

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

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4 FRANK MILFORD PECK,

5 Petitioner,

6 v.

7 THE SECOND JUDICIAL DISTRICT
8 COURT OF THE STATE OF NEVADA,
9 IN AND FOR THE COUNTY OF
10 WASHOE; AND THE HONORABLE
11 BRENT T. ADAMS, DISTRICT JUDGE,

12 Respondents,

13 and

14 THE STATE OF NEVADA,

15 Real Party in Interest.

16 _____/
17 RESPONSE TO ORDER TO SHOW CAUSE

18 On February 3, 2012, this Court ordered the State, on behalf of the
19 Second Judicial District Court, to show cause why this Court should not
20 issue a writ of mandamus directing the district court to evaluate and move
21 forward on a petition for writ of habeas corpus filed by petitioner Peck in
22 2008.

23 The State has two responses. First, the appropriate writ is a writ of
24 procedendo, not a writ of mandamus. Second, that 2008 petition has been
25 dismissed.

26 On February 9, 2011, the district court entered an order dismissing a
First Amended Petition. *See* Order dated 2-9-11. On February 10, 2012, a
year and a day later, the court entered an order dismissing a supplemental

1 petition, and specified, in footnote 1, that it was dismissing the pleadings of
2 November 21, 2011 and December 12, 2011, and that the original order
3 from a year earlier disposed of the claims raised in the 2008 petition. *See*
4 Order dated 2-10-12.

5 Petitioner Peck has a propensity to present petitions and
6 supplements and supplemental authority and motions for leave to present
7 supplemental authority rather willy nilly. It is quite difficult to keep track
8 of and make sense of his various pleadings. We do the best we can,
9 however. It is now clear enough that the court dismissed the 2008 petition
10 in an order dated February 9, 2011. Indeed the text of that order includes
11 the sentence that “The Court finds that the petition is procedurally
12 barred. . .” Not the supplement, or any of the other pleadings, but “the
13 petition.” If that were not clear enough, it certainly became clear enough
14 later when the court issued another order, including footnote one,
15 explaining that the order of 2-9-11 applied to the 2008 petition.

16 The State contends that this Court should deny the petition for writ of
17 mandamus, and any other pending claims for extraordinary relief.

18 DATED: March 5, 2012.

19 RICHARD A. GAMMICK
20 DISTRICT ATTORNEY

21 By: TERRENCE P. McCARTHY
22 Appellate Deputy
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1 Code 3370
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8 FRANK M. PECK,
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10 Petitioner,

Case No. CR96P2687

Dept. No. 6

11 v.

12 STATE OF NEVADA,
13 Respondent.
14 _____/

15 ORDER

16 Petitioner filed: (1) a first amended petition for writ of habeas corpus (post-
17 conviction), and (2) an ex parte motion for appointment of counsel and request for
18 evidentiary hearing pursuant to N.R.S. 34.750.

19 The Court finds that *Rosas v. State*, 122 Nev. 1258, 147 P.3d 1101 (Nev. 2006)
20 does not retroactively apply to Petitioner's case.

21 The Court finds that the petition is procedurally barred by the one-year statute of
22 limitations on time to file (Remit., Jun. 4, 2003). See N.R.S. 34.726. The Court also finds
23 that good cause does not exist for Petitioner's delay in filing the petition. See N.R.S.
24 34.726(1). Thus, an evidentiary hearing is not warranted in this matter. See N.R.S.
34.770(2).

25 Accordingly, Petitioner's petition is dismissed. Petitioner's motion for appointment of
26 counsel is denied.

27 DATED: This 9th day of February, 2011.

28 _____
DISTRICT JUDGE

CERTIFICATE OF SERVICE

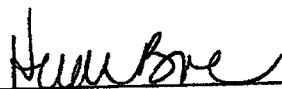
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I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 9th day of February, 2011, I electronically filed the foregoing with the Clerk
of the Court system which will send a notice of electronic filing to the following:

GARY HATLESTAD, ESQ.

Further, I certify that I deposited in the county mailing system for postage and mailing
with the U.S. Postal Service in Reno, Nevada, a true copy of the foregoing addressed to:

Frank Peck, #57106
NNCC
PO Box 7000
Carson City, NV 89702



Judicial Assistant

1 Code 3370
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4 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
5 **IN AND FOR THE COUNTY OF WASHOE**

6 **FRANK M. PECK,**

Case No. CR96P2687

7
8 Petitioner,

Dept. No. 6

9 v.

10 **STATE OF NEVADA,**

11 Respondent.
12 _____ /

13 **ORDER**

14 Petitioner filed a supplemental petition for writ of habeas corpus ("Supplemental
15 Petition").¹ In his Petition, Petitioner argues that both his trial and appellate attorneys failed
16 to properly characterize the requested "lesser related" offense jury instructions as "lesser
17 included" offenses under the facts of the case.

18 The Court finds that the supplemental petition is procedurally barred by the one-year
19 statute of limitations on time to file (Remit., Jun. 4, 2003). See N.R.S. 34.726. The Court
20 also finds that good cause does not exist for Petitioner's delay in filing the petition. See
21 N.R.S. 34.726(1). Thus, an evidentiary hearing is not warranted in this matter. See N.R.S.
34.770(2).

22 Accordingly, Petitioner's supplemental petition is dismissed and Petitioner's motion
23 for leave to file supplemental points and authorities in support of the writ is moot.

24 DATED: This 10th day of February, 2012.

25 _____
26 **DISTRICT JUDGE**

27 _____
28 ¹ This Order encompasses Petitioner's Supplemental Petitions filed on November 21, 2011 and December 12, 2011, respectively. The issues raised in Petitioner's August 7, 2008 Petition were resolved by way of the Court's Order entered on February 9, 2011. (Or. Denying Pet.'s Mot., Feb. 9, 2011).

CERTIFICATE OF SERVICE

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I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 16th day of February, 2012, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

GARY HATLESTAD, ESQ.

And, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Frank M. Peck, #57106
HDSP Box 650
Indian Springs, NV 89070

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Judicial Assistant

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CERTIFICATE OF MAILING

Pursuant to NRAP Rule 25, I hereby certify that I am an employee of the Washoe County District Attorney's Office and that on March 5, 2012, I deposited for mailing at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Frank Milford Peck #57106
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070-0650

Shelly Muckel
Washoe County District Attorney's Office