

ORIGINAL
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1 **NOAS**
2 PATRICIA M. ERICKSON, ESQ.
3 Nevada Bar #3506
4 601 South Tenth Street, #206
5 Las Vegas, Nevada 89101
6 (702) 388-1055
7 Counsel for Defendant:
8 SAMUEL HOWARD

Nov 25 1 34 PM '03

Shirley L. Ruggione
CLERK

6 **DISTRICT COURT**
7 **CLARK COUNTY, NEVADA**

8 THE STATE OF NEVADA,
9 Plaintiff,
10 vs.
11 SAMUEL HOWARD,
12 Defendant.

No. 40593
Case No.: C53867
Dept. No.: V

FILED

JAN 07 2004

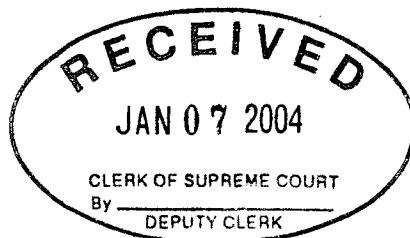
JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *G. Alvarado*
DEPUTY CLERK

14 Notice is hereby given that SAMUEL HOWARD, defendant above named, hereby
15 appeals to the Supreme Court of Nevada from the District Court's findings of fact,
16 conclusions of law and order dismissing his Petition for Writ of Habeas Corpus (Post
17 Conviction), which was filed on October 28, 2003.

18 DATED this 25th day of November, 2003.

19 Respectfully Submitted,

20 *Patricia M. Erickson* #6702
21 Patricia M. Erickson, Esq.
22 Nevada Bar No. 3506
23 601 South Tenth St., Suite 206
24 Las Vegas, NV 89101
25 702.388.1055
26 Counsel for Defendant:
27 SAMUEL HOWARD



RECEIVED
NOV 25 2003
CLERK OF SUPREME COURT

CERTIFICATE OF MAILING

I hereby certify that on this 25th day of November, 2003 a true and correct copy of the forgoing NOTICE OF APPEAL was deposited in the United States Mail, with postage prepaid, addressed to the following:

David Roger
District Attorney
200 South Third Street
Las Vegas, NV 89155


An Employee of Patricia M. Erickson, Esq.

FILED
DEC 30
1 16 PM '03
Shirley B. Ruggione
CLERK

ASTA
 PATRICIA M. ERICKSON, ESQ.
 Nevada Bar #3506
 601 South Tenth Street, #206
 Las Vegas, Nevada 89101
 (702) 388-1055
 Counsel for Defendant:
 SAMUEL HOWARD

DISTRICT COURT CLARK COUNTY, NEVADA

| | | |
|----------------------|---|------------------|
| THE STATE OF NEVADA, |) | |
| |) | |
| Plaintiff, |) | Case No.: C53867 |
| |) | Dept. No.: V |
| vs. |) | |
| |) | |
| SAMUEL HOWARD, |) | |
| |) | |
| Defendant. |) | |

CASE APPEAL STATEMENT

1. Petitioner/Appellant - Samuel Howard
 2. Judge - Honorable Jackie Glass
 3. Parties in district court - State of Nevada and Samuel Howard (Petitioner)
 4. Parties in appeal - same as above
 5. Counsel on appeal - for Samuel Howard - Patricia M. Erickson, 601 South Tenth St., Suite 206, Las Vegas, Nevada, 89101 **PRO BONO**; counsel for the State of Nevada, Clark Peterson, Chief Deputy District Attorney, counsel for the Respondents.
 6. Representation at district court - same as above
- ///
- ///
- ///
- ///

1 7. A "Petition For Writ of Habeas Corpus (Post Conviction) was filed on behalf
2 of SAMUEL HOWARD with the clerk of the Eighth Judicial District Court on
3 December 20, 2002. On October 23, 2003, the Honorable Jackie Glass entered an
4 order denying the Petition. A "Notice of Entry of Order" was filed with regard to
5 this order on October 28, 2003.

6 8. As SAMUEL HOWARD was previously sentenced to death, this is not a "fast
7 track" case.

8 DATED this 30th day of December, 2003.

9 Respectfully Submitted,

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Patricia M. Erickson, Esq.
Nevada Bar #3506
601 South Tenth St., Suite 206
Las Vegas, Nevada 89101
702.388.1055
Counsel for Appellant:
SAMUEL HOWARD

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 30th day of December, 2003, I mailed a true
3 and correct copy of the **CASE APPEAL STATEMENT**, first class mail, postage
4 prepaid, addressed to:

5 Clark Peterson
6 Chief Deputy District Attorney
7 Post Conviction and Appellate Division
8 200 South Third St.
9 Las Vegas, NV 89155

10 Samuel Howard #18329
11 P.O. Box 1989
12 Ely, NV 89301

13 
14 _____
15 Patricia M. Erickson
16
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18
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DATE: 12/30/03
CASE NO. 81-C-053867-C

I N D E X

TIME 10:41 AM
JUDGE: Glass, Jackie

STATE OF NEVADA

[] vs Howard, Samuel

[]

001 D1 Samuel Howard

003506 Erickson, Patricia M.
NO. 1 601 S. Tenth St. #206
Las Vegas, NV 89101

| NO. | FILED/REC CODE | REASON/DESCRIPTION | FOR | OC | SCH/PER | C |
|---------------------------------|----------------|--|-----|----|----------|---|
| 0001 | 05/21/81 | COMP/CRIMINAL COMPLAINT | 001 | | | |
| 0002 | 05/21/81 | IND /(GRAND JURY) INDICTMENT | 001 | | 05/21/81 | |
| 0003 | 02/15/91 | ROC /RECEIPT OF COPY OF REQUEST TO PLACE ON CALENDAR AND SUPPLEMENTAL BILLING BY | 001 | | 02/14/91 | Y |
| CIVIL DISTRICT ATTORNEYS OFFICE | | | | | | |
| 0004 | 02/19/91 | RSPN/RESPONSE TO DEFENDANTS MOTION FOR FEES IN EXCESS OF STATUTORY MAXIMUM | S | | | |
| 0005 | 02/13/91 | MOT /MOTION FOR FEES IN EXCESS OF STATUTORY GUIDELINES | 001 | GR | 03/07/91 | |
| 0006 | 02/26/91 | CERT/CERTIFICATE OF MAILING TO ATTORNEY GENERAL OF REQUEST TO PLACE ON CALENDAR | 001 | | 02/26/91 | |
| 0007 | 03/12/91 | MOT /MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION | 001 | GR | 07/07/92 | |
| 0008 | 03/25/91 | ORDR/ORDER GRANTING MOTION FOR FEES IN EXCESS OF STATUTORY GUIDELINES | 001 | | 03/25/91 | |
| 0009 | 12/16/91 | PET /PETITION FOR POST CONVICTION RELIEF | 001 | DN | 06/09/92 | |
| 0010 | 12/16/91 | NOTC/NOTICE OF PETITION | 001 | SC | 02/04/92 | |
| 0011 | 02/10/92 | REQT/MOTION TO DISMISS AMENDED PETITION FOR POST CONVICTION RELIEF | S | | 02/07/92 | |
| 0012 | 02/14/92 | OCAL/STATUS CHECK EVIDENTIARY HEARING | 001 | DN | 06/09/92 | |
| 0013 | 02/14/92 | STIP/STIPULATION VACATING PETITIONERS AMENDED PETITION FOR POST CONVICTION RELIEF SET | 001 | | 02/14/92 | Y |
| FOR 2-11-92 | | | | | | |
| 0014 | 02/25/92 | ORDR/ORDER VACATING PETITIONERS AMENDED PETITION FOR POST CONVICTION RELIEF | 001 | | 02/20/92 | |
| 0015 | 04/17/92 | RSPN/RESPONSE TO MOTION TO DISMISS AMENDED PETITION FOR POST CONVICTION RELIEF | 001 | | 04/17/92 | |
| 0016 | 04/21/92 | MOT /ALL PENDING MOTIONS 4/21/92 | 001 | | 04/21/92 | |
| 0017 | 04/28/92 | MOT /ALL PENDING MOTIONS 4-28-92 | | | 04/28/92 | |
| 0018 | 05/27/92 | ORDR/ORDER APPOINTING COUNSEL | 001 | | 05/07/92 | |
| 0019 | 06/09/92 | MOT /ALL PENDING MOTIONS 6/9/92 | 001 | | 06/09/92 | |
| 0020 | 07/07/92 | ORDR/ORDER OF EXECUTION | 001 | | 07/07/92 | |
| 0021 | 07/07/92 | WARR/WARRANT OF EXECUTION | 001 | | 07/07/92 | |
| 0022 | 07/07/92 | ORDR/ORDER DENYING AMENDED PETITION FOR POST CONVICTION RELIEF | 001 | | 07/07/92 | |
| 0023 | 07/14/92 | NOTC/NOTICE OF APPEAL | 001 | AP | 07/13/92 | |
| 0024 | 07/22/92 | NOAS/DESIGNATION OF RECORD ON APPEAL | 001 | | 07/22/92 | |
| 0025 | 07/29/92 | ORDR/ORDER RE; TRANSCRIPTS | 001 | | 07/27/92 | |
| 0026 | 08/12/92 | MOT /MOTION FOR EXTRAORDINARY FEES | 001 | GR | 08/25/92 | |
| 0027 | 08/17/92 | ROC /RECEIPT OF COPY | 001 | | 08/17/92 | |
| 0028 | 08/26/92 | ORDR/ORDER GRANTING MOTION FOR EXTRAORDINARY FEES | 001 | | 08/25/92 | |
| 0029 | 04/19/93 | EXPT/EX PARTE MOTION FOR ENTRY OF ORDER NUNC PRO TUNC FOR APPOINTMENT OF COUNSEL | 001 | | | |
| 0030 | 04/26/93 | ORDR/ORDER GRANTING EX PARTE MOTION FOR ENTRY OF ORDER NUNC PRO TUNC FOR APPOINTMENT | 001 | | | Y |

(Continued to page 2)

| NO. | FILED/REC CODE | REASON/DESCRIPTION | FOR | OC | SCH/PER | C |
|--|----------------|---|-----|----|----------|---|
| OF COUNSEL | | | | | | |
| 0031 | 11/18/93 | NSCO/NEVADA SUPREME COURT JUDGMENT / ORDERED APPEAL DISMISSED | 001 | GR | 11/18/93 | |
| 0032 | 01/19/94 | ORDR/STIPULATION AND ORDER FOR EXTRA-ORDINARY FEES | 001 | | | |
| 0033 | 01/04/94 | EXPT/EX PARTE MOTION FOR EXTRAORDINARY FEES | 001 | | | |
| 0034 | 01/04/94 | STAT/STATEMENT OF FEES AND COSTS | 001 | | | |
| 0035 | 12/20/02 | CASO/CASE (RE)ACTIVATED ON | | | | |
| 0036 | 12/20/02 | PET /DEFT'S PTN FOR WRIT OF HABEAS CORPUS /9 | 001 | VC | 06/12/03 | |
| 0037 | 12/20/02 | ASSG/REASSIGNMENT OF JUDGE Sobel TO JUDGE Glass | | | | |
| 0038 | 12/31/02 | MOT /DEFT'S PRO PER MTN TO APPOINT EFFECTIVE POST-CONVICTION/10 | 001 | DN | 01/14/03 | |
| 0039 | 01/07/03 | NOEV/NOTICE OF TRANSCRIPT(S) ON THE SHELVES | 001 | | | |
| 0040 | 01/14/03 | MOT /ALL PENDING MOTIONS FOR 1/14/03 | 001 | | 01/14/03 | |
| 0041 | 01/13/03 | OPPS/STATES OPPOSITION TO DEFENDANTS MOTION FOR APPOINTMENT OF POST CONVICTION | 001 | | | Y |
| COUNSEL | | | | | | |
| 0042 | 01/17/03 | NOTC/NOTICE OF APPEARANCE AS PRO BONO COUNSEL | 001 | | | |
| 0043 | 02/19/03 | SUBT/SUBSTITUTION OF ATTORNEY | 001 | | | |
| 0044 | 03/04/03 | MOT /STATE'S MTN TO DISMISS PTN FOR WRIT HABEAS CORPUS/12 | 001 | VC | 06/12/03 | |
| 0045 | 03/18/03 | MOT /ALL PENDING MOTIONS FOR 3/18/03 | 001 | | 03/18/03 | |
| 0046 | 03/20/03 | OCAL/STATUS CHECK: VERIFICATION OF PETITION VJ 06/03/03 | 001 | VC | 06/12/03 | |
| 0047 | 03/20/03 | MOT /ALL PENDING MOTIONS FOR 3/20/03 | 001 | | 03/20/03 | |
| 0048 | 03/28/03 | TRAN/REPORTER'S TRANSCRIPT DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS | 001 | | 03/18/03 | Y |
| STATES MOTION TO DISMISS DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS | | | | | | |
| 0049 | 04/03/03 | ARGU/ARGUMENT AND DECISION: DEFT'S PETITION/ STATE'S MTN TO DISMISS/STATUS CHECK: PET | 001 | VC | 06/12/03 | |
| 0050 | 04/03/03 | MOT /ALL PENDING MOTIONS 04/03/03 | 001 | | 04/03/03 | |
| 0051 | 04/03/03 | VERF/VERIFICATION OF PETITIONER | 001 | | | |
| 0052 | 04/03/03 | ROC /RECEIPT OF COPY | 001 | | 04/03/03 | |
| 0053 | 05/21/03 | MOT /DEFT'S MOTION TO EXTEND TIME TO FILE AN OPPOSITION TO STATE'S MTN TO DISMISS/18 | 001 | GR | 06/03/03 | |
| 0054 | 06/03/03 | MOT /HEARING RE: PETITION FOR WRIT OF HABEAS CORPUS | 001 | | 08/21/03 | |
| 0055 | 08/18/03 | APPL/EX PARTE APPLICATION TO EXTEND TIME TO FILE REPLY TO STATES RESPONSE TO | 001 | | | Y |
| AMENDED PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) | | | | | | |
| 0056 | 08/20/03 | PET /AMENDED PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) (DEATH PENALTY) | 001 | | | |
| 0057 | 08/20/03 | OPPS/PETITIONER HOWARDS OPPOSITION TO STATES MOTION TO DISMISS PETITION | 001 | | | |
| 0058 | 08/21/03 | ARGU/ARGUMENT/DECISION: DEFT'S WRIT FOR HABEAS CORPUS | 001 | DN | 10/02/03 | |
| 0059 | 08/20/03 | ROC /RECEIPT OF COPY | 001 | | 08/20/03 | |
| 0060 | 08/21/03 | ROC /RECEIPT OF COPY | 001 | | 08/21/03 | |
| 0061 | 08/21/03 | EXH /EXHIBITS TO PETITIONER HOWARDS OPPOSITION TO STATES MOTION TO DISMISS | 001 | | | Y |

(Continued to page 3)

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REASON/DESCRIPTION

FOR OC SCH/PER C

VOL II

| | | | | | |
|------|----------|---|-----|-------------|---|
| 0062 | 08/25/03 | NOTC/NOTICE OF EXHIBITS TO EXHIBITS TO PETITIONER HOWARD'S OPPOSITION TO STATE'S MOTION TO DISMISS IN THE VAULT | | 08/21/03 | Y |
| 0063 | 08/21/03 | EXH /EXHIBITS TO PETITIONER HOWARDS | 001 | | |
| | | OPPOSITION TO STATES MOTION TO DISMISS | 001 | | |
| 0064 | 09/24/03 | RPLY/STATES REPLY TO DEFENDANTS OPPOSITION | 001 | | Y |
| | | TO STATES MOTION TO DISMISS | 001 | | |
| | | DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION | | | |
| 0065 | 10/08/03 | TRAN/REPORTER'S TRANSCRIPT ARGUMENT/DECISION: PETITION FOR WRIT FOR HABEAS CORPUS | 001 | 10/02/03 | |
| 0066 | 10/08/03 | TRAN/REPORTER'S TRANSCRIPT STATES MOTION TO DISMISS DEFENDANTS PETITION FOR WRIT | 001 | 03/20/03 | Y |
| | | OF HABEAS CORPUS (POST-CONVICTION) DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS | | | |
| 0067 | 10/08/03 | TRAN/REPORTER'S TRANSCRIPT DEFENDANTS PRO PER MOTION FOR APPOINTMENT OF EFFECTIVE | 001 | 01/14/03 | Y |
| | | POST-CONVICTION COUNSEL DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS | 001 | | |
| 0068 | 10/08/03 | TRAN/REPORTER'S TRANSCRIPT STATES MOTION TO DISMISS DEFENDANTS PETITION FOR WRIT | 001 | 04/03/03 | Y |
| | | OF HABEAS CORPUS (POST CONVICTION) DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) STATUS CHECK: VERIFICATION OF PETITION | 001 | | |
| 0069 | 10/08/03 | TRAN/REPORTER'S TRANSCRIPT DEFENDANTS MOTION TO EXTEND TIME TO FILE AN OPPOSITION | 001 | 06/03/03 | Y |
| | | TO STATES MOTION TO DISMISS | 001 | | |
| 0070 | 10/08/03 | TRAN/REPORTER'S TRANSCRIPT HEARING: WRIT OF HABEAS CORPUS (POST CONVICTION) | 001 | 08/21/03 | |
| 0071 | 10/13/03 | ORDR/ORDER FOR TRANSCRIPT | 001 | 10/02/03 | |
| 0072 | 10/23/03 | JUDG/FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER | 001 | GR 10/23/03 | |
| 0073 | 10/28/03 | NOED/NOTICE OF ENTRY OF DECISION AND ORDER | 001 | 10/23/03 | |
| 0074 | 11/25/03 | NOAS/NOTICE OF APPEAL | 001 | AP 11/25/03 | |

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OCT 23 2 07 PM '03

Shirley B. Augustine
CLERK

1 **ORDR**

2 DAVID RÓGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 CLARK PETERSON
6 Chief Deputy District Attorney
7 Nevada Bar #006088
8 200 South Third Street
9 Las Vegas, Nevada 89155-2211
10 (702) 455-4711
11 Attorney for Plaintiff

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 THE STATE OF NEVADA,

15 Plaintiff,

16 -vs-

17 SAMUEL HOWARD,
18 #0624173

19 Defendant.

CASE NO: C53867

DEPT NO: V

20 **FINDINGS OF FACT, CONCLUSIONS OF**
21 **LAW AND ORDER**

22 DATE OF HEARING: October 2, 2003

23 TIME OF HEARING: 9:00 A.M.

24 THIS CAUSE having come on for hearing before the Honorable JACKIE GLASS,
25 District Judge, on the 2nd day of October, 2003, the Petitioner not being present, Proceeding
26 In Forma Pauperis with assistance from PATRICIA ERICKSON, appearing pro bono, the
27 Respondent being represented by DAVID ROGER, District Attorney, by and through
28 CLARK PETERSON, Chief Deputy District Attorney, and the Court having considered the
29 matter, including briefs, transcripts, arguments of counsel, and documents on file herein,
30 now therefore, the Court makes the following findings of fact and conclusions of law:

31 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

32 1. In 1983 Samuel Howard ("Howard") was convicted of murder and two counts of
33 robbery with a deadly weapon and sentenced to death by a jury.

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OCT 23 2003

COUNTY CLERK

1 2. Howard appealed directly to the Nevada Supreme Court, which affirmed his
2 conviction and sentence. Howard v. State, 102 Nev. 572, 729 P.2d 1341 (1986). His
3 subsequent petition for rehearing was denied.

4 3. Howard then filed his first petition for post-conviction relief. There was an
5 evidentiary hearing and his petition for post-conviction relief was denied. The Nevada
6 Supreme Court affirmed the district court's denial of Howard's petition for post-conviction
7 relief. Howard v. State, 106 Nev. 713, 800 P.2d 175 (1990). Again, a subsequent petition for
8 rehearing was denied.

9 4. Howard filed a second petition for post-conviction relief that was subsequently denied
10 in 1992 on procedural grounds. Howard appealed the denial of his second petition to the
11 Nevada Supreme Court, which dismissed his appeal on March 19, 1993. The Nevada
12 Supreme Court in its 1993 Order Dismissing Appeal found that Howard's latest petition was
13 so lacking in merit that briefing and oral argument were not even warranted.

14 5. Howard filed a petition for writ of habeas corpus in the United States District Court
15 that was dismissed without prejudice in 1988. His petition for writ of certiorari to the United
16 States Supreme Court was denied in 1993. His second petition for writ of habeas corpus in
17 the United States District Court has been stayed pending exhaustion of remedies in Nevada
18 state court.

19 6. On December 20, 2002, Howard filed the instant third petition for writ of habeas
20 corpus. The instant petition, however, was not properly before this Court until it was verified
21 by Howard on April 2, 2003.

22 7. Howard is not entitled to counsel on this petition as it is his third petition. NRS
23 34.820; see also Coleman v. Thompson, 501 U.S. 722, 725, 111 S.Ct. 2546, 2552 (1991);
24 McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 257-58 (1996).

25 8. The instant petition may be summarily denied. NRS 34.810. Howard's petition fails
26 to allege new or different grounds that have not already been addressed on direct appeal or
27 should have been addressed on direct appeal as required under NRS 34.810. Pelligrini v.
28 State, 117 Nev. 860, 34 P.3d 519 (2001).

1 9. Howard is time barred from bringing his instant petition under NRS 34.726(1) and
2 has failed to meet his burden of showing good cause for delay. The latest remittitur from the
3 Nevada Supreme Court was filed October 23, 1993, long after the one year time for such
4 petitions as detailed in NRS 34.726(1). Additionally, NRS 34.800 creates a presumption of
5 prejudice to the State in this case. Howard is also barred by the doctrine of equitable laches.
6 Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).

7 10. The State was not required to respond to the merits of Howard's instant petition
8 because they are procedurally barred. Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247,
9 252 (1997). Once the State raises procedural bars the burden falls on the defendant to show
10 good cause and actual prejudice. Only if this Court concludes that Howard has overcome the
11 procedural bars would the State have to answer the instant petition on the merits.

12 11. Howard has also failed to make a showing of good cause or actual prejudice for the
13 above failure. Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247, 252 (1997); see also
14 Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989).

15 12. Howard's claim that failures by counsel create good cause to avoid procedural bars is
16 without merit. Any counsel acting for Howard is his agent, so errors or failings on behalf of
17 said counsel are the risk Howard must bear and do not meet the definition of good cause for
18 delay. Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247, 252 (1997); see also Hathaway
19 v. State, 119 Nev. 30, 71 P.3d 503 (2003); Coleman v. Thompson, 501 U.S. 722, 111 S.Ct.
20 2546 (1991).

21 13. Similarly, remand from Federal Court does not constitute good cause to overcome
22 procedural bars. See Shumway v. Payne, 223 F.3d 982, 989 (9th Cir. 2000); see also,
23 Pelligrini v. State, 117 Nev. 860, 34 P.3d 519 (2001).

24 14. Because Howard has failed to show good cause or actual prejudice there is no need
25 for the State to address the merits of the petition. Crump v. Warden, 113 Nev. 293, 295, 934
26 P.2d 247, 252 (1997).

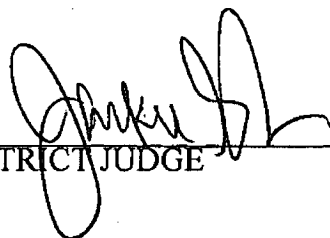
27 15. Finally, under 34.770, since Howard is not entitled to relief here, an evidentiary
28 hearing is not required.

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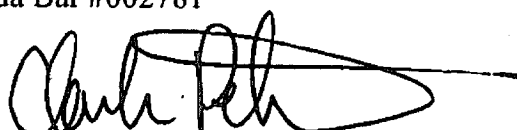
ORDER

THEREFORE, IT IS HEREBY ORDERED that Howard's Third Petition for Writ of Habeas Corpus shall be, and is, hereby denied.

DATED this 21st day of October, 2003.


DISTRICT JUDGE oo

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

BY 
CLARK PETERSON
Chief Deputy District Attorney
Nevada Bar #006088

ORIGINAL

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District Court

Clark County, Nevada

OCT 28 11 16 AM '03

Shirley B. Paraguirre
CLERK

SAMUEL HOWARD,

Petitioner,

vs

Case No. C53867

Dept. No. V

THE STATE OF NEVADA,

Respondent.

NOTICE OF ENTRY OF
DECISION AND ORDER

PLEASE TAKE NOTICE that on October 23, 2003, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on October 28, 2003.

SHIRLEY B. PARAGUIRRE, CLERK OF COURT

By: *Norreta Caldwell*
Norreta Caldwell, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on the 28 day of October, 2003, I placed a copy of this Notice of Entry of Decision and Order in:

The bin(s) located in the Office of the County Clerk of:
Clark County District Attorney's Office - Appellate Division
Attorney General's Office - Appellate Division

☐ The United States mail addressed as follows:

Attorney - Patricia Erickson
601 S 10 St. #206
Las Vegas, NV 89101

Norreta Caldwell
Norreta Caldwell, Deputy Clerk

1 **ORDR**

2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **CLARK PETERSON**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #006088**
8 **200 South Third Street**
9 **Las Vegas, Nevada 89155-2211**
10 **(702) 455-4711**
11 **Attorney for Plaintiff**

FILED

OCT 23 2 07 PM '03

Shirley B. Riggins
CLERK

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **THE STATE OF NEVADA,**
10 **Plaintiff,**

11 **-vs-**

12 **SAMUEL HOWARD,**
13 **#0624173**

14 **Defendant.**

CASE NO: C53867

DEPT NO: V

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

17 **DATE OF HEARING: October 2, 2003**

18 **TIME OF HEARING: 9:00 A.M.**

19 **THIS CAUSE** having come on for hearing before the Honorable JACKIE GLASS,
20 **District Judge,** on the 2nd day of October, 2003, the Petitioner not being present, Proceeding
21 **In Forma Pauperis** with assistance from PATRICIA ERICKSON, appearing pro bono, the
22 **Respondent** being represented by DAVID ROGER, District Attorney, by and through
23 **CLARK PETERSON,** Chief Deputy District Attorney, and the Court having considered the
24 **matter,** including briefs, transcripts, arguments of counsel, and documents on file herein,
25 **now therefore,** the Court makes the following findings of fact and conclusions of law:

26 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

27 **1. In 1983 Samuel Howard ("Howard") was convicted of murder and two counts of**
28 **robbery with a deadly weapon and sentenced to death by a jury.**

1 2. Howard appealed directly to the Nevada Supreme Court, which affirmed his
2 conviction and sentence. Howard v. State, 102 Nev. 572, 729 P.2d 1341 (1986). His
3 subsequent petition for rehearing was denied.

4 3. Howard then filed his first petition for post-conviction relief. There was an
5 evidentiary hearing and his petition for post-conviction relief was denied. The Nevada
6 Supreme Court affirmed the district court's denial of Howard's petition for post-conviction
7 relief. Howard v. State, 106 Nev. 713, 800 P.2d 175 (1990). Again, a subsequent petition for
8 rehearing was denied.

9 4. Howard filed a second petition for post-conviction relief that was subsequently denied
10 in 1992 on procedural grounds. Howard appealed the denial of his second petition to the
11 Nevada Supreme Court, which dismissed his appeal on March 19, 1993. The Nevada
12 Supreme Court in its 1993 Order Dismissing Appeal found that Howard's latest petition was
13 so lacking in merit that briefing and oral argument were not even warranted.

14 5. Howard filed a petition for writ of habeas corpus in the United States District Court
15 that was dismissed without prejudice in 1988. His petition for writ of certiorari to the United
16 States Supreme Court was denied in 1993. His second petition for writ of habeas corpus in
17 the United States District Court has been stayed pending exhaustion of remedies in Nevada
18 state court.

19 6. On December 20, 2002, Howard filed the instant third petition for writ of habeas
20 corpus. The instant petition, however, was not properly before this Court until it was verified
21 by Howard on April 2, 2003.

22 7. Howard is not entitled to counsel on this petition as it is his third petition. NRS
23 34.820; see also Coleman v. Thompson, 501 U.S. 722, 725, 111 S.Ct. 2546, 2552 (1991);
24 McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 257-58 (1996).

25 8. The instant petition may be summarily denied. NRS 34.810. Howard's petition fails
26 to allege new or different grounds that have not already been addressed on direct appeal or
27 should have been addressed on direct appeal as required under NRS 34.810. Pelligrini v.
28 State, 117 Nev. 860, 34 P.3d 519 (2001).

1 9. Howard is time barred from bringing his instant petition under NRS 34.726(1) and
2 has failed to meet his burden of showing good cause for delay. The latest remittitur from the
3 Nevada Supreme Court was filed October 23, 1993, long after the one year time for such
4 petitions as detailed in NRS 34.726(1). Additionally, NRS 34.800 creates a presumption of
5 prejudice to the State in this case. Howard is also barred by the doctrine of equitable laches.
6 Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).

7 10. The State was not required to respond to the merits of Howard's instant petition
8 because they are procedurally barred. Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247,
9 252 (1997). Once the State raises procedural bars the burden falls on the defendant to show
10 good cause and actual prejudice. Only if this Court concludes that Howard has overcome the
11 procedural bars would the State have to answer the instant petition on the merits.

12 11. Howard has also failed to make a showing of good cause or actual prejudice for the
13 above failure. Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247, 252 (1997); see also
14 Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989).

15 12. Howard's claim that failures by counsel create good cause to avoid procedural bars is
16 without merit. Any counsel acting for Howard is his agent, so errors or failings on behalf of
17 said counsel are the risk Howard must bear and do not meet the definition of good cause for
18 delay. Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247, 252 (1997); see also Hathaway
19 v. State, 119 Nev. 30, 71 P.3d 503 (2003); Coleman v. Thompson, 501 U.S. 722, 111 S.Ct.
20 2546 (1991).

21 13. Similarly, remand from Federal Court does not constitute good cause to overcome
22 procedural bars. See Shumway v. Payne, 223 F.3d 982, 989 (9th Cir. 2000); see also,
23 Pelligrini v. State, 117 Nev. 860, 34 P.3d 519 (2001).

24 14. Because Howard has failed to show good cause or actual prejudice there is no need
25 for the State to address the merits of the petition. Crump v. Warden, 113 Nev. 293, 295, 934
26 P.2d 247, 252 (1997).

27 15. Finally, under 34.770, since Howard is not entitled to relief here, an evidentiary
28 hearing is not required.

1 ORDER

2 THEREFORE, IT IS HEREBY ORDERED that Howard's Third Petition for Writ of
3 Habeas Corpus shall be, and is, hereby denied.

4 DATED this 25th day of October, 2003.

5
6 
DISTRICT JUDGE 

7
8 DAVID ROGER
9 DISTRICT ATTORNEY
10 Nevada Bar #002781

11 BY 

12 CLARK PETERSON
13 Chief Deputy District Attorney
14 Nevada Bar #006088
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CRIMINAL COURT MINUTES

81-C-053867-C STATE OF NEVADA vs Howard, Samuel

02/26/91 09:00 AM 00 MOTION FOR FEES IN EXCESS OF STATUTORY
GUIDELINES

HEARD BY: Jeffrey Sobel, Judge

OFFICERS: ALONA FUJII, Court Clerk
SHIRLEE CHRISTOFFERSON, Reporter/Recorder

PARTIES: 001 D1 Howard, Samuel
 000824 Schieck, David M.

N
Y

State represented by Ronald Bloxham, DDA. Defendant Howard not present, in custody, represented by David Schieck. Court advised Mr. Schieck that the state should be represented by the Attorney General's office and not the District Attorney's office. COURT ORDERED, matter continued.

3/7/91 @ 9 a.m.

CONTINUED TO: 03/07/91 09:00 AM 01

03/07/91 09:00 AM 01 MOTION FOR FEES IN EXCESS OF STATUTORY
GUIDELINES

HEARD BY: Jeffrey Sobel, Judge

OFFICERS: ALONA FUJII, Court Clerk
SHIRLEE CHRISTOFFERSON, Reporter/Recorder

PARTIES: STATE OF NEVADA

 001 D1 Howard, Samuel
 000824 Schieck, David M.

Y

N
Y

Mr. Schieck advised court that the State has no opposition. COURT ORDERED, motion GRANTED, Mr. Schieck to prepare order.

CON.

LATER: Stephanie Tucker and Keith Marcher, DAGs appeared and advised court that the Attorney General's office was not aware of date, and will notify court if there is opposition.

CRIMINAL COURT MINUTES

81-C-053867-C

STATE OF NEVADA

vs Howard, Samuel

CONTINUED FROM PAGE: 001

03/26/91 09:00 AM 00 MOTION FOR THE COURT TO ISSUE THIRD
SUPPLEMENTAL WARRANT OF EXECUTION

HEARD BY: Jeffrey Sobel, Judge

OFFICERS: ALONA FUJII, Court Clerk
SANDRA SMITH, Relief Clerk
SHIRLEE CHRISTOFFERSON, Reporter/Recorder

PARTIES: NO PARTIES PRESENT

There being no parties present, COURT ORDERED: Matter continued for one
week.

CUSTODY (NSP)

CONTINUED TO: 04/02/91 09:00 AM 01

04/02/91 09:00 AM 01 MOTION FOR THE COURT TO ISSUE THIRD
SUPPLEMENTAL WARRANT OF EXECUTION

HEARD BY: Jeffrey Sobel, Judge

OFFICERS: ALONA FUJII, Court Clerk
SHIRLEE CHRISTOFFERSON, Reporter/Recorder

PARTIES: STATE OF NEVADA
003776 Monroe, Vicki J.
001 D1 Howard, Samuel
000824 Schieck, David M.

Y
Y
N
Y

Statements by counsel. Ms. Monroe advised court that this is Mr. Seaton's
case. Mr. Schieck advised court that he just received a copy of warrant
from Ms. Monroe today in court and there are a few errors. Court advised
counsel that it is reluctant to sign a warrant of execution which is not
letter perfect. COURT ORDERED, matter continued.

CUSTODY - NSP

APRIL 9, 1991 @ 9 A.M. -- STATE'S MTN CONTINUED

CONTINUED TO: 04/09/91 09:00 AM 02

CONTINUED ON PAGE: 003

CRIMINAL COURT MINUTES

81-C-053867-C STATE OF NEVADA

vs Howard, Samuel

CONTINUED FROM PAGE: 002

04/09/91 09:00 AM 02 MOTION FOR THE COURT TO ISSUE THIRD
SUPPLEMENTAL WARRANT OF EXECUTION

HEARD BY: Jeffrey Sobel, Judge

OFFICERS: ALONA FUJII, Court Clerk
SHIRLEE CHRISTOFFERSON, Reporter/Recorder

PARTIES: STATE OF NEVADA
002274 Smith, Ulrich W.
001 D1 Howard, Samuel
000824 Schieck, David M.

Y

Y

N

Y

Mr. Schieck requested to review warrant of execution. COURT ORDERED, matter
trailed.

LATER: Mr. Schieck advised court that he has reviewed warrant and has no
opposition. Third supplemental Warrant and Order of execution signed and
filed in open court. COURT ORDERED, the Director of the department of
Prisons shall during the week beginning Monday, the 6th day of May 1991,
carry out said judgment and sentence by executing said Samuel Howard by the
administration to him, said Defendant Samuel Howard, an injection of a
lethal drug in the manner as required by law and pursuant to the Third
Supplemental Warrant of Execution.

CUSTODY - NSP

CONTINUED TO: 04/21/92 09:00 AM 03

02/04/92 09:00 AM 00 PETITION FOR POST CONVICTION RELIEF

HEARD BY: Jeffrey Sobel, Judge

OFFICERS: ALONA CANDITO, Court Clerk
SHIRLEE CHRISTOFFERSON, Reporter/Recorder

PARTIES: STATE OF NEVADA
000862 Harmon, Melvyn T.

Y

Y

Mr. Harmon requested this matter be continued for one week. COURT ORDERED,
MATTER CONTINUED.

CUSTODY - SNP

//Clerk telephoned Mr. Potter's office and advised continuance date.
(Michelle 2/5/92 @2:43 p.m. ac)

CONTINUED TO: 02/11/92 09:00 AM 01

CONTINUED ON PAGE: 004

CRIMINAL COURT MINUTES

81-C-053867-C STATE OF NEVADA

vs Howard, Samuel

CONTINUED FROM PAGE: 003

02/11/92 09:00 AM 01 PETITION FOR POST CONVICTION RELIEF

HEARD BY: Jeffrey Sobel, Judge

OFFICERS: ALONA CANDITO, Court Clerk
SHIRLEE CHRISTOFFERSON, Reporter/RecorderPARTIES: STATE OF NEVADA
003776 Monroe, Vicki J.Y
Y

Ms. Monroe advised Court that Mr. Harmon was present earlier and he spoke with Mr. Schieck, who requested this matter be continued. Ms. Monroe submitted a copy of the State's response to the Court. COURT ORDERED, MATTER CONTINUED FOR ONE MONTH. Court advised Ms. Monroe for the State to contact Mr. Schieck and advise continuance date. All courtesy copies should be filed and submitted to the Court one full week prior to hearing date. Mr. Schieck to advised Court whether the Defendant is entitled to an Evidentiary Hearing, or if one is necessary.

3/12/92 @ 9 A.M. -- STATUS CHECK: EVIDENTIARY HEARING

CUSTODY - NSP

CONTINUED TO: 04/21/92 09:00 AM 02

03/12/92 09:00 AM 00 STATUS CHECK EVIDENTIARY HEARING

HEARD BY: Jeffrey Sobel, Judge

OFFICERS: ALONA CANDITO, Court Clerk
LEONE DUMIRE, Relief Clerk
DEBRA WINN, Reporter/RecorderPARTIES: STATE OF NEVADA
001648 Barker, David B.N
Y

MR. BARKER STATED THERE WAS A STIPULATION IN HIS FILE THAT HAD NOT BEEN SIGNED BY MR. HARMON, DATED 2/12/92 TO CONTINUE THIS HEARING DATE, HOWEVER, BEYOND THAT, HE DID NOT KNOW WHAT TO TELL THE COURT.

COURT ORDERED: THIS MATTER IS PASSED FOR ONE WEEK AND THE COURT CLERK WILL NOTIFY MR. WHETHERALL AND MR. SCHIECK OF NEW COURT DATE AND TO HAVE THEM PRESENT TO DETERMINE THE STATUS OF THIS MATTER AND IF AN EVIDENTIARY HEARING IS NECESSARY.

CUSTODY

3/19/92 @ 9 AM - STATUS CHECK: EVIDENTIARY HEAIRNG

CRIMINAL COURT MINUTES

81-C-053867-C STATE OF NEVADA

vs Howard, Samuel

CONTINUED FROM PAGE: 004

ON 3/12/92 THE CT. CLERK CALLED MR. WETHERALL'S OFFICE AND INFORMED HIS SECRETARY OF NEW DATE, AS WELL AS MR. SCHIECK'S OFFICE.

MR. WETHERALL'S SECRETARY APPOLOGIZED FOR MR. WETHERALL NOT BEING PRESENT AND FOR THE MIX UP AND STATED THERE WAS A FILE STAMPED COPY OF THE STIPULATION AND ORDER SIGNED BY THE COURT TO CONTINUE THE MATTER TO 4/21/92, HOWEVER, WOULD HAVE MR. WETHERALL PRESENT AT NEXT HEARING DATE.

CONTINUED TO: 03/19/92 09:00 AM 01

03/19/92 09:00 AM 01 STATUS CHECK EVIDENTIARY HEARING

HEARD BY: Jeffrey Sobel, Judge

OFFICERS: ALONA CANDITO, Court Clerk
SHIRLEE CHRISTOFFERSON, Reporter/Recorder

PARTIES: STATE OF NEVADA
003776 Monroe, Vicki J.

Y
Y

Defendant represented by Peter Wetherall. Court inquired whether Counsel are ready in terms of the petition. Ms. Monroe advised Court that the State filed a motion to dismiss which has not been answered. Mr. Wetherall advised Court that he will be answering the motion to dismiss. COURT ORDERED, THIS MATTER CONTINUED, COUNSEL TO SUBMIT COURTESY COPIES TO THE COURT. FURTHER ORDERED, THE 4/9/92 MOTION TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION IS ALSO CONTINUED TO NEXT HEARING DATE.

CUSTODY - NSP

CONTINUED TO: 04/21/92 09:00 AM 02

04/21/92 09:00 AM 00 ALL PENDING MOTIONS 4/21/92

HEARD BY: Jeffrey Sobel, Judge

OFFICERS: ALONA CANDITO, Court Clerk
SHIRLEE CHRISTOFFERSON, Reporter/Recorder

PARTIES: STATE OF NEVADA
000981 Noxon, Arthur G.

Y
Y

DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF

STATE'S MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION

STATUS CHECK: EVIDENTIARY HEARING

CRIMINAL COURT MINUTES

81-C-053867-C STATE OF NEVADA

vs Howard, Samuel

CONTINUED FROM PAGE: 005

Defendant represented by Peter Wetherall, who advised Court that he has answered the motion. Court advised Counsel that it has not seen the answer as it did not receive a courtesy copy. Mr. Noxon advised Court that this is Mr. Harmon's case. COURT ORDERED, MATTER CONTINUED. Mr. Wetherall advised Court that he was appointed in the Federal Court matter and does not believe that the motion for appointment of counsel was ever filed. COURT ORDERED, MR. WETHERALL TO PUT IN WRITING AND COURT WILL TAKE UP NEXT WEEK.

CUSTODY - NSP

4/28/92 - ALL PENDING MOTIONS

04/28/92 09:00 AM 00 ALL PENDING MOTIONS 4-28-92

HEARD BY: Jeffrey Sobel, Judge

OFFICERS: ALONA CANDITO, Court Clerk
SHARON PHELPS, Relief Clerk
SHIRLEE CHRISTOFFERSON, Reporter/Recorder

PARTIES: STATE OF NEVADA
003776 Monroe, Vicki J.

Y
Y

DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF/STATE'S MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION/STATUS CHECK: EVIDENTIARY HEARING

Peter Wetherall present for the defendant. Court ORDERED Mr. Wetherall officially appointed to represent the deft. on the Petition for Post Conviction Relief. Court advised it needs to review the "A" and "B" files on this case, and ORDERED, matters continued.

CUSTODY (NSP)...5-19-92 @ 9:00 A.M. DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF/STATE'S MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION/STATUS CHECK: EVIDENTIARY HEARING

CRIMINAL COURT MINUTES

81-C-053867-C STATE OF NEVADA

vs Howard, Samuel

CONTINUED FROM PAGE: 006

06/09/92 09:00 AM 00 ALL PENDING MOTIONS 6/9/92

HEARD BY: Jeffrey Sobel, Judge

OFFICERS: ALONA CANDITO, Court Clerk
ARLENE BLAZI, Reporter/RecorderPARTIES: STATE OF NEVADA
000981 Noxon, Arthur G.
004352 Owens, Steven S.

001 D1 Howard, Samuel
000824 Schieck, David M.Y
Y
Y

N
Y

DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF

STATE'S MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF
EXECUTION

STATUS CHECK: EVIDENTIARY HEARING

Defendant also represented by Peter Wetherall. Court advised counsel that it has reviewed the "A" and "B" files. COURT ORDERED, PETITION FOR POST CONVICTION RELIEF IS DENIED. Court inquired about the supplemental warrant of execution. State advised court that it does not have the warrant prepared. COURT ORDERED, MOTION FOR THIRD SUPPLEMENTAL WARRANT CONTINUED.

CUSTODY - NSP

6/23/92 -- STATE'S MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT
OF EXECUTION06/23/92 09:00 AM 07 MOTION FOR THE COURT TO ISSUE THIRD
SUPPLEMENTAL WARRANT OF EXECUTION

HEARD BY: Jeffrey Sobel, Judge

OFFICERS: ALONA CANDITO, Court Clerk
PATRICIA CAMAROTE, Relief Clerk
ARLENE BLAZI, Reporter/RecorderPARTIES: STATE OF NEVADA
001648 Barker, David B.

001 D1 Howard, Samuel
001988 Potter, III, Cal J.N
Y

N
YCONTINUED ON PAGE: 008
MINUTES DATE: 06/23/92

CRIMINAL COURT MINUTES

81-C-053867-C STATE OF NEVADA

vs Howard, Samuel

CONTINUED FROM PAGE: 007

Mr. Potter objected to the findings of facts not being prepared in this case. Mr. Barker advised Court that what routinely happens is a very expensive execution is put on, and then a stay is received from Judge Reed. Mr. Barker requested a continuance for Mr. Harmon to appear as the findings have not been filed. COURT ORDERED, MATTER CONTINUED. Mr. Potter advised Court that he needs the findings for Federal Court.

CUSTODY - NSP

7/7/92 -- 9 AM -- STATE'S MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION

CONTINUED TO: 07/07/92 09:00 AM 08

07/07/92 09:00 AM 08 MOTION FOR THE COURT TO ISSUE THIRD
SUPPLEMENTAL WARRANT OF EXECUTION

HEARD BY: Jeffrey Sobel, Judge

OFFICERS: ALONA CANDITO, Court Clerk
PATRICIA CAMAROTE, Relief Clerk
SHIRLEE CHRISTOFFERSON, Reporter/Recorder

PARTIES: STATE OF NEVADA
001398 Bloxham, Ronald C.

Y
Y

Peter Wetherall present on behalf of defendant. Court stated it received the Findings of Facts last evening, has read them and further stated they do comply. Court signed the Order Denying Amended Petition, Order for Execution and the Warrant of Execution in open Court and returned them to the State for filing in open Court and Service. Mr. Wetherall stated an indication that Mr. Harmon wants to wait and further stated that, once this matter is resolved here, it will go back to Federal Court, due to the fact that Federal Court wants to take over this case after the State's claims are exhausted. Mr. Bloxham objected. Court stated that the State is entitled to the Warrant. COURT ORDERED, MOTION GRANTED.

CUSTODY (NSP)

CRIMINAL COURT MINUTES

81-C-053867-C

STATE OF NEVADA

vs Howard, Samuel

CONTINUED FROM PAGE: 008

08/25/92 09:00 AM 00 MOTION FOR EXTRAORDINARY FEES

HEARD BY: Jeffrey Sobel, Judge

OFFICERS: ALONA CANDITO, Court Clerk
SHIRLEE CHRISTOFFERSON, Reporter/Recorder

| | | |
|----------|---------------------|---|
| PARTIES: | STATE OF NEVADA | Y |
| 000360 | Paine, Charles A. | Y |
| 001 D1 | Howard, Samuel | N |
| 001988 | Potter, III, Cal J. | Y |

Mr. Paine advised court that the state has no objection. COURT ORDERED,
MOTION GRANTED.

CUSTODY - NSP

01/09/03 09:00 AM 00 DEFT'S PTN FOR WRIT OF HABEAS CORPUS /9

HEARD BY: Jackie Glass, Judge; Dept. 5

OFFICERS: Billie Jo Craig, Court Clerk
Shirley Parawalsky, Reporter/Recorder

| | | |
|----------|-----------------------|---|
| PARTIES: | STATE OF NEVADA | Y |
| 002781 | Roger, David J. | Y |
| 006088 | Peterson, Clark A. | Y |
| 001 D1 | Howard, Samuel | N |
| 003506 | Erickson, Patricia M. | Y |

Mr. Peterson advised this was a Pro Per Motion and objected to Ms. Erickson being present and speaking. She has not been appointed and the hearing is next week to appoint counsel and defendant has no right to an attorney. There was a briefing schedule set and a hearing was supposed to be today. However, there was a subsequent petition filed in December that the State wishes to respond to in 60 days. He requested the time to respond be extended. Ms. Erickson represented she has been representing defendant for 6-1/2 years in his federal case and Judge Hicks ordered her to represent defendant and amend the petition. COURT ORDERED, this matter CONTINUED to the same date as Defendant's Pro Per Motion for Appointment of Effective Post-Conviction Counsel. Court directed Ms. Erickson to provide Mr. Peterson and the Court with a copy of the documentation where Judge Hicks ordered her to represent defendant in his federal case and to amend the petition.

NDC

CONTINUED TO: 01/14/03 09:00 AM 01

PRINT DATE: 12/30/03

PAGE: 009

CONTINUED ON PAGE: 010
MINUTES DATE: 01/09/03

CRIMINAL COURT MINUTES

81-C-053867-C

STATE OF NEVADA

vs Howard, Samuel

CONTINUED FROM PAGE: 009

01/14/03 09:00 AM 00 ALL PENDING MOTIONS FOR 1/14/03

HEARD BY: Jackie Glass, Judge; Dept. 5

OFFICERS: Billie Jo Craig, Court Clerk
Shirlee Parawalsky, Reporter/Recorder

PARTIES: STATE OF NEVADA
002781 Roger, David J.
000439 Tufteland, James N.

001 D1 Howard, Samuel
003506 Erickson, Patricia M.

Y
Y
Y

N
Y

DEFENDANT'S PRO PER MOTION FOR APPOINTMENT OF EFFECTIVE POST-CONVICTION
COUNSEL...DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION)

Mr. Tufteland advised defendant has a federal petition with constitutional claims which are not exhausted. The Pro Per Petition was actually prepared by Ms. Erickson and is not verified. He intends to file a Motion to Dismiss as defendant not entitled to counsel. COURT ORDERED, Defendant's Pro Per Motion for Appointment of Effective Post-Conviction Counsel is DENIED. As the State previously requested time to respond to the Petition, COURT ORDERED, the State's request to respond is GRANTED and matter CONTINUED. Court directed Ms. Erickson to file a written Motion to be appointed as Counsel in this case.

NDC

CONTINUED TO: 3/18/03 9:00 AM DEFT'S PRO PER PETITION FOR WRIT OF
HABEAS CORPUS (POST-CONVICTION)

03/18/03 09:00 AM 00 ALL PENDING MOTIONS FOR 3/18/03

HEARD BY: Jackie Glass, Judge; Dept. 5

OFFICERS: Billie Jo Craig, Court Clerk
Shirlee Prawalsky, Reporter/Recorder

PARTIES: STATE OF NEVADA
002781 Roger, David J.
006088 Peterson, Clark A.

Y
Y
Y

DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)...
STATE'S MOTION TO DISMISS DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION)

Mr. Peterson advised he was out of the office for three days and had a

CRIMINAL COURT MINUTES

81-C-053867-C STATE OF NEVADA

vs Howard, Samuel

CONTINUED FROM PAGE: 010

Motion to Dismiss ready if the Petition was verified. If not verified, the Petition should be dismissed as if it was not filed. Colloquy regarding who defendant's attorney was and whether his attorney was working pro bono. Mr. Peterson advised there was no reason to appoint an attorney and Ms. Erickson could work pro bono. However, there was a difference if the Court appointed an attorney pro bono or not. Mr. Peterson advised it was not appropriate for Ms. Erickson to substitute in as attorney of record as she would need permission of the Court. Court noted it did not know if the Petition was verified or not as it only had the "D" file, and ORDERED, matter CONTINUED.

NDC

CONTINUED TO: 3/20/03 9:00 AM SAME MOTIONS

03/20/03 09:00 AM 00 ALL PENDING MOTIONS FOR 3/20/03

HEARD BY: Jackie Glass, Judge; Dept. 5

OFFICERS: Billie Jo Craig, Court Clerk
Shirlee Prawalsky, Reporter/Recorder

PARTIES: STATE OF NEVADA
002781 Roger, David J.
006088 Peterson, Clark A.

001 D1 Howard, Samuel
003506 Erickson, Patricia M.

Y
Y
Y

N
Y

DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)...
STATE'S MOTION TO DISMISS DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION)

Ms. Erickson advised matter not resolved. Court noted Ms. Erickson is defendant's counsel but was not appointed by the Court. Court noted Ms. Erickson not appointed pro bono and she is donating her time with no compensation. As to verification, Court noted it does not comply with statute. Mr. Erickson advised she was not informed as to that issue and was not prepared to respond. Court directed Ms. Erickson to take care of the verification today and the State to response in 30 days. COURT ORDERED, matter SET for Status Check: Verification of Petition. The two matters on Calendar today to be CONTINUED to the Status Check date with a date to be heard set at that time.

NDC

CONTINUED: 4/3/03 9:00 AM SAME MATTERS...STATUS CHECK: VERIFICATION OF
PETITION

CRIMINAL COURT MINUTES

81-C-053867-C STATE OF NEVADA

vs Howard, Samuel

CONTINUED FROM PAGE: 011

04/03/03 09:00 AM 00 ALL PENDING MOTIONS 04/03/03

HEARD BY: Joseph S. Pavlikowski, Senior Judge; Dept. VJ30

OFFICERS: Georgette Byrd, Court Clerk
Shirlee Prawalsky, Reporter/RecorderPARTIES: STATE OF NEVADA
006088 Peterson, Clark A.
001 D1 Howard, Samuel
003506 Erickson, Patricia M.

Y

Y

N

Y

STATUS CHECK: VERIFICATION OF PETITION..DEFT'S PRO PER PETITION FOR WRIT OF
HABEAS CORPUS (POST-CONVICTION)..STATE'S MOTION TO DISMISS DEFENDANT'S
PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)Ms. Erickson stated she filed Defendants petition yesterday and requested a
date to respond by to State's Motion to Dismiss. COURT ORDERED, Defendant
to respond by June 5, 2003; State advised it does not need a reply date.

NDC

06/12/03 9:00 AM ARGUMENT/DECISION: DEFT PETITION/STATE'S MOTION/STATUS
CHECK06/03/03 09:00 AM 00 DEFT'S MOTION TO EXTEND TIME TO FILE AN
OPPOSITION TO STATE'S MTN TO DISMISS/18

HEARD BY: Jackie Glass, Judge; Dept. 5

OFFICERS: Georgette Byrd, Court Clerk
Shirlee Prawalsky, Reporter/RecorderPARTIES: STATE OF NEVADA
006088 Peterson, Clark A.
001 D1 Howard, Samuel
003506 Erickson, Patricia M.

Y

Y

N

Y

Ms. Erickson requested an extension. Mr. Peterson argued this is defendants
third successive petition for writ which the State urged the Court to
appoint counsel. The State has written their opposition and object to a
continuance to August. Ms. Erickson stated she must find a reason why this
Court should not deny defendants petition. Further Ms. Erickson stated she
has broken her arm and should not be working at this point per doctors
orders. COURT ORDERED, Ms. Erickson will be granted additional time to work
on her opposition, however if the opposition is not submitted by August 18,
2003 the case will be dismissed.

CONTINUED ON PAGE: 013

CRIMINAL COURT MINUTES

81-C-053867-C STATE OF NEVADA

vs Howard, Samuel

CONTINUED FROM PAGE: 012

NDC

08/21/03 9:00 AM HEARING: DEFT'S WRIT FOR HABEAS CORPUS

08/21/03 09:00 AM 00 HEARING RE: PETITION FOR WRIT OF HABEAS
CORPUS

HEARD BY: Jackie Glass, Judge; Dept. 5

OFFICERS: Georgette Byrd, Court Clerk
Shirlee Prawalsky, Reporter/Recorder

| | | |
|----------|-----------------------|---|
| PARTIES: | STATE OF NEVADA | Y |
| 006088 | Peterson, Clark A. | Y |
| 001 D1 | Howard, Samuel | N |
| 003506 | Erickson, Patricia M. | Y |

Ms. Erickson filed Exhibit To Petition Howard/Opposition To State's Motion To Dismiss. Court noted it gave Ms. Erickson until 8/18 to file her opposition. Ms. Erickson stated she filed an Ex Parte Motion for a two day extention and provided a copy to Court and counsel. Arguments by Mr. Peterson. COURT ORDERED, State has until 9/25/03 to file their reply and matter is continued.

NDC

10/02/03 9:00 AM ARGUMENTS/DECISION: PETITION FOR WRIT OF HABEAS CORPUS

10/02/03 09:00 AM 00 ARGUMENT/DECISION: DEFT'S WRIT FOR
HABEAS CORPUS

HEARD BY: Jackie Glass, Judge; Dept. 5

OFFICERS: Georgette Byrd, Court Clerk
Shirlee Prawalsky, Reporter/Recorder

| | | |
|----------|-----------------------|---|
| PARTIES: | STATE OF NEVADA | Y |
| 006088 | Peterson, Clark A. | Y |
| 001 D1 | Howard, Samuel | N |
| 003506 | Erickson, Patricia M. | Y |

Ms. Erickson requested an evidentiary hearing on all counts and submitted on her pleadings. Mr. Peterson stated Deft's Writ is time barred and twice his writ has been denied. Mr. Peterson requested Court to grant State's Motion to Dismiss. COURT ORDERED, Deft's Petition for Writ for Habeas Corpus is

CONTINUED ON PAGE: 014

CRIMINAL COURT MINUTES

81-C-053867-C STATE OF NEVADA

vs Howard, Samuel

CONTINUED FROM PAGE: 013

DENIED; States's Motion to Dismiss is GRANTED.

NDC

12/30/03

E X H I B I T S

10:42 AM

CASE NO. 81-C-053867-C

CASE STATUS: INACTIVE

STATE OF NEVADA

[] vs Howard, Samuel

[]

| <u>NO.</u> | <u>CODE</u> | <u>EXHIBIT DESCRIPTION</u> | <u>SUB</u> | <u>OF/OB</u> | <u>DATE</u> | <u>S</u> |
|------------|-------------|---|------------|--------------|-------------|----------|
| 0001 | D | /EXH TO EXHIBITS TO PETITIONERS OPPOSITIO | | / | 08/21/03 | V |

Certification of Copy

State of Nevada

County of Clark

SS:

I, Shirley B. Parraguirre, the duly elected, qualifying and acting Clerk of Clark County, in the State of Nevada, and Ex-Officio Clerk of the District Court, do hereby certify that the foregoing is a true, full and correct copy of the original:

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER; NOTICE OF
ENTRY OF ORDER; DISTRICT COURT MINUTES; EXHIBIT LIST;

STATE OF NEVADA.

Plaintiff(s),

VS.

SAMUEL HOWARD.

Defendant(s),

Case No: C53867

Dept No: V

now on file and of record in this office.

IN WITNESS THEREOF, I have herunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
this 30 day of December 2003.

Shirley B. Parraguirre, Clark County Clerk

MANUEL RIVAS, Deputy Clerk



Office of the County Clerk

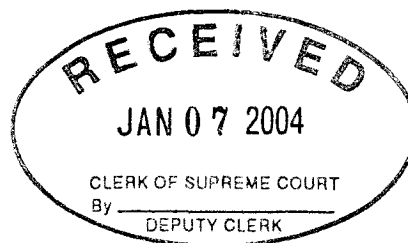
Shirley B. Parraguirre
County Clerk
Commissioner of Civil Marriages

Diana Alba
Assistant County Clerk

200 South Third Street
P. O. Box 551601
Las Vegas NV 89155-1601
(702) 455-3156 -- Day Telephone
(702) 455-4415 -- Night Telephone
(702) 455-4929 -- Fax

December 30, 2003

Janette Bloom
Clerk of the Supreme Court
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702



No. 42593

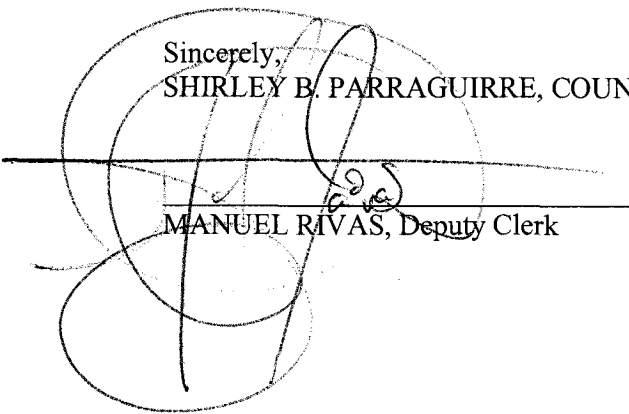
RE: STATE OF NEVADA VS SAMUEL HOWARD
S.C. CASE: N/A
D.C. CASE: C53867

Dear Ms. Bloom:

We apologize for the delay in processing this new appeal packet but our appeals division did not receive a copy of this Notice of Appeal.

If you have any questions you may reach me at (702) 455-4409.

Sincerely,
SHIRLEY B. PARRAGUIRRE, COUNTY CLERK

A large, stylized signature of Manuel Rivas, written in ink, is written over a horizontal line. The signature is circular and loops around the line.
MANUEL RIVAS, Deputy Clerk

Ex-Officio Clerk of:

*Eighth Judicial District Court • Board of County Commissioners • Board of Equalization
Clark County Liquor and Gaming Board • Mt. Charleston Fire Protection District
Clark County Sanitation District • Clark County Debt Management Commission*