

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
May 31 2019 11:53 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

FRANK HEARRING, JR.,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: A-19-790102-W

Docket No: 78791

RECORD ON APPEAL

ATTORNEY FOR APPELLANT
FRANK HEARRING #1006445,
PROPER PERSON
P.O. BOX 7007
CARSON CITY, NV 89702

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NV 89155-2212

A-19-790102-W

Frank Herring, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	05/14/2019	CASE APPEAL STATEMENT	51 - 52
1	05/31/2019	CERTIFICATION OF COPY AND TRANSMITTAL OF RECORD	
1	04/05/2019	EX PARTE MOTION FOR APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING	30 - 33
1	04/12/2019	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER	35 - 40
1	05/10/2019	NOTICE OF APPEAL	48 - 50
1	04/15/2019	NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	41 - 47
1	04/11/2019	NOTICE OF HEARING	34 - 34
1	02/25/2019	PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)	1 - 29

1 Frank Herring, #100645
2 Warm Springs Correctional Center
3 P.O. Box 7007
4 Carson City, Nevada 89702

FILED

FEB 25 2019 7

Alan J. Johnson
CLERK OF COURT

PETITIONER IN PROPER PERSON

5
6 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF
7 NEVADA IN AND FOR THE COUNTY OF Clark

10 Frank Herring

Petitioner,

Case No.: A-19-790102-W

Dept. XII

v.

Dept. No. _

13 State of Nevada

14 Respondent

17 PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)

18 INSTRUCTIONS:

19
20 (1) This petition must be legibly handwritten or typewritten, signed by the
petitioner and verified.

21 (2) Additional pages are not permitted except where noted or with respect to the
22 facts which you rely upon to support your grounds for relief. No citation of
authorities need be furnished. If briefs or arguments are submitted, they should be
23 submitted in the form of a separate memorandum.

24 (3) If you want an attorney appointed, you must complete the Affidavit in Support
of Request to Proceed in Forma Pauperis. You must have an authorized officer at the
prison complete the certificate as to the amount of money and securities on deposit to
25 your credit in any account in the institution.

26 (4) You must name as respondent the person by whom you are confined or
27 restrained. If you are in a specific institution of the Department of Corrections,
name the warden or head of the institution. If you are not in a specific institution
of the Department but within its custody, name the Director of the Department of
28 Corrections.

A-19-790102-W
IPWHC
Inmate Filed - Petition for Writ of Habeas
4818192



RECEIVED

FEB 25 2019

CLERK OF THE COURT

1 (5) You must include all grounds or claims for relief which you may have
2 regarding your conviction or sentence. Failure to raise all grounds in this petition
3 may preclude you from filing future petitions challenging your conviction and sentence.

4 (6) You must allege specific facts supporting the claims in the petition you file
5 seeking relief from any conviction or sentence. Failure to allege specific facts,
6 rather than just conclusions may cause your petition to be dismissed. If your petition
7 contains a claim of ineffective assistance of counsel, that claim will operate to waive
8 the attorney-client privilege for the proceeding in which you claim your counsel was
9 ineffective.

10 (7) When the petition is fully completed, the original and one copy must be filed
11 with the clerk of the state district court for the county in which you were convicted.
12 One copy must be mailed to the respondent, one copy to the Attorney General's Office,
13 and one copy to the district attorney of the county in which you were convicted or to
14 the original prosecutor if you are challenging your original conviction or sentence.
15 Copies must conform in all particulars to the original submitted for filing.

16
17
18
19
20
21
22
23
24
25
26
27
28
PETITION

1. Name of institution and county in which you are presently
imprisoned or where and how you are presently restrained of your
liberty: Warm Springs Correctional Center, Carson County.

2. Name and location of court which entered the judgment of
conviction under attack:
The Eighth Judicial District Court of Clark County,
Nevada

3. Date of judgment of conviction: December 30, 2013-~~2014~~

4. Case number: C-13-291159-1

5. (a) Length of sentence: 10 yrs to Life, consecutive with 8+20yrs

1 (b) If sentence is death, state any date upon which
2 execution is scheduled: _____
3

4 6. Are you presently serving a sentence for a conviction
5 other than the conviction under attack in this motion?

6 Yes _____ No X

7 If "yes," list crime, case number and sentence being
8 served at this time: _____
9

10 7. Nature of offense involved in conviction being
11 challenged: Murder (Second Degree) w/ the use of a Deadly Weapon
12 Category A Felony.
13

14 8. What was your plea? (check one)
15 (a) Not guilty _____
16 (b) Guilty X
17 (c) Guilty but mentally ill _____
18 (d) Nolo contendere _____
19

20 9. If you entered a plea of guilty to one count of an
21 indictment or information, and a plea of not guilty to another
22 count of an indictment or information, or if a plea of guilty was
23 negotiated, give details: The Plea of guilty was unknowingly and
24 Unintelligently made as well as involuntarily entered due to
25 defense attorney's Ineffective of Attorney
26

27 10. If you were found guilty after a plea of not guilty, was
28 the finding made by: (check one)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(a) Jury _____

(b) Judge without a jury _____

11. Did you testify at the trial? Yes _____ No X

12. Did you appeal from the judgment of conviction?

Yes _____ No X

13. If you did appeal, answer the following:

(a) Name of court: _____

(b) Case number or citation: _____

(c) Result: _____

(d) Date of result: _____

(Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not:

The reason(s) was because I negotiated plea agreement with
states attorney by the Coersion of Incompetent trial
Counsel.

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any

court, state or federal? Yes X No _____

1 16. If your answer to No. 15 was "yes," give the following
2 information:

3 (a) (1) Name of court: Eighth Judicial District

4 (2) Nature of proceeding: _____
5

6 (3) Grounds raised: Motion to withdraw guilty plea which
7 was denied by trial court, and United States Supreme Court
8 affirmed the trial court's decision.

9 (4) Did you receive an evidentiary hearing on your
10 petition, application or motion? Yes _____ No X

11 (5) Result: _____
12

13 (6) Date of result: _____

14 (7) If known, citations of any written opinion or date of
15 orders entered pursuant to such result: _____
16

17 (b) As to any second petition, application or motion, give
18 the same information:

19 (1) Name of court: N/A

20 (2) Nature of proceeding: N/A

21 (3) Grounds raised: N/A
22

23
24 (4) Did you receive an evidentiary hearing on your petition,
25 application or motion? Yes _____ No X

26 (5) Result: N/A

27 (6) Date of result: N/A
28

1 (7) If known, citations of any written opinion or date of
2 orders entered pursuant to such result: _____
3 _____
4 _____

5 (c) As to any third or subsequent additional applications or
6 motions, give the same information as above, list them on a
7 separate sheet and attach.

8 (d) Did you appeal to the highest state or federal court
9 having jurisdiction, the result or action taken on any petition,
10 application or motion?

11 (1) First petition, application or motion?
12 Yes X No _____
13 Citation or date of decision: December 1, 2016

14 (2) Second petition, application or motion?
15 Yes N/A No _____
16 Citation or date of decision: _____

17
18 (3) Third or subsequent petitions, applications or motions?
19 Yes _____ No _____
20 Citation or date of decision: _____

21 (e) If you did not appeal from the adverse action on any
22 petition, application or motion, explain briefly why you did not.
23 (You must relate specific facts in response to this question.
24 Your response may be included on paper which is 8 1/2 by 11
25 inches attached to the petition. Your response may not exceed
26 five handwritten or typewritten pages in length.)

27
28

1 17. Has any ground being raised in this petition been
2 previously presented to this or any other court by way of
3 petition for habeas corpus, motion, application or any other
4 post-conviction proceeding? If so, identify:

5
6 (a) Which of the grounds is the same: petitioners plea negotia-
7 tions, vulgawing and unintelligent, Petitioners trial Counsel failed to properly in-
8 terview potential witnesses, Ineffective assistance, Failure to interview State witness (key)
9 (See Attached)

10 (b) The proceedings in which these grounds were raised:
11 In petitioners (First) Writ of Habeas Corpus (Post-Conviction)
12 Petition.

13 (c) Briefly explain why you are again raising these grounds.
14 I am again raising these ground because I believe they are
15 relevant to these proceedings.

16 (You must relate specific facts in response to this
17 question. Your response may be included on paper which is 8 1/2
18 by 11 inches attached to the petition. Your response may not
19 exceed five handwritten or typewritten pages in length.)

20
21
22
23
24 18. If any of the grounds listed in Nos. 23(a), (b), (c) and
25 (d), or listed on any additional pages you have attached, were
26 not previously presented in any other court, state or federal,
27 list briefly what grounds were not so presented, and give your
28 reasons for not presenting them. (You must relate specific facts

1 in response to this question. Your response may be included on
2 paper which is 8 1/2 by 11 inches attached to the petition. Your
3 response may not exceed five handwritten or typewritten pages in
4 length.)

5 (See Attached)
6
7

8
9 19. Are you filing this petition more than 1 year following
10 the filing of the judgment of conviction or the filing of a
11 decision on direct appeal? If so, state briefly the reasons for
12 the delay. (You must relate specific facts in response to this
13 question. Your response may be included on paper which is 8 1/2
14 by 11 inches attached to the petition. Your response may not
15 exceed five handwritten or typewritten pages in length.)

16 Petitioner has been attempting to receive (All) documents (Court
17 Case documents) from retained Counsel and/or records related
18 to Case # C-13-291159-1. Received Sept 7, 2018 (on or about.)

19 20. Do you have any petition or appeal now pending in any
20 court, either state or federal, as to the judgment under attack?
21 Yes _____ No ✓ If yes, state what court and the case number:
22
23

24 21. Give the name of each attorney who represented you in
25 the proceeding resulting in your conviction and on direct appeal:
26
27

28 22. Do you have any future sentences to serve after you
complete the sentence imposed by the judgment under attack?

Yes _____ No ✓

Continuation From question #17

- 1
- 2 ground #4 - Retained Counsel failure to interview
- 3 states Key witness.
- 4 ground #5 Retained Seasoned Counsel's failure to present
- 5 mitigating evidence during sentencing.
- 6 ground six - Retained Seasoned Counsel's failure to
- 7 ~~file~~ file motion for ~~psychological~~ psychological evaluation for
- 8 states Key witness.
- 9 ground #7 Retained Seasoned Counsel rendered ineff-
- 10 ective assistance when Counsel advised petitioner to
- 11 accept revised plea
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27

1 Continuation From question #18 of Habeas Petition:

2 ground # 8 - Petitioner(s) alleges retained seasoned Counsel

3 ~~acted~~ intentionally withheld knowledge of material

4 information.

5 ground # 9 - Petitioner alleges trial Court erred when

6 Court(s) did not construe petitioner's Motion to Withdraw

7 guilty plea.

8 ground # 10 - Petitioner alleges ~~acted~~ ^{retained} seasoned Counsel

9 failed to seek out and/or disclose exculpatory evidence.

10 ground # 11 Petitioner alleges retained seasoned Counsel

11 rendered ineffective assistance when seasoned Counsel

12 failed to make reasonable investigations on behalf of

13 petitioner.

14 ground # 12 - Petitioner alleges the Detectives and/or Crime

15 Scene Analyst Experts failed to conduct a thorough

16 investigation of Crime Scene by failing to perform forensic

17 testing investigative duties on spent 9mm Cartridge Casings.

18 ground # 13 - Petitioner alleges retained seasoned Counsel

19 rendered ineffective assistance to petitioner when Counsel

20 failed to conduct a proper and thorough investigation of

21 Crime Scene.

22

23 Petitioner was in ~~the~~ the process of awaiting for (All)

24 relevant Court Case / records and documents to be turned

25 over and received.

26

27

1 23. (a) GROUND ONE: Petitioner Alleges Crime Scene Analyst Ex-
2 erts and detectives failed to conduct a thorough investiga-
3 tion of crime scene by performing forensic testing
4 in violation of petitioner's 6th and 14th Amendment rights.

5 23. (a) SUPPORTING FACTS (tell your story briefly without citing
6 cases or law): Petitioner alleges crime scene Analyst Ex-
7 erts and detectives failed to thoroughly and properly per-
8 form forensic testing investigative duties such as locate,
9 test and process potential mitigating evidence, which if
10 done such evidence would show that someone else
11 committed the charged crime and exonerate petitioner
12 from doing such criminal activity. This failure by
13 Crime Scene analyst experts and detectives to collect
14 and perform forensic testing thoroughly process Crime
15 scene evidence denied petitioner a Constitutional right
16 to an appropriate investigation these elements are
17 instrumental in proving a defendant's guilt and/or in-
18 nocentance. This failure to perform these forensic testing
19 investigative duties, mishandling potential evidence that
20 could have exonerated petitioner this failure to per-
21 form these duties violates petitioner's due process rights
22 and furthermore impeaches crime scene experts Analyst
23 and detectives credibility, furthermore there ex-
24 ist a reasonable probability sufficient to under-
25 mine confidence in the outcome of these pro-
26 ceeding(s) and investigative duties, in violation of
27 petitioner's 6th and 14th Amendment rights.

1 23. (b) GROUND TWO: Petitioner Alleges trial Court erred when trial
2 Court failed to Construe petitioners Motion to Withdraw Guilty Plea
3 petition as post-Conviction writ for Habeas Corpus, in vio-
4 lation of petitioners 6th and 14th Amendment rights.

5 23. (b) SUPPORTING FACTS (tell your story briefly without citing
6 cases or law): Petitioner Alleges that trial Court failed to
7 Construe petitioners Motion To Withdraw Guilty Plea as
8 Post-Conviction writ. Petitioner further states that on
9 December 10, 2014, petitioners Motion To withdraw Guilty Plea petition
10 was filed 20 days prior to the 1yr deadline, which
11 does not time bar petitioner from seeking post-conviction
12 relief. Petitioner alleges that this failure to comply would
13 constitute a miscarriage of justice, prejudice and/or a manifest
14 injustice because petitioner filed Motion to withdraw guilty
15 plea in a timely manner within the 1yr timeline and
16 there fore should be decided on its merits, there fore pro-
17 cedural defaults) should be excused under this standard
18 and petitioners petition should be heard on it's merits
19 failure to do so would violate petitioners due process
20 rights) 6th and 14th Amendment rights.

1 23. (b) GROUND ³ Petitioner alleges seasoned retained trial
2 Counsel rendered ineffective assistance when seasoned
3 trial Counsel failed to make reasonable investigations on be-
4 half of petitioner in violation of petitioners 6th and 14th Amendment ^{rights}

5 23. (b) SUPPORTING FACTS (tell your story briefly without citing
6 cases or law) Petitioner alleges retained seasoned trial Coun-
7 sel rendered ineffective assistance when trial Counsel
8 failed to make a reasonable decision that would
9 make investigations and/or using private investiga-
10 tor unnecessary given the gravity of the charges
11 of: Murder w/ the use of a deadly weapon, Attempted
12 Murder w/ the use of a deadly weapon, and prohibited per-
13 son in possession of a deadly weapon, petitioner
14 further alleges prejudice ensued when seasoned
15 trial Counsel failed to seek out or yielding reasonable
16 doubt on behalf of petitioner seasoned Counsel
17 would have found doubt as to petitioners guilty and/or
18 innocense to the alleged crimes. In violation of
19 petitioners 6th and 14th Amendment rights.

1 23. (c) GROUND 4 : Petitioner alleges seasoned retained trial
2 Counsel intentionally withheld knowledge of favorable, material
3 information from petitioner which denied petitioner a Constitu-
4 tional right to effective assistance of Counsel in violation of petitioners
5 6th and 14th Amendment rights.

6 23. (c) SUPPORTING FACTS (tell your story briefly without citing
7 cases or law): Petitioner alleges seasoned retained Counsel
8 intentionally withheld knowledge of favorable evidence
9 from petitioner, retained seasoned Counsel withheld mat-
10 erial evidence until petitioners request for records/Court
11 case documents motion was filed and/or after petitioner receiv-
12 ed records/Court case documents. Seasoned retained trial Counsel
13 Coersing petitioner into believing pleading guilty would be in
14 his best interest, Seasoned retained Counsel withheld exculpatory
15 material evidence from petitioner that could have exonerated
16 petitioner from the crimes of; Murder w/the use of a Dead-
17 ly weapon, Attempted Murder w/the use of a Deadly weapon, and
18 Prohibited person in possession of a dangerous weapon. Petitioner
19 did not have notice of this due process violation until after
20 he had plead guilty, been sentenced and after conviction
21 had been affirmed. Petitioners seasoned trial Counsel intent-
22 ionally withheld favorable evidence after petitioners rep-
23 eated request for Court case documents in violation of
24 petitioners 5th, 6th and 14th Amendment rights. Petitioner
25 alleges that the above stated issue was withheld by seasoned
26 Counsel either intentionally or inadvertently, and prejudice
27 ensued.
28

1 Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating
2 additional grounds and facts supporting same.

3 23. (a) GROUND 5 :: petitioner Alleges seasoned retained Counsel
4 failed to seek out and/or disclose exculpatory evidence to pet-
5 itioner in violation of petitioners 6th and 14th Amendment
6 right(s).

7 23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law): _____
8 Petitioner alleges retained Counsel failed to perform duties
9 imposed by ethical principles as well as Constitutional one's
10 when seasoned retained Counsel failed to seek out excul-
11 patory evidence, mitigating evidence on behalf of petitioner
12 to the crimes of; Murder w/the use of a deadly weapon,
13 Attempted Murder w/the use of a deadly weapon, and a
14 prohibited person in possession of a deadly weapon
15 which denied petitioner a Constitutional right to a Comp-
16 ulsory process and to have the assistance of Counsel
17 for defense during a serious criminal proceedings in
18 violation of standards for criminal justice, in vio-
19 lation of petitioners 6th and 14th Amendment rights.

20 _____
21 _____
22 _____
23 _____
24 _____
25 _____
26 _____
27 _____

1 23. (d) GROUND : 6 :: Petitioner alleges that retained trial Counsel
2 rendered ineffective assistance when retained seasoned counsels
3 failure to seek out exculpatory, mitigating evidence when
4 seasoned Counsel failed to conduct a thorough investigation of crime scene
5 in violation of petitioner's 6th and 14th Amendment rights.

6 23. (d) SUPPORTING FACTS (tell your story briefly without citing
7 cases or law): Petitioner's seasoned trial counsel never paid a visit
8 to the crime scene, seasoned Counsel neglected to use any
9 investigator to fully comprehend and properly assess the sit-
10 uation and circumstances surrounding the crime scene related
11 to petitioner's alleged crimes) of, Murder w/the use of Deadly wea-
12 pon, Attempted Murder w/the use of a Deadly weapon, and pro-
13 hibited person in possession of a Deadly weapon a serious
14 criminal proceedings. Seasoned Counsel has a duty to make reason-
15 able investigations or make reasonable decisions that make these
16 particular investigations unnecessary. Had seasoned retained
17 counsel and/or investigator properly used investigative measures
18 took a tactical and reasonable approach in properly and
19 thoroughly investigating and assessing the crime scene
20 then seasoned Counsel would have found strong evidence
21 that would've provided on yielding reasonable doubt
22 as to the petitioner's guilty or innocence to the alleged
23 crimes. when Crime scene Analyst experts and detectives state
24 in Application and Affidavit for Search warrant that based
25 solely on (witnesses) hearing 5-7 shot Affinate believes
26 spent 9mm casings were from a previous shooting with-
27 out forensic testing. In violation of petitioner's 6th and
28 14th Amendment rights.

1 23. (d) GROUND 7: Petitioner alleges that his plea negotiation
2 was unknowing and unintelligently as well as involuntarily
3 made due to trial counsels ineffective assistance in violation of the
4 petitioner's 6th Amendment and 14th Amendment rights).

5 23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The
6 defense attorney purposely lead petitioner to believe he
7 (petitioner) would get the death by withholding the
8 results to the grand jury's indictment seeking the
9 death penalty until after petitioners plea negotiation
10 agreement, causing petitioner to plea negotiate with
11 states attorney. Petitioner was coerced into accept-
12 ing a lesser charge from First degree Murder to
13 avoid the death penalty because of trial counsels
14 coersion and this deception (forced) petitioner to
15 plead guilty to avoid the death penalty which
16 petitioner contends that due to trial counsel's
17 performance of misrepresentation, petitioner
18 would've preferred to go to trial instead of plea
19 negotiations.

1 Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating
2 additional grounds and facts supporting same.

3 23. (a) GROUND 8: Petitioner alleges trial Counsel failed to
4 properly interview potential witnesses and make Indep-
5 endent investigation of the facts and circumstances of
6 the case rendering ineffective assistance of Counsel in viol of 6th Amend

7 23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law): Re-
8 trained Counsel Carl Arnold (Seasoned Counsel) re-
9 presented petitioner Frank bearing in a Murder
10 case in the first degree which carried a penalty
11 of death. Trial Counsel failed to properly interview
12 witnesses that petitioner presented to him by
13 way of visitation in the Clark County detention
14 center. Petitioner alleges that seasoned Counsels
15 failure to interview potential witnesses that could
16 have exonerated petitioner from the crimes) Cons-
17 tituted bad performance of a reasonable trial
18 attorney in violation of the 6th and 14th Amend-
19 ment rights to effective assistance of Counsel
20 and due process rights to life and liberty.

1 23. (b) GROUND ⁹ Petitioner alleges seasoned Counsel rendered
2 ineffective assistance of Counsel when he failed to use
3 private investigator of the office to conduct tho-
4 rough investigation in violation of 6th and 14th Amendment.

5 23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): Peti-
6 tioner alleges trial counsel failed to use the law off-
7 ice's private investigator to perform investigative
8 duties such as locate friends and family of
9 petitioner who would have made statements on
10 behalf of petitioner's alibi to the crime of
11 Murder w/ the use of a deadly weapon and
12 exonerate him from doing such criminal act-
13 ivity. This failure of the use of a private in-
14 vestigator that seasoned trial counsel has chosen
15 to do denied petitioner a constitutional right to
16 a fair trial proceedings, which lead to petitioners
17 plea negotiations) because of ineffective
18 assistance of Counsel, in violation of petif-
19 ioners 6th and 14th Amendment rights) to
20 effective assistance of counsel during a serious
21 Criminal proceedings.
22
23
24
25
26
27
28

1 23. (d) GROUND 10: Petitioner alleges that seasoned
2 Counsel failed to properly interview state's attorney
3 Key witness.
4

5 23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law):
6 Petitioner contends seasoned trial Counsel failed to
7 properly interview the state's witness (Key witness)
8 to receive the witness point of the investigation
9 which rendered (s) Competent seasoned Coun-
10 sel and this prejudiced petitioner because
11 Key witness pursued a course of misidenti-
12 fication (with certainty) until coercion took
13 place. A proper interview would have given season-
14 ed Counsel a better view of the state's witnesses
15 demeanor however trial Counsel fail to perform
16 such critical duties which lead to petitioners
17 6th and 14th Amendment rights constitutional
18 right(s) to effective assistance of Counsel guar-
19 anteed under the state and federal Constitution.
20
21
22
23
24
25
26
27

1 23. (d) GROUND ¹¹: Petitioner alleges seasoned trial Counsel
2 rendered ineffective assistance when Counsel advised peti-
3 tioner(s) to accept revised plea despite petitioner's protesta-
4 tions of innocence.

5 23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): _____
6 Season trial Counsel purposely advised petitioner to
7 accept plea negotiations based solely on petitioner's
8 inability to pay retained counsel's fees of 10,000.00,
9 Petitioner alleges seasoned Counsel was improperly
10 motivated. Trial counsel induced guilty plea(s) based
11 solely on petitioner's inability to pay Counsel's fee
12 because counsel's Coersion and deception forced
13 petitioner to plead guilty, which violates petitioner's
14 13th and 14th Amendment right(s).

15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____
26 _____
27 _____

1 Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating
2 additional grounds and facts supporting same.

3 23. (a) GROUND 12: Petitioner alleges seasoned Counsel failed
4 to file motion for a psychological evaluation for states Key
5 witness knowing witnesses inconsistent statements testimony
6 during preliminary hearing.

7 23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law):
8 Petitioner alleges seasoned Counsel failed to file motion for a
9 psychological evaluation for states Key witness once it was
10 discovered that states Key witness testimony during the Pre-
11 liminary hearing showed inconsistencies which seasoned trial
12 Counsel failed to Investigate and petitioner requested for
13 this evaluation to be conducted by filing a motion with
14 the courts however was told "No" by trial counsel. This
15 rendered ineffectiveness on behalf of Counsel on the
16 petitioners seasoned trial counsels part because this Key
17 witness was states only witness to a Murder and petitioner
18 was not allowed to Confront this witness by questioning in
19 violation of petitioners 6th and 14th Amendment rights
20 to Confrontation of the accuser and also in violation of
21 petitioners state and Federal Constitutional due process
22 and related to counsels performance rendered ineff-
23 ectiveness denying petitioner of his Federal, Constitu-
24 tional rights.

1 23. (b) GROUND: 13: Petitioner alleges trial Counsel failed to
2 present mitigating evidence during sentencing hearing
3 which would have rendered a more lenient sentence
4 from trial Judge and show good character of petitioner.

5 23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): _____
6 Petitioner alleges seasoned trial counsel failed to present
7 mitigating evidence during sentencing which petitioner
8 had advised counsel to do and seasoned Counsel re-
9 fused to present Mitigating testimony from petitioners
10 church members, school mentors, youth Counselor, Par-
11 ents, Fiance, Childhood friends and petitioners Super-
12 visors as well as past Employer so trial judge can
13 show leniency toward petitioner's sentencing because
14 state's attorney presented evidence to show petitioner
15 is Bad Charter which rendered unfairness, in violation
16 of petitioners Constitutional rights to state and fed-
17 eral Constitution, in violation of 6th and 14th Amend-
18 ment to effectiveness of Counsel.

1 WHEREFORE, petitioner prays that the court grant petitioner
2 relief to which he may be entitled in this proceeding.

3
4 EXECUTED at Warm Springs Correctional Center
5 on the 21st day of the month of February of the
6 year 2019

7
8 

9 Signature of petitioner

10 W.S.C.C, P.O. Box 7007
11 Carson City, NV 89702

12
13 Address

14
15 Signature of attorney (if any)

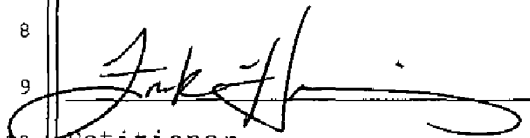
16
17 Attorney for petitioner

18
19
20
21 Address

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.


Petitioner

Attorney for petitioner

1 CERTIFICATE OF SERVICE BY MAIL

2
3 I, Frank Hearring, hereby certify pursuant to
4 N.R.C.P. 5(b), that on this 21st day of the month of February
5 of the year 2019, I mailed a true and correct copy of the
6 foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

7
8 State of Nevada

9 Respondent prison or jail official

10 P.O. Box 7007 3301 E. 5th St
11 Carson City, NV 89702

12 Address

13
14 Attorney General's Office
15 100 North Carson Street
16 Carson City, Nevada 89701-4717

17
18 Steve Wolfson

19 District Attorney of County of Conviction

20 200 Lewis Avenue 3rd Floor
21 Las Vegas, NV 89155-1160

22 Address

23
24 [Signature]
25 Signature of Petitioner

26 P.O. Box 7007
27 Warm Springs Correctional Center
28 Carson City, Nevada 89702

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Post-Conviction Writ For Habeas Corpus
(Title of Document)

filed in District Court Case number C-13-291159-1

Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

Charles B. Harris v. State of Nevada, 329 P.3d 619, 2014
(State specific law)

-OR-

B. For the administration of a public program or for an application for a federal or state grant.

Frank Herring
Signature

2/21/19
Date

Frank Herring
Print Name

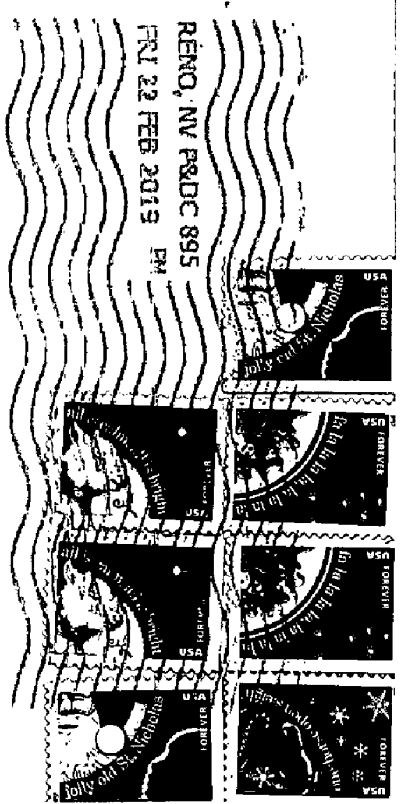
Title

FRANK HARRINGTON #1006445 1006445-

U.S.C.G.

P.O. Box 7007

Carson City, NV 89702



STEVEN D. GRIERSON

CLERK OF THE COURT

200 Lewis Avenue, 3rd Floor

Las Vegas, NV 89155-1160

POSTNET

0106445 1006445

1006445-

21

FILED

APR 05 2019

[Signature]
CLERK OF COURT

Frank Herring #10060445
Warm Springs Correctional Center
P.O. Box 7007
Carson City, Nevada 89702

IN THE 8th JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF

Frank Herring,
Petitioner
vs.
State of Nevada,
Respondent

Case No. A-13-790102-W

**EX PARTE MOTION FOR APPOINTMENT OF COUNSEL
AND REQUEST FOR EVIDENTIARY HEARING**

COMES NOW Petitioner Frank Herring, in pro se, and moves
this Court for its order allowing the appointment of counsel for Petitioner and for an
evidentiary hearing. This motion is made and based in the interest of justice.

Pursuant to NRS 34.750(1),

A petition may allege that the petitioner is unable to pay the costs of
the proceedings or to employ counsel. If the court is satisfied that the
allegation of indigence is true and the petitioner is not dismissed
summarily, the court may appoint counsel to represent the petitioner.
In making its determination, the court may consider, among other
things, the severity of the consequences facing the petitioner and
whether:

- (a) The issues present are difficult;
- (b) The petitioner is unable to comprehend the proceedings, or
- (c) Counsel is necessary to proceed with discovery.

Petitioner is presently incarcerated at Warm Springs Correctional Center, Carson City,
Nevada, where he is unemployed, indigent and unable to retain private counsel to
represent him.

Petitioner is unlearned and unfamiliar with the complexities of Nevada state law,
particularly state post-conviction proceedings. Further Petitioner alleges that the issues in
this case are complex and require an evidentiary hearing. Petitioner is unable to factually

CLERK OF THE COURT

APR 05 2019

RECEIVED

A-13-790102-W
EXMT
Ex Parte Motion
4828407

1




4

develop and adequately present the claims without the assistance of counsel. Counsel is unable to adequately present the claims without an evidentiary hearing.

Petitioner hereby respectfully requests that the Court appoint counsel and set a date for an evidentiary hearing for the reasons stated above.

Dated this 1st day of April, 2019.

Respectfully submitted,


Warm Springs Correctional Center
P.O. Box 7007
Carson City, Nevada 89702

AFFIRMATION
PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding REQUEST FOR APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING does NOT contain the social security number of any person.

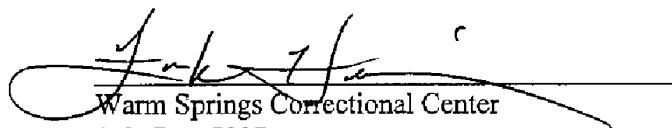
Dated this 1st day of April, 2019.

Frank Herring
Petitioner, in pro se

CERTIFICATE OF SERVICE BY MAIL

I, Frank Herring, hereby certify pursuant to N.R.C.P. 5(b), that on this 1st day of April, 2019, I handed to a prison official for mailing a true and correct copy of the foregoing REQUEST FOR APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING addressed as following:

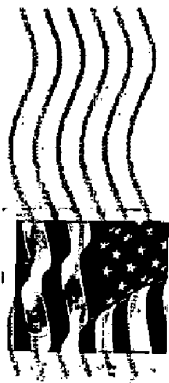
Steven B. Wolfson
200 Lewis Avenue
3rd Floor LV, NV
89155-1160


Warm Springs Correctional Center
P.O. Box 7007
Carson City, Nevada 89702

Mr. Frank Hearing #1000445
A.S.C.C
P.O. Box 7007
Benson City, NV 89702

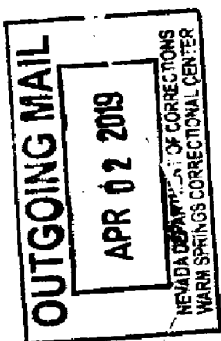
RENO NV 895

02 APR 2019 PM 2 T



Steven D. Errierson
200 Lewis Avenue 3rd
Floor Las Vegas, NV 89155

89101 \$6.500





DISTRICT COURT
CLARK COUNTY, NEVADA

1
2
3 Frank Herring, Plaintiff(s)
4 vs.
5 State of Nevada, Defendant(s)

Case No.: A-19-790102-W
Department 12

6 **NOTICE OF HEARING**

7
8 Please be advised that the Ex Parte Motion for Appointment of Counsel and Request
9 for Evidentiary Hearing in the above-entitled matter is set for hearing as follows:

10 **Date:** May 30, 2019
11 **Time:** 8:30 AM
12 **Location:** RJC Courtroom 14D
13 Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

14 **NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the**
15 **Eighth Judicial District Court Electronic Filing System, the movant requesting a**
16 **hearing must serve this notice on the party by traditional means.**

17 STEVEN D. GRIERSON, CEO/Clerk of the Court

18
19 By: /s/ Michelle McCarthy
20 Deputy Clerk of the Court

21 **CERTIFICATE OF SERVICE**

22 I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion
23 Rules a copy of this Notice of Hearing was electronically served to all registered users on
24 this case in the Eighth Judicial District Court Electronic Filing System.

25 By: /s/ Michelle McCarthy
26 Deputy Clerk of the Court
27
28



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDR

EIGHTH JUDICIAL DISTRICT
CLARK COUNTY, NEVADA

FRANK HEARRING,)	Case No.: A-19-790102-W
)	
Petitioner,)	DEPT. No.: XII
vs.)	(Second Petition)
)	
STATE OF NEVADA,)	
)	
Respondent)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

FINDINGS OF FACT

1. On July 15, 2013, the State charged Frank Hearing by way of information with Murder With Use of a Deadly Weapon, Attempt Murder With Use of a Deadly Weapon, Discharging Firearm At or Into Structure, Vehicle, Aircraft or Watercraft, and Possession of Firearm by Ex-Felon.

2. On October 7, 2013, pursuant to negotiations, Petitioner entered into a Guilty Plea Agreement ("GPA") with the State, wherein, he agreed to plead guilty to one count of Murder (Second Degree) With Use of a Deadly Weapon. The same day, the court conducted a plea canvass on the record and thereafter accepted Petitioner's plea. An Amended Information was filed in open court reflecting the charge contained in the GPA.

3. On December 10, 2013, Petitioner was sentenced to life imprisonment in the Nevada Department of Corrections with parole eligibility after ten years, plus a consecutive sentence of a maximum of 240 months and a minimum of 96 months for the deadly weapon enhancement. Petitioner received 293 days credit for time served. Judgment of Conviction was filed on December 30, 2013. Petitioner did not file a direct appeal.

4. On May 15, 2014, Petitioner filed a Motion to Withdraw Counsel. On June 12, 2014, the Motion was granted.

5. On November 12, 2014, Petitioner filed a Motion for Appointment of Counsel and Request for Evidentiary Hearing. The State filed its response on November

MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89169

1 25, 2014. On December 4, 2014, the court denied the motion, finding the request for
2 evidentiary hearing was made prematurely and could be renewed in a Petition for Writ of
3 Habeas Corpus (post-conviction).

4 6. On December 10, 2014, Petitioner filed a Motion to Withdraw Plea. On
5 December 22, 2014, the State filed an opposition. On January 6, 2015, the district court
6 denied Petitioner's motion. The district court filed its order on January 16, 2015.

7 7. On March 30, 2015, Petitioner filed a Petition for Writ of Habeas Corpus
8 (post-conviction). On July 31, 2015, the State filed its response. A hearing was held on
9 August 4, 2015 and the Petition was denied. The court's Findings of Fact, Conclusions of
10 Law and Order was filed on September 14, 2015.

11 8. On October 6, 2015, Petitioner filed a Notice of Appeal. On April 14,
12 2016, the Supreme Court of Nevada affirmed the district court's denial of the Petition for
13 Writ of Habeas Corpus (post-conviction). Remittitur issued on May 9, 2016.

14 9. On October 28, 2015, Petitioner filed a Motion for Records/Court Case
15 Documents. A hearing was held on November 19, 2015 and the motion was granted in
16 part. The district court filed its order on December 3, 2015.

17 10. On January 21, 2016, Petitioner filed a Motion for Records/Court Case
18 Documents. On February 17, 2016, the State filed its response. A hearing was held on
19 February 23, 2015 and the motion was denied. The district court filed its order on March
20 2, 2016.

21 11. On March 8, 2016, Petitioner filed a Motion for Withdrawal of Attorney
22 of Record or in the Alternative, Request for Records/Court Case Documents. On March
23 11, 2016, the State filed its reply. A hearing was held on March 29, 2016 and the motion
24 was denied. The district court filed its order on April 12, 2016.

25 12. On October 6, 2017, Petitioner filed a Motion to Withdraw Counsel. A
26 hearing was held on October 31, 2017 and the motion was granted. The district court
27 filed its order on November 14, 2017.

28 13. On December 11, 2017, Petitioner filed a Motion to Modify Sentence. On
December 26, 2017, the State filed its opposition. A hearing was held on January 2, 2018
and the motion was denied. The district court filed its order on January 8, 2018.

14. On December 29, 2017, Petitioner filed a Motion to Compel. A hearing
was held on January 23, 2018 and the motion was granted. The district court filed its
order on February 2, 2018.

15. On June 6, 2018, Petitioner filed a Motion to Compel. A hearing was held
on June 28, 2018 and the court ordered a show cause hearing. A show cause hearing was
held on July 31, 2018, August 2, 2018 and September 4, 2018 and were all continued for

1 counsel to appear. On September 11, 2018, counsel appeared and confirmed the file was
2 turned over to the Petitioner.

3 16. On October 10, 2018, Petitioner filed a Motion for Order to Show Cause
4 Contempt of Court and Monetary Sanctions. A hearing was held on November 6, 2018
5 and the court ordered the motion taken off calendar because the file was turned over. On
6 November 26, 2018, Petitioner filed a Notice of Appeal. On December 17, 2018, the
7 Supreme Court of Nevada dismissed the appeal. Remittitur issued on January 11, 2019.

8 17. On February 25, 2019, Petitioner filed the instant (second) Petition for
9 Writ of Habeas Corpus (post-conviction).

10 18. Absent good cause for the failure to present the claim in a prior petition or
11 for presenting the claim again, and actual prejudice, the petition must be dismissed.

12 CONCLUSIONS OF LAW

13 1. NRS 34.726(1), governing "Limitations on time to file...", requires that a
14 petition for a writ of habeas corpus "must be filed within 1 year after entry of the
15 judgment of conviction or, if an appeal has been taken from the judgment, within 1 year
16 after the Supreme Court issues its remittitur." Late-filing of a petition may be excused
17 from procedural default if the Petitioner can establish good cause for delay in bringing
18 the claim. *Id.* Good cause for late-filing consists of a showing that: (1) "delay is not the
19 fault of the petitioner"; and (2) "dismissal of the petition as untimely will unduly
20 prejudice the petitioner." *Id.* at (1)(a)-(b).

21 2. To avoid dismissal, the petitioner must plead and prove specific facts that
22 demonstrate good cause for his failure to present claims before and actual prejudice. *See*
23 *State v. District Court*, 121 Nev. 225, 232, 112 P.3d 1070, 1074 (2005).

24 3. In order to demonstrate good cause, a petitioner must show that an
25 impediment external to the defense prevented him or her from complying with the state
26 procedural default rules. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

27 4. The court may excuse the failure to show good cause where the prejudice
28 from a failure to consider the claim amounts to a fundamental miscarriage of justice.
Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

1 "that the factual or legal basis for a claim was not reasonably available to counsel, or that
2 "some interference by officials," made compliance impracticable." *Hathaway v. State*,
3 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting *Murray v. Carrier*, 477 U.S. 478,
4 488 (1986)).

5 6. NRS 34.810(2), governing "Additional reasons for dismissal of petition,"
6 requires that "[a] second or successive petition must be dismissed if the judge or justice

1 determines that it fails to allege new or different grounds for relief and that the prior
2 determination was on the merits or, if new and different grounds are alleged, the judge or
3 justice finds that the failure of the petitioner to assert those grounds in a prior petition
constituted an abuse of the writ.”

4 7. The petitioner has the burden of pleading and proving specific facts that
5 demonstrate both good cause for failing to present a claim or for presenting a claim again
6 and actual prejudice. NRS 34.810(3). *See also State v. Haberstroh*, 119 Nev. 173, 181, 69
P.3d 676, 681 (2003).

7 8. A court must dismiss a habeas petition if it presents claims that either were
8 presented in an earlier proceeding or could have been presented in an earlier proceeding,
9 unless the court finds both cause for failing to present the claims earlier or for raising
10 them again and actual prejudice to the petitioner. *Evans v. State*, 117 Nev. 609, 621-622,
28 P.3d 498, 507 (2001).

11 9. Unlike initial petitions which certainly require a careful review of the
12 record, successive petitions may be dismissed based solely on the face of the petition.
Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

13 10. Application of the statutory procedural default rules to post-conviction
14 habeas petitions is mandatory. *State v. District Court (Riker)*, 121 Nev. 225, 231, 112
P.3d 1070, 1074 (2005).

15 11. Meritless, successive and untimely petitions clog the court system and
16 undermine the finality of convictions. *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d 944,
950 (1994).

17 12. Petitioner had one year from December 30, 2013, the date the Judgement
18 of Conviction was filed, to file a Petition for Writ of Habeas Corpus (post-conviction).
19 The instant Petition was filed over five years after the Judgement of Conviction was filed.
20 The instant petition is untimely. Absent good cause and prejudice, the instant petition is
time barred and must be dismissed.

21 13. The instant petition is a successive petition, and therefore is also subject
22 to dismissal pursuant to NRS 34.810(1)(b)(2); NRS 34.810(2). The petition must be
23 dismissed if petitioner failed to allege new or different grounds for relief and the prior
24 determination was on the merits or, if new and different grounds are raised in the petition
25 and the court determines the failure of the petitioner to assert those grounds in a prior
petition constituted an abuse of the writ. Absent good cause for the failure to present the
claim in a prior petition or for presenting the claim again, and actual prejudice, the
petition must be dismissed.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

14. Petitioner failed to establish good cause for filing the instant petition more than five years after the Judgment of Conviction was filed. The instant petition raises some new or different claims; however, the court finds the failure to assert those claims in a previous petition constitutes an abuse of the writ.

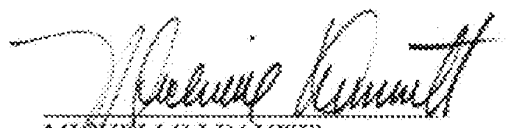
15. The Petitioner further failed to demonstrate prejudice to the petitioner which would amount to a fundamental miscarriage of justice. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

16. Accordingly, the petition is time barred. The petition is a successive petition and constitutes an abuse of the writ.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus (post-conviction) shall be, and it is, hereby DENIED.

Dated this 11 day of April 2019.


MICHELLE LEAVITT
DISTRICT COURT JUDGE
DEPARTMENT XII
EIGHTH JUDICIAL DISTRICT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


CERTIFICATE OF MAILING

I hereby certify that on the date filed, I placed a copy of the Order for Petition for Writ of Habeas Corpus (Post-Conviction) in the U.S. Mail, postage prepaid to:

Frank Herring #1006445
Warm Springs Correctional Center
P.O. Box 7007
Carson City, NV 89702

Steven B. Wolfson
Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155

Aaron Ford
Nevada Attorney General
555 E. Washington, Suite 3900
Las Vegas, NV 89101-1068


Pamela Rocha
Judicial Executive Assistant
Department XII
Eighth Judicial District Court

A-19-790102-W
Frank Herring
vs.
The State of Nevada

NICHELLE LEAVITT
DISTRICT JUDGE
DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

FRANK HEARRING,

Petitioner,

Case No: A-18-790102-W

Dept No: XII

vs.

STATE OF NEVADA,

Respondent,

**NOTICE OF ENTRY OF FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

PLEASE TAKE NOTICE that on April 12, 2019, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on April 15, 2019.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Debra Donaldson

Debra Donaldson, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 15 day of April 2019, I served a copy of this Notice of Entry on the following:

- By e-mail:
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

- The United States mail addressed as follows:
Frank Hearing # 1006445
P.O. Box 7007
Carson City, NV 89702

/s/ Debra Donaldson

Debra Donaldson, Deputy Clerk



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDR

EIGHTH JUDICIAL DISTRICT
CLARK COUNTY, NEVADA

FRANK HEARRING,

Petitioner,

vs.

STATE OF NEVADA,

Respondent

) Case No.: A-19-790102-W

) DEPT. No.: XII
) (Second Petition)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

FINDINGS OF FACT

1. On July 15, 2013, the State charged Frank Hearing by way of information with Murder With Use of a Deadly Weapon, Attempt Murder With Use of a Deadly Weapon, Discharging Firearm At or Into Structure, Vehicle, Aircraft or Watercraft, and Possession of Firearm by Ex-Felon.

2. On October 7, 2013, pursuant to negotiations, Petitioner entered into a Guilty Plea Agreement ("GPA") with the State, wherein, he agreed to plead guilty to one count of Murder (Second Degree) With Use of a Deadly Weapon. The same day, the court conducted a plea canvass on the record and thereafter accepted Petitioner's plea. An Amended Information was filed in open court reflecting the charge contained in the GPA.

3. On December 10, 2013, Petitioner was sentenced to life imprisonment in the Nevada Department of Corrections with parole eligibility after ten years, plus a consecutive sentence of a maximum of 240 months and a minimum of 96 months for the deadly weapon enhancement. Petitioner received 293 days credit for time served. Judgment of Conviction was filed on December 30, 2013. Petitioner did not file a direct appeal.

4. On May 15, 2014, Petitioner filed a Motion to Withdraw Counsel. On June 12, 2014, the Motion was granted.

5. On November 12, 2014, Petitioner filed a Motion for Appointment of Counsel and Request for Evidentiary Hearing. The State filed its response on November

1 25, 2014. On December 4, 2014, the court denied the motion, finding the request for
2 evidentiary hearing was made prematurely and could be renewed in a Petition for Writ of
3 Habeas Corpus (post-conviction).

4 6. On December 10, 2014, Petitioner filed a Motion to Withdraw Plea. On
5 December 22, 2014, the State filed an opposition. On January 6, 2015, the district court
6 denied Petitioner's motion. The district court filed its order on January 16, 2015.

7 7. On March 30, 2015, Petitioner filed a Petition for Writ of Habeas Corpus
8 (post-conviction). On July 31, 2015, the State filed its response. A hearing was held on
9 August 4, 2015 and the Petition was denied. The court's Findings of Fact, Conclusions of
10 Law and Order was filed on September 14, 2015.

11 8. On October 6, 2015, Petitioner filed a Notice of Appeal. On April 14,
12 2016, the Supreme Court of Nevada affirmed the district court's denial of the Petition for
13 Writ of Habeas Corpus (post-conviction). Remittitur issued on May 9, 2016.

14 9. On October 28, 2015, Petitioner filed a Motion for Records/Court Case
15 Documents. A hearing was held on November 19, 2015 and the motion was granted in
16 part. The district court filed its order on December 3, 2015.

17 10. On January 21, 2016, Petitioner filed a Motion for Records/Court Case
18 Documents. On February 17, 2016, the State filed its response. A hearing was held on
19 February 23, 2015 and the motion was denied. The district court filed its order on March
20 2, 2016.

21 11. On March 8, 2016, Petitioner filed a Motion for Withdrawal of Attorney
22 of Record or in the Alternative, Request for Records/Court Case Documents. On March
23 11, 2016, the State filed its reply. A hearing was held on March 29, 2016 and the motion
24 was denied. The district court filed its order on April 12, 2016.

25 12. On October 6, 2017, Petitioner filed a Motion to Withdraw Counsel. A
26 hearing was held on October 31, 2017 and the motion was granted. The district court
27 filed its order on November 14, 2017.

28 13. On December 11, 2017, Petitioner filed a Motion to Modify Sentence. On
December 26, 2017, the State filed its opposition. A hearing was held on January 2, 2018
and the motion was denied. The district court filed its order on January 8, 2018.

14. On December 29, 2017, Petitioner filed a Motion to Compel. A hearing
was held on January 23, 2018 and the motion was granted. The district court filed its
order on February 2, 2018.

15. On June 6, 2018, Petitioner filed a Motion to Compel. A hearing was held
on June 28, 2018 and the court ordered a show cause hearing. A show cause hearing was
held on July 31, 2018, August 2, 2018 and September 4, 2018 and were all continued for

1 counsel to appear. On September 11, 2018, counsel appeared and confirmed the file was
2 turned over to the Petitioner.

3 16. On October 10, 2018, Petitioner filed a Motion for Order to Show Cause
4 Contempt of Court and Monetary Sanctions. A hearing was held on November 6, 2018
5 and the court ordered the motion taken off calendar because the file was turned over. On
6 November 26, 2018, Petitioner filed a Notice of Appeal. On December 17, 2018, the
7 Supreme Court of Nevada dismissed the appeal. Remittitur issued on January 11, 2019.

8 17. On February 25, 2019, Petitioner filed the instant (second) Petition for
9 Writ of Habeas Corpus (post-conviction).

10 18. Absent good cause for the failure to present the claim in a prior petition or
11 for presenting the claim again, and actual prejudice, the petition must be dismissed.

12 CONCLUSIONS OF LAW

13 1. NRS 34.726(1), governing "Limitations on time to file..." requires that a
14 petition for a writ of habeas corpus "must be filed within 1 year after entry of the
15 judgment of conviction or, if an appeal has been taken from the judgment, within 1 year
16 after the Supreme Court issues its remittitur." Late-filing of a petition may be excused
17 from procedural default if the Petitioner can establish good cause for delay in bringing
18 the claim. *Id.* Good cause for late-filing consists of a showing that: (1) "delay is not the
19 fault of the petitioner"; and (2) "dismissal of the petition as untimely will unduly
20 prejudice the petitioner." *Id.* at (1)(a)-(b).

21 2. To avoid dismissal, the petitioner must plead and prove specific facts that
22 demonstrate good cause for his failure to present claims before and actual prejudice. *See*
23 *State v. District Court*, 121 Nev. 225, 232, 112 P.3d 1070, 1074 (2005).

24 3. In order to demonstrate good cause, a petitioner must show that an
25 impediment external to the defense prevented him or her from complying with the state
26 procedural default rules. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

27 4. The court may excuse the failure to show good cause where the prejudice
28 from a failure to consider the claim amounts to a fundamental miscarriage of justice.
Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

1 "that the factual or legal basis for a claim was not reasonably available to counsel, or that
2 "some interference by officials," made compliance impracticable." *Hathaway v. State*,
3 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting *Murray v. Carrier*, 477 U.S. 478,
4 488 (1986)).

5 6. NRS 34.810(2), governing "Additional reasons for dismissal of petition,"
6 requires that "[a] second or successive petition must be dismissed if the judge or justice

1 determines that it fails to allege new or different grounds for relief and that the prior
2 determination was on the merits or, if new and different grounds are alleged, the judge or
3 justice finds that the failure of the petitioner to assert those grounds in a prior petition
constituted an abuse of the writ.”

4 7. The petitioner has the burden of pleading and proving specific facts that
5 demonstrate both good cause for failing to present a claim or for presenting a claim again
6 and actual prejudice. NRS 34.810(3). *See also State v. Haberstroh*, 119 Nev. 173, 181, 69
P.3d 676, 681 (2003).

7 8. A court must dismiss a habeas petition if it presents claims that either were
8 presented in an earlier proceeding or could have been presented in an earlier proceeding,
9 unless the court finds both cause for failing to present the claims earlier or for raising
10 them again and actual prejudice to the petitioner. *Evans v. State*, 117 Nev. 609, 621-622,
28 P.3d 498, 507 (2001).

11 9. Unlike initial petitions which certainly require a careful review of the
12 record, successive petitions may be dismissed based solely on the face of the petition.
Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

13 10. Application of the statutory procedural default rules to post-conviction
14 habeas petitions is mandatory. *State v. District Court (Riker)*, 121 Nev. 225, 231, 112
P.3d 1070, 1074 (2005).

15 11. Meritless, successive and untimely petitions clog the court system and
16 undermine the finality of convictions. *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d 944,
950 (1994).

17 12. Petitioner had one year from December 30, 2013, the date the Judgement
18 of Conviction was filed, to file a Petition for Writ of Habeas Corpus (post-conviction).
19 The instant Petition was filed over five years after the Judgement of Conviction was filed.
20 The instant petition is untimely. Absent good cause and prejudice, the instant petition is
time barred and must be dismissed.

21 13. The instant petition is a successive petition, and therefore is also subject
22 to dismissal pursuant to NRS 34.810(1)(b)(2); NRS 34.810(2). The petition must be
23 dismissed if petitioner failed to allege new or different grounds for relief and the prior
24 determination was on the merits or, if new and different grounds are raised in the petition
25 and the court determines the failure of the petitioner to assert those grounds in a prior
petition constituted an abuse of the writ. Absent good cause for the failure to present the
claim in a prior petition or for presenting the claim again, and actual prejudice, the
petition must be dismissed.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

14. Petitioner failed to establish good cause for filing the instant petition more than five years after the Judgment of Conviction was filed. The instant petition raises some new or different claims; however, the court finds the failure to assert those claims in a previous petition constitutes an abuse of the writ.

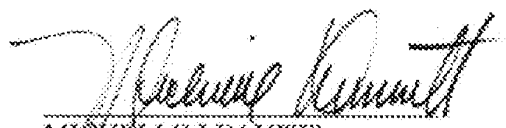
15. The Petitioner further failed to demonstrate prejudice to the petitioner which would amount to a fundamental miscarriage of justice. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

16. Accordingly, the petition is time barred. The petition is a successive petition and constitutes an abuse of the writ.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus (post-conviction) shall be, and it is, hereby DENIED.

Dated this 11 day of April 2019.


MICHELLE LEAVITT
DISTRICT COURT JUDGE
DEPARTMENT XII
EIGHTH JUDICIAL DISTRICT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

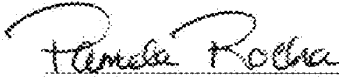
CERTIFICATE OF MAILING

I hereby certify that on the date filed, I placed a copy of the Order for Petition for Writ of Habeas Corpus (Post-Conviction) in the U.S. Mail, postage prepaid to:

Frank Herring #1006445
Warm Springs Correctional Center
P.O. Box 7007
Carson City, NV 89702

Steven B. Wolfson
Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155

Aaron Ford
Nevada Attorney General
555 E. Washington, Suite 3900
Las Vegas, NV 89101-1068


Pamela Rocha
Judicial Executive Assistant
Department XII
Eighth Judicial District Court

A-19-790102-W
Frank Herring
vs.
The State of Nevada

NICHELLE LEAVITT
DISTRICT JUDGE
DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

A-19-1102-W

Electronically Filed
5/10/2019 10:44 AM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

State of Nevada
PLAINTIFF

case no: A-18-790102-W

VS.

NOTICE OF APPEAL

Frank Hearring

DEFENDANT

Notice is hereby given that Frank Hearring, In Pro Se, proper person
In the above named case, hereby appeals to the United States Court of Appeals for the Ninth
Circuit from a judgment in writ of Habeas Corpus (Post Conviction).
On 11th day of April 2019, which was received by Frank Hearring
On 15th day of April 2019.

Frank Hearring respectfully requests on this 6th day of May
2019, that this Honorable Court enter this Notice of Appeal.

[Signature]
RESPECTFULLY

Warm Springs Correctional Center
P.O. Box 7007
Carson City, Nevada 89702

CLERK OF THE COURT

RECEIVED
MAY 10 2019

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DESIGNATION OF TRANSCRIPTS
TO BE USED IN RECORD ON APPEAL

District Court Case Number: C-13-291159-1

Court of Appeals Case Number: A-18-790102-W

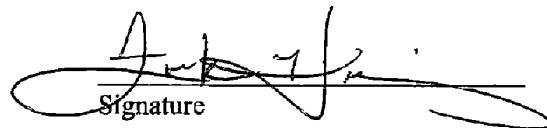
Case Caption: Motion For Writ of Habeas Corpus.

_____ Transcripts are **NOT** required for this appeal.

The undersigned hereby designates the following transcripts to be used in the record on appeal for the above listed case and appeal:

Date of Hearing	Docket Number	Proceeding	Recorder/ Reporter	Transcript Filed Yes/No
5/21/13	13F08177X	Criminal Complaint		
7/11/13	13F08177X	Transcript Preliminary ^{Hearing}		YES
12/10/14	C-13-291159-1	Notice of Motion to Withdrawal Dec		
5/26/15	C-13-291159-1	Notice of Motion; Request for Records/Court Case Documents		
12/3/15	C-13-291159-1	order granted in part and denying in part defend Records/Court case doc.		
3/8/16	C-13-291159-1	Motion for withdrawal of Attorney of Record for Records/Court Case Documents		
1/23/18	C-13-291159-1	Pro Per Motion to Counsel		
10/31/17	C-13-291159-1	Motion to Withdraw Counsel (Order granted)		

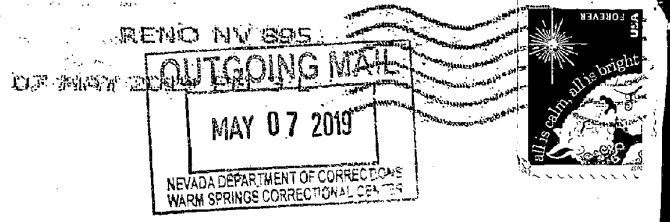
Date: May 6, 2019


Signature

Frank Hearnring
Print Name

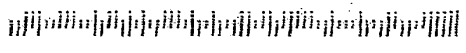
Frank Hearnring
Appellant/Appellee

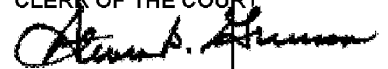
Mr. Frank Herring # 1006445
W.S.C.C
P.O. Box 7007
Carson City, NV 89702



Steven D. Grierson
200 Lewis Avenue 3rd floor
Las Vegas, NV 89155-1160

8810136300





1 ASTA

2

3

4

5

6

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK**

7

8

9

FRANK HEARRING,

10

Plaintiff(s),

11

12

vs.

13

STATE OF NEVADA,

14

Defendant(s),

15

16

17

CASE APPEAL STATEMENT

18

1. Appellant(s): Frank Hearing

19

2. Judge: Michelle Leavitt

20

3. Appellant(s): Frank Hearing

21

Counsel:

22

Frank Hearing #1006445

23

P.O. Box 7007

24

Carson City, NV 89702

25

4. Respondent (s): State of Nevada

26

Counsel:

27

Steven B. Wolfson, District Attorney

28

200 Lewis Ave.

Las Vegas, NV 89155-2212

Aaron D. Ford, Attorney General

555 E. Washington Ave., Ste. 3900

Las Vegas, NV 89101-1068

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A
- Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A
- 6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No
- 7. Appellant Represented by Appointed Counsel On Appeal: N/A
- 8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A
***Expires 1 year from date filed*
Appellant Filed Application to Proceed in Forma Pauperis: No
Date Application(s) filed: N/A
- 9. Date Commenced in District Court: February 25, 2019
- 10. Brief Description of the Nature of the Action: Civil Writ
Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus
- 11. Previous Appeal: No
Supreme Court Docket Number(s): N/A
- 12. Child Custody or Visitation: N/A
- 13. Possibility of Settlement: Unknown

Dated This 14 day of May 2019.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann
Heather Ungermann, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: Frank Herring

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated May 30, 2019, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 52.

FRANK HEARRING,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

Case No: A-19-790102-W

Dept. No: XII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 31 day of May 2019.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

