EXHIBIT

C

[redacted]

February 9 2023

P.O. Box 7000 N.N.C.C.
Carson City NV. 89702

Governor Joe Lombardo
Board of Prison Commissioner

Kristina Wildeveld & Associates
550 E Charleston Blvd Ste A
Las Vegas NV. 89104

Gabe Stern - Assoc. Press

RE.: Response to Kristina's Claim's with Supporting Documents and Proposal to Satisfy Wildeveld & Associates fiduciary duty

Kristina,

As much as you do not enjoy or appreciate long letters, Please believe I do not enjoy nor appreciate the fact that I am now tasked with 'teaching' my attorney 'anything about anything'.... just because you are smart ... does not mean everybody else is Stupid... litigious... argumentative ect...

I GUARANTEE, if you read this material and review the attached documents, YOU will agree that you have been operating on a BAD custom, usage and practice, you will feel Compelled to offer an apology. Although I am not looking for one. I need, and the Community needs, INTEGRITY and Courage from our officials and the attorney's that have the PRIVILEGE to serve the interest of our State

1.) My current custodial Confinement is predicated upon a Consecutive Sentence, Separate and distinct for all purposes; for which no Separate offense or conviction is contemplated statutorially either by N.R.S. 193.165 nor N.R.S. 200.030 (NO ENHANCEMENT OF MAXIMUM SENT IMPOSED)

2.) The claim by your office that the Board of Pardons Commissioners has the power to commute a Consecutive sentence that does not Constitute a Crime and NEVER results in a Conviction is a LEGAL FICTION

[redacted] February 9, 2023

3) The power to pardon or to have a punishment commuted is vested by the Constitution, in the Board of Pardons Comm. and limited to the crime of conviction under consideration.

4.) I suffered a single unitary Conviction

5.) The Single Unitary Conviction is discharged through Parole, effective November 1, 2016

6.) There is no separate offense, and no conviction contemplated by N.R.S. 193.165

7.) The Board of Pardons Commissioners has no power or authority what-so-ever to even consider commutation of the "punishment" related to my current confinement to prison for use of a deadly weapon

Kristina, the legal fiction presented by your representations served to work an injustice designed to deprive/solicit fee's for a promised function or service that is not even legally available. It is time to set the record straight. The following brief explaination and review of the attached documents will reveal the fallacy of the false contention that N.R.S. 193.165 "use of a deadly weapon" works to enhance the maximum of any sentence; or works to augment the severity of any crime; or ever results in any conviction

HISTORY and BRIEF EXPLAINATION YOU DID NOT KNOW RELATED TO NRS 193.165

The legislative policy related to the extent of the reach of N.R.S 193.165 was meant to prevent probation for crimes committed with the use of a deadly weapon; 193.165 (1) "Any person who uses ... a deadly weapon ... shall be imprisoned," and to trigger an increase in the minimum sentence imposed, within the maximum range of the sentence described by the crime, up through Category B felonies

[redacted] February 9, 2023

N.R.S. 193.165 (1)..." shall be punished... for a term equal to and in addition to the term... prescribed by statute..." (Criminal statute 'not 193.165)
N.R.S 193.165 has never defined Criminal Conduct and has never contemplated a sentence, and still to this day DOES NOT Contemplate a sentence. The 1-20 range now included in the statute works to define the limit of the Range of Felonies that are Captured by N.R.S. 193.165, up to Category B Felonies
The State Concedes this point. Keep reading Kristine you will benefit.!!

TAB # 1 PETITION FOR WRIT OF MANDAMUS (1974)

August 1974, David Eldon Duncker pled guilty to two Felony Counts: N.R.S. 200.380 Robbery; and N.R.S. 193.165 use of D.W. Trial Judge O'DONNELL refused to accept the plea of guilt to N.R.S. 193.165 because it is NOT a crime. District attorney Woofter Claimed that N.R.S. 193.165 does constitute a separate felony and Conviction and Sentence.

TAB # 2 DOCKET SHEET NV. SP. Ct. WOOFTER V. ODONNELL

Significantly, and un-be-Knownst to present Counsel, the Court Consolidated Case No's: 7939 and 8074. Both of these Cases involve defendants that did receive a Separate Felony "Conviction" for use of a deadly Weapon pursuant to N.R.S. 193.165
The stage was set where, in Woofter V. ODONNELL, the underlying case involved a defendant that DID NOT receive any conviction, and in Contrast the two Consolidated Cases both involved defendants that did receive a Conviction.
Also SIGNIFICANT to Notice is the fact that

* I have purchased all related briefing status transcripts ect to each and every case described

[redacted] February 9 2023

the Woofter Petition for Mandamus must resolve in a MANDATE, unlike the two Consolidated cases, which unlike Woofter, were submitted as Habeas Corpus. No Matter how you slice it a MANDATE must issue and it did but not until the Supreme Court notified the 58th Session of the legislature (1975) related to Ambiguities related to N.R.S. 193.165 that resulted in Varied interpretations

TAB #3 SELECTED SIGNIFICANT LEGISLATION (1975)

After the NV. SP. Ct. Docket of WOOFTER V. ODONELL, but BEFORE oral arguments, the court asked the legislature to clear up ambiguities related to N.R.S. 193.165 in order to determine if N.R.S. 193.165 defines criminal Conduct. A.B. 502 chapter 465 clarified perceived ambiguities, establishing that N.R.S. 193.165 is not a Separate offense and must not be treated as criminal conduct. The use of a deadly weapon statute instructs or informs the court to 'increase the term handed down by the Judges' discretion within the framework of the actual available SENTENCE (These statements are derived from the state's concessions INFRA)

TAB #4 1973 and 1975 version of N.R.S. 193.165 and TITLE

The ambiguity related to N.R.S. 193.165 was found in the TITLE of the ACT related to state Constitutional requirements. The TITLE of the ACT described ... "Penalty for the use of a firearm ..." (1973 Version.) In order to clarify the criminal RULE the 1975 Legislature Changed the Verbiage in the title of the ACT... "Clarifying ..... additional penalty for the commisson of a crime ..." and providing the express clarification of the Criminal RULE by provision #2 "This section does not create any separate offense but provides an additional

[redacted] February 9, 2023

penalty for the primary offense, whose imposition is contingent upon the finding of the prescribed fact."

Significantly, this established that the prescribed fact, triggering an increased sentence is NOT an offense. Equally significant there is not a sentence contained in the frame work of N.R.S. 193.165 and the prescribed fact is not an ELEMENT of any crime. This legislative clarification of the CRIMINAL RULE related to N.R.S. 193.165 Completely eviscerated District Attorney Woofters Petition for MANDAMUS even before the Oral arguments. Woofter postulated that N.R.S. 193.165 does constitute a Separate unitary felony Conviction and Sentence. The legislature expressly denied this posture.

Significantly, N.R.S. 193.165 (2) 1973 Version prevents 'use of a deadly weapon' as a Consideration in Sentencing when any statutory Crime Contemplates "USE of A DEADLY WEAPON" as an ELEMENT of any crime. The importance is clear, N.R.S. 193.165 is not an ELEMENT of any crime and does not increase the maximum punishment. Simply put if use of a deadly weapon is not already an ELEMENT of the Crime under Consideration, any Subsequent Consideration of N.R.S. 193.165 Cannot be applied as an ELEMENT. MURDER does not become Murder with the Use of a deadly weapon. Suggested INFRA TAB #5 TRANSCRIBED ORAL ARGUMENTS WOOFTER V O'DONNELL

As discussed Supra, the states position that N.R.S. 193.165 is a chargable offense with a Conviction and Sentence was ABANDONED at ORAL arguments following the legislative Clarification. The State Conceeds that only a Single

offense is involved further stating "..[t]he judge is not robbed of any discretion because two offenses are not involved, the judge is following a legislative edict .... he shall impose a SECOND and CONSECUTIVE Sentence because of the use of a deadly weapon." Later the State argues "Well a Conviction is not independent for each crime, the conviction is Robbery with the use of a deadly weapon, true, two Sentences are imposed but the Conviction is Single"...

The confused posture of the state first claiming N.R.S. 193.165 is a crime, then conceeding it is not a crime was further countermanded by their claim that a UNITARY Conviction - Robbery with the use of a deadly weapon - can allow two separate and distinct punishments, oddly pointing out that N.R.S. 176.033 limits any Sentence to the SINGLE Sentence within the Minimum Maximum limits provided by the applicable statute (see trans. pg 8. TAB 5)

The written decision emphasized the single Sentence requirement

INFRA

TAB #6 WOOFTER - V - O DONNELL written decision

Kristina, please follow me here, this material is crutial and has been over-looked. To be Fair, I think the explanation for this is tied to the stated; "DISPOSITION: writ of Mandamus granted."

This Statement does not reflect the truth of the matter or the written decision. The same applies to the stated "PROCEDURAL POSTURE" claiming that "Petitioner District attorney ... e.g. sought the issuance of a writ of Mandamus directing respondent district judge to Sentence criminal defendant in accordance

[redacted] February 9, 2023

with the enhancement punishment provisions of Nev. Rev. Stat. §193.165..."

As set forth Supra, the Writ of Mandamus did NOT seek any ENHANCEMENT pursuant to the provisions of N.R.S. 193.165 In fact the district attorney sought a Mandamus based upon the claim that N.R.S. 193.165 is a separate distinct Criminal Statute, a Felony with a Separate Conviction and Sentence. The Supreme Court rejected this argument after legislative clarification and the district attorney did not argue for a conviction The Mandamus was soundly defeated. However as a result of the additional Consolidated cases the written decision Set Forth the following guidance for sentencing purposes and issued a Mandamus related to the following findings and Opinion. #1. The SP.CT recognizing the legislative clarification that N.R.S. 193.165 is Not a Separate offense and only provides for an increased sentence Set forth the following #2. "It is also a fundamental Concept expressed in Criminal statutes providing a Single sentence of imprisonment for each distinct Crime that a defendant may not be punished more than once for the same offense." The court goes on to emphasize that N.R.S. 193.165 is NOT a PENAL Statute. This is the basis of the Courts finding that N.R.S. 193.165 is a Constitutional statute that does not offend the Double Jeopardy Clause - THE SINGLE SENTENCE REQUIREMENT CONFORMS WITH THE STATUTORY SCHEME IN NEVADA - Robbery Carries one Sent. Murder is limited to either 1st or 2nd and only Carries one Sentence.

Significantly, in the states briefing for oral arguments

See TAB ONE pg 4

[redacted] February 9, 2023

the State addresses Judge O'Donnells Claim that N.R.S. 193.165 works to deprive the judge of sentencing discretion by mandating an equal Consecutive Sentence, the State replied and said that the Sentencing judge is to lower the punishment for the Crime downward until an equal term would reach the desired total sentence with the maximum determined by the Min-Max set by the actual Crime. Kristina, we know these things because we purchased every page of every brief related to N.R.S. 193.165 by All Attorney's - Bills ect

Ultimately the Woofter decision Clarified what the legislature set forth - N.R.S. 193.165 is NOT an offense and does not result in a Conviction - This means you can't "enhance" a Conviction by aggravating Robbery into Robbery with the use of a deadly weapon. Further Clarifying the Criminal Rule in Nevada "... It is also a fundamental Concept expressed in Criminal Statutes providing a SINGLE sentence of imprisonment for each distinct crime that a defendant may not be punished more than once for the same offense.

The NV. SP. Ct. issued a MANDATE that simply directs Judge O'DONNELL to Sentence in accordance with the provision of N.R.S. 193.165 - DETAILing a Single Sentence -

TAB #7 ORIGINAL J.O.C. / Records CHECK Confirming as Amended J.O.C. Related to DAVID ELDON DUNKEL / Woofter v O'Donnell

By this point we realized the magnitude of the problem, the State Squarely lost the petition for Mandamus seeking two Convictions one for Robbery one for USE of

&

[redacted] 59250 February 9, 2023

a deadly weapon. The "Disposition" and "Procedural Posture" Claims "Mandamus Granted" although this is not true. The written decision sets forth a Single-sentence requirement, the Petitioner district attorney was squarely defeated in pursuit of a separate conviction and sentence for use of a deadly weapon. The "Procedural Posture" Claims that the district attorney in the Original Mandamus sought "ENHANCEMENT" pursuant to N.R.S. 193.165... This is simply NOT TRUE!! The district attorney sought a separate felony conviction and sentence (see TAB 1 pg 4)

The written decision set forth the single sentence requirement detailing the legislative Clarification that N.R.S. 193.165 does not Create an offense - The problem was that other cases resulted in Conviction and or two-sentences - N.R.S. 193.165 is Constitutional BECAUSE it is not an offense and does not provide a Separate Sentence.

To be positive we Conducted further records search seeking any Amended J.O.C. for DAVID EIDON DUNKEL district Court Case No.: 28424. There was never a new sentencing hearing. District Court Judge O'DONNELL Won the day - the Mandamus was decided AGAINST the district attorney. A Single-Sentence for the single Conviction of Robbery. There simply is no aggravated crime of Robbery w/ the Use of a deadly Weapon.

The next year in Raby -v- State the wheels fell off the whole thing.

TAB 8 RABY v STATE written decision

Despite the legislative Clarification expressly declaring N.R.S. 193.165

[redacted] February 9 2023

to be "Not a separate offense" (1975)(TAB 3-4) followed by the Woofter Court decision in support prosecutors and judges Continued to treat N.R.S. 193.165 as a criminal statute. The Nevada Supreme Court reviewed Raby v State. Raby received 5 convictions for robbery and five Conviction for use of a deadly weapon by way of a jury verdict. The Court ruled that N.R.S. 193.165 is not a separate Criminal offense Citing Woofter and Ordered the five Convictions are hereby annulled. The court went on to say Since Raby used a firearm "We shall treat the ten-year Consecutive sentence imposed ... as the enhanced penalty Mandated by N.R.S. 193.165"

Kristina - THIS is where the wheels come off. First the decision in Woofter NEVER identified any ENHANCED penalty in fact the Woofter decision only lays out a Single-sentence principle set forth by when ever Criminal statute is the base's for the Conviction. Second, the Raby Court annulled the Convictions for use of a deadly weapon, directing that each remaining Robbery Conviction Serve Concurrent terms of 10 years and a Consecutive term of 10 years for each Robbery as a result of using a firearm. This is a Judicial over-reach of a legislative function, each robbery is to be perceived or enjoined twice each with two 10 year terms. Notwithstanding what appears to be a Single 10 year Sentence for the use of a Firearm.

No Matter how you slice it the Convictions for use of a deadly Weapon were ANNULLED - But NO AMENDED J.O.C. was ever produced FAILED

[redacted] February 9 2023

TAB 9 ORIGINAL J.O.C. / Records check confirming NO AMENDED J.O.C. Resulted Related to RABY

Despite the Nv. Sp. Ct. decision to ANNUL the five convictions for use of a deadly weapon (citing Woofter deciding N.R.S. 193.165 is NOT a separate offense) in RABY v. State, NO Amended J.O.C. ever took place. Raby was sent to Prison with a J.O.C. directing Imprisonment of 10 years to four Consecutive for Count VI USE of A DEADLY WEAPON Case no 27622 Raby had two cases both were Robbery w/ use but only case No 27577 was Amended. Interestingly - No second sentence for 'use of D/w was imposed. But see Raby case no 27622 which was the subject of the Sp Ct. decision.

What has become clear is that no court would actually issue a Judgment that reads; Count I Robbery - ten years in prison, and when thats over do another ten years on the same Robbery, we will just call the Separate distinct Consecutive Sentence ENHANCED punishment for using a firearm.

Those of us that understand this MACHINATION are shocked that the System and players just turn a blind eye more so that INFRA

Once the first offender arrived at state prison with a J.O.C. that Commands imprisonment for "USE of a deadly weapon" N.R.S. 193.165 The Director created a Classification System with a Crime Severity Index Code that assigns use of a deadly weapon as a crime. The Dept. ignores

the statutory language: "Not a Separate offense" and unilaterally assigns a Conviction and represents a Category of Felony This Happens with All of YOUR CLIENTS.... Illegal Criminal More INFRA

TAB 10 MINUTES OF THE SENATE AND THE ASSEMBLY RE: N.R.S. 193.165

In 2000 Apprendi v. New Jersey was decided. Apprendi established that in order to increase the Maximum punishment for a Crime the enhancement must be the result of a Conviction of a greater or more Serrce offense, in other words it must be an ELEMENT of a Crime. This triggered review of the Statutes listed on pg 2 including N.R.S. 193.165 - The Nevada legislature in 2007 realized the unintended Consequences of N.R.S. 193.165 that has Caused people to stay incarcerated beyond the Offense. The legislature recognized that the enhancement cannot increase the Sentence for the Crime it is only meant to provide for the use of the full Range of the Sentence Not a single day more See pg 2, 4, 5, 6 and 7

Additionally the legislature recognized that Category A Felonies Do NOT have a discretionary RANGE and N.R.S. 193.165 Can only be utilized to increase the Sentence pursuant to the Judges' discretion ONLY when the Crime provides a Range Declaring that these "enhancements" only apply to Category B through E Felonies see pg 4, 6

The 1-20 range that was added to N.R.S. 193.165

[redacted] February 9 2023

is NOT a Sentence range for the crime of use of a deadly weapon because it is NOT a crime. The 1-20 yr language expressly captures ONLY B-E felonies and describes the crimes or the RANGE of sent. for the underlying discretionary sentence. This EXPRESSLY EXCludes Crimes that CARRY life Sentences

The funny thing is, A.B. 236 passed in 1973 Codifying N.R.S. 193.165. At that time we did NAT have Minimum-Maximum Sentencing schemes - But we did have a RANGE. The Judge picked a number of years based upon factors as a matter of EQUITY - and he was to double that number up to the Maximum range of the crime if a weapon was used.

Significantly many judges realized that this means if NO Gun is used ONLY 1/2 of the max Could issue!!

*I have plenty of J.O.C.'s and Records that demonstrate this.

In 1973 the Assembly voted "NOT ONLY NO BUT HELL NO"

"This is a do nothing bill" the Senate passed it Anyway

TAB 11 NEVADA CRIMINAL JUSTICE INFORMATION

BASE RECORD re CONVICTION RECORD

Kristina, by this point we are both tired, please hang in there!

Also by now you must realize that you were wrong about N.R.S. 193.165 providing a Conviction.

Many attorney's do not realize the significance of a Conviction Record, and who is responsible for it's production. Unlike a Judgement of Conviction

[redacted] February 9 2023

which is prepared by the prevailing attorney and does include a claim that Adjudication of guilt and a Conviction and Sentence are found for N.R.S. 193.165 - The Conviction record is prepared by the Court and must Coaform with the UNIFORM CRIME REPORTING ACT. The State record is the Nevada Criminal Justice INFORMATION SYSTEM BASE RECORD - In my case the ONLY Conviction is pursuant to N.R.S. 200.030 SECOND DEGREE MURDER This is Significant - The Court does NOT claim a Conviction for N.R.S. 193.165. The fact that this is the record that is relied upon in order to report Conviction to be included in the Federal Conviction Data Base N.C.I.C.

Although the Conviction record claims that I pled Guilty, this springs from an Amended J.O.C. by - McCarthy he messed it up. Simply put - THE CONVICTION record maintained by the Criminal records repository DOES NOT reflect a Conviction or Sentence for N.R.S. 193.165

TAB 12 PETITION FOR WRIT OF CERTIORARI

Kristina, the attached writ by Kirshbaum Also sets forth the argument that I am NOT being held pursuant to a Constitutionally Viable Consecutive Sentence - After the discharge of the SOLE CONVICTION

TAB 13 NDOC POLICY STATEMENT

N.D.O.C. Grievance response establishing treatment of N.R.S. 193.165 as Category F Conviction

N.R.S. 193.165 as Continuation of discharged Murder Sent

N.R.S. 193.165 as Second Count when only one Count Stated

[redacted] February 9 2023

N.R.S. 193.165 as Not an Offense, but must still be punished with an offense

TAB 14 PAROLE COMMISSIONERS STATEMENT

Despite the legislative command directing the Parole Board to identify the CRIME under consideration, the Board simply defers to the Dept's representation as to Crime and Category of Felony Conviction.

The result is that the Board considers parole for the use of a deadly weapon with the claim of a Category F felony Conviction. Thats Right I said Category "F"

Conclusion

By now you must understand that my current Confinement to a State prison is without statutory authority.

If it still escapes you, think about those who have Expired their Sole Count of Conviction. Think about Foriegn Nationals and the implications. Think about Justice

The N.V. S.C. ct has held that N.D.O.C. must rely on the Verbiage in the relevant statute in this instance N.R.S. 193.165 "NOT A SEPARATE OFFENSE" and not to rely on the Verbiage in the J.O.C. (see Vanseydewitzs) Also see BOWEN- instructing N.D.O.C. to treat 193.165 Separate for ALL purposes!

Kristina, I could have already filed a False imprisonment claim - There is No sufficient STATUTORY authority for Confinement to a Prison

I haven't because of how big this issue is, and quite frankly - there are TOO MANY of these GANG-BANGERS

[redacted] February 9 2023

and RACIST I would rather not help. The work I have done has been a civic exercise - The Board Knows, the Dept too. If they had any Sense it would have been at the parolees Board.

Which brings me to another point, it was clear that you were caught Flat-Footed and not prepared, you waited until the DEAD-line and then made an effort when asked for the P.S.I you didnt have a Complete file.... I'am surprised, disapointed, and WORRIED.

Frankly, I hope you are pissed off. You need a fire built under you. Considering that you didn't even Know that I have not been litigating or Suing Anybody - You didnt even try to ASK me - You only ACCUSED Me and my wife, which tells me You did not even try to defend me?

Whats worse is that your clients have had their hats handed to them because you thought (think) N.R.S. 193.165 results in a Conviction

Johnathan Kirshbaum refused to Amend my 2254 because he is a Coward!! Despite his representations to the Court that NO Conviction is present - He told me that he changed his mind, that N.R.S. 193.165 is a crime Separate and distinct.... He also told me this is TOO BIG he is just a Coward!! I'am Confident that he was instructed or Compelled Not to Amend the 2254 with this issue.... Another thing that is disheartening...

[redacted]

February 9 2023

[redacted]

NONE of you Know the difference between any of us !! I stand up for what is right all the time. Not Some of the time. You Remember Michael Lee Smith? He got out, he lives at his dads house and is doing well. He Changed his life - You did good helping him out.

I bet if you asked him about me you would come to understand that I DESERVE your BEST Effort !!

PROPOSAL

I do not care about any litigation, my goal is to come home to my wife and children. It is clear to any reasonable person that the Board of Pardons Commissioners can only consider a Current crime, I do not have ANY undischarged crime. NO Conviction remains - NOTWITHSTANDING this fact I would promise to never breech that subject If I Could get relief - they CAN operate any way they choose OR I would Plead Guilty to even Second degree if the Sentence was 10-25 and CALL it Good

But Absent these outcomes, the only proposal left is for the Return of the "35,500" -

You were hired for your political ability - I Know You CAN Get it done if You really apply Yourself

I need an ANSWER BY MARCH 9 2023.

I have already initiated a Voter Rights Violation

[redacted] February 9 2023

and exhausted a false imprisonment Grievance.
Kristina, I don't want to be forced into any litigation - But I'am right about every bit of this circumstance.
As far as the Voting Rights issue - N.R.S. 213.157 Restores my Civil-Right to Vote immediately upon a Grant of Parole - So long as No Conviction Remains - I will Beat All of the Procedural B.S. with this Claim and will force an Answer on the Merits.

It's a short trip from that Point.
I Bet you are pissed-off about being Fooled or tricked by the state, related to your understanding of N.R.S. 193.165
AND I Hope You are NOT A COWARD like Johnathan ~~Hill~~ Kirshbaum)
I'am Not AFRAID - The TRUTH is MY SHIELD
I will win if it must go that way.
Hope to hear from you.
Tired of writing, Take Care Cordially,

[redacted]

(19)

IN THE SUPREME COURT OF THE STATE OF NEVADA.

ONE

ROY A. WOOFTER, DISTRICT ATTORNEY OF CLARK COUNTY, NEVADA;

Petitioner,

v.

THE HONORABLE THOMAS J. O'DONNELL, AS DISTRICT COURT JUDGE, EIGHTH JUDICIAL DISTRICT COURT, COUNTY OF CLARK, STATE OF NEVADA,

Respondent.

7939

PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATE PETITION FOR WRIT OF CERTIORARI

FILED

NOV 13 1974

TO: THE HONORABLE SUPREME COURT OF THE STATE OF NEVADA:

The Petitioner, ROY A. WOOFTER, respectfully represents:

I.

That he is a duly elected, qualified and acting District Attorney of Clark County, and by Statute NRS 252.080, 252.090 and 252.110 is charged with the duty of public prosecution. Pursuant to said duty this Petition is brought.

II.

The Respondent is now, and has been at all times, mentioned herein a District Court Judge in the Eighth

Judicial District Court, County of Clark, State of Nevada.

III.

That on the 12th day of August, 1974 a Defendant, DAVID ELDON DUNCKEL, entered a plea of guilty to the Information on file in District Court, Criminal Case No. 28424. The Information charged Defendant DUNKEL with Robbery - Felony - NRS 200.380, and Use of a Deadly Weapon During the Commission of a Crime - Felony - NRS193.165.

On September 19, 1974 the Respondent sentenced the Defendant, DAVID ELDON DUNCKEL, to eight (8) years in the Nevada State Prison. Said sentence was suspended and the Defendant was placed on five (5) years probation, the first nine (9) months to be served in the Clark County Jail. The Respondent took the position that the Information charged but one offense and it would be unconstitutional for the Court to impose two Judgments of Conviction. Further, the Respondent felt that to enhance the penalty wherein it becomes mandatory to impose two separate Judgments of Conviction for the commission of one offense is unconstitutional.

NRS 193.165 provides for an additional penalty when a firearm or deadly weapon is used in the commission of a crime. Section (1) provides:

"1. Any person who uses a firearm or other deadly weapon in the commission of a crime shall be punished by imprisonment in the state prison for a term equal to and in addition to the term of imprisonment prescribed by statute for such crime. The sentence prescribed by this section shall run consecutively with the sentence prescribed by statute for such crime."

Petitioner contends that Respondent acted without or in excess of his jurisdiction when he refused to sentence the Defendant to two consecutive sentences and declared NRS 193.165 unconstitutional.

That this Court has jurisdiction in this matter pursuant to NRS 34.010 to 34.310, as well as NRS 2.100, and the Nevada Constitution, Article VI, Section 4.

That the Petitioner herein has no plain, speedy and adequate remedy other than Mandamus or Certiorari.

Petitioner files this Writ, Affidavit and sentencing transcript. Petitioner further requests leave to file Opening Briefs and Points and Authorities at a later date.

(22)

WHEREFORE, Petitioner prays that a Writ of Mandamus be issued out of this Court compelling the Respondent to sentence the Defendant, DAVID ELDON DUNCKEL, in accordance to his plea of Guilty to Robbery - Felony - NRS 200.380 and Use of a Deadly Weapon During the Commission of a Crime - Felony - NRS 193.165.

DATED this 11th day of November, 1974.

ROY A. WOOFTER
DISTRICT ATTORNEY

By: Sherman H. Simmons
SHERMAN H. SIMMONS
Deputy District Attorney.

Caption 8124
Cons/w 8124

No. 7939 10-15-75, 9:30 (23)

ROY A. WOOFTER, DISTRICT ATTORNEY OF CLARK COUNTY, NEVADA,	George Holt, ~~Roy A. Woofter~~, District Attorney, Sherman H. Simmons, Deputy, Frank Cremen, Deputy Please send a copy of receipts to Ogilvi and Seaton in this case. (No. 7939)
Petitioner,	Attorney for Dan M. Seaton, Deputy D. A.
vs.	
THE HONORABLE THOMAS J. O'DONNELL, AS DISTRICT COURT JUDGE, EIGHTH JUDICIAL DISTRICT COURT, COUNTY OF CLARK, STATE OF NEVADA,	Morgan D. Harris, Public Defender, Stephen Huffaker, Deputy
Respondent.	Attorney for Respondent.

TWO

Appeal from the EIGHTH *Judicial District Court,* CLARK *County, Nevada*

ORIGINAL PROCEEDINGS IN MANDAMUS/CERTIORARI

1974:		
November	13	Filing Petition for Writ of Mandamus Or In The Alternate Petition for Writ of Certiorari.
	15	Filing Affidavit of Service on David Eldon Dunckel.
	15	Filing Order respondent to file an answer, directed solely to issues of arguable cause against issuance of the writ, on or before December 4, 1974.
	21	Filing Affidavits of Service on David Eldon Dunckel, Judge O'Donnell and Morgan D. Harris, of Order dated November 15, 1974.
December	20	Filing Application and Order respondent may have to and including December 20, 1974, to file their answer in opposition to Petition for Writ of Mandamus/Certiorari.
	20	Filing Defendant/Respondent's Answer in Opposition to Petition for Writ of Mandamus Or In The Alternate Petition for Writ of Certiorari.
1975:		
January	29	Filing Order this matter set for oral argument November 11, 1975, at 11:30. Briefing schedules, as delineated in NRAP 31, are to be calculated from the date of this order. We further Order the clerk of the Eighth Judicial District Court to certify and transmit to the clerk of this court, forthwith, the original record of all proceedings.
February	5	Filing Original District Court File.
March	10	Filing Points and Authorities in Support of Petition for Writ of Mandamus Or In The Alternate Petition for Writ of Certiorari.
	18	Filing Order case Nos. 8124 and 7939 are consolidated for the purpose of oral argument and briefing.

1724 (Rev. 11-66)

975:		
larch	31	Filing Order appeal No. 8074 is concolidated for the purpose of oral argument with case No. 7939.
pril	4	Calendar: Ordered oral argument is set for October 15, 1975 at 9:30.
	22	Filing Application and Order respondent may have to and including May 21, 1975, to file his answering brief.
lay	22	Filing Points and Authbrities in Opposition to Petition for Writ of Mandamus Or, In the Alternate, Petition for Writ of Certiorari.
	27	Filing Appellant's Opening Brief.
ne	23	~~Filing Respondent's Answering Brief. (Original in case No. 8124).~~
tober	15	Oral argument: Submitted.
ember	5	~~Filing Opinion " . . . order that a writ of mandamus issue, directing the~~ respondent district judge to resentence the defendant in the case before ~~the court, in accordance with the provisions of NRS 193.165. Per Curiam.~~
	24	Issuing Writ of Mandate. Original and copy of writ and copy of Opinion sent ~~to George Holt for service.~~
	30	Filing Writ of Mandate. Entg. return. Served on Judge O'Donnell December ~~29, 1975.~~

(25)

NEVADA LEGISLATURE

Fifty-Eighth Session

1975

THREE

SELECTED SIGNIFICANT LEGISLATION

Prepared by
~~Office of Research~~
Legislative Counsel Bureau

Andrew P. Grose
Director of Research

Mary Lou Love
Deputy Researcher