Judicial District Court
of the
State of Nevada

Petition of
Writ
Of
Habeas Corpus

Application
to proceed in

Forma Pauperis

Latest filing
as of
December 31, 2024

Case No. _____

Pursuant to NRS 239B.030, the undersigned affirms that this document does not contain social security numbers.

IN THE 10th JUDICIAL DISTRICT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CHURCHILL

******

_____

Petitioner

VS.

APPLICATION TO PROCEED IN FORMA PAUPERIS

The State of Nevada

Respondent.

COMES NOW _____, a prisoner, in pro se, and moves the Court for an order granting him leave to proceed in the above-entitled action without paying the costs and/or security of proceeding herein.

This motion is made and based upon NRS 12.015, NRAP 21(e), NRAP 24 and the attached affidavit and certificate of inmate's institutional account.

Dated this _____ day of _____, 20 24

_____

_____

Lovelock Correctional Center

1200 Prison Road

Lovelock, NV 89419

In Pro Se

Submitted by _____ _____ on ____/____/24

LCC FORM 26.012

Affidavit In Support of Application To Proceed In Forma Pauperis

STATE OF NEVADA)

COUNTY OF PERSHING)

COMES NOW, _____, who first being duly sworn and on my own oath, do hereby depose and state the following in support of my foregoing motion:

(1) Because of my poverty I am unable to pay the costs of the proceedings in the foregoing action or to give security therefore; I am entitled to relief. This application is made in good faith.

(2) I swear that the responses below are true and correct and to the best of my knowledge, information and belief:

(a) I ____am ✓ am not presently employed. I currently earn salary or wages per month in the following amount at Lovelock Correctional Center OR, if I am not presently employed, the date of my last employment and the amount of salary or wages I earned per month were as follows: n/a

(b) I have NOT received any money from any of the following sources within the past 12 months: business, profession, self-employment, rent payments, pensions, interests or dividends, annuities, insurance payments, gifts or inheritances. Money, if any, placed on my prison account from sources such as family or friends, is in the amount as indicated on the attached Certificate of Inmate's Institutional Account, which reflects the total amount of money on my prison account.

(c) I do NOT own any real estate, stocks, bonds, notes, automobiles or other valuable property, and I do not have any money in a checking account.

(d) I ___ do ✓ do not have persons dependent upon me for support. The persons I support, if any, are as follows, with my relationship to them and the amount of my contributions towards their support being as follows: n/a

(3) I swear under penalty of perjury that the above is true and correct and to the best of my personal knowledge, and that the foregoing is rendered without notary per NRS 208.165.

LCC FORM 26.012

Dated this _____ day of _____, 20 24.

_____

_____ #_____

Lovelock Correctional Center

1200 Prison Road

Lovelock, NV 89419

In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding APPLICATION TO PROCEED IN FORMA PAUPERIS does not contain the social security number of any person.

_____

_____ #_____

Lovelock Correctional Center

1200 Prison Road

Lovelock, NV 89419

In Pro Se

LCC FORM 26.012

Affirmation Pursuant to NRS 239B.030

Case No. _____

Pursuant to NRS 239B.030, the undersigned affirms that this document does not contain social security numbers.

IN THE 10th JUDICIAL DISTRICT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CHURCHILL

******

_____

Petitioner

VS.

ORDER TO PROCEED IN FORMA PAUPERIS

The State of Nevada

Respondent

Upon consideration of _____'s Application to Proceed In Forma Pauperis and it appearing that there is not sufficient income, property or resources with which to commence and maintain the action, and with good cause appearing:

IT IS HEREBY ORDERED that _____ a prisoner in pro se, shall be permitted to proceed In Forma Pauperis in this action, with no fees, costs or securities being necessary towards the filing or issuance of any writ, process, pleading or papers.

IT IS FURTHER ORDERED that the Sheriff shall make personal service of any necessary pleadings in this action without fees.

IT IS SO ORDERED.

Dated this _____ day of _____, 20 _____.

_____

District Court Judge

LCC FORM 26.012

Case No. _____

Pursuant to NRS 239B.030, the undersigned affirms that this document does not contain social security numbers.

IN THE 10th JUDICIAL DISTRICT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CHURCHILL

******

_____

Petitioner

VS.

CERTIFICATE OF INMATE'S INSTITUTIONAL ACCOUNT

The State of Nevada

Respondent

I, the undersigned, do certify that _____,

NDOC # _____, above-named, has a balance of $_____ on account to his credit in the prisoner's personal property fund for his use at Lovelock Correctional Center, in Pershing County.

I further certify that said prisoner owes departmental charges in the amount of $_____ and that the solitary security to his credit is a saving account established pursued to NRS § 209.247(5) with a balance of $_____ which is inaccessible to him.

Dated this _____ day of _____, 20 _____

_____

Inmate Services Division

Nevada Department of Corrections

Submitted by _____ # _____, on 1/1/2024.

This is for a civil _____ habeas ✓ matter. (Check one)

LCC FORM 26.012

Case No. _____

Dept. No. I

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CHURCHILL

* * * * *

_____,

PETITIONER

-vs.

THE STATE OF NEVADA,

_____

Respondent

PETITION OF WRIT OF HABEAS CORPUS

(VALIDITY OF JUDGMENT OF CONVICTION OR SENTENCE)

INSTRUCTIONS:

(1) Use this form if you are currently serving a sentence pursuant to a judgment of conviction and are seeking relief from your judgment of conviction or sentence. Do not use this form if you are challenging the post conviction computation of your time served.

(2) This petition must be legibly handwritten or typewritten, signed by petitioner and verified.

(3) Additional pages are not permitted except where noted or with respect to the facts that support your grounds for relief. You are not required to cite to law or authorities. If you submit briefs or arguments, they must be in a separate memorandum.

(4) If you want an attorney appointed, you must complete an Affidavit in Support of Request to Proceed in Forma Pauperis. An authorized officer at the prison must complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(5) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of

LCC FORM 26.082

the institution. If you are not in a specific institution of the Department but: (a) within its custody, name the Director of the Department of Corrections.

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

(7) You must allege specific facts supporting the claims in this petition. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

(8) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed or electronically delivered to the respondent, one copy to the Attorney General's Office, and one copy to the prosecuting agency. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: _____

_____

2. Name and location of court which entered the judgment of conviction being challenged: The Tenth Judicial District Court in the State of Nevada, Churchill County.

3. Date of judgment of conviction: _____

4. Case Number: _____

5. (a) Length of sentence:

_____

_____

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

n/a

6. Are you presently serving a sentence for a judgment of conviction other than the judgment of conviction you are challenging in this petition?: Yes: _____ No: ✓

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

n/a

7. Nature of offense involved in the judgment of conviction being challenged:

8. What was your plea? (check one)

(a) Not guilty _____

(b) Guilty ✓ (Alford)

(c) Guilty but mentally ill _____

(d) Nolo contendere

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

Plea negotiated by trial counsel

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

(a) Jury _____

(b) Judge without a jury _____

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

12. Did you appeal from the judgment of conviction? Yes ✓ No _____

13. If you did appeal, answer the following:

(a)Name of court: Court of Appeals of the State of Nevada

(b) Case number or citation: _____

(c) Result: Affirmed

(d) Date of result: 9/15/2023

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

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

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

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

(a) (1) Name of court: _____

(2) Nature of proceeding: _____

_____

(3) Grounds raised: _____

_____

_____

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

(5) Result: _____

(6) Date of result: _____

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

_____

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

(1) Name of court: _____

(2) Nature of proceeding: _____

_____

(3) Grounds raised: _____

_____

_____

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

Yes _____ No _____

(5) Result: _____

(6) Date of result: _____

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

_____

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

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

(1) First petition, application or motion? Yes _____ No _____

Citation or date of decision: _____

(2) Second petition, application or motion? Yes _____ No _____

Citation or date of decision: _____

(3) Third or subsequent petitions, applications or motions Yes _____ No _____

Citation or date of decision: _____

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

_____

_____

_____

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

_____

(a) Which of the grounds is the same: _____

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

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

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

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) This Petition is timely filed.

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment of conviction you are challenging in this petition? Yes _____ No ✓

If yes, state what court and the case number _____

21. Give the name of each attorney who represented you in the proceeding resulting in your judgment of conviction and on direct appeal: _____

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment of conviction you are challenging in this petition? Yes ___ No ✓

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

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

(a) Ground One: See pages 3 — 13 for Grounds 1 — 3

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

(b) Ground Two _____

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

(c) Ground Three _____

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

Introduction

Petitioner is unlawfully incarcerated in violation of his rights to Due Process of law and effective assistance of counsel in violation of the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution and Nevada's Constitutional equivalents due to the fact that the trial court lacked both *jurisdiction* to prosecute crimes committed within its borders and lacked *subject matter jurisdiction* to charge this Petitioner with any specific crime under the *Nevada Revised Statute* ("NRS") scheme.

Trial counsel never advised Petitioner of this jurisdictional flaw. Had Petitioner been advised of this subject matter jurisdiction defect and various legal challenges that were available to him during the pre-trial stages, he would have pled not guilty and proceeded directly to trial — where either his case would have been dismissed or he would have prevailed on appeal.

GROUND ONE

THE TRIAL COURT LACKED JURISDICTION TO PROSECUTE CRIMES COMMITTED WITHIN ITS BORDERS DUE TO A DEFECTIVE NRS 171.010.

NRS 171.010 is cited by the Nevada Supreme Court ("NSC") as the cognizance, in addition to Article 6, Section 6 of the Nevada Constitution, to impose sentence and punish defendants in criminal cases and is the source of the trial court's subject matter jurisdiction and jurisdiction over any individual who commits any crime within its borders (see Exhibit 4 and Exhibit 5 at 5).

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Upon examining the legislative history of NRS 171.010 located in brackets immediately following its descriptive paragraph, is shown the authoritative statutes [1911 Cr. Prac. § 58; RL 6908; NCL § 10705] which is derived from the statutes of Nevada (Exhibit 4).

According to this informational bracket, it is the source of its legal authority to validate its existence (Exhibit 7 at 5). The interpolation following the text of NRS 171.010 means that NRS 171.010 was derived from section 58 of the Crimes and Punishment Act of 1911 and subsequently appeared in Revised Laws of Nevada (1912) section 6908, and Nevada Compiled Laws (1929) section 10705. Suspiciously, missing from this informational bracket is the 1957 Act which enacted and adopted NRS 171.010 (Exhibit 10).

Contrary to this, these statutes of Nevada have been *repealed* in 1957 by Laws of the State of Nevada, Senate Bill No. 2, Chapter 7, Section 3 of Senate Bill No. 2 ("SB2") states in pertinent part:

> "... 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" (Exhibit 16 at 2).

Since then, no new enacted legislative acts have been passed by the Nevada legislature to establish the statutory authority for NRS 171.010 during or after 1957. No where in this NRS does it indicate by specific provisions that the repealed, antiquated statutes of Nevada correlating to this NRS are to be continued.

As a result, NRS 171.010 is invalid, void, and the state trial court lacked jurisdiction to prosecute state crimes and to impose sentence on Petitioner for alleged crimes within the borders of Nevada. The court may exercise judicial power only when it has a valid statutory scheme and subject matter jurisdiction. Rhode Island v. Massachusetts, 37 U.S. 657, 718 (1838). To impose sentence violates the Petitioner's right to Due Process of Law guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution. NRS 171.010 has no supporting source statutes to sustain it because they were all repealed.

Therefore, the state trial court overstepped the bounds of constitutional authority by extrajudicial action. It cannot validly sentence this Petitioner pursuant to a statute not in effect at the time of the offense. NRS 171.010 was repealed by legislation which deprived the court of jurisdiction to prosecute state crimes within the borders of Nevada.

GROUND TWO

THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION IN VIOLATION OF PETITIONER'S FEDERALLY PROTECTED RIGHT TO DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT

The State trial court sentenced Petitioner for two (2) "NRS Violations": NRS 201.230 and NRS 193.330 (Exhibit 1). However, both of these Counts are at variance with the controlling source Nevada statutes, in that they are based on invalid statutes that contain a fatal defect. In this case, the two above named NRS Violations are based on repealed statutes depriving them of any foundational authority.

Here, after simply reading the plain and literal *repealing* language of SB2 Section 3 (supra), juxtaposed with the NRS sentencing statute's historical sections, reasonable minds can logically conclude that there is no clear indication of statutory authority for each Count as the supporting source laws are repealed.

According to the historical section of Count 2 NRS 201.230, its foundational source statutes are composed of: Nevada Statutes 1925, p. 17, 1943 Nevada Compiled Laws section 10143, and Statutes of Nevada 1947 (Exhibit 8). All of these pre-1957 statutes have been repealed by SB2 Section 3 (*supra*).

Subsequently, in a 1961 futile effort, NRS 201.230 was amended by legislation by Statutes of Nevada 1961 on page 92 (Exhibit 8). However, legislation cannot amend acts or bills that have been repealed. "Revision in a legislative sense can only apply to a measure, bill, or law then having existence, life, and force, and cannot, in the very nature of things, apply to a nullified or repealed act." Maclean v. Brodigan, 41 Nev. 468, 475 (1918).

Likewise, Count 1, NRS 193.330, contains the same inherent defects which make it nullified, invalid, and at variance with the supporting source laws as they have been repealed by SB2 Section 3 (Exhibit 9).

Courts cannot sentence a defendant who did not commit a crime. If a criminal statute is unconstitutional, then the courts lack subject matter jurisdiction and cannot proceed to pronounce sentence to a crime. 22 Corpus Juris Secundum, "Criminal Law", section 157, p. 189; citing

People v. Katrinak, 185 Cal. Rptr. 869 (1982).

If there are no valid statutes charged against this Petitioner, there is nothing that can be deemed a crime, and without a crime, there is no subject matter jurisdiction. To impose sentence violates the Petitioner's right to Due Process of Law guaranteed by the Fourteenth Amendment to the U.S. Constitution.

GROUND THREE

THE PETITIONER'S FOURTEENTH AMENDMENT CLAIM IS SUPPORTED BY THE FACT THAT THE NEVADA SUPREME COURT HAS EFFECTIVELY STRUCK DOWN THE ENTIRE NRS SCHEME.

In 1957, the Forty-Eighth Session of the Nevada Legislature passed an act entitled: Senate Bill No. 2 - Committee on Judiciary, Chapter 2. The legislative intent of this act was stated in the provision of Section 1 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 (Exhibit 10).

The clear and plain language of this provision intended that the NRS was enacted to be *law* of the State of Nevada. There is no ambiguity to this provision.

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///

///

However, the Nevada Supreme Court ("NSC") and the state court of appeals have contradicted SB2, Section 1 in numerous rulings and decreed that the NRS scheme is *not* the law of the State of Nevada. In numerous case laws as follows:

Taylor v. State, 472 P.3d 195 (2020) (Exhibit 5),
Olson v. State, 133 Nev. 1058 Unpub. LEXIS 699 (2017),
Hunt v. State, 133 Nev. 1025 Unpub. (Nev. 2017),
Cesar Victor v. State, LEXIS 269, Unpub. (Nev. 2017),
Peck v. State, LEXIS 867 Unpub. (Nev. 2017),
Escamilla v. State, 133 Nev. 1005 Unpub. (Nev. 2017),
Bryant v. State, 2021 Nev. App. Unpub. LEXIS 114 (2021),
Krig v. State, 125 Nev. 1054, 281 P.3d 1193 Unpub. (2009) (Exhibit 6).

The NSC and appellate courts have clearly ruled that the NRS scheme is not the law of the State of Nevada and is opposed to "Senate Bill No. 2" Section 1 as the NSC opines in the above case laws that the NRS scheme "merely constitutes of codified/reflective version of the statutes of Nevada." Not to confuse or conflate Nevada's actual law, the NRS scheme is *not* the law of Nevada. "The actual laws of Nevada are contained in the statutes of Nevada." Olson, supra.

If the NRS sentencing statutes, in this Petitioner's case, are *not* the law as declared and published by the NSC, then it violates the Petitioner's Due Process of Law guaranteed by the Fourteenth Amendment to the U.S. Constitution by implicating Petitioner's Fair Notice of what is lawfully prohibited. To arrest, indict, convict, and sentence this Petitioner on what is *not* law is illegal and unconstitutional.

(d) Ground Four: _____

_____

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

_____

_____

_____

WHEREFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at _____ on the ___ day of the month of _____, 20 24

_____

Signature of Petitioner

_____

_____

_____

Address

_____

Signature of Attorney (if any)

_____

_____

Address

VERIFICATION

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

_____

Petitioner

_____ n/a

Attorney for Petitioner

CERTIFICATE OF SERVICE

(PLEASE SIGN THE APPROPRIATE METHOD YOU WISH TO USE)

CERTIFICATE OF SERVICE BY MAIL

I, _____, hereby certify, pursuant to N.R.C.P. 5(b), that on this _____ day of the month of _____ of the year 2024, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS (VALIDITY OF JUDGMENT OF CONVICTION OR SENTENCE) addressed to:

_____

_____

Respondent prison or jail official

Address: _____

_____

Attorney General

100 North Carson Street

Carson City, Nevada 89701

_____

District Attorney of County of Conviction

165 North Ada Street

Fallon, NV 89406

Address

_____

Signature of Petitioner

EXHIBIT 1

EXHIBIT

LCC #001

Case No.

Dept. No. 1

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

FILED
2011 DEC 17 AM 8:25

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF CHURCHILL

THE STATE OF NEVADA,

Plaintiff,

vs.

JUDGMENT OF CONVICTION

Redacted

Insert Personal Case History Here

REDACTED

Insert Personal Case History Here

REDACTED

Insert Personal Case History Here

EXHIBIT 2

EXHIBIT

#001

LCC

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85390-COA

FILED

SEP 15 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY:
DEPUTY CLERK

ORDER OF AFFIRMANCE

Redacted

Pages 1 through 6

Insert Personal Case History Here

cc: Hon. Thomas L. Stockard, District Judge
Churchill County Public Defender
Attorney General/Carson City
Churchill County District Attorney/Fallon
Churchill County Clerk

CERTIFIED COPY
This document is a full, true and correct copy of the original on file and of record in my office.

DATE: 10/11/2023

Supreme Court Clerk, State of Nevada

By Elizabeth Brooks Deputy

EXHIBIT 3

EXHIBIT

LCC #001

IN THE SUPREME COURT OF THE STATE OF NEVADA FILED

Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 85390
District Court Case No. 22-10DC-0570

2023 OCT 13 PM 1:21
TIFFANY JOSEPHS
CLERK OF COURT
BY DEPUTY

REMITTITUR

TO: Tiffany Josephs, Churchill County Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: October 11, 2023

Elizabeth A. Brown, Clerk of Court

By: Elyse Hooper
Administrative Assistant

cc (without enclosures):
Hon. Thomas L. Stockard, District Judge
Churchill County District Attorney/Fallon \ Jeffrey H. Weed\ Priscilla L. Baker
Churchill County Public Defender \ Jacob N. Sommer

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the REMITTITUR issued in the above-entitled cause, on October 13, 2023.

District Court Clerk

EXHIBIT 4

*

NRS 171.010

EXHIBIT

LCC #001

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]

As you can see from the historical note, this statute was enacted as part of the 1911 Criminal Practice Act (Cr. Prac.). The Law Library is not able to send you anything from any of the 1911 Acts because they were exempted from printing. Their first existence in the statutes is in the 1912 *Revised Laws of Nevada*. (This citation is also in the historical note, directly after the Cr. Prac. Citation).

Next in the historical note is the *Nevada Compiled Laws* (NCL) citation. There is no *Statutes of Nevada* page because this statute was not amended. This note is simply to inform the reader of the citation of this statute in the NCL.

There is nothing else in the historical note because the statute has not been amended since it was enacted. The Law Library is only able to provide the current NRS 171.010, RL § 6908 and NCL § 10705 because that is all that exists.

Note: The *Nevada Revised Statutes* (NRS) are the codified laws of the State of Nevada. The *Statutes of Nevada* are a compilation of all legislation passed by the Nevada Legislature during a particular Legislative Session (i.e. the enrolled bill).

The Law Library discards all Advance Sheets once the hardbound copy is received. There are no advance sheets for the Statutes of Nevada.

EXHIBIT 5

* Taylor v. State

EXHIBIT

LCC #001

COPY

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

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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.1

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

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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.2 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. Cronic*, 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.3*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

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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 Para*, 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.

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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.4*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]nvolve[d] 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

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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

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 6

* Krig v. State

EXHIBIT

LCC #001

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

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

No. 50976.
|
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 [1] 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 7

* Legislative Counsel's Preface

EXHIBIT

LCC #001

LEGISLATIVE COUNSEL'S PREFACE

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.

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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

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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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EXHIBIT 8

EXHIBIT

LCC #001

NEVADA STATUTES

Title 15. Crimes and Punishments.

Chapter 201. Crimes Against Public Decency and Good Morals.

201.230. Lewdness with child under 16 years; penalties.

1. A person is guilty of lewdness with a child if he or she:

(a) Is 18 years of age or older and willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 16 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child; or

(b) Is under the age of 18 years and willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child.

2. Except as otherwise provided in subsections 4 and 5, a person who commits lewdness with a child under the age of 14 years is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and may be further punished by a fine of not more than $10,000.

3. Except as otherwise provided in subsection 4, a person who commits lewdness with a child who is 14 or 15 years of age 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 and may be further punished by a fine of not more than $10,000.

4. Except as otherwise provided in subsection 5, a person who commits lewdness with a child and who has been previously convicted of:

(a) Lewdness with a child pursuant to this section or any other sexual offense against a child; or

(b) An offense committed in another jurisdiction that, if committed in this State, would constitute lewdness with a child pursuant to this section or any other sexual offense against a child,

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is guilty of a category A felony and shall be punished by imprisonment in the state prison for life without the possibility of parole.

5. A person who is under the age of 18 years and who commits lewdness with a child under the age of 14 years commits a delinquent act.

6. For the purpose of this section, "other sexual offense against a child" has the meaning ascribed to it in subsection 6 of NRS 200.366.

HISTORY:

1925, p. 17; 1947, p. 24; CL 1929 (1949 Supp.), § 10143; 1961, p. 92; 1967, p. 477; 1973, pp. 96, 255, 1406; 1977, pp. 867, 1632; 1979, p. 1430; 1983, p. 207; 1991, ch. 389, § 18, p. 1009; 1995, ch. 443, § 89, p. 1200; 1997, ch. 455, § 5, p. 1722; 1997, ch. 524, § 4, p. 2502; 1997, ch. 641, § 19, p. 3190; 1999, ch. 105, § 49, p. 470; 1999, ch. 105, § 49, p. 472; 2003, ch. 461, § 2, p. 2826; 2005, ch. 507, § 33, p. 2877; 2015, ch. 399, § 15, p. 2241, effective October 1, 2015.

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EXHIBIT 9

EXHIBIT

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

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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.

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EXHIBIT 10

* Statute of Nev. 1957
Senate Bill # 2
(SB2)

EXHIBIT

LCC #001

ACT OF THE 48TH SESSION OF THE NEVADA LEGISLATURE ADOPTING AND ENACTING NEVADA REVISED STATUTES

Chapter 2, Statutes of Nevada 1957, page 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.

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.

(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.

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.

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.)

Case No. _____

Dept. No. 1

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CHURCHILL

* * * * *

_____,

Petitioner,

-vs-

The State of Nevada,

Respondent.

MOTION FOR APPOINTMENT OF COUNSEL

COMES NOW Petitioner, _____, in pro se, and moves the Court for an order appointing counsel in the instant petition for writ of habeas corpus (post-conviction).

This motion is made and based upon NRS 34.750; all papers, pleadings and documents on file herein; and the points and authorities below.

POINTS AND AUTHORITIES

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

The substantive issues and procedural requirements of this case are difficult and incomprehensible to Petitioner.

Petitioner, due to his incarceration, cannot investigate, take depositions or otherwise proceed with discovery herein.

Petitioner's sentence is: _____.

LCC LL FORM 26.042

Case No. _____

Dept. No. 1

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CHURCHILL

* * * * *

_____,
Petitioner,

-vs-

The State of Nevada,
Respondent.

ORDER APPOINTING COUNSEL

THE COURT, having considered Petitioner's Motion for Appointment of Counsel, and with Good Cause appearing,

IT IS HEREBY ORDERED that the motion is **GRANTED.**

Attorney _____ is hereby appointed to represent Petitioner for and in relation to all further proceedings in the above-entitled habeas corpus action.

IT IS SO ORDERED.

Dated this _____ day of _____, 20____.

_____
District Court Judge

There ✓ are ___ are not additional facts in support of this motion attached hereto on separate page(s).

Counsel would assist Petitioner with a clearer presentation of his issues before this Court and would likewise facilitate and ease this Court's task of discerning the issues and adjudicating same upon their merits.

Discretion lies with the Court to appoint counsel under NRS 34.750. Crump v. Warden, 113 Nev. 293, 934 P.2d 247, 254 (1997). The Court is to consider: (1) the complexity of the issues; (2) whether Petitioner comprehends the issues; (3) whether counsel is necessary to conduct discovery; and (4) the severity of Petitioner's sentence. NRS 34.750(1)-(1)(c).

Under similar discretionary standards, Federal courts are encouraged to appoint counsel when the interests of justice so require - a showing which increases proportionately with the increased complexities of the case and the penalties involved in the conviction. Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986). Attorneys should be appointed for indigent petitioners who cannot "adequately present their own cases." Jeffers v. Lewis, 68 F.3d 295, 297-98 (9th Cir. 1995).

Although Petitioner need meet but one (1) of the enumerated criteria of NRS 34.750 in order to merit appointment of counsel, he meets all of them. He also presents a classic example of one meriting counsel under the interest of justice test bespoken by the Ninth Circuit. Indeed, Petitioner's sentence, coupled with the other factors set forth above, demonstrate that appointment of counsel to him would not only satisfy justice, but fundamental fairness, as well.

CONCLUSION

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

Dated this _____ day of _____, 20 24.

_____ #_____
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing MOTION FOR APPOINTMENT OF COUNSEL to the below address on this _____ day of _____, 20 24, by placing same in the U.S. Mail via prison law library staff:

Office of District Attorney, Churchill County
Arthur Mallory, Esq. (3108)
165 North Ada Street
Fallon, NV 89406
Attorney For Respondent

_____

Petitioner In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION FOR APPOINTMENT OF COUNSEL DOES *not* contain the social security number of any person.

Dated this _____ day of _____, 20 24.

_____

Petitioner In Pro Se

Additional Facts

1. Petitioner raises grounds that challenge the bedrock of Nevada's body of statutory law

2. Petitioner's grounds challenge various inconsistancies in rulings on the validity of Nevada's statutory laws by the Supreme Court of the State of Nevada

3. The internal contradictions of the court's various rulings are up for possible consideration by the United States Supreme Court in Wilcox vs. The United States of America, docket No. 24-5273

4. As such, both this Court and public policy are best served by appointing the public defender to receive the grounds herein, and thereafter submit counseled briefing to this Court

— 4. and LAST —