



Justin O. Langford-1159546

LCC, 1200 Prison Road

Love Lock, Nev. 89419

E-Mail: N/A

Phone: N/A

Fax: N/A

Electronically Filed
Aug 17 2023 08:56 AM
Elizabeth A. Brown
Clerk of Supreme Court

DISTRICT COURT
CLARK COUNTY, NEVADA

Justin O. Langford,
Petitioner,

CASE No. A-18-784811-W

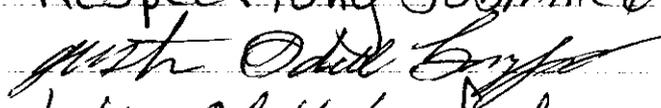
DEPT No. II

vs.

Warden Tim Garrett,
Respondent,

NOTICE OF APPEAL

COMES Now Justin Odell Langford, in Pro per, to
file his Notice of Appeal Challenging the denial of
his Petition for Writ of Habeas Corpus that was
entered on July 31ST, 2023 by dist. Ct. Judge
Karli Kierney in Dept. II.

Respectfully Submitted

Justin Odell Langford
Petitioner/Paralegal

RECEIVED
AUG 14 2023
CLERK OF THE COURT

(1)

VERIFICATION

I, declare and verify, that I have read the above-entitled document, and that to the best of my own knowledge and belief that it is true and correct under the pains and penalties of perjury pursuant 28 U.S.C. 31746

DATE: 8-6-23


Petitioner

CERTIFICATE OF SERVICE

I, Certify, that I have attached a true and correct copy, with special ~~certificate~~ instructions to clerk of the court to E-file and E-serve all of my opponents pursuant to N.E.F.C.R. 9 et seq. (A-E) Etc, to the following:

Steven Wolfson Clrk, Cnty. D.A.

DATE: 8-6-23


Petitioner

Justin Odell Langford-1159546
LCC, 1200 Prison Rd
Lovehock, Nev. 89419

RECEIVED

AUG 14 2023

CLERK OF THE COURT

**NOT ATE LEGAL
CAN CONFIDENTIAL**

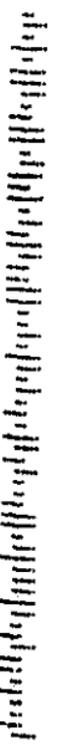
08 AUG 2023 PM 3 F

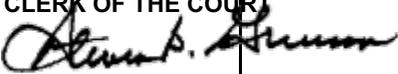
REMO NV 8945



8TH Jud. Dist. Ct.
ATTN: Clerk of the Court
200 Lewis Ave.
Las Vegas, Nev. 89155

8910186300 0075





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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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10 JUSTIN ODELL LANGFORD,

11 Plaintiff(s),

12 vs.

13 WARDEN RENEE BAKER,

14 Defendant(s),

Case No: A-18-784811-W

Dept No: II

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CASE APPEAL STATEMENT

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18 1. Appellant(s): Justin Odell Langford

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19 2. Judge: Carli Kierny

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20 3. Appellant(s): Justin Odell Langford

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22 Counsel:

23 Justin Odell Langford #1159546
24 1200 Prison Rd.
25 Lovelock, NV 89419

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25 4. Respondent (s): Warden Renee Baker

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26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.
Las Vegas, NV 89155-2212

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- 1
2 5. Appellant(s)'s Attorney Licensed in Nevada: N/A
3 Permission Granted: N/A
4 Respondent(s)'s Attorney Licensed in Nevada: Yes
5 Permission Granted: N/A
6
7 6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No
8
9 7. Appellant Represented by Appointed Counsel On Appeal: N/A
10
11 8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A
12 **Expires 1 year from date filed
13 Appellant Filed Application to Proceed in Forma Pauperis: N/A
14 Date Application(s) filed: N/A
15
16 9. Date Commenced in District Court: November 19, 2018
17
18 10. Brief Description of the Nature of the Action: Civil Writ
19 Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus
20
21 11. Previous Appeal: Yes
22 Supreme Court Docket Number(s): 78144, 83032, 84284
23
24 12. Child Custody or Visitation: N/A
25
26 13. Possibility of Settlement: Unknown

27 Dated This 16 day of August 2023.

28 Steven D. Grierson, Clerk of the Court

29
30
31 /s/ Cierra Borum

32 Cierra Borum, Deputy Clerk
33 200 Lewis Ave
34 PO Box 551601
35 Las Vegas, Nevada 89155-1601
36 (702) 671-0512

37 cc: Justin Odell Langford
38
39
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CASE SUMMARY
CASE NO. A-18-784811-W

Justin Langford, Plaintiff(s)
vs.
Warden Renee Baker, Defendant(s)

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§
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§

Location: **Department 2**
 Judicial Officer: **Kierny, Carli**
 Filed on: **11/19/2018**
 Case Number History:
 Cross-Reference Case Number: **A784811**
 Supreme Court No.: **78144**
83032
84284

CASE INFORMATION

Related Cases
 C-14-296556-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Statistical Closures
 08/03/2023 Other Manner of Disposition
 07/22/2021 Other Manner of Disposition
 03/11/2019 Summary Judgment

Case Status: **08/03/2023 Closed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-18-784811-W
Court	Department 2
Date Assigned	04/04/2022
Judicial Officer	Kierny, Carli

PARTY INFORMATION

Plaintiff **Langford, Justin**

Lead Attorneys

Pro Se

Defendant **State of Nevada**

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

Warden Renee Baker

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

DATE

EVENTS & ORDERS OF THE COURT

INDEX

EVENTS

- | | |
|------------|---|
| 11/19/2018 |  Inmate Filed - Petition for Writ of Habeas Corpus
Party: Plaintiff Langford, Justin
<i>[1] Affidavit of Writ of Habeas Corpus NRS Chap. 34 et seq FRE 201 NRS Chap 47 et seq. NRCIVP 8(a)</i> |
| 11/29/2018 |  Order for Petition for Writ of Habeas Corpus
<i>[2] Order for Petition for Writ of Habeas Corpus</i> |
| 12/10/2018 |  Motion to Continue
Filed By: Plaintiff Langford, Justin
<i>[3] Motion for Continuance</i> |
| 12/10/2018 |  Notice |

CASE SUMMARY

CASE NO. A-18-784811-W

- Filed By: Plaintiff Langford, Justin
[4] Judicial Notice
- 01/17/2019  Response
[5] State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction)
- 01/22/2019  Motion to Strike
Filed By: Plaintiff Langford, Justin
[6] Motion to Strike States Response (Telephonic Hearing)
- 02/12/2019  Notice of Appeal
Filed By: Plaintiff Langford, Justin
[7] Notice of Appeal
- 02/13/2019  Case Appeal Statement
Filed By: Plaintiff Langford, Justin
[8] Case Appeal Statement
- 03/11/2019  Findings of Fact, Conclusions of Law and Order
[9] Findings of Fact, Conclusions of Law and Order
- 03/13/2019  Response
[10] State's Response to Defendant's Motion to Strike State's Response
- 03/14/2019  Notice
Filed By: Plaintiff Langford, Justin
[11] Judicial Notice
- 03/14/2019  Notice of Entry
[12] Notice of Entry of Findings of Fact, Conclusions of Law and Order
- 07/24/2019  Certificate of Service
Filed by: Plaintiff Langford, Justin
[13] Certificate of Re-Service
- 10/18/2019  NV Supreme Court Clerks Certificate/Judgment - Affirmed
[14] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed; Rehearing Denied
- 01/04/2021 Case Reassigned to Department 23
Judicial Reassignment to Judge Jasmin Lilly-Spells
- 02/09/2021  Inmate Filed - Petition for Writ of Habeas Corpus
Party: Plaintiff Langford, Justin
[15] Petition for Writ of Habeas Corpus Pursuant to the All Writs Act
- 02/09/2021  Application to Proceed in Forma Pauperis
Filed By: Plaintiff Langford, Justin
[16] Application to Proceed in Forma Pauperis (Confidential)
- 02/09/2021  Ex Parte Motion
Filed By: Plaintiff Langford, Justin
[17] Ex Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing

CASE SUMMARY
CASE NO. A-18-784811-W

- 02/11/2021  Order to Proceed In Forma Pauperis
[18] Order to Proceed in Forma Pauperis (Confidential)
- 02/15/2021  Order for Petition for Writ of Habeas Corpus
[19] Order for Petition for Writ of Habeas Corpus
- 02/17/2021  Clerk's Notice of Hearing
[20] Notice of Hearing
- 02/25/2021  Addendum
[21] Addendum to Petition for Writ of Habeas Corpus Pursuant to the all Writs Act
- 03/04/2021  Certificate
[22] Certificate of Inmate's Institutional Account (Confidential)
- 03/08/2021  Motion for Appointment of Attorney
Filed By: Plaintiff Langford, Justin
[23] Motion for Appointment of Counsel
- 03/08/2021  Ex Parte Motion
Filed By: Plaintiff Langford, Justin
[24] Ex Parte Motion to Shorten Time Pursuant to EDCR 5.513
- 03/08/2021  Motion to Continue
Filed By: Plaintiff Langford, Justin
[25] Motion for Continuance
- 03/17/2021  Request
[26] Request for Judicial Notice and Judicial Action to be Taken
- 03/17/2021  Motion for Order
Filed By: Plaintiff Langford, Justin
[27] Motion for an Order to Produce Prisoner
- 03/31/2021  Notice of Motion
Filed By: Plaintiff Langford, Justin
[28] Notice of Motion and Motion for Discovery/ Motion for Order to Show Cause
- 04/05/2021  Response
[29] State's Response to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction), Motion for Appointment of Attorney, and Request for Evidentiary Hearing
- 04/22/2021  Notice
Filed By: Plaintiff Langford, Justin
[30] Judicial Notice
- 04/27/2021  Miscellaneous Filing
[31] Petitioners Traverse
- 04/30/2021  Notice of Rescheduling of Hearing
[32] Notice of Rescheduling of Hearing
- 06/03/2021

CASE SUMMARY
CASE NO. A-18-784811-W

 Notice of Appeal
[33] Notice of Appeal

06/08/2021  Case Appeal Statement
Filed By: Plaintiff Langford, Justin
[34] Case Appeal Statement

06/17/2021  Motion
Filed By: Plaintiff Langford, Justin
[35] Motion for Request in Status Check and Copy of Court Docket Sheet (Hearing Requested/Required)

06/17/2021  Clerk's Notice of Hearing
[36] Notice of Hearing

07/22/2021  Findings of Fact, Conclusions of Law and Order
Filed By: Defendant State of Nevada
[37] Findings of Fact, Conclusions of Law and Order

07/26/2021  Notice of Entry of Findings of Fact, Conclusions of Law
Filed By: Defendant State of Nevada
[38] Notice of Entry of Findings of Fact, Conclusions of Law and Order

09/07/2021 Case Reassigned to Department 9
From Judge Jasmin Lilly-Spells to Judge Cristina Silva

12/20/2021  NV Supreme Court Clerks Certificate/Judgment - Affirmed
[39] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed; Petition Denied

01/28/2022  Inmate Filed - Petition for Writ of Habeas Corpus
Party: Plaintiff Langford, Justin
[40] Petition for Writ of Habeas Corpus (Post-Conviction); Hearing Requested

02/18/2022  Notice of Appeal (Criminal)
[41] Notice of Appeal

02/22/2022  Case Appeal Statement
[42] Case Appeal Statement

04/04/2022 Case Reassigned to Department 2
Judicial Reassignment - From Judge Cristina D. Silva to Judge Carli Kierny

04/20/2022  Findings of Fact, Conclusions of Law and Order
Filed By: Plaintiff Langford, Justin
[43] Findings of Fact, Conclusions of Law and Order

04/27/2022  Notice of Entry of Findings of Fact, Conclusions of Law
[44] Notice of Entry of Findings of Fact, Conclusions of Law and Order

07/26/2022  Opposition
Filed By: Plaintiff Langford, Justin
[45] State's Response to Defendant's Petition to Establish Factual Innocence

CASE SUMMARY
CASE NO. A-18-784811-W

10/19/2022	 NV Supreme Court Clerks Certificate/Judgment - Affirmed <i>[46] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed; Rehearing Denied</i>
10/25/2022	 Inmate Filed - Petition for Writ of Habeas Corpus Party: Plaintiff Langford, Justin <i>[47] Petition for Writ of Habeas Corpus (Nev.Const.Art.6,36)</i>
01/05/2023	 Request Filed by: Plaintiff Langford, Justin <i>[48] Request for Judicial Notice and Action to be Taken</i>
02/01/2023	 Motion Filed By: Plaintiff Langford, Justin <i>[49] Motion for Judicial Action on Petition</i>
02/01/2023	 Clerk's Notice of Nonconforming Document <i>[50] Clerk's Notice of Nonconforming Document</i>
02/24/2023	 Clerk's Notice of Nonconforming Document and Curative Action <i>[52] Clerk's Notice of Curative Action</i>
02/24/2023	 Clerk's Notice of Hearing <i>[53] Notice of Hearing</i>
04/10/2023	 Response Filed by: Defendant State of Nevada <i>[54] State's Response to Defendant's Petition for Writ of Habeas Corpus</i>
05/02/2023	 Motion to Continue Filed By: Plaintiff Langford, Justin <i>[55] Motion for Continuance</i>
05/02/2023	 Clerk's Notice of Hearing <i>[56] Notice of Hearing</i>
05/23/2023	 Motion Filed By: Plaintiff Langford, Justin <i>[57] Addendum to Motion for Enlargement of Time</i>
05/23/2023	 Clerk's Notice of Hearing <i>[58] Notice of Hearing</i>
05/31/2023	 Reply <i>[59] Petitioner's Reply to State's Response to Defendant's Petition for Writ of Habeas Corpus</i>
07/03/2023	 Ex Parte Motion Filed By: Plaintiff Langford, Justin <i>[60] Ex Parte Motion for Transportation of Inmate for Court Appearance or, in the Alternative, for Appearance by Telephone or Video Conference</i>
07/03/2023	 Clerk's Notice of Hearing <i>[61] Notice of Hearing</i>

CASE SUMMARY
CASE NO. A-18-784811-W

07/20/2023



Motion

Filed By: Plaintiff Langford, Justin
 [62] Motion for Judicial Notice to be Taken

07/20/2023



Clerk's Notice of Hearing

[63] Notice of Hearing

08/03/2023



Findings of Fact, Conclusions of Law and Order

[64] Findings of Fact, Conclusions of Law and Order Re: Petition for Writ of Habeas Corpus

08/07/2023



Notice of Entry of Findings of Fact, Conclusions of Law

[65] Notice of Entry of Findings of Fact, Conclusions of Law and Order

08/15/2023



Notice of Appeal

[66] Notice of Appeal

08/16/2023



Case Appeal Statement

Case Appeal Statement

DISPOSITIONS

10/18/2019

Clerk's Certificate (Judicial Officer: Hardy, Joe)
 Debtors: Justin Langford (Plaintiff)
 Creditors: Warden Renee Baker (Defendant)
 Judgment: 10/18/2019, Docketed: 10/21/2019
 Comment: Supreme Court No. 78144 " Appeal Affirmed"

12/20/2021

Clerk's Certificate (Judicial Officer: Silva, Cristina D.)
 Debtors: Justin Langford (Plaintiff)
 Creditors: Warden Renee Baker (Defendant), State of Nevada (Defendant)
 Judgment: 12/20/2021, Docketed: 12/22/2021
 Comment: Supreme Court No 83032 - "APPEAL AFFIRMED"

10/19/2022

Clerk's Certificate (Judicial Officer: Kierny, Carli)
 Debtors: Justin Langford (Plaintiff)
 Creditors: Warden Renee Baker (Defendant), State of Nevada (Defendant)
 Judgment: 10/19/2022, Docketed: 10/20/2022
 Comment: Supreme Court No 84284 - "APPEAL AFFIRMED"

HEARINGS

01/28/2019



Petition for Writ of Habeas Corpus (9:00 AM) (Judicial Officer: Hardy, Joe)

Events: 11/29/2018 Order for Petition for Writ of Habeas Corpus

MINUTES



Order for Petition for Writ of Habeas Corpus

[2] Order for Petition for Writ of Habeas Corpus

Denied Without Prejudice;

Journal Entry Details:

Court indicated it had reviewed Plaintiff's Petition for Writ Of Habeas Corpus, as well as the State's Response. Finding that oral argument was not necessary due to its review of the pleadings, COURT ORDERED, Petition DENIED WITHOUT PREJUDICE for all of the reasons set forth in the State s response. Court indicated the State was to prepare the order, including the reasons from the response and submit it directly to the Court. CLERK'S NOTE: A copy of this minute order was mailed to the Petitioner Justin Langford (1159546) Lovelock Correctional Center 1200 Prison Road Lovelock, NV 89419.// 1-30-19/ dy ;

02/25/2019

CASE SUMMARY
CASE NO. A-18-784811-W

 **Motion to Strike** (9:00 AM) (Judicial Officer: Hardy, Joe)

02/25/2019, 04/03/2019

Events: 01/22/2019 Motion to Strike
Motion to Strike States Response(Telephonic Hearing)
 Continued;
 Vacate - Moot;
 Journal Entry Details:
Given the filing of the Judicial Notice, COURT ORDERED the instant Motion was hereby VACATED as MOOT.;

MINUTES

 **Motion to Strike**

Filed By: Plaintiff Langford, Justin
[6] Motion to Strike States Response (Telephonic Hearing)
 Continued;
 Vacate - Moot;
 Journal Entry Details:
The Court noted that it was unclear whether the District Attorneys' Office was properly served with the instant Motion, as there was no response to said Motion, and a District Attorney had not appeared in open court. COURT ORDERED the instant Motion was hereby CONTINUED, and the Court would provide electronic service of said Motion to the District Attorneys' Office. COURT FURTHER ORDERED, the Opposition to the instant Motion would be DUE BY March 18, 2019, and any Reply would be DUE BY March 25, 2019. CONTINUED TO: 4/3/19 9:00 AM CLERK'S NOTE: A copy of this minute order, along with a copy of the Motion to Strike State's Response (Telephonic Hearing), was e-mailed to: James R. Sweetin, DDA [james.sweetin@clarkcountyda.com] and Jacob Villani, DDA [jacob.villani@clarkcountyda.com]. A copy of this minute order was mailed to: Justin Langford #1159546 [Lovelock Correctional Center 1200 Prison Road Lovelock, NV 89149]. (KD 2/27/19);

05/19/2021 **Petition for Writ of Habeas Corpus** (11:00 AM) (Judicial Officer: Lilly-Spells, Jasmin)
 Motion Denied;

05/19/2021 **Motion** (11:00 AM) (Judicial Officer: Lilly-Spells, Jasmin)
Plaintiff's Motion for Appointment of Counsel and Request for Evidentiary Hearing
 Motion Denied;

05/19/2021  **All Pending Motions** (11:00 AM) (Judicial Officer: Lilly-Spells, Jasmin)
 Motion Denied;
 Journal Entry Details:

PETITION FOR WRIT OF HABEAS CORPUS . . . PLAINTIFF'S MOTION FOR APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING Plaintiff is in custody of the Nevada Department of Corrections and not transported. Court stated it would not hear oral arguments regarding the Petition for Writ of Habeas Corpus. Court stated regarding the Petition for Writ of Habeas Corpus the Petition is DENIED. Court finds the Petition is time-barred pursuant to NRS 34.726. The one-year time period begins to run from the date of conviction, Jefferson v. State, 114 Nev. 1084, 967 P.2d 1132 (1998). The one-year time period should be strictly applied under Gonzalez v. State, 118 Nev. 590, also at 53 P.3d 901 (2002). The application of the procedural bar is mandatory under State v. Eighth Judicial District Court (Riker), 121 Nev. 225, 112 P.3d 1070 (2005). Here, the Petitioner's Writ is over three years late. The Petitioner has not shown good cause for the delay. The Petitioner must show that an impediment extended to the defense preventing his compliance with the procedural rule. Clinton v. State, 119 Nev. 615, 81 P.3d 521 (2003). Petitioner here has not put forth any evidence to show that good cause exist. The Court further finds here Petitioner claim is incoherent and vague and do not therefore, warrant relief for post conviction must be support with the factual allegations. Hargrove v. State 100 Nev. 498, 686 P.2d 222 (1984). Moreover, the Court has previously denied Petitioner's post-conviction petition. Additionally, the claim that this Court does not have subject matter jurisdiction is not supported by the evidence or any caselaw. With regards to Petitioner's claim and request for evidentiary hearing, the Court finds that there is no sixth amendment constitutional right to counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722 (1991), 111 S. Ct. 2546 (1991). Nevada courts have also ruled that the Nevada Constitution does not provide for a right for post-conviction counsel either under McCabe v. Warden 112 Nev. 159, 912 P.2d

CASE SUMMARY
CASE NO. A-18-784811-W

(1996). Nevada courts do have the discretion to appoint counsel if the court is satisfied that the individual is indigent and the petition cannot be dismissed summarily under NRS 34.750. In making this determination, the court can consider (1) whether the issues are difficult, (2) defendant is unable to comprehend the proceeding and (3) whether counsel is unable to proceed with discovery. The Court finds here that although the Defendant is indigent if he is in the prison that the petition can be dismissed summarily and thus, the Petitioner is not entitled to counsel and therefore, the Motion to Appoint Counsel is DENIED. The Court also finds that there is no basis for an evidentiary hearing and thus, does not entitled the Plaintiff to relief so the request for evidentiary hearing is therefore, DENIED. State to prepare the Order.;

07/19/2021

 **Motion** (11:00 AM) (Judicial Officer: Lilly-Spells, Jasmin)
Plaintiff's Motion for Request in Status Check and Copy of Court Docket Sheet Off Calendar;
Journal Entry Details:
COURT NOTED Mr. Langford was not transported. COURT stated findings and ORDERED, Plaintiff's Motion for Request in Status Check and Copy of Court Docket Sheet taken OFF CALENDAR.;

01/31/2022

 **Minute Order** (11:00 AM) (Judicial Officer: Silva, Cristina D.)
Minute Order - No Hearing Held;
Journal Entry Details:
Pending before the Court is Petitioner Justin Langford's s Petition for Writ of Habeas Corpus. This Court has reviewed the Petition and has determined that a response would not assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his liberty as this matter has previously been briefed. Petitioner previously filed the same Petition on November 19, 2018 which was denied on January 28, 2019 by Judge Hardy and February 09, 2021 which was denied on May 19, 2021 by Judge Lilly-Spells. The Nevada Court of Appeals affirmed both decisions on August 13, 2019 and December 20, 2021 respectively. This Court adopts both decisions for denial on this matter. Therefore, COURT ORDERED Petition for Writ of Habeas Corpus DENIED. NDC CLERK'S NOTE: A copy of this Minute Order has been mailed to: Justin Langford #1159546, 1200 Prison Rd, Lovelock, Nevada 89419. (1-31-2022 ks);

03/27/2023

 **Motion** (9:30 AM) (Judicial Officer: Kierny, Carli)
03/27/2023, 05/31/2023
Plaintiffs-Motion for Judicial Action on Petition
Matter Continued;
Matter Continued;
Journal Entry Details:
Court noted there was a Motion filed to continue the hearing set today. COURT ORDERED MOTION ADVANCED and GRANTED. COURT FURTHER MATTER CONTINUED. CONTINUED TO: 7/26/23 9:30 AM;
Matter Continued;
Matter Continued;
Journal Entry Details:
Court noted that it did not receive the State's response and provided counsel with a briefing schedule. COURT ORDERED, MATTER SET FOR HEARING. 5/31/23 9:30 AM HEARING CLERK'S NOTE: A copy of this minute order was mailed to Justin Langford via USPS. jmc 4/4/23;

06/05/2023

CANCELED Motion (9:30 AM) (Judicial Officer: Kierny, Carli)
Vacated
Plaintiff's Motion for Continuance

06/26/2023

CANCELED Motion (9:30 AM) (Judicial Officer: Kierny, Carli)
Vacated - Previously Decided
Plaintiff/Inmate's Addendum to Motion for Enlargement of Time

07/26/2023

 **Petition for Writ of Habeas Corpus** (9:30 AM) (Judicial Officer: Kierny, Carli)
Denied;
Journal Entry Details:

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-18-784811-W

COURT ORDERED, 8/7/23 MOTION ADVANCED AND DENIED as to Deft. does not need to be transported. COURT FURTHER ORDERED, PETITION DENIED as to the merits. Court directed State to prepare order. ;

08/07/2023

CANCELED Motion (9:30 AM) (Judicial Officer: Kierny, Carli)

Vacated - Previously Decided

Plaintiff / Inmate's- Ex Parte Motion for Transportation of Inmate for Court Appearance or, in the Alternative for Appearance by Telephone or Video Conference

08/21/2023

Motion (9:30 AM) (Judicial Officer: Kierny, Carli)

Plaintiff / Inmate's Motin for Judicial Notice to be Taken

DISTRICT COURT CIVIL COVER SHEET

A-18-784811-W

County, Nevada

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

XV

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

Plaintiff(s) (name/address/phone): <i>Justin Langford</i>	Defendant(s) (name/address/phone): <i>Warden Renee Baker</i>
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>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>Negligence</p> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <p>Malpractice</p> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<p>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>Probate</p> <p>Probate (select case type and estate value)</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>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>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>Civil Writ</p> <p>Civil Writ</p> <input checked="" type="checkbox"/> Writ of Habeas Corpus <input checked="" type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrantum	<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.

11-19-2018
Date

prepared by clerk
Signature of initiating party or representative

See other side for family-related case filings.

A-18-784811-W
CCS
Civil Cover Sheet
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1 **FFCO**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
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11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 JUSTIN ODELL LANGFORD,
10 #2748452,
11
12 Petitioner,
13
14 -vs-
15 THE STATE OF NEVADA,
16
17 Respondent.

CASE NO: A-18-784811-W
C-14-296556
DEPT NO: II

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER, RE: PETITION FOR WRIT OF HABEAS CORPUS**

DATE OF HEARING: JULY 26, 2023
TIME OF HEARING: 9:30 AM

18 THIS CAUSE having come on for hearing before the Honorable CARLI KIERNY,
19 District Judge, on the 26th day of July, 2023, the Petitioner not being present, proceeding in
20 propria persona, the Respondent being represented by STEVEN B. WOLFSON, Clark County
21 District Attorney, by and through KAREN MISHLER, Chief Deputy District Attorney, and
22 the Court having considered the matter, including briefs, transcripts, and documents on file
23 herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **PROCEDURAL HISTORY**

3 On March 14, 2014, Petitioner Justin Langford (hereinafter “Petitioner”) was charged
4 by way of Information with the following: Counts 1, 2, 6, 7, 8, 10, 11, and 12 – Lewdness
5 With A Child Under The Age Of 14 (Category A Felony - NRS 201.230); COUNTS 3, 4, and
6 5 – Sexual Assault With A Minor Under Fourteen Years Of Age (Category A Felony - NRS
7 200.364, 200.366); and COUNT 9 – Child Abuse, Neglect, or Endangerment (Category B
8 Felony - NRS 200.508(1)).

9 After several continuances at the Petitioner’s request, on March 7, 2016, a jury trial
10 convened and lasted nine days. On March 17, 2016, the jury returned a guilty verdict as to
11 Count 2, and not guilty as to all other Counts. On May 10, 2016, Petitioner was sentenced to
12 life with a possibility of parole after a term of 10 years have been served in the Nevada
13 Department of Corrections (“NDOC”). Petitioner received eight hundred forty-one (841) days
14 credit for time served. The Judgment of Conviction was filed on May 17, 2016.

15 On June 1, 2016, Petitioner filed a Notice of Appeal from his conviction. On June 27,
16 2017, the Nevada Supreme Court affirmed the Judgment of Conviction in Docket No. 70536.
17 Remittitur issued July 24, 2017.

18 On July 19, 2017, Petitioner filed a Motion to Modify And/or Correct Sentence
19 (“Motion to Modify”), Motion for Sentence Reduction (“Motion for Reduction”), Motion for
20 Production of Documents, Papers, Pleadings, and Tangible Property of Petitioner, a Motion
21 for Transcripts at the State’s Expense and Memorandum of Point and Authorities in Support
22 of Request for Transcripts at State’s Expense, a Motion to Obtain a Copy of a Sealed Record,
23 and a Motion to Withdraw Counsel. The State filed its Response to Petitioner’s Motion to
24 Modify and/or Correct Sentence and Motion for Sentence Reduction on August 2, 2017. On
25 August 10, 2017, the Court denied Petitioner’s Motion for Sentence Reduction, granted
26 Petitioner’s Motion for Production of Documents, Papers, Pleadings, and Tangible Property
27 of Petitioner, denied Petitioner’s Motion for Transcripts at State’s Expense, granted

28 //

1 Petitioner's Motion to withdraw Counsel, granted Petitioner's Motion to Obtain Copy of a
2 Sealed Record, and denied Petitioner's Motion to Modify/Correct Illegal Sentence.

3 On October 10, 2017, Petitioner filed a Motion to Claim and Exercise Rights
4 Guaranteed by the Constitution for the United States of America and Require the Presiding
5 Judge to Rule upon this Motion, and All Public Officers of this Court to Uphold Said Rights
6 and an affidavit in support of that Motion. He also filed a Motion to Reconsider Transcripts at
7 State's Expense, a Motion to Compel Court Orders, and a Motion to Reconsider Motions for
8 Correction of Illegal Sentence and Sentence Reduction. The State responded to the Motion to
9 Reconsider Motions for Correction of Illegal Sentence and Sentence Reduction on October 30,
10 2017. On October 31, 2017, the Court denied all of Petitioner's Motions, and the order was
11 filed on November 7, 2017. On November 27, 2017, Petitioner filed a Motion for Ancillary
12 Services and a Motion for Transcripts and Other Court Documents and State's Expense. The
13 State filed its Opposition to Petitioner's Motion for Ancillary Services on December 13, 2017.
14 The Court denied Petitioner's Motions on December 19, 2017, and the order was filed on
15 December 29, 2017.

16 On December 29, 2017, Petitioner filed a "Notice of Understanding of Intent and Claim
17 of Right as well as a Notice of Denial of Consent." He additionally filed a Petition for Writ of
18 Habeas Corpus (Post-Conviction), Memorandum in Support of Petition, Motion for
19 Appointment of Counsel, and Request for Evidentiary Hearing. The State responded to
20 Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction), Memo in Support, Motion
21 to Appoint Counsel, and Motion for Evidentiary Hearing on February 20, 2018. On March 7,
22 2018, Petitioner filed a Motion for Summary Judgment on Petition for Writ of Habeas Corpus
23 (Post-Conviction) Due to Respondent's Silence, and on March 15, 2018, he filed a Motion to
24 Strike State's Response [to Petitioner's Petition]. In both of those, he alleged that since the
25 State did not respond by February 19, 2018 (45 days from the order to respond), its Response
26 should be disregarded. Pursuant to Eighth Judicial District Court Rule 1.14(b), "If any day on
27 which an act required to be done by any one of these rules falls on a Saturday, Sunday or legal
28 holiday, the act may be performed on the next succeeding judicial day." February 19, 2018

1 was a legal holiday; thus, the State properly filed its Response on the next succeeding judicial
2 day, February 20, 2018.

3 On March 15, 2018, Petitioner filed a Motion for Stay of Sentence. The State responded
4 on April 2, 2018. That motion was denied on April 5, 2018. On March 30, 2018, Petitioner
5 filed a Motion to Modify and/or Correct Illegal Sentence and “Judicial Notice of Lack of
6 Jurisdiction” claiming that the District Court lacked subject matter jurisdiction to sentence
7 him.

8 On April 24, 2018, Petitioner filed a Pro Per Petition for Writ of Habeas Corpus. On
9 March 7, 2018, Petitioner filed a Motion for Summary Judgment on Writ of Habeas Corpus
10 (Post-Conviction). On May 1, 2018 the court issued an Order denying Petitioner’s Motion. On
11 June 1, 2018, the court entered an order denying Petitioner’s Motion to Modify and/or Correct
12 Illegal Sentence and “Judicial Notice of Lack of Jurisdiction. The court also entered its
13 Findings of Fact, Conclusions of Law, and Order. On July 2, 2018 this case was reassigned to
14 Department 15. Petitioner appealed and the Nevada Supreme Court affirmed on March 29,
15 2019, in Docket No. 75825.

16 On August 28, 2018 Petitioner filed a Motion to Recuse and Application for Bail. The
17 State filed its Response on October 8, 2018. On August 31, 2018, Petitioner filed a Post-
18 Conviction Petition Requesting a Genetic Marker Analysis. The State filed its Opposition on
19 September 17, 2018. The court denied Petitioner’s Motions on October 9, 2018 and filed its
20 Order on November 6, 2018. Petitioner appealed and the Nevada Supreme Court affirmed on
21 April 12, 2019, in Docket No. 77262.

22 On November 19, 2018, Petitioner filed a Petition for Writ of Habeas Corpus. The State
23 filed its Response on January 17, 2019. The court denied Petitioner’s Petition and filed its
24 Findings of Fact, Conclusions of Law and Order on March 11, 2019.

25 On March 28, 2019, Petitioner filed a Motion to Compel Production of Documents
26 Pursuant to 5 U.S.C.S. 552-Freedom of Information Act. The court denied Petitioner’s Motion
27 on April 25, 2019. The court filed its Order on May 17, 2019.

28 //

1 On August 28, 2019, Petitioner filed a Motion to Amend Judgment. The court granted
2 the Motion on September 19, 2019, directing the Clerk's Office to file an Amended Judgment
3 of Conviction with no change to the language, but amending the nature of the closure of the
4 case to reflect that the case was closed after a jury-trial conviction. The Amended Judgment
5 of Conviction was filed on September 23, 2019.

6 On September 25, 2019, Petitioner filed a Motion to Amend Judgment of Conviction
7 to Include All Jail Time Credits. The State filed its Opposition on October 16, 2019. The court
8 granted the Motion on October 17, 2019, finding that Petitioner was entitled to eight hundred
9 fifty-nine (859) days credit for time served. The Second Amended Judgment of Conviction
10 was filed on October 23, 2019.

11 On December 5, 2019, Petitioner filed a Motion to Hold Monique McNeill, Esq.,
12 Attorney of Record in Contempt for Failing to Forward Copy of Case File. On December 6,
13 2019, Petitioner filed a Petition for Writ of Habeas Corpus Ad Testificandum/Alternatively a
14 Telephone Hearing. On December 10, 2019, the court granted the Motion to Compel
15 Production of Transcripts and denied Petitioner's Petition as moot. The Findings of Fact,
16 Conclusions of Law, and Order was filed on December 23, 2019.

17 On January 7, 2020, the Court held a hearing on Petitioner's Motion to Hold Monique
18 McNeill, Esq., Attorney of Record in Contempt for Failing to Forward Copy of Case File. The
19 court continued the matter to allow Ms. McNeill to file an Opposition and appear at the
20 hearing. The court issued a Notice of Hearing for the Motion and continued the hearing.

21 On February 18, 2020, Ms. McNeill informed the Court she had provided Petitioner
22 with his file on four (4) different occasions. The Court then denied Petitioner's Motion to Hold
23 Monique McNeill, Esq., Attorney of Record in Contempt for Failing to Forward Copy of Case
24 File.

25 On February 25, 2020, Petitioner filed a Motion to Correct Illegal Sentence. The State
26 filed its Opposition to Petitioner's Motion to Correct Illegal Sentence on March 10, 2020. On
27 March 16, 2020, Petitioner filed a Memorandum of Law. On March 17, 2020, the district court
28 denied Petitioner's Motion. The Order was filed on March 26, 2020.

1 On March 30, 2020, Petitioner filed a Notice of Appeal, appealing the denial of
2 Petitioner's Motion to Correct Illegal Sentence. On April 24, 2020, the Nevada Supreme Court
3 dismissed Petitioner's appeal because Petitioner had no right to appeal the district court's
4 decision in Docket No. 80972-COA. Remittitur issued on May 21, 2020.

5 On May 29, 2020, Petitioner filed another Motion to Compel Production of Court
6 Documents by Clerk of the Court. The district court denied Petitioner's Motion on July 2,
7 2020.

8 On February 9, 2021, Petitioner filed a Petition for Writ of Habeas Corpus (Post-
9 Conviction), Motion for Appointment of Attorney, and Request for Evidentiary Hearing.
10 Petitioner filed an Addendum to Petition for Writ of Habeas Corpus Pursuant to the all Writs
11 Act on February 25, 2021. On March 8, 2021, Petitioner filed an additional Motion for
12 Appointment of Attorney. The same day, Petitioner also filed an Ex Parte Motion to Shorten
13 Time Pursuant to EDCR 5.513 and a Motion to Continue. On March 17, 2021, Petitioner filed
14 a Request for Judicial Notice and Judicial Action to be Taken, Motion for an Order to Produce
15 Prisoner, and Motion for Discovery/Motion for Order to Show Cause. The State filed its
16 Response on April 5, 2021.

17 On June 9, 2021, Petitioner filed a Motion to Correct Illegal Sentence. The State
18 responded June 16, 2021. Petitioner filed a Preemptive Reply to State's Opposition on June
19 22, 2021. The Motion was denied June 30, 2021. The Findings of Fact, Conclusions of Law
20 and Order was filed July 22, 2021.

21 On October 25, 2022, Petitioner filed a Petition for Writ of Habeas Corpus. On April
22 10, 2023, the State filed its Response. On May 31, 2023, Petitioner filed a Reply. On July 26,
23 2023, this Court denied the Petition, for the reasons stated as follows.

24 **ANALYSIS**

25 This Court finds postconviction relief is unwarranted because the Petition is
26 procedurally barred, due to being untimely, successive, and an abuse of the writ. Petitioner
27 fails to demonstrate the requisite good cause to overcome these procedural bars.

28 //

1 **I. THE PETITION IS PROCEDURALLY BARRED**

2 **a. The Petition is Time-Barred**

3 The mandatory provision of NRS 34.726(1) states:

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

8 (emphasis added).

9 Thus, a petition challenging a judgment of conviction’s validity must be filed within
10 one year of the judgment or within one year of the remittitur, unless there is good cause to
11 excuse delay. NRS 34.726(1). The Nevada Supreme Court has held that NRS 34.726 should
12 be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873–74, 34 P.3d 519, 528
13 (2001). The one-year time bar prescribed by NRS 34.726 begins to run from the date the
14 judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson
15 v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998); see Pellegrini v. State, 117
16 Nev. 860, 873, 34 P.3d 519, 528 (2001) (holding that NRS 34.726 should be construed by its
17 plain meaning).

18 The one-year time limit for preparing petitions for post-conviction relief under NRS
19 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002),
20 the Nevada Supreme Court affirmed the rejection of a habeas petition that was filed two days
21 late, pursuant to the “clear and unambiguous” mandatory provisions of NRS 34.726(1).
22 Gonzales reiterated the importance of filing the petition with the district court within the one-
23 year mandate, absent a showing of “good cause” for the delay in filing. Gonzales, 118 Nev. at
24 593, 590 P.3d at 902. The one-year time bar is therefore strictly construed. In contrast with the
25 short amount of time to file a notice of appeal, a prisoner has an ample full year to file a post-
26 conviction habeas petition, so there is no injustice in a strict application of NRS 34.726(1). Id.
27 at 593, 53 P.3d at 903.

28 //

1 Here, remittitur from Petitioner’s direct appeal was issued on July 24, 2017. Thus, under
2 NRS 34.726 Petitioner had until July 24, 2018 to file a timely habeas petition. The instant
3 Petition was filed on October 25, 2022—more than four years after this statutory deadline.
4 Due to this failure to timely raise his habeas claims, this Court must deny the Petition, absent
5 a showing of good cause and prejudice. NRS 34.726(1).

6 **b. The Petition is Successive and an Abuse of the Writ**

7 The Petition is also procedurally barred because it is successive. NRS 34.810(2)
8 reads:

9 A second or successive petition *must* be dismissed if the judge or
10 justice determines that it fails to allege new or different grounds for
11 relief and that the prior determination was on the merits or, if new and
12 different grounds are alleged, the judge or justice finds that the failure
of the petitioner to assert those grounds in a prior petition constituted
an abuse of the writ.

13 (emphasis added). Second or successive petitions are petitions that either fail to allege new or
14 different grounds for relief and the grounds have already been decided on the merits or that
15 allege new or different grounds but a judge or justice finds that the petitioner’s failure to assert
16 those grounds in a prior petition would constitute an abuse of the writ. Second or successive
17 petitions will only be decided on the merits if the petitioner can show good cause and prejudice.
18 NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

19 The Nevada Supreme Court has stated: “Without such limitations on the availability of
20 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-
21 conviction remedies. In addition, meritless, successive and untimely petitions clog the court
22 system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d at 950.
23 The Nevada Supreme Court recognizes that “[u]nlike initial petitions which certainly require
24 a careful review of the record, successive petitions may be dismissed based solely on the face
25 of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words,
26 if the claim or allegation was previously available with reasonable diligence, it is an abuse of
27 the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497-498 (1991).

28 //

1 Here, Petitioner has previously filed three postconviction petitions for writ of habeas
2 corpus—on April 24, 2018, November 19, 2018, and February 9, 2021. He has also filed
3 numerous other pleadings challenging the validity of his conviction. The claims he raises in
4 the instant Petition—that his conviction is invalid because the entirety of the Nevada Revised
5 Statutes is invalid—could have been raised in any of these prior petitions or pleadings.
6 Accordingly, the Petition is an abuse of the writ and is procedurally barred under NRS
7 34.810(2).

8 Additionally, as Petitioner could have raised his instant claim in a prior petition or on
9 direct appeal, this claim is waived pursuant to NRS 34.810(1)(b)(2). “A court must dismiss a
10 habeas petition if it presents claims that either were or could have been presented in an earlier
11 proceeding, unless the court finds both cause for failing to present the claims earlier or for
12 raising them again and actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646-
13 47, 29 P.3d 498, 523 (2001). Accordingly, this Court must deny the Petition in the absence of
14 a showing of good cause and prejudice. NRS 34.810(3).

15 **c. The Procedural Bars are Mandatory**

16 The Nevada Supreme Court has granted no discretion to the district courts regarding
17 whether to apply the statutory procedural bars. Instead, the Nevada Supreme Court has
18 emphatically and repeatedly stated that the procedural bars *must* be applied.

19 The district courts have *a duty* to consider whether post-conviction claims are
20 procedurally barred. State v. Eighth Judicial District Court (Riker), 121 Nev. 225, 234, 112
21 P.3d 1070, 1076 (2005). Riker held that the procedural bars “cannot be ignored when properly
22 raised by the State.” Id. at 233, 112 P.3d at 1075. Accord, State v. Huebler, 128 Nev. 192,
23 197, 275 P.3d 91, 94-95, footnote 2 (2012), cert. denied, 571 U.S. ___, 133 S.Ct. 988 (2013)
24 (“under the current statutory scheme the time bar in NRS 34.726 is *mandatory, not*
25 *discretionary*” (emphasis added)).

26 Even “a stipulation by the parties cannot empower a court to disregard the mandatory
27 procedural default rules.” State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003);
28 accord, Sullivan v. State, 120 Nev. 537, 540, footnote 6, 96 P.3d 761, 763-64, footnote 6 (2004)

1 (concluding that a petition was improperly treated as timely and that a stipulation to the
2 petition’s timeliness was invalid). The Sullivan Court “expressly conclude[d] that the district
3 court should have denied [a] petition” because it was procedurally barred. Sullivan, 120 Nev.
4 at 542, 96 P.3d at 765.

5 The district courts have zero discretion in applying the procedural bars because to allow
6 otherwise would undermine the finality of convictions. In holding that “[a]pplication of the
7 statutory procedural default rules to post-conviction habeas petitions is mandatory,” the Riker
8 Court noted:

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

12 Riker, 121 Nev. at 231, 112 P.3d at 1074.

13 Moreover, strict adherence to the procedural bars promotes the best interests of the
14 parties:

15 At some point, we must give finality to criminal cases. Should we
16 allow [petitioner’s] post conviction relief proceeding to go forward,
17 we would encourage defendants to file groundless petitions for federal
18 habeas corpus relief, secure in the knowledge that a petition for post-
19 conviction relief remained indefinitely available to them. This
20 situation would prejudice both the accused and the State since the
21 interests of both the petitioner and the government are best served if
22 post-conviction claims are raised while the evidence is still fresh.

20 Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989) (citations omitted).

21 **II. PETITIONER FAILS TO DEMONSTRATE GOOD CAUSE TO** 22 **OVERCOME THE PROCEDURAL BARS**

23 To avoid procedural default, under NRS 34.726, a defendant has the burden of pleading
24 and proving specific facts that demonstrate good cause for his failure to present his claim in
25 earlier proceedings or to otherwise comply with the statutory requirements, and that he will be
26 unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a); see Hogan v. Warden, 109
27 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep’t of Prisons, 104 Nev.
28 656, 659, 764 P.2d 1303, 1305 (1988). “A court *must* dismiss a habeas petition if it presents

1 claims that either were or could have been presented in an earlier proceeding, unless the court
2 finds both cause for failing to present the claims earlier or for raising them again and actual
3 prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646–47, 29 P.3d 498, 523 (2001)
4 (emphasis added).

5 “To establish good cause, appellants must show that an impediment external to the
6 defense prevented their compliance with the applicable procedural rule.” Clem v. State, 119
7 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119
8 Nev. 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. “A
9 qualifying impediment might be shown where the factual or legal basis for a claim was not
10 reasonably available at the time of default.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521,
11 525 (2003). The Court continued, “appellants cannot attempt to manufacture good cause[.]”
12 Id. at 621, 81 P.3d at 526. Examples of good cause include interference by State officials and
13 the previous unavailability of a legal or factual basis. See State v. Huebler, 128 Nev. Adv. Op.
14 19, 275 P.3d 91, 95 (2012). Clearly, any delay in the filing of the petition must not be the fault
15 of the petitioner. NRS 34.726(1)(a).

16 To avoid procedural default under NRS 34.726 and NRS 34.810, a defendant has the
17 burden of pleading and proving specific facts that demonstrate good cause for his failure to
18 present his claim in earlier proceedings or comply with the statutory requirements. See Hogan,
19 109 Nev. at 959-60, 860 P.2d at 715-16; Phelps, 104 Nev. at 659, 764 P.2d at 1305.

20 “To establish good cause, appellants *must* show that an impediment external to the
21 defense prevented their compliance with the applicable procedural rule.” Clem v. State, 119
22 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev.
23 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. Such an external
24 impediment could be “that the factual or legal basis for a claim was not reasonably available
25 to counsel, or that ‘some interference by officials’ made compliance impracticable.”
26 Hathaway, 119 Nev. at 251, 71 P.3d at 506 (quoting Murray v. Carrier, 477 U.S. 478, 488, 106
27 S. Ct. 2639, 2645 (1986)); see also Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing Harris v.

28 //

1 Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)). Any delay in filing of the petition
2 must not be the fault of the petitioner. NRS 34.726(1)(a).

3 The Nevada Supreme Court has clarified that, a defendant cannot attempt to
4 manufacture good cause. See Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there
5 must be a “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251, 71
6 P.3d at 506; (quoting Colley v. State, 105 Nev. at 236, 773 P.2d at 1230). Excuses such as the
7 lack of assistance of counsel when preparing a petition, as well as the failure of trial counsel
8 to forward a copy of the file to a petitioner have been found not to constitute good cause. See
9 Phelps, 104 Nev. at 660, 764 P.2d at 1306, superseded by statute on other grounds as
10 recognized in Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145 (2004); Hood v. State,
11 111 Nev. 335, 890 P.2d 797 (1995).

12 Here, Petitioner fails entirely to plead or demonstrate good cause for his failure to
13 comply with the procedural rules. This failure necessitates the wholesale rejection of his
14 claims, as it is Petitioner’s burden to plead specific facts demonstrating good cause. Riker, 121
15 Nev. at 232, 112 P.3d at 1075; see also Haberstroh, 119 Nev. at 181, 69 P.3d at 681; Bejarano
16 v. Warden, 112 Nev. 1466, 1471, 929 P.2d 922, 925 (1996); Hargrove v. State, 100 Nev. 498,
17 502-03, 686 P.2d 222, 225 (1984).

18 In Ground 3, Petitioner does appear to suggest that he had difficulties in obtaining
19 evidence. He fails to specify what evidence that would have been, or why it was necessary for
20 him to present his claims. Considering that his claim is that the entirety of the Nevada Revised
21 Statutes are unconstitutional and invalid, it does not appear any case evidence would be
22 relevant to this claim, which is largely based upon misinterpretations of legislative history and
23 case law. Accordingly, Petitioner has failed to demonstrate good cause to overcome the
24 procedural bars, and this Court must deny the Petition.

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ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus shall be, and it is, hereby denied.

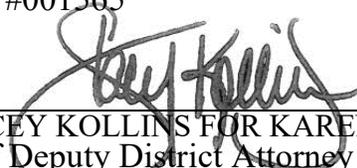
Dated this 3rd day of August, 2023



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

F80 4A0 06EE EC42
Carli Kierny
District Court Judge

BY



STACEY KOLLINS FOR KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730

sar/SVU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Justin Langford, Plaintiff(s)

CASE NO: A-18-784811-W

7 vs.

DEPT. NO. Department 2

8 Warden Renee Baker,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

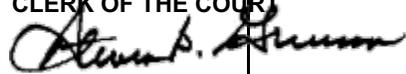
12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the
14 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

15 Service Date: 8/3/2023

16 maria case-bateson

maria.case-bateson@clarkcountyda.com

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1 NEFF

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

4
5 JUSTIN LANGFORD,

6 Petitioner,

Case No: A-18-784811-W

Dept No: II

7 vs.

8 STATE OF NEVADA; WARDEN RENEE
9 BAKER,

10 Respondent,

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

11 **PLEASE TAKE NOTICE** that on August 3, 2023, the court entered a decision or order in this matter, a
12 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 August 7, 2023.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Cierra Borum

Cierra Borum, Deputy Clerk

18
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 7 day of August 2023, 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 Justin Langford # 1159546
1200 Prison Rd.
26 Lovelock, NV 89419

27 /s/ Cierra Borum

28 Cierra Borum, Deputy Clerk

1 **FFCO**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 KAREN MISHLER
6 Chief Deputy District Attorney
7 Nevada Bar #013730
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 JUSTIN ODELL LANGFORD,
10 #2748452,
11
12 Petitioner,
13
14 -vs-
15 THE STATE OF NEVADA,
16
17 Respondent.

CASE NO: A-18-784811-W
C-14-296556
DEPT NO: II

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER, RE: PETITION FOR WRIT OF HABEAS CORPUS**

DATE OF HEARING: JULY 26, 2023
TIME OF HEARING: 9:30 AM

18 THIS CAUSE having come on for hearing before the Honorable CARLI KIERNY,
19 District Judge, on the 26th day of July, 2023, the Petitioner not being present, proceeding in
20 propria persona, the Respondent being represented by STEVEN B. WOLFSON, Clark County
21 District Attorney, by and through KAREN MISHLER, Chief Deputy District Attorney, and
22 the Court having considered the matter, including briefs, transcripts, and documents on file
23 herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **PROCEDURAL HISTORY**

3 On March 14, 2014, Petitioner Justin Langford (hereinafter “Petitioner”) was charged
4 by way of Information with the following: Counts 1, 2, 6, 7, 8, 10, 11, and 12 – Lewdness
5 With A Child Under The Age Of 14 (Category A Felony - NRS 201.230); COUNTS 3, 4, and
6 5 – Sexual Assault With A Minor Under Fourteen Years Of Age (Category A Felony - NRS
7 200.364, 200.366); and COUNT 9 – Child Abuse, Neglect, or Endangerment (Category B
8 Felony - NRS 200.508(1)).

9 After several continuances at the Petitioner’s request, on March 7, 2016, a jury trial
10 convened and lasted nine days. On March 17, 2016, the jury returned a guilty verdict as to
11 Count 2, and not guilty as to all other Counts. On May 10, 2016, Petitioner was sentenced to
12 life with a possibility of parole after a term of 10 years have been served in the Nevada
13 Department of Corrections (“NDOC”). Petitioner received eight hundred forty-one (841) days
14 credit for time served. The Judgment of Conviction was filed on May 17, 2016.

15 On June 1, 2016, Petitioner filed a Notice of Appeal from his conviction. On June 27,
16 2017, the Nevada Supreme Court affirmed the Judgment of Conviction in Docket No. 70536.
17 Remittitur issued July 24, 2017.

18 On July 19, 2017, Petitioner filed a Motion to Modify And/or Correct Sentence
19 (“Motion to Modify”), Motion for Sentence Reduction (“Motion for Reduction”), Motion for
20 Production of Documents, Papers, Pleadings, and Tangible Property of Petitioner, a Motion
21 for Transcripts at the State’s Expense and Memorandum of Point and Authorities in Support
22 of Request for Transcripts at State’s Expense, a Motion to Obtain a Copy of a Sealed Record,
23 and a Motion to Withdraw Counsel. The State filed its Response to Petitioner’s Motion to
24 Modify and/or Correct Sentence and Motion for Sentence Reduction on August 2, 2017. On
25 August 10, 2017, the Court denied Petitioner’s Motion for Sentence Reduction, granted
26 Petitioner’s Motion for Production of Documents, Papers, Pleadings, and Tangible Property
27 of Petitioner, denied Petitioner’s Motion for Transcripts at State’s Expense, granted

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1 Petitioner's Motion to withdraw Counsel, granted Petitioner's Motion to Obtain Copy of a
2 Sealed Record, and denied Petitioner's Motion to Modify/Correct Illegal Sentence.

3 On October 10, 2017, Petitioner filed a Motion to Claim and Exercise Rights
4 Guaranteed by the Constitution for the United States of America and Require the Presiding
5 Judge to Rule upon this Motion, and All Public Officers of this Court to Uphold Said Rights
6 and an affidavit in support of that Motion. He also filed a Motion to Reconsider Transcripts at
7 State's Expense, a Motion to Compel Court Orders, and a Motion to Reconsider Motions for
8 Correction of Illegal Sentence and Sentence Reduction. The State responded to the Motion to
9 Reconsider Motions for Correction of Illegal Sentence and Sentence Reduction on October 30,
10 2017. On October 31, 2017, the Court denied all of Petitioner's Motions, and the order was
11 filed on November 7, 2017. On November 27, 2017, Petitioner filed a Motion for Ancillary
12 Services and a Motion for Transcripts and Other Court Documents and State's Expense. The
13 State filed its Opposition to Petitioner's Motion for Ancillary Services on December 13, 2017.
14 The Court denied Petitioner's Motions on December 19, 2017, and the order was filed on
15 December 29, 2017.

16 On December 29, 2017, Petitioner filed a "Notice of Understanding of Intent and Claim
17 of Right as well as a Notice of Denial of Consent." He additionally filed a Petition for Writ of
18 Habeas Corpus (Post-Conviction), Memorandum in Support of Petition, Motion for
19 Appointment of Counsel, and Request for Evidentiary Hearing. The State responded to
20 Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction), Memo in Support, Motion
21 to Appoint Counsel, and Motion for Evidentiary Hearing on February 20, 2018. On March 7,
22 2018, Petitioner filed a Motion for Summary Judgment on Petition for Writ of Habeas Corpus
23 (Post-Conviction) Due to Respondent's Silence, and on March 15, 2018, he filed a Motion to
24 Strike State's Response [to Petitioner's Petition]. In both of those, he alleged that since the
25 State did not respond by February 19, 2018 (45 days from the order to respond), its Response
26 should be disregarded. Pursuant to Eighth Judicial District Court Rule 1.14(b), "If any day on
27 which an act required to be done by any one of these rules falls on a Saturday, Sunday or legal
28 holiday, the act may be performed on the next succeeding judicial day." February 19, 2018

1 was a legal holiday; thus, the State properly filed its Response on the next succeeding judicial
2 day, February 20, 2018.

3 On March 15, 2018, Petitioner filed a Motion for Stay of Sentence. The State responded
4 on April 2, 2018. That motion was denied on April 5, 2018. On March 30, 2018, Petitioner
5 filed a Motion to Modify and/or Correct Illegal Sentence and “Judicial Notice of Lack of
6 Jurisdiction” claiming that the District Court lacked subject matter jurisdiction to sentence
7 him.

8 On April 24, 2018, Petitioner filed a Pro Per Petition for Writ of Habeas Corpus. On
9 March 7, 2018, Petitioner filed a Motion for Summary Judgment on Writ of Habeas Corpus
10 (Post-Conviction). On May 1, 2018 the court issued an Order denying Petitioner’s Motion. On
11 June 1, 2018, the court entered an order denying Petitioner’s Motion to Modify and/or Correct
12 Illegal Sentence and “Judicial Notice of Lack of Jurisdiction. The court also entered its
13 Findings of Fact, Conclusions of Law, and Order. On July 2, 2018 this case was reassigned to
14 Department 15. Petitioner appealed and the Nevada Supreme Court affirmed on March 29,
15 2019, in Docket No. 75825.

16 On August 28, 2018 Petitioner filed a Motion to Recuse and Application for Bail. The
17 State filed its Response on October 8, 2018. On August 31, 2018, Petitioner filed a Post-
18 Conviction Petition Requesting a Genetic Marker Analysis. The State filed its Opposition on
19 September 17, 2018. The court denied Petitioner’s Motions on October 9, 2018 and filed its
20 Order on November 6, 2018. Petitioner appealed and the Nevada Supreme Court affirmed on
21 April 12, 2019, in Docket No. 77262.

22 On November 19, 2018, Petitioner filed a Petition for Writ of Habeas Corpus. The State
23 filed its Response on January 17, 2019. The court denied Petitioner’s Petition and filed its
24 Findings of Fact, Conclusions of Law and Order on March 11, 2019.

25 On March 28, 2019, Petitioner filed a Motion to Compel Production of Documents
26 Pursuant to 5 U.S.C.S. 552-Freedom of Information Act. The court denied Petitioner’s Motion
27 on April 25, 2019. The court filed its Order on May 17, 2019.

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1 On August 28, 2019, Petitioner filed a Motion to Amend Judgment. The court granted
2 the Motion on September 19, 2019, directing the Clerk's Office to file an Amended Judgment
3 of Conviction with no change to the language, but amending the nature of the closure of the
4 case to reflect that the case was closed after a jury-trial conviction. The Amended Judgment
5 of Conviction was filed on September 23, 2019.

6 On September 25, 2019, Petitioner filed a Motion to Amend Judgment of Conviction
7 to Include All Jail Time Credits. The State filed its Opposition on October 16, 2019. The court
8 granted the Motion on October 17, 2019, finding that Petitioner was entitled to eight hundred
9 fifty-nine (859) days credit for time served. The Second Amended Judgment of Conviction
10 was filed on October 23, 2019.

11 On December 5, 2019, Petitioner filed a Motion to Hold Monique McNeill, Esq.,
12 Attorney of Record in Contempt for Failing to Forward Copy of Case File. On December 6,
13 2019, Petitioner filed a Petition for Writ of Habeas Corpus Ad Testificandum/Alternatively a
14 Telephone Hearing. On December 10, 2019, the court granted the Motion to Compel
15 Production of Transcripts and denied Petitioner's Petition as moot. The Findings of Fact,
16 Conclusions of Law, and Order was filed on December 23, 2019.

17 On January 7, 2020, the Court held a hearing on Petitioner's Motion to Hold Monique
18 McNeill, Esq., Attorney of Record in Contempt for Failing to Forward Copy of Case File. The
19 court continued the matter to allow Ms. McNeill to file an Opposition and appear at the
20 hearing. The court issued a Notice of Hearing for the Motion and continued the hearing.

21 On February 18, 2020, Ms. McNeill informed the Court she had provided Petitioner
22 with his file on four (4) different occasions. The Court then denied Petitioner's Motion to Hold
23 Monique McNeill, Esq., Attorney of Record in Contempt for Failing to Forward Copy of Case
24 File.

25 On February 25, 2020, Petitioner filed a Motion to Correct Illegal Sentence. The State
26 filed its Opposition to Petitioner's Motion to Correct Illegal Sentence on March 10, 2020. On
27 March 16, 2020, Petitioner filed a Memorandum of Law. On March 17, 2020, the district court
28 denied Petitioner's Motion. The Order was filed on March 26, 2020.

1 On March 30, 2020, Petitioner filed a Notice of Appeal, appealing the denial of
2 Petitioner's Motion to Correct Illegal Sentence. On April 24, 2020, the Nevada Supreme Court
3 dismissed Petitioner's appeal because Petitioner had no right to appeal the district court's
4 decision in Docket No. 80972-COA. Remittitur issued on May 21, 2020.

5 On May 29, 2020, Petitioner filed another Motion to Compel Production of Court
6 Documents by Clerk of the Court. The district court denied Petitioner's Motion on July 2,
7 2020.

8 On February 9, 2021, Petitioner filed a Petition for Writ of Habeas Corpus (Post-
9 Conviction), Motion for Appointment of Attorney, and Request for Evidentiary Hearing.
10 Petitioner filed an Addendum to Petition for Writ of Habeas Corpus Pursuant to the all Writs
11 Act on February 25, 2021. On March 8, 2021, Petitioner filed an additional Motion for
12 Appointment of Attorney. The same day, Petitioner also filed an Ex Parte Motion to Shorten
13 Time Pursuant to EDCR 5.513 and a Motion to Continue. On March 17, 2021, Petitioner filed
14 a Request for Judicial Notice and Judicial Action to be Taken, Motion for an Order to Produce
15 Prisoner, and Motion for Discovery/Motion for Order to Show Cause. The State filed its
16 Response on April 5, 2021.

17 On June 9, 2021, Petitioner filed a Motion to Correct Illegal Sentence. The State
18 responded June 16, 2021. Petitioner filed a Preemptive Reply to State's Opposition on June
19 22, 2021. The Motion was denied June 30, 2021. The Findings of Fact, Conclusions of Law
20 and Order was filed July 22, 2021.

21 On October 25, 2022, Petitioner filed a Petition for Writ of Habeas Corpus. On April
22 10, 2023, the State filed its Response. On May 31, 2023, Petitioner filed a Reply. On July 26,
23 2023, this Court denied the Petition, for the reasons stated as follows.

24 **ANALYSIS**

25 This Court finds postconviction relief is unwarranted because the Petition is
26 procedurally barred, due to being untimely, successive, and an abuse of the writ. Petitioner
27 fails to demonstrate the requisite good cause to overcome these procedural bars.

28 //

1 **I. THE PETITION IS PROCEDURALLY BARRED**

2 **a. The Petition is Time-Barred**

3 The mandatory provision of NRS 34.726(1) states:

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

8 (emphasis added).

9 Thus, a petition challenging a judgment of conviction’s validity must be filed within
10 one year of the judgment or within one year of the remittitur, unless there is good cause to
11 excuse delay. NRS 34.726(1). The Nevada Supreme Court has held that NRS 34.726 should
12 be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873–74, 34 P.3d 519, 528
13 (2001). The one-year time bar prescribed by NRS 34.726 begins to run from the date the
14 judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson
15 v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998); see Pellegrini v. State, 117
16 Nev. 860, 873, 34 P.3d 519, 528 (2001) (holding that NRS 34.726 should be construed by its
17 plain meaning).

18 The one-year time limit for preparing petitions for post-conviction relief under NRS
19 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002),
20 the Nevada Supreme Court affirmed the rejection of a habeas petition that was filed two days
21 late, pursuant to the “clear and unambiguous” mandatory provisions of NRS 34.726(1).
22 Gonzales reiterated the importance of filing the petition with the district court within the one-
23 year mandate, absent a showing of “good cause” for the delay in filing. Gonzales, 118 Nev. at
24 593, 590 P.3d at 902. The one-year time bar is therefore strictly construed. In contrast with the
25 short amount of time to file a notice of appeal, a prisoner has an ample full year to file a post-
26 conviction habeas petition, so there is no injustice in a strict application of NRS 34.726(1). Id.
27 at 593, 53 P.3d at 903.

28 //

1 Here, remittitur from Petitioner’s direct appeal was issued on July 24, 2017. Thus, under
2 NRS 34.726 Petitioner had until July 24, 2018 to file a timely habeas petition. The instant
3 Petition was filed on October 25, 2022—more than four years after this statutory deadline.
4 Due to this failure to timely raise his habeas claims, this Court must deny the Petition, absent
5 a showing of good cause and prejudice. NRS 34.726(1).

6 **b. The Petition is Successive and an Abuse of the Writ**

7 The Petition is also procedurally barred because it is successive. NRS 34.810(2)
8 reads:

9 A second or successive petition *must* be dismissed if the judge or
10 justice determines that it fails to allege new or different grounds for
11 relief and that the prior determination was on the merits or, if new and
12 different grounds are alleged, the judge or justice finds that the failure
of the petitioner to assert those grounds in a prior petition constituted
an abuse of the writ.

13 (emphasis added). Second or successive petitions are petitions that either fail to allege new or
14 different grounds for relief and the grounds have already been decided on the merits or that
15 allege new or different grounds but a judge or justice finds that the petitioner’s failure to assert
16 those grounds in a prior petition would constitute an abuse of the writ. Second or successive
17 petitions will only be decided on the merits if the petitioner can show good cause and prejudice.
18 NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

19 The Nevada Supreme Court has stated: “Without such limitations on the availability of
20 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-
21 conviction remedies. In addition, meritless, successive and untimely petitions clog the court
22 system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d at 950.
23 The Nevada Supreme Court recognizes that “[u]nlike initial petitions which certainly require
24 a careful review of the record, successive petitions may be dismissed based solely on the face
25 of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words,
26 if the claim or allegation was previously available with reasonable diligence, it is an abuse of
27 the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497-498 (1991).

28 //

1 Here, Petitioner has previously filed three postconviction petitions for writ of habeas
2 corpus—on April 24, 2018, November 19, 2018, and February 9, 2021. He has also filed
3 numerous other pleadings challenging the validity of his conviction. The claims he raises in
4 the instant Petition—that his conviction is invalid because the entirety of the Nevada Revised
5 Statutes is invalid—could have been raised in any of these prior petitions or pleadings.
6 Accordingly, the Petition is an abuse of the writ and is procedurally barred under NRS
7 34.810(2).

8 Additionally, as Petitioner could have raised his instant claim in a prior petition or on
9 direct appeal, this claim is waived pursuant to NRS 34.810(1)(b)(2). “A court must dismiss a
10 habeas petition if it presents claims that either were or could have been presented in an earlier
11 proceeding, unless the court finds both cause for failing to present the claims earlier or for
12 raising them again and actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646-
13 47, 29 P.3d 498, 523 (2001). Accordingly, this Court must deny the Petition in the absence of
14 a showing of good cause and prejudice. NRS 34.810(3).

15 c. The Procedural Bars are Mandatory

16 The Nevada Supreme Court has granted no discretion to the district courts regarding
17 whether to apply the statutory procedural bars. Instead, the Nevada Supreme Court has
18 emphatically and repeatedly stated that the procedural bars *must* be applied.

19 The district courts have *a duty* to consider whether post-conviction claims are
20 procedurally barred. State v. Eighth Judicial District Court (Riker), 121 Nev. 225, 234, 112
21 P.3d 1070, 1076 (2005). Riker held that the procedural bars “cannot be ignored when properly
22 raised by the State.” Id. at 233, 112 P.3d at 1075. Accord, State v. Huebler, 128 Nev. 192,
23 197, 275 P.3d 91, 94-95, footnote 2 (2012), cert. denied, 571 U.S. ___, 133 S.Ct. 988 (2013)
24 (“under the current statutory scheme the time bar in NRS 34.726 is *mandatory, not*
25 *discretionary*” (emphasis added)).

26 Even “a stipulation by the parties cannot empower a court to disregard the mandatory
27 procedural default rules.” State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003);
28 accord, Sullivan v. State, 120 Nev. 537, 540, footnote 6, 96 P.3d 761, 763-64, footnote 6 (2004)

1 (concluding that a petition was improperly treated as timely and that a stipulation to the
2 petition’s timeliness was invalid). The Sullivan Court “expressly conclude[d] that the district
3 court should have denied [a] petition” because it was procedurally barred. Sullivan, 120 Nev.
4 at 542, 96 P.3d at 765.

5 The district courts have zero discretion in applying the procedural bars because to allow
6 otherwise would undermine the finality of convictions. In holding that “[a]pplication of the
7 statutory procedural default rules to post-conviction habeas petitions is mandatory,” the Riker
8 Court noted:

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

12 Riker, 121 Nev. at 231, 112 P.3d at 1074.

13 Moreover, strict adherence to the procedural bars promotes the best interests of the
14 parties:

15 At some point, we must give finality to criminal cases. Should we
16 allow [petitioner’s] post conviction relief proceeding to go forward,
17 we would encourage defendants to file groundless petitions for federal
18 habeas corpus relief, secure in the knowledge that a petition for post-
19 conviction relief remained indefinitely available to them. This
20 situation would prejudice both the accused and the State since the
21 interests of both the petitioner and the government are best served if
22 post-conviction claims are raised while the evidence is still fresh.

23 Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989) (citations omitted).

24 **II. PETITIONER FAILS TO DEMONSTRATE GOOD CAUSE TO** 25 **OVERCOME THE PROCEDURAL BARS**

26 To avoid procedural default, under NRS 34.726, a defendant has the burden of pleading
27 and proving specific facts that demonstrate good cause for his failure to present his claim in
28 earlier proceedings or to otherwise comply with the statutory requirements, and that he will be
unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a); see Hogan v. Warden, 109
Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep’t of Prisons, 104 Nev.
656, 659, 764 P.2d 1303, 1305 (1988). “A court *must* dismiss a habeas petition if it presents

1 claims that either were or could have been presented in an earlier proceeding, unless the court
2 finds both cause for failing to present the claims earlier or for raising them again and actual
3 prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646–47, 29 P.3d 498, 523 (2001)
4 (emphasis added).

5 “To establish good cause, appellants must show that an impediment external to the
6 defense prevented their compliance with the applicable procedural rule.” Clem v. State, 119
7 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119
8 Nev. 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. “A
9 qualifying impediment might be shown where the factual or legal basis for a claim was not
10 reasonably available at the time of default.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521,
11 525 (2003). The Court continued, “appellants cannot attempt to manufacture good cause[.]”
12 Id. at 621, 81 P.3d at 526. Examples of good cause include interference by State officials and
13 the previous unavailability of a legal or factual basis. See State v. Huebler, 128 Nev. Adv. Op.
14 19, 275 P.3d 91, 95 (2012). Clearly, any delay in the filing of the petition must not be the fault
15 of the petitioner. NRS 34.726(1)(a).

16 To avoid procedural default under NRS 34.726 and NRS 34.810, a defendant has the
17 burden of pleading and proving specific facts that demonstrate good cause for his failure to
18 present his claim in earlier proceedings or comply with the statutory requirements. See Hogan,
19 109 Nev. at 959-60, 860 P.2d at 715-16; Phelps, 104 Nev. at 659, 764 P.2d at 1305.

20 “To establish good cause, appellants *must* show that an impediment external to the
21 defense prevented their compliance with the applicable procedural rule.” Clem v. State, 119
22 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev.
23 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. Such an external
24 impediment could be “that the factual or legal basis for a claim was not reasonably available
25 to counsel, or that ‘some interference by officials’ made compliance impracticable.”
26 Hathaway, 119 Nev. at 251, 71 P.3d at 506 (quoting Murray v. Carrier, 477 U.S. 478, 488, 106
27 S. Ct. 2639, 2645 (1986)); see also Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing Harris v.

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1 Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)). Any delay in filing of the petition
2 must not be the fault of the petitioner. NRS 34.726(1)(a).

3 The Nevada Supreme Court has clarified that, a defendant cannot attempt to
4 manufacture good cause. See Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there
5 must be a “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251, 71
6 P.3d at 506; (quoting Colley v. State, 105 Nev. at 236, 773 P.2d at 1230). Excuses such as the
7 lack of assistance of counsel when preparing a petition, as well as the failure of trial counsel
8 to forward a copy of the file to a petitioner have been found not to constitute good cause. See
9 Phelps, 104 Nev. at 660, 764 P.2d at 1306, superseded by statute on other grounds as
10 recognized in Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145 (2004); Hood v. State,
11 111 Nev. 335, 890 P.2d 797 (1995).

12 Here, Petitioner fails entirely to plead or demonstrate good cause for his failure to
13 comply with the procedural rules. This failure necessitates the wholesale rejection of his
14 claims, as it is Petitioner’s burden to plead specific facts demonstrating good cause. Riker, 121
15 Nev. at 232, 112 P.3d at 1075; see also Haberstroh, 119 Nev. at 181, 69 P.3d at 681; Bejarano
16 v. Warden, 112 Nev. 1466, 1471, 929 P.2d 922, 925 (1996); Hargrove v. State, 100 Nev. 498,
17 502-03, 686 P.2d 222, 225 (1984).

18 In Ground 3, Petitioner does appear to suggest that he had difficulties in obtaining
19 evidence. He fails to specify what evidence that would have been, or why it was necessary for
20 him to present his claims. Considering that his claim is that the entirety of the Nevada Revised
21 Statutes are unconstitutional and invalid, it does not appear any case evidence would be
22 relevant to this claim, which is largely based upon misinterpretations of legislative history and
23 case law. Accordingly, Petitioner has failed to demonstrate good cause to overcome the
24 procedural bars, and this Court must deny the Petition.

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ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus shall be, and it is, hereby denied.

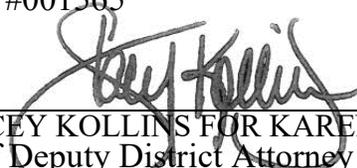
Dated this 3rd day of August, 2023



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

F80 4A0 06EE EC42
Carli Kierny
District Court Judge

BY



STACEY KOLLINS FOR KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730

sar/SVU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Justin Langford, Plaintiff(s)

CASE NO: A-18-784811-W

7 vs.

DEPT. NO. Department 2

8 Warden Renee Baker,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 8/3/2023

16 maria case-bateson

maria.case-bateson@clarkcountyda.com

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

January 28, 2019

A-18-784811-W Justin Langford, Plaintiff(s)
vs.
Warden Renee Baker, Defendant(s)

**January 28, 2019 9:00 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Hardy, Joe

COURTROOM: RJC Courtroom 11D

COURT CLERK: Kristin Duncan
Dara Yorke

RECORDER: Matt Yarbrough

REPORTER:

PARTIES

PRESENT: Villani, Jacob J. Attorney

JOURNAL ENTRIES

- Court indicated it had reviewed Plaintiff's Petition for Writ Of Habeas Corpus, as well as the State's Response. Finding that oral argument was not necessary due to its review of the pleadings, COURT ORDERED, Petition DENIED WITHOUT PREJUDICE for all of the reasons set forth in the State s response. Court indicated the State was to prepare the order, including the reasons from the response and submit it directly to the Court.

CLERK'S NOTE: A copy of this minute order was mailed to the Petitioner Justin Langford (1159546) Lovelock Correctional Center 1200 Prison Road Lovelock, NV 89419.// 1-30-19/ dy

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

February 25, 2019

A-18-784811-W Justin Langford, Plaintiff(s)
vs.
Warden Renee Baker, Defendant(s)

February 25, 2019 9:00 AM Motion to Strike

HEARD BY: Hardy, Joe **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Kristin Duncan

RECORDER: Matt Yarbrough

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Court noted that it was unclear whether the District Attorneys' Office was properly served with the instant Motion, as there was no response to said Motion, and a District Attorney had not appeared in open court. COURT ORDERED the instant Motion was hereby CONTINUED, and the Court would provide electronic service of said Motion to the District Attorneys' Office. COURT FURTHER ORDERED, the Opposition to the instant Motion would be DUE BY March 18, 2019, and any Reply would be DUE BY March 25, 2019.

CONTINUED TO: 4/3/19 9:00 AM

CLERK'S NOTE: A copy of this minute order, along with a copy of the Motion to Strike State's Response (Telephonic Hearing), was e-mailed to: James R. Sweetin, DDA [james.sweetin@clarkcountyda.com] and Jacob Villani, DDA [jacob.villani@clarkcountyda.com]. A copy of this minute order was mailed to: Justin Langford #1159546 [Lovelock Correctional Center 1200 Prison Road Lovelock, NV 89149]. (KD 2/27/19)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

May 19, 2021

A-18-784811-W Justin Langford, Plaintiff(s)
vs.
Warden Renee Baker, Defendant(s)

May 19, 2021 11:00 AM All Pending Motions

HEARD BY: Lilly-Spells, Jasmin **COURTROOM:** RJC Courtroom 12D

COURT CLERK:
Carolyn Jackson

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT: Raman, Jay Attorney
 State of Nevada Defendant

JOURNAL ENTRIES

- PETITION FOR WRIT OF HABEAS CORPUS . . . PLAINTIFF'S MOTION FOR APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING

Plaintiff is in custody of the Nevada Department of Corrections and not transported.

Court stated it would not hear oral arguments regarding the Petition for Writ of Habeas Corpus. Court stated regarding the Petition for Writ of Habeas Corpus the Petition is DENIED. Court finds the Petition is time-barred pursuant to NRS 34.726. The one-year time period begins to run from the date of conviction, Jefferson v. State, 114 Nev. 1084, 967 P.2d 1132 (1998). The one-year time period should be strictly applied under Gonzalez v. State, 118 Nev. 590, also at 53 P.3d 901 (2002). The application of the procedural bar is mandatory under State v. Eighth Judicial District Court (Riker), 121 Nev. 225, 112 P.3d 1070 (2005). Here, the Petitioner's Writ is over three years late. The Petitioner has not shown good cause for the delay. The Petitioner must show that an impediment extended to the defense preventing his compliance with the procedural rule. Clinton v. State, 119 Nev. 615, 81 P.3d 521 (2003). Petitioner here has not put forth any evidence to show that good cause exist. The Court further finds here Petitioner claim is incoherent and vague and do not therefore, warrant relief

for post conviction must be support with the factual allegations. *Hargrove v. State* 100 Nev. 498, 686 P.2d 222 (1984). Moreover, the Court has previously denied Petitioner's post-conviction petition. Additionally, the claim that this Court does not have subject matter jurisdiction is not supported by the evidence or any caselaw. With regards to Petitioner's claim and request for evidentiary hearing, the Court finds that there is no sixth amendment constitutional right to counsel in post-conviction proceedings. *Coleman v. Thompson*, 501 U.S. 722 (1991), 111 S. Ct. 2546 (1991). Nevada courts have also ruled that the Nevada Constitution does not provide for a right for post-conviction counsel either under *McCabe v. Warden* 112 Nev. 159, 912 P.2d (1996). Nevada courts do have the discretion to appoint counsel if the court is satisfied that the individual is indigent and the petition cannot be dismissed summarily under NRS 34.750. In making this determination, the court can consider (1) whether the issues are difficult, (2) defendant is unable to comprehend the proceeding and (3) whether counsel is unable to proceed with discovery. The Court finds here that although the Defendant is indigent if he is in the prison that the petition can be dismissed summarily and thus, the Petitioner is not entitled to counsel and therefore, the Motion to Appoint Counsel is DENIED. The Court also finds that there is no basis for an evidentiary hearing and thus, does not entitled the Plaintiff to relief so the request for evidentiary hearing is therefore, DENIED. State to prepare the Order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 19, 2021

A-18-784811-W Justin Langford, Plaintiff(s)
vs.
Warden Renee Baker, Defendant(s)

July 19, 2021 11:00 AM Motion

HEARD BY: Lilly-Spells, Jasmin **COURTROOM:** RJC Courtroom 12D

COURT CLERK:
Rem Lord

RECORDER: Maria Garibay

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT NOTED Mr. Langford was not transported. COURT stated findings and ORDERED, Plaintiff's Motion for Request in Status Check and Copy of Court Docket Sheet taken OFF CALENDAR.

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus

COURT MINUTES

January 31, 2022

A-18-784811-W Justin Langford, Plaintiff(s)
vs.
Warden Renee Baker, Defendant(s)

January 31, 2022 11:00 AM Minute Order

HEARD BY: Silva, Cristina D. COURTROOM: RJC Courtroom 11B

COURT CLERK: Kory Schlitz

RECORDER: Gina Villani

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- Pending before the Court is Petitioner Justin Langford's s Petition for Writ of Habeas Corpus. This Court has reviewed the Petition and has determined that a response would not assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his liberty as this matter has previously been briefed. Petitioner previously filed the same Petition on November 19, 2018 which was denied on January 28, 2019 by Judge Hardy and February 09, 2021 which was denied on May 19, 2021 by Judge Lilly-Spells. The Nevada Court of Appeals affirmed both decisions on August 13, 2019 and December 20, 2021 respectively. This Court adopts both decisions for denial on this matter. Therefore, COURT ORDERED Petition for Writ of Habeas Corpus DENIED.

NDC

CLERK'S NOTE: A copy of this Minute Order has been mailed to: Justin Langford #1159546, 1200 Prison Rd, Lovelock, Nevada 89419. (1-31-2022 ks)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

March 27, 2023

A-18-784811-W Justin Langford, Plaintiff(s)
vs.
Warden Renee Baker, Defendant(s)

March 27, 2023 9:30 AM Motion

HEARD BY: Kierny, Carli **COURTROOM:** RJC Courtroom 12B

COURT CLERK:
Jill Chambers

RECORDER: Jessica Kirkpatrick

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Court noted that it did not receive the State's response and provided counsel with a briefing schedule.

COURT ORDERED, MATTER SET FOR HEARING.

5/31/23 9:30 AM HEARING

CLERK'S NOTE: A copy of this minute order was mailed to Justin Langford via USPS. jmc 4/4/23

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus

COURT MINUTES

May 31, 2023

A-18-784811-W Justin Langford, Plaintiff(s)
vs.
Warden Renee Baker, Defendant(s)

May 31, 2023 9:30 AM Motion

HEARD BY: Kierny, Carli COURTROOM: RJC Courtroom 12B

COURT CLERK:
Jill Chambers

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES
PRESENT: Cobb, Tyrus Attorney

JOURNAL ENTRIES

- Court noted there was a Motion filed to continue the hearing set today. COURT ORDERED MOTION ADVANCED and GRANTED. COURT FURTHER MATTER CONTINUED.

CONTINUED TO: 7/26/23 9:30 AM

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, RE: PETITION FOR WRIT OF HABEAS CORPUS; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT MINUTES

JUSTIN ODELL LANGFORD,

Plaintiff(s),

vs.

WARDEN RENEE BAKER,

Defendant(s),

Case No: A-18-784811-W

Dept No: II

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 16 day of August 2023.

Steven D. Grierson, Clerk of the Court



— Cierra Borum, Deputy Clerk —

