FILED
FIFTH JUDICIAL DISTRICT
MAR 15 2021
Nye County Clerk
Electronically Filed
Mar 17 2021 10:26 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. CR-9012
Dept. No. 2

DAVID H. NEELY III
Nev. Bar No. 3891
3520 East Tropicana Ave., Ste. D
Las Vegas, NV 891218
(702) 565-0716
Attorney for Petitioner

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE

EBONI COCKERHAM,

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

NOTICE OF APPEAL

TO: THE HONORABLE ROBERT LANE,
Fifth Judicial District Court Judge,

AND TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL.

NOTICE IS HEREBY GIVEN that Petitioner, EBONI COCKERHAM, by and through her attorney of record, DAVID H. NEELY III, Esq., pursuant to NRS 177.015 and NRAP 3B/3C(fastrack), NRAP 3A(civil), hereby appeals to the Supreme Court of the State of Nevada from the Findings of Fact, Conclusions of Law and Order Denying Petition for Writ of Habeas Corpus entered in the Fifth Judicial District Court in the above matter on November 30,2020.

SUBMITTED this 15th day of March, 2021.

DAVID H. NEELY III
Nev. Bar No. 003891
3520 E. Tropicana Ave., #D-1
Las Vegas, NV 89121
Attorney for Petitioner

Docket 82635 Document 2021-07702

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am an agent or employee of the above referenced Nevada licensed attorney, and that on the 15th day of March, 2021, I served the above and foregoing NOTICE OF APPEAL by depositing a copy in the United States mails, postage prepaid, addressed to counsel for respondent at his last known address, as indicated below:

Kirk Vitto, Esq.
Chief Deputy
Nye County District Attorney
P. O. Box 39
Pahrump, NV 89041

Aaron Ford, Esq.
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

Elizabeth Brown
Nevada Supreme Court Clerk
201 South Carson Street, #300
Carson City, NV 89701



agent or employee of
DAVID H. NEELY, III, ESQ.

Case No. CR-9012
Dept. No. 2

DAVID H. NEELY III
Nevada State Bar No. 003891
3520 East Tropicana Ave., Ste. D-1
Las Vegas, NV 89121
(702) 565-0716
Attorney for Petitioner

FIFTH JUDICIAL DISTRICT
ORIGINAL
MAR 15 2021
Nye County Clerk
Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE

EBONI COCKERHAM,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

CASE APPEAL STATEMENT

1. **Name of appellant filing this case appeal statement:** EBONI COCKERHAM.

2. **Identify the judge issuing the decision, judgment, or order appealed from:** Hon. Robert Lane, Judge of the Fifth Judicial District Court..

3. **Identify all parties to the proceedings in the district court: EBONI COCKERHAM,** Petitioner, and **THE STATE OF NEVADA,** Respondent.

4. **Identify all parties involved in this appeal: EBONI COCKERHAM,** Appellant, and **THE STATE OF NEVADA,** Respondent.

5. **Set forth the name, law firm, address, and telephone number of all counsel on appeal and identify the party or parties whom they represent:** David H. Neely III, Esq., 3520 East Tropicana Ave., Ste. D-1, Las Vegas, Nevada, 89121 (702) 565-0716 represents Petitioner, **EBONI COCKERHAM** and Chris Arabia,

Esq., Nye County District Attorney, 101 Radar Rd, P.O. Box 593, Tonopah, Nevada, (775) 482-8166 represents Respondent, **STATE OF NEVADA.**

6. Indicate whether appellant is represented by appointed or retained counsel in the district court: Appointed counsel.

7. Indicate whether appellant is represented by appointed or retained counsel in this appeal: Appointed counsel.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court Order granting such leave: Request to be filed, no order issued as yet.

9. Indicate the date the proceedings commenced in the district court: Writ of Habeas Corpus (Post-Conviction) was filed on January 16, 2020.

SUBMITTED this 15th day of March, 2021.

DAVID H. NEELY III
Nev. Bar No. 003891
3520 E. Tropicana, Ste. D-1
Las Vegas, NV 89121
Attorney for Petitioner

CERTIFICATE OF MAILING

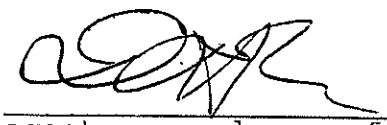
I HEREBY CERTIFY that I am an agent or employee of the above referenced Nevada licensed attorney, and that on the 15th day of March, 2021, I served the above and foregoing **CASE APPEAL STATEMENT** by depositing a copy in the United States mails, postage prepaid, addressed to counsel for respondent at his last known address, as indicated below:

Chris Arabia, Esq.
District Attorney
Nye County, Nevada
P. O. Box 593
Tonopah, NV 89049

HON. Robert Lane
Fifth Judicial District Court
1520 E. Basin Ave., #105
Pahrump, NV 89060

Clerk, Nevada Supreme Court
201 South Carson Street,#300
Carson City, NV 89701

Aaron Ford, Esq.
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717



agent or employee of
DAVID H. NEELY, III, ESQ.

Fifth Judicial District Court - Nye County
Case Summary

Case #: CR18-9012

Judge: LANE, ROBERT W

Date Filed: 03/30/2018 **Department:**

Case Type: Child Abuse and Neglect (Felony)

	Attorney(s)
Defendant	
COCKERHAM, EBONI SHAJUANA	NEELY, DAVID H III
Plaintiff	
STATE OF NEVADA	DISTRICT ATTORNEY'S OFFICE

Fees:

Date Assessed:	Fee	Total	Paid	Waived	Outstanding
03/30/2018	ATTYFEE	$900.00	$0.00	$0.00	$900.00
03/30/2018	ADMIN	$25.00	$0.00	$0.00	$25.00
04/09/2018	CGENERA	$5.00	$5.00	$0.00	$0.00
03/30/2018	DNA	$3.00	$0.00	$0.00	$3.00

Charge: NRS 200.508 (2)(B)(1) CHILD ABUSE OR NEGLECT F/B Count 1

Sent: NDOC 19/48 MONS; $25 AA; $3 DNA; $500 ATTY; $400 PSI; FINES/FEES DUE BY 11/29/19; $254.25 RESTITUTION PAID TO P&P; CTS 34 DAYS.

Disp/Judgment: Guilty Plea Before Trial Date: 04/29/2019

Hearings:

Date	Time	Hearing	Court Result
04/30/2017	12:00AM	ARRAIGNMENT HEARING	CANC
06/04/2018	9:00AM	EVALUATION RETURN	
01/14/2019	9:00AM	ARRAIGNMENT HEARING	
04/15/2019	9:00AM	BENCH WARRANT RETURN/ ARRAIGNMENT HEARING	
04/29/2019	9:00AM	ARRAIGNMENT HEARING CONT'D	
09/30/2019	9:00AM	SENTENCING HEARING	
11/22/2019	9:00AM	MOTION TO MODIFY SENTENCE-PRO PER	CANC
12/02/2019	9:00AM	(06) DEFENDANT'S MOTION TO MODIFY SENTENCE	
04/20/2020	2:30PM	99#FILE TO LOUISE/RESPONSES DUE	
08/03/2020	11:00AM	99#EVIDENTIARY HEARING	
09/21/2020	11:00AM	70#EVIDENTIARY HEARING	

Filings:

Date	Filing
03/30/2018	CASE FILED 03/30/2018 CASE NUMBER CR18-9012
03/30/2018	DOCUMENTS RECEIVED FROM PAHRUMP JUSTICE COURT

03/30/2018	BINDOVER ORDER
04/12/2018	ORDER COMMITTING DEFENDANT FOR COMPETENCY EVALUATION
04/12/2018	STIPULATION
04/17/2018	INFORMATION(FELONY/PERSON)
06/04/2018	Court Minutes - JUDGE: ROBERT W LANE CLERK: JUANITA L TORRES REPORTER: CECILIA THOMAS BAILIFF: JAMELE TAYLOR APPEAR: DEPUTY DISTRICT ATTORNEY, CHRISTI KENDEL, PRESENT ON BEHALF OF THE STATE; LISA THELANDER, ON BEHALF OF P&P; ATTORNEY HARRY GENSLER PRESENT WITH DEFENDANT WHO IS PRESENT AT LIBERTY. COURT CALLS THE MATTER AS EVALUATION RETURN. GENSLER REQUEST THE MATTER BE REMAINED TO JUSTICE COURT. COURT FINDS DEFENDANT IS COMPETENT REMANDS THE MATTER TO JUSTICE COURT. GENSLER ADVISES THE COURT AND DEFENDANT THIS MATTER IS SET ON 8/30/2018 IN JUSTICE COURT.
06/05/2018	ORDER OF REMAND(FILE TO PJC)
12/03/2018	DOCUMENTS RECEIVED FROM PAHRUMP JUSTICE COURT
12/03/2018	BINDOVER ORDER
12/04/2018	AMENDED INFORMATION (FELONY/PERSON)
12/05/2018	TRANSCRIPT OF: EVALUATION RETURN (06/04/18)
01/10/2019	DOCUMENTS RECEIVED FROM PAHRUMP JUSTICE COURT- REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING/UNCONDITIONAL WAIVER OF
01/14/2019	Court Minutes - JUDGE: ROBERT W. LANE CLERK: SARAH WESTFALL COURT REPORTER: CECILIA THOMAS BAILIFF: JAMELE TAYLOR APPS: DANIEL YOUNG, DDA, FOR THE STATE; LISA THELANER FOR P&P; BRENT PERCIVAL FOR DEFENDANT (NOT PRESENT). COURT CALLS THE MATTERS; CR9012 AND CR9378 - ARRAIGNMENT HEARING. PERCIVAL ACKNOWLEDGES DEFENDANT'S ABSENCE, NOTES RECENT CONTACT WITH THE DEFENDANT, AND REQUESTS A 2-WEEK CONTINUANCE OF MATTERS TO SECURE DEFENDANT'S PRESENCE. COURT NOTES FAILURE TO APPEAR CHARGE IN CR9378 AND ISSUES A NATIONWIDE BENCH WARRANT.
01/15/2019	BENCH WARRANT (ISSUED)
04/15/2019	Court Minutes - JUDGE: ROBERT W. LANE CLERK: SARAH WESTFALL COURT REPORTER: CECILIA THOMAS BAILIFF: JAMELE TAYLOR APPS: RONNI BOSKOVICH, DDA, FOR THE STATE; LISA THELANER FOR P&P; BRENT PERCIVAL WITH DEFENDANT, IN CUSTODY (NCDC). COURT CALLS THE MATTERS; CR9012 AND CR9378 - BENCH WARRANT RETURN/ ARRAIGNMENT HEARING. PERCIVAL BRIEFS THE RECORD AND REQUESTS A CONTINUANCE OF ARRAIGNMENT HEARINGS TO GLOBALIZE NEGOTIATIONS. PERCIVAL FURTHER MOVES FOR THE RELEASE OF DEFENDANT ON HER OWN RECOGNIZANCE. BOSKOVICH OBJECTS TO AN OWN RECOGNIZANCE RELEASE GIVEN THE DEFENDANT HAS ACQUIRED A NEW CHARGE. COURT CONTINUES THE MATTERS TO APRIL 29, 2019 AT 0900 AND DENIES THE OWN RECOGNIZANCE RELEASE. DEFENDANT IS REMANDED BACK TO THE CUSTODY OF THE NYE COUNTY DETENTION CENTER.
04/29/2019	GUILTY PLEA AGREEMENT
04/29/2019	Court Minutes - JUDGE: ROBERT W. LANE CLERK: SARAH WESTFALL COURT REPORTER: CECILIA THOMAS BAILIFF: JAMELE TAYLOR APPS: MICHAEL VIETA-KABELL, DDA, FOR THE STATE; LISA THELANER FOR P&P; BRENT PERCIVAL WITH DEFENDANT, IN CUSTODY (NCDC). COURT CALLS THE MATTERS; CR9012 AND CR9378 - ARRAIGNMENT HEARINGS CONT'D. PERCIVAL BRIEFS THE NEGOTIATIONS AS PROVIDED IN THE GUILTY PLEA AGREEMENT FILED IN CR9012 FOR THE RECORD- CR9012, DEFENDANT TO ENTER PLEA, AND CR9378, CASE TO BE DISMISSED. VIETA-KABELL NOTES THAT THE DEFENDANT WILL NEED TO RETURN AS NOT A HIGH RISK TO RE-OFFEND TO BE ELIGIBLE FOR PROBATION. COURT CANVASSES THE DEFENDANT, STATES THE OFFENSE TO WHICH THE DEFENDANT IS CHARGED AND THE POSSIBLE SENTENCE. DEFENDANT SO ACKNOWLEDGES AND ENTERS A PLEA OF GUILTY IN CR9012 TO THE CHARGE, WAIVING HER CONSTITUTIONAL RIGHTS TO TRIAL AND APPELLATE RIGHTS. COURT ACCEPTS THE DEFENDANT'S GUILTY PLEA AND SETS SENTENCING HEARING IN CR9012 FOR JUNE 17, 2019 AT 0900. DEFENSE COUNSEL TO ARRANGE THE PSYCHOLOGICAL EVALUATION THAT IS TO BE DONE BEFORE THE SENTENCING HEARING. DEFENDANT IS REMANDED BACK TO THE CUSTODY OF THE NYE COUNTY DETENTION CENTER. ** COURT DISCUSSED MATTERS AT END OF CALENDAR; ORDERED BAIL SET AT $5,000.
05/08/2019	ORDER INCREASING BAIL (ADDITIONAL $10K)

05/30/2019	FTA PRESENTENCE INVESTIGATION REPORT
06/06/2019	TRANSCRIPT OF:ARRAIGNMENT(4/29/19)
06/14/2019	STIPULATION AND ORDER TO CONTINUE SENTENCING HEARING (06/17/19 AT 9AM TO 08/12/19 AT 9AM)
07/01/2019	TRANSCRIPT OF:ARRAIGNMENT(CONT)/BW ISSUED(1/14/19)
07/31/2019	ORDER FOR COMPETENCY EVALUATION
08/09/2019	STIPULATION AND ORDER TO CONTINUE SENTENCING HEARING (SET FOR 08/12/19)
08/22/2019	STIPULATION AND ORDER TO CONTINUE SENTENCING HEARING (9/30/19)
09/16/2019	ORDER FOR PSYCHOLOGICAL EVALUATION AND RISK ASSESMENT
09/30/2019	Court Minutes - JUDGE: ROBERT LANE; CLERK: JUANITA TORRES; BAILIFF: JAMELE TAYLOR; REPORTER: CECILIA THOMAS; APPEAR: KIRK VITTO ON BEHALF OF THE STATE; ATTORNEY BRENT PERCIVAL, ON BEHALF OF THE DEFENDANT, WHO IS PRESENT IN AT LIBERTY; LISA THELANDER ON BEHALF OF THE DIVISION OF P&P. COURT CALLS THE MATTER AS SENTENCING HEARING. PERCIVAL ADDRESSES THE COURT; REQUEST PROBATION, PSYCHOLOGICAL EVALUATION AND OUTLINES DEFENDANT'S MENTAL HEALTH, THEY HAVE SUBMITTED APPLICATION FOR THE 8TH JUDICIAL DISTRICT MENTAL HEALTH COURT; DEFENDANT NOW LIVES IN CLARK COUNTY; OUTLINES CRIMINAL HISTORY; REQUEST STATUS HEARING REGARDING MENTAL HEALTH COURT. DEFENDANT ADDRESSES THE COURT. THE STATE REQUEST THE MAXIMUM. P&P ADVISES THE COURT, THE DEFENDANT HAS 8 ACTIVE WARRANTS AND CONFIRMS 34 DAYS CREDIT FOR TIME SERVED. PERCIVAL STATES THE WARRANTS ARE BEING HANDLED IN PJC. COURT SENTENCES THE DEFENDANT TO 19-48 MONTHS NDC, ALL THE STANDARD FINES AND FEES, RESTITUTION AS SET FORTH IN THE PSI REPORT. DEFENDANT REMANDED INTO CUSTODY.
10/01/2019	JUDGMENT OF CONVICTION (FELONY/PERSON)
10/11/2019	NOTICE OF MOTION (11/22/19)(ATTACHED MOTION TO MODIFY SENTENCE)
10/16/2019	TRANSCRIPT OF: SENTENCING HEARING (09/30/19)
11/12/2019	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO MODIFY SENTENCE
11/19/2019	ORDER RE-SETTING HEARING(12/2/19)
11/26/2019	ORDER TO PRODUCE PRISONER
12/02/2019	COURT MINUTES - DEFENDANT'S MOTION TO MODIFY SENTENCE JUDGE: ROBERT W. LANE CLERK: SARAH WESTFALL COURT REPORTER: CECILIA THOMAS BAILIFF: JAMELE TAYLOR APPS: PATRICK FERGUSON, DDA, FOR THE STATE; BRENT PERCIVAL WITH DEFENDANT, IN CUSTODY (NDOC).
12/09/2019	FINDINGS OF FACT,CONCLUSIONS OF LAW AND ORDER DENYING DEFENDANTS MOTION TO MODIFY SENTENCE
12/23/2019	TRANSCRIPT OF: DEFENDANT'S MOTION TO MODIFY SENTENCE(12/2/19)
01/16/2020	PETITION FOR WRIT OF HABEAS CORPUS(POST CONVICTION)
01/16/2020	MOTION TO WITHDRAW COUNSEL
01/16/2020	MOTION FOR APPOINTMENT OF COUNSEL
01/17/2020	ORDER APPOINTING COUNSEL(PERCIVAL OUT NEELY IN)
03/19/2020	PETITIONERS SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF POST-CONVICTION WRIT
03/20/2020	ORDER FOR STATE RESPONSE
04/01/2020	AMENDED CERTIFICATE OF SERVICE
04/01/2020	ANSWER AND MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)
04/08/2020	PETITIONER'S REPLY TO ANSWER AND MOTION TO DISMISS PETIITON FOR WRIT IF HABEAS CORPUS(POST CONVICTION)
06/18/2020	ORDER SETTING HEARING

06/29/2020	ORDER TO PRODUCE PRISONER (DEFENDANT, EBONI SHAJUANA COCKERHAM, NDOC#1223906 - EVIDENTIARY HEARING, 08/03/2020, 11AM)
07/10/2020	EX PARTE APPLICATION FOR ORDER TRANSPORT PRISONER TO COURT FOR EVIDENTIARY HEARING
07/13/2020	ORDER TO TRANSPORT PRISONER TO COURT FOR HEARING (AUGUST 3, 2020 @ 11 AM)
08/03/2020	COURT MINUTES - EVIDENTIARY HEARING ON THE WRIT. JAVS RECORDING TIME: 1055 JUDGE: ROBERT LANE; CLERK: JUANITA TORRES; BAILIFF: JAMELE TAYLOR; REPORTER: CECILIA THOMAS; APPEAR: MICHAEL ALLMON ON BEHALF OF THE STATE; ATTORNEY DAVID NEELY, ON BEHALF OF THE DEFENDANT, WHO IS PRESENT IN THE CUSTODY OF THE NEVADA DEPARTMENT OF CORRECTIONS. COURT CALLS THE MATTER. NEELY BRIEFS THE RECORD, ADVISES THE COURT THE DEFENDANT IS NOT ON HER MEDICATION; REQUEST CONTINUANCE. STATE CONCURS. COURT CONTINUES THE MATTER TO 09/21/2020 AT 11:00.
08/04/2020	TRANSCRIPT OF: BENCH WARRANT RETURN / ARRAIGNMENT (CONT'D) (04.15.2019)
08/11/2020	AMENDED ORDER TO TRANSPORT PRISONER TO COURT FOR HEARING
08/31/2020	TRANSCRIPT OF: EVIDENTIARY HEARING(CONT)(08/03/20)

09/21/2020 COURT MINUTES - EVIDENTIARY HEARING
JAVS RECORDING TIME: 1053

JUDGE: ROBERT LANE;
CLERK: JUANITA TORRES;
BAILIFF: JAMELE TAYLOR;
REPORTER: CECILIA THOMAS;
APPEAR: MICHAEL ALLMON ON BEHALF OF THE STATE;
ATTORNEY DAVID NEELY, ON BEHALF OF THE DEFENDANT, WHO IS PRESENT IN CUSTODY OF NDC.
COURT CALLS THE MATTER.
NEELY CALLS WITNESS BRENT PERCIVAL, ESQ., TO THE STAND; WITNESS SWORN AND TESTIFIES AS TO: HE WAS APPOINTED AFTER (HARRY) GINSLER, ESQ. RETIRED; WITNESS STATES HE WAS RETAIN ON ONE MATTER, WHEN GINSLER RETIRED HE TOOK OVER THE REST OF HER CASES; STINE DIAGNOSTIC HAD DEEMED HER COMPETENT; HE WAS AWARE OF HER MENTAL ISSUES, SHE WAS FOUND COMPETENT; OUTLINES HER DIAGNOSES/MEDICATIONS THAT HE WAS AWARE OF; HE WAS NOT AWARE SHE WAS NOT ON HER MEDS AT THE TIME OF THE ARRAIGNMENT; SHE WAS FOUND LUCID AT THE ARRAIGNMENT DURING THE CANVAS; WITNESS STATES HE HAS NOT REVIEWED THE TRANSCRIPT OF THE ARRAIGNMENT; HE HAD REVIEWED THE GPA WITH THE DEFENDANT; DOES NOT RECALLED WHERE THE DEFENDANT WAS PRIOR TO THE ARRAIGNMENT, IN HIS OFFICE HE WENT OVER THE GPA WITH THE DEFENDANT; DOES NOT RECALL WHAT HE ASKED HER ABOUT HER MEDS PRIOR TO THE ARRAIGNMENT; DOES NOT RECALL THE PRELIMINARY HEARING DATE, HE DID PARTICIPATE IN THE HEARING, HER SON TESTIFIED, PERCIVAL STATES HE HAS NOT REVIEWED THE TRANSCRIPT OF THE PRELIM HEARING; NO FEES WERE REQUESTED FOR AN INVESTIGATOR; OUTLINES THE PRELIM NEGOTIATIONS; RECALLS THE WITNESS HAD STATED HE HAD LIED TO THE POLICE AT THE TIME OF THE INCIDENT; REVIEWED THE PSI WITH THE DEFENDANT, DOES NOT RECALL IF HE GAVE HER THE SENTENCING DATE, OR IF HE GAVE HER A COPY OF THE PSI; DOES NOT RECALL WHAT MENTAL HEALTH CARE; SHE FTA HER INTERVIEWED WITH P&P; HE DID NOT FILE A MOTION FOR ANOTHER PSI; 19-48, NO PROBATION WAS IN THE RECOMMENDATION OF P&P, AND HE WENT OVER THAT WITH THE DEFENDANT; HE WENT OVER THE GPA AND THAT SHE WAS ADVISED TO MEET WITH P&P FOR THE PSI INTERVIEW; WITNESS PASSED.
STATE CROSS-EXAMINES THE WITNESS. WITNESS TESTIFIES AS TO: HE DOES NOT RECALL ALL OF HER CASES, OUTLINES THE CASE HE DOES RECALL; OUTLINE THE DEFENDANT'S FTA'S AFTER NEGOTIATIONS; WITNESS STATES HE WAS NOT SERVED THE WRIT OR RESPONSES. COPY OF THE GPA GIVEN TO THE WITNESS. WITNESS IDENTIFIES AND REVIEWS THE GPA FILED APRIL 29TH, CONFIRMS HE SIGNED THE GPA; OUTLINES PAGE 2 OF THE CHARGES THAT WERE BEING DISMISS AND CHARGES SHE PLED GUILTY TO IN JUSTICE COURT; OUTLINES THE CHARGES/SENTENCES/RESTITUTION IN THE JUSTICE COURT CASES; OUTLINES THE ARSON CASE THAT WAS DISMISSED OR NOT PURSUED; DOES NOT RECALL IF THE COMMUNITY SERVICE WAS DISMISSED, RECALLS THE RESTITUTION WAS REMAINED. TRANSCRIPT OF THE HEARING GIVEN TO THE WITNESS FOR REVIEW. WITNESS OUTLINES THE TRANSCRIPT, STATING THE 40 HOURS OF COMMUNITY SERVICE WAS VACATED; WITNESS OUTLINES HIS EMPLOYMENT, EXCESS OF 50 JURY VERDICT CASES, OUTLINES TYPES/AMOUNTS OF CASES HE HAS HANDLED; HE HAS HAD WITNESS THAT HAVE RECANTED THEIR TESTIMONY; THERE IS EVIDENCE THAT SUPPORTED THE INCIDENT, WITH PHYSICAL EVIDENCE OF CHILD. COPY OF THE PSI GIVEN TO THE WITNESS FOR REVIEW. WITNESS REVIEWS PAGE 7, CONFIRMS THE PHYSICAL EVIDENCE/INJURIES; HE IS AWARE OF HER PREVIOUS CONVICTIONS OF CHILD ABUSE, BELIEVES IT WAS IN HER BEST INTEREST NOT TO BE CHARGED WITH A SECOND CHILD ABUSE CHARGE; THE NEGOTIATIONS WAS A DIVERSION SENTENCE, SENTENCING THE DEFENDANT TO MENTAL HEALTH TREATMENT WITH A DISMISSAL UPON COMPETITION, UNTIL SHE FTA AT THE SENTENCING HEARING; CONFIRMS HE SPOKE TO THE DEFENDANT PRIOR TO THE ARRAIGNMENT HEARING, THE GPA WAS SIGNED 2 WEEKS PRIOR AT HIS OFFICE, KNEW SHE HAD A HISTORY OF MENTAL ILLNESS, SHE HAD BEEN APPROVED FOR MENTAL HEALTH COURT IN CLARK COUNTY, SHE HAD AN INTERVIEW SCHEDULED FOR THE DATE OF HER SENTENCING HEARING; DEFENDANT HAD BEEN GIVEN MEDICATION NOTHING RAISED HER CONCERNS; SHE WAS FOUND LUCID. TRANSCRIPT OF THE ARRAIGNMENT HEARING GIVEN TO THE WITNESS TO REVIEW. WITNESS OUTLINES PAGES 5 AND 6 ON THE RECORD; WITNESS REFERS TO THE SENTENCING TRANSCRIPT,

	WITNESS OUTLINES PAGE 8 ON THE RECORD; FTA PSI SENTENCING PROCEEDS; WITNESS OUTLINES THE STATE'S, MR VITTO, TESTIMONY ON THE RECORD, VITTO KEPT TO THE TERMS OF THE NEGATIONS EVEN WITH HER FTA WITH P&P; WITNESS PASSED. WITNESS EXCUSED. NEELY CONDUCTS CLOSING ARGUMENT. STATE CONDUCTS CLOSING ARGUMENT, ARGUES DEFENSE HAS NOT MET THEIR BURDEN. NEELY REBUTS. COURT FINDS MR. PERCIVAL'S ACTIONS DID NOT FALL BELOW THE EFFECTIVE ASSISTANCE OF COUNSEL; THE PLEA WAS NOT UNRELIABLE; THERE WAS EVIDENCE SHE WAS ON HER MEDS INCLUDING HER OWN TESTIMONY, NO EVIDENCE SHE WAS OFF HER MEDS, SHE APPEARED LUCID TO THE COURT AND MR. PERCIVAL THAT DAY; CANVAS WAS COMPLETE, VOLUNTARY AND KNOWINGLY, SHE WAS LUCID AND ON HER MEDS; MR. PERCIVAL EXPLAINED WHY HE DID NOT HAVE A INVESTIGATOR, BECAUSE OF THE PHYSICAL EVIDENCE AND TESTIMONY OF THE PARTIES INVOLVED, IT IS POSSIBLE IF SHE REJECTED THE PLEA AND WENT TO TRIAL, HE WOULD HAVE HAD AN INVESTIGATOR, SINCE SHE ACCEPTED THE PLEA THERE WAS NO NEED AT THAT TIME; PRIMA FACIE CASE HAS NOT BEEN SHOWN, THAT HER PLEA WAS INVOLUNTARILY ENTERED NOR THAT THERE WAS INEFFECTIVE ASSISTANCE OF COUNSEL, MOTION FOR NEW TRIAL IS DENIED AND FOR A FINDING OF INEFFECTIVE COUNSEL; STATE TO PREPARE ORDER.
10/01/2020	TRANSCRILPT OF EVIDENTIARY HEARING (SEPTEMBER 21, 2020)
11/30/2020	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS
03/15/2021	NOTICE OF APPEAL
03/15/2021	CASE APPEAL STATEMENT

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

Case No. CR9012

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

FILED
FIFTH JUDICIAL DISTRICT
NOV 30 2020
Nye County Clerk
Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

EBONI SHAJUANA COCKERHAM,

Petitioner,

v.

THE STATE OF NEVADA,

Respondent. /

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

WHEREAS the Court has considered Petitioner's Writ of Habeas Corpus (Post-Conviction) filed pro-se on January 16, 2020, Petitioner's Supplemental Points and Authorities in Support of Post-Conviction Writ filed March 19, 2020, the State's Answer and Motion to Dismiss Petition for Writ of Habeas Corpus (Post-Conviction) filed April 1, 2020, Petitioner's Reply to Answer and Motion to Dismiss Petition for Writ of Habeas Corpus filed on April 8, 2020, and an evidentiary hearing in support of the above motions, held on September 21, 2020. The Court issues the following Findings of Fact and Conclusions of Law:

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///

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NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

FINDINGS OF FACT

1. On January 8, 2018, the Petitioner, EBONI SHAJUANA COCKERHAM, was charged with one count of Child Abuse or Neglect with Prior Conviction, a category B felony, for an offense alleged to have been committed by the Petitioner on December 29, 2017. The allegations were that she hit a 15-year-old child, threw him on the ground and bit his face. The State had previously convicted the Petitioner of Child Abuse and Neglect in 2012 in Clark County.

2. On March 9, 2018, represented by counsel and at Petitioner's request, she was evaluated for competency as part of the proceedings. She was adjudicated competent.

3. On November 29, 2018, preliminary hearing was held in Pahrump Justice Court. The minor victim in the case testified. That preliminary hearing concluded by negotiation. The parties had a discussion and reached a plea deal.

4. On April 29, 2019, Petitioner was present for arraignment and represented by Attorney Brent Percival. A written guilty plea agreement ("GPA") was filed in court. Under the terms of the GPA, the State would strike the allegation of the prior Child Abuse and Neglect, a category B felony and would stipulate to assigner her to a mental health diversion program under NRS 176A.260. The State further agreed that if she were not accepted into such a program, it would make no recommendation at sentencing. Additionally, the parties agreed to additional terms on two

other misdemeanors, and to forgo prosecution on five other cases. The Court canvassed Petitioner and then accepted her plea.

5. The Petitioner was lucid at the time she entered her plea of guilty. Both the Court and counsel at the time, Mr. Percival, found her to be lucid. The Petitioner herself even stated that she was on her medication. As such, her plea was entered knowingly, intelligently, and voluntarily.

6. The Petitioner did not appear for her meeting with the Parole and Probation Presentence Investigator. This is referred to as a Failure to Appear ("FTA") Presentence Investigation Report ("PSI"), or simply FTA PSI. It is not uncommon to proceed to sentencing with an FTA PSI.

7. On September 30, 2019, Petitioner was sentenced by this Court to a minimum term of imprisonment of nineteen months, and a maximum term of 48 months, with 34 days credit for time served.

8. In consideration of the evidence available in the case, Petitioner's criminal record, and the charges to be dismissed or reduced as part of the plea deal that the State offered, it was not beneficial to seek an investigator to investigate whether the Petitioner's son provoked or started the incident that Petitioner ultimately plead guilty to.

CONCLUSIONS OF LAW

1. To prevail on a claim of ineffective assistance of counsel in a guilty plea agreement, a Petitioner must demonstrate that (1) counsel at the time of the plea performed in an unreasonable manner, and (2) that defective performance resulted in prejudice to the petitioner in such a way that, without the unreasonable error, they

NYE COUNTY DISTRICT ATTORNEY
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would have insisted on rejecting the plea deal and instead going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370, 88 L. Ed. 2d 203, 209-210 (1985).

2. In guaranteeing that the Petitioner was in a lucid state and in consideration of Petitioner's own statement concerning the matter and the Court's observations, Counsel took appropriate steps to guarantee that Petitioner entered her plea, knowingly, intelligently, and voluntarily. As such, counsel at the time of the plea performed in a reasonable manner.

3. In light of the evidence available to the State and the recommended plea negotiation offered by the State, trial counsel recommended to Petitioner that she accept the plea deal that was beneficial to her without seeking appointment of an investigator. As such, counsel at the time of the plea performed in a reasonable manner.

4. In guaranteeing that the Petitioner was in a lucid state and in consideration of Petitioner's own statement concerning the matter and the Court's observations, Counsel took appropriate steps to guarantee that Petitioner was competent to proceed with sentencing. As such, counsel at the time of the plea performed in a reasonable manner.

5. In continuing with sentencing under the FTA PSI, trial counsel performed in a reasonable manner. Furthermore, Petitioner did not suffer prejudice by being sentenced under such conditions.

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ORDER

IT IS HEREBY ORDERED that in the above-entitled case, Petitioner's Writ of Habeas Corpus (Post-Conviction), is DENIED.

DATED this 30th day of November, 2020.

HONORABLE ROBERT W. LANE
District Court Judge

NYE COUNTY DISTRICT ATTORNEY
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Fifth Judicial District Court - Nye County
Case Summary

Case #: CR18-9012

Judge: LANE, ROBERT W

Date Filed: 03/30/2018 **Department:**

Case Type: Child Abuse and Neglect (Felony)

	Attorney(s)
Defendant	
COCKERHAM, EBONI SHAJUANA	NEELY, DAVID H III
Plaintiff	
STATE OF NEVADA	DISTRICT ATTORNEY'S OFFICE

Fees:

Date Assessed:	Fee	Total	Paid	Waived	Outstanding
03/30/2018	ATTYFEE	$900.00	$0.00	$0.00	$900.00
03/30/2018	ADMIN	$25.00	$0.00	$0.00	$25.00
04/09/2018	CGENERA	$5.00	$5.00	$0.00	$0.00
03/30/2018	DNA	$3.00	$0.00	$0.00	$3.00

Charge: NRS 200.508 (2)(B)(1) CHILD ABUSE OR NEGLECT F/B Count 1

Sent: NDOC 19/48 MONS; $25 AA; $3 DNA; $500 ATTY; $400 PSI; FINES/FEES DUE BY 11/29/19; $254.25 RESTITUTION PAID TO P&P; CTS 34 DAYS.

Disp/Judgment: Guilty Plea Before Trial Date: 04/29/2019

Hearings:

Date	Time	Hearing	Court Result
04/30/2017	12:00AM	ARRAIGNMENT HEARING	CANC
06/04/2018	9:00AM	EVALUATION RETURN	
01/14/2019	9:00AM	ARRAIGNMENT HEARING	
04/15/2019	9:00AM	BENCH WARRANT RETURN/ ARRAIGNMENT HEARING	
04/29/2019	9:00AM	ARRAIGNMENT HEARING CONT'D	
09/30/2019	9:00AM	SENTENCING HEARING	
11/22/2019	9:00AM	MOTION TO MODIFY SENTENCE-PRO PER	CANC
12/02/2019	9:00AM	(06) DEFENDANT'S MOTION TO MODIFY SENTENCE	
04/20/2020	2:30PM	99#FILE TO LOUISE/RESPONSES DUE	
08/03/2020	11:00AM	99#EVIDENTIARY HEARING	
09/21/2020	11:00AM	70#EVIDENTIARY HEARING	

Filings:

Date	Filing
03/30/2018	CASE FILED 03/30/2018 CASE NUMBER CR18-9012
03/30/2018	DOCUMENTS RECEIVED FROM PAHRUMP JUSTICE COURT

03/30/2018	BINDOVER ORDER
04/12/2018	ORDER COMMITTING DEFENDANT FOR COMPETENCY EVALUATION
04/12/2018	STIPULATION
04/17/2018	INFORMATION(FELONY/PERSON)
06/04/2018	Court Minutes - JUDGE: ROBERT W LANE CLERK: JUANITA L TORRES REPORTER: CECILIA THOMAS BAILIFF: JAMELE TAYLOR APPEAR: DEPUTY DISTRICT ATTORNEY, CHRISTI KENDEL, PRESENT ON BEHALF OF THE STATE; LISA THELANDER, ON BEHALF OF P&P; ATTORNEY HARRY GENSLER PRESENT WITH DEFENDANT WHO IS PRESENT AT LIBERTY. COURT CALLS THE MATTER AS EVALUATION RETURN. GENSLER REQUEST THE MATTER BE REMAINED TO JUSTICE COURT. COURT FINDS DEFENDANT IS COMPETENT REMANDS THE MATTER TO JUSTICE COURT. GENSLER ADVISES THE COURT AND DEFENDANT THIS MATTER IS SET ON 8/30/2018 IN JUSTICE COURT.
06/05/2018	ORDER OF REMAND(FILE TO PJC)
12/03/2018	DOCUMENTS RECEIVED FROM PAHRUMP JUSTICE COURT
12/03/2018	BINDOVER ORDER
12/04/2018	AMENDED INFORMATION (FELONY/PERSON)
12/05/2018	TRANSCRIPT OF: EVALUATION RETURN (06/04/18)
01/10/2019	DOCUMENTS RECEIVED FROM PAHRUMP JUSTICE COURT- REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING/UNCONDITIONAL WAIVER OF
01/14/2019	Court Minutes - JUDGE: ROBERT W. LANE CLERK: SARAH WESTFALL COURT REPORTER: CECILIA THOMAS BAILIFF: JAMELE TAYLOR APPS: DANIEL YOUNG, DDA, FOR THE STATE; LISA THELANER FOR P&P; BRENT PERCIVAL FOR DEFENDANT (NOT PRESENT). COURT CALLS THE MATTERS; CR9012 AND CR9378 - ARRAIGNMENT HEARING. PERCIVAL ACKNOWLEDGES DEFENDANT'S ABSENCE, NOTES RECENT CONTACT WITH THE DEFENDANT, AND REQUESTS A 2-WEEK CONTINUANCE OF MATTERS TO SECURE DEFENDANT'S PRESENCE. COURT NOTES FAILURE TO APPEAR CHARGE IN CR9378 AND ISSUES A NATIONWIDE BENCH WARRANT.
01/15/2019	BENCH WARRANT (ISSUED)
04/15/2019	Court Minutes - JUDGE: ROBERT W. LANE CLERK: SARAH WESTFALL COURT REPORTER: CECILIA THOMAS BAILIFF: JAMELE TAYLOR APPS: RONNI BOSKOVICH, DDA, FOR THE STATE; LISA THELANER FOR P&P; BRENT PERCIVAL WITH DEFENDANT, IN CUSTODY (NCDC). COURT CALLS THE MATTERS; CR9012 AND CR9378 - BENCH WARRANT RETURN/ ARRAIGNMENT HEARING. PERCIVAL BRIEFS THE RECORD AND REQUESTS A CONTINUANCE OF ARRAIGNMENT HEARINGS TO GLOBALIZE NEGOTIATIONS. PERCIVAL FURTHER MOVES FOR THE RELEASE OF DEFENDANT ON HER OWN RECOGNIZANCE. BOSKOVICH OBJECTS TO AN OWN RECOGNIZANCE RELEASE GIVEN THE DEFENDANT HAS ACQUIRED A NEW CHARGE. COURT CONTINUES THE MATTERS TO APRIL 29, 2019 AT 0900 AND DENIES THE OWN RECOGNIZANCE RELEASE. DEFENDANT IS REMANDED BACK TO THE CUSTODY OF THE NYE COUNTY DETENTION CENTER.
04/29/2019	GUILTY PLEA AGREEMENT
04/29/2019	Court Minutes - JUDGE: ROBERT W. LANE CLERK: SARAH WESTFALL COURT REPORTER: CECILIA THOMAS BAILIFF: JAMELE TAYLOR APPS: MICHAEL VIETA-KABELL, DDA, FOR THE STATE; LISA THELANER FOR P&P; BRENT PERCIVAL WITH DEFENDANT, IN CUSTODY (NCDC). COURT CALLS THE MATTERS; CR9012 AND CR9378 - ARRAIGNMENT HEARINGS CONT'D. PERCIVAL BRIEFS THE NEGOTIATIONS AS PROVIDED IN THE GUILTY PLEA AGREEMENT FILED IN CR9012 FOR THE RECORD- CR9012, DEFENDANT TO ENTER PLEA, AND CR9378, CASE TO BE DISMISSED. VIETA-KABELL NOTES THAT THE DEFENDANT WILL NEED TO RETURN AS NOT A HIGH RISK TO RE-OFFEND TO BE ELIGIBLE FOR PROBATION. COURT CANVASSES THE DEFENDANT, STATES THE OFFENSE TO WHICH THE DEFENDANT IS CHARGED AND THE POSSIBLE SENTENCE. DEFENDANT SO ACKNOWLEDGES AND ENTERS A PLEA OF GUILTY IN CR9012 TO THE CHARGE, WAIVING HER CONSTITUTIONAL RIGHTS TO TRIAL AND APPELLATE RIGHTS. COURT ACCEPTS THE DEFENDANT'S GUILTY PLEA AND SETS SENTENCING HEARING IN CR9012 FOR JUNE 17, 2019 AT 0900. DEFENSE COUNSEL TO ARRANGE THE PSYCHOLOGICAL EVALUATION THAT IS TO BE DONE BEFORE THE SENTENCING HEARING. DEFENDANT IS REMANDED BACK TO THE CUSTODY OF THE NYE COUNTY DETENTION CENTER. ** COURT DISCUSSED MATTERS AT END OF CALENDAR; ORDERED BAIL SET AT $5,000.
05/08/2019	ORDER INCREASING BAIL (ADDITIONAL $10K)

05/30/2019	FTA PRESENTENCE INVESTIGATION REPORT
06/06/2019	TRANSCRIPT OF:ARRAIGNMENT(4/29/19)
06/14/2019	STIPULATION AND ORDER TO CONTINUE SENTENCING HEARING (06/17/19 AT 9AM TO 08/12/19 AT 9AM)
07/01/2019	TRANSCRIPT OF:ARRAIGNMENT(CONT)/BW ISSUED(1/14/19)
07/31/2019	ORDER FOR COMPETENCY EVALUATION
08/09/2019	STIPULATION AND ORDER TO CONTINUE SENTENCING HEARING (SET FOR 08/12/19)
08/22/2019	STIPULATION AND ORDER TO CONTINUE SENTENCING HEARING (9/30/19)
09/16/2019	ORDER FOR PSYCHOLOGICAL EVALUATION AND RISK ASSESMENT
09/30/2019	Court Minutes - JUDGE: ROBERT LANE; CLERK: JUANITA TORRES; BAILIFF: JAMELE TAYLOR; REPORTER: CECILIA THOMAS; APPEAR: KIRK VITTO ON BEHALF OF THE STATE; ATTORNEY BRENT PERCIVAL, ON BEHALF OF THE DEFENDANT, WHO IS PRESENT IN AT LIBERTY; LISA THELANDER ON BEHALF OF THE DIVISION OF P&P. COURT CALLS THE MATTER AS SENTENCING HEARING. PERCIVAL ADDRESSES THE COURT; REQUEST PROBATION, PSYCHOLOGICAL EVALUATION AND OUTLINES DEFENDANT'S MENTAL HEALTH, THEY HAVE SUBMITTED APPLICATION FOR THE 8TH JUDICIAL DISTRICT MENTAL HEALTH COURT; DEFENDANT NOW LIVES IN CLARK COUNTY; OUTLINES CRIMINAL HISTORY; REQUEST STATUS HEARING REGARDING MENTAL HEALTH COURT. DEFENDANT ADDRESSES THE COURT. THE STATE REQUEST THE MAXIMUM. P&P ADVISES THE COURT, THE DEFENDANT HAS 8 ACTIVE WARRANTS AND CONFIRMS 34 DAYS CREDIT FOR TIME SERVED. PERCIVAL STATES THE WARRANTS ARE BEING HANDLED IN PJC. COURT SENTENCES THE DEFENDANT TO 19-48 MONTHS NDC, ALL THE STANDARD FINES AND FEES, RESTITUTION AS SET FORTH IN THE PSI REPORT. DEFENDANT REMANDED INTO CUSTODY.
10/01/2019	JUDGMENT OF CONVICTION (FELONY/PERSON)
10/11/2019	NOTICE OF MOTION (11/22/19)(ATTACHED MOTION TO MODIFY SENTENCE)
10/16/2019	TRANSCRIPT OF: SENTENCING HEARING (09/30/19)
11/12/2019	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO MODIFY SENTENCE
11/19/2019	ORDER RE-SETTING HEARING(12/2/19)
11/26/2019	ORDER TO PRODUCE PRISONER
12/02/2019	COURT MINUTES - DEFENDANT'S MOTION TO MODIFY SENTENCE JUDGE: ROBERT W. LANE CLERK: SARAH WESTFALL COURT REPORTER: CECILIA THOMAS BAILIFF: JAMELE TAYLOR APPS: PATRICK FERGUSON, DDA, FOR THE STATE; BRENT PERCIVAL WITH DEFENDANT, IN CUSTODY (NDOC).
12/09/2019	FINDINGS OF FACT,CONCLUSIONS OF LAW AND ORDER DENYING DEFENDANTS MOTION TO MODIFY SENTENCE
12/23/2019	TRANSCRIPT OF: DEFENDANT'S MOTION TO MODIFY SENTENCE(12/2/19)
01/16/2020	PETITION FOR WRIT OF HABEAS CORPUS(POST CONVICTION)
01/16/2020	MOTION TO WITHDRAW COUNSEL
01/16/2020	MOTION FOR APPOINTMENT OF COUNSEL
01/17/2020	ORDER APPOINTING COUNSEL(PERCIVAL OUT NEELY IN)
03/19/2020	PETITIONERS SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF POST-CONVICTION WRIT
03/20/2020	ORDER FOR STATE RESPONSE
04/01/2020	AMENDED CERTIFICATE OF SERVICE
04/01/2020	ANSWER AND MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)
04/08/2020	PETITIONER'S REPLY TO ANSWER AND MOTION TO DISMISS PETIITON FOR WRIT IF HABEAS CORPUS(POST CONVICTION)
06/18/2020	ORDER SETTING HEARING

06/29/2020	ORDER TO PRODUCE PRISONER (DEFENDANT, EBONI SHAJUANA COCKERHAM, NDOC#1223906 - EVIDENTIARY HEARING, 08/03/2020, 11AM)
07/10/2020	EX PARTE APPLICATION FOR ORDER TRANSPORT PRISONER TO COURT FOR EVIDENTIARY HEARING
07/13/2020	ORDER TO TRANSPORT PRISONER TO COURT FOR HEARING (AUGUST 3, 2020 @ 11 AM)
08/03/2020	COURT MINUTES - EVIDENTIARY HEARING ON THE WRIT. JAVS RECORDING TIME: 1055 JUDGE: ROBERT LANE; CLERK: JUANITA TORRES; BAILIFF: JAMELE TAYLOR; REPORTER: CECILIA THOMAS; APPEAR: MICHAEL ALLMON ON BEHALF OF THE STATE; ATTORNEY DAVID NEELY, ON BEHALF OF THE DEFENDANT, WHO IS PRESENT IN THE CUSTODY OF THE NEVADA DEPARTMENT OF CORRECTIONS. COURT CALLS THE MATTER. NEELY BRIEFS THE RECORD, ADVISES THE COURT THE DEFENDANT IS NOT ON HER MEDICATION; REQUEST CONTINUANCE. STATE CONCURS. COURT CONTINUES THE MATTER TO 09/21/2020 AT 11:00.
08/04/2020	TRANSCRIPT OF: BENCH WARRANT RETURN / ARRAIGNMENT (CONT'D) (04.15.2019)
08/11/2020	AMENDED ORDER TO TRANSPORT PRISONER TO COURT FOR HEARING
08/31/2020	TRANSCRIPT OF: EVIDENTIARY HEARING(CONT)(08/03/20)

09/21/2020 COURT MINUTES - EVIDENTIARY HEARING
JAVS RECORDING TIME: 1053

JUDGE: ROBERT LANE;
CLERK: JUANITA TORRES;
BAILIFF: JAMELE TAYLOR;
REPORTER: CECILIA THOMAS;
APPEAR: MICHAEL ALLMON ON BEHALF OF THE STATE;
ATTORNEY DAVID NEELY, ON BEHALF OF THE DEFENDANT, WHO IS PRESENT IN CUSTODY OF NDC.
COURT CALLS THE MATTER.
NEELY CALLS WITNESS BRENT PERCIVAL, ESQ., TO THE STAND; WITNESS SWORN AND TESTIFIES AS TO: HE WAS APPOINTED AFTER (HARRY) GINSLER, ESQ. RETIRED; WITNESS STATES HE WAS RETAIN ON ONE MATTER, WHEN GINSLER RETIRED HE TOOK OVER THE REST OF HER CASES; STINE DIAGNOSTIC HAD DEEMED HER COMPETENT; HE WAS AWARE OF HER MENTAL ISSUES, SHE WAS FOUND COMPETENT; OUTLINES HER DIAGNOSES/MEDICATIONS THAT HE WAS AWARE OF; HE WAS NOT AWARE SHE WAS NOT ON HER MEDS AT THE TIME OF THE ARRAIGNMENT; SHE WAS FOUND LUCID AT THE ARRAIGNMENT DURING THE CANVAS; WITNESS STATES HE HAS NOT REVIEWED THE TRANSCRIPT OF THE ARRAIGNMENT; HE HAD REVIEWED THE GPA WITH THE DEFENDANT; DOES NOT RECALLED WHERE THE DEFENDANT WAS PRIOR TO THE ARRAIGNMENT, IN HIS OFFICE HE WENT OVER THE GPA WITH THE DEFENDANT; DOES NOT RECALL WHAT HE ASKED HER ABOUT HER MEDS PRIOR TO THE ARRAIGNMENT; DOES NOT RECALL THE PRELIMINARY HEARING DATE, HE DID PARTICIPATE IN THE HEARING, HER SON TESTIFIED, PERCIVAL STATES HE HAS NOT REVIEWED THE TRANSCRIPT OF THE PRELIM HEARING; NO FEES WERE REQUESTED FOR AN INVESTIGATOR; OUTLINES THE PRELIM NEGOTIATIONS; RECALLS THE WITNESS HAD STATED HE HAD LIED TO THE POLICE AT THE TIME OF THE INCIDENT; REVIEWED THE PSI WITH THE DEFENDANT, DOES NOT RECALL IF HE GAVE HER THE SENTENCING DATE, OR IF HE GAVE HER A COPY OF THE PSI; DOES NOT RECALL WHAT MENTAL HEALTH CARE; SHE FTA HER INTERVIEWED WITH P&P; HE DID NOT FILE A MOTION FOR ANOTHER PSI; 19-48, NO PROBATION WAS IN THE RECOMMENDATION OF P&P, AND HE WENT OVER THAT WITH THE DEFENDANT; HE WENT OVER THE GPA AND THAT SHE WAS ADVISED TO MEET WITH P&P FOR THE PSI INTERVIEW; WITNESS PASSED.
STATE CROSS-EXAMINES THE WITNESS. WITNESS TESTIFIES AS TO: HE DOES NOT RECALL ALL OF HER CASES, OUTLINES THE CASE HE DOES RECALL; OUTLINE THE DEFENDANT'S FTA'S AFTER NEGOTIATIONS; WITNESS STATES HE WAS NOT SERVED THE WRIT OR RESPONSES. COPY OF THE GPA GIVEN TO THE WITNESS. WITNESS IDENTIFIES AND REVIEWS THE GPA FILED APRIL 29TH, CONFIRMS HE SIGNED THE GPA; OUTLINES PAGE 2 OF THE CHARGES THAT WERE BEING DISMISS AND CHARGES SHE PLED GUILTY TO IN JUSTICE COURT; OUTLINES THE CHARGES/SENTENCES/RESTITUTION IN THE JUSTICE COURT CASES; OUTLINES THE ARSON CASE THAT WAS DISMISSED OR NOT PURSUED; DOES NOT RECALL IF THE COMMUNITY SERVICE WAS DISMISSED, RECALLS THE RESTITUTION WAS REMAINED. TRANSCRIPT OF THE HEARING GIVEN TO THE WITNESS FOR REVIEW. WITNESS OUTLINES THE TRANSCRIPT, STATING THE 40 HOURS OF COMMUNITY SERVICE WAS VACATED; WITNESS OUTLINES HIS EMPLOYMENT, EXCESS OF 50 JURY VERDICT CASES, OUTLINES TYPES/AMOUNTS OF CASES HE HAS HANDLED; HE HAS HAD WITNESS THAT HAVE RECANTED THEIR TESTIMONY; THERE IS EVIDENCE THAT SUPPORTED THE INCIDENT, WITH PHYSICAL EVIDENCE OF CHILD. COPY OF THE PSI GIVEN TO THE WITNESS FOR REVIEW. WITNESS REVIEWS PAGE 7, CONFIRMS THE PHYSICAL EVIDENCE/INJURIES; HE IS AWARE OF HER PREVIOUS CONVICTIONS OF CHILD ABUSE, BELIEVES IT WAS IN HER BEST INTEREST NOT TO BE CHARGED WITH A SECOND CHILD ABUSE CHARGE; THE NEGOTIATIONS WAS A DIVERSION SENTENCE, SENTENCING THE DEFENDANT TO MENTAL HEALTH TREATMENT WITH A DISMISSAL UPON COMPETITION, UNTIL SHE FTA AT THE SENTENCING HEARING; CONFIRMS HE SPOKE TO THE DEFENDANT PRIOR TO THE ARRAIGNMENT HEARING, THE GPA WAS SIGNED 2 WEEKS PRIOR AT HIS OFFICE, KNEW SHE HAD A HISTORY OF MENTAL ILLNESS, SHE HAD BEEN APPROVED FOR MENTAL HEALTH COURT IN CLARK COUNTY, SHE HAD AN INTERVIEW SCHEDULED FOR THE DATE OF HER SENTENCING HEARING; DEFENDANT HAD BEEN GIVEN MEDICATION NOTHING RAISED HER CONCERNS; SHE WAS FOUND LUCID. TRANSCRIPT OF THE ARRAIGNMENT HEARING GIVEN TO THE WITNESS TO REVIEW. WITNESS OUTLINES PAGES 5 AND 6 ON THE RECORD; WITNESS REFERS TO THE SENTENCING TRANSCRIPT,

	WITNESS OUTLINES PAGE 8 ON THE RECORD; FTA PSI SENTENCING PROCEEDS; WITNESS OUTLINES THE STATE'S, MR VITTO, TESTIMONY ON THE RECORD, VITTO KEPT TO THE TERMS OF THE NEGATIONS EVEN WITH HER FTA WITH P&P; WITNESS PASSED. WITNESS EXCUSED. NEELY CONDUCTS CLOSING ARGUMENT. STATE CONDUCTS CLOSING ARGUMENT, ARGUES DEFENSE HAS NOT MET THEIR BURDEN. NEELY REBUTS. COURT FINDS MR. PERCIVAL'S ACTIONS DID NOT FALL BELOW THE EFFECTIVE ASSISTANCE OF COUNSEL; THE PLEA WAS NOT UNRELIABLE; THERE WAS EVIDENCE SHE WAS ON HER MEDS INCLUDING HER OWN TESTIMONY, NO EVIDENCE SHE WAS OFF HER MEDS, SHE APPEARED LUCID TO THE COURT AND MR. PERCIVAL THAT DAY; CANVAS WAS COMPLETE, VOLUNTARY AND KNOWINGLY, SHE WAS LUCID AND ON HER MEDS; MR. PERCIVAL EXPLAINED WHY HE DID NOT HAVE A INVESTIGATOR, BECAUSE OF THE PHYSICAL EVIDENCE AND TESTIMONY OF THE PARTIES INVOLVED, IT IS POSSIBLE IF SHE REJECTED THE PLEA AND WENT TO TRIAL, HE WOULD HAVE HAD AN INVESTIGATOR, SINCE SHE ACCEPTED THE PLEA THERE WAS NO NEED AT THAT TIME; PRIMA FACIE CASE HAS NOT BEEN SHOWN, THAT HER PLEA WAS INVOLUNTARILY ENTERED NOR THAT THERE WAS INEFFECTIVE ASSISTANCE OF COUNSEL, MOTION FOR NEW TRIAL IS DENIED AND FOR A FINDING OF INEFFECTIVE COUNSEL; STATE TO PREPARE ORDER.
10/01/2020	TRANSCRILPT OF EVIDENTIARY HEARING (SEPTEMBER 21, 2020)
11/30/2020	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS
03/15/2021	NOTICE OF APPEAL
03/15/2021	CASE APPEAL STATEMENT

CERTIFICATION OF COPY

STATE OF NEVADA
COUNTY OF NYE

I, SANDRA L. MERLINO, the duly elected, qualifying and acting Clerk of Nye County, in the State of Nevada, and Ex-Officio Clerk of the District Court, do hereby certify that the foregoing is a true, full and correct copy of the original:

Documents Filed and of record in CR9012: Notice of Appeal filed 03/15/2021; Case Appeal Statement filed 03/15/2021; District Court Docket entries; Court Order filed 11/30/20; District Court Minutes,

State of Nevada,)
Appellants,)
)
VS)
)
Eboni Cockerham,)
Respondent.)

DC Case No.: CR9012

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto set my hand and affixed The Seal of the Court at my office, Pahrump, Nevada, this 15th day of March, 2021 A.D.

SANDRA L. MERLINO, CLERK

By: _____
Terri Pemberton, Deputy Clerk II

OFFICE OF THE NYE COUNTY CLERK
SANDRA L. MERLINO

Tonopah Office
Nye County Courthouse
P.O. Box 1031
101 Radar Road
Tonopah, Nevada 89049
Phone (775) 482-8127
Fax (775) 482-8133

Pahrump Office
Government Complex
1520 East Basin Avenue
Pahrump, Nevada 89060
Phone (775) 751-7040
Fax (775)751-7047

Tuesday, March 3, 2020

SENT VIA E-FILE

Supreme Court Clerk
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

RE: CR9012
THE STATE OF NEVADA, Plaintiff,
vs.
EBONI COCKERHAM, Defendant.

Dear Clerk of Court:

I am submitting an appeal packet for an appeal received and filed March 15, 2021, in the above referenced matter. As this is a criminal matter, post-conviction, no fees were collected.

Please feel free to contact me should you have any questions with regard to the foregoing.

Sincerely,

SANDRA L. MERLINO
NYE COUNTY CLERK

By _____
Terri Pemberton
Deputy Clerk, Pahrump

cc: David H. Neely III, ESQ
Nye County District Attorney
Honorable Robert W. Lane