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ORDR
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CLERK OF THE COURT
FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

AUG 06 2008
THOMAS K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Lindeman*
DEPUTY CLERK

THE STATE OF NEVADA,
Plaintiff,

-vs

GENE ALLEN
#1052416
Defendant.

No. 51940
CASE NO: C177427
DEPT NO: XXIV

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: JUNE 17, 2008
TIME OF HEARING: 8:30 A.M.

THIS CAUSE having come on for hearing before the Honorable JAMES BIXLER, District Judge, on the 17TH day of JUNE, the Petitioner not being present and proceeding pro per, the Respondent being represented by DAVID ROGER, District Attorney, by and through THOMAS J. MOREO, Chief Deputy District Attorney, and the Court having considered the matter including briefs and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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THOMAS K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

FINDINGS OF FACT

- 1
- 2 1. On August 13, 2001, Gene Allen, hereinafter "Defendant," was charged via
- 3 Information with nineteen (19) separate felony counts: Counts I through IV – Sexual
- 4 Assault with a Minor Under Fourteen Years of Age; Count V – Lewdness with a
- 5 Child Under the Age of Fourteen; Counts VI through IX – Sexual Assault with a
- 6 Minor Under Fourteen Years of Age; Count X – Lewdness with a Child Under the
- 7 Age of Fourteen; Counts XI through XIV – Sexual Assault with a Minor Under
- 8 Fourteen Years of Age; Count XV – Lewdness with a Child Under the Age of
- 9 Fourteen; and Counts XVI through XIX – Sexual Assault with a Minor Under
- 10 Fourteen Years of Age.
- 11 2. Trial began on September 16, 2002. However, on September 18, 2002, Defendant
- 12 agreed to plead guilty to an Amended Information charging the Defendant with:
- 13 Count I – Sexual Assault with a Minor under Sixteen Years of Age; and Count II –
- 14 Lewdness with a Child Under the Age of Fourteen.
- 15 3. On October 3, 2002, Defendant filed a Motion to Withdraw his Guilty Plea and to
- 16 Proceed Pro Per. On December 5, 2002, a Faretta canvas was conducted, at which
- 17 time the District Court determined that the Defendant was competent to represent
- 18 himself on his Motion to Withdraw Guilty Plea. However, the District Court
- 19 appointed attorney Jennifer Bolton as standby counsel. On January 3, 2003,
- 20 Defendant supplemented his Motion to Withdraw Guilty Plea with a Motion to
- 21 Suppress Contributors. On January 7, 2003, Defendant filed a Pro Per Motion for a
- 22 New Trial or Acquittal. On January 17, 2003, Defendant filed a Pro Per Motion to
- 23 Dismiss charges. On January 22, 2003, the Court dismissed Defendant's Pro Per
- 24 Motion to Withdraw Guilty Plea.
- 25 4. Also on January 22, 2003, Defendant filed two separate Pro Per Motions for
- 26 Discovery. On January 23, 2003, Defendant filed a Pro Per Motion to Withdraw
- 27 Guilty Plea. On January 29, 2003, Defendant filed a Pro Per Motion in Limine
- 28 alleging various Brady violations. On January 30, 2003, the State filed its Opposition

1 to Defendant's January 7, 2003 Motion for a New Trial. On February 24, 2003,
2 Defendant filed a Reply to the State's Opposition to Defendant's January 7, 2003,
3 Motion for a New Trial. On March 11, 2003, Defendant filed a Pro Per Motion for
4 Change of Venue and filed a third Pro Per "Motion in Limine to Preserve
5 Constitutional Objections not Raised by Counsel at Trial." On March 24, 2003,
6 Defendant filed a Pro Per Motion to Suppress Hearsay, which was followed up with a
7 second Motion to Suppress Hearsay on March 25, 2003.

- 8 5. On April 1, 2003, the Court denied the following Motions: Defendant's Motion to
9 Suppress Hearsay; Motion for Change of Venue; Motion in Limine for a New Trial;
10 Motion to Dismiss Stand-By Counsel; Motion for Independent Testing of Evidence;
11 Motion(s) for Discovery; Motion for Demurer of Charges; and, Motion to Suppress
12 Contributors.
- 13 6. Additionally, on April 1, 2003, Defendant was sentenced to five to twenty (20) years
14 on Count I, and life with a possibility of parole after ten (10) years on Count II –
15 sentences to run concurrent. Defendant received 634 days credit for time served, and
16 a special sentence of lifetime supervision was imposed to commence upon
17 Defendant's release from probation, parole or imprisonment. The Judgment of
18 Conviction was filed on April 7, 2003.
- 19 7. On April 11, 2003, Defendant filed a Notice of Appeal, contending that the District
20 Court erred in denying his pre-sentence Motion to Withdraw his Guilty Plea and that
21 his guilty plea was not made knowing and voluntary. Additionally, the Defendant
22 argued that he was not aware of the terms of the Guilty Plea Agreement, because he
23 received ineffective assistance of counsel. The Defendant withdrew this Appeal prior
24 to decision by the Nevada Supreme Court.
- 25 8. On May 12, 2003, Defendant filed a Pro Per Motion for Change of Venue and a Pro
26 Per Motion in Limine asking the case to be reassigned to a different Court or Judge.
27 On May 13, 2003, the Nevada Supreme Court ordered counsel appointed to the
28 Defendant to pursue Defendant's various claims of relief in the District Court. On

1 May 22, 2003, Defendant filed a Pro Per Motion to Withdraw or Revoke guilty Plea.
2 9. Defendant filed his first Petition for Writ of Habeas Corpus (Post-Conviction) on June
3 11, 2003, and an Amended or possibly second Petition on July 8, 2003, wherein the
4 Defendant argued that his plea was not knowingly and voluntarily made; and,
5 Defendant entered his guilty plea without the effective assistance of counsel. On July
6 16, 2003, Defendant filed a Pro Per Motion to Dismiss Appointed Counsel; a Pro Per
7 Motion for Sentence Investigation Report; and, a Pro Per Motion for State's
8 Evidence; two Pro Per Motion for Transcripts; and, a Motion for Evidentiary Hearing.
9 On July 20, 2005, the Defendant filed an Appeal challenging the validity of his
10 GuiltyPlea Agreement, his Judgment of Conviction, and other unintelligible claims
11 challenging the District Court's denial of his July 8, 2003 Habeas Petition.
12 10. On August 1, 2005, the Supreme Court entered an Affirmance of the District Court's
13 dismissal of Defendant's July 8, 2003, Petition. Additionally, the Nevada Supreme
14 Court affirmed the Judgment of Conviction and dismissed Defendant's remaining
15 claims on the merits. Remitter on this Appeal was issued July 26, 2005. The time
16 delay on this Appeal was due to confusion as to what Petition was being Appealed
17 and the fact that the Defendant had withdrawn a previous Appeal.
18 11. On July 23, 2003, the State filed its Response to Defendant's June 11, 2003, Habeas
19 Petition. On September 16, 2003, Defendant filed a Pro Per Petition for Protective
20 Order. On September 18, 2003, Defendant filed a document titled "Brief on the
21 Merits." On October 28, 2003, Defendant filed a Pro Per Motion for Voluntary
22 Dismissal of Charges. On November 3, 2003, Defendant filed a second document
23 titled "Brief on the Merits" and a third document titled "Motion for Statement of
24 Evidence." On November 14, 2003, an Order was filed denying Defendant's Pro Per
25 Motion for a Statement of Evidence and Pro Per Motion for Voluntary Dismissal of
26 Charges. On November 17, 2003, Defendant filed a Pro Per Motion for Transmission
27 of the Record to the Supreme Court.

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12. On December 26, 2003, Defendant a second Petition for Writ of Habeas Corpus, Post-Conviction. Defendant raised issues of ineffective assistance of counsel, errors in pre-trial procedures and the fact that the Clark County Detention Center (CCDC) was not providing him with medication for his psychological disorders. On February 12, 2004, the State filed an Opposition to this second Petition. On February 23, 2004, the District Court filed an Order dismissing Defendant's second Petition due to the Petition being frivolous and having no basis in law or fact. The Nevada Supreme Court Affirmed the District court's denial of Defendant's second Petition for Writ of Habeas Corpus, which Defendant filed on September 17, 2004. (See Order of Affirmance, Docket No. 42969, filed September 17, 2004). In so denying, the Supreme Court addressed all of Defendant's arguments on the merits. The same claims regarding entry of Defendant's guilty plea, challenge of his sentence and claims of ineffective assistance of counsel are continuously raised in the all of the following Petitions filed. Remittitur on this Appeal was issued on October 18, 2004.

13. During the period that the District Court was disposing of Defendant's second Petition, Defendant filed a Pro Per Motion for Change of Venue on January 12, 2004. On January, 21, 2004, Defendant filed a Pro Per Motion for Evidentiary Hearing on issues raised in his second Habeas Petition. On February 3, 2004, Defendant filed a second Pro Per Motion for Evidentiary Hearing on issues raised in his second Habeas Petition. On February 12, 2004, the State filed its Opposition to: Defendant's Second Habeas Petition; Defendant's two Motions for an Evidentiary Hearing, Motion for Change of Venue; and, Motions for Transcripts.

14. On February 17, 2004, Defendant filed a Pro Per Motion for Statement of the Evidence, Pro Per Motion for Evidentiary Hearing, and Pro Per Motion for Change of Venue; a third Pro Per Brief on the Merits; and, Notice of Withdrawal of Appeal. Each of these Motions was denied pursuant to the same February 23, 2004, Order denying Defendant's second Habeas Petition.

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- 1 15. On February 24, 2004, Defendant filed a Pro Per Motion to Vacate Judgment. On
2 March 5, 2004, Defendant filed a Pro Per Motion for Voluntary Dismissal of Appeal.
3 On March 9, 2004, Defendant filed a third Petition for Writ of Habeas Corpus, Post-
4 Conviction, and Amended said Petition on March 11, 2004. Additionally, on March
5 11, 2004, the Nevada Supreme Court affirmed the Defendant's Judgment of
6 Conviction and the District Court's denial of Defendant's Motion to Withdraw Guilty
7 Plea. The Nevada Supreme Court found that the record showed the Defendant
8 entered his Guilty Plea Agreement knowingly and voluntarily and that there was no
9 basis in law or fact for the Defendant's Motion to Withdraw Guilty Plea. The Nevada
10 Supreme Court otherwise dismissed the Defendant's other unitelligable Claims.
11 Remittur on this appeal was issued on April 6, 2004. (See, Order of Affirmance,
12 5/11/2004, pp. 1-7).
- 13 16. On the same day his Judgment of Conviction was affirmed, or March 11, 2004,
14 Defendant filed another Appeal challenging the District Court's February 23, 2004,
15 denial of Defendant's second Habeas Petition. Thereafter, on March 19, 2004,
16 Defendant filed a forth Petition for Writ of Habeas Corpus, Post-Conviction, which
17 may possibly have been an amendment to the third Petition filed on March 9, 2004.
18 On April 5, 2004, the State filed its Response to Defendant's third and/or fourth
19 Petition. Both the March 9, 2004 and March 19, 2004, Petitions are consolidated and
20 referred to her as Defendant's third Petition as it appears that the District Court did
21 not dispose of the Petition(s). On April 1, 2004, Defendant filed an amendment to his
22 March 19, 2004, Petition. An Order was filed on June 25, 2005, denying Defendant's
23 consolidated third Petition consisting of Defendant's March 9, 2004 Petition; March
24 19, 2004 Petition; and, April 1, 2004, Amended Petition.
- 25 17. During the disposition of the Defendant's fourth consolidated Petition from March 9,
26 2003 to June 25, 2005, the Defendant filed various Motions. On March 23, 2004,
27 Defendant filed a Pro Per Motion to Vacate Judgment of Conviction. On March, 25,
28 2004, Defendant filed a Pro per Motion to Modify Sentence. On April 20, 2004,

1 Defendant filed a Pro Per Motion for Court Order Presentencing Investigation
2 Disclosure Copy and a Pro Per Motion for Dismissal. On April 27, 2004 Defendant
3 filed a Pro Per Motion to Compel Discovery and Request for an Evidentiary Hearing.
4 On May 3, 2004, Defendant filed a Pro Per Motion to Dismiss Counsel and Pro Per
5 Motion for Criminal Minutes. On May 11, 2004, Defendant filed a Pro Per Motion to
6 Suppress Petrocelli hearing and a Pro Per Motion for a Speedy Trial. On May 20,
7 2004, Defendant filed a Pro Per Motion to Withdraw Guilty Plea. On May 24, 2004,
8 Defendant filed a Pro Per Motion to Suppress Preliminary Hearing. On June 25,
9 2004, in addition to an Order filed denying Defendant's fourth consolidated Petition,
10 an Order was filed denying: Defendant's Motion for Conclusion and Disposition;
11 Motion for Speedy Trial; Motion to Dismiss Counsel; Motion for Criminal Court
12 Minutes; Motion to Suppress Petrocelli Hearing; Motion to Compel Discovery;
13 Motion for Evidentiary Hearing; Motion for Sentence Modification; Motion to Vacate
14 Judgment; Motion for Dismissal; Motion to Suppress Preliminary Hearing; and,
15 Motion to Dismiss Request for an Evidentiary Hearing.

16 18. On July 1, 2004, Defendant filed a Pro Per Request for State's Opposition for
17 Presentence Investigation Report. On July 8, 2004, Defendant filed an Appeal of the
18 District Court's denial of the the Defendant's various Motions. On July 29, 2004,
19 Defendant filed two Pro Per Motions for State's Opposition to Defendant's Motions
20 for Transcripts. On August 2, 2004, Defendant filed a Motion for Production of
21 Sentencing Transcripts and a Pro Per Motion for "Contents and Notice of Order
22 Finally Disposing of Petition." On August 6, 2004, Defendant filed a Pro Per Motion
23 for Exception and Motion for Transcripts.

24 19. On August 10, 2004, Defendant filed his fifth Petition for Writ of Habeas Corpus and
25 Certificate of Inmates Institutional Account. Defendant filed an Amended fifth
26 Petition on August 17, 2004. Similar to Petitions 1-4, the Defendant presented
27 unintelligible arguments claiming that he was denied effective assistance of counsel
28 when entering his guilty plea, and that his guilty plea was not entered knowingly and

1 voluntarily. On August 27, 2004, Defendant filed a consolidated fifth Petition for
2 Writ of Habeas Corpus, Post-Conviction. On September 21, 2004 the State filed a
3 Motion to Dismiss Defendant's fifth Petition, because Defendant had failed to show
4 good cause for overcoming the procedural bars that preclude a successive and
5 untimely Petition. On October 11, 2004, the District Court entered an Order
6 dismissing Defendant's fifth Petition for failing to allege any facts warranting relief
7 and for failing present good cause for filing a successive and untimely Petition. The
8 Nevada Supreme Court affirmed the District Court's dismissal of Defendant's fifth
9 Petition, which Defendant filed on August 10, 2004, on the ground that it was a
10 successive petition with no good cause shown. (See Order of Affirmance, Docket No.
11 43599, filed December 6, 2004). Remittitur was issued on January 6, 2005.

12 20. During the disposition of Defendant's fifth Petition, Defendant filed many more
13 frivolous Motions. On September 14, 2004, Defendant filed a Pro Per Motion for
14 Qualified Immunity and Motion for an Evidentiary Hearing. On September 16, 2004,
15 Defendant filed a Pro Per Motion for Court Minutes. On September 21, 2004, the
16 State filed its Opposition to Defendant's fifth Habeas Petition filed on August 10,
17 2004. On October 11, 2004, the Defendant filed a Motion of Consideration on the
18 Merit. On October 12, 2004, Defendant filed a Pro Per Motion for Contents and
19 Order Finally Disposing of Habeas Petition. Defendant filed a sixth Petition for
20 Habeas on November 19, 2004. On December 16, 2004, Defendant filed an
21 Amendment and/or seventh Petition to accompany his November 19, 2004 Petition.
22 On January 13, 2005, the State filed a Motion to Dismiss Defendant's November 11,
23 2004, and December 16, 2004, Petitions as being successive and untimely without
24 good cause shown. On February 4, 2005, the Defendant filed what appears to be a
25 Reply to the State's Motion to Dismiss. On March 2, 2005, the District Court filed an
26 Order denying Defendant's six and/or seventh Petitions, due to the Petition(s) being
27 successive and untimely with no good cause shown. On July 18, 2005, the Supreme
28 Court affirmed the District Court's March 2, 2005 dismissal of his November 19,

1 2004, Petition and Motion for Sentencing Transcripts. Defendant's remaining claims
2 were dismissed as unsupported by facts or unintelligible. Remittur on this Appeal
3 was issued July 12, 2005.

4 21. During Disposition of Defendant's sixth and/or seventh Petition the Defendant again
5 began filing the following frivolous Motions, all of which were denied. On January
6 19, 2005, Defendant filed a "Closing Argument" and "Harmless and Reversible
7 Error". At that hearing, the District Court requested that the State respond to several
8 Motions filed by Defendant on January 19, 2005 and January 24, 2005. As per the
9 Court's order the State filed its Opposition(s) on February 8, 2005. On February 9,
10 2005, Defendant filed a Motion for transcripts apparently requesting transcripts for
11 proceedings held on November 13, 2002 and January 22, 2003. On February 24,
12 2005, Defendant filed a "Motion for Conclusion of Law and Answer." On March 3,
13 2005, Defendant filed a Motion for Documents and a Motion for Downward
14 Departure. This Court denied Defendant's various Motions on March 2, 2005, and on
15 March 7, 2005.

16 22. On March 11, 2005, Defendant filed a Motion for Sentencing Transcripts. The State
17 filed an opposition and a hearing was held on March 21, 2005. On March 29, 2005,
18 the District Court issued an Order denying Defendant's request for sentencing
19 transcripts and all other outstanding Motions. On April 11, 2005, Defendant filed yet
20 another Motion for production of sentencing transcripts at State expense. The Motion
21 was denied as moot on April 21, 2005. Defendant filed an Appeal on May 2, 2005,
22 challenging the District Court's denial of his Motion for Transcripts. On May 10,
23 2005, Defendant filed a Pro Per Motion to Correct Illegal Sentence. Defendant filed
24 an Appeal on May 13, 2005, challenging the validity of his Guilty Plea Agreement.
25 On May 17, 2005 Defendant filed a Pro Per Motion for Court to Disqualify Itself. On
26 May 27, 2005 Defendant filed a Pro Per Petition for Personal Restraint. On June 22,
27 2005, Defendant filed a Motion for Answer Response or Opposition. The State Filed
28 its Opposition on July 1, 2005. An Order denying the Motion was filed on July 13,

1 2005. On June 30, 2005, the District Court filed an Order denying Defendant's: Pro
2 Per Personal Restraint Petition; Pro Per Application to Correct Illegal Sentence; Pro
3 Per Motion for Court to Disqualify Itself and Pro Per Certificate of Inmate's
4 Institutional Account.

5 23. On August 19, 2005, Defendant filed what possibly is his eighth Petition for Writ of
6 Habeas Corpus. On August 26, 2005, Defendant filed a ninth Petition or what might
7 have been an amendment to his eighth Petition filed on August 19, 2005. On
8 September 13, 2005, the State filed a Motion to Dismiss Defendant's eighth and/or
9 ninth Petition(s), for the Defendant's continued failure to show good cause for filing a
10 successive and untimely Petition. On October 11, 2005, the District Court heard
11 argument on Defendant's August 26th Petition and subsequently denied it as being
12 timed barred and successive without good cause shown for avoiding procedural bars.
13 Additionally, the Court's Order noted that the Defendant was continuing to assert
14 meritless legal arguments and facts, which were unfounded and had no basis.

15 24. On August 24, 2005, Defendant filed a Pro Per Motion for an Evidentiary Hearing.
16 On August 29, 2005, the Defendant filed a Pro Per Petition for Court Minutes. On
17 August 30, the State filed its Opposition to Defendant's August 26, 2005, and August
18 19, 2005 Petitions. On September 7, 2005, the State filed its Opposition to
19 Defendant's August 29, 2005, Motion for Court Minutes. On September 12, 2005,
20 Defendant filed a Demand for Answer or Response to his August 26, 2005, and
21 August 19, 2005 Petitions. On September 26, 2005, Defendant filed an Appeal for
22 an unintelligible reason that could not be discerned from a review of the Appeal filed.
23 On October 25, the Supreme Court entered an Affirmance of the District Court's June
24 30, 2005, denial of Defendant's May 27, 2005, Pro Per document labeled "Personal
25 Restraint Petition", finding that the document was unintelligible and not warranting
26 address by the District Court.

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25. On December 22, 2005, Defendant filed a Pro Per Motion to Correct Illegal Sentence. On December 27, 2005, Defendant filed an Amended Writ; however, it is unclear to which Petition this Amendment was to apply. On January 9, 2006, the State filed its Opposition to Defendant's Motion to Correct Illegal Sentence. On January 10, 2006, the Defendant filed a document labeled as "Traverse Brief" with unintelligible claims related to his sentence and guilty plea. On January 19, 2006, Defendant filed a second Pro Per document labeled as "Traverse Brief". On January 20, 2006, Defendant filed an Appeal challenging his sentence and Guilty Plea Agreement on various unintelligible grounds. On January 24, 2006, the District Court Denied Defendant's December 22, 2005, Motion to Correct Illegal Sentence. On March 28, 2006, Defendant filed a Pro Per Motion for Transfer Order. On April 25, 2006, the State filed its Opposition to Defendant's Motion for Transfer Order. On April 11, 2006, Defendant filed two Pro Per Motions for Voluntary Dismissal. On April 13, 2006, Defendant filed a Pro Per Motion for a Transfer Order F.R.A.P Rule 22(B). On April 14, 2006, the District Court Denied Defendant's Motion for Transfer Order. On April 24, 2006, Defendant filed a document titled as a Pro Per Motion to Quire the Jurisdiction Defect.

26. Additionally on April 24, 2006, Defendant filed his tenth Petition for Writ of Habeas Corpus, Post-Conviction challenging the validity his guilty plea and the sentenced rendered. On April 26, 2006, the Defendant filed an Amended Statement to his April 24, 2006, Petition. On May 23, 2006, the State filed a Response and Motion to Dismiss Defendant's tenth Petition as being untimely and successive with no good cause shown. On April 24, 2006, the Defendant filed another Petition, which may be considered his eleventh or an Amendment to his tenth. On August 1, 2006, the District Court entered an Order dismissing Defendant's tenth and/or eleventh Petition as being frivolous and having no basis in law or fact. Defendant Appealed this August 1, 2006, Order on August 10, 2006.

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1 27. On February 12, 2007, the Supreme Court affirmed the District Court's August 1,
2 2006, denial of what was "arguably his [Defendant's] eleventh post-conviction
3 petition for a writ of habeas corpus] filed on April 24, 2006. In so affirming, the
4 Nevada Supreme Court noted that Appellant did not even attempt to demonstrate
5 good cause to excuse the procedural defects in his petition and that the Defendant has
6 filed numerous arguably frivolous, documents in the district court challenging the
7 validity of his judgment of conviction.

8 28. As a result of this behavior the Nevada Supreme Court cautioned the Defendant that
9 he may forfeit all deductions of time earned if the District Court finds that the
10 prisoner has filed a document in a civil action, which includes Habeas Petitions, and
11 the document, "contains a claim or defense included for an improper purpose, the
12 document contains a claim or defense not supported by existing law or a reasonable
13 argument for a change in existing law, or the document contains allegations or
14 information presented as fact for which evidentiary support is not available or is not
15 likely to be discovered after further investigation. Order of Affirmance, 1/10/2007,
16 pp. 4-7 (citing, NRS 209.451 (1)(d)). Remitter on this Appeal was issued on February
17 7, 2007.

18 29. During the disposition of what was "arguably" his eleventh Petition, the following
19 activity occurred as a result of Defendant's frivolous litigation of his case. On May 1,
20 2006, the Defendant filed a Pro Per Motion for Full Evidentiary Hearing, an eleventh
21 Petition for Writ of Habeas Corpus, and a Request for a Judgment as a Matter of Law.
22 On May 2, 2006, the District Court denied Defendant's Motion for a Transfer Order
23 F.R.A.P. 22(B), and dismissed or otherwise disposed of all remaining motions on
24 May 4, 2006. On May 3, 2006, the State filed Oppositions to Defendant's Motions
25 for a Full Evidentiary Hearing and Motion for Judgment as a Matter of Law. On May
26 9, 2006, the District Court entered an Order denying Defendant's Motion to Quire the
27 Jurisdictional Defect. On May 10, 2006, Defendant filed an Appeal, apparently
28 challenging the District Court's June 3, 2003, denial of Defendant's Pro Per Motion

1 to Dismiss Counsel. On May 15, 2006, the District Court filed an Order denying
2 Defendant's Motion for Voluntary Dismissal. On May 16, 2006, Defendant filed a
3 Pro Per Motion for an Evidentiary Hearing.

4 30. On May 24, 2006, Defendant filed a Pro Per Motion to Request Another Judge to be
5 assigned, with the State's Opposition following on June 5, 2006. On June 8, 2006,
6 the District Court filed an Order denying Defendant's May 16, 2006, Motion for
7 Evidentiary Hearing. On June 8, 2006, Defendant also filed an Appeal of the District
8 Court's denial of Defendant's June 13, 2006, Post-Conviction Petition, as well as his
9 July 8, 2003, Petition. On June 19, 2006, the Supreme Court filed a dismissal of
10 Defendant's Appeal of the District Court's denial of Defendant's Motion for Transfer
11 Order and Motion to "Quie the Jurisdictional Defect." On August 25, 2006, an
12 Affirmance was filed, wherein the Supreme Court affirmed the District Court's denial
13 of Defendant's December 22, 2005, Pro Per Motion to Correct an Illegal Sentence.

14 31. On September 20, 2006, the Defendant filed a Pro Per Motion for Production of
15 Transcripts. The State's Opposition followed on October 4, 2006. On October 16,
16 2006, the District Court filed an Order denying the Defendant's Motion for
17 Production of Transcripts. On October 18, 2006, the Defendant filed an appeal, of the
18 October 10, 2006, Order denying the Defendant's Motion for Production of
19 Transcripts. This Appeal was dismissed on November 27, 2006, because no rule or
20 statute allowed for an appeal from the District Court's denial of Defendant's Motion
21 for Production of Transcripts.

22 32. Despite the previous warning of the Nevada Supreme Court, the Defendant filed his
23 twelfth Petition for Writ of Habeas Corpus, Post Conviction on February 5, 2007.
24 The Defendant followed this Petition with another Petition on February 13, 2007,
25 which may be counted as his thirteenth Petition or an Amendment to his twelfth
26 February 5, 2007 Petition. The State filed an Opposition and Motion to Dismiss
27 Defendant's Petition(s), on March 7, 2007. The Defendant filed another Amendment
28 to his twelfth Petition on March 20, 2007. On April 3, 2007, the District Court filed

1 an Order dismissing Defendant's February 5, February 13, and March 20, Petition(s),
2 finding that Defendant had failed to show good cause for overcoming the procedural
3 bars. On April 12, 2007, Defendant filed an Appeal of the District Court's April 3,
4 2007, denial of Defendant's twelfth Petition. On September 12, 2007, the District
5 Court Affirmed the District Court's dismissal of Defendant's order twelfth Petition(s),
6 and stated that the Petition(s) were "unintelligible," and were an "abuse of writ."
7 Order of Affirmance, 10/12/2007, pp. 1-13). Remittur on this Appeal was issued on
8 October 12, 2007.

9 33. During disposition of Defendant's twelfth Appeal, the Defendant filed the following
10 Motions and Appeals. On March 26, 2007, the Defendant filed an Appeal,
11 challenging the validity of the Judgment of Conviction and previous denials of his
12 various Habeas Petitions. On April 5, 2007, Plaintiff filed a Motion to Amend
13 findings of Fact. On May 2, 2007, the Defendant filed a Pro Per Motion for A
14 transcripts of Sentencing. On May 15, 2007, an Amended Judgment of Conviction
15 was filed providing for a sanction by deducting time from Defendant's "credit for
16 time served." However, this sanction was reversed during an April 3, 2007, hearing,
17 because the Court noted that only the Director of the Department of Corrections could
18 sanction the Defendant under NRS 209.415. As such, the District Court filed an
19 Amended Judgment of Conviction reinstating Defendant's credits for time served.

20 34. Defendant filed an Appeal of his Judgment of Conviction on June 4, 2007. On July 6,
21 2007, the Defendant filed a document simply titled "Brief." On August 2, 2007, the
22 Defendant filed an Appeal challenging Defendant's Judgment of Conviction. On
23 August 14, 2007, The Defendant filed a Pro Per Motion to Request Case Documents.
24 Defendant filed another Appeal challenging the Amended Judgment of Conviction on
25 September 13, 2007, as well as an affidavit in support of his Appeal. On October 29,
26 2007, Defendant filed another Appeal challenging his original Judgment of
27 Conviction. This Appeal was dismissed on December 10, 2007. Defendant refilled
28 essentially the same Appeal on December 26, 2007 and again on March 3, 2008. On

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February 19, 2008, Defendant filed a Pro Per Motion for Remand and on February 22, 2008, Defendant filed a Pro Per Motion for Presentence Investigation Report. Defendant filed another Pro Per Motion to Remand on March 3, 2008.

35. Defendant filed was is arguably his thirteenth, or possibly seventeenth, Petition for Habeas Relief on March 17, 2008. Defendant's Petition continues to rehash his unintelligible arguments challenging the Judgment of Conviction; and, claiming that his plea was not knowingly entered and that he received ineffective assistance of counsel.

36. Thereafter, this Court requested information on recommending to the Director of the Department of Corrections, that sanctions be levied under NRS 209.451, against the Defendant for engaging in frivolous litigation by filing Habeas Petitions without any factually or legal basis.

37. Since, then Defendant has filed (3) more appeals, another two (2) more Habeas Petitions, one on April 10, 2008, and another supplement on April 23, 2008, and a document titled as "Answer and Response to Writ of Habeas Corpus," on May 5, 2008. All three documents are set for hearing on June 17, 2008.

38. Defendant's current petition are untimely under NRS 34.726

39. Defendant's petition is successive under NRS 34.810.

40. Defendant has not shown good cause for the late filing of a successive petition.

41. Defendant's petition is bared by the doctrine of latches.

42. Defendant's petition amounts to frivolous litigation under NRS 209.451, warranting recommendation to the Department of Prisons that Defendant's good time credits be forfeited.

43. Any further Petitions for Writ of Habeas Corpus submitted by Defendant must be submitted to the Federal District Court in the first instance.

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3 **CONCLUSIONS OF LAW**
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5 1. The mandatory provisions of NRS 34.726 states:
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7 1. Unless there is good cause shown for delay, a petition that challenges
8 the validity of a judgment or sentence must be filed within 1 year after
9 entry of the judgment of conviction or, if an appeal has been taken from
10 the judgment, within 1 year after the supreme court issues its remittitur.
11 For the purpose of this subsection, good cause for delay exists if the
12 petitioner demonstrates to the satisfaction of the court:

13 (a) That the delay is not the fault of the petitioner; and

14 (b) That dismissal of the petition as untimely will unduly prejudice the
15 petitioner.

16 2. In Gonzales v. State, 118 Nev. 61, 590 P.3d 901 (2002), the Nevada Supreme Court
17 rejected a habeas petition that was filed two days late, pursuant to the “clear and
18 unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the
19 importance of filing the petition with the district court within one year mandate,
20 absent a showing of “good cause” for the delay in filing. Gonzales, 53 P.3d at 902.

21 4. The relevant portions of NRS 34.810 state:

22 2. A second or successive petition must be dismissed if the judge or
23 justice determines that it fails to allege new or different grounds for
24 relief and that the prior determination was on the merits or, if new
25 and different grounds are alleged, the judge or justice finds that the
26 failure of the Defendant assert those grounds in a prior petition
27 constituted an abuse of the writ.

28 3. Pursuant to subsection 1 and 2 the petitioner has the burden of
pleading and proving specific facts that demonstrate:

(a) Good cause for the petitioner’s failure to present the claim or for
presenting the claim again; and

(b) Actual prejudice to the petitioner

5. “In order to demonstrate good cause, a petitioner must show that an impediment
external to the defense prevented him or her from complying with the state procedural
default rules.” Hathaway v. State, 119 Nev. 30, 71 P.3d 503, 506 (2003); citing
Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); Lozada v. State,
110 Nev. 349, 353, 871 P.2d 944, 946 (1994); Passanisi v. Director, 105 Nev. 63, 769
P.2d 72 (1989); see also Crump v Warden, 113 Nev. 293, 295, 934 P.2d 247, 252

1 (1997); Phelps v. Director, 104 Nev. 656, 764 P.2d 1303 (1988). Such an external
2 impediment could be “that the factual or legal basis for a claim was not reasonably
3 available to counsel, or that ‘some interference by officials’ made compliance
4 impracticable.” Hathaway, 71 P.3d at 506; quoting Murray v. Carrier, 477 U.S. 478,
5 488, 106 S.Ct. 2639, 2645 (1986); see also Gonzales, 118 Nev. at 595, 53 P.3d at 904;
6 citing Harris v. Warden, 114 Nev. 956, 959-60 n. 4, 964 P.2d 785 n. 4 (1998).

7 6. To find good cause there must be a “substantial reason; one that affords a legal
8 excuse.” Hathaway, 71 P.3d at 506; quoting Colley v. State, 105 Nev. 235, 236, 773
9 P.2d 1229, 1230 (1989), quoting State v. Estencion, 625 P.2d 1040, 1042 (Haw.
10 1981). The lack of assistance of counsel when preparing a petition, and even the
11 failure of trial counsel, not to forward a copy of the file to a petitioner, have been
12 found to be non-substantial, not constituting good cause. See Phelps v. Director
13 Nevada Department of Prisons, 104 Nev. 656, 660, 764 P.2d 1303 (1988); Hood v.
14 State, 111 Nev. 335, 890 P.2d 797 (1995).

15 7. NRS 34.800 creates a rebuttable presumption of prejudice to the State if “[a] period
16 exceeding five years between the filing of a judgment of conviction, an order
17 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of
18 conviction and the filing of a petition challenging the validity of a judgment of
19 conviction....” The statute also requires that the State plead laches in its motion to
20 dismiss the petition. NRS 34.800.

21 8. NRS 34.750 provides, in pertinent part:

22 “[a] petition may allege that the Defendant is unable to pay the
23 costs of the proceedings or employ counsel. If the court is
24 satisfied that the allegation of indigency is true and the petition *is*
25 *not dismissed summarily*, the court may appoint counsel at the
time the court orders the filing of an answer and a return. In
making its determination, the court may consider whether:

26 (a) The issues are difficult;

27 (b) The Defendant is unable to comprehend the proceedings; or

28 (c) Counsel is necessary to proceed with discovery.”
(emphasis added).

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9. The Nevada Supreme Court has observed that a Defendant "must show that the requested review is not frivolous before he may have an attorney appointed." Peterson v. Warden, Nevada State Prison, 87 Nev. 134, 483 P.2d 204 (1971) (citing former statute NRS 177.345(2)).

10. NRS 209.451 states in pertinent part:

1. If an offender:

...

(d) In a civil action, in state or federal court, is found by the court to have presented a pleading, written motion or other document in writing to the court which:

(1) Contains a claim or defense that is included for an improper purpose, including, without limitation, for the purpose of harassing his opponent, causing unnecessary delay in the litigation or increasing the cost of the litigation;

(2) Contains a claim, defense or other argument which is not warranted by existing law or by a reasonable argument for a change in existing law or a change in the interpretation of existing law; or

(3) Contains allegations or information presented as fact for which evidentiary support is not available or is not likely to be discovered after further investigation, he forfeits all deductions of time earned by him before the commission of that offense or act, or forfeits such part of those deductions as the director considers just.

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5. As used in this section, "civil action" includes a petition for a writ of habeas corpus filed in state or federal court. (NRS 209.451).

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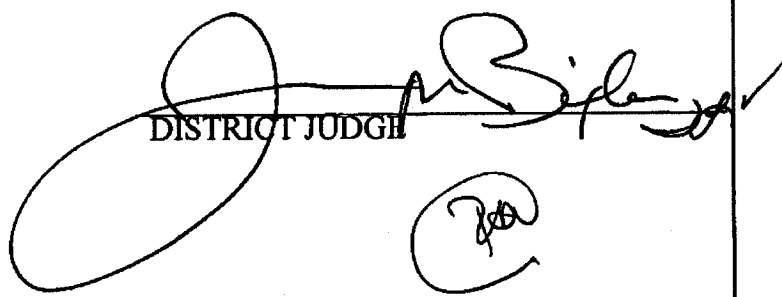
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ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and is DISMISSED.

IT IS HEREBY FURTHER ORDERED that this Court recommends to the Director of Prisons that Defendant's good time credits be REVOKED for continuously engaging in unnecessary, frivolous and harassing litigation.


DATED this 29th day of JULY, 2008.


DISTRICT JUDGE

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

BY Thomas J. Moreo
THOMAS J. MOREO
Chief Deputy District Attorney
Nevada Bar #002415

hjc/SVU


CLERK OF THE COURT

AUG 1 '08