

1 **ANOASC**
2 **LOWE LAW, L.L.C.**
3 DIANE C. LOWE, ESQ. Nevada Bar No. 14573
4 7350 West Centennial Pkwy #3085
5 Las Vegas, Nevada 89131
6 (725)212-2451 – F: (702)442-0321
7 Attorney for Petitioner JACK LEAL

Electronically Filed
Sep 14 2021 11:40 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

8 EIGHTH JUDICIAL DISTRICT COURT

9 CLARK COUNTY NEVADA

10 JACK LEAL,

11 Petitioner,

12 vs.

13 WARDEN CALVIN JOHNSON

14 Respondent.

Case No.: A-20-814369-W stemming
from C-17-322664-2 DEPT NO XVII

S. Ct. No 83451

AMENDED NOTICE OF APPEAL

15
16 NOTICE is hereby given that JACK LEAL, Petitioner above named, hereby submits
17 this Amended Notice of Appeal per NRAP 4(a)(6)&(7) wherein he seeks to appeal
18 from the September 6, 2021 ‘Order Dismissing Petition for Writ of Habeas Corpus’
19 instead of what was called in the original notice of appeal the ‘Findings of Fact,
20 Conclusions of Law and Order’. All else is the same including the case appeal
21 statement previously submitted whereby he appeals to the Supreme Court of Nevada
22 from the Order by the Honorable District Court Judge Michael P. Villani and from
23 the final Judgment of Conviction entered August 23, 2017 [Amended JOC May 9,
24
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1 2019] after a plea agreement and hearing on April 24, 2017, and August 17, 2017
2 Sentencing.
3

4
5 The writ of habeas corpus hearing was held on the briefings August 27, 2021, and
6 an immediate oral ruling was made at the conclusion of arguments denying relief.
7

8 An evidentiary hearing was denied.

9 DATED this 10th day of September 2021.
10

11 Respectfully Submitted,
12 /s/ Diane C. Lowe, Esq.
13 _____
14 DIANE C. LOWE, ESQ.
15 Nevada Bar #14573
16 Lowe Law, L.L.C.
17 7350 West Centennial Pkwy #3085
18 Las Vegas, NV 89131
19 Telephone: (725)212-2451
20 Facsimile: (702)442-0321

21
22
23 Attorney for Petitioner Jack Leal

24 **CERTIFICATE OF SERVICE VIA ELECTRONIC FILING EMAIL Service**

25 I hereby certify that service of the above and foregoing was made this 10th day of
26 September 2021 by Electronic Filing email service to: District Attorney's Office

27 Email Address:
28

1 Motions@clarkcountyda.com

2
3
4 And to the Nevada Attorney General's Office at wiznetfilings@ag.net.gov

5 I further certify that I served a copy of this document by mailing a true and correct
6 copy thereof, post pre-paid, addressed to:
7

8
9 Jack Leal NDOC 1183500

10
11 Southern Desert Correctional Center

12 Three Lakes Valley Conservation Camp

13
14 PO Box 208

15 Indian Springs, Nevada 89070-0208

16
17
18 /s/ Diane C Lowe, Esq

19 Attorney for Jack Leal
20
21
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23
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EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY
CASE NO. A-20-814369-W

Jack Leal, Plaintiff(s)
vs.
Jerry Howell, Defendant(s)

§
§
§
§
§
§

Location: **Department 19**
 Judicial Officer: **Eller, Crystal**
 Filed on: **04/28/2020**
 Case Number History:
 Cross-Reference Case **A814369**
 Number:
 Supreme Court No.: **83451**

CASE INFORMATION

Related Cases
 C-17-322664-2 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Statistical Closures
 09/06/2021 Other Manner of Disposition
 08/30/2021 Other Manner of Disposition

Case Status: **09/06/2021 Closed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-20-814369-W
Court	Department 19
Date Assigned	09/07/2021
Judicial Officer	Eller, Crystal

PARTY INFORMATION

Plaintiff

Leal, Jack

Lead Attorneys

Lowe, Diane Carol
Court Appointed
 725-212-2451(W)

Defendant

Howell, Jerry

Bongard, Michael J.
Retained
 775-289-1630(W)

Nevada State of

Blanscett, Joye
Retained
 7023847000(W)

Southern Desert Correctional Center

Blanscett, Joye
Retained
 7023847000(W)


DATE

EVENTS & ORDERS OF THE COURT


INDEX

EVENTS


04/29/2020

 Petition for Writ of Habeas Corpus
 Filed by: Plaintiff Leal, Jack
[1] Petition for Writ of Habeas Corpus (Post Conviction)

04/29/2020















 Notice of Change
[2] Notice of Change of Case Number

05/27/2020

 Petition for Writ of Habeas Corpus
 Filed by: Plaintiff Leal, Jack
[3] Post Conviction




CASE SUMMARY

CASE NO. A-20-814369-W


- 08/12/2020  Answer
Filed By: Defendant Nevada State of; Defendant Howell, Jerry; Defendant Southern Desert Correctional Center
[4] Answer to Post- Conviction Petition for Writ of Habeas Corpus
- 08/19/2020  Amended Certificate of Service
Party: Defendant Nevada State of; Defendant Howell, Jerry; Defendant Southern Desert Correctional Center
[5] Amended Certificate of Service
- 08/26/2020  Stipulation and Order
Filed by: Plaintiff Leal, Jack
[6] Stipulation and Order to Extend Time
- 08/28/2020  Stipulation and Order
Filed by: Plaintiff Leal, Jack
[7] Stipulation and Order to Extend Time
- 10/23/2020  Order
[8] ORDER TO PRODUCE PRISONER
- 11/08/2020  Stipulation and Order
Filed by: Plaintiff Leal, Jack
[9] Stipulation and Order to Extend Time
- 11/17/2020  Order
[10] ORDER TO PRODUCE PRISONER
- 12/08/2020  Motion to Withdraw As Counsel
Filed By: Plaintiff Leal, Jack
[11] Motion to Withdraw as Counsel
- 12/08/2020  Reply
Filed by: Plaintiff Leal, Jack
[12] Reply to State's Answer to Petition for Writ of Habeas Corpus (Post Conviction)
- 12/08/2020  Supplement
Filed by: Plaintiff Leal, Jack
[13] Supplement to Petition for Writ of Habeas Corpus (Post Conviction)
- 12/08/2020  Ex Parte Motion
Filed By: Plaintiff Leal, Jack
[14] Ex Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing
- 12/10/2020  Clerk's Notice of Nonconforming Document
[15] Clerk's Notice of Nonconforming Document
- 12/15/2020  Clerk's Notice of Nonconforming Document and Curative Action
[16] Clerk's Notice of Curative Action
- 12/15/2020  Clerk's Notice of Hearing
[17] Notice of Hearing


CASE SUMMARY


CASE NO. A-20-814369-W


- 02/12/2021  Order
Filed By: Plaintiff Leal, Jack
[18] Order Appointing Counsel
- 05/20/2021  Appendix
Filed By: Plaintiff Leal, Jack
[19] Appendix Volume 1 of 2 to Supplemental Brief to 2nd Petition for Writ of Habeas Corpus
- 05/20/2021  Appendix
Filed By: Plaintiff Leal, Jack
[20] Appendix Volume 2 of 2 to Supplemental Brief to 2nd Petition for Writ of Habeas Corpus
- 05/20/2021  Supplemental
Filed by: Plaintiff Leal, Jack
[21] Supplement to Petition for Writ of Habeas Corpus with Exhibit 1
- 05/25/2021  Ex Parte Motion
Filed By: Plaintiff Leal, Jack
[22] Ex Parte Motion for Increase in Page Limit for Supplement by 3 pages
- 05/26/2021  Order
[23] ORDER GRANTING MOTION FOR ADDITIONAL PAGE ALLOWANCE FOR SUPPLEMENT TO WRIT
- 07/27/2021  Answer
Filed By: Defendant Nevada State of; Defendant Howell, Jerry; Defendant Southern Desert Correctional Center
[24] Answer to Post-Conviction Petition for Writ of Habeas Corpus
- 07/27/2021  Appendix
Filed By: Defendant Nevada State of; Defendant Howell, Jerry; Defendant Southern Desert Correctional Center
[25] Appendix to Supplemental Answer to Petition Volume 1 of 1
- 08/03/2021  Order for Production of Inmate
[26] ORDER FOR PRODUCTION OF INMATE
- 08/11/2021  Notice
Filed By: Defendant Nevada State of; Defendant Howell, Jerry; Defendant Southern Desert Correctional Center
[27] Notice of Supplemental Authority Addressing the Pleadings Filed in this Matter
- 08/16/2021  Order
Filed By: Defendant Nevada State of; Defendant Howell, Jerry; Defendant Southern Desert Correctional Center
[28] Transport Order
- 08/29/2021  Notice of Appeal (Criminal)
Party: Plaintiff Leal, Jack
[29] Notice of Appeal
- 08/29/2021  Ex Parte Motion
Filed By: Plaintiff Leal, Jack
[30] Ex parte Motion for Hearing Transcript

CASE SUMMARY
CASE NO. A-20-814369-W


- 08/29/2021  Case Appeal Statement
 Filed By: Plaintiff Leal, Jack
[31] Leal Case Appeal Statement


- 08/30/2021  Order
 Filed By: Plaintiff Leal, Jack
[32] ORDER APPOINTING APPEAL COUNSEL

- 08/30/2021  Order
 Filed By: Plaintiff Leal, Jack
[33] ORDER FOR TRANSCRIPT


- 09/06/2021  Order
 Filed By: Defendant Nevada State of; Defendant Southern Desert Correctional Center
[34] Order Dismissing Petition for Writ of Habeas Corpus

- 09/07/2021 Case Reassigned to Department 19
From Judge Michael Villani to Judge Crystal Eller


- 09/09/2021  Notice of Entry of Order
 Filed By: Defendant Nevada State of
[35] Notice of Entry of Order

- 09/10/2021  Amended Notice of Appeal (Criminal)
[36] Amended Notice of Appeal

HEARINGS

- 06/16/2020  **Petition for Writ of Habeas Corpus (10:15 AM)** (Judicial Officer: Villani, Michael)
06/16/2020, 08/18/2020, 12/10/2020
 Matter Continued;
 Matter Continued;
 Journal Entry Details:
Court noted Deft. is in NDC. Ms. Cole indicated this is an Attorney General case. COURT ORDERED, matter CONTINUED to contact Attorney General and Defense Counsel for presence. CUSTODY (NDC) CONTINUED: 12/22/2020 08:30 AM;
 Matter Continued;
 Matter Continued;
 Journal Entry Details:
Defendant not present. Court noted it had not received an response from the State. Ms. Schwartzer advised she spoke with the State regarding Defendant retaining her to file a Motion to modify, that she had a hard time in obtaining the pertinent documents in support thereof, noting she was hopeful the issue would be resolved with the Motion to Modify once filed, otherwise Defendant would need to proceed Pro Per or have counsel appointed. Ms. Schwartzer requested matter be set for a status check on the Motion. Mr. Bongard concurred, advised the Petition was successive, and noted other procedural bars. Court noted Petition was filed May 27, 2020. Counsel advised it was filed Pro Per prior to. COURT ORDERED, matter set for Status Check on the Motion to Modify. NDC 08/18/2020 10:15 AM STATUS CHECK: MOTION TO MODIFY/STATE'S OPPOSITION TO PETITION;


- 08/18/2020 **CANCELED Status Check: Status of Case (10:15 AM)** (Judicial Officer: Villani, Michael)
Vacated - per Stipulation and Order
Status Check: Motion To Modify/State's Opposition to Petition

- 08/18/2020  **All Pending Motions (10:15 AM)** (Judicial Officer: Villani, Michael)
 Matter Heard;
 Journal Entry Details:

CASE SUMMARY
CASE NO. A-20-814369-W


Ms. McNeill advised Ms. Schwartzer had filed a Stipulation and Order between parties to set up a briefing schedule. Court advised it would have it filed upon receipt. NDC;

12/14/2020

 **Minute Order** (4:29 PM) (Judicial Officer: Villani, Michael)


*Minute Order re: Defendant's Petition
 Minute Order - No Hearing Held;
 Journal Entry Details:
 By stipulation and agreement by Parties by via communications with Court's Law Clerk.
 COURT ORDERED, matter SET for December 22, 2020 VACATED and RESET to January 28, 2021 at 10:15AM.;*

01/14/2021

 **Motion to Withdraw as Counsel** (8:30 AM) (Judicial Officer: Villani, Michael)

*Petitioner's Motion to Withdraw as Counsel
 Motion Granted;
 Journal Entry Details:
 COURT ORDERED, Motion to Withdraw GRANTED. Court noted there is a status check and petition for habeas corpus set on January 28. COURT ORDERED, Petition for Writ of Habeas Corpus VACATED and matter SET for status check STANDS to see if Defendant can hire another attorney. 1/28/21 8:30 AM STATUS CHECK: CONFIRMATION OF COUNSEL;*


01/28/2021

 **Status Check: Confirmation of Counsel** (8:30 AM) (Judicial Officer: Villani, Michael)

01/28/2021, 02/04/2021

*Matter Continued;
 Counsel Confirmed;
 Journal Entry Details:
 Defendant not transported. COURT ORDERED, Diane Lowe CONFIRMED as counsel for the Defendant. Upon Court's inquiry, Ms. Lowe noted this case had been Ms. Schwartzer's case and had not yet requested the file from her. COURT FURTHER ORDERED, matter CONTINUED for Ms. Lowe to receive and review the file. NDC 2/25/2021 10:00 AM STATUS CHECK: FILE ;
 Matter Continued;
 Counsel Confirmed;
 Journal Entry Details:
 Jean Schwartzer, Esq. also present. Ms. Schwartzer stated she had withdrawn as Defendant's attorney at the last hearing. Upon Court's inquiry, Defendant advised he is trying to be appointed counsel in this case. Upon Court's inquiry, Ms. Schwartzer indicated she was retained on the C case for the Motion to Modify and had filed the Petition on Defendant's behalf in this case, however she was not fully retained to litigate the matter in this case. Mr. Bongard stated Defendant filed an Ex-Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing on 12/8/2020 and it was not placed on calendar as a hearing date was not requested. COURT ORDERED, matter CONTINUED to contact the Office of Appointed Counsel (OAC) for appointment of counsel. Court noted Defendant would not need to be transported for the next hearing. CUSTODY CONTINUED TO: 2/4/2021 8:30 AM;*

02/25/2021

 **Status Check** (10:00 AM) (Judicial Officer: Villani, Michael)

02/25/2021, 03/25/2021

*Status Check: File
 Matter Continued;
 Briefing Schedule Set;
 Journal Entry Details:
 Upon Court's inquiry, Ms. Lowe advised she just received the file and requested the matter be set out for ninety days for the supplemental as the file is quite large. COURT ORDERED, Defendant's Supplemental brief shall be due on or before 5/26/2021, State's Response shall be due on or before 7/27/2021 and matter SET for Hearing. NDC 8/27/2021 8:30 AM PETITION FOR WRIT OF HABEAS CORPUS ;
 Matter Continued;
 Briefing Schedule Set;
 Journal Entry Details:
 Defendant not present. Upon Court's inquiry, Ms. Lowe advised she had not received the file yet. COURT ORDERED, matter CONTINUED. NDC CONTINUED TO: 3/25/2021 10:00 AM;*

CASE SUMMARY
CASE NO. A-20-814369-W

08/27/2021



Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer: Villani, Michael)

Denied;

Journal Entry Details:

Argument by counsel as to the timeliness of the 2nd Writ of Habeas Corpus and whether the issues raised in the first writ preclude the second writ. Argument by the State that the claims are untimely, successive, and barred by the law of the case doctrine. Further argument by counsel. COURT FINDS, the 2nd Petition is untimely and there is no good cause to overlook the untimeliness, noting the petition is successive, and the issues set forth could have been brought up in the first petition and appeal; FURTHER, there is nothing in the plea that shows it was not freely and voluntarily entered; ADDITIONALLY, Defendant did not show good faith effort to resolve the restitution prior to sentencing; and ORDERED, the petition is DENIED. State to submit the Findings of Fact and Conclusions of Law. FURTHER, matter SET for status check. 9/16/21 8:30 AM STATUS CHECK: FINDINGS OF FACT, CONCLUSIONS OF LAW SUBMITTED;

09/16/2021

Status Check (11:00 AM) (Judicial Officer: Eller, Crystal)

STATUS CHECK: FINDINGS OF FACT, CONCLUSIONS OF LAW SUBMITTED

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

A-20-814369-W

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

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

Plaintiff(s) (name/address/phone): Jack Leal	Defendant(s) (name/address/phone): Jerry Howell Southern Desert Correctional Center State of Nevada
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 style="text-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 style="text-align: center;">Negligence</p> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <p style="text-align: center;">Malpractice</p> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<p style="text-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 style="text-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 style="text-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 style="text-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 style="text-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 Warrant	<p style="text-align: center;">Other Civil Filing</p> <p>Other Civil Filing</p> <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	<p style="text-align: center;">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.

04/29/20 **Signed By Clerk**

Date

Signature of initiating party or representative

See other side for family-related case filings.

Thomas S. Lewis
CLERK OF THE COURT

1 **ORDD**
AARON D. FORD
2 Attorney General
MICHAEL J. BONGARD (Bar No. 007997)
3 Senior Deputy Attorney General
State of Nevada
4 Office of the Attorney General
1539 Avenue F, Suite 2
5 Ely, NV 89301
(775)289-1632 (phone)
6 (775)289-1653 (fax)
MBongard@ag.nv.gov
7 Attorneys for Respondents

8 **DISTRICT COURT**
9 **CLARK COUNTY NEVADA**

10 JACK LEAL,

Case No.: A-20-814369-W
Department XVII

11 Petitioner,

12 vs.

13 JERRY HOWELL, WARDEN, SOUTHERN
DESERT CORRECTIONAL CENTER,

14 Respondents.

15
16 **ORDER DIMISSING PETITION FOR WRIT OF HABEAS CORPUS**

17 On August 27, 2021, the matter came before the Court for argument on Petitioner's Petition for Writ
18 of Habeas Corpus and the Supplemental Petitions for Writ of Habeas Corpus. Appearing via Bluejeans was
19 Petitioner's Counsel, Diane C. Lowe, Esq., and Senior Deputy Attorney General Michael Bongard,
20 representing Respondents. Mr. Leal, in the custody of the Nevada Department of Corrections, appeared via
21 Bluejeans from the Clark County Detention Center.

22 The Court, having reviewed the claims in the counseled petition, pro se petition, and counseled and
23 pro-se supplemental petitions, and Respondents' answer to the petition, heard argument from the parties.

24 **Procedural History**

25 The Court adopts the procedural history of the case from Respondents' answer to the petition, as set
26 forth below:

27 On November 29, 2016, the State filed a criminal complaint in the Las Vegas Township Justice
28 Court charging Leal with: one count of Racketeering, 12 counts of Theft in the Amount of \$3500 or More;

1 one count of Fraud or Deceit in the Course of Enterprise or Occupation (Racketeering); and one count of
2 Multiple Transactions Involving Fraud or Deceit in the Course of an Enterprise and Occupation. On April
3 11, 2017, Leal unconditionally waived his preliminary hearing, which included a conflict-of-interest waiver.

4 In Eighth Judicial District Court case number C-17-322664-2, the State filed a criminal information
5 in the district court charging Leal with one count of Multiple Transactions Involving Fraud or Deceit in the
6 Course of an Enterprise and Occupation.

7 On April 24, 2017, the parties filed a guilty plea agreement in open court and appeared for entry of
8 plea. Leal executed a second conflict of interest waiver. Leal pled guilty to the charge in the information
9 agreeing to pay restitution jointly and severally in the amount of \$757,420.

10 The parties appeared for sentencing on August 17, 2017. The Court sentenced Leal to a maximum
11 term of one hundred eighty (180) months in the Nevada Department of Corrections, with a minimum term
12 of seventy-two (72) months, ordering restitution in the amount of \$757,420.00. The clerk filed the judgment
13 of conviction on August 23, 2017.

14 Leal filed a notice of appeal on September 14, 2017.

15 Leal filed his opening brief on February 1, 2018, in Supreme Court case number 74050.¹ After full
16 briefing, the Nevada Court of Appeals affirmed Leal's conviction. The Nevada Supreme Court subsequently
17 denied Leal's petitions for review and reconsideration. Remittitur issued December 24, 2018.

18 On March 21, 2019, Leal filed his post-conviction state habeas corpus petition in case number C-17-
19 322664-2. In that petition, Leal alleged: (1) the original information failed to put Leal on notice of the
20 charges; (2) counsel was ineffective for failing to obtain a conflict waiver; and (3) counsel coerced petitioner
21 into entering his plea. The Court denied the claims in the petition and Leal filed a notice of appeal.

22 Leal filed his pro se informal brief in case number 79243 on December 30, 2019.² The Nevada Court
23 of Appeals affirmed the denial of Leal's petition and denied rehearing. Remittitur issued January 21, 2021.

24 ///

25 ///

27 ¹ The Supreme Court transferred the matter to the Court of Appeals for disposition.

28 ² The Supreme Court again transferred the matter to the Court of Appeals for disposition.

1 On May 9, 2019, the Court entered an amended judgment of conviction which corrected the original
2 judgment of conviction by ordering restitution be paid jointly and severally pursuant to the terms of the plea
3 agreement.

4 On April 28, 2020, Leal filed a counseled State Habeas Petition. In that petition, Leal raises three
5 claims: (1) Ineffective assistance of counsel for failure to present mitigating factors at sentencing, due to the
6 difficulty of selling property to pay restitution, (2) Ineffective assistance of counsel for failure to correct
7 errors in the pre-sentence report prior to sentencing, and (3) Ineffective assistance of counsel for failure to
8 correct or explain errors in Leal's criminal history prior to sentencing.

9 On May 27, 2020, Leal filed a pro se State Habeas Petition. In that petition, Leal raises the following
10 claims: (1) the guilty plea was involuntary, (2) ineffective assistance of trial counsel (consisting of five
11 subclaims), and (3) ineffective assistance of appellate counsel for failing to raise a claim that petitioner never
12 received a copy of his pre-sentence investigation report.

13 Leal then filed a Pro Se Supplemental Petition for Writ of Habeas Corpus on December 8, 2020. In
14 his supplemental petition, Leal alleged his plea was invalid because of duress, undue influence, and coercion.

15 Finally, on May 5, 2021, Leal filed a counseled-Supplemental Petition for Writ of Habeas Corpus.
16 That petition raised challenges to the voluntariness of his plea and effectiveness of trial counsel.

17 Respondent filed an Answer to these petitions on July 27, 2021, and a Notice of Supplemental
18 Authority on August 11, 2021.

19 After hearing from the parties on August 27, 2021, the Court makes the following findings:

20 **Nevada's Procedural Bars Prohibit Consideration of Leal's Claim**

21 **1.) NRS 34.726**

22 A petitioner must file their habeas corpus petition within one-year after the filing of the judgment of
23 conviction or within one-year of the issuance of the remittitur at the conclusion of the direct appeal. NRS
24 34.726(1). A petition may justify filing an untimely petition if they demonstrate cause for a "delay [that] is
25 not the fault of the petitioner" and show that "dismissal of the petition as untimely will unduly prejudice the
26 petitioner. NRS 34.726(1)(a) and (b).

27 ///

28 ///

1 The Court finds that the Remittitur from the conclusion of Leal's direct appeal issued December 24,
2 2018. The Court finds that all of Leal's pro se and counseled petitions filed in this matter are subject to
3 dismissal unless Leal demonstrates cause and prejudice to excuse the default.

4 In the supplemental counseled petition, Leal argues the May 9, 2019, Amended Judgement of
5 Conviction either restarts the one-year time limit in NRS 34.726(1), or alternatively provides cause for his
6 untimely filing. Leal's counseled supplemental petition cites *Whitehead v. State*, 128 Nev. 259, 285 P.3d
7 1053 (2012), in support of his argument.

8 The Court finds that the Nevada Supreme Court recognized that an amended judgment may establish
9 cause to excuse the untimely filing of a state habeas petition. In *Sullivan v. State*, 120 Nev. 537, 96 P.3d 761
10 (2004), the Nevada Supreme Court established that an amended judgment of conviction does not restart the
11 one-year time period in NRS 34.726(1). The Court in *Sullivan* first found "No specific language in NRS
12 34.726 expressly provides that the one-year time period restarts if the judgment of conviction is amended."
13 120 Nev. at 540, 96 P.3d at 764. The Court also recognized that the spirit behind the Legislature's enactment
14 of NRS 34.726 was "one of limiting habeas petitioners to one time through the [post-conviction] system
15 absent extraordinary circumstances." 120 Nev. at 541, 96 P.3d at 764 (citation omitted).

16 While finding that an amended judgment did not restart the time period in NRS 34.726(1), the Court
17 in *Sullivan* found that "if the claims presented in a petition filed within one year of the entry of the amended
18 judgment challenge the proceedings leading to a substantive amendment to the judgment and could not have
19 been raised in prior proceedings, there may be no delay attributable to the 'fault of the petitioner.'" 120 Nev.
20 541, 96 P.3d at 764 (citation omitted).

21 The Court finds that Leal's citation to *Whitehead* is misplaced. In *Whitehead*, the Nevada Supreme
22 Court found that a petitioner's state habeas petition was not untimely where the original judgment of
23 conviction failed to comply with Nevada law. The *Whitehead*, the Nevada Supreme Court distinguished
24 *Sullivan*. In *Whitehead*, the Court found the first judgment of conviction entered in Whitehead's case did not
25 constitute a final judgment of conviction under Nevada law because that order never set a final amount for
26 restitution. 128 Nev. at 263, 285 P.3d at 1055. The Court in *Whitehead* further concluded that "[an]
27 intermediate judgment is not sufficient to trigger the one-year period under NRS 34.726 for filing a
28 postconviction petition for a writ of habeas corpus." *Id.*

1 Addressing the arguments of counsel in Leal’s case, the Court finds that the Judgment of Conviction
2 entered against Leal in Case Number C-17-322644-2 on August 23, 2017, constituted a final judgment. That
3 judgment set forth Leal’s restitution obligation in the amount of \$757,420.00. The Court also finds that the
4 May 9, 2019, Amended Judgment merely corrected the original judgment to conform to the requirement of
5 joint and several liability for the repayment of restitution as bargained for by the parties in the plea agreement.
6 During argument on the petitions, Leal, through counsel, conceded the August 23, 2017, judgment complied
7 with NRS 176.105(1). That statute requires a judgment of conviction imposing restitution set forth the
8 amount of restitution in a specific dollar amount.

9 The Court further finds that the subject of the Amended Judgment of Conviction—ordering payment
10 of restitution jointly and severally with Leal’s co-defendant—corrects the original judgment to conform to
11 the plea agreement. The Court further finds if it changed the terms of Leal’s sentence in any way, such a
12 change inured to the benefit of Leal.

13 In determining whether NRS 34.726(1) applies to Leal’s petitions filed in this matter, the Court finds
14 that it cannot ignore the application of NRS 34.726(1) once raised by Respondents. *State v. Eighth Judicial*
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18 good cause or prejudice to excuse his untimely filing of his petitions.

19 Based upon the record, the facts, and the relevant law, the Court finds that all claims in Leal’s
20 petitions filed in this matter are untimely and subject to dismissal pursuant to NRS 34.726(1).

21 **2.) NRS 34.810(1) and (2)**

22 When a petitioner’s judgment and sentence result from the entry of a plea, a state habeas petition
23 may challenge only those claims “involving the voluntariness of the plea itself and the effectiveness of
24 counsel.” *Kirksey v. State*, 112 Nev. 980, 999, 923 P.2d 1102, 1114 (1996); NRS 34.810(1)(a).

25 Claims also subject to dismissal in a state habeas petition are those claims raised for a second time
26 or claims that could have been raised in a prior proceeding. NRS 34.810(2)

27 The Nevada Supreme Court recently addressed NRS 34.810(1)(a). *Gonzales v. State*, ___ P.3d ___,
28 137 Nev. Adv. Op. 40 (July 29, 2021).

1 In *Gonzales*, the Court concluded that NRS 34.810(1)(a) essentially codified the United States
2 Supreme Court's holding in *Tollett v. Henderson*, 411 U.S. 258, 265 (1973), which recognized that "[A]
3 guilty plea represents a break in the chain of events which has preceded it in the criminal process." 137 Nev.
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8 The Court takes judicial notice of Leal's first state habeas corpus petition filed in Eighth Judicial
9 District Court Case Number C-17-322664-2, and the Nevada Court of Appeals' affirmance of the denial of
10 the petition in Case Number 79243.

11 The Court finds that if the rules in NRS 34.810(1)(a) and (2) apply, the Court must apply the default
12 provisions of Nevada law. *State v. Eighth Judicial District Ct. (Riker)*, 121 Nev. at 231, 112 P.3d at 1074.
13 The Court also recognizes that a petitioner may excuse the application of the default rules by demonstrating
14 good cause and actual prejudice. NRS 34.810(3).

15 As cause to excuse a default of claims, Leal again argues that the May 9, 2019, Amended Judgment
16 constitutes a new judgment. However, for the reasons discussed above, the Amended Judgment merely
17 corrected the existing judgment to conform with the plea agreement, which called for restitution to be paid
18 "jointly and severally." The Court also reaffirms its finding that the August 23, 2017, judgment complied
19 with NRS 176.105(1) by setting forth a specific dollar amount and therefore constituted a final judgment.
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22 defendant. However, the Court finds that the difference in the sentences imposed upon Leal and his co-
23 defendant resulted in part due to Leal's inaction prior to sentencing, waiting until a week prior to sentencing
24 to place a lien on his property to secure restitution. The Court finds that any disparity in the sentences does
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1 Based upon the Nevada Supreme Court's holding in *Sullivan*, the Court finds that the amended
2 judgment of conviction did not entitle Leal to a new round of state habeas proceedings. The Court finds that
3 the claims barred pursuant to NRS 34.810(1)(a) are: (1) the pro se petition's claim that trial counsel failed to
4 litigate an alleged jurisdictional defect regarding property located out of state (Ground 2(c))⁴; (2) the pro se
5 petition's claim that counsel represented both co-defendant for a period of time without a conflict-of-interest
6 waiver; and (3) The pro se petition's claim that counsel was ineffective for challenging an allegedly defective
7 charging document.

8 The Court finds that the claims barred pursuant to NRS 34.810(2) because Leal failed to raise them
9 in his March 2019 petition are: (1) all grounds in Leal's first counseled petition filed in this matter; and (2)
10 Grounds 2(a), 2(b), 2(c), and 3 of the original pro se petition.

11 The Court finds the following claims barred pursuant to NRS 34.810(2) because Leal raised them
12 for a second time in this proceeding: (1) Grounds 1, 2(d), and 2(e) in the original pro se petition; (2) Leal's
13 supplemental pro se petition; and (3) Grounds A and B in the supplemental counseled petition.

14 **The Law of the Case Doctrine Prevents Consideration of Those Claims Addressed in Prior Proceedings**

15 Claims previously litigated by the parties and rejected by an appellate court are subject to the law of
16 the case doctrine. *Hsu v. Cty. of Clark*, 123 Nev. 625, 629-30, 173 P.3d 724, 728 (2007). Nevada recognizes
17 two exceptions to the law of the case doctrine. *Id.* at 631-33, 173 P.3d at 729-31 (recognizing a "fundamental
18 miscarriage of justice" exception and an exception for intervening case law).

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20 79243 and 74050. That Court previously rejected Leal's claims: (1) that his plea was unknowing and not
21 entered intelligently and voluntarily; (2) that counsel was ineffective for failing to obtain a waiver of conflict;
22 (3) that counsel was ineffective for failing to challenge an insufficient charging document; (4) that Leal's
23 plea was coerced.

24 The Court finds that no intervening case law calls into question the Nevada Court of Appeals'
25 affirmance of the denial of Leal's first state habeas petition, nor has Leal demonstrated that applying the law
26 of the case doctrine would result in a fundamental miscarriage of justice.

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28 ⁴ The Court adopts Respondents numbering of the claims in Ground 2 as set forth on pages 4 of
the Answer.

1 Conclusion

2 Based upon the pleadings and exhibits submitted in this case, as well as the record in Leal's criminal
3 and appellate cases, the Court finds Leal's petitions procedurally barred. The Court also finds that no cause
4 or prejudice exists to evade application of NRS 34.726(1) and NRS 34.810. The Court further finds that
5 Leal's claims that his plea was coerced or otherwise not knowing, intelligent, and voluntary, or that counsel
6 was ineffective for failing to obtain a waiver of conflict are barred pursuant to the law of the case.

7 Therefore, good cause appearing:

8 **IT IS THE ORDER OF THE COURT**, the Petitioner for Writ of Habeas Corpus in this matter is
9 **DENIED.**

10 DATED this _____ day of _____, 2021.
11 Dated this 6th day of September, 2021

12 

13

DISTRICT JUDGE
A29 B19 1145 3E3D
Michael Villani
District Court Judge

14 Submitted by:

15 /s/Michael J. Bongard
16 Senior Deputy Attorney General
Counsel for Respondents

17 Approved as to Form:

18 /s/Diane C. Lowe
19 Diane C. Lowe, Esq.
Counsel for Jack Leal

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Jack Leal, Plaintiff(s)

CASE NO: A-20-814369-W

7 vs.

DEPT. NO. Department 19

8 Jerry Howell, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/6/2021

15 Amanda White

awhite@ag.nv.gov

16 Michael Bongard

mbongard@ag.nv.gov

17 Rikki Garate

rgarate@ag.nv.gov

18 Michael Bongard

mbongard@ag.nv.gov

19 Diane Lowe

dianelowe@lowelawllc.com

20 District Attorney District Attorney

motions@clarkcountyyda.com

21 Attorney General

wiznetfilings@ag.nv.gov

22 Lisa Clark

lclark@ag.nv.gov

23 Kristine Santi

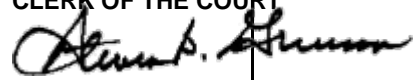
santik@clarkcountycourts.us

24
25
26 If indicated below, a copy of the above mentioned filings were also served by mail
27 via United States Postal Service, postage prepaid, to the parties listed below at their last
28 known addresses on 9/7/2021

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Joye Blanscett

7401 W. Charleston Blvd
Las Vegas, NV, 89117-1401



1 NEOJ

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

4
5 JACK LEAL,

6 Petitioner,

Case No: A-20-814369-W

Dept. No: XIX

7 vs.

8 JERRY HOWELL; ET.AL.,

9 Respondent,

10 **NOTICE OF ENTRY OF ORDER**

11 **PLEASE TAKE NOTICE** that on September 6, 2021, the court entered a decision or order in this matter,
12 a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed
15 to you. This notice was mailed on September 9, 2021.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

18
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 9 day of September 2021, I served a copy of this Notice of Entry on the
21 following:

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

24 The United States mail addressed as follows:
25 Jack Leal # 1183500 Diane C. Lowe, Esq.
P.O. Box 208 7350 W. Centennial Pkwy., #3085
26 Indian Springs, NV 89070 Las Vegas, NV 89131

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

Thomas S. Lewis
CLERK OF THE COURT

1 **ORDD**
AARON D. FORD
2 Attorney General
MICHAEL J. BONGARD (Bar No. 007997)
3 Senior Deputy Attorney General
State of Nevada
4 Office of the Attorney General
1539 Avenue F, Suite 2
5 Ely, NV 89301
(775)289-1632 (phone)
6 (775)289-1653 (fax)
MBongard@ag.nv.gov
7 Attorneys for Respondents

8 **DISTRICT COURT**
9 **CLARK COUNTY NEVADA**

10 JACK LEAL,

Case No.: A-20-814369-W
Department XVII

11 Petitioner,

12 vs.

13 JERRY HOWELL, WARDEN, SOUTHERN
DESERT CORRECTIONAL CENTER,

14 Respondents.

15
16 **ORDER DIMISSING PETITION FOR WRIT OF HABEAS CORPUS**

17 On August 27, 2021, the matter came before the Court for argument on Petitioner's Petition for Writ
18 of Habeas Corpus and the Supplemental Petitions for Writ of Habeas Corpus. Appearing via Bluejeans was
19 Petitioner's Counsel, Diane C. Lowe, Esq., and Senior Deputy Attorney General Michael Bongard,
20 representing Respondents. Mr. Leal, in the custody of the Nevada Department of Corrections, appeared via
21 Bluejeans from the Clark County Detention Center.

22 The Court, having reviewed the claims in the counseled petition, pro se petition, and counseled and
23 pro-se supplemental petitions, and Respondents' answer to the petition, heard argument from the parties.

24 **Procedural History**

25 The Court adopts the procedural history of the case from Respondents' answer to the petition, as set
26 forth below:

27 On November 29, 2016, the State filed a criminal complaint in the Las Vegas Township Justice
28 Court charging Leal with: one count of Racketeering, 12 counts of Theft in the Amount of \$3500 or More;

1 one count of Fraud or Deceit in the Course of Enterprise or Occupation (Racketeering); and one count of
2 Multiple Transactions Involving Fraud or Deceit in the Course of an Enterprise and Occupation. On April
3 11, 2017, Leal unconditionally waived his preliminary hearing, which included a conflict-of-interest waiver.

4 In Eighth Judicial District Court case number C-17-322664-2, the State filed a criminal information
5 in the district court charging Leal with one count of Multiple Transactions Involving Fraud or Deceit in the
6 Course of an Enterprise and Occupation.

7 On April 24, 2017, the parties filed a guilty plea agreement in open court and appeared for entry of
8 plea. Leal executed a second conflict of interest waiver. Leal pled guilty to the charge in the information
9 agreeing to pay restitution jointly and severally in the amount of \$757,420.

10 The parties appeared for sentencing on August 17, 2017. The Court sentenced Leal to a maximum
11 term of one hundred eighty (180) months in the Nevada Department of Corrections, with a minimum term
12 of seventy-two (72) months, ordering restitution in the amount of \$757,420.00. The clerk filed the judgment
13 of conviction on August 23, 2017.

14 Leal filed a notice of appeal on September 14, 2017.

15 Leal filed his opening brief on February 1, 2018, in Supreme Court case number 74050.¹ After full
16 briefing, the Nevada Court of Appeals affirmed Leal's conviction. The Nevada Supreme Court subsequently
17 denied Leal's petitions for review and reconsideration. Remittitur issued December 24, 2018.

18 On March 21, 2019, Leal filed his post-conviction state habeas corpus petition in case number C-17-
19 322664-2. In that petition, Leal alleged: (1) the original information failed to put Leal on notice of the
20 charges; (2) counsel was ineffective for failing to obtain a conflict waiver; and (3) counsel coerced petitioner
21 into entering his plea. The Court denied the claims in the petition and Leal filed a notice of appeal.

22 Leal filed his pro se informal brief in case number 79243 on December 30, 2019.² The Nevada Court
23 of Appeals affirmed the denial of Leal's petition and denied rehearing. Remittitur issued January 21, 2021.

24 ///

25 ///

27 ¹ The Supreme Court transferred the matter to the Court of Appeals for disposition.

28 ² The Supreme Court again transferred the matter to the Court of Appeals for disposition.

1 On May 9, 2019, the Court entered an amended judgment of conviction which corrected the original
2 judgment of conviction by ordering restitution be paid jointly and severally pursuant to the terms of the plea
3 agreement.

4 On April 28, 2020, Leal filed a counseled State Habeas Petition. In that petition, Leal raises three
5 claims: (1) Ineffective assistance of counsel for failure to present mitigating factors at sentencing, due to the
6 difficulty of selling property to pay restitution, (2) Ineffective assistance of counsel for failure to correct
7 errors in the pre-sentence report prior to sentencing, and (3) Ineffective assistance of counsel for failure to
8 correct or explain errors in Leal's criminal history prior to sentencing.

9 On May 27, 2020, Leal filed a pro se State Habeas Petition. In that petition, Leal raises the following
10 claims: (1) the guilty plea was involuntary, (2) ineffective assistance of trial counsel (consisting of five
11 subclaims), and (3) ineffective assistance of appellate counsel for failing to raise a claim that petitioner never
12 received a copy of his pre-sentence investigation report.

13 Leal then filed a Pro Se Supplemental Petition for Writ of Habeas Corpus on December 8, 2020. In
14 his supplemental petition, Leal alleged his plea was invalid because of duress, undue influence, and coercion.

15 Finally, on May 5, 2021, Leal filed a counseled-Supplemental Petition for Writ of Habeas Corpus.
16 That petition raised challenges to the voluntariness of his plea and effectiveness of trial counsel.

17 Respondent filed an Answer to these petitions on July 27, 2021, and a Notice of Supplemental
18 Authority on August 11, 2021.

19 After hearing from the parties on August 27, 2021, the Court makes the following findings:

20 **Nevada's Procedural Bars Prohibit Consideration of Leal's Claim**

21 **1.) NRS 34.726**

22 A petitioner must file their habeas corpus petition within one-year after the filing of the judgment of
23 conviction or within one-year of the issuance of the remittitur at the conclusion of the direct appeal. NRS
24 34.726(1). A petition may justify filing an untimely petition if they demonstrate cause for a "delay [that] is
25 not the fault of the petitioner" and show that "dismissal of the petition as untimely will unduly prejudice the
26 petitioner. NRS 34.726(1)(a) and (b).

27 ///

28 ///

1 The Court finds that the Remittitur from the conclusion of Leal's direct appeal issued December 24,
2 2018. The Court finds that all of Leal's pro se and counseled petitions filed in this matter are subject to
3 dismissal unless Leal demonstrates cause and prejudice to excuse the default.

4 In the supplemental counseled petition, Leal argues the May 9, 2019, Amended Judgement of
5 Conviction either restarts the one-year time limit in NRS 34.726(1), or alternatively provides cause for his
6 untimely filing. Leal's counseled supplemental petition cites *Whitehead v. State*, 128 Nev. 259, 285 P.3d
7 1053 (2012), in support of his argument.

8 The Court finds that the Nevada Supreme Court recognized that an amended judgment may establish
9 cause to excuse the untimely filing of a state habeas petition. In *Sullivan v. State*, 120 Nev. 537, 96 P.3d 761
10 (2004), the Nevada Supreme Court established that an amended judgment of conviction does not restart the
11 one-year time period in NRS 34.726(1). The Court in *Sullivan* first found "No specific language in NRS
12 34.726 expressly provides that the one-year time period restarts if the judgment of conviction is amended."
13 120 Nev. at 540, 96 P.3d at 764. The Court also recognized that the spirit behind the Legislature's enactment
14 of NRS 34.726 was "one of limiting habeas petitioners to one time through the [post-conviction] system
15 absent extraordinary circumstances." 120 Nev. at 541, 96 P.3d at 764 (citation omitted).

16 While finding that an amended judgment did not restart the time period in NRS 34.726(1), the Court
17 in *Sullivan* found that "if the claims presented in a petition filed within one year of the entry of the amended
18 judgment challenge the proceedings leading to a substantive amendment to the judgment and could not have
19 been raised in prior proceedings, there may be no delay attributable to the 'fault of the petitioner.'" 120 Nev.
20 541, 96 P.3d at 764 (citation omitted).

21 The Court finds that Leal's citation to *Whitehead* is misplaced. In *Whitehead*, the Nevada Supreme
22 Court found that a petitioner's state habeas petition was not untimely where the original judgment of
23 conviction failed to comply with Nevada law. The *Whitehead*, the Nevada Supreme Court distinguished
24 *Sullivan*. In *Whitehead*, the Court found the first judgment of conviction entered in Whitehead's case did not
25 constitute a final judgment of conviction under Nevada law because that order never set a final amount for
26 restitution. 128 Nev. at 263, 285 P.3d at 1055. The Court in *Whitehead* further concluded that "[an]
27 intermediate judgment is not sufficient to trigger the one-year period under NRS 34.726 for filing a
28 postconviction petition for a writ of habeas corpus." *Id.*

1 Addressing the arguments of counsel in Leal’s case, the Court finds that the Judgment of Conviction
2 entered against Leal in Case Number C-17-322644-2 on August 23, 2017, constituted a final judgment. That
3 judgment set forth Leal’s restitution obligation in the amount of \$757,420.00. The Court also finds that the
4 May 9, 2019, Amended Judgment merely corrected the original judgment to conform to the requirement of
5 joint and several liability for the repayment of restitution as bargained for by the parties in the plea agreement.
6 During argument on the petitions, Leal, through counsel, conceded the August 23, 2017, judgment complied
7 with NRS 176.105(1). That statute requires a judgment of conviction imposing restitution set forth the
8 amount of restitution in a specific dollar amount.

9 The Court further finds that the subject of the Amended Judgment of Conviction—ordering payment
10 of restitution jointly and severally with Leal’s co-defendant—corrects the original judgment to conform to
11 the plea agreement. The Court further finds if it changed the terms of Leal’s sentence in any way, such a
12 change inured to the benefit of Leal.

13 In determining whether NRS 34.726(1) applies to Leal’s petitions filed in this matter, the Court finds
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18 good cause or prejudice to excuse his untimely filing of his petitions.

19 Based upon the record, the facts, and the relevant law, the Court finds that all claims in Leal’s
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24 The Court finds that no intervening case law calls into question the Nevada Court of Appeals'
25 affirmance of the denial of Leal's first state habeas petition, nor has Leal demonstrated that applying the law
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1 Conclusion

2 Based upon the pleadings and exhibits submitted in this case, as well as the record in Leal's criminal
3 and appellate cases, the Court finds Leal's petitions procedurally barred. The Court also finds that no cause
4 or prejudice exists to evade application of NRS 34.726(1) and NRS 34.810. The Court further finds that
5 Leal's claims that his plea was coerced or otherwise not knowing, intelligent, and voluntary, or that counsel
6 was ineffective for failing to obtain a waiver of conflict are barred pursuant to the law of the case.

7 Therefore, good cause appearing:

8 **IT IS THE ORDER OF THE COURT**, the Petitioner for Writ of Habeas Corpus in this matter is
9 **DENIED.**

10 DATED this _____ day of _____, 2021.
11 Dated this 6th day of September, 2021

12 

13

DISTRICT JUDGE
A29 B19 1145 3E3D
Michael Villani
District Court Judge

14 Submitted by:

15 /s/Michael J. Bongard
16 Senior Deputy Attorney General
Counsel for Respondents

17 Approved as to Form:

18 /s/Diane C. Lowe
19 Diane C. Lowe, Esq.
Counsel for Jack Leal

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Jack Leal, Plaintiff(s)

CASE NO: A-20-814369-W

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19 Diane Lowe

dianelowe@lowelawllc.com

20 District Attorney District Attorney

motions@clarkcountyda.com

21 Attorney General

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22 Lisa Clark

lclark@ag.nv.gov

23 Kristine Santi

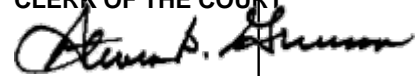
santik@clarkcountycourts.us

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25
26 If indicated below, a copy of the above mentioned filings were also served by mail
27 via United States Postal Service, postage prepaid, to the parties listed below at their last
28 known addresses on 9/7/2021

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Joye Blanscett

7401 W. Charleston Blvd
Las Vegas, NV, 89117-1401



1 JOCP
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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
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8 THE STATE OF NEVADA,
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10 Plaintiff,

11 -vs-

12 JACK LEAL
13 #X0157754

14 Defendant.
15

CASE NO. C-17-322664-2

DEPT. NO. XVII

16 JUDGMENT OF CONVICTION
17 (PLEA OF GUILTY)
18

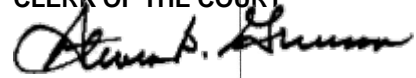
19
20 The Defendant previously appeared before the Court with counsel and entered a
21 plea of guilty to the crime of MULTIPLE TRANSACTIONS INVOLVING FRAUD
22 OR DECEIT IN THE COURSE OF AN ENTERPRISE AND OCCUPATION
23 (Category B Felony) in violation of NRS 205.377; thereafter, on the 17th day of August,
24 2017, the Defendant was present in court for sentencing with counsel JASON
25 WEINER, ESQ., and good cause appearing,
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1 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense and, in
2 addition to the \$25.00 Administrative Assessment Fee, \$757,420.00 Restitution,
3 (\$70,000.00 payable to LoryLee Plancarte, \$75,000.00 payable to Edelyn Rudin,
4 \$37,000.00 payable to Chatty Becker, \$57,500.00 payable to Irene Segura, \$98,620.00
5 payable to Lih-Ling Yang, \$90,300.00 payable to Lina Palafox, \$85,000.00 payable to
6 Adilson Gibellato, \$50,000.00 payable to Juan Eloy Ramirez, \$115,000.00 payable to
7 Catherine Wyngarden, \$25,000.00 payable to Shahram Bozorgnia, \$53,500.00 payable
8 to Tat Lam) and \$150.00 DNA Analysis Fee including testing to determine genetic
9 markers plus \$3.00 DNA Collection Fee, the Defendant is sentenced as follows: a
10 MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole
11 eligibility of SEVENTY-TWO (72) MONTHS in the Nevada Department of
12 Corrections (NDC); with ZERO (0) DAYS credit for time served.

13 DATED this 22 day of August, 2017

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22 MICHAEL VILLANI ^{OB}
23 DISTRICT COURT JUDGE
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AJOCP

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO. C-17-322664-2

-vs-

DEPT. NO. XVII

JACK LEAL
#X0157754

Defendant.

AMENDED JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of MULTIPLE TRANSACTIONS INVOLVING FRAUD OR DECEIT IN THE COURSE OF AN ENTERPRISE AND OCCUPATION (Category B Felony) in violation of NRS 205.377; thereafter, on the 17th day of August, 2017, the Defendant was present in court for sentencing with counsel JASON WEINER, ESQ., and good cause appearing.

MAY - 9 2019
RECEIVED BY
DEPT 170N

<input type="checkbox"/> Nolle Prosequi (before trial)	<input type="checkbox"/> Bench (Non-Jury) Trial
<input type="checkbox"/> Dismissed (after diversion)	<input type="checkbox"/> Dismissed (during trial)
<input type="checkbox"/> Dismissed (before trial)	<input type="checkbox"/> Acquittal
<input type="checkbox"/> Guilty Plea with Sent (before trial)	<input type="checkbox"/> Guilty Plea with Sent. (during trial)
<input type="checkbox"/> Transferred (before/during trial)	<input type="checkbox"/> Conviction
<input checked="" type="checkbox"/> Other Manner of Disposition	

1 THE DEFENDANT WAS ADJUDGED guilty of said offense and, in addition to
2 the \$25.00 Administrative Assessment Fee, \$757,420.00 Restitution **payable jointly**
3 **and severally with Co-Defendant** (\$70,000.00 payable to LoryLee Plancarte;
4 \$75,000.00 payable to Edelyn Rudin; \$37,000.00 payable to Chatty Becker; \$57,500.00
5 payable to Irene Segura; \$98,620.00 payable to Liih-Ling Yang; \$90,300.00 payable to
6 Lina Palafox; \$85,000.00 payable to Adilson Gibellato; \$50,000.00 payable to Juan
7 Eloy Ramirez; \$115,000.00 payable to Catherine Wyngarden; \$25,000.00 payable to
8 Shahram Bozorgnia; \$53,500.00 payable to Tat Lam) and \$150.00 DNA Analysis Fee
9 including testing to determine genetic markers plus \$3.00 DNA Collection Fee, the
10 Defendant sentenced as follows: a MAXIMUM of ONE HUNDRED EIGHTY (180)
11 MONTHS with a MINIMUM parole eligibility of SEVENTY-TWO (72) MONTHS in
12 the Nevada Department of Corrections (NDC); with ZERO (0) DAYS credit for time
13 served.

14 THEREAFTER, on the 7th day of May, 2019, the Defendant Pro Se was not
15 present in Court, and pursuant to Petition for Writ of Habeas Corpus (Post Conviction)
16 hearing; COURT ORDERED, Restitution payable jointly and severally with Co-
17 Defendant.

18 DATED this 9 day of May, 2019

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27 MICHAEL VILLANI 06
28 DISTRICT COURT JUDGE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

June 16, 2020

A-20-814369-W Jack Leal, Plaintiff(s)
vs.
Jerry Howell, Defendant(s)

**June 16, 2020 10:15 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Shannon Reid

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT: Bongard, Michael J. Attorney
Schwartzter, Jean Attorney

JOURNAL ENTRIES

- Defendant not present. Court noted it had not received an response from the State. Ms. Schwartzter advised she spoke with the State regarding Defendant retaining her to file a Motion to modify, that she had a hard time in obtaining the pertinent documents in support thereof, noting she was hopeful the issue would be resolved with the Motion to Modify once filed, otherwise Defendant would need to proceed Pro Per or have counsel appointed. Ms. Schwartzter requested matter be set for a status check on the Motion. Mr. Bongard concurred, advised the Petition was successive, and noted other procedural bars. Court noted Petition was filed May 27, 2020. Counsel advised it was filed Pro Per prior to. **COURT ORDERED**, matter set for Status Check on the Motion to Modify.

NDC

08/18/2020 10:15 AM STATUS CHECK: MOTION TO MODIFY/STATE'S OPPOSITION TO PETITION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

August 18, 2020

A-20-814369-W Jack Leal, Plaintiff(s)
vs.
Jerry Howell, Defendant(s)

August 18, 2020 10:15 AM All Pending Motions

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Shannon Reid

RECORDER: Trisha Garcia

REPORTER:

PARTIES

PRESENT: Bongard, Michael J. Attorney
 McNeill, Monique A. Attorney

JOURNAL ENTRIES

- Ms. McNeill advised Ms. Schwartzer had filed a Stipulation and Order between parties to set up a briefing schedule. Court advised it would have it filed upon receipt.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

December 10, 2020

A-20-814369-W Jack Leal, Plaintiff(s)
vs.
Jerry Howell, Defendant(s)

**December 10, 2020 10:15 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Carina Bracamontez-Munguia

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT: Cole, Madilyn M. Attorney

JOURNAL ENTRIES

- Court noted Deft. is in NDC. Ms. Cole indicated this is an Attorney General case. COURT ORDERED, matter CONTINUED to contact Attorney General and Defense Counsel for presence.

CUSTODY (NDC)

CONTINUED: 12/22/2020 08:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

December 14, 2020

A-20-814369-W Jack Leal, Plaintiff(s)
vs.
Jerry Howell, Defendant(s)

December 14, 2020 4:29 PM Minute Order

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Tia Everett

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- By stipulation and agreement by Parties by via communications with Court s Law Clerk. COURT ORDERED, matter SET for December 22, 2020 VACATED and RESET to January 28, 2021 at 10:15AM.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

January 14, 2021

A-20-814369-W Jack Leal, Plaintiff(s)
vs.
Jerry Howell, Defendant(s)

**January 14, 2021 8:30 AM Motion to Withdraw as
Counsel**

HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Louisa Garcia

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- COURT ORDERED, Motion to Withdraw GRANTED. Court noted there is a status check and petition for habeas corpus set on January 28. COURT ORDERED, Petition for Writ of Habeas Corpus VACATED and matter SET for status check STANDS to see if Defendant can hire another attorney.

1/28/21 8:30 AM STATUS CHECK: CONFIRMATION OF COUNSEL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

January 28, 2021

A-20-814369-W Jack Leal, Plaintiff(s)
vs.
Jerry Howell, Defendant(s)

**January 28, 2021 8:30 AM Status Check:
Confirmation of Counsel**

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Samantha Albrecht

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT: Bongard, Michael J. Attorney
Leal, Jack Plaintiff
Nevada State of Defendant

JOURNAL ENTRIES

- Jean Schwartzer, Esq. also present.

Ms. Schwartzer stated she had withdrawn as Defendant's attorney at the last hearing. Upon Court's inquiry, Defendant advised he is trying to be appointed counsel in this case. Upon Court's inquiry, Ms. Schwartzer indicated she was retained on the C case for the Motion to Modify and had filed the Petition on Defendant's behalf in this case, however she was not fully retained to litigate the matter in this case. Mr. Bongard stated Defendant filed an Ex-Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing on 12/8/2020 and it was not placed on calendar as a hearing date was not requested. COURT ORDERED, matter CONTINUED to contact the Office of Appointed Counsel (OAC) for appointment of counsel. Court noted Defendant would not need to be transported for the next hearing.

CUSTODY

A-20-814369-W

CONTINUED TO: 2/4/2021 8:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

February 04, 2021

A-20-814369-W Jack Leal, Plaintiff(s)
vs.
Jerry Howell, Defendant(s)

**February 04, 2021 8:30 AM Status Check:
Confirmation of Counsel**

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Samantha Albrecht

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT: Bongard, Michael J. Attorney
 Lowe, Diane Carol Attorney
 Nevada State of Defendant

JOURNAL ENTRIES

- Defendant not transported. COURT ORDERED, Diane Lowe CONFIRMED as counsel for the Defendant. Upon Court's inquiry, Ms. Lowe noted this case had been Ms. Schwartzer's case and had not yet requested the file from her. COURT FURTHER ORDERED, matter CONTINUED for Ms. Lowe to receive and review the file.

NDC

2/25/2021 10:00 AM STATUS CHECK: FILE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

February 25, 2021

A-20-814369-W Jack Leal, Plaintiff(s)
vs.
Jerry Howell, Defendant(s)

February 25, 2021 10:00 AM Status Check

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Samantha Albrecht

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT:	Bongard, Michael J.	Attorney
	Lowe, Diane Carol	Attorney
	Nevada State of	Defendant

JOURNAL ENTRIES

- Defendant not present. Upon Court's inquiry, Ms. Lowe advised she had not received the file yet.
COURT ORDERED, matter CONTINUED.

NDC

CONTINUED TO: 3/25/2021 10:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

March 25, 2021

A-20-814369-W Jack Leal, Plaintiff(s)
vs.
Jerry Howell, Defendant(s)

March 25, 2021 10:00 AM Status Check

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Samantha Albrecht

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT: Bongard, Michael J. Attorney

JOURNAL ENTRIES

- Upon Court's inquiry, Ms. Lowe advised she just received the file and requested the matter be set out for ninety days for the supplemental as the file is quite large. COURT ORDERED, Defendant's Supplemental brief shall be due on or before 5/26/2021, State's Response shall be due on or before 7/27/2021 and matter SET for Hearing.

NDC

8/27/2021 8:30 AM PETITION FOR WRIT OF HABEAS CORPUS

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus

COURT MINUTES

August 27, 2021

A-20-814369-W Jack Leal, Plaintiff(s)
vs.
Jerry Howell, Defendant(s)

August 27, 2021 8:30 AM Petition for Writ of Habeas
Corpus

HEARD BY: Villani, Michael COURTROOM: RJC Courtroom 11A

COURT CLERK: Michaela Tapia

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT: Bongard, Michael J. Attorney
Leal, Jack Plaintiff
Lowe, Diane Carol Attorney

JOURNAL ENTRIES

- Argument by counsel as to the timeliness of the 2nd Writ of Habeas Corpus and whether the issues raised in the first writ preclude the second writ. Argument by the State that the claims are untimely, successive, and barred by the law of the case doctrine. Further argument by counsel. COURT FINDS, the 2nd Petition is untimely and there is no good cause to overlook the untimeliness, noting the petition is successive, and the issues set forth could have been brought up in the first petition and appeal; FURTHER, there is nothing in the plea that shows it was not freely and voluntarily entered; ADDITIONALLY, Defendant did not show good faith effort to resolve the restitution prior to sentencing; and ORDERED, the petition is DENIED. State to submit the Findings of Fact and Conclusions of Law. FURTHER, matter SET for status check.

9/16/21 8:30 AM STATUS CHECK: FINDINGS OF FACT, CONCLUSIONS OF LAW SUBMITTED

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):

AMENDED NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS; NOTICE OF ENTRY OF ORDER; JUDGMENT OF CONVICTION (PLEA OF GUILTY) (FROM RELATED CRIMINAL CASE C-17-322664-2); AMENDED JUDGMENT OF CONVICTION (PLEA OF GUILTY) (FROM RELATED CRIMINAL CASE C-17-322664-2); DISTRICT COURT MINUTES

JACK LEAL,

Plaintiff(s),

vs.

JERRY HOWELL, WARDEN; SOUTHERN
DESERT CORRECTIONAL CENTER; STATE
OF NEVADA,

Defendant(s),

Case No: A-20-814369-W
Related Case C-17-322664-2
Dept No: XVII

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 10 day of September 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

