

Judicial District Court  
of the  
State of Nevada

Motion to correct Illegal Sentence  
And Supporting Memorandum

Latest filing  
as of  
December 31, 2024



1 [redacted] # [redacted]  
2 Lovelock Correctional Center  
3 1200 Prison Road  
4 Lovelock, Nevada 89419  
5 Defendant In Pro Se

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

|    |                  |   |   |
|----|------------------|---|---|
| 10 | STATE OF NEVADA, | } | Case No. : [redacted]                     |
| 11 | Plaintiff,       |   | Dept. No. : 7                             |
| 12 | vs.              |   |   |
| 13 | [redacted],      |   | <u>MOTION TO CORRECT ILLEGAL SENTENCE</u> |
| 14 | Defendant.       | } | <u>AND SUPPORTING MEMORANDUM</u>          |

16 [redacted] (herein after "Defendant"), in pro se,  
17 moves this Court for an order granting Defendant's Motion to  
18 Correct Illegal Sentence and Supporting Memorandum.  
19 Defendant submits same in good faith and not intended to  
20 burden nor harass the Court or the State, and/or any  
21 interested party(ies) referenced by the facts contained  
22 therein, nor the Points and Authorities cited herein.

24 This Motion is made and based upon Edwards v. State,  
25 112 Nev. 704 (1996) and/or the provisions of NRS 176.555  
26 (The court may correct an illegal sentence at any time).

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1 I,

STATEMENT OF THE FACTS

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Redacted

Insert Personal Case History Here

On March 25, 2011, Defendant's Judgment (Judgment of Conviction) was filed. (Exhibit 1).

///

Note must be taken that Defendant reserves the right to respond to any motions to dismiss Defendant's Motion To Correct Illegal Sentence made by the State.



1 II.

POINTS AND AUTHORITIES

2

3 PROCEDURAL DEFAULT AND TIME LIMITATION DO NOT  
4 APPLY TO MOTION TO CORRECT ILLEGAL SENTENCE AND  
5 JURISDICTION CHALLENGES.

6

7 A motion to correct an illegal sentence is an appropriate  
8 vehicle for raising the claim that a sentence is facially  
9 illegal at any time. Edwards v. State, 112 Nev. 704, 708 (1996).

10 Under Nevada case-law it is well established that there  
11 are some post-conviction remedies not subject to Nevada's  
12 habeas time constraints and procedural defaults. The very  
13 nature of the remedy sought in this Motion for relief from  
14 a sentence that is facially illegal is incidental to the  
15 proceeding in the trial court and is separate from habeas  
16 corpus relief. *Zd.* at 708. See also Kanally v. Del Pappa, 126  
17 Fed. Appx. 361 (2005). As defined by NRS 176.555:

18 The district court may correct an illegal sentence  
19 at any time, we have recognized that the inherent  
20 power of the district court to correct an illegal  
21 sentence... must necessarily include the power  
22 to entertain a motion to correct an illegal sentence.

23 Also, Nevada's Appellate Courts have recognized only two types  
24 of post-conviction challenges to a conviction or sentence,  
25 i.e., motions to modify a sentence based on a mistaken  
26 assumption about a defendant's criminal record and motion  
27 to correct a facially illegal sentence and, therefore, not  
28 required to be brought in a habeas petition. Pangallo v. State,



1 112 Nev. 1533, 1534 (1996). The Nevada Supreme Court's  
2 discussion of motions to correct an illegal sentence (and  
3 like appeals) in Edwards emphasizes that these motions  
4 are free from the various constraints and time restricting  
5 access to other appeals. In particular these motions are  
6 exempt from the limitation on habeas petition and "motions  
7 to correct an illegal sentence are *not* subject to the time  
8 bars and procedural hurdles limiting other types of  
9 appeals." Collier v. Bayer, 408 F.3d 1279, 1287 (9th Cir. 2005).

10

11 In addition, procedural defaults and time constraints  
12 do not apply to *jurisdiction* challenges. As explained in  
13 Kelly v. US, 29 F.3d 1107, 113-114 (7th Cir. 1994) "When challenging  
14 a jurisdiction error the defendant need *not* show cause and  
15 prejudice..." quoting an unpublished opinion in US v. Broadwell,  
16 LEXIS 6366 (9th Cir. 1992). The court's jurisdiction cannot  
17 be waived. See Freytag v. Commissioner of Int. Revenue, 501  
18 US 868 (1991) (discussing the "non-waivability" of lack of  
19 subject-matter jurisdiction). Arguments attacking a court's  
20 subject-matter jurisdiction can neither be waived nor  
21 forfeited. Class v. US, 138 S.Ct. 798, 200 L.Ed. 2d 37 (2018).  
22 As noted, the court has an independent duty to assure  
23 itself that its jurisdiction is properly had, and as a  
24 result, parties can raise *jurisdictional defect* at any  
25 *time*. Kelly, at 113, quoting Landreth v. Malik, 127 Nev.  
26 175, 179 (2011); Barber v. State, 131 Nev. 1065,  
27 1069 (2015).

28



1 In this Motion, Defendant addresses the facial  
2 illegality of his sentence and will demonstrate his  
3 sentencing is "One 'at variance' with the controlling  
4 sentence statute; or illegal in the sense that the  
5 court goes beyond its authority by acting/imposing  
6 without jurisdiction." Edwards at 708. Furthermore,  
7 Defendant is challenging the validity of the Nevada  
8 Revised Statute ("NRS") Scheme and the trial court's  
9 lack of subject-matter jurisdiction, based on this scheme,  
10 which relates to his illegal sentencing.  
11

12 As a result of this illegal sentence, this Defendant,  
13 DAMON LEE DUNAGAN, is unlawfully incarcerated in  
14 violation of his Right to Due Process of Law in  
15 violation of the 5th, 6th, and 14th Amendments to  
16 the U.S. Constitution and Nevada's Constitutional  
17 equivalents due to the fact that the trial court  
18 lacked subject-matter jurisdiction and lacked  
19 jurisdiction to prosecute state crimes within Nevada's  
20 borders; for purposes of Nevada Revised Statute  
21 171.010 and Senate Bill No. 2, §§ 1 and 3.  
22  
23  
24

25 / / /

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1 of the State of Nevada. In numerous case-laws as follows:  
2 Taylor v. State, 472 P.3d 195 (2020) (Exhibit 4),  
3 Olson v. State, 133 Nev. 1058 Unpub. LEXIS 699 (2017),  
4 Hunt v. State, 133 Nev. 1025 Unpub. (Nev. 2017),  
5 Cesar Victor v. State, LEXIS 269 Unpub. (Nev. 2017),  
6 Peck v. State, LEXIS 867 Unpub. (Nev. 2017),  
7 Escamilla v. State, 133 Nev. 1005 Unpub. (Nev. 2017),  
8 Bryant v. State, 2021 Nev. App. Unpub. LEXIS 114 (2021),  
9 Krig v. State, 125 Nev. 1054, 281 P.3d 1193 Unpub.  
10 (2009) (Exhibit 5).

11  
12 The NSC and appellate courts have clearly ruled that  
13 the NRS Statutory Scheme is *not* the law of the State of  
14 Nevada and is opposed to "Senate Bill No. 2" as the NSC  
15 opines in the above case-laws that the NRS Scheme  
16 "merely constitutes of codified/reflective version of the  
17 Statutes of Nevada." Not to confuse or conflate Nevada's  
18 actual laws, the NRS Scheme is *not* the laws of Nevada.  
19 "The actual laws of Nevada are contained in the  
20 statutes [repealed by SB2 §3, *infra*] of Nevada." Olson  
21 (Exhibit 6 at 19).

22  
23 "To declare what the law is or has been is judicial power;  
24 to declare what the law shall be is legislative." Berkson v.  
25 Lepome, 126 Nev. 492, 499 (2010) quoting Thomas M. Cooley,  
26 Constitutional Limitation 191 (8th ed. 1927). Judicial power  
27 means, therefore, a power to *interpret* what the NRS  
28 Scheme is or is not. This is Judicial Supremacy.



1 Therefore, this Defendant argues that the NRS  
2 Statutory Scheme clearly is NOT the law as expressed  
3 and interpreted by the Nevada Supreme Court. If the  
4 NRS sentencing statutes, in this Defendant's case are  
5 not the law, then it violates his Due Process of Law  
6 as guaranteed by the 5th, 6th, and 14th Amendments  
7 to the US Constitution by implicating Defendant's  
8 Fair Notice of what is lawfully prohibited. To arrest,  
9 convict, and sentence this Defendant on what is not  
10 law is illegal, voided, and unconstitutional.

11

## 12 GROUND TWO

13 THE TRIAL COURT LACKED JURISDICTION TO PROSECUTE  
14 STATE CRIMES WITHIN NEVADA'S BORDERS DUE TO A  
15 FATALLY DEFECTIVE NEVADA REVISED STATUTE 171.010

16

17 NRS 171.010 is cited by the Nevada Supreme Court as  
18 the cognizance, in addition to Article 6, Section 6, of the  
19 Nevada Constitution, to impose sentence and punish  
20 defendants in criminal cases and is the statutory  
21 component of the trial court's subject-matter jurisdiction  
22 over any individual who commits any crime within  
23 its borders. (Exhibit 4 at 14, Exhibit 3).

24

25 However, NRS 171.010 was enacted on January 25,  
26 1957 with a fatal flaw — its three foundational and  
27 supporting statutes were repealed by the same Bill that  
28 created it. This statutory defect can be found within



1 the Statute itself.

2

3 Upon examining the legislative history, located within  
4 NRS 171.010 itself, in brackets, is shown the authoritative  
5 statutes [1911 Cr. Prac. § 58; RL 6908; NCL § 10705] which  
6 is derived from the Statutes of Nevada. (Exhibit 3).

7

8 According to this informational bracket, it is the  
9 source of its legal authority to validate its existence  
10 (Exhibit 7 at 24). The interpolation following the text  
11 of NRS 171.010 means that NRS 171.010 was derived from  
12 section 58 of the Crimes and Punishment Act of 1911 and  
13 subsequently appeared in Revised Laws of Nevada (1912)  
14 section 6908, and Nevada Compiled Laws (1929) section  
15 10705. Missing from this informational bracket is the  
16 very Act that adopted and created NRS 171.010 — 1957's  
17 SB2. What is the "Official Nevada Law Library (from  
18 the "Source™") trying to hide? (Exhibit 7 at 20).

19

20 Notwithstanding, these statutes have been *repealed*  
21 in 1957 by Laws of the State of Nevada, Senate Bill  
22 No. 2, Chapter 2. Section 3 of this act states in  
23 pertinent part: "... all laws and statutes of the  
24 state of Nevada of a general, public, and permanent  
25 nature enacted prior to January 21, 1957 hereby  
26 are *repealed* (Exhibit 2 at 6).

27

28



1 Since then, no new enacted legislative acts have  
2 been passed by the Nevada Legislature to establish the  
3 statutory authority for NRS 171.010 during or after  
4 1957. Nowhere in this NRS does it indicate by specific  
5 provisions that the repealed, antiquated Statutes of  
6 Nevada correlating to this NRS are to be continued.

7  
8 As a result, NRS 171.010 is invalid, void, and the state  
9 trial court lacked jurisdiction to prosecute state crimes  
10 and to impose sentence on this Defendant for alleged  
11 crimes within the borders of Nevada. The court may  
12 exercise judicial power only when it has a valid  
13 statutory scheme and subject-matter jurisdiction.  
14 Rhode Island v. Massachusetts, 37 US 657, 718 (1838).  
15 To impose sentence violates the Defendant's right  
16 to Due Process of Law guaranteed by 5th, 6th, and 14th  
17 Amendments to the US Constitution. NRS 171.010 has no  
18 foundational supporting source statutes to sustain it  
19 because they were all repealed.

20  
21 Therefore, the trial court overstepped the bounds  
22 of constitutional authority by extrajudicial action. It  
23 cannot legally sentence this Defendant pursuant to  
24 a statute ~~not~~ in effect at the time of the offense.  
25 NRS 171.010 was repealed by Legislation which deprived  
26 the trial court of jurisdiction to prosecute state crimes  
27 within the borders of Nevada.

28



## GROUND THREE

ALL OF THE DEFENDANT'S SENTENCING "NRS VIOLATIONS" ARE INVALID, VOID, AND UNCONSTITUTIONAL; FOR THE PURPOSES OF SENATE BILL NO. 2 §§ 1 AND 3 AND NEVADA REVISED STATUTES 171.010

The Defendant's sentence is based on seven (7) "NRS Violations" (Exhibit 1). This sentence is illegal, void, and unconstitutional for the purposes of Senate Bill No. 2 §1, §3, and NRS 171.010 implicating the trial court's subject-matter jurisdiction and jurisdiction to prosecute state crimes within Nevada's borders on three critical dimensions.

1. The trial court lacks subject-matter jurisdiction; for the purpose of Senate Bill No. 2 §3.

Jurisdiction is defined as a court's power to decide a case or issue a decree. Black's Law Dict., (5th ed.). Jurisdiction in terms of the authority of a court, is of two main types, as Judge Cooley states: "Jurisdiction consists of, first, *subject matter*; and second, *personal*. A Treatise on the Constitutional Limitations, 1883, p. 493. Subject-matter jurisdiction defines the court's authority to hear a given type of case, whereas personal jurisdiction protects the individual interest. US v. Morton, 467 US 822, 828 (1984). Both types of jurisdiction are required. To try a person for the commission of a crime, the trial court must



1 have jurisdiction of both the subject-matter and the  
2 person of the Defendant. 21 American Jurisprudence,  
3 "Criminal Law" § 338, p.588.

4  
5 The jurisdiction of a court over the subject-matter  
6 has been a vital prerequisite to the exercise of judicial  
7 power which is derived from the Nevada Constitution,  
8 Article 6, Section 6. 21 C.J.S., "Courts," § 18, p. 25. When  
9 there is established a lack of subject-matter jurisdiction  
10 in the courts, this means that no criminal case can be  
11 lawfully tried. Jurisdiction of the subject-matter involves  
12 the actual thing involved in the controversy. In criminal  
13 proceedings the thing that forms the subject-matter is  
14 the crime or public offense, defined by the actual  
15 enacted law, that the alleged committed. The cause  
16 of action is the alleged crime of offense. But in order to  
17 define a crime, there has to be a working legal and valid  
18 NRS scheme that defines an "NRS Violation," to  
19 establish a crime.

20  
21 Each of Defendant's seven "NRS Violations" which  
22 led to his conviction and sentencing are at variance with  
23 the controlling statutes and the Nevada Constitution, in  
24 that it is based on an invalid statutory scheme, and/or  
25 non-existent statutes. By definition, variance is a  
26 difference or disparity between two statements or documents  
27 that ought to agree; especially in criminal procedure.  
28 Black's Law Dict. In this case, the controlling sentencing



1 statutes are either non-existent, based on repealed  
2 controlling source statutes, or invalid, void, and unconsti-  
3 tutional when the Nevada Supreme Court struck down  
4 the entire NRS Scheme, which in effect — struck down  
5 all of the Defendant's seven "NRS Violations."

6

7 Senate Bill No. 2 § 3, the 1957 bill and provision that  
8 repealed all laws and statutes of the State of Nevada  
9 of a general, public and permanent nature enacted prior  
10 to January 21, 1957 (Ground Two, *supra*) has repealed  
11 several of the controlling source statutes supporting a  
12 number of the Defendant's seven NRS Violations creating  
13 a "variance" under Edwards between the pre-1957  
14 controlling statutes and the Defendant's sentencing  
15 NRS Violations, the trial court went "beyond its authority  
16 by acting/imposing without jurisdiction." Edwards at 708.

17

18 Case in point, the controlling source statutes which  
19 provide source authority to COUNT 2, NRS 193.330 (Exhibit 8)  
20 does not legally exist because it is based on repealed  
21 Statutes of Nevada, i.e., Crimes and Punishment Act of  
22 1911, § 26; Revised Laws of Nevada 1912, § 6291; and Compiled  
23 Laws of Nevada 1929, § 9975 (Exhibit 8 at 36). All were  
24 "Pre-1957" statutes that have repealed by 1957's  
25 Senate Bill No. 2 § 3 (Exhibit 2 at 6).

26

27 Subsequently, in a 1981 futile effort, NRS 193.330 was  
28 amended by Legislation to Statutes of Nevada 1981 on



1 page 158 (Exhibit 8 at 36, in brackets). However, legislation  
2 cannot amend acts or bills that have been repealed.  
3 An amendment is an alteration effecting a change in  
4 the draft, or form, or substance of a law already  
5 enacted, or of a bill proposed for enacted. "Revision in  
6 a legislative sense can only apply to a measure, bill, or  
7 law then having existence, life and force, and cannot  
8 in the very nature of things, apply to a nullified or  
9 repealed act," Maclean v. Brodigan, 41 Nev. 468, 475 (1918).  
10 Defendant incorporates this point into all the NRS Statutes  
11 involved in his sentencing that have been repealed and  
12 subsequently amended.

13

14 In Wisconsin, a case involved a charge for violating a  
15 law which had actually been repealed. There was a hearing  
16 on the issue of whether the court had subject-matter  
17 jurisdiction and the Supreme Court held: Where the  
18 offense charged does not exist, the trial court lacks  
19 jurisdiction. State v. Christensen, 329 N.W. 2d 382, 383 (1983).

20

21 Therefore, everyone of the Defendant's sentencing  
22 "NRS Violations" with pre-1957 controlling source Nevada  
23 Statutes are hollow statutes that cannot legally stand.  
24 Furthermore, all of the Defendant's sentencing NRS  
25 statutes with "post-1957" source laws (controlling  
26 statutes) are *not* the law as decreed by the Nevada  
27 Supreme Court (Ground One) which results in a fatal  
28 variance between the NRS Scheme and the Nevada Statutes



1 completely depriving the trial court of subject-matter  
2 jurisdiction violating Defendant's Due Process Rights  
3 under the 5th, 6th, and 14th Amendments to the  
4 US Constitution; for the purpose of Senate Bill No. 2  
5 §§ 1 and 3.

6

7 2. The Nevada Supreme Court has struck down the  
8 Defendant's NRS Violations; depriving the trial court of  
9 subject-matter jurisdiction, for the purpose of Senate  
10 Bill No. 2 § 1.

11

12 Senate Bill No. 2 Section 1 in clear, plain, and literal  
13 language enacted the NRS Scheme as LAW of the State  
14 of Nevada, rather than the mere adoption thereof as  
15 evidence of law (Exhibit 7 at 21, Exhibit 2 at 5). This material  
16 fact is without question or doubt (Ground One). However,  
17 as already established by this Motion, the NSC decreed  
18 the NRS Scheme *not* to be the laws of the State  
19 (Exhibits 4-6).

20

21 Recognizing this fact, inmates in previous court  
22 challenges to their illegal confinement highlighted this  
23 discrepancy and also noted their sentencing NRS Violations  
24 lacked an Enacting Clause as mandated by the  
25 Nevada Constitution 4 § 23 (Exhibit 6 at 18) and stare  
26 decisis case-law. State v. Rogers, 10 Nev. 120 (1875);  
27 Cain v. Rogers, 131 P.2d 516 (1942). Confronted with this  
28 evidence which clearly points to an illegal sentence, the



1 State's response has been to reply with deception.

2

3 Inmate's "conflates the laws of Nevada with the  
4 codified statutes. The Nevada Revised Statutes 'constitute  
5 the official codified version of the Statutes of Nevada  
6 and may be cited as *prima facie* evidence of the law."  
7 Krig (Exhibit 5 at 17). This "codified" version of law,  
8 according to Taylor (*supra*), are laws that are grouped  
9 together "of similar subject matter together in a  
10 logical order, but *not* itself exercising the legislative  
11 function". (Exhibit 4 at 15). In Olson, the Appellate  
12 Court opined, "The actual laws of Nevada are contained  
13 in the Statutes of Nevada." (Exhibit 6 at 18).

14

15 To say that the NRS Scheme is simply an "official  
16 codified version of the Statutes of Nevada" and  
17 "prima facie evidence of law" would require willful  
18 blindness to the clear and plain language of Senate  
19 Bill No. 2 § 1.

20

21 Therefore uniform lawlessness has occurred in the  
22 State of Nevada for almost seven decades. All crimes  
23 prosecuted by the trial courts since January 21, 1957  
24 lacked subject-matter jurisdiction after the Nevada  
25 Supreme Court struck down the Defendant's  
26 NRS Violations.

27

28



1 There are two (2) algorithmic pathways in considering  
2 whether or not the NRS Scheme is law or not. First,  
3 if the NRS sentencing statutes, in this Defendant's case,  
4 are NOT the law, then it violates the Defendant's  
5 Due Process of Law as guaranteed by the 5th, 6th, and  
6 14th Amendments to the US Constitution by implicating  
7 Defendant's Fair Notice of what is lawfully prohibited.  
8 To sentence this Defendant on what is not law or  
9 neither evidence of law is illegal, void, and unconstitutional.  
10 Second, in the alternative, if the NRS sentencing statutes  
11 are the law, then we come full circle, and the Nevada  
12 Constitutional mandate of an Enactment Clause, on its  
13 face, of each "NRS Violation" shall be mandatory, else  
14 once again, the Defendant's Constitutional Rights are  
15 violated.

16

17 3. The Defendant's trial court lacks subject-matter  
18 jurisdiction for the purpose of NRS 171.010; due to the  
19 fact that NRS 171.010 is defective from its inception.

20

21 Not only is the individual and specific penalty statute  
22 for each crime and sentencing illegal and voided, *supra*,  
23 the general statutory authority for the courts to enforce  
24 such penalty is also illegal and void. As cited in numerous  
25 case-laws that challenge the constitutionality of their  
26 sentencing and the court's subject-matter jurisdiction  
27 (Ground One at 7:2-10) NRS 171.010 is implemented  
28 as the authoritative source of statute that the courts



1 have jurisdiction to sentence and punish defendants  
2 for state crimes within the borders of Nevada (Ground Two).

3  
4 However, NRS 171.010 is fundamentally defective from  
5 its adoption and enactment in 1957. Not to conflate or  
6 confuse the NRS Scheme as "merely the codified version"  
7 with the actual Statutes of Nevada, which is the LAW,  
8 the NRS is only an enigmatic codified resemblance to  
9 the source of statutory authority. The signpost that  
10 points to a non-existent destination becomes null, voided,  
11 and futile. On close examination of NRS 171.010, the  
12 Statutes of Nevada that correspond to this imitation  
13 NRS Statute does NOT exist because they have ALL  
14 been repealed (Ground Two).

15  
16 As a result, the Defendant's trial court lacks  
17 subject-matter jurisdiction due to the indisputable  
18 evidence that NRS 171.010 is defective from its  
19 inception violating the Defendant's Due Process of  
20 Law protected and guaranteed by the 5th, 6th, and  
21 14th Amendments to the US Constitution.

22

23

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1 IV.

## CONCLUSION

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3 As demonstrated in the above sections, the sentence  
4 imposed on this Defendant is an "illegal sentence" and as  
5 such, he prays this Court grants relief from the currently  
6 imposed punishment and correct the illegal sentence by  
7 vacating thereof and releasing Defendant immediately  
8 from custody, from this false and unconstitutional  
9 imprisonment.

10

11 It is not so much that the courts, in general, are  
12 accomplices to the corruption and illegality of the legal  
13 system, as it is the defective engine (NRS Statutory Scheme)  
14 that is illegally enforced by the courts, that must be  
15 rectified with an Enactment Clause, or be replaced to  
16 the rightful law — Statutes of Nevada — exclusively.

17

18 Each of the Defendant's "NRS Violations" is at variance  
19 with the "controlling sentencing statutes," in such that the  
20 controlling sentence is either non-existent (pre-1957  
21 controlling statutes), due to the *repealing* provision of  
22 SB2 § 3; void and invalid (unconstitutional) post-1957  
23 controlling statutes after the Nevada Supreme Court  
24 struck down the NRS Scheme implicating the Defendant's  
25 NRS Violations.

26

27 In sum, it is the lack of subject-matter jurisdiction,  
28 for the purposes of Senate Bill No. 2 §§ 1 and 3, and



1 Nevada Revised Statute 171.010, in the trial court  
2 that makes the sentencing facially illegal under  
3 Edwards and/or NRS 176.555 (The court may correct  
4 an illegal sentence at any time). This Defendant has  
5 standing in this legal action because he is falsely  
6 imprisoned by the Executive Branch (NDOC) of the  
7 State Government against his will. This has caused  
8 irreparable harm by violating his Life, Liberty, and  
9 Property, and Due Process of Law guaranteed by the  
10 5th, 6th, and 14th Amendments to the US Constitution,  
11 as a citizen of this State and Country.

12

13 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

14

15

Respectfully submitted,

16

x \_\_\_\_\_

17

\_\_\_\_\_  
#

18

Defendant In Pro Se

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/ / /

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/ / /

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/ / /

28



1 CODE: 1360  
2 \_\_\_\_\_ # \_\_\_\_\_  
3 Lovelock Correctional Center  
4 1200 Prison Road  
5 Lovelock, Nevada 89419

6 Defendant In Pro Se

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. \_\_\_\_\_  
11 Plaintiff, ) Dept. No. 7  
12 -vs- )  
13 Defendant. )  
14 \_\_\_\_\_ )

15 CERTIFICATE OF SERVICE

16 I do certify that I mailed a true and correct copy of the  
17 preceding MOTION TO CORRECT ILLEGAL SENTENCE  
18 to the below address(es) on this \_\_\_\_\_ day of \_\_\_\_\_,  
19 20 24, by placing same into the hands of prison staff for  
20 posting in the U.S. Mail:

21 Washoe County District Attorney  
22 One South Sierra Street  
23 South Tower, 4th Floor  
Reno, Nevada 89 501

24 Attorney For Plaintiff

25 ( ) check for additional address(es) below

26 \_\_\_\_\_ # \_\_\_\_\_  
27 Lovelock Correctional Center  
28 1200 Prison Road  
Lovelock, Nevada 89419

Defendant In Pro Se

LCC II FORM 20.023



1 [redacted] # [redacted]  
2 Lovelock Correctional Center  
3 1200 Prison Road  
4 Lovelock, Nevada 89419  
5 Defendant In Pro Se  
6 -

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

10 STATE OF NEVADA,  
11 Plaintiff,  
12 vs.  
13 [redacted],  
14 Defendant.

Case No. : [redacted]  
Dept No. : 7

MEMORANDUM IN SUPPORT OF MOTION  
TO CORRECT ILLEGAL SENTENCE

15  
16 [redacted] (herein after "Defendant"), in pro se,  
17 named in the above-styled action with his MOTION TO CORRECT  
18 ILLEGAL SENTENCE, moves this Court for an order granting  
19 Defendant's Motion To Correct Illegal Sentence. Defendant  
20 submits same in good faith and not intended to burden  
21 or harass the Court or the State, and/or any interested  
22 party(ies) referenced by the facts contained therein,  
23 nor contents in Memorandum cited herein.

24  
25 This Motion is made and based upon Edwards v. State,  
26 112 Nev. 704 (1996) and/or the provisions of NRS 176.555  
27 (The court may correct an illegal sentence at any time).  
28

///



1 I.

## INTRODUCTION

2

3 This Defendant is held against his will, kidnapped, and  
4 falsely imprisoned; which is illegal and unconstitutional and  
5 he seeks remedies in this Motion To Correct Illegal Sentence  
6 by vacating his sentence. Furthermore, the illegal sentence  
7 has caused irreparable harms toward this Defendant that  
8 have manifested up to the constitutional dimension,  
9 affecting his procedural and substantive Due Process Rights,  
10 and the right to be informed of the nature and cause of  
11 the accusation as guaranteed by the 5th, 6th, and 14th  
12 Amendments to the US Constitution.

13

14 The interests sought to be protected and enforced is  
15 within the zone regulated and guaranteed by the US and  
16 Nevada Constitution. Despite the fundamentally defective  
17 NRS Scheme, this Court should not excuse itself from  
18 hearing this Motion. The Judicial Power, authorized by the  
19 Constitution (Art. 6 § 6) and not from the fatally defective  
20 NRS Scheme, should compel this Court to hear and determine  
21 the merits of this Motion which addresses the facially  
22 illegality of his sentence by showing that his sentence is  
23 "one at variance with controlling sentencing statute," or  
24 "illegal in the sense that the court goes beyond its  
25 authority by acting *without jurisdiction*." Edwards v. State,  
26 112 Nev 704, 708 (1996). This Court must grant this Motion  
27 and Memorandum below and grant this Defendant's  
28 immediate release, in the interest of Liberty and Justice.



## II.

## POINTS AND AUTHORITIES

### HISTORICAL NEVADA COURT FAILURES

It has been the historical practice of Nevada courts to demand defendants (submitting Motions To Correct Illegal Sentence based on lack of subject-matter jurisdiction) show good cause and prejudice to overcome procedural bars and time limitations and deny these motions for failure to raise these claims on direct appeals or habeas petitions.

This practice has been a clear abuse of judicial discretion and contrary to all established jurisdictional-issue jurisprudence.

In Nevada, a trial court's lack of subject-matter jurisdiction resulting into an illegal sentence can be raised at any time. Edwards v. State, 112 Nev. 704, 708 (1996). A motion to correct an illegal sentence is an appropriate vehicle for raising the claim that a sentence is facially illegal at any time (Edwards) and as defined by NRS 176.555.

In Pangallo v. State, 112 Nev. 1533, 1534 (1996), it was recognized that a post-conviction challenge to a sentence in a form of a Motion To Correct Illegal Sentence to a facially illegal sentence is *not* required to be brought in a habeas petition.



1 In the Federal Courts, it was the opinion of the  
2 Ninth Circuit that "because [the error] is *jurisdictional*,  
3 [the defendant] need *not* show cause and prejudice."  
4 United States v. Broadwell, 1992 US App. LEXIS 6366, \*5  
5 (9th Cir.). Collier further establishes that Motions To  
6 Correct An Illegal Sentence are *not* subject to the time  
7 bars and procedural hurdles limiting other types of  
8 appeals because of the very nature of the remedy  
9 sought from a facially illegal sentence. Collier v. Bayer,  
10 408 F.3d 1279; 2005 U.S. App. LEXIS 10165 (9th Cir.).  
11

12 And most importantly, in the United States Supreme  
13 Court, a litigant whom submits a question of a  
14 jurisdictional defect, which implicates the very power of  
15 a state court to prosecute and punish its citizens is a  
16 valid claim of the denial of a Constitutional Right.  
17 McGirt v. Oklahoma, 591 US \_\_\_; 140 S.Ct. 2452; 207 L.Ed.  
18 2d 985; 2020 US LEXIS 3554 (2020). The court's jurisdiction  
19 *cannot* be waived. Freytag v. Commissioner of Int. Revenue,  
20 501 US 868 (1991) (discussing the "non-waivability" of lack of  
21 subject-matter jurisdiction). Arguments attacking a court's  
22 subject-matter jurisdiction can neither be waived nor  
23 forfeited. Class v. US, 138 S.Ct. 798, 200 L.Ed. 2d 37 (2018).  
24

25 Lastly, the Federal Rules of Civil Procedure, Rule 12(h)(3)  
26 states the following: "If the court determines at any  
27 time it lacks subject-matter jurisdiction, the court  
28 *must* dismiss the action."



1 III.

CONCLUSION

2

3 This Defendant has demonstrated that it is illogical  
4 to conclude that a question of a jurisdictional defect,  
5 which implicates the very power of a trial court to  
6 prosecute and punish this Defendant must show good cause  
7 and prejudice to overcome procedural bars and time  
8 limitations or force these claims into a direct appeal  
9 or habeas petition. This blatant miscarriage of justice  
10 must end.

11

12 To date, the State of Nevada continues its decades-long  
13 historical practice of illegally and unconstitutionally prosecuting  
14 and punishing thousands; sentencing US citizens to life in  
15 prison and EXECUTION by the hands of the government.  
16 Illegally confining these citizens against their will is  
17 kidnapping. Sentencing them to death without jurisdiction  
18 is MURDER. Our Constitution demands more than the  
19 continued use of a Flawed criminal justice system.

20

21 The claims contained in this Motion are currently on  
22 docket in the United States Supreme Court. Therefore,  
23 Defendant requests this Court take Judicial Notice of  
24 Altamirano v. The United States of America, Docket  
25 No. 24-5676 (Exhibit 9) as decisions of the U.S.  
26 Supreme Court must be followed by the States.

27

28



1 History demonstrates the U.S. Supreme Court does  
2 not cower from correcting subject-matter jurisdiction  
3 errors of state governments, e.g., Ramos v. Louisiana,  
4 590 US \_\_\_, \_\_\_, 140 S.Ct. 1390, 206 L.Ed. 2d 583 (2020);  
5 Mc Girt v. Oklahoma, 591 U.S. \_\_\_, 140 S.Ct. 2452; 207 L.Ed.  
6 2d 985; 2020 U.S. LEXIS 3554 (2020). Nevada's long-standing  
7 practice of asserting criminal jurisdiction over its citizens  
8 without a valid statutory scheme must end, despite  
9 the State's obvious view of unacceptable consequences.  
10 The magnitude of correcting this legal wrong is no reason  
11 to perpetuate it. Mc Girt, id.

12  
13 When confronted with the difficult task of rendering  
14 a judgment adverse to a state with potential far-reaching  
15 consequences, the U.S. Supreme Court stated the following:  
16 "Every judge must learn to live with the fact he or she  
17 will make some mistakes; it comes with the territory. But  
18 it is something else entirely to perpetuate something  
19 we all know to be wrong only because we fear the  
20 consequences of being right..." Ramos, id.

21  
22 Dated this \_\_\_ day of \_\_\_\_\_, 2024.

23  
24 Respectfully submitted,

25 x \_\_\_\_\_

26  
27 # \_\_\_\_\_

28 Defendant In Pro Se



1 CODE: 1360

2 Lovelock Correctional Center #  
1200 Prison Road  
3 Lovelock, Nevada 89419

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 \* \* \* \* \*

9 STATE OF NEVADA, ) Case No. \_\_\_\_\_  
10 Plaintiff, ) Dept. No. 7  
11 -vs- )  
12 \_\_\_\_\_ )  
13 Defendant. )  
14 \_\_\_\_\_ )

15 CERTIFICATE OF SERVICE

16 I do certify that I mailed a true and correct copy of the  
17 preceding MEMORANDUM in support of MOTION TO CORRECT  
18 to the below address(es) on this \_\_\_\_\_ day of \_\_\_\_\_,  
19 20 24, by placing same into the hands of prison staff for  
20 posting in the U.S. Mail:

21 Washoe County District Attorney  
22 One South Sierra Street  
23 South Tower, 4th Floor  
Reno, Nevada 89 501

24 Attorney For Plaintiff

25 ( ) check for additional address(es) below.

26  
27 \_\_\_\_\_ #  
28 Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

Defendant In Pro Se

7



1 [Redacted] # [Redacted]  
2 Lovelock Correctional Center  
3 1200 Prison Road  
4 Lovelock, Nevada 89419  
5 Defendant In Pro Se

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

9 \* \* \* \* \*

10 STATE OF NEVADA, }  
11 Plaintiff, }  
12 vs. }  
13 [Redacted], }  
14 Defendant. }

Case No. : [Redacted]  
Dept. No. : 7  
INDEX OF EXHIBITS IN SUPPORT  
OF MOTION TO CORRECT ILLEGAL  
SENTENCE BY A PERSON IN STATE  
CUSTODY.

15  
16 Defendant, [Redacted], in pro se, submits the  
17 following INDEX OF EXHIBITS in support of MOTION TO CORRECT  
18 ILLEGAL SENTENCE BY A PERSON IN STATE CUSTODY.

| No. | Document                         | Date       |
|-----|----------------------------------|------------|
| 20  | 1 Judgment of Conviction         | 3/25/2011  |
| 21  | 2 Senate Bill No.2, Ch.2         | 1/25/1957  |
| 22  | 3 Nevada Revised Statute 171.010 | 2019       |
| 23  | 4 Taylor v. State                | 9/18/2020  |
| 24  | 5 Krig v. State                  | 2/2/2009   |
| 25  | 6 Olson v. State                 | 10/11/2017 |
| 26  | 7 Legislative Counsel's Preface  | 2020       |
| 27  | 8 Nevada Revised Statute 193.330 | 2024       |
| 28  | 9 Altamirano v. United States    | 10/1/24    |



**EXHIBIT**

**1**

**EXHIBIT**

**1**



**EXHIBIT 2**

**EXHIBIT 2**



[Rev. 3/1/2019 5:31:34 PM]

LAWS OF THE STATE OF NEVADA

↓1957 Statutes of Nevada, Page 1↓

LAWS OF THE STATE OF NEVADA

Passed at the
FORTY-EIGHTH SESSION OF THE LEGISLATURE
1957

Senate Bill No. 1—Senator Johnson

CHAPTER 1

AN ACT creating a legislative fund.

[Approved January 23, 1957]

The People of the State of Nevada, represented in Senate and Assembly,
do enact as follows:

SECTION 1. For the purpose of paying the salaries, mileage, and the postage and stationery allowances of members of the 1957 Nevada legislature, the salaries of the attaches, and the incidental expenses of the respective houses thereof, and the unpaid expenses incurred by the 1956 special session of the Nevada legislature, the state treasurer is hereby authorized and required to set apart, from any money now in the general fund not otherwise appropriated, the sum of \$150,000, which shall constitute the legislative fund.

SEC. 2. The state controller is hereby authorized and required to draw his warrants on the legislative fund in favor of the members and employees of the senate and assembly for per diem, mileage, stationery allowances, compensation, and incidental expenses of the respective houses, when properly certified in accordance with law, and the state treasurer is hereby authorized and required to pay the same.

SEC. 3. Any unexpended portion of the legislative fund shall revert to the general fund on December 31, 1959.

SEC. 4. This act shall become effective upon passage and approval.

Senate Bill No. 2—Committee on Judiciary

CHAPTER 2

AN ACT to revise the laws and statutes of the State of Nevada of a general or public nature; to adopt and enact such revised laws and statutes, to be known as the Nevada Revised Statutes, as the law of the State of Nevada; to repeal all prior laws and statutes of a general, public and permanent nature; providing penalties; and other matters relating thereto.

[Approved January 25, 1957]

The People of the State of Nevada, represented in Senate and Assembly,
do enact as follows:

SECTION 1. Enactment of Nevada Revised Statutes. The Nevada Revised Statutes, being the statute laws set forth after section 9 of this act, are hereby adopted and enacted as law of the State of Nevada.

↓1957 Statutes of Nevada, Page 2 (CHAPTER 2, SB 2)↓

SEC. 2. Designation and Citation. The Nevada Revised Statutes adopted and enacted into law by this act, and as hereafter amended and supplemented and printed and published pursuant to law, shall be known as Nevada Revised Statutes and may be cited as "NRS" followed by the number of the Title, chapter or section, as appropriate.



→ SEC. 3. Repeal of Prior Laws. Except as provided in section 5 of this act and unless expressly continued by specific provisions of Nevada Revised Statutes, all laws and statutes of the State of Nevada of a general, public and permanent nature enacted prior to January 21, 1957, hereby are repealed.

SEC. 4. Construction of Act.

1. The Nevada Revised Statutes, as enacted by this act, are intended to speak for themselves; and all sections of the Nevada Revised Statutes as so enacted shall be considered to speak as of the same date, except that in cases of conflict between two or more sections or of any ambiguity in a section, reference may be had to the acts from which the sections are derived, for the purpose of applying the rules of construction relating to repeal or amendment by implication or for the purpose of resolving the ambiguity.

2. The provisions of Nevada Revised Statutes as enacted by this act shall be considered as substituted in a continuing way for the provisions of the prior laws and statutes repealed by section 3 of this act.

3. The incorporation of initiated and referred measures is not to be deemed a legislative reenactment or amendment thereof, but only a mechanical inclusion thereof into the Nevada Revised Statutes.

4. The various analyses set out in Nevada Revised Statutes, constituting enumerations or lists of the Titles, chapters and sections of Nevada Revised Statutes, and the descriptive headings or catchlines immediately preceding or within the texts of individual sections, except the section numbers included in the headings or catchlines immediately preceding the texts of such sections, do not constitute part of the law. All derivation and other notes set out in Nevada Revised Statutes are given for the purpose of convenient reference, and do not constitute part of the law.

5. Whenever any reference is made to any portion of Nevada Revised Statutes or of any other law of this state or of the United States, such reference shall apply to all amendments and additions thereto now or hereafter made.

SEC. 5. Effect of Enactment of NRS and Repealing Clause.

1. The adoption and enactment of Nevada Revised Statutes shall not be construed to repeal or in any way affect or modify:

- (a) Any special, local or temporary laws.
- (b) Any law making an appropriation.
- (c) Any law affecting any bond issue or by which any bond issue may have been authorized.
- (d) The running of the statutes of limitations in force at the time this act becomes effective.
- (e) The continued existence and operation of any department, agency or office heretofore legally established or held.
- (f) Any bond of any public officer.

.....  
↓1957 Statutes of Nevada, Page 3 (CHAPTER 2, SB 2)↓

(g) Any taxes, fees, assessments or other charges incurred or imposed.

(h) Any statutes authorizing, ratifying, confirming, approving or accepting any compact or contract with any other state or with the United States or any agency or instrumentality thereof.

2. All laws, rights and obligations set forth in subsection 1 of this section shall continue and exist in all respects as if Nevada Revised Statutes had not been adopted and enacted.

3. The repeal of prior laws and statutes provided in section 3 of this act shall not affect any act done, or any cause of action accrued or established, nor any plea, defense, bar or matter subsisting before the time when such repeal shall take effect; but the proceedings in every case shall conform with the provisions of Nevada Revised Statutes.

4. All the provisions of laws and statutes repealed by section 3 of this act shall be deemed to have remained in force from the time when they began to take effect, so far as they may apply to any department, agency, office, or trust, or any transaction, or event, or any limitation, or any right, or obligation, or the construction of any contract already affected by such laws, notwithstanding the repeal of such provisions.

5. No fine, forfeiture or penalty incurred under laws or statutes existing prior to the time Nevada Revised Statutes take effect shall be affected by repeal of such existing laws or statutes, but the recovery of such fines and forfeitures and the enforcement of such penalties shall be effected as if the law or statute repealed had still remained in effect.

6. When an offense is committed prior to the time Nevada Revised Statutes take effect, the offender shall be punished under the law or statute in effect when the offense was committed.

7. No law or statute which heretofore has been repealed shall be revived by the repeal provided in section 3 of this act.

8. The repeal by section 3 of this act of a law or statute validating previous acts, contracts or transactions shall not affect the validity of such acts, contracts or transactions, but the same shall remain as valid as if there had been no such repeal.

9. If any provision of the Nevada Revised Statutes as enacted by this act, derived from an act that amended or repealed a preexisting statute, is held unconstitutional, the provisions of section 3 of this act shall not prevent the preexisting statute from being law if that appears to have been the intent of the legislature or the people.

SEC. 6. Severability of Provisions. If any provision of the Nevada Revised Statutes or amendments thereto, or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions or application of the Nevada Revised Statutes or such amendments that can be given effect without the invalid provision or application, and to this end the provisions of Nevada Revised Statutes and such amendments are declared to be severable.

6



SEC. 7. Effective Date. This act, and each and all of the laws and statutes herein contained and hereby enacted as the Nevada Revised Statutes, shall take effect upon passage and approval.

.....  
↓1957 Statutes of Nevada, Page 4 (CHAPTER 2, SB 2)↓

statutes herein contained and hereby enacted as the Nevada Revised Statutes, shall take effect upon passage and approval.

SEC. 8. Omission From Session Laws. The provisions of NRS 1.010 to 710.590, inclusive, appearing following section 9 of this act shall not be printed or included in the Statutes of Nevada as provided by NRS 218.500 and NRS 218.510; but there shall be inserted immediately following section 9 of this act the words: "(Here followed NRS 1.010 to 710.590, inclusive.)"

SEC. 9. Content of Nevada Revised Statutes. The following laws and statutes attached hereto, consisting of NRS sections 1.010 to 710.590, inclusive, constitute the Nevada Revised Statutes:  
(Here followed NRS 1.010 to 710.590, inclusive.)

Senate Bill No. 3—Committee on Judiciary

CHAPTER 3

AN ACT to amend NRS section 218.310 relating to drafting of bills, and to amend NRS sections 220.100, 220.130, 220.160 and 220.170 relating to the duties of the statute revision commission.

[Approved January 25, 1957]

*The People of the State of Nevada, represented in Senate and Assembly,  
do enact as follows:*

SECTION 1. NRS 218.310 is hereby amended to read as follows:

218.310 1. Bills to amend existing general statutes *and all bills to enact new statutes of a general, public and permanent nature shall be deemed amendments to NRS* and shall contain reference to [sections of] NRS. [in the body of the bill rather than in the title.]

2. New matter shall be indicated by underscoring in the typewritten copy and italics in the printed copy [.] *except in bills to add new chapters or Titles to NRS and which do not amend existing sections of NRS.*

3. Matter to be omitted shall be indicated by brackets in the typewritten copy and brackets or strike-out type in the printed copy.

4. In the drafting and printing of bills all matter appearing as omitted and bracketed in previously enacted and printed statutes shall be omitted entirely.

SEC. 2. NRS 220.100 is hereby amended to read as follows:

220.100 1. As soon as practicable after May 1, 1951, the commission shall commence the preparation of a complete revision and compilation of the laws of the State of Nevada of general application, and a compilation of the constitution of the State of Nevada, together with brief annotations to sections thereof.

2. The revision when completed shall be known as Nevada Revised Statutes [, ....., and the year of first publication shall be filled in in the blank space of the title. For brevity the title may be cited as NRS .....] *and may be cited as NRS followed by the number of the Title, chapter or section, as appropriate.*

.....  
↓1957 Statutes of Nevada, Page 5 (CHAPTER 3, SB 3)↓

SEC. 3. NRS 220.130 is hereby amended to read as follows:

220.130 1. Upon completion of Nevada Revised Statutes, the commission is authorized and directed to have the same printed, lithographed or reproduced by any other process at the state printing office. Sufficient copies of each page shall be printed or reproduced so that there shall be bound 2,500 copies of each volume of Nevada Revised Statutes.

2. Upon completion of the final printing or other reproduction the separate volumes shall be bound as required in this chapter and forwarded to the secretary of state for safekeeping and disposition. The secretary of state shall sell each set at a price to be set by the commission as near as possible to the cost of preparing, printing and binding, and all proceeds of sales shall be deposited in the general fund.

3. A master copy of Nevada Revised Statutes [, .....,] shall be kept in the office of the commission, and the master copy shall not be removed from the office except in the custody of a member of the commission or the director thereof.

SEC. 4. NRS 220.160 is hereby amended to read as follows:

220.160 1. Upon the completion of Nevada Revised Statutes [, .....,] the commission is authorized and directed to prepare and have printed or reproduced such replacement and supplementary pages for such laws as may,



from time to time, be necessary. In any event, the commission shall prepare replacement and supplementary pages made necessary by the sessions of the legislature as soon as possible after each session.

2. The intent of this section is that Nevada Revised Statutes shall be kept current insofar as may be possible. To that end, the provisions of this chapter and, in particular, NRS 220.120 shall be applicable to the preparation and printing or reproduction of such replacement and supplementary pages.

3. Prices shall be set by the commission as near as possible to the cost of preparing, printing and reproduction.  
SEC. 5. NRS 220.170 is hereby amended to read as follows:

220.170 [Upon completion, Nevada Revised Statutes, ....., may be cited as prima facie evidence of the law in all of the courts of this state. Such evidence may be rebutted by proof that the same differ from the official statutes of Nevada.] 1. The master copy of Nevada Revised Statutes, as printed and bound in accordance with NRS 220.130, shall contain a certificate of the director that he has compared each section thereof with the original section of the enrolled bill by which Nevada Revised Statutes was adopted and enacted, and that the sections in the published edition are correctly copied. All other printed and bound copies of Nevada Revised Statutes shall contain a copy of the certificate.

2. Each set of replacement or supplementary pages, prepared in accordance with NRS 220.160 and provided for inclusion in the master copy of Nevada Revised Statutes, shall be accompanied by a certificate of the director that he has compared each section thereof with the original section of the enrolled bill, and that, with the exception of the changes authorized by law, the sections set forth in the replacement or supplementary pages are correctly copied.

.....  
↓1957 Statutes of Nevada, Page 6 (CHAPTER 3, SB 3)↓

or supplementary pages are correctly copied. All other sets of replacement or supplementary pages shall be accompanied by a copy of the certificate. All such certificates shall be inserted in the bound copies of Nevada Revised Statutes in chronological order immediately following the initial certificate of the director.

3. Copies of Nevada Revised Statutes, as printed, published, revised, supplemented and certified in accordance with this chapter, may be cited as prima facie evidence of the law in all of the courts of this state. Such evidence may be rebutted by proof that the same differ from the official statutes of Nevada.

SEC. 6. This act shall become effective upon passage and approval.

Assembly Bill No. 14—Messrs. McKissick and Hill

CHAPTER 4

AN ACT to amend chapter 379 of NRS relating to county, city and town public libraries by creating a new provision providing penalties for willful detention of property owned by public libraries.

[Approved February 18, 1957]

The People of the State of Nevada, represented in Senate and Assembly,  
do enact as follows:

SECTION 1. Chapter 379 of NRS is hereby amended by adding thereto a new section which shall read as follows:

Any person who willfully detains any book, newspaper, magazine, pamphlet, manuscript, filmstrip or other property of any public library or reading room for more than 30 days after receipt of written notice demanding the return of any such article or property shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$10 nor more than \$50.

Assembly Bill No. 74—Washoe County Delegation

CHAPTER 5

AN ACT to amend and supplement an act entitled "An Act authorizing and empowering the board of county commissioners of the county of Washoe, State of Nevada, in their discretion, not later than 3 years after the passage and approval of this act, to issue bonds for the construction, furnishing and equipment of additional medical facilities at Washoe Medical Center, a public county hospital in such county, and to levy a tax for the payment of interest thereon and the redemption thereof; and other matters relating thereto," approved February 25, 1956; and to ratify, approve and confirm action and proceedings heretofore taken or adopted relating to the issuance of those bonds.

[Approved February 18, 1957]

8



**EXHIBIT 3**

**EXHIBIT 3**

LCC #001



LOCAL JURISDICTION OF PUBLIC OFFENSES

**NRS 171.010 Jurisdiction of offense committed in State.** Every person, whether an inhabitant of this state, or any other state, or of a territory or district of the United States, is liable to punishment by the laws of this state for a public offense committed therein, except where it is by law cognizable exclusively in the courts of the United States.

[1911 Cr. Prac. § 58; RL § 6908; NCL § 10705]

**NEVADA CASES.**

Venue is material allegation and must be proved; use of circumstantial evidence. Venue in a criminal case is material allegation and must be proved, and proof may be made by the use of circumstantial evidence. *People v. Gleason*, 1 Nev. 173 (1865)

Statutes considered together show legislative intent that incarceration of convicted murderer upon life sentence does not preclude trial under indictment for another murder. RL § 6908 (cf. NRS 171.010), making every person who commits a crime liable to punishment, RL § 6921 (cf. NRS 171.080), permitting prosecution for a murder to be commenced at any time after the death of the victim, and RL § 7459 (cf. NRS 174.325), authorizing an order directing a person in prison brought before a court of criminal jurisdiction when it is necessary for any purpose, disclose legislative intent that incarceration of the convicted murderer upon a life sentence does not preclude his trial under indictment for another murder. In re *Trammer*, 35 Nev. 56, 126 Pac. 337 (1912)

Venue may be established by circumstantial evidence. Where, in a prosecution for the attempted grand larceny of a store, the manager of the store where the larceny was attempted testified he lived in the county and managed a store in a city located in the county, employees testified as to the address of the store and the defendant testified that he knew that the incident in which he was involved occurred in a certain store, there was sufficient circumstantial evidence to establish venue in the county of trial although no specific mention of the county was made at trial. (See NRS 171.010.) *Dixon v. State*, 83 Nev. 120, 424 P.2d 100 (1967), cited, *Najarjan v. Sheriff, Clark County*, 87 Nev. 495, at 496, 489 P.2d 405 (1971), *Hyler v. Sheriff, Clark County*, 93 Nev. 561, at 564, 571 P.2d 114 (1977), *James v. State*, 105 Nev. 873, at 875, 784 P.2d 965 (1989)

Statute does not exclude prosecution of foreign national. The fact that NRS 171.010, relating to the jurisdiction of offenses committed in the state, mentioned the inhabitants of the United States but did not specifically refer to the inhabitants of foreign countries would not be construed to exclude prosecution of a foreign national who committed a crime while traveling through Nevada. *Paulette v. State*, 92 Nev. 71, 545 P.2d 205 (1976), cited, *Therault v. State*, 92 Nev. 185, at 189, 547 P.2d 668 (1976), *Johnstone v. State*, 92 Nev. 241, at 242, 548 P.2d 1362 (1976), *Johnstone v. State*, 93 Nev. 427, at 428, 566 P.2d 1130 (1977)

Jurisdiction over crimes committed on land owned by Federal Government. Where an incident for which the defendant was accused of felony driving while intoxicated (see former NRS 484.379; cf. NRS 484C.110), occurred on land owned by the Federal Government, the courts of this State had jurisdiction to try the case because NRS 171.010 gives district court jurisdiction over crimes committed in a county except where the United States has exclusive jurisdiction, the Nevada Admission Acts revealed no retention of jurisdiction by the United States over the land in question, there was no affirmative cessation of jurisdiction by Nevada and affirmative acceptance by the United States and NRS 328.110 requires recording in the office of the county recorder to effectuate cessation of jurisdiction. *Pendleton v. State*, 103 Nev. 95, 734 P.2d 693 (1987)

Where dispute concerned which court had jurisdiction over defendant, district court erred in directing dismissal of matter. As a general rule, except for criminal offenses cognizable exclusively in federal court, some court always has jurisdiction over a criminal defendant. (See NRS 171.010.) Thus, where felony charges were awaiting a preliminary examination in justice court and the justice court had rejected the defendant's contention that the juvenile court had jurisdiction, the district court erred in granting a writ of mandamus directing the justice court to dismiss the matter for lack of jurisdiction. (See NRS 34.160.) The issue was not whether any court had jurisdiction over the defendant if he were held to answer for the charges, but which court had jurisdiction. *State v. Barren*, 128 Nev. 337, 279 P.3d 182 (2012)

**ATTORNEY GENERAL'S OPINIONS.**

Nevada court not deprived of jurisdiction where arresting officer takes defendant temporarily across state line. A Nevada court was not deprived of criminal jurisdiction where an officer, in making an arrest in Nevada, takes the defendant temporarily across the state line while en route to the nearest Nevada magistrate. AGO 52 (4-28-1955)

**NRS 171.015 Jurisdiction of offense commenced without, but consummated within, this State; consummation through agent.** When the commission of a public offense, commenced without the State, is consummated within its boundaries, the defendant is liable to punishment therefor in this State, though the defendant was out of the State at the time of the commission of the



**EXHIBIT**

**4**

**EXHIBIT**

**4**



DONALD TAYLOR, Appellant, vs. THE STATE OF NEVADA, Respondent.  
SUPREME COURT OF NEVADA  
472 P.3d 195; 2020 Nev. Unpub. LEXIS 875  
No. 79218  
September 18, 2020, Filed

Notice:

NOT DESIGNATED FOR PUBLICATION. PLEASE CONSULT THE NEVADA RULES OF APPELLATE PROCEDURE FOR CITATION OF UNPUBLISHED OPINIONS. PUBLISHED IN TABLE FORMAT IN THE PACIFIC REPORTER.

Editorial Information: Prior History

Taylor v. State, 132 Nev. 309, 371 P.3d 1036, 2016 Nev. LEXIS 333, 2016 WL 1594007 (Apr. 21, 2016)

Judges: Parraguirre, J., Hardesty, J., Cadish, J.

Opinion

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; William D. Kephart, Judge. Appellant Donald Taylor argues that he received ineffective assistance of trial and appellate counsel. The district court denied the petition after conducting an evidentiary hearing. We affirm.

To demonstrate ineffective assistance of counsel, a petitioner must show that counsel's performance was deficient in that it fell below an objective standard of reasonableness and that prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*); *see also Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1113 (1996) (applying *Strickland* to claims of ineffective assistance of appellate counsel). The petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004), and both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697. For purposes of the deficiency prong, counsel is strongly presumed to have provided adequate assistance and exercised reasonable professional judgment in all significant decisions. *Id.* at 690. We defer to the district court's factual findings that are supported by substantial evidence and not clearly wrong, but review its application of the law to those facts *de novo*. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

Taylor first argues that trial counsel should have moved to suppress the evidence obtained following his traffic stop on the basis that he was detained for more than one hour without probable cause. He argues that the show-up identification that took place within that one-hour period could not provide



probable cause because it was unreliable. The record, however, shows that probable cause had been established before the show-up identification. The victim's phone showed text messages and calls to and from "D" shortly before the killing; the text messages depicted an agreement where the victim would sell a large quantity of marijuana; witness A. Chenault told the police that the shooting took place after the buyers arrived, pulled guns, and stated that they were stealing the marijuana; and "D"'s phone number was associated with Taylor in other police records. A challenge to Taylor's initial detention on a probable-cause basis would have failed. *See Doleman v. State*, 107 Nev. 409, 413, 812 P.2d 1287, 1289 (1991) ("Probable cause to conduct a warrantless arrest exists when police have reasonably trustworthy information of facts and circumstances that are sufficient in themselves to warrant a person of reasonable caution to believe that an offense has been or is being committed by the person to be arrested."). Taylor accordingly has not shown deficient performance or prejudice in counsel's omitting this challenge. The district court therefore did not err in denying this claim.<sup>1</sup>

Taylor next argues that trial counsel should have retained an investigator to interview Chenault about her changing description of the shooter. Specifically, he argues that an investigation could have developed evidence that Chenault's identification of Taylor as the shooter was influenced by a booking photo texted by the investigating detective to Chenault's daughter and shown to Chenault after the show-up. The discrepancies in Chenault's descriptions are well documented in the record, and counsel cross-examined Chenault on this issue and argued it extensively. As Taylor has not alleged that anything would be uncovered that was not already known and available to be argued, he has not shown deficient performance or that he was prejudiced. The district court therefore did not err in denying this claim.

Taylor next argues that trial counsel should have retained an eyewitness-identification expert, specifically Dr. Deborah Davis, who had been retained by Taylor's codefendant but did not testify after the codefendant pleaded guilty. Substantial evidence supports the district court's finding that counsel made a strategic decision to challenge Chenault's identification by cross-examination rather than an expert witness, as counsel testified at the evidentiary hearing that he identified the eyewitness identification as a significant issue and considered retaining an expert and the record shows that counsel challenged the identification through pretrial motions, cross-examination, and closing argument. Taylor has not shown extraordinary circumstances warranting a challenge to counsel's strategic decision and thus has not shown deficient performance. *See Lara v. State*, 120 Nev. 177, 180, 87 P.3d 528, 530 (2004). Further, Taylor has not shown prejudice. Davis testified at the evidentiary hearing that her testimony would have addressed limitations on the accuracy of eyewitness identifications. Counsel, however, argued these issues and the facts undermining the reliability of Chenault's identification at trial, such that we cannot say that omitting Davis' testimony undermines our confidence in the jury's verdict. *See Strickland*, 466 U.S. at 694 ("A reasonable probability is a probability sufficient to undermine confidence in the outcome.").

Taylor next argues that appellate counsel should have better argued that Chenault's identification was irreparably tainted by the suggestive photograph of Taylor, shown to her by her daughter after the detective sent it by text message to the daughter. Appellate counsel argued briefly that Chenault's in-court identification was tainted by both the suggestive show-up identification and the photograph, such that the in-court identification should have been suppressed. We determined on appeal that the brief statement of the issue was not supported by cogent argument or relevant authority. *Taylor v. State*, 132 Nev. 309, 320 n.6, 371 P.3d 1036, 1043 n.6 (2016). Here, however, Taylor does not proffer the cogent argument or relevant authority that appellate counsel omitted, stating merely that counsel should have established that the photograph was overly suggestive and that Chenault's in-court identification was based on the photograph. We concluded that Chenault's in-court identification had



an adequate independent basis in her observation of the suspects in her apartment before the shooting. *Id.* at 322, 371 P.3d at 1045. Taylor has not argued how the photograph compromised this independent basis. Insofar as Taylor relies on *United States v. Wade*, 388 U.S. 218, 240, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967), and *Moore v. Illinois*, 434 U.S. 220, 225-26, 98 S. Ct. 458, 54 L. Ed. 2d 424 (1977), such reliance is misplaced, as those authorities are relevant only for the general proposition that an in-court identification may be tainted by a suggestive pretrial lineup. Appellate counsel did not perform deficiently and Taylor was not prejudiced by counsel's omitting authorities supporting this general proposition. The district court therefore did not err in denying this claim.

Taylor next argues that trial and appellate counsel should have challenged references to cellular-service-company custodians of records as "experts." Taylor has not shown that either a trial or appellate challenge had merit, as testimony of a cellular-service-company record custodian is expert testimony and thus the references accurately described the testimony. See *Burnside v. State*, 131 Nev. 371, 384, 352 P.3d 627, 636-37 (2015). Taylor accordingly has shown neither deficient performance nor prejudice in the omission of meritless claims. The district court therefore did not err in denying this claim.

Taylor next argues that trial counsel should have challenged the State's failure to notice the record custodian testimony as expert testimony.<sup>2</sup> Taylor has not provided the State's witness lists, and this claim is accordingly a bare claim unsupported by the record. See *Biggins v. State*, 107 Nev. 178, 182, 808 P.2d 535, 538 (1991) (concluding that materials omitted from the record on appeal "are presumed to support the district court's decision"), *rev'd on other grounds by Riggins v. Nevada*, 504 U.S. 127, 112 S. Ct. 1810, 118 L. Ed. 2d 479 (1992); see also *Thomas v. State*, 120 Nev. 37, 43 n.4, 83 P.3d 818, 822 n.4 (2004) ("Appellant has the ultimate responsibility to provide this court with portions of the record essential to determination of issues raised in appellant's appeal." (internal quotation marks omitted)). Even if the State failed to notice the record custodians as experts, Taylor has not shown that trial counsel performed deficiently in omitting a challenge, as we settled that expert witness notice was required in these circumstances two years after Taylor's trial. See *Burnside*, 131 Nev. at 384, 352 P.3d at 636-37. "[C]ounsel's failure to anticipate a change in the law does not constitute ineffective assistance of counsel." *Nika v. State*, 124 Nev. 1272, 1289, 198 P.3d 839, 851 (2008). The district court therefore did not err in denying this claim.

Taylor next argues that trial counsel provided ineffective assistance when his lead counsel David Phillips had his license suspended and could not appear at several pretrial hearings and that this suspension deprived him of his Sixth Amendment right to counsel. Taylor was represented at these hearings by his second attorney John Rogers. Phillips' error in allowing his license to be suspended for failing to submit his CLE certification does not constitute deficient performance. See *United States v. Mouzin*, 785 F.2d 682, 698 (9th Cir. 1986) (observing that suspension does not per se constitute ineffective representation and looking instead to counsel's trial performance). Taylor has not specifically alleged how Rogers' representation at the hearings was deficient or how Phillips' presence at these hearings would have led to a reasonable probability of a different outcome. Insofar as he argues that counsel effectively abandoned his representation by being suspended, Taylor was not abandoned by counsel because Rogers was able to represent him. See *United States v. Cronin*, 466 U.S. 648, 656, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984) ("[T]he adversarial process protected by the Sixth Amendment requires that the accused have counsel acting in the role of an advocate." (internal quotation marks omitted)). And Taylor's argument that he was denied his counsel of choice fails, as he was not entitled to counsel of his choice where counsel was appointed.<sup>3</sup> See *Young v. State*, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004) (recognizing that "[a] defendant's right to substitution of counsel is not without limit"). And to the extent that Taylor argues that appellate counsel should have



raised these issues on appeal, he has not identified a basis that would support a meritorious appellate claim, as he had counsel at all critical stages, and thus has not shown deficient performance or prejudice. The district court therefore did not err in denying these claims.

Taylor next argues that trial counsel should have waived the penalty phase. Substantial evidence supports the district court's finding that counsel made a strategic decision to decline to waive the penalty phase when asked before trial. Taylor has not shown extraordinary circumstances warranting a challenge to that decision and thus has not shown deficient performance. See *Barra*, 120 Nev. at 180, 87 P.3d at 530. Moreover, Taylor has not shown how waiving the penalty phase would have led to a reasonable probability of a different outcome. The district court therefore did not err in denying this claim.

Taylor next argues that trial counsel did not properly prepare for the penalty phase. The record belies Taylor's contention that trial counsel failed to present a mitigation case, as the jury was presented with photographs of Taylor's girlfriend and children and evidence regarding his efforts to turn his life around through employment and education, and counsel argued in favor of Taylor's character and that he should be given an opportunity to rehabilitate himself and reenter society. Contrary to Taylor's contention, it was not objectively unreasonable for counsel to refrain from arguing that Taylor's criminal history was not significant, as this was false, the State extensively argued regarding that history, and counsel reasonably avoided calling attention to it. The record repels Taylor's contention that his mother would have testified in mitigation, as counsel reported contemporaneously that Taylor did not want to subject his mother to that. And contrary to Taylor's contention, it was not objectively unreasonable for counsel to decline to request a jury instruction on mitigating evidence pursuant to NRS 200.035, as that statute concerns mitigating circumstances to weigh against aggravating circumstances in capital penalty phases and Taylor's was not a capital trial. See *Lisle v. State*, 131 Nev. 356, 366-67, 351 P.3d 725, 733 (2015) (discussing mitigating evidence pursuant to NRS 200.035 in capital proceedings). Accordingly, Taylor has not shown deficient performance. The district court therefore did not err in denying this claim.

Taylor next argues that trial and appellate counsel should have investigated and challenged evidence during the penalty phase as to Taylor's charge for a 2001 murder in Pomona, California, that was dismissed without explanation. Taylor argues that investigation would have revealed that another suspect was culpable. Taylor, however, disregards that there were two suspect shooters in the 2001 drive-by shooting-proffering a second suspect would not preclude Taylor's participation. Taylor has not shown deficient performance by trial counsel, who argued strenuously that this evidence was impalpable and highly suspect. Further, he has not shown prejudice regarding trial counsel's performance, as evidence of a second suspect would not itself render the Pomona murder evidence impalpable or highly suspect. See *Nunnery v. State*, 127 Nev. 749, 769, 263 P.3d 235, 249 (2011) ("[Evidence of uncharged crimes] is relevant because a sentencing determination should be based on the entirety of a defendant's character, record, and the circumstances of the offense, but it may be excluded from a capital penalty hearing if it is impalpable or highly suspect." (internal citation and quotation marks omitted)). And Taylor has not shown deficient performance or prejudice regarding appellate counsel's omission, as an appellate claim lacked merit where the jury considered other evidence, including victim-impact testimony, Taylor's prior convictions, and evidence of Taylor's past domestic violence, such that his sentence did not rest solely on the Pomona murder. See *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996) (reversing "a sentence if it is supported solely by impalpable and highly suspect evidence" (emphasis original)). The district court therefore did not err in denying this claim.



Taylor next argues that trial and appellate counsel should have challenged prospective juror 121 for cause because she was unwilling to consider all possible punishments in a penalty phase. While prospective juror 121 stated that she believed that murder warranted "the ultimate punishment," she assented that she would consider all possible punishments and follow the court's instructions. Taylor accordingly has shown neither deficient performance nor prejudice regarding trial counsel's omitting a meritless challenge for cause on this basis. See *Leonard v. State*, 117 Nev. 53, 65, 17 P.3d 397, 405 (2001) (providing that a prospective juror should be removed for cause if her "views would prevent or substantially impair the performance of [her] duties as a juror in accordance with [her] instructions and [her] oath" (internal quotation marks omitted)). Further, Taylor has not shown that an appellate claim on this basis had merit and thus has not shown deficient performance or prejudice in that regard. Cf. *Blake v. State*, 121 Nev. 779, 796, 121 P.3d 567, 578 (2005) (recognizing that the right to an impartial jury is not violated unless a juror empaneled was unfair or biased). The district court therefore did not err in denying this claim.

Taylor next argues that *Carpenter v. United States*, 138 S. Ct. 2206, 201 L. Ed. 2d 507 (2018), applies retroactively and that the seizure of his cell site location information without a warrant violated the Fourth Amendment. *Carpenter* was decided after Taylor's conviction became final, and Taylor argues that it clarified existing law, rather than announcing a new rule of constitutional procedure. We disagree. *Carpenter* announced a new rule, as it overruled a line of authority permitting warrantless seizure of cell site data under certain circumstances. See *United States v. Carpenter*, 819 F.3d 880, 887 (2016) (citing circuit court decisions declining to apply Fourth Amendment protections to cell site metadata), *revel*, 138 S. Ct. 2206, 201 L. Ed. 2d 507; *United States v. Yang*, 958 F.3d 851, 864 (9th Cir. 2020) (Bea, J., concurring in the judgment) (recognizing that *Carpenter* set forth a new rule); *United States v. Goldstein*, 914 F.3d 200, 201-02 (3d Cir. 2019) (same); see also *Bejarano v. State*, 122 Nev. 1066, 1075, 146 P.3d 265, 272 (2006) ("[A] rule is new when it overrules precedent, disapproves a practice sanctioned by prior cases, or overturns a longstanding practice uniformly approved by lower courts."). And as *Carpenter*'s extension of the warrant requirement to cell site location data did not "establish that it is unconstitutional to proscribe certain conduct as criminal or to impose a type of punishment on certain defendants because of their status or offense" or "establish a procedure without which the likelihood of an accurate conviction is seriously diminished," it does not apply retroactively. See *Bejarano*, 122 Nev. at 1074-75, 146 P.3d at 271. The district court therefore did not err in denying this claim.

Taylor next argues that trial and appellate counsel should have challenged the constitutionality of the legislative processes leading to the codification of the Nevada Revised Statutes. He argues that the 1951 statute that created a statute revision commission to revise and compile Nevada's laws-of which Supreme Court justices would be three members-violated a constitutional provision barring justices from holding another nonjudicial office. He also argues that this deprived the trial court of subject matter jurisdiction and violated the separation of powers. Taylor has not demonstrated deficient performance or prejudice because Taylor did not show that the trial court lacked subject matter jurisdiction. See Nev. Const. art. 6 § 6; NRS 171.010. Taylor further did not show that justices of the Nevada Supreme Court violated the constitution by serving in a nonjudicial public office because he did not show that participating in the commission "[i]nvolv[ed] the continuous exercise, as part of the regular and permanent administration of the government, of a public power, trust or duty." Nev. Const. Art. 6, § 11; NRS 281.005(1) (defining "Public officer"); 1963 Nev. Stat., ch. 403, preface, at 1011 (providing that the act serves to abolish the statute revision commission and to assign its duties to the Legislative Counsel Bureau). Moreover, the Legislature enacts the actual laws of Nevada, while the Legislative Counsel Bureau-which succeeded the statute revision commission-codifies and classifies



those laws as the Nevada Revised Statutes, grouping laws of similar subject matter together in a logical order, but not itself exercising the legislative function. See NRS 220.110; NRS 220.120(3); NRS 220.170(3); 1963 Nev. Stat., ch. 403, preface, at 1011. Taylor accordingly has not shown that the statute revision commission improperly encroached upon the powers of another branch of government, violating the separation of powers. See *Comm'n on Ethics v. Hardy*, 125 Nev. 285, 291-92, 212 P.3d 1098, 1103 (2009) ("The purpose of the separation of powers doctrine is to prevent one branch of government from encroaching on the powers of another branch.") The district court therefore did not err in denying this claim.

Lastly, Taylor argues cumulative error. Even assuming that multiple deficiencies in counsel's performance may be cumulated to demonstrate prejudice in a postconviction context, see *McConnell v. State*, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009), Taylor has not demonstrated multiple instances of deficient performance to cumulate.

Having considered Taylor's contentions and concluded that they do not warrant relief, we ORDER the judgment of the district court AFFIRMED.

/s/ Parraguirre, J.

Parraguirre

/s/ Hardesty, J.

Hardesty

/s/ Cadish, J.

Cadish

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Footnotes

1

Taylor argues that the district court denied this and other claims without an evidentiary hearing. The record belies this contention, as an evidentiary hearing was held and postconviction counsel had the opportunity to ask trial counsel about this omission or any other claim raised in the pleadings.

2

Taylor does not argue that appellate counsel should have raised a claim on this basis.

3

Taylor did not contemporaneously object to Rogers' representation while Phillips was unavailable.

4

The *Carpenter* decision was entered after Taylor's conviction had become final, and thus, his claim based on *Carpenter* could not have been raised on direct appeal. See NRS 34.810(1)(b), (3).

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**EXHIBIT**

**5**

**EXHIBIT**

**5**



281 P.3d 1193 (Table)  
Unpublished Disposition  
Supreme Court of Nevada.

Lance G. KRIG, Appellant,  
v.  
The STATE of Nevada, Respondent.

No. 50976.

1  
Feb. 2, 2009.

Attorneys and Law Firms

Paul E. Wommer

Attorney General Catherine Cortez Masto/Carson City

Clark County District Attorney David J. Roger

ORDER OF AFFIRMANCE

\*1 This is an appeal from a judgment of conviction, pursuant to a plea in accordance with *North Carolina v. Alford*, 400 U.S. 25 (1970), of a single count of coercion. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Lance Krig to serve a term of 12 to 48 months in prison.

On appeal, Krig claims that the district court erred in denying his pretrial motion to dismiss for lack of subject matter jurisdiction. Specifically, Krig argues that the statutes under which he was charged and convicted<sup>1</sup> are unconstitutional, as they each lack the enacting clause mandated by Article 4, Section 23 of the Nevada Constitution. This argument is without merit.

The enacting clause of the Nevada Constitution states, "The enacting clause of every law shall be as follows: 'The people of the State of Nevada represented in Senate and Assembly, do enact as follows,' and no law shall be enacted except by bill." Nev. Const. art 4, § 23. This court has interpreted the enacting clause to require that all laws express upon their face "the authority by which they were enacted." *State of Nevada v. Rogers*, 10 Nev. 250, 261, 1875 WL 4032, at \*7 (1875). Krig asserts that the laws under which he was charged and convicted, as compiled in the Nevada Revised Statutes, lack this enacting clause and are therefore unconstitutional.

However, Krig fails to recognize that each of the acts creating and last amending the statutes at issue, as published in the Advanced Sheets of Nevada Statutes (Statutes of Nevada), begins with the phrase "THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS." 1997 Nev. Stat., ch. 313, at 1174; 1995 Nev. Stat., ch. 293, at 508; 2007 Nev. Stat., ch. 528, at 3245; 1995 Nev. Stat., ch. 443, at 1167. Thus, the statutes under which Krig was charged and convicted comply with the constitutional mandate of Article 4, Section 23. *See Ledden v. State*, 686 N.W.2d 873, 876-77 (Minn.2004) (holding that, where appellant argued that his convictions were unconstitutional because statutes under which he was charged did not contain constitutionally required enacting clauses, appellant's convictions were not unconstitutional as acts creating and amending laws began with required phrase); *State v. Wittine*, No. 90747, 2008 WL 4813830, \* 4 (Ohio Ct.App. Nov. 6, 2008) (holding that omission of constitutionally required enacting clauses in Ohio Revised Code "in no way affects the validity of the statutes themselves" where clauses were contained in senate bill enacting laws).

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Further, Krig's argument conflates the laws of Nevada with the codified statutes. The Nevada Revised Statutes "constitute the official codified version of the Statutes of Nevada and may be cited as prima facie evidence of the law." NRS 220.170(3). The Nevada Revised Statutes consist of enacted laws which have been classified, codified, and annotated by the Legislative Counsel. See NRS 220.120. The actual laws of Nevada are contained in the Statutes of Nevada, which as mentioned above, do contain the mandatory enacting clauses. Moreover, NRS 220.110, which sets forth the required contents of the Nevada Revised Statutes, does not mandate that the enacting clauses be republished in the Nevada Revised Statutes. Thus, we conclude that the fact that the Nevada Revised Statutes do not contain enacting clauses does not render the statutes unconstitutional. Therefore, Krig's convictions are not constitutionally deficient. Accordingly, we

\*2 ORDER the judgment of conviction AFFIRMED.

#### All Citations

281 P.3d 1193 (Table), 2009 WL 1491110

#### Footnotes

- 1 The amended criminal information charged Krig with two counts of sexual assault in violation of NRS 200.364 and NRS 200.366, and one count of attempted sexual assault in violation of NRS 200.364, NRS 200.366 and NRS 193.330. The second amended information, to which Krig pleaded guilty, charged Krig with one count of coercion in violation of NRS 207.190.

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**EXHIBIT**

**6**

**EXHIBIT**

**6**



PATRICK DOYLE OLSON, Appellant, vs. THE STATE OF NEVADA, Respondent.  
COURT OF APPEALS OF NEVADA  
2017 Nev. App. Unpub. LEXIS 699; 133 Nev. 1058  
No. 72337  
October 11, 2017, Filed

Notice:

NOT DESIGNATED FOR PUBLICATION. PLEASE CONSULT THE NEVADA RULES OF APPELLATE PROCEDURE FOR CITATION OF UNPUBLISHED OPINIONS. PUBLISHED IN TABLE FORMAT IN THE NEVADA REPORTER.

Judges: Silver, C.J., Tao, J., Gibbons, J.

Opinion

ORDER OF AFFIRMANCE

Patrick Doyle Olson appeals from a district court order dismissing the postconviction petition for a writ of habeas corpus he filed on November 4, 2016. 1 Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Olson did not file a direct appeal and his habeas petition was filed more than three years after the judgment of conviction was entered on April 30, 2013; consequently, Olson's petition was untimely filed and procedurally barred absent a demonstration of good cause for the delay and undue prejudice. See NRS 34.726(1).

Olson claimed he had good cause to overcome the procedural bar because his claims were based on newly discovered evidence that the bill creating the Nevada Revised Statutes was not properly enacted into law and because subject matter jurisdiction can be raised at any time. Olson argued that the bill was flawed and unconstitutional because the procedural requirements for enacting a bill into law were not followed, justices of the Nevada Supreme Court improperly participated in the legislative process, and the law does not contain an enacting clause.

Olson has failed to demonstrate good cause because his claims regarding the Nevada Revised Statutes were available to be raised in a timely petition and ignorance of the law is not an impediment external to the defense. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003); *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988). Olson also failed to demonstrate his claims regarding the Nevada Revised Statutes implicated the jurisdiction of the district court. See Nev. Const. art. 6, § 6; NRS 171.010; *United States v. Cotton*, 535 U.S. 625, 630, 122 S. Ct. 1781, 152 L. Ed. 2d 860 (2002) ("[T]he term jurisdiction means . . . the courts' statutory or constitutional power to adjudicate the case." (internal quotation marks omitted)).

Olson confuses Nevada's actual laws with Nevada's codified statutes. The Nevada Revised Statutes "constitute the official codified version of the Statutes of Nevada and may be cited as prima facie

Appendix J

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evidence of the law." NRS 220.170(3). The Nevada Revised Statutes consist of enacted laws which have been classified, codified, and annotated by the Legislative Counsel. See NRS 220.120. The actual laws of Nevada are contained in the Statutes of Nevada.<sup>2</sup>

Having concluded Olson failed to demonstrate good cause to overcome the procedural bar and the district court did not err by dismissing his petition as procedurally barred, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

/s/ Silver, C.J.

Silver

/s/ Tao, J.

Tao

/s/ Gibbons, J.

Gibbons

**Footnotes**

1

This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

2

The law creating the Nevada Revised Statutes contains an enacting clause and is found in the 1957 Statutes of Nevada, in chapter 2, on page 1.

3

To the extent Olson claims he is actually innocent, we decline to consider his claim because it was not raised in his petition or considered by the district court in the first instance. See *Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), overruled on other grounds by *Means v. State*, 120 Nev. 1001, 103 P.3d 25 (2003).

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Appendix J 1



**EXHIBIT**

**7**

**EXHIBIT**

**7**



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## LEGISLATIVE COUNSEL'S PREFACE

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### History and Objectives of the Revision

*Nevada Revised Statutes* is the result of the enactment, by the 45th Session of the Legislature of the State of Nevada, of chapter 304, Statutes of Nevada 1951 (subsequently amended by chapter 280, Statutes of Nevada 1953, and chapter 248, Statutes of Nevada 1955), which created the Statute Revision Commission and authorized the Commission to undertake, for the first time in the state's history, a comprehensive revision of the laws of the State of Nevada of general application. Although revision was not commenced until 1951, the need for statutory revision had been recognized as early as 1865 when an editorial published in the *Douglas County Banner* stated:

One subject which ought to engage the early, and serious consideration of the Legislature, about to convene, and one which should be acted upon without delay, is the revision and codification of the laws of Nevada. Amendment has been added to amendment, in such manner as to leave, in many instances, the meaning of the Legislature, that last resort of the jurist, in determining the application of the law, more than doubtful \* \* \*. The most serviceable members of the Legislature will be those gentlemen who will do something toward reducing to order our amendment-ridden, imperfectly framed and jumbled up statutes at large.

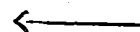
From 1861 to 1951 the Legislature made no provisions for statutory revision, although during that period 8,423 acts were passed by the Legislature and approved by the Governor. During the period from 1873 to 1949 eight compilations of Nevada statutes were published. "Compiling" must be distinguished from "revising." Ordinarily, the "compiling" of statutes involves the following steps: Removing from the last compilation the sections that have been specifically repealed since its publication; substituting the amended text for the original text in the case of amended sections; inserting newly enacted sections; rearranging, to a limited extent, the order of sections; and bringing the index up to date.

"Revising" the statutes, on the other hand, involves these additional and distinguishing operations: (1) The collection into chapters of all the sections and parts of sections that relate to the same subject and the orderly arrangement into sections of the material assembled in each chapter. (2) The elimination of inoperative or obsolete, duplicated, impliedly repealed and unconstitutional (as declared by the Supreme Court of the State of Nevada) sections and parts of sections. (3) The elimination of unnecessary words and the improvement of the grammatical structure and physical form of sections.

The revision, instead of the recompilation, of the statutes was undertaken, therefore, first, to eliminate sections or parts of sections which, though not specifically repealed, were nevertheless ineffective and, second, to clarify, simplify, classify and generally make more accessible, understandable and usable the remaining effective sections or parts of sections.

With respect to the accomplishment of the second purpose of revision specified above, the following revisions, in addition to those mentioned elsewhere in this preface, were made:

1. Long sections were divided into shorter sections. The division of long sections facilitates indexing and reduces the complications and expense incident to future amendment of the statutes.
2. Whole sections or parts of sections relating to the same subject were sometimes combined.
3. Sentences within a section, and words within a sentence, were rearranged, and tabulations were employed where indicated.
4. Such words and phrases as "on and after the effective date of this act," "heretofore," "hereinafter," "now," and "this act" were replaced by more explicit words when possible.
5. The correct names of officers, agencies or funds were substituted for incorrect designations.





4. Such words and phrases as "on and after the effective date of this act," "heretofore," "hereinafter," "now," and "this act" were replaced by more explicit words when possible.

5. The correct names of officers, agencies or funds were substituted for incorrect designations.

The general types of revisions to be made by the reviser, as well as the broad policies governing the work of revision, were determined by the Statute Revision Commission at frequent meetings. Precautions were taken to ensure the accomplishment of the objectives of the program without changing the meaning or substance of the statutes.

Upon completion of the revision of the text of the statutes in December 1956, the Commission turned to the solution of a vital problem: Would it recommend the enactment of the revised statutes or would it request the Legislature merely to adopt the revised statutes as evidence of the law? The Commission concluded that the enactment of the revised statutes as law, rather than the mere adoption thereof as evidence of the law, would be the more desirable course of action. Accordingly, *Nevada Revised Statutes* in typewritten form was submitted to the 48th Session of the Legislature in the form of a bill providing for its enactment as law of the State of Nevada. This bill, Senate Bill No. 2 (hereafter referred to in this preface as "the revision bill"), was passed without amendment or dissenting vote, and on January 25, 1957, was approved by Governor Charles H. Russell.

On July 1, 1963, pursuant to the provisions of chapter 403, Statutes of Nevada 1963, the Statute Revision Commission was abolished, and its powers, duties and functions were transferred to the Legislative Counsel of the State of Nevada.

## METHOD AND FORM OF PUBLICATION

As required by NRS 220.120, all volumes are "bound in loose-leaf binders of good, and so far as possible, permanent quality." The use of the loose-leaf method makes it possible to keep *Nevada Revised Statutes* up to date, without using pocket parts or supplements or completely reprinting and rebinding each volume, simply by the insertion of new pages. As required by NRS 220.160, replacement and supplementary pages to the statute text made necessary by the session of the Legislature are prepared as soon as possible after each session. Complete reprintings of *Nevada Revised Statutes* were made in 1967, 1973 and 1979, and after each regular session beginning in 1985.

Replacement pages are additionally provided periodically between legislative sessions as necessary to update the annotations to NRS, including federal and state case law. Occasionally these replacement pages will contain material inadvertently omitted in the codification of NRS and the correction of manifest clerical errors, as well as sections or chapters of NRS which have been recodified pursuant to chapter 220 of NRS for clarification or to alleviate overcrowding.

The outside bottom corner of each page of NRS contains a designation which indicates the reprint or group of replacement pages with which the page was issued. A designation consisting of four numerals contained in parentheses means that the page was issued as part of a reprint of NRS immediately following the legislative session held in the year indicated by the four numerals. For example, the designation "(2017)" means that the page was issued as part of the reprint of NRS immediately following the 79th Legislative Session which was held in 2017. A designation consisting of four numerals contained in parentheses immediately followed by the capitalized letter "R" and a numeral means that the page was issued as part of a group of replacement pages in the year indicated by the four numerals in parentheses. The numeral following the "R" indicates the number of the group of replacement



pages. The groups begin with the number one and increase sequentially by one number so that the later group will always have a higher number. For example, the designation "(2017) R1" means that the page was part of the first group of replacement pages issued in 2017. Similarly, the designation "(2017) R4" means that the page was part of the fourth group of replacement pages issued in 2017.

## CLASSIFICATION AND ARRANGEMENT

One of the first and most fundamental tasks in the revision was the adoption of a sound system of classification. Proper classification, by which the laws or parts of laws are brought together in logical consecutive units, is vital for a number of reasons: It makes the law more accessible and understandable; only through it can all conflicts, implied repeals and duplications be discovered and the proper changes made; and it makes possible improvements in the cross references, the numbering, the index and the annotations.

The initial step in classification was to develop an outline composed of convenient units, arranged in logical order and designed to accommodate not only the existing statutes but such as might reasonably be expected to be enacted in the future. The basic unit of classification is the chapter. Each chapter is intended to include all the statutes, and no more, relating to each subject that logically can be treated as a unit.

In the process of classification the statutes were divided into four main parts; the parts, in turn, were divided into titles and the titles into chapters. In each of the parts, an attempt has been made to arrange the titles, and the chapters within titles, in the most logical sequence. The four main parts are as follows:

1. Remedial, dealing with structure and organization of courts and with civil procedure and remedies (chapters 1 to 74, inclusive, of NRS).
2. Civil, dealing with relationships among persons (chapters 75 to 167, inclusive, of NRS).
3. Penal, dealing with criminal procedure, crimes generally and punishment (chapters 169 to 217, inclusive, of NRS).
4. Political, dealing with the structure and organization of state and local government and with the services rendered and the regulation exercised by government (chapters 218A to 722, inclusive, of NRS).

The Table of Titles lists the titles in each part, and attempts, with respect to the political part, to indicate the logic of their sequence. The Table of Titles and Chapters that follows the Table of Titles lists all the titles and chapters in the order in which they appear. With respect to the grouping of chapters, the user of the statutes will note that the chapters are arranged in small groups having to do with specific fields of the law, and that numbered titles have been inserted for each of these fields. A thorough understanding of the system of classification, acquired through a study of the Table of Titles and the Table of Titles and Chapters, will enhance the ability of the user of the statutes to find the statutes he or she seeks, or, in many cases, to determine with some degree of certainty that there are no such statutes to be found.

The arrangement of sections within each chapter, as well as the arrangement of chapters within titles, is intended to follow a logical pattern. If there are definitions applicable to a whole chapter, they are contained in the first section or sections of the chapter. Next comes a section or sections stating the leading principle of the chapter. Following this the details dealing with the carrying out or the enforcing of the principle are set down in logical order. If it is contemplated that certain steps shall be taken in chronological order, the steps are arranged in that order. If a chapter consists of several independent or separable laws, the sections dealing with each law are arranged



according to the pattern just described. In most chapters, except those containing the ordinary criminal statutes and the applicable penalties, the criminal penalties for violating provisions of a chapter are contained in the last section or sections.

In the statutory text, index tabs appear at the beginning of each title. Following each tab is an outline of the chapters in that title. These aids are designed to encourage and facilitate the use of the system of classification in finding the law. As a further aid to the quick location of statutory sections, there has been placed at the beginning of each chapter a detailed outline of the sections in that chapter. After the user of the statutes has determined, first, by use of the Table of Titles, in which of the four major parts the statute for which he or she is searching logically falls and, secondly, by use of the Table of Titles and Chapters or the General Index, in which of the titles and chapters it would fall, the user may utilize the outline of that chapter to direct his or her attention to the particular statute being sought. If a statute concerns the subject of that chapter but is located in another, the cross references which follow the outline should point out its location.

## NUMBERING OF SECTIONS

The complete reclassification and rearrangement of the statutes required a renumbering of the sections. The Statute Revision Commission selected a permanent and expandable decimal system of numbering, thus eliminating in future editions of *Nevada Revised Statutes* the necessity of renumbering. Under the adopted decimal system, the number to the left of the decimal point indicates the number of the chapter in which the section is located, while the number to the right indicates the relative position of the section within the chapter. When it is once understood that the number to the left of the decimal point is the chapter number, and the number to the right of the decimal point indicates the order of the section within that chapter, the system is easily comprehended.

The chapters are numbered progressively with Arabic numerals. A progressive rather than a consecutive system was used in order to facilitate the insertion of additional chapters without renumbering, but it has been necessary to designate some chapters by adding a capital letter to the number.

Within each chapter the sections are generally numbered by 10's. In some instances, however, the large number of sections in a chapter has necessitated numbering by 5's, 2's or even 1's. The purpose of generally numbering by 10's is to enable future legislation to be compiled in its proper place without disturbing the uniformity of the numbering system or without renumbering existing sections.

Sections repealed are dropped from the outline and the chapter after the first regular session following the regular session during which they were repealed. Until then, the leadline is printed in the outline followed by the word "Repealed" in brackets and is printed in the chapter with a reference to the provision that repealed the section. The NRS numbers of sections that have been repealed are not revised in future codification except in the case of certain uniform acts, such as the Uniform Commercial Code, where the reuse of numbers is necessary to ensure the desired uniformity of numbering. A Table of Sections Repealed or Replaced is included following the Comparative Section Tables.



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## NUMBERING OF PAGES

The pages of each chapter of NRS are numbered independently of the other chapters with Arabic numerals at the center of the bottom of each page. Each page number consists of one to three numerals or numerals and a letter to the left of a hyphen and one or more numerals to the right of the hyphen. The numerals or numerals and letter to the left of the hyphen indicate the NRS chapter number. The number to the right of the hyphen indicates the sequential order of the page within the chapter. For example, the designation "616D-14" would appear on the fourteenth page of chapter 616D of NRS. On rare occasions, an abundance of replacement pages may cause the use of decimal points and additional numbers immediately following the page number to the right of the hyphen. The numbers following the decimal point are consecutively ordered. For example, the designation "616D-14.2" would appear in chapter 616D of NRS following the page numbered "616D-14.1" which would follow the fourteenth page of the chapter.



## LEGISLATIVE HISTORY

The legislative history for each section of Nevada Revised Statutes enacted as a part of the revision bill, up to the time of enactment, has been inserted in brackets immediately following the section. Each legislative history contains a reference to the section, chapter and year of the Statutes of Nevada from which the section of NRS is derived, together with references to subsequent amendments and, when applicable, section numbers in prior compilations.

Certain abbreviations have been employed by the reviser in order to shorten the bracketed material:

- B—Bonnifield and Healy, *The Compiled Laws of the State of Nevada* (1873)
- BH—Baily and Hammond, *The General Statutes of the State of Nevada* (1885)
- C—Cutting, *Compiled Laws of Nevada* (1900)
- RL—*Revised Laws of Nevada* (1912)
- 1919 RL—*Revised Laws of Nevada* (1919)
- NCL—*Nevada Compiled Laws* (1929)
- 1931 NCL—*Nevada Compiled Laws 1931—41 Supplement* (1941)
- 1943 NCL—*Nevada Compiled Laws 1943—49 Supplement* (1949)

In the case of the Civil Practice Act, Criminal Practice Act and Crimes and Punishments Act of 1911, which were omitted from Statutes of Nevada 1911 as authorized by chapter 84, Statutes of Nevada 1911, the reviser has employed the following abbreviations in the legislative history:

- 1911 CPA—Civil Practice Act of 1911
- 1911 C&P—Crimes and Punishments Act of 1911



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 1911 Cr. Prac.—Criminal Practice Act of 1911

The following several detailed illustrations will show how the legislative history works:

1. The interpolation “[1:19:1865; B § 910; BH § 2425; C § 2508; RL § 4828; NCL § 8370]” following the text of NRS 1.010, means that NRS 1.010 was derived from section 1, chapter 19, Statutes of Nevada 1865; and that section 1, chapter 19, Statutes of Nevada 1865, subsequently appeared in the compilation of Nevada statutes in Bonfield and Healy § 910, in Baily and Hammond § 2425, in Cutting § 2508, in *Revised Laws of Nevada* (1912) § 4828, and *Nevada Compiled Laws* (1929) § 8370.

2. The interpolation “[52:19:1865; A 1869, 136; 1881, 165; BH § 2471; C § 2553; RL § 4872; NCL § 8414]” following the text of NRS 1.060, means that NRS 1.060 was derived from section 52, chapter 19, Statutes of Nevada 1865; that section 52, chapter 19, Statutes of Nevada 1865, was subsequently amended by Statutes of Nevada 1869, at page 136, and by Statutes of Nevada 1881, at page 165; and that the last amendment subsequently appeared in the compilation of Nevada statutes in Baily and Hammond § 2471, in Cutting § 2553, in *Revised Laws of Nevada* (1912) § 4872, and *Nevada Compiled Laws* (1929) § 8414.

3. The interpolation “[42:19:1865; A 1927, 138; NCL § 8404]” following the text of NRS 1.090, means that NRS 1.090 was derived from section 42, chapter 19, Statutes of Nevada 1865; that section 42, chapter 19, Statutes of Nevada 1865, was subsequently amended by Statutes of Nevada 1927, at page 138; and that the last amendment subsequently appeared in *Nevada Compiled Laws* (1929) § 8404.

4. The interpolation “[Part 61:108:1866; B § 2659; BH § 1696; C § 1842; RL § 2817; NCL § 4817]” following the text of NRS 1.280, means that NRS 1.280 was derived from a part of section 61, chapter 108, Statutes of Nevada 1866; and that section 61, chapter 108, Statutes of Nevada 1866, subsequently appeared in the compilation of Nevada statutes in Bonfield and Healy § 2659, in Baily and Hammond § 1696, in Cutting § 1842, in *Revised Laws of Nevada* (1912) § 2817, and *Nevada Compiled Laws* (1929) § 4817.

5. The interpolation “[Part 1:217:1909; A 1931, 9; 1931 NCL § 618] + [Part 2:108:1866; A 1953, 711; 1955, 459]” following the text of NRS 2.020, means that NRS 2.020 was derived from: (a) A part of section 1, chapter 217, Statutes of Nevada 1909; that section 1, chapter 217, Statutes of Nevada 1909, was subsequently amended by Statutes of Nevada 1931, at page 9; and that the last amendment to section 1, chapter 217, Statutes of Nevada 1909, subsequently appeared in *Nevada Compiled Laws 1931–41 Supplement* § 618; and (b) A part of section 2, chapter 108, Statutes of Nevada 1866; that section 2, chapter 108, Statutes of Nevada 1866, was subsequently amended by Statutes of Nevada 1953, at page 711, and by Statutes of Nevada 1955, at page 459.

6. The interpolation “[Part 19:33:1861; A 1947, 445; 1943 NCL § 4067]” following the text of NRS 125.340, means that NRS 125.340 was derived from a part of section 19, chapter 33, Statutes of Nevada 1861; that section 19, chapter 33, Statutes of Nevada 1861, was amended by Statutes of Nevada 1947, at page 445; and that the last amendment to section 19, chapter 33, Statutes of Nevada 1861, subsequently appeared in *Nevada Compiled Laws 1943–49 Supplement* § 4067.

7. The interpolation “[1911 CPA § 532; RL § 5474; NCL § 9021]” following the text of NRS 1.030, means that NRS 1.030 was derived from section 532 of the Civil Practice Act of 1911; and that that section was first printed in *Revised Laws of Nevada* (1912) § 5474, and subsequently appeared in *Nevada Compiled Laws* (1929) § 9021.

8. The interpolation “[1911 C&P § 53; RL § 6318; NCL § 10002]” following the text of NRS 198.010, means that NRS 198.010 was derived from section 53 of the Crimes and Punishments Act of 1911; and that that section was first printed in *Revised Laws of Nevada* (1912) § 6318, and subsequently appeared in *Nevada Compiled Laws* (1929) § 10002.

9. The interpolation “[1911 Cr. Prac. § 99; RL § 6949; NCL § 10747]” following the text of NRS 171.215, means that NRS 171.215 was derived from section 99 of the Criminal Practice Act of 1911; and that that section



was first printed in *Revised Laws of Nevada* (1912) § 6949, and subsequently appeared in *Nevada Compiled Laws* (1929) § 10747.

10. The interpolation “[1911 C&P § 202; A 1917, 410; 1919 RL § 6467; NCL § 10150]” following the text of NRS 646.030, means that NRS 646.030 was derived from section 202 of the Crimes and Punishments Act of 1911; that that section was amended by Statutes of Nevada 1917, at page 410; and that the last amendment subsequently appeared in *Revised Laws of Nevada* (1919) § 6467, and *Nevada Compiled Laws* (1929) § 10150.

11. The interpolation “[8:264:1913; 1919 RL p. 2838; NCL § 3767]” following the text of NRS 339.030, means that NRS 339.030 was derived from section 8, chapter 264, Statutes of Nevada 1913; and that section 8, chapter 264, Statutes of Nevada 1913, subsequently appeared in *Revised Laws of Nevada* (1919), at page 2838, and *Nevada Compiled Laws* (1929) § 3767.

12. The interpolation “[1:153:1927; A 1928, 29; 1945, 208; 1951, 359; 1953, 540]” following the text of NRS 2.050, means that NRS 2.050 was derived from section 1, chapter 153, Statutes of Nevada 1927; and that section 1, chapter 153, Statutes of Nevada 1927, was subsequently amended by Statutes of Nevada 1928, at page 29, by Statutes of Nevada 1945, at page 208, by Statutes of Nevada 1951, at page 359, and by Statutes of Nevada 1953, at page 540.

13. The interpolation “[7:52:1907; added 1949, 506; 1943 NCL § 8460.01]” following the text of NRS 3.380, means that NRS 3.380 was derived from section 7, chapter 52, Statutes of Nevada 1907, which section was added to chapter 52, Statutes of Nevada 1907, by Statutes of Nevada 1949, at page 506; and that the added section appeared in *Nevada Compiled Laws 1943-49 Supplement* § 8460.01.

14. The interpolation “[1:229:1953]” following the text of NRS 1.220, means that NRS 1.220 was derived from section 1, chapter 229, Statutes of Nevada 1953.

Note that the legislative history of a section which was amended contains only references to compilations in which the section appeared in its latest amended form. Thus the legislative history of a section which appeared in *Nevada Compiled Laws* (1929), if the section was amended in 1951, contains no reference to *Nevada Compiled Laws* (1929).

When the legislative history of a section of NRS indicates that the section of NRS has been derived from a *part* of a section, the disposition and location of the balance of that original section generally may be determined by referring to the Comparative Section Tables. In some instances temporary or obsolete material of the original section was deleted by the reviser, the reason for such deletion being explained in the reviser's note to the section of NRS.

Legislative histories interpreted above are to sections of NRS as enacted by the revision act by the 1957 Legislature. Action taken on *Nevada Revised Statutes* by the 1957 and subsequent legislative sessions appears at the end of each legislative history enclosed in parentheses and is indicated as follows:

1. Amended section. The interpolation “[1911 CPA § 673; A 1955, 284]—(NRS A 1957, 140; 1959, 596)” following the text of NRS 37.100 means that NRS 37.100 was amended by Statutes of Nevada 1957, at page 140, and by Statutes of Nevada 1959, at page 596.

2. New section. The interpolation “(Added to NRS by 1957, 64)” following the text of NRS 18.045, means that NRS 18.045 was enacted by Statutes of Nevada 1957, at page 64.

## CROSS REFERENCES



Immediately following the outline in most chapters there have been inserted cross references to other related subjects found in the Constitution of the State of Nevada, *Nevada Revised Statutes*, special and local acts which have a continuing effect, Supreme Court Rules, Nevada Rules of Appellate Procedure, Nevada Rules of Civil Procedure, Nevada Rules on the Administrative Docket, District Court Rules, local district court rules and Justice Court Rules of Civil Procedure. The Constitution of the United States, the United States District Court Rules for the District of Nevada and the Ninth Circuit Rules for the United States Court of Appeals have not been cross-referenced. Use of the information thus made available will enable a complete picture to be obtained of the law with reference to any particular subject. In considering any chapter of NRS, the cross references noted following the outline should be examined. The cross references are designed to make the statutes more accessible.

## CITATION OF NEVADA REVISED STATUTES

The citation of *Nevada Revised Statutes* and its component parts (titles, chapters and sections) is provided in NRS 220.170.

The component parts of a section of NRS and the proper manner of citing them are indicated in the following example of the outline used:

**000.000 Sample outline.** This is a sample section of NRS, which can be subdivided as follows:

1. This is a subsection.
2. Subsections are numbered with Arabic numerals and can be subdivided into paragraphs which:
  - (a) Are designated by a lowercase letter in parentheses;
  - (b) Are cited as "paragraphs (a) and (b) of subsection 2 of NRS 000.000"; and
  - (c) Can be further subdivided into subparagraphs which:
    - (1) Are designated by Arabic numerals in parentheses;
    - (2) Are cited as "subparagraphs (1) and (2) of paragraph (c) of subsection 2 of NRS 000.000"; and
    - (3) Can be further subdivided into sub-subparagraphs which are:
      - (I) Designated by Roman numerals in parentheses; and
      - (II) Cited as "sub-subparagraphs (I) and (II) of subparagraph (3) of paragraph (c) of subsection 2 of NRS 000.000."

## ABBREVIATIONS

In preparing and revising NRS a minimum of abbreviations has been used. In addition to the abbreviations employed in the legislative histories (explained in this preface under the heading "Legislative History") the following abbreviations have been used:



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“4JDCR” means Fourth Judicial District Court Rules.  
“7JDCR” means Seventh Judicial District Court Rules.  
“10JDCR” means Tenth Judicial District Court Rules.  
“Const.” means Nevada Constitution.  
“D.C.R.” means District Court Rules.  
“EDCR” means Eighth Judicial District Court Rules.  
“FJDCR” means First Judicial District Court Rules.  
“FMR” means Foreclosure Mediation Rules.  
“JCRCR” means Justice Court Rules of Civil Procedure.  
“JCRLV” means Justice Court Rules of Las Vegas Township.  
“JCRNLV” means Justice Court Rules of North Las Vegas Township.  
“JCRRT” means Justice Court Rules of Reno Township.  
“L.C.R.” means Criminal Rules of Practice for the Second Judicial District Court.  
“NAC” means Nevada Administrative Code.  
“N.A.R.” means Nevada Arbitration Rules.  
“NEFCR” means Nevada Electronic Filing and Conversion Rules.  
“NJDCR” means Ninth Judicial District Court Rules.  
“N.M.R.” means Nevada Mediation Rules.  
“NRAD” means Nevada Rules on the Administrative Docket.  
“NRAP” means Nevada Rules of Appellate Procedure.  
“N.R.C.P.” means Nevada Rules of Civil Procedure.  
“NRS” means Nevada Revised Statutes.  
“N.S.T.R.” means Nevada Short Trial Rules.  
“R.C.J.C.” means Revised Nevada Code of Judicial Conduct.  
“RJCR” means Rural Justice Court Rules.  
“RPC” means Nevada Rules of Professional Conduct.  
“S.C.R.” means Supreme Court Rules.  
“SRCR” means Nevada Rules for Sealing and Redacting Court Records.  
“T.J.D.C.R.” means Third Judicial District Court Rules.  
“WDCR” means Washoe District Court Rules.  
“WDFCR” means Washoe District Family Court Rules.

## ANNOTATIONS

From 1965 to 1985, the annotations, historical notes and other reviser's notes required by chapter 220 of NRS were contained in a separate set of volumes entitled *Annotations to Nevada Revised Statutes*. In the 1987 reprint of NRS, for the first time, this material was included with the text of the chapters and sections to which it pertains. The several kinds of material so included are described respectively below.



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### Reviser's Notes

During the process of revising the statutes, the statute reviser prepared detailed notes explaining the reason for each omission, change of wording or other revision made. These "reviser's notes" appear in the annotations under the appropriate sections and will answer most questions that may arise as to the reason for any difference between the old statute and the new. When a section has been amended since the enactment of NRS, the accompanying note may be omitted, upon the theory that the Legislature has then examined the section in detail and ratified any such change. Also included in the "reviser's notes" are selected preambles and other transitory provisions which accompany statutes but which are not included in *Nevada Revised Statutes*.

### Subcommittee's Comments

Title 4 of NRS includes annotations which set forth relevant comments of the Legislative Commission's Subcommittee for Study of an Evidence Code, which appeared in the publication "A Proposed Evidence Code for the State of Nevada," (Legislative Counsel Bureau Bulletin No. 90, 1970). Many of these comments specify the Draft Federal Rule which corresponds to the section under which the comment appears. The user is cautioned that the comments relate to the sections of the draft bill, not all of which were enacted in the exact form proposed.

### Notes of Advisory Committees of the Nevada Supreme Court

The annotations to Nevada Rules of Civil Procedure, Nevada Rules of Appellate Procedure and Justice Court Rules of Civil Procedure contain notes as prepared by the respective advisory committees appointed by the Nevada Supreme Court.

### References to Nevada Constitutional Debates and Proceedings

Annotations to the Constitution of the State of Nevada contain references to the *Debates and Proceedings in the Constitutional Convention of the State of Nevada*, as reported by Andrew J. Marsh and published in 1866. For example, the annotations to § 1, Article 2 of the Constitution relating to the right to vote and qualifications of electors contains the following reference: "Nevada Constitutional Debates and Proceedings, pp. 70-73, 80-104, 243-246, 253, 271, 272, 467, 493, 785, 835." All cited pages relate to the right to vote and qualifications of electors.

### Cross References to Related Provisions of the Nevada Revised Statutes

Cross references to related sections of NRS have been included in the annotations under appropriate sections. The references are to sections or groups of sections of NRS which have been codified in another chapter or title of NRS but which the reader may find particularly relevant or helpful in construing the section under which the annotation is placed.



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### References to Related Provisions of the Nevada Administrative Code

Beginning with the 1987 reprint of NRS, references to related provisions of the Nevada Administrative Code (NAC) have been included in the annotations under appropriate sections. The references are to sections or groups of sections of NAC which are related to or adopted pursuant to the statutory provision. Caution is advised because state officers and agencies can amend these regulations at any time. It is therefore advised that the reader consult the corresponding chapter of NAC whenever an officer or agency has statutory authority to adopt regulations. NAC is organized so that each chapter contains regulations authorized by or relating to the chapter of NRS with the same number.

### Notes of Judicial Decisions

The notes of judicial decisions include statements of holdings set forth in the reported decisions of the Nevada Supreme Court, federal courts and courts of other jurisdictions, involving the various provisions of *Nevada Revised Statutes*. Also included are statements of holdings in cases decided under former statutes which were substantially the same as the present provisions of *Nevada Revised Statutes*.

These notes have been enlarged beginning with the 1987 reprint by including not only cases in which the court expressly construed a constitutional or statutory provision but also cases: (1) in which such a provision although not identified was clearly the basis of the court's holding; and (2) which the annotator believes are useful in understanding the application of the provision even though it was not construed or specifically applied. Any such extension necessarily involves editorial judgment and human frailty. In particular, the reader is cautioned that not every case which might be equally worthy of inclusion for one of the stated reasons may be included, either because the annotator did not find it or because his or her judgment of the propriety of its inclusion did not agree with the reader's.

### Notes of Opinions of the Attorneys General

Annotations to the Constitution and the statutes contain notes of opinions of the various attorneys general of the State of Nevada rendered since 1869. These opinions, known informally as AGOs, have been cited in three different forms, for example:

AGO 100 (9-8-1955). This citation refers to official opinion No. 100 of the Attorney General, dated September 8, 1955. This citation form was used through 1978. (Note, however, that through 1978 an official AGO opinion number may have been used more than one time. For example, AGO 13 (2-1-1923), AGO 13 (1-30-1951), AGO 13 (2-23-1955), AGO 13 (2-23-1959), AGO 13 (3-5-1963) and AGO 13 (2-25-1971)).

AGO 81-13 (12-8-1981). This citation refers to the thirteenth official opinion of the Attorney General issued during the year of 1981, dated December 8, 1981. This citation form was used from 1979 through 1999.

AGO 2002-10 (2-26-2002). This citation refers to the tenth official opinion of the Attorney General issued during the year of 2002, dated February 26, 2002. This citation form has been used from 2000 through the present.

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### Notes of Open Meeting Law Opinions

Annotations to the statutes contain notes of opinions of the various attorneys general of the State of Nevada rendered since 1995 as a guideline for enforcing the Open Meeting Law (Chapter 241 of Nevada Revised Statutes). These opinions, known informally as OMLOs, were not rendered as written opinions requested pursuant to NRS 228.150. Open Meeting Law Opinions have been cited in two different forms, for example:

OMLO 96-04 (4-3-1996). This citation refers to the fourth official Open Meeting Law Opinion of the Attorney General issued during the year of 1996, dated April 3, 1996. This citation form was used from 1995 through 1999.

OMLO 2001-07 (3-7-2001). This citation refers to the seventh official Open Meeting Law Opinion of the Attorney General issued during the year of 2001, dated March 7, 2001. This citation form has been used from 2000 through the present.

### Notes of Commission on Ethics Opinions

Annotations to the statutes contain notes of opinions rendered by the Nevada Commission on Ethics. These opinions, known informally as CEOs, are cited, for example: CEO 00-12 (10-6-2000). This citation refers to case file No. 00-12 of the Nevada Commission on Ethics, dated October 6, 2000.

### Selected Collateral Cases

Immediately following selected statutes and chapter or subchapter headings, there have been placed references to holdings set forth in the reported decisions of federal courts and courts of other jurisdictions, which holdings are not directly interpretive of Nevada law but have been determined by the Legislative Counsel to be of potential assistance to the reader of Nevada Revised Statutes (typically through the presentation of a matter of common law or the discussion of an issue that is analogous to or tangentially interpretive of Nevada law). The reader is cautioned that these selected collateral cases have been included as a function of editorial judgment in an attempt to broaden the resources available to the reader, and that such cases may be of limited precedential value within the State of Nevada.

## INDEXES

Because of the additional, time-consuming duties of legislative bill drafting and statute indexing assigned to the reviser and his staff during the 1953, 1954, 1955 and 1956 Sessions of the Legislature, the completion of the editorial work on the General Index was delayed and publication did not occur until 1958. The General Index to



*Nevada Revised Statutes* was entirely new, being carefully and painstakingly constructed, entry by entry, over a period of 30 months. The objectives of the Statute Revision Commission were to supply adequate index entries for all statutory and Nevada constitutional provisions, Supreme Court Rules, Nevada Rules of Civil Procedure, District Court Rules and Justice Court Rules of Civil Procedure, to avoid erroneous, misleading or useless index entries and to eliminate blind or cumulative cross references. All index entries were reviewed, after preparation, by one indexer, and considerable attention was devoted to the integration of the index entries.

The Nevada Constitution is included in the General Index and also has a separate index following the text. The United States Constitution is not indexed in the General Index but has a separate index following the text. The City Charters and selected Special and Local Acts which appear in separate volumes towards the end of the set are included in the General Index. There is also an Index to the City Charters and an Index to the Special and Local Acts which are explained in this preface under the heading "City Charters and Other Special and Local Acts." The United States District Court Rules for the District of Nevada and the Ninth Circuit Rules for the United States Court of Appeals are also followed by indexes and are not included in the General Index. All indexes are completely updated and reprinted following each legislative session. A User's Guide appears at the front of the first General Index volume.

## TABLES

Immediately following the Index to the Special and Local Acts appear Legislative Histories, which include citations and short titles to all statutes on the subject of each title repealed before or by enactment of *Nevada Revised Statutes* and not contained in the revision. For example, the legislative history for title 30 (Public Borrowing and Obligations) contains the following entries:

- 1921, 221—Consolidated bond interest and redemption fund. R 1957, 2.
- 1933, 116—Bonds elections. A 1941, 140; R 1956, 219.

The following detailed illustrations show the value of the legislative histories. The 1921 act referred to above was enacted by Statutes of Nevada 1921, at page 221. The act was repealed Statutes of Nevada 1957, at page 2. The 1933 act referred to above was enacted by Statutes of Nevada 1933, at page 116, amended by Statutes of Nevada 1941, at page 140, and repealed by Statutes of Nevada 1956, at page 219. Thus the user of the statutes can, with little time and effort, inform himself or herself concerning previous legislation on the general subject in which he or she has an interest.

Following the legislative histories appear the Comparative Section Tables showing the disposition in *Nevada Revised Statutes* of the statutes compiled in *Nevada Compiled Laws* (1929), *Nevada Compiled Laws 1931-41 Supplement*, *Nevada Compiled Laws 1943-49 Supplement*, and the statutes of general application enacted during the 1951 and subsequent legislative sessions.

Following these tables appears a table composed of all chapters and sections of *Nevada Revised Statutes* which have been repealed or replaced in revision since its enactment in 1957 except those repealed sections whose NRS numbers have been reused. Reuse of the NRS numbers of repealed sections is avoided in all chapters except those chapters which contain certain uniform acts such as the Uniform Commercial Code where reuse of numbers is

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necessary to ensure the desired uniformity of numbering.

## ALPHABETICAL LIST OF NEVADA SUPREME COURT CASES

For the convenience of the users of *Nevada Revised Statutes*, an alphabetical list of Nevada Supreme Court cases is contained in its own volume preceding the first volume of the General Index. This list contains the name and citation of each case decided by the Nevada Supreme Court from 1865 through the year in which the reprint is published. Each case is listed in alphabetical order under both the name of the appellant and the name of the respondent. Some cases may have a third listing. For example, *State ex rel. Sweikert v. Briare* will be listed under "Sweikert," "Briare" and "State." Cases which begin with numerals are at the front of the list.

## CITY CHARTERS AND OTHER SPECIAL AND LOCAL ACTS

Pursuant to Senate Concurrent Resolution No. 45 of the 60th Session of the Nevada Legislature (File No. 99, Statutes of Nevada 1979, page 1997), the Legislative Commission directed the Legislative Counsel to prepare and publish an index of all special and local acts of the Territory of Nevada and the State of Nevada which by their terms appear to have a continuing effect and to codify selected special and local acts in a companion volume to *Nevada Revised Statutes*. The Legislative Commission decided that the index should be published as an appendix of *Nevada Revised Statutes*. It also selected a number of special and local acts which the Legislative Counsel had identified as appearing to have a continuing effect and which the Legislative Commission believed should be included in the appendix. The basis of the selection was the Legislative Commission's judgment of the degree of public interest which any one of the acts seemed to have as evidenced primarily by the number of persons the act appeared to affect and the number and frequency of its amendments. These special and local acts are contained in two volumes towards the end of the set. The City Charters are contained in the first volume and the other selected Special and Local Acts in the second volume, with each volume including a relevant index.

The Legislative Commission directed that the material in the appendix be kept current as part of the continuous program of statute revision. To this end acts will be deleted when they cease to have a continuing effect and added as appropriate under the guidelines for selection used by the Legislative Commission.

The inclusion or exclusion of any special or local act from this appendix of *Nevada Revised Statutes* does not constitute any finding or declaration of the Legislature or of the Legislative Counsel as to the legal effect of the act upon the rights, powers or duties of any person.



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## FUTURE REVISION

Chapter 220 of Nevada Revised Statutes provides for a continuous program of statute revision. The efforts of the Legislative Counsel will be devoted to the improvement of the statutory law. Each user of *Nevada Revised Statutes* is invited to submit to the Legislative Counsel such suggestions concerning the statutes and annotations as he or she considers will result in improving the statutes, and also to call upon the Legislative Counsel for such information as may be at his or her disposal.

Russell W. McDonald  
*Legislative Counsel*  
December 1, 1967

Lorne J. Malkiewich  
*Legislative Counsel*  
October 29, 1993

Frank W. Daykin  
*Legislative Counsel*  
October 25, 1985

Brenda J. Erdoes  
*Legislative Counsel*  
November 7, 2017

**EXHIBIT 8**

**EXHIBIT 8**

LCC #001



# NEVADA STATUTES

## Title 15. Crimes and Punishments.

### Chapter 193. Criminality Generally.

#### 193.330. Punishment for attempts. [Renumbered]

1. An act done with the intent to commit a crime, and tending but failing to accomplish it, is an attempt to commit that crime. A person who attempts to commit a crime, unless a different penalty is prescribed by statute, shall be punished as follows:

(a) If the person is convicted of:

(1) Attempt to commit a category A felony, for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years.

(2) Attempt to commit a category B felony for which the maximum term of imprisonment authorized by statute is greater than 10 years, for a category B felony 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.

(3) Attempt to commit a category B felony for which the maximum term of imprisonment authorized by statute is 10 years or less, for a category C felony as provided in NRS 193.130.

(4) Attempt to commit a category C felony, for a category D felony as provided in NRS 193.130, or for a gross misdemeanor by imprisonment in the county jail for not more than 364 days, or by a fine of not more than \$2,000, or by both fine and imprisonment.

(5) Attempt to commit a category D felony, for a category E felony as provided in NRS 193.130, or for a gross misdemeanor by imprisonment in the county jail for not more than 364 days, or by a fine of not more than \$2,000, or by both fine and imprisonment.

(6) Attempt to commit a category E felony, for a category E felony as provided in NRS 193.130, or for a gross misdemeanor by imprisonment in the county jail for not more than 364 days, or by a fine of not more than \$2,000, or by both fine and imprisonment.

(b) If the person is convicted of attempt to commit a misdemeanor, a gross misdemeanor

or a felony for which a category is not designated by statute, by imprisonment for not more than one-half the longest term authorized by statute, or by a fine of not more than one-half the largest sum, prescribed upon conviction for the commission of the offense attempted, or by both fine and imprisonment.

2. Nothing in this section protects a person who, in an unsuccessful attempt to commit one crime, does commit another and different one, from the punishment prescribed for the crime actually committed. A person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime was consummated, unless the court in its discretion discharges the jury and directs the defendant to be tried for the crime itself.

—> **HISTORY:**

C&P 1911, § 26; RL 1912, § 6291; CL 1929, § 9975; 1981, p. 158; 1995, ch. 443, § 3, p. 1168; 1997, ch. 314, § 2, p. 1178; 2013, ch. 229, § 3, p. 977.

## Chapter 205. Crimes Against Property.

### 205.060. Residential burglary, burglary of a business, burglary of a motor vehicle and burglary of a structure: Definitions; penalties; venue.

1. A person who, by day or night, unlawfully enters or unlawfully remains in any:

(a) Dwelling with the intent to commit grand or petit larceny, assault or battery on any person or any felony, or to obtain money or property by false pretenses, is guilty of residential burglary.

(b) Business structure with the intent to commit grand or petit larceny, assault or battery on any person or any felony is guilty of burglary of a business.

(c) Motor vehicle, or any part thereof, with the intent to commit grand or petit larceny, assault or battery on any person or any felony is guilty of burglary of a motor vehicle.

(d) Structure other than a dwelling, business structure or motor vehicle with the intent to commit grand or petit larceny, assault or battery on any person or any felony is guilty of burglary of a structure.

2. Except as otherwise provided in this section, a person convicted of:

(a) Burglary of a motor vehicle:

(1) For the first offense, is guilty of a category E felony and shall be punished as provided in NRS 193.130.



(2) For a second or subsequent offense, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

(b) Burglary of a structure is guilty of a category D felony and shall be punished as provided in NRS 193.130.

(c) Burglary of a business is guilty of a category C felony and shall be punished as provided in NRS 193.130.

(d) Residential burglary is guilty of a category B felony and shall be punished 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.

3. If mitigating circumstances exist, a person who is convicted of residential burglary may be released on probation and granted a suspension of sentence if the person has not previously been convicted of residential burglary or another crime involving the unlawful entry or invasion of a dwelling.

4. Whenever any burglary pursuant to this section is committed on a vessel, vehicle, vehicle trailer, semitrailer, house trailer, airplane, glider, boat or railroad car, in motion or in rest, in this State, and it cannot with reasonable certainty be ascertained in what county the crime was committed, the offender may be arrested and tried in any county through which the vessel, vehicle, vehicle trailer, semitrailer, house trailer, airplane, glider, boat or railroad car traveled during the time the burglary was committed.

5. A person convicted of any burglary pursuant to this section who has in his or her possession or gains possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the dwelling, structure or motor vehicle or upon leaving the dwelling, structure or motor vehicle, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, and may be further punished by a fine of not more than \$10,000.

6. As used in this section:

(a) "Business structure" means any structure or building, the primary purpose of which is to carry on any lawful effort for a business, including, without limitation, any business with an educational, industrial, benevolent, social or political purpose, regardless of whether the business is operated for profit.

(b) "Dwelling" means any structure, building, house, room, apartment, tenement, tent, conveyance, vessel, boat, vehicle, house trailer, travel trailer, motor home or railroad car,

including, without limitation, any part thereof that is divided into a separately occupied unit:

(1) In which any person lives; or

(2) Which is customarily used by a person for overnight accommodations,

regardless of whether the person is inside at the time of the offense.

(c) “Motor vehicle” means any motorized craft or device designed for the transportation of a person or property across land or water or through the air which does not qualify as a dwelling or business structure pursuant to this section.

(d) “Unlawfully enters or unlawfully remains” means for a person to enter or remain in a dwelling, structure or motor vehicle or any part thereof, including, without limitation, under false pretenses, when the person is not licensed or privileged to do so. For purposes of this definition, a license or privilege to enter or remain in a part of a dwelling, structure or motor vehicle that is open to the public is not a license or privilege to enter or remain in a part of the dwelling, structure or motor vehicle that is not open to the public.

**HISTORY:**

C&P 1911, § 369; 1953, p. 31; 1967, p. 494; 1968, p. 45; 1971, p. 1161; 1979, p. 1440; 1981, p. 551; 1983, p. 717; 1989, ch. 568, § 1, p. 1207; 1995, ch. 443, § 124, p. 1215; 2005, ch. 126, § 1, p. 416; 2013, ch. 488, § 1, p. 2987; 2019, ch. 633, § 55, p. 4425, effective July 1, 2020.



**EXHIBIT** 9

**EXHIBIT** 9

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Activity in Case 3:23-cv-00266-MMD-CSD Altamirano v. Garrett et al Appeal Case Number Assigned

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From cmecf@nvd.uscourts.gov <cmecf@nvd.uscourts.gov>  
Date Wed 10/2/2024 12:27 PM  
To cmecfhelpdesk@nvd.uscourts.gov <cmecfhelpdesk@nvd.uscourts.gov>

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**United States District Court  
District of Nevada**

**Notice of Electronic Filing**

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The following transaction was entered on 10/2/2024 at 12:27 PM PDT and filed on 10/2/2024

**Case Name:** Altamirano v. Garrett et al

**Case Number:** 3:23-cv-00266-MMD-CSD

**Filer:**

**WARNING: CASE CLOSED on 11/09/2023**

**Document Number:** 19

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**Docket Text:**

**NOTICE - Letter from USSC Clerk to USCA Clerk dated 10/1/2024. Petition for certiorari as to ECF No. [16] Notice of Appeal filed. USSC Case No. 24-5676 assigned. USCA 9th Circuit Case No. 23-3953. (DRM)**

**3:23-cv-00266-MMD-CSD Notice has been electronically mailed to:**

Law Library - Lovelock CC lcclawlibrary@doc.nv.gov

**3:23-cv-00266-MMD-CSD Notice has been delivered by other means to:**

The following document(s) are associated with this transaction:



**Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001**

Scott S. Harris  
Clerk of the Court  
(202) 479-3011

October 1, 2024

Clerk  
United States Court of Appeals for the Ninth  
Circuit  
95 Seventh Street  
San Francisco, CA 94103-1526

Re: Henry Altamirano  
v. Nethanjah Breitenbach, Warden, et al.  
No. 24-5676  
(Your No. 23-3953)

Dear Clerk:

The petition for a writ of certiorari in the above entitled case was filed on September 11, 2024 and placed on the docket October 1, 2024 as No. 24-5676.

Sincerely,

Scott S. Harris, Clerk

by

Susan Frimpong  
Case Analyst