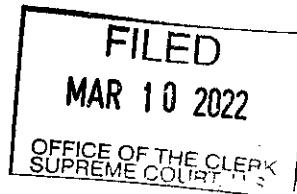


21-7401
No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



HAROLD EDWARDS — PETITIONER
(Your Name)

vs.

THE STATE OF NEVADA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

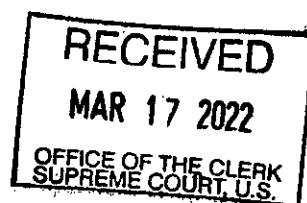
PETITION FOR WRIT OF CERTIORARI

HAROLD EDWARDS
(Your Name)

20825 Cold Creek Rd. P.O. Box 208
(Address)

Indian Springs, NV 89070
(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

1. Did The State District Court Judge's Failure To Abide By Nevada's State Procedural Law Violate My Constitutionally Protected Liberty Interest, Fourteenth Amendment?
2. Was The Large Habitual Sentence Substantially Disproportionate To The Underlying Offense As To Constitute Cruel and Unusual Punishment In Violation Of The Eighth Amendment?
3. Was My Sixth Amendment Constitutional Right To Effective Assistance Of Counsel violated?
4. Did The State Court Sentencing Judge Allow the Prosecutor To Use Two Constitutionally Infirm Prior Convictions For The Basis For His Recommended Large Habitual Sentence?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Harold Edwards v. State of Nevada et al., United States District Court, Dist. of Nevada
Case No. 2:18-cv-00346-JAD-BNW Judgment Entered February 26, 2020

Harold Edwards v. State of Nevada et al. United States District Court
District of Nevada Case No. 2:18-cv-00346-JAD-BNW Judgment Entered September 1, 2021

Harold Edwards v. State of Nevada, Attorney General for The State of Nevada
Case No. 21-16515 D.C. No. 2:18-cv-00346-JAD-BNW Judgment Entered November
16, 2021

Harold Edwards v. State of Nevada Attorney General for The State of Nevada
Case No. 21-16515 D.C. No. 2:18-cv-00346-JAD-BNW District of Nevada Las Vegas
Judgment Entered December 13, 2021

Harold Edwards vs. THE STATE OF NEVADA. [REDACTED] Supreme Court Of The
State Of Nevada Case No. 76590 Judgment Entered March 15, 2019

TABLE OF AUTHORITIES CITED

CASES

		PAGE NUMBER
State of Nevada v. Adams	Furman v. Georgia	
Cronic v. U.S.	Hart v. Coiner	4
Lockhart v. Fretwell	U.S. v. Bowser	
Bordenkircher v. Hayes	U.S. v. Tucker	
U.S. v. Custis	Rezin v. State	
U.S. ex rel Savini	U.S. v. Chapnick	
Clark v. State of Nevada	U.S. v. Bachiero	
John Walker v. George Deeds	McAnulty v. State of Nevada	
Hicks v. Oklahoma 447 U.S. 343	Strachan v. Army Clemency and Parole Bd.	
Fetterly v. Paskett 997 F. 2d	Hamlet v. State of Nevada	
Campbell v. Blodgett	Boykin v. Alabama	
Thacker v. Garrison	Burgett v. Texas	
Weems v. U.S.		
Robinson v. California		
Solem v. Helm		
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Nevada Revised Statute	205, 240
Eighth Judicial District Court Rule	3.10(c)

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APPENDIX B	Harold Edwards v. State Of Nevada, et al., U.S. District Court District of Nevada No. 2:18-cv-00346-JAD-BNW Judgment entered September 1, 2021
APPENDIX C	Harold Edwards v. State Of Nevada et al., United States District Court, District Of Nevada No. 2:18-cv-00346-JAD-BNW Judgment entered February 26, 2020
APPENDIX D	Harold Edwards v. The State Of Nevada No. 76590 Supreme Court Of The State of Nevada Judgment entered on March 15, 2019
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was NOVEMBER 16, 2021.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: DECEMBER 13, 2021, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment Fourteen

Amendment Eight

Amendment Six

STATEMENT OF THE CASE

Petitioner challenges the constitutionality of his large habitual sentence under Nevada's Habitual Criminal Statute. The district court sentencing judge failure to abide by Nevada's procedure violated petitioner's Fourteenth Amendment due process rights. In Nevada the decision to adjudicate a person as a habitual criminal is not an automatic one. *Clark v. State of Nevada*, 851 P.2d 426. In particular someone having committed three felonies does not of itself a habitual criminal make. Nevada's Supreme Court has emphasized that the simple finding of three felonies is not the same as adjudication of habitual criminal status, and is inadequate because it does not clearly disclose that the district court sentencing judge weighed the appropriate factors for and against the habitual criminal enhancement. In Nevada the sentencing judge is required to make an actual judgment on the question of whether it is "just and proper" for the defendant to be punished and segregated as a habitual criminal. *John Walker v. George Deeds*, 50 F. 3d 670, *Clark v. State of Nevada* 851 P.2d 426. The sentencing judge did not decide that it was "just and proper" based on the nature and gravity of the underlying charge to adjudge petitioner Edwards a habitual criminal offender under the relevant statute. If the sentencing judge had weighed the three "Specific Prior Convictions" that were used by the state for the basis for the sentencing enhancement, under Nevada's law the three "Specific Prior Convictions" for non-violent property crimes though reprehensible simply does not warrant the harsh sanction available under the habitual criminal statute. In *Hicks v. Oklahoma*, 447 U.S. 343, 65 L. Ed 2d 175 100 S.Ct. 2227 The Supreme Court held that state laws guaranteeing a defendant procedural rights at sentencing may

1 Create liberty interests protected against arbitrary deprivation
2 by the Due Process Clause of the Fourteenth Amendment, therefore
3 when a State has provided a specific method for determining
4 whether a certain sentence shall be imposed it is not enough or
5 not correct to say that the defendant's interest in having
6 that method adhered to is merely a matter of state procedural
7 law. Fetterly v. Paskett 997 F.2d 1295-1300 9th Cir. 1993 (citing
8 Hicks) Based on Hicks that court found that state law requiring
9 that the Washington Supreme Court review and make the particular find-
10 ings before affirming [a] death sentence "created a Constitutionally
11 Protected Liberty interests. Campbell v. Blodgett 997 F.2d 512 9th Cir.
12 Nevada's law requiring a court to review and then make a particularized
13 finding that it is "Just And Proper" for a defendant who was charged
14 with being a habitual criminal and for him, to be adjudged a habit-
15 ual criminal also creates a Constitutionally Protected Liberty interest
16 in sentencing procedure. So because Nevada's State Court sent-
17 encing judge did "not make the requisite individualized determ-
18 ination that it was "Just And Proper" that petitioner be adjudged a
19 Habitual Offender as mandated by Nevada Law, Petitioner's Due
20 Process Rights Were Violated. John Walker v. George Deeds
21 50 F.3d 670 1995 Clark v. State of Nevada 851 P.2d 426

22 IS THE LARGE HABITUAL SENTENCE IN THIS CASE EXCESSIVE AND SUBST-
23 ANTIALY DISPROPORTIONATE TO THE UNDERLYING OFFENSE AS TO CONST-
24 ITUTE CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH
25 AMENDMENT?

26 IF we are Construing a living Constitution, the Sentence impo-

1 Sed upon me would be viewed as substantially unjust by virtu-
2 ally every layman and lawyer alike. The objective criteria
3 in this case, clearly will establish that a 10-25 year sentence
4 for finding a "Lunch Bag" in the entrance doorway of a business
5 I was seeking employment at, and turning that "Lunch Bag" in to
6 a storage area of an arcade where the arcade stored lost
7 property. Nothing was reported missing from the "Lunch Bag"
8 and it was the second time the owner of the "Lunch Bag" rep-
9 ported her "Lunch Bag" missing. The bifurcated Petit Larceny Ch-
10 arge the state relied on as proof of my intent when I ent-
11 ered the Bellagio Las Vegas' property, that charge was dismissed
12 on May 10th 2016. The sentence in question crosses any rationally
13 drawn line separating punishment that lawfully may be imposed
14 from that which is proscribed by the Eighth Amendment. The Sen-
15 tence in this case 10-25 years is substantially disproportionate to
16 the crime alleged. Seeing me sentenced to that large habitual 10-25
17 year sentence for actually no criminal conduct, would shock the
18 Conscience of any modern society. *Hart v. Coiner*, 483 F.2d 136
19 *Thacker v. Garrison*, 445 F. Supp. 376, *Weems v. United States*, 217
20 U.S. 349, *Robinson v. California*, 370 U.S. 660 and *Solem v. Helm*,
21 436 U.S. 277. Nevada's recidivist scheme is Constitutional as
22 written, therefore I pray that this Supreme Court of the U.S. will
23 decide concerning these issues. I contend that the 10-25 year
24 sentence is excessive as applied to the circumstances of the
25 underlying charge. Given the pronouncements of this court on
26 this subject it becomes apparent that excessiveness is the hallmark
27 of cruel and unusual punishment. One of the primary criterias
28 for evaluating the excessiveness is the disproportionality of the sentence

1 in relation to the offense. O'Neil v. Vermont, 144 U.S. 323
2 Furman v. Georgia and Hart v. Coiner, 408 U.S. 238 and
3 483 F.2d 136. Given the inescapable conclusion that a sentence
4 may be excessive to one individual and appropriate to another, even-
5 though both individuals are similarly situated in terms of broad sta-
6 tutory provisions, it seems only reasonable to infer that the length
7 of an otherwise valid sentence is not immune from Constitutional
8 Scrutiny. The factors to be considered in determining whether the
9 sentence is excessive are (1) NATURE OF OFFENSE, (2) THE LEGISLA-
10 TURE'S PURPOSE BEHIND THE STATUTORY PERMISSIBLE PUNISHMENT (3) THE KIND
11 OF PUNISHMENT OTHER JURISDICTIONS IMPOSE FOR THE SAME CRIME and
12 (4) THE COMPARATIVE PUNISHMENT IN THE SAME JURISDICTION FOR OTHER
13 OFFENSES. I was charged with Burglary initially. According to
14 Nevada's Law, the gravamen of Burglary is the entry. Nevada Rev-
15 ised Statute 205.060 The establishment that I was accused
16 of committing Burglary in, (The Bellagio Las Vegas) is an establish-
17 ment that is open to the public seven days a week, Twenty-Four hours
18 a day. I am viewed on the Bellagio Las Vegas' surveillance cam-
19 eras entering the Bellagio Las Vegas legally. So the state Deputy
20 District Attorney can never prove that I entered the Bellagio
21 Las Vegas illegally. The next element of the state's Burglary charge
22 that has to be proven is that I had an intent to commit a theft
23 the very moment that I entered the Bellagio Las Vegas. The Petit
24 Larceny charge which the state charged me with and based their
25 Burglary charge on. That charge was dismissed. So the Burglary
26 that I was charged with could never have been proven.
27 In examining the length of a sentence, it is not enough merely
28 to look at [redacted] the elements of the crime, the facts and the

1 Circumstances of the particular underlying offense.
2 must be considered. U.S. v. Bowser, 497 F.2d 1017 (4th
3 Cir. 1974) Nevada's legislators created the recidivist
4 Statute not to be used capriciously but to enable the justice
5 system to deal determinedly with Defendants who pose a ser-
6 ious threat to public safety and to afford less violent off-
7 enders an opportunity to reform. In the instant case abso-
8 lutely nothing was taken nor was anyone hurt.

9
10 In the instant case I was punished more severely than
11 criminals in Nevada who committed more serious violent
12 crimes. This was not the purpose of the Nevada legisla-
13 ture. In Nevada Robbery carries 2-15 years, Kidnapping 5-15
14 years, Use of a deadly weapon 1-20 years, Voluntary manslaug-
15 hter 1-10 years, involuntary manslaughter 1-4 years, these are
16 comparative punishments in the same jurisdiction for other
17 offenses.

18 The kind of punishment other jurisdictions impose for the
19 same crime. In Illinois the appellate court recently held
20 on December 27th 2016 that a homeless man's 12 year sent-
21 ence for stealing \$44 dollars in quarters from a vending ma-
22 chine was excessive punishment. A paltry crime for a paltry
23 sum does not warrant the unpaltry sentence of 12 years.
24 I was charged with Burglary but this Burglary is not like a
25 burglary to someone's home, apartment or car I was charged
26
27
28

1 with a Burglary, Nevada Revised Statute 205.060 because I
2 entered a Business open to the public (The Bellagio Las Vegas) and I
3 was accused of committing Petit Larceny for allegedly stealing
4 a "Lunch Bag". Going into a Business that is open to the public
5 and then being accused of committing Petit Larceny usually ends with
6 the accused being charged with Petit Larceny. The Burglary in this
7 case, was based on me entering the Bellagio Las Vegas (a business
8 that is open twenty-four hours a day) (three hundred and sixty-five
9 days a year to the public) illegally and having the intent to
10 commit Petit Larceny. The Business I was accused of Burglarizing
11 (The Bellagio Las Vegas) is open to the public, so my entry was legal,
12 and the Petit Larceny charge the Burglary was predicated on, was
13 dismissed May 10th 2016. Looking at the circumstances of the
14 underlying offense in this case the sentence that I received is
15 disproportionate. It is very perplexing that charges in the same
16 district with high degrees of violence and danger to others receives
17 lesser punishment. In Nevada Robbery carries 2-15 years, Kidnapping 5-
18 15 years, Use of a deadly weapon 1-20 years, voluntary manslaughter 1-10 years,
19 Involuntary manslaughter 1-4 years. There is no rational basis for
20 imposing a mind boggling 10-25 year sentence for actually no Crim-
21 inal Conduct while requiring much lower minimum sentences for
22 very serious offenses. The 10-25 year large habitual sentence is
23 not necessary to achieve any legitimate legislative purpose.
24 In light of less severe penalties provided for other offenses
25 including violent offenses, I pray that the majestic Uni-
26 ted States Supreme Court concludes that the sentence in my
27 case is so excessive and disproportionate to the underlying
28 offense it constitutes cruel and unusual punishment. What was imposed

1 in my Case was clearly excessive in length and dispropor-
2 tionate to the nature of the Offense for which I was Convic-
3 ted and was therefore Cruel and Unusual.

5
6 WAS MY SIXTH AMENDMENT CONSTITUTIONAL RIGHT TO
7 EFFECTIVE ASSISTANT OF COUNSEL VIOLATED?

8
9 My Counsel's assistance during the Pre-Trial Phase was
10 Constitutionally ineffective. His representation was substand-
11 ard in the following particular ways:

12 1. Pursuant to the Sixth Amendment-thorough investigation
13 is Counsel's most critical duty. My appointed Counsel failed
14 to investigate the Three (3) Prior Convictions the State presen-
15 ted to the sentencing Court as the Basis for their recommended
16 Large Habitual Sentence. Had Counsel investigated the validity
17 of the Three (3) "Specific Prior Convictions" the state was allowed
18 to present to the Court during Sentencing as the Basis for
19 their recommended 10-25 year Large Habitual Sentence. Counsel
20 would have learned that two (2) of the "Specific Prior Convictions"
21 did not affirmatively or definitively establish that I was repre-
22 sented by Counsel at those Prior Proceedings in Illinois or that I
23 validly waived Counsel. Counsel would have discovered that a
24 Constitutionally invalid Conviction cannot be used to enhance a
25 Sentence under a Habitual Offender Statute. United States v. Tucker
26 404 U.S. 443, 30 L.Ed 2d 592, 92 S.Ct. 589 my due process rights
27 were violated. My Counselor should have known that it is imper-
28 missible to presume waiver of Counsel from a silent record and

1 a conviction obtained in violation of Gideon v. Wainwright
2 may not be used to enhance punishment for another offense. He
3 also would have discovered that for Two (2) of the Three (3)
4 "Specific Prior Convictions" the state was allowed to use as the
5 basis for their recommended 10-25 year Large Habitual Sentence
6 I received identical concurrent sentences from the same judge in
7 Illinois on the same day at the same proceeding. So for sentencing
8 (on the case at bar) those Two (2) "Specific Prior Convictions"
9 should have been treated as one conviction. Rezin v. State, 596 P.2d
10 226, U.S. v. Chapnick, 963 F.2d 224 (9th Cir 1992) A defendants
11 previous state offenses are consolidated for sentencing even though
12 the state courts had entered no formal consolidation order when
13 the defendant receives identical concurrent sentences from the
14 same judge at the same hearing. U.S. v. Bachiero, 969 F.2d 733
15 (9th Cir.) After further investigation counsel would have discovered
16 that One (1) of the Three (3) Specific Prior Convictions the state
17 were allowed to use for the basis for their recommended 10-25
18 year Large Habitual Sentence is not a felony in the state of
19 Nevada. The state were allowed to use a Thirty-Four (34) year
20 old conviction for a theft of \$75.00.00 dollars if that conduct
21 happened in Nevada I would have been guilty of a Petit Larceny.
22 Nevada Revised Statute 205.240 states: A person commits Petit
23 Larceny if the person intentionally steals, takes away or carries
24 away, leads away or drives away personal goods or property with
25 a value of less than \$650.00 dollars owned by another person. I
26 advised my counsel of this but he failed to investigate. I also
27 advised my counsel that I was actually innocent of the Burglary
28 the state charged me with. On the surveillance video from

1 the Bellagio Las Vegas I was observed entering that property which
2 is open to the Public 24 hours a day, 365 days a year. The
3 Bellagio Las Vegas invites the Public inside and anyone who enters
4 is considered a guest. I was viewed on the Bellagio Las Vegas'
5 Surveillance video legally entering, and upon my entry, I was
6 viewed taking pictures, walking around the Food Courts Conduc-
7 ting myself consistent with why this place of business is open
8 to the Public. According to Nevada's Law, the gravamen of
9 Burglary is the entry. I was viewed on Video entering the
10 Bellagio Las Vegas legally. So my entry into the Bellagio
11 Las Vegas was not illegal. Next, I had to have the Mens Rea
12 upon entry to commit Grand or Petit Larceny or any Fel-
13 ony to be guilty of Burglary. On May 10th 2016 the Petit
14 Larceny charge that the State's Burglary charge was pre-
15 dicated on, was dismissed. So my Conduct does not satisfy
16 the Burglary Statute in Nevada. Adams v. State of Nevada, 581
17 P.2d 868 All this was explained to my Counsel, and he again
18 failed to investigate. My Counsel abandoned his duty of loy-
19 alty to me and effectively joined the Prosecutor in an
20 effort to obtain a conviction, therefore I suffered from
21 obvious Conflict of interest. Such an attorney, like un-
22 wanted Counsel represented me through a tenuous and unac-
23 ceptable legal fiction. In April of 2016 the Sentencing
24 judge ordered my Counsel to refile a discovery motion, he
25 failed to obey that order. Had my Counsel obeyed
26 the order he would have discovered in the discovery that
27 I could never have been convicted of Burglary because
28 the necessary elements could never be proven, and my Credible Story Of

1 actual as well as factual innocence could never have been
2 contraverted. Counsel should have refiled the Discovery Mot-
3 ion the Court ordered him to refile because he would have
4 fulfilled his obligation to investigate.

5 Counsel had over Three (3) months to file a Motion To Consoli-
6 date the instant case C15310695-1 with the oldest case I had
7 C15310166-1 pursuant to the Rules of Practice for the Eighth
8 Judicial District Court Rule 3.10. Consolidation and Reassign-
9 ment 3.10(c) states: "In the event of Negotiations being reached
10 as to multiple cases having the same Defendant, Defense Cou-
11 nsel and the Prosecution may stipulate to having all of the invol-
12 ved cases assigned to the Department having the oldest case with
13 the lowest case number, and the Court Clerk shall then so reass-
14 ign the envolved cases." Instead of filing the Motion To Con-
15 solidate earlier, counsel filed the motion five (5) days before Cal-
16 endar call on the case at bar. I was clearly prejudiced by this
17 because had Counsel filed the motion to Consolidate way earlier,
18 there was a strong possibility that the case at bar would have been
19 removed from that Courtroom into the Courtroom where the
20 lowest case number was and most likely had the sentence (19-48
21 months) I received on the case that I went to trial on, ran Con-
22 current with that case with the lowest case number i.e. Case
23 No's C15311212-1 and C15310166-1. And the Case No. 310695-1 where I
24 received the Large Habitual 10-25 year on, would not existed any
25 more. Counsel also filed a Motion To Access the alleged Crime
26 Scene too late as well, and only visited me at the Detention Center
27 where I was being held only two times.

1 Had Counsel filed the Motion To Access the alleged Crime Scene
2 earlier and the motion was granted, Counsel would have ascert-
3 ained that the Lunch Bag (I was accused of stealing) was actu-
4 ally found in a loss and found area of the Arcade next door to
5 the Cafe Gelato where the Lunch Bag was reported missing
6 from, and absolutely nothing was missing from the Lunch Bag
7 and that Security found the Lunch Bag and returned it to the
8 owner. A Counsel who does not investigate is tantamount to
9 upsetting the adversarial balance between the defense and prosecu-
10 tion. Cronic v. U.S. 466 U.S. 648, Lockhart v. Fretwell, 113 S.Ct.
11 838-842.

12
13 Counsel Coerced my Guilty Plea By Informing me
14 that no one would believe my Credible story And the
15 Sentencing Judge was Known for Allowing the State To
16 Admit Any And All Evidence And That He Would For Sure
17 Sentence Me To Life Without The Possibility Of Parole;
18 If I Went To Trial.

19
20 At The Plea Canvass I was told by Counsel to Answer Yes To
21 Whatever The Judge Asked Me. I was visited by Counsel and
22 another attorney the day before trial was to begin. These two
23 Counselors proceeded to explain to me that the Judge the trial
24 would be held in front of would without doubt find me guilty
25 if I went to trial in his Courtroom. These attorneys explained
26 to me that the Judge is Known for being unethical and display-
27 ed impropriety all the time. They told me that the Judge would
28 allow any evidence the state offered, to be admitted and

1 Would for sure sentence me to Life without the possibility of
2 parole. I pled guilty because I didn't want to be sentenced to Life with
3 out the possibility of parole. Seeing no loyalty from my own
4 Counsel when undivided allegiance and faithful, devoted service was
5 expected, encouraged me to surrender and make a rushed unintell-
6 igent plea to get it over with even though I knew that I was
7 innocent.

8
9 Counsel failed to investigate my claim of Prosecutorial
10 Misconduct:

11 I explained to Counsel that before I proceeded to trial on
12 Case No. C15311212-1 which is the case that ran Concurrent
13 with the instant case C15310695-1 in a Guilty Plea Agreement
14 there was initially a Global Guilty Plea Agreement extended to
15 me that was substantially lesser than the one that I was subse-
16 quently sentenced to. I was allowed to be dealt with more severely
17 because I decided not to agree to the initial Global Guilty Plea
18 Agreement I was offered of 5 1/2 to 12 1/2 years and decided
19 to go to trial on Case No. C15311212-1 which is the other case in-
20 cluded in the Guilty Plea Agreement that I was subsequently sent-
21 enced on here. Because I decided to exercise my Constitu-
22 tional Right by going to trial the prosecutor punished me or was
23 allowed to punish me because I did what the law plainly allows
24 me to do. For the prosecutor (who is an agent of the state)
25 to pursue a course of action, whose objective is to pen-
26 alize me and my reliance

1 on my legal rights is patently unconstitutional, Bordenkircher v.
2 Hayes. Vindictiveness was displayed when on August 17th 2016
3 when the Prosecutor showed personal animus towards me when he
4 stated in open Court "I'm Done Playing Games With Mr. Harold Edwards'
5 case." It was improper for the Prosecutor to display his personal
6 animus towards me. That statement made by the prosecutor was
7 made for no other purpose except to inflame the judge (who's
8 duty is to safeguard the waste of judicial resources) into being indif-
9 ferent towards me. If a prosecutor is obliged to choose his cases,
10 it follows that he can also choose his Defendants. Herein is the
11 most dangerous power of the prosecutor, because he picks people that
12 he thinks he should get, rather than pick cases that needs to be pro-
13secuted. It is in this realm in which the prosecutor picks some
14 person whom he dislikes or desires to embarrass. This is where
15 the greatest danger of abuse of prosecuting power lies and it is here
16 that Law Enforcement becomes personal and the real crime be-
17 comes that of being unpopular with the prosecutor because to him
18 I was abnoxious to, or in the way of the prosecutor. Because I did
19 not handle the charges against me the way the prosecutor wanted me
20 to, gives him no right to utter such prejudicial language as he
21 did. Prosecutors are not allowed to behave in a manner that even
22 suggest a retaliatory motive. By the prosecutor in this case making
23 that statement, a strong inference was created that the sole reason
24 he recommended a more severe penalty (the 10-25 year Large Habit-
25 ual Sentence) was vindictively motivated. Although a prosecutor may
26 in the course of the Plea Negotiations offer a defendant a lesser
27 punishment in a global negotiation... he may not outwardly or indir-
28 ectly threaten a defendant with the consequences that a more

1 harsher punishment will be presented if he insists on going to
2 trial. So because the prosecutor recommended a less severe
3 punishment 5½ to 12½ years at the beginning of the global negoti-
4 ation because he determined that the interest of the state was
5 best served by not having to expend judicial resources by going to
6 trial, then after plea negotiations failed, he then recommended the
7 more severe punishment of 10 to 25 years because I chose
8 to go to trial on one of the charges, a strong inference was
9 created that the only reason for the more severe recommended
10 sentence of 10 to 25 years was vindictive.

11
12
13 THE SENTENCING JUDGE ALLOWED THE PROSECUTOR
14 TO USE TWO CONSTITUTIONALLY INFIRM PRIOR
15 CONVICTIONS FOR THE BASIS FOR HIS RECOMMENDED
16 LARGE HABITUAL SENTENCE.

17 In *United States v. Custis*, 511 U.S. 485 this court held
18 that at sentencing hearings a defendant may challenge the
19 constitutionality of prior state convictions on the ground
20 that he was denied his Sixth Amendment right to counsel. I did
21 in fact challenge the constitutionality of the three prior state
22 of Illinois convictions at sentencing. The prosecutor at se-
23 ntencing presented three judgments of conviction from the state
24 of Illinois, a 1988 thirty year old conviction for theft of \$
25 75 dollars, a 1992 twenty-six year old conviction for Burglary
and a 1995 twenty three year old conviction for possession of a
Stolen motor vehicle. Not only is the 1988 theft conviction stale
and remote in time, there is no attorney definitively attached
to it. That case is also not a felony in the state of Nevada.

1 If that conduct would have occurred in the state of Nevada, I
2 would have been charged with a misdemeanor under Nevada Revised Sta-
3 tute 205.240 which states: A person commits petit larceny if he
4 intentionally steals, takes and carries away, leads away or drives
5 away personal goods or property, with a value of less than \$ 650
6 dollars owned by another person. Carter v. State, 378 P.2d 876

7
8 Nevada's Habitual Offender Statute under which I was sentenced, Con-
9 templates Constitutionally valid underlying Convictions, Nothing
10 less will do. Both federal and State laws makes it abundantly
11 clear that if a defendant was not informed of his right to
12 Counsel at one or more of the Convictions underlying a rec-
13 ividist Sentence, or if the records of those Convictions are
14 silent as to Counsel, then the habitual offender conviction
15 is null and void. U.S. ex rel. Savini v. Jackson, 250 F.2d 349
16 (2d Cir.) Nevada's law in Mc Anulty v. State, 826 P.2d 567
17 The question of validity of prior convictions must be deter-
18 mined by the District Court as a matter of law, the punish-
19 ment which follows is dependent on the number of valid prior Con-
20 victions. Two of the three Judgment of Convictions the
21 State were allowed to admit to the Court for the basis of their
22 Large Habitual 10 to 25 year Sentence recommendation were pre-
23 sumptively unconstitutional because on the 1988 thirty year
24 old Conviction for theft there was no attorney of record next
25 to mines and the Judgment of Conviction for the 1995 twenty
26 three year old Conviction for possession of a Stolen motor Veh-
27 icle also did not have the name of an attorney next to mines.
28 The 1988 Judgment of Conviction for theft had only the letters

1 P.D. on the line where the court clerk was instructed to print
2 the name of the Counsel who represented me. On the 1995
3 Judgment Of Conviction, there was the words Public Defenders
4 Office on the line where the Court Clerk was instructed to print
5 the name of the Counsel who represented me. The Court Clerk only
6 printing the letters P.D. and the words Public Defenders Office on
7 the line of the Judgment Of Convictions where the Court Clerk was
8 instructed to print the name of the Counsel who represented me
9 is too imprecise to make a finding that the Judgment Of Convictions
10 are on their face Constitutional. The court clerk printing the let-
11 ters P.D. and the words Public Defenders Office could be asking the
12 question: "Who is the defendant's P.D. or Public Defender? Or that the
13 defendant needs a P.D. or Someone from the Public Defenders Office to
14 be able to print a name on the Judgment of Conviction. The ambigu-
15 ous letters P.D. and the words Public Defenders Office are not them-
16 selves Sufficient to establish that I had Counsel in those prior
17 proceedings. Not having a named attorney of record on a Judgment
18 of Conviction raises the presumption that I did not have Counsel
19 during that proceeding where I was Sentenced, and a Court Cannot
20 presume that I did. An ambiguous and inconclusive record is tanta-
21 mount to a silent one from which it may be presumed neither the
22 presence of Counsel nor waiver thereof. Oswald v. Crouse, 420 F.
23 2d 373 (10th Cir. 1969) If a record of a Conviction does not indicate
24 representation by Counsel where so entitled or an effective waiver
25 the defendant enjoys a presumption that he was denied his right
26 to Counsel and that his Conviction is therefore Void. Strachan v. Army
27 Clemency and Parole Bd., 151 F. 3d 1308 (CA 10 1998) Nevada's Supreme
28

ADDITIONAL FACTS OF THE CASE:

1 Court announced in Hamlet v. State of Nevada in following the
2 mandate of this Court in Burgett v. Texas that there must be
3 an affirmative showing that the defendant was represented by
4 Counsel or that he validly waived his right to Counsel in the
5 prior felony proceedings. If the record does not so show, that
6 felony conviction may not be considered in determining whether
7 the defendant is a habitual criminal. If the state is unable to
8 establish presence of Counsel or Valid waiver, punishment shall be
9 imposed in accordance with the statutory requirements but with-
10 out recidivist enlargement. Hamlet v. State of Nevada, 455 P.2d 915

11 The State did not introduce any evidence that I made knowing
12 and voluntary waivers of my Constitution rights when I entered
13 the two guilty pleas that led to the Illinois Convictions. The State
14 failed to prove that my Boykin rights were satisfied because they
15 failed to introduce a transcript of those two Illinois plea proceedings.
16 The Sentencing Court in the Case at bar was asked to presume a waiver
17 of... important Federal Rights from a silent record. So my rights
18 under Boykin were violated when the Nevada state District Court
19 Sentencing Court considered prior convictions for sentencing pur-
20 poses. In Rudolph v. Parke, citing Boykin v. Alabama the Supr-
21 eme Court of the United States stated: When reviewing evidence
22 of Convictions that lacks accompanying transcripts evincing a
23 defendant's waiver of his Right To A Jury Trial, His Right Not To
24 Incriminate Himself and His Right Of Confrontation. A Court Can-
25 not presume a waiver of these three important rights from a
26 silent record. The two Judgment Of Convictions the State were
27 allowed to use for enhancement lacked accompanying sentencing

1 transcripts evincing that I waived the aforementioned
2 three Federal Rights set out in Baykin v. Alabama, presuming
3 waiver from a record that is silent as to counsel is impermiss-
4 ible. The inference to be drawn from a presumptive silent record
5 is that I was not represented by Counsel and the inference is
6 of such magnitude that the ordinary presumption of Const-
7 itutional Correctness is dispelled. A sentencing Judge Cannot
8 Consider prior convictions obtained without the assistance of
9 Counsel. Tucker v. U.S. 404 U.S. 443 (1972)

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REASONS FOR GRANTING THE PETITION

The Decision of the Lower Courts were erroneous because the issues that I raised in my Petition Clearly showed that Nevada's Courts as well as the United States Court of Appeals For The Ninth Circuit made rulings and decisions which were not only a gross abuse of discretion but which Knowingly and deliberately disregarded clear and Controlling Law that I presented to these Courts in support of my Contention that my Twelfth, Sixth and Eighth Amendment Constitutional rights were violated.

The Nevada State District Court Judge who sentenced me did not make the requisite individualized determination that it was "Just and Proper" that I be adjudged a Habitual Offender as mandated by Nevada's Law. So my Due Process Rights were violated.

After reviewing the record, it should be clear that these Lower Courts did not give full consideration to the substantial evidence that I put forth in support of the Prima facie case. There was clearly a Substantial Showing of the denial of a Constitutional rights. Under the Controlling Standards I showed that reasonable jurists could debate whether my Petition should have been resolved in a different manner and the issues that I presented were adequate to deserve encouragement to proceed further.

There isn't any Proof a crime was committed in this case. I was charged with a Burglary, for allegedly illegally entering the Bellagio Las Vegas which is a business open to the public and having the intent to commit "petit larceny".

According to Nevada's law on Burglary, the gravaman of burglary is the entry. I was viewed on Surveillance Video entering the Bellagio Las Vegas legally and the petit larceny that is

- the second element that has to be proven to establish a burglary
- that charge was dismissed in Court on May 10th 2016 nothing was taken in this case nor was anyone hurt.

Court Appointed Counsel was ineffective for failing to even investigate the three Judgment of Convictions the State were erroneously allowed to use to enhance my sentence. I was sentenced to the almost penultimate sentence for actually no criminal conduct.

The State were allowed to use unconstitutional Prior Convictions to argue for and get a sentence of 10 to 25 years, when I showed these Courts that I was not represented at those prior proceedings, and the State presented no evidence that I was definitively represented by Counsel at those prior Convictions proceedings. They had no transcripts from those prior proceedings.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Harold Edwards

Date: 3. 9. 22