

Judicial District Court  
of the  
State of Nevada

Response to States  
Opposition to  
Defendants  
Motion  
to  
Correct Illegal Sentence

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Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419  
Defendant In Pro Se

IN THE 8<sup>th</sup> JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA IN AND FOR THE COUNTY OF CLARK

\* \* \* \* \*

STATE OF NEVADA,  
Plaintiff,

vs.

Defendant.

Case No.:

Dept. No.: X

RESPONSE TO STATE'S OPPOSITION TO DEFENDANT'S MOTION  
TO CORRECT ILLEGAL SENTENCE AND SUPPORTING MEMORANDUM

DATE OF HEARING: December 5, 2024

TIME OF HEARING: 9:00 AM

(herein after "Defendant"), in pro se, hereby submits the attached Points and Authorities in response to the State's Opposition to Defendant's Motion to Correct Illegal Sentence and Supporting Memorandum.

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

1 STATEMENT OF THE FACTS

2  
3 On May 6, 2010, Defendant entered a plea of guilty  
4 and was sentenced to several life sentences for  
5 violating 24 "NRS Violations."  
6

7 On May 10, 2010, Defendant's Judgment of Conviction  
8 was filed.  
9

10 On November 5, 2024, Defendant's Motion To Correct  
11 Illegal Sentence And Supporting Memorandum was filed.  
12

13 On November 19, 2024, the State filed their  
14 Opposition To Defendant's Motion To Correct Illegal  
15 Sentence And Supporting Memorandum. The Defendant's  
16 Response now follows.  
17

18 RESPONSE WITH

19 POINTS AND AUTHORITIES

20 I. THE GOVERNMENT IS ATTEMPTING TO ERRONEOUSLY  
21 APPLY INAPPLICABLE PROCEDURAL BARS TO DEFENDANT'S  
22 MOTION TO CORRECT ILLEGAL SENTENCE  
23

24 In the State's Opposition To Defendant's Motion To  
25 Correct Illegal Sentence And Supporting Memorandum  
26 ("Opposition"), the State presents five points as to  
27 why Defendant's Motion must be denied.  
28

1 In Point 1, the State contends that the Motion  
2 must be denied for failure to raise a *subject-matter*  
3 *jurisdiction* defect contained in his sentence on  
4 direct appeal, thus is procedurally barred per  
5 habeas corpus restrictions (Point 2) and applying  
6 the same habeas action provisions under NRS 34  
7 has not shown good cause or prejudice to overcome  
8 the procedural bar. (Point 3).

9

10 These are all erroneous contentions and must not  
11 be permitted by this Court.

12

13 These challenges have already been addressed by  
14 Defendant's Motion. The Defendant's claims center around  
15 the trial court imposing sentence without *jurisdiction* thus  
16 he may bring up these claims at any time and is not  
17 limited to a direct appeal (see Motion at 3:12 - 5:21).

18

19 The State's second point attempts to mischaracterize  
20 Defendant's Motion into a habeas action and procedurally  
21 bar its claims (see Opposition 7 at 1-20). Again, Defendant's  
22 Motion preemptively countered: "... this Motion for  
23 relief from a sentence that is facially illegal is incidental  
24 to the proceeding in the trial court and is separate from  
25 habeas corpus relief... See also *Kanally v. Del Pappa*, 126  
26 Fed. Appx. 361 (2005)" (Motion at 3:24-28) and "... these  
27 motions are exempt from the limitation on habeas

28

1 petition and motions to correct an illegal sentence  
2 are not subject to the time bars and procedural  
3 hurdles limiting other types of appeals. Collier v.  
4 Bayer, 408 F.3d 1279, 1287 (9th Cir. 2005). (Motion at  
5 17-22).

6  
7 Point 3 of the State's Opposition claims the Defendant  
8 has not shown good cause or prejudice to overcome the  
9 procedural bar (Opposition 7 at 21-22). However, in the  
10 Federal Courts, it was the opinion of the Ninth Circuit  
11 that "because [the error] is jurisdictional, [the defendant]  
12 need not show cause and prejudice." United States v.  
13 Broadwell, 1992 U.S. App. LEXIS 6366, \*5 (9th Cir.) (Motion  
14 at 4:1-10). (Memorandum at 4:1-10).

15

16 II. THE GOVERNMENT HAS FAILED TO SUBSTANTIVELY  
17 ADDRESS THE CORE ISSUES CAUSING THE DEFENDANT'S  
18 ILLEGAL SENTENCE DUE TO LACK OF JURISDICTION

19

20 The Defendant's Motion To Correct Illegal Sentence  
21 And Supporting Memorandum contains three grounds,  
22 supported by facts, as to why the Defendant's sentence  
23 is illegal due to lack of jurisdiction. The grounds, facts,  
24 and evidence contained in his eight Exhibits are  
25 simple and direct, not complicated, and easy to  
26 understand. Any reasonable jurist can mentally grasp  
27 the issues presented. Yet these issues are completely

28

1 avoided in the Government's Opposition.

2

3 Ground one describes and articulates how the State's  
4 highest court has ruled that the NRS Scheme is *not*  
5 the law of the State of Nevada contradicting the very  
6 Bill that created it (1957 Senate Bill No. 2 § 1) depriving  
7 the Defendant's trial court of *subject-matter jurisdiction*.

8

9 Where in the State's Opposition does it prove otherwise?  
10 Did the Supreme Court rulings NOT take place? Was  
11 Defendant's evidence presented in Exhibits 4-6  
12 fabricated? The Defendant may not be a legal scholar  
13 or gone to law school — but he can read English. Senate  
14 Bill No. 2 § 1 in plain and simple English states the  
15 Nevada Revised Statutes are the laws of the State of  
16 Nevada (Exhibit 7, Index of Exhibits) and the higher  
17 court case laws ruled that they are not. No where in  
18 the State's Opposition is this mentioned much less  
19 argued and opposed with its own evidence of facts.

20

21 Ground two describes how the three supporting  
22 source laws of the States general jurisdictional statute  
23 (NRS 171.010) have been repealed by the very Act  
24 that created it: 1957 Senate Bill No. 2 § 3.

25

26 Point five leads with NRS 171.010 (of the State's  
27 Opposition) and actually acknowledges this statute

28

1 gives the Nevada court system jurisdiction over any  
2 individual who commits any crime within its borders  
3 (Opposition 12 at 22-23). However, the State failed  
4 to oppose the Defendant's claim that the three  
5 "pre-1957" foundational and controlling statutes for  
6 NRS 171.010 was not implicated by the repeal provision  
7 of Senate Bill No. 2 § 3 which states: "... all  
8 laws and statutes of the State of Nevada of a  
9 general, public, and permanent nature enacted prior  
10 to January 21, 1957 hereby are repealed" (Motion  
11 at 9:24 - 10:1). Instead, the State attempts to  
12 avert this major jurisdictional defect with a multi-  
13 page tirade over "charging documents" which was  
14 never raised as a claim in Defendant's Motion.

15

16 Ground three attacked the Defendant's specific  
17 "NRS" violations listed in his Judgment of Conviction  
18 by demonstrating the supporting and controlling source  
19 statutes are fundamentally defective depriving the  
20 trial court of subject-matter jurisdiction.

21

22 Again, the State failed to counter this claim with  
23 any legal argument and instead alleges that attacks  
24 against the NRS scheme are outside the scope of  
25 claims permissible in a motion to correct an illegal  
26 sentence by citing an unpublished, appellate court  
27 ruling, Martin v. State, 554 P.3d 726 (Nev. App. 2024).

28

1 This argument simply does not hold water. On  
2 such a serious issue, the lack of subject-matter  
3 jurisdiction that has affected tens of thousands of  
4 US citizens over seven decades, Federal case law  
5 must take precedence and not brushed aside with  
6 an unpublished appellate court ruling.

7

8 III. THE GOVERNMENT'S CONTRADICTIONS WITHIN  
9 ITS OWN ARGUMENT PROVES THIS DEFENDANT  
10 HAS BEEN ILLEGALLY SENTENCED

11

12 In its attempt to provide an argument for dismissing  
13 Defendant's claims, the State does not even realize  
14 its contradicting its own position and supporting the  
15 Defendant's:

16 "... while it is well established that the laws  
17 of Nevada must include an Enacting Clause,  
18 the Nevada Revised Statutes do not have the  
19 same requirement, as they are not laws  
20 enacted by the legislature." (Opposition 16:16-18).

21

22 However, just one page previous and the State claimed  
23 just the opposite:

24 "The Nevada Revised Statutes were properly  
25 passed by the 48<sup>th</sup> Legislature... providing  
26 for its enactment as law of the State  
27 of Nevada." (Opposition 15:10-14).

28



1 So which is it? This Defendant agrees with the  
2 State's version of the truth contained in its Opposition  
3 on page fifteen and the Nevada Supreme Court —  
4 the Nevada Revised Statutes are *not* the laws of  
5 the State of Nevada. Thus, the Defendant's "NRS  
6 Violations" used to illegally sentence him to prison for  
7 the rest of his life are void, null, and unconstitutional  
8 implicating the trial court's subject-matter jurisdiction  
9 resulting in the Government violating this Defendant's  
10 Federally protected Constitutional Rights to the 5th,  
11 6th, and 14th Amendments to the U.S. Constitution  
12 and especially his protected Right to Due Process of  
13 Law protected by the 14th Amendment.

14

### 15 CONCLUSION

16 Based on the foregoing, the Defendant respectfully  
17 requests that his Motion To Correct Illegal Sentence  
18 And Supporting Memorandum be adjudicated on  
19 its merits 2<sup>nd</sup> 66 December 66

20 Dated this 29<sup>th</sup> day of November, 2024.

21

22 Respectfully submitted,

23

24

25

Defendant In Pro Se

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1 CERTIFICATE OF SERVICE BY MAIL

2  
3 I, \_\_\_\_\_, hereby certify pursuant to  
4 NRC 5(b) that on the <sup>2nd 66</sup> 29<sup>th</sup> day of <sup>December 66</sup> November, 2024,  
5 I did deposit in the U.S. Post Office at Lovelock, Nevada,  
6 via prison law library staff, in a sealed envelope with  
7 postage fully pre-paid thereon, a true and correct copy of  
8 the above and foregoing RESPONSE TO STATE'S OPPOSITION  
9 TO DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE  
10 AND SUPPORTING MEMORANDUM, addressed to the following:

11 Steve Wolfson, Clark Co. District Atty.  
12 200 Lewis Avenue  
13 Las Vegas, Nevada 89155

14 By: \_\_\_\_\_  
15 Defendant In Pro Se # \_\_\_\_\_

16  
17 AFFIRMATION PURSUANT TO NRS 239B.030

18  
19 The undersigned does hereby affirm that the preceding  
20 RESPONSE to the State's Opposition, filed in this case  
21 does not contain the social security number of any  
22 person

23 Dated this <sup>2nd 66</sup> 29<sup>th</sup> day of <sup>December 66</sup> November, 2024.

24  
25  
26 Defendant In Pro Se # \_\_\_\_\_