

1 **NOTC**

2 **FRANNY A. FORSMAN**

3 **Federal Public Defender**

4 **Bar No. 000014**

5 **GERALD BIERBAUM**

6 **Assistant Federal Public Defender**

7 **Texas Bar No. 24025252**

8 **GARY TAYLOR**

9 **Texas Bar No. 19691650**

10 **411 E. Bonneville Avenue, Suite 250**

11 **Las Vegas, Nevada 89101**

12 **(702) 388-6577**

13 **(Fax) 388-5819**

14 **Attorneys for Petitioner**

CLARK COUNTY

DISTRICT OF NEVADA

15 **WILLIAM L. WITTER**

16 **Petitioner,**

17 **vs.**

18 **E.K. McDANIEL, Warden of Ely**
19 **State Prison, and CATHERINE CORTEZ**
20 **MASTO, Attorney General of the State of**
21 **Nevada,**

22 **Respondents.**

Case No. C-117513

Dept. No. 2

No. 50447

NOTICE OF APPEAL

FILED

OCT 29 3 17 PM '07

[Signature]
CLERK OF THE COURT

FILED

NOV 0 1 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

23 **NOTICE is hereby given that petitioner, William Witter, appeals to the Nevada**
24 **Supreme Court from the Findings of Fact and Conclusions of Law and Order denying the Petition**
25 **for Post-Conviction Relief entered in this action on September 26, 2007. Notice of Entry of**
26 **Decision and Order of the foregoing order was entered and mailed on September 29, 2007.**

27 **Respectfully submitted this 29th day of October 2007.**

28 **FRANNY A. FORSMAN**
Federal Public Defender

[Signature]
Gerald Bierbaum
Assistant Federal Public Defender

[Signature]
Gary Taylor
Assistant Federal Public Defender

RECEIVED

NOV 0 1 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

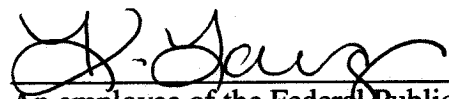
1 **CERTIFICATE OF MAILING**

2 In accordance with Rule 5(b) of the Nevada Rules of Civil Procedure, the undersigned hereby
3 certifies that on this 29th day of October 2007, she caused to be deposited for mailing in the United
4 States mail, first-class postage prepaid, a true and correct copy of the foregoing **NOTICE OF**
5 **APPEAL** addressed to the parties as follows:

6 David Roger
7 Clark County District Attorney
8 Steven S. Owens
9 Chief Deputy District Attorney
10 Office of the District Attorney
11 Regional Justice Center, Third Floor
12 200 Lewis Avenue
13 Las Vegas, Nevada 89155

11 Catherine Cortez Masto
12 Attorney General
13 Victor Hugo Schulze II
14 Deputy Attorney General
15 Attorney General's Office
16 555 E. Washington Ave., #3900
17 Las Vegas, Nevada 89101

15 William L. Witter
16 Id No. 47405
17 Ely State Prison
18 P.O. Box 1989
19 Ely, Nevada 89301

19 
20 An employee of the Federal Public Defender
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1 **ASTA**
2 **FRANNY A. FORSMAN**
3 **Federal Public Defender**
4 **Bar No. 000014**
5 **GERALD BIERBAUM**
6 **Assistant Federal Public Defender**
7 **Texas Bar No. 24025252**
8 **GARY TAYLOR**
9 **Texas Bar No. 19691650**
10 **411 E. Bonneville Avenue, Suite 250**
11 **Las Vegas, Nevada 89101**
12 **(702) 388-6577**
13 **(Fax) 388-5819**

14 **Attorneys for Petitioner**

15 **CLARK COUNTY**
16 **DISTRICT OF NEVADA**

17 **WILLIAM L. WITTER**

18 **Petitioner,**

19 **vs.**

20 **E.K. McDANIEL, Warden of Ely**
21 **State Prison, and CATHERINE CORTEZ**
22 **MASTO, Attorney General of the State of**
23 **Nevada,**

24 **Respondents.**

Case No. C-117513
Dept. No. 2

CASE APPEAL STATEMENT

25 **CASE APPEAL STATEMENT**

26 1. **Name of petitioner filing this case appeal statement:**

27 **William L. Witter**

28 2. **Identify the judge issuing the order appealed from:**

Honorable Valerie J. Vega

3 3. **All parties to the proceedings in the district court:**

Same as in caption; State of Nevada is real party in interest.

4 4. **All parties involved in this appeal:**

Same as in caption; State of Nevada is real party in interest.

5 **///**

1 5. **Set forth the name, law firm, address and telephone number of all counsel on**
2 **appeal and party or parties whom they represent:**

3 Franny Forsman
4 Federal Public Defender
5 Gerald Bierbaum
6 Assistant Federal Public Defender
7 Gary Taylor
8 Assistant Federal Public Defender
9 411 E. Bonneville, Ste. 250
10 Las Vegas, NV 89101
11 (702) 388-6577

12 Counsel for Petitioner, William L. Witter

13 David Roger
14 Clark County District Attorney
15 Steven S. Owens
16 Chief Deputy District Attorney
17 Office of the District Attorney
18 Regional Justice Center, Third Floor
19 200 Lewis Avenue
20 Las Vegas, Nevada 89155
21 (702) 671-2750

22 and

23 Catherine Cortez Masto
24 Attorney General of Nevada
25 Heather D. Proctor
26 Deputy Attorney General
27 Criminal Division
28 Attorney General's Office
100 N. Carson St.
Carson City, Nevada 89701
(775) 684-1272

Counsel for Warden and State of Nevada

20 6. **Whether petitioner/appellant was represented by appointed or retained counsel**
21 **in the district court:**

22 Request for appointment of the Office of the Federal Public Defender was filed on
23 February 14, 2007 but not ruled on; a substitution of counsel was filed on February
24 15, 2007, substituting David Anthony for court-appointed post conviction counsel,
25 David M. Schieck. Court approved appointment on February 27, 2007. Counsel
26 was appointed by the federal district court, Witter v. E.K. McDaniel et al., 2:01-cv-
27 01034-RLH-LRL, on November 23, 2005.

25 7. **Whether petitioner/appellant was granted leave to proceed in forma pauperis,**
26 **and the date of entry of the district court order granting such leave:**

27 Petitioner/appellant filed leave to proceed *in forma pauperis* on February 14, 2007
28 and the state court granted the request on February 27, 2007.

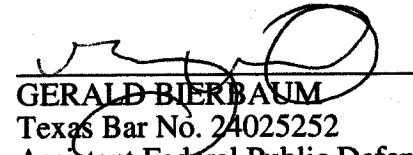
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8. **Date proceedings commenced in the district court (e.g., date complaint, indictment, information or petition was filed):**

Petition for writ of habeas corpus was filed on February 14, 2007. A supplemental claim including exhibits was filed on March 29, 2007.

Respectfully submitted this 29th day of October 2007.

FRANNY A. FORSMAN
Federal Public Defender


GERALD BIERBAUM
Texas Bar No. 24025252
Assistant Federal Public Defender

GARY TAYLOR
Assistant Federal Public Defender
Texas Bar No. 19691650

Attorneys for Petitioner/Appellant

1 **CERTIFICATE OF MAILING**

2 The undersigned hereby certifies that on the 29th day of October 2007, she deposited
3 a true and correct copy of the foregoing **CASE APPEAL STATEMENT**, in the United States mail,
4 postage prepaid, addressed to the parties as follows:

5 David Roger
6 Clark County District Attorney
7 Steven S. Owens
8 Chief Deputy District Attorney
9 Office of the District Attorney
Regional Justice Center, Third Floor
200 Lewis Avenue
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10 Catherine Cortez Masto
11 Attorney General
12 Heather D. Proctor
13 Deputy Attorney General
14 Criminal Division
Attorney General's Office
100 N. Carson St.
Carson City, Nevada 89701

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17 An employee of the Federal Public Defender
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DATE: 10/30/07
CASE NO. 94-C-117513-C

I N D E X

TIME 8:40 AM
JUDGE: Vega, Valorie J.

STATE OF NEVADA

[] vs Witter, William L

[]

0001 D1 William L Witter

Pro Se

NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0001	01/14/94	CBO /CRIMINAL BINDOVER Fee \$0.00				
0002	01/14/94	NOTC/NOTICE OF EXHIBIT(S) IN THE VAULT			01/14/94	
0003	01/18/94	ARRN/INITIAL ARRAIGNMENT	0001		01/25/94	
0004	01/20/94	REQT/MEDIA REQUEST				
0005	01/20/94	ORDR/ORDER GRANTING PERMISSION OF MEDIA ENTRY				
0006	01/21/94	INFO/INFORMATION	0001		01/21/94	
0007	01/25/94	JURY/TRIAL BY JURY VJ 2-1-94	0001	VC	08/29/94	
0008	01/25/94	CALC/CALENDAR CALL VJ 2-1-94	0001	VC	08/25/94	
0009	01/25/94	NOTC/NOTICE OF INTENT TO SEEK DEATH PENALTY	0001			
0010	01/28/94	HEAR/ORAL REQUEST OF DISTRICT ATTORNEY	0001		02/01/94	
		RESET TRIAL DATE	0001			
0011	02/01/94	JURY/TRIAL BY JURY	0001	VC	11/14/94	
0012	02/01/94	CALC/CALENDAR CALL	0001	VC	11/10/94	
0013	02/25/94	TRAN/REPORTER'S TRANSCRIPT OF PRELIMINARY	0001		01/07/94	
		HEARING	0001			
0014	07/27/94	OTTE/ORDER TO TRANSPORT	0001		07/27/94	
0015	09/29/94	MOT /MOTION TO CONTINUE TRIAL DATE	0001	GR	10/20/94	
0016	10/07/94	ANS /ANSWER IN OPPOSITION TO MOTION TO	0001			
		CONTINUE TRIAL DATE	0001			
0017	10/21/94	CALC/CALENDAR CALL VH	0001	VC	04/27/95	
0018	10/21/94	JURY/TRIAL BY JURY VH	0001	VC	05/01/95	
0019	03/23/95	EXPT/EX PARTE APPLICATION AND ORDER TO	0001			
		TRANSPORT	0001			
0020	04/13/95	MOT /DEFT'S MOTION IN LIMINE TO PROHIBIT	0001		06/15/95	
		REFERENCE TO FIRST PHASE AS GUILT PHASE	0001			
0021	04/13/95	MOT /DEFT'S MOTION IN LIMINE LIMITING REMOVAL	0001	DN	06/15/95	
		OF JURORS BY PROSECUTOR	0001			
0022	04/13/95	MOT /DEFT'S MOTION TO ALLOW JURY	0001	GR	06/15/95	
		QUESTIONNAIRE	0001			
0023	04/13/95	MOT /DEFT'S MOTION TO PARTIALLY STRIKE NOTICE	0001	RR	06/15/95	
		OF AGGRAVATING CIRCUMSTANCE	0001			
0024	04/13/95	MOT /DEFT'S MOTION FOR INDIVIDUAL SEQUESTERED	0001	DN	06/15/95	
		VOIR DIRE	0001			
0025	04/13/95	MOT /DEFT'S MOTION TO DISMISS FOR FAILURE TO	0001	WD	06/15/95	
		COLLECT/PERSERVE EVIDENCE	0001			
0026	04/20/95	ORDR/ORDER FOR PRODUCTION OF INMATE	0001			
0027	04/21/95	MOT /DEFT'S MOTION TO CONTINUE TRIAL DATE	0001	VC	04/27/95	
0028	04/21/95	ANS /ANSWER IN OPPOSITION TO MOTION FOR	0001			
		INDIVIDUAL SEQUESTERED VOIR DIRE	0001			
0029	04/21/95	ANS /ANSWER IN MOTION IN LIMINE TO PROHIBIT	0001			Y
		ANY REFERENCES TO THE FIRST PHASE	0001			
		OF THE TRIAL AS THE GUILT PHASE				
0030	04/21/95	ANS /ANSWER IN OPPOSITION TO DEFENDANT'S	0001			
		MOTION TO CONTINUE TRIAL DATE	0001			
0031	04/24/95	HEAR/AT THE REQUEST OF THE COURT	0001		04/25/95	
0032	04/24/95	ANS /ANSWER TO MOTION TO ALLOW JURY	0001			
		QUESTIONNAIRE	0001			

(Continued to page 2)

94-C-117513-C		(Continuation	Page	2)	
NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER C
0033	04/24/95	ANS /ANSWER IN OPPOSITION TO MOTION TO PROHIBIT THE USE OF PEREMPTORY	0001		Y
		CHALLENGES TO EXCLUDE JURORS WHO EXPRESS CONCERNS ABOUT CAPITAL PUNISHMENT	0001		
0034	04/26/95	CALC/CALENDAR CALL	0001		06/16/95
0035	04/26/95	JURY/TRIAL BY JURY	0001		06/28/95
0036	05/03/95	MOT /DEFT'S PRO PER MOTION TO DISMISS COUNSEL AND APPOINTMENT OF NEW COUNSEL	0001		05/16/95
0037	05/09/95	ANS /ANSWER IN OPPOSITION TO DEFENDANT'S PROPER PERSON MOTION TO DISMISS COUNSEL	0001		
0038	05/17/95	MOT /STATE'S MOTION TO ENDORSE NAMES ON INFORMATION	0001	GR	06/15/95
0039	05/17/95	INFO/MOTION AND NOTICE OF MOTION TO ENDORSE NAMES OF INFORMATION	0001		06/15/95
0040	05/25/95	MOT /DEFT'S PRO PER MOTION TO DISMISS COUNSEL AND APPOINTMENT OF NEW COUNSEL	0001	DN	05/25/95
0041	05/26/95	OTTE/ORDER TO TRANSPORT	0001		05/26/95
0042	06/14/95	ANS /ANSWER IN OPPOSITION TO DEFENDANT'S MOTION TO STRIKE AGGRAVATING CIRCUMSTANCES	0001		Y
0043	06/16/95	LIST/WITNESS LIST	0001		
0044	06/19/95	MOT /ALL PENDING MOTIONS	0001		06/15/95
0045	01/21/94	CINF/INFORMATION CORRECTED IN OPEN COURT	0001		06/16/95
0046	06/16/95	ORDR/ORDER TO ENDORSE NAMES ON INFORMATION	0001		
0047	06/20/95	TRAN/REPORTER'S TRANSCRIPT			06/19/95
0048	06/19/95	ORDR/ORDER FOR TRANSCRIPT	0001		
0049	06/20/95	REQT/MEDIA REQUEST			
0050	06/20/95	ORDR/ORDER GRANTING PERMISSION OF MEDIA ENTRY			
0051	06/23/95	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS-VOLUME IV	0001		06/22/95
0052	06/23/95	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS-VOLUME III	0001		06/21/95
0053	06/23/95	JURY/JURY	AL		
0054	06/22/95	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS-VOLUME II	0001		06/20/95
0055	06/26/95	ORDR/ORDER GRANTING PERMISSION OF MEDIA ENTRY			
0056	06/28/95	OCAL/STATUS CHECK:DISCOVERY FOR PENALTY HRG.	0001		07/06/95
0057	06/26/95	REQT/MEDIA REQUEST			
0058	06/26/95	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS VOLUME V	0001		06/23/95
0059	06/27/95	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS VOLUME VI	0001		06/26/95
0060	06/28/95	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS VOLUME VII	0001		06/27/95
0061	06/29/95	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS VOLUME VIII	0001		06/28/95
0062	07/11/95	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS VOLUME IX	0001		07/10/95
0063	07/12/95	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS PENALTY HEARING VOLUME X	0001		07/11/95
0064	07/13/95	HEAR/PENALTY HEARING	0001		07/13/95
0065	07/13/95	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS VOLUME XI	0001		07/12/95

(Continued to page 3)

NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0066	07/14/95	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS	0001		07/13/95	
		VOLUME XII	0001			
0067	07/19/95	SENT/SENTENCING COUNTS I-IV	0001	GR	08/03/95	
0068	07/19/95	NOEV/NOTICE OF EXHIBIT(S) IN THE VAULT			07/19/95	
0069	07/19/95	NOTC/NOTICE OF TRANSCRIPTS IN THE FILE			07/19/95	
0070	07/06/95	LIST/AMENDED WITNESS LIST	0001			
0071	07/06/95	REQT/STATES MOTION TO PERMIT TESTIMONY	0001			Y
		REGARDING DEFENDANTS GANG AFFILIATION	0001			
		DURING PENALTY PHASE				
0072	07/12/95	NOTC/AMENDED NOTICE OF INTENT TO SEEK DEATH	0001			
		PENALTY	0001			
0073	07/10/95	OPPS/DEFENDANTS OPPOSITION TO THE STATES	0001			Y
		MOTION TO PERMIT TESTIMONY REGARDING	0001			
		DEFENDANTS GANG AFFILIATION DURING PENALTY PHASE				
0074	07/10/95	REQT/DEFENDANTS MOTION TO EXCLUDE EVIDENCE	0001			Y
		REGARDING ALLEGATIONS THAT THE	0001			
		DEFENDANT POSSESSED A WEAPON WHILE IN JAIL				
0075	07/10/95	REQT/DEFENDANTS MOTION TO CONTINUE THE	0001			
		PENALTY PHASE	0001			
0076	07/12/95	REQT/MOTION TO ALLOW THE DEFENSE TO ARGUE	0001			
		LAST IN PENALTY PHASE	0001			
0077	07/13/95	VER /SPECIAL VERDICT	0001		07/13/95	
0078	07/13/95	VER /VERDICT	0001		07/13/95	
0079	06/28/95	VER /VERDICT	0001		06/28/95	
0080	06/28/95	VER /VERDICT	0001		06/28/95	
0081	06/28/95	VER /VERDICT	0001		06/28/95	
0082	07/13/95	INST/INSTRUCTIONS TO THE JURY	0001			
0083	06/28/95	INST/INSTRUCTIONS TO THE JURY	0001			
0084	06/28/95	VER /VERDICT	0001		06/28/95	
0085	08/04/95	CASO/CASE CLOSED ON 08-03-95			08/03/95	
0086	08/04/95	JUDG/JUDGMENT OF CONVICTION	0001		08/04/95	
0087	08/04/95	WARR/WARRANT OF EXECUTION	0001			
0088	08/04/95	ORDR/ORDER OF EXECUTION	0001			
0089	08/04/95	EMO /ENTRY OF MINUTE ORDER	0001			
0090	08/11/95	JUDG/AMENDED JUDGMENT OF CONVICTION	0001		08/11/95	
0091	08/11/95	JMNT/AMENDED JUDGMENT	0001		08/29/95	
0092	08/11/95	JMNT/JUDGMENT OF RESTITUTION	0001		08/29/95	
0093	08/31/95	NOTC/NOTICE OF APPEAL	0001	AP		
0094	08/31/95	NOAS/DESIGNATION OF CONTENTS OF RECORD ON	0001			
		APPEAL	0001			
0095	09/22/95	ORDR/ORDER FOR STAY OF EXECUTION	0001			
0096	09/25/95	CASO/CASE (RE)ACTIVATED ON				
0097	09/26/95	JUDG/SECOND AMENDED JUDGMENT OF CONVICTION	0001		09/26/95	
0098	09/26/95	JMNT/AMENDED ADMINISTRATIVE FEE	0001		09/28/95	
0100	09/29/95	TRAN/REPORTER'S TRANSCRIPT OF APRIL 25, 1995			04/25/95	
0101	09/29/95	TRAN/REPORTER'S TRANSCRIPT OF JULY 6, 1995			07/06/95	
0102	09/29/95	TRAN/REPORTER'S TRANSCRIPT OF AUGUST 3, 1995			08/03/95	
0103	08/05/96	ORDR/ORDER RELEASING EVIDENCE	0001			
0104	08/05/96	PET /PETITION FOR RELEASE OF EVIDENCE	0001			
0105	01/08/97	JUDG/NEVADA SUPREME COURT CLERKS CERTIFICATE/	0001		01/08/97	
		JUDGMENT - AFFIRMED	0001			
0106	06/28/97	ASSG/Reassign Case From Judge HUFFAKER to				
		Judge BONAVENTURE				

(Continued to page 4)

NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0107	09/05/97	MOT /DEFT'S MOTION FOR APPOINTMENT OF COUNSEL	0001	GR	09/18/97	
0108	09/26/97	TRAN/REPORTER'S TRANSCRIPT OF MOTION FOR APPOINTMENT OF COUNSEL	0001		09/18/97	
0109	10/13/97	ORDR/ORDER OF APPOINTMENT	0001			
0110	10/27/97	PET /DEFT'S PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)	0001		08/12/98	
0111	10/27/97	CRTF/CERTIFICATE OF SERVICE BY MAIL	0001		10/27/97	
0112	02/23/98	MOT /DEFT'S MTN FOR EXTENSION OF TIME TO FILE SUPPLEMENTAL POINTS/MTN CONTINUE ARGUMEN	0001		03/09/98	
0113	02/24/98	ROC /RECEIPT OF COPY	0001		02/24/98	
0114	03/09/98	ARGU/ARGUMENT	0001		08/12/98	
0115	07/17/98	MOT /ALL PENDING MOTIONS 07/15/98	0001		07/15/98	
0116	08/11/98	PTAT/SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION	0001			Y
0117	08/12/98	HEAR/ARGUMENT: DEFT'S PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)	0001		10/14/98	
0118	09/22/98	OPPS/STATES OPPOSITION TO DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS	0001			Y
POST-CONVICTION						
0119	10/14/98	HEAR/EVIDENTIARY HEARING: DEFT'S PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)	0001		02/26/99	
0120	12/04/98	WAIV/WAIVER OF APPEARANCE	0001		12/04/98	
0121	12/23/98	OCAL/MINUTE ORDER RE: REASSIGNMENT	0001		12/23/98	
0122	12/28/98	ASSG/Reassign Case From Judge Bonaventure TO Judge Loehrer				
0123	03/12/99	REQT/EX PARTE MOTION FOR ORDER TO PREPARE TRANSCRIPTS	0001			
0124	03/22/99	EXPR/EX PARTE ORDER TO PREPARE TRANSCRIPTS	0001			
0125	03/23/99	ROC /RECEIPT OF COPY OF EX PARTE ORDER TO PREPARE TRANSCRIPTS	0001		03/23/99	
0126	04/19/99	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS	0001		02/26/99	
0127	01/26/00	REQT/EX PARTE MOTION FOR INTERIM PAYMENT OF EXCESS ATTORNEYS FEES AND EXPENSES IN POST CONVICTION PROCEEDINGS	0001			Y
0128	02/14/00	ORDR/ORDER GRANTING INTERIM PAYMENT OF EXCESS ATTORNEYS FEES AND EXPENSES	0001			
0129	09/11/00	OPPS/STATES SUPPLEMENTAL OPPOSITION TO DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION	0001			Y
0130	09/12/00	WRIT/DEFENDANTS POST HEARING BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS	0001			
0131	09/25/00	JUDG/FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER	0001	HG	02/26/99	
0132	09/27/00	NOTC/NOTICE OF ENTRY OF ORDER	0001		09/27/00	
0133	10/09/00	MOT /DEFT'S MOTION FOR APPOINTMENT OF APPELLATE COUNSEL	0001	GR	10/31/00	
0134	10/10/00	ROC /RECEIPT OF COPY OF MOTION FOR APPOINTMENT OF APPELLATE COUNSEL	0001		10/10/00	
0135	10/23/00	NOAS/NOTICE OF APPEAL	0001	AP		
0136	10/25/00	CASO/CASE (RE)ACTIVATED ON				
0137	10/23/00	STAT/CASE APPEAL STATEMENT	0001			

(Continued to page 5)

94-C-117513-C		(Continuation	Page	5)		
NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0138	10/31/00	ORDR/ORDER APPOINTING COUNSEL	0001			
0139	11/29/00	ORDR/ORDER GRANTING DEFENDANTS MOTION GRANTING APPOINTMENT OF COUNSEL	0001	HG	10/31/00	
0140	11/29/00	NOTC/NOTICE OF ENTRY OF ORDER	0001		11/29/00	
0141	12/02/00	ASSG/Reassign Case From Judge Loehrer To Judge Vega				
0142	11/30/00	ORDR/STIPULATION AND ORDER FOR PAYMENT OF EXCESS ATTORNEYS FEES AND EXPENSES	0001		11/30/00	
0143	08/17/01	CSCL/CASE CLOSED			08/10/01	
0144	09/20/01	JMNT/CLERK'S CERTIFICATE JUDGMENT AFFIRMED	0001		09/21/01	
0145	09/19/01	ORDR/STIPULATION AND ORDER FOR PAYMENT OF EXCESS ATTORNEYS FEES AND EXPENSES	0001		09/19/01	
0146	09/20/01	CCJA/NEVADA SUPREME COURT CLERKS CERTIFICATE/ JUDGMENT - AFFIRMED	0001		09/20/01	
0147	02/14/07	CASO/CASE (RE)OPENED			02/14/07	
0148	02/14/07	PET /PTN FOR WRIT OF HABEAS CORPUS	0001	MH	08/30/07	
0149	02/14/07	MOT /DEFT'S MTN FOR APPOINTMENT OF ATTY /37	0001	GR	02/27/07	
0150	02/14/07	REQT/REQUEST FOR LEAVE TO PROCEED IN FORMA PAUPERIS	0001			
0151	02/15/07	SUBT/SUBSTITUTION OF ATTORNEY	0001			
0152	02/14/07	EXH /EXHIBIT TO PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION VOLUME ONE OF	0001		02/14/07	Y
SEVEN						
0153	02/14/07	EXH /EXHIBIT TO PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION VOLUME TWO OF	0001		02/14/07	Y
SEVEN						
0154	02/14/07	EXH /EXHIBIT TO PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION VOLUME THREE OF	0001		02/14/07	Y
SEVEN						
0155	02/14/07	EXH /EXHIBIT TO PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION VOLUME FOUR OF	0001		02/14/07	Y
SEVEN						
0156	02/14/07	EXH /EXHIBIT TO PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION VOLUME FIVE OF	0001		02/14/07	Y
SEVEN						
0157	02/14/07	EXH /EXHIBIT TO PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION VOLUME SIX OF	0001		02/14/07	Y
SEVEN						
0158	02/14/07	EXH /EXHIBIT TO PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION VOLUME SEVEN OF	0001		02/14/07	Y
SEVEN						
0159	02/27/07	MOT /ARGUMENT/DECISION ON STATE'S MOTION TO DISMISS PETITION	0001	DP	08/02/07	
0160	02/27/07	AFFD/AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS	0001			
0161	03/29/07	CLAM/SUPPLEMENTAL CLAIM TO PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION	0001			
0162	03/29/07	EXH /SUPPLEMENTAL EXHIBITS TO PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION	0001			
0163	05/01/07	OPPS/STATES OPPOSITION TO DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS POST	0001			Y
		CONVICTION AND MOTION TO DISMISS	0001			

(Continued to page 6)

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0164	06/14/07	STIP/STIPULATION		0001			
0165	06/15/07	ORDR/ORDER		0001		06/15/07	
0166	06/28/07	EXH /PETITIONERS EXHIBITS IN SUPPORT OF		0001			
		OPPOSITION TO MOTION TO DISMISS		0001			
0167	06/28/07	OPPS/OPPOSITION TO MOTION TO DISMISS		0001		04/12/07	
0168	07/05/07	RPLY/STATES REPLY TO DEFENDANTS OPPOSITION TO		0001			
		MOTION TO DISMISS		0001			
0169	07/12/07	MOT /ALL PENDING MOTIONS FOR 7/12/07		0001		07/12/07	
0170	07/12/07	ORDR/ORDER FOR TRANSCRIPT		0001		07/12/07	
0171	07/20/07	TRAN/REPORTER'S TRANSCRIPT DEFTS MOTION FOR		0001		02/27/07	
		APPOINTMENT OF COUNSEL		0001			
0172	07/30/07	TRAN/REPORTER'S TRANSCRIPT OF PROCEEDINGS		0001			Y
		DEFENDANTS PETITION FOR WRIT OF		0001			
		HABEAS CORPUS/ARGUMENT/DECISION ON STATES MOTION TO DISMISS	PETITION				
0173	08/02/07	MOT /ALL PENDING MOTIONS FOR 8/2/07		0001		08/02/07	
0174	08/07/07	ORDR/ORDER FOR TRANSCRIPT		0001		08/07/07	
0175	08/27/07	TRAN/REPORTER'S TRANSCRIPT DEFTS PETITION FOR		0001		08/02/07	Y
		WRIT OF HABEAS CORPUS ARGUMENT/DECISION		0001			
		ON STATES MOTION TO DISMISS PETITION					
0176	08/28/07	OPPS/SUPPLEMENTAL OPPOSITION TO MOTION TO		0001			
		DISMISS		0001			
0177	08/31/07	TRAN/REPORTER'S TRANSCRIPT DEFTS PETITION FOR		0001		08/30/07	
		WRIT OF HABEAS CORPUS		0001			
0178	08/30/07	ORDR/ORDER FOR TRANSCRIPT		0001		08/30/07	
0179	09/11/07	CSCL/CASE CLOSED				08/30/07	
0180	09/17/07	OBJ /OBJECTIONS TO THE PROPOSED ORDER DENYING		0001			
		POST CONVICTION RELIEF		0001			
0181	09/26/07	JUDG/FINDINGS OF FACTS, CONCLUSIONS OF LAW		0001		09/26/07	
		AND ORDER		0001			
0182	09/26/07	NOTC/NOTICE RE OBJECTIONS TO THE PROPOSED		0001		09/26/07	Y
		ORDER DENYING POST CONVICTION RELIEF		0001			
		FINDINGS AND ORDER					
0183	09/29/07	NOED/NOTICE OF ENTRY OF DECISION AND ORDER		0001		09/26/07	

1 **ORDR**

2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **STEVEN S. OWENS**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #004352**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

FILED

SEP 26 7 59 AM '07

Clark
CLERK OF THE COURT

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

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

11 **-vs-**

12 **WILLIAM WITTER,**
13 **#1204227**

14 **Defendant.**

CASE NO: C117513

DEPT NO: II

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

17 **DATE OF HEARING: 8/30/07**
18 **TIME OF HEARING: 10:30 A.M.**

19 **THIS CAUSE** having come on for hearing before the Honorable VALORIE J.
20 **VEGA**, District Judge, on the 30th day of August, 2007, the Petitioner not being present,
21 represented by MICHAEL PESSETTA, Federal Public Defender, the Respondent being
22 represented by DAVID ROGER, District Attorney, by and through STEVEN S. OWENS,
23 Chief Deputy District Attorney, and the Court having considered the matter, including briefs,
transcripts, arguments of counsel, and documents on file herein, now therefore, the Court
makes the following findings of fact and conclusions of law:

24 **FINDINGS OF FACT**

On June 28, 1995 a jury found William Witter (hereinafter "Defendant") guilty of
Murder with Use of a Deadly Weapon, Attempted Sexual Assault with Use of a Deadly

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SEP 26 2007

CLERK OF THE COURT

1 Weapon, and Burglary. A penalty hearing was held on July 10, 1995 through July 13, 1995,
2 after which, by way of special verdict, the jury sentenced Witter to death by lethal injection.
3 On July 22, 1996, the Nevada Supreme Court affirmed Defendant's conviction and sentence
4 in a published opinion. Witter v. State, 112 Nev. 908, 921 P.2d 886 (1996), *cert. denied*, 520
5 U.S. 1217 (1997).

6 On October 27, 1997, Defendant filed his first Petition for Writ of Habeas Corpus
7 (Post-Conviction). Counsel was appointed to represent Defendant. On August 11, 1998,
8 Defendant's post-conviction counsel filed a supplemental brief in support of the petition.
9 Following an evidentiary hearing at which Defendant's trial and appellate counsel testified,
10 the district court denied relief on September 25, 2000. The Nevada Supreme Court affirmed
11 the district court's denial of relief on August 10, 2001.

12 Following pursuit of federal remedies over the last several years, Defendant filed the
13 instant petition for writ of habeas corpus on February 14, 2007. The State moved to dismiss
14 the petition on procedural grounds on May 1, 2007. The Defendant filed his Opposition on
15 June 28, 2007, and the State filed its Reply on July 5, 2007. Arguments were heard on July
16 12, 2007, and the district court announced its decision on August 2nd and 30th, 2007.

17 The current post-conviction petition was filed approximately ten years after direct
18 appeal in violation of the one-year rule in NRS 34.726 and Defendant has failed to establish
19 good cause for this delay. Additionally, the State has pleaded laches under NRS 34.800
20 raising a rebuttable presumption of prejudice to the State due to delay in excess of five years.
21 Also, because the current petition is Defendant's second, it is a successive petition under
22 NRS 34.810. Defendant has not alleged or proven specific facts that demonstrate actual
23 prejudice and good cause for failing to present his claims in an earlier proceeding or for
24 presenting them again.

25 Ineffective assistance of post-conviction counsel does not constitute good cause as it
26 does not excuse Defendant's pursuit of federal remedies and delay of six years before
27 returning to state court to raise such claims. The court grants the motion to dismiss in part as
28 to Ground 12 as death penalty execution protocol by lethal injection has been determined not

1 to constitute cruel and unusual punishment and is constitutional pursuant to McConnell v.
2 State, 120 Nev. 1043 (2004). Other than as to Ground 4, the balance of the motion to
3 dismiss is granted based on the law of the case or being time barred without legal excuse for
4 any delay or no showing of any change in the outcome pursuant to NRS 34.800, 34.810 and
5 Crump v. Warden, 113 Nev. 293 (1997).

6 The court denies the motion to dismiss as to Ground 4 pursuant to EDCR 3.20, NRS
7 34.726, McConnell v. State, 120 Nev. 1043 (2004) and Bejarano v. State, 122 Nev. Adv. Op.
8 92 (2006). The Defendant has shown good cause for delay due to the Nevada Supreme
9 Court's decisions in McConnell and Bejarano. This court does not sit as fact-finder. This
10 court reweighs with the harmless error analysis beyond a reasonable doubt.

11 McConnell requires striking of the burglary and sexual assault felony aggravators
12 leaving one remaining aggravator of a prior felony conviction involving the use or threat of
13 violence based on Defendant's 1996 conviction for stabbing David Rumsey with a butcher
14 knife. Against this aggravator, the court reweighs and considers mitigating evidence that
15 Defendant was under the influence of extreme mental or emotional disturbance for having
16 been advised by his girlfriend that she had aborted their child as well as other mitigating
17 evidence presented, for an extremely dysfunctional family, for alcohol and controlled
18 substance abuse and for psychologocial issues, that the Defendant was low average or just
19 below average intelligence, had possible Attention Deficit Hyperactivity Disorder, ADHD,
20 Antisocial Personality Disorder and possible Developmental Arithmetic Disorder. This
21 court finds harmless error beyond a reasonable doubt with the aggravator outweighing the
22 mitigators, therefore, the sentence previously imposed stands.

23 24 CONCLUSIONS OF LAW

25 Unless there is good cause shown for delay, a petition that challenges the validity of a
26 judgment or sentence must be filed within 1 year after entry of the judgment of conviction
27 or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court
28 issues its remittitur. NRS 34.726.

1 NRS 34.800(2) creates a rebuttable presumption of prejudice to the State if "[a]
2 period of five years [elapses] between the filing of a judgment of conviction, an order
3 imposing sentence of imprisonment or a decision on direct appeal of a judgment of
4 conviction and the filing of a petition challenging the validity of a judgment of conviction ...
5 ." See NRS 34.800.

6 A second or successive petition must be dismissed if the judge or justice determines
7 that it fails to allege new or different grounds for relief and that the prior determination was
8 on the merits or, if new and different grounds are alleged, the judge or justice finds that the
9 failure of the Defendant to assert those grounds in a prior petition constituted an abuse of the
10 writ. NRS 34.810(2). The petitioner has the burden of pleading and proving specific facts
11 that demonstrate: (a) Good cause for the petitioner's failure to present the claim or for
12 presenting the claim again; and (b) Actual prejudice to the petitioner. NRS 34.810(3).

13 Good cause to overcome procedural bars might be shown where the legal basis for a
14 claim was not reasonably available at the time of any default. See e.g., Bejarano v. State,
15 122 Nev. ___, 146 P.3d 265 (2006). As a death row petitioner, Defendant had a right to
16 effective assistance of counsel in his first post-conviction proceeding, so he may raise claims
17 of ineffective assistance of post-conviction counsel in a successive petition. See McNelson
18 v. State, 115 Nev. 296, 416 n.5, 990 P.2d 1263, 1276 n.5 (1999); Crump v. Warden, 113
19 Nev. 293, 303, 934 P.2d 247, 253 (1997). However, he must raise these matters in a
20 reasonable time to avoid application of procedural default rules. See Pellegrini v. State, 117
21 Nev. 860, 869-70, 34 P.3d 519, 525-26 (2001) (holding that the time bar in NRS 34.726
22 applies to successive petitions); see generally Hathaway v. State, 119 Nev. 248, 252-53, 71
23 P.3d 503, 506-07 (2003) (stating that a claim reasonably available to the petitioner during the
24 statutory time period did not constitute good cause to excuse a delay in filing). Pursuit of
25 federal remedies does not constitute good cause to overcome state procedural bars. Colley v.
26 State, 105 Nev. 235, 773 P.2d 1229 (1989).

27 The Nevada Supreme Court's overruling of 20 years of precedent in McConnell v.
28 State, 120 Nev. 1043, 102 P.2d 606 (2004) and application of that ruling retroactively in

1 Bejarano supra, constitutes intervening case authority giving rise to a new claim not
2 previously available to Defendant. The appropriate inquiry is whether it is clear beyond a
3 reasonable doubt that absent the invalid aggravators the jury still would have imposed a
4 sentence of death. Bejarano v. State, 122 Nev. ___, 146 P.3d 265 (2006); Rippo v. State,
5 122 Nev. ___, 146 P.3d 279 (2006); Archanian v. State, 122 Nev. ___, 145 P.3d 1008
6 (2006).

7
8 **ORDER**


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

11 DATED this 25th day of September, 2007.

12 
13 _____
14 DISTRICT JUDGE

15 DAVID ROGER
16 DISTRICT ATTORNEY
17 Nevada Bar #002781

18 BY


19 STEVEN S. OWENS
20 Chief Deputy District Attorney
21 Nevada Bar #004352
22
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MICHAEL PES CETTA
FAX #(702) 388-5819

Eileen Davis

SSO/ed

*** TX REPORT ***

TRANSMISSION OK

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RESULT	OK	



OFFICE OF THE DISTRICT ATTORNEY

CRIMINAL APPEALS UNIT

DAVID ROGER
District Attorney

CHRISTOPHER J. LALLI
Assistant District Attorney

ROBERT W. TEUTON
Assistant District Attorney

MARY-ANNE MILLER
County Counsel

JAMES TUFTELAND
Chief Deputy

STEVEN S. OWENS
Chief Deputy

FACSIMILE TRANSMISSION

Fax No. (702) 382-5815

Telephone No. (702) 671-2750

TO: Michael Pescetta **FAX#:** (702) 388-5819

FROM: Steven S. Owens

SUBJECT: William Witter Findings

DATE: September 6, 2007

To Michael:
Following are the proposed Findings of Fact, Conclusions of Law & Order.
We will be submitting them to the Judge on Monday, September 17th.
Sincerely,
Steven S. Owens

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	4612	
CONNECTION TEL		3885819
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ST. TIME	09/17 15:49	
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PGS. SENT	8	
RESULT	OK	



OFFICE OF THE DISTRICT ATTORNEY
CRIMINAL APPEALS UNIT

DAVID ROGER
District Attorney

CHRISTOPHER J. LALLI
Assistant District Attorney

ROBERT W. TEUTON
Assistant District Attorney

MARY-ANNE MILLER
County Counsel

JAMES TUFTELAND
Chief Deputy

STEVEN S. OWENS
Chief Deputy

FACSIMILE TRANSMISSION

Fax No. (702) 382-5815

Telephone No. (702) 671-2750

TO: Michael Pescetta

FAX#: (702) 388-5819

FROM: Steven S. Owens

SUBJECT: William Witter Findings

DATE: September 17, 2007

NO. OF PAGES, EXCLUDING COVER PAGE: _____

● ORIGINAL ●

1 NOED

FILED

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

SEP 29 6 49 AM '07

5 WILLIAM WITTER,

6 Petitioner,

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

Chaf SPN
CLERK OF THE COURT

Case No: C117513
Dept No: II

10 NOTICE OF ENTRY OF
DECISION AND ORDER

11 PLEASE TAKE NOTICE that on September 26, 2007, the court entered a decision or order in this matter,
12 a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
15 mailed to you. This notice was mailed on September 29, 2007.

16 CHARLES J. SHORT, CLERK OF THE COURT

17 By: *Brandi J. Wendel*
18 Brandi J. Wendel, Deputy Clerk

19 CERTIFICATE OF MAILING

20 I hereby certify that on this 29 day of September 2007, I placed a copy of this Notice of Entry of Decision
21 and Order in:

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

24 ☒ The United States mail addressed as follows:

25 William Witter # 47405
26 P.O. Box 1989
Ely, NV 89301

Michael Pescetta, Esq.
411 E. Bonneville Ave.
Las Vegas, NV 89101

27 *Brandi J. Wendel*
28 Brandi J. Wendel, Deputy Clerk

1 **ORDR**

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 STEVEN S. OWENS
6 Chief Deputy District Attorney
7 Nevada Bar #004352
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

FILED

SEP 26 7 59 AM '07

C. Raf. S. D.
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 WILLIAM WITTER,
12 #1204227

13 Defendant.

CASE NO: C117513

DEPT NO: II

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

16 DATE OF HEARING: 8/30/07
17 TIME OF HEARING: 10:30 A.M.

18 THIS CAUSE having come on for hearing before the Honorable VALORIE J.
19 VEGA, District Judge, on the 30th day of August, 2007, the Petitioner not being present,
20 represented by MICHAEL PESSETTA, Federal Public Defender, the Respondent being
21 represented by DAVID ROGER, District Attorney, by and through STEVEN S. OWENS,
22 Chief Deputy District Attorney, and the Court having considered the matter, including briefs,
23 transcripts, arguments of counsel, and documents on file herein, now therefore, the Court
24 makes the following findings of fact and conclusions of law:

25
26 **FINDINGS OF FACT**

27 On June 28, 1995 a jury found William Witter (hereinafter "Defendant") guilty of
28 Murder with Use of a Deadly Weapon, Attempted Sexual Assault with Use of a Deadly

1 Weapon, and Burglary. A penalty hearing was held on July 10, 1995 through July 13, 1995,
2 after which, by way of special verdict, the jury sentenced Witter to death by lethal injection.
3 On July 22, 1996, the Nevada Supreme Court affirmed Defendant's conviction and sentence
4 in a published opinion. Witter v. State, 112 Nev. 908, 921 P.2d 886 (1996), *cert. denied*, 520
5 U.S. 1217 (1997).

6 On October 27, 1997, Defendant filed his first Petition for Writ of Habeas Corpus
7 (Post-Conviction). Counsel was appointed to represent Defendant. On August 11, 1998,
8 Defendant's post-conviction counsel filed a supplemental brief in support of the petition.
9 Following an evidentiary hearing at which Defendant's trial and appellate counsel testified,
10 the district court denied relief on September 25, 2000. The Nevada Supreme Court affirmed
11 the district court's denial of relief on August 10, 2001.

12 Following pursuit of federal remedies over the last several years, Defendant filed the
13 instant petition for writ of habeas corpus on February 14, 2007. The State moved to dismiss
14 the petition on procedural grounds on May 1, 2007. The Defendant filed his Opposition on
15 June 28, 2007, and the State filed its Reply on July 5, 2007. Arguments were heard on July
16 12, 2007, and the district court announced its decision on August 2nd and 30th, 2007.

17 The current post-conviction petition was filed approximately ten years after direct
18 appeal in violation of the one-year rule in NRS 34.726 and Defendant has failed to establish
19 good cause for this delay. Additionally, the State has pleaded laches under NRS 34.800
20 raising a rebuttable presumption of prejudice to the State due to delay in excess of five years.
21 Also, because the current petition is Defendant's second, it is a successive petition under
22 NRS 34.810. Defendant has not alleged or proven specific facts that demonstrate actual
23 prejudice and good cause for failing to present his claims in an earlier proceeding or for
24 presenting them again.

25 Ineffective assistance of post-conviction counsel does not constitute good cause as it
26 does not excuse Defendant's pursuit of federal remedies and delay of six years before
27 returning to state court to raise such claims. The court grants the motion to dismiss in part as
28 to Ground 12 as death penalty execution protocol by lethal injection has been determined not

1 to constitute cruel and unusual punishment and is constitutional pursuant to McConnell v.
2 State, 120 Nev. 1043 (2004). Other than as to Ground 4, the balance of the motion to
3 dismiss is granted based on the law of the case or being time barred without legal excuse for
4 any delay or no showing of any change in the outcome pursuant to NRS 34.800, 34.810 and
5 Crump v. Warden, 113 Nev. 293 (1997).

6 The court denies the motion to dismiss as to Ground 4 pursuant to EDCR 3.20, NRS
7 34.726, McConnell v. State, 120 Nev. 1043 (2004) and Bejarano v. State, 122 Nev. Adv. Op.
8 92 (2006). The Defendant has shown good cause for delay due to the Nevada Supreme
9 Court's decisions in McConnell and Bejarano. This court does not sit as fact-finder. This
10 court reweighs with the harmless error analysis beyond a reasonable doubt.

11 McConnell requires striking of the burglary and sexual assault felony aggravators
12 leaving one remaining aggravator of a prior felony conviction involving the use or threat of
13 violence based on Defendant's 1996 conviction for stabbing David Rumsey with a butcher
14 knife. Against this aggravator, the court reweighs and considers mitigating evidence that
15 Defendant was under the influence of extreme mental or emotional disturbance for having
16 been advised by his girlfriend that she had aborted their child as well as other mitigating
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18 substance abuse and for psychologocial issues, that the Defendant was low average or just
19 below average intelligence, had possible Attention Deficit Hyperactivity Disorder, ADHD,
20 Antisocial Personality Disorder and possible Developmental Arithmetic Disorder. This
21 court finds harmless error beyond a reasonable doubt with the aggravator outweighing the
22 mitigators, therefore, the sentence previously imposed stands.

23 24 CONCLUSIONS OF LAW

25 Unless there is good cause shown for delay, a petition that challenges the validity of a
26 judgment or sentence must be filed within 1 year after entry of the judgment of conviction
27 or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court
28 issues its remittitur. NRS 34.726.

1 NRS 34.800(2) creates a rebuttable presumption of prejudice to the State if "[a]
2 period of five years [elapses] between the filing of a judgment of conviction, an order
3 imposing sentence of imprisonment or a decision on direct appeal of a judgment of
4 conviction and the filing of a petition challenging the validity of a judgment of conviction ...
5 ." See NRS 34.800.

6 A second or successive petition must be dismissed if the judge or justice determines
7 that it fails to allege new or different grounds for relief and that the prior determination was
8 on the merits or, if new and different grounds are alleged, the judge or justice finds that the
9 failure of the Defendant to assert those grounds in a prior petition constituted an abuse of the
10 writ. NRS 34.810(2). The petitioner has the burden of pleading and proving specific facts
11 that demonstrate: (a) Good cause for the petitioner's failure to present the claim or for
12 presenting the claim again; and (b) Actual prejudice to the petitioner. NRS 34.810(3).

13 Good cause to overcome procedural bars might be shown where the legal basis for a
14 claim was not reasonably available at the time of any default. See e.g., Bejarano v. State,
15 122 Nev. ___, 146 P.3d 265 (2006). As a death row petitioner, Defendant had a right to
16 effective assistance of counsel in his first post-conviction proceeding, so he may raise claims
17 of ineffective assistance of post-conviction counsel in a successive petition. See McNelson
18 v. State, 115 Nev. 296, 416 n.5, 990 P.2d 1263, 1276 n.5 (1999); Crump v. Warden, 113
19 Nev. 293, 303, 934 P.2d 247, 253 (1997). However, he must raise these matters in a
20 reasonable time to avoid application of procedural default rules. See Pellegrini v. State, 117
21 Nev. 860, 869-70, 34 P.3d 519, 525-26 (2001) (holding that the time bar in NRS 34.726
22 applies to successive petitions); see generally Hathaway v. State, 119 Nev. 248, 252-53, 71
23 P.3d 503, 506-07 (2003) (stating that a claim reasonably available to the petitioner during the
24 statutory time period did not constitute good cause to excuse a delay in filing). Pursuit of
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26 State, 105 Nev. 235, 773 P.2d 1229 (1989).

27 The Nevada Supreme Court's overruling of 20 years of precedent in McConnell v.
28 State, 120 Nev. 1043, 102 P.2d 606 (2004) and application of that ruling retroactively in

1 Bejarano supra, constitutes intervening case authority giving rise to a new claim not
2 previously available to Defendant. The appropriate inquiry is whether it is clear beyond a
3 reasonable doubt that absent the invalid aggravators the jury still would have imposed a
4 sentence of death. Bejarano v. State, 122 Nev. ___, 146 P.3d 265 (2006); Rippo v. State,
5 122 Nev. ___, 146 P.3d 279 (2006); Archanian v. State, 122 Nev. ___, 145 P.3d 1008
6 (2006).

7
8 **ORDER**

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

11 DATED this 25 day of September, 2007.

12 VALORIE J VEGA

13 DISTRICT JUDGE

14
15 DAVID ROGER
16 DISTRICT ATTORNEY
Nevada Bar #002781

17
18 BY 

19 STEVEN S. OWENS
20 Chief Deputy District Attorney
Nevada Bar #004352

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MICHAEL PES CETTA
FAX #(702) 388-5819

Eileen Davis
Employee for the District Attorney's
Office

SSO/ed

*** TX REPORT ***

TRANSMISSION OK

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ST. TIME	09/06 14:57	
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PGS. SENT	7	
RESULT	OK	



DAVID ROGER
District Attorney

CHRISTOPHER J. LALLI
Assistant District Attorney

ROBERT W. TEUTON
Assistant District Attorney

MARY-ANNE MILLER
County Counsel

OFFICE OF THE DISTRICT ATTORNEY CRIMINAL APPEALS UNIT

JAMES TUFTELAND
Chief Deputy

STEVEN S. OWENS
Chief Deputy

FACSIMILE TRANSMISSION

Fax No. (702) 382-5815

Telephone No. (702) 671-2750

TO: Michael Pescetta **FAX#:** (702) 388-5819
FROM: Steven S. Owens
SUBJECT: William Witter Findings
DATE: September 6, 2007

To Michael:

Following are the proposed Findings of Fact, Conclusions of Law & Order.
We will be submitting them to the Judge on Monday, September 17th.

Sincerely,
Steven S. Owens

*** TX REPORT ***

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OFFICE OF THE DISTRICT ATTORNEY
CRIMINAL APPEALS UNIT

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District Attorney

CHRISTOPHER J. LALLI
Assistant District Attorney

ROBERT W. TEUTON
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TO: Michael Pescetta **FAX#:** (702) 388-5819
FROM: Steven S. Owens
SUBJECT: William Witter Findings
DATE: September 17, 2007

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA vs Witter, William L

01/25/94 10:00 AM 00 INITIAL ARRAIGNMENT

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: BERNIECE STUCKI, Court Clerk
LARRY SNYDER/LS, Relief Clerk
TOM MERCER, Reporter/Recorder

PARTIES: STATE OF NEVADA
000862 Harmon, Melvyn T.

0001 D1 Witter, William L
PUBDEF Public Defender

Y
Y

Y
Y

Mr. Philip J. Kohn of the Public Defenders office present representing the Deft. Deft. Witter arraigned and pled NOT GUILTY. Deft. waived 60-day rule. Mr. Harmom lodged a copy of Rule #250 with the Clerk, and gave copies to the Deft. and his Counsel. COURT ORDERED, MATTER SET FOR TRIAL.

CUSTODY

8/29/94 @ 10:30 AM / JURY TRIAL /// 8/25/94 @ 10:00 AM / CALENDAR CALL

02/01/94 10:00 AM 00 ORAL REQUEST OF DISTRICT ATTORNEY
RESET TRIAL DATE

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: BERNIECE STUCKI, Court Clerk
TOM MERCER, Reporter/Recorder

PARTIES: STATE OF NEVADA
001799 Bell, Jr., Rex A.
000862 Harmon, Melvyn T.

0001 D1 Witter, William L
PUBDEF Public Defender

Y
Y
Y

Y
Y

PHILIP J. KOHN, DEPUTY PUBLIC DEFENDER, PRESENT ON BEHALF OF DEFENDANT. THE RECORD WILL SHOW MR. HARMON HAS A PROBLEM WITH A TRIAL DATE IN AUGUST AND HAS ASKED FOR A NEW DATE. THE COURT ORDERED, THE TRIAL DATE IS VACATED AND RESET.

CUSTODY

11-14-94 @ 10:30 AM / JURY TRIAL

11-10-94 @ 10:00 AM / CALENDAR CALL

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA vs Witter, William L
CONTINUED FROM PAGE: 001

10/13/94 10:00 AM 00 MOTION TO CONTINUE TRIAL DATE

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: PENNY WISNER, Relief Clerk

PARTIES: STATE OF NEVADA Y
 002415 Moreo, Thomas J. Y

 0001 D1 Witter, William L Y

Phillip Kohn, DPD, present. Due to Court's absence, matter CONTINUED.

CUSTODY

CONTINUED TO: 10/20/94 10:00 AM 01

10/20/94 10:00 AM 01 MOTION TO CONTINUE TRIAL DATE

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: BERNIECE STUCKI, Court Clerk
 TOM MERCER, Reporter/Recorder

PARTIES: STATE OF NEVADA Y
 001799 Bell, Jr., Rex A. Y
 003726 Guymon, Gary L. Y

 0001 D1 Witter, William L Y
 PUBDEF Public Defender Y
 000556 Kohn, Philip J. Y

Mr. Kohn represented to Court they have learned of records that are critical to their defense. Because of the privacy act in California it will take some time to obtain these records. State argued in opposition to a continuance. COURT ORDERED, this trial date is vacated and RESET.

CUSTODY

4-27-95 10:00 AM CALENDAR CALL

5-1-95 10:30 AM JURY TRIAL

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 002

04/25/95 10:00 AM 00 AT THE REQUEST OF THE COURT

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: BERNIECE STUCKI, Court Clerk
TOM MERCER, Reporter/Recorder

PARTIES: STATE OF NEVADA
000477 Bell, Stewart L.
000862 Harmon, Melvyn T.
003726 Guymon, Gary L.

0001 D1 Witter, William L
PUBDEF Public Defender
000556 Kohn, Philip J.

Y
Y
Y
Y

Y
Y
Y

COURT MET WITH COUNSEL IN CHAMBERS. These representations were put on the record. Mr. Kohn made a motion to continue the trial date and argued in support of the motion. Mr. Guyman argued in opposition to the motion to continue this trial date. He stated the victim in this case vigorously opposes a continuance of this trial date.

The Court addressed Defendant Witter and told him that the Court had told his attorney there will be no more continuances, no more coming up with a new theory a few weeks prior to trial. The Court ORDERED, trial date is set. Mr. Kohn asked that his motions set for 4-27-95 be continued to the date of the calendar call, and BY THE COURT SO ORDERED.

CUSTODY

6-15-95 10:00 AM CALENDAR CALL

6-19-95 10:30 AM JURY TRIAL

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 003

05/16/95 10:00 AM 00 DEFT'S PRO PER MOTION TO DISMISS COUNSEL
AND APPOINTMENT OF NEW COUNSEL

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: BERNIECE STUCKI, Court Clerk
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
003726	Guymon, Gary L.	Y
0001 D1	Witter, William L	Y
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y

Mr. Kohn represented to Court that since this motion was filed he has met twice with defendant Witter and State has answered the motion. It is not a personality problem. Defendant Witter in not happy that certain defenses are not being pursued. Mr. Kohn asked that this hearing be in camera since he does not want to set forth all of their defenses at this time. THE COURT ORDERED, that request is granted and Court will meet with Counsel on 5-25-95.

CUSTODY

6-15-95 10:00 AM CALENDAR CALL

05/25/95 10:00 AM 00 DEFT'S PRO PER MOTION TO DISMISS COUNSEL
AND APPOINTMENT OF NEW COUNSEL

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: CAROL GREEN, Relief Clerk
DAVID ROBINSON, Reporter/Recorder

PARTIES:	STATE OF NEVADA	N
000862	Harmon, Melvyn T.	Y
003726	Guymon, Gary L.	Y
0001 D1	Witter, William L	Y
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y

Statement by Mr. Kohn regarding previous hearing which was held in chambers and was recorded, with request that transcript be sealed. COURT ORDERED, transcript will be sealed. Further, COURT ORDERED, Motion to Dismiss Counsel and Appointment of New Counsel is DENIED; dates previously set will stand.

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 004

CUSTODY

06/15/95 10:00 AM 00 ALL PENDING MOTIONS

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: BERNIECE STUCKI, Court Clerk
TOM MERCER, Reporter/Recorder

PARTIES:

	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
003726	Guymon, Gary L.	Y
004352	Owens, Steven S.	Y
0001 D1	Witter, William L	Y
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y
004214	Bassett, Kedric	Y

DEFENDANT'S MOTION IN LIMINE TO PROHIBIT ANY REFERENCES TO THE FIRST PHASE AS THE "GUILT PHASE"... DEFENDANT'S MOTION IN LIMINE LIMITING REMOVAL OF JURORS BY THE PROSECUTOR...DEFENDANT'S MOTION TO ALLOW JURY QUESTIONNAIRE. ...DEFENDANT'S MOTION TO PARTIALLY STRIKE NOTICE OF AGGRAVATING CIRCUMSTANCES...DEFENDANT'S MOTION FOR INDIVIDUAL SEQUESTERED VOIR DIRE...DEFT'S MOTION TO DISMISS FOR FAILURE TO COLLECT AND/OR PRESERVE EVIDENCE...STATE'S MOTION TO ENDORSE NAMES ON INFORMATION...CALENDAR CALL

COURT ORDERED, Defendant's Motion to Allow Jury Questionnaire will be granted with these questions omitted: 7, 10, 11, 13, 14, 15, 20, 22, 25, 26, 29 (A) (B) (C), 30, 32, 34, 35, 36, 37, 38, 41, 42, 43, 44, 45, 48, 49, 50, 51 and the words close friends, 52, 53, and words close friends, 54, 59, 60, 61, 63, 64, 74, 75,,79, 86 and preamble, 92, 96, 97, 98, 99, 100, 101, 102, and 103.

COURT ORDERED, no ruling will be made on Defendant's Motion in limine to Prohibit any Reference to the First Phase as the "Guilt Phase". Court finds State has as much right as Defendant does for removal of Jurors, and Court indicated ruling will be made on that as we go along.

COURT RESERVED ruling on Defendant's Motion to partially Strike Notice of Aggravating Circumstances. COURT ORDERED, Defendant's Motion for Individual sequestered Voir Dire is DENIED. Defendant's Motion to Dismiss for Failure to Collect and/or Preserve Evidence was WITHDRAWN. State's Motion to Endorse Names is GRANTED.

Mr. Kohn asked that this matter be passed for one day so they can tell the Court for sure they are ready for trial, and by the COURT SO ORDERED. Mr. Kohn represented to Court he would like to WITHDRAW the motion for JURY QUESTIONNAIRE since the questions omitted are the questions he wanted and he does not want to upset the Jurors by having them answer the questions he is

CONTINUED ON PAGE: 006

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 005

not as interested in. COURT ORDERED, that Motion will be WITHDRAWN.

CUSTODY

6-16-95 10:00 AM CALENDAR CALL

06/16/95 10:00 AM 01 CALENDAR CALL

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: BERNIECE STUCKI, Court Clerk
TOM MERCER, Reporter/Recorder

PARTIES: STATE OF NEVADA

000477 Bell, Stewart L.

003726 Guymon, Gary L.

004352 Owens, Steven S.

0001 D1 Witter, William L

PUBDEF Public Defender

000556 Kohn, Philip J.

004214 Bassett, Kedric

Y
Y
Y
Y
Y
Y
Y
Y

Mr. Kohn announced ready for trial on 6-19-95 @ 10:30 A.M. There was some discussion as to when the Penalty Hearing could be held. Estimated time for this trial is two weeks and one week, or three days for the Penalty Hearing. The Court indicated the week of July 10, 1995 is the time set for the penalty hearing, if that becomes necessary. It was decided prospective jurors would be brought into the Courtroom in groups of fourteen (14) to be cleared for death penalty.

Mr. Guymon submitted an Order to Endorse Names for Court's signature and the same was filed in Open Court.

COURT ORDERED, matter continued for JURY TRIAL.

CUSTODY

6-19-95 10:30 AM JURY TRIAL

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 006

06/19/95 10:30 AM 00 TRIAL BY JURY

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: BERNIECE STUCKI, Court Clerk
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
003726	Guymon, Gary L.	Y
004352	Owens, Steven S.	Y
0001 D1	Witter, William L	Y
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y
004214	Bassett, Kedric	Y

(PRE-TRIAL MOTIONS OUTSIDE PRESENCE OF JURY)

On behalf of State Mr. Guyman stated there were no motions pending that have not been ruled on by the Court. Mr. Kohn stated he had no pretrial motions that had not been ruled on and counsel stipulated that all motions have been heard and ruled on. Court and counsel agreed all of the requirements of the Supreme Court rule 250 had been satisfied.

One further matter. The Court stated there was a motion previously filed by Defendant to remove Mr. Kohn as his counsel. After reading the minutes Court determined that this motion had been heard and denied.

(JURY PRESENT)

The clerk called the roll of prospective jurors with all answering present.

Mr. Owens made a short nature of action statement who introduced himself and Mr. Guymon. He also read the list of witnesses State may call. Mr. Philip Kohn, Counsel for Defense, introduced himself and Mr. Bassett and estimated time of trial will be two weeks.

The Court called groups of fourteen prospective jurors and they examined in groups of fourteen, with remaining prospective jurors out of the courtroom.

Voir Dire examination continued.

COURT ORDERED, voir dire examination will continue June 20, 1995 at the hour of 1:30 P.M. The prospective jurors were dismissed until that time.

(OUTSIDE PRESENCE OF JURY)

Mr. Guymon made objection to Mr. Kohn's reference to circumstances in Defendant's childhood. Response by Mr. Kohn who agreed to brief the issue. The Court suggested that counsel not use the word "mitigation". Both agreed they would not use that word.

CONTINUED TO: 06/20/95 01:30 PM 01

CONTINUED ON PAGE: 008

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 007

06/20/95 01:30 PM 01 TRIAL BY JURY

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: BERNIECE STUCKI, Court Clerk
TOM MERCER, Reporter/Recorder

PARTIES: STATE OF NEVADA
000477 Bell, Stewart L.
000372 Primeaux, A. L.
004352 Owens, Steven S.

0001 D1 Witter, William L
PUBDEF Public Defender
000556 Kohn, Philip J.
004214 Bassett, Kedric

Y
Y
Y
Y

Y
Y
Y
Y

(OUTSIDE PRESENCE OF JURYY)

Mr. Kohn put on the record his motion to introduce fetal alcohol.
Mr. Kohn put on the record his conversation regarding defendant's motion for replacing his counsel. It was because Mr. Kohn had stated he had no defense for the trial phase but in talking with experts in Seattle, Washington he feels there is a great deal that could be done in the penalty phase.

Mr. Kohn stated the Court denied his motion to continue the trial and he had never made a record on that motion. He did so. State opposed the motion and the basis for that opposition was that the case was previously set for trial in 1994, 10-14-94, and Mr. Kohn has had almost a year to get the discovery for his defense. State's recollection of that motion which was heard in chambers was very much as the State indicated. The Court had granted a couple of continuances in the past to give defense time to procure a witness, since the Court thought it was important, in fairness to Defendant's case. But now the Court feels it is not right to give him three weeks to do what he could not do in past year. Court denied the motion for continuance on the eve of trial.

Mr. Kohn asked permission to inquire into the area of aggravating circumstances. Response by State. Court stated it's findings. Court DENIED the request.

(JURY PRESENT)

Jury selection continued.

Prospective jurors were released at 4:00 p.m.

COURT ORDERED, jury selection is continued to 6-21-95 at the hour of 10:30 A.M.

CONTINUED TO: 06/21/95 10:30 AM 02

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 008

06/21/95 10:30 AM 02 TRIAL BY JURY

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: BERNIECE STUCKI, Court Clerk
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
003726	Guymon, Gary L.	Y
004352	Owens, Steven S.	Y
0001 D1	Witter, William L	Y
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y
004214	Bassett, Kedric	Y

(OUTSIDE PRESENCE OF JURY)

Mr. Kohn made a record about his objections to Defendant not receiving a proper razor for shaving before he came to Court. The Court inquired of Court Services Officers if Defendant had been treated in an unusual manner. They indicated he had been given the same razor that they have been giving prisoners for years. Court determined that the Defendant looked fine.

Mr. Kohn brought to Court's attention that in today's Review Journal, editorial page, there is a letter from the deputy Attorney General and it talks about criminals not taking the blame for criminal actions. It basically belittles the idea of mitigation. He expressed concern about the Court's rulings on voir dire in asking the jury about abuse. Further argument by Mr. Kohn. Response by State. The Court ORDERED, mark the article in red and it will be marked as Court's Exhibit but the Court will not respond to anything in the press during this trial.

(PROSPECTIVE JURORS PRESENT)

Jury selection continued.

COURT ORDERED, this matter is continued to the date of June 22, 1995 at the hour of 11:15 AM.

CONTINUED TO: 06/22/95 11:15 AM 03

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 009

06/22/95 11:15 AM 03 TRIAL BY JURY

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: BERNIECE STUCKI, Court Clerk
TOM MERCER, Reporter/Recorder

PARTIES:

	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
003726	Guymon, Gary L.	Y
004352	Owens, Steven S.	Y
0001 D1	Witter, William L	Y
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y
004214	Bassett, Kedric	Y

(JURY PRESENT)

Jury selection continued.

Lunch Break.

(JURY PRESENT)

Jury selection continued.

At the hour of 5-30 P.M. twelve jurors and two alternates were seated and sworn.

The Court admonished and excused the jury and ORDERED, this matter is continued to the date of 6-23-95 at the hour of 9:00 AM.

CONTINUED TO: 06/23/95 09:00 AM 04

06/23/95 09:00 AM 04 TRIAL BY JURY

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: BERNIECE STUCKI, Court Clerk

PARTIES: NO PARTIES PRESENT

(JURY PRESENT)

Opening statement by Mr. Guymon.

Opening statement by Mr. Bassett.

The Clerk read Information to Jury and stated Defendant's plea thereto.

Mr. Kohn invoked the exclusionary rule.

Kathryn Terry Cox sworn and testified.

Thomas D. McKinnon sworn and testified.

Thomas Pummill sworn and testified.

Lunch break.

(OUTSIDE PRESENCE OF JURY)

Mr. Kohn put on the record he had asked to make a motion to exclude witnesses outside presence of Jury and the Court determined it should be

CONTINUED ON PAGE: 011

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 010

made in the presence of the jury. Also, Mr. Kohn stated he did not want those who will testify in the Penalty Hearing allowed to be present during the trial, in the interest of a fair trial for the defendant.

Response by Mr. Guymon.

The Court ruled the exclusionary rule applies only to the Evidentiary portion of the trial.

LUNCH BREAK

(OUTSIDE PRESENCE OF JURY)

Mr. Kohn asked to put on the record one other thought concerning the motion to exclude witnesses.

The Court finds this motion is prematurely made, since the motion that affects the trial is the motion to exclude witnesses at the trial. Should we come to the penalty hearing, then the question will be should witnesses be allowed to testify at the penalty phase who have sat through the guilty phase of the trial. Court further finds, it is not an issue in this phase of the trial.

Mr. Kohn stated that in going through the police reports there was some mention of gang affiliation. He advised the Court the State will not mention that and both witnesses have been strongly admonished not to say anything about gang affiliation. That will be in the form of a stipulation.

Mr. Kohn objected to the State showing two (2) pictures of Mr. Cox, showing him under his cab, dead and very bloody. Mr. Kohn also objected to photographs of Mr. Cox taken at the autopsy. The Court did remove one picture of Mr. Cox under his cab but allowed the other four.

(JURY PRESENT)

Timothy Allen Schroeder sworn and testified.

Afternoon break.

(OUTSIDE PRESENCE OF JURY)

Mr. Kohn objected to some pictures State had marked, #18 and #22. Court viewed the photos and ORDERED, they will be admitted.

(JURY PRESENT)

Bryan Candiano sworn and testified.

Donald Redlin, Security officer, bicycle detail, sworn and testified.

Jury was admonished and excused. COURT ORDERED, this matter is continued to the date of Monday, June 26, 1995 at the hour of 10:30 AM.

(OUTSIDE PRESENCE OF JURY)

Mr. Guyman advised Court that if Mr. Kohn is going to call an expert they would like to have the name of the expert and any report he might have. Mr. Kohn indicated that depending on what the State's witness says, he may or may not call an expert. IF he does, he has already told the State who it will be>

There was some discussion about instructions.

CONTINUED TO: 06/26/95 10:30 AM 05

CRIMINAL COURT MINUTES

94-C-117513-C

STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 011

06/26/95 10:30 AM 05 TRIAL BY JURY

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: BERNIECE STUCKI, Court Clerk
 MARCIA LEONARD, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
003726	Guymon, Gary L.	Y
004352	Owens, Steven S.	Y
0001 D1	Witter, William L	Y
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y
004214	Bassett, Kedric	Y

(OUTSIDE PRESENCE OF JURY)

Mr. Guymon has show counsel for defense all of the photos the State intends to admit. Mr. Kohn had objections to five of the pictures.

(JURY PRESENT.)

Daniel Peterson sworn and testified.

Exhibits marked, offered and admitted as per attached worksheet.

(OUTSIDE PRESENCE OF JURY)

Mr. Kohn put on the record his objections to State's Exhibit #41. The Court deemed that although it was the same photo, it might be called duplicitous but it jusdt a smaller photo of the larger one they already have in. So the Court can see no harm in the State using the smaller photo also.

Lunch break.

(JURY PRESENT)

Thomas Dwayne Thowsen sworn and testified. (Detective Thomas)

Alan Galaspy sworn and testified.

Counsel stipulated to admit State's Exhibits No. 70 and No. 71.

Sonya Snodie sworn and testified.

Mr. Guymon put on the record another stipulation of Counsel: Terry Cook, who is a criminalist with the Las Vegas Metropolitan Police Department, and has previously testified as an expert for the Las Vegas Metropolitan Police Department as a criminalist, tested many of the items that have no been admitted into evidence. Specifically, he tested the blood that was found on the four and a half inch blade of the buck knife and concluded that it could be the blood of James Cox, but not the blood of Kathryn Cox or William Witter.

Terry Cook also tested the substances that were found on the bloody t-shirt of the defendant, the black and white sweater, the boxer shorts and the blue and white socks; concluded that that too was a blood substance; that it could be the blood of -- specifically on the t-shirt, sweater and socks --o the blood of James Cox, and not the blood of Kathryn Cox or the Defendant William Witter; That the substance on the blue jeans worn by the defendant was, in fact blood, and that it could

CONTINUED ON PAGE: 013

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 012

be the blood of James Cox and not Kathryn's or the defendant's; that the substance on the tennis shoes worn by the defendant was, in fact blood, and that it could be the blood of James Cox and not the blood of Kathryn Cox or William Witter; That the substance found on the hands, left and right, of the Defendant was, in fact, blood, and that it matched the blood of James Cox and not the blood of Kathryn Cox or the defendant, William Witter; That the blood, that the substance found on the brown jacket located over the body of James Cox could be the blood of James Cox, but not the blood of Kathryn Cox or defendant Witter. That the Substance found on the gray sweatshirt that said Caesars Palace, which Kathryn had been wearing, and the blood on the green and black sweater as well as the bra, could be --that was blood and that it could be the blood of Kathryn Cox or the defendant's, as they have similar blood types, but could not be the blood of James Cox. Further, Counsel will stipulate that Terry Cook tested or analyzed the swabs from the sexual assault kits, that being taken by Marilyn Allred, the nurse at University Medical Center, from Kathryn Cox, and compared it to the sexual assault kit and evidence taken from the defendant and that nothing of serological value was found on the vaginal, anal, or oral swabs taken from Kathryn Cox.

Dr. Robert Jordan was sworn and testified.

The COURT ORDERED, these proceedings are continued to the date of June 27th, 1995 at the hour of 1:30 PM.

(OUTSIDE PRESENCE OF JURY)

The Defendant was advised of his rights.

CONTINUED TO: 06/27/95 01:30 PM 06

06/27/95 01:30 PM 06 TRIAL BY JURY

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: BERNIECE STUCKI, Court Clerk
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
003726	Guymon, Gary L.	Y
004352	Owens, Steven S.	Y
0001 D1	Witter, William L	Y
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y
004214	Bassett, Kedric	Y

(OUTSIDE THE PRESENCE OF JURY)

Mr. Kohn represented to the Court that he was prepared to call Dr. Levy as his first and possibly only witness. Dr. Levy is a medical doctor. He works at Montevista Hospital. He is head of addictions there.

CONTINUED ON PAGE: 014

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 013

This doctor was contacted by the State and now he feels the Defendant is a bad guy and should die and that he doesn't think he can do any good for the defense. So, at this point Mr. Kohn stated he was without an expert and the State is partly to blame. Mr. Kohn asked for a continuance. Mr. Guymon argued in opposition to that motion. The Court finds the request for a continuance is not well taken. The COURT ORDERED, the motion for a continuance is DENIED.

(JURY PRESENT)

State rests.

Defense rests.

The Court ORDERED, this matter is continued to June 28, 1995 at the hour of 10:30 AM.

CONTINUED TO: 06/28/95 10:30 AM 07

06/28/95 10:30 AM 07 TRIAL BY JURY

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: BERNIECE STUCKI, Court Clerk

PARTIES: NO PARTIES PRESENT

(OUTSIDE PRESENCE OF JURY)

On behalf of State Mr. Guymon had no objection to the instructions the Court indicated it would give and had two instructions to offer that the Court indicated it would not give. Arguments of counsel.

On behalf of Defense Mr. Kohn made an objection to the fact that all discussion regarding settling instructions was not put on the record. Discussion between Court and Mr. Kohn regarding the felony murder rule. Mr. Kohn had two instructions marked as Defendant's proffered A and Aa, and argued. Mr. Kohn had no instructions to offer that the Court indicated it would not give. Counsel stipulated that instructions were settled in Open Court.

Mr. Kohn put on the record he thought the State had the right to rebut what the defense says in their argument, but not save a lot of charts whistles and bells for their closing argument.

The Court reminded Mr. Kohn Mr. Guymon had just read into the record NRS 175.141, entitled Order of Trial, sub (5), which states the State must open and must conclude the argument.

Further argument and response.

The Court ORDERED, State will get a second argument.

(JURY PRESENT)

The Court instructed the jury as to the law of the case. Instruction #29-A was added to the instructions and read to the jury.

Opening argument by Mr. Owens. Answering argument by Mr. Bassett.

Closing argument by Mr. Guymon.

The officers were sworn to take charge of the jury.

The alternate jurors were thanked and excused.

CONTINUED ON PAGE: 015

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 014

The jury retired to deliberate at the hour of 1:35 PM.

(OUTSIDE PRESENCE OF JURY)

The Court made a record with regard to Instruction #29-A.

The jury returned with a verdict at the hour of 5:10 PM.

The clerk called the roll of the jury.

The jury found defendant guilty of Count I, MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, Count II, ATTEMPT MURDER WITH USE OF A DEADLY WEAPON, Count III, ATTEMPT SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON and Count IV, BURGLARY.

The jury was polled at request of Mr. Kohn.

The Court explained to the Jury they would now have to decide the penalty and the Penalty Hearing would begin on July 10, 1995 at the hour of 10:30 AM.

The jurors were thanked and excused until that date and were asked to leave their names and telephone numbers with the bailiff.

(OUTSIDE PRESENCE OF JURY)

The COURT ORDERED, Defendant is remanded on this case. Court and Counsel discussed in chambers the matter of getting together to exchange witness lists and make reciprocal discovery of everything that is going to be had in the penalty phase. July 6 is the cut off date for the penalty phase. All witnesses have to be disclosed at that time.

07/06/95 10:30 AM 00 STATUS CHECK:DISCOVERY FOR PENALTY HRG.

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: BERNIECE STUCKI, Court Clerk
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
003726	Guymon, Gary L.	Y
004352	Owens, Steven S.	Y
0001 D1	Witter, William L	N
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y
004214	Bassett, Kedric	Y

State filed in open Court an Amended Witness List and a Motion to Permit Testimony Regarding Defendant's Gang Affiliation During Penalty Phase. Mr. Kohn represented to Court he did not want to disclose at this time his expert witness. The Court indicated that he must do that at this time. This is the cut off date and all discovery is to be turned over at this time if it is to be used in the Penalty Hearing. Counsel indicated they were ready to proceed.

COURT ORDERED, this matter is continued for Penalty Phase and anything else that needs to be put on the record will be done when the Defendant is present.

CONTINUED ON PAGE: 016

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 015

CUSTODY

7-10-95 10:30 AM PENALTY HEARING

07/10/95 10:30 AM 00 PENALTY HEARING

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: BERNIECE STUCKI, Court Clerk
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
003726	Guymon, Gary L.	Y
004352	Owens, Steven S.	Y
0001 D1	Witter, William L	Y
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y
004214	Bassett, Kedric	Y

(OUTSIDE PRESENCE OF JURY)

Mr. Kohn filed in Open Court Defendant's Motion to Continue the Penalty Phase and Defendant's opposition to the State's Motion to Permit Testimony Regarding Defendant's Gang Affiliation During Penalty Phase and Defendant's Motion to Exclude Evidence Regarding Allegations that the Defendant possessed a Weapon While in Jail in open Court.

The Court, having read briefs from both sides, and hearing oral argument ORDERED, that testimony will be allowed as to evidence of gang affiliation and reasons for that decision were put on the record. FURTHER ORDERED, Defendant's Motion to continue the Penalty Hearing is DENIED. and testimony regarding the weapon found in Defendant's cell will be allowed.

Mr. Guymon stated he would file an Amended Notice of Intent to Seek Death Penalty, striking the first aggravator since Defendant Witter had completed his parole prior to this incident.

There was discussion as to the packet of information brought by State's witness Linda Rose. The Court deemed that could be used at the hearing. Mr. Kohn stated again his concern on the discovery issue. He said they have had Dr. Etcoff used against them before they call him as a witness. Mr. Kohn asked to have a picture marked as Defense Exhibit #A to be published to the Jury through his opening statement, and by the Court SO ORDERED.

(JURY PRESENT)

The Clerk called the roll of the jurors, with all answering present. Opening argument by Mr. Guymon and then Mr. Kohn.

Lunch Break.

Ronald A. Ezell sworn and testified.

CONTINUED ON PAGE: 017

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 016

David Scot Rumsey sworn and testified.
 Michael Pomeroy sworn and testified.
 Linda Rose sworn and testified.
 James Ford sworn and testified.
 Shanta Franco sworn and testified.
 Timothy Jackson sworn and testified.
 Thomas Pipitone sworn and testified.
 The Court admonished and excused the jurors and ORDERED, matter continued to July 11, 1995 at the hour of 11:00 am.

CONTINUED TO: 07/11/95 11:00 AM 01

07/11/95 11:00 AM 01 PENALTY HEARING

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: BERNIECE STUCKI, Court Clerk
 TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
003726	Guymon, Gary L.	Y
004352	Owens, Steven S.	Y
0001 D1	Witter, William L	Y
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y
004214	Bassett, Kedric	Y

(JURY PRESENT)

James Randall Cox sworn and testified.
 Lunch recess.
 Phillip Cox, brother of Jim Cox, sworn and testified.
 Kathryn Terry Cox sworn and testified.
 State Rests.

(OUTSIDE PRESENCE OF JURY)

Mr. Kohn put on the record his objection about the parole evidence presented by State.

Response by State.

Response by Mr. Kohn.

Mr. Kohn moved for a mistrial based on the statements of Mrs. Cox, asking the jury to show no mercy.

Response by Mr. Guymon.

The COURT ORDERED, motion for Mistrial is DENIED.

Mr. Kohn represented to Court Defendant Witter does not want him family called in testify, but Mr. Kohn feels this is his choice to make and he feels he must present this evidence on behalf of his client. Mr. Witter would like the Court to Order Mr. Kohn not to bring his family into Court, or allowed him to be removed from the Courtroom.

CONTINUED ON PAGE: 018

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 017

The Court spoke with Defendant. COURT ORDERED, Defendant is to be removed from the Courtroom during the testimony of his family, per his request.

(JURY PRESENT)

Ruth Amador Ffabela sworn and testified.

Louis Witter, defendant's father, sworn and testified.

The jurors were admonished and excused.

The COURT ORDERED, matter is continued to the date of July 12, 1995 at the hour of 10:30 AM..

(OUTSIDE PRESENCE)

The Court directed Mr. Kohn to give Defendant a chance to come back into the Courtroom, if he chooses to do so.

CONTINUED TO: 07/12/95 10:30 AM 02

07/12/95 10:30 AM 02 PENALTY HEARING

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: BERNIECE STUCKI, Court Clerk
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000477	Bell, Stewart L.	Y
003726	Guymon, Gary L.	Y
004352	Owens, Steven S.	Y
0001 D1	Witter, William L	N
PUBDEF	Public Defender	Y
000556	Kohn, Philip J.	Y
004214	Bassett, Kedric	Y

(JURY PRESENT)

Mr. Guymon filed an Amended Notice of Intent to Seek Death Penalty in Open Court.

Arlan Justice, Investigator for Public Defenders' office, sworn and testified.

Lani Sanders sworn and testified.

Michael Ritchison sworn and testified.

LUNCH BREAK.

Dr. Lewis Marion Etcoff sworn and testified.

Afternoon break.

Defense Rests.

No rebuttal testimony.

The Jurors were admonished and excused and told to return on July 13, 1995 at the hour of 11:00 AM.

(OUTSIDE PRESENCE OF JURY)

The Court had defendant brought over from the jail and he was brought before the Court. The Court told him who had testified and where they

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 018

were in the trial and asked him if he wanted to come back into Court for the final arguments. The Defendant indicated it was his choice to remain out of the courtroom until the verdict is read.

The Court allowed that.

Mr. Kohn advised Court he was going to file a motion allowing him to argue last in the penalty phase. The Court said he could file it, but the Court will not grant it.

CONTINUED TO: 07/13/95 11:00 AM 03

07/13/95 11:00 AM 03 PENALTY HEARING

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: BERNIECE STUCKI, Court Clerk
TOM MERCER, Reporter/Recorder

PARTIES:

STATE OF NEVADA
000477 Bell, Stewart L.
003726 Guymon, Gary L.
004352 Owens, Steven S.

0001 D1 Witter, William L
PUBDEF Public Defender
000556 Kohn, Philip J.
004214 Bassett, Kedric

Y
Y
Y
Y

N
Y
Y
Y

(OUTSIDE PRESENCE OF JURY)

Instructions settled in open Court.

On behalf of State Mr. Guymon had no instructions to offer that the Court indicated it would not give and had no objections to the instructions the Court indicated it would give.

Mr. Kohn made his objection to Court settling instructions outside presence of Defendant. He also made a record of his objection to the word "appropriate" in Instruction No. 8, line 26 and argued.

Mr. Kohn had one instruction to offer that the Court indicated it would not give and that was marked Defense proffered A.

Counsel stipulated that instructions have been settled in open Court and will be read prior to closing arguments.

(JURY PRESENT)

The Court instructed the Jury as to the law of the case.

Opening argument by Mr. Owens.

Answering argument by Mr. Bassett and then Mr. Kohn.

Closing argument by Mr. Guymon.

The officers were sworn to take charge of the jury.

The alternate jurors were thanked and excused.

The jury retired to deliberate at the hour of 1:30 PM.

(OUTSIDE PRESENCE OF JURY)

Mr. Kohn put on the record his argument regarding future dangerousness.

CONTINUED ON PAGE: 020

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 019

Response by Mr. Guymon.

Defendant was present when the Jury returned with a verdict at the hour of 6:00 p.m.

The jurors were polled at request o Mr. Kohn, thanked and excused by Court.

(OUTSIDE PRESENCE OF JURY)

Defendant was remanded to custody and COURT ORDERED, matter set for sentencing.

CUSTODY

8-3-95 10:00 AM SENTENCING COUNTS I-IV

08/03/95 10:00 AM 00 SENTENCING COUNTS I-IV

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: BERNIECE STUCKI, Court Clerk
TOM MERCER, Reporter/Recorder

PARTIES: STATE OF NEVADA
000477 Bell, Stewart L.
003726 Guymon, Gary L.

0001 D1 Witter, William L
PUBDEF Public Defender
000556 Kohn, Philip J.

Y
Y
Y

Y
Y
Y

JENE CAREY, Division of Parole and Probation, present. Defendant Witter adjudged guilty of Count I, MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON (F), Count II, ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), Count III, ATTEMPT SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON (F) and Count IV, BURGLARY (F) by reason of Jury Verdict. Argument to Court by State. State-ment by Defendant. Mr. Kohn submitted the matter.

The Court ORDERED, Defendant Witter is sentenced, in addition to the \$25 Administrative Assessment as follows:

COUNT I DEATH BY LETHAL INJECTION

COUNT II TWENTY (20) YEARS in the Nevada Department of Prisons and a consecutive TWENTY (20) YEARS for Use of a Deadly Weapon.

COUNT III TWENTY 20) YEARS in the Nevada Department of Prisons and a consecutive TWENTY (20) YEARS for Use of a Deadly Weapon. This sentence to run consecutively to Count II.

COUNT IV TEN (10) YEARS in the Nevada Department of Prisons. This sen- tence to run consecutively to Count III.

Defendant is to pay \$2,790 in restitution, with an additional amount to determined. Also, Defendant is given six hundred twenty-seven (627) days credit for time served.

CONTINUED ON PAGE: 021

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 020

The State filed in Open Court the Greetings, Judgment of Conviction, Warrant of Execution and Order of Execution.

NDP

09/18/97 08:30 AM 00 DEFT'S MOTION FOR APPOINTMENT OF COUNSEL

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: LINDA SKINNER, Relief Clerk
ROBERT MINTUN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	004352 Owens, Steven S.	Y
	0001 D1 Witter, William L	N
	PUBDEF Public Defender	Y
	001060 Miller, Robert L.	Y

Upon Court's inquiry, Mr. Miller advised that defendant has not filed any motion. Court inquired if this motion was premature. Mr. Miller stated he felt it might be, but that defendant was going to be filing something soon. Mr. Schieck stated that if he were going to be appointed, he would rather be appointed before defendant prepared his writ as it would be less work for him. COURT ORDERD, MOTION GRANTED. Mr. Schieck is APPOINTED to help with the appeal.

NDP

11/12/97 08:30 AM 00 DEFT'S PETITION FOR WRIT OF HABEAS
CORPUS (POST CONVICTION)

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: LINDA VIGIL, Court Clerk
BILLIE JO CRAIG, Relief Clerk
ROBERT MINTUN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	0001 D1 Witter, William L	N
	000824 Schieck, David M.	Y

Prior to Court commencing, counsel requested a briefing schedule. COURT ORDERED briefing schedule as follows: Mr. Schieck to file supplemental points and authorities by 1/14/98; the State to respond by 3/2/98; Mr. Schieck to reply by 3/17/98; argument 3/19/98.

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 021

NDP

3/19/98 8:30 AM DEFT'S PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)

CONTINUED TO: 03/19/98 08:30 AM 01

03/09/98 08:30 AM 00 DEFT'S MTN FOR EXTENSION OF TIME TO FILE
SUPPLEMENTAL POINTS/MTN CONTINUE ARGUMEN

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: LINDA VIGIL, Court Clerk
JO ANN HANEMAN/JAH, Relief Clerk
ROBERT MINTUN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	005391 Kollins, Stacy L.	Y
	0001 D1 Witter, William L	N
	000824 Schieck, David M.	Y

State requested a briefing schedule in this matter, there being no
opposition from Mr. Schieck, COURT ORDERED, DEFT'S BRIEF DUE BY 4/27/98;
STATE'S OPPOSITION DUE BY 6/8/98; DEFT'S REPLY DUE BY 7/13/98; ARGUMENT SET
7/15/98.

NDP

7/15/98 8:30AM ARGUMENT

07/15/98 08:30 AM 00 ALL PENDING MOTIONS 07/15/98

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: LINDA VIGIL, Court Clerk
ROBERT MINTUN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	005873 Benedict, Susan M.	Y
	0001 D1 Witter, William L	N
	000824 Schieck, David M.	Y

DEFT'S PETITION FOR WRIT OF HABEAS CORPUS...ARGUMENT

Mr. Schieck advised the Court he needs to arrange to have the Defendant sign
documents and requested a continuance. COURT ORDERED, matter continued to
mid August.

CONTINUED ON PAGE: 023

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 022

NDP

8/12/98 8:30 AM SAME

08/12/98 08:30 AM 01 ARGUMENT

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: CYNTHIA NAVARRETTE-LORY, Court Clerk
ROBERT MINTUN, Reporter/RecorderPARTIES: STATE OF NEVADA
004352 Owens, Steven S.N
Y0001 D1 Witter, William L
000824 Schieck, David M.N
Y

Mr. Schieck stated he filed points and authorities yesterday. COURT ORDERED, matter CONTINUED for FINAL ARGUMENT; NO MORE CONTINUANCES.

NDP

09-16-98 8:30 AM FINAL ARGUMENT

09/16/98 08:30 AM 00 ARGUMENT: DEFT'S PETITION FOR WRIT OF
HABEAS CORPUS (POST CONVICTION)

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: NORA PENA, Court Clerk
ROBERT MINTUN, Reporter/RecorderPARTIES: STATE OF NEVADA
003726 Guymon, Gary L.Y
Y0001 D1 Witter, William L
004349 Oram, Christopher R.N
Y

Mr. Oram present on behalf of Mr. Schieck advised there is no opposition to continue. Mr. Guymon agreed and stated he talked with Mr. Schieck and now is waiting to file his opposition in the next day or two. COURT ORDERED, Briefing schedule as follows: State to file opposition on 9/23rd, Mr. Schieck to file reply 10/7th and set for argument. Court admonished parties and stated NO MORE CONTINUES.

NDP

CONTINUED TO: 10/12/98 08:30 AM 01

CONTINUED ON PAGE: 024

PRINT DATE: 10/30/07

PAGE: 023

MINUTES DATE: 09/16/98

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA vs Witter, William L

CONTINUED FROM PAGE: 023

10/14/98 08:30 AM 02 ARGUMENT: DEFT'S PETITION FOR WRIT OF
HABEAS CORPUS (POST CONVICTION)

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: NORA PENA, Court Clerk
ROBERT MINTUN, Reporter/Recorder

PARTIES: STATE OF NEVADA
003726 Guymon, Gary L.
0001 D1 Witter, William L
000824 Schieck, David M.

Y
Y
N
Y

Argument by Mr. Schieck, in addition he would like to call Phil Kohn as a witness, he was the trial attorney and appeal attorney. No opposition by the State to set an evidentiary hearing because it can be done very quickly. Court noted an evidentiary hearing is appropriate. Mr. Schieck advised he would like to check Mr. Kohn's schedule but would request a date sometime in November and thinks it would not be so quick, further would like to bring the deft. here. COURT ORDERED, matter set on a Monday for an Evidentiary Hearing.

NDP

11-16-98 10:00 AM EVIDENTIARY HEARING: DEFT'S PETITION FOR WRIT OF HABEAS
CORPUS (POST CONVICTION)

11/16/98 08:30 AM 00 EVIDENTIARY HEARING: DEFT'S PETITION FOR
WRIT OF HABEAS CORPUS (POST CONVICTION)

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: NORA PENA, Court Clerk
ROBERT MINTUN, Reporter/Recorder

PARTIES: STATE OF NEVADA
003726 Guymon, Gary L.
0001 D1 Witter, William L
000824 Schieck, David M.

Y
Y
N
Y

Mr. Schieck requested a continuance, defendant is not present and is not cooperating also has refused to see him, further has written to the deft. and thinks the deft. is needed here. Court asked if he could proceed without the deft. as the deft. doesn't want to come down. Mr. Schieck noted this is the first continuance. No objection by the State for a continuance. COURT ORDERED, matter CONTINUED.

CONTINUED ON PAGE: 025

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 024

NDP

CONTINUED TO: 12/14/98 10:00 AM 01

12/14/98 10:00 AM 01 EVIDENTIARY HEARING: DEFT'S PETITION FOR
WRIT OF HABEAS CORPUS (POST CONVICTION)

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

OFFICERS: NORA PENA, Court Clerk
JAMES HELLESO, Reporter/RecorderPARTIES: STATE OF NEVADA
003726 Guymon, Gary L.Y
Y

There being no objection, COURT ORDERED, matter CONTINUED.

NDP

CONTINUED TO: 01/13/99 08:30 AM 02

12/23/98 08:30 AM 00 MINUTE ORDER RE: REASSIGNMENT

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: NORA PENA, Court Clerk

PARTIES: NO PARTIES PRESENT

Upon review of the case, COURT ORDERED, it would like this case reassigned
to Judge Loehrer as in the normal course pursuant to the change over.

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA vs Witter, William L

CONTINUED FROM PAGE: 025

01/13/99 10:00 AM 02 EVIDENTIARY HEARING: DEFT'S PETITION FOR
WRIT OF HABEAS CORPUS (POST CONVICTION)

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: REBECCA FOSTER, Relief Clerk
JOY HINCK, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	005144 Sweetin, James R.	Y
	0001 D1 Witter, William L	N
	000824 Schieck, David M.	Y

Mr. Schieck advised Court Mr. Kohn is ill and needs a continuance. COURT ORDERED, Mr. Schieck to prepare a transport order. Mr. Schieck stated a waiver of appearance was filed. COURT ORDERED, defendant's presence waived and matter CONTINUED.

CONTINUED TO: 02/19/99 01:30 PM 03

02/19/99 03:00 PM 03 EVIDENTIARY HEARING: DEFT'S PETITION FOR
WRIT OF HABEAS CORPUS (POST CONVICTION)

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: CINDY HORTON, Court Clerk

PARTIES: NO PARTIES PRESENT

DUE TO COURT'S TRIAL SCHEDULE, HEARING CONTINUED.

NDP

CONTINUED TO: 02/26/99 03:00 PM 04

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA vs Witter, William L

CONTINUED FROM PAGE: 026

02/26/99 03:00 PM 04 EVIDENTIARY HEARING: DEFT'S PETITION FOR
WRIT OF HABEAS CORPUS (POST CONVICTION)

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: CINDY HORTON, Court Clerk
LISA MAKOWSKI, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
001438	Kane, Edward R.	Y
0001 D1	Witter, William L	N
000824	Schieck, David M.	Y

Mr. Schieck advised the deft waived his right to be present for todays proceedings. P. Kohn and R. Miller sworn and testified. Mr. Schieck requested closing argument be submitted by brief. COURT ORDERED, BOTH COUNSEL TO SUBMIT CLOSING BRIEF WITH PROPOSED ORDER.

NDP

10/31/00 08:30 AM 00 DEFT'S MOTION FOR APPOINTMENT OF
APPELLATE COUNSEL

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: THERESA LEE, Court Clerk
GEORGETTE BYRD/GB, Relief Clerk
LISA MAKOWSKI, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
004353	Pace, Barter G.	Y
0001 D1	Witter, William L	N
000824	Schieck, David M.	Y

COURT ORDERED, Mr. Shieck is appointed as counsel for purposes of appealing post conviction relief.

NDP

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA vs Witter, William L

CONTINUED FROM PAGE: 027

02/27/07 09:00 AM 00 DEFT'S MTN FOR APPOINTMENT OF ATTY /37

HEARD BY: Valorie J. Vega, Judge; Dept. 2

OFFICERS: Billie Jo Craig, Court Clerk
Lisa Lizotte, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
002781	Roger, David J.	Y
004352	Owens, Steven S.	Y
0001 D1	Witter, William L	N
002437	Pescetta, Michael L.	Y

As there was no opposition, COURT ORDERED, Defendant's Motion for Appointment of Counsel is GRANTED pursuant to EDCR 3.20. The Federal Public Defender's Office is APPOINTED as Counsel of Record. Colloquy regarding status of case. COURT ORDERED, a briefing schedule set as follows:

State's Motion to Dismiss Petition for Writ Due: 5/1/07

Defendant's Opposition Due: 6/14/07

State's Reply Due: 6/28/07

ARGUMENT/DECISION: 7/12/07 10:30 AM

COURT ORDERED, the Petition for Writ of Habeas Corpus scheduled for 4/10/07 is CONTINUED to the same date and time.

7/12/07 10:30 AM ARGUMENT/DECISION ON STATE'S MOTION TO DISMISS
PETITION FOR WRIT...PETITION FOR WRIT OF HABEAS CORPUS

07/12/07 10:30 AM 00 ALL PENDING MOTIONS FOR 7/12/07

HEARD BY: Valorie J. Vega, Judge; Dept. 2

OFFICERS: Billie Jo Craig, Court Clerk
Lisa Lizotte, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
002781	Roger, David J.	Y
004352	Owens, Steven S.	Y
0001 D1	Witter, William L	N
FPD	Federal Public Defender	Y
002437	Pescetta, Michael L.	Y

DEFT'S PETITION FOR WRIT OF HABEAS CORPUS...ARGUMENT/DECISION ON STATE'S
MOTION TO DISMISS PETITION

State's Order for today's Transcript FILED IN OPEN COURT.

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 028

Due to the congestion of the Court's morning Calendar, COURT ORDERED, matter to TRAIL to later today. RECALLED AT 2:33 PM. COURT ORDERED, defendant's PRESENCE WAIVED today.

Arguments by counsel regarding the State's Motion to Dismiss Petition. As the Court wished to further review case law cited and the transcript from the Penalty Hearing, COURT ORDERED, above matters CONTINUED for Decision. The State submitted its Order for today's Transcript to the Court, which it signed, and was FILED IN OPEN COURT.

NDC

CONTINUED TO: 8/2/07 10:30 AM DEFT'S PETITION FOR
WRIT OF HABEAS CORPUS...ARGUMENT/DECISION ON
STATE'S MOTION TO DISMISS PETITION

08/02/07 10:30 AM 00 ALL PENDING MOTIONS FOR 8/2/07

HEARD BY: Valorie J. Vega, Judge; Dept. 2

OFFICERS: Billie Jo Craig, Court Clerk
Lisa Lizotte, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
002781	Roger, David J.	Y
001190	Owens, Christopher J.	Y
0001 D1	Witter, William L	N
FPD	Federal Public Defender	Y
002437	Pescetta, Michael L.	Y

DEFT'S PETITION FOR WRIT OF HABEAS CORPUS...ARGUMENT/DECISION ON STATE'S MOTION TO DISMISS PETITION

COURT ORDERED, defendant's PRESENCE WAIVED today. Court reviewed the Points and Authorities, and ORDERED, the State's Motion to Dismiss is GRANTED as to Ground 4 and stated its findings. There remains only one aggravator for violent Felony conviction. COURT ORDERED, the State's Motion to Dismiss is GRANTED as to Ground 12. Balance of State's Motion to Dismiss is GRANTED. Matter can now proceed on the one remaining aggravator. Colloquy regarding verdict form. Court directed counsel to provide a copy of the transcript from the Penalty Phase. COURT ORDERED, matter CONTINUED for Decision on Ground 4 of the Petition. Counsel requested to prepare an Order after Decision on Ground 4. COURT SO ORDERED. The State requested a copy of the transcript from today. COURT SO ORDERED.

NDC

CRIMINAL COURT MINUTES

94-C-117513-C STATE OF NEVADA

vs Witter, William L

CONTINUED FROM PAGE: 029

CONTINUED TO: 8/30/07 10:30 AM DEFT'S PETITION FOR WRIT OF
HABEAS CORPUS

08/30/07 10:30 AM 03 PTN FOR WRIT OF HABEAS CORPUS

HEARD BY: Valorie J. Vega, Judge; Dept. 2

OFFICERS: Billie Jo Craig, Court Clerk
Lisa Lizotte, Reporter/Recorder

PARTIES:

STATE OF NEVADA
002781 Roger, David J.
004352 Owens, Steven S.
008818 Jimenez, Sonia V.

0001 D1 Witter, William L
FPD Federal Public Defender
002437 Pescetta, Michael L.

Y
Y
Y
Y

N
Y
Y

COURT ORDERED, defendant's PRESENCE WAIVED today. Court noted this was a continued matter regarding one remaining issue. It had reviewed the evidence from the Vault in the Clerk's Office and the transcript from the Penalty Phase provided by the Federal Public Defender. Court stated its findings and that it found one aggravator and mitigators under NRS 200.035(2) for emotional disturbance (7) and other mitigating circumstances. COURT ORDERED, the sentence previously imposed STANDS. The State to prepare a global Order and submit to Mr. Pescetta for approval before submitting to the Court. Mr. Owens submitted State's Order for Transcript which was signed by the Judge and FILED IN OPEN COURT for today's hearing. A copy provided to the Court Recorder.

NDC

10/30/07

E X H I B I T S

8:40 AM

CASE NO. 94-C-117513-C

CASE STATUS: CLOSED

STATE OF NEVADA

[] vs Witter, William L

[]

<u>NO.</u>	<u>CODE</u>	<u>EXHIBIT DESCRIPTION</u>	<u>SUB</u>	<u>OF/OB</u>	<u>DATE</u>	<u>S</u>
0001	P	/JUSTICE COURT EXHIBITS		/	01/14/94	V
0002	P/D	/SEE EXHIBIT LIST IN FILE/VAULT	S	/	99/99/99	V

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Charles J. Short, 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 DECISION AND ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST

STATE OF NEVADA,

Plaintiff(s),

vs.

WILLIAM L. WITTER,

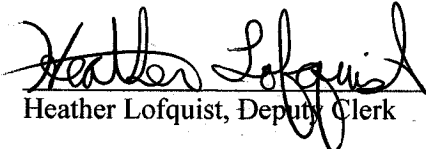
Defendant(s),

)
)
) Case No: C117513
) 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 30 day of October 2007.

Charles J. Short, Clerk of the Court


Heather Lofquist, Deputy Clerk

**SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

WILLIAM LESTER WITTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 50447
District Court Case No. C117513

RECEIPT FOR DOCUMENTS

TO: Federal Public Defender/Las Vegas and Gary Allen Taylor and Gerald
James Bierbaum, Asst. Federal Public Defender and Franny A.
Forsman, Public Defender
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Charles J. Short , District Court Clerk

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

11/01/07 Filing Fee Waived: Criminal.

11/01/07 Filed Certified Copy of Notice of Appeal.
Appeal docketed in the Supreme Court this day. (Docketing statement mailed to counsel
for appellant.)

DATE: November 01, 2007

Janette M. Bloom, Clerk of Court

By: NH
Deputy Clerk