

DISTRICT COURT
CLARK COUNTY, NEVADA

VALENTINA KNIGHT
Petitioner,
VS
STATE OF NEVADA
Respondent.

Electronically Filed
Case No: A-20-820448-W
Dept NO: XIX
Jan 12 2021 11:15 am
Elizabeth A. Brown
Clerk of Supreme Court

NOTICE OF APPEAL

Comes now the petitioner, Valentina Knight in PRO SE in necessity, and hereby gives NOTICE OF APPEAL from this Court's ORDER that DENIED Post Conviction Relief. The petitioner Appeals to the District Court of Appeals for NEVADA County from this Court's judgement, entered for record in the above styled action on the 7th Day of December, 2020. was issued in error. Petitioner received the governments response on December, 18, 2020 and was not given sufficient time to respond to the United States attorneys Answer. I would like that fact entered into record that I was never sent the District Attorneys response until December, 18, 2020 so I did not have time to respond to the answer, for the appeal entered on the 31st Day of August 2020.

CLERK OF THE COURT
JAN 12 2021

Respectfully Submitted,

Valentina

Valentina Knight, PRO SE
2020010801

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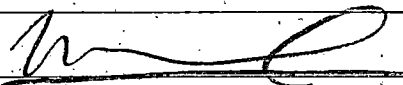
949 N. 9th St

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have served a copy of the foregoing instrument on all parties, TO WIT: The Clerk of this Court and District Attorney, TALEEN PANDUKHT 200 Lewis Avenue, Las Vegas, NV 89155. This service has been via United States mail, properly addressed, and placed into the internal mailing system of Milwaukee County Jail, as made available to inmates for legal mail.

Done this 23rd Day of December,
2020.

Respectfully Submitted,



Valentina Knight, PRO SE
2020010861

Milwaukee County Jail

949 N. 9th St

Milwaukee, WI 53233



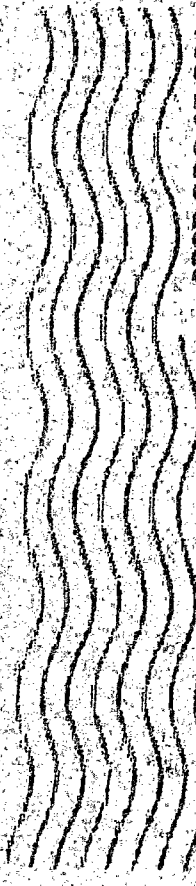
Antonia Knight 2020018801

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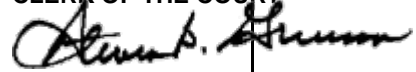
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INDIANAPOLIS IN 46204-5332

TUE 29 DEC 2020



CLERK OF THE COURT
200 Lewis Ave 3rd Floor
Las Vegas, NV 89155



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

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VALENTINA KNIGHT,

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Plaintiff(s),

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vs.

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STATE OF NEVADA,

14

Defendant(s),

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CASE APPEAL STATEMENT

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1. Appellant(s): Valentina Knight

19

2. Judge: William D. Kephart

20

3. Appellant(s): Valentina Knight

21

Counsel:

22

Valentina Knight #2020010861
949 N 9th St.
Milwaukee, WI 53233

23

24

25

4. Respondent (s): State of Nevada

26

Counsel:

27

Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89155-2212

28

- 1 5. Appellant(s)'s Attorney Licensed in Nevada: N/A
2 Permission Granted: N/A
3 Respondent(s)'s Attorney Licensed in Nevada: Yes
4 Permission Granted: N/A
5 6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No
6 7. Appellant Represented by Appointed Counsel On Appeal: N/A
7 8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A
8 **Expires 1 year from date filed
9 Appellant Filed Application to Proceed in Forma Pauperis: No
10 Date Application(s) filed: N/A
11 9. Date Commenced in District Court: August 31, 2020
12 10. Brief Description of the Nature of the Action: Civil Writ
13 Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus
14 11. Previous Appeal: No
15 Supreme Court Docket Number(s): N/A
16 12. Child Custody or Visitation: N/A
17 13. Possibility of Settlement: Unknown

18 Dated This 6 day of January 2021.

19 Steven D. Grierson, Clerk of the Court

20 /s/ Heather Ungermann

21 Heather Ungermann, Deputy Clerk
22 200 Lewis Ave
23 PO Box 551601
24 Las Vegas, Nevada 89155-1601
25 (702) 671-0512

26 cc: Valentina Knight
27
28

CASE SUMMARY
CASE SUMMARY
CASE NO. A-20-820448-W

Valentina Knight, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

§
§
§
§
§

Location: **Department 1**
Judicial Officer: **Yeager, Bitá**
Filed on: **08/31/2020**
Case Number History:
Cross-Reference Case **A820448**
Number:

CASE INFORMATION

Related Cases
C-15-309123-2 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**
Case Flags: **Appealed to Supreme Court**
NRS 34.730 Case

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-20-820448-W
Court	Department 1
Date Assigned	01/04/2021
Judicial Officer	Yeager, Bitá

PARTY INFORMATION

Plaintiff

Knight, Valentina

Lead Attorneys

Pro Se

Defendant

State of Nevada


Wolfson, Steven B
Retained
702-455-5320(W)

DATE


EVENTS & ORDERS OF THE COURT

INDEX


08/31/2020

 Inmate Filed - Petition for Writ of Habeas Corpus
Party: Plaintiff Knight, Valentina
Post Conviction

09/02/2020

 Order for Petition for Writ of Habeas Corpus
Order for Petition for Writ of Habeas Corpus

10/09/2020

 Response
Filed by: Defendant State of Nevada
State's Response to Petitioner's Petition for Writ of Habeas Corpus


10/16/2020

 Motion
Filed By: Plaintiff Knight, Valentina
Motion to Submit Documents to Supplement Claims in Petition for Writ of Habeas Corpus

10/16/2020





 Affidavit
Filed By: Plaintiff Knight, Valentina
Affidavit of Valentina Knight Petitioner

10/26/2020

 **Petition for Writ of Habeas Corpus (10:15 AM)** (Judicial Officer: Kephart, William D.)
Parties Present: Attorney Iscan, Ercan E

12/07/2020

CASE SUMMARY
CASE SUMMARY
CASE NO. A-20-820448-W

	 Findings of Fact, Conclusions of Law and Order Filed By: Plaintiff Knight, Valentina <i>Findings of Fact, Conclusions of Law, and Order</i>
12/10/2020	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Defendant State of Nevada <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
01/04/2021	Case Reassigned to Department 1 <i>Judicial Reassignment to Judge Bitá Yeager</i>
01/04/2021	 Notice of Appeal <i>Notice of Appeal</i>
01/06/2021	 Case Appeal Statement Filed By: Plaintiff Knight, Valentina <i>Case Appeal Statement</i>

DISTRICT COURT CIVIL COVER SHEET

**A-20-820448-W
Dept. 19**

County, Nevada

Case No. _____
(Assigned by Clerk's Office)

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone): <p align="center">Valentina Knight</p>	Defendant(s) (name/address/phone): <p align="center">State Of Nevada</p>
Attorney (name/address/phone):	Attorney (name/address/phone):

II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

<p align="center">Real Property</p> <p>Landlord/Tenant</p> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <p>Title to Property</p> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <p>Other Real Property</p> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<p align="center">Torts</p> <p>Other Torts</p> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort	
<p align="center">Probate</p> <p>Probate <i>(select case type and estate value)</i></p> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <p>Estate Value</p> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<p align="center">Construction Defect & Contract</p> <p>Construction Defect</p> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <p>Contract Case</p> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<p align="center">Judicial Review/Appeal</p> <p>Judicial Review</p> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <p>Nevada State Agency Appeal</p> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <p>Appeal Other</p> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<p align="center">Civil Writ</p> <p>Civil Writ</p> <input checked="" type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrantum		<p align="center">Other Civil Filing</p> <p>Other Civil Filing</p> <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ <p>Other Civil Filing</p> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

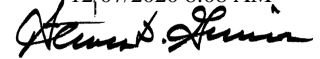
August 31, 2020

Date

PREPARED BY CLERK

Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

1 **FFCO.**
 2 STEVEN B. WOLFSON
 3 Clark County District Attorney
 Nevada Bar #001565
 4 TALEEN PANDUKHT
 Chief Deputy District Attorney
 Nevada Bar #5734
 5 200 Lewis Avenue
 Las Vegas, Nevada 89155-2212
 (702) 671-2500
 6 Attorney for Plaintiff

7
 8 DISTRICT COURT
 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
 10 Plaintiff,

11 -vs-

12 VALENTINA MONEE KNIGHT,
 #7018909
 13 Defendant.
 14

CASE NO: A-20-820448-W

DEPT NO: XIX

15 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

16 DATE OF HEARING: OCTOBER 26, 2020
 17 TIME OF HEARING: 8:30AM

18 This cause having come on for hearing before the Honorable Carolyn Ellsworth,
 19 District Judge, on October 26, 2020, the Petitioner, pro se, not appearing, the Respondent
 20 being represented by Steven B. Wolfson, District Attorney, through Ercan E. Iscan, Chief
 21 Deputy District Attorney, and the Court having considered the matter, including briefs,
 22 transcripts, and documents on file herein, now therefore, the Court makes the following
 23 findings of fact and conclusions of law:

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STATEMENT OF THE CASE

On September 2, 2015, VALENTINA MONEE KNIGHT (hereinafter "Petitioner") was charged by way of Information with one count BURGLARY (Category B Felony – NRS 205.060).

On October 1, 2015, Petitioner filed a Motion to Release from House Arrest. On October 12, 2015, Petitioner's Motion was denied.

On November 23, 2016, the State filed a Motion to Revoke Bail and Remand Defendants. On December 5, 2016, the State's Motion was granted.

On January 4, 2017, Petitioner, pursuant to a Guilty Plea Agreement, pled guilty to the charge contained in the Information.

On April 12, 2017, Petitioner was sentenced to a term of forty-eight (48) to one hundred twenty (120) months in the Nevada Department of Corrections. Petitioner's sentence was suspended and Petitioner was placed on probation for an indeterminate period not to exceed five (5) years. The Judgment of Conviction was filed on May 1, 2017.

On December 6, 2019, Petitioner's counsel filed a Motion to Withdraw as Attorney of Record. On January 6, 2020, counsel's motion was granted. New counsel was confirmed on January 8, 2020.

On January 15, 2020, Petitioner appeared before this Court for a probation revocation hearing and this Court revoked Petitioner's probation and imposed her suspended sentence. The Amended Judgment of Conviction was filed on January 17, 2020.

On March 17, 2020, Petitioner filed a Motion to Withdraw Counsel, Motion to Amend Judgment of Conviction and Motion for Appointment of Attorney. On June 8, 2020, this Court granted Petitioner's Motion to Withdraw Counsel, but denied her other two motions. The Court entered its Order on June 15, 2020.

On August 31, 2020, Petitioner filed the instant Petition for Writ of Habeas Corpus. The State filed its Response on October 9, 2020. On October 26, 2020, this matter came before this Court for argument and the Court rules as follows:

//

1 **STATEMENT OF THE FACTS**

2 On May 5, 2015, a detective was contacted by an officer, who had responded to a call
3 at the Bellagio Hotel and Casino. Details of the call advised that two subjects were currently
4 being detained by security officers due to a fraudulent room rental.

5 Further investigation revealed that the front desk manager of the Bellagio had been
6 contacted by Orbitz in reference to a guest who had rented a room at the Bellagio using Orbitz
7 as a third party booker.

8 The man renting the room, later identified as the co-defendant, Moustapha Dioubate,
9 had provided a credit card number to Orbitz, who later received notification the card was
10 fraudulent. Once Orbitz contacted the Bellagio hotel, the hotel pinned out the room the co-
11 defendant was renting so that access could not be made into the room.

12 The co-defendant and a female, who was later identified as Petitioner, approached the
13 front desk a short time later. Petitioner retrieved a credit card from her purse and handed it to
14 the co-defendant, who gave the card to the front desk representative. Both Petitioner and the
15 co-defendant were detained by security officers after it was determined the credit card was
16 fraudulent. The two were then escorted to security holding where security searched both
17 subjects. A security officer located a large amount of credit cards and identifications in a brown
18 leather bag, which Petitioner was carrying. Security then contacted police.

19 Upon arrival, the Las Vegas Metropolitan Police Officer immediately noticed there
20 were multiple identifications with different names on the table. The identifications had pictures
21 with the likeness of the co-defendant and Petitioner and appeared fraudulent. The credit cards
22 were found to be counterfeit. As an officer began to search the above mentioned bag, Petitioner
23 immediately stated, "I didn't give you consent to search that."

24 The officer attempted to talk to both the co-defendant and Petitioner, but both requested
25 the presence of an attorney, therefore no further questions were asked of them.

26 **ANALYSIS**

27 **I. PETITIONER'S PETITION IS TIME-BARRED.**

28 Pursuant to NRS 34.726(1):

1 Unless there is good cause shown for delay, a petition that
2 challenges the validity of a judgment or sentence must be filed
3 within 1 year of the entry of the judgment of conviction or, if an
4 appeal has been taken from the judgment, within 1 year after the
5 Supreme Court issues its remittitur. For the purposes of this
6 subsection, good cause for delay exists if the petitioner
7 demonstrates to the satisfaction of the court:

- 8 (a) That the delay is not the fault of the petitioner; and
9 (b) That dismissal of the petition as untimely will unduly prejudice
10 the petitioner.

11 The Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain
12 meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the
13 language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from
14 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
15 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

16 The one-year time limit for preparing petitions for post-conviction relief under NRS
17 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
18 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
19 evidence presented by the defendant that he purchased postage through the prison and mailed
20 the Notice within the one-year time limit.

21 Furthermore, the Nevada Supreme Court has held that the district court has a *duty* to
22 consider whether a defendant's post-conviction petition claims are procedurally barred. State
23 v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The
24 Riker Court found that “[a]pplication of the statutory procedural default rules to post-
25 conviction habeas petitions is mandatory,” noting:

26 Habeas corpus petitions that are filed many years after conviction
27 are an unreasonable burden on the criminal justice system. The
28 necessity for a workable system dictates that there must exist a
time when a criminal conviction is final.

29 Id. Additionally, the Court noted that procedural bars “cannot be ignored [by the district court]
30 when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
31 has granted no discretion to the district courts regarding whether to apply the statutory
32 procedural bars; the rules *must* be applied.

33 //

1 In the instant case, the Judgment of Conviction was filed on May 1, 2017, and Petitioner
2 did not file a direct appeal. Thus, the one-year time bar began to run from this date. The instant
3 Petition was not filed until August 31, 2020. This is over two (2) years in excess of the one-
4 year time frame. Further, Petitioner's claim that the filing of the Amended JOC extends the
5 deadline for filing a habeas petition is flatly incorrect. An Amended JOC does not change the
6 deadline for filing a post-conviction petition for writ of habeas corpus. Sullivan v. State, 120
7 Nev. 537, 541, 96 P.3d 761, 764 (2004) ("we conclude that the one-year statutory time limit
8 did not automatically restart for Sullivan's post-conviction claims simply because the district
9 court entered the amended judgment of conviction."). Absent a showing of good cause for this
10 delay and undue prejudice, Petitioner's claim must be dismissed because of its tardy filing.

11 **II. PETITIONER HAS FAILED TO DEMONSTRATE GOOD CAUSE TO**
12 **OVERCOME THE PROCEDURAL BARS.**

13 A showing of good cause and prejudice may overcome procedural bars. "To establish
14 good cause, appellants *must* show that an impediment external to the defense prevented their
15 compliance with the applicable procedural rule. A qualifying impediment might be shown
16 where the factual or legal basis for a claim was not reasonably available at the time of default."
17 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court
18 continued, "appellants cannot attempt to manufacture good cause[.]" Id. at 621, 81 P.3d at 526
19 To find good cause there must be a "substantial reason; one that affords a legal excuse."
20 Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105
21 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Clearly, any delay in the filing of the petition
22 must not be the fault of the petitioner. NRS 34.726(1)(a). Additionally, "bare" and "naked"
23 allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled
24 by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "A claim is
25 'belied' when it is contradicted or proven to be false by the record as it existed at the time the
26 claim was made." Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

27 Here, Petitioner cannot demonstrate good cause to overcome the procedural bars. All
28 of the facts and law alleged in Petitioner's Petition were available for direct appeal or a timely

1 filed habeas petition. Further, to the extent that Petitioner claims that AB 236 provides good
2 cause to overcome the procedural bars, Petitioner's claim fails. It is well established that, under
3 Nevada law, the proper penalty for a criminal conviction is the penalty in effect at the time of
4 the commission of the offense and not the penalty in effect at the time of sentencing. State v.
5 Second Judicial Dist. Ct. ("Pullin"), 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008). Unless
6 the Legislature clearly expresses its intent to apply a law retroactively, Nevada law requires
7 the application of the law in effect at the time of the commission of the crime. Id.

8 In the instant case, Petitioner was charged with an offense that occurred on or about
9 May 4, 2015, prior to the amendment going into effect in July of 2020. Moreover, Petitioner
10 admits that AB 236 had no legal effect on her case because it was not enacted at the time
11 Petitioner committed the instant offense. Petition at 11. Further, the Legislature did not clearly
12 express its intent that the amendment of the statute applies retroactively. Therefore, pursuant
13 to Nevada law, the proper penalty for Petitioner's conviction is that which was in effect at the
14 time of the commission of the crime. In the instant case, Petitioner was sentenced to forty-
15 eight (48) to one hundred twenty (120) months in the Nevada Department of Corrections. This
16 sentence falls within the statutory sentencing guidelines. See NRS 205.060. Therefore,
17 Petitioner is not entitled to relief under AB 236 and her claim fails. Thus, Petitioner has failed
18 to demonstrate an impediment external to the defense. Therefore, Petitioner has failed to
19 demonstrate good cause to overcome the procedural bars and her Petition is denied.

20 **III. PETITIONER CANNOT DEMONSTRATE PREJUDICE SUFFICIENT TO**
21 **IGNORE THE PROCEDURAL DEFAULTS.**

22 In order to establish prejudice, the defendant must show "not merely that the errors of
23 [the proceedings] created possibility of prejudice, but that they worked to his actual and
24 substantial disadvantage, in affecting the state proceedings with error of constitutional
25 dimensions." Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United
26 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)).

27 //

28 //

1 **a. Petitioner received effective assistance of counsel.**

2 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
3 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
4 defense.” The United States Supreme Court has long recognized that “the right to counsel is
5 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
6 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
7 (1993).

8 To prevail on a claim of ineffective assistance of counsel as it relates to a guilty plea, a
9 defendant must prove he was denied “reasonably effective assistance” of counsel by satisfying
10 the two-prong test of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64; see also Love, 109
11 Nev. at 1138, 865 P.2d at 323. Under the Strickland test, a defendant must show first that his
12 counsel’s representation fell below an objective standard of reasonableness, and second, that
13 but for counsel’s ineffective assistance, he would not have pleaded guilty and would have
14 insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370 (1985).

15 The court begins with the presumption of effectiveness and then must determine
16 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
17 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
18 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
19 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
20 537 P.2d 473, 474 (1975).

21 Counsel cannot be ineffective for failing to make futile objections or arguments. See
22 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
23 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
24 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
25 (2002).

26 Based on the above law, the role of a court in considering allegations of ineffective
27 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
28 whether, under the particular facts and circumstances of the case, trial counsel failed to render

1 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
2 (1978). This analysis does not mean that the court should “second guess reasoned choices
3 between trial tactics nor does it mean that defense counsel, to protect himself against
4 allegations of inadequacy, must make every conceivable motion no matter how remote the
5 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel
6 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
7 cannot create one and may disserve the interests of his client by attempting a useless charade.”
8 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

9 “There are countless ways to provide effective assistance in any given case. Even the
10 best criminal defense attorneys would not defend a particular client in the same way.”
11 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
12 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
13 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
14 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's
15 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
16 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

17 Even if a defendant can demonstrate that his counsel's representation fell below an
18 objective standard of reasonableness, he must still demonstrate prejudice and show a
19 reasonable probability that, but for counsel's errors, the result of the trial would have been
20 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
21 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
22 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,
23 694, 104 S. Ct. at 2064-65, 2068).

24 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the
25 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
26 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
27 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
28 be supported with specific factual allegations, which if true, would entitle the petitioner to

1 relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. “Bare” and “naked” allegations are not
2 sufficient, nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant
3 part, “[Petitioner] *must* allege specific facts supporting the claims in the petition[.] . . . Failure
4 to allege specific facts rather than just conclusions may cause your petition to be dismissed.”
5 (emphasis added).

6 Here, Petitioner claims that counsel was ineffective for failing to raise her claim
7 regarding AB 236 and failing to provide her certain facts of her case. Petition at 11. As an
8 initial matter, as demonstrated above, AB 236 does not apply in Petitioner’s case. Further,
9 Petitioner provides no evidence other than her own conclusory claims that such deficient
10 performance occurred. Therefore, Petitioner’s claims are bare, naked and only appropriate for
11 summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus Petitioner’s claim fails and
12 her Petition is denied.

13 **b. Petitioner’s substantive claims are waived as they should have been raised**
14 **on direct appeal.**

15 Under NRS 34.810(1),

16 The court *shall* dismiss a petition if the court determines that:

17 (a) The petitioner’s conviction was upon a plea of guilty or
18 guilty but mentally ill and the petition is not based upon an
19 allegation that the plea was involuntarily or unknowingly entered
20 or that the plea was entered without effective assistance of
21 counsel.

22 . . .
23 unless the court finds both cause for the failure to present the
24 grounds and actual prejudice to the petitioner.

25 (emphasis added). Further, substantive claims are beyond the scope of habeas and waived.
26 NRS 34.724(2)(a); NRS 34.810(1)(a); Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523
27 (2001); Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), disapproved on
28 other grounds, Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). Here, Petitioner raises
claims of prosecutorial misconduct in her instant Petition. Petition at 11, 14-15. Petitioner has

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1 failed to demonstrate good cause to overcome the procedural bars and, as Petitioner failed to
2 raise such a claim on direct appeal, the claim is waived.

3 **c. Petitioner cannot raise constitutional claims that occurred prior to her**
4 **guilty plea.**

5 Additionally, Petitioner cannot raise constitutional claims that occurred prior to her
6 guilty plea. A defendant cannot enter a guilty plea then later raise independent claims alleging
7 a deprivation of his rights before entry of the plea. State v. Eighth Judicial District Court, 121
8 Nev. 225, 112 P.3d 1070, n.24 (2005) (quoting Tollett v. Henderson, 411 U.S. 258, 267 (1973)).
9 Generally, the entry of a guilty plea waives any right to appeal from events occurring prior to
10 the entry of the plea. See Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975). “[A] guilty plea
11 represents a break in the chain of events which has preceded it in the criminal process. . . . [A
12 defendant] may not thereafter raise independent claims relating to the deprivation of
13 constitutional rights that occurred prior to the entry of the guilty plea.” Id. (quoting Tollett,
14 411 U.S. at 267). Therefore, Petitioner’s claim of prosecutorial misconduct is waived by nature
15 of her guilty plea.

16 **d. There was no prosecutorial misconduct.**

17 Petitioner claims that the State committed prosecutorial misconduct for failing to
18 charge Petitioner in compliance with AB 236. Petition at 11, 14-15. This Court reviews claims
19 of prosecutorial misconduct for improper conduct and then determines whether reversal is
20 warranted. Valdez v. State, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). It reviews
21 improper conduct claims for harmless error. Id. Where no objection was made at trial, the
22 standard of review for prosecutorial misconduct rests upon Defendant showing “that the
23 remarks made by the prosecutor were ‘patently prejudicial.’” Riker v. State, 111 Nev. 1316,
24 1328, 905 P.2d 706, 713 (1995) (citing Libby v. State, 109 Nev. 905, 911, 859 P.2d 1050,
25 1054 (1993)). This is based on a defendant’s right to have a fair trial, not necessarily a perfect
26 one. Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1105 (1990). The relevant inquiry is
27 whether the prosecutor’s statements so contaminated the proceedings with unfairness as to
28 make the result a denial of due process. Darden v. Wainwright, 477 U.S. 168, 181, 106 S.Ct.

1 2464, 2471 (1986). Defendant must show that the statements violated a clear and unequivocal
2 rule of law, he was denied a substantial right, and as a result, he was materially prejudiced.
3 Libby, 109 Nev. at 911, 859 P.2d at 1054.

4 In resolving claims of prosecutorial misconduct, this Court undertakes a two-step
5 analysis: determining whether the comments were improper; and deciding whether the
6 comments were sufficient to deny the defendant a fair trial. Valdez v. State, 124 Nev. 1172,
7 1188, 196 P.3d 465, 476. The standard of review for prosecutorial misconduct rests upon a
8 defendant showing “that the remarks made by the prosecutor were ‘patently prejudicial.’”
9 Riker v. State, 111 Nev. 1316, 1328, 905 P.2d 706, 713 (1995) (citing Libby v. State, 109 Nev.
10 905, 911, 859 P.2d 1050, 1054 (1993)). This is based on a defendant’s right to have a fair trial,
11 not a perfect one. Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1105 (1990). This Court
12 views the statements in context and will not lightly overturn a jury’s verdict based upon a
13 prosecutor’s statements. Byars v. State, 130 Nev. 848, 865, 336 P.3d 939, 950–51 (2014).
14 Notably, “statements by a prosecutor, in argument... made as a deduction or conclusion from
15 the evidence introduced in the trial are permissible and unobjectionable.” Parker v. State, 109
16 Nev. 383, 392, 849 P.2d 1062, 1068 (1993) (quoting Collins v. State, 87 Nev. 436, 439, 488
17 P.2d 544, 545 (1971)). Further, the State may respond to defense theories and arguments.
18 Williams v. State, 113 Nev. 1008, 1018–19, 945 P.2d 438, 444–45 (1997), receded from on
19 other grounds, Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000).

20 With respect to the second step, this Court will not reverse if the misconduct was
21 harmless error. Valdez, 124 Nev. at 1188, 196 P.3d at 476. The proper standard of harmless-
22 error review depends on whether the prosecutorial misconduct is of a constitutional dimension.
23 Id. at 1188–89, 196 P.3d at 476. Misconduct may be constitutional if a prosecutor comments
24 on the exercise of a constitutional right, or the misconduct “so infected the trial with unfairness
25 as to make the resulting conviction a denial of due process.” Id. 124 Nev. at 1189, 196 P.3d
26 476–77 (quoting Darden v. Wainright, 477 U.S. 168, 181, 106 S.Ct. 2464, 2471 (1986)). When
27 the misconduct is of constitutional dimension, this Court will reverse unless the State
28 demonstrates that the error did not contribute to the verdict. Id. 124 Nev. at 1189, 196 P.3d

1 476-77. When the misconduct is not of constitutional dimension, this Court "will reverse only
2 if the error substantially affects the jury's verdict." Id.

3 As demonstrated above, AB 236 has no legal effect on Petitioner's case, as it went into
4 effect after Petitioner committed the instant offense. Therefore, the State cannot have
5 committed misconduct as Petitioner was properly charged under the statute in effect at the
6 time the crime was committed. Thus, Petitioner's claim fails. Therefore, Petitioner has failed
7 to demonstrate prejudice sufficient to overcome the procedural bars and her Petition is denied.

8 **ORDER**

9 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief
10 shall be, and it is, hereby denied.

11 DATED this _____ day of November, 2020. Dated this 7th day of December, 2020

William D. Kephart

DISTRICT JUDGE
4CA 68F 2888 C3F1
William D. Kephart
District Court Judge

14 STEVEN B. WOLFSON
15 Clark County District Attorney
Nevada Bar #001565

16 BY BB for
17 TALEEN PANDUKHTI
18 Chief Deputy District Attorney
19 Nevada Bar #5734

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CERTIFICATE OF SERVICE

I certify that on the 19th day of November, 2020, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

VALENTINA KNIGHT, BAC #2020010861
CLARK COUNTY NEVADA HOUSE OF CORRECTION
949 N. 9th St.
MILWAUKEE, WI 53233

BY *Carina Garcia*
C. Garcia
Secretary for the District Attorney's Office

TP/cg/L2

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 Valentina Knight, Plaintiff(s)

CASE NO: A-20-820448-W

7 vs.

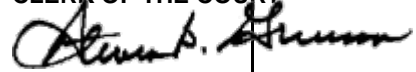
DEPT. NO. Department 19

8 State of Nevada, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's
12 electronic filing system, but there were no registered users on the case. The filer has been
13 notified to serve all parties by traditional means.

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1 NEFF

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4 VALENTINE KNIGHT,

5
6 Petitioner,

Case No: A-20-820448-W

Dept No: XIX

7 vs.

8 STATE OF NEVADA,

9 Respondent,

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

10
11 **PLEASE TAKE NOTICE** that on December 7, 2020, the court entered a decision or order in this
matter, a true and correct copy of which is attached to this notice.

12 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
13 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
14 mailed to you. This notice was mailed on December 10, 2020.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

17
18
19 CERTIFICATE OF E-SERVICE / MAILING

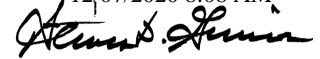
20 I hereby certify that on this 10 day of December 2020, I served a copy of this Notice of Entry on the
following:

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

24 The United States mail addressed as follows:
25 Valentine Knight # 2020010861
26 949 N. 9th St.
27 Milwaukee, WI 53233

28 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk



CLERK OF THE COURT

1 **FFCO.**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 TALEEN PANDUKHT
6 Chief Deputy District Attorney
7 Nevada Bar #5734
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10
11 Plaintiff,

11 -vs-

12 VALENTINA MONEE KNIGHT,
13 #7018909
14 Defendant.

CASE NO: A-20-820448-W

DEPT NO: XIX

15 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

16 DATE OF HEARING: OCTOBER 26, 2020
17 TIME OF HEARING: 8:30AM

18 This cause having come on for hearing before the Honorable Carolyn Ellsworth,
19 District Judge, on October 26, 2020, the Petitioner, pro se, not appearing, the Respondent
20 being represented by Steven B. Wolfson, District Attorney, through Ercan E. Iscan, Chief
21 Deputy District Attorney, and the Court having considered the matter, including briefs,
22 transcripts, and documents on file herein, now therefore, the Court makes the following
23 findings of fact and conclusions of law:

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STATEMENT OF THE CASE

On September 2, 2015, VALENTINA MONEE KNIGHT (hereinafter "Petitioner") was charged by way of Information with one count BURGLARY (Category B Felony – NRS 205.060).

On October 1, 2015, Petitioner filed a Motion to Release from House Arrest. On October 12, 2015, Petitioner's Motion was denied.

On November 23, 2016, the State filed a Motion to Revoke Bail and Remand Defendants. On December 5, 2016, the State's Motion was granted.

On January 4, 2017, Petitioner, pursuant to a Guilty Plea Agreement, pled guilty to the charge contained in the Information.

On April 12, 2017, Petitioner was sentenced to a term of forty-eight (48) to one hundred twenty (120) months in the Nevada Department of Corrections. Petitioner's sentence was suspended and Petitioner was placed on probation for an indeterminate period not to exceed five (5) years. The Judgment of Conviction was filed on May 1, 2017.

On December 6, 2019, Petitioner's counsel filed a Motion to Withdraw as Attorney of Record. On January 6, 2020, counsel's motion was granted. New counsel was confirmed on January 8, 2020.

On January 15, 2020, Petitioner appeared before this Court for a probation revocation hearing and this Court revoked Petitioner's probation and imposed her suspended sentence. The Amended Judgment of Conviction was filed on January 17, 2020.

On March 17, 2020, Petitioner filed a Motion to Withdraw Counsel, Motion to Amend Judgment of Conviction and Motion for Appointment of Attorney. On June 8, 2020, this Court granted Petitioner's Motion to Withdraw Counsel, but denied her other two motions. The Court entered its Order on June 15, 2020.

On August 31, 2020, Petitioner filed the instant Petition for Writ of Habeas Corpus. The State filed its Response on October 9, 2020. On October 26, 2020, this matter came before this Court for argument and the Court rules as follows:

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1 **STATEMENT OF THE FACTS**

2 On May 5, 2015, a detective was contacted by an officer, who had responded to a call
3 at the Bellagio Hotel and Casino. Details of the call advised that two subjects were currently
4 being detained by security officers due to a fraudulent room rental.

5 Further investigation revealed that the front desk manager of the Bellagio had been
6 contacted by Orbitz in reference to a guest who had rented a room at the Bellagio using Orbitz
7 as a third party booker.

8 The man renting the room, later identified as the co-defendant, Moustapha Dioubate,
9 had provided a credit card number to Orbitz, who later received notification the card was
10 fraudulent. Once Orbitz contacted the Bellagio hotel, the hotel pinned out the room the co-
11 defendant was renting so that access could not be made into the room.

12 The co-defendant and a female, who was later identified as Petitioner, approached the
13 front desk a short time later. Petitioner retrieved a credit card from her purse and handed it to
14 the co-defendant, who gave the card to the front desk representative. Both Petitioner and the
15 co-defendant were detained by security officers after it was determined the credit card was
16 fraudulent. The two were then escorted to security holding where security searched both
17 subjects. A security officer located a large amount of credit cards and identifications in a brown
18 leather bag, which Petitioner was carrying. Security then contacted police.

19 Upon arrival, the Las Vegas Metropolitan Police Officer immediately noticed there
20 were multiple identifications with different names on the table. The identifications had pictures
21 with the likeness of the co-defendant and Petitioner and appeared fraudulent. The credit cards
22 were found to be counterfeit. As an officer began to search the above mentioned bag, Petitioner
23 immediately stated, "I didn't give you consent to search that."

24 The officer attempted to talk to both the co-defendant and Petitioner, but both requested
25 the presence of an attorney, therefore no further questions were asked of them.

26 **ANALYSIS**

27 **I. PETITIONER'S PETITION IS TIME-BARRED.**

28 Pursuant to NRS 34.726(1):

1 Unless there is good cause shown for delay, a petition that
2 challenges the validity of a judgment or sentence must be filed
3 within 1 year of the entry of the judgment of conviction or, if an
4 appeal has been taken from the judgment, within 1 year after the
5 Supreme Court issues its remittitur. For the purposes of this
6 subsection, good cause for delay exists if the petitioner
7 demonstrates to the satisfaction of the court:

- 8 (a) That the delay is not the fault of the petitioner; and
9 (b) That dismissal of the petition as untimely will unduly prejudice
10 the petitioner.

11 The Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain
12 meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the
13 language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from
14 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
15 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

16 The one-year time limit for preparing petitions for post-conviction relief under NRS
17 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
18 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
19 evidence presented by the defendant that he purchased postage through the prison and mailed
20 the Notice within the one-year time limit.

21 Furthermore, the Nevada Supreme Court has held that the district court has a *duty* to
22 consider whether a defendant's post-conviction petition claims are procedurally barred. State
23 v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The
24 Riker Court found that “[a]pplication of the statutory procedural default rules to post-
25 conviction habeas petitions is mandatory,” noting:

26 Habeas corpus petitions that are filed many years after conviction
27 are an unreasonable burden on the criminal justice system. The
28 necessity for a workable system dictates that there must exist a
time when a criminal conviction is final.

29 Id. Additionally, the Court noted that procedural bars “cannot be ignored [by the district court]
30 when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
31 has granted no discretion to the district courts regarding whether to apply the statutory
32 procedural bars; the rules *must* be applied.

33 //

1 In the instant case, the Judgment of Conviction was filed on May 1, 2017, and Petitioner
2 did not file a direct appeal. Thus, the one-year time bar began to run from this date. The instant
3 Petition was not filed until August 31, 2020. This is over two (2) years in excess of the one-
4 year time frame. Further, Petitioner's claim that the filing of the Amended JOC extends the
5 deadline for filing a habeas petition is flatly incorrect. An Amended JOC does not change the
6 deadline for filing a post-conviction petition for writ of habeas corpus. Sullivan v. State, 120
7 Nev. 537, 541, 96 P.3d 761, 764 (2004) ("we conclude that the one-year statutory time limit
8 did not automatically restart for Sullivan's post-conviction claims simply because the district
9 court entered the amended judgment of conviction."). Absent a showing of good cause for this
10 delay and undue prejudice, Petitioner's claim must be dismissed because of its tardy filing.

11 **II. PETITIONER HAS FAILED TO DEMONSTRATE GOOD CAUSE TO**
12 **OVERCOME THE PROCEDURAL BARS.**

13 A showing of good cause and prejudice may overcome procedural bars. "To establish
14 good cause, appellants *must* show that an impediment external to the defense prevented their
15 compliance with the applicable procedural rule. A qualifying impediment might be shown
16 where the factual or legal basis for a claim was not reasonably available at the time of default."
17 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court
18 continued, "appellants cannot attempt to manufacture good cause[.]" Id. at 621, 81 P.3d at 526
19 To find good cause there must be a "substantial reason; one that affords a legal excuse."
20 Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105
21 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Clearly, any delay in the filing of the petition
22 must not be the fault of the petitioner. NRS 34.726(1)(a). Additionally, "bare" and "naked"
23 allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled
24 by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "A claim is
25 'belied' when it is contradicted or proven to be false by the record as it existed at the time the
26 claim was made." Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

27 Here, Petitioner cannot demonstrate good cause to overcome the procedural bars. All
28 of the facts and law alleged in Petitioner's Petition were available for direct appeal or a timely

1 filed habeas petition. Further, to the extent that Petitioner claims that AB 236 provides good
2 cause to overcome the procedural bars, Petitioner's claim fails. It is well established that, under
3 Nevada law, the proper penalty for a criminal conviction is the penalty in effect at the time of
4 the commission of the offense and not the penalty in effect at the time of sentencing. State v.
5 Second Judicial Dist. Ct. ("Pullin"), 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008). Unless
6 the Legislature clearly expresses its intent to apply a law retroactively, Nevada law requires
7 the application of the law in effect at the time of the commission of the crime. Id.

8 In the instant case, Petitioner was charged with an offense that occurred on or about
9 May 4, 2015, prior to the amendment going into effect in July of 2020. Moreover, Petitioner
10 admits that AB 236 had no legal effect on her case because it was not enacted at the time
11 Petitioner committed the instant offense. Petition at 11. Further, the Legislature did not clearly
12 express its intent that the amendment of the statute applies retroactively. Therefore, pursuant
13 to Nevada law, the proper penalty for Petitioner's conviction is that which was in effect at the
14 time of the commission of the crime. In the instant case, Petitioner was sentenced to forty-
15 eight (48) to one hundred twenty (120) months in the Nevada Department of Corrections. This
16 sentence falls within the statutory sentencing guidelines. See NRS 205.060. Therefore,
17 Petitioner is not entitled to relief under AB 236 and her claim fails. Thus, Petitioner has failed
18 to demonstrate an impediment external to the defense. Therefore, Petitioner has failed to
19 demonstrate good cause to overcome the procedural bars and her Petition is denied.

20 **III. PETITIONER CANNOT DEMONSTRATE PREJUDICE SUFFICIENT TO**
21 **IGNORE THE PROCEDURAL DEFAULTS.**

22 In order to establish prejudice, the defendant must show "not merely that the errors of
23 [the proceedings] created possibility of prejudice, but that they worked to his actual and
24 substantial disadvantage, in affecting the state proceedings with error of constitutional
25 dimensions." Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United
26 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)).

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1 **a. Petitioner received effective assistance of counsel.**

2 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
3 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
4 defense.” The United States Supreme Court has long recognized that “the right to counsel is
5 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
6 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
7 (1993).

8 To prevail on a claim of ineffective assistance of counsel as it relates to a guilty plea, a
9 defendant must prove he was denied “reasonably effective assistance” of counsel by satisfying
10 the two-prong test of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64; see also Love, 109
11 Nev. at 1138, 865 P.2d at 323. Under the Strickland test, a defendant must show first that his
12 counsel’s representation fell below an objective standard of reasonableness, and second, that
13 but for counsel’s ineffective assistance, he would not have pleaded guilty and would have
14 insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370 (1985).

15 The court begins with the presumption of effectiveness and then must determine
16 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
17 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
18 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
19 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
20 537 P.2d 473, 474 (1975).

21 Counsel cannot be ineffective for failing to make futile objections or arguments. See
22 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
23 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
24 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
25 (2002).

26 Based on the above law, the role of a court in considering allegations of ineffective
27 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
28 whether, under the particular facts and circumstances of the case, trial counsel failed to render

1 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
2 (1978). This analysis does not mean that the court should “second guess reasoned choices
3 between trial tactics nor does it mean that defense counsel, to protect himself against
4 allegations of inadequacy, must make every conceivable motion no matter how remote the
5 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel
6 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
7 cannot create one and may disserve the interests of his client by attempting a useless charade.”
8 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

9 “There are countless ways to provide effective assistance in any given case. Even the
10 best criminal defense attorneys would not defend a particular client in the same way.”
11 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
12 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
13 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
14 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's
15 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
16 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

17 Even if a defendant can demonstrate that his counsel's representation fell below an
18 objective standard of reasonableness, he must still demonstrate prejudice and show a
19 reasonable probability that, but for counsel's errors, the result of the trial would have been
20 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
21 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
22 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,
23 694, 104 S. Ct. at 2064-65, 2068).

24 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the
25 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
26 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
27 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
28 be supported with specific factual allegations, which if true, would entitle the petitioner to

1 relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. “Bare” and “naked” allegations are not
2 sufficient, nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant
3 part, “[Petitioner] *must* allege specific facts supporting the claims in the petition[.] . . . Failure
4 to allege specific facts rather than just conclusions may cause your petition to be dismissed.”
5 (emphasis added).

6 Here, Petitioner claims that counsel was ineffective for failing to raise her claim
7 regarding AB 236 and failing to provide her certain facts of her case. Petition at 11. As an
8 initial matter, as demonstrated above, AB 236 does not apply in Petitioner’s case. Further,
9 Petitioner provides no evidence other than her own conclusory claims that such deficient
10 performance occurred. Therefore, Petitioner’s claims are bare, naked and only appropriate for
11 summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus Petitioner’s claim fails and
12 her Petition is denied.

13 **b. Petitioner’s substantive claims are waived as they should have been raised**
14 **on direct appeal.**

15 Under NRS 34.810(1),

16 The court *shall* dismiss a petition if the court determines that:

17 (a) The petitioner’s conviction was upon a plea of guilty or
18 guilty but mentally ill and the petition is not based upon an
19 allegation that the plea was involuntarily or unknowingly entered
20 or that the plea was entered without effective assistance of
21 counsel.

22 . . .

23 unless the court finds both cause for the failure to present the
24 grounds and actual prejudice to the petitioner.

25 (emphasis added). Further, substantive claims are beyond the scope of habeas and waived.
26 NRS 34.724(2)(a); NRS 34.810(1)(a); Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523
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28 other grounds, Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). Here, Petitioner raises
claims of prosecutorial misconduct in her instant Petition. Petition at 11, 14-15. Petitioner has

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1 failed to demonstrate good cause to overcome the procedural bars and, as Petitioner failed to
2 raise such a claim on direct appeal, the claim is waived.

3 **c. Petitioner cannot raise constitutional claims that occurred prior to her**
4 **guilty plea.**

5 Additionally, Petitioner cannot raise constitutional claims that occurred prior to her
6 guilty plea. A defendant cannot enter a guilty plea then later raise independent claims alleging
7 a deprivation of his rights before entry of the plea. State v. Eighth Judicial District Court, 121
8 Nev. 225, 112 P.3d 1070, n.24 (2005) (quoting Tollett v. Henderson, 411 U.S. 258, 267 (1973)).
9 Generally, the entry of a guilty plea waives any right to appeal from events occurring prior to
10 the entry of the plea. See Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975). “[A] guilty plea
11 represents a break in the chain of events which has preceded it in the criminal process. . . . [A
12 defendant] may not thereafter raise independent claims relating to the deprivation of
13 constitutional rights that occurred prior to the entry of the guilty plea.” Id. (quoting Tollett,
14 411 U.S. at 267). Therefore, Petitioner’s claim of prosecutorial misconduct is waived by nature
15 of her guilty plea.

16 **d. There was no prosecutorial misconduct.**

17 Petitioner claims that the State committed prosecutorial misconduct for failing to
18 charge Petitioner in compliance with AB 236. Petition at 11, 14-15. This Court reviews claims
19 of prosecutorial misconduct for improper conduct and then determines whether reversal is
20 warranted. Valdez v. State, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). It reviews
21 improper conduct claims for harmless error. Id. Where no objection was made at trial, the
22 standard of review for prosecutorial misconduct rests upon Defendant showing “that the
23 remarks made by the prosecutor were ‘patently prejudicial.’” Riker v. State, 111 Nev. 1316,
24 1328, 905 P.2d 706, 713 (1995) (citing Libby v. State, 109 Nev. 905, 911, 859 P.2d 1050,
25 1054 (1993)). This is based on a defendant’s right to have a fair trial, not necessarily a perfect
26 one. Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1105 (1990). The relevant inquiry is
27 whether the prosecutor’s statements so contaminated the proceedings with unfairness as to
28 make the result a denial of due process. Darden v. Wainwright, 477 U.S. 168, 181, 106 S.Ct.

1 2464, 2471 (1986). Defendant must show that the statements violated a clear and unequivocal
2 rule of law, he was denied a substantial right, and as a result, he was materially prejudiced.
3 Libby, 109 Nev. at 911, 859 P.2d at 1054.

4 In resolving claims of prosecutorial misconduct, this Court undertakes a two-step
5 analysis: determining whether the comments were improper; and deciding whether the
6 comments were sufficient to deny the defendant a fair trial. Valdez v. State, 124 Nev. 1172,
7 1188, 196 P.3d 465, 476. The standard of review for prosecutorial misconduct rests upon a
8 defendant showing “that the remarks made by the prosecutor were ‘patently prejudicial.’”
9 Riker v. State, 111 Nev. 1316, 1328, 905 P.2d 706, 713 (1995) (citing Libby v. State, 109 Nev.
10 905, 911, 859 P.2d 1050, 1054 (1993)). This is based on a defendant’s right to have a fair trial,
11 not a perfect one. Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1105 (1990). This Court
12 views the statements in context and will not lightly overturn a jury’s verdict based upon a
13 prosecutor’s statements. Byars v. State, 130 Nev. 848, 865, 336 P.3d 939, 950–51 (2014).
14 Notably, “statements by a prosecutor, in argument... made as a deduction or conclusion from
15 the evidence introduced in the trial are permissible and unobjectionable.” Parker v. State, 109
16 Nev. 383, 392, 849 P.2d 1062, 1068 (1993) (quoting Collins v. State, 87 Nev. 436, 439, 488
17 P.2d 544, 545 (1971)). Further, the State may respond to defense theories and arguments.
18 Williams v. State, 113 Nev. 1008, 1018–19, 945 P.2d 438, 444–45 (1997), receded from on
19 other grounds, Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000).

20 With respect to the second step, this Court will not reverse if the misconduct was
21 harmless error. Valdez, 124 Nev. at 1188, 196 P.3d at 476. The proper standard of harmless-
22 error review depends on whether the prosecutorial misconduct is of a constitutional dimension.
23 Id. at 1188–89, 196 P.3d at 476. Misconduct may be constitutional if a prosecutor comments
24 on the exercise of a constitutional right, or the misconduct “so infected the trial with unfairness
25 as to make the resulting conviction a denial of due process.” Id. 124 Nev. at 1189, 196 P.3d
26 476–77 (quoting Darden v. Wainright, 477 U.S. 168, 181, 106 S.Ct. 2464, 2471 (1986)). When
27 the misconduct is of constitutional dimension, this Court will reverse unless the State
28 demonstrates that the error did not contribute to the verdict. Id. 124 Nev. at 1189, 196 P.3d

1 476-77. When the misconduct is not of constitutional dimension, this Court "will reverse only
2 if the error substantially affects the jury's verdict." Id.

3 As demonstrated above, AB 236 has no legal effect on Petitioner's case, as it went into
4 effect after Petitioner committed the instant offense. Therefore, the State cannot have
5 committed misconduct as Petitioner was properly charged under the statute in effect at the
6 time the crime was committed. Thus, Petitioner's claim fails. Therefore, Petitioner has failed
7 to demonstrate prejudice sufficient to overcome the procedural bars and her Petition is denied.

8 **ORDER**

9 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief
10 shall be, and it is, hereby denied.

11 DATED this _____ day of November, 2020. Dated this 7th day of December, 2020

William D. Kephart

DISTRICT JUDGE
4CA 68F 2888 C3F1
William D. Kephart
District Court Judge

14 STEVEN B. WOLFSON
15 Clark County District Attorney
Nevada Bar #001565

16 BY BB for
17 TALEEN PANDUKHTI
18 Chief Deputy District Attorney
19 Nevada Bar #5734

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CERTIFICATE OF SERVICE

I certify that on the 19th day of November, 2020, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

VALENTINA KNIGHT, BAC #2020010861
CLARK COUNTY NEVADA HOUSE OF CORRECTION
949 N. 9th St.
MILWAUKEE, WI 53233

BY *Carina Garcia*
C. Garcia
Secretary for the District Attorney's Office

TP/cg/L2

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Valentina Knight, Plaintiff(s)

CASE NO: A-20-820448-W

7 vs.

DEPT. NO. Department 19

8 State of Nevada, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's
12 electronic filing system, but there were no registered users on the case. The filer has been
13 notified to serve all parties by traditional means.

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A-20-820448-W Valentina Knight, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

October 26, 2020 10:15 AM Petition for Writ of Habeas Corpus

HEARD BY: Kephart, William D. COURTROOM: RJC Courtroom 16B

COURT CLERK: Everett, Tia

RECORDER: Pierson, Toshiana

REPORTER:

PARTIES PRESENT:

Ercan E Iscan Attorney for Defendant

JOURNAL ENTRIES

Court noted Defendant not present and in custody with the Nevada Department of Corrections. Court FINDS the petition is time barred pursuant to NRS 34.726(1); Defendant has failed to show good cause to overcome the procedural bar and Defendant has failed to show how there is any prejudice; therefore, COURT ORDERED, Petition DENIED.

NDC

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT MINUTES

VALENTINA KNIGHT,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

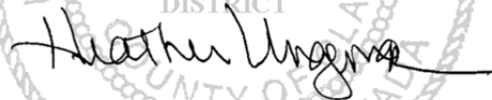
Case No: A-20-820448-W

Dept No: I

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 6 day of January 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

