

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

Electronically Filed
Jan 04 2022 10:58 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

STATE OF NEVADA,

PLAINTIFF,

vs.

ANTHONY CLARKE,

DEFENDANT.

Sup. Ct. Case No. 83839

Case No. CR19-1352

Dept. 15

RECORD ON APPEAL

VOLUME 3 OF 6

DOCUMENTS

APPELLANT

Anthony Clarke

NNCC

PO Box 7000

Carson City, NV

RESPONDENT

Washoe County District

Attorney's Office

Jennifer P. Noble, Esq. #9446

P.O. Box 30083

Reno, Nevada 89502-3083

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2 Code: 3698
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 STATE OF NEVADA,

10 Plaintiff(s),

Case No. CR19-1352

11 vs

Dept. No. 15

12 ANTHONY CLARKE
13

14 Defendant(s).
15 _____ /

16 PRETRIAL SERVICES COURT NOTE – PRIOR SUPERVISION
17

18
19 This document does not contain the Social Security Number of any person.
20
21

22 Signature: 
23 _____

24 Print: Carlos A. Mendoza
25 _____
26
27
28

PRIOR SUPERVISION FOR THIS CASESupervised by: L. PITT*(Defendant did NOT comply on this case.)*☐ **OUT OF CUSTODY –**☐ ACTIVE WARRANT (*this case*)☐ REVOKED & POSTED BOND (*this case*)☐ No Supervision ☐ DAS supervision☒ **IN CUSTODY ON** (*check all that apply*):☐ **Revocation** (*this case*)Current Financial Bail \$ _____ ☐ Cash Only ☐ NO Bail Hold☐ Supervision Ordered: ☐ None ☐ Pretrial Services ☐ DAS☐ Specific Conditions of Release: _____☒ **Warrant** (*this case*)☒ FTA ☐ Non-ComplianceCurrent Financial Bail \$ 10,000.00 ☐ Cash Only ☐ NO Bail Hold☒ Supervision Ordered: ☐ None ☒ Pretrial Services ☐ DAS☐ Specific Conditions of Release: _____☐ **New / Unrelated Cases**

* Charge(s): _____ Top Charge: _____

☐ Local Court: _____ ☐ Outside Jurisdiction (Extraditable): _____☐ Pre-adjudication ☐ Post-adjudication Must Release Date: _____Bail \$ _____ ☐ Cash Only ☐ NO Bail Hold

* Charge(s): _____ Top Charge: _____

☐ Local Court: _____ ☐ Outside Jurisdiction (Extraditable): _____☐ Pre-adjudication ☐ Post-adjudication Must Release Date: _____Bail \$ _____ ☐ Cash Only ☐ NO Bail Hold**REASON DEFENDANT WAS NOT COMPLIANT FOR THIS CASE:**☒ FTA'd Court: RJC Date: 03/25/19☐ Rearrested Date: _____ Charge Level: _____ Bail: \$ _____☐ New Charge(s): _____☐ Revoked Date: _____☐ Missed check-ins/tests ☐ Positive test(s) ☐ Violation of NCO**ADDITIONAL COURT NOTES:**

Defendant was previously on supervision for this case and failed to appear in the lower court on 03/25/19. A bench warrant was issued for \$10,000.00 BB with Pretrial Supervision if bail is posted. Defendant was arrested on the warrant on 07/11/19 and remains in custody at the WCJ.

Return Of NEF**Recipients**

MARIAH - Notification received on 2019-11-21 15:03:20.969.
NORTHINGTON,
ESQ.
LORENA VALENCIA, - Notification received on 2019-11-21 15:03:20.922.
PD
DIV. OF PAROLE & - Notification received on 2019-11-21 15:03:20.906.
PROBATION

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

11-21-2019:15:01:35

Clerk Accepted:

11-21-2019:15:02:50

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Prior Supervision for this Case

Filed By:

Pretrial Off. CMendoza

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

MARIAH NORTHINGTON, ESQ. for STATE OF
NEVADA

LORENA VALENCIA, PD for ANTHONY
CLARKE

DIV. OF PAROLE & PROBATION

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

1 **CODE: 2528**
2
3
4
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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **STATE OF NEVADA,**

10 **Plaintiff,**

Case No. CR19-1352

11 **vs.**

12 **ANTONY CLARKE,**

Dept. No. 15

13 **Defendant.**
14 _____/

15 **NOTICE OF DOCUMENT RECEIVED BUT NOT CONSIDERED BY THE COURT**
16

17 Take notice that the attached document has been received unsolicited by the Court.
18 The Court has not reviewed the document. Further, the Court will not review the
19 document absent an affirmative request to do so from a party.

20 ///

21 ///

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26 This document was considered by the Court only if initialed and dated by the Judge
27 below.

28 _____
Date

Judge's Initials

DC-09900089193-722
CR19-1352 ANTHONY CLARKE (D 27 Pages)
STATE VS. ANTHONY CLARKE
District Court 11/21/2019 12:37 PM
2645
Washoe County

FILED

2019 NOV 21 PM 12:37

JACQUELINE
CLERK
BY: [Signature]

1. Anthony Clarke #1910622

2. Washoe County Jail

3. Reno NV 89512

4. Defendant In Pro se:

5.
6. IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7. IN AND FOR THE COUNTY OF WASHOE

8. THE STATE OF NEVADA,

9. Plaintiff,

CASE No. CR19-1352

10. v.

DEPT No. 15

11. Anthony Clarke,

12. Defendant.

13. OPPOSITION TO STATES MOTION OF DEFENDANT'S MOTION TO WITHDRAW PLEA

14. Comes Now, Anthony Clarke, in pro se who moves this Court for an Order granting
15. his request to Withdraw his plea. This Motion is made and based upon the Sixth
16. and Fourteenth Amendment to the United States Constitution, and the Declaration
17. of Anthony Clarke, the attached Points and Authorities, and any oral or documen-
18. tary evidence as may be presented at a hearing on this matter.

19. 1. Background

20. Clarke is charged with the offense of Burglary in violation of NRS 205.060. The
21. State alleges that on March 2, 2019 Clarke entered the Taste of Chicago restaurant
22. with the intent to commit larceny therein after having been convicted on two
23. prior occasions. August 1, 2019 Clarke waived his Preliminary hearing on
24. appointed counsel's advice. August 21, 2019 Clarke plead guilty to the offense
25. on the advise of appointed counsel, subjected to an agreement that the State rec-
26. ommended a sentence of 12 to 36 months imprisonment. At his intended sentencing

1 hearing Clarke orally informed this Court he wishes to represent himself. Subsequently,
2 Clarke filed a written Motion stating there is a conflict of interest between him-
3 self and the Washoe County Public Defender's office.

4 And requesting his appointed counsel be released without substitution
5 of new counsel. In addition, during the October 23, 2019, Clarke indicated
6 his intent to seek the withdrawal of his plea and if granted,
7 proceed to trial.

8 In the Young hearing October 23, 2019, Clarke alleged insufficient
9 performance by his assigned Public Defender and alleged he was misled
10 by counsel at the Justice Court Stage of proceedings, which led him waiving
11 his Preliminary hearing.
12

13 This Court held a Faretta canvas. Subsequently, Clarke's Motion for Self-
14 Representation was granted. And this Court appointed standby counsel.
15 During the hearing Clarke indicated his preference that standby counsel
16 not be a member of Washoe County Public Defender's office.
17 Subsequently, Clarke request for substitution of standby counsel was
18 denied. Washoe County Public Defender's office was appointed.
19

GROUND ONE

PETITIONER ALLEGES HE WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AS
"GUARANTEES" BY THE UNITED STATES CONSTITUTION SIXTH AND FOURTEENTH
AMENDMENTS.

Introduction:

The Sixth Amendment provides that a criminal defendant shall have the right
to "the Assistance of Counsel for his defense." This right has been accorded, we ^①
have said, "not for its own sake, but because of the effect it has on the ability
of the accused to receive a fair trial." United States v. Cronin, 466 U.S. 648, 658
(1984). It follows from this that assistance which is ineffective in pres-
erving fairness does not meet the constitutional mandate, see Strickland v.
Washington, 466 U.S. 668, 685-686 (1984); and it also follows that defects
in assistance that have no probable effect upon the trial's outcome do not
establish a constitutional violation. As a general matter, a defendant
alleging a Sixth Amendment violation must demonstrate "a reasonable
probability that but for counsel's unprofessional errors, the result of
the proceedings would have been different." *Id.*, at 694.

There is an exception to this general rule. We have spared the defendant the
need of showing probable effect upon the outcome, and have simply presumed
such effect, where assistance of counsel has been denied entirely or during
a critical stage of the proceeding. When that has occurred, the likelihood
that the verdict is unreliable is so high that a case-by-case inquiry is un-
necessary. See Cronin, *supra*, at 658-659; see also Geders v. United States,
425 U.S. 80, 91 (1976); Gideon v. Wainwright, 372 U.S. 335, 344-345 (1963). But
only in "circumstances of that magnitude" do we forgo individual inquiry
into whether counsel's inadequate performance undermined the

^① Citing Mickens v. Taylor, Warden, 535 U.S. 162, 152 L.Ed.2d 291 (2002).

1. reliability of the verdict, Cronic, supra, at 659, n. 26. We have held in several
 2. cases that "circumstances of that magnitude" may also arise when the
 3. defendant's attorney actively represented conflicting interest.

4. II Statement of Law and Argument

5. Mr. Jarrod Hickman, was appointed counsel August 2, 2019. He reviewed Clarke's
 6. case files and conducted what is called a Mandatory Status Conference ("MSC")
 7. without Clarke consent. As of this date, Clarke has not spoke to Mr. Hickman, about
 8. this case.

9. Appointed counsel Ms. Bertschy, contacted Clarke for the first and only time on
 10. July 30, 2019. during an I-Web visit at WCT. The line-up was discussed in some
 11. detail. Clarke and appointed counsel agreed a line-up will be conducted prior to
 12. the Preliminary hearing on 8-1-19. Ms. Bertschy, was reading from another PD's
 13. computer screen meaning it was "common Knowledge", to support Clarke's
 14. contention that he was promised a line-up prior to the scheduled Preliminary
 15. on 8-1-19. However, this exculpatory evidence is being withheld from Clarke by
 16. both Washoe County Public Defender's office and the Washoe County District
 17. attorney's office.

18. On July 31, 2019, Ms. Bertschy, visited Clarke at WCT wherein he signed a document
 19. entitled: Notice of Waiver of Appearance in Preliminary hearing with the full
 20. understanding that a line-up would be held prior to Preliminary hearing.

21. August 1st 2019, Clarke was transported to the Reno Justice Court. Placed in a
 22. holding area with other prisoners - Clarke was then directed by Sheriff Deputies
 23. to get on a elevator - leading up stairs to Department #4 were he sat
 24. down. Moments later Ms. Bertschy appeared from the side door leading from
 25. Department #4 and said to Clarke "you were identified in a line-up and
 26. the witnesses are hear. Do you want to sign the waiver. Clarke signed —
 27. thinking he was identified in a line-up and prosecution witnesses was present.
 28. Clarke was subjected to undue coercion. See: Doe v. Woodford, 508 F.3d 563, 570/4th cir.
 2007 (Video surveillance from the courtroom back area will show the truth)

Clarke learned later that it was no line-up^① Why would Mr. Clarke waive appearance at Prelim? Because he didn't want to be identified in the courtroom by the witness. August 21, 2019, Clarke entered his plea with newly assigned Public Defender Ms. Valencia. Clarke explained how he was treated by Ms. Bertschy. Ms. Valencia said "I know her she is a good attorney she would not do that." Clarke also asked about the prosecution witness who appeared at Prelim on 8-1-19. Clarke was told that was not available You would have to ask the state referring to Ms. M. Northington. As of this date, Clarke has no idea who if anyone, was at the Preliminary hearing as a prosecution witness. Clarke filed Discovery requesting this very information which is filed with this Court. The States response is also filed with this Court. It appears the state is over looking its obligations under NRS 174.235 and Brady.

Oct 7, 2019 Ms. Pusich was representing Clarke. Clarke inquired about the issues raised with counsel Valencia. Ms. Pusich became upset and said: Maybe you should represent yourself and talk to the Judge yourself. Clarke responded by saying I have no problem with that, I don't need you or your office to send me to prison I can do that.

Nov 1, 2019, Ms. Valencia explained that she did not review his case files Mr. Hickman did. Nonetheless, during the Oct 23, 2019, hearing Appointed counsel explained to this Court that it was no "exculpatory evidence" in Clarke's discovery which was provided to him 71 days after he signed the waiver in Justice Court. How can she know if she didn't review the files? See Court Minutes. Oct 23.

Nevada Rules of Professional Conduct 3.3, entitled "candor Towards towards the Tribunal" provides that "a lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer... Under Rule 3.3, the assigned defense counsel must not knowingly mislead the Court on legal or factual issue ...

Clarke allege that it is a conflict of interest between himself and the entire Public Defender's office which affected counsels performance.

① Appointed Standby Counsel advised this Court that it was no line-up and Clarke was advised. See October 23, 2019 Court's Minutes. The truth is he was not advised. Why would he have to be advised if he was not Promised a line-up prior to preliminary?

1 This is an "Actual Conflict" for Sixth Amendment purposes. See Covler v. Sullivan,
2 446 U.S. 335 (1980).

3 Amiel v. United States, 209 F.3d 195, 199 (2d Cir. 2000)

4 ("To show a lapse in representation, a defendant need not demon -

5 strate prejudice - that the outcome of the proceedings would

6 have different but for the conflict - but only that some plausible

7 alternative defense strategy or tactic might have been pursued

8 but was not and that the alternative defense was in conflict with or not

9 undertaken due to the attorney's other loyalties or interests.").

10 In this case Clarke alleges that appointed counsel failed to subject the
11 prosecution's case to meaningful adversarial testing.

12 (See United States v. Cronig, 466 U.S. 648-59, 80 L.ed.2d 657 (1984))

13 (counsel's absence at critical stage of proceedings state Sixth Amend -
14 ment claim; remanding for a hearing).

15 Olden v. United States 224 F.3d 561, 568-70 (6th Cir. 2000).

16 (constructive denial of counsel where attorney - client relationship

17 was so poor, counsel was unable to prepare defense for trial or

18 penalty phase). Daniel v. Woodford, 428 F.3d 1181 (9th Cir. 2005).

20 II.

21 DUE PROCESS IS VIOLATED PURSUANT TO THE UNITED STATES

22 CONSTITUTION FOURTEENTH AMENDMENT WHICH IS GUARA -

23 NTEED, DEFENDANT DID NOT VOLUNTARILY, KNOWINGLY AND

24 INTELLIGENTLY ENTER HIS GUILTY PLEA, AND THERE IS SUB -

25 STANTIAL FAIR AND JUST REASON TO ALLOW WITHDRAWAL OF HIS

26 GUILTY PLEA

1. INTRODUCTION:

2 It is clear from the State Opposition Motion they willfully Misrepresent
3 fact in this case. The State contend that Clarke on August 1, 2019,
4 was transported to the hallway next to the courtroom, in the Reno
5 Justice Court and was told by his attorney that he was identified
6 in that hallway in a line up. (see p. 9 Opps Mot. lines 21-23).

7 Clarke's Declaration which is attached to his Motion to withdraw
8 Plea is clear. Clarke did not declare the above, as claimed by the
9 State.

10 As to certain irregularities noted in the States Opposition Motion
11 Yes, Clarke made the mistake by using the word hallway posed
12 to "Sally Port". The facts are still the same. Clarke was misled by
13 counsel in the "Sally Port" leading to Department #4 at the Reno
14 Justice Court on August 1, 2019. The only Fabrication hear is the
15 State contention. This constroversy can be resolved by viewing
16 surveillance footage in the "Sally Port" leading to Dept # 4
17 at the RJC at approx 9:00 am or conduct a evidentiary
18 hearing wherein these individuals have to swear under penalty
19 of perjury.

20 The State asserts that it is unsure why a line up would had been
21 promised or even requested. First of all if the attorney did not
22 want to conduct a line up that should had been made clear from
23 the start. Second, since appointed counsel had NO DEFENSE, Clarke
24 decided to request a line up. Perhaps the passage of time would
25 increase Clarke not being identified in Preliminary hearing.
26

1 As to Clarke's Declaration attached to his Motion to Withdraw Plea this was
2 after reviewing Discovery on October 8, 2019.

3 I was under the false impression appointed counsel was on a Defense
4 team now in retrospect the Promise of a line up was only a pretense
5 to subject him to undue coercion. The PD and DA's office used Clarke's
6 Notice of Waiver of Appearance for Preliminary hearing to ensure he would
7 not have the physical ability to see who would be present at the
8 Preliminary hearing. The line-up pretense was used to claim he was
9 identified in a line up when in truth, it was No line up. But what
10 was not anticipated is that Clarke would go Pro se, and start asking
11 hard question about his representation. The plan is not working
12 out so well for them now. What happen to Fundamental Fairness in
13 these criminal proceedings?
14

15 In any event appointed counsel agreed to the line up and so did the prior
16 Public Defender or it would not be on the computer Ms. Bertschy
17 was reading from during the first and only I-Web visit with Clarke at
18 WCS on July 30, 2019. The promised line up didn't happen based on a conflict
19 of interest and ineffective assistance of counsel.

20 The State relied upon Molina v. State, 120 Nev. 185, 87 P.3d 533 (2004). This
21 case is dissembler to Clarke case.

22 In Clarke's case, Appointed counsel ^{Did not} discussed any evidence at any point
23 with Clarke. According to Ms. Valencia, she did not review Clarke's case
24 files Mr. Hickman did - whom Clarke has never spoke to or seen,

25 Appointed counsel never discussed any options with Clarke only prison time,
26 Appointed counsel did not have a defense,
27
28

1. Appointed counsel never went over the guilty plea Memorandum with
 2. Clarke or its consequences prior to entering his plea.
 3. Proof of this fact can be certified through video surveillance in the
 4. Second Judicial District Court. Department 15 August 21, 2019 at
 5. approx 9:00 am. The then appointed counsel Ms. Valencia for the
 6. first, and last time, handed Clarke the Guilty Plea Memorandum;
 7. it was handed back through a lady Bailiff minutes before Clarke
 8. before Clarke entered his plea. As such Clarke's plea was not Knowing,
 9. voluntary and intelligent. ①

11. As to the State's assertion that Clarke waived his Preliminary hearing
 12. on August 1, 2019 with the understanding that he would enter a guilty
 13. plea to the charge of Burglary... At that time the Defendant had the
 14. video surveillance from the restaurant and made the decision to
 15. accept plea negotiation. This is pure conjecture. Why? It is conclusive
 16. evidence Clarke did not receive Discovery until October 8, 2019.
 17. See Court's Minutes of Oct. 23, 2019 1:00 p.m. Also see Exhibit A attached.
 18. During the canvass Clarke was under Duress. His plea was not Knowing,
 19. voluntary and intelligent.

21. The State further assumed there is nothing in the record, or common
 22. knowledge, to support the Defendant's contention that he was promised
 23. a line up... and was told that said line up occurred. And there
 24. is nothing in the record to support his assertion that an alleged
 25. line up is what caused him to waive preliminary hearing. How does
 26. the State know this?

① Boykin v. Alabama, 395 U.S. 238, 23 L.Ed. 2d 274 (1969).

1 if there is no common knowledge to support Clarke's contention. Why
 2 then was appointed counsel Ms. Bertschy reading computer notes from
 3 another Public Defenders computer on July 30, 2019 discussing a line
 4 up with Clarke.? (cf: I-Web dated July 30, 2019, at Washoe County Jail).^①

5 Clarke alleges that the Deputy District Attorney Mariah Northington and
 6 prior appointed Public Defender Ms. Bertschy, conspired to withhold this
 7 exculpatory evidence from Clarke as a matter of custom and habit.

8 Clarke has set out reasonable, credible and adequate grounds to illustrate
 9 that the performance of his assigned attorney was ineffective assistance and
 10 actively representing conflicting interest under Taylor and Sullivan.

13 GROUND III

14 CLARKE'S CLAIM OF FACTUAL INNOCENCE IS SUPPORTED BY THE FACTS

15 Introduction :

16 The Nevada Supreme Court has established that withdrawal of a
 17 guilty plea may be warranted when there is a "credible claim of
 18 factual innocence and [a] lack of prejudice to the State." Mitchell v. State,
 19 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993).

20 In this case, there is credibility to Clarke's contention that he is
 21 factually innocent of Burglary.

22
 23
 24
 25
 26 ^① On July 31, 2019 defense filed a Notice of Waiver of Appearance for Preliminary
 Hearing pursuant to 178.388 and State v. Sargent, 122 Nev. 210, 128 P.3d 1052
 (2006). Why? Why wasn't the reason for the Motion not memorialized
 in any record? Is it possible it is memorialized in the Attorney-Client privilege?

1 Argument:

2 Clarke is charged with the offense of Burglary, in violation of N.R.S. 205.060.
3 The State alleges that on March 2, 2019 Clarke entered the Taste of Chicago rest-
4 aurant with the intent to commit larceny therein after having been convicted
5 of petit larceny on two prior occasions. but evidence ONLY show that he entered
6 the restaurant and that at one point asked a customer if it was open, and
7 when the customer offended him by calling him a "Nigger" he then took the
8 tip jar money out of retaliation.
9

10 Clarke point out the surveillance footage inside the restaurant reveal Clarke
11 waited for the customer to turn her head wherein he reached into the tip jar,
12 obtained the cash and depart the scene.

13 State's Contention that he entered with the intent to commit larceny therein
14 is pure speculation given that he had \$ 377 dollars on his person when entering
15 the restaurant.
16

17 The State claim it is not true that Clarke had \$377 dollars on his person
18 when entering the restaurant. And that after leaving the restaurant with
19 the tip money, the owner of the restaurant, Steve Peto, was able
20 to stop him from getting away until Police arrived. After being
21 detained by Police, a search of Defendant's person found a total
22 of \$35 dollars. the \$35 he stole from the tip jar. Per booking rec-
23 ords, the Defendant had \$0 on his person when he was booked into the
24 Washoe County Jail. Thus, all the facts establish that, contrary to the
25 Defendant's contention, he had no money on him when he entered that
26 restaurant. Further, even if he did, the video surveillance shows the
27
28

1 Defendant walking by the restaurant on the sidewalk, peering through
2 the large windows, where it can clearly be seen there is no worker standing
3 behind the counter and there is a tip jar full of cash. After the Defendant
4 walks in the front door of the restaurant, he walks up to the counter, stands
5 next to the customer, and as soon as the customer turns her head, he
6 reaches in and steals the cash out of the tip jar. This entire series of
7 events; from the moment the Defendant walks into the restaurant until he
8 has the tip money in hand. takes 7 seconds. Although it is possible that
9 the Defendant's statement of events occurred it is not possible, especially
10 given the facts that the Defendant had no money on him when he entered
11 that restaurant.
12

13 (See Opp. Mot to Def's Mot to Withdraw Plea pp. 8, p. 9-1-7.)
14

15 Question: How does the State know that Clarke could see no worker standing
16 behind the counter and there is a tip jar full of cash?

17 In terms of Clarke having \$ 377 dollars on his person when booked into
18 Washoe County Jail. Clarke have conclusive evidence from an employee
19 of the Washoe County Sheriff's Department who can attest to the fact
20 Clarke was book into Washoe County Jail on March 3, 2019, with \$ 377
21 dollars on his person. This is the employees ID# at Washoe County
22 jail W3783. The State has attempted to alter the facts of the case by with-
23 holding Brady Material. The State has submitted to this Court a request to
24 deny Clarke request for discovery; However, the State has not upheld its
25 constitutional obligation under Brady v. Maryland, 373 U.S. 83, 83 S.Ct 1194
26 (1963). States request to deny Clarke's Motion for discovery that request
27 should be denied.
28

1 The State's suppression of the \$ 377 dollars is a violation of the Due Process
2 Clause of the Fourteenth Amendment.

3 See Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963).

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

6
7 One of the essential elements of burglary is the entry of a building
8 with the intent to commit grand or petit larceny, or any felony N.R.S. 205
9 060. Subd. 1 Sheriff. Clark County v. Hicks, 1973 506 P.2d 766. 89 Nev. 78.
10 also see: Sheriff. Clarke Co. Nev. v. Stevens, 1981 630 P.2d 256, 97 Nev. 316.

11 Based on the totality of the circumstances as described above,
12 Clarke has carried his burden to demonstrate that his plea was not
13 voluntarily, intelligently and knowingly entered and that it would
14 be fair and just to allow him to withdraw his plea. There has been
15 a fair and just reason provided that is supported by evidence which
16 would allow the Defendant to withdraw his guilty plea.

17
18 It is alleged that the Washoe County Public Defender's office
19 including standby counsel refuse to reveal attorney work
20 product to resolve the issue about the line-up. This evidence
21 is vital.
22
23
24
25
26

GROUND IV

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

STATEMENT OF LAW AND ARGUMENT

Conclusive evidence show that on March 2, 2019 officer Good's body
came show him removing unknown amount of money from Clarke's
jacket pocket allegedly \$35.00 stolen from tip jar^①. This amount of
money is not shown on Good's body cam.

Conclusive evidence show officer Caprioli reported that on March 2, 2019
he returned three \$5.00 bills, two \$10.00 bills to Ms. Tyrrell, as the
tip jar money. No body cam footage support those bills were re-
moved from Clarke's jacket pocket. See Exh A

What is also not on body cam, is officer McGurk removed a unknow
amount of money from Clarke's right pants pocket joined it with
monies removed from jacket pocket and claimed it was the stolen
tip jar money. The report is distorted.

WITNESS TO THE FIGHT:

"I ran after him outside and others from inside stopped him."
(See Sheri Martinovich statement)

This is in conflict with Steve Peto statement. The fact is, a employee
of his, physically confronted Clarke beat and robbed him - then ran
in to Mr. Peto's restaurant when RPD arrived. Martinovich, Peto and
Tyrrell witnessed the fight, but worked in concert to suppress it.

Conclusive evidence show a call was made reporting a fight. Witness
reports reveal the fight wasnt between Clarke and Peto. It is safe to
deduce another person was involved other than Peto grabbing Clarke
as reported in Peto's witness statement and Police report.

① How do You know how much money was in the tip jar? What happen to dollar bills?

1. Restaurant surveillance: should show Peto, Martinorch and the unknown
 2. employee coming and going the night (3-2-19) Clarke was arrested.
 3. Why? Ms. Tyrell stated:

4. ... The lady customer (Martinorch) went out
 5. the door yelling at him (Clarke) to give my
 6. money back. I told my boss (Peto) and he also
 7. went outside... (Cf:at Tyrell statement).

8. Clarke gave the money back to Peto who accepted it but failed to report
 9. this to RPD and allowed his employee to beat and rob Clarke then run in
 10. the restaurant when RPD arrived. Again Ms. Tyrell statement was sanitized.
 11. The police report read that Clarke was being yelled at for taking the money,
 12. the same was done with the PSI. Unfortunately, this exculpatory evidence
 13. will not be presented to a jury. Why? "Clarke was not allowed to view all
 14. restaurant surveillance or body cam evidence due to time limits at WDJ.
 15. (Cf: with Investigator for PD's office iweb Oct 8, 2019)

16. ONE WITNESS STATED SHE SAW CLARKE LEAVE THE Restaurant:

17. ... I saw the male (Clarke) quickly leave out the front"...
 18. (Cf: statement of Tyrrell).

19. Probable cause declaration, Police report, PSI indicate Clarke "ran
 20. out the door"; Restaurant surveillance show Clarke walking out the door.
 21. Words mean something in burglary prosecution context. "Run Out" suggest
 22. FLIGHT = GUILT. Clarke was in flight from assault and robbery.

23. MODIFICATION OF WITNESS STATEMENT:

24. Probable cause, Police and PSI reports indicate Peto informed officers
 25. that Clarke entered the business took money out of his employees tip
 26. jar, and ran out. "Mr Peto did not give this statement."

27. It appears each individual is obstructing justice & operating under a Code of Silence.

1. Prosecutors have the absolute discretion to refuse to prosecute case if
 2. they suspect police misconduct. Brady v. Maryland, 373 U.S. 83 (1963).
 3. requires the prosecutor to disclose evidence that may exonerate
 4. a defendant and could be used to impeach a government witness,
 5. so a prosecutor has greater motivation to look behind the curtain.
 6. The State has withheld Brady Material that is favorable to the defense.
 7. and material to questions of guilt or to punishment.

8. [Due process] tends to secure equality of law in the sense that it makes
 9. a required minimum of protection for every one's right of life, liberty
 10. and property which the Congress or the legislature may not with-
 11. hold. Our whole system of law is predicated on the general,
 12. fundamental principle of equality of application of the law.
 13. Truax v. Corrigan, 257 U.S. 312, 331 (1921).

14. "Due process of law requires that the proceedings shall be fair...
 15. Snyder v. Massachusetts, 291 U.S. 97, 116, 117 (1934). Buchalter v. New York,
 16. 319 U.S. 427, 429 (1943).
 17. Conversely, "as applied to a criminal trial, denial of due process is the
 18. failure to observe that fundamental fairness essential to the very concept
 19. of justice." In order to declare a denial of it... [the Court] must
 20. find that the absence of that fairness fatally infected the trial; the
 21. acts complained of must be of such quality as necessarily prevents a
 22. fair trial. Lisenba v. California, 314 U.S. 219, 236 (1941).

23. CONCLUSION

24. ① All charges be dismissed with prejudice, ② Order a Evidentiary Hearing or ③
 25. and any other relief this Court deems just and proper. Withdrawal of Plea.
 26. I declare under penalty of perjury that the above is true and correct.

27.

28. DATE: 11.19.19

151 Anthony Clarke
 Anthony Clarke In Prose
 Petitioner

AFFIRMATION NRS 239B.030

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

4. DATE 11.19.19

151. Anthony Clarke

Anthony Clarke #1910622

Petitioner In Pro se

Washo County Jail.

17 of 19

5 of 6

DECLARATION OF ANTHONY CLARKE

1 I, Anthony Clarke, is the Defendant in this action and declare the following:

2 1. On March 2, 2019 I was arrested and charged by Reno Police Department
3 for Burglary.

4 2. In this process Officer Good's body cam show him removing unknown
5 amount of money from my jacket pocket allegedly \$ 35.00 stolen from tip jar.

6 3. That money was not \$ 35.00 from the tip jar. In fact, money removed from
7 my jacket was less than \$10.00.

8 4. The tip jar money I gave back to Peto, when confronted by him and
9 witness Martinovich outside restaurant which was less than \$ 35.00,
10 more like \$ 11.00.

11 5. Officer Caprioli reported March 2, 2019 he returned three \$5.00 bills, two
12 \$10.00 bills to Tyrrell as the stolen tip jar money.

13 6. There is no body cam footage to support those bills were removed from
14 my jacket pocket. Why?

15 7. The fact is that I witnessed arresting officer McGurk remove unknown
16 amount of money from my right front pants pocket join it with money from
17 my jacket then reported on his official report the stolen tip jar money was
18 found in my jacket pocket which was on body cam footage.

19 8. Why was'nt anything recorded on body cam about money being taken
20 out my pants pocket?

21 9. Why didn't the arresting officer report he removed money not only
22 from my jacket pocket, but my pants pocket as well?

23 10. I personally have never witnessed a tip jar only contain \$5.00 bills
24 and \$10.00 bills - with no one dollar bills or coins.

25 11. Witness Katherine reported no money was in the tip jar as she returned
26 to the front counter.

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

28 DATE 11. 19. 19

By Anthony Clarke

PROOF OF SERVICE

I, Anthony Clarke, am the Defendant in this action and that on the 19th day of November, 2019 I served a true copy of attached document, addressed to:

Second Judicial Court

Attention: Clerk

75 Court St

Reno NV 89512

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

Date: 19th day of November, 2019


**RENO POLICE DEPARTMENT
EVIDENCE PHOTO RELEASE CERTIFICATE**
CASE NUMBER: 19-4180
-APPLICABLE USE

- A. Misdemeanor Cases (Simple battery, vandalism, shoplifting, petit larceny, etc.)**
At the victim's discretion, the actual evidence can be retained for future presentation in court or photographs can be taken of the evidence so the items can be returned to their original use. CSI can be used for photographing of evidence, especially in battery cases, in which case the responding officer will complete this form and submit it with the original report. Photographs taken by the victims in misdemeanor shoplifting cases will be retained by the victim for presentation in court. If the victim photographs the evidence the officer need not complete this form.
- B. Felony Crimes Against Property (Grand larceny, destruction of property, burglary, etc.)**
In cases where the actual evidence does not need to be collected for trial or lab analysis, the reporting officer will have CSI respond, photograph the evidence items and release them to the rightful owner. The reporting officer will complete and submit this form with original police report.
- C. Other Felony Cases**
When evidence is to be processed for forensic analysis (i.e. latent prints, tool mark comparison, DNA, etc.) items will be placed into the evidence facility by the reporting officer. This will almost always be the situation in serious cases involving crimes against persons such as murder, robbery, sexual assault, kidnapping, etc. In those cases it will be the responsibility of the Detective Division to review the evidence and arrange for photographing and release of the evidence, if applicable. The assigned detective will complete this form when the property is released. In these types of cases evidence may be photographed and released to the rightful owner at the scene on a case-by-case basis and only if approved by an on-scene Reno Police Department supervisor or detective.

CRIME: BURGLARY
DAS CASE NUMBER:
DEFENDANT: CLARKE, Anthony
VICTIM: Taste of Chicago

TO WASHOE COUNTY DISTRICT ATTORNEY OR OTHER APPROPRIATE PROSECUTOR: PURSUANT TO AND IN COMPLIANCE WITH NRS 52.235, SECTIONS 1, 2 AND 3, THE FOLLOWING PROPERTY HAS BEEN PHOTOGRAPHED AND RELEASED TO THE OWNER OR PERSON ENTITLED TO POSSESS SAID PROPERTY.

PROPERTY: Describe in detail each item by color, size, brand, serial number, etc. If price tags are attached to the property, the price tag showing the retail price should be displayed clearly in the photograph(s) or retained on the original item.

• Three \$5.00 bills

• Two \$10.00 bills

Property photographed by: (Print name & employee no.)
MANNING, ALICE
Date:
3/2/2019
Person Receiving Evidence: (Print name)
Katherine Tynnell
Signature:
Address:
180 E. 1st St., Reno, NV
Phone No:
970-4465
Explain if property released to a person other than victim/owner:
N/A

UNDER PENALTY OF PERJURY, I CERTIFY THAT PHOTOGRAPH(S) OF THIS PROPERTY HAVE BEEN TAKEN AND THE DESCRIPTION OF THE PROPERTY IS ACCURATE.

Releasing Peace Officer/Evidence Custodian: (Print name & employee no.)
Signature:
#14653
Date:
3/2/2019



RENO POLICE DEPARTMENT STATEMENT

FOR POLICE USE ONLY:

CASE NO: 19-4180

TAKEN BY: McGuck 14824

PERSON MAKING STATEMENT

NAME OF PERSON MAKING STATEMENT: <u>Katherine Tyrrell</u>				OTHER NAMES USED:	
RESIDENCE (STREET) ADDRESS:				HOME PHONE:	
CITY: <u>Reno</u>		STATE: <u>NV</u>		ZIP: <u>89501</u>	
RACE: <input checked="" type="checkbox"/> WHITE <input type="checkbox"/> INDIAN <input type="checkbox"/> BLACK <input type="checkbox"/> ASIAN <input type="checkbox"/> OTHER		SEX: <input type="checkbox"/> MALE <input checked="" type="checkbox"/> FEMALE		DATE OF BIRTH: SOCIAL SEC. NO:	
HEIGHT: <u>5' 8"</u>		WEIGHT: <u>140</u>		HAIR: <u>brn</u> EYES: <u>grn</u>	
OCCUPATION AND WHERE EMPLOYED: <u>Taste of Chicago</u>				EMAIL ADDRESS:	
WORK/SCHOOL ADDRESS: <u>180 E. 1st Street</u>				WORK HOURS: <u>10am-9pm</u> DAYS OFF: <u>mon/wed.</u>	
INVOLVEMENT: <input type="checkbox"/> DRIVER <input type="checkbox"/> COMPLAINANT <input type="checkbox"/> PASSENGER <input checked="" type="checkbox"/> VICTIM <input type="checkbox"/> WITNESS		MY LOCATION WHEN EVENT OCCURRED: <u>180 E. 1st St. Reno NV</u>			

WRITTEN STATEMENT

1 I walked from my front register back to the kitchen
 2 to grab my lady customer a plastic spoon. I
 3 came back to my register and on my way
 4 back I saw the male quickly leave out
 5 the front and noticed my money from
 6 my tip jar was gone. I said he just
 7 stole my money!
 8
 9 The lady customer went
 10 out the door yelling at him to give
 11 my money back. I told my boss
 12 and he also went outside.
 13 Few minutes later police
 14 arrived and got ahold of the man
 who took my money.

DATE & TIME OF STATEMENT: <u>3/2/19 9:30 pm</u>	NO PAGES IN STATEMENT: DATE:	SIGNATURE OF PERSON MAKING STATEMENT: <u>Katherine Tyrrell</u>
FOR POLICE USE ONLY: RELS. TO:	DATE:	BY:

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

Printed 2/12/15



RENO POLICE DEPARTMENT STATEMENT

FOR POLICE USE ONLY:

CASE NO: 19-4180TAKEN BY: McGook 14824

PERSON MAKING STATEMENT

NAME OF PERSON MAKING STATEMENT:

Sher Martinovich

OTHER NAMES USED:

RE: _____

CITY:

Reno

STATE:

NV

ZIP:

8951

RACE:

☒ WHITE ☐ INDIAN
☐ BLACK ☐ ASIAN
☐ OTHER

SEX:

☒ MALE
☐ FEMALE

HEIGHT:

WEIGHT:

HAIR:

EYES:

OCCUPATION AND WHERE EMPLOYED:

Store Mgr

WORK/SCHOOL ADDRESS:

WORK HOURS:

DAYS OFF:

INVOLVEMENT:

☐ DRIVER ☐ COMPLAINANT
☐ PASSENGER ☐ VICTIM
☒ WITNESS

MY LOCATION WHEN EVENT OCCURRED:

180 E 1st St Reno

WRITTEN STATEMENT

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

DATE & TIME OF STATEMENT:

3/2/19 9:40pm

NO PAGES IN STATEMENT:

SIGNATURE OF PERSON MAKING STATEMENT:

FOR POLICE USE ONLY: RELY TO:

DATE:

3/2/19

BY:

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

Printed 2/12/15



RENO POLICE DEPARTMENT STATEMENT

FOR POLICE USE ONLY:

CASE NO:

19-4180

TAKEN BY:

McGonk 14824

PERSON MAKING STATEMENT

NAME OF PERSON MAKING STATEMENT: <u>Steve Peto</u>				OTHER NAMES USED:	
RESIDENCE (STREET) ADDRESS:				HOME PHONE:	
CITY: <u>Sparks</u>		STATE: <u>NV</u>		ZIP: <u>89431</u>	
RACE: <input checked="" type="checkbox"/> WHITE <input type="checkbox"/> INDIAN <input type="checkbox"/> BLACK <input type="checkbox"/> ASIAN <input type="checkbox"/> OTHER		SEX: <input checked="" type="checkbox"/> MALE <input type="checkbox"/> FEMALE		DATE OF BIRTH: SOCIAL SEC. NO:	
HEIGHT: <u>6'2</u>		WEIGHT: <u>185</u>		HAIR: <u>BR</u>	
EYES: <u>BR</u>		FAX/CELL/PAGER:		OTHER NO TO CALL:	
OCCUPATION AND WHERE EMPLOYED: <u>owner - Taste of Chicago</u>				EMAIL ADDRESS:	
WORK/SCHOOL ADDRESS: <u>180 E 1st St Reno 89501</u>				WORK HOURS: DAYS OFF: <u>NONE</u>	
INVOLVEMENT: <input type="checkbox"/> DRIVER <input type="checkbox"/> COMPLAINANT <input type="checkbox"/> PASSENGER <input type="checkbox"/> VICTIM <input checked="" type="checkbox"/> WITNESS		MY LOCATION WHEN EVENT OCCURRED: <u>Bar tending the bar @ 180 E 1st St, Reno 89501</u>			

WRITTEN STATEMENT

1 Waitress in dining room yelled "He stole my tips!"
 2 I came from behind bar & ran outside. A
 3 customer who saw the suspect steal the tips
 4 from the tip jar pointed out the suspect. I
 5 ran up to him & confronted him. He tried
 6 to run so I grabbed him & tried to restrain
 7 him. He tried to run again so I grabbed
 8 him & threw him to the ground. He kept
 9 trying to get up & run & I kept grabbing
 10 him & at times throwing him down to
 11 defend myself. He ran North up Lake
 12 Street & the RPD officers showed up.
 13
 14

DATE & TIME OF STATEMENT: <u>3-2-2019 9:43</u>	NO PAGES IN STATEMENT: <u>1</u>	SIGNATURE OF PERSON MAKING STATEMENT: <u>Steve Peto</u>
FOR POLICE USE ONLY: RELS. TO:	DATE:	BY:

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

Printed 2/12/15



WASHOE COUNTY

PUBLIC DEFENDER

350 S. CENTER ST.
RENO, NV 89501-2103
(775) 337-4800
(800) 762-8031
FAX: (775) 337-4856
www.washoecounty.us/defender

October 8, 2019

Anthony Clarke
Washoe County Jail
Reno, NV 89512

Re: Case No. CR19-1352
PD No. 19-2128

FOR HAND DELIVERY

Dear Mr. Clarke:

Your **Sentencing Hearing** is scheduled for **October 14, 2019 at 9:00 AM** in the **Second Judicial District Court, Department 15, Reno, Nevada.**

Please find enclosed a copy of your discovery. Pursuant to law and office policy, the dates of birth, addresses, phone numbers and social security numbers have been blacked out.

Because these reports contain information that may be used against you, please keep them in a secure place. Please do not share them with anyone except your attorney and investigator.

If you have any questions, please contact me at (775) 337-4816.

Sincerely,

LORENA VALENCIA
Deputy Public Defender

:bg
Enc.

PRESENTENCE INVESTIGATION REPORT

Page 11

Anthony Clarke
CC#: CR19-1352**V. OFFENSE SYNOPSIS**

Records provided by the arresting agency and the prosecuting agency reflect that the instant offense occurred substantially as follows:

On March 2, 2019, officers of the Reno Police Department responded to a local restaurant on a report of a fight.

Upon arrival, officers detained Anthony Clarke, the defendant. The owner of the victim restaurant informed officers that the defendant entered the business and took approximately \$35.00 out of his employee's tip jar and ran out. Surveillance footage revealed the defendant waited for a customer to turn her head wherein he reached into the tip jar, obtained the cash and departed the scene.

A witness then ran after the defendant yelling at him for taking the money. A restaurant employee recalled seeing no money in the tip jar as she was returning to the front counter to assist a customer and also saw the defendant quickly leave through the front door.

- A search of the defendant's person yielded the money stolen from the tip jar in the defendant's jacket pocket. The defendant informed officers the money was his and denied taking money out of the tip jar. The recovered cash was returned to the restaurant. A records check revealed that the defendant had two prior convictions for petit larceny.

The defendant was taken to Renown Hospital by REMSA to be medically cleared prior to being transported to jail. The defendant was medically cleared from the Hospital. The defendant was then arrested for and transported to the Washoe County Jail where he was booked accordingly.

VI. DEFENDANT'S STATEMENT

☐ See Attached ☒ Defendant interviewed, no statement submitted ☐ Defendant not interviewed

The Division interviewed the defendant on September 10, 2019 at the Washoe County Jail. He was presented with his Nevada criminal history and agreed with all of its contents. Due to time constraints, the defendant's California history was not presented. When asked about the instant offense, the defendant stated he needed money for drugs and that he was under the influence of alcohol and drugs. He also stated he had been awake for 24 hours at the time of the instant offense. The defendant would like to be sent to a treatment program.

VII. VICTIM INFORMATION/STATEMENT

VC2249686: The money that the defendant stole from the tip jar of this restaurant was recovered and returned. Loss: \$0.00

ORIGINAL

ARREST REPORT AND
DECLARATION OF PROBABLE CAUSE

RPD0048360C

COURT OF JURISDICTION RCCASE # 19-4180

PHOTO # _____

R6666603

PRINT CLEARLY

ARRESTEE'S (Last, First, Middle)
NAME

AKA/ALIAS

RESIDENCE (Street, City, State, Zip)
ADDRESSRENO NV

RACE <input type="checkbox"/> White <input checked="" type="checkbox"/> Black <input type="checkbox"/> Unknown		<input type="checkbox"/> Indian <input type="checkbox"/> Asian	SEX <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	ETHNICITY <input type="checkbox"/> Hispanic <input type="checkbox"/> Non-Hispanic <input type="checkbox"/> Unknown	AGE <u>58</u> " <u>5'10"</u> " <u>180</u>	POB <u>CALIFORNIA</u>	HAIR <u>BLK</u>	EYES <u>BRN</u>
OCCUPATION & BUS ADDRESS <u>UNEMPLOYED</u>						HOME PHONE _____		
DRIV LIC # _____			DRIV LIC STATE _____			ARRESTEE'S VEH <input type="checkbox"/> Stolen <input type="checkbox"/> Left at Scene <input type="checkbox"/> Not Applicable <input type="checkbox"/> Impounded <input type="checkbox"/> Held to Off Per		
NEXT OF KIN _____						SCARS, MARKS, TATTOOS <u>NONE</u>		

ARREST DATE <u>3-2-19</u> TIME <u>2125</u>		LOCATION <u>1ST / LAKE ST. RENO NV</u>	
OFFENSE DATE <u>3-2-19</u> TIME <u>2111</u>		LOCATION <u>1ST / LAKE ST. RENO NV</u>	
NRS/ORD #	NOC	BAIL	WARRANT # & DATE
<u>205.060.2</u>	<u>50424</u>		
CHARGE			F=Felony, G=Gross Misd, M=Misd F-G-M
<u>1 BURGLARY</u>			<u>F</u>
2			
3			
4			
5			
6			
7			
8			

ARRESTING OFFICER(S) AND ID # <u>McGURK 14824</u>	TRANSPORTING OFFICER(S) AND ID # <u>Jameson 14890</u> <u>Callaghan 14788</u>
PRIVATE PERSON MAKING THE ARREST (Citizen Arrest)	REVIEWING SUPERVISOR AND ID # <u>Donner 3270</u>

The undersigned, McGURK, a police officer, of RPD, hereby declares under penalty of perjury, that the above-named defendant has been arrested on probable cause and is subject to detention for the above-listed offense(s). Either personally or upon information and belief this officer learned the following facts and circumstances which support the arrest and detention:

- See Attached -

15 MAR 3 PM 5:42

RELS TO _____ DISSEMINATION IS RESTRICTED TO CRIMINAL JUSTICE AGENCIES ONLY.	DATE _____ BY _____ SECONDARY DISSEMINATION TO NON-CRIMINAL AGENCIES IS PROHIBITED.
---	--

WHEREFORE, Declarant requests that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charge is a felony or gross misdemeanor) or for trial (if charge is a misdemeanor).

Page 1 of 2 DECLARANT B. McGurk I.D.# 14824

REVIEWED FOR PROBABLE CAUSE (PC)
PC FOUND ☐ PC NOT FOUND ☐ DATE _____ TIME _____, MAGISTRATE

DEFENDANT ORDERED RELEASED, DATE _____, MAGISTRATE

DECLARATION SUPPLEMENT

Page: 2 of 2CASE# 19-4180

On 3/2/19 at approximately 2114 hours Officers arrived in the area of 1st/ Lake St on a report of a fight.

Officers Good and Caprioli arrived on scene and detained an Anthony Clarke. Owner of Taste of Chicago, Steve Peto informed Officers that Anthony entered the business, took money out of his employees tip jar, and then ran out.

Anthony is seen on security footage walking eastbound outside of the business, enter and directly go to the front counter. Anthony waits for a customer to turn her head and then reaches his right hand into the tip jar and quickly leaves the business through the same door.

Anthony was chased by Steve who attempted to stop him until Officers arrived on scene. Steve was not able to hold onto Anthony. Anthony did not attempt to hit or make advances on Steve but continued to run away.

RPD records confirmed Anthony had two convictions for petit larceny through a prior history check. Anthony had a prior arrest on 12/26/15 for petit larceny with a conviction on 12/28/15 out of RMC. Anthony also had an arrest on 10/17/15 for petit larceny with a conviction on 10/20/15 out of RMC.

Anthony was arrested for Burglary and transported to WCSO without incident.

WHEREFORE, Declarant requests that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charge is a felony or gross misdemeanor) or for a trial (if charge is a misdemeanor).

REVIEWED FOR PROBABLE CAUSE (PC).
PC FOUND ☐ PC NOT FOUND ☐

DECLARANT B. M. J.I.D.# 14824

DATE: _____, MAGISTRATE PAGE _____ OF _____
DEFENDANT ORDERED RELEASED, DATE: _____, MAGISTRATE

Return Of NEF**Recipients**

MARIAH - Notification received on 2019-11-22 13:03:52.583.
NORTHINGTON,
ESQ.
LORENA VALENCIA, - Notification received on 2019-11-22 13:03:52.552.
PD
DIV. OF PAROLE & - Notification received on 2019-11-22 13:03:52.52.
PROBATION

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

11-22-2019:13:02:48

Clerk Accepted:

11-22-2019:13:03:24

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Not/Doc/Rc'd/Not/Cons/by Crt

Filed By:

Judicial Asst. SParke

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

MARIAH NORTHINGTON, ESQ. for STATE OF
NEVADA

LORENA VALENCIA, PD for ANTHONY
CLARKE

DIV. OF PAROLE & PROBATION

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

1
2
3
4
5
6
7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,**
8 **IN AND FOR THE COUNTY OF WASHOE**
9

10 **STATE OF NEVADA,**

Case No. CR19-1352

11 **Plaintiff,**

12 **v.**

Dept. No. 15

13 **ANTHONY CLARKE,**

14 **Defendant.**
15 _____/

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

18 **SEE ATTACHED**

19 **///**

20 **///**

21 **///**

22 **///**

23 **///**

24 **///**

25 **///**

26 **///**

27 **///**

28 **///**

Anthony Clarke #1910622

Nov 25, 2019

Washoe County Jail

Case No# CR19-1352

Reno, NV 89512

THE HONORABLE DAVID A HARDY

DEPARTMENT XV, WASHOE COUNTY

SECOND JUDICIAL DISTRICT COURT

PSI: 581476

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

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

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

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

CONCLUSION

These should be changed.

Respectfully submitted,
Anthony Clarke

Return Of NEF**Recipients**

MARIAH - Notification received on 2019-11-25 13:40:22.473.
NORTHINGTON,
ESQ.

LORENA VALENCIA, - Notification received on 2019-11-25 13:40:22.427.
PD

DIV. OF PAROLE & - Notification received on 2019-11-25 13:40:22.411.
PROBATION

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

11-25-2019:13:39:05

Clerk Accepted:

11-25-2019:13:39:47

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Other ...

Filed By:

Judicial Asst. SParke

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

MARIAH NORTHINGTON, ESQ. for STATE OF
NEVADA

LORENA VALENCIA, PD for ANTHONY
CLARKE

DIV. OF PAROLE & PROBATION

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

Return Of NEF**Recipients**

MARIAH - Notification received on 2019-11-25 13:43:27.584.
NORTHINGTON,
ESQ.
LORENA VALENCIA, - Notification received on 2019-11-25 13:43:27.225.
PD
DIV. OF PAROLE & - Notification received on 2019-11-25 13:43:27.21.
PROBATION

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

11-25-2019:13:40:13

Clerk Accepted:

11-25-2019:13:42:44

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Confidential Document(s)

Filed By:

Judicial Asst. SParke

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

MARIAH NORTHINGTON, ESQ. for STATE OF
NEVADA

LORENA VALENCIA, PD for ANTHONY
CLARKE

DIV. OF PAROLE & PROBATION

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

1 **CODE 1850**

2

3

4

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6

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

8 **IN AND FOR THE COUNTY OF WASHOE**

9

10 **STATE OF NEVADA,**

11 **Plaintiff,**

Case No. CR19-1352

12 **vs.**

Dept. No. 15

13 **ANTHONY CLARKE,**

14 **Defendant.**

15 _____ /

16 **JUDGMENT OF CONVICTION**

17 The Defendant having entered a plea of guilty and no legal cause being shown as to why

18 judgment should not be pronounced against him, the Court rendered judgment as follows:

19 1. That Anthony Clarke is guilty of the crime of BURGLARY, a violation of NRS

20 205.060, a category B felony, as charged in the Information, and that he be punished by

21 imprisonment in the Nevada Department of Corrections for a minimum term 28 of months to a

22 maximum term of 96 months, with 136 days credit for time served.

23 2. It is further ordered that the Defendant shall pay the statutory \$25.00 administrative

24 assessment fee, \$3.00 as an administrative assessment for obtaining a biological specimen and

25 conducting a genetic marker analysis, and reimburse the County of Washoe the sum \$500.00 for

26 legal representation.

27 ///

28 ///

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

D. A. H. G.
DISTRICT JUDGE

1
2
3
4
5
6
7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,**
8 **IN AND FOR THE COUNTY OF WASHOE**
9

10 **STATE OF NEVADA,**

Case No. CR19-1352

11 **Plaintiff,**

12 **v.**

Dept. No. 15

13 **ANTHONY CLARKE,**

14 **Defendant.**
15 _____/

16 **NOTICE OF APPEAL**
17

18 **SEE ATTACHED**

19 **///**

20 **///**

21 **///**

22 **///**

23 **///**

24 **///**

25 **///**

26 **///**

27 **///**

28 **///**

1. Anthony Clarke, #1910622
2. Washoe County Jail
3. Reno NV 89512

4. In Pro se

5.
6.
7. IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8. IN AND FOR THE COUNTY OF WASHOE

9.
10. STATE OF NEVADA,

11. Plaintiff,

CASE No CR19-1352

12. v.

Dept. No: 15

13.
14. Anthony Clarke,

15. Defendant.

16. NOTICE OF APPEAL

17. The Defendant Anthony Clarke. pleaded guilty in the Second Judicial District
18. Court on August 21, 2019. Sentence was imposed November 25, 2019. Clarke
19. now give Notice of appeal.

20.
21. DATED November 25, 2019

22. 151 Anthony Clarke
23. Anthony Clarke
24. In Pro se

Return Of NEF**Recipients**

MARIAH - Notification received on 2019-11-25 15:47:03.622.
NORTHINGTON,
ESQ.

LORENA VALENCIA, - Notification received on 2019-11-25 15:47:01.516.
PD

DIV. OF PAROLE & - Notification received on 2019-11-25 15:47:00.752.
PROBATION

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

11-25-2019:15:43:15

Clerk Accepted:

11-25-2019:15:45:10

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Judgment of Conviction

Filed By:

Court Clerk ADick

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

MARIAH NORTHINGTON, ESQ. for STATE OF
NEVADA

LORENA VALENCIA, PD for ANTHONY
CLARKE

DIV. OF PAROLE & PROBATION

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CR19-1352
STATE VS. ANTHONY CLARKE (D1 & Pages
District Court 11/25/2019 03:49 PM
Washoe County 3373
nmi nmi

Anthony Clarke #1910622

Washoe County Jail

Reno NV 89512

Defendant In Pro se:

FILED

2019 NOV 25 PM 3:30

JACQUES
CLERK OF COURT
BY 

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

THE STATE OF NEVADA,

Plaintiff,

CASE No CR19-1352

v.

Ded No 15

Anthony Clarke,

Defendant.

DEFENDANT'S WAIVER OF ATTORNEY CLIENT PRIVILEGE

Comes Now Anthony Clarke, acting in Pro se, and hereby give notice to this Court that he waive his Attorney Client Privilege pursuant to NRS 176.165. This Motion is made and based upon the Sixth And Fourteenth Amendments to the United States Constitution, Article 1, Section 8 of the Nevada Constitution, the attached Points and Authorities, and any oral or documentary evidence as maybe presented at a hearing on this matter.

POINTS AND AUTHORITIES1. Summary of Facts

Clarke alleges insufficient Performance by his assigned counsel and alleges that he was misled by counsel at the Justice Court stage of his proceedings, which led to him waiving his preliminary hearing.

1 Sequence of Events:2 DECLARATION OF ANTHONY CLARKE

3 Ms. Bertschy appointed counsel and Clarke came into contact for the first
4 and last time July 30, 2019, during an I-Web visit. We discussed in detail
5 the line up. Ms. Bertschy, advised me she was reading notes about the line up
6 from another attorney. We both agreed the line up and waiver to be present in the
7 Preliminary Hearing was a good ideal.

8 On July 31, 2019, Ms. Bertschy, visited me at the Washoe County Jail. During
9 this visit, I signed the notice of waiver of appearance for preliminary hearing
10 I and Ms. Bertschy, were in agreement that a line up would be conducted prior
11 to Preliminary Hearing.

12 August 1, 2019, I was transported to the Reno Justice Court Department 4.
13 wherein I was placed in a Sally Port hallway next to Department 4, side
14 door where prisoners are kept prior to entering the courtroom. Moments
15 before the start of the Preliminary Hearing, Ms. Bertschy entered the Sally
16 Port hallway from Department 4, side door and said to me "You were identified
17 in a line up and the witnesses are hear do you want to sign the waiver?"
18 I signed the waiver thinking that I was identified in a line up and witne-
19 sses were at the Preliminary Hearing.

20 August 21, 2019, I entered my guilty plea in this Court. At that point I asked
21 the then appointed counsel Ms. Valencia, if I could see proof of the line up and
22 what prosecution witnesses were at the Preliminary Hearing. I was told this
23 not available.

24 On October 7, 2019, I appeared before this Court for sentencing. Ms Pusich was
25 representing me. I asked her the same questions. I was told "I dont have
26 that information".

1 The current Standby Counsel Ms. Valencia, on October 23, 2019, advised this Court
 2 that there was no line up was held in Mr. Clarke's case, and that he was
 3 advised. I was not advised. See Court Minutes Oct 23, 2019.

4 If I had known I was deprived of the line up, I would not have signed
 5 that waiver on August 1, 2019, in the Reno Justice Court. I was subjected
 6 to undue coercion^① at the hands of appointed counsel which constitute Ineffective
 7 Assistance of counsel under Strickland.^② Molina.^③

8
 9 I declare under penalty of perjury that the above is true and correct.

10 DATED Nov 21, 2019

1st Anthony Clarke
 Anthony Clarke
 IN PRO SE.

14 AFFIRMATION NRS 239 B.030

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

17 DATED Nov 21, 2019

1st Anthony Clarke
 Anthony Clarke
 IN PRO SE.

23 ^① Coercion occurs when a defendant is induced by promise ... which deprives the plea of the nature of a voluntary act". Doe v. Woodford, 508 F.3d 563, 570 (9th Cir. 2007).

24 ^② 466 U.S. 668, 104 S.Ct 2052, 80 L.Ed.2d 674 (1984).

25 ^③ 120 Nev. 185, 87 P.3d 533 (2004).

PROOF OF SERVICE

I am the Defendant in this case. I declare the following:

I sent the original attached Motion to:

Clerk of the Court
Second Judicial District Court
75 COURT Str, Reno, NV 89501.

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

DATED Nov 21, 2019

151 Anthony Clarke
ANTHONY CLARKE
IN PRO SE

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-11-25 15:56:31.887.
MARIAH NORTHINGTON, ESQ. - Notification received on 2019-11-25 15:56:33.697.
LORENA VALENCIA, PD - Notification received on 2019-11-25 15:56:32.48.
DIV. OF PAROLE & PROBATION - Notification received on 2019-11-25 15:56:32.261.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

11-25-2019:15:45:05

Clerk Accepted:

11-25-2019:15:55:32

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Notice/Appeal Supreme Court

Filed By:

Court Clerk ADick

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

MARIAH NORTHINGTON, ESQ. for STATE OF
NEVADA

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

LORENA VALENCIA, PD for ANTHONY
CLARKE

DIV. OF PAROLE & PROBATION

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

Code 1310

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

Case No. CR19-1352

vs.

Dept. No. 15

ANTHONY CLARKE,

Defendant.

CASE APPEAL STATEMENT

This case appeal statement is filed pursuant to NRAP 3(f).

1. Appellant is Anthony Clarke.
2. This appeal is from an order entered by the Honorable Judge David A. Hardy.
3. Appellant is representing himself in Proper Person on appeal. The Appellant's address is:

Anthony Clarke #1910622
Washoe County Jail
911 Parr Blvd.
Reno, Nevada 89512

4. Respondent is the State of Nevada. Respondent is represented by the Washoe County

District Attorney's Office:

Jennifer P. Noble, Esq., SBN: 9446
P.O. Box 11130
Reno, Nevada 89520

5. Respondent's attorney is not licensed to practice law in Nevada: n/a
6. Appellant is represented by appointed counsel in District Court.

7. Appellant is not represented by appointed counsel on appeal.
8. Appellant was not granted leave to proceed in forma pauperis in the District Court.
9. Proceeding commenced by the filing of an Information on August 6th, 2019.
10. This is a criminal proceeding and the Appellant is appealing the Judgment of Conviction filed November 25th, 2019.
11. The case has not been the subject of a previous appeal to the Supreme Court.
12. This case does not involve child custody or visitation.
13. This is not a civil case involving the possibility of a settlement.

Dated this 25th day of November, 2019.

Jacqueline Bryant
Clerk of the Court

By: /s/ YViloria
YViloria
Deputy Clerk

Code 1350

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

STATE OF NEVADA,

Case No. CR19-1352

Plaintiff,

Dept. No. 15

vs.

ANTHONY CLARKE,

Defendant.

_____ /

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 25th day of November, 2019, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 25th day of November, 2019

Jacqueline Bryant
Clerk of the Court

By /s/ YViloria
YViloria
Deputy Clerk

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-11-25 16:09:48.225.
MARIAH NORTHINGTON, ESQ. - Notification received on 2019-11-25 16:09:58.443.
LORENA VALENCIA, PD - Notification received on 2019-11-25 16:09:52.468.
DIV. OF PAROLE & PROBATION - Notification received on 2019-11-25 16:09:49.848.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

11-25-2019:16:05:36

Clerk Accepted:

11-25-2019:16:08:02

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Case Appeal Statement
Certificate of Clerk

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

MARIAH NORTHINGTON, ESQ. for STATE OF
NEVADA

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

LORENA VALENCIA, PD for ANTHONY
CLARKE

DIV. OF PAROLE & PROBATION

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

ANTHONY CLARKE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 80130
District Court Case No. CR191352

DIS

RECEIPT FOR DOCUMENTS

TO: Anthony Clarke
Washoe County District Attorney \ Jennifer P. Noble
Jacqueline Bryant, Washoe District Court Clerk

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

12/03/2019	Appeal Filing Fee waived. Criminal. (SC)
12/03/2019	Filed Notice of Appeal/Proper Person. Appeal docketed in the Supreme Court this day. (SC)

DATE: December 03, 2019

Elizabeth A. Brown, Clerk of Court
df

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-12-04 13:57:02.739.
MARIAH NORTHINGTON, ESQ. - Notification received on 2019-12-04 13:57:02.832.
LORENA VALENCIA, PD - Notification received on 2019-12-04 13:57:02.785.
DIV. OF PAROLE & PROBATION - Notification received on 2019-12-04 13:57:02.77.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

12-04-2019:13:55:28

Clerk Accepted:

12-04-2019:13:56:20

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Supreme Court Receipt for Doc

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

MARIAH NORTINGTON, ESQ. for STATE OF
NEVADA

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

LORENA VALENCIA, PD for ANTHONY
CLARKE

DIV. OF PAROLE & PROBATION

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

V3 Anthony Clarke # 1910622
Washoe County Jail
Reno, NV 89512

IN THE SECOND JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF WASHOE

FILED

2019 DEC -4 PM 2:13

JACQUELINE BRYANT
CLERK OF THE COURT

BY

DEPUTY

THE STATE OF NEVADA,

Plaintiff,

CASE NO CR19-1352

v.

Dept: 15

Anthony Clarke,

Defendant.

NOTICE OF APPEAL

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

This document contains no persons social security
number.

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

DATED 11.26.19

151 Anthony Clarke
Anthony Clarke

CR19-1352
STATE VS ANTHONY CLARKE (D1 2 Pages)
District Court
Washoe County
DC-09900089195-544
12/04/2019 02:13 PM
2515
vini notia

PROOF OF SERVICE

I, Anthony Clarke, declare the following:

I sent the attached Notice of Appeal to:

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

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

DATED: 11.26.19

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

Code 1310

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

Case No. CR19-1352

vs.

Dept. No. 15

ANTHONY CLARKE,

Defendant.
_____/**CASE APPEAL STATEMENT**

This case appeal statement is filed pursuant to NRAP 3(f).

1. Appellant is Anthony Clarke.
2. This appeal is from an order entered by the Honorable Judge David A. Hardy.
3. Appellant is representing himself in Proper Person on appeal. The Appellant's address is:

Anthony Clarke #1910622
Washoe County Jail
911 Parr Blvd.
Reno, Nevada 89512

4. Respondent is the State of Nevada. Respondent is represented by the Washoe County

District Attorney's Office:

Jennifer P. Noble, Esq., SBN: 9446
P.O. Box 11130
Reno, Nevada 89520

5. Respondent's attorney is not licensed to practice law in Nevada: n/a
6. Appellant is represented by appointed counsel in District Court.

7. Appellant is not represented by appointed counsel on appeal.
8. Appellant was not granted leave to proceed in forma pauperis in the District Court.
9. Proceeding commenced by the filing of an Information on August 6th, 2019.
10. This is a criminal proceeding and the Appellant is appealing the Judgment of Conviction filed November 25th, 2019.
11. The case has been the subject of a previous appeal to the Supreme Court.
Supreme Court No.: 80130
12. This case does not involve child custody or visitation.
13. This is not a civil case involving the possibility of a settlement.

Dated this 4th day of December, 2019.

Jacqueline Bryant
Clerk of the Court

By: /s/ YViloria
YViloria
Deputy Clerk

Code 1350

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

STATE OF NEVADA,

Case No. CR19-1352

Plaintiff,

Dept. No. 15

vs.

ANTHONY CLARKE,

Defendant.

_____ /

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 4th day of December, 2019, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 4th day of December, 2019

Jacqueline Bryant
Clerk of the Court

By /s/ YViloria
YViloria
Deputy Clerk

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-12-04 14:40:09.199.
MARIAH NORTHINGTON, ESQ. - Notification received on 2019-12-04 14:40:13.879.
LORENA VALENCIA, PD - Notification received on 2019-12-04 14:40:11.82.
DIV. OF PAROLE & PROBATION - Notification received on 2019-12-04 14:40:11.414.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

12-04-2019:14:37:49

Clerk Accepted:

12-04-2019:14:38:40

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Case Appeal Statement
Certificate of Clerk

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

MARIAH NORTHINGTON, ESQ. for STATE OF
NEVADA

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

LORENA VALENCIA, PD for ANTHONY
CLARKE

DIV. OF PAROLE & PROBATION

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CASE NO. CR19-1352

STATE OF NEVADA VS. ANTHONY CLARKE

DATE, JUDGE

OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

11/25/19

ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE

HONORABLE

DAVID A. HARDY

Dept. No. 15

A. Dick

(Clerk)

E. Ferretto

(Reporter)

DDA M. Northington represented the State. Defendant present, in custody, acting in proper person. DPD Valencia present acting as stand-by counsel. SPEC R. Glass present on behalf of the Division of Parole and Probation.

DEFT addressed CT stated corrections to PSI Report and provided documents for review *Whereupon, Defendant's proposed corrections to PSI Report and said confidential documents efiled to case docket.*

DEFT invoked his right to counsel; objections stated – **DENIED.**

SPEC Glass addressed CT stated Defendant's CA criminal history contained in PSI Report is based upon NCIC records. Spec indicated Defendant may have previously received substance abuse treatment. Spec further indicated the Defendant's may be the basis of Division's recommendation.

DDA Northington addressed and advised CT pursuant to negotiations recommended 12-36 months in NDOC as appropriate punishment. Counsel stated victim(s) have been notified and did not wish to attend today's proceedings.

SPEC Glass provided updated CTS in the amount of 136 days.

COURT ORDERED: [see JOC entered 11/25/19].

DEFT presented notice of appeal.

Whereupon, said notice efiled to case docket.

Defendant remanded to the custody of the Sheriff.

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-12-10 15:58:02.008.
MARIAH NORTHINGTON, ESQ. - Notification received on 2019-12-10 15:58:02.101.
LORENA VALENCIA, PD - Notification received on 2019-12-10 15:58:02.055.
DIV. OF PAROLE & PROBATION - Notification received on 2019-12-10 15:58:02.023.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

12-10-2019:15:54:28

Clerk Accepted:

12-10-2019:15:56:53

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

***Minutes

Filed By:

Court Clerk ADick

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

MARIAH NORTINGTON, ESQ. for STATE OF
NEVADA

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

LORENA VALENCIA, PD for ANTHONY
CLARKE

DIV. OF PAROLE & PROBATION

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

ANTHONY CLARKE,
Petitioner,

vs.

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

Respondent,

and

THE STATE OF NEVADA,
Real Party in Interest.

Supreme Court No. 80185

District Court Case No. [NONE]

CR19-1352
DIS

RECEIPT FOR DOCUMENTS

TO: Anthony Clarke
Washoe County District Attorney \ Jennifer P. Noble
Jacqueline Bryant, Washoe District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

12/10/2019 Petition Filing Fee waived. Criminal. (SC)

12/10/2019 Filed Proper Person Petition for Writ of Habeas Corpus. (SC)

DATE: December 10, 2019

Elizabeth A. Brown, Clerk of Court
lh

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

ANTHONY CLARKE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 80130
District Court Case No. CR191352

015

RECEIPT FOR DOCUMENTS

TO: Anthony Clarke
Washoe County District Attorney \ Jennifer P. Noble
Jacqueline Bryant, Washoe District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

12/09/2019 Filed Notice of Appeal/Proper Person. (Second NOA) (SC)

DATE: December 09, 2019

Elizabeth A. Brown, Clerk of Court
lh

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-12-11 13:56:53.491.
MARIAH NORTHINGTON, ESQ. - Notification received on 2019-12-11 13:56:53.569.
LORENA VALENCIA, PD - Notification received on 2019-12-11 13:56:53.538.
DIV. OF PAROLE & PROBATION - Notification received on 2019-12-11 13:56:53.523.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

12-11-2019:13:55:44

Clerk Accepted:

12-11-2019:13:56:20

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Supreme Court Receipt for Doc

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

MARIAH NORTINGTON, ESQ. for STATE OF
NEVADA

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

LORENA VALENCIA, PD for ANTHONY
CLARKE

DIV. OF PAROLE & PROBATION

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-12-11 13:57:34.223.
MARIAH NORTHINGTON, ESQ. - Notification received on 2019-12-11 13:57:34.613.
LORENA VALENCIA, PD - Notification received on 2019-12-11 13:57:34.27.
DIV. OF PAROLE & PROBATION - Notification received on 2019-12-11 13:57:34.239.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

12-11-2019:13:56:23

Clerk Accepted:

12-11-2019:13:57:03

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Supreme Court Receipt for Doc

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

MARIAH NORTINGTON, ESQ. for STATE OF
NEVADA

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

LORENA VALENCIA, PD for ANTHONY
CLARKE

DIV. OF PAROLE & PROBATION

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

Code 2586

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

ANTHONY CLARKE,

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

Case No. CR19-1352

Dept. No. 15

SCN: 80185

**NOTICE OF
PETITION FOR WRIT OF HABEAS CORPUS**

Anthony Clarke #1910622

Washoe County Jail

Reno, NV 89512

Petitioner In Pro Se

FILED

DEC 10 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERKIN THE SUPREME COURT OF NEVADAPETITION FOR WRIT OF
HABEAS CORPUS.

CASE NO.:

Declaration of Anthony Clarke
Attached

IN RE ANTHONY Clarke,

PETITIONER.

POST CONVICTION

PETITION FOR WRIT OF HABEAS CORPUSPetitioner Clarke liberty is being restrained by Darin Balaam,
Sheriff of Washoe County 911 Parr Blvd. Reno Nevada.1. Background

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

On August 1, 2019 Clarke waived his preliminary examination on counsel's advise. Subsequently, on August 21, 2019, he pled guilty to the offense, on counsel's advise, subject to an agreement that both Clarke and the State stipulate to recommend a sentence of 12 to 36 months imprisonment in the Nevada State Department of Corrections. However, at his intended sentencing hearing October 7, 2019. Clarke orally informed the court

DEC 05 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

1. he wished to represent himself and withdraw his guilty plea. Following
2. a Faretta canvas, the court granted Clarke's motion for self-represen-
3. tation and appointed Ms. Valencia, a member of the Washoe County
4. public defenders office as standby counsel over Clarke's objection.

5. At the same sentencing hearing Ms. Valencia, was directed by the Court
6. to file a Motion for Young Hearing. Counsel requested a one-week con-
7. tinuance. Sentencing was continued to October 14, 2019. On October 11,
8. 2019, Ms. Valencia filed a Motion for Young Hearing. On October 14, 2019, the court
9. set a Young Hearing on October 23, 2019. At the October 23, 2019 hearing held
10. a Young Hearing, the court found no conflict between Clarke and Ms. Valencia.
11. At the closed Young hearing Ms. Valencia asserted that it was no line
12. up conducted in the case and Mr. Clarke was advised.

13. The court filed a order on October 24, 2019, instructing that any Motion
14. seeking to withdraw his guilty plea must be filed no later than
15. November 1, 2019. The Petitioner filed the following documents:
16. Motion to dismiss case, Motion for Discovery, Petition for Writ of
17. Habeas Corpus Ad Testificandum and Motion to Withdraw Guilty
18. Plea. which was denied November 25, 2019, Clarke was then
19. sentenced to a term of 28 to 97 months in the Nevada Depart-
20. ment of Corrections.

21. GROUND 1

22. PETITIONER ALLEGES THAT HE WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL
23. AS "GUARANTEED" BY THE SIXTH AND FOURTEENTH AMENDMENT TO THE
24. UNITED STATES CONSTITUTION AND ARTICLE 1. SECTION 8 OF THE
25. NEVADA CONSTITUTION

26. ARGUMENT:

1. Appointed counsel Ms. Bertschy, of the Washoe County Public Defender's
2. office on July 30, 2019 during a I-Web visit at Washoe County Jail
3. with Clarke discussed the line up. It was revealed counsel was
4. reading from a computer screen of another public defender from
5. her office. It was agreed upon that the line up would go forward
6. prior to the scheduled preliminary hearing on August 1, 2019 in the
7. Reno Justice Court Department #4. On July 31, 2019 counsel visited Clarke
8. at the WCT to have him sign a Notice of Waiver of Appearance for
9. Preliminary Hearing. On August 1, 2019 Clarke executed a preliminary
10. hearing waiver on counsel's advise based on he was identified in a ^①
11. line-up and prosecution witnesses were present. Based on this,
12. Clarke signed the preliminary hearing examination waiver thinking
13. that he was identified in a line up and prosecution witnesses
14. were present in the Reno Justice Court.

15. August 21, 2019 Clarke entered his guilty plea in District Court based
16. on counsel's advise. Clarke learned on October 23, 2019 that he was
17. misled by Ms. Bertschy at the Justice level through appointed counsel
18. Ms. Valencia when the court inquired: Was it a line up in this case.
19. Counsel said "No" and Mr. Clarke was advised. See Court Minutes
20. dated Oct 23, 2019.

21. Pursuant to negotiations Clarke was to plead to Burglary and the
22. parties would jointly recommend a sentence of 12 to 36 months in
23. the Nevada Department of Corrections.

24. ^① Undue coercion occurs when "a defendant is induced by promise ...
25. which deprive the plea of the nature of a voluntary act."

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

1. However, on November 25, 2019, the District Court sentenced Clarke
2. to a term of 28 to 97 months ^① in the Nevada Department of
3. Corrections. See Court's Minutes Nov 25, 2019.

4. The Nevada Supreme Court addressed the issue of ineffective
5. assistance of Counsel as a basis to withdraw a guilty plea in
6. Molina v. State, 120 Nev. 185, 87 P.3d 533 (2004) in which the
7. Court stated:

8. The question of whether a criminal defendant has received ineffective
9. assistance of counsel presents mixed questions of law and fact,
10. and is subject to independent review. We review claims of ineff-
11. ective assistance of counsel under the two-part test set
12. forth in Strickland v. Washington. (citations omitted). Under
13. Strickland, the defendant must demonstrate that his
14. counsel's performance was deficient. i.e. it fell below an
15. objective standard of reasonableness, and that the
16. deficient performance prejudiced the defense. However,
17. in order to eliminate the distorting effect of hindsight, courts
18. indulge in a strong presumption that counsel's representation
19. falls within the broad range of reasonable assistance. *Id.* at 190.

20. If it were not for counsel ill advise, Clarke would had not
21. signed the preliminary examination waiver which led him
22. to enter a Guilty Plea in the District Court on August 21, 2019.
23. Counsel's performance was deficient and fell below an objective
24. standard of reasonableness and that the deficient performance
25. prejudiced the defense.

26. ① ... Once the guilty plea is accepted, the state must adhere
to the terms of the bargain. See 404 U.S. 257, 262 (1971).

CONCLUSION

1.
2. The case should be dismissed with prejudice in case No. #
3. CR19-1352, RCR 2019-100994.

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

6. DATED: December 2, 2019 151 Anthony Clarke
7. Anthony Clarke #1910622
8. In Pro se Washoe Co. Jail

AFFIRMATION PURSUANT TO NRS 239B.030

9.
10. This document contains no person social security number.

11. DATE December 2, 2019 151 Anthony Clarke
12. Anthony Clarke 1910622
13. In Pro se
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Declaration of Anthony Clarke

1
2 I Anthony Clarke, declare the following: I am the Petitioner in this
3 action.

4 Appointed counsel Ms. Bertschy's misinformation affected my
5 decision to sign a Preliminary waiver and plead and that I would not
6 have done those things but for misadvice,

7 The assigned attorney Mr. Hickman, was never questioned regarding
8 the line up.

9 Ms Bertschy the attorney who misled me on August 1, 2019
10 was never questioned regarding the line up or was an expli-
11 cation as to why she filed a Notice of Waiver of Appearance
12 for Preliminary Hearing.

13 I filed Discovery on November 1, 2019 requesting the names of
14 prosecution witnesses who were present at the Preliminary
15 Hearing in the Reno Justice Court Department 4. The prosecutor refused
16 to provide this Brady material.

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

19 Dated: December 2, 2019

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PROOF OF SERVICE

I am the Petitioner in this action. I declare
The following:

I sent the attached Petition For Writ of HABEAS
corpus to:

NEVADA SUPREME COURT
201 S. Carson Str
201 Carson City
NEVADA 89701

by Placing a prepaid envelope in the
U.S. Postal Service box at Washoe
County Jail 89512

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

DATE December 2, 2019

1st Anthony Clarke
Anthony Clarke

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-12-11 14:12:39.357.
MARIAH NORTHINGTON, ESQ. - Notification received on 2019-12-11 14:12:39.591.
LORENA VALENCIA, PD - Notification received on 2019-12-11 14:12:39.403.
DIV. OF PAROLE & PROBATION - Notification received on 2019-12-11 14:12:39.372.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

12-11-2019:14:11:09

Clerk Accepted:

12-11-2019:14:11:49

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Notice of Writ

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

MARIAH NORTHINGTON, ESQ. for STATE OF
NEVADA

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

LORENA VALENCIA, PD for ANTHONY
CLARKE

DIV. OF PAROLE & PROBATION

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ANTHONY CLARKE

(Name)

1192204

(I.D. Number)

Northern Nevada Correctional Center
Post Office Box 7000
Carson City, NV 89702

Petitioner, In Proper Person

FILED
2020 JAN -2 PM 1:27
JACQUEE
CLERK OF DISTRICT COURT
BY [Signature]

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

The State of Nevada
Plaintiff Petitioner,

Case No.: CR19-1352Dept. No.: XV 15

vs.

ANTHONY CLARKE
Defendant Respondent.

NRS 176.555
**PETITION FOR WRIT OF HABEAS
CORPUS (POST-CONVICTION)**
(Non Death Penalty)

INSTRUCTIONS:

1. This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
2. Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
3. If you want an attorney appointed, you must complete the Affidavit in Support of Motion for Leave to Proceed In Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
4. You must name as Respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of corrections, name the warden or head of the

CR19-1352
STATE VS. ANTHONY CLARKE
District Court
Washoe County
DC-09900089222-166
ID 14 Pages
01/02/2020 01:27 PM
3373

1 institution. If you are not in a specific institution of the department but within its custody, name the
2 director of the department of corrections.

3 (5) You must include all grounds or claims for relief which you may have regarding your
4 conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing
5 future petitions challenging your conviction and sentence.

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

11 (7) When the petition is fully completed, the original and copy must be filed with the
12 clerk of the state district court for the county in which you were convicted. One copy must be mailed
13 to the respondent, one copy to the attorney general's office, and one copy to the district attorney of
14 the county in which you were convicted or to the original prosecutor if you are challenging your
15 original conviction or sentence. Copies must conform in all particulars to the original submitted for
16 filing.

17 PETITION

18 1. Name of institution and county in which you are presently imprisoned or where and
19 how you are presently restrained of you liberty: NNCC XIV Amct to USA

20 2. Name and location of court which entered the judgment of conviction under attack:

21 Second Judicial 75 Court St. Reno NV

22 3. Date of judgment of conviction: Nov 25, 2019

23 4. Case Number: CR 19-1352

24 5. (a) Length of sentence: 28-97 months State Prison

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes _____ No /

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

7. Nature of offense involved in conviction being challenged: Burglary
NRS 205.060 A Category (B) Felony

8. What was your plea? (check one)

(a) Not guilty _____ (c) Guilty but mentally ill _____

(b) Guilty / (d) Nolo contendere _____

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

N/A

N/A

N/A

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

(a) Jury _____

(b) Judge without a jury X AC N/A

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

12. Did you appeal from the judgment of conviction?

Yes _____ No _____

13. If you did appeal, answer the following:

(a) Name of court: _____

(b) Case number or citation: _____

(c) Result: _____

(d) Date of result: _____

(Attach copy of order or decision, if available)

14. If you did not appeal, explain briefly why you did not:

N/A

N/A

N/A

N/A

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

16. If you answer to No. 15 was "yes," give the following information:

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

(2) Name of proceeding: N/A

(3) Grounds raised: N/A

N/A

N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes _____ No N/A

(5) Result: N/A

(6) Date of result: N/A

(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: N/A

(2) Nature of proceeding: N/A

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes _____ No N/A

(5) Result: N/A

(6) Date of result: N/A

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

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

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

(1) First petition, application or motion?

Yes _____ No N/A

(2) Second petition, application or motion?

Yes _____ No N/A

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

Yes _____ No N/A

Citation or date of decision.

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

N/A

N/A

N/A

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

(a) Which of the grounds is the same: NONE

11

11

(b) The proceedings in which these grounds were raised:

1111

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

N/A

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

N/AN/A

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

11

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

If yes, state what court and the case number:

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: Mr. Hickman, 12772, Kendra G. Bertschy,
13071, Ms. Valencia, 14292, and Ms. Maizie Pusich.

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

Yes _____ No

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

(a) Ground One:

Illegal Sentence NRS 176.555

Lack of Subject Matter Jurisdiction

Supporting Facts:

There Are Several Variables Concerning The Lack of Subject Matter Jurisdiction of The Plaintiff A Substantial Matter Dealing with according to the Congressional Record That Nevada is Under The Treaty of Guadalupe @ Hidalgo (1848) 11 Stat 347, That in the Act of Congress of (1889) 1 Stat 137, The Aboriginal Title cannot be changed out from the Indians, except by Another Treaty which never happened. Treaty is the Supreme Law of the Land. Despite The President Jackson Indian Removal Act of (1831) (see) U.S. v. Joseph 94 US 614, 24 L Ed. 295 (1876) The Defendant is not trained in the letter of the Law (see)

Balistreri v. Pacifica Police Dept 901 F.2d 1076, 3499 (1990) Proceedings Are to be Liberally Constructed

(b) Ground Two:

Statutes were illegally repealed
Lacks Subject Matter Jurisdiction
(see) U.S. v. Cotton 535 U.S. 625, 630
122 S.Ct. 1781 (2002)

Supporting Facts:

Subject Matter Jurisdiction Can never be
waived or forfeited, as it involves the
Court's Power to hear a case (see) Steel Co.
v. Citz for a better environment, 523 U.S. 83, 89
Nevada Supreme Court Justices Edgath & Edgar
Eather, Charles Merrill, Milton B. Baer performed
a Quasi Legislative function in ruling that the State
Reversion Commission be abolished on July 1st 1903
Director Russell W. McDonald, counsel used a
Joint Concurrent Resolution No #1 And No #2 to
Repeal all of The Statutes of Nevada and
Create the Nevada Revised Statutes, "Nothing
can become Law if it does not contain such
enactment clause / language upon its face
(see) Nevada Highway Patrol v. State, 107 NV
547, 549, 815 P.2d 608 (1992) And Rogers v. State 10
Nev. 250 (NV 1875). (Action by A Court without
Subject Matter Jurisdiction is Ultra Vires And
therefore Void; (see) Rubras A.G. v. Marton Oil
Co., 526 U.S. 574, 583, 119 S.Ct. (1999). It is
established that Charges for the instant offense
had no Legal Lawful, or Right to Pursue.

(c) Ground Three:

LACK OF Performance Bonds
not de jure and just a de facto judge
and prosecutor for this Venue and
Jurisdiction Washoe County.

Supporting Facts:

That in the instant case The Blanket Fidelity Bonds upon performance of public duties were not filed in the County Clerk's office pursuant to NRS 4030 as required, meeting the Statutory Requirements for a bond (see) NRS (282.040) It is noted that when the word "shall" is used in a command to a public official, it excluded from the idea of discretion (see) State ex rel Attorney General v. Laughton 19 Nev 202, 8 P. 344 (1885) And have at least two sureties for The Justice of The Peace and Prosecutor (NRS. 282.120, 282.150, 282.160) See also NRS 282.200) These two Statutes should be meet as a whole. (See) Supreme Court of Nevada, University And Community College System of Nevada v. Nevada's For Sound Government, 100 P. 3d. 179 (2004), The Question must be asked, That Public Officials to be held to a higher standard, Than the Civilian POW's under the Power of Appointment Act 65 Stat 91 as debtors, Which now have a Apostile seal to be as Secured Party Creditors.

(d) Ground Four:

Illegal Use of The Defendants Strawman
CUSIP Bond, without his Authorization or
Consent in Large Caps.

Supporting Facts:

Since the inception of The Strawman CUSIP Bonds, to be pledged to The Bank of England and The Vatican World Trust, Cardinal Rell And Pope Francis of Assisi, in (2013) Through Our Final Jubilee, All Property must be returned Through The (2013) Apostolic Letter issued Motu Proprio, That The Holy Roman Catholic Church had created the concept of Legal Fiction, for The Purposes of The United States Government which was set aside in (1871) Session III, Ch 62 16 Stat 419 By The Forty Second Congress and then President Ulysses S. Grant, When Under (1789) 1 Stat 68-69, Pursuant to Ch XIV State Dept. We Lost Our Full Faith And Credit, and our Birth Certificate Registration Form was monetized into A Cusip bond to be pledged for money to operate our Country, which is used to operate regulatory agencies. And The United States of America is registered with The Sec of State, in Wilmington Delaware file no (29652), And The XVI Amendment to USCA was not ratified in (1913) Anyway.

(e) Ground Five:

Being Restrained of My Life, Liberty,
And Property XIV Amnt to USCA

Supporting Facts:

I am being used as Chattel, or as a Artificial
Entity, Ward v. Okla, 176 OKI 368, 50 P. 2d 136
137, And Bowling v. US 191 Fed Rept. 22. And
Holla well v. US, 221 US § 317, And Shawmut
BANK NA v. Valley Farms 1610 A. 2d 652, 654
222 Conn. 361 Our Judgment of Conviction
is used in Concert with Uniform Probate
Code § 5-101(3) or Contract Law from a
Non Profit to secured creditors 19 CORPUS JURIS
Secundum § 883

Being Held Against my Life Liberty
And Pursuit of Happiness, is a right towards
the due process clause of the XIV Amnt to
the US Constitution (see) Wbl F. v. McDonnell
418 US § 539, 558-559 (1974).

WHEREFORE, ^{Defendant}~~petitioner~~ prays that the court grant ^{Defendant}~~petitioner~~

Relief to which he may be entitled in this proceeding.

EXECUTED at N.N.C.C, Nevada on the 30

Day of December, 20 19.

x Anthony Clarke
Anthony Clarke
Defendant
NNCC P/O Box #700
1721 Snyder Ave
Carson City NV.
(89702)

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

Anthony Clarke
Petitioner ~~Defendant~~
Anthony Clarke

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS to the below addresses on this 30 day of December 2019, by placing the same into the hands or prison law library staff for posting in the U.S. Mail, pursuant to N.R.C.P. 5:

Christopher J. Hicks # 7747
WASHOE COUNTY DISTRICT ATTORNEY
ONE South Sierra St
Reno, NV 89501

_____, Nevada 89 _____

X Anthony Clarke
Signature of Petitioner In Pro Se
Anthony Clarke

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document.

Petition
For Illegal Sentence NRS 196.555
(Title of Document)

filed in case number: CR 19-1352☐ Document does not contain the social security number of any person

-OR-

☒ Document contains the social security number of a person as required by:☐ A specific state or federal law, to wit:

NRS 196.555
(State specific state or federal law)

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☒ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)Date: December 30, 2019

X Anthony Clarke
(Signature)

Anthony Clarke
(Print Name)

NRS 12015
(Attorney for)

Code: 3860
 Name: Anthony Clarke
 Address: NNCC P.O. Box 7000
Carson City, NV 89702
 Telephone: _____
 Email: _____
 Self-Represented Litigant

FILED
 2020 JAN -2 PM 1:28

JACQUEL H. HARRIS
 CLERK OF THE COURT
 BY _____

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

Anthony Clarke #1192204,
 Plaintiff / Petitioner,

Case No. CR19-1352

Dept. No. 15

vs. STATE OF Nevada
~~Anthony Clarke, NNCC,~~

Defendant / Respondent.

REQUEST FOR SUBMISSION OF MOTION

I request that the Motion to Proceed Informa Pauperis, which was filed on Dec 18, 2019^{30 AC}
 (Date filed)
 and all other documents filed herein be submitted to the Court for decision.

This document does not contain the personal information of any person as defined by
 NRS 603A.040.

I declare, under penalty of perjury under the law of the State of Nevada, that the foregoing is
 true and correct.

Date: Dec 18, 2019^{30 AC}

Your Signature: Anthony Clarke

Print Your Name: Anthony Clarke

Original

Anthony Clarke
(Name)1192204

(I.D. No.)

Northern Nevada Correctional Center
Post Office Box 7000
Carson City, NV 89702

2020 JAN -2 PM 1:28

JACQUELINE
CLERK OF THE COURT

BY

Movant, In Proper Person

IN THE Second JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOEAnthony Clarke

Plaintiff/Movant

Case No.: CR 19-1352Dept. No.: 15

VS.

Warden B.AC ~~State of Nevada~~
STATE OF NEVADA

Defendant/Respondent

REQUEST FOR SUBMISSIONCOMES NOW, Anthony Clarke, in proper person, and respectfully
requests submission of his pleading, to wit: AC NRS 176.555 Writ of Habeas Corpus, filed
in this court on December 30, 2019, for adjudication on the merits.This request is made pursuant to the applicable District Court Rules, and Nevada Rules of Civil
Procedure.Respectfully submitted this 30 AC
24 day of December, 2019.By: Anthony ClarkeCR19-1352
DC-09900089222-165
STATE VS. ANTHONY CLARKE (D1 2 Pages
District Court 01/02/2020 01:28 PM
Washoe County 3860

CERTIFICATE OF SERVICE

I, Anthony Clarke certify that on this date I did serve a true and correct copy of the foregoing pleading upon Respondent(s), via U.S. Mail, by placing same in the United States Postal Service (Prison Mail System), postage being fully prepaid, and addressed to:

Second Judicial District Court
75 Court Str

Reno NV 89501

ATTN: Clerk of Court

AND

Christopher J. Hicks # 7747

1 South Sierra Str

Reno, NV 89501

Dated this 30
~~24~~^{AC} day of December, 2019.

By: Anthony Clarke

Movant, In Proper Person

AFFIRMATION PURSUANT TO NRS 239B.030

** I certify that the foregoing document DOES NOT contain the social security number of any

Persons.

Dec 30
~~24~~^{AC}, 2019
 (Date) 1

Anthony Clarke
 (Signature)

CR19-1352
DC-09900089222-167
STATE VS. ANTHONY CLARKE (D1 3 Pages)
District Court 01/02/2020 01:28 PM
Washoe County 2230

Anthony Clarke #1192204
(Name)

(I.D. No.)
Northern Nevada Correctional Center
Post Office Box 7000
Carson City, NV 89702

Movant, In Proper Person

FILED
2020 JAN -2 PM 1:28
JACQUELINE
CLERK OF COURT
BY [Signature]

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

Anthony Clarke #1192204

Plaintiff/Movant

Case No.: CR19-1352

vs. State of Nevada
Warden Brian Niles

Defendant/Respondent

**MOTION FOR TRANSCRIPTS
AT STATE EXPENSE**

COMES NOW, Anthony Clarke, in his proper person and requests that this Honorable Court order the Clerk of the Court to prepare a complete transcript of the testimony offered at the hearings held on 8.14.19, 8.21.19, 10.7.19, (see attached page) and that Plaintiff / Movant not be held liable for payment of such transcripts.

1. Plaintiff / Movant is currently incarcerated at Northern Nevada Correctional Center, 1721 E. Snyder Avenue, Post Office Box 7000, Carson City, NV 89702.
2. Petitioner is proceeding in proper person.
3. Petitioner is indigent per ADKT 411 and as proof by the accompanying Motion for Leave to Proceed In Forma Pauperis, with attached sworn affidavit of Plaintiff / Movant and Certificate of Inmate Financial status.
4. A transcript of the court proceedings in this matter is necessary to allow Plaintiff / Movant to prepare a Petition for Writ of Habeas Corpus (Post-Conviction) that will rely on the record requested.

1. MOTION FOR TRANSCRIPTS AT STATE EXPENSE CONTINUED :

2. August 14, 2019,

3. August 21, 2019,

4. October 7, 2019,

5. October 14, 2019,

6. October 23, 2019,

7. October 24, 2019,

8. November 25, 2019,

9.

10. Thank You.

11.

Anthony Clarke

12.

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5. Prior counsel of record does not possess the requested transcripts.

Respectfully Submitted this 22³⁰ day of Dec, 20 19.

Anthony Clarke
(Signature)

CERTIFICATE OF SERVICE

I, Anthony Clarke certify that on this date I did serve a true and correct copy of the foregoing Motion upon Respondent(s), via U.S. Mail, by placing same in the United States Postal Service (Prison Mail System), postage being fully prepaid, and addressed to:

Second Judicial District Court
Att Court Clerk
75 Court Str
Reno, NV 89501

Dated this 27³⁰ day of December, 20 19.

By: Anthony Clarke
Movant, In Proper Person

AFFIRMATION PURSUANT TO NRS 239B.030

** I certify that the foregoing document DOES NOT contain the social security number of any

Persons.

Dec 27³⁰ AC 2019
(Date)

Anthony Clarke
(Signature)

///

CR19-1352
STATE VS. ANTHONY CLARKE ID 14 Pages
District Court 01/02/2020 01:27 PM
Washoe County 3373

ANTHONY CLARKE

(Name)

1192204

(I.D. Number)

Northern Nevada Correctional Center
Post Office Box 7000
Carson City, NV 89702

Petitioner, In Proper Person

FILED
2020 JAN -2 PM 1:27
JACQUEE
CLERK OF COURT
BY [Signature]

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

The State of Nevada

Plaintiff Petitioner,

vs.

ANTHONY CLARKE

Defendant Respondent.

Case No.: CR19-1352

Dept. No.: XV 15

NRS 176.555
**PETITION FOR WRIT OF HABEAS
CORPUS (POST-CONVICTION)**
(Non Death Penalty)

INSTRUCTIONS:

1. This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
2. Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
3. If you want an attorney appointed, you must complete the Affidavit in Support of Motion for Leave to Proceed In Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
4. You must name as Respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of corrections, name the warden or head of the

1 institution. If you are not in a specific institution of the department but within its custody, name the
2 director of the department of corrections.

3 (5) You must include all grounds or claims for relief which you may have regarding your
4 conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing
5 future petitions challenging your conviction and sentence.

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

11 (7) When the petition is fully completed, the original and copy must be filed with the
12 clerk of the state district court for the county in which you were convicted. One copy must be mailed
13 to the respondent, one copy to the attorney general's office, and one copy to the district attorney of
14 the county in which you were convicted or to the original prosecutor if you are challenging your
15 original conviction or sentence. Copies must conform in all particulars to the original submitted for
16 filing.

17 PETITION

18 1. Name of institution and county in which you are presently imprisoned or where and
19 how you are presently restrained of you liberty: NNCC, XIV. Amct to USA

20 2. Name and location of court which entered the judgment of conviction under attack:

21 Second Judicial 75 Court St. Reno NV

22 3. Date of judgment of conviction: Nov 25, 2019

23 4. Case Number: CR 19-1352

24 5. (a) Length of sentence: 28-97 months State Prison

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes _____ No /

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

7. Nature of offense involved in conviction being challenged: Burglary
NRS 205.060 A Category (B) Felony

8. What was your plea? (check one)

(a) Not guilty _____ (c) Guilty but mentally ill _____

(b) Guilty / (d) Nolo contendere _____

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

N/A

N/A

N/A

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

(a) Jury _____

(b) Judge without a jury X AC N/A

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

12. Did you appeal from the judgment of conviction?

Yes _____ No _____

13. If you did appeal, answer the following:

(a) Name of court: _____

(b) Case number or citation: _____

(c) Result: _____

(d) Date of result: _____

(Attach copy of order or decision, if available)

14. If you did not appeal, explain briefly why you did not:

N/A

N/A

N/A

N/A

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

16. If you answer to No. 15 was "yes," give the following information:

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

(2) Name of proceeding: N/A

(3) Grounds raised: N/A

N/A

N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes _____ No N/A

(5) Result: N/A

(6) Date of result: N/A

(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: N/A

(2) Nature of proceeding: N/A

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes _____ No N/A

(5) Result: N/A

(6) Date of result: N/A

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

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

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

(1) First petition, application or motion?

Yes _____ No N/A

(2) Second petition, application or motion?

Yes _____ No N/A

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

Yes _____ No N/A

Citation or date of decision.

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

N/A

N/A

N/A

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

(a) Which of the grounds is the same: NONE

11

11

(b) The proceedings in which these grounds were raised:

1111

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

N/A

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

N/AN/A

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

11

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

If yes, state what court and the case number:

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: Mr. Hickman, 12772, Kendra G. Bertschy, 13071, Ms. Valencia, 14292, and Ms. Maizie Pusich.

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

Yes _____ No

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

(a) Ground One:

Illegal Sentence NRS 176.555

Lack of Subject Matter Jurisdiction

Supporting Facts:

There Are Several Variables Concerning The Lack of Subject Matter Jurisdiction of The Plaintiff. A Substantial Matter Dealing with according to the Congressional Record That Nevada is Under The Treaty of Guadalupe @ Hidalgo (1848) 11 Stat 347, That in the Act of Congress of (1889) 1 Stat 137, The Aboriginal Title cannot be changed out from the Indians, except by Another Treaty which never happened. Treaty is the Supreme Law of the Land. Despite The President Jackson Indian Removal Act of (1831) (see) *US v. Joseph* 94 US 614, 24 L Ed. 295 (1876) The Defendant is not trained in the letter of the Law (see) *Balistreri v. Pacific Police Dept* 901 F.2d. 696, 699 (1990) Proceedings Are to be Liberally Construed

(b) Ground Two:

Statutes were illegally repealed
Lacks Subject Matter Jurisdiction
(see) U.S. v. Cotton 535 U.S. 625, 630
127 S.Ct. 1781 (2002)

Supporting Facts:

Subject Matter Jurisdiction Can never be
waived or forfeited, as it involves the
Court's Power to hear a case (see) Steel Co.
v. Citiz for a better environment, 523 U.S. 83, 89
Nevada Supreme Court Justices Edgathar Edgar
Eather, Charles Merrill, Milton B. Baer performed
a Quasi Legislative function in ruling that the State
Revision Commission be abolished on July 1st 1963
Director Russell W. McDonald, counsel used a
Joint Concurrent Resolution No. 1 And No. 2 to
Repeal all of The Statutes of Nevada and
Create the Nevada Revised Statutes, "Nothing
can become Law if it does not contain such
enactment clause / language upon it's face
(see) Nevada Highway Patrol v. State, 107 NV
547, 549, 815 P.2d 608 (1992) And Rogers v. State 10
Nev. 250 (NV 1875). Citation by A Court without
Subject Matter Jurisdiction is Ultra Vires And
therefore Void; (see) Rubras A.G. v. Marton Oil
Co., 526 U.S. 574, 583, 119 S.Ct. (1999). It is
established that Chinges for the instant offense
had no Legal Lawful, or Right to Pursue.

(c) Ground Three:

LACK OF Performance Bonds
not de jure and just a de facto judge
and prosecutor for this Venue and
Jurisdiction Washoe County.

Supporting Facts:

That in the instant case The Blunke + Fidelity Bonds upon performance of public duties were not filed in the County Clerk's office pursuant to NRS 4030 as required, meeting the Statutory Requirements for a bond (see) NRS (282.040) It is noted that when the word "shall" is used in a command to a public official, it excluded from the idea of discretion (see) State ex rel Attorney General v. Laughton 19 Nev 202, 8 P. 344 (1885) And have at least two sureties for The Justice of The Peace and Prosecutor (NRS. 282.120, 282.150, 282.160) See also NRS 282.200) These two Statutes should be meet as a whole. (See) Supreme Court of Nevada, University And Community College System of Nevada v. Nevada's) For School Government, 100 P. 3d. 179 (2004), The Question must be asked, That Public Officials to be held to a higher standard, Than the Civilian POW's under the Power of Appointment Act 65 Stat 91 as debtors, Which now have a Apostile Seal to be as Secured Party Creditors.

(d) Ground Four:

Illegal Use of The Defendants Strawman
CUSIP Bond, without his Authorization or
Consent in Large Caps.

Supporting Facts:

Since the inception of The Strawman CUSIP Bonds, to be pledged to The Bank of England and The Vatican World Trust, Cardinal Rell And Pope Francis of Assisi, in (2013) Through Our Final Jubilee, All Property must be returned Through The (2013) Apostolic Letter issued Motu Proprio, That The Holy Roman Catholic Church had created the concept of Legal Fiction, for The Purposes of The United States Government which was set aside in (1871) Session III, Ch 62 16 Stat 419 By The Forty Second Congress and then President Ulysses S. Grant. When Under (1789) 1 Stat 68-69, Pursuant to Ch XIV State Dept. We lost Our Full Faith, And Credit, and our Birth Certificate Registration Form was monetized into A Cusip bond to be pledged for money to operate our Country, which is used to operate regulatory agencies. And The United States of America is registered with The Sec of State, in Wilmington Delaware file no (290652), And The XVI Amitt to USCA was not ratified in (1913) Anyway.

(e) Ground Five:

Being Restrained of My Life, Liberty,
And Property XIV Amnt to USCA

Supporting Facts:

Tam being used as Chattel, or as a Artificial
Entity, Wards v. Okla, 176 OK 368, 56 P. 2d 136
137, And Bowling v. US 191 Fed Rept. 22 And
Hollowell v. US, 221 US § 317, And Shawmut
BANK NA v. Valley Farms 610 A. 2d 652, 654
222 Conn. 361 Our Judgment of Conviction
is used in Concert with Uniform Probate
Code § 5-101(3) or Contract Law from a
Non Profit to secured creditors 19 CORPUS JURIS
Secundum § 883

Being Held Against my Life Liberty
And Pursuit of Happiness, is a right towards
the due process clause of The XIV Amnt to
the US Constitution (see) Whitely v. McDonnell
418 US § 539, 558-559 (1974).

WHEREFORE, ^{Defendant}~~petitioner~~ prays that the court grant ^{Defendant}~~petitioner~~

Relief to which he may be entitled in this proceeding.

EXECUTED at N.N.C.C., Nevada on the 30

Day of December, 20 19.

x Anthony Clarke
Anthony Clarke
Defendant
NNCC P/O Box #
1721 Snyder Ave
Carson City NV.
(89702)

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

Anthony Clarke
~~Petitioner~~ Defendant
Anthony Clarke

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS to the below addresses on this 30 day of December 2019, by placing the same into the hands or prison law library staff for posting in the U.S. Mail, pursuant to N.R.C.P. 5:

Christopher J. Hicks # 7747
WASHOE COUNTY DISTRICT ATTORNEY
ONE SOUTH SIERRA ST
RENO, NV 89501

_____, Nevada 89 _____

X Anthony Clarke
Signature of Petitioner In Pro Se
Anthony Clarke

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document.

PetitionFor Illegal Sentence NRS 176.555

(Title of Document)

filed in case number:

CR 19-1352☐

Document does not contain the social security number of any person

-OR-

☒

Document contains the social security number of a person as required by:

☐

A specific state or federal law, to wit:

NRS 176.555

(State specific state or federal law)

-or-

☐

For the administration of a public program

-or-

☐

For an application for a federal or state grant

-or-

☒

Confidential Family Court Information Sheet

(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: December 30, 2019X Anthony Clarke

(Signature)

Anthony Clarke

(Print Name)

NRS 12.015

(Attorney for)

CR19-1352
STATE VS. ANTHONY CLARKE (D15 1 Page)
District Court 01/02/2020 01:27 PM
Washoe County 3860

Code: 3860
Name: Anthony Clarke
Address: NNCC P.O. Box 7000
Carson City, NV 89702
Telephone: _____
Email: _____
Self-Represented Litigant

FILED

2020 JAN -2 PM 1:28

JACQUELINE
CLERK OF THE COURT
BY _____

ORIGINAL

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

Anthony Clarke #1192204,
Plaintiff / Petitioner,

Case No. CR19-1352Dept. No. 15

vs. STATE OF Nevada
Attorney General, NNCC,

Defendant / Respondent.

REQUEST FOR SUBMISSION OF MOTION

I request that the Motion to Proceed Informa Pauperis, which was filed on Dec 18, 2019
(Date filed)
and all other documents filed herein be submitted to the Court for decision.

This document does not contain the personal information of any person as defined by
NRS 603A.040.

I declare, under penalty of perjury under the law of the State of Nevada, that the foregoing is
true and correct.

Date: Dec 18, 2019

Your Signature: Anthony Clarke

Print Your Name: Anthony Clarke

Original

Anthony Clarke
(Name)1192204
(I.D. No.)Northern Nevada Correctional Center
Post Office Box 7000
Carson City, NV 89702

2020 JAN -2 PM 1:28

JACQUES
CLERK OF COURTBY [Signature]

Movant, In Proper Person

IN THE Second JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOEAnthony Clarke

Plaintiff/Movant

Case No.: CR19-1352Dept. No.: 15VS. Warden B.AC ~~State of Nevada~~
STATE OF NEVADA

Defendant/Respondent

REQUEST FOR SUBMISSIONCOMES NOW, Anthony Clarke, in proper person, and respectfully
requests submission of his pleading, to wit: AC NRS 176.555
Wait of Habeas Corpus, filed
in this court on December 30, 2019, for adjudication on the merits.This request is made pursuant to the applicable District Court Rules, and Nevada Rules of Civil
Procedure.Respectfully submitted this 30 ^{AC}
24 day of December, 2019.By: Anthony ClarkeCR19-1352
DC-0900089222-165
STATE VS. ANTHONY CLARKE (DI 2 Pages
District Court 01/02/2020 01:28 PM
3860
Washoe County

CERTIFICATE OF SERVICE

I, Anthony Clarke certify that on this date I did serve a true and correct copy of the foregoing pleading upon Respondent(s), via U.S. Mail, by placing same in the United States Postal Service (Prison Mail System), postage being fully prepaid, and addressed to:

Second Judicial District Court
75 Court Str

Reno NV 89501

ATTN: Clerk of Court

AND

Christopher J. Hicks # 7747

1 South Sierra Str

Reno, NV 89501

Dated this 30
24th day of December, 2019.

By: Anthony Clarke
 Movant, In Proper Person

AFFIRMATION PURSUANT TO NRS 239B.030

** I certify that the foregoing document DOES NOT contain the social security number of any

Persons.

Dec 30
24th 2019
 (Date)

Anthony Clarke
 (Signature)

CR19-1352
STATE VS. ANTHONY CLARKE (D1 3 Pages)
District Court 01/02/2020 01:28 PM
Washoe County

Anthony Clarke #1192204

(Name)

(I.D. No.)

Northern Nevada Correctional Center
Post Office Box 7000
Carson City, NV 89702

Movant, In Proper Person

FILED
2020 JAN -2 PM 1:28

JACOBSON
CLERK OF COURT
BY [Signature]

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

Anthony Clarke #1192204

Plaintiff/Movant

Case No.: CR19-1352

vs. State of Nevada
Warden Bacia, WCC

Defendant/Respondent

**MOTION FOR TRANSCRIPTS
AT STATE EXPENSE**

COMES NOW, Anthony Clarke, in his proper person and requests that this Honorable Court order the Clerk of the Court to prepare a complete transcript of the testimony offered at the hearings held on 8-14-19, 8-21-19, 10-7-19, (See attached page.) and that Plaintiff / Movant not be held liable for payment of such transcripts.

1. Plaintiff / Movant is currently incarcerated at Northern Nevada Correctional Center, 1721 E. Snyder Avenue, Post Office Box 7000, Carson City, NV 89702.
2. Petitioner is proceeding in proper person.
3. Petitioner is indigent per ADKT 411 and as proof by the accompanying Motion for Leave to Proceed In Forma Pauperis, with attached sworn affidavit of Plaintiff / Movant and Certificate of Inmate Financial status.
4. A transcript of the court proceedings in this matter is necessary to allow Plaintiff / Movant to prepare a Petition for Writ of Habeas Corpus (Post-Conviction) that will rely on the record requested.

1. MOTION FOR TRANSCRIPTS AT STATE EXPENSE CONTINUED :

2. August 14, 2019,

3. August 21, 2019,

4. October 7, 2019,

5. October 14, 2019,

6. October 23, 2019,

7. October 24, 2019,

8. November 25, 2019,

9.

10. Thank You.

11.

Anthony Clarke

12.

13.

14.

15.

16.

17.

18.

19.

20.

21.

22.

23.

24.

25.

26.

27.

28.

5. Prior counsel of record does not possess^{AC} the requested transcripts.

Respectfully Submitted this 22³⁰ day of Dec, 2019.

Anthony Clarke
(Signature)

CERTIFICATE OF SERVICE

I, Anthony Clarke certify that on this date I did serve a true and correct copy of the foregoing Motion upon Respondent(s), via U.S. Mail, by placing same in the United States Postal Service (Prison Mail System), postage being fully prepaid, and addressed to:

Second Judicial District Court
Att Court Clerk
75 Court St
Reno, NV 89501

Dated this 30^{AC} day of December, 2019.

By: Anthony Clarke
Movant, In Proper Person

AFFIRMATION PURSUANT TO NRS 239B.030

** I certify that the foregoing document DOES NOT contain the social security number of any

Persons. 30^{AC}
Dec 21, 2019
(Date)

Anthony Clarke
(Signature)

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2020-01-03 12:26:08.654.
MARIAH NORTHINGTON, ESQ. - Notification received on 2020-01-03 12:26:08.748.
LORENA VALENCIA, PD - Notification received on 2020-01-03 12:26:08.701.
DIV. OF PAROLE & PROBATION - Notification received on 2020-01-03 12:26:08.685.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

01-03-2020:12:19:20

Clerk Accepted:

01-03-2020:12:25:31

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Notice

Filed By:

Judicial Asst. SParke

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

LORENA VALENCIA, PD for ANTHONY
CLARKE

MARIAH NORTHINGTON, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY CLARKE,
Petitioner,

vs.

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

Respondent,

and

THE STATE OF NEVADA,
Real Party in Interest.

No. 80185

CR19-1352
DIS

FILED

JAN 03 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DENYING PETITION FOR A WRIT OF HABEAS CORPUS


This is an original pro se petition for a writ of habeas corpus challenging a district court's presentence denial of petitioner's motion to dismiss, motion for discovery, petition for a writ of habeas corpus, and motion to withdraw a guilty plea.

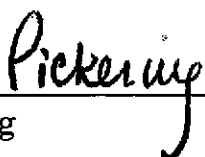
Problematically, petitioner has not provided this court with exhibits or other documentation that would support his claims for relief. See NRAP 21(a)(4) (providing the petitioner shall submit an appendix containing all documents "essential to understand the matters set forth in the petition"). Therefore, without deciding the merits of the claims raised, we decline to exercise our original jurisdiction in this matter, see NRAP 21(b); *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88


P.3d 840, 844 (2004) ("Petitioner[] carr[ies] the burden of demonstrating that extraordinary relief is warranted.").

Moreover, we note that petitioner alleges he has now been sentenced to a term of 28 to 97 months in the Nevada Department of Corrections, and a challenge to a judgment of conviction must be raised in an appeal from the judgment of conviction or in a postconviction petition for a writ of habeas corpus filed in the district court in the first instance. NRS 34.724; NRS 34.738; NRAP 22.¹ Accordingly, we

ORDER the petition DENIED.


Gibbons C.J.


Pickering, J.


Hardesty, J.

cc: Anthony Clarke
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

¹We express no opinion as to whether petitioner could meet the procedural requirements of NRS Chapter 34.

IN THE SUPREME COURT OF THE STATE OF NEVADA

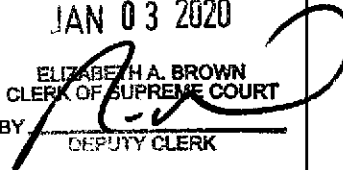
ANTHONY CLARKE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80130

CR19-1352
D15

FILED

JAN 03 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

*ORDER OF LIMITED REMAND
FOR DESIGNATION OF COUNSEL*

This is a pro se appeal from a judgment of conviction. This appeal is remanded to the district court for the limited purpose of securing counsel for appellant. *See Evitts v. Lucey*, 469 U.S. 387 (1985). If appellant is indigent, the district court shall have 30 days from the date of this order to appoint counsel for appellant. Otherwise, within 30 days from the date of this order, the district court shall order that appellant must retain counsel and that retained counsel must enter an appearance in the district court on appellant's behalf within 30 days from the date of the district court's order. Within 5 days from the appointment or appearance of counsel, the district court clerk shall transmit to the clerk of this court: (1) a copy of the district court's written or minute order appointing appellate counsel; or (2) a copy of the notice of appearance filed by retained counsel.

It is so ORDERED.¹

 C.J.

¹Given this order, this court takes no action in regard to appellant's requests for the appointment of counsel filed on December 30, 2019, and January 2, 2020.

cc: Hon. David A. Hardy, District Judge
Anthony Clarke
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2020-01-06 14:04:27.314.
MARIAH NORTHINGTON, ESQ. - Notification received on 2020-01-06 14:04:28.874.
LORENA VALENCIA, PD - Notification received on 2020-01-06 14:04:27.751.
DIV. OF PAROLE & PROBATION - Notification received on 2020-01-06 14:04:27.719.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

01-06-2020:14:00:36

Clerk Accepted:

01-06-2020:14:02:30

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Supreme Court Order Denying
Supreme Court Ord Remanding

Filed By:

Deputy Clerk YViloria

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The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

LORENA VALENCIA, PD for ANTHONY
CLARKE

MARIAH NORTHINGTON, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

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

STATE OF NEVADA,

Case No. CR19-1352

Plaintiff,

Dept. No. 15

vs.

ANTHONY CLARKE,

Defendant.

ORDER STRIKING REQUEST FOR SUBMISSION

Defendant Anthony Clarke, in proper person, filed a request for submission on January 2, 2020, seeking to submit a Motion to Proceed In Forma Pauperis. To date Mr. Clarke has not filed a Motion to Proceed In Forma Pauperis. Accordingly, the request for submission is stricken as moot.

IT IS SO ORDERED.

Dated this 6th day of January, 2020.



District Judge

CERTIFICATE OF SERVICE

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 6 day of January, 2020, I electronically filed the foregoing with the Second Judicial District Court's electronic filing system which will send a notice of electronic filing to the following:

JENNIFER P. NOBLE, ESQ. for STATE OF NEVADA

DIV. OF PAROLE & PROBATION

LORENA VALENCIA, PD for ANTHONY CLARKE

MARIAH NORTHINGTON, ESQ. for STATE OF NEVADA

Further, I certify that I deposited in the county mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the foregoing addressed to:

Anthony Clarke, #1192204
NNCC, P.O. Box 7000
Carson City, NV 89702


Judicial Assistant

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2020-01-06 14:48:54.51.
MARIAH NORTHINGTON, ESQ. - Notification received on 2020-01-06 14:49:01.358.
LORENA VALENCIA, PD - Notification received on 2020-01-06 14:48:56.834.
DIV. OF PAROLE & PROBATION - Notification received on 2020-01-06 14:48:56.257.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

01-06-2020:14:46:40

Clerk Accepted:

01-06-2020:14:47:43

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Ord Striking

Filed By:

Judicial Asst. SParke

You may review this filing by clicking on the following link to take you to your cases.

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The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

LORENA VALENCIA, PD for ANTHONY
CLARKE

MARIAH NORTHINGTON, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

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

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR19-1352

ANTHONY CLARKE,

Dept. No. 15

Defendant.

ORDER

Defendant Anthony Clarke was convicted of BURGLARY, a violation of NRS 205.060, a category B felony. The judgment of conviction was entered on November 25, 2019. Mr. Clarke filed a notice of appeal that same day, November 25, 2019. The Nevada Supreme Court issued an order of limited remand for designation of counsel within 30 days on January 3, 2020.¹

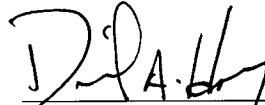
Mr. Clarke is currently serving a sentence in a correctional institution. Pursuant to Nevada Supreme Court's Order ADKT No. 411, a person will be deemed indigent who is unable, without substantial hardship to himself or his dependents, to obtain competent qualified legal counsel on his own. Under this standard, a presumption of substantial hardship attaches to those persons currently serving a sentence in a correctional institution or housed in a mental health facility. Mr. Clarke is therefore, deemed indigent.

¹ After filing his appeal, Mr. Clarke continued to file and submit post-conviction motions and pleadings in this Court. All post-conviction requests made to this Court will be held in abeyance pending final resolution of the appeal and all submissions thereof will be stricken as premature.

1 Pursuant to order of the Nevada Supreme Court regarding representation of
2 indigent defendants, ADKT 411 (2008), and the plan developed for the Second Judicial
3 District Court to meet the requirements set forth therein, the matter of appointment of
4 counsel is hereby referred to the Appointed Counsel Administrator, Krista M. Meier, Esq.

5 **IT IS SO ORDERED.**

6 Dated: January 7, 2020.



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8 David A. Hardy
9 District Court Judge
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court, and that on the 7 day of January, 2020, I deposited for mailing via the Second Judicial District Court interoffice mail system, a true and correct copy of the foregoing document addressed to:

Krista M. Meier, Esq.
Via interoffice mail


Administrative Assistant

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2020-01-07 11:15:23.221.
MARIAH NORTHINGTON, ESQ. - Notification received on 2020-01-07 11:15:23.362.
LORENA VALENCIA, PD - Notification received on 2020-01-07 11:15:23.284.
DIV. OF PAROLE & PROBATION - Notification received on 2020-01-07 11:15:23.252.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

01-07-2020:11:13:46

Clerk Accepted:

01-07-2020:11:14:43

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Ord Appointing Counsel

Filed By:

Judicial Asst. SParke

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

LORENA VALENCIA, PD for ANTHONY
CLARKE

MARIAH NORTHINGTON, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

Code 1350

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

THE STATE OF NEVADA,

Plaintiff,

Vs,

ANTHONY CLARKE,

Defendant.
_____ /

Case No. CR19-1352

Dept. No. 15

SCN: 80130

CERTIFICATE OF CLERK AND TRANSMITTAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe. On the 7th day of January, 2020, I electronically filed to the Supreme Court the Order filed January 7th, 2020. The Order is transmitted pursuant to the Supreme Court's Order of Limited Remand for Designation of Counsel filed January 3rd, 2020.

I further certify that the transmitted record is a copy of the original pleadings on file with the Second Judicial District Court.

Dated this 7th day of January, 2020.

Jacqueline Bryant
Clerk of the Court

By /s/YViloria
YViloria
Deputy Clerk

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2020-01-07 11:35:51.277.
MARIAH NORTHINGTON, ESQ. - Notification received on 2020-01-07 11:35:52.65.
LORENA VALENCIA, PD - Notification received on 2020-01-07 11:35:51.667.
DIV. OF PAROLE & PROBATION - Notification received on 2020-01-07 11:35:51.636.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

01-07-2020:11:33:23

Clerk Accepted:

01-07-2020:11:35:01

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Certificate of Clerk

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

LORENA VALENCIA, PD for ANTHONY
CLARKE

MARIAH NORTHINGTON, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CODE 2520

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

ANTHONY CLARKE,

Appellant,

vs.

Case No. CR19-1352

THE STATE OF NEVADA,

Dept. No. 15

Respondent.

-----/

NOTICE OF APPEARANCE OF COUNSEL

On January 3, 2020, the Nevada Supreme Court remanded the above-entitled appeal for the limited purpose of appointing new Counsel for Appellant. On January 7, 2020, this Court directed the Administrator to appoint an attorney for Appellant. The Public Defender's office represented Appellant in his underlying matter.

Appellant, having been previously represented by the public defender and having remained in-custody since this time, is presumed indigent in accordance with Supreme Court ADKT 411.

IT IS HEREBY RECOMMENDED that Carolyn "Lina" Tanner, Esq., be appointed to represent Appellant in this matter;

IT IS FURTHER RECOMMENDED that Counsel shall receive her fees and costs for time reasonably spent on this matter as mandated by NRS 7.115 through NRS 7.165; and said attorney's fees will be paid as approved by the Administrator.

Pursuant to the Supreme Court Order dated January 3, 2020, the District Court Clerk shall transmit to the Clerk of the Supreme Court a copy of the District Court's written Order appointing appellate counsel and serve the same upon appellant's counsel.

AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED this 25th day of January , 2020.

/s/ Krista Meier, Esq.

KRISTA MEIER, ESQ.

Appointed Counsel Administrator

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 25th day of December, 2020, I caused service to be completed by:

☐ Personal Delivery

☐ Delivery by professional courier

☐ Sending via federal express or other overnight delivery service

☐ Depositing for mail in the U.S. Mail with sufficient postage

☐ Via fax to:

☒ Electronically, in compliance with the Second Judicial District Court's electronic filing system (E-flex), of which the recipient is a registered user a true and correct copy of the above document addressed to: Carolyn "Lina" Tanner, Esq.

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2020-01-27 08:09:15.195.
MARIAH NORTHINGTON, ESQ. - Notification received on 2020-01-27 08:09:15.32.
LORENA VALENCIA, PD - Notification received on 2020-01-27 08:09:15.288.
CAROLYN TANNER, ESQ. - Notification received on 2020-01-27 08:09:15.257.
DIV. OF PAROLE & PROBATION - Notification received on 2020-01-27 08:09:15.226.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

01-24-2020:19:20:00

Clerk Accepted:

01-27-2020:08:08:48

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Notice of Appearance

Filed By:

Krista Meier, Esq.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

LORENA VALENCIA, PD for ANTHONY
CLARKE

MARIAH NORTHINGTON, ESQ. for STATE OF
NEVADA

CAROLYN TANNER, ESQ. for ANTHONY
CLARKE

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

Code 1350

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

ANTHONY CLARKE,

Appellant,

Vs,

THE STATE OF NEVADA,

Respondent.

Case No. CR19-1352

Dept. No. 15

SCN: 80130

CERTIFICATE OF CLERK AND TRANSMITTAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe. On the 27th day of January, 2020, I electronically filed to the Supreme Court the Notice of Appearance of Counsel filed January 24th, 2020. The Notice is transmitted pursuant to the Supreme Court's Order of Limited Remand for Designation of Counsel filed January 3rd, 2020.

I further certify that the transmitted record is a copy of the original pleadings on file with the Second Judicial District Court.

Dated this 27th day of January, 2020.

Jacqueline Bryant
Clerk of the Court

By /s/YViloria
YViloria
Deputy Clerk

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2020-01-27 10:26:30.351.
MARIAH NORTHINGTON, ESQ. - Notification received on 2020-01-27 10:26:30.46.
LORENA VALENCIA, PD - Notification received on 2020-01-27 10:26:30.444.
CAROLYN TANNER, ESQ. - Notification received on 2020-01-27 10:26:30.398.
DIV. OF PAROLE & PROBATION - Notification received on 2020-01-27 10:26:30.366.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

01-27-2020:10:25:17

Clerk Accepted:

01-27-2020:10:25:53

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Certificate of Clerk

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

LORENA VALENCIA, PD for ANTHONY
CLARKE

MARIAH NORTHINGTON, ESQ. for STATE OF
NEVADA

CAROLYN TANNER, ESQ. for ANTHONY
CLARKE

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY CLARKE,
Petitioner,
vs.
THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF WASHOE,
Respondent,
and
THE STATE OF NEVADA,
Real Party in Interest.

Supreme Court No. 80185
District Court Case No. CR191352

D15

NOTICE IN LIEU OF REMITTITUR

TO THE ABOVE-NAMED PARTIES:

The decision and Order of the court in this matter having been entered on January 3rd, 2020, and the period for the filing of a petition for rehearing having expired and no petition having been filed, notice is hereby given that the Order and decision entered herein has, pursuant to the rules of this court, become effective.

DATE: January 28, 2020

Elizabeth A. Brown, Clerk of Court

By: Monique Mercier
Administrative Assistant

cc:
Washoe County District Attorney \ Jennifer P. Noble
Jacqueline Bryant, Washoe District Court Clerk
Anthony Clarke

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2020-01-30 11:45:12.683.
MARIAH NORTHINGTON, ESQ. - Notification received on 2020-01-30 11:45:12.808.
LORENA VALENCIA, PD - Notification received on 2020-01-30 11:45:12.777.
CAROLYN TANNER, ESQ. - Notification received on 2020-01-30 11:45:12.73.
DIV. OF PAROLE & PROBATION - Notification received on 2020-01-30 11:45:12.714.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

01-30-2020:11:44:05

Clerk Accepted:

01-30-2020:11:44:45

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Supreme Ct Not/Lieu/Remittitur

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

LORENA VALENCIA, PD for ANTHONY
CLARKE

MARIAH NORTHINGTON, ESQ. for STATE OF
NEVADA

CAROLYN TANNER, ESQ. for ANTHONY
CLARKE

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

Carolyn “Lina” Tanner, Esq.
Nevada Bar No. 5520
TANNER LAW & STRATEGY GROUP, LTD.
216 E. Liberty Street
Reno, Nevada 89501
Tel. 775.315.0520
E-mail: lina@tannerlnv.com

ANTHONY CLARKE,
Appellant,
vs.
STATE OF NEVADA,
Respondent.

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CASE NO. CR19-1352
SUPREME COURT NO. 80130
DEPT. NO. 15

COMES NOW, Appellant, ANTHONY CLARKE, by and through appointed counsel, CAROLYN “LINA” TANNER, Esq., and hereby requests that the Ex Parte Motion for Transcripts and Sealed Documents at Public Expense on file herein be submitted to the Court for decision.

The undersigned does hereby affirm that the preceding document does not contain the Social

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Security Number of any person.

DATED this 11th day of February, 2020.

By: /s/ Carolyn Tanner
CAROLYN "LINA" TANNER, ESQ.
Nevada Bar No. 5520
TANNER LAW & STRATEGY GROUP, LTD.
216 E. Liberty Street
Reno, Nevada 89501
Tel. 775.315.0520
E-mail: lina@tannerlnv.com

Attorney for ANTHONY CLARKE, Appellant

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Tanner Law & Strategy Group, Reno, Washoe County, Nevada, and that on this date I forwarded a true copy of the foregoing document addressed to:

Krista Meier, Esq. (via e-flex and e-mail)
Washoe County Conflict Contract Administrator

DATED this 11th day of February, 2020.

By: /s/ Carolyn Tanner
CAROLYN "LINA" TANNER, ESQ.

Code: 3868

Carolyn "Lina" Tanner, Esq.
Nevada Bar No. 5520
TANNER LAW & STRATEGY GROUP, LTD.
216 E. Liberty Street
Reno, Nevada 89501
Tel. 775.315.0520
E-mail: lina@tannerlnv.com

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

ANTHONY CLARKE,)	CASE NO. CR19-1352
)	
Appellant,)	SUPREME COURT NO. 80130
)	
vs.)	DEPT. NO. 15
)	
STATE OF NEVADA,)	
)	
Respondent.)	

REQUEST FOR TRANSCRIPT OF PROCEEDINGS

TO: I. ZIHN, E. FERETTO, S. KOETTING, and T. AMUNDSON, Court Reporters

Appellant ANTHONY CLARKE requests preparation of transcripts of the proceedings before the Second Judicial District Court as follows:

Judge or officer hearing the proceeding: THE HONORABLE BARRY L. BRESLOW

Specific individual dates of proceedings for which transcripts are being requested:

- I. ZIHN: August 14, 2019, Arraignment Hearing;

Judge or officer hearing the proceeding: THE HONORABLE EGAN WALKER

Specific individual dates of proceedings for which transcripts are being requested:

- S. KOETTING: August 21, 2019, Arraignment Hearing;

Judge or officer hearing the proceeding: THE HONORABLE DAVID HARDY

Specific individual dates of proceedings for which transcripts are being requested:

- E. FERETTO: October 7, 2019, Sentencing;
- T. AMUNDSON: October 14, 2019, Motion Hearing;
- E. FERETTO: October 23, 2019, Evidentiary Hearing;
- E. FERETTO: November 25, 2019, Sentencing;

Specific portions of the transcript being requested (e.g., suppression hearing, trial, closing argument, etc.): Complete transcripts of the above-requested proceedings.

This notice requests a transcript of only those portions of the district court proceedings which counsel reasonably and in good faith believes are necessary to determine whether appellate issues are present. Voir dire examination of jurors, opening statements and closing arguments of trial counsel, and the reading of jury instructions shall not be transcribed unless specifically requested above, which, except for the reading of jury instructions, they are hereby requested.

I recognize that I must personally serve a copy of this form on the above-named court reporters and on opposing counsel, and that the above-named court reporters shall have 30 days from the receipt of this notice to prepare and submit to the district court and counsel the draft transcript requested herein.

The undersigned hereby affirms, pursuant to NRS 239B.030, that this document does not contain the social security number of any person.

DATED this 11th day of February, 2020.

By: /s/ Carolyn Tanner
CAROLYN "LINA" TANNER, ESQ.
Nevada Bar No. 5520
TANNER LAW & STRATEGY GROUP, LTD.
216 E. Liberty Street

Reno, Nevada 89501
Tel. 775.315.0520
E-mail: lina@tanner1nv.com

Attorney for ANTHONY CLARKE, Appellant

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2020-02-11 13:42:03.311.
MARIAH NORTHINGTON, ESQ. - Notification received on 2020-02-11 13:42:05.557.
LORENA VALENCIA, PD - Notification received on 2020-02-11 13:42:05.167.
CAROLYN TANNER, ESQ. - Notification received on 2020-02-11 13:42:04.808.
DIV. OF PAROLE & PROBATION - Notification received on 2020-02-11 13:42:04.403.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

02-11-2020:13:38:30

Clerk Accepted:

02-11-2020:13:40:02

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Request for Submission

Filed By:

Carolyn E. Tanner

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

LORENA VALENCIA, PD for ANTHONY
CLARKE

MARIAH NORTHINGTON, ESQ. for STATE OF
NEVADA

CAROLYN TANNER, ESQ. for ANTHONY
CLARKE

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2020-02-11 13:44:11.901.
MARIAH NORTHINGTON, ESQ. - Notification received on 2020-02-11 13:44:12.961.
LORENA VALENCIA, PD - Notification received on 2020-02-11 13:44:12.727.
CAROLYN TANNER, ESQ. - Notification received on 2020-02-11 13:44:12.665.
DIV. OF PAROLE & PROBATION - Notification received on 2020-02-11 13:44:12.634.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

02-11-2020:13:39:29

Clerk Accepted:

02-11-2020:13:42:12

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Request

Filed By:

Carolyn E. Tanner

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

LORENA VALENCIA, PD for ANTHONY
CLARKE

MARIAH NORTHINGTON, ESQ. for STATE OF
NEVADA

CAROLYN TANNER, ESQ. for ANTHONY
CLARKE

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2020-02-11 13:44:44.146.
MARIAH NORTHINGTON, ESQ. - Notification received on 2020-02-11 13:44:47.952.
LORENA VALENCIA, PD - Notification received on 2020-02-11 13:44:47.203.
CAROLYN TANNER, ESQ. - Notification received on 2020-02-11 13:44:45.378.
DIV. OF PAROLE & PROBATION - Notification received on 2020-02-11 13:44:45.347.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

02-11-2020:13:37:47

Clerk Accepted:

02-11-2020:13:42:47

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Ex-Parte Mtn

Filed By:

Carolyn E. Tanner

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

LORENA VALENCIA, PD for ANTHONY
CLARKE

MARIAH NORTHINGTON, ESQ. for STATE OF
NEVADA

CAROLYN TANNER, ESQ. for ANTHONY
CLARKE

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

Code: 1675

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

ANTHONY CLARKE,
Appellant,
vs.
STATE OF NEVADA,
Respondent.

CASE NO. CR19-1352
SUPREME COURT NO. 80130
DEPT. NO. 15

ORDER GRANTING EX PARTE MOTION FOR TRANSCRIPTS AT PUBLIC EXPENSE

(DIRECT APPEAL)

Pursuant to NRS 7.125 through NRS 7.135, and upon Appellant's Motion for Transcripts at Public Expense, filed on February 11, 2020, who was previously declared indigent, by and through his counsel, Carolyn "Lina" Tanner, Esq., wherein Counsel moves this Court to allow payment of transcripts in an amount up to, but not to exceed, an unreasonable amount in preparation for the above-referenced post-conviction:

The Court, having reviewed the Motion requesting payment of Transcripts and finds that the services requested as necessary to provide compensation that is of unusual character and duration. Good cause therefore appearing;

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1 IT IS HEREBY ORDERED that costs for transcripts shall be paid upon receipt of the court
2 reporter's invoice of these services.

3 IT IS SO ORDERED.

4 DATED this 11th day of February, 2020.

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7 DISTRICT JUDGE
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Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2020-02-11 15:36:09.449.
MARIAH NORTHINGTON, ESQ. - Notification received on 2020-02-11 15:36:09.59.
LORENA VALENCIA, PD - Notification received on 2020-02-11 15:36:09.558.
CAROLYN TANNER, ESQ. - Notification received on 2020-02-11 15:36:09.512.
DIV. OF PAROLE & PROBATION - Notification received on 2020-02-11 15:36:09.48.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

02-11-2020:15:34:51

Clerk Accepted:

02-11-2020:15:35:31

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Ord Trial Transcript/Public\$

Filed By:

Judicial Asst. SParke

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NEVADA

CAROLYN TANNER, ESQ. for ANTHONY
CLARKE

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1 4185

2

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

7 IN AND FOR THE COUNTY OF WASHOE

8 HONORABLE BARRY L. BRESLOW

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

Case No. CR19-1352

12 ANTHONY CLARKE,

Department No. 8

13 Defendant.

14 -----/

15 TRANSCRIPT OF PROCEEDINGS

Motion to continue

16 August 14, 2019

17 APPEARANCES:

18 For the State:

Aziz Merchant
Deputy District Attorney
1 South Sierra Street
Reno, Nevada

19

20

For the Defendant:

Maizie Pusich
Deputy Public Defender
350 South Center Street
Reno, Nevada

21

22

For the Division of
Parole and Probation:

Teresa Ogden

23 Reported by:

Isolde Zihn, CCR #87

24

1 RENO, NEVADA, WEDNESDAY, AUGUST 14, 2019, 9:00 A.M.

2 MS. PUSICH: Your Honor, Mr. Clarke will also be
3 asking for a short continuance.

4 THE COURT: All right. Please come forward.
5 What's the case name and number, please?

6 MS. PUSICH: CR19-1352, State versus Anthony Clarke.

7 THE COURT: Thank you.
8 Give me just a moment, please.

9 MS. PUSICH: Your Honor, Mr. Clarke is here for
10 arraignment. He has a question about his negotiations.

11 I spoke with Mr. Merchant, but this is Miss
12 Northington's case, and he told me I really need to speak
13 with her. So we would simply ask for a week for entry of
14 plea.

15 THE COURT: Thank you.

16 Mr. Merchant, for purposes of today, any objection to
17 that?

18 MR. MERCHANT: No, Your Honor.

19 What he wanted was an adjustment to the charge. I
20 wasn't willing to do that. We can talk to the assigned DA.

21 THE COURT: Mr. Clarke, do you understand that we'll
22 postpone this a week, and your attorney can meet with the
23 Deputy District Attorney and discuss your case at that time?

24 THE DEFENDANT: Yes, I do.

1 THE COURT: All right. Ms. Clerk, date and time for
2 arraignment in Department 15, please.

3 THE CLERK: August 21st, at 9:00 a.m.

4 MS. PUSICH: Thank you, Your Honor.

5 THE COURT: You will see Judge Hardy at that time.

6 THE DEFENDANT: Thank you, Your Honor.

7 THE COURT: Thank you.

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1 STATE OF NEVADA)

2 COUNTY OF WASHOE)

3

4 I, ISOLDE ZIHN, a Certified Shorthand Reporter of the
5 Second Judicial District Court of the State of Nevada, in and
6 for the County of Washoe, do hereby certify:

7 That I was present in Department 8 of the
8 above-entitled court on Wednesday, August 14, 2019 at the
9 hour of 9:00 a.m. of said day, and took verbatim stenotype
10 notes of the proceedings had upon the matter of THE STATE OF
11 NEVADA, Plaintiff, versus ANTHONY CLARKE, Defendant, Case No.
12 CR19-1352, and thereafter reduced to writing by means of
13 computer-assisted transcription as herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 4, all inclusive, contains a full, true and complete
16 transcript of my said stenotype notes, and is a full, true
17 and correct record of the proceedings had at said time and
18 place.

19 Dated at Reno, Nevada, this 11th day of February,
20 2020.

21

22

23

24

/s/ Isolde Zihn
Isolde Zihn, CCR #87

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2020-02-11 17:19:37.173.
MARIAH NORTHINGTON, ESQ. - Notification received on 2020-02-11 17:19:37.283.
LORENA VALENCIA, PD - Notification received on 2020-02-11 17:19:37.267.
CAROLYN TANNER, ESQ. - Notification received on 2020-02-11 17:19:37.22.
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******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

02-11-2020:17:17:37

Clerk Accepted:

02-11-2020:17:19:06

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Transcript

Filed By:

Isolde Zihn

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CAROLYN TANNER, ESQ. for ANTHONY
CLARKE

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CODE 2610

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ANTHONY CLARKE,

Appellant,

vs.

Case No.: CR19-1352

THE STATE OF NEVADA,

Dept. No.: 15

Respondent.

-----/

NOTICE REGARDING PAYMENT OF TRANSCRIPTS

Pursuant to NRS 7.125 through NRS 7.135, and upon Appellant's Motion for Transcripts at Public Expense, filed on February 11, 2020, by and through his counsel, Carolyn "Lina" Tanner, wherein Counsel moves this Court to allow payment of transcripts in an amount up to, but not to exceed, an unreasonable amount in preparation for the above-referenced appeal:

Appellant has previously been found indigent and counsel was appointed to represent him in this matter. Having reviewed the Motion requesting transcripts, and for good cause appearing;

THIS ADMINISTRATOR HEREBY CERTIFIES the services requested as necessary to provide compensation that is of unusual character and duration;

THIS ADMINISTRATOR HEREBY AUTHORIZES defense/costs of appeal be authorized for transcripts in an amount up to, but not to exceed, AMOUNT DOLLARS (\$0.00), and, to be paid upon receipt of the invoice of these services.

AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED this 17th day of February, 2020.

/s/ Krista Meier, Esq.

KRISTA MEIER, ESQ.

Appointed Counsel Administrator

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 17th day of February, 2020, I caused service to be completed by:

☐ Personal Delivery

☐ Delivery by professional courier

☐ Sending via federal express or other overnight delivery service

☐ Depositing for mail in the U.S. Mail with sufficient postage

☐ Via fax to:

☒ Electronically, in compliance with the Second Judicial District Court's electronic filing system (E-flex), of which the recipient is a registered user a true and correct copy of the above document addressed to: Carolyn "Lina" Tanner.

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JENNIFER NOBLE, ESQ. - Notification received on 2020-02-18 08:49:30.696.
MARIAH NORTHINGTON, ESQ. - Notification received on 2020-02-18 08:49:30.805.
LORENA VALENCIA, PD - Notification received on 2020-02-18 08:49:30.789.
CAROLYN TANNER, ESQ. - Notification received on 2020-02-18 08:49:30.743.
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******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

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A filing has been submitted to the court RE: CR19-1352

Judge:

HONORABLE DAVID A. HARDY

Official File Stamp:

02-17-2020:16:48:14

Clerk Accepted:

02-18-2020:08:49:00

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. ANTHONY CLARKE (D15)

Document(s) Submitted:

Notice

Filed By:

Krista Meier, Esq.

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CLARKE

MARIAH NORTHINGTON, ESQ. for STATE OF
NEVADA

CAROLYN TANNER, ESQ. for ANTHONY
CLARKE

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4185
SUNSHINE LITIGATION
 151 Country Estates Circle
 Reno, Nevada 89512

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

- o0o -

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

=====

TRANSCRIPT OF PROCEEDINGS

SENTENCING

MONDAY, OCTOBER 7TH, 2019

Reno, Nevada

Reported By: ERIN T. FERRETTO, CCR #281

A P P E A R A N C E S

FOR THE PLAINTIFF:

AMANDA C. SAGE, ESQ.
Deputy District Attorney
One South Sierra Street
Reno, Nevada

FOR THE DEFENDANT:

LINDA NORDVIG, ESQ.
Deputy Public Defender
350 S. Center Street
Reno, Nevada

THE DEFENDANT:

Present

PAROLE AND PROBATION:

JULIE BANES

**

SUNSHINE LITIGATION

**

1 -o0o-

2 RENO, NEVADA, MONDAY, OCTOBER 7TH, 2019, 9:00 A.M.

3 -o0o-

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5
6 MS. NORDVIG: Could we call Mr. Clarke's case
7 next?

8 THE COURT: Yes.

9 MS. NORDVIG: Mr. Clarke?

10 THE COURT: I'm missing my cover sheet in Wallen.
11 I want that before that case is called, so we'll do
12 Clarke and take a quick recess. You got it? Okay.

13 CR19-1352, State versus Anthony Clarke, who is
14 present in custody with his attorney, Ms. Nordvig.
15 Ms. Sage is present on behalf of the State.

16 This is the time set for entry of judgment and
17 imposition of sentence. Mr. Clarke entered a plea of
18 guilty to burglary on August 21st, 3029.

19 MS. NORDVIG: Your Honor, Mr. Clarke would like to
20 set a *Young* hearing, please.

21 THE COURT: While I'm pausing, not because I push
22 back, he has every right to receive the effective
23 assistance of counsel and to have a relationship with
24 counsel such that he can communicate and aid in his own

1 defense, I typically see something in writing, mostly it
2 comes from the defendant, I'll occasionally see something
3 from defense counsel, in which there is an identification
4 of the relationship fallen apart.

5 To the State and then to the defense, I'm not sure
6 I'm comfortable proceeding just on an oral request at the
7 time set for sentencing.

8 MS. NORDVIG: If I might, he has prepared a motion
9 which is hand printed. I don't believe it's appropriate
10 to file. We will be happy to file the memo regarding the
11 *Young* hearing and give the court time to consider that.

12 THE COURT: Why is it not appropriate to file?

13 MS. NORDVIG: There are certain things that I'm
14 not sure should be filed in open court. Obviously I
15 can't file it from here and it would have to be attached
16 to at least a cover page, if not something more, as well
17 as --

18 THE COURT: When did Mr. Clarke present --

19 MS. NORDVIG: About ten minutes to 9:00.

20 THE COURT: Do you have it?

21 MS. NORDVIG: Yes -- well, he has it.

22 THE COURT: I'd like to review it in camera,
23 please, if you'll bring it to me, and then back to
24 Ms. Sage.

1 Are you comfortable if I overwrote the request and
2 sentenced Mr. Clarke this morning or must I yield to his
3 oral request?

4 MS. SAGE: An oral request without anything
5 further, I think the court is free to proceed how it
6 feels appropriate. Given that he may be handing you
7 something for your review in camera, that might change
8 the analysis. And, of course, the State has nothing in
9 front of it to understand why we would be setting a *Young*
10 hearing, whether this has to do with withdrawing a plea
11 or what is going on, so I can't make a good
12 representation to the court because I don't know what is
13 going on.

14 MS. NORDVIG: May I approach?

15 THE COURT: Yes, please.

16 MS. NORDVIG: For the court's information, that's
17 for the *Young* hearing. He also has a second motion that
18 is the part I was referring to that was not appropriate
19 for today, nor is it done completely.

20 THE COURT: What is the caption of the second --

21 MS. NORDVIG: Change of plea.

22 THE COURT: Ms. Sage, if you'll please approach
23 and obtain a copy of this motion?

24 This motion does not set forth any basis under

1 *Young*.

2 MS. NORDVIG: No, your Honor. That's why, if we
3 could have some time to file the appropriate documents,
4 then you can make a better judgment. Ms. Valencia will
5 be back in the office on Wednesday, who is his assigned
6 attorney, although anyone in the Public Defender's Office
7 is more than capable of handling this.

8 THE COURT: This is the tip jar \$35 case?

9 MS. NORDVIG: Yes, sir.

10 THE COURT: Will you take that to the clerk,
11 please, and we'll cause it to be marked and admitted in.

12 If that motion constitutes a request for a *Young*
13 hearing as the caption indicates, there is not a good
14 cause to continue the sentencing, that motion is denied.

15 Now, I have essentially through counsel from the
16 defendant a complaint of ineffective assistance and the
17 threat of post-conviction proceedings. At what point,
18 counsel, do I follow judicial normalcy and allow the
19 process to occur as established in our rules of
20 decisional authority, or should I preempt this process to
21 give additional time at the front end to Mr. Clarke?

22 MS. NORDVIG: Your Honor, as I stated earlier, he
23 does have a second motion for the court today, which I
24 believe is incomplete so I could not file it. We would

1 ask for time to allow for counsel to consult with him and
2 see if there's any merit to filing that motion.

3 If you could continue his sentencing until next
4 week sometime, we would appreciate it, and I'm sure
5 Mr. Clarke would, too.

6 THE DEFENDANT: Yes.

7 THE COURT: Ms. Sage?

8 MS. CAMERON: The concern from the State, your
9 Honor, is that proceedings need to continue and if
10 defendants are allowed to show up with no information to
11 the court, nothing filed, no basis for any motion and ask
12 that things be delayed, that would open up the door to
13 continuance delays from every defendant that comes to
14 court. And there's nothing before the court today to say
15 what the basis of the filing is. We saw with the *Young*
16 hearing that there was no basis for that, I would assume
17 that it's going to be somewhat of a similar allegation in
18 the motion to withdraw, but we don't know for sure.
19 That's the State's concern today.

20 THE COURT: It's appears that he's going to seek
21 to withdraw his plea alleging -- despite the canvass and
22 the Guilty Plea Memorandum, and despite -- let me just
23 check real quick -- the waiver of preliminary
24 examination, that on the eve of sentencing he is going to

1 allege that he is not responsible for this crime, and
2 seeks to reinstate his presumption of innocence.

3 MS. NORDVIG: Your Honor, I would suggest a week's
4 continuance is not an undue delay to at least discuss
5 this with Mr. Clarke in a more appropriate setting where
6 we can have a confidential conversation.

7 THE COURT: It is not inappropriate in isolation,
8 but what happens is there becomes a reverberating effect.
9 We see it -- we're just -- we're just coming to the end
10 of reverberations in file-stamped -- excuse me -- inmate
11 communications requesting relief directly from the court
12 in circumvention of defense counsel. We found a way to
13 end those by reinstating the role of counsel. This court
14 does not entertain private communications. So how can I
15 grant this request in isolation but not begin another
16 inappropriate control of the court's calendar? That's
17 really what I'm struggling with.

18 MS. NORDVIG: Your Honor, I would think you would
19 have to take it on a case-by-case basis. I can't advise
20 the court on how to run this court, nor would I even try.

21 THE COURT: Ms. Sage?

22 MS. CAMERON: Again, you're expressing what the
23 State expressed concerning that when I initially
24 addressed you. The basis for withdrawing when the plea

1 was knowing, intelligent and voluntarily, saying, *I*
2 *didn't do this, and I'm changing my mind about entering*
3 *the plea*, it's not that a plea was not knowing,
4 intelligent and voluntary. And that's all that we have
5 in front of us. There's nothing more to go forward
6 without more. I'm not sure this is the appropriate time
7 to be requesting a continuance to file that motion.

8 THE COURT: I agree. This is the time set for
9 entry of judgment and imposition of sentence. There is
10 no motion on file.

11 MS. NORDVIG: Your Honor, could we then trail this
12 so I can at least, maybe if the court takes a break, have
13 five minutes with him?

14 THE COURT: I would certainly allow you to have
15 private consultation time with your client.

16 MS. NORDVIG: Thank you.

17 (Proceedings recessed.)

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2 RENO, NEVADA, MONDAY, OCTOBER 7TH, 2019

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6 THE COURT: Ms. Nordvig, would you come forward --

7 MS. NORDVIG: Yes. Thank you, your Honor.

8 THE COURT: -- with Mr. Clarke.

9 Good morning.

10 THE DEFENDANT: Thank you, your Honor.

11 THE COURT: During the break I read again the
12 statute for withdrawing pleas, NRS 176, I think it was
13 .165, somewhere in there. As I considered the decisional
14 authority, one cause for the withdrawal of plea
15 presentencing is the ineffective assistance. As we know,
16 counsel, there is a different standard for withdrawing a
17 plea pre- and post-sentencing.

18 I quickly looked to see if this charge represented
19 some negotiated charge and it doesn't appear to me that
20 it did. So the question is whether I revisit my initial
21 inclination to grant a week so that there can be a
22 counsel-filed motion. It's important to me that I do
23 right, not always be right. I would probably revisit it
24 if you want to argue it, Ms. Nordvig.

1 MS. NORDVIG: Thank you, your Honor.

2 Your Honor, as the court knows, I always try to do
3 what is in my client's best interests, whether or not
4 their request is for that is another question. However,
5 in this case, Mr. Clarke was represented -- I think I'm
6 his fifth public defender representing him. During the
7 course of those appearances, there may have been some
8 confusion or misunderstanding. I'm not sure. I would
9 have to go back and pull all of the arraignment
10 transcripts, which we do not have access to other than
11 getting it directly from the court. We can't get it
12 electronically, so that would take a day or two. And
13 make an appointment to see Mr. Clarke at the Washoe
14 County Jail.

15 So I would ask for either next Monday or next
16 Wednesday to make sure that the information he was either
17 given or thought that he understood correctly was, in
18 fact, correct. I think that's very important.

19 The court has already made a finding regarding
20 assistance of counsel this morning. I don't know if
21 you're reconsidering that as well.

22 THE COURT: When I said made a finding -- I don't
23 recall making any finding. I thought I was
24 acknowledging --

1 MS. NORDVIG: My apologies.

2 THE COURT: -- acknowledging the possibilities in
3 our legal universe that -- I mean, I really want to be
4 clear so that you and I communicate. What I attempted to
5 say was it appears that he doesn't believe he was well
6 served. So the question is whether that is entertained
7 pre-sentence or post-adjudication upon post-conviction
8 relief.

9 MS. NORDVIG: And, your Honor, I would prefer time
10 to consult with Mr. Clarke, or someone from our office to
11 consult with Mr. Clarke, instead of him feeling that he
12 has been misrepresented or not represented adequately or
13 thoroughly so that if he files a second motion, if the
14 court is not willing to appoint new counsel, he does have
15 the right to represent himself. So I would like to
16 discuss that with him as well.

17 THE COURT: Ms. Sage, the reason why I'm
18 reconsidering what I said before the break, it's not just
19 that I read the statute but when I took the bench
20 initially I was disinclined to follow the recommendation.
21 I was struggling to balance what appears to be a \$35
22 choice with 47 prior convictions, and I was in no way
23 inclined to yield to the negotiations because of those 37
24 gross misdemeanors and misdemeanors. I don't know to

1 what extent the State's negotiating attorney had access
2 to his complete criminal history at the time the
3 negotiations were reached.

4 I'm not pledging my sentence but it's an important
5 part of my decision, because I was inclined at least to
6 follow the Division's recommendation of 36 to 96 and
7 could be persuaded to max him out for 48 to 120 because
8 of his criminal history. At some point, given his age
9 and his conduct within our community, it's time to remove
10 him, so he needs his very best legal counsel.

11 MS. NORDVIG: Thank you, your Honor.

12 And if I might supplement the record, for the
13 court's information we were provided through discovery a
14 copy of his criminal history prior to the time set for
15 the preliminary hearing with the lower court.

16 THE COURT: To include all of the misdemeanors?

17 MS. NORDVIG: The entire packet that I have is
18 significant and, yes, it appears to include the majority,
19 if not, all of the misdemeanors.

20 THE COURT: Ms. Clerk, next Monday, please. Am I
21 available next Monday, do we have a calendar?

22 THE CLERK: Yes, you're available next Monday.

23 THE COURT: I'm going to grant a one-week request.
24 There must be some written motion on file before next

1 Monday.

2 MS. NORDVIG: Unless we decide not to file any
3 motions and proceed?

4 THE COURT: Unless you decide not to file, of
5 course, yes.

6 MS. NORDVIG: Thank you.

7 THE COURT: Any motion that is filed will be filed
8 before next Monday.

9 MS. NORDVIG: Thank you, your Honor.

10 THE COURT: You have no obligation to file
11 anything.

12 MS. NORDVIG: Thank you.

13 THE CLERK: That is October 14th at 9:00 a.m.

14 THE COURT: Mr. Clarke, we'll see you next week.

15 THE DEFENDANT: Thank you, your Honor.

16 * * * * *

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

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

8 That I was present in Department No. 15 of
9 the above-entitled Court on MONDAY, OCTOBER 7TH, 2019,
10 and took verbatim stenotype notes of the proceedings had
11 upon the matter captioned within, and thereafter
12 transcribed them into typewriting as herein appears;

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

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

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

21
22 /s/ Erin T. Ferretto

23 ERIN T. FERRETTO, CCR #281

4185
SUNSHINE LITIGATION
 151 Country Estates Circle
 Reno, Nevada 89512

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

- o0o -

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

=====

TRANSCRIPT OF PROCEEDINGS

EVIDENTIARY HEARING RE: YOUNG/SENTENCING

WEDNESDAY, OCTOBER 23RD, 2019

Reno, Nevada

Reported By: ERIN T. FERRETTO, CCR #281

A P P E A R A N C E S

FOR THE PLAINTIFF:

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

FOR THE DEFENDANT:

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

THE DEFENDANT:

Present

PAROLE AND PROBATION:

JENNY LOPEZ

**

SUNSHINE LITIGATION

**

1 -o0o-

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

3 -o0o-

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6 THE COURT: Just remain seated, please.

7 Where is our State's attorney?

8 (Off the record.)

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

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

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

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

4 THE DEFENDANT: Of course I do.

5 THE COURT: -- to appear impartial.

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

8 MS. NORTHINGTON: Thank you, your Honor.

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

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

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

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

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

7 THE DEFENDANT: Yes, your Honor.

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

10 THE DEFENDANT: No.

11 THE COURT: So you want to represent yourself?

12 THE DEFENDANT: Yes.

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

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

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

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

3 (Defendant sworn.)

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

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

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

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

15 MS. NORTHINGTON: Yes, your Honor.

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

19 MS. NORTHINGTON: Correct.

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

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

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

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

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

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

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

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

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

1 MS. NORTHINGTON: Yes, your Honor.

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

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

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

10 MS. NORTHINGTON: Yes, your Honor.

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

16 Let me have just a moment here.

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

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

1 downtown.

2 THE COURT: Is this the tips --

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

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

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

11 THE COURT: \$37.

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

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

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

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

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

1 building with the intent to commit a felony?

2 MS. NORDVIG: Or petty larceny.

3 THE COURT: Or petty larceny.

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

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

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

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

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

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

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

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: Okay. And you understand that the

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

3 THE DEFENDANT: I do.

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

5 THE DEFENDANT: I do.

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

8 THE DEFENDANT: I do.

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

13 THE DEFENDANT: Yes.

14 THE COURT: You understand you have that right?

15 THE DEFENDANT: Yes.

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

23 Do you understand that?

24 THE DEFENDANT: Yes.

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

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

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

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

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

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

24 THE DEFENDANT: Yes.

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

3 MS. VALENCIA: No, your Honor.

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

6 MS. VALENCIA: Correct, your Honor.

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

10 THE DEFENDANT: Yes, I do.

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

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

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

18 THE DEFENDANT: Yes.

19 THE COURT: When?

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

23 THE COURT: Did that case go the trial?

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

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

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

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

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

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

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

14 Then --

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

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

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

1 Is that your belief?

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

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

9 THE DEFENDANT: I understand.

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

13 THE DEFENDANT: Yes.

14 THE COURT: Why do you think that is?

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

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

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

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

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

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

12 THE DEFENDANT: Yes.

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

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

18 THE COURT: Yes.

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

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

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

3 THE DEFENDANT: I do.

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

9 THE DEFENDANT: Yes.

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

12 THE DEFENDANT: Yes.

13 THE COURT: In California?

14 THE DEFENDANT: Yes.

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

17 THE DEFENDANT: I'm 62.

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

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

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

23 THE DEFENDANT: Never graduated from school.

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

1 THE DEFENDANT: Fifth grade.

2 THE COURT: Fifth grade?

3 THE DEFENDANT: (No audible response.)

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

6 THE DEFENDANT: LA County.

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

9 THE DEFENDANT: Yes.

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

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

20 THE DEFENDANT: Yes.

21 THE COURT: Do you want that?

22 THE DEFENDANT: No.

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

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

4 THE DEFENDANT: Can I interject?

5 THE COURT: Yes.

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

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

11 THE DEFENDANT: Okay.

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

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

24 Do you understand that?

1 THE DEFENDANT: Yes, your Honor.

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

9 Are you familiar with that concept?

10 THE DEFENDANT: Yes.

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

14 THE DEFENDANT: Yes.

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

21 THE DEFENDANT: Yes, your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

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

21 MS. NORTHINGTON: No, your Honor.

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

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

5 Do you agree, counsel?

6 MS. NORTHINGTON: Yes.

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

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

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

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

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

1 negotiations, if I'm remembering correctly.

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

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

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

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

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

13 Ms. Lopez, you're standing?

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

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

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

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

19 THE DEFENDANT: I appreciate you.

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

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

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

4 MS. NORTHINGTON: Understood.

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

6 MS. NORTHINGTON: Yes, your Honor.

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

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

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

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

20 THE DEFENDANT: Your Honor?

21 THE COURT: Yes, Mr. Clarke.

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

24 THE COURT: Yes.

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

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

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

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

14 MS. NORTHINGTON: Will do.

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

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

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

19 (The hearing continued and is filed separately.
20 under seal.)

1 -o0o-

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

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5
6 THE COURT: All right. Ms. Northington and
7 Ms. Lopez have returned. We now mark the transcript as
8 no longer sealed.

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

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

17 That's it. All right?

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

20 THE COURT: Yes.

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

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

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

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

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

21 MS. NORTHINGTON: Yep.

22 THE COURT: I've never forgotten that.

23 THE DEFENDANT: Marine?

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

1 a Marine.

2 MS. NORTHINGTON: Thank you, your Honor.

3 MS. VALENCIA: Thank you, your Honor.

4 THE COURT: All right. Good night.

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

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

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

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

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

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

22
23 /s/ Erin T. Ferretto

24 _____
 ERIN T. FERRETTO, CCR #281