the longest possible sentences onto these two men. And please allow my roommate, Willough [phonetic], and I to try and slowly rebuild our lives free from worry or fear. Thank you.

THE COURT: Thank you.

Any questions?

MS. MACHNICH: Not on behalf of Mr. Turner.

MS. PLUNKETT: No, Judge.

THE COURT: Thank you.

MR. GIORDANI: Willoughby Grimaldi.

THE COURT: Counsel, before the next speaker can you approach?

[Bench conference -- not transcribed]

WILLOUGHBY GRIMALDI

[having been called as a victim speaker and being first duly sworn, testified as follows:]

THE COURT CLERK: Would you please state and spell your name for the record?

THE VICTIM IMPACT SPEAKER: My full name is Willoughby Potter de Grimaldi, but W-I-L-L-O-U-G-H-B-Y, last name Grimaldi, G-R-I-M-A-L-D-I.

THE COURT: And you may proceed, sir.

THE VICTIM IMPACT SPEAKER: Thank you. To begin I

would like to start by thanking the Court and Your Honor for passing a guilty verdict on all accounts against these two criminals.

These past 33 months have been some of the darkest days of my life. I have lived in fear not only day-to-day, but minute-to-minute; the horror of the events of that night haunting every corner of my mind. My best friend cannot even console me due to the fact that she too has flashbacks and tons of guilt when we did nothing to deserve this.

Unable to move or run away into hiding, I continue to endure living in the same place where so much violence occurred, and all for nothing. While constantly visiting therapists, I replay that night -- I don't look out -- I'm sorry -- I replay that night unable to let it go. There are no windows in our home that I don't look out wondering if someone is outside waiting to kill us.

I should be happy to be alive, yet somehow I feel like I did die that night. I'm just a ghost wandering in pain for all eternity. This is not living. I'm just going through the motions.

In the last many months I have learned the difference between justice and hate. I understand that a crime of passion, even if committed based in hate, does not equal a federally recognized hate crime. Nevertheless, I cannot continue to live as a victim and replay the events of that night.

It may be true that my heart is struggling to recover. The rage and fear -- I'm sorry -- the rage and fear in my heart are like an everlasting tug of war leaving me feeling empty. I know there is some questions that will never be answered, yet the questions still haunt me.

Why? What hate would cause someone to act this way? I guess we'll never know.

Our lives were shattered that morning, and since then my health and physical abilities have plummeted leaving me disabled, hopeless, and at a loss for -- feeling fully stressed. Our lives have been completely altered forever. And although the PTSD and memories affect us both differently, we will somehow leave this courtroom today as survivors instead of just victims.

I believe in our justice system, and I beg Your Honor to please pass the longest available sentence on these two in order to keep this kind of ignorance and hate off of our streets. I feel anything less than 50 years is still not enough time to learn how bad this action actually was.

I would like to take one final moment to greatly thank the first responding officers as well, who took on gunfire and everlasting trauma that ultimately saved our lives and brought these two criminals to justice. We are both eternally grateful to you and to all the police officers who responded, put their lives on the line day in and day out. And to the Deputy District Attorney and the whole team who worked tirelessly in this case, thank you all. Between the jury and yourself, Your Honor, thank you. I trust that justice will be served today, and that we will begin to heal one more time.

THE COURT: Any questions?

MS. MACHNICH: Not on behalf of Mr. Turner.

MS. PLUNKETT: No, Judge.

THE COURT: Thank you, sir.

MR. GIORDANI: Barbara Robertson.

BARBARA ROBERTSON

[Having been called as a victim speaker and being first duly sworn, testified as follows:]

THE COURT CLERK: Please state and spell your name for the record.

THE VICTIM IMPACT SPEAKER: Barbara Robertson, B-A-R-B-A-R-A R-O-B-E-R-T-S-O-N.

THE COURT: You may proceed.

THE VICTIM IMPACT SPEAKER: First of all, I'd like to thank Your Honor for letting me speak today. Jeremy wanted to be a fireman or a police officer from the time he was a little boy. From the time he applied and graduated from the police academy, the first question I was always asked is aren't you afraid for him to be a police officer? My answer was always no. I trust in all the training he has had. As his mother I completely supported him. I knew he would become an excellent officer. I am proud to call Office Robertson my son and hero.

Fast forward to September 4, 2015, a mother's worst nightmare happened. I was awakened by a telephone call from my daughter-in-law telling me Jeremy had been shot in the leg, and asked if I could come over to watch my 18-month-old grandson so she could go to the hospital.

I remember as I was driving over their house -- over to their house crying because as much as I wanted to watch my grandson, I also really wanted to be at the hospital with my son. At the time I was not

aware of the severity of his injury.

After arriving at their house, I then had to call my daughter to tell her about her brother. She lived in Bakersfield, California at the time and was devastated. Not only did I have to worry about Jeremy, I also had to worry about her driving to Las Vegas by herself to be here for all of us.

The news was on at the house and there was continuous coverage of the shooting. I was trying to stay strong for my grandson, as he didn't understand anything that was going on. It became apparent that this was a very serious incident, and I worried the other suspect would not be found.

I was finally able to go to the hospital, but wasn't prepared to see my son in the condition he was in. The pool of blood on the floor as he -- as they wheeled him to surgery will forever be in my memory. It wasn't until he came out of surgery and the doctor talked to us that I realized how lucky we were that he was alive. The doctor informed us it would be a long road to recovery and that there was a strong possibility that he would have to walk with a cane for the rest of his life.

My daughter-in-law was pregnant at the time with my second grandchild. I was now worried that the trauma, physical and emotional, that she was going through could be detrimental to the baby. She is like another daughter to me, so I needed to be there for her along with Jeremy. Trying to balance everything was overwhelming at times.

It broke my heart to see Jeremy in so much pain and never complain. A mother is supposed to protect their children, and I felt like a

complete failure, as there was nothing I could do but be there for him and the family. The worst part was having to watch him go through the changing of his wound VAC every three days for about four months. The exit wound from the bullet was left to heal from the inside out and was at least four inches deep. I can't even imagine the pain associated with pulling out the packing and replacing it with clean material. He would have so much anxiety on those days. It was hard to watch.

Everyday things we do on our own were difficult or impossible for Jeremy to do by himself. Jeremy so enjoys the role of being a husband and father. He was very excited about having another child. He and his son had a great relationship. They loved playing with each other and rolling around on the floor together. Unfortunately, his injury has put limitations on what he can and cannot do with his son and daughter.

Jeremy was separated from his son for 11 days while he was in the hospital. This was hard on both of them and the family. When he was able to go home he wasn't even able to pick him up. That was something his son just couldn't understand. Even walking around his dad he had to be extremely careful so he wouldn't unplug the wound VAC machine. His dad wasn't able to put him to bed like he had done every night before September 4th because his room was upstairs. Jeremy stayed downstairs for more than three months. His son went from being a good eater, willing to try anything, to being a very picky eater; that still continues today. He continues to worry that bad guys will hurt his father again.

Through his recovery process the family chose to stay positive and do whatever we could for Jeremy. The courage Jeremy displayed through the recovery process amazes me each and every day. The pain continues to this day and will be with him every day of his life. Dealing with a leg that is an inch shorter than the other is not an easy task. Walking with a noticeable limp has put stress on his other leg and hip. He never complains, but I can see he is in pain.

I have learned that depression and PTSD are real. Something as simple as the kids making loud noises can be agitating.

Jeremy was willing to agree to a plea deal for Mr. Turner and Hudson. He just wanted to move on. They repeatedly turned the offer down and drug this out for almost three years.

These young males will be able to walk out of prison as the same person physically. However, Jeremy, along with his family have been forever changed both physically and mentally because of their decision in the early morning of September 4th.

They have not been willing to step up and take responsibility for their actions, which is very disappointing. It is hard for me to believe they were at the house only to steal marijuana with the type of firepower they had on them. Shots were fired as soon as they heard the door opening. There were other options that they could have taken, but they made the choice to disregard the life of the person opening the door.

I wish no ill will on these two, but feel they need to be held accountable. I am asking the Court to sentence both of them to the maximum sentence allowed by law. I hope that this will be long enough

for them to reflect on their actions and come out ready to change and be productive citizens. Again, Your Honor, thank you for letting me have the opportunity to speak.

THE COURT: Thank you, ma'am.

Are there any questions?

MS. MACHNICH: None on behalf of Mr. Turner.

Thank you, ma'am.

MS. PLUNKETT: No, Judge.

THE COURT: Thank you.

MR. GIORDANI: Melissa Robertson.

MELISSA ROBERTSON

[having been called as a victim speaker and being first duly sworn, testified as follows:]

THE COURT CLERK: Please state and spell your name for the record.

THE VICTIM IMPACT SPEAKER: Melissa Robertson, M-E-L-I-S-S-A R-O-B-E-R-T-S-O-N.

THE COURT: Please proceed.

THE VICTIM IMPACT SPEAKER: Hello, my name is Melissa Robertson. I am the wife of Officer Jeremy Robertson. I want to thank the Court for allowing me to speak today. On the day my husband was shot I was four months pregnant and had an 18-month-old son. A week and a half earlier my son had undergone emergency surgery and was still recovering. This was my husband's first night back after taking care of our son during his post-surgery recovery.

The day my husband was shot was one of the hardest and scariest days of my life. I had to see my husband in pain and anguish with blood on the floor. I had to wait for four hours while they replaced his femur with a metal rod, and I had to wait with him in a hospital for 11 days while he tried to recover enough to be able to take a few steps. My family and friends were worried about me because they didn't want to see the stress and emotions of the situation hurt me or the baby.

But that's not the only hard days I've had to face since this tragedy. Not only did I have to take care of an 18-month-old son while pregnant, but I had to take care of a husband who was bound to a wheelchair for months. And for a while I was the main caregiver for my son, and I still had to work full-time while trying to save enough days for maternity leave. And I was now taking on all of my husband's daily responsibilities for our household.

I did not sleep in the same bed as my husband for months because he couldn't even walk up the stairs and he had to sleep in a hospital bed in our living room. To this day he still has trouble trying to kneel to do bath time or get on the floor to play with our kids like he used to with my son before he was shot.

Both of my kids were greatly affected when my husband was shot. It breaks my heart to think that my two-year-old daughter, who is a big daddy's girl and looks just like him, almost never got to meet her daddy. My son though is the one that was affected the most. Kids are very intuitive, so although my son was only 18 months old, he knew something was wrong. During the 11 days my husband was in the

hospital my son stopped eating and became fixated on bad guys. To this day he still doesn't eat much when he used to eat or try anything. And sometimes he still randomly brings up bad guys and how they hurt his daddy.

While I'm glad that justice was served and I believe they deserve whatever punishment is given to them, I also hope they use this as an opportunity to better themselves.

I had a lot of hate in my heart towards them for a couple years, and it's very hard to let go of that. Even now I fight anxiety and depression because of everything that I and my family have had to go through. I still have nightmares about what could have happened and what did happen, and I have had many sleepless nights since. While I still battle with these lasting emotions, I can forgive. It has taken me a very, very long time, but I have finally forgiven.

Although my husband has -- still lives with lasting side effects both mentally and physically, I am grateful because his name is not on memorials and on T-shirts along with other fallen officers that we've tragically lost.

I will forever have a scar on my heart because of the pain that has been caused, but all those scars are permanent reminders of pain and suffering. They also remind me of the value of life, love, and my family.

My hope is that the Court gives the maximum sentence allowed because although this may be their first crime, it only takes one offense to affect someone's lives the way that mine and my family's has

been affected.

I hope they work hard to better themselves and learn from their mistakes. I hope they took a good look inside and truly take responsibility and reflect on what they did and come out with a better understanding of what it means to be a good member of society. They're still going to have a chance at life after this, and I don't want them to waste it and make any more reckless and horrible actions like they did that night.

Thank you again for allowing me to speak. Thank you to my family and to my wonderful husband. What he's been through is tragic, and his recovery has been nothing short of a miracle. And without him I'd be falling apart. So, thank you again.

THE COURT: Thank you.

Any questions?

MS. MACHNICH: No questions on behalf of Mr. Turner.

Thank you, ma'am.

THE COURT: Thank you.

MS. PLUNKETT: No, Judge.

MR. GIORDANI: Officer Robertson.

JEREMY ROBERTSON

[having been called as a victim speaker and being first duly sworn, testified as follows:]

THE COURT CLERK: Please state and spell your name for the record.

THE VICTIM IMPACT SPEAKER: Jeremy Robertson,

J-E-R-E-M-Y R-O-B-E-R-T-S-O-N.

Good morning, Your Honor, I thank you for allowing me this opportunity today to address the Court. First I'd like to thank again the Court for allowing me to speak today. I'd also like to thank the State for the great job and time it took to put this case together. I also want to thank everyone here that is here supporting me today.

The events that occurred on September 4th, 2015 will always be an impact on my life. That night Turner and Hudson made a choice to go to a house and, from what they say, steal some weed. They chose to go to that house and take with them some hefty firepower with a rifle and a shotgun. They and they alone are the ones that set things in motion that morning. They chose where to go, they chose what firearms to bring, and they chose to have those firearms ready to use.

I opened the door and was immediately met with a gunshot that hit me in the right upper thigh shattering my femur causing me to fall to the floor. I will never forget the moment I finally realized what had happened and thinking immediately to my wife who was four months pregnant at the time and my little boy who was 18 months. My mind raced to thinking of them and how I needed to do everything I could to survive so I could see them again.

I will never forget the pain of being rolled over by responding officers and then them carrying me out of the house holding my dangling leg. I will never forget laying on the table in trauma with all the doctors and nurses surrounding me, and just praying that I would keep my leg and one day be able to walk again.

One of my fellow officers started calling my wife while I was laying on the trauma table. Not wanting to scare her I asked for the phone so I could talk to her myself. She was woken up around 4:30 a.m. with me on someone else's phone -- dazed trying to figure out why I would call on someone else's phone -- and having to tell her that I had been shot and to call my mom to come watch our son so she could come down to the hospital.

I spent 11 days in the hospital. Some of the days, especially the first few days after the incident and surgery, I was in a daze and not coherent to what was going on around me. I woke with family and friends surrounding me. I also woke to the pain that was in my leg, and seen a tube attached that I later found out to be a wound VAC.

My son was allowed to visit the first day after the event, but then due to him becoming sick he was not allowed to visit for my safety. This was very hard for me and was very emotional, as I want to spend time with him. I have a very great bond with my son.

The wound VAC that was attached to me stayed attached for several months as my injury healed from the inside. The wound VAC was a love-hate relationship, as it helped me heal and protected me from infection, but the dressings had to be changed every three days and was very painful.

I survived a pretty bad gunshot, but then every three days after had to endure the dressing change that consisted of a tech removing the tape to expose the wound and then pulling out foam pieces that were packed inside the wound. The tech then had to spray and

clean the inside of the wound and then pack it with new foam and tape. This event would last about an hour.

And the reason why I bring it up is to relay that just surviving the gunshot was not the only thing. I had to endure the pain from the wound for months. The pain was so bad I had to be put on anxiety medication because I was -- would start freaking out about the next dressing change.

When I finally got released from the hospital I was transported home on a gurney and was taken inside where a hospital bed awaited me inside my dining room. I was not allowed to put any weight on my leg for two months, and had to have someone by me to help me with the simplest of things. I had to have family help me use the restroom, shower, eat and et cetera. I couldn't sleep in the same bed with my wife, and was stuck sleeping in the dining room in a hospital bed for months.

My son had a hard time with this, as he could not play with Daddy the way he was used to. Interactions became careful, Daddy's leg, don't pull that tube, don't do this and that. My son became afraid to be around me.

I was finally allowed to start physical therapy in November. I still had the wound VAC attached to me, and started the yearlong process of learning how to walk again. I was told by my surgeon to expect to walk with at least a cane for the rest of my life, but I did not like that idea, nor did my physical therapist. My therapist along with myself pushed myself hard to do everything we could to get my leg to do what it used to. I went to therapy three times a week, three hours each visit, and

many times left in tears from the pain and stretching and massaging that had to be done.

As I was getting better it became apparent that my right leg was shorter than the other leg. The titanium rod the surgeon had placed inside my leg was shorter than my left leg. I now have to wear an insole or have special boots made to counterbalance this.

I am very thankful that my therapist did not want to see me using a cane and pushed me hard to be able to walk without assistance. I wish I could say that I could walk every day without pain, but that would be a lie. Every day I wake up sore with leg issues, back issues, and have to stretch things out before I start my day. During the day the muscles tighten up and throughout the day I need to stretch out. This will be an issue for the rest of my life. My body has protected the hurt leg and now caused problems for my good leg due to counterbalancing, putting all the weight on my left leg.

I am very thankful to be alive and be here for my family, but it is not, nor will it ever be, the same. I don't have full range of motion in my leg like I used to. I can't sit on the floor and play with my kids like I used to. Even though I get around, I know as I get older I'll have the issues with my leg, and I am sure it will get worse as I get older.

As I stated at the beginning, Hudson and Turner both were the ones who made the poor decision to do something that they knew was wrong. My belief is if we had not shown up as officers those homeowners would be dead and this would be a totally different trial -- or -- had been a different trial.

Today Hudson and Turner will get sentenced and spend the time given to them, which I hope is the max time allowed, but when that time is up they get to walk out and start their life with nothing in their way. I'm not so lucky. I don't get to wait some years and then all the things wrong with me caused from getting shot go away. I will forever have to live with the pain, with the -- live with the emotional and PTS part.

My son knows something bad happened, and even though we never told him exactly what happened he still once in a while tells me when I put him to bed at night no bad guys are going to hurt Daddy. My family and I have to live with this for the rest of our lives. We don't get to do the same, get to do some years, and then erase it all.

The reason why I bring all these things up, reference the healing process and the forever life-changing effects I have to deal with is just to remind the Court and Turner and Hudson that one mistake can cause a lifetime of pain and suffering.

I will continue to get better. This event has not broken me or my family, but has made us stronger and built a stronger bond. This may surprise the families of Turner and Hudson and themselves, but I forgive you. Don't get me wrong, I hated you guys for a long time, but I grew up going to church and know that living with hate will not help me. The offense that occurred on 9/4/15 has happened and there's no going back from that now. The only way is to move forward.

I could see from the few times I was at court during the trial that both Turner and Hudson have family and friends that care for them. Please, to you the family of Turner and Hudson continue to love and

support them. I know that you will get -- that they will get out one day and they will get the opportunity to start life over and be part of this community.

I would like to see Turner and Hudson take the time in prison to better themselves, take classes, learn trade if they offer it. They'll have to pay for the poor decision they made, but I want them to better themselves and come out of this a better person who can function within our community. Stay away from the people in prison that will only bring you down, and surround yourself with positive people not looking for trouble. A quote I've heard -- and I don't remember who said it -- you want to know what your life will look like or live like when you get older, look at your friends. You need to surround yourselves with the people that will care for you and support you, not bring you down.

I've had the opportunity since being shot to work with a program called Hope for Prisoners who help people getting out of prison take classes and help them then find a job and get them to be part of the community and not reoffend. This program is several weeks long, and towards the end officers come in and have the opportunity to talk to them and mentor them. I've had the privilege on several occasions to be part of this, and also being part of the graduation at the end of the course -- sorry -- at the end of the course. The program has a great success rate with hardly any of the graduates reoffending.

I hope this is something that you, Turner and Hudson, will be interested in doing when you are released, as it will help you become a better citizen to yourself, family, and the community. You will have a

chance to live life. Please don't screw it up again.

Your Honor, I thank you for the opportunity here. Like I said before, one incident, one choice can make -- decide someone's life. My life will never be the same. And I agree with the State with what they have suggested for punishment. Thank you.

THE COURT: Thank you.

Any questions?

MS. MACHNICH: Nothing on behalf of Mr. Turner.

MS. PLUNKETT: No, Judge.

THE COURT: We'll be in a short recess.

THE COURT MARSHAL: Court's in recess.

[Recess taken at 10:48 a.m.]

[Proceedings resumed at 10:55 a.m.]

THE COURT MARSHAL: Remain standing. Court's back in session.

THE COURT: Please be seated.

THE COURT MARSHAL: Judge?

MS. DEMONTE: I can take notes, I guess.

THE COURT MARSHAL: All right. I'll see if I can --

THE COURT: Are you standing in, counsel?

MS. DEMONTE: I can. I don't know where Mr. Giordani went. I mean, we're at the point where it's just taking notes.

MS. LUZAICH: He'll be right back, Judge, if you don't mind; two seconds. Thank you.

[Bench conference -- not transcribed]

THE COURT: State, do you know where counsel went?

MS. DEMONTE: I do not.

THE COURT: Did you text him?

MS. DEMONTE: Huh? Other people are. I can see everyone on their phone.

THE COURT: All right. We'll be in a short recess. As soon as counsel arrives let me know.

[Recess taken at 10:59 a.m.]

[Proceedings resumed at 11:00 a.m.]

THE COURT MARSHAL: Remain seated. Court's back in session.

MR. GIORDANI: Sorry.

THE COURT: Please be seated.

As to Mr. Turner, in accordance with the laws of the State of Nevada this Court does now sentence you, as to Count 1, to 364 days in the Clark County Detention Center.

As to Count 2, to confinement in the Nevada Department of Corrections for a maximum term of 72 months with minimum parole eligibility of 16 months. Count 2 is to run concurrent with Count 1.

As to Count 3, to confinement in the Nevada Department of Corrections for a maximum term of 48 months with minimum parole eligibility of 30 -- I'm sorry -- with minimum parole -- retract. As to Count 3, to confinement in the Nevada Department of Corrections for a maximum term of 120 months with a minimum parole eligibility of 48 months. A consecutive term of 36 months for the use of -- a maximum

term -- 120 months for the deadly weapon to run concurrent with Count 2.

As to Count 4, to confinement in the Nevada Department of Corrections for a maximum term of 120 months with a minimum parole eligibility of 36 months. A consecutive term of 36 months for use of -- a maximum of 120 months for the deadly weapon consecutive to Count 3.

As to Count 5, the maximum, to confinement in the Nevada Department of Corrections for a maximum term of 120 months with a minimum parole eligibility of 36 months concurrent with Count 2.

As to Counts 3 and 4, as to the 36 months and maximum of 120 months for the use of a deadly weapon, the Court considered the information described in paragraphs A through E in NRS 193.165 in determining the length. The aggregate sentence as to Mr. Turner is a maximum of 480 months with minimum parole eligibility of 168 months.

As to Mr. Hudson, in accordance with the laws of the State of Nevada this Court does now sentence you, as to Count 1, to 364 days in the Clark County Detention Center.

As to Count 2, to confinement in the Nevada Department of Corrections for a maximum term of 72 months with a minimum parole eligibility of 16 months.

As to Count 3, to confinement in the Nevada Department of Corrections for a maximum term of 120 months with the minimum parole eligibility of 48 months. A consecutive term of 36 months for the use of -- a maximum term of 120 months for the deadly weapon. And Count 3 is to run concurrent with Count 2.

As to Count 4, to confinement in the Nevada Department of Corrections for a maximum term of 120 months with minimum parole eligibility of 48 months. A consecutive term of 36 months for the use of -- and the minimum term of 120 months for the deadly weapon. And Count 4 is to run consecutive to Count 3.

As to the use of a deadly weapon, the Court considered the information described in paragraphs A through E in NRS 193.165 in determining the length.

As to Count 5, to confinement in the Nevada Department of Corrections for a maximum term of 120 months with the minimum parole eligibility of 36 months to run concurrent with Count 4. The aggregate sentence is a maximum term of 480 months with minimum parole eligibility of 168 months.

Counsel, if my math is incorrect I need to know at this point.

MR. GIORDANI: Court's brief indulgence.

MS. MACHNICH: Your Honor, I think it was just -- and it may have been that I just was writing it incorrectly. For Mr. Turner, Count 4 I had --

THE COURT: The same as Count 3; a maximum of 120, minimum of 48 with an additional 36 consecutive as regarded by law.

MS. MACHNICH: I had 36 to 120 and 36 to 120.

MS. PLUNKETT: As did I on Count 4.

THE COURT: No, it's supposed to be -- both the sentences should be identical. It should be, as to Count 2, a max of 72, a minimum of 16 concurrent with Count 1. Count 3 a max of 120, a minimum of 48

with a consecutive 36. That count's concurrent to Count 2. Count 4 is a max of 120 with a minimum of 48 with a consecutive of 36, and that's to be consecutive to Count 3. And Count 5 is a max of 120 with a minimum of 36 concurrent to Count 4.

MR. GIORDANI: That looks accurate, Your Honor.

THE COURT: Okay.

MR. GIORDANI: Fourteen to 40 on each.

THE COURT: That's correct.

MS. SISOLAK: Thank you, Your Honor.

MR. GIORDANI: And as to credit for time served, I believe --

THE COURT: Well, wait, we're not there yet, counsel.

MR. GIORDANI: Oh, I'm sorry.

THE COURT: I further impose $25.00 as an administrative assessment fee, $150.00 for a DNA analysis fee, $3.00 for a DNA administrative assessment fee. This is as to Mr. Turner. The Court does not impose a fine. No restitution.

MR. GIORDANI: Oh, as to that, Your Honor, we were requesting $9,000.00 -- I'm sorry -- $9,099.98 to Jeremy Robertson. One of the two defense counsel has the proof. Most of his bills were covered by insurance for the department.

THE COURT: Okay. It wasn't in the Presentence Investigation Report.

MR. GIORDANI: Yeah, I don't want to speak out of turn, but I believe that sir probably -- well, can I have the Court's brief indulgence?

THE COURT: Sure.

MR. GIORDANI: Sorry, Your Honor. I spoke to Officer Robertson. He wasn't contacted by P and P. I think that his understanding was he submitted it to our office, my victim/witness advocate and it would get to the Court. So, that's what our request is; $9,099.98.

THE COURT: Say it again, please.

MR. GIORDANI: $9,099.98.

THE COURT: State, are you -- not State. Defense, are you objecting to the amount of restitution?

MS. PLUNKETT: Judge, I've seen the bill, and I don't believe I have any objection on behalf of --

THE COURT: All right.

MS. PLUNKETT: -- Mr. Hudson.

THE COURT: Thank you.

What about -- counsel?

[Colloquy between counsel]

THE COURT: All right. Well, I can order it. If you have an objection you can file a motion to reduce it if you feel it's inaccurate.

MR. GIORDANI: Understood.

MS. MACHNICH: It -- that's fine, Your Honor.

MS. PLUNKETT: Your Honor, we'd have no objection.

THE COURT: Okay. Thank you.

MR. GIORDANI: And I'd ask -- it's just jointly and severally.

THE COURT: I will, counsel.

The Court further orders you to pay restitution to Officer

Robertson in the amount of $9,099.98 jointly and severally with your co-defendant, Turner.

MR. GIORDANI: And credit for time served?

THE COURT: Credit for time served in the amount of 1,022 days.

MR. GIORDANI: Thank you, Your Honor.

MS. SISOLAK: Thank you, Your Honor.

MS. PLUNKETT: Thank you, Judge.

MS. MACHNICH: Thank you, Your Honor.

THE COURT: Now, I -- pronounced the sentence as to Mr. Hudson yet?

MS. MACHNICH: Yes, you did.

MR. GIORDANI: Yes.

THE COURT: Okay. So I just need to do the imposition of fines and restitution, credit for time served?

MR. GIORDANI: Yes.

THE COURT: Okay. So as -- that was as to Mr. Turner. As to Mr. Hudson, $25.00 is the administrative assessment fee, $150.00 for the DNA analysis fee, $3.00 for a DNA administrative assessment fee. The Court orders you to pay restitution to Officer Robertson in the amount of $9,099.98 jointly and severally with your co-defendant, Mr. Turner. Credit for time served in the amount of 1,022 days.

Is there anything further? I've pronounced sentence in both Defendants; correct?

MR. GIORDANI: You have.

THE COURT: Imposed fines, restitution, and credit for time served?

MR. GIORDANI: Yes, Your Honor.

THE COURT: As to both Defendants; correct?

MR. GIORDANI: Yes, Your Honor.

THE COURT: Okay. Is there anything further, counsel?

MR. GIORDANI: Not on behalf of the State.

THE COURT: Anything further, counsel?

MS. MACHNICH: No, Your Honor, thank you.

THE COURT: Thank you.

MS. SISOLAK: Thank you, Your Honor.

MS. PLUNKETT: Thank you, Judge.

[Proceedings concluded at 11:12 a.m.]

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

Trisha Garcia
Court Transcriber

Electronically Filed
12/31/2019 3:01 PM
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CLEMON HUDSON,
#7025101

Defendant.

CASE NO: A-18-783635-W

DEPT NO: XXIX

STATE'S RESPONSE TO SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) AND REQUEST FOR EVIDENTIARY HEARING

DATE OF HEARING: JANUARY 28, 2020
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through KAREN MISHLER, Deputy District Attorney, and hereby submits the attached Points and Authorities in State's Response to Defendant's Supplemental Brief in Support of Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) and Request for Evidentiary Hearing.

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

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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On September 23, 2015, the State of Nevada ("the State") filed an Indictment charging Defendant Clemon Hudson ("Defendant") and his Co-Defendant, Steven Turner, with the following: Count 1 – CONSPIRACY TO COMMIT BURGLARY; Count 2 – ATTEMPT BURGLARY WHILE IN POSSESSION OF A FIREARM OR DEADLY WEAPON; Counts 3 and 4 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON; Count 5 – BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM; Count 6 – DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT. On October 1, 2015, Defendant was arraigned, pled not guilty, and waived the sixty (60) day rule.

On May 12, 2016, Defendant filed a Motion for Bail Reduction. The State filed its Opposition on May 16, 2016. This Court denied Defendant's Motion without prejudice and invited counsel to refile the motion with more information on May 17, 2016.

Subsequently, on May 31, 2016, Defendant filed a second Motion for Bail Reduction. On June 10, 2016, the State filed its Opposition. This Court modified Defendant's bail on June 16, 2016.

On January 3, 2017, Defendant filed a third Motion for Bail Reduction. The State filed its Opposition on January 5, 2017. On January 24, 2017, this Court, after examining the applicable NRS factors, denied Defendant's Motion.

On August 28, 2017, Defendant filed a Motion to Sever his case from Co-Defendant. The State filed its Opposition on September 18, 2017. On October 12, 2017, this Court denied Defendant's Motion. Defendant subsequently renewed his Motion to Sever, but this Court once again denied it without prejudice on November 16, 2017.

Defendant's jury trial commenced on April 16, 2018. The State also filed an Amended Indictment on this day dismissing Count 6 – DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT OR WATERCRAFT. After ten (10)

days of trial, the jury returned a verdict finding Defendant guilty of all charges on April 27, 2018.

On June 21, 2018, Defendant was sentenced to an aggregate total of 168 months to 480 months in the Nevada Department of Corrections. Defendant received 1,022 days credit for time served. The Judgment of Conviction was filed on July 2, 2018.

Defendant failed to file a direct appeal. On October 25, 2018, Defendant filed a Petition for Writ of Habeas Corpus (Post-Conviction). On December 18, 2019, the instant Supplemental Brief was filed on Defendant's behalf.

STATEMENT OF FACTS

On September 4, 2015, at approximately 3:45AM, Eric Clarkson and Willoughby Grimaldi were asleep in their home when they heard suspicious noises in their backyard. Jury Trial Day 3, pgs. 61–63. Looking out the window, they observed two figures, later identified as Defendant and his Co-Defendant, running across the backyard. Jury Trial Day 3, pgs. 64–65. Grimaldi specifically mentioned that when he looked in the backyard, he saw the silhouette of an African American man with a cap on cocking a shotgun. Jury Trial Day 3, pg. 95. Though the homeowners reported that there was potentially a third person, both Defendant and Co-Defendant indicated in their statements to police that only two people were involved. Jury Trial Day 6, pgs. 73–74, 80–81, 105–106. The would-be burglars were armed; Co-Defendant had a SKS rifle and Defendant had a shotgun. Jury Trial Day 3, pgs. 68, 78; Jury Trial Day 4, pgs. 85, 95; Jury Trial Day 5, pgs. 76–77; Jury Trial Day 6, pgs. 20–22. Investigators later recovered both of these guns, a handgun, and a beanie in Clarkson and Grimaldi's backyard. Jury Trial Day 4, pgs. 78–81. Defendant's DNA was later found on the beanie and his latent prints were found on the shotgun. Jury Trial Day 6, pg. 24–27, 43–44. Defendant's DNA was also found on the East Nunca street sidewalk, Clarkson and Grimaldi's patio table, and Clarkson and Grimaldi's backyard walkway. Jury Trial Day 6, pgs. 46–47. Additionally, investigators found Speer .9mm cartridge cases (consistent with LVMPD's handguns), cartridge cases consistent with rifle rounds, and what appeared to be pellet marks from a shotgun blast. Jury Trial Day 4, pg. 55; Jury Trial Day 5, pgs. 14–15, 33.

After observing the figures in their backyard, Clarkson and Grimaldi called 9-11. Jury Trial Day 3, pgs. 65–66. Officers Jeremy Robertson and Malik Greco-Smith arrived to investigate. Jury Trial Day 3, pgs. 71–72, 105; Jury Trial Day 5, pgs. 62–63, 112–114. Officer Greco-Smith could not see anyone before the officers decided to clear the backyard. Jury Trial Day 5, pg. 72. Officer Robertson began to open the back door—when two shots were fired from the backyard. Jury Trial Day 5, pgs. 76–77, 120–21. Grimaldi testified that from what he saw there were two different guns being used to shoot into his home. Jury Trial Day 3, pg. 108. One of the rounds hit Officer Robertson in the upper thigh. Jury Trial Day 5, pg. 120. Defendant admitted that he fired at least one round at the officers. Jury Trial Day 6, pgs. 79–80, 87–88. Officer Greco-Smith returned fire. Jury Trial Day 5, pgs. 76–77; Jury Trial Day 6, pgs. 86–88, 105. Officer Robertson testified that he told the other responding officers that there were two suspects. Jury Trial Day 5, pgs. 81, 124, 126.

Co-Defendant fled the scene while Defendant hid in the backyard. Jury Trial Day 6, pg. 105. K9 units were dispatched to remove Defendant from the backyard, where he was laying on the ground with a shotgun by him. Jury Trial Day 4, pg. 143; Jury Trial Day 5, pg. 82. Co-Defendant was later apprehended by police, within the mile-and-a-half by mile perimeter they had set up to catch the second shooter. Jury Trial Day 4, pgs. 153, 156–57. Co-Defendant was bleeding from the leg, from a wound that looked like a gunshot wound. Jury Trial Day 4, pg. 158. His treating physician discovered he had bullet fragments in and stippling around the wound. Jury Trial Day 6, pg. 109; Jury Trial Day 9, pgs. 8–9.

Officer Robertson was extracted from the residence and transported to the hospital to be treated for his shattered right femur. Jury Trial Day 5, pg. 128. He was taken to trauma and then shortly into surgery. Jury Trial Day 5, pg. 128. Muscles needed to be reattached and a titanium rod and plates needed to be inserted into his broken femur. Jury Trial Day 5, pgs. 128–29. He could not walk for two months, and, as of trial, was still missing the whole upper portion of that bone. Jury Trial Day 5, pgs. 128–130.

In his interviews after the shooting altercation, Defendant admitted to being at the house that night and that this was his first heist robbery. Jury Trial Day 6, 72–73. He was told to go

through the back of the house to get weed. Jury Trial Day 6, pg. 65. Defendant explained that he and his co-offender tried to see if the doors around the house were unlocked, but then planned to break the back window of the home. Jury Trial Day 6, pg. 66, 69. He admitted to carrying a shotgun into the backyard and he was wearing a beanie. Jury Trial Day 6, pgs. 66–67, 76. Defendant clearly stated in his interviews with police that he and one other individual were the only people there in the backyard and that there was an SK, a shotgun, and a little gun in Defendant's pocket. Jury Trial Day 6, pgs. 71–72, 74–75, 78–79. Although he later told officers he was not sure if he fired the shotgun, Defendant had originally admitted that after he fired his shotgun he fell straight back. Jury Trial Day 6, pgs. 77–80, 87–88.

ARGUMENT

I. STANDARD OF REVIEW FOR INEFFECTIVE ASSISTANCE OF COUNSEL

The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The United States Supreme Court has long recognized that "the right to counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64; see also Love, 109 Nev. at 1138, 865 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's representation fell below an objective standard of reasonableness and second, that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. Strickland, 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). "[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

The court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975).

"There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." Strickland, 466 U.S. at 689, 104 S. Ct. at 689. In essence, the court must "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

Strickland does not enact Newton's third law for the presentation of evidence, requiring for every prosecution expert an equal and opposite expert from the defense. In many instances cross-examination will be sufficient to expose defects in an expert's presentation. When defense counsel does not have a solid case, the best strategy can be to say that there is too much doubt about the State's theory for a jury to convict. Harrington v. Richter, 131 S.Ct. 770, 791, 578 F.3d. 944 (2011).

Further, a defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have rendered a more favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

"Bare" and "naked" allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "A claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

In order to satisfy the Strickland standard and establish ineffectiveness for failure to investigate, a defendant must allege *in the pleadings* what information would have resulted from a better investigation or the substance of the missing witness' testimony. Molina v. State,

120 Nev. 185, 192, 87 P.3d 533, 538 (2004); State v. Haberstroh, 119 Nev. 173, 185, 69 P.3d 676, 684 (2003). It must be clear from the "record what it was about the defense case that a more adequate investigation would have uncovered." Id. A defendant must also show how a better investigation probably would have rendered a more favorable outcome. Id.

In the instant matter, Defendant has not proven that counsel's performance fell below an objective standard of reasonableness and he has failed to show how the outcome of his trial could have been different in light of any possible ineffectiveness. Strickland, 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068. Thus, Defendant's claim should be denied.

II. DEFENDANT HAS NOT DEMONSTRATED THAT HE WAS DEPRIVED OF HIS RIGHT TO A DIRECT APPEAL

A habeas corpus petitioner must prove disputed factual allegations by a preponderance of the evidence. Means, 120 Nev. at 1011, 103 P.3d at 32. The United States Supreme Court requires courts to review three factors when determining whether a defendant was deprived of his right to an appeal: (1) whether the defendant asked counsel to file an appeal, (2) whether the conviction was the result of a trial or a guilty plea, and (3) whether the defendant had any non-frivolous issues to raise on appeal. Roe v. Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). The Nevada Supreme Court has held that the court can assess the credibility of witnesses when conducting an evidentiary hearing to determine whether a defendant was deprived of an appeal. Barnhart v. State, 122 Nev. 301, 130 P.3d 650, 652 (2006).

In the instant matter, Defendant has not demonstrated that he was deprived of an appeal. However, the State has no objection to an evidentiary hearing limited strictly to Defendant's Appeal Deprivation claim.

III. COUNSEL WAS NOT INEFFECTIVE FOR NOT OBJECTING TO THE COURT PREMITTING THE FLIGHT INSTRUCTION

Counsel cannot be ineffective for failing to make futile objections or arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). To be effective, the constitution "does not require that counsel do what is impossible or unethical. If there is no bona fide defense to the charge, counsel cannot create one and may disserve the interests of his client by

attempting a useless charade." United States v. Cronic, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

Further, "[s]trategic choices made by counsel after thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). Likewise, the decision not to call witnesses is within the discretion of trial counsel and will not be questioned unless it was a plainly unreasonable decision. Rhyne v. State, 118 Nev. 1, 38 P.3d 163 (2002); Dawson v. State, 108 Nev. 112, 825 P.2d 593 (1992).

Defendant argues that his counsel was ineffective for failing to object to Jury Instruction No. 38, also known as the flight instruction[1], which stated:

> The flight of a person immediately after the commission of the crime, or after he is accused of a crime, is not sufficient in itself to establish guilt, but in fact which, if proved, may be considered by you in light of all other proved facts in deciding the question of his guilt or innocence. The essence of flight embodies the idea of deliberately going away with consciousness of guilt and for the purpose of avoiding apprehension or prosecution. Whether or not evidence of flight shows a consciousness of guilt and the significance to be attached to such a circumstance are matters for your deliberation.

Instructions to the Jury, filed Apr. 27, 2018. Defendant's argument is meritless as counsel was not required to make a futile objection to a jury instruction that clearly did not apply to Defendant. This instruction was given because Co-Defendant ran. As the facts of this case reveal, Defendant did not flee, but instead was apprehended at the scene of the crime. Further, in closing arguments, the only time flight was mentioned was in reference to Co-Defendant's escape from the crime scene. Jury Trial Day 9, pgs. 118, 119, 130. Thus, Defendant's claim should be dismissed.

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[1] Defendant refers to the flight instruction as "Instruction No. 32," however, the flight instruction was given to the jury as Jury Instruction No. 38.

IV. COUNSEL WAS NOT INEFFECTIVE FOR NOT OBJECTING TO THE REASONABLE DOUBT AND EXACT JUSTICE INSTRUCTIONS

Defendant takes issue with Jury Instruction Nos. 40 and 50. Specifically, he argues that such instructions impermissibly minimized the State's burden of proof. However, Defendant's claims are meritless as the jury instructs comply with Nevada law.

NRS 175.211 provides the exact language district courts must use when giving a reasonable doubt instruction in a jury trial. The Court gave this exact instruction as Jury Instruction No. 40 stated in relevant part:

> A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all of the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

Likewise, Jury Instruction No. 50, the equal and exact justice instruction, is also a standard instruction. The Nevada Supreme Court has already held that using this instruction does not deny a defendant the presumption of innocence:

> This instruction does not concern the presumption of innocence or burden of proof. A separate instruction informed the jury that the defendant is presumed innocent until the contrary is proven and that the state has the burden of proving beyond a reasonable doubt every material element of the crime and that the defendant is the person who committed the offense. Appellant was not denied the presumption of innocence.

Leonard v. State, 114 Nev. 1196, 1209, 969 P.2d 288, 296 (1998). Thus, Defendant's claim should be denied.

V. THERE WAS NO CUMULATIVE ERROR

The Nevada Supreme Court has not endorsed application of its direct appeal cumulative error standard to the post-conviction Strickland context. McConnell v. State, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009). Nor should cumulative error apply on post-conviction review.

Middleton v. Roper, 455 F.3d 838, 851 (8th Cir. 2006), cert. denied, 549 U.S. 1134, 1275 S. Ct. 980 (2007) ("a habeas petitioner cannot build a showing of prejudice on series of errors, none of which would by itself meet the prejudice test.").

Even if applicable, a finding of cumulative error in the context of a Strickland claim is extraordinarily rare and requires an extensive aggregation of errors. See, e.g., Harris By and through Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995). In fact, logic dictates that there can be no cumulative error where the petitioner fails to demonstrate any single violation of Strickland. Turner v. Quarterman, 481 F.3d 292, 301 (5th Cir. 2007) ("where individual allegations of error are not of constitutional stature or are not errors, there is 'nothing to cumulate.'") (quoting Yohey v. Collins, 985 F.2d 222, 229 (5th Cir. 1993)); Hughes v. Epps, 694 F.Supp.2d 533, 563 (N.D. Miss. 2010) (citing Leal v. Dretke, 428 F.3d 543, 552-53 (5th Cir. 2005)). Since Petitioner has not demonstrated any claim warranting relief under Strickland, there are no errors to cumulate.

Under the doctrine of cumulative error, "although individual errors may be harmless, the cumulative effect of multiple errors may deprive a defendant of the constitutional right to a fair trial." Pertgen v. State, 110 Nev. 554, 566, 875 P.2d 361, 368 (1994) (citing Sipsas v. State, 102 Nev. 119, 716 P.2d 231 (1986)); see also Big Pond v. State, 101 Nev. 1, 3, 692 P.2d 1288, 1289 (1985). The relevant factors to consider in determining "whether error is harmless or prejudicial include whether 'the issue of innocence or guilt is close, the quantity and character of the error, and the gravity of the crime charged.'" Id., 101 Nev. at 3, 692 P.2d at 1289.

Defendant failed to show cumulative error because there were no errors to cumulate. Defendant has failed to show how any of the above claims constituted ineffective assistance of counsel. Further, the issue of guilt in this case was not close. Not only was the jury presented with Defendant's admissions of what transpired on the night of his first heist, but Defendant was actually apprehended at the scene next to the shotgun containing his latent prints. Not to mention, Defendant's DNA was found in various areas around the scene. As such, Petitioner has failed to establish cumulative error.

VI. DEFENDANT IS ONLY ENTITLED TO AN EVIDENTIARY HEARING FOR HIS APPEAL DEPRIVATION CLAIM

NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

> 1. The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required. A petitioner must not be discharged or committed to the custody of a person other than the respondent unless an evidentiary hearing is held.
> 2. If the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, he shall dismiss the petition without a hearing.
> 3. If the judge or justice determines that an evidentiary hearing is required, he shall grant the writ and shall set a date for the hearing.

The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual allegations, which, if true, would entitle him to relief unless the factual allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that "[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is improper to hold an evidentiary hearing simply to make a complete record. See State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) ("The district court considered itself the 'equivalent of . . . the trial judge' and consequently wanted 'to make as complete a record as possible.' This is an incorrect basis for an evidentiary hearing.").

Further, the United States Supreme Court has held that an evidentiary hearing is not required simply because counsel's actions are challenged as being unreasonable strategic decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge post hoc rationalization for counsel's decision making that contradicts the available evidence

of counsel's actions, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. Id. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Id. (citing Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the objective reasonableness of counsel's performance, not counsel's subjective state of mind. 466 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

As stated *supra*, the State does not oppose an evidentiary hearing for the limited purpose of Defendant's appeal deprivation claim. There is no need to expand the record beyond that issue as Defendant has not demonstrated that counsel fell below an objective standard of reasonableness. Strickland, 466 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994). Thus, Defendant's request should be denied.

CONCLUSION

For the foregoing reasons, Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) and Defendant's Supplemental Brief in Support of Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) should be DENIED.

DATED this 31st day of December, 2019.

Respectfully submitted,

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

BY /s/ KAREN MISHLER
KAREN MISHLER
Deputy District Attorney
Nevada Bar #013730

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of State's Response to Defendant's Supplemental Brief in Support of Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) and Request for Evidentiary Hearing, was made this 31st day of December, 2019, by Electronic Filing to:

CHRISTOPHER ORAM, ESQ.
contact@christopheroramlaw.com

/s/ J. MOSLEY
Secretary for the District Attorney's Office

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Attorney for Defendant
CLEMON HUDSON

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

THE STATE OF NEVADA, Plaintiff, vs. CLEMON HUDSON, Defendant.	CASE NO. A-18-783635-W DEPT. NO. 29

REPLY TO STATE'S RESPONSE TO DEFENDANT'S SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

COMES NOW, Defendant, CLEMON HUDSON, by and through his counsel of record, CHRISTOPHER R. ORAM, ESQ., and hereby submits his Reply to the State's Response to the Supplemental Brief in support of Defendant's Petition for Writ of Habeas Corpus.

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Case Number: A-18-783635-W

This Reply is made and based upon the pleadings and papers on file herein, the Points and Authorities attached hereto, and any oral arguments adduced at the time of hearing this matter.

DATED this 16th day of January, 2020.

Respectfully submitted

/s/ Christopher R. Oram, Esq.
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STATEMENT OF THE CASE

The Statement of the Case stands as enunciated in the Supplemental Brief.

STATEMENT OF THE FACTS

The Statement of the Facts stands as enunciated in the Supplemental Brief.

ARGUMENT

I. STANDARD OF REVIEW FOR INEFFECTIVE ASSISTANCE OF COUNSEL.

This argument stands as enunciated in the Supplemental Brief.

II. MR. HUDSON WAS WRONGFULLY DEPRIVED OF HIS RIGHT UNDER ESTABLISHED LAW TO A DIRECT APPEAL AND HEREBY REQUESTS RELIEF PURSUANT TO *LOZADA V. STATE*, 110 NEV. 349, 871 P.2D 944 (1994) AND NRAP 4(c).

Within the Response, the State claims Mr. Hudson cannot demonstrate he was deprived of an appeal (State's Response, p. 7). Mr. Hudson vehemently disagrees. After a jury trial, Mr. Hudson was found guilty of very serious offenses and is facing a lengthy sentence. Mr. Hudson naturally desired to appeal his conviction, and as a result, requested his attorney file an appeal (Supplemental Brief, Exhibit A). The transcripts attached to the Supplemental Brief as Exhibit B further this assertion.

Regardless of the State's disagreement on the issue, the State has no objection to this Court holding an evidentiary hearing with regard to this issue (State's Response, p. 7, 12). As such, this Court should grant an evidentiary hearing so Mr. Hudson can demonstrate he was deprived of his right to a direct appeal based upon counsel's rendering of ineffective assistance. *See Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 Led.2d 674 (1984); *Lozada v. State,* 110 Nev. 349, 354, 871 P.2d 944 (1994.

III. MR. HUDSON RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR FAILURE TO OBJECT TO THE DISTRICT COURT'S PRESENTATION OF INSTRUCTION NUMBER 38 REGARDING FLIGHT TO THE JURY.

This argument stands as enunciated in the Supplemental Brief.

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IV. MR. HUDSON RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR FAILURE TO OBJECT TO THE DISTRICT COURT'S GIVING OF INSTRUCTION NUMBERS 40 AND 50 IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

This argument stands as enunciated in the Supplemental Brief.

V. MR. HUDSON IS ENTITLED TO A REVERSAL OF HIS CONVICTIONS BASED UPON CUMULATIVE ERROR.

This argument stands as enunciated in the Supplemental Brief.

VI. MR. HUDSON IS ENTITLED TO AN EVIDENTIARY HEARING.

This argument stands as enunciated in the Supplemental Brief.

CONCLUSION

Wherefore, Mr. Hudson respectfully requests this Court grant his Petition finding he received ineffective assistance of counsel.

Dated this 16th day of January, 2020.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of January, 2020, I served a true and correct copy of the foregoing document entitled **SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)** to the Clark County District Attorney's Office by sending a copy via electronic mail to:

CLARK COUNTY DISTRICT ATTORNEY
motions@clarkcountyda.com

BY:

/s/ Nancy Medina
An employee of Christopher R. Oram, Esq.

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. CLEMON HUDSON, Defendant.	CASE#: A-18-7836935-W DEPT. XXIX

BEFORE THE HONORABLE DAVID M. JONES, DISTRICT COURT JUDGE

TUESDAY, JANUARY 28, 2020

RECORDER'S TRANSCRIPT OF HEARING:
PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

APPEARANCES:

For the State: NOREEN DEMONTE, ESQ.
Chief Deputy District Attorney

For the Defendant: CHRISTOPHER ORAM, ESQ.

RECORDED BY: MELISSA DELGADO-MURPHY, COURT RECORDER

Las Vegas, Nevada, Tuesday, January 28, 2020

[Case called at 8:52 a.m.]

THE COURT: Page 6, A18-783635 the State of Nevada versus Clemon Hudson.

MR. ORAM: Good morning, Your Honor. Christopher Oram on behalf of Clemon Hudson he's not present. He's at Department of Corrections.

THE COURT: Correct.

MR. ORAM: Your Honor, I think I could - - if I could be heard, make this quite quick.

THE COURT: I can tell you exactly, yeah. I've read your motion. I can tell you what I'm going to do. I'm going to call for an evidentiary hearing.

MS. DEMONTE: Yep.

THE COURT: I mean the law is very simplistic in this, according to the Supreme Court under *Toston v. State* if in fact there is a - - we had to ascertain whether defendant was in improperly deprived of his direct appeal, if in fact he was, we need to have an evidentiary hearing. So, it's - -

MR. ORAM: I think the State and I both agree we should set that. Do you want to set that out ninety days, Your Honor?

THE COURT: Will it give you enough time to get a hold of counsel and everything else?

MR. ORAM: Yes.

THE COURT: Let's set this matter out for an evidentiary hearing on a Friday, ninety days.

THE CLERK: May 1st at 8:30.

MR. ORAM: Thank you very much, Your Honor.

THE COURT: Let's see if - - we have to do it a little later. Is that a Friday? I have my 16 conferences.

[Colloquy between the Court and JEA]

THE COURT: How many witnesses do you have Counsel?

MR. ORAM: I think it will be one and if the State could make sure the defendant is transported here.

MS. DEMONTE: Yeah.

THE COURT: We need a transport order. Let's do it at eleven o'clock that way because I have morning calendars, 16 conferences usually.

MR. ORAM: Thank you very much, Your Honor.

THE COURT: Thank you.

[Hearing concluded at 8:54 a.m.]

* * * * * *

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

Melissa Delgado-Murphy
Court Recorder/Transcriber

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. CLEMON HUDSON, Defendants.	CASE#: A-18-783635-W DEPT. XXIX

BEFORE THE HONORABLE DAVID M. JONES, DISTRICT COURT JUDGE

THURSDAY, OCTOBER 15, 2020

RECORDER'S TRANSCRIPT OF PROCEEDINGS:
PETITION FOR WRIT OF HABEAS CORPUS
[POST-CONVICTION]

APPEARANCES:

For the State: LEAH C. BEVERLY, ESQ.
Chief Deputy District Attorney

For the Defendant: CHRISTOPHER R. ORAM, ESQ.

RECORDED BY: MELISSA DELGADO-MURPHY, COURT RECORDER

THURSDAY, OCTOBER 15, 2020 AT 11:54 A.M.

THE COURT MARSHAL: The 11 o'clock. A-783635-W. State of Nevada versus Clemon Hudson.

THE COURT: Counsel, we're just going to take a short recess waiting for counsel for about five minutes and get set up.

[Recess taken at 10:54 a.m.]

[Proceedings resumed at 11:04 a.m.]

THE COURT: Counsel, we're just waiting for the jail to be hooked up.

MS. BEVERLY: Just before we get started, before we actually start the hearing, just as a clarification, it's my understanding that the evidentiary hearing is limited solely to the Defendant's Deprivation of Appeal --

THE COURT: Right.

MS. BEVERLY: -- claim. Okay. Just wanted to make sure that -- okay.

THE COURT: Counsel, who's your first witness? Mr. Hudson, you can go ahead and sit down. Officer, if we can provide a seat for him that would be fine.

MR. ORAM: Your Honor, the first and only witness is going to be Ms. Alexis Plunkett.

And before we get started, Your Honor, I want to put on the record I have talked to Mr. Hudson about privileged communication between himself and Ms. Plunkett and for purposes of this hearing he

would have to waive that so I could question Ms. Plunkett, and he is willing to waive that at this time so we can proceed.

THE COURT: Okay. Mr. Hudson, you understand you're waiving your privileges, rights between the communications between yourself and Ms. Plunkett?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Thank you, sir. Ms. Plunkett, if you'd raise your right hand and please be sworn in by my clerk.

ALEXIS PLUNKETT

[having been called as a witness and being first duly sworn, testified as follows:]

THE COURT: Ms. Plunkett. unmute, please.

THE WITNESS: I am unmuted.

THE COURT: There you go. Now we can hear.

THE WITNESS: Okay. Perfect.

THE COURT: Thank you. Counsel, your witness.

MR. ORAM: Thank you.

DIRECT EXAMINATION

BY MR. ORAM:

Q Ms. Plunkett, back in 2018, were you an attorney representing Clemon Hudson at his sentencing?

A Yes, I was.

Q You were licensed to practice in the state of Nevada at that time and were you hired or were you appointed to represent Mr. Hudson?

A I was retained.

Q And have you had an opportunity, Ms. Plunkett, to read through the filings in this case; in other words, have you read my supplemental brief?

A I did read it last year when it was originally filed.

Q Okay. And -- I'm sorry. I didn't mean to cut you off, Ms. Plunkett. I want to ask you, during the appeal or during the sentencing, do you remember independently the sentencing?

A Yes, I do.

Q Okay. And I'm going to ask you from -- counsel, just so you know where I'm referring to, I'm referring to an exhibit that's attached to our supplement which reflects as the sentencing transcript and it was dated -- the sentencing transcript is Exhibit B and it is dated Thursday, June 21st, 2018.

First of all, Ms. Plunkett, the Defendant was obviously present during the sentencing; correct?

A Yes.

Q And I want to ask you, on page 14 of that transcript, whether you recall making the following statements, and that is that you say -- bear with me one second -- that you say, yes, Judge, and as I stated I advised him due to the mandatory appeal to not give a statement today. Do you recall making that statement, Ms. Plunkett?

A Yes, I do.

Q And obviously it's in the transcript. You'd have no reason to dispute that that's an accurate statement of what you said?

A Right.

Q And you also advised the Court that you felt that Mr. Hudson on that same page had received bad advice and you don't believe that he should be there following a jury verdict, but hopefully that would be addressed on appeal; do you remember making a statement like that?

A Yes, I do.

Q Okay. And it's fair to say then the Defendant would be listening to that, he would have heard you talk about a mandatory appeal and how this is going to be a -- it could be changed on appeal; correct?

MS. BEVERLY: Objection.

THE WITNESS: Yes.

MS. BEVELRY: Calls for speculation.

THE COURT: Hold on a second. Counsel --

MR. ORAM: And you --

THE COURT: Counsel, hold on. Are you asking Ms. Plunkett to give this Court an understanding of what her client was thinking or what he heard?

MR. ORAM: No. Yes, thinking that he was in the courtroom and that she made that statement.

THE COURT: The Court will acknowledge he was physically present. Whether or not the Defendant heard it or took it to heart or listened to it is a different story. Go ahead.

BY MR. ORAM:

Q Yes. And so, Ms. Plunkett, you remained the attorney of

record after that; correct?

A Correct.

Q And no appeal was ever filed?

A No appeal was ever filed and I can fully explain why I didn't personally an appeal if that's what --

Q Ms. Plunkett, I heard you while you were talking and then the last portion of it I didn't hear what you said; could you repeat it?

A Yes. I said I can fully explain why I did not personally file an appeal if that is what you believe the Court would like to hear today.

Q Well, you didn't file an appeal and you remained the attorney of record through the 30 days after the Judgment of Conviction; correct?

A Correct.

Q And so I guess since you brought it up, why didn't you file an appeal?

A I was first contacted by Clemon Hudson's family prior to his trial about a week before the trial. They wanted me to come on as the trial counsel, and for reasons one through 10 I declined to do that. Mr. Hudson did go to trial the following week, I believe with Craig Mueller's office as trial counsel, and Clemon's family, Mr. Hudson's family, was very, very unhappy with the performance by Mr. Mueller's office. I believe there was a guilty verdict on every count. They were not happy with the attorney. They wanted to meet with me to discuss representing him at sentencing. I did meet with his family. I discussed with his family Mr. Mueller's obligations under NRA CP3 regarding appeal and they informed me that they wanted Mr. Mueller and his associate to have

nothing to do with this case any further. No appeal, no sentencing --

MS. BEVERLY: I'm going to -- I'm going to --

THE COURT: Hold on a second, just hold on a second, counsel.

MS. BEVERLY: I'm going to object at this point as to hearsay as to what his family was telling Ms. Plunkett.

THE COURT: Overruled. I'll allow it. I understand the basis, counselor. Go ahead, Ms. Plunkett, continue.

THE WITNESS: So, we discussed how I have never filed an appeal before. I've never done PCR. I have -- I'm not an appellate attorney, I'm not a post-conviction attorney. His family and Mr. Hudson understood that and it's written into my retainer that my retainer encompassed sentencing alone and no post-conviction review or appeal of any form.

His family and I discussed who they were going to hire for the direct appeal, and I was actually in touch with someone that they informed was a paralegal from an office that was going to handle the appeal. So, I believed that we were all on the same page the entire time that Mr. Mueller's office was done. I would be solely, pursuant to my retainer, the sentencing attorney and a different attorney would come on for any type of direct appeal, appeal post-conviction review.

BY MR. ORAM:

Q Ms. Plunkett, did you advise the Defendant of his right to appeal?

A We discussed about how his family was retaining an attorney

for the appeal, and I discussed with them that I am not and was not an appellate attorney and would not be handling the appeal.

Q You remained attorney of record after the 30 day deadline was gone; correct?

A Correct. I assumed that an attorney was going to come in and no one did.

Q And you can -- nobody filed a Notice of Appeal for the man; right:

A Correct.

Q And you did not prepare a Notice of Appeal. It could have even been done for the Defendant pro per, you could have done that, but you did not do that; correct?

A I did not do that because I've never filed an appeal in my entire career, no.

Q And you did not withdraw before the deadline; did you?

A I did not, no.

Q So, as the time passed for the Notice of Appeal you were the attorney of record; correct?

A Correct.

MR. ORAM: Nothing further, Your Honor.

THE WITNESS: And I -- if I do recall, Mr. Mueller's office was completely non-communicative with me and his office never signed a Substitution of Attorney. So, I believe what I had to do in that case was file a Notice of Appearance because Mr. Mueller wouldn't give a substitution.

MR. ORAM: I have nothing further, Your Honor.

THE COURT: Okay. Cross.

MS. BEVERLY: Thank you.

CROSS-EXAMINATION

BY MS. BEVERLY:

Q Ms. Plunkett, can you hear me okay?

A Yep.

Q Okay. Ms. Plunkett, do you have a copy of that retainer agreement still in your files?

A I do.

Q Could you please forward a copy of that to the District Court? Do you have that on your email or on your computer or something of that nature?

A I do and if you give me one second, would you like me to forward that while we are on the phone.

Q Yes, please.

THE COURT: Yes, that would be fine. I'm going to have you forward that to my clerk so she has access to it and we can print it here. She'll give you her email address.

THE WITNESS: Give me one second here. I'm ready.

THE COURT CLERK: It's Tapia, T-A-P-I-A M@clarkcountycourts.us.

THE COURT: Were you able to send that, Ms. Plunkett?

THE WITNESS: I -- okay. There we go.

THE COURT: All righty. Perfect

THE WITNESS: That was done.

THE COURT: Okay. Next question, counsel.

BY MS. BEVERLY:

Q Ms. Plunkett, you indicated on direct examination that you had several conversations with Mr. Hudson specifically about the fact that you were not appellate counsel; do you recall that?

A I believe it was likely one conversation. I think several might be pushing it, but we had at least one conversation where I said I'm not an appellate attorney.

Q Okay. Well, let me ask you this. The sentencing in this case was on June the 21st of 2018; is that correct?

A If you tell me that I believe you, but I don't personally remember the date.

Q Did you meet with Mr. Hudson prior to the sentencing date?

A I did not meet with him in person because I was restricted by the Clark County Detention Center at that time, but we had some conversation.

Q Okay. Before the sentencing; right?

A Prior to the sentencing.

Q Okay. And you meet with his family before the sentencing; is that correct?

A That's correct.

Q Okay. And before the sentencing, is that when you told his family that you were not an appellate counsel?

A That's correct.

Q I'm sorry?

A That's correct.

Q Okay.

A Prior to the sentencing.

Q Prior to the sentencing. Okay. So, from your understanding and your conversation with his family, you were only going to be retained to do a sentencing; correct?

A Correct. My retainer specifically excludes any appeal or PCR.

Q After the sentencing on June 21st, 2018, did you have an additional conversation with Mr. Hudson either on phone or in person?

A I did not believe I did.

Q Okay. Did you have any additional conversations with his family after the sentencing?

A Yes, I did.

Q Okay. During those conversations did you again discuss with him that you were not an appellate attorney?

A Yes. I actually provided them a couple of my personal referral or --

MR. ORAM: Judge, I object to the form of the question simply because I don't know who the family member was. So, it's really foundational for day and time.

THE COURT: I understand, counsel. But you were asking the same generalization questions about it and we never identified which member of his family was the individual who had contact with her during direct so I'll allow it. Go ahead, Ms. Plunkett, answer the

question.

THE WITNESS: Can you repeat the question, please.

BY MS. BEVERLY:

Q Sure. After the sentencing, did you meet with Mr. Hudson's family again?

A I did and I asked them to provide me with the name of the appellate attorney so I could have a discussion about what I knew with that person and that never happened.

Q Do you specifically know which family member you met with?

A His mother.

Q His mother?

A Mother.

Q Okay. And you told her to give you the name of the appellate counsel that she was planning on hiring but she never did; right?

A Correct.

Q When was the last time or let me ask you this, how many times did you meet with his mother after the sentencing?

A I don't remember how many contacts I had with her. It was likely over phone or email.

Q Okay. And at no point did she tell you that -- who she had hired; is that correct?

A At one point she gave me -- this was prior to the sentencing -- she gave me the name and an email address of a paralegal that she had claimed worked with the attorney that they had retained for sentencing -- I'm mean, I'm sorry, I'm sorry, I'm reading as I'm talking -- for the appeal.

It was, I'm looking at it right now, a paralegal named Jessica Lewis, gave me an email address, JLewis@NationalFreedomProject.com, and that was when I remember suggesting that they hire someone local. They did reach out to this Jessica Lewis person about Mr. Hudson and I never heard back from her.

Q Okay. And I'm looking at the retainer agreement that you just forwarded to the Court. It was actually signed by a Karen Hudson; is that correct?

A Correct.

Q And it says OBO Clemon Hudson; is that right?

A Correct.

Q As the people who were the clients; is that right?

A Correct.

MS. BEVERLY: Okay. I have no further questions, Judge.

THE COURT: Redirect, counselor.

MR. ORAM: Nothing. Just argument.

THE COURT: Okay. Thank you. Thank you, Ms. Plunkett. Counsel, any other witnesses?

THE WITNESS: Thank you, Judge.

MR. ORAM: I'm sorry, Judge.

THE COURT: Any other witnesses?

MR. ORAM: No, just argument.

THE COURT: Okay. Go ahead and argue.

MS. BEVERLY: Oh, Judge, I just have one thing.

THE COURT: Oh, wait. Hold on one second, Mr. Oram.

MS. BEVERLY: I would ask that the document that Ms. Plunkett sent, the attorney representation agreement, be marked as an exhibit and introduced on behalf of the case.

THE COURT: Mr. Oram, do you have any objection to that?

MR. ORAM: I don't, Your Honor.

THE COURT: Okay. The retainer agreement, attorney representation agreement between Ms. Plunkett and Karen Hudson is hereby admitted.

MS. BEVERLY: Thank you.

THE COURT: Exhibit 1. Go ahead and argue.

MR. ORAM: Okay. To me, Your Honor, this is an easy legal decision; it's simple. It's a -- it comes under *Lozada* and *Dotson*.

I remember when I used to argue *Lozada* issues before they actually formalized this where attorneys had missed the opportunity to appeal. Usually we see this with the guilty plea and then the attorney doesn't really know that they're supposed to appeal and the Defendant says they're supposed to appeal.

What we have here, Your Honor, is we got a conviction where the guy gets an aggregate sentence of 168 months to 480 months. So, he's convicted by a jury and that's a significant sentence.

Well, first of all, the Courts say, Nevada and Federal Court, say we look at -- we have to look at whether this was a guilty plea or whether this was a jury verdict. And then, quite frankly, if we look at *Dotson*, the Nevada Supreme Court said in *Dotson*, and this is on page 14, Your Honor, of my supplemental brief, and I'm quoting from the

Nevada Supreme Court: Trial counsel has the duty to file a direct appeal when the client's desire to challenge the conviction or sentence can be reasonable inferred from the totality of the circumstances focusing on the information that counsel knew or should have known at the time.

And then we went on to *Lozada* and it says when the Defendant has been convicted pursuant to a jury verdict, counsel has a constitutional duty to inform the client of a right to appeal.

Well, apparently what Ms. Plunkett has just testified to is she told him of his right to appeal before sentencing. We have heard that she made statements of a mandatory appeal and that maybe this would be -- the result could be changed on appeal. And so from that we know -- we know that Ms. Plunkett was aware of the -- his right to appeal and the 30 days. She's the attorney of record. It cannot be absolved by simply saying there's a retainer agreement. I don't have to do this. It could easily have been solved by her simply preparing a Notice of Appeal pro per for the Defendant or withdrawing and having a public defender appointed. But she cannot defend and the State is making a perilous argument if they say deny this -- deny this and here's why, Your Honor.

You still have to hear the Writ of Habeas Corpus, not today obviously, I realize it's not on for that, but we have to hear the Writ of Habeas Corpus. And what he's confined too then is what his trial attorney should have done. Then if, let's say, if I am unsuccessful, we'll appeal, and we're going to be appealing the -- should have had a

Lozada issue, we should have been able to raise the issues on appeal. If it's granted, which it would be, we send it back down and then we do the *Lozada* appeal.

And so, to me, for judicial economy, it seems quite simple. Let's get this all done at one, letting her do this record, put all the issues in, and have this done. But I don't even see the State's argument.

If the State thinks that somehow a retainer agreement or an attorney's position can somehow eliminate a constitutional right; in other words, I don't have to write an appeal because I told him that I'm not hired to do an appeal. Well, that deadline went, the 30 day deadline, and she should have known its jurisdiction. Once that goes it's gone forever. And what we didn't hear is there were discussions with the mother, well, why aren't you over with the Defendant two or three days beforehand packing the docket saying, hey, you've got to file a Notice of Appeal.

So, I don't see how this is not ineffective. I don't really understand what the State can argue, and I think for judicial economy this is an easy decision, and with that I'll just submit it and ask for a reply argue.

THE COURT: Okay. Counsel.

MS. BEVERLY: Thank you, Judge, just briefly.

Essentially, when you tell a -- well, actually, the constitutional issue is she informed him of his rights to have an appeal. She testified to that. And I personally was not present. I did do the trial in this case and my co-counsel actually did the sentencing and he was present that

day. So, as we can see from the transcript, she assumed that there would be a appeal filed. It just not be her as she had already told him and it had already been agreed upon not only by Mr. Hudson but by his representative who was obviously Ms. Karen Hudson.

The agreement in part two says -- excuse me -- client acknowledges, client being Mr. Hudson, that he had been found guilty following a jury trial and further acknowledges that representation is limited to a bond hearing and sentencing hearing. Client acknowledged that the retainer specifically eliminates attorney representation of client any type of appeal or post-conviction review. Saying that she should have done something where she says she clearly has no knowledge of doing, she's never done one before, which is probably why she put this in her agreement so it what is clear to the client, the person retaining her, that she doesn't have any expertise in this area, she doesn't have any knowledge in this area. We don't even know if she has -- if she even knows about the 30 day, well, because she's never done it before, and that's why she puts this in there to eliminate anyone saying exactly what's happening now that, well, she should have done more than what she did. He knew that he had the right to appeal, his family knew, they met afterwards, and yet they chose not to follow through with getting what they needed to do to file the appeal.

So, that's what we're arguing, Judge. And, in fact, he couldn't have been represented by a public defender because the co-Defendant, Mr. Tyler, was represented by the Public Defender. So, that's kind of a side issue. But that is why we have these agreements because we don't

want attorneys who don't have any knowledge in what they're doing trying to do things that they're not skilled in.

So, with that being said, Judge, she advised him that he had the right to, he didn't follow through with that, and that is -- the onus is on him.

THE COURT: Okay. Rebuttal.

MR. ORAM: Yes, Your Honor.

First of all, because she's attorney of record, no other attorney can come in and file a Notice of Appeal. It's a rogue document. You got to come in and do a Substitution of Attorneys. She could have easily protected against this; file a motion to withdraw, have a track attorney appointed. He did absolutely nothing. This is -- this were -- is this is denied, if this is denied on some retainer agreement, it's just going to get reversed. It's just we'll do the post-conviction, we'll take it up, and then we'll send it back down and this is going to get reversed. I don't really understand why she's the attorney of record and you can't make an argument that I don't understand; I don't know about notices of appeal. I don't know about any of that stuff so I'm not ineffective. You know a Defendant has a right to a jury trial and you're not ineffective. Of course you are. And so you know this one thing. The State isn't relying upon any case law. I'm telling -- I'm showing *Dotson* and relying upon *Lozada.* Those are the Nevada Supreme Courts cases that absolutely dictate reversal, and yet what I heard the State say is, hey, here's a retainer agreement and all -- those cases don't apply.

So, essentially, the Nevada Supreme Court will have to rule

that *Lozada* applies and *Dotson* applies, and unless there's a retainer agreement that says you don't have to do this in which case the deadline just goes, you're the attorney of record, and you just, essentially, in a retainer agreement waived out ineffective assistance of counsel. It's unconstitutional --

THE COURT: Well, counsel, let me ask you this. We're a little bit more than just the retainer agreement. She had conversations with her client and the client's representative. They knew of that -- of their -- they knew, Mr. Oram, he knew of his right to an appeal. He was informed of that. You, yourself, said he was standing right next to Ms. Plunkett when she made those statements in open Court. So, the client, the Defendant, knew of his right to an appeal. His representative was out getting counsel for that appeal.

So, what you're saying is that the attorney of record has to file what could have been an inappropriate Notice of Appeal, she doesn't know what she's doing, could have filed a wrongful Notice of Appeal, jeopardize that person's right to an appeal by filing an inappropriate document. It's not as if Mr. Hudson wasn't aware of his right to appeal. He clearly was aware of his right to appeal. He had his representative out seeking what seemed to be national counsel that handles these types of appeals.

So, I think your argument is that Ms. Plunkett has an obligation to file an appeal even though she doesn't know how to do it correctly.

MR. ORAM: Yes, that's right.

THE COURT: Did Mr. Mueller have -- did Mr. Mueller have an obligation because I didn't see anywhere where he withdrew as attorney of record.

MR. ORAM: Your Honor, whoever is the attorney of record, if he's still the attorney of record then, yes, then one of them has. It's sort of a res ipsa loquitur and they do have to do it. And she cannot defend on I don't know how to do this. Yes, that is absolutely required, Your Honor, and they're going to say, the Court's going to say obviously she had to do it. And just because the client --

THE COURT: Well, Mr. Oram, if you -- if you can predict what the Nevada Supreme Court is going to say you're one of a kind. Okay.

I don't know what the Nevada Supreme Court is going to say on this and that's why I'm asking you questions as to how far does that obligation go on behalf of -- you look at *Lozada* -- that's an argument when the party in interest here, the real party here, Mr. Hudson, was clearly aware of his right to appeal. That's where the argument is what obligation does an attorney have to notify the client of their rights. Clearly, Mr. Hudson knew his rights. His family was exercising it and trying to retain counsel for it. As you said, Mr. Hudson was in the hearing at the sentence, heard his attorney say he has a right to an appeal; it's going to happen, it's got to happen. His family was working on his behalf to retain counsel to get that appeal. So, what obligation does the Defendant have to make sure that he has an appeal that he's clearly aware of. What obligation does he have as the Defendant to make sure that appeal gets filed? None.

MR. ORAM: That's -- the answer's right there in my brief. It tells us that from the totality of the circumstances and -- and so the answer to that question is in determining whether counsel knew or should have known that his client wanted to appeal the conviction, the courts may consider whether the conviction arose from jury trial or guilty verdict, but also goes down -- and it describes, Your Honor, if I can find it, where it says that they should look to the totality of circumstances and if the Defendant had expressed a wish to appeal. Clearly, the family is talking about appealing. Second of all, the Defendant has nothing to do with this. If we're not -- if the families have obligations and can reduce attorney's obligations, if the Court -- that really is not -- it's --

THE COURT: Counsel, that's not what I'm making, counsel.

MR. ORAM: It's not --

THE COURT: Counsel, I'm not arguing that the family has some affirmative duty to become a legal representative. He was aware, Mr. Hudson was aware, I think we can all agree --

MR. ORAM: Right.

THE COURT: -- he was aware he had a right to appeal.

MR. ORAM: Yes.

THE COURT: He clearly was trying to facilitate that by utilizing his agent whether it be his family or another attorney. He was facilitating by use of an agent to retain counsel for himself.

What happened in this situation --

MR. ORAM: Your Honor --

THE COURT: -- was the counsel said, look, you need to get

someone who can handle an appeal and the family said we're doing it, we're getting it, we're having it done. So --

MR. ORAM: Your Honor, in fact Ms. Plunkett said she never talked to him after the sentencing. So, from that point on when she's talking about mandatory appeal and she never talked to him. And so now we have to -- and even if the family was told and he was told, it makes no difference. He's the attorney of record. They have to perfect it. The standard is do you know, you are the attorney, that they want to do it.

And, Judge, when you say an inappropriate document, nothing is going to be inappropriate. She could have done a pro forma, a pro forma appeal. It's a one page document. And if she -- if the standard is the attorney just didn't know what she was doing, that's right. That's exactly what happened. The attorneys didn't know. They made a mistake. It's just that clear.

And I also think, Your Honor, it is judicial economy. What's the harm in letting him raise issues now of what happened in that trial? It does -- it seems that's the whole point of *Lozada.* And the totality of circumstances, Your Honor, if you look at the totality, you could see he wanted to appeal. It just didn't get perfected.

And so I don't see that she is alleviated in any way. And so with that, Your Honor, if you want to make that ruling and say I don't know what the Nevada Supreme Court is going to do, I really think that a sentence like this -- you know, I've done a few hundred appeals to that Court I, as a betting person, I predict they're going to send this back. I

think it's obvious to me. It has to be perfected. This isn't even close. If it was a guilty plea, Your Honor, if this had been a guilty plea, I think I could see what's -- what's been said, you know, was it really clear, did he really express. In fact, he never even called her afterward. Well, he was fine with the guilty plea and what happened. But that's not the case.

This is a case where he got somewhere around -- I think my numbers may be a little wrong -- but about 14 years at the bottom end. And it's obvious he'd want to appeal. Nobody wants to get a sentence like that, get convicted of everything, and not want to appeal. It is her obligation, Your Honor, it's her constitutional obligation. And you may be correct, Your Honor, because you point that out that Mr. Mueller, if he's still attorney of record, one [indiscernible] is not the Defendant's requirement, but we're asking, what is the Defendant's requirement? That he's represented by counsel. It's just to show the expression of a desire to appeal and that is proven in the record overwhelmingly that they want -- he wanted to appeal. How he was doing that is irrelevant. She should have protected -- she should have either withdrawn or she should have gotten a pro per Notice of Appeal or she could have gotten a Notice of Appeal and then withdrawn or she could have informed the Court that appellate counsel needed to be appointed.

But with that, Your Honor, I think you understand my arguments unless you have any other questions.

THE COURT: I understand the argument.

My [indiscernible] and questioning comes into the fact that

they clearly fired Mr. Mueller and they have a right to fire Mr. Mueller. They fired him. I don't think Mr. Mueller then has an obligation after getting terminated by the Defendant to represent them any further. Once you get terminated that's the end of it. To say that that person has an obligation -- and then Ms. Plunkett was very adamant not only in her statements but in her retainer agreement alone as to the limitations and scope of her representation, and the parties -- the client clearly knew that because they were seeking counsel for the appeal at the same time that Ms. Plunkett was representing him. So, they knew about the limitation.

I'm going to go back, and just based upon this Ms. Plunkett's statements, I'm going to go back on the record because there's a couple of questions in regards to the record I had. I think Ms. Plunkett has cleared those up. I'll have a decision to you by Monday.

MS. BEVERLY: Thank you, Judge.

MR. ORAM: Thank you, Your Honor.

THE COURT: Thank you. Thank you, Officers. Thank you Mr. Hudson.

[Proceedings concluded at 11:46 a.m.]

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

Patricia Slattery

PATRICIA SLATTERY
Court Transcriber

A-18-783635-W State Of Nevada, Plaintiff(s)
vs.
Clemon Hudson, Defendant(s)

December 03, 2020 03:00 AM Minute Order

HEARD BY: Jones, David M COURTROOM: Chambers

COURT CLERK: Tapia, Michaela

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

After review of all pleadings and evidence taken at the evidentiary hearing this Court finds Defendant was deprived of his right to direct appeal. As to all other issues raised in the Petition for Writ of Habeas Corpus, all other issues are DENIED.

Counsel for Defendant is to prepare the order GRANTED in part as to Direct Appeal and DENIED as to all other claims.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /mt

Electronically Filed
12/16/2020 9:50 AM
CLERK OF THE COURT

ORDR

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CLEMON HUDSON

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, -vs- CLEMON HUDSON, Defendant.	CASE NO: A-18-783635-W DEPT NO: XXIX

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: October 15, 2020
TIME OF HEARING: 11:00 a.m.

THIS CAUSE having come on for hearing before the Honorable DAVID M. JONES, District Judge, on the 15th day of October, 2020, the Defendant being present, represented by CHRISTOPHER R. ORAM, the Respondent being represented by STEVE WOLFSON, District Attorney, by and through Leah Beverly, Chief Deputy District Attorney, and the Court having considered the matter, including all briefs, transcripts, arguments of counsel, documents on file herein, and the testimony adduced from the Evidentiary Hearing, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

Procedural History

Mr. Hudson was charged by way of Indictment on September 23, 2015 as follows: Count 1: Conspiracy to Commit Burglary; Count 2: Attempt Burglary while in possession of a firearm or deadly weapon; Count 3: Attempt Murder with use of a deadly weapon; Count 4: Attempt Murder with use of a deadly weapon; Count 5: Battery with use of a deadly weapon resulting in substantial bodily harm; and Count 6: Discharging firearm at or into occupied structure, vehicle, aircraft, or watercraft. On October 1, 2015, Mr. Hudson was arraigned, pled not guilty and waived the sixty day rule.

On August 28, 2017, Mr. Hudson filed a motion to sever his case from co-defendant Steven Turner. Co-defendant Turner joined Mr. Hudson's motion on September 13, 2017. The State filed an opposition on September 18, 2019. The district court denied the motion for severance on October 12, 2017. Mr. Hudson renewed his motion for severance, but was again denied on November 16, 2017.

Mr. Hudson's trial began on April 16, 2018. On the first day of trial, the State filed an Amended Indictment dismissing count six. On April 27, 2018, the jury found Mr. Hudson guilty of all charges.

Mr. Hudson was sentenced on July 21, 2018, to an aggregate total of a maximum of 480 months with a minimum 168 months. Mr. Hudson received 1,022 days credit for time served. The Judgment of Conviction was filed July 2, 2018.

No direct appeal was filed on Mr. Hudson's behalf. On October 25, 2018, Mr. Hudson filed a timely post-conviction Petition for Writ of Habeas Corpus. Thereafter, supplemental briefing, through counsel, commenced. An Evidentiary Hearing took place on October 15, 2020, and the matter was taken under advisement.

Facts of the offense

Mr. Eric Clarkson was friends with Mr. Turner (JT Day 3 p. 57-58). Mr. Clarkson

did not know Mr. Hudson (JT Day 3 p. 80). Mr. Clarkson resided with his best friend Mr. Willoughby Potter de Grimaldi at a house located at 6729 Oveja Circle, Las Vegas, Clark County, Nevada (JT Day 3 p. 59-61, 92).

On September 4, 2015, around 3:30 a.m., Mr. Clarkson was in his bedroom watching television before going to sleep (JT Day 3 p. 61). Once Mr. Clarkson got into bed, he heard his metal outdoor patio furniture being moved outside (JT Day 3 p. 63-64). This caused Mr. Clarkson to look out the window where he saw a young African American man outside on the patio (JT Day 3 p. 65). Then, Mr. Clarkson grabbed his phone, let his roommate know what he saw and contacted 911 to report that someone was in his backyard (JT Day 3 p. 65). Moments later, Mr. Clarkson and Mr. Grimaldi heard someone banging on the front door and Mr. Grimaldi saw a figure outside (JT Day 3 p. 68, 97-98).

When Mr. Grimaldi went to the back window, he saw a shirtless African American man with a billed cap on his head, racking a shotgun (JT Day 3 p. 95, 119). When Mr. Grimaldi looked out the window, he saw a tall African American man with an afro wearing basketball shorts (JT Day 3 p. 98-99). Mr. Grimaldi then saw a third person out of the corner of his eye, describing the man as African American with a spiky afro (JT Day 3 p. 101-102). Mr. Grimaldi did not recognize any of the three individuals (JT Day 3 p. 104). Mr. Clarkson then relayed this information to the 911 operator (JT Day 3 p. 96-97).

When two police officers arrived (Officer Malik Grego-Smith and Officer Jeremy Robertson) Mr. Clarkson let them in the front door (JT Day 3 p. 71). Mr. Clarkson and Mr. Grimaldi explained to officers how to open the back door and then Officer Robertson opened the back door (JT Day 3 p. 71-72). Mr. Clarkson and Mr. Grimaldi recalled that immediately after the back door was opened there were gunshots (JT Day 3 p. 74-75, 107-108). Mr. Grimaldi had previously told detectives it was his belief that an officer fired the first gunshot, but testified at trial the first shots came from outside on the patio (JT Day 3 p. 124, 126-127). Mr. Clarkson and Mr. Grimaldi both saw different types of bullets enter

their home (JT Day 3 p. 75, 107-108). After the shots were fired, Mr. Clarkson and Mr. Grimaldi hid in a bedroom (JT Day 3 p. 76).

Officer Malik Grego-Smith, along with Officer Jeremy Robertson, responded to a dispatch call regarding a prowler at the Oveja circle residence (JT Day 5 p. 62, 65). After requesting dispatch inform the homeowner to open the front door, Officer Grego-Smith and Officer Robertson enter the residence (JT Day 5 p. 70). Once in the residence, the officers developed a plan to "clear the backyard" to see if anyone was out there (JT Day 5 p. 72). Officer Robertson was to open the back door, and as he opened the door, Officer Grego-Smith would go through and Officer Robertson would follow (JT Day 5 p. 73). Officer Grego-Smith drew his weapon and as he stepped outside two shots were fired from outside on the patio, one striking Officer Robertson (JT Day 5 p. 73, 76). Officer Grego-Smith returned fire towards the patio, firing twelve shots (JT Day 5 p. 76; JT Day 7 p. 29-30).

Officer Grego-Smith testified he turned his flashlight on right when he started shooting and saw "a light-skinned black male with no shirt and purple basketball shorts" on the patio (JT Day 5 p. 78). The man was approximately three to four feet from him (JT Day 5 p. 90). Officer Grego-Smith recalled yelling, "Don't move, keep your hands up, don't move or I'll fucking shoot you." (JT Day 5 p. 80). Officer Grego-Smith immediately radioed dispatch to inform them that shots had been fired and Officer Robertson had been shot (JT Day 5 p. 80). When back up arrived, Officer Grego-Smith entered the backyard area and witnessed Mr. Hudson being taken into custody (JT Day 5 p. 82). Officer Grego-Smith testified at trial that Mr. Hudson was not the shirtless African American man he had seen in the backyard when he turned on his flashlight (JT Day 5 p. 86).

Officer Jeremy Robertson recalled he had just opened the back door to the patio of the residence when he was shot and fell to the ground (JT Day 5 p. 120). Officer Robertson was struck in the upper thigh, fracturing his femur (JT Day 5 p. 122, 128).

Sergeant Joshua Bitsko, a K-9 officer, responded to the Oveja residence (JT Day 4 p. 127, 135). Upon arriving at the residence, Sergeant Bitsko learned from the air unit that the suspect was laying in the backyard with a rifle next to him (JT Day 4 p. 140). A Beretta .25 caliber handgun was also located nearby (JT Day 4 p. 81). Sergeant Bitsko deployed his police dog into the backyard who located and began biting the suspect (JT Day 4 p. 140-143). The suspect complied with all commands, was taken into custody and identified as Clemon Hudson (JT Day 4 p. 32, 143-145).

Police secured a perimeter around the crime scene approximately a mile and a half by a mile wide in order to search for additional suspects (JT Day 4 p. 153). Detective Jeremy Vance spent approximately three and a half hours driving around the perimeter looking for the suspect described by officer Grego-Smith (JT Day 4 p. 153).

After being notified of a call concerning a suspicious person in a backyard, Detective Vance came upon Mr. Turner and began to question him (JT Day 4 p. 154-158). Detective Vance noticed Mr. Turner was injured given the blood on his pants (JT Day 4 p. 158). When questioned about the injury, Mr. Turner indicated his leg was caught on a fence at his friend's house (JT Day 4 p. 158). Detective Vance believed the injury was caused by a gunshot wound (JT Day 4 p. 158-159).

Ms. Stephanie Fletcher, a senior crime scene analyst with the Las Vegas Metropolitan Police Department responded to the Oveja Circle residence (JT Day 5 p. 6). Twelve Speer .9 millimeter cartridge casings were recovered from the dining room area (JT Day 5 p. 14). There were three 7.62 rifle cartridge casings located on the backyard patio area (JT Day 5 p. 15). Analysts did not locate any expended shotgun shells or .25 caliber casings (JT Day 5 p. 16). Analysts located numerous shotgun pellets in the living room of the residence as well as pieces of a shotgun round located on top of the front window sill (JT Day 5 p. 32-34). Firearms recovered from the scene included a SKS rifle, a Mossberg 12-gauge shotgun and a Beretta .25 caliber handgun (JT Day 4 p. 78, 81).

Ms. Gayle Johnson, a forensic scientist with the Las Vegas Metropolitan Police Department, conducted latent print testing on several items (JT Day 6 p. 17-25). With regard to an AK-47 firearm, the analyst was unable to develop any suitable prints for testing (JT Day 6 p. 20). Two latent prints were recovered from a shotgun, both belonging to Mr. Hudson and located in the metal area above the trigger (JT Day 6 p. 23-24). DNA testing was conducted with regard to the firearms (JT Day 6 p. 29-48). No conclusions could be made about the DNA located on the rifle, the Mossberg shotgun or the Beretta handgun (JT Day 6 p. 35, 39-41).

A Toyota Camry located outside the residence was registered to Mr. Hudson's mother (JT Day 7 p. 50-51).

When analysts recovered the shotgun the State alleged Mr. Hudson to be holding, it was inoperable due to damage sustained (JT Day 7 p. 118-122). A fragment was removed from the shotgun, but analysts were unable to determine what weapon the fragment originated (JT Day 7 p. 136).

In September of 2015, Mr. Craig Jex was employed as a Detective with the Las Vegas Metropolitan Police Department (JT Day 6 p. 58). Mr. Jex documented Officer Robertson's injuries at the hospital (JT Day 6 p. 60-61). While at the hospital, Mr. Jex came into contact with Mr. Hudson and conducted an interview with him (JT Day 6 p. 61).

Mr. Jex testified Mr. Hudson relayed to him that he went to the house to obtain marijuana that night and no one was supposed to be home (JT Day 6 p. 65, 86). Mr. Hudson told him there was only one other person involved and the plan was to break in the back window of the residence (JT Day 6 p. 66-67, 74). When Mr. Jex questioned Mr. Hudson as to whether he brought and carried the shotgun, he indicated he did (JT Day 6 p. 66-67, 76-78). Mr. Hudson informed Mr. Jex that there was an SKS rifle and a shotgun in the backyard (JT Day 6 p. 76). Mr. Hudson also told Mr. Jex that he had also brought a small firearm in his shoe (JT Day 6 p. 78-80).

During the interview, Mr. Hudson told Mr. Jex he was not sure if he fired the shotgun, but if he did, he fired once (JT Day 6 p. 77, 88). Mr. Hudson indicated he shot towards the bottom of the window (JT Day 6 p. 78). It was Mr. Hudson's belief that the officers started shooting first (JT Day 6 p. 90).

Detective Eduardo Pazos conducted an interview with Mr. Turner (JT Day 6 p. 96-97). Mr. Turner told police that "someone came to pick him up" around midnight and it was just the two of them in the car (JT Day 6 p. 101, 104). When Mr. Turner got in the car, he saw two guns in the back (JT Day 6 p. 103-104). Mr. Turner indicated the SKS rifle belonged to his uncle (JT Day 6 p. 102, 105).

Mr. Turner explained to Detective Pazos that when he entered the backyard of the residence, shots were fired (JT Day 6 p. 105). When the shots were fired, he hopped over the wall to the back of the house (JT Day 6 p. 105). Mr. Turner told Detective Pazos that after he hopped over the wall, he sat on a couch he found in the neighborhood for a while and then began walking to a friend's house (JT Day 6 p. 105). As he was walking to a friend's house, he encountered police (JT Day 6 p. 105).

Mr. Turner told Detective Pazos he had been in the house before and knew who lived there (JT Day 6 p. 108). Mr. Turner admitted he was there to steal weed and if there was any money in the house, he would have taken that as well (JT Day 6 p. 108-110). Mr. Turner denied having a gun in his hand during the incident or firing a weapon (JT Day 6 p. 116-117). Mr. Turner indicated that when the shooting began, he ran away (JT Day 6 p. 112-113, 116).

CONCLUSIONS OF LAW

Mr. Hudson was wrongfully deprived of his right under established law to a direct appeal and is entitled to relief pursuant to Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) and NRAP 4(c).

In this case, Mr. Hudson was deprived of his right to a direct appeal based upon

counsel's rendering of ineffective assistance. As such, Mr. Hudson is permitted to file an untimely notice of appeal. Here, given the serious nature of the offenses for which he has been convicted and the lengthy sentence received, Mr. Hudson naturally desired to appeal the instant conviction. Due to counsel's failure, Mr. Hudson never received such an opportunity. In circumstances such as this, the Nevada Supreme Court has held the defendant must be granted an untimely direct appeal. This Court agrees and hereby directs the district court clerk to prepare and file, within 7 days of the entry of the instant order, a Notice of Appeal from the judgment of conviction and sentence on the petitioner's behalf in substantially the form provided in Form 1 in the Appendix of Forms in accordance with NRAP 4(c).

A. STATE AND FEDERAL AUTHORITY PERMITS AN UNTIMELY DIRECT APPEAL UNDER THE CIRCUMSTANCES.

In *Lozada v. State,* 110 Nev. 349, 354, 871 P.2d 944 (1994), the Nevada Supreme Court explained, "an attorney has a duty to perfect an appeal when a convicted defendant expresses a desire to appeal or indicates dissatisfaction with a conviction.". If counsel fails to file an appeal after a convicted defendant makes a timely request, the defendant was entitled to the *Lozada* remedy, which consisted of filing a post-conviction petition with assistance of counsel in which the actual appellate claims could be raised. *Id.* Such a claim did not require any showing of merit as to the issues sought to be raised. As such, it is sufficient to receive the relief contemplated by *Lozada* if a petition shows that the defendant was deprived of his right to a direct appeal without his consent. *Id.* at 357.

The remedy contemplated by *Lozada* has been largely subsumed by revisions to the Nevada Rules of Appellate Procedure (NRAP), though the basis for obtaining relief remains generally the same. Under NRAP 4(c), an untimely notice of appeal may be filed if:

> A) A post-conviction petition for a writ of habeas corpus has been timely and properly filed in accordance with the provisions of NRSs 34.720 to 34.830, asserting a viable claim that the petitioner was unlawfully deprived of the right to a timely direct appeal from a judgment of conviction and sentence; and
>
> B) The district court in which the petition is considered enters a written order containing:
> i) specific findings of fact and conclusions of law finding that the petitioner has established a valid appeal-deprivation claim and is entitled to a direct appeal with the assistance of appointed or retained appellate counsel;
> ii) if the petitioner is indigent, directions for the appointment of appellate counsel, other than counsel for the defense in the proceedings leading to the conviction, to represent the petitioner in the direct appeal from the conviction and sentence; and
> iii) directions to the district court clerk to prepare and file – within 7 days of the entry of the district court's order – a notice of appeal from the judgment of conviction and sentence on the petitioner's behalf in substantially the form provided in Form 1 in the Appendix of Forms.

The Nevada Supreme Court has been clear – counsel has a constitutional duty to file a direct appeal in two circumstances: when requested to do so and when the defendant expresses dissatisfaction with his conviction, and that the failure to do so in those circumstances is deficient for purposes of proving ineffective assistance of counsel. *Lozada*, 110 Nev. at 354–57; *Davis v. State,* 115 Nev. 17, 20, 974 P.2d 658, 660 (1999) ("[I]f the client does express a desire to appeal, counsel is obligated to file the notice of appeal on the client's behalf.")

To prove ineffective assistance of counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 Led.2d 674 (1984); *Warden v. Lyons*, 100 Nev 430, 432–33, 683 P.2d 504, 505 (1984). Generally, both components of the inquiry must be shown, but in some instances, such as when the petitioner has been deprived of the right to appeal due to counsel's deficient performance, the second

component – prejudice – may be presumed. *See Lozada*, 110 Nev. at 356–57. *See also Rodriguez v. United States*, 395 U.S. 327, 328, 23 L. Ed 2d 340, 89 S. T. 1715 (1969) (presuming prejudice when counsel failed to file a notice of appeal against his client's wishes). The petitioner must demonstrate the underlying facts by a preponderance of the evidence. *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). *See also Toston v. State*, 127 Nev. 971, 976, 267 P.3d 795 (2011).

In *Toston*, the Nevada Supreme Court provided guidance as to the meaning of "when the defendant expresses dissatisfaction with his conviction". *See generally*, 127 Nev. at 978–79. The Nevada Supreme Court explained:

> [T]rial counsel has a duty to file a direct appeal when the client's desire to challenge the conviction or sentence can be reasonably inferred from the totality of the circumstances, focusing on the information that counsel new or should have known at the time. *Cf Flores v. Ortega*, 528 U.S. at 480 (discussing circumstances in which counsel must consult with a client regarding an appeal). In determining whether counsel knew or should have known that his client wanted to appeal the conviction, the courts may consider whether the conviction arose from a jury trial or a guilty plea, "both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." *Toston*, 127 Nev. at 979 (footnotes omitted).

Thus, when a defendant has been convicted pursuant to a jury verdict, counsel has a constitutional duty to inform the client of the right to appeal. *Lozada* 110 Nev. at 356. Counsel's failure to do so is deficient performance for purposes of proving an ineffective assistance of counsel claim. *Roe v. Flores-Ortega*, 528 U.S. 470, 477–81, 120 S. Ct. 1029 (2000).

B. MR. HUDSON WAS DEPRIVED OF HIS RIGHT TO A DIRECT APPEAL AND IS HEREBY PERMITTED AN OPPORTUNITY FOR AN UNIMELY DIRECT APPEAL.

In order to prevail, Mr. Hudson must demonstrate by a preponderance of the evidence that 1) he filed a timely post-conviction Petition, and 2) his attorney had a duty to perfect an appeal because Mr. Hudson either expressed a desire to appeal, indicated dissatisfaction with his conviction, or his desire to challenge the conviction or sentence

can be reasonably inferred from the totality of the circumstances. *See Lozada v. State,* 110 Nev. at 354–57; *Toston*, 127 Nev. at 976–79. Mr. Hudson need not demonstrate prejudice as it is presumed. *Lozada*, 110 Nev. at 356–57. Mr. Hudson has demonstrated as such.

First, in this case, there is no question that Mr. Hudson filed a timely post-conviction petition. Mr. Hudson's Judgment of Conviction was filed on July 2, 2018. On October 25, 2018, Mr. Hudson filed a timely Petition noting he received ineffective assistance of counsel for counsel's failure to preserve his appellate rights (Petition, p. 3). Supplemental briefing was thereafter permitted. Thus, Mr. Hudson can demonstrate he began a timely post-conviction proceeding.

Next, Mr. Hudson can demonstrate that he was deprived of a direct appeal due to ineffective assistance of counsel not only because he expressed a desire that his direct appeal be perfected, but also because his desire to challenge the conviction can be reasonably inferred from the totality of the circumstances. This Court reviewed a declaration from Mr. Hudson confirming he expressed his desire to counsel that an appeal be filed on his behalf (Supplemental Brief, Exhibit A). Further, the nature and severity of the offenses, including the fact that Mr. Hudson proceeded to trial, demonstrated his desire to continue to challenge the conviction.

Additionally, counsel's own statements demonstrate not only Mr. Hudson's desire for an appeal, but counsel's awareness that an appeal was to be filed. During Mr. Hudson's sentencing on June 21, 2018, counsel stated: "Yes, Judge, and as I stated, I advised him, **due to the mandatory appeal**, to not give a statement today." (emphasis added) (Reporter's Transcript of Sentencing, p. 14) (Supplemental Brief, Exhibit B). Counsel continued, "I believe we are here because Mr. Hudson got some very bad advice, and I don't believe that we should be here at a sentencing following a jury verdict, but hopefully **that will be addressed on appeal**." (Emphasis added) (Reporter's Transcript of

Sentencing, p. 14) (Exhibit B).

Unfortunately, counsel failed to preserve his direct appeal. The totality of the circumstances demonstrates Mr. Hudson's desire for preservation of his direct appeal and such a fact is obvious from a plain review of the record. In this case, Mr. Hudson received ineffective assistance of counsel concerning his right to file an appeal because a review of the record reveals that counsel was required to file the notice of appeal and failed to do so. In such a case, prejudice is presumed. This Court therefore grants the petition with regard to the failure to file a direct appeal.

Having carefully considered the record, pleadings on file herein, and evidence adduced at the Evidentiary Hearing, this Court is convinced that based upon the above Mr. Hudson has demonstrated he was deprived of his right to a direct appeal.

With regard to all other issues raised: alleged failure to object to jury instruction 38 (a flight instruction), alleged failure to object to jury instruction numbers 40 and 50, and alleged cumulative error, they are denied.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, granted in part and denied in part as described within this Order.

IT IS FURTHER ORDERED that the district court clerk is to prepare and file, within 7 days of the entry of the instant order, a Notice of Appeal from the judgment of conviction and sentence on the petitioner's behalf in substantially the form provided in Form 1 in the Appendix of Forms in accordance with NRAP 4(c).

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IT IS FURTHER ORDERED that all other issues raised: alleged failure to object to jury instruction 38 (a flight instruction), alleged failure to object to jury instruction numbers 40 and 50, and alleged cumulative error, they are denied.

Dated this 16th day of December, 2020

DATED this _____ day of _____, 2020.

DISTRICT JUDGE
DCB 729 0934 B825
David M Jones
District Court Judge

SUBMITTED BY:

/s/ Christopher R. Oram, Esq.
CHRISTOPHER R. ORAM, ESQ.
NEVADA BAR NO. 4349
520 SOUTH 4TH STREET, 2ND FLOOR
LAS VEGAS, NEVADA 89101
TELEHPONE: (702) 598-1471

Attorney for Defendant
CLEMON HUDSON

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

State Of Nevada, Plaintiff(s)	CASE NO: A-18-783635-W
vs.	DEPT. NO. Department 29
Clemon Hudson, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 12/16/2020

Christopher Oram	contact@christopheroramlaw.com
Jessie Folkestad	jfolkestad@christopheroramlaw.com

Electronically Filed
12/16/2020 1:23 PM
Steven D. Grierson
CLERK OF THE COURT

NOTC
CHRISTOPHER R. ORAM, ESQ.
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520 South 4th Street, 2nd Floor
Las Vegas, Nevada 89101
(702) 384-5563

Attorney for Defendant
CLEMON HUDSON

DISTRICT COURT

CLARK COUNTY, NEVADA

*** * * * ***

THE STATE OF NEVADA, Plaintiff, vs. CLEMON HUDSON, Defendant.	CASE NO. A-18-783635-W DEPT. NO. 29

NOTICE OF APPEAL

NOTICE is hereby given that Defendant, CLEMON HUDSON, hereby appeals to the Supreme Court of the State of Nevada from the denial of claims contained within his Petition for Writ of Habeas Corpus (Post-Conviction), which was granted in part, and denied in part, by the Honorable David M. Jones on December 04, 2020. The Findings of Fact, Conclusions of Law and Order was entered December 16, 2020.

DATED this 16th day of December, 2020.

By: /s/ Christopher R. Oram
CHRISTOPHER R. ORAM
Nevada Bar #004349
520 South Fourth Street.,
Las Vegas, Nevada 89101

Attorney for Defendant
CLEMON HUDSON

CHRISTOPHER R. ORAM, LTD.
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LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623

Case Number: A-18-783635-W

CERTIFICATE OF MAILING

I hereby certify that I am an employee of CHRISTOPHER R ORAM and that on the 16th day of December 16, 2020, I did deposit in the United States Post Office, at Las Vegas, Nevada, in a sealed envelope with postage fully pre-paid thereon, a true and correct copy of the above and foregoing **NOTICE OF APPEAL**, addressed to:

Supreme Court Clerk
Supreme Court Building
201 S. Carson Street
Carson City, Nevada 89701

Steve Wolfson
District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89101

Aaron Ford
Attorney General
100 North Carson Street
Carson City, Nevada 89701

/s/ Nancy Medina
An employee of Christopher R. Oram Esq.

CHRISTOPHER R. ORAM, LTD.
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LAS VEGAS, NEVADA 89101
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12/17/2020 8:33 AM
Steven D. Grierson
CLERK OF THE COURT

NOAS

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

CLEMON HUDSON,

Plaintiff,

vs.

THE STATE OF NEVADA,

Defendant,

Case No: A-18-783635-W
Related Case C-15-309578-2
Dept No: XXIX

NOTICE OF APPEAL

Notice is hereby given that the Defendant above named, hereby appeals to the Supreme Court of Nevada from the Judgment of Conviction (Jury Trial) entered in this action on July 2, 2018.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Heather Ungermann
Heather Ungermann, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 17 day of December 2020, I served a copy of this Notice of Entry on the following:

☑ By e-mail:
Clark County District Attorney's Office

Case Number: A-18-783635-W

Attorney General's Office – Appellate Division-

☑ The United States mail addressed as follows:

Clemon Hudson # 1200865
P.O. Box 650
Indian Springs, NV 89070

Christopher R. Oram, Esq.
520 S. 4th St., Second Floor
Las Vegas, NV 89101

☑ This appeal was electronically submitted to the Clerk of the Supreme Court.

/s/ Heather Ungermann
Heather Ungermann, Deputy Clerk

Electronically Filed
12/17/2020 9:59 AM
Steven D. Grierson
CLERK OF THE COURT

NOTC
CHRISTOPHER R. ORAM, ESQ.
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520 South 4th Street, 2nd Floor
Las Vegas, Nevada 89101
(702) 384-5563

Attorney for Defendant
CLEMON HUDSON

DISTRICT COURT

CLARK COUNTY, NEVADA

*** * * * ***

THE STATE OF NEVADA, Plaintiff, vs. CLEMON HUDSON, Defendant.	CASE NO. A-18-783635-W DEPT. NO. 29

NOTICE OF APPEAL

NOTICE is hereby given that Defendant, CLEMON HUDSON, pursuant to NRAP 4(c)(3) files an untimely notice of appeal to the Supreme Court of the State of Nevada which was granted by the Honorable David M. Jones on December 04, 2020. The Findings of Fact, Conclusions of Law and Order, which granted Mr. Hudson's petition in part, and denied in part, was entered December 16, 2020.

DATED this 17th day of December, 2020.

By: /s/ Christopher R. Oram
CHRISTOPHER R. ORAM
Nevada Bar #004349
520 South Fourth Street.,
Las Vegas, Nevada 89101

Attorney for Defendant
CLEMON HUDSON

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TEL. 702.384-5563 | FAX. 702.974-0623

Case Number: A-18-783635-W

CERTIFICATE OF MAILING

I hereby certify that I am an employee of CHRISTOPHER R ORAM and that on the 17th day of December, 2020, I did deposit in the United States Post Office, at Las Vegas, Nevada, in a sealed envelope with postage fully pre-paid thereon, a true and correct copy of the above and foregoing **NOTICE OF APPEAL**, addressed to:

Supreme Court Clerk
Supreme Court Building
201 S. Carson Street
Carson City, Nevada 89701

Steve Wolfson
District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89101

Aaron Ford
Attorney General
100 North Carson Street
Carson City, Nevada 89701

/s/ Nancy Medina
An employee of Christopher R. Oram Esq.

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Steven D. Grierson
CLERK OF THE COURT

NEFF

DISTRICT COURT
CLARK COUNTY, NEVADA

CLEMON HUDSON,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: A-18-783635-W

Dept No: XXIX

NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

PLEASE TAKE NOTICE that on December 16, 2020, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on December 17, 2020.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Heather Ungermann
Heather Ungermann, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 17 day of December 2020, I served a copy of this Notice of Entry on the following:

☑ By e-mail:
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☑ The United States mail addressed as follows:

Clemon Hudson # 1200865
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CLEMON HUDSON

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, -vs- CLEMON HUDSON, Defendant.	CASE NO: A-18-783635-W DEPT NO: XXIX

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: October 15, 2020
TIME OF HEARING: 11:00 a.m.

THIS CAUSE having come on for hearing before the Honorable DAVID M. JONES, District Judge, on the 15th day of October, 2020, the Defendant being present, represented by CHRISTOPHER R. ORAM, the Respondent being represented by STEVE WOLFSON, District Attorney, by and through Leah Beverly, Chief Deputy District Attorney, and the Court having considered the matter, including all briefs, transcripts, arguments of counsel, documents on file herein, and the testimony adduced from the Evidentiary Hearing, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

Procedural History

Mr. Hudson was charged by way of Indictment on September 23, 2015 as follows: Count 1: Conspiracy to Commit Burglary; Count 2: Attempt Burglary while in possession of a firearm or deadly weapon; Count 3: Attempt Murder with use of a deadly weapon; Count 4: Attempt Murder with use of a deadly weapon; Count 5: Battery with use of a deadly weapon resulting in substantial bodily harm; and Count 6: Discharging firearm at or into occupied structure, vehicle, aircraft, or watercraft. On October 1, 2015, Mr. Hudson was arraigned, pled not guilty and waived the sixty day rule.

On August 28, 2017, Mr. Hudson filed a motion to sever his case from co-defendant Steven Turner. Co-defendant Turner joined Mr. Hudson's motion on September 13, 2017. The State filed an opposition on September 18, 2019. The district court denied the motion for severance on October 12, 2017. Mr. Hudson renewed his motion for severance, but was again denied on November 16, 2017.

Mr. Hudson's trial began on April 16, 2018. On the first day of trial, the State filed an Amended Indictment dismissing count six. On April 27, 2018, the jury found Mr. Hudson guilty of all charges.

Mr. Hudson was sentenced on July 21, 2018, to an aggregate total of a maximum of 480 months with a minimum 168 months. Mr. Hudson received 1,022 days credit for time served. The Judgment of Conviction was filed July 2, 2018.

No direct appeal was filed on Mr. Hudson's behalf. On October 25, 2018, Mr. Hudson filed a timely post-conviction Petition for Writ of Habeas Corpus. Thereafter, supplemental briefing, through counsel, commenced. An Evidentiary Hearing took place on October 15, 2020, and the matter was taken under advisement.

Facts of the offense

Mr. Eric Clarkson was friends with Mr. Turner (JT Day 3 p. 57-58). Mr. Clarkson

did not know Mr. Hudson (JT Day 3 p. 80). Mr. Clarkson resided with his best friend Mr. Willoughby Potter de Grimaldi at a house located at 6729 Oveja Circle, Las Vegas, Clark County, Nevada (JT Day 3 p. 59-61, 92).

On September 4, 2015, around 3:30 a.m., Mr. Clarkson was in his bedroom watching television before going to sleep (JT Day 3 p. 61). Once Mr. Clarkson got into bed, he heard his metal outdoor patio furniture being moved outside (JT Day 3 p. 63-64). This caused Mr. Clarkson to look out the window where he saw a young African American man outside on the patio (JT Day 3 p. 65). Then, Mr. Clarkson grabbed his phone, let his roommate know what he saw and contacted 911 to report that someone was in his backyard (JT Day 3 p. 65). Moments later, Mr. Clarkson and Mr. Grimaldi heard someone banging on the front door and Mr. Grimaldi saw a figure outside (JT Day 3 p. 68, 97-98).

When Mr. Grimaldi went to the back window, he saw a shirtless African American man with a billed cap on his head, racking a shotgun (JT Day 3 p. 95, 119). When Mr. Grimaldi looked out the window, he saw a tall African American man with an afro wearing basketball shorts (JT Day 3 p. 98-99). Mr. Grimaldi then saw a third person out of the corner of his eye, describing the man as African American with a spiky afro (JT Day 3 p. 101-102). Mr. Grimaldi did not recognize any of the three individuals (JT Day 3 p. 104). Mr. Clarkson then relayed this information to the 911 operator (JT Day 3 p. 96-97).

When two police officers arrived (Officer Malik Grego-Smith and Officer Jeremy Robertson) Mr. Clarkson let them in the front door (JT Day 3 p. 71). Mr. Clarkson and Mr. Grimaldi explained to officers how to open the back door and then Officer Robertson opened the back door (JT Day 3 p. 71-72). Mr. Clarkson and Mr. Grimaldi recalled that immediately after the back door was opened there were gunshots (JT Day 3 p. 74-75, 107-108). Mr. Grimaldi had previously told detectives it was his belief that an officer fired the first gunshot, but testified at trial the first shots came from outside on the patio (JT Day 3 p. 124, 126-127). Mr. Clarkson and Mr. Grimaldi both saw different types of bullets enter

their home (JT Day 3 p. 75, 107-108). After the shots were fired, Mr. Clarkson and Mr. Grimaldi hid in a bedroom (JT Day 3 p. 76).

Officer Malik Grego-Smith, along with Officer Jeremy Robertson, responded to a dispatch call regarding a prowler at the Oveja circle residence (JT Day 5 p. 62, 65). After requesting dispatch inform the homeowner to open the front door, Officer Grego-Smith and Officer Robertson enter the residence (JT Day 5 p. 70). Once in the residence, the officers developed a plan to "clear the backyard" to see if anyone was out there (JT Day 5 p. 72). Officer Robertson was to open the back door, and as he opened the door, Officer Grego-Smith would go through and Officer Robertson would follow (JT Day 5 p. 73). Officer Grego-Smith drew his weapon and as he stepped outside two shots were fired from outside on the patio, one striking Officer Robertson (JT Day 5 p. 73, 76). Officer Grego-Smith returned fire towards the patio, firing twelve shots (JT Day 5 p. 76; JT Day 7 p. 29-30).

Officer Grego-Smith testified he turned his flashlight on right when he started shooting and saw "a light-skinned black male with no shirt and purple basketball shorts" on the patio (JT Day 5 p. 78). The man was approximately three to four feet from him (JT Day 5 p. 90). Officer Grego-Smith recalled yelling, "Don't move, keep your hands up, don't move or I'll fucking shoot you." (JT Day 5 p. 80). Officer Grego-Smith immediately radioed dispatch to inform them that shots had been fired and Officer Robertson had been shot (JT Day 5 p. 80). When back up arrived, Officer Grego-Smith entered the backyard area and witnessed Mr. Hudson being taken into custody (JT Day 5 p. 82). Officer Grego-Smith testified at trial that Mr. Hudson was not the shirtless African American man he had seen in the backyard when he turned on his flashlight (JT Day 5 p. 86).

Officer Jeremy Robertson recalled he had just opened the back door to the patio of the residence when he was shot and fell to the ground (JT Day 5 p. 120). Officer Robertson was struck in the upper thigh, fracturing his femur (JT Day 5 p. 122, 128).

Sergeant Joshua Bitsko, a K-9 officer, responded to the Oveja residence (JT Day 4 p. 127, 135). Upon arriving at the residence, Sergeant Bitsko learned from the air unit that the suspect was laying in the backyard with a rifle next to him (JT Day 4 p. 140). A Beretta .25 caliber handgun was also located nearby (JT Day 4 p. 81). Sergeant Bitsko deployed his police dog into the backyard who located and began biting the suspect (JT Day 4 p. 140-143). The suspect complied with all commands, was taken into custody and identified as Clemon Hudson (JT Day 4 p. 32, 143-145).

Police secured a perimeter around the crime scene approximately a mile and a half by a mile wide in order to search for additional suspects (JT Day 4 p. 153). Detective Jeremy Vance spent approximately three and a half hours driving around the perimeter looking for the suspect described by officer Grego-Smith (JT Day 4 p. 153).

After being notified of a call concerning a suspicious person in a backyard, Detective Vance came upon Mr. Turner and began to question him (JT Day 4 p. 154-158). Detective Vance noticed Mr. Turner was injured given the blood on his pants (JT Day 4 p. 158). When questioned about the injury, Mr. Turner indicated his leg was caught on a fence at his friend's house (JT Day 4 p. 158). Detective Vance believed the injury was caused by a gunshot wound (JT Day 4 p. 158-159).

Ms. Stephanie Fletcher, a senior crime scene analyst with the Las Vegas Metropolitan Police Department responded to the Oveja Circle residence (JT Day 5 p. 6). Twelve Speer .9 millimeter cartridge casings were recovered from the dining room area (JT Day 5 p. 14). There were three 7.62 rifle cartridge casings located on the backyard patio area (JT Day 5 p. 15). Analysts did not locate any expended shotgun shells or .25 caliber casings (JT Day 5 p. 16). Analysts located numerous shotgun pellets in the living room of the residence as well as pieces of a shotgun round located on top of the front window sill (JT Day 5 p. 32-34). Firearms recovered from the scene included a SKS rifle, a Mossberg 12-gauge shotgun and a Beretta .25 caliber handgun (JT Day 4 p. 78, 81).

Ms. Gayle Johnson, a forensic scientist with the Las Vegas Metropolitan Police Department, conducted latent print testing on several items (JT Day 6 p. 17-25). With regard to an AK-47 firearm, the analyst was unable to develop any suitable prints for testing (JT Day 6 p. 20). Two latent prints were recovered from a shotgun, both belonging to Mr. Hudson and located in the metal area above the trigger (JT Day 6 p. 23-24). DNA testing was conducted with regard to the firearms (JT Day 6 p. 29-48). No conclusions could be made about the DNA located on the rifle, the Mossberg shotgun or the Beretta handgun (JT Day 6 p. 35, 39-41).

A Toyota Camry located outside the residence was registered to Mr. Hudson's mother (JT Day 7 p. 50-51).

When analysts recovered the shotgun the State alleged Mr. Hudson to be holding, it was inoperable due to damage sustained (JT Day 7 p. 118-122). A fragment was removed from the shotgun, but analysts were unable to determine what weapon the fragment originated (JT Day 7 p. 136).

In September of 2015, Mr. Craig Jex was employed as a Detective with the Las Vegas Metropolitan Police Department (JT Day 6 p. 58). Mr. Jex documented Officer Robertson's injuries at the hospital (JT Day 6 p. 60-61). While at the hospital, Mr. Jex came into contact with Mr. Hudson and conducted an interview with him (JT Day 6 p. 61).

Mr. Jex testified Mr. Hudson relayed to him that he went to the house to obtain marijuana that night and no one was supposed to be home (JT Day 6 p. 65, 86). Mr. Hudson told him there was only one other person involved and the plan was to break in the back window of the residence (JT Day 6 p. 66-67, 74). When Mr. Jex questioned Mr. Hudson as to whether he brought and carried the shotgun, he indicated he did (JT Day 6 p. 66-67, 76-78). Mr. Hudson informed Mr. Jex that there was an SKS rifle and a shotgun in the backyard (JT Day 6 p. 76). Mr. Hudson also told Mr. Jex that he had also brought a small firearm in his shoe (JT Day 6 p. 78-80).

During the interview, Mr. Hudson told Mr. Jex he was not sure if he fired the shotgun, but if he did, he fired once (JT Day 6 p. 77, 88). Mr. Hudson indicated he shot towards the bottom of the window (JT Day 6 p. 78). It was Mr. Hudson's belief that the officers started shooting first (JT Day 6 p. 90).

Detective Eduardo Pazos conducted an interview with Mr. Turner (JT Day 6 p. 96-97). Mr. Turner told police that "someone came to pick him up" around midnight and it was just the two of them in the car (JT Day 6 p. 101, 104). When Mr. Turner got in the car, he saw two guns in the back (JT Day 6 p. 103-104). Mr. Turner indicated the SKS rifle belonged to his uncle (JT Day 6 p. 102, 105).

Mr. Turner explained to Detective Pazos that when he entered the backyard of the residence, shots were fired (JT Day 6 p. 105). When the shots were fired, he hopped over the wall to the back of the house (JT Day 6 p. 105). Mr. Turner told Detective Pazos that after he hopped over the wall, he sat on a couch he found in the neighborhood for a while and then began walking to a friend's house (JT Day 6 p. 105). As he was walking to a friend's house, he encountered police (JT Day 6 p. 105).

Mr. Turner told Detective Pazos he had been in the house before and knew who lived there (JT Day 6 p. 108). Mr. Turner admitted he was there to steal weed and if there was any money in the house, he would have taken that as well (JT Day 6 p. 108-110). Mr. Turner denied having a gun in his hand during the incident or firing a weapon (JT Day 6 p. 116-117). Mr. Turner indicated that when the shooting began, he ran away (JT Day 6 p. 112-113, 116).

CONCLUSIONS OF LAW

Mr. Hudson was wrongfully deprived of his right under established law to a direct appeal and is entitled to relief pursuant to Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) and NRAP 4(c).

In this case, Mr. Hudson was deprived of his right to a direct appeal based upon

counsel's rendering of ineffective assistance. As such, Mr. Hudson is permitted to file an untimely notice of appeal. Here, given the serious nature of the offenses for which he has been convicted and the lengthy sentence received, Mr. Hudson naturally desired to appeal the instant conviction. Due to counsel's failure, Mr. Hudson never received such an opportunity. In circumstances such as this, the Nevada Supreme Court has held the defendant must be granted an untimely direct appeal. This Court agrees and hereby directs the district court clerk to prepare and file, within 7 days of the entry of the instant order, a Notice of Appeal from the judgment of conviction and sentence on the petitioner's behalf in substantially the form provided in Form 1 in the Appendix of Forms in accordance with NRAP 4(c).

A. STATE AND FEDERAL AUTHORITY PERMITS AN UNTIMELY DIRECT APPEAL UNDER THE CIRCUMSTANCES.

In *Lozada v. State,* 110 Nev. 349, 354, 871 P.2d 944 (1994), the Nevada Supreme Court explained, "an attorney has a duty to perfect an appeal when a convicted defendant expresses a desire to appeal or indicates dissatisfaction with a conviction.". If counsel fails to file an appeal after a convicted defendant makes a timely request, the defendant was entitled to the *Lozada* remedy, which consisted of filing a post-conviction petition with assistance of counsel in which the actual appellate claims could be raised. *Id.* Such a claim did not require any showing of merit as to the issues sought to be raised. As such, it is sufficient to receive the relief contemplated by *Lozada* if a petition shows that the defendant was deprived of his right to a direct appeal without his consent. *Id.* at 357.

The remedy contemplated by *Lozada* has been largely subsumed by revisions to the Nevada Rules of Appellate Procedure (NRAP), though the basis for obtaining relief remains generally the same. Under NRAP 4(c), an untimely notice of appeal may be filed if:

> A) A post-conviction petition for a writ of habeas corpus has been timely and properly filed in accordance with the provisions of NRSs 34.720 to 34.830, asserting a viable claim that the petitioner was unlawfully deprived of the right to a timely direct appeal from a judgment of conviction and sentence; and
>
> B) The district court in which the petition is considered enters a written order containing:
> i) specific findings of fact and conclusions of law finding that the petitioner has established a valid appeal-deprivation claim and is entitled to a direct appeal with the assistance of appointed or retained appellate counsel;
> ii) if the petitioner is indigent, directions for the appointment of appellate counsel, other than counsel for the defense in the proceedings leading to the conviction, to represent the petitioner in the direct appeal from the conviction and sentence; and
> iii) directions to the district court clerk to prepare and file – within 7 days of the entry of the district court's order – a notice of appeal from the judgment of conviction and sentence on the petitioner's behalf in substantially the form provided in Form 1 in the Appendix of Forms.

The Nevada Supreme Court has been clear – counsel has a constitutional duty to file a direct appeal in two circumstances: when requested to do so and when the defendant expresses dissatisfaction with his conviction, and that the failure to do so in those circumstances is deficient for purposes of proving ineffective assistance of counsel. *Lozada*, 110 Nev. at 354–57; *Davis v. State,* 115 Nev. 17, 20, 974 P.2d 658, 660 (1999) ("[I]f the client does express a desire to appeal, counsel is obligated to file the notice of appeal on the client's behalf.")

To prove ineffective assistance of counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 Led.2d 674 (1984); *Warden v. Lyons*, 100 Nev 430, 432–33, 683 P.2d 504, 505 (1984). Generally, both components of the inquiry must be shown, but in some instances, such as when the petitioner has been deprived of the right to appeal due to counsel's deficient performance, the second

component – prejudice – may be presumed. *See Lozada*, 110 Nev. at 356–57. *See also Rodriguez v. United States*, 395 U.S. 327, 328, 23 L. Ed 2d 340, 89 S. T. 1715 (1969) (presuming prejudice when counsel failed to file a notice of appeal against his client's wishes). The petitioner must demonstrate the underlying facts by a preponderance of the evidence. *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). *See also Toston v. State*, 127 Nev. 971, 976, 267 P.3d 795 (2011).

In *Toston*, the Nevada Supreme Court provided guidance as to the meaning of "when the defendant expresses dissatisfaction with his conviction". *See generally*, 127 Nev. at 978–79. The Nevada Supreme Court explained:

> [T]rial counsel has a duty to file a direct appeal when the client's desire to challenge the conviction or sentence can be reasonably inferred from the totality of the circumstances, focusing on the information that counsel new or should have known at the time. *Cf Flores v. Ortega*, 528 U.S. at 480 (discussing circumstances in which counsel must consult with a client regarding an appeal). In determining whether counsel knew or should have known that his client wanted to appeal the conviction, the courts may consider whether the conviction arose from a jury trial or a guilty plea, "both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." *Toston*, 127 Nev. at 979 (footnotes omitted).

Thus, when a defendant has been convicted pursuant to a jury verdict, counsel has a constitutional duty to inform the client of the right to appeal. *Lozada* 110 Nev. at 356. Counsel's failure to do so is deficient performance for purposes of proving an ineffective assistance of counsel claim. *Roe v. Flores-Ortega*, 528 U.S. 470, 477–81, 120 S. Ct. 1029 (2000).

B. MR. HUDSON WAS DEPRIVED OF HIS RIGHT TO A DIRECT APPEAL AND IS HEREBY PERMITTED AN OPPORTUNITY FOR AN UNIMELY DIRECT APPEAL.

In order to prevail, Mr. Hudson must demonstrate by a preponderance of the evidence that 1) he filed a timely post-conviction Petition, and 2) his attorney had a duty to perfect an appeal because Mr. Hudson either expressed a desire to appeal, indicated dissatisfaction with his conviction, or his desire to challenge the conviction or sentence

can be reasonably inferred from the totality of the circumstances. *See Lozada v. State,* 110 Nev. at 354–57; *Toston*, 127 Nev. at 976–79. Mr. Hudson need not demonstrate prejudice as it is presumed. *Lozada*, 110 Nev. at 356–57. Mr. Hudson has demonstrated as such.

First, in this case, there is no question that Mr. Hudson filed a timely post-conviction petition. Mr. Hudson's Judgment of Conviction was filed on July 2, 2018. On October 25, 2018, Mr. Hudson filed a timely Petition noting he received ineffective assistance of counsel for counsel's failure to preserve his appellate rights (Petition, p. 3). Supplemental briefing was thereafter permitted. Thus, Mr. Hudson can demonstrate he began a timely post-conviction proceeding.

Next, Mr. Hudson can demonstrate that he was deprived of a direct appeal due to ineffective assistance of counsel not only because he expressed a desire that his direct appeal be perfected, but also because his desire to challenge the conviction can be reasonably inferred from the totality of the circumstances. This Court reviewed a declaration from Mr. Hudson confirming he expressed his desire to counsel that an appeal be filed on his behalf (Supplemental Brief, Exhibit A). Further, the nature and severity of the offenses, including the fact that Mr. Hudson proceeded to trial, demonstrated his desire to continue to challenge the conviction.

Additionally, counsel's own statements demonstrate not only Mr. Hudson's desire for an appeal, but counsel's awareness that an appeal was to be filed. During Mr. Hudson's sentencing on June 21, 2018, counsel stated: "Yes, Judge, and as I stated, I advised him, **due to the mandatory appeal**, to not give a statement today." (emphasis added) (Reporter's Transcript of Sentencing, p. 14) (Supplemental Brief, Exhibit B). Counsel continued, "I believe we are here because Mr. Hudson got some very bad advice, and I don't believe that we should be here at a sentencing following a jury verdict, but hopefully **that will be addressed on appeal**." (Emphasis added) (Reporter's Transcript of

Sentencing, p. 14) (Exhibit B).

Unfortunately, counsel failed to preserve his direct appeal. The totality of the circumstances demonstrates Mr. Hudson's desire for preservation of his direct appeal and such a fact is obvious from a plain review of the record. In this case, Mr. Hudson received ineffective assistance of counsel concerning his right to file an appeal because a review of the record reveals that counsel was required to file the notice of appeal and failed to do so. In such a case, prejudice is presumed. This Court therefore grants the petition with regard to the failure to file a direct appeal.

Having carefully considered the record, pleadings on file herein, and evidence adduced at the Evidentiary Hearing, this Court is convinced that based upon the above Mr. Hudson has demonstrated he was deprived of his right to a direct appeal.

With regard to all other issues raised: alleged failure to object to jury instruction 38 (a flight instruction), alleged failure to object to jury instruction numbers 40 and 50, and alleged cumulative error, they are denied.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, granted in part and denied in part as described within this Order.

IT IS FURTHER ORDERED that the district court clerk is to prepare and file, within 7 days of the entry of the instant order, a Notice of Appeal from the judgment of conviction and sentence on the petitioner's behalf in substantially the form provided in Form 1 in the Appendix of Forms in accordance with NRAP 4(c).

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IT IS FURTHER ORDERED that all other issues raised: alleged failure to object to jury instruction 38 (a flight instruction), alleged failure to object to jury instruction numbers 40 and 50, and alleged cumulative error, they are denied.

DATED this _____ day of _____, 2020.

Dated this 16th day of December, 2020

DISTRICT JUDGE
DCB 729 0934 B825
David M Jones
District Court Judge

SUBMITTED BY:

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DISTRICT COURT
CLARK COUNTY, NEVADA

State Of Nevada, Plaintiff(s)	CASE NO: A-18-783635-W
vs.	DEPT. NO. Department 29
Clemon Hudson, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 12/16/2020

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