

DISTRICT COURT
CLARK COUNTY, NEVADA

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AOR.
V. Clavis

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STATE OF NEVADA

Plaintiff,

vs.

ERICH MELTON NOWSCH #2827516

Defendant

) Case No.: C-15-304831-1

) Dept. No.: XVII

) Docket No.: _____

Electronically Filed
04/22/2016 10:49:04 AM

Alvin D. Quinn

CLERK OF THE COURT

5-17-16

8:30A

MOTION TO DISMISS COUNSEL, APPOINT ALTERNATE
COUNSEL AND WITHDRAW GUILTY PLEA AGREEMENT

COMES NOW THE DEFENDANT ERICH MELTON NOWSCH ~~#2827516~~
AND MOVES THIS HONORABLE COURT TO DISMISS COUNSEL AUGUSTUS
CLAVIS, ESQ, APPOINT ALTERNATE COUNSEL AND THE WITHDRAW-
ING OF GUILTY PLEA AGREEMENT. THIS MOTION IS BASED
UPON THE POINTS AND AUTHORITIES, THE PLEADINGS AND PAPERS
FILED HEREIN. THIS MOTION IS PRESENTED IN GOOD FAITH
WITHOUT THE THOUGHT OF HARASSMENT OR DELAY

DATED THIS 17TH DAY OF APRIL 2016

RESPECTFULLY

[Signature]

ERICH MELTON NOWSCH #2827516

(1)

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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

THE DEFENDANT ERICH MELTON NOWSCH (HERE AFTER DEFENDANT) WAS ARRESTED ON FEBRUARY 19TH, 2015 FOR SEVERAL FELONIES INCLUDING BUT NOT LIMITED TO MURDER WITH A DEADLY WEAPON. AUGUSTUS CLAUS WAS SUBSEQUENTLY RETAINED FOR DEFENDANT THE DEFENDANT BELIEVES HIS GUILTY PLEA AGREEMENT ENTERED ON MARCH 4TH 2016 (HERE AFTER GPA) SHOULD BE HELD INVALID. WHAT OCCURRED DURING AUGUSTUS CLAUS (HERE AFTER COUNSEL) REPRESENTATION AND LEADING UP TO THE GPA BEING SIGNED HAD A DEFECT EFFECT ON THE KNOWING, VOLUNTARY AND INTELLIGENT ASPECTS OF DEFENDANTS WAIVER. THE DEFENDANT WAS NEVER FULLY CONSULTED ABOUT AVAILABLE DEFENSES AND RELEVANT LAW AS IT PERTAINED TO HIS CASE. WHILE ALSO BEING PRESSURED AND HAVING NO ADEQUATE TIME TO REVIEW THE GPA BEFORE SIGNING IT.

II. LEGAL ARGUMENT

THE DEFENDANT BRINGS THE INSTANT MOTION DUE TO COUNSEL'S ACTIONS OR LACK OF, AND A BREAK DOWN IN THE ATTORNEY CLIENT RELATIONSHIP WHICH ALONG WITH AN IRRECONCILABLE DIFFERENCE ON HOW TO PROCEED HAS RESULTED IN A VIOLATION OF DEFENDANTS SIXTH AMENDMENT

1 RIGHTS AND HIS RIGHT TO DUE PROCESS UNDER THE FOURTEENTH
2 AMENDMENT.

3 - NEVADA REVISED STATUTE 176.165 AND CASE LAW STATES: THE
4 DISTRICT COURT MAY IN ITS DISCRETION GRANT A DEFENDANT'S
5 [PRE SENTENCE] MOTION TO WITHDRAW A GUILTY PLEA FOR ANY
6 "SUBSTANTIAL REASON" IF IT IS FAIR AND JUST. (WOODS V STATE
7 114 NEV 468, 958 P2D 91 (1998) QUOTING STATE V DISTRICT COURT
8 85 NEV 381, 455 P2D 923 (1969))

9 - THE CONSTITUTIONAL REQUIREMENT OF SUBSTANTIAL EQUALITY
10 AND FAIR PROCESS CAN ONLY BE ^{EMN} ~~OBTAINED~~ ATTAINED WHERE
11 COUNSEL ACTS IN THE ROLE OF AN ADVOCATE IN BEHALF OF
12 HIS CLIENT AS OPPOSED TO THAT OF AMICUS CURIAE (CITING
13 ANDERS V CALIFORNIA 386 US 738, 87 S. CT 1396 (1967))

14 DEFENDANT SINCE A YOUNG AGE HAS HAD A MEDICAL
15 DIAGNOSIS BY NUMEROUS DOCTORS INCLUDING BUT NOT LIMIT-
16 ED TO DR. COLLINS, THAT AFFECT HIS ABILITY TO COMPREHEND
17 SIMPLE CONVERSATIONS LET ALONE SIGNIFICANT LEGAL DOCUMENTS.
18 (DEFENDANT ASSERTS COMPLETE MEDICAL RECORDS ARE BEING LOCATED
19 AND WILL BE SUBMITTED FOR THIS COURTS REVIEW) THIS DIAGNOSIS
20 AND LACK OF MEDICATION DIRECTLY AFFECTED DEFENDANTS ABILITY
21 TO MAKE A KNOWING AND INTELLIGENT WAIVER.

22 - WE THINK THE SAME STANDARD MUST BE APPLIED TO DETER-
23 MINING WHETHER A GUILTY PLEA IS VOLUNTARILY MADE, FOR
24 AS WE HAVE SAID. A PLEA OF GUILTY IS MORE THAN AN
25 ADMISSION OF CONDUCT. IT IS A CONVICTION. IGNORANCE, INCO-

1 IMPREHENSION, COERCION, TERROR, INDUCEMENTS, SUBTLE OR BLATANT
2 THREATS MIGHT BE A PERFECT COVER UP OF UNCONSTITUTIONALITY.
3 THE QUESTION OF AN EFFECTIVE WAIVER OF A FEDERAL CONSTITUTIONAL
4 RIGHT IS OF COURSE GOVERNED BY FEDERAL STANDARDS
5 (BOYKIN V ALABAMA 395 US 238, 89 S. CT 1709 (1969) QUOTING
6 DOUGLAS V ALABAMA 380 US 415, 85 S. CT 1074 (1965))

7 COUNSEL ALSO FAILED TO COMPLETELY DISCUSS THE AVAILABLE
8 DEFENSES TO DEFENDANT PRIOR TO THE GPA. INCLUDING BUT
9 NOT LIMITED TO THE IMPACT OF INTERVIEWS OF DEFENSE
10 WITNESS ANTHONY LEE AND ADAM CROSS, WHICH PREVENTED
11 DEFENDANT FROM UNDERSTANDING THE LAW AS IT PERTAINED
12 TO DEFENDANT'S CASE

13 - A CONSEQUENCE IS DEEMED "DIRECT" IF IT HAS A DEFINITE,
14 IMMEDIATE AND LARGELY AUTOMATIC EFFECT ON THE DEFENDANT'S
15 PUNISHMENT (LITTLE V WARDEN 117 NEV 845, 34 P3D 540 (2001)
16 QUOTING BOYKIN V ALABAMA SUPRA)

17 - FOR THIS WAIVER TO BE VALID UNDER THE DUE PROCESS CLAUSE,
18 IT MUST BE "AN INTENTIONAL RELINQUISHMENT OR ABANDONMENT OF
19 A KNOWN RIGHT OR PRIVILEGE" JOHNSON V ZERBST 304 US 458,
20 58 S. CT 1019 (1938) CONSEQUENTLY, IF A DEFENDANT'S GUILTY
21 PLEA^{EMN} IS NOT EQUALLY VOLUNTARY AND KNOWING, IT HAS BEEN
22 ~~OBTAINED~~^{EMN OBTAINED} IN VIOLATION OF DUE PROCESS AND IS THEREFORE
23 VOID. MOREOVER, BECAUSE A GUILTY PLEA IS AN ADMISSION OF
24 ALL THE ELEMENTS OF A FORMAL ~~CRIMINAL~~^{EMN} CRIMINAL CHARGE, IT
25 CANNOT BE TRULY VOLUNTARY UNLESS THE DEFENDANT POSSESSES

1 AN UNDERSTANDING OF THE LAW IN RELATION TO THE FACTS .

2 (QUOTING MCCARTHY V UNITED STATES 394 US 459, 89 S. CT 1166
3 (1969))

4 MOST IMPORTANTLY COUNSEL DID NOT ADEQUATELY EXPLAIN
5 THE LENGTH OF SENTENCES DEFENDANT WAS AGREEING TO (DEFENDANT
6 ONLY MET WITH COUNSEL THREE TIMES, NO MORE THAN FIVE AT
7 CLARK COUNTY DETENTION CENTER SINCE FEB 19TH, 2015) NONE OF WHICH
8 INCLUDED ANY REVIEW OF THE GPA AS THIS WAS ALL DONE IN
9 OPEN COURT AND THE DEFENDANT WAS PRESSURED INTO ACCEPTING
10 THE GPA.

11 - THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL IS THIS
12 THE RIGHT OF THE ACCUSED TO REQUIRE THE PROSECUTION'S
13 CASE TO SURVIVE THE CRUCIBLE OF MEANINGFUL ADVERSARIAL
14 TESTING. WHEN A TRUE ADVERSARIAL CRIMINAL TRIAL HAS BEEN
15 CONDUCTED EVEN IF DEFENSE COUNSEL MAY HAVE MADE DEMONSTRABLE
16 ERRORS THE KIND OF TESTING ENVISIONED BY THE SIXTH AMENDMENT
17 HAS OCCURED. BUT IF THE PROCESS LOSES ITS CHARACTER AS A
18 CONFRONTATION BETWEEN ADVERSARIES, THE CONSTITUTION GUARANTEE
19 IS VIOLATED (QUOTING UNITED STATES V SWANSON 943 F2D 1070
20 (1991) 9TH CCA)

21 - TO ESTABLISH INEFFECTIVENESS A DEFENDANT MUST SHOW THAT
22 COUNSEL'S REPRESENTATION FELL BELOW AN OBJECTIVE STANDARD OF
23 REASONABLENESS. TO ESTABLISH PREJUDICE HE MUST SHOW THAT THERE
24 IS A REASONABLE PROBABILITY THAT, BUT FOR COUNSEL'S UNPROFESSIONAL
25 ERRORS THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT.

1 A REASONABLE PROBABILITY IS A PROBABILITY SUFFICIENT TO UNDER-
2 MINE CONFIDENCE IN THE OUTCOME. (CITING WILLIAMS V TAYLOR
3 529 US 362, 120 SCT 1495 (2000) QUOTING STRECKLAND V WASHI-
4 NGTON 466 US 668, 80 L.ED 2D 674 (1994))

6 III. CONCLUSION

7 COUNSEL'S ACTIONS HAVE LED TO A COMPLETE BREAK-
8 OWN IN THE ATTORNEY CLIENT RELATIONSHIP. WHICH HAS
9 LEFT THE DEFENDANT WITH OBSTACLES THAT ARE UNFAIR, ALONG
10 WITH DIFFICULTY IN UNDERSTANDING HOW TO PROCEED. THIS
11 LACK OF UNDERSTANDING IS ALL THAT REMAINS OF THE ATTORNEY
12 CLIENT RELATIONSHIP. DEFENDANT HAS FOUND HIMSELF BETWEEN
13 A ROCK AND HARD PLACE WITH VIRTUALLY ONLY CONFUSION
14 AND DOUBT AS TO WHAT HE AGREED TO THEREFORE DEFENDANT
15 RESPECTFULLY REQUEST THIS HONORABLE COURT DISMISS AUGUSTIN
16 S CLAIMS, CURRENT COUNSEL AND APPOINT ALTERNATE
17 COUNSEL WHILE ALLOWING THE DEFENDANT THE ALSO WITH-
18 DRAW THE GUILTY PLEA AGREEMENT ENTERED ON MARCH
19 4TH, 2016. IN THE ALTERNATIVE ALLOW FOR AN EVIDENTIARY
20 HEARING SO THE DEFENDANT CAN NOT ONLY SUBSTANTIATE
21 HIS ~~CLAIMS~~ ^{EMN} ~~CLAIMS~~ ^{EMN}, BUT ALSO PROVIDE THE COURT WITH
22 DEFENDANT'S MEDICAL RECORDS MENTIONED EARLIER. AS THE
23 DEFENDANT ONLY LEARNED OF WHAT HE ACTUALLY AGREED TO
24 ON APRIL 15TH, 2016. IN CONCLUSION OF THE P AND P
25 INTERVIEW AND FURTHER REVIEW OF GPA WITH CURRENT

1 COUNSEL OF RECORD

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DATED THIS 17TH day of APRIL, 2016.

I, ERICH MELTON NOWSCH, do

solemnly swear, under the penalty of perjury, that
the above MOTION TO DISMISS, WITHDRAW OF PLEA is accurate,
correct, and true to the best of my knowledge.

NRS 171.102 and NRS 208.165.

Respectfully submitted,



ERICH MELTON NOWSCH
Defendant
#2827516

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