

FILED

DEC 06 2010

Ann L. Johnson
CLERK OF COURT

1 NOED

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 SAMUEL HOWARD,

6 Petitioner,

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,
10

Case No: 81C053867
Dept No: XVII

NOTICE OF ENTRY OF
DECISION AND ORDER

11 PLEASE TAKE NOTICE that on November 6, 2010, 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 December 6, 2010.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 By: *Heather Lofquist*
18 Heather Lofquist, Deputy Clerk

19 CERTIFICATE OF MAILING

20 I hereby certify that on this 6 day of December 2010, I placed a copy of this Notice of Decision
21 and Order in:

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

81C053867
NOED
Notice of Entry of Decision and Order
1085633



24 ☒ The United States mail addressed as follows:

25 Samuel Howard # 18329
26 P.O. Box 1989
Ely, NV 89301

Michael B. Charlton
411 E. Bonneville Ave., Ste. 250
Las Vegas, NV 89101

27 *Heather Lofquist*
28 Heather Lofquist, Deputy Clerk

ORIGINAL

FILED

Nov 6 10 21 AM '10

1 **ORDER**

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 NANCY A. BECKER
6 Deputy District Attorney
7 Nevada Bar #00145
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

81C053867
FCL
Finding of Fact and Conclusions of Law
1039704



7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 SAMUEL HOWARD,
12 #0624173

13 Defendant.

CASE NO: 81C053867

DEPT NO: XVII

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

16 DATE OF HEARING: 2/4/10
17 TIME OF HEARING: 8:30 A.M.

18 THIS CAUSE having come on for hearing before the Honorable MICHAEL
19 VILLANI, District Judge, on the 4th day of February, 2010, the Petitioner not being present,
20 and his presence having been waived by Counsel, MICHAEL CHARLTON, Assistant
21 Federal Public Defender, the Respondent being represented by DAVID ROGER, District
22 Attorney, by and through NANCY A. BECKER, Deputy District Attorney, and the Court
23 having considered the matter, including briefs, transcripts, arguments of counsel, and
24 documents on file herein, now therefore, the Court makes the following findings of fact and
25 conclusions of law:

26 PROCEDURAL HISTORY

27 On May 20, 1981 defendant Samuel Howard was indicted on one count of Robbery
With Use of a Deadly Weapon involving a Sears security officer named Keith Kinsey on

RECEIVED
DEPT. 17 ON

NOV - 4 2010

P:\WPDOCS\ORDR\FORDR\OUTLYING\0g0\0g012703.doc

36✓

1 March 26, 1980; one count of Robbery With Use Of A Deadly Weapon involving Dr.
2 George Monahan and one count of Murder With Use Of A Deadly Weapon involving Dr.
3 Monahan, both committed on March 27, 1980. With respect to the murder count, the State
4 alleged two theories: willful, premeditated and deliberate murder or murder in the
5 commission of a robbery.

6 Howard was arrested in California where he was serving time for a robbery
7 committed on or about April 1, 1980. He was extradited in November of 1982 and an initial
8 appearance was set for November 23, 1982. At that time the matter was continued for
9 appointment of counsel, the Clark County Public Defender's Office.

10 On November 30, 1982, Terry Jackson of the Public Defender's Office represented to
11 the district court that Howard qualified for the Public Defender's services; however, Mr.
12 Jackson indicated he had a personal conflict as he was a friend of the victim. The district
13 judge determined that the relationship did not create a conflict for the Public Defender's
14 Office, barred Mr. Jackson from involvement with the case and appointed another deputy
15 public defender to Howard's case.

16 Howard's counsel requested a one week continuance to consult with Howard about
17 the case. Howard objected, insisted on being arraigned and demanded a speedy trial. After
18 discussion, the district court accepted a plea of not guilty and set a trial date of January 10,
19 1983.

20 Howard filed a motion in late in December asking for his counsel to be removed and
21 substitute counsel appointed. Counsel filed a response addressing issues raised in the
22 motion. After a hearing, the district court determined there were no grounds for removing
23 the Clark County Public Defender's Office.

24 A motion for a psychiatric expert was filed. At a hearing, the district court inquired if
25 this was for competency and Howard's counsel indicated it was not, but it was to help
26 evaluate Howard's mental status at the time of the events. The district court granted the
27 motion and appointed Dr. O'Gorman to assist the defense.

28 At a status check on January 4, 1983, defense counse indicated the defense could not

1 be ready for the January 10th trial date due to the need to conduct additional investigation and
2 discovery. In addition, counsel noted Howard was refusing to cooperate with counsel.
3 Howard objected to any continuance with knowledge that his attorneys' could not complete
4 the investigations by that date. Given Howard's objections, the district court stated the trial
5 would go forward as scheduled.

6 On the day of trial, defense counsel moved to withdraw stating that Mr. Jackson's
7 conflict created mistrust in Howard and he therefore refused to cooperate. This motion was
8 denied. Defense counsel then moved for a continuance as they did not feel comfortable
9 proceeding to trial in this case, given the issues involved, with only six weeks to prepare.
10 After extensive argument and a recess so that counsel could discuss the issue with Howard,
11 the district court granted the continuance over Howard's objections.

12 The guilt phase of the trial began on April 11, 1983 and concluded on April 22, 1983.
13 The jury returned a verdict of guilty on all three counts. The penalty phase was set to begin
14 on May 2, 1983. In the interim, one of the jurors tried to contact the trial judge about a
15 scheduling problem. Because the district judge was on vacation, someone referred the juror
16 to the District Attorney's Office. That Office referred the juror to the jury commissioner.
17 Howard moved for a mistrial or elimination of the death penalty as a sentencing option based
18 upon this contact. After conducting an evidentiary hearing, the district court denied
19 Howard's motions.

20 Defense counsel made an oral motion to withdraw indicating they had irreconcilable
21 differences with Howard over the conduct of the penalty phase. Counsel indicated they had
22 documents and witnesses in mitigation, but that Howard had instructed them not to present
23 any mitigation evidence. Howard also instructed them not to argue mitigation and they
24 would not follow that directive, but would argue mitigation. Counsel also indicated that
25 Howard told them he wished to testify, but would not tell them the substance of his
26 testimony. Finally counsel indicated they had attempted to get military and mental health
27 records but were unsuccessful because the agencies possessing the records would not send
28 copies without a release signed by Howard and Howard refused to sign the releases. The

1 district court canvassed Howard if this was correct and Howard confirmed it was true and
2 that he did not want any mitigation presented. The district court found Howard understood
3 the consequences of his decision and denied the motion to withdraw concluding defense
4 counsel's disagreement with Howard's decision was not a valid basis to withdraw.

5 The penalty phase began on May 2, 1983 and concluded on May 4, 1983. The State
6 originally alleged three aggravating circumstances: 1) the murder was committed by a
7 person who had previously been convicted of a felony involving the use of violence - namely
8 Robbery With Use Of A Deadly Weapon in California, 2) prior violent felony - a 1978 New
9 York conviction in absentia for Robbery With Use Of A Deadly Weapon; and 3) the murder
10 occurred in the commission of a robbery. Howard moved to strike the California conviction
11 because the conviction occurred after the Monahan murder and the New York conviction
12 because it was not supported by a Judgment of Conviction. The district court struck the
13 California conviction but denied the motion as to the New York conviction, noting that the
14 records reflected a jury had convicted Howard and the lack of a formal judgment was the
15 result of Howard's absconding in the middle of trial.

16 The State presented evidence of the aggravating circumstances and Howard took the
17 stand and related information on his background. During a break in the testimony, Howard
18 suddenly stated he didn't understand what mitigation meant and that he would leave it up to
19 his attorneys to decide what to do. The district court asked Howard if he was now
20 instructing his attorneys to present mitigation and he refused to answer the question.
21 Howard did indicate that he wanted his attorney's to argue mitigation and defense counsel
22 asked for time to prepare which was granted. The jury found both aggravating
23 circumstances existed and that no mitigating circumstances outweighed the aggravating
24 circumstances. The jury returned a sentence of death.

25 Howard appealed to the Nevada Supreme Court. Elizabeth Hatcher represented
26 Howard on Direct Appeal. Howard raised the following issues on direct appeal: 1)
27 ineffective assistance of counsel based on actual conflict arising out of Jackson's relationship
28 with Dr. Monahan; 2) denial of a motion to sever the Sears' count from the Monahan counts;

1 3) denial of an evidentiary hearing on a motion to suppress Howard's statements and
2 evidence derived therefrom; 4) refusal to instruct the jury that accomplice testimony should
3 be viewed with mistrust; 5) refusal to instruct the jury that Dawana Thomas was an
4 accomplice as a matter of law; 6) denial of a motion to strike the felony robbery and New
5 York prior violent felony aggravators; and 7) the giving of a anti-sympathy instruction and
6 refusal to instruct the jury that sympathy and mercy were appropriate considerations.

7 The Nevada Supreme Court affirmed Howard's conviction and sentence. Howard v.
8 State, 102 Nev. 572, 729 P.2d 1341 (1986) (hereinafter "Howard I"). The Supreme Court
9 held that the relationship of two members of the Public Defender's Office with Monahan did
10 not objectively justify Howard's distrust and there was no evidence that those attorneys had
11 any involvement in his case. Therefore no actual conflict existed and the claim of ineffective
12 assistance of counsel on this basis had no merit. The Court further concluded the district
13 court did not abuse its discretion by refusing to sever the counts and by not granting an
14 evidentiary hearing on the suppression motion. The Court noted that the record reflected
15 proper Miranda warnings were given and the statements were admitted as rebuttal and
16 impeachment after Howard testified. The Court also found that the district court did not
17 error in rejecting the two accomplice instructions; the anti-sympathy language in one of the
18 instructions was not err in light of the totality of the instructions and the record supported the
19 district court's refusal to instruct on certain mitigating circumstances for lack of evidence.
20 The Court concluded by stating it had considered Howard's other claims of error and found
21 them to be without merit. Howard filed a petition for rehearing which was denied on March
22 24, 1987. Remittitur was stayed pending the filing of a petition for Writ of Certiorari to the
23 United States Supreme Court on the anti-sympathy issues. John Graves, Jr. was appointed to
24 represent Howard on the writ petition. The petition was denied on October 5, 1987 and
25 remittitur issued on February 12, 1988.

26 On October 28, 1987, Howard filed his first State petition for post-conviction relief.
27 John Graves Jr. and Carmine Colucci originally represented Howard on the petition. They
28 withdrew and David Schieck was appointed. The petition raised the following claims for

1 relief: 1) ineffective assistance of trial counsel – guilt phase - failure to present an insanity
2 defense and Howard's history of mental illness and commitments; 2) ineffective assistance
3 of trial counsel – penalty phase – failure to present mental health history and documents;
4 failure to present expert psychiatric evidence that Howard was not a danger to jail
5 population; failure to rebut future dangerousness evidence with jail records and personnel;
6 failure to object to improper prosecutorial arguments involving statistics regarding
7 deterrence, predictions of future victims, Howard's lack of rehabilitation, aligning the jury
8 with "future victims," comparing victim's life with Howard's life, diluting jury's
9 responsibility by suggesting it was shared with other entities, voicing personal opinions in
10 support of the death penalty and its application to Howard, references to Charles Manson,
11 voice of society arguments and referring to Howard as an animal; 3) ineffective assistance of
12 appellate counsel – failure to raise prosecutorial misconduct issues.

13 An evidentiary hearing was held on August 25, 1988. George Franzen, Lizzie
14 Hatcher, John Graves and Howard testified. Supplemental points and authorities were filed
15 on October 3, 1988. The district court entered an oral decision denying the petition on
16 February 14, 1989. The district court concluded that trial counsel performed admirably
17 under difficult circumstances created by Howard himself. As to the failure to present an
18 insanity defense and present mental health records, the court found that Howard was
19 canvassed throughout the proceedings about his refusal to cooperate in obtaining those
20 records, particularly his refusal to sign releases. Howard knew what was going on, was
21 competent and was trying to manipulate the proceedings and that there was no evidence to
22 support an insanity defense, therefore counsel were not ineffective in this regard.

23 On the issue of failure to object to prosecutorial misconduct, the district court found
24 that defense counsel did object where appropriate and the arguments that were not objected
25 to did not amount to misconduct and were a fair comment on the evidence. Even if some of
26 the comments were improper, the district court concluded that they would not have
27 succeeded on appeal as they were harmless beyond a reasonable doubt. Formal Findings Of
28

1 Fact And Conclusions Of Law were filed on July 5, 1989.¹

2 The Nevada Supreme Court affirmed the district court's denial of Howard's first State
3 petition for post-conviction relief. Howard v. State, 106 Nev. 713, 800 P.2d 175 (1990)
4 (hereinafter "Howard II"). David Schieck represented Howard in that appeal. On appeal
5 Howard raised ineffective assistance of trial and appellate counsel regarding the
6 prosecutorial misconduct issues. The Supreme Court found three comments to be improper
7 under Collier v. State, 101 Nev. 473, 705 P.2d 1126 (1985)²: 1) a personal opinion that
8 Howard merited the death penalty, 2) a golden rule argument – asking the jury to put
9 themselves in the shoes of a future victims and 3) an argument without support from
10 evidence that Howard might escape. The Court found that counsel were ineffective for
11 failing to object to these arguments but concluded there was no reasonable probability of a
12 contrary result absent these remarks and therefore no prejudice. The Court rejected
13 Howard's other contentions of improper argument.

14 With respect the mitigation evidence issues, the Nevada Supreme Court upheld the
15 district court's findings that this was a result of Howard's own conduct and not ineffective
16 assistance of counsel.³

17 Howard proceeded to file a second Federal habeas corpus petition on May 1, 1991.
18 This proceeding was stayed for Howard to exhaust his state remedies on October 16, 1991.

19 Howard then filed a second State petition for post-conviction relief on December 16,
20 1991. Cal J. Potter, III and Fred Atcheson represented Howard in the second State petition.
21 In that petition, Howard alleged denial of a fair trial based on prosecutorial misconduct,
22 namely: 1) jury tampering based on the prosecutor's contact-with the juror between the guilt
23

24 ¹During the pendency of the first State petition for post-conviction relief, Howard filed his first
25 Federal petition for habeas relief. That petition was dismissed without prejudice on June 23, 1988.

26 ² Collier was decided two years after Howard's trial.

27 ³ The State filed a petition for rehearing with respect to sanctions imposed on the prosecutor because
28 his remarks violated Collier. The State noted that Howard's trial occurred before Collier therefore
the Court should not sanction counsel for conduct that occurred before the Court issued the Collier
opinion. Rehearing was denied February 7, 1991.

1 and penalty phases; 2) expressions of personal belief and a personal endorsement of the
2 death penalty; 3) reference to the improbability of rehabilitation, escape, future killings; 3)
3 comparing Howard's life with Dr. Monahan's and 4) a statement that the community would
4 benefit from Howard's death. The petition also asserted an ineffective assistance of trial
5 counsel claim for failing to explain to Howard the nature of mitigating circumstances and
6 their importance. Finally the petition raised a speedy trial violation and cumulative error.

7 The State moved to dismiss the second State petition as procedurally barred or
8 governed by the law of the case on February 10, 1992. In his reply, Howard dropped his
9 speedy trial claim as unsubstantiated and indicated if the other claims were barred, then they
10 had been exhausted and Howard could proceed in Federal court.

11 The district court denied the petition on July 7, 1992. The district court found that the
12 claims of prosecutorial misconduct and ineffective assistance of counsel relating thereto as
13 well as the claims relating to mitigation evidence had been heard and found to be without
14 merit or failed to demonstrate prejudice. Such claims were therefore barred by the law of the
15 case. The district court further concluded that any claim of cumulative error and any issues
16 not raised in previous proceedings were procedurally barred. Finally the district court found
17 the speedy trial violation was a naked allegation, frivolous and procedurally barred.

18 Howard appealed the denial of his second State petition to the Nevada Supreme
19 Court, which dismissed his appeal on March 19, 1993. The Order Dismissing Appeal found
20 that Howard's second State petition was so lacking in merit that briefing and oral argument
21 was not warranted. Howard filed a petition for Writ of Certiorari challenging the summary
22 affirmance and the United States Supreme Court denied the request on October 4, 1993.

23 On December 8, 1993, Howard returned to federal court and filed a new pro se habeas
24 petition rather than lifting the stay in the previous petition. After almost three years, on
25 September 2, 1996, the federal district court dismissed the petition as inadequate and ordered
26 Howard to file a second amended federal petition that contained more than conclusory
27 allegations. Thereafter Howard, now represented by Patricia Erickson, filed a Second
28 Amended Petition for Writ of Habeas Corpus on January 27, 1997. After almost five years,

1 on September 23, 2002, the Second Amended Federal petition was stayed for Howard to
2 again exhaust his federal claims in state court.

3 Howard filed his third State petition for post-conviction relief on December 20, 2002.
4 Patricia Erickson represented him on this petition. The petition asserted the following
5 claims, phrased generally as denial of a fundamentally fair trial or assistance of counsel
6 under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution or as
7 cruel and unusual punishment under the Eighth Amendment: 1) failure to sever Sears
8 robbery count from Monahan robbery/murder counts; 2) failure to suppress Howard's
9 statements to LVMPD and physical evidence derived therefrom; 3) speedy trial violation; 4)
10 trial counsel actual conflict of interest – Jackson issue; 5) failure to give accomplice as a
11 matter of law and accomplice testimony should be viewed with distrust instructions – Dwana
12 Thomas; 6) improper jury instructions – diluting standard of proof - reasonable doubt,
13 second degree murder as lesser included of first degree murder, premeditation, intent and
14 malice instructions; 7) improper jury instructions – failure to clearly define first degree
15 murder as specific intent crime requiring malice and premeditation; 8) improper
16 premeditation instruction blurred distinction between first and second degree murder; 9)
17 improper malice instruction; 10) improper anti-sympathy instruction; 11) failure to give
18 influence of extreme mental or emotional disturbance mitigator instruction; 12) improper
19 limitation of mitigation by giving only “any other mitigating circumstance” instruction; 13)
20 failure to instruct that mitigating circumstances findings need not be unanimous; 14)
21 prosecutorial misconduct – jury tampering, stating personal beliefs, personal endorsement of
22 death penalty; improper argument regarding rehabilitation, escape and future killings;
23 comparing Howard and victim's lives, comparing Howard to notorious murder (Charles
24 Manson) and improper community benefit argument; 15) use of felony robbery as aggravator
25 and basis for first degree murder; 16) improper reasonable doubt instruction; 17) ineffective
26 assistance of trial counsel – inadequate contact, conflict of interest, failure to contact
27 California counsel to obtain records, failure to obtain Patton and Atescadero hospital records,
28 failure to obtain California trial transcripts, failure to review Clark County Detention Center

1 medical records, failure to challenge competency to stand trial, failure to obtain suppression
2 hearing, failure to present legal insanity, failure to object to reasonable doubt instruction,
3 failure to view visiting records and call witnesses based upon same, failure to call Pinkie
4 Williams and Carol Walker in penalty phase, failure to investigate and call Benjamin Evans
5 in penalty phase, failure to obtain San Bernardino medical records regarding suicide attempt,
6 failure to obtain military records, failure to adequately explain concept of mitigation
7 evidence, failure to object to prosecutorial misconduct in closing arguments, failure to refute
8 future dangerousness argument, failure to object to trial court's limitation of mitigating
9 circumstances and failure to object to instructions which allegedly required unanimous
10 finding of mitigating circumstances; 18) ineffective assistance of appellate counsel – failed
11 to raise claims 3, 4, 6-9, 12, 13, 15, 16, 20 and 21 on appeal; 19) ineffective assistance of
12 post-conviction counsel – failure to adequately investigate and develop all trial and appeal
13 claims; 20) cumulative error; 21) Nevada's death penalty is administered in an arbitrary,
14 irrational and capricious fashion; 22) lethal injection constitutes cruel and unusual
15 punishment and 23) the death penalty violates evolving standards of decency.

16 The State filed a motion to dismiss Howard's third State petition on March 4, 2001.
17 The State argued that the entire petition was procedurally barred under NRS 34.726(1) (one
18 year limit) and NRS 34.800 (five year laches) and that Howard had not shown good cause
19 for delay in raising the claims to overcome the procedural bars. The State also analyzed
20 each claim and noted what issues had already been raised and decided adversely to Howard
21 or should have been raised and were waived under NRS 34.810..

22 Howard filed an amended third State petition. The amended petition expanded the
23 factual matters under Claim 17 regarding Howard's family background that Howard asserted
24 should have been presented in mitigation.

25 On August 20, 2003, Howard filed his opposition to the State's motion to dismiss his
26 third State petition. As good cause for delay, Howard alleged Nevada's successive petition
27 and waiver bar (NRS 34.810) is inconsistently applied and Pellegrini v. State, 117 Nev. 860,
28 34 P.3d 519 (2001) is not controlling. Howard contended NRS 34.726 did not apply because

1 any delay was the fault of counsel not Howard and NRS 34.726 is unconstitutional and
2 cannot be applied to successive petitions Pellegrini notwithstanding. Howard argued the
3 Due process and Equal Protection clauses of the Federal Constitution bar application of NRS
4 34.726, NRS 34.800 and NRS 34.810 to Howard. In addition, Howard asserted NRS 34.800
5 did not apply because the State had not shown prejudice and the presumption of prejudice
6 was overcome by the allegations in the petition.

7 The State filed a reply to the opposition on September 24, 2003. The district court
8 issued an oral decision on October 2, 2003 dismissing the third State petition as procedurally
9 barred under NRS 34.726 and finding Howard had failed to overcome the bar by showing
10 good cause for delay. The district court also independently dismissed the claims under NRS
11 34.810. Written findings were entered on October 23, 2003.

12 Howard appealed the dismissal to the Nevada Supreme Court, which affirmed the
13 district court's dismissal of the third State petition on December 4, 2004. The High Court
14 addressed Howard's assertions that he had either overcome the procedural bars or they could
15 not constitutionally be applied to him and rejected them. Among its conclusions, the Court
16 noted that the record reflected Howard was aware that all his claims challenging the
17 conviction or imposition of sentence must be joined in a single petition and that Howard had
18 no right to post-conviction counsel at the time of the filing of his first and second State
19 petitions for post-conviction relief and hence ineffectiveness of post-conviction counsel
20 could not be good cause for delay.⁴

21 Howard then returned to Federal district court where he filed his Third Amended
22 Petition for Writ of Habeas Corpus on October 23, 2005. Subsequently, without seeking
23 approval from the Federal Court, the Federal Public Defender's Office filed, on Howard's
24 behalf, the current Fourth State Post-Conviction Petition on October 27, 2007. The State
25 filed a motion to dismiss the Fourth State Petition on April 8, 2008. The parties agreed to
26 stay this case for several months while Howard sought permission from the Federal District
27

28

4 See 1987 Nev. Stat., ch. 539, § 42 at 1230 (providing that appointment of counsel was discretionary not mandatory).

1 Court to hold his federal petition for post-conviction habeas corpus in abeyance pending
2 exhaustion of the claims already filed in the Fourth State Petition and of new claims he
3 wished to file in State court as a result of the Ninth Circuit's decision in Polk v. Sandoval,
4 503 F.3d 903, 910 (9th Cir. 2007).

5 The United States District Court denied Howards' motion for stay and abeyance on
6 January 9, 2009. Thereafter, Howard filed an Opposition to the State's original motion to
7 dismiss and an Amended Petition on February 24, 2009. The State responded to Howard's
8 opposition to the original motion to dismiss and additionally moved to dismiss the Amended
9 Fourth Petition on October 7, 2009.⁵ Howard filed an Opposition to the Amended Motion to
10 Dismiss on December 18, 2009. Howard filed supplemental authorities on January 5, 2010.

11 Argument on the State's motion to dismiss was heard on February 4, 2010. The
12 matter was taken under advisement so the district court could review the extensive record. A
13 Minute Order Decision was issued on May 13, 2010 dismissing the Fourth State Petition as
14 procedurally barred.

15 STATEMENT OF FACTS

16 On March 26, 1980, around noon, a Sears' security officer, Keith Kinsey, observed
17 Howard take a sander from a shelf, remove the packing and then claim a fraudulent refund
18 slip from a cashier. Kinsey approached Howard and asked him to accompany Kinsey to a
19 security office. Kinsey enlisted the aid of two other store employees. Howard was
20 cooperative, alert and indicated there must be some mistake. In the security office, Kinsey
21 observed Howard had a gun under his jacket and attempted to handcuff Howard for safety
22 reasons. A struggle broke out and Howard drew a .357 revolver and pointed it at the three
23 men. Howard had the men lay face down on the floor and took Kinsey's security badge, ID
24 and a portable radio (walkie-talkie). Howard threatened to kill the three men if they
25

26 ⁵ Although both defense counsel and this Court received a copy of the Opposition and
27 Amended Motion to Dismiss, for some reason it was not filed. This Court authorized the
28 District Attorney's Office to file a Notice of Errata and attach a copy of the previously
distributed Opposition and Amended Motion to Dismiss. This was filed on February 4,
2010. Subsequently, the missing document was located and the original Amended Motion to
Dismiss was officially filed on May 11, 2010.

1 followed him and he fled to his car in the parking lot. A yellow gold jewelry ID bracelet was
2 found at the scene and impounded. It was later identified as Howard's. The Sears in
3 question was located at the corner of Desert Inn Road and Maryland Parkway at the
4 Boulevard Mall in Las Vegas, Nevada.

5 Dawana Thomas, Howard's girlfriend, was waiting for him in the car. Howard had
6 told her to wait for him and she was unaware of his intentions to obtain money through a
7 false refund transaction. Fleeing from the robbery, Howard hopped into the car, a 1980
8 black Oldsmobile Cutlass with New York plates 614 ZHQ and sped away from the mall.
9 While escaping, Howard rear-ended a white corvette driven by Stephen Houchin. Houchin
10 followed Howard when Howard left the scene of the accident. Howard pointed the .357
11 revolver out the window of the Olds and at Houchin's face, telling Houchin to mind his own
12 business.

13 Howard drove to the Castaways Motel on Las Vegas Boulevard South and parked the
14 car for a few hours. Thomas and Howard walked about and Howard made some phone calls.
15 Later that evening Howard left for a couple of hours. When he returned he told Thomas that
16 he had met up with a pimp, but the pimps' girls were with him so he couldn't rob him.
17 Howard indicated he had arranged to meet with the "pimp" the next morning and would rob
18 him then.

19 Howard and Thomas drove to the Western Six motel located on the Boulder Highway
20 near the intersection of Desert Inn Road. The couple had stayed at this motel before and
21 Howard instructed Thomas to register under an assumed name, Barbara Jackson. The motel
22 registration card under that name was admitted into evidence and a documents' examiner
23 compared handwriting on the card with Thomas' and indicated they matched.

24 Around 6:00 a.m. on March 27, 1980, Thomas and Howard left the motel and went to
25 breakfast. After breakfast, Thomas dropped Howard off in the alley behind Dr. George
26 Monahan's office. This was at approximately 7:00 a.m. Thomas went back to the motel
27 room. Approximately an hour later, Howard returned to the motel. Howard had a CB radio
28 with him that had loose wires and a gold watch she had never seen before. Howard told

1 Thompson that he was tired of Las Vegas and to pack up their things as they were leaving
2 for California.

3 Dr. Monahan was a dentist with a practice located on Desert Inn Road within walking
4 distance of the Boulevard Mall. He was attempting to sell a uniquely painted van and would
5 park the van in the parking lot of the mall, at the Desert Inn and Maryland intersection and
6 near the Sears store, then walk to his office. The van had a sign in it listing Dr. Monahan's
7 home and business phone numbers and the business address.

8 About 4:00 p.m. on March 26, 1980, the afternoon of the Sears robbery, Dr.
9 Monahan's wife, Mary Lou Monahan, received a phone call at her home inquiring about the
10 van. The caller was a male who identified himself as "Keith" and stated he was a Security
11 Guard at Caesar's Palace. He indicated he was interested in purchasing the van and wanted
12 to know if someone could meet him at Caesar's during his break time at 8:00 p.m. Mrs.
13 Monahan indicated the caller would have to talk to her husband who was expected home
14 shortly. A second call was made around 4:30 p.m. and Dr. Monahan made arrangements to
15 meet "Keith" at Caesar's later that night.

16 The Monahans and two relatives, Barbara Zemen and Mary Catherine Monahan, met
17 "Keith" that evening at the appointed time and place. Howard was identified as the man
18 who called himself "Keith". Howard was carrying a walkie-talkie radio at the time. Howard
19 talked to Dr. Monahan for about ten minutes about purchasing the van and looked inside the
20 van but did not touch the door handle while doing so. Howard arranged to meet Dr.
21 Monahan the next morning to take a test drive. The Monahan's left Caesar's and parked the
22 van at Dr. Monahan's office before returning home in another vehicle.

23 The next day, March 27, 1980, Dr. Monahan left his home at about 6:50 a.m. He took
24 with him his wallet, a gold Seiko watch, daily receipts and the van title. When Mrs.
25 Monahan arrived at the office at about 8:00 a.m. Dr. Monahan was not there and a patient
26 was waiting for him. Dr. Monahan's truck was in the parking lot to the rear of the office.
27 Dr. Monahan had not entered the office. A Black man wearing a radio or walkie-talkie on
28 his belt came into the office at about 7:00 a.m. that morning looking for Dr. Monahan and

1 stating that he had an appointment with the doctor.

2 Mrs. Monahan called Caesar's Palace and learned no "Keith" fitting the description
3 she gave worked security. After obtaining this information, Mrs. Monahan called the police
4 to report her husband as a missing person. This occurred at about 9:00 a.m.

5 Charles Marino owned the Dew Drop Inn located near the corner of Desert Inn and
6 Boulder Highway, just a few blocks from Dr. Monahan's office and almost across the road
7 from the Western Six motel. Early on the morning of March 27, 1980, as he approached his
8 business, he observed the Monahan van backing into the rear of the bar. When he arrived at
9 the Inn, he looked in the driver's side and saw no one. He asked patrons if they knew
10 anything about the van and no one spoke up. Marino remained at the business until the early
11 afternoon. The van was still there and had not been moved. Later that day, at around 7:00
12 p.m. he received a call to return to the bar as a dead body had been found in the van.

13 In response to television coverage, the police learned the Monahan van was behind
14 the Dew Drop Inn around 6:45 p.m. Dr. Monahan's body was found in the van under an
15 overturned table and some coverings. He had been shot once in the head. The bullet went
16 through Dr. Monahan's head and a projectile was recovered on the floor of the van. The
17 projectile was compared to Howard's .357 revolver. Because the bullet was so badly
18 damaged; forensic analysis could not establish an exact match. It was determined that the
19 bullet could have come from certain makes and models of revolvers, Howard's included.
20 The van's CB radio and a tape deck had been removed. Dr. Monahan's watch and wallet
21 were missing. A fingerprint recovered from one of the van's doors matched Howard's.

22 Homicide detectives were aware of the Sears robbery that had occurred on March
23 26th. The description of the Sears suspect matched that given by Mrs. Monahan of the man
24 calling himself Keith at Caesar's Palace. Based upon that, the use of the name Keith, the
25 walkie-talkie in possession of the suspect, the close proximity of the dental office to the
26 Sears and the fact that the van had been parked in the Sears' parking lot, the police issued a
27 bulletin to state and out-of-state law enforcement agencies describing the suspect and the car
28 used in the Sears' robbery.

1 On March 27, 1980, while the police were searching for Dr. Monahan, Howard and
2 Thompson drove to California. They left the motel between 8:00 a.m. and 9:00 a.m. and on
3 the way they stopped for gas. At that time Howard had a brown or black wallet that had
4 credit cards and photos in it. Howard went to the gas station rest room and when he returned
5 he no longer had the wallet.

6 On March 28, 1980, Howard and Thompson went to a Sears in San Bernadino,
7 California. Once again Howard left Thompson in the car while he entered the Sears, picked
8 up merchandize and tried to obtain a refund on it. This time he used the stolen Kinsey Sears
9 security badge in the attempt. The Sears personal were suspicious and left Howard at the
10 register while they called Las Vegas. When they returned Howard had left. Howard had
11 returned to the car and Thompson and Howard ducked down when the people from Sears
12 stepped outside to view the parking lot.

13 On or about April 1, 1980, at around noon, Howard went to the Stonewood Shopping
14 Center in Downey, California. He entered a jewelry store and talked to a security agent,
15 Manny Velasquez. Another agent in the store, Robert Slater, who also worked as a police
16 officer in Downey, saw Howard and noticed the grip of a gun under Howard's jacket. Slater
17 talked to Velasquez and decided to call the Downey Police. Howard left the jewelry store
18 went to the west end of the mall near a Thrifty drugstore. Downey Police officers observed
19 Howard walking up and down the aisles of the drugstore, picking items up and replacing
20 them on shelves. Howard was stopped on suspicion of carrying a concealed weapon. No
21 gun was found on him nor was he carrying the walkie-talkie. A search of the aisles he had
22 been in revealed a .357 magnum revolver and the walkie-talkie and Sears' security badge
23 stolen from Kinsey.

24 Howard was arrested for carrying a concealed weapon and then identified and booked
25 for a San Bernadino robbery. Howard was given his Miranda rights by Downey Police
26 officers. Disputed evidence was presented regarding his response and whether he invoked
27 his right to silence. Based on information in the all-points bulletin, the California authorities
28 contacted the Las Vegas Metropolitan Police Department about Howard. On April 2, 1980,

1 LVMPD Detective Alfred Leavitt went to California and, after reading Howard his Miranda
2 rights, which Howard indicated he understood, interviewed Howard regarding the Sears
3 robbery and Dr. Monahan's murder. Howard did not invoke his right to remain silent or to
4 counsel at this time.

5 Howard told Detective Leavitt he recalled being at the Sears department store but no
6 details about what happened and that he did not remember anything about March 27, 1980.
7 He stated he could have killed Dr. Monahan but he didn't know.

8 Ed Schwartz was working as a car salesman in New York on October 5, 1979. When
9 he arrived at work at approximately 9:00 a.m. Howard entered the agency and was looking at
10 an Oldsmobile car. Howard showed Schwartz a New York driver's license and checkbook
11 and told Schwartz that he worked for a security firm in New York. Howard asked if they
12 could take a demonstration ride and Schwartz drove the car for a few blocks while Howard
13 was the passenger. Howard asked if he could drive the car and the men switched seats.
14 After driving for a short time, Howard pulled over and pointed an automatic pistol at
15 Schwartz. Schwartz was told to get down on the floor of the car and remove his shoes and
16 pants. Schwartz complied and Howard took Schwartz' watch, ring and wallet. Schwartz got
17 out of the car when ordered to do so and Howard drove off. The car was later found
18 abandoned.⁶

19 Howard called witnesses who testified they saw the Monahan van being driven by a
20 Black man who did not match Howard's description, in particular the man had a large afro
21 and Howard had short hair. John McBride state that he saw the van around 8:30 to 8:45 a.m.
22 in his apartment complex which is located about five miles from Desert Inn and Boulder
23 Highway. Lora Mallek was employed at a Mobile gas station at the corner of DI and
24 Boulder Highway and she stated serviced the van when it pulled into the station between
25 3:00 p.m. and 4:00 p.m. Mallek testified that a Black man with a large afro was driving, a
26 Black woman who did not match Thomas' description was in the passenger seat and a white
27

28 ⁶ This evidence was admitted to show identity and motive for the Monahan murder.

1 man was sitting in the back.

2 Howard testified over the objection of counsel. He indicated he did not recall much
3 about March 26, 1980. He remembered being in Las Vegas in general on and off and that at
4 one point Dwana Thomas' brother, who was about Howard's height, age and weight, and
5 had a large afro, visited them. Howard said he remembers incidents, not dates and Kinsey
6 could have been telling the truth about the Sears store. Howard indicated he wasn't sure
7 because when the Sears people gathered around him, it reminded him of Vietnam and he
8 kind of had a flashback. Howard said he thinks he left Las Vegas immediately after the
9 Sears incident. Howard also stated that he did not meet Dr. Monahan, rob or kill him as he
10 couldn't be that callous.

11 On cross-examination, Howard admitted he left New York in the middle of his
12 robbery trial and was asked about statements he made to Detective Leavitt. Howard also
13 acknowledged he has used a number of aliases including Harold Stanback. Howard
14 indicated he was taking the blame for Dawana and her brother Lonnie.

15 Dawana Thomas was called in rebuttal and indicated her brother Lonnie had not been
16 in Las Vegas in March of 1980.

17 In the penalty phase, the State presented evidence on the details of Howard's 1979
18 New York conviction for Robbery. A college nurse, who knew Howard, Dorothy Weisband,
19 testified that Howard robbed her at gunpoint taking her wallet and car. He forced her into a
20 closet and demanded she removed her clothes. She refused and he left. After the robbery,
21 Howard called Weisband trying to get more cash from her in return for her car and
22 threatened her.

23 Howard testified regarding his military, family and mental health histories. Howard
24 discussed his military service and stated he had suffered a concussion and received a purple
25 heart.⁷ Howard also stated he was on veteran's disability in New York.⁸ He said he was in

26
27 ⁷ The military records attached to the current Fourth Petition do not reflect any such injury or
award.

28 ⁸ Howard's military records do not support this and there is nothing in the record
substantiating any admission to a veteran's hospital. The record reflects Howard was never

1 various mental health facilities in California including being housed in the same facility as
2 Charlie Manson. He testified he had been diagnosed as a schizophrenic, but that some of the
3 doctors thought he was malingering. When asked about his childhood, Howard became
4 upset. He indicated he didn't want to talk about the death of his mother and sister. Howard
5 indicated he was not mentally ill and knew what he was doing at all times.

6 FINDINGS OF FACT

- 7 1. The Court adopts the above Procedural History as its first Finding of Fact.
- 8 2. The Court adopts the above Statement of Facts as its second Finding of Fact.
- 9 3. This is Howard's fourth state petition for post-conviction relief.
- 10 4. The current Petition for Post-Conviction Relief was filed on October 27, 2007,
11 approximately twenty-one years after Howard's conviction and nineteen years after
12 remittitur was issued on direct appeal from the Judgment of Conviction.

13 5. The following claims raised in the original Fourth State Petition are time-
14 barred under NRS 34.726 as they were filed more than one year from the remittitur on direct
15 appeal: Claims 2(1) conflict of interest, 2(2) ineffective assistance of trial counsel –
16 mitigation evidence, 2(3) polygraphing policy; Claim 3 – competency and validity of
17 mitigation evidence waiver; Claim 4 – insufficiency of the evidence, failure to conduct
18 neuro-psychological testing, failure to develop post-traumatic stress disorder evidence;
19 Claim 5 – invalidity of New York Robbery conviction; Claim 6 – denial of motion to sever
20 counts; Claim 7 – denial of evidentiary hearing to suppress statements; Claim 8 – speedy
21 trial violation; Claim 9 – denial of motions to dismiss counsel and motions to withdraw;
22 Claim 10 – failure to give accomplice instruction; Claims 11(A) – reasonable doubt
23 instruction, 11(B) – lesser-included Second Degree Murder instruction, 11(C) –
24 premeditation and malice instructions; Claim 12 – validity of Instruction # 20; Claim 13 –
25 *Kazalyn* instruction; Claim 14 – improper malice instructions; Claim 15 – anti-sympathy
26 instruction; Claim 16 – failure to instruct on mental/emotional disturbance mitigating

27
28 actually admitted to a hospital in New York because it required identification and he could
not identify himself due to existing warrants for his arrest.

1 circumstance; Claim 17 – improper limitation of mitigating circumstances; Claim 18 – forms
2 and instructions implied mitigating circumstances must be unanimous finding; Claim 19 –
3 prosecutorial misconduct; Claim 21 – ineffective assistance of trial counsel; Claims 22 –
4 ineffective assistance of appellate counsel; Claim 23 – ineffective assistance of post-
5 conviction counsel; Claim 24 – Nevada's death penalty scheme is arbitrary and capricious in
6 application; Claim 25 – Nevada Supreme Court fails to adequately review death penalty
7 cases; Claim 26 – lethal injection; Claim 27 – elected judiciary; Claim 28 – restrictive death
8 row conditions; Claim 29 – international law; Claim 30 – Nevada's death penalty scheme
9 unconstitutional; Claim 31 – evolving standards of decency; Claim 32 – cumulative errors.

10 6. The following claims in the original Fourth State Petition involve issues that
11 either were, or could have been, raised at trial, on direct appeal or in a previous timely post-
12 conviction petition. They are therefore procedurally barred under NRS 34.810 as either
13 waived, successive or an abuse of the writ. Claims 2(1) conflict of interest, 2(2) ineffective
14 assistance of trial counsel – mitigation evidence, 2(3) polygraphing policy; Claim 3 –
15 competency and validity of mitigation evidence waiver; Claim 4 – insufficiency of the
16 evidence, failure to conduct neuro-psychological testing, failure to develop post-traumatic
17 stress disorder evidence; Claim 5 – invalidity of New York robbery conviction; Claim 6 –
18 denial of motion to sever counts; Claim 7 – denial of evidentiary hearing to suppress
19 statements; Claim 8 – speedy trial violation; Claim 9 – denial of motions to dismiss counsel
20 and motions to withdraw; Claim 10 - failure to give accomplice instruction; Claims 11(A) –
21 reasonable doubt instruction, 11(B) – lesser-included second degree murder instruction,
22 11(C) – premeditation and malice instructions; Claim 12 – validity of Instruction # 20; Claim
23 13 – *Kazalyn* instruction; Claim 14 – improper malice instructions; Claim 15 – anti-
24 sympathy instruction; Claim 16 – failure to instruct on mental/emotional disturbance
25 mitigating circumstance; Claim 17 – improper limitation of mitigating circumstances; Claim
26 18 – forms and instructions implied mitigating circumstances must be unanimous finding;
27 Claim 19 – prosecutorial misconduct; Claim 21 – ineffective assistance of trial counsel;
28 Claims 22 – ineffective assistance of appellate counsel; Claim 23 – ineffective assistance of

1 post-conviction counsel; Claim 24 – Nevada’s death penalty scheme is arbitrary and
2 capricious in application; Claim 25 – Nevada Supreme Court fails to adequately review
3 death penalty cases; Claim 26 – lethal injection; Claim 27 – elected judiciary; Claim 28 –
4 restrictive death row conditions; Claim 29 – international law; Claim 30 – Nevada’s death
5 penalty scheme unconstitutional; Claim 31 – evolving standards of decency; Claim 32 –
6 cumulative errors.

7 7. In its Motion to Dismiss the original Fourth State Petition, the State alleged
8 laches under NRS 34.800. The Fourth State Petition was filed over twenty years after the
9 entry of the Judgment of Conviction. Therefore the rebuttable presumption of prejudice to
10 the State under NRS 34.800 applies.

11 8. The legal and factual issues surrounding the claims raised in the original
12 Fourth State Petition are intertwined and the State is likely to have difficulty with memories,
13 location and availability of witnesses from the 1980’s creating actual prejudice.

14 9. Howard failed to meet his burden to prove facts by a preponderance of the
15 evidence to rebut the presumption of prejudice.

16 10. The following claims in the original Fourth State Petition are procedurally
17 barred pursuant to NRS 34.800: Claims 2(1) conflict of interest, 2(2) ineffective assistance
18 of trial counsel – mitigation evidence, 2(3) polygraphing policy; Claim 3 – competency and
19 validity of mitigation evidence waiver; Claim 4 – insufficiency of the evidence, failure to
20 conduct neuro-psychological testing, failure to develop post-traumatic stress disorder
21 evidence; Claim 5 – invalidity of New York robbery conviction; Claim 6 – denial of motion
22 to sever counts; Claim 7 – denial of evidentiary hearing to suppress statements; Claim 8 –
23 speedy trial violation; Claim 9 – denial of motions to dismiss counsel and motions to
24 withdraw; Claim 10 – failure to give accomplice instruction; Claims 11(A) – reasonable
25 doubt instruction, 11(B) – lesser-included second degree murder instruction, 11(C) –
26 premeditation and malice instructions; Claim 12 – validity of Instruction # 20; Claim 13 –
27 *Kazalyn* instruction; Claim 14 – improper malice instructions; Claim 15 – anti-sympathy
28 instruction; Claim 16 – failure to instruct on mental/emotional disturbance mitigating

1 circumstance; Claim 17 – improper limitation of mitigating circumstances; Claim 18 – forms
2 and instructions implied mitigating circumstances must be unanimous finding; Claim 19 –
3 prosecutorial misconduct; Claim 21 – ineffective assistance of trial counsel; Claims 22 –
4 ineffective assistance of appellate counsel; Claim 23 – ineffective assistance of post-
5 conviction counsel; Claim 24 – Nevada’s death penalty scheme is arbitrary and capricious in
6 application; Claim 25 – Nevada Supreme Court fails to adequately review death penalty
7 cases; Claim 26 – lethal injection; Claim 27 – elected judiciary; Claim 28 – restrictive death
8 row conditions; Claim 29 – international law; Claim 30 – Nevada’s death penalty scheme
9 unconstitutional; Claim 31 – evolving standards of decency; Claim 32 – cumulative errors.

10 11. Claims 1 and 20 of the original Fourth State Petition involve a claim under
11 McConnell v. State, 120 Nev. 1043, 102 P.3d 606 (2004). McConnell was decided in 2004
12 and the instant petition was filed in 2007, over two years after issuance of the decision. The
13 claim was available in 2004 and nothing prevented Howard from raising the claim prior to
14 2007 and arguing McConnell should be retroactively applied. Howard acted unreasonably in
15 waiting until the Nevada Supreme Court addressed the issue of retroactivity before raising
16 this claim. Thus the decision in Bejarno v. State, 122 Nev. 1066, 146 P.3d 265 (2006) does
17 not constitute good cause for the delay in raising the claim. Accordingly, Claims 1 and 20
18 are time-barred under NRS 34.726.

19 12. Howard filed an Amended Petition for Writ of Habeas Corpus on February
20 24, 2009. For purposes of applying the procedural bars, the original petition filing date of
21 October 27, 2007 still applies. Thus the claims in the Amended Petition were raised
22 approximately twenty-one years after Howard’s conviction and nineteen years after
23 remittitur was issued on direct appeal from the Judgment of Conviction.

24 12. The following claims in the Amended Fourth State Petition are time-barred
25 under NRS 34.726: Claim 1 – validity of New York prior felony aggravator; Claim 2(1) –
26 actual conflict of interest, Claim 2(2) – ineffective assistance of counsel (mitigation issues),
27 Claim 2(3) – polygraph/resources allegations, Claim 2(4) – failure of trial court grant
28 motions for new counsel; Claim 3 – *Kazalyn* instruction fails to distinguish first and second

1 degree murder and violates *Byford*; Claim 4 – Nevada statutes permit the death penalty to be
2 imposed for second degree murder; Claim 5 – instructions and verdict form implied
3 mitigating circumstances must be unanimous finding; Claim 6 – prosecutorial misconduct;
4 Claim 7 – ineffective assistance of appellate counsel; Claim 8 – Nevada Supreme Court fails
5 to conduct fair and adequate review of death cases; Claim 9 – Nevada’s capital system is
6 arbitrary and capricious; Claim 10 – cumulative error.

7 13. Claim 1 of the Amended Petition also asserts a McConnell claim which is also
8 time-barred under NRS 34.726 for the reasons set forth in Finding # 11.

9 14. The State’s motion to dismiss the Amended Fourth State Petition asserted
10 laches under NRS 34.800. As noted in Findings # 8 and # 9, the State has suffered actual as
11 well as presumptive prejudice and Howard has not overcome that presumption.

12 15. The following claims of the Amended Fourth State Petition are barred under
13 NRS 34.800: Claim 1 – validity of New York prior felony aggravator; Claim 2(1) – actual
14 conflict of interest, Claim 2(2) – ineffective assistance of counsel (mitigation issues), Claim
15 2(3) – polygraph/resources allegations, Claim 2(4) – failure of trial court grant motions for
16 new counsel; Claim 3 – *Kazalyn* instruction fails to distinguish first and second degree
17 murder; Claim 4 – Nevada statutes permit the death penalty to be imposed for second degree
18 murder; Claim 5 – instructions and verdict form implied mitigating circumstances must be
19 unanimous finding; Claim 6 – prosecutorial misconduct; Claim 7 – ineffective assistance of
20 appellate counsel; Claim 8 – Nevada Supreme Court fails to conduct fair and adequate
21 review of death cases; Claim 9 – Nevada’s capital system is arbitrary and capricious; Claim
22 10 – cumulative error.

23 16. The following claims in the Amended Fourth State Petition involve issues that
24 either were, or could have been, raised at trial, on direct appeal or in a previous timely post-
25 conviction petition. They are therefore procedurally barred under NRS 34.810 as with
26 waived, successive or an abuse of the writ: Claim 2(1) – actual conflict of interest, Claim
27 2(2) – ineffective assistance of counsel (mitigation issues), Claim 2(3) – polygraph/resources
28 allegations, Claim 2(4) – failure of trial court grant motions for new counsel; Claim 3 –

1 *Kazalyn* instruction fails to distinguish first and second degree murder; Claim 4 – Nevada
2 statutes permit the death penalty to be imposed for second degree murder; Claim 5 –
3 instructions and verdict form implied mitigating circumstances must be unanimous finding;
4 Claim 6 – prosecutorial misconduct; Claim 7 – ineffective assistance of appellate counsel;
5 Claim 8 – Nevada Supreme Court fails to conduct fair and adequate review of death cases;
6 Claim 9 – Nevada’s capital system is arbitrary and capricious; Claim 10 – cumulative error.

7 17. As good cause to excuse the procedural delays, in the original or amended
8 petitions, Howard asserts: 1) ineffective assistance of trial, appellate and post-conviction
9 counsel; 2) inconsistent application of procedural bars; 3) delay was not the result of any
10 direct fault of Howard; 4) Howard was litigating in Federal court; 5) as to the *Kazalyn* claim,
11 the Ninth Circuit decision Polk v. Sandoval, 503 F.3d 903 (2007).

12 18. Howard’s claims of ineffective assistance of trial and appellate counsel are, in
13 themselves, procedurally barred.

14 19. Under the Statutes of Nevada in 1987, Howard was not entitled to the
15 appointment of post-conviction counsel on his first state petition for post-conviction relief.

16 20. Even if Howard had been entitled to counsel during his first state petition, any
17 claim of ineffective assistance of post-conviction counsel is, in itself, procedurally barred.

18 21. Actions of Howard’s counsel are attributable to Howard.

19 22. Nothing in Polk v Sandoval indicates it is retroactive to cases that were final
20 when the Nevada Supreme Court issued its opinion in Byford v. State, 116 Nev. 215, 994
21 P.2d 700 (2000).

22 23. Howard’s conviction became final when remittitur issued on his direct appeal
23 on February 12, 1988. Neither Byford nor Polk are applicable to Howard’s conviction.

24 24. None of allegations raised to explain the delays in bringing these claims
25 constitute good cause.

26 25. Howard also asserts a claim of “actual innocence” of the death penalty as
27 justification for excusing the procedural bars.

28 26. Howard has not demonstrated clear and convincing evidence that the

1 Legislature intended the prior felony aggravator to apply only to cases in which a judgment
2 of conviction was entered as opposed to a jury verdict.

3 27. Howard has not produced any evidence or factual allegations let alone, clear
4 and convincing evidence that he is innocent of the New York robbery.

5 28. To the extent that anything in the pleadings is intended to assert a claim of
6 "actual innocence" with respect to guilt, Howard has not produced any evidence or factual
7 allegations, let alone clear and convincing evidence, that he is not the killer of Dr. Monahan.

8 29. The only allegations of "new evidence" involve mitigating circumstances.

9 30. Even if Howard's McConnell claim is not untimely, Howard has failed to
10 establish prejudice. Without the "in the commission of a robbery" aggravator, the jury still
11 heard evidence that Howard committed a violent robbery with a gun in New York only one
12 year before he committed the instant crimes. The facts of that robbery indicated he
13 terrorized a nurse who was trying to help him, forcing her to remove her clothes and locking
14 her in closet before stealing her car. The mitigation evidence consisted of Howard's own
15 statements concerning his service in Vietnam, the time spent in some California mental
16 health facilities until doctors concluded he was malingering and his expression of sympathy
17 to Dr. Monahan's family while maintaining his innocence. Given this evidence, this Court
18 concludes, beyond a reasonable doubt, that the jury would still have determined the
19 aggravating circumstances were not outweighed by the mitigating circumstances without the
20 "in the commission of the robbery" aggravator.

21 31. In considering the effect of the aggravator on the ultimate sentence of death,
22 the Court concludes, beyond a reasonable doubt, that the jury would have sentenced Howard
23 to death absent that aggravator. In addition to the facts of the Sears robbery and Monahan
24 murder, the jury heard evidence Howard committed two violent robberies in New York. All
25 these crimes were committed within a two year period.

26 32. To the extent that any conclusion of law stated below can also be considered a
27 finding of fact, it shall be so treated.

28

CONCLUSIONS OF LAW

1
2 1. Under NRS 34.810(1)(b) every challenge to a conviction that could have been
3 raised at trial or on direct appeal cannot be raised in a post-conviction habeas proceeding. In
4 addition, under NRS 34.810(2), all claims of ineffective assistance of trial and appellate
5 counsel are required to be raised in a first petition for post-conviction relief and any claims
6 of ineffective assistance of post-conviction are required to be filed in a second petition for
7 post-conviction relief. Failure to do so constitutes either a successive petition or an abuse of
8 the writ. Any claims in a post-conviction petition that fail to comply with the statute are
9 procedurally barred.

10 2. NRS 34.810(2) incorporates the concept that where a subsequent petition
11 raises new or different grounds for relief and those grounds could have been asserted in a
12 prior petition, it is an abuse of the writ. In essence, it encompasses the same concerns as
13 NRS 34.810(1)(b), the waiver provision, except that it applies to all petitions, not just those
14 arising from trial. It also reflects the policy behind the Law of the Case Doctrine; rulings on
15 previous issues cannot be avoided by a more detailed or precisely focused argument. Hogan
16 v. State, 109 Nev. 952, 860 P.2d 710 (1993). In other words, if the information or argument
17 was previously available, it is an abuse of the writ to wait to assert it in a second or
18 subsequent petition. McClesky v. Zant, 499 U.S. 457, 497-498 (1991).

19 3. As noted in Findings # 6 and # 16, all of Howard's claims and sub-claims were
20 either raised in previous proceedings and denied on their merits (or found to be procedurally
21 barred) or could have been raised in previous proceedings and were not. Thus they are
22 barred under NRS 34.810.

23 4. Under NRS 34.726, any challenge to Howard's conviction based upon a
24 substantive claim of ineffective assistance of trial and/or appellate counsel was required to
25 be filed within one year of the remittitur, which was February 12, 1988. However, pursuant
26 to Pellegrini v. State, 117 Nev. 860, 34 P.3d 519, 537 (2001), that period would be extended
27 to January 1, 1994. The instant petition was filed in 2007, thus, as noted in Findings # 5, #
28 11, # 12 and #13, all claims and subclaims are untimely and procedurally barred under NRS

1 34.726.

2 5. NRS 34.726 is strictly enforced. In Gonzales v. State, 118 Nev. 61, 590 P.3d
3 901 (2002), the Nevada Supreme Court rejected a habeas petition that was filed two days
4 late, pursuant to the "clear and unambiguous" mandatory provisions of NRS 34.726(1).

5 6. Besides the provisions of NRS 34.726, NRS 34.800 recognizes that a post-
6 conviction petition should be dismissed when delay in presenting issues would prejudice the
7 State in responding to the petition or in retrial. NRS 34.800(1)(a)(b).

8 7. NRS 34.800(2) creates a rebuttable presumption of prejudice to the State
9 where a period of five years has elapsed between the filing a decision on direct appeal of a
10 judgment of conviction and the filing of a petition challenging the validity of a judgment of
11 conviction. To invoke the presumption, the statute requires that the State plead laches in its
12 motion to dismiss the petition. NRS 34.800(2). Once the presumption is invoked, the
13 petitioner has the burden of pleading specific facts to overcome the presumption.

14 8. The decision on direct appeal was rendered in 1987. The instant petition was
15 filed in 2007. The State plead laches in its motion to dismiss, therefore the presumption of
16 prejudice applies.

17 9. Because Howard failed to plead or prove factual allegations to overcome the
18 presumption of prejudice all claims and sub-claims, except the McConnell claim, are
19 procedurally barred under NRS 34.800.

20 10. To overcome the procedural bars under NRS 34.726, NRS 34.800 and NRS
21 34.810, Howard must show either show good cause and prejudice for the delay or manifest
22 injustice.

23 11. Good cause means an impediment external to the defense that prevented
24 petitioner from complying with the state procedural default rules. Hathaway v. State, 119
25 Nev. 248, 252, 71 P.3d 503, 506 (2003); citing Pellegrini v. State, 117 Nev. 860, 886-87, 34
26 P.3d 519, 537 (2001); Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994);
27 Passanisi v. Director, 105 Nev. 63, 66, 769 P.2d 72, 74 (1989); see also Crump v. Warden,
28 113 Nev. 293, 295, 934 P.2d 247, 252 (1997); Phelps v. Director, 104 Nev. 656, 764 P.2d

1 1303 (1988).

2 12. An external impediment exists if the factual or legal basis for a claim was not
3 reasonably available to counsel, or where some interference by officials' made compliance
4 impracticable. Hathaway, 71 P.3d at 506; quoting Murray v. Carrier, 477 U.S. 478, 488, 106
5 S.Ct. 2639, 2645 (1986); see also Gonzales, 118 Nev. at 595, 53 P.3d at 904; citing Harris v.
6 Warden, 114 Nev. 956, 959-60 n. 4, 964 P.2d 785 n. 4 (1998).

7 13. Fault of the petitioner encompasses not only a petitioner's own actions, but
8 also actions of a petitioner's counsel or agents. For example, trial counsel's failure to
9 forward a copy of the file to a petitioner is not good cause for excusing a delay in filing. See
10 Phelps, 104 Nev. at 660; Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995). Other than
11 implying that any "fault" in the delay was that of his attorneys, Howard presented no
12 evidence of an external impediment.

13 14. A claim of ineffective assistance of counsel that is procedurally barred cannot
14 constitute good cause for excusing the procedural bars, for itself or any other claim.
15 State v. District Court (Riker), 121 Nev. 225, 112 P.3d 1070 (2005). See also Edwards v.
16 Carpenter, 529 U.S. 446, 453 (2000) (procedurally barred ineffective assistance of counsel
17 claim is not good cause). See generally Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d
18 503, 506-07 (2003) (stating that a claim reasonably available to the petitioner during the
19 statutory time period did not constitute good cause to excuse a delay in filing).

20 15. As Howard fails to show good cause for not bringing his ineffective assistance
21 of counsel claims in a timely manner, they are procedurally barred and do not constitute
22 good cause for overcoming the procedural bars. Moreover, as to the claims of ineffective
23 assistance of counsel that were brought in prior petitions and decided on their merits, these
24 claims would be successive and new arguments in support of the claims would be an abuse
25 of the writ, so they are also procedurally barred under NRS 34.810 and cannot constitute
26 good cause for delay. Any claims that were not previously raised in the first or second post-
27 conviction petitions would be waived and barred under NRS 34.810(1)(b) and likewise
28 cannot establish good cause for delay.

1 16. Because Howard was not entitled to post-conviction counsel at the time of his
2 first post-conviction petition, he cannot maintain a claim of ineffective assistance of post-
3 conviction counsel and thus this cannot constitute good cause for any delays. See Pellegrini,
4 117 Nev. at 888, 34 P.3d at 538, fn. 125.

5 17. The Nevada Supreme Court has gone to great lengths to refute claims that it
6 arbitrarily and inconsistently applies the procedural default rules. See State v. Dist.Ct.
7 (Riker), 121 Nev. 225, 112 P.3d 1070 (2005). Nevada does not inconsistently apply its
8 procedural bars and this allegation does not demonstrate good cause for the delay in the
9 filing of Howard's claims in the instant petition.

10 18. Howard claims Polk v. Sandoval constitutes good cause for the delay in raising
11 his challenge to the *Kazalyn* instruction. As noted in Nika v. State, 198 P.3d 839 (2008),
12 Polk v. Sandoval misconstrues the Nevada Supreme Court's decision in Byford v. State, 116
13 Nev. 215, 994 P.2d 700 (2000). Further Nika notes that Byford would only apply to cases
14 that were not final when Byford was issued. Howard's case was final in 1988 and Byford
15 was issued in 2000. Thus Byford and Polk are not applicable to Howard and cannot
16 constitute good cause for the delay in raising the *Kazalyn* issue in the instant petition.

17 19. Generally, a defendant who has procedurally defaulted on a claim may
18 subsequently raise the claim in a habeas petition upon a showing of manifest injustice which
19 is defined as "actual innocence". Bousley v. State, 523 U.S. 614, 1611, 118 S.Ct. 1604,
20 1611 (1998). Courts have consistently found "actual innocence" to be a miscarriage of
21 justice sufficient to overcome any procedural post-conviction time bar or default without
22 analyzing good cause and prejudice. See Sawyer v. Whitley, 505 U.S. 333, 338-39, 112
23 S.Ct. 2514, 2518-19 (1992). In other words, actual innocence acts as a "gateway" for
24 innocent defendants to present constitutional challenges to a court years after the procedural
25 defaults and bars have ran. See Sawyer at 315.

26 20. A claim of actual innocence requires both an allegation that the defendant's
27 constitutional rights were violated and the presentation of newly discovered evidence. The
28 Eighth Circuit Court of Appeals has "rejected free-standing claims of actual innocence as a

1 basis for habeas review stating, "[c]laims of actual innocence based on newly discovered
2 evidence have never been held to state a ground for federal habeas relief absent an
3 independent constitutional violation occurring in the underlying state criminal proceeding."
4 Meadows v. Delo, 99 F.3d 280, 283 (8th Cir. 1996) (citing Herrera v. Collins, 506 U.S. 390,
5 400, 113 S. Ct. 853, 860 (1993)).

6 21. Furthermore, the newly discovered evidence suggesting the defendant's
7 innocence must be "so strong that a court cannot have confidence in the outcome of the
8 trial." Id. at 316, at 861. Actual innocence focuses on actual not legal innocence, and
9 therefore, a defendant who only challenges the validity of evidence presented at trial has not
10 sufficiently claimed actual innocence to overcome the procedural bars and defaults. See
11 Sawyer, 112 U.S. at 339, 505 S. Ct. at 2519. The United States Supreme Court has held that,
12 "Without any new evidence of innocence, even the existence of a concededly meritorious
13 constitutional violation is not itself sufficient to establish a miscarriage of justice that would
14 allow a habeas court to reach the merits of the barred claim." Schlup v. Delo, 513 U.S. 298,
15 316, 115 S. Ct. 851, 861 (1995).

16 22. The applicable standard applied to the actual innocence analysis depends upon
17 whether the defendant is challenging his conviction or his death ineligibility:

18 To avoid application of the procedural bar to claims attacking the
19 *validity of the conviction*, a petitioner claiming actual innocence
20 *must show that it is more likely than not* that no reasonable juror
21 would have convicted him absent a constitutional violation.
22 Where the petitioner has argued that the procedural default
should be ignored because he is *actually ineligible for the death*
penalty, he must show by *clear and convincing evidence* that, but
for a constitutional error no reasonable juror would have found
him death eligible. (Emphasis added).

23 Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

24 23. Once a defendant has made such a showing, he may then use the claim of
25 actual innocence as a "gateway" to present his constitutional challenges to the court and
26 require the court to decide them on the merits. Schlup, 513 U.S. at 315, 115 S. Ct. at 861.

27 24. As a matter of federal constitutional law, the Sawyer Court also indicated that
28 to qualify for "actual innocence" sufficient to overcome the procedural bars, a petitioner

1 must eliminate all aggravating circumstances.

2 "Thus, a petitioner may make a colorable showing that he is
3 actually innocent of the death penalty by presenting evidence that
4 an alleged constitutional error implicates *all* of the aggravating
5 factors found to be present by the sentencing body. That is, but
6 for the alleged constitutional error, the sentencing body *could not*
7 have found *any* aggravating factors and thus the petitioner was
ineligible for the death penalty. In other words, the petitioner
must show that absent the alleged constitutional error, the jury
would have lacked the discretion to impose the death penalty;
that is, that he is *ineligible* for the death penalty." *Johnson v.*
Singleton, 938 F.2d, at 1183 (emphasis in original).

8 Sawyer, 505 U.S. at 347, 112 S.Ct. at 2523.

9 25. In addition, any new evidence regarding mitigating factors is not considered in
10 an "actual innocence" death eligibility determination. The United States Supreme Court has
11 indicated that the "actual innocence" standard is a very narrow and limited method of
12 overcoming procedural bars and should be based on objective standards, not subjective
13 issues relating to the weight to be given to mitigating evidence. Sawyer, 505 U.S. at 345-46,
14 112 S.Ct. at 2522.

15 26. Because the Nevada Supreme Court relied upon Sawyer in Pelligrini, the
16 limitations on the "actual innocence" doctrine discussed in Sawyer also apply to Howard's
17 petition and State law procedural bars.

18 27. The Nevada Supreme Court recognizes one other form of "actual innocence"
19 involving aggravating circumstances. Leslie v. Warden, 118 Nev. 773, 59 P.3d 440 (2002).
20 In Leslie, which involved a timely filed first state petition for post-conviction relief, the
21 Nevada Supreme Court received evidence that the legislative history did not support the
22 previous interpretation of the "random and no apparent motive" aggravator.⁹ Based on this
23 evidence, the Court examined the trial record and concluded that there was insufficient
24 evidence in the record to support that aggravator, as correctly interpreted. The Supreme
25 Court then struck the aggravator and conducted a reweighing analysis. Concluding that there
26 was a reasonable probability the jury would not have given a death sentence without that

27 _____
28 ⁹ The claim was procedurally barred under NRS 34.810(1)(b) waiver provision. It was not
barred under NRS 34.726 or NRS 34.800.

1 aggravator, the Supreme Court found Leslie met the actual innocence standard and that the
2 procedural bar was excused. After considering the merits of the claims, a new sentencing
3 hearing was ordered.

4 28. The Nevada Supreme Court in Leslie relied upon its earlier decision in
5 Pelligrini, which recognized the "actual innocence" standard set forth in Sawyer. See
6 Pellegrini, 117 Nev. at 887, 34 P.3d at 537. When read with Pellegrini and Sawyer, Leslie
7 makes it clear that to be "actually innocent" of an aggravating circumstance under Leslie a
8 defendant must demonstrate, by clear and convincing evidence, that: 1) the Legislative
9 History demonstrates a previous interpretation of an aggravating circumstance was actually
10 incorrect and in direct contradiction to legislative intent; and 2) under the correct
11 interpretation, based upon the evidence presented at trial, no reasonable juror would have
12 found the existence of that aggravating factor beyond a reasonable doubt. If the defendant
13 can meet this standard, then the defendant is actually innocent of that aggravating
14 circumstance and it is stricken.

15 However, after striking the aggravating circumstance, a court must still reweigh the
16 remaining valid aggravators with the mitigating factors derived from the evidence at trial. If
17 it is clear the remaining aggravating circumstance(s) are not outweighed by the mitigating
18 circumstances, then the defendant is still death qualified and the claim of gateway "actual
19 innocence" fails. If the court cannot make such a determination, then Defendant has
20 demonstrated sufficient evidence that Defendant is actually innocent of the death penalty and
21 a new penalty hearing is ordered. Leslie, 118 Nev. at 783, 59 P.3d at 447.

22 29. Howard alleges that he is actually innocent of the death penalty because the
23 two aggravators in his case, the murder was committed during a robbery and he had been
24 previously convicted of a violent felony are invalid

25 30. With respect to the felony robbery McConnell aggravator, Leslie is
26 inapplicable. As noted in Findings # 31 and # 32, even if Howard's McConnell claim is
27 timely, striking that aggravator would not result in actual innocence. The Court concludes
28 beyond a reasonable doubt that the jury would still have found the aggravating circumstance

1 was not outweighed by any mitigating circumstances. The violent nature of the New York
2 robbery conviction, the fact that it occurred one year before the robberies and murders in the
3 instant case and the self-serving and inconsistent nature of the mitigation evidence
4 demonstrate this.

5 31. Given the calculated manner in which Howard planned his robberies; lured Dr.
6 Monahan; shot Dr. Monahan execution style in the head; terrorized or threatened to kill his
7 robbery victims in New York and Las Vegas as well as considering his activities in
8 California prior to his arrest, this Court also concludes beyond a reasonable doubt, that
9 absent the *McConnell* aggravator, the jury would still have sentenced Howard to death.

10 32. With respect to the New York prior violent felony robbery, Howard presented
11 to evidence that it falls within the narrow holding of *Leslie* and the Supreme Court already
12 held the New York jury verdict was sufficient to satisfy the prior crime of violence
13 aggravator. Therefore Howard has not demonstrated he is actually innocent of that
14 aggravator. As that aggravator remains, he is not actually innocent of the death penalty and
15 he cannot, therefore, overcome the procedural bars on this ground.


16 **ORDER**

17 THEREFORE, IT IS HEREBY ORDERED that the Fourth State Petition for Post-
18 Conviction Relief shall be, and it is, hereby denied.

19 DATED this 5 day of November, 2010.

20 
21 DISTRICT JUDGE 

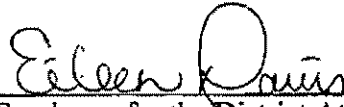
22
23 DAVID ROGER
24 DISTRICT ATTORNEY
25 Nevada Bar #002781

26 BY 
27 NANCY A. BECKER
28 Deputy District Attorney
Nevada Bar #00145

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing, was made this 4th day
of November, 2010, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

MICHAEL B. CHARLTON
Assistant Federal Public Defender
411 E. Bonneville, Ste. 250
Las Vegas, Nevada 89101



Employee for the District Attorney's
Office

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	2591	
CONNECTION TEL		3885819
CONNECTION ID		
ST. TIME	10/20 08:44	
USAGE T	03'29	
PGS. SENT	20	
RESULT	OK	



OFFICE OF THE DISTRICT ATTORNEY
CRIMINAL APPEALS UNIT

DAVID ROGER
District Attorney

CHRIS OWENS
Assistant District Attorney

TERESA M. LOWRY
Assistant District Attorney

MARY-ANNE MILLER
County Counsel

STEVEN S. OWENS
Chief Deputy

NANCY BECKER
Deputy

FACSIMILE TRANSMISSION

Fax No. (702) 382-5815

Telephone No. (702) 671-2750

TO: Michael Charlton

FAX#: (702) 388-5819

FROM: Nancy A. Becker *NAB*

SUBJECT: Samuel Howard, 81C053867, Proposed Findings

DATE: October ²⁰~~19~~, 2010

1 of 2

Mr. Charlton,
The following Findings will be submitted to the Judge on November 2, 2010.
Sincerely,

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	2592	
CONNECTION TEL		3885819
CONNECTION ID		
ST. TIME	10/20 08:49	
USAGE T	02'29	
PGS. SENT	16	
RESULT	OK	



OFFICE OF THE DISTRICT ATTORNEY
CRIMINAL APPEALS UNIT

DAVID ROGER
District Attorney

CHRIS OWENS
Assistant District Attorney

TERESA M. LOWRY
Assistant District Attorney

MARY-ANNE MILLER
County Counsel

STEVEN S. OWENS
Chief Deputy

NANCY BECKER
Deputy

FACSIMILE TRANSMISSION

Fax No. (702) 382-5815

Telephone No. (702) 671-2750

TO: Michael Charlton

FAX#: (702) 388-5819

FROM: Nancy A. Becker *NAB*

SUBJECT: Samuel Howard, 81C053867, Proposed Findings

DATE: October ²⁰~~19~~, 2010

2 of 2

Mr. Charlton,
The following Findings will be submitted to the Judge on November 2, 2010.
Sincerely,

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
5-21-81 DEPT. XII JUDGE LEGAKES R. Child & A. Mang, Clerks L. Reid, Rptr.	At the hour of 11:32 AM this date, Court convened in this matter. State represented by DDA, Thomas Green. Valene Scoble, Deputy Foreman of the Grand Jury, stated to the Court that at least twelve members had concurred in the return of the true bill in this matter; but others had been excused for the presentation to the Court. Mr. Jeffers presented Grand Jury Case No.	
	80G0127X to the Court and argued in support thereof. BY THE COURT ORDERED, the Indictment may be filed and is assigned District Court Case No. C53867; and is assigned to Docket H, Department 9; to return June 9, 1981 for Initial Arraignment. Mr. Jeffers deposited evidence with the Clerk of the Court and moved for issuance of a bench warrant, stating the Defendant is in custody	
	in California; and requested warrant be issued with Defendant to be held without bail. COURT ORDERED, Bench Warrant will issue, without Bail. (B.W. - CUSTODY)	<u>DEPT. NINE</u> 6-9-81 - 9 AM INITIAL ARRAIGNMENT
6-9-81 STEPHEN L. HUFFAKER DEPT. NINE B. STUCKI CLERK M. SIMON REPORTER	INITIAL ARRAIGNMENT STATE REPRESENTED BY DONALD J. CAMPBELL, DDA. DEFT. HOWARD aka KEITH NEITHER PRESENT NOR REPRESENTED BY COUNSEL. COURT SERVICES OFFICER REPRESENTED TO COURT THEY HAD NOT BEEN ABLE TO LOCATE DEFT. HOWARD. COURT ORDERED, THIS MATTER CONTINUED. CLERK IS TO NOTIFY PUBLIC DEFENDER. CUSTODY (BW)	6-16-81 @ 9:00 AM CONTINUED INITIAL ARRAIGNMENT
6-16-81 STEPHEN L. HUFFAKER DEPT. NINE B. STUCKI CLERK M. SIMON REPORTER	CONTINUED INITIAL ARRAIGNMENT STATE REPRESENTED BY RAY D. JEFFERS, DEPUTY DISTRICT ATTORNEY. DEFENDANT NEITHER PRESENT NOR REPRESENTED BY COUNSEL. MR. JEFFERS ADVISED COURT THAT A GOVERNOR'S WARRANT HAS BEEN ISSUED BUT DEFT. HAS NOT BEEN RETURNED YET. COURT ORDERED, THIS MATTER OFF CALENDAR UNTIL DEFENDANT IS RETURNED FROM CALIFORNIA. CUSTODY BW	11-30-82 - 9:00A.M. CONFIRMATION OF COUNSEL AND CONT. INITIAL ARRAIGN- MENT
11-23-82 JUDGE GUY DEPT. XI FOR V T. ALMSTEAD AND R. SNAPE, CLERKS H. ST. THOMAS, REPORTER	BENCH WARRANT RETURN State represented by Melvin Bowers, Deputy District Attorney. Defendant Howard present without Counsel. COURT ORDERED, Public Defender is to investigate to determine if Defendant qualified for their services. FURTHER ORDERED, continued to November 30, 1982 at 9:00 A.M. for Arraignment and Confirmation of Counsel. CUSTODY	

MINUTES — CRIMINAL

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
11-30-82 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK R. SILVAGGIO, REPORTER	<u>CONFIRMATION OF COUNSEL</u> <u>CONTINUED ARRAIGNMENT</u> State represented by Michael Amador, Deputy District Attorney. Defendant Howard present with Michael Peters and Terrence Jackson, Deputy Public Defenders. Mr. Jackson informed the Court that the Defendant qualified for their services, but that the victim in this matter was his dentist so he personally would not be able to have anything to do with this case, and by the COURT SO ORDERED. Mr. Peters requested a continuance of the arraignment as he was not familiar with this case. Defendant objected to any continuance and requested a speedy Trial. Defendant was arraigned and entered a Plea of Not Guilty.	1-10-83 - 10:00 A.M. JURY TRIAL ----- 1-6-83 - 9:00 A.M. CALENDAR CALL
	COURT ORDERED, this matter is set for Trial January 10, 1983 at 10:00 A.M. and Calendar Call will be January 6, 1983 at 9:00 A.M. Mr. Peters requested that the 21 days in which to file a Writ be computed from this date. Court stated Counsel to expedite the filing of a Writ and if it appeared that he needed more time, he could bring this matter back before the Court. Mr. Peters received copy of CUSTODY Grand Jury Transcript.	
12-28-82 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK R. SILVAGGIO, REPORTER	<u>DEFENDANT'S MOTION FOR APPOINTMENT OF PSYCHIATRIST</u> State represented by Dan Seaton, Deputy District Attorney. Defendant Howard present with Michael Peters, Deputy Public Defender. Mr. Seaton filed State's Response in Open Court. Mr. Peters moved for a continuance in this matter.	12-30-82 - 9:00 A.M. DEFENDANT'S MOTION FOR APPOINTMENT OF PSYCHIATRIST
	COURT ORDERED, this matter is continued to December 30, 1982 at 9:00 A.M. Defendant stated he had a Motion for the Court in regard to substitution of attorneys, and Court stated he could make that request on December 30, 1982. CUSTODY	

MINUTES — CRIMINAL

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
12-30-82 JOHN F. MENDOZA DEPT. V LOIS BAZAR (CLERK) R. SILVAGGIO (REPORTER)	DEFENDANT'S MOTION FOR APPOINTMENT OF PSYCHIATRIST State represented by Dan Seaton, D.D.A. Defendant Howard present with Michael Peters and Marcus Cooper, D.P.D's. Mr. Peters requested permission to argue Defendant's Motion for Substitution and Removal of Attorney of Record. Mr. Seaton filed Opposition to Motion in open court. COURT ORDERED, this matter is continued to this afternoon at 1:45 P.M.	
	CUSTODY	
12/30/82 JOHN F. MENDOZA DEPT. V M. HARMON, DDA M. PETERS, DPD. L. OLSEN, CLRK R. SILVAGGIO, RPTR	1:45 P.M. DEFENDANT'S MOTION FOR APPOINTMENT OF PSYCHIATRIST DEFENDANT'S MOTION FOR SUBSTITUTION AND REMOVAL OF ATTORNEY OF RECORD Defendant Howard present. Statement by the deft. and Mr. Peters. Opposition by the State. COURT ORDERED, motion for substitution and removal of attorney is denied; Mr. Peters is to remain on the case and prepare for trial. Counsel advised they may request trial date be continued. Counsel requested Psychiatrist be appointed to see if defendant can assist in own defense. COURT ORDERED, motion is granted, Dr. Gorman is appointed as psychiatrist to examine the deft. Counsel are to try and obtain report by Tuesday if not, report back on the 10th.	1/4/83 09 AM STATUS CHECK 1/10/83 09 AM EVALUATION OF PSYCHIATRIC REPORT
1-4-83 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK E. DONNELLY, REPORTER	STATUS CHECK State represented by Melvin T. Harmon, Deputy District Attorney. Defendant Howard present with Marcus Cooper, Deputy Public Defender. Mr. Cooper informed the Court this matter was on to determine if the Court would grant a continuance of the Trial of this matter. Defendant Howard objection to having the Trial Date continued, stating he wanted to go to Trial in this matter. COURT ORDERED, Motion to Continue Trial Date is denied and this matter will go to Trial on January 10, 1983 at 10:00 A.M. FURTHER ORDERED, Calendar Call of January 6, 1983 is vacated.	1-10-83 - 10:00 A.M. JURY TRIAL
	CUSTODY	

MINUTES — CRIMINAL

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

1-10-83
JOHN F. MENDOZA
DEPT. FIVE

R. SNAPE, CLERK

R. SILVAGGIO,
REPORTERHEARING ON PSYCHIATRIC REPORT
DEFENDANT'S MOTION TO SEVER AND MOTION IN
LIMINE AND MOTION TO SUPPRESS

State represented by Melvin T. Harmon and Daniel Seaton, Deputy District Attorneys. Defendant Howard present with Marcus Cooper and George Franzen, Deputy Public Defenders. Mr. Cooper moved to withdraw as Counsel of record, stating Mr. Jackson, the team chief,

was a patient of Dr. Monohan's, the victim in this matter, and other members of the staff had been acquainted with the victim. Mr. Cooper stated further the Defendant refused to talk to the attorneys and they were not prepared to go to Trial this date. COURT ORDERED, Motion to withdraw is denied. Mr. Cooper moved Court to continue this Trial. Court stated the Defendant requested that this matter proceed to Trial this date.

Mr. Harmon stated they were ready for Trial and had relied on the fact the Defendant requested they go to Trial this date. Mr. Harmon stated they had several out-of-state witnesses that they would not be able to call off at this late date, and argued in opposition to a continuance. Court examined Mr. Cooper in regard to why the Defendant had just been examined by Dr. O'Gorman yesterday.

Mr. Franzen requested a continuance to 1:45 P.M. in this matter to discuss the matter with the Defendant. State filed an Answer in Opposition to Motion to Sever Offenses in Open Court. COURT ORDERED, continued to 1:45 P.M. this date.

Court reconvened in this matter with all present as of the previous session.

Mr. Cooper filed Motion for Discovery, Motion for Individual Examination of Jurors and Motion for Additional Peremptory Challenges in Open Court.

Mr. Franzen stated the Defendant wanted to go to Trial this week but they wanted the Court to continue this Trial over the objections of the Defendant.

Argument in opposition by Mr. Harmon. Court stated it would grant this Motion to Continue but set specific conditions.

COURT ORDERED, Marcus Cooper and George Franzen are to try this case and will not be released without an Order from this Court. FURTHER ORDERED, the Public Defenders are to make adjustments in their schedules to try this case on April 11, 1983. FURTHER ORDERED, neither Mr. Harris nor Mr. Jackson are to become directly involved in this case without the approval of Mr. Cooper and Mr. Franzen.

Court stated it would discuss this matter with Mr. Harris about the inadequacy of the representation of this Defendant.

MINUTES — CRIMINAL

(over)

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
1-10-83 (CONTINUED FROM PREVIOUS PAGE)	FURTHER ORDERED, Motion to Sever Counts is denied. FURTHER ORDERED, Motion to Discover Aggravating Circumstances is granted. FURTHER ORDERED, Motion for Additional Peremptory Challenges is denied. FURTHER ORDERED, Motion for Individual Examination of Jurors is denied. FURTHER ORDERED, Motion in Limine and Motion for Lineup are continued to January 25, 1983 at 9:00 A.M. FURTHER ORDERED, Trial is continued	4-11-83 - 10:00 A.M. JURY TRIAL ----- 4-7-83 - 9:00 A.M. CALENDAR CALL
	to April 11, 1983 at 10:00 A.M. and Calendar Call will be April 7, 1983 at 9:00 A.M. CUSTODY	1-25-83 - 9:00 A.M. DEPT'S MOTION IN LIMINE DEPT'S MOTION FOR LINEUP
1-25-83 JOHN P. MENDOZA DEPT. FIVE R. SNAPE, CLERK P. SILVAGGIO, REPORTER	<u>DEFENDANT'S MOTION IN LIMINE</u> <u>DEFENDANT'S MOTION FOR LINEUP</u> State represented by Daniel Seaton, Deputy District Attorney. Defendant Howard present with Marcus Cooper, Deputy Public Defender. Mr. Cooper requested a continuance in this matter to file points and authorities, and COURT ORDERED, this matter is continued to February 1, 1983 at 9:00 A.M. and the Public Defender is to file points and authorities by Thursday, January 27, 1983 and the District Attorney has until January 31, 1983 to respond.	2-1-83 - 9:00 A.M. DEPT'S MOTION IN LIMINE DEPT'S MOTION FOR LINEUP
	CUSTODY	

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
1-27-83 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK S. WIENER, REPORTER	PLAINTIFF'S MOTION FOR FINGERPRINT EXEMPLAR State represented by Melvyn T. Harmon, Deputy District Attorney. Defendant Howard present with George Franzen, Deputy Public Defender. Court heard arguments of Counsel. Court stated its findings. COURT ORDERED, Motion for Exemplar is granted CUSTODY	
2/1/83 JOHN F. MENDOZA DEPT. V S. Nicholson, Clerk S. Wiener, Reporter	DEFENDANT'S MOTION IN LIMINE: MOTION FOR LINE- UP STATE'S MOTION FOR FINGERPRINT EXEMPLAR State represented by Melvyn T. Harmon, DDA. Deft. Howard present, in custody, with Marcus Cooper, DPD. Mr. Cooper advised that Deft's. Motion in Limine may be involved and Court stated it wanted to hear arguments. COURT ORDERED, Motion for Lineup is denied and date is set for Evidentiary Hearing on Motion in Limine. (FURTHER ORDERED, a gag is to be made available to be used on the Deft., if necessary the next time he enters the Courtroom and sanctions may be taken if Deft's. behavior con- tinues.) State's Motion for Fingerprint Exemplar, having previously been signed, is taken off calendar. CUSTODY	4/8/83 10 A.M. EVIDENTIARY HRNG. ON DEFT'S MOTION IN LIMINE
4-7-83 JOHN F. MENDOZA DEPT FIVE R. SNAPE, CLERK R. SIVAGGIO, REPORTER	CALENDAR CALL State represented by C. Dan Bowman, Deputy District Attorney. Defendant Howard present with Marcus Cooper, Deputy Public Defender. Counsel stated this matter was ready for Trial, and would take from one week to one and one-half weeks to try. COURT ORDERED, this Trial will be heard in Department Five on April 11, 1983 at 10:00 A.M. Court reconvened in this matter. State represented by Daniel Seaton, Deputy District Attorney. Defendant Howard represented by George Franzen and Marcus Cooper, Deputy Public Defenders. Counsel stipulated to continue Motions until the time of Trial, and that the exhibits could be marked outside the presence of the Court. COURT ORDERED, Counsel to meet with the Clerk on April 8, 1983 to mark the exhibits. FURTHER ORDERED, the hearing previously set for April 8, 1983 is hereby vacated. CUSTODY	4-11-83 - 10:00 A.M. JURY TRIAL DEPT. FIVE

MINUTES — CRIMINAL

CASE NO. C53867

TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD AKA KEITH

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

<p>4-11-12-13-14- 18-19-20-21-22- 83 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK R. SILVAGGIO, REPORTER</p>	<p><u>JURY TRIAL</u> State represented by Melvyn T. Harmon and Daniel Seaton, Deputy District Attorneys. Defendant Howard present with Marcus Cooper and George Franzen, Deputy Public Defenders. Counsel stated they were ready to proceed to Trial. Mr. Franzen stated there was a breakdown in communication between Defendant and Counsel.</p>	
	<p>Jurors were brought into the Courtroom and panel was selected and sworn. Mr. Franzen stated they objected to selection of Jury as some panel members were not present. Mr. Harmon stated the Jury Commissioner had the right to excuse jurors. Court stated the Jury Commissioner had the right to excuse Jurors, and Court stated they assumed they were properly excused. Mr. Cooper filed an Original Letter from the</p>	
	<p>Defendant in Open Court. Mr. Cooper stated the Defendant was not satisfied with their representation of him. Mr. Cooper stated further that the Defendant refused to communicate with them and assist them in his defense. Court stated these matters had been litigated previously. Court inquired if the Public Defenders Cooper and Franzen had had any other communication</p>	
	<p>with other members of the Public Defenders Office that were familiar with the victim in this case, and Counsel replied in the negative. Mr. Cooper stated they had prepared this case to the best of their ability. Mr. Franzen informed the Court some of the jurors had inquired about his injured hand, and requested that the Court advise the Jurors that the attorneys could not communicate with them.</p>	
	<p>Jurors were brought into the Courtroom and Court advised the panel that the attorneys were not allowed to discuss matters with the jurors, and the jurors must not attempt to converse with the attorneys. On April 12, 1983, outside the presence of the Jury, Court reconvened in this matter. Court stated Defendant had filed Proper Person Motions and inquired of Counsel if there was any validity to these Motions, stating if so, Counsel</p>	
	<p>could present them to the Court. Jury was brought into the Courtroom. Court advised Jurors in regard to how this matter would proceed to Trial. Opening statement by Mr. Harmon. Defendant's Counsel reserved the right to make their Opening Statement at the beginning of their case. Mr. Cooper moved Court to invoke the rule of exclusion of witnesses and by the COURT SO ORDERED.</p>	

(CONTINUED)

MINUTES — CRIMINAL

CASE NO. C53867 TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD AKA KEITH

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
CONTINUED	<p>Court heard testimony of witnesses and admitted exhibits.</p> <p>On April 19, 1983, Court heard arguments of Counsel in regard to Defendant being married to Dwana Thomas, possible witness in this matter. SAMUEL HOWARD was sworn and testified in regard to that matter.</p> <p>On April 20, 1983, Mr. Cooper stated they contacted authorities in New York and were unable</p>	<p>5-2-83---10:00 A.M.</p> <p>PENALTY HEARING</p>
	<p>to locate any record or documents in regard to the Defendant having been married to Dwana Thomas. Court stated if Ms. Thomas was married to someone else, she could not have been married to Defendant at the same time.</p> <p>Mr. Cooper filed Motion to Suppress in Open Court.</p> <p>Court heard arguments of Counsel.</p> <p>Court stated its findings.</p> <p>COURT ORDERED, Motion to Suppress denied.</p>	
	<p>On April 21, 1983, Marriage Certificate of Dwana and Lenon Thomas was presented to the Court and Divorce Decree of Dwana and Lenon Thomas was also presented. COURT ORDERED, they will be marked as Court's Exhibits, and placed in the file.</p> <p>Court heard further testimony of witnesses and admitted exhibits.</p> <p>Court read Instructions to the Jury.</p> <p>Opening argument by Mr. Seaton.</p>	
	<p>Answering argument by Mr. Cooper.</p> <p>Closing argument by Mr. Harmon.</p> <p>On April 22, 1983, Court reconvened in this matter.</p> <p>Juror #12, Leo Zachary Gates, is Foreman.</p> <p>Jury returned the following Verdicts:</p>	
	<p>COUNT ONE - ROBBERY WITH USE OF A DEADLY WEAPON - GUILTY</p>	
	<p>COUNT TWO - ROBBERY WITH USE OF A DEADLY WEAPON - GUILTY</p> <p>COUNT THREE - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON - GUILTY</p> <p>COURT ORDERED, this matter is continued to May 2, 1983 at 10:00 A.M. for the Penalty phase of this Trial. FURTHER ORDERED, Defendant is</p>	
	<p>remanded to custody.</p> <p>CUSTODY</p>	

MINUTES — CRIMINAL

CASE NO. C53867

TITLE STATE OF NEVADA VS. SAMUEL HOWARD aka KEITH

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

5-2-83
JOHN F. MENDOZA
DEPT. VM. SKURSKI,
CLERK
R. SILVAGGIO,
REPORTERDEFENDANT'S MOTION TO PROHIBIT THE USE OF
ALLEGED AGGRAVATING CIRCUMSTANCES &
PENALTY HEARING

Motion:

State represented by DDA's Mel Harmon and Dan
Seaton. Deft. Howard present with DDP's Marcus
Cooper and George Franzen, who presented oral
motion to the Court to withdraw as counsel.
Argument by counsel. COURT ORDERED, Motion

Denied.

Court advised one of the jurors in this case
had been in contact with the DA's the DA's office
and the Jury Commissioner, which is a breach
of the Admonition; said Juror and Jury
Commissioner are available for questioning.
Statement of Lynn Kennington, Jury Commissioner
marked and admitted as Court's Exhibit #5.
Mrs. Kennington sworn and testified. Juror
was called into courtroom and questioned, thenexcused to hallway. State filed document
entitled "Regarding Potential Juror Difficulties
in Deliberating in the Penalty Phase" in Open
Court. Argument by counsel. Court stated the
facts did not bear out excusing of the Juror.
Mr. Franzen presented oral motion for State
to be barred from asking for the Death Penalty.
Argument by counsel. COURT ORDERED, Motion
Denied.State filed "Answer in Opposition to Motion to
Prohibit the Use of Alleged Aggravating
Circumstances" in Open Court. Argument by
Counsel. COURT ORDERED, Motion Denied.

Penalty Hearing:

All present as above. Counsel stipulated to
presence of Jury. Opening statement by Mr.
Harmon. Exhibits marked and admitted and
witnesses sworn and testified as per attached
lists.Court thanked and dismissed Alternate Jurors.
COURT ORDERED, hearing continued.

CUSTODY

5-3-83 - 10 AM

PENALTY HEARING
CONTINUED.MINUTES — CRIMINAL

CASE NO. C53867

TITLE STATE OF NEVADA VS. SAMUEL HOWARD aka Keith

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

5-3-83
JOHN F. MENDOZA
DEPT. VT. DUNCAN
CLERK
R. SILVAGGIO
REPORTER

CONTINUED PENALTY HEARING

State represented by Dan Seaton and Mel Harmon, DDA's. Deft. Howard present with PPD's George Franzen and Marcus Cooper. Jury not present.
 10:45 A.M. State moved to bring additional witness. Arguments of counsel. COURT ORDERED, motion denied.
 Defense moved to bar State from seeking the Death Penalty. COURT ORDERED, motion denied.

Jury Present - State rested.
 Defendant sworn and testified.
 Outside presence of jury - Defense moved for continuance as Defendant now wished counsel to present closing arguments. COURT ORDERED, granted.

Jury present - Court instructed jury.
 Jury excused until 5-4-83 at 10:00 A.M.
 Outside presence of jury - State had no objections to jury instructions. Defense

5-4-83

objected to instructions #5, 9, & 12.
 COURT ORDERED, matter continued to 5-4-83 at 10:00 A.M.

10:10 A.M. - Outside presence of jury -
 All present as above. Defense moved to introduce additional evidence. Arguments of counsel, COURT ORDERED, motion denied.
 Closing arguments of counsel. Rebuttal by State. Jury retired to deliberate.

AT THE HOUR OF 4:05 P.M. Jury returned with
Special Verdict establishing that: The
murder was committed by a defendant who was
previously convicted of a felony involving the
use of or threat of violence to the person of
another.

The murder was committed while the defendant
was engaged in the commission of any robbery.
Verdict: Jury having previously found the
Defendant, Samuel Howard, guilty of Murder in
the First Degree, impose a sentence of death.

Court thanked and excused the jury.
 COURT ORDERED, matter continued to 6-1-83 for sentencing re; Robbery counts. FURTHER ORDERED, continued to 5-6-83 to Set Time Certain: Execution Date. PSI Report ordered.

CUSTODY ✓✓

6-1-83 1:45 P.M.

SENTENCING RE:
ROBBERY COUNTS

5-6-83 10:00 A.M.

SET TIME CERTAIN:
EXECUTION DATE

MINUTES — CRIMINAL

CASE NO. C53867

TITLE STATE OF NEVADA VS. SAMUEL HOWARD aka KEITH

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

5-6-83
JOHN F. MENDOZA
DEPT. VT. DUNCAN
CLERK
R. SILVAGGIO
REPORTERSET TIME CERTAIN: EXECUTION DATE

State represented by Mel Harmon and Dan Seaton DDA's. Deft. Howard present in custody with George Franzen and Marcus Cooper, DPD's. The Court stated that by virtue of Verdict entered in these proceedings on April 22, 1983 and by virtue of Verdicts entered on May 4, 1983, and there being no legal reason why he should not be executed; the COURT ORDERED and signed the Judgment of Conviction, Warrant of Execution and Order of Execution in Open Court, and read same into the Record.

FURTHER ORDERED, Clerk is directed to make the appropriate entry and to forward the certified copies to the appropriate authorities.

Defendant is remanded to the custody of the Sheriff for transportation to the Nevada State Prison for the purpose of carrying out the aforesaid Judgment of Death, commencing the week of July 18, 1983.

CUSTODY (NSP)

The Clerk of the Court is directed to
18-01
61

MINUTES — CRIMINAL

CASE NO. C53867 TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD AKA KEITH

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES -- HEARING	CONTINUED TO:
6-1-83 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK PAULA VOYLES, REPORTER	<u>DEFENDANT'S MOTION TO STAY EXECUTION OF DEATH SENTENCE</u> <u>SENTENCING - COUNTS ONE AND TWO</u> State represented by Melvyn T. Harmon, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by Marcus Cooper and George Franzen, Deputy Public Defenders. Court stated the Defendant had been transported to Nevada State Prison and would have to be returned for Sentencing. Court advised Mr. Cooper and Mr. Franzen to file a Notice of Appeal with the State Supreme Court and they would Stay the Execution of the Death Sentence. COURT ORDERED, this matter is continued to June 16, 1983 at 9:00 A.M. for Sentencing. CUSTODY (NSP)	6-16-83 - 9:00 A.M. SENTENCING - COUNTS ONE AND TWO

CASE NO. C53867 TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD AKA KEITH

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
6-16-83 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK R. SILVAGGIO, REPORTER	<u>DEFENDANT'S MOTION TO STAY EXECUTION OF DEATH SENTENCE</u> <u>SENTENCING - COUNTS ONE AND TWO:</u> State represented by Melvyn T. Harmon, Deputy District Attorney. Defendant Howard present with Marcus Cooper and George Franzen, Deputy Public Defenders. Norma Price, Probation Officer, also present. Court heard statements by Counsel and the	6-21-83 -- 1:30 P.M. PROPER PERSON MOTION
	Defendant. Mr. Cooper stated the Defendant had not received a copy of the Pre-Sentence Report in this matter. Defendant stated he did not wish to read the Report, and that he wanted to proceed with the sentencing. Court stated its findings. COURT ORDERED, Defendant is adjudged Guilty and sentenced to Fifteen Years for Robbery and <u>Fifteen Years for Use of Deadly Weapon in Com-</u>	
	<u>mission of a Crime, Count One, sentence for Use of Deadly Weapon to run consecutive to Robbery sentence; and Fifteen Years for Robbery and Fifteen Years for Use of a Deadly Weapon on Count Two, sentence for Use of Deadly Weapon to run consecutive to the Robbery sentence, and Sentence on Count Two to run consecutive to sentence imposed in Count One, and sentences in Count One and Two to run consecutive to</u>	
	<u>sentence in Count One, if that sentence should be commuted.</u> Defendant filed Proper Person Motion in Open Court. COURT ORDERED, Pro Per Motion will be heard June 21, 1983 at 1:30 P.M. and Defendant is to be held in Clark County Jail until that date. FURTHER ORDERED, Defendant's Motion to Stay Execution of Sentenced is granted.	
6-16-83 1:45 P.M. JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK R. SILVAGGIO, REPORTER	<u>PROPER PERSON MOTION TO REMOVE PUBLIC DEFENDER FOR APPEAL</u> State represented by Melvyn T. Harmon, Deputy District Attorney. Defendant Howard present with Marcus Cooper and George Franzen, Deputy Public Defenders. Court heard arguments of Counsel. Defendant presented Motion to the Court. COURT ORDERED, Motion denied and Defendant may <u>be transported to Nevada State Prison. FURTHER</u>	
	<u>ORDERED, Hearing set for June 21, 1983 at 1:30 P.M. is vacated.</u> CUSTODY	

CASE NO. C53867

TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD AKA KEITH

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

1-17-84
J. CHARLES
THOMPSON
DEPT. ONE FOR
DEPT. FIVE
P. TAYLOR AND
R. SNAPE, CLERKS
J. LISTON,
RECORDER

PRO PER MOTION FOR RELEASE OF PERSONAL PROPERTY

State represented by William Koot, Deputy
District Attorney.

Defendant Howard not present, being in custody
NSP, represented by George Franzen, Deputy
Public Defender.

Mr. Koot stated he had discussed this matter
with Deputy District Attorney Seaton, and he
indicated there was no objection to this Motion.

Mr. Koot indicated, however, there was a request
for return of \$6,000.00 Cash and requested a
continuance to investigate that matter.
COURT ORDERED, this matter is continued to
January 19, 1984 at 9:00 A.M.

CUSTODY (NSP)

1-19-84 - 9:00 A.M.

PRO PER MOTION FOR
RELEASE OF
PERSONAL PROPERTY

MINUTES — CRIMINAL

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
1-22-85 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK C. JONES, RECORDER	CONFIRMATION OF COUNSEL DETERMINATION OF INDIGENCE State represented by Melvyn T. Harmon, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by George Franzen, Deputy Public Defender and Lizzie Hatcher. Ms. Hatcher stated it appeared the Defendant was indigent and was eligible for Court-appointed Counsel.	
	COURT ORDERED, Defendant is declared to be indigent and Lizzie Hatcher is appointed to represent the Defendant. CUSTODY (NSP)	
4-14-87 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK S. CHRISTOFFERSON RECORDER	STATE'S MOTION FOR ISSUANCE OF SUPPLEMENTAL WARRANT OF EXECUTION State represented by Melvyn T. Harmon, Deputy District Attorney. Defendant Howard not present, being in custody NSP, nor represented. COURT ORDERED, this matter is continued to April 16, 1987 at 9:00 A.M. to allow Ms. Hatcher to be present. CUSTODY (NSP)	4-16-87 - 9:00 A.M. SET EXECUTION DATE
4-16-87 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK S. CHRISTOFFERSON RECORDER	STATE'S MOTION FOR ISSUANCE OF SUPPLEMENTAL WARRANT OF EXECUTION State represented by Daniel Seaton, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by Lizzie Hatcher. Ms. Hatcher stated an Appeal would be filed in this matter. COURT ORDERED, Execution Date is set in this matter for May 15, 1987. CUSTODY (NSP)	
2-16-88 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK S. CHRISTOFFERSON RECORDER	DEFENDANT'S MOTION FOR EXTENSION OF TIME RE: POST CONVICTION RELIEF AND STAY OF EXECUTION State represented by John Lukens, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by Don Beury. Mr. Beury requested a continuance to read the file in this case. Mr. Beury requested that the Court set a brief- ing schedule. No objection by Mr. Lukens. Mr. Beury requested that the Court sign an Order appointing him as Counsel in this matter. Court examined <u>MINUTES — CRIMINAL</u> Mr. Beury in regard to this matter. COURT ORDERED, this matter is continued to February 25, 1988 at 9:00 A.M. and Mr. Beury to discuss this matter with Mr. Graves.	

CASE NO. C53867 TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD AKA KEITH

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES -- HEARING

CONTINUED TO:

1-19-84 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK C. JONES, RECORDER	<p><u>PRO PER MOTION FOR RELEASE OF PERSONAL PROPERTY</u> State represented by Daniel Seaton, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by Marcus Cooper, Deputy Public Defender. Mr. Seaton stated the only items requested that he was familiar with were the pre-recorded tapes. Mr. Seaton stated further that their investigator was to determine if these items are in existence. COURT ORDERED, continued to February 2, 1984 at 9:00 A.M.</p> <p>CUSTODY (NSP)</p>	<p>2-2-84-9:00 A.M. PRO PER MOTION FOR RELEASE OF PERSONAL PROPERTY</p>
2-2-84 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK C. JONES, RECORDER	<p><u>PRO PER MOTION FOR RELEASE OF PERSONAL PROPERTY</u> State represented by Robert Teuton, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by George Franzen, Deputy Public Defender. Mr. Teuton stated the property Defendant was requesting to be released had not been impounded by the Police Department. COURT ORDERED, Motion is denied.</p> <p>CUSTODY (NSP)</p>	
1-8-85 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK C. JONES, RECORDER	<p><u>FURTHER PROCEEDINGS</u> State represented by Roberta O'Neale, Deputy District Attorney. Defendant Howard not present, being in custody NSP, nor represented by Counsel. Lizzie Hatcher present in Court. COURT ORDERED, this matter is continued to January 22, 1985 at 9:00 A.M. and Ms. Hatcher is to make inquiry in regard to the indigence of the Defendant.</p> <p>CUSTODY (NSP)</p>	<p>1-22-85 - 9:00 A.M. CONFIRMATION OF COUNSEL AND DETERMINATION OF INDIGENCY</p>

MINUTES -- CRIMINAL

CASE NO. C53867 TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD AKA KEITH

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
2-25-88 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK S. CHRISTOFFERSON RECORDER	DEFENDANT'S MOTION FOR EXTENSION OF TIME RE: POST CONVICTION RELIEF AND STAY OF EXECUTION DONALD BEURY'S MOTION TO BE APPOINTED TO REPRESENT DEFENDANT OR MOTION TO WITHDRAW State represented by Ronald Bloxham, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by Barbara Schubel and Carmine Colucci. Mr. Colucci stated he had assisted John Graves in this case.	3-1-88 - 9:00 A.M. FURTHER PROCEEDINGS
	Ms. Schubel stated Mr. Graves had contacted Mr. Beury, stating he did not have time for this case and requesting that Mr. Beury substitute in as Counsel. Mr. Colucci moved Court to allow Mr. Graves and him to withdraw as Counsel. Ms. Schubel presented Mr. Beury's Motion to the Court and argued in support thereof.	
	COURT ORDERED, Mr. Beury's Motion to Withdraw is granted. FURTHER ORDERED, this matter is continued to March 1, 1988 at 9:00 A.M. and if Mr. Graves and Mr. Colucci wish to withdraw, they should file Motion to do so. CUSTODY (NSP)	
3-1-88 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK S. CHRISTOFFERSON RECORDER	DEFENDANT'S MOTION FOR EXTENSION OF TIME RE: POST CONVICTION RELIEF AND STAY OF EXECUTION State represented by Douglas Smith, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by John Graves and Carmine Colucci. Mr. Graves presented Motion to Withdraw for both Counsel and argued in support thereof. Mr. Graves informed the Court they had filed	
	Petition for Post Conviction Relief. Mr. Smith submitted matter on the written response filed by Mr. Seaton. Counsel stated the Motion for Extension of Time would be moot as Petition had been filed. COURT ORDERED, Mr. Graves and Mr. Colucci are allowed to withdraw as Counsel in this matter. CUSTODY (NSP)	

MINUTES — CRIMINAL

CASE NO. C53867 TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD AKA KEITH

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

3-31-88 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK S. CHRISTOFFERSON RECORDER	STATE'S MOTION FOR THE COURT TO ISSUE SECOND SUPPLEMENTAL WARRANT OF EXECUTION State represented by Ronald Bloxham, Deputy District Attorney. Defendant Howard not present, being in custody NSP, nor represented by Counsel. COURT ORDERED, Execution Date for the Defendant is set for April 29, 1988. CUSTODY (NSP)	
3-31-88 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK	COURT ORDERED, this matter is continued to April 1, 1988 at 9:00 A.M. CUSTODY (NSP)	4-1-88 - 9:00 A.M.
4-1-88 John F. Mendoza Dept. Five R. Snape, Clerk S. Christofferson Recorder	State's motion for the Court to issue Second Supplemental Warrant of Execution State represented by Douglas Smith, Deputy District Attorney. Defendant Howard not present, being in custody NSP, nor represented by Counsel. Court stated the State had presented motion to the Court yesterday. Court stated previous Counsel for Defendant had withdrawn. Court stated further it did not appear that Defendant had been notified of this motion as he should have been, as he does represent himself. Court ordered previous order to Issue Second Supplemental Warrant of Execution is set aside and this matter continued to April 29, 1988 at 9:00 A.M. Further ordered, District Attorney to notify Defendant. Custody (NSP)	4-28-88 - 9:00 A.M. State's motion for Court to issue Second Supplemental Warrant of Execution

MINUTES — CRIMINAL

CASE NO. C53867

TITLE STATE OF NEVADA VS SAMUEL HOWARD

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
4-28-88 JOHN F. MENDOZA DEPT. V J. HUFF, CLERK S. COPE, RECORDER	<u>STATE'S MOTION FOR COURT TO ISSUE SECOND SUPPLEMENTAL WARRANT OF EXECUTION</u> State represented by Eric Jorgenson, DDA. Deft Howard neither present nor represented by counsel. Mr. Jorgenson moved to file the SECOND SUPPLEMENTAL ORDER AND WARRANT OF EXECUTION in open court based on the fact that the U.S. Supreme Court denied deft's writ; also advised that notice of this motion was mailed to the deft at the prison on March 25th. COURT ORDERED , the Director of the Department of Prisons shall, on MAY 27, 1988, carry out said Judgment and Sentence by lethal injection pursuant to the Second Supplemental Warrant of Execution issued herein. COURT FURTHER ORDERED , Clerk directed to make the appropriate entry in the minutes of the Court and forward the certified copies to the appropriate authorities. Court signed the Second Supplemental Order of Execution and Second Supplemental Warrant of Execution in open court.	
5-27-88 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK S. CHRISTOFFERSON RECORDER	<u>AT REQUEST OF COURT</u> State represented by Daniel Seaton, Deputy District Attorney. Defendant Howard not present, represented by David Schieck. Court stated it had contacted Mr. Schieck in regard to appointment to represent the Defendant. Court stated it had been advised by the District Attorney that there was further action pending in this case. Mr. Seaton advised Court and Mr. Schieck of the status of this case. COURT ORDERED, David Schieck is appointed to represent Defendant. FURTHER ORDERED, Execution is stayed until after disposition of Petition for Post-Conviction Relief. FURTHER ORDERED, this matter is continued to June 9, 1988 at 9:00 A.M. for Status Check.	6-9-88 - 9:00 A.M. STATUS CHECK
6-9-88 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK S. CHRISTOFFERSON RECORDER	<u>STATUS CHECK</u> State represented by George Assad, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by David Schieck. Mr. Schieck stated he was going to pick up file from Mr. Beury. Mr. Schieck stated further that he had reviewed Petition for Post Conviction Relief and requested an Evidentiary Hearing. COURT ORDERED, this matter is continued for July 7, 1988 at 10:00 A.M. for Evidentiary Hearing on Petition for Post Conviction Relief.	7-7-88 - 9:00 A.M. EVIDENTIARY HEARING - PETITION FOR POST CONVICTION RELIEF
	CUSTODY (NSP)	
	CUSTODY (NSP)	

MINUTES — CRIMINAL

CASE NO. C53867 TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES -- HEARING	CONTINUED TO:
6-28-88 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK S. CHRISTOFFERSON RECORDER	<u>AT REQUEST OF COURT</u> State represented by Daniel Seaton, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by David Schieck. Conference between Court and Counsel. Mr. Schieck moved the Court for additional time as files in this case were voluminous. No objection by Mr. Seaton. <u>Mr. Seaton requested that any documents since the Trial be provided to them and Mr. Schieck stated they would do so.</u> COURT ORDERED, the July 7, 1988 hearing date is vacated and this matter is continued to August 25, 1988 at 10:00 A.M. FURTHER ORDERED, Mr. Schieck has until July 18 to file supplemental points and authorities, State has until August 8 to respond, and Mr. Schieck has until August 15 to reply.	8-25-88 - 10:00 A.M. PETITION FOR POST CONVICTION RELIEF
	<u>CUSTODY (NSP)</u>	
7-19-88 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK S. CHRISTOFFERSON RECORDER	<u>DEFENDANT'S MOTION FOR ORDER TO TRANSPORT</u> State represented by Ronald Bloxham, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by David Schieck. Mr. Schieck presented Motion to Transport Defendant to the Court and argued in support thereof. No objection by Mr. Bloxham. <u>COURT ORDERED, Motion granted.</u>	
	<u>CUSTODY (NSP)</u>	
8-23-88 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK S. CHRISTOFFERSON RECORDER	<u>DEFENDANT'S MOTION TO CONTINUE POST-CONVICTION HEARING</u> State represented by Daniel Seaton, Deputy District Attorney. Defendant Howard present with David Schieck. Mr. Schieck moved Court to withdraw the Motion to Continue as Defendant is presently here. COURT ORDERED, Motion to Continue is withdrawn.	
	<u>CUSTODY (NSP)</u>	

MINUTES -- CRIMINAL

CASE NO. C53867 TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES -- HEARING	CONTINUED TO:
8-25-26-88 JOHN F. MENDOZA DEPT. FIVE R.SNAPE, CLERK S. CHRISTOFFERSON RECORDER	<u>PETITION FOR POST-CONVICTION RELIEF</u> State represented by Daniel Seaton, Deputy District Attorney. Defendant Howard present with David Schieck. Court heard testimony of witnesses. Court examined Counsel in regard to briefing schedule. COURT ORDERED, this matter is continued to October 27, 1988 at 9:00 A.M. and Defendant may be returned to NSP. CUSTODY (NSP)	10-27-88 - 9:00 A.M. ARGUMENT
10-20-88 JOHN F. MENDOZA DEPT. FIVE R.SNAPE, CLERK D. WINN RECORDER	<u>ARGUMENT - PETITION FOR POST-CONVICTION RELIEF</u> State represented by Melvin Harmon, Deputy District Attorney. Defendant Howard not present, being in custody NSP, nor represented by Counsel. Mr. Harmon stated Counsel had signed a Stipula- tion to continue this matter and requested an extension to brief matter. COURT ORDERED, State has until November 18, 1988 to file brief and reply to be followed by December 5, 1988. FURTHER ORDERED, this matter is set for hearing December 7, 1988 at 9:00 A.M. CUSTODY (NSP)	12-7-88 - 9:00 A.M. ARGUMENT
12-7-88 JOHN F. MENDOZA DEPT. FIVE R.SNAPE, CLERK S. CHRISTOFFERSON RECORDER	<u>PETITION FOR POST-CONVICTION RELIEF</u> State represented by William Henry, Deputy District Attorney. Defendant Howard not present not represented. Mr. Henry moved Court to continue this matter, stating Mr. Seaton was involved in a murder trial. COURT ORDERED, this matter is continued to 11:00 A.M. this date and Clerk to notify Mr. Schieck to be present at that time.	1-5-89 - 10:00 A.M. PETITION FOR POST- CONVICTION RELIEF - ARGUMENT
	Court reconvened in this matter. State represented by William Henry, Deputy District Attorney. Defendant Howard not present, represented by David Schieck. Mr. Schieck apologized to the Court, stating he did not have this calendered. Mr. Schieck stated they had filed a Stipulation to continue this matter. COURT ORDERED, this matter is continued to January 5, 1989 at 10:00 A.M. for Argument. CUSTODY (NSP)	

MINUTES -- CRIMINAL

CASE NO. 053867 TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

1-5-89 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK S. CHRISTOFFERSON RECORDER	<u>ARGUMENT; PETITION FOR POST CONVICTION RELIEF</u> State represented by Ronald Bloxham, Deputy District Attorney. Defendant Howard not present, represented by David Schieck. Mr. Schieck stated Mr. Seaton had called him and stated he would not be able to argue this matter today. COURT ORDERED, continued to January 6, 1989 at 9:00 A.M.	1-6-89 - 9:00 A.M. ARGUMENT - PETITION FOR POST CONVICTION RELIEF
	CUSTODY (NSP)	
1-6-89 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK S. CHRISTOFFERSON RECORDER	<u>ARGUMENT: DEFENDANT'S MOTION FOR POST-CONVICTION RELIEF</u> State represented by Daniel Seaton, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by David Schieck. Court heard arguments of Counsel. Court examined Counsel. COURT ORDERED, this matter continued to February 3, 1989 at 9:00 A.M. for Decision.	2-3-89 - 9:00 A.M. DECISION
	CUSTODY (NSP)	
2-3-89 J. CHARLES THOMPSON DEPT. ONE FOR DEPT. FIVE R. SNAPE, CLERK D. WINN, RECORDER	<u>DECISION</u> State represented by Bradford Jerbic, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by David Schieck. COURT ORDERED, this matter continued to February 10, 1989 at 9:00 A.M.	2-10-89 - 9:00 A.M. DECISION - PETN. FOR POST CONVICTION RELIEF
	CUSTODY (NSP)	
2-10-89 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK S. CHRISTOFFERSON RECORDER	<u>DECISION</u> State represented by Frank Ponticello, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by David Schieck. Conference between Court and Counsel. COURT ORDERED, continued to February 14, 1989 at 10:15 A.M. for Decision.	2-14-89 - 10:15 A.M. DECISION - PETN. FOR POST CONVICTION RELIEF
	CUSTODY (NSP)	

MINUTES — CRIMINAL

CASE NO. C53867 TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
2-14-89 JOHN F. MENDOZA DEPT. FIVE R.SNAPE, CLERK D. WINN RECORDER	DECISION: PETITION FOR POST CONVICTION RELIEF State represented by Frank Ponticello, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by David Schieck. Conference between Court and Counsel. Court stated it did not have this in final written form as yet but stated he would advise Counsel of its Order in this matter. Court stated its findings.	
	COURT ORDERED, Petition for Post Conviction Relief denied. FURTHER ORDERED, Counsel to confer with the Court Recorder to determine when transcripts would be available and Counsel to prepare Findings of Fact in this matter. CUSTODY (NSP)	
7-6-89 JOHN F. MENDOZA DEPT. FIVE R.SNAPE, CLERK S. CHRISTOFFERSON RECORDER	DAVID M. SCHIECK'S MOTION TO ALLOW APPOINTMENT OF APPELLANT COUNSEL DEFENDANT'S MOTION FOR RETURN OF PROPERTY State represented by Daniel Seaton, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by David Schieck. Mr. Seaton stated he had no objection to Motion for Return of Property. COURT ORDERED, Counsel to get together and make a list in regard to property of Defendant to be released and present it to the Court. FURTHER ORDERED, Findings of Fact, Conclusions of Law and Decision has been filed and the word "Pro- posed" has been stricken from the title.	
	CUSTODY (NSP)	
7-25-89 JOHN F. MENDOZA DEPT. FIVE R.SNAPE, CLERK S. CHRISTOFFERSON RECORDER	DAVID M. SCHIECK'S MOTION FOR FEES IN EXCESS OF STATUTORY ALLOWANCE State represented by Frank Ponticello, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by David Schieck. Mr. Schieck stated there was an error in the billing. COURT ORDERED, this matter is taken under sub- mission and Mr. Schieck to provide the Court with a letter in regard to error.	
	CUSTODY (NSP)	

MINUTES — CRIMINAL

CASE NO. C53867 TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD AKA KEITH

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

11-29-90
JOHN F. MENDOZA
DEPT. FIVE
R. SNAPE, CLERK
ALICE EASTGATE
RECORDER

DAVID M. SCHIECK'S MOTION FOR FEES IN EXCESS OF
STATUTORY GUIDELINES

State represented by Gary Booker, Deputy
District Attorney.

Defendant Howard not present, being in custody
NSP, represented by Shirley Derke.
Ms. Derke moved to take this matter off calendar
and by the COURT SO ORDERED.

CUSTODY (NSP)

MINUTES — CRIMINAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 26, 1991

81C053867

The State of Nevada vs Samuel Howard

February 26, 1991

9:00 AM

Motion

MOTION FOR FEES
IN EXCESS OF
STATUTORY
GUIDELINES Court
Clerk: ALONA FUJII
Reporter/Recorder:
SHIRLEE
CHRISTOFFERSON
Heard By: SOBEL,
JEFFREY

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Schieck, David M. Attorney

JOURNAL ENTRIES

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

3/7/91 @ 9 a.m.

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****March 07, 1991**

81C053867

The State of Nevada vs Samuel Howard

March 07, 1991**9:00 AM****Motion****MOTION FOR FEES
IN EXCESS OF
STATUTORY
GUIDELINES Court
Clerk: ALONA FUJII
Reporter/Recorder:
SHIRLEE
CHRISTOFFERSON
Heard By: Jeffrey
Sobel****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Schieck, David M. Attorney**JOURNAL ENTRIES**

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 26, 1991

81C053867

The State of Nevada vs Samuel Howard

March 26, 1991

9:00 AM

Motion

MOTION FOR THE
COURT TO ISSUE
THIRD
SUPPLEMENTAL
WARRANT OF
EXECUTION Court
Clerk: ALONA FUJII
Relief Clerk:
SANDRA SMITH
Reporter/Recorder:
SHIRLEE
CHRISTOFFERSON
Heard By: SOBEL,
JEFFREY

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

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

CUSTODY (NSP)

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****April 02, 1991**

81C053867

The State of Nevada vs Samuel Howard

April 02, 1991**9:00 AM****Motion****MOTION FOR THE
COURT TO ISSUE
THIRD
SUPPLEMENTAL
WARRANT OF
EXECUTION Court
Clerk: ALONA FUJII
Reporter/Recorder:
SHIRLEE
CHRISTOFFERSON
Heard By: SOBEL,
JEFFREY****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Monroe, Vicki J. Attorney
Schieck, David M. Attorney**JOURNAL ENTRIES**

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

CUSTODY - NSP

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

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****April 09, 1991**

81C053867

The State of Nevada vs Samuel Howard

April 09, 1991**9:00 AM****Motion****MOTION FOR THE
COURT TO ISSUE
THIRD
SUPPLEMENTAL
WARRANT OF
EXECUTION Court
Clerk: ALONA FUJII
Reporter/Recorder:
SHIRLEE
CHRISTOFFERSON
Heard By: SOBEL,
JEFFREY****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Schieck, David M. Attorney
Smith, Ulrich W. Attorney**JOURNAL ENTRIES**

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 04, 1992

81C053867

The State of Nevada vs Samuel Howard

February 04, 1992

9:00 AM

Petition for Post Conviction
Relief

PETITION FOR
POST CONVICTION
RELIEF Court Clerk:
ALONA CANDITO
Reporter/Recorder:
SHIRLEE
CHRISTOFFERSON
Heard By: SOBEL,
JEFFREY

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Harmon, Melvyn T. Attorney

JOURNAL ENTRIES

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

CUSTODY - SNP

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 11, 1992

81C053867

The State of Nevada vs Samuel Howard

February 11, 1992

9:00 AM

Petition for Post Conviction
Relief

PETITION FOR
POST CONVICTION
RELIEF Court Clerk:
ALONA CANDITO
Reporter/Recorder:
SHIRLEE
CHRISTOFFERSON
Heard By: SOBEL,
JEFFREY

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Monroe, Vicki J. Attorney

JOURNAL ENTRIES

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

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

CUSTODY - NSP

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 12, 1992

81C053867

The State of Nevada vs Samuel Howard

March 12, 1992

9:00 AM

Status Check

STATUS CHECK
EVIDENTIARY
HEARING Court
Clerk: ALONA
CANDITO Relief
Clerk: LEONE
DUMIRE
Reporter/Recorder:
DEBRA WINN
Heard By: SOBEL,
JEFFREY

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Barker, David B. Attorney

JOURNAL ENTRIES

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

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

CUSTODY

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****March 19, 1992**

81C053867

The State of Nevada vs Samuel Howard

March 19, 1992**9:00 AM****Status Check****STATUS CHECK
EVIDENTIARY
HEARING Court
Clerk: ALONA
CANDITO
Reporter/Recorder:
SHIRLEE
CHRISTOFFERSON
Heard By: SOBEL,
JEFFREY****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Monroe, Vicki J. Attorney**JOURNAL ENTRIES**

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 21, 1992

81C053867

The State of Nevada vs Samuel Howard

April 21, 1992

9:00 AM

All Pending Motions

ALL PENDING
MOTIONS 4/21/92
Court Clerk: ALONA
CANDITO
Reporter/Recorder:
SHIRLEE
CHRISTOFFERSON
Heard By: Jeffrey
Sobel

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Noxon, Arthur G. Attorney

JOURNAL ENTRIES

- DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF
STATE'S MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF
EXECUTION

STATUS CHECK: EVIDENTIARY HEARING

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

CUSTODY - NSP

4/28/92 - ALL PENDING MOTIONS

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****April 28, 1992**

81C053867

The State of Nevada vs Samuel Howard

April 28, 1992**9:00 AM****All Pending Motions****ALL PENDING
MOTIONS 4-28-92
Court Clerk: ALONA
CANDITO Relief
Clerk: SHARON
PHELPS
Reporter/Recorder:
SHIRLEE
CHRISTOFFERSON
Heard By: Jeffrey
Sobel****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Monroe, Vicki J. Attorney**JOURNAL ENTRIES**

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****June 09, 1992**

81C053867

The State of Nevada vs Samuel Howard

June 09, 1992**9:00 AM****All Pending Motions****ALL PENDING
MOTIONS 6/9/92
Court Clerk: ALONA
CANDITO
Reporter/Recorder:
ARLENE BLAZI
Heard By: Jeffrey
Sobel****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	Noxon, Arthur G.	Attorney
	Owens, Steven S.	Attorney
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF
STATE'S MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF
EXECUTION

STATUS CHECK: EVIDENTIARY HEARING

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

CUSTODY - NSP

6/23/92 -- STATE'S MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****June 23, 1992**

81C053867

The State of Nevada vs Samuel Howard

June 23, 1992**9:00 AM****Motion****MOTION FOR THE
COURT TO ISSUE
THIRD
SUPPLEMENTAL
WARRANT OF
EXECUTION Court
Clerk: ALONA
CANDITO Relief
Clerk: PATRICIA
CAMAROTE
Reporter/Recorder:
ARLENE BLAZI
Heard By: SOBEL,
JEFFREY****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Barker, David B. Attorney
 Potter, III, Cal J. Attorney**JOURNAL ENTRIES**

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

CUSTODY - NSP**PRINT DATE:** 01/04/2011**Page 14 of 36****Minutes Date:**

February 26, 1991

81C053867

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 07, 1992

81C053867

The State of Nevada vs Samuel Howard

July 07, 1992

9:00 AM

Motion

MOTION FOR THE
COURT TO ISSUE
THIRD
SUPPLEMENTAL
WARRANT OF
EXECUTION Court
Clerk: ALONA
CANDITO Relief
Clerk: PATRICIA
CAMAROTE
Reporter/Recorder:
SHIRLEE
CHRISTOFFERSON
Heard By: Jeffrey
Sobel

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Bloxham, Ronald C. Attorney

JOURNAL ENTRIES

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

81C053867

ORDERED, MOTION GRANTED.
CUSTODY (NSP)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 25, 1992

81C053867

The State of Nevada vs Samuel Howard

August 25, 1992

9:00 AM

Motion

MOTION FOR
EXTRAORDINARY
FEES Court Clerk:
ALONA CANDITO
Reporter/Recorder:
SHIRLEE
CHRISTOFFERSON
Heard By: Jeffrey
Sobel

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Paine, Charles A. Attorney
Potter, III, Cal J. Attorney

JOURNAL ENTRIES

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 09, 2003

81C053867

The State of Nevada vs Samuel Howard

January 09, 2003

9:00 AM

Petition for Writ of Habeas
Corpus

DEFT'S PTN FOR
WRIT OF HABEAS
CORPUS/9 Court
Clerk: Billie Jo Craig
Reporter/Recorder:
Shirley Parawalsky
Heard By: Glass,
Jackie

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Erickson, Patricia M.	Attorney
	Peterson, Clark A.	Attorney
	Roger, David J.	Attorney

JOURNAL ENTRIES

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

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 14, 2003

81C053867

The State of Nevada vs Samuel Howard

January 14, 2003

9:00 AM

All Pending Motions

ALL PENDING
MOTIONS FOR
1/14/03 Court Clerk:
Billie Jo Craig
Reporter/Recorder:
Shirlee Parawalsky
Heard By: Jackie
Glass

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Erickson, Patricia M. Attorney
Roger, David J. Attorney
Tufteland, James N. Attorney

JOURNAL ENTRIES

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

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

NDC

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

PRINT DATE: 01/04/2011

Page 20 of 36

Minutes Date:

February 26, 1991

81C053867

(POST-CONVICTION)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 18, 2003

81C053867

The State of Nevada vs Samuel Howard

March 18, 2003

9:00 AM

All Pending Motions

ALL PENDING
MOTIONS FOR
3/18/03 Court Clerk:
Billie Jo Craig
Reporter/Recorder:
Shirlee Prawalsky
Heard By: Jackie
Glass

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Peterson, Clark A. Attorney
Roger, David J. Attorney

JOURNAL ENTRIES

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

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

NDC

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

PRINT DATE: 01/04/2011

Page 22 of 36

Minutes Date:

February 26, 1991

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 20, 2003

81C053867

The State of Nevada vs Samuel Howard

March 20, 2003

9:00 AM

All Pending Motions

ALL PENDING
MOTIONS FOR
3/20/03 Court Clerk:
Billie Jo Craig
Reporter/Recorder:
Shirlee Prawalsky
Heard By: Jackie
Glass

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Erickson, Patricia M. Attorney
Peterson, Clark A. Attorney
Roger, David J. Attorney

JOURNAL ENTRIES

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

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

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

81C053867

PETITION

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****April 03, 2003**

81C053867

The State of Nevada vs Samuel Howard

April 03, 2003**9:00 AM****All Pending Motions****ALL PENDING
MOTIONS 04/03/03
Court Clerk:
Georgette Byrd
Reporter/Recorder:
Shirlee Prawalsky
Heard By: Joseph
Pavlikowski****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Erickson, Patricia M. Attorney
Peterson, Clark A. Attorney**JOURNAL ENTRIES**

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

Ms. Erickson stated she filed Defendants petition yesterday and requested a date to respond by to State's Motion to Dismiss. COURT ORDERED, Defendant to respond by June 5, 2003; State advised it does not need a reply date.

NDC

06/12/03 9:00 AM ARGUMENT/DECISION: DEFT PETITION/STATE'S MOTION/STATUS CHECK

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****June 03, 2003**

81C053867

The State of Nevada vs Samuel Howard

June 03, 2003**9:00 AM****Motion****DEFT'S MOTION
TO EXTEND TIME
TO FILE AN
OPPOSITION TO
STATE'S MTN TO
DISMISS/18 Court
Clerk: Georgette
Byrd
Reporter/Recorder:
Shirlee Prawalsky
Heard By: Jackie
Glass****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Erickson, Patricia M. Attorney
Peterson, Clark A. Attorney**JOURNAL ENTRIES**

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

NDC

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

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****August 21, 2003**

81C053867

The State of Nevada vs Samuel Howard

August 21, 2003**9:00 AM****Show Cause Hearing****HEARING RE:
PETITION FOR
WRIT OF HABEAS
CORPUS Court
Clerk: Georgette
Byrd
Reporter/Recorder:
Shirlee Prawalsky
Heard By: Jackie
Glass****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Erickson, Patricia M. Attorney
Peterson, Clark A. Attorney**JOURNAL ENTRIES**

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****October 02, 2003**

81C053867

The State of Nevada vs Samuel Howard

October 02, 2003**9:00 AM****Hearing****ARGUMENT/DECISION: DEFT'S WRIT
FOR HABEAS
CORPUS Court
Clerk: Georgette
Byrd
Reporter/Recorder:
Shirlee Prawalsky
Heard By: Jackie
Glass****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Erickson, Patricia M. Attorney
Peterson, Clark A. Attorney**JOURNAL ENTRIES**

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

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****November 06, 2007**

81C053867

The State of Nevada vs Samuel Howard

November 06, 2007**8:30 AM****All Pending Motions****ALL PENDING
MOTIONS 11/6/07
Court Clerk: Sandra
Jeter/sj Relief Clerk:
Denise Trujillo
Reporter/Recorder:
Rachelle Hamilton
Heard By: Jackie
Glass****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Becker, Nancy A. Attorney**JOURNAL ENTRIES**

- Deft. not present and in custody at the Nevada Department of Corrections.

DEFT.'S MOTION FOR APPOINTMENT OF COUNSEL: Ms. Becker advised the Federal Public Defender was previously appointed. COURT ORDERED, deft.'s motion GRANTED; FEDERAL PUBLIC DEFENDER APPOINTED.

DEFT.'S MOTION TO PROCEED IN FORMA PAUPERIS: COURT ORDERED, motion GRANTED. Court NOTED this was already dismissed in 2003. Ms. Becker requested a Briefing Schedule set on the State's Motion to Dismiss stating this matter went to Federal Court and now deft. is exhausting his remedies. COURT ORDERED, briefing schedule SET as follows: State to file its motion by 2/8/08; deft.'s Response due by 3/7/08 and matter SET for HEARING.

NDC

4/3/08 8:30 AM STATE'S MOTION TO DISMISS ... DEFT.'S PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 19, 2009

81C053867

The State of Nevada vs Samuel Howard

February 19, 2009

8:00 AM

All Pending Motions

ALL PENDING
MOTIONS 2-19-09
Court Clerk: Kristen
Brown
Reporter/Recorder:
Michelle Ramsey
Heard By: JOSEPH
BONAVENTURE

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Radovic, Michael Attorney

JOURNAL ENTRIES

- STATE'S MOTION TO DISMISS...PETITION FOR WRIT OF HABEAS CORPUS
COURT ORDERED, Motions OFF CALENDAR.
NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 18, 2009

81C053867

The State of Nevada vs Samuel Howard

June 18, 2009

8:00 AM

Motion

STATE'S MOTION
TO DISMISS Court
Clerk: Kristen Brown
Relief Clerk: Michele
Tucker/mlt
Reporter/Recorder:
Michelle Ramsey
Heard By: Villani,
Michael

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- COURT ORDERED, matter OFF CALENDAR.
NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 29, 2009

81C053867

The State of Nevada vs Samuel Howard

October 29, 2009

8:00 AM

All Pending Motions

ALL PENDING
MOTIONS 10-29-09
Court Clerk: Kristen
Brown
Reporter/Recorder:
Michelle Ramsey
Heard By: Michael
Villani

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- STATE'S MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS...DEFT'S PRO PER
PETITION FOR WRIT OF HABEAS CORPUS

Pursuant to a stipulation by counsel, COURT ORDERED, Motions CONTINUED.

NDC

CONTINUED TO: 11/12/09 8:15 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 12, 2009

81C053867

The State of Nevada vs Samuel Howard

November 12, 2009

8:15 AM

Motion

**STATE'S MOTION
TO DISMISS Court
Clerk: Kristen Brown
Reporter/Recorder:
Michelle Ramsey
Heard By: Villani,
Michael**

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Thomas, Michelle L. Attorney

JOURNAL ENTRIES

- COURT ORDERED, matter CONTINUED to coincide with State's Motion to Dismiss.
NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 28, 2010

81C053867

The State of Nevada vs Samuel Howard

January 28, 2010

8:15 AM

Motion

STATE'S MOTION
TO DISMISS Relief
Clerk: Tia Everett/te
Reporter/Recorder:
Michelle Ramsey
Heard By: Villani,
Michael

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Jeanney, Jacqueline Attorney

JOURNAL ENTRIES

- Court stated he received a note parties stipulate to continue this matter to 2/4/10. COURT SO ORDERED.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 04, 2010

81C053867

The State of Nevada vs Samuel Howard

February 04, 2010

8:15 AM

All Pending Motions

ALL PENDING
MOTIONS (02-04-10)
Court Clerk: Carol
Donahoo Heard By:
Michael Villani

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

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

Pending before the Court is Defendant s Fourth State Post- Conviction Petition. In 1982, Defendant was convicted of Murder and sentenced to death. His conviction and death sentence was affirmed by the Nevada Supreme Court in 1986. On or about October 28, 1987 Defendant s First State PCR Petition was filed and ultimately denied on February 14, 1989. In 1990 the denial was affirmed by the Nevada Supreme court.

On December 16, 1991, Defendant s second PCR Petition was filed and denied on July 7, 1992. An Appeal of said denial was dismissed by the Nevada Supreme Court on March 19, 1993. Then on December 20, 2002, Defendant filed his Third PCR Petition which was dismissed on October 23, 2003 as it was procedurally barred. The Dismissal was affirmed by the Nevada Supreme Court in 2004. The pending Fourth Petition was filed on October 27, 2007, twenty five years after Defendants conviction. The State has filed a motion to dismiss the present petition based upon procedural bars. NRS 34.810 bars successive Petitions by a Defendant which raise grounds that have previously been denied on the merits or Petitions that raise new or additional grounds. Defendant s Fourth Petition contains issues that were previously addressed and/or issues that should have been brought up over the last twenty five years. Accordingly, Defendant s Fourth Petition is procedurally barred. See NRS

34.726(1) and NRS 34.810.

The procedural time bar is to be strictly construed as this Court is doing in this case. To overcome the procedural time bar (by establishing good cause), Defendant must show an impediment external to the defense prevented him from complying with the procedural rules. Defendant has not shown good cause for the numerous delays in this case. Further, Defendant has failed to establish that, but for the alleged errors in this case, no reasonable juror would have convicted him or imposed the death penalty. Additionally, actual innocence has not been sufficiently established.

In *McConnell v. State*, 120 Nev. 1043, 102 P.3d 606 (2004), the Court ruled that a felony (robbery) can not be used as grounds for a first degree murder charge as well as an aggravator. Although, the Supreme Court did not make *McConnell* retroactive until 2006, nothing prevented the Defendant from raising the retroactivity issue prior to his most recent Petition. For this reason he is time barred from raising this issue. See NRS 34.726. Even if Defendant is not time barred from presenting this issue until one year subsequent the decision in *Bejarno v. State*, 122 Nev. 1066, 146 P.3d 265 (2006), this Court finds that a jury would find beyond a reasonable doubt the striking of the robbery aggravator would still have lead to a conclusion that the aggravators outweighed the mitigating factors.

The State in opposing the Fourth Petition has alleged Laches for a conviction that occurred over 20 years ago. A Petition filed more than five years from the JOC creates a rebuttable presumption of prejudice to the State. Legal issues in this case are intertwined with factual matters which do create a legitimate prejudice to the State if they had to try to locate witnesses from the 1980 s. Defendant has not submitted sufficient facts or argument to rebut said prejudice. See, NRS 34.800.

Based upon the above, Defendant s Fourth Petition is procedurally barred and is dismissed.

State to prepare Finding of Fact and Conclusions of Law consistent with the court s decision.

CLERK'S NOTE: A copy of this minute order to be placed in the attorney folder of the District Attorney and FAXED to Michael Charlton, Asst Fed PD, and Megan Hoffman, Asst Fed PD.

Court's
PLAINTIFF'S EXHIBITS

not to go to J
CASE NO. CS3867

OFFERED ADMITTED

- | | | |
|--|--|--|
| 1. <u>Letter from Defendant dated April 17, 1953</u> | <input checked="" type="checkbox"/> 4-18 | <input checked="" type="checkbox"/> 4-18 |
| 2. <u>Form - Teletype in re marriage</u> | <input checked="" type="checkbox"/> 4-20 | <input checked="" type="checkbox"/> 4-20 |
| 3. <u>marriage Certificate</u> | <input checked="" type="checkbox"/> 4-21 | <input checked="" type="checkbox"/> 4-21 |
| 4. <u>divorce decree</u> | <input checked="" type="checkbox"/> 4-21 | <input checked="" type="checkbox"/> 4-21 |
| 5. <u>Statement</u> | <input checked="" type="checkbox"/> 5/2 | <input checked="" type="checkbox"/> 5/2 |
| 6. <u>Copy of Penal Law 160.10</u> | <input checked="" type="checkbox"/> 5/3 | <input checked="" type="checkbox"/> 5/3 |
| 7. _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 16. _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 17. _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 18. _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 19. _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 20. _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 21. _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. _____ | <input type="checkbox"/> | <input type="checkbox"/> |

PLAINTIFF'S EXHIBITS

CASE NO. C 53867

OFFERED ADMITTED

1. <u>Photograph</u>	<input checked="" type="checkbox"/> 4-14 no obj	<input checked="" type="checkbox"/> 4-14
2. <u>Photograph</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3. <u>Photograph</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4. <u>Photograph</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
5. <u>Photograph</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
6. <u>Photograph</u>	<input checked="" type="checkbox"/> 4-14 obj	<input checked="" type="checkbox"/> 4-14
7. <u>Photograph</u>	<input checked="" type="checkbox"/> 4-14 obj	<input type="checkbox"/>
8. <u>Photograph</u>	<input checked="" type="checkbox"/> 4-14 no obj	<input checked="" type="checkbox"/> 4-14
9. <u>Photograph</u>	<input checked="" type="checkbox"/> 4-14 obj	<input type="checkbox"/>
10. <u>Photograph</u>	<input checked="" type="checkbox"/> 4-14 no obj	<input checked="" type="checkbox"/> 4-14
11. <u>Photograph</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
12. <u>Photograph</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
13. <u>Photograph</u>	<input checked="" type="checkbox"/> 4-18 obj	<input checked="" type="checkbox"/> 4-18
14. <u>Photograph</u>	<input checked="" type="checkbox"/> 4-14 no obj	<input checked="" type="checkbox"/> 4-14
15. <u>Photograph</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
16. <u>Photograph</u>	<input checked="" type="checkbox"/> obj	<input type="checkbox"/>
17. <u>Photograph</u>	<input checked="" type="checkbox"/> 4-18 no obj	<input checked="" type="checkbox"/> 4-18
18. <u>Photograph</u>	<input checked="" type="checkbox"/> w/d	<input type="checkbox"/>
19. <u>Photograph</u>	<input checked="" type="checkbox"/> w/d	<input type="checkbox"/>
20. <u>Photograph</u>	<input checked="" type="checkbox"/> 4-18 no obj	<input checked="" type="checkbox"/> 4-18
21. <u>Photograph</u>	<input checked="" type="checkbox"/> 4-18 no obj	<input checked="" type="checkbox"/> 4-18
22. <u>Photograph</u>	<input checked="" type="checkbox"/> 4-18 no obj	<input checked="" type="checkbox"/> 4-18
23. <u>Photograph</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Badge #24A
4-18-18

4-18-18
4-18-18

PLAINTIFF'S EXHIBITS

SE NO. 053867

OFFERED ADMITTED

- | PLAINTIFF'S EXHIBITS | OFFERED | ADMITTED |
|---|--|--|
| 26. Evidence Envelope - Linen Photos ^{26 26A-28} | <input checked="" type="checkbox"/> 26 26A-28 | <input checked="" type="checkbox"/> 4-20 |
| 27. Latent prints from ^{do not have} | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. Latent prints from ^{31A} Olds Car Case | <input checked="" type="checkbox"/> 28 31A-31B | <input checked="" type="checkbox"/> 31 31A-31B |
| 29. Exemplar Prints obtained by Block | <input checked="" type="checkbox"/> 29 4-21 | <input checked="" type="checkbox"/> 4-21 |
| 30. 3 Exemplars obtained by ^{do not have} Trussawski | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. Evidence Bag ^{31A Small Evidence Bag} 31B Green 31C Envelope | <input checked="" type="checkbox"/> 31 31A-31C | <input checked="" type="checkbox"/> 31 31A-31C |
| 32. Evidence Envelope ^{32A Trial + Projectile} | <input checked="" type="checkbox"/> 32 4-18 | <input checked="" type="checkbox"/> 4-18 |
| 33. Evidence Envelope ^{33A Viol 9-Contents} | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. Evidence Envelope ^{34A Bullets} 34B Cartridge Cases | <input checked="" type="checkbox"/> 34 34A-34B | <input checked="" type="checkbox"/> 34 34A-34B |
| 35. Evidence Envelope ^{35A 35B 35C 35D 35E 35F 35G 35H 35I 35J 35K 35L 35M 35N 35O 35P 35Q 35R 35S 35T 35U 35V 35W 35X 35Y 35Z} & Contents | <input checked="" type="checkbox"/> 35 35A-35Z | <input checked="" type="checkbox"/> 35 35A-35Z |
| 36. Impound Report | <input checked="" type="checkbox"/> 36 4-18 | <input checked="" type="checkbox"/> 4-18 |
| 37. Evidence Envelope ^{37A Analysis Kit} | <input type="checkbox"/> | <input type="checkbox"/> |
| 38. Sears, Roebuck Credit Check | <input checked="" type="checkbox"/> 38 4-13 | <input checked="" type="checkbox"/> 4-13 |
| 39. Motel Receipts | <input type="checkbox"/> | <input type="checkbox"/> |
| 40. Evidence Envelope ^{40A Bracelet} | <input checked="" type="checkbox"/> 40 4-13 | <input checked="" type="checkbox"/> 4-13 |
| 41. Evidence Bag and Contents ^{41A 41B 41C 41D 41E 41F 41G 41H 41I 41J 41K 41L 41M 41N 41O 41P 41Q 41R 41S 41T 41U 41V 41W 41X 41Y 41Z} | <input checked="" type="checkbox"/> 41 41A-41Z | <input checked="" type="checkbox"/> 41 41A-41Z |
| 42. Evidence Envelope & Contents | <input type="checkbox"/> | <input type="checkbox"/> |
| 43. Evidence Envelope ^{43A Consent Form} | <input type="checkbox"/> | <input type="checkbox"/> |
| 44. Evidence Bag & Contents ^{44A Jacket 44B Clothing caps 44C 44D 44E 44F 44G 44H 44I 44J 44K 44L 44M 44N 44O 44P 44Q 44R 44S 44T 44U 44V 44W 44X 44Y 44Z} | <input checked="" type="checkbox"/> 44 44A-44Z | <input checked="" type="checkbox"/> 44 44A-44Z |
| 45. Evidence Envelope ^{45A Rights Card} | <input checked="" type="checkbox"/> 45 45A | <input checked="" type="checkbox"/> 45 45A |
| 46. Evidence Bag & Contents | <input type="checkbox"/> | <input type="checkbox"/> |
| 47. Drawing by Mr. Limsey | <input checked="" type="checkbox"/> 47 4-21 | <input checked="" type="checkbox"/> 4-21 |
| 48. Drawing by Mr. Limsey | <input checked="" type="checkbox"/> 48 1 | <input checked="" type="checkbox"/> 1 |

PLAINTIFF'S EXHIBITS

CASE NO. C53867

OFFERED ADMITTED

51.	<u>Picture</u>	<input checked="" type="checkbox"/> 4-18 mo. by	<input checked="" type="checkbox"/> 4-18
52.	<u>Picture</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
53.	<u>Picture</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
54.	<u>Picture</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
55.	<u>Drawing by Mr. Morahan</u>	<input checked="" type="checkbox"/> 4-21	<input checked="" type="checkbox"/> 4-21
56.	<u>Inventory - Carcase</u>	<input checked="" type="checkbox"/> 4-14 mo. by	<input checked="" type="checkbox"/> 4-14
57.	<u>Latent Fingerprint Card</u>	<input checked="" type="checkbox"/> 4-21 mo. by	<input checked="" type="checkbox"/> 4-21
58.	<u>Fingerprint of one of the</u>	<input checked="" type="checkbox"/> 4-21 mo. by	<input checked="" type="checkbox"/> 4-21
59.	<u>Security Activity Log</u>	<input checked="" type="checkbox"/> 4-18 obj.	<input type="checkbox"/>
60.	<u>Picture</u>	<input checked="" type="checkbox"/> 4-19 mo. by	<input checked="" type="checkbox"/> 4-19
61.	<u>Picture</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
62.	<u>Picture</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
63.	<u>Picture</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
64.	<u>Latent Print</u>	<input checked="" type="checkbox"/> 4-21 mo. by	<input checked="" type="checkbox"/> 4-21
65.	<u>Photo Line Up</u>	<input checked="" type="checkbox"/> 4-21 mo. by	<input checked="" type="checkbox"/> 4-21
66.	<u>Picture</u>	<input type="checkbox"/>	<input type="checkbox"/>
67.	<u>Handwriting Samples</u>	<input checked="" type="checkbox"/> 4-22 mo. by	<input checked="" type="checkbox"/> 4-22
68.	<u>Receipts</u>	<input checked="" type="checkbox"/> 4-22 mo. by	<input checked="" type="checkbox"/> 4-22
69.	<u>Certified Copy of Minutes</u>	<input checked="" type="checkbox"/> 5-2 obj.	<input checked="" type="checkbox"/> 5-2
70.	<u>Certified Copy of Fingerprint Photograph</u>	<input type="checkbox"/>	<input type="checkbox"/>
71.		<input type="checkbox"/>	<input type="checkbox"/>
72.		<input type="checkbox"/>	<input type="checkbox"/>
73.		<input type="checkbox"/>	<input type="checkbox"/>
74.		<input type="checkbox"/>	<input type="checkbox"/>

DEFENDANT'S EXHIBITS:

CASE NO. 253867

	OFFERED	ADMITTED
A. <u>Letter (hearing in Judge's presence) no to Jury</u>	<input checked="" type="checkbox"/> 4-19	<input checked="" type="checkbox"/> 4-19
B. <u>Letter (hearing in Judge's presence) no to Jury</u>	<input checked="" type="checkbox"/> 4-19	<input checked="" type="checkbox"/> 4-19
C. <u>Registration Cards</u>	<input checked="" type="checkbox"/> 4-21	<input checked="" type="checkbox"/> 4-21
C-1 <u>Registration Card No. 1-66-66-42</u>	<input checked="" type="checkbox"/> 4-21	<input checked="" type="checkbox"/> 4-21
D. <u>4 Copies of Proof regarding Deft's father's marriage to mother & sister</u>	<input type="checkbox"/>	<input type="checkbox"/>
E. _____	<input type="checkbox"/>	<input type="checkbox"/>
F. _____	<input type="checkbox"/>	<input type="checkbox"/>
G. _____	<input type="checkbox"/>	<input type="checkbox"/>
H. _____	<input type="checkbox"/>	<input type="checkbox"/>
I. _____	<input type="checkbox"/>	<input type="checkbox"/>
J. _____	<input type="checkbox"/>	<input type="checkbox"/>
K. _____	<input type="checkbox"/>	<input type="checkbox"/>
L. _____	<input type="checkbox"/>	<input type="checkbox"/>
M. _____	<input type="checkbox"/>	<input type="checkbox"/>
N. _____	<input type="checkbox"/>	<input type="checkbox"/>
O. _____	<input type="checkbox"/>	<input type="checkbox"/>
P. _____	<input type="checkbox"/>	<input type="checkbox"/>
Q. _____	<input type="checkbox"/>	<input type="checkbox"/>
R. _____	<input type="checkbox"/>	<input type="checkbox"/>
S. _____	<input type="checkbox"/>	<input type="checkbox"/>
T. _____	<input type="checkbox"/>	<input type="checkbox"/>
U. _____	<input type="checkbox"/>	<input type="checkbox"/>
V. _____	<input type="checkbox"/>	<input type="checkbox"/>
W. _____	<input type="checkbox"/>	<input type="checkbox"/>
X. _____	<input type="checkbox"/>	<input type="checkbox"/>
Y. _____	<input type="checkbox"/>	<input type="checkbox"/>

Certification of Copy

State of Nevada }
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; 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.

SAMUEL HOWARD,

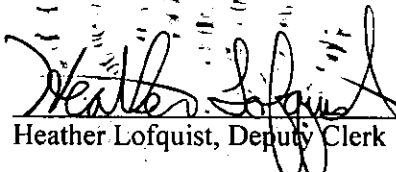
Defendant(s),

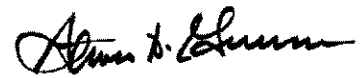
)
)
) Case No: 81C053867
) Dept No: XVII
)
)
)
)
)
)

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 5 day of January 2011.

Steven D. Grierson, Clerk of the Court


Heather Lofquist, Deputy Clerk



CLERK OF THE COURT

Electronically Filed
Jan 05 2011 12:47 p.m.
Tracie K. Lindeman

1 NOTC
FRANNY A. FORSMAN
2 Federal Public Defender
Nevada Bar No. 00014
3 MICHAEL CHARLTON
Assistant Federal Public Defender
4 Nevada Bar No. 11025C
Mike_Charlton@fd.org
5 MEGAN C. HOFFMAN
Assistant Federal Public Defender
6 Nevada Bar No. 9835
Megan_Hoffman@fd.org
7 411 Bonneville Ave., Suite 250
Las Vegas, Nevada 89101
8 Telephone: (702) 388-6577
Facsimile: (702) 388-5819

9 Attorneys for Petitioner

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

13 SAMUEL HOWARD,
14 Petitioner,

15 v.

16 E. K. McDANIEL, Warden of ELY STATE
PRISON; CATHERINE CORTEZ MASTO,
17 Attorney General, State of Nevada; and THE
STATE OF NEVADA,

18 Respondents.

Case No. C053867
Dept. No. XVII

NOTICE OF APPEAL

(Death Penalty Case)

20 NOTICE is hereby given that Petitioner, Samuel Howard, appeals to the Nevada Supreme
21 Court from the Findings of Fact, Conclusions of Law and Order which was filed in this action on
22

23 ///

24 ///

25 ///

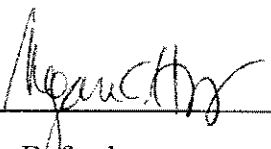
1 November 6, 2010, and entered and served on December 6, 2010, by Notice of Entry of Decision and
2 Order.

3 DATED this 21st day of December 2010.

4 FRANNY A. FORSMAN
5 Federal Public Defender

6 

7 /s/ Michael Charlton
8 MICHAEL CHARLTON
9 Assistant Federal Public Defender

10 /s/ Megan Hoffman 
11 MEGAN HOFFMAN
12 Assistant Federal Public Defender

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Attorneys for Petitioner

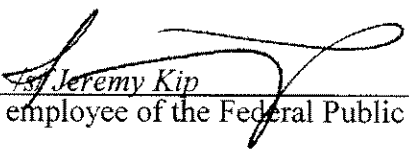
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

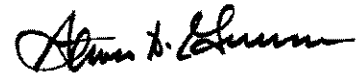
CERTIFICATE OF SERVICE

In accordance with EDCR 7.26(a)(1) of the Nevada Rules of Civil Procedure, the undersigned hereby certifies that on this 21st day of December 2010, I deposited for mailing in the United States mail, first-class postage prepaid, a true and correct copy of the foregoing NOTICE OF APPEAL addressed to the parties as follows:

Nancy Becker
Deputy District Attorney
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Catherine Cortez-Masto
Nevada Attorney General
David K. Neidert
Senior Deputy Attorney General
100 N. Carson Street
Carson City, Nevada 89701


An employee of the Federal Public Defender



CLERK OF THE COURT

1 ASTA
FRANNY A. FORSMAN
2 Federal Public Defender
Nevada Bar No. 00014
3 MICHAEL CHARLTON
Assistant Federal Public Defender
4 Nevada Bar No. 11025C
Mike_Charlton@fd.org
5 MEGAN C. HOFFMAN
Assistant Federal Public Defender
6 Nevada Bar No. 9835
Megan_Hoffman@fd.org
7 411 Bonneville Ave., Suite 250
Las Vegas, Nevada 89101
8 Telephone: (702) 388-6577
Facsimile: (702) 388-5819

9 Attorneys for Petitioner

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 SAMUEL HOWARD,

13 Petitioner,

14 v.

15 E. K. McDANIEL, Warden of ELY STATE
16 PRISON; CATHERINE CORTEZ MASTO,
17 Attorney General, State of Nevada; and THE
STATE OF NEVADA,

18 Respondents.

Case No. C053867
Dept. No. XVII

CASE APPEAL STATEMENT

(Death Penalty Case)

19
20 1. **Name of petitioner filing this case appeal statement:**

21 Samuel Howard

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

23 Michael Villani

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

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

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

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

28 ///

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

3 David Roger
4 Clark County District Attorney
5 Nancy Becker
6 Deputy District Attorney
7 200 Lewis Ave.
8 Las Vegas, Nevada 89155
9 (702) 671-2750

10 Counsel for State of Nevada

11 and

12 Catherine Cortez Masto
13 Nevada Attorney General
14 David K. Neidert
15 Deputy Attorney General
16 Senior Deputy Attorney General
17 100 N. Carson Street
18 Carson City, Nevada 89701
19 (775) 684-1271

20 Counsel for E.K. McDaniel, Warden

21 Michael Charlton
22 Assistant Federal Public Defender
23 411 E. Bonneville Ave, Suite 250
24 Las Vegas, NV 89101
25 (702) 388-6577

26 Counsel for Petitioner, Samuel Howard

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

Petitioner/Appellant was represented by appointed counsel.

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

Yes; November 6, 2007

///

///

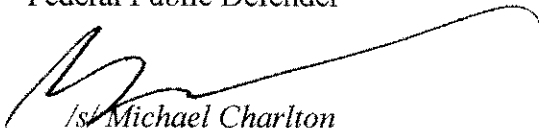
///


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

3 A Petition for Writ of Habeas Corpus (Post-Conviction) was filed on October 25, 2007. An
4 Amended Petition for Writ of Habeas Corpus (Post-Conviction) was filed on February 24,
5 2009.

6 DATED this 21st day of December 2010.

7 FRANNY A. FORSMAN
8 Federal Public Defender

9 
10 /s/ Michael Charlton
11 MICHAEL CHARLTON
12 Assistant Federal Public Defender

13 
14 /s/ Megan Hoffman
15 MEGAN HOFFMAN
16 Assistant Federal Public Defender

17 Attorneys for Petitioner
18
19
20
21
22
23
24
25
26
27
28


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

In accordance with EDCR 7.26(a)(1) of the Nevada Rules of Civil Procedure, the undersigned hereby certifies that on this 21st day of December 2010, I deposited for mailing in the United States mail, first-class postage prepaid, a true and correct copy of the foregoing CASE APPEAL STATEMENT addressed to the parties as follows:

Nancy Becker
Deputy District Attorney
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Catherine Cortez-Masto
Nevada Attorney General
David K. Neidert
Senior Deputy Attorney General
100 N. Carson Street
Carson City, Nevada 89701



An employee of the Federal Public Defender

DEPARTMENT 17
CASE SUMMARY
CASE No. 81C053867

The State of Nevada vs Samuel Howard

§	Location:	Department 17
§	Judicial Officer:	Villani, Michael
§	Filed on:	05/21/1981
§	Case Number History:	
§	Conversion Case Number:	C053867
§	Defendant's Scope ID #:	0624173
§	Lower Court Case Number:	80G00127

CASE INFORMATION

Offense	Deg	Date	Case Type: Felony/Gross Misdemeanor
1. ROBBERY WITH A DEADLY WEAPON	F	01/01/1900	Case Flags: Appealed to Supreme Court
2. ROBBERY WITH A DEADLY WEAPON	F	01/01/1900	
3. MURDER IN THE FIRST DEGREE WITH A DEADLY WEAPON	F	01/01/1900	
3. DEGREES OF MURDER	F	01/01/1900	

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	81C053867
Court	Department 17
Date Assigned	12/28/2008
Judicial Officer	Villani, Michael

PARTY INFORMATION

Defendant	Howard, Samuel	<i>Lead Attorneys</i>
		Public Defender <i>Retained</i>
Plaintiff	State of Nevada	Roger, David J. 702-671-2700(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

01/01/1900	Plea (Judicial Officer: User, Conversion) 1. ROBBERY WITH A DEADLY WEAPON Not Guilty	
01/01/1900	Plea (Judicial Officer: User, Conversion) 2. ROBBERY WITH A DEADLY WEAPON Not Guilty	
01/01/1900	Plea (Judicial Officer: User, Conversion) 3. MURDER IN THE FIRST DEGREE WITH A DEADLY WEAPON Not Guilty	
01/01/1900	Plea (Judicial Officer: User, Conversion) 3. DEGREES OF MURDER Not Guilty	
05/21/1981	Conversion Case Event Type <i>CRIMINAL COMPLAINT</i>	<i>81C0538670001.tif pages</i>
05/21/1981	Indictment	<i>81C0538670002.tif pages</i>

DEPARTMENT 17
CASE SUMMARY
CASE No. 81C053867

(GRAND JURY) INDICTMENT

04/22/1983	Disposition (Judicial Officer: User, Conversion) 1. ROBBERY WITH A DEADLY WEAPON Guilty
04/22/1983	Disposition (Judicial Officer: User, Conversion)
04/22/1983	Disposition (Judicial Officer: User, Conversion) 2. ROBBERY WITH A DEADLY WEAPON Guilty
04/22/1983	Disposition (Judicial Officer: User, Conversion)
04/22/1983	Disposition (Judicial Officer: User, Conversion) 3. MURDER IN THE FIRST DEGREE WITH A DEADLY WEAPON Guilty
04/22/1983	Disposition (Judicial Officer: User, Conversion)
04/22/1983	Disposition (Judicial Officer: User, Conversion) 3. DEGREES OF MURDER Guilty
04/22/1983	Sentence (Judicial Officer: User, Conversion) 1. ROBBERY WITH A DEADLY WEAPON Adult Adjudication Converted Disposition: Sentence# 0001: Minimum 15 Years to Maximum 15 Years Placement: NSP Cons/Conc: Consecutive w/Charge Item: 0003 and Sentence#: 0001 Converted Disposition: Sentence# 0002: Minimum 15 Years to Maximum 15 Years Placement: NSP Cons/Conc: Consecutive w/Charge Item: 0001 and Sentence#: 0001 Converted Disposition: Sentence# 0003: CREDIT FOR TIME SERVED Minimum 230 Days to Maximum 230 Days
04/22/1983	Sentence (Judicial Officer: User, Conversion) 2. ROBBERY WITH A DEADLY WEAPON Adult Adjudication Converted Disposition: Sentence# 0001: Minimum 15 Years to Maximum 15 Years Placement: NSP Cons/Conc: Consecutive w/Charge Item: 0001 and Sentence#: 0001 Converted Disposition: Sentence# 0002: Minimum 15 Years to Maximum 15 Years Placement: NSP Cons/Conc: Consecutive w/Charge Item: 0002 and Sentence#: 0001

DEPARTMENT 17
CASE SUMMARY
CASE No. 81C053867

04/22/1983	Sentence (Judicial Officer: User, Conversion) 3. MURDER IN THE FIRST DEGREE WITH A DEADLY WEAPON Adult Adjudication Converted Disposition: Sentence# 0001: DEATH PENALTY	
02/13/1991	Motion <i>MOTION FOR FEES IN EXCESS OF STATUTORY GUIDELINES</i>	81C0538670005.tif pages
02/15/1991	Receipt of Copy Filed by: Defendant Howard, Samuel <i>RECEIPT OF COPY OF REQUEST TO PLACE ON CALENDAR AND SUPPLEMENTAL BILLING BY CIVIL DISTRICT ATTORNEYS OFFICE CIVIL DISTRICT ATTORNEYS OFFICE</i>	81C0538670003.tif pages
02/19/1991	Response <i>RESPONSE TO DEFENDANTS MOTION FOR FEES IN EXCESS OF STATUTORY MAXIMUM</i>	81C0538670004.tif pages
02/26/1991	Motion (9:00 AM) (Judicial Officer: Sobel, Jeffrey) Events: 02/13/1991 Motion <i>MOTION FOR FEES IN EXCESS OF STATUTORY GUIDELINES Court Clerk: ALONA FUJII Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL, JEFFREY</i>	
02/26/1991	Certificate Filed By: Defendant Howard, Samuel <i>CERTIFICATE OF MAILING TO ATTORNEY GENERAL OF REQUEST TO PLACE ON CALENDAR</i>	81C0538670006.tif pages
03/07/1991	Motion (9:00 AM) (Judicial Officer: Sobel, Jeffrey) <i>MOTION FOR FEES IN EXCESS OF STATUTORY GUIDELINES Court Clerk: ALONA FUJII Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: Jeffrey Sobel</i>	
03/12/1991	Motion <i>MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION</i>	81C0538670007.tif pages
03/25/1991	Order Filed By: Defendant Howard, Samuel <i>ORDER GRANTING MOTION FOR FEES IN EXCESS OF STATUTORY GUIDELINES</i>	81C0538670008.tif pages
03/26/1991	Motion (9:00 AM) (Judicial Officer: Sobel, Jeffrey) Events: 03/12/1991 Motion <i>MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION Court Clerk: ALONA FUJII Relief Clerk: SANDRA SMITH Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL, JEFFREY</i>	
04/02/1991	Motion (9:00 AM) <i>MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION Court Clerk: ALONA FUJII Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL, JEFFREY</i>	
04/09/1991	Motion (9:00 AM) <i>MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION Court Clerk: ALONA FUJII Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL, JEFFREY</i>	
12/16/1991	Petition <i>PETITION FOR POST CONVICTION RELIEF</i>	81C0538670009.tif pages
12/16/1991	Notice Filed By: Defendant Howard, Samuel	81C0538670010.tif pages


DEPARTMENT 17
CASE SUMMARY
CASE No. 81C053867

	<i>NOTICE OF PETITION</i>	
02/04/1992	Petition for Post Conviction Relief (9:00 AM) (Judicial Officer: Sobel, Jeffrey) Events: 12/16/1991 Petition <i>PETITION FOR POST CONVICTION RELIEF Court Clerk: ALONA CANDITO Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL, JEFFREY</i>	
02/10/1992	Request <i>MOTION TO DISMISS AMENDED PETITION FOR POST CONVICTION RELIEF</i>	81C0538670011.tif pages
02/11/1992	Petition for Post Conviction Relief (9:00 AM) <i>PETITION FOR POST CONVICTION RELIEF Court Clerk: ALONA CANDITO Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL, JEFFREY</i>	
02/14/1992	Hearing <i>STATUS CHECK EVIDENTIARY HEARING</i>	81C0538670012.tif pages
02/14/1992	Stipulation Filed by: Defendant Howard, Samuel <i>STIPULATION VACATING PETITIONERS AMENDED PETITION FOR POST CONVICTION RELIEF SET FOR 2-11-92 FOR 2-11-92</i>	81C0538670013.tif pages
02/25/1992	Order Filed By: Defendant Howard, Samuel <i>ORDER VACATING PETITIONERS AMENDED PETITION FOR POST CONVICTION RELIEF</i>	81C0538670014.tif pages
03/12/1992	Status Check (9:00 AM) (Judicial Officer: Sobel, Jeffrey) Events: 02/14/1992 Hearing <i>STATUS CHECK EVIDENTIARY HEARING Court Clerk: ALONA CANDITO Relief Clerk: LEONE DUMIRE Reporter/Recorder: DEBRA WINN Heard By: SOBEL, JEFFREY</i>	
03/19/1992	Status Check (9:00 AM) <i>STATUS CHECK EVIDENTIARY HEARING Court Clerk: ALONA CANDITO Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL, JEFFREY</i>	
04/17/1992	Response Filed by: Defendant Howard, Samuel <i>RESPONSE TO MOTION TO DISMISS AMENDED PETITION FOR POST CONVICTION RELIEF</i>	81C0538670015.tif pages
04/21/1992	Motion (9:00 AM) <i>MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION Heard By: Jeffrey Sobel</i>	
04/21/1992	Petition for Post Conviction Relief (9:00 AM) <i>PETITION FOR POST CONVICTION RELIEF Heard By: Jeffrey Sobel</i>	
04/21/1992	Status Check (9:00 AM) <i>STATUS CHECK EVIDENTIARY HEARING Heard By: Jeffrey Sobel</i>	
04/21/1992	All Pending Motions (9:00 AM) (Judicial Officer: Sobel, Jeffrey) <i>ALL PENDING MOTIONS 4/21/92 Court Clerk: ALONA CANDITO Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: Jeffrey Sobel</i>	
04/21/1992	Motion <i>ALL PENDING MOTIONS 4/21/92</i>	81C0538670016.tif pages
04/28/1992	Motion (9:00 AM) <i>MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION Heard By: Jeffrey Sobel</i>	


DEPARTMENT 17
CASE SUMMARY
CASE No. 81C053867

04/28/1992	Petition for Post Conviction Relief (9:00 AM) <i>PETITION FOR POST CONVICTION RELIEF Heard By: Jeffrey Sobel</i>	
04/28/1992	Status Check (9:00 AM) <i>STATUS CHECK EVIDENTIARY HEARING Heard By: Jeffrey Sobel</i>	
04/28/1992	All Pending Motions (9:00 AM) (Judicial Officer: Sobel, Jeffrey) <i>ALL PENDING MOTIONS 4-28-92 Court Clerk: ALONA CANDITO Relief Clerk: SHARON PHELPS Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: Jeffrey Sobel</i>	
04/28/1992	Motion <i>ALL PENDING MOTIONS 4-28-92</i>	81C0538670017.tif pages
05/19/1992	Motion (9:00 AM) <i>MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION Heard By: Jeffrey Sobel</i>	
05/19/1992	Petition for Post Conviction Relief (9:00 AM) (Judicial Officer: Sobel, Jeffrey) <i>PETITION FOR POST CONVICTION RELIEF Heard By: Jeffrey Sobel</i>	
05/19/1992	Status Check (9:00 AM) (Judicial Officer: Sobel, Jeffrey) <i>STATUS CHECK EVIDENTIARY HEARING Heard By: Jeffrey Sobel</i>	
05/27/1992	Order Filed By: Defendant Howard, Samuel <i>ORDER APPOINTING COUNSEL</i>	81C0538670018.tif pages
06/09/1992	Motion (9:00 AM) <i>MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION Heard By: Jeffrey Sobel</i>	
06/09/1992	Petition for Post Conviction Relief (9:00 AM) <i>PETITION FOR POST CONVICTION RELIEF Court Clerk: ALONA CANDITO Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: Jeffrey Sobel</i>	
06/09/1992	Status Check (9:00 AM) <i>STATUS CHECK EVIDENTIARY HEARING Court Clerk: ALONA CANDITO Relief Clerk: LEONE DUMIRE Reporter/Recorder: DEBRA WINN Heard By: Jeffrey Sobel</i>	
06/09/1992	All Pending Motions (9:00 AM) (Judicial Officer: Sobel, Jeffrey) <i>ALL PENDING MOTIONS 6/9/92 Court Clerk: ALONA CANDITO Reporter/Recorder: ARLENE BLAZI Heard By: Jeffrey Sobel</i>	
06/09/1992	Motion <i>ALL PENDING MOTIONS 6/9/92</i>	81C0538670019.tif pages
06/23/1992	Motion (9:00 AM) (Judicial Officer: Sobel, Jeffrey) <i>MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION Court Clerk: ALONA CANDITO Relief Clerk: PATRICIA CAMAROTE Reporter/Recorder: ARLENE BLAZI Heard By: SOBEL, JEFFREY</i>	
07/07/1992	Motion (9:00 AM) <i>MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION Court Clerk: ALONA CANDITO Relief Clerk: PATRICIA CAMAROTE Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: Jeffrey Sobel</i>	
07/07/1992	Order <i>ORDER OF EXECUTION</i>	81C0538670020.tif pages





DEPARTMENT 17
CASE SUMMARY
CASE No. 81C053867

07/07/1992	Warrant <i>WARRANT OF EXECUTION</i>	81C0538670021.tif pages
07/07/1992	Order Filed By: Defendant Howard, Samuel <i>ORDER DENYING AMENDED PETITION FOR POST CONVICTION RELIEF</i>	81C0538670022.tif pages
07/14/1992	Notice Filed By: Defendant Howard, Samuel <i>NOTICE OF APPEAL</i>	81C0538670023.tif pages
07/22/1992	Notice of Appeal Filed By: Defendant Howard, Samuel <i>DESIGNATION OF RECORD ON APPEAL</i>	81C0538670024.tif pages
07/29/1992	Order <i>ORDER RE; TRANSCRIPTS</i>	81C0538670025.tif pages
08/12/1992	Motion <i>MOTION FOR EXTRAORDINARY FEES</i>	81C0538670026.tif pages
08/17/1992	Receipt of Copy Filed by: Defendant Howard, Samuel <i>RECEIPT OF COPY</i>	81C0538670027.tif pages
08/25/1992	Motion (9:00 AM) (Judicial Officer: Sobel, Jeffrey) Events: 08/12/1992 Motion <i>MOTION FOR EXTRAORDINARY FEES Court Clerk: ALONA CANDITO Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: Jeffrey Sobel</i>	
08/26/1992	Order <i>ORDER GRANTING MOTION FOR EXTRAORDINARY FEES</i>	81C0538670028.tif pages
04/19/1993	Ex Parte Filed By: Defendant Howard, Samuel <i>EX PARTE MOTION FOR ENTRY OF ORDER NUNC PRO TUNC FOR APPOINTMENT OF COUNSEL</i>	81C0538670029.tif pages
04/26/1993	Order Filed By: Defendant Howard, Samuel <i>ORDER GRANTING EX PARTE MOTION FOR ENTRY OF ORDER NUNC PRO TUNC FOR APPOINTMENT OF COUNSEL OF COUNSEL</i>	81C0538670030.tif pages
11/18/1993	NV Supreme Court Clerks Certificate/Judgment - Dismissed <i>NEVADA SUPREME COURT JUDGMENT / ORDERED APPEAL DISMISSED</i>	81C0538670031.tif pages
01/04/1994	Ex Parte Filed By: Defendant Howard, Samuel <i>EX PARTE MOTION FOR EXTRAORDINARY FEES</i>	81C0538670033.tif pages
01/04/1994	Statement Filed by: Defendant Howard, Samuel <i>STATEMENT OF FEES AND COSTS</i>	81C0538670034.tif pages
01/19/1994	Order Filed By: Defendant Howard, Samuel <i>STIPULATION AND ORDER FOR EXTRA-ORDINARY FEES</i>	81C0538670032.tif pages
12/20/2002	 Petition <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS /9</i>	81C0538670036.tif pages









DEPARTMENT 17
CASE SUMMARY
CASE No. 81C053867

12/31/2002	 Motion <i>DEFT'S PRO PER MTN TO APPOINT EFFECTIVE POST-CONVICTION/10</i>	81C0538670038.tif pages
01/09/2003	Petition for Writ of Habeas Corpus (9:00 AM) (Judicial Officer: Glass, Jackie) Events: 12/20/2002 Petition <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS /9 Court Clerk: Billie Jo Craig Reporter/Recorder: Shirley Parawalsky Heard By: Glass, Jackie</i>	
01/13/2003	 Opposition <i>STATES OPPOSITION TO DEFENDANTS MOTION FOR APPOINTMENT OF POST CONVICTION COUNSEL COUNSEL</i>	81C0538670041.tif pages
01/14/2003	Petition for Writ of Habeas Corpus (9:00 AM) <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS /9</i>	
01/14/2003	Motion (9:00 AM) (Judicial Officer: Glass, Jackie) Events: 12/31/2002 Motion <i>DEFT'S PRO PER MTN TO APPOINT EFFECTIVE POST-CONVICTION/10 Heard By: Jackie Glass</i>	
01/14/2003	All Pending Motions (9:00 AM) (Judicial Officer: Glass, Jackie) <i>ALL PENDING MOTIONS FOR 1/14/03 Court Clerk: Billie Jo Craig Reporter/Recorder: Shirlee Parawalsky Heard By: Jackie Glass</i>	
01/14/2003	Motion <i>ALL PENDING MOTIONS FOR 1/14/03</i>	81C0538670040.tif pages
01/17/2003	 Notice Filed By: Defendant Howard, Samuel <i>NOTICE OF APPEARANCE AS PRO BONO COUNSEL</i>	81C0538670042.tif pages
02/19/2003	 Substitution of Attorney Filed by: Defendant Howard, Samuel <i>SUBSTITUTION OF ATTORNEY</i>	81C0538670043.tif pages
03/04/2003	 Motion <i>STATE'S MTN TO DISMISS PTN FOR WRIT HABEAS CORPUS/12</i>	81C0538670044.tif pages
03/18/2003	Petition for Writ of Habeas Corpus (9:00 AM) <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS /9</i>	
03/18/2003	Motion to Dismiss (9:00 AM) (Judicial Officer: Glass, Jackie) Events: 03/04/2003 Motion <i>STATE'S MTN TO DISMISS PTN FOR WRIT HABEAS CORPUS/12</i>	
03/18/2003	All Pending Motions (9:00 AM) (Judicial Officer: Glass, Jackie) <i>ALL PENDING MOTIONS FOR 3/18/03 Court Clerk: Billie Jo Craig Reporter/Recorder: Shirlee Prawalsky Heard By: Jackie Glass</i>	
03/18/2003	Motion <i>ALL PENDING MOTIONS FOR 3/18/03</i>	81C0538670045.tif pages
03/20/2003	Petition for Writ of Habeas Corpus (9:00 AM) <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS /9</i>	
03/20/2003	Motion to Dismiss (9:00 AM) <i>STATE'S MTN TO DISMISS PTN FOR WRIT HABEAS CORPUS/12</i>	

DEPARTMENT 17
CASE SUMMARY
CASE No. 81C053867

03/20/2003	All Pending Motions (9:00 AM) (Judicial Officer: Glass, Jackie) <i>ALL PENDING MOTIONS FOR 3/20/03 Court Clerk: Billie Jo Craig Reporter/Recorder: Shirlee Prawalsky Heard By: Jackie Glass</i>	
03/20/2003	Hearing <i>STATUS CHECK: VERIFICATION OF PETITION VJ 06/03/03</i>	81C0538670046.tif pages
03/20/2003	Motion <i>ALL PENDING MOTIONS FOR 3/20/03</i>	81C0538670047.tif pages
03/28/2003	 Reporters Transcript <i>REPORTER'S TRANSCRIPT DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS STATES MOTION TO DISMISS DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS STATES MOTION TO DISMISS DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS</i>	81C0538670048.tif pages
04/03/2003	Petition for Writ of Habeas Corpus (9:00 AM) (Judicial Officer: Glass, Jackie) <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS /9</i>	
04/03/2003	Motion to Dismiss (9:00 AM) (Judicial Officer: Glass, Jackie) <i>STATE'S MTN TO DISMISS PTN FOR WRIT HABEAS CORPUS/12</i>	
04/03/2003	Status Check (9:00 AM) (Judicial Officer: Glass, Jackie) Events: 03/20/2003 Hearing <i>STATUS CHECK: VERIFICATION OF PETITION VJ 06/03/03</i>	
04/03/2003	All Pending Motions (9:00 AM) (Judicial Officer: Pavlikowski, Joseph) <i>ALL PENDING MOTIONS 04/03/03 Court Clerk: Georgette Byrd Reporter/Recorder: Shirlee Prawalsky Heard By: Joseph Pavlikowski</i>	
04/03/2003	Conversion Case Event Type <i>ARGUMENT AND DECISION: DEFT'S PETITION/ STATE'S MTN TO DISMISS/STATUS CHECK: PET</i>	81C0538670049.tif pages
04/03/2003	Motion <i>ALL PENDING MOTIONS 04/03/03</i>	81C0538670050.tif pages
04/03/2003	 Verification Filed by: Defendant Howard, Samuel <i>VERIFICATION OF PETITIONER</i>	81C0538670051.tif pages
04/03/2003	 Receipt of Copy Filed by: Defendant Howard, Samuel <i>RECEIPT OF COPY</i>	81C0538670052.tif pages
05/21/2003	 Motion <i>DEFT'S MOTION TO EXTEND TIME TO FILE AN OPPOSITION TO STATE'S MTN TO DISMISS/18</i>	81C0538670053.tif pages
06/03/2003	Motion (9:00 AM) (Judicial Officer: Glass, Jackie) Events: 05/21/2003 Motion <i>DEFT'S MOTION TO EXTEND TIME TO FILE AN OPPOSITION TO STATE'S MTN TO DISMISS/18 Court Clerk: Georgette Byrd Reporter/Recorder: Shirlee Prawalsky Heard By: Jackie Glass</i>	
06/03/2003	Motion <i>HEARING RE: PETITION FOR WRIT OF HABEAS CORPUS</i>	81C0538670054.tif pages

DEPARTMENT 17
CASE SUMMARY
CASE No. 81C053867

06/12/2003	Petition for Writ of Habeas Corpus (9:00 AM) <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS /9 Court Clerk: Billie Jo Craig Reporter/Recorder: Shirley Parawalsky</i>	
06/12/2003	Motion to Dismiss (9:00 AM) <i>STATE'S MTN TO DISMISS PTN FOR WRIT HABEAS CORPUS/12</i>	
06/12/2003	Status Check (9:00 AM) (Judicial Officer: Glass, Jackie) <i>STATUS CHECK: VERIFICATION OF PETITION VJ 06/03/03</i>	
06/12/2003	CANCELED Hearing (9:00 AM) Events: 04/03/2003 Conversion Case Event Type <i>Vacated</i>	
08/18/2003	 Application Filed By: Defendant Howard, Samuel <i>EX PARTE APPLICATION TO EXTEND TIME TO FILE REPLY TO STATES RESPONSE TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) AMENDED PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)</i>	81C0538670055.tif pages
08/20/2003	 Petition Filed by: Defendant Howard, Samuel <i>AMENDED PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) (DEATH PENALTY)</i>	81C0538670056.tif pages
08/20/2003	 Opposition Filed By: Defendant Howard, Samuel <i>PETITIONER HOWARDS OPPOSITION TO STATES MOTION TO DISMISS PETITION</i>	81C0538670057.tif pages
08/20/2003	 Receipt of Copy Filed by: Defendant Howard, Samuel <i>RECEIPT OF COPY</i>	81C0538670059.tif pages
08/21/2003	Show Cause Hearing (9:00 AM) (Judicial Officer: Glass, Jackie) Events: 06/03/2003 Motion <i>HEARING RE: PETITION FOR WRIT OF HABEAS CORPUS Court Clerk: Georgette Byrd Reporter/Recorder: Shirlee Prawalsky Heard By: Jackie Glass</i>	
08/21/2003	Conversion Case Event Type <i>ARGUMENT/DECISION: DEFT'S WRIT FOR HABEAS CORPUS</i>	81C0538670058.tif pages
08/21/2003	 Receipt of Copy Filed by: Defendant Howard, Samuel <i>RECEIPT OF COPY</i>	81C0538670060.tif pages
08/21/2003	 Exhibits Filed By: Defendant Howard, Samuel <i>EXHIBITS TO PETITIONER HOWARDS OPPOSITION TO STATES MOTION TO DISMISS VOL II VOL II</i>	81C0538670061.tif pages
08/21/2003	 Exhibits Filed By: Defendant Howard, Samuel <i>EXHIBITS TO PETITIONER HOWARDS OPPOSITION TO STATES MOTION TO DISMISS</i>	81C0538670063.tif pages
08/25/2003	 Notice	81C0538670062.tif pages

CASE SUMMARY**CASE No. 81C053867**







*NOTICE OF EXHIBITS TO EXHIBITS TO PETITIONER HOWARD'S OPPOSITION TO
STATE'S MOTION TO DISMISS IN THE VAULT STATE'S MOTION TO DISMISS IN
THE VAULT*

09/24/2003	 Reply <i>STATES REPLY TO DEFENDANTS OPPOSITION TO STATES MOTION TO DISMISS DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION</i>	81C0538670064.tif pages
10/02/2003	Hearing (9:00 AM) (Judicial Officer: Glass, Jackie) Events: 08/21/2003 Conversion Case Event Type <i>ARGUMENT/DECISION: DEFT'S WRIT FOR HABEAS CORPUS Court Clerk: Georgette Byrd Reporter/Recorder: Shirlee Prawalsky Heard By: Jackie Glass</i>	
10/08/2003	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ARGUMENT/DECISION: PETITION FOR WRIT FOR HABEAS CORPUS</i>	81C0538670065.tif pages
10/08/2003	 Reporters Transcript <i>REPORTER'S TRANSCRIPT STATES MOTION TO DISMISS DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS OF HABEAS CORPUS (POST- CONVICTION) DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS</i>	81C0538670066.tif pages
10/08/2003	 Reporters Transcript <i>REPORTER'S TRANSCRIPT DEFENDANTS PRO PER MOTION FOR APPOINTMENT OF EFFECTIVE POST-CONVICTION COUNSEL DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION COUNSEL DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS</i>	81C0538670067.tif pages
10/08/2003	 Reporters Transcript <i>REPORTER'S TRANSCRIPT STATES MOTION TO DISMISS DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) STATUS CHECK: VERIFICATION OF PETITION OF HABEAS CORPUS (POST CONVICTION) DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) STATUS CHECK: VERIFICATION OF PETITION</i>	81C0538670068.tif pages
10/08/2003	 Reporters Transcript <i>REPORTER'S TRANSCRIPT DEFENDANTS MOTION TO EXTEND TIME TO FILE AN OPPOSITION TO STATES MOTION TO DISMISS TO STATES MOTION TO DISMISS</i>	81C0538670069.tif pages
10/08/2003	 Reporters Transcript <i>REPORTER'S TRANSCRIPT HEARING: WRIT OF HABEAS CORPUS (POST CONVICTION)</i>	81C0538670070.tif pages
10/13/2003	 Order <i>ORDER FOR TRANSCRIPT</i>	81C0538670071.tif pages
10/23/2003	 Judgment <i>FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER</i>	81C0538670072.tif pages
10/28/2003	 Notice of Entry of Decision and Order <i>NOTICE OF ENTRY OF DECISION AND ORDER</i>	81C0538670073.tif pages
11/25/2003	 Notice of Appeal Filed By: Defendant Howard, Samuel	81C0538670074.tif pages

DEPARTMENT 17
CASE SUMMARY
CASE No. 81C053867

	<i>NOTICE OF APPEAL</i>	
12/30/2003	 Statement Filed by: Defendant Howard, Samuel <i>CASE APPEAL STATEMENT</i>	<i>81C0538670075.tif pages</i>
01/03/2005	 Judgment <i>CLERK'S CERTIFICATE/JUDGMENT AFFIRMED</i>	<i>81C0538670077.tif pages</i>
10/25/2007	 Motion <i>PETITIONER'S MTN FOR APPOINTMENT OF COUNSEL/21</i>	<i>81C0538670079.tif pages</i>
10/25/2007	 Motion <i>PETITIONER'S TO PROCEED IN FORMA PAUPERIS /22</i>	<i>81C0538670080.tif pages</i>
10/25/2007	 Petition <i>PTN FOR WRIT OF HABEAS CORPUS</i>	<i>81C0538670081.tif pages</i>
10/25/2007	 Exhibits <i>PETITIONERS EXHIBIT IN SUPPORT OF PTN FOR WRIT OF HABEAS CORPUS</i>	<i>81C0538670082.tif pages</i>
10/25/2007	 Exhibits <i>PETITIONERS EXHIBITS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS VOLUME FOUR OF FOUR VOLUME FOUR OF FOUR</i>	<i>81C0538670083.tif pages</i>
10/25/2007	 Exhibits <i>PETITIONERS EXHIBITS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS VOLUME THREE OF FOUR VOLUME THREE OF FOUR</i>	<i>81C0538670084.tif pages</i>
10/25/2007	 Receipt of Copy <i>RECEIPT OF COPY</i>	<i>81C0538670085.tif pages</i>
10/25/2007	 Exhibits <i>PETITIONERS EXHIBITS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS VOLUME TWO OF FOUR VOLUME TWO OF FOUR</i>	<i>81C0538670086.tif pages</i>
10/25/2007	 Affidavit in Support Filed By: Defendant Howard, Samuel <i>AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS</i>	<i>81C0538670087.tif pages</i>
11/06/2007	Motion for Appointment (8:30 AM) (Judicial Officer: Glass, Jackie) Events: 10/25/2007 Motion <i>PETITIONER'S MTN FOR APPOINTMENT OF COUNSEL/21 Heard By: Jackie Glass</i>	
11/06/2007	Petition to Proceed in Forma Pauperis (8:30 AM) (Judicial Officer: Glass, Jackie) Events: 10/25/2007 Motion <i>PETITIONER'S TO PROCEED IN FORMA PAUPERIS /22 Heard By: Jackie Glass</i>	
11/06/2007	All Pending Motions (8:30 AM) (Judicial Officer: Glass, Jackie) <i>ALL PENDING MOTIONS 11/6/07 Court Clerk: Sandra Jeter/sj Relief Clerk: Denise Trujillo Reporter/Recorder: Rachelle Hamilton Heard By: Jackie Glass</i>	
11/06/2007	Motion <i>ALL PENDING MOTIONS 11/6/07</i>	<i>81C0538670088.tif pages</i>

DEPARTMENT 17
CASE SUMMARY
CASE No. 81C053867






11/06/2007	Motion <i>STATE'S MOTION TO DISMISS</i>	81C0538670089.tif pages
12/13/2007	Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer: Glass, Jackie) Events: 10/25/2007 Petition <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Jackie Glass</i>	
03/12/2008	 Order <i>STIPULATION AND ORDER EXTENDING BRIEF SCHEDULE AND VACATING HEARING DATE</i>	81C0538670090.tif pages
04/03/2008	Petition for Writ of Habeas Corpus (8:30 AM) <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Jackie Glass</i>	
04/03/2008	Motion (8:30 AM) (Judicial Officer: Glass, Jackie) Events: 11/06/2007 Motion <i>STATE'S MOTION TO DISMISS Heard By: Jackie Glass</i>	
04/08/2008	 Notice <i>STATES NOTICE OF MOTION AND MOTION TO DISMISS DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) HABEAS CORPUS (POST CONVICTION)</i>	81C0538670092.tif pages
05/13/2008	 Order <i>STIPULATION AND ORDER</i>	81C0538670093.tif pages
06/05/2008	Petition for Writ of Habeas Corpus (8:30 AM) <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Jackie Glass</i>	
06/05/2008	Motion (8:30 AM) <i>STATE'S MOTION TO DISMISS Heard By: Jackie Glass</i>	
07/09/2008	 Order Filed By: Defendant Howard, Samuel <i>STIPULATION AND ORDER</i>	81C0538670094.tif pages
08/26/2008	Petition for Writ of Habeas Corpus (8:30 AM) <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Jackie Glass</i>	
08/26/2008	Motion (9:00 AM) <i>STATE'S MOTION TO DISMISS Heard By: Jackie Glass</i>	
09/17/2008	 Order Filed By: Defendant Howard, Samuel <i>STIPULATION AND ORDER</i>	81C0538670095.tif pages
10/27/2008	Motion (8:30 AM) <i>STATE'S MOTION TO DISMISS Heard By: Jackie Glass</i>	
10/28/2008	Motion (8:30 AM) <i>STATE'S MOTION TO DISMISS Heard By: Jackie Glass</i>	
10/28/2008	Petition for Writ of Habeas Corpus (9:00 AM) <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Jackie Glass</i>	
12/10/2008	 Order Filed By: Defendant Howard, Samuel <i>STIPULATION AND ORDER</i>	81C0538670096.tif pages

DEPARTMENT 17
CASE SUMMARY
CASE No. 81C053867









02/09/2009	Petition for Writ of Habeas Corpus (8:00 AM) <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Villani</i>	
02/09/2009	Motion (8:30 AM) <i>STATE'S MOTION TO DISMISS Heard By: Jackie Glass</i>	
02/19/2009	Petition for Writ of Habeas Corpus (8:00 AM) <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Villani</i>	
02/19/2009	Motion (8:00 AM) <i>STATE'S MOTION TO DISMISS Heard By: Michael Villani</i>	
02/19/2009	All Pending Motions (8:00 AM) (Judicial Officer: Bonaventure, Joseph T.) <i>ALL PENDING MOTIONS 2-19-09 Court Clerk: Kristen Brown Reporter/Recorder: Michelle Ramsey Heard By: JOSEPH BONAVENTURE</i>	
02/19/2009	Motion <i>ALL PENDING MOTIONS 2-19-09</i>	81C0538670098.tif pages
02/24/2009	 Exhibits Filed By: Defendant Howard, Samuel <i>PETITIONERS EXHIBITS IN SUPPORT OF AMENDED PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION - VOLUME TWO OF FOUR CORPUS POST CONVICTION - VOLUME TWO OF FOUR</i>	81C0538670099.tif pages
02/24/2009	 Exhibits Filed By: Defendant Howard, Samuel <i>PETITIONERS EXHIBITS IN SUPPORT OF AMENDED PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION - VOLUME FOUR OF FOUR CORPUS POST CONVICTION - VOLUME FOUR OF FOUR</i>	81C0538670100.tif pages
02/24/2009	 Exhibits Filed By: Defendant Howard, Samuel <i>PETITIONERS EXHIBITS IN SUPPORT OF AMENDED PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION - VOLUME THREE OF FOUR CORPUS POST CONVICTION - VOLUME THREE OF FOUR</i>	81C0538670101.tif pages
02/24/2009	 Exhibits Filed By: Defendant Howard, Samuel <i>PETITIONERS EXHIBITS IN SUPPORT OF AMENDED PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION CORPUS POST CONVICTION</i>	81C0538670102.tif pages
02/24/2009	 Opposition Filed By: Defendant Howard, Samuel <i>PETITIONERS OPPOSITION TO MTN TO DISMISS</i>	81C0538670103.tif pages
02/24/2009	 Order Filed By: Defendant Howard, Samuel <i>STIPULATION AND ORDER</i>	81C0538670104.tif pages
02/24/2009	 Petition Filed by: Defendant Howard, Samuel <i>AMENDED PETITION FOR WRIT OF HABEAS CORPUS - POST CONVICTION</i>	81C0538670105.tif pages
05/06/2009	 Petition Filed by: Defendant Howard, Samuel	81C0538670106.tif pages

DEPARTMENT 17
CASE SUMMARY
CASE No. 81C053867


PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION


06/05/2009	 Exhibits Filed By: Defendant Howard, Samuel <i>SUBMISSION OF EXHIBITS IN SUPPORT OF PETITIONERS PETITION FOR WRIT OF HABEAS CORPUS CORPUS</i>	81C0538670107.tif pages
06/11/2009	Petition for Writ of Habeas Corpus (8:00 AM) <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Villani</i>	
06/11/2009	Motion (8:00 AM) <i>STATE'S MOTION TO DISMISS Heard By: Michael Villani</i>	
06/11/2009	 Notice Filed By: Defendant Howard, Samuel <i>NOTICE TO THE COURT REGARDING THE SERVICE OF THE PETITION FOR WRIT OF HABEAS CORPUS HABEAS CORPUS</i>	81C0538670108.tif pages
06/18/2009	Petition for Writ of Habeas Corpus (8:00 AM) <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Villani</i>	
06/18/2009	Motion (8:00 AM) <i>STATE'S MOTION TO DISMISS Court Clerk: Kristen Brown Relief Clerk: Michele Tucker/mlt Reporter/Recorder: Michelle Ramsey Heard By: Villani, Michael</i>	
06/29/2009	 Order <i>STIPULATION AND ORDER EXTENDING BRIEFING SCHEDULE AND VACATING HEARING DATE</i>	81C0538670109.tif pages
08/20/2009	 Order <i>STIPULATION AND ORDER EXTENDING BRIEFING SCHEDULE AND VACATING HEARING DATE</i>	81C0538670110.tif pages
08/27/2009	Petition for Writ of Habeas Corpus (8:00 AM) <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Villani</i>	
08/27/2009	Motion (8:00 AM) <i>STATE'S MOTION TO DISMISS Heard By: Michael Villani</i>	
10/29/2009	All Pending Motions (8:00 AM) (Judicial Officer: Villani, Michael) <i>ALL PENDING MOTIONS 10-29-09 Court Clerk: Kristen Brown Reporter/Recorder: Michelle Ramsey Heard By: Michael Villani</i>	
10/29/2009	Petition for Writ of Habeas Corpus (8:15 AM) <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Villani</i>	
10/29/2009	Motion (8:15 AM) <i>STATE'S MOTION TO DISMISS Heard By: Michael Villani</i>	
10/29/2009	Motion <i>ALL PENDING MOTIONS 10-29-09</i>	81C0538670111.tif pages
11/06/2009	 Order <i>STIPULATION AND ORDER EXTENDING BRIEFING SCHEDULE AND VACATING HEARING DATE</i>	81C0538670112.tif pages
11/12/2009	Petition for Writ of Habeas Corpus (8:15 AM) <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Villani</i>	


DEPARTMENT 17
CASE SUMMARY
CASE No. 81C053867

11/12/2009	Motion (8:15 AM) <i>STATE'S MOTION TO DISMISS Court Clerk: Kristen Brown Reporter/Recorder: Michelle Ramsey Heard By: Villani, Michael</i>	
12/08/2009	 Order Filed By: Defendant Howard, Samuel <i>STIPULATION AND ORDER</i>	81C0538670113.tif pages
12/18/2009	 Response Filed by: Defendant Howard, Samuel <i>RESPONSE TO MOTION TO DISMISS</i>	81C0538670114.tif pages
01/05/2010	 Supplement Filed by: Defendant Howard, Samuel <i>NOTICE OF SUPPLEMENTAL AUTHORITY</i>	81C0538670115.tif pages
01/25/2010	 Order Filed By: Defendant Howard, Samuel <i>STIPULATION AND ORDER</i>	81C0538670116.tif pages
01/28/2010	Motion (8:15 AM) (Judicial Officer: Villani, Michael) <i>STATE'S MOTION TO DISMISS Relief Clerk: Tia Everett/te Reporter/Recorder: Michelle Ramsey Heard By: Villani, Michael</i>	
01/28/2010	Petition for Writ of Habeas Corpus (9:00 AM) (Judicial Officer: Villani, Michael) <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Villani</i>	
02/04/2010	Motion (8:15 AM) <i>STATE'S MOTION TO DISMISS Heard By: Jackie Glass</i>	
02/04/2010	All Pending Motions (8:15 AM) (Judicial Officer: Villani, Michael) <i>ALL PENDING MOTIONS (02-04-10) Court Clerk: Carol Donahoo Heard By: Michael Villani</i>	
02/04/2010	Petition for Writ of Habeas Corpus (9:00 AM) <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Jackie Glass</i>	
02/04/2010	 Errata <i>NOTICE OF ERRATA</i>	81C0538670117.tif pages
03/15/2010	 Reporters Transcript <i>REPORTER'S TRANSCRIPT OF PROCEEDINGS - DEFTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS - STATES MTN TO DISMISS - HEARD 02-04-10 HABEAS CORPUS - STATES MTN TO DISMISS - HEARD 02-04-10</i>	81C0538670118.tif pages
05/11/2010	 Request <i>STATES NOTICE OF MOTION AND MOTION TO DISMISS DEFENDANTS AMENDED PETITION FOR WRIT OF HABEAS CORPUS - POST CONVICTION AND REPLY TO OPPOSITION PETITION FOR WRIT OF HABEAS CORPUS - POST CONVICTION AND REPLY TO OPPOSITION</i>	81C0538670119.tif pages
05/13/2010	Motion <i>ALL PENDING MOTIONS (02-04-10)</i>	81C0538670120.tif pages
11/06/2010	 Findings of Fact, Conclusions of Law and Order Filed By: Plaintiff State of Nevada	

DEPARTMENT 17
CASE SUMMARY
CASE No. 81C053867

12/06/2010  Notice of Entry of Decision and Order

12/21/2010  Notice of Appeal (criminal)
Notice of Appeal

12/21/2010  Case Appeal Statement
Case Appeal Statement

DATE	FINANCIAL INFORMATION
Defendant Howard, Samuel Total Charges Total Payments and Credits Balance Due as of 1/4/2011	38.00 38.00 0.00

1 **ORDR**

2 DAVID ROGER
 3 Clark County District Attorney
 Nevada Bar #002781
 4 NANCY A. BECKER
 Deputy District Attorney
 Nevada Bar #00145
 5 200 Lewis Avenue
 Las Vegas, Nevada 89155-2212
 (702) 671-2500
 6 Attorney for Plaintiff

Nov 6 10 21 AM '10

81C053867

FCL

Finding of Fact and Conclusions of Law
1039704

7 DISTRICT COURT
 CLARK COUNTY, NEVADA



8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 SAMUEL HOWARD,
 #0624173

13 Defendant.

CASE NO: 81C053867

DEPT NO: XVII

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

16 DATE OF HEARING: 2/4/10
 17 TIME OF HEARING: 8:30 A.M.

18 THIS CAUSE having come on for hearing before the Honorable MICHAEL
 19 VILLANI, District Judge, on the 4th day of February, 2010, the Petitioner not being present,
 20 and his presence having been waived by Counsel, MICHAEL CHARLTON, Assistant
 21 Federal Public Defender, the Respondent being represented by DAVID ROGER, District
 22 Attorney, by and through NANCY A. BECKER, Deputy District Attorney, and the Court
 23 having considered the matter, including briefs, transcripts, arguments of counsel, and
 24 documents on file herein, now therefore, the Court makes the following findings of fact and
 25 conclusions of law:

26 PROCEDURAL HISTORY

27 On May 20, 1981 defendant Samuel Howard was indicted on one count of Robbery
 With Use of a Deadly Weapon involving a Sears security officer named Keith Kinsey on

RECEIVED
 DEPT. 17 ON

NOV - 4 2010

36✓

1 March 26, 1980; one count of Robbery With Use Of A Deadly Weapon involving Dr.
2 George Monahan and one count of Murder With Use Of A Deadly Weapon involving Dr.
3 Monahan, both committed on March 27, 1980. With respect to the murder count, the State
4 alleged two theories: willful, premeditated and deliberate murder or murder in the
5 commission of a robbery.

6 Howard was arrested in California where he was serving time for a robbery
7 committed on or about April 1, 1980. He was extradited in November of 1982 and an initial
8 appearance was set for November 23, 1982. At that time the matter was continued for
9 appointment of counsel, the Clark County Public Defender's Office.

10 On November 30, 1982, Terry Jackson of the Public Defender's Office represented to
11 the district court that Howard qualified for the Public Defender's services; however, Mr.
12 Jackson indicated he had a personal conflict as he was a friend of the victim. The district
13 judge determined that the relationship did not create a conflict for the Public Defender's
14 Office, barred Mr. Jackson from involvement with the case and appointed another deputy
15 public defender to Howard's case.

16 Howard's counsel requested a one week continuance to consult with Howard about
17 the case. Howard objected, insisted on being arraigned and demanded a speedy trial. After
18 discussion, the district court accepted a plea of not guilty and set a trial date of January 10,
19 1983.

20 Howard filed a motion in late in December asking for his counsel to be removed and
21 substitute counsel appointed. Counsel filed a response addressing issues raised in the
22 motion. After a hearing, the district court determined there were no grounds for removing
23 the Clark County Public Defender's Office.

24 A motion for a psychiatric expert was filed. At a hearing, the district court inquired if
25 this was for competency and Howard's counsel indicated it was not, but it was to help
26 evaluate Howard's mental status at the time of the events. The district court granted the
27 motion and appointed Dr. O'Gorman to assist the defense.

28 At a status check on January 4, 1983, defense counsel indicated the defense could not

1 be ready for the January 10th trial date due to the need to conduct additional investigation and
2 discovery. In addition, counsel noted Howard was refusing to cooperate with counsel.
3 Howard objected to any continuance with knowledge that his attorneys' could not complete
4 the investigations by that date. Given Howard's objections, the district court stated the trial
5 would go forward as scheduled.

6 On the day of trial, defense counsel moved to withdraw stating that Mr. Jackson's
7 conflict created mistrust in Howard and he therefore refused to cooperate. This motion was
8 denied. Defense counsel then moved for a continuance as they did not feel comfortable
9 proceeding to trial in this case, given the issues involved, with only six weeks to prepare.
10 After extensive argument and a recess so that counsel could discuss the issue with Howard,
11 the district court granted the continuance over Howard's objections.

12 The guilt phase of the trial began on April 11, 1983 and concluded on April 22, 1983.
13 The jury returned a verdict of guilty on all three counts. The penalty phase was set to begin
14 on May 2, 1983. In the interim, one of the jurors tried to contact the trial judge about a
15 scheduling problem. Because the district judge was on vacation, someone referred the juror
16 to the District Attorney's Office. That Office referred the juror to the jury commissioner.
17 Howard moved for a mistrial or elimination of the death penalty as a sentencing option based
18 upon this contact. After conducting an evidentiary hearing, the district court denied
19 Howard's motions.

20 Defense counsel made an oral motion to withdraw indicating they had irreconcilable
21 differences with Howard over the conduct of the penalty phase. Counsel indicated they had
22 documents and witnesses in mitigation, but that Howard had instructed them not to present
23 any mitigation evidence. Howard also instructed them not to argue mitigation and they
24 would not follow that directive, but would argue mitigation. Counsel also indicated that
25 Howard told them he wished to testify, but would not tell them the substance of his
26 testimony. Finally counsel indicated they had attempted to get military and mental health
27 records but were unsuccessful because the agencies possessing the records would not send
28 copies without a release signed by Howard and Howard refused to sign the releases. The

1 district court canvassed Howard if this was correct and Howard confirmed it was true and
2 that he did not want any mitigation presented. The district court found Howard understood
3 the consequences of his decision and denied the motion to withdraw concluding defense
4 counsel's disagreement with Howard's decision was not a valid basis to withdraw.

5 The penalty phase began on May 2, 1983 and concluded on May 4, 1983. The State
6 originally alleged three aggravating circumstances: 1) the murder was committed by a
7 person who had previously been convicted of a felony involving the use of violence - namely
8 Robbery With Use Of A Deadly Weapon in California, 2) prior violent felony - a 1978 New
9 York conviction in absentia for Robbery With Use Of A Deadly Weapon; and 3) the murder
10 occurred in the commission of a robbery. Howard moved to strike the California conviction
11 because the conviction occurred after the Monahan murder and the New York conviction
12 because it was not supported by a Judgment of Conviction. The district court struck the
13 California conviction but denied the motion as to the New York conviction, noting that the
14 records reflected a jury had convicted Howard and the lack of a formal judgment was the
15 result of Howard's absconding in the middle of trial.

16 The State presented evidence of the aggravating circumstances and Howard took the
17 stand and related information on his background. During a break in the testimony, Howard
18 suddenly stated he didn't understand what mitigation meant and that he would leave it up to
19 his attorneys to decide what to do. The district court asked Howard if he was now
20 instructing his attorneys to present mitigation and he refused to answer the question.
21 Howard did indicate that he wanted his attorney's to argue mitigation and defense counsel
22 asked for time to prepare which was granted. The jury found both aggravating
23 circumstances existed and that no mitigating circumstances outweighed the aggravating
24 circumstances. The jury returned a sentence of death.

25 Howard appealed to the Nevada Supreme Court. Elizabeth Hatcher represented
26 Howard on Direct Appeal. Howard raised the following issues on direct appeal: 1)
27 ineffective assistance of counsel based on actual conflict arising out of Jackson's relationship
28 with Dr. Monahan; 2) denial of a motion to sever the Sears' count from the Monahan counts;

1 3) denial of an evidentiary hearing on a motion to suppress Howard's statements and
2 evidence derived therefrom; 4) refusal to instruct the jury that accomplice testimony should
3 be viewed with mistrust; 5) refusal to instruct the jury that Dawana Thomas was an
4 accomplice as a matter of law; 6) denial of a motion to strike the felony robbery and New
5 York prior violent felony aggravators; and 7) the giving of a anti-sympathy instruction and
6 refusal to instruct the jury that sympathy and mercy were appropriate considerations.

7 The Nevada Supreme Court affirmed Howard's conviction and sentence. Howard v.
8 State, 102 Nev. 572, 729 P.2d 1341 (1986) (hereinafter "Howard I"). The Supreme Court
9 held that the relationship of two members of the Public Defender's Office with Monahan did
10 not objectively justify Howard's distrust and there was no evidence that those attorneys had
11 any involvement in his case. Therefore no actual conflict existed and the claim of ineffective
12 assistance of counsel on this basis had no merit. The Court further concluded the district
13 court did not abuse its discretion by refusing to sever the counts and by not granting an
14 evidentiary hearing on the suppression motion. The Court noted that the record reflected
15 proper Miranda warnings were given and the statements were admitted as rebuttal and
16 impeachment after Howard testified. The Court also found that the district court did not
17 error in rejecting the two accomplice instructions; the anti-sympathy language in one of the
18 instructions was not err in light of the totality of the instructions and the record supported the
19 district court's refusal to instruct on certain mitigating circumstances for lack of evidence.
20 The Court concluded by stating it had considered Howard's other claims of error and found
21 them to be without merit. Howard filed a petition for rehearing which was denied on March
22 24, 1987. Remittitur was stayed pending the filing of a petition for Writ of Certiorari to the
23 United States Supreme Court on the anti-sympathy issues. John Graves, Jr. was appointed to
24 represent Howard on the writ petition. The petition was denied on October 5, 1987 and
25 remittitur issued on February 12, 1988.

26 On October 28, 1987, Howard filed his first State petition for post-conviction relief.
27 John Graves Jr. and Carmine Colucci originally represented Howard on the petition. They
28 withdrew and David Schieck was appointed. The petition raised the following claims for

1 relief: 1) ineffective assistance of trial counsel – guilt phase - failure to present an insanity
2 defense and Howard's history of mental illness and commitments; 2) ineffective assistance
3 of trial counsel – penalty phase – failure to present mental health history and documents;
4 failure to present expert psychiatric evidence that Howard was not a danger to jail
5 population; failure to rebut future dangerousness evidence with jail records and personnel;
6 failure to object to improper prosecutorial arguments involving statistics regarding
7 deterrence, predictions of future victims, Howard's lack of rehabilitation, aligning the jury
8 with "future victims," comparing victim's life with Howard's life, diluting jury's
9 responsibility by suggesting it was shared with other entities, voicing personal opinions in
10 support of the death penalty and its application to Howard, references to Charles Manson,
11 voice of society arguments and referring to Howard as an animal; 3) ineffective assistance of
12 appellate counsel – failure to raise prosecutorial misconduct issues.

13 An evidentiary hearing was held on August 25, 1988. George Franzen, Lizzie
14 Hatcher, John Graves and Howard testified. Supplemental points and authorities were filed
15 on October 3, 1988. The district court entered an oral decision denying the petition on
16 February 14, 1989. The district court concluded that trial counsel performed admirably
17 under difficult circumstances created by Howard himself. As to the failure to present an
18 insanity defense and present mental health records, the court found that Howard was
19 canvassed throughout the proceedings about his refusal to cooperate in obtaining those
20 records, particularly his refusal to sign releases. Howard knew what was going on, was
21 competent and was trying to manipulate the proceedings and that there was no evidence to
22 support an insanity defense, therefore counsel were not ineffective in this regard.

23 On the issue of failure to object to prosecutorial misconduct, the district court found
24 that defense counsel did object where appropriate and the arguments that were not objected
25 to did not amount to misconduct and were a fair comment on the evidence. Even if some of
26 the comments were improper, the district court concluded that they would not have
27 succeeded on appeal as they were harmless beyond a reasonable doubt. Formal Findings Of
28

1 Fact And Conclusions Of Law were filed on July 5, 1989.¹

2 The Nevada Supreme Court affirmed the district court's denial of Howard's first State
3 petition for post-conviction relief. Howard v. State, 106 Nev. 713, 800 P.2d 175 (1990)
4 (hereinafter "Howard II"). David Schieck represented Howard in that appeal. On appeal
5 Howard raised ineffective assistance of trial and appellate counsel regarding the
6 prosecutorial misconduct issues. The Supreme Court found three comments to be improper
7 under Collier v. State, 101 Nev. 473, 705 P.2d 1126 (1985)²: 1) a personal opinion that
8 Howard merited the death penalty, 2) a golden rule argument – asking the jury to put
9 themselves in the shoes of a future victims and 3) an argument without support from
10 evidence that Howard might escape. The Court found that counsel were ineffective for
11 failing to object to these arguments but concluded there was no reasonable probability of a
12 contrary result absent these remarks and therefore no prejudice. The Court rejected
13 Howard's other contentions of improper argument.

14 With respect the mitigation evidence issues, the Nevada Supreme Court upheld the
15 district court's findings that this was a result of Howard's own conduct and not ineffective
16 assistance of counsel.³

17 Howard proceeded to file a second Federal habeas corpus petition on May 1, 1991.
18 This proceeding was stayed for Howard to exhaust his state remedies on October 16, 1991.

19 Howard then filed a second State petition for post-conviction relief on December 16,
20 1991. Cal J. Potter, III and Fred Atcheson represented Howard in the second State petition.
21 In that petition, Howard alleged denial of a fair trial based on prosecutorial misconduct,
22 namely: 1) jury tampering based on the prosecutor's contact with the juror between the guilt
23

24 ¹During the pendency of the first State petition for post-conviction relief, Howard filed his first
25 Federal petition for habeas relief. That petition was dismissed without prejudice on June 23, 1988.

26 ² Collier was decided two years after Howard's trial.

27 ³ The State filed a petition for rehearing with respect to sanctions imposed on the prosecutor because
28 his remarks violated Collier. The State noted that Howard's trial occurred before Collier therefore
the Court should not sanction counsel for conduct that occurred before the Court issued the Collier
opinion. Rehearing was denied February 7, 1991.

1 and penalty phases; 2) expressions of personal belief and a personal endorsement of the
2 death penalty; 3) reference to the improbability of rehabilitation, escape, future killings; 3)
3 comparing Howard's life with Dr. Monahan's and 4) a statement that the community would
4 benefit from Howard's death. The petition also asserted an ineffective assistance of trial
5 counsel claim for failing to explain to Howard the nature of mitigating circumstances and
6 their importance. Finally the petition raised a speedy trial violation and cumulative error.

7 The State moved to dismiss the second State petition as procedurally barred or
8 governed by the law of the case on February 10, 1992. In his reply, Howard dropped his
9 speedy trial claim as unsubstantiated and indicated if the other claims were barred, then they
10 had been exhausted and Howard could proceed in Federal court.

11 The district court denied the petition on July 7, 1992. The district court found that the
12 claims of prosecutorial misconduct and ineffective assistance of counsel relating thereto as
13 well as the claims relating to mitigation evidence had been heard and found to be without
14 merit or failed to demonstrate prejudice. Such claims were therefore barred by the law of the
15 case. The district court further concluded that any claim of cumulative error and any issues
16 not raised in previous proceedings were procedurally barred. Finally the district court found
17 the speedy trial violation was a naked allegation, frivolous and procedurally barred.

18 Howard appealed the denial of his second State petition to the Nevada Supreme
19 Court, which dismissed his appeal on March 19, 1993. The Order Dismissing Appeal found
20 that Howard's second State petition was so lacking in merit that briefing and oral argument
21 was not warranted. Howard filed a petition for Writ of Certiorari challenging the summary
22 affirmance and the United States Supreme Court denied the request on October 4, 1993.

23 On December 8, 1993, Howard returned to federal court and filed a new pro se habeas
24 petition rather than lifting the stay in the previous petition. After almost three years, on
25 September 2, 1996, the federal district court dismissed the petition as inadequate and ordered
26 Howard to file a second amended federal petition that contained more than conclusory
27 allegations. Thereafter Howard, now represented by Patricia Erickson, filed a Second
28 Amended Petition for Writ of Habeas Corpus on January 27, 1997. After almost five years,

1 on September 23, 2002, the Second Amended Federal petition was stayed for Howard to
2 again exhaust his federal claims in state court.

3 Howard filed his third State petition for post-conviction relief on December 20, 2002.
4 Patricia Erickson represented him on this petition. The petition asserted the following
5 claims, phrased generally as denial of a fundamentally fair trial or assistance of counsel
6 under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution or as
7 cruel and unusual punishment under the Eighth Amendment: 1) failure to sever Sears
8 robbery count from Monahan robbery/murder counts; 2) failure to suppress Howard's
9 statements to LVMPD and physical evidence derived therefrom; 3) speedy trial violation; 4)
10 trial counsel actual conflict of interest – Jackson issue; 5) failure to give accomplice as a
11 matter of law and accomplice testimony should be viewed with distrust instructions – Dwana
12 Thomas; 6) improper jury instructions – diluting standard of proof - reasonable doubt,
13 second degree murder as lesser included of first degree murder, premeditation, intent and
14 malice instructions; 7) improper jury instructions – failure to clearly define first degree
15 murder as specific intent crime requiring malice and premeditation; 8) improper
16 premeditation instruction blurred distinction between first and second degree murder; 9)
17 improper malice instruction; 10) improper anti-sympathy instruction; 11) failure to give
18 influence of extreme mental or emotional disturbance mitigator instruction; 12) improper
19 limitation of mitigation by giving only “any other mitigating circumstance” instruction; 13)
20 failure to instruct that mitigating circumstances findings need not be unanimous; 14)
21 prosecutorial misconduct – jury tampering, stating personal beliefs, personal endorsement of
22 death penalty, improper argument regarding rehabilitation, escape and future killings;
23 comparing Howard and victim's lives, comparing Howard to notorious murder (Charles
24 Manson) and improper community benefit argument; 15) use of felony robbery as aggravator
25 and basis for first degree murder; 16) improper reasonable doubt instruction; 17) ineffective
26 assistance of trial counsel – inadequate contact, conflict of interest, failure to contact
27 California counsel to obtain records, failure to obtain Patton and Atescadero hospital records,
28 failure to obtain California trial transcripts, failure to review Clark County Detention Center

1 medical records, failure to challenge competency to stand trial, failure to obtain suppression
2 hearing, failure to present legal insanity, failure to object to reasonable doubt instruction,
3 failure to view visiting records and call witnesses based upon same, failure to call Pinkie
4 Williams and Carol Walker in penalty phase, failure to investigate and call Benjamin Evans
5 in penalty phase, failure to obtain San Bernardino medical records regarding suicide attempt,
6 failure to obtain military records, failure to adequately explain concept of mitigation
7 evidence, failure to object to prosecutorial misconduct in closing arguments, failure to refute
8 future dangerousness argument, failure to object to trial court's limitation of mitigating
9 circumstances and failure to object to instructions which allegedly required unanimous
10 finding of mitigating circumstances; 18) ineffective assistance of appellate counsel – failed
11 to raise claims 3, 4, 6-9, 12, 13, 15, 16, 20 and 21 on appeal; 19) ineffective assistance of
12 post-conviction counsel – failure to adequately investigate and develop all trial and appeal
13 claims; 20) cumulative error; 21) Nevada's death penalty is administered in an arbitrary,
14 irrational and capricious fashion; 22) lethal injection constitutes cruel and unusual
15 punishment and 23) the death penalty violates evolving standards of decency.

16 The State filed a motion to dismiss Howard's third State petition on March 4, 2001.
17 The State argued that the entire petition was procedurally barred under NRS 34.726(1) (one
18 year limit) and NRS 34.800 (five year laches) and that Howard had not shown good cause
19 for delay in raising the claims to overcome the procedural bars. The State also analyzed
20 each claim and noted what issues had already been raised and decided adversely to Howard
21 or should have been raised and were waived under NRS 34.810..

22 Howard filed an amended third State petition. The amended petition expanded the
23 factual matters under Claim 17 regarding Howard's family background that Howard asserted
24 should have been presented in mitigation.

25 On August 20, 2003, Howard filed his opposition to the State's motion to dismiss his
26 third State petition. As good cause for delay, Howard alleged Nevada's successive petition
27 and waiver bar (NRS 34.810) is inconsistently applied and Pellegrini v. State, 117 Nev. 860,
28 34 P.3d 519 (2001) is not controlling. Howard contended NRS 34.726 did not apply because

1 any delay was the fault of counsel not Howard and NRS 34.726 is unconstitutional and
2 cannot be applied to successive petitions Pellegrini notwithstanding. Howard argued the
3 Due process and Equal Protection clauses of the Federal Constitution bar application of NRS
4 34.726, NRS 34.800 and NRS 34.810 to Howard. In addition, Howard asserted NRS 34.800
5 did not apply because the State had not shown prejudice and the presumption of prejudice
6 was overcome by the allegations in the petition.

7 The State filed a reply to the opposition on September 24, 2003. The district court
8 issued an oral decision on October 2, 2003 dismissing the third State petition as procedurally
9 barred under NRS 34.726 and finding Howard had failed to overcome the bar by showing
10 good cause for delay. The district court also independently dismissed the claims under NRS
11 34.810. Written findings were entered on October 23, 2003.

12 Howard appealed the dismissal to the Nevada Supreme Court, which affirmed the
13 district court's dismissal of the third State petition on December 4, 2004. The High Court
14 addressed Howard's assertions that he had either overcome the procedural bars or they could
15 not constitutionally be applied to him and rejected them. Among its conclusions, the Court
16 noted that the record reflected Howard was aware that all his claims challenging the
17 conviction or imposition of sentence must be joined in a single petition and that Howard had
18 no right to post-conviction counsel at the time of the filing of his first and second State
19 petitions for post-conviction relief and hence ineffectiveness of post-conviction counsel
20 could not be good cause for delay.⁴

21 Howard then returned to Federal district court where he filed his Third Amended
22 Petition for Writ of Habeas Corpus on October 23, 2005. Subsequently, without seeking
23 approval from the Federal Court, the Federal Public Defender's Office filed, on Howard's
24 behalf, the current Fourth State Post-Conviction Petition on October 27, 2007. The State
25 filed a motion to dismiss the Fourth State Petition on April 8, 2008. The parties agreed to
26 stay this case for several months while Howard sought permission from the Federal District
27
28

⁴ See 1987 Nev. Stat., ch. 539, § 42 at 1230 (providing that appointment of counsel was discretionary not mandatory).

1 Court to hold his federal petition for post-conviction habeas corpus in abeyance pending
2 exhaustion of the claims already filed in the Fourth State Petition and of new claims he
3 wished to file in State court as a result of the Ninth Circuit's decision in Polk v. Sandoval,
4 503 F.3d 903, 910 (9th Cir. 2007).

5 The United States District Court denied Howards' motion for stay and abeyance on
6 January 9, 2009. Thereafter, Howard filed an Opposition to the State's original motion to
7 dismiss and an Amended Petition on February 24, 2009. The State responded to Howard's
8 opposition to the original motion to dismiss and additionally moved to dismiss the Amended
9 Fourth Petition on October 7, 2009.⁵ Howard filed an Opposition to the Amended Motion to
10 Dismiss on December 18, 2009. Howard filed supplemental authorities on January 5, 2010.

11 Argument on the State's motion to dismiss was heard on February 4, 2010. The
12 matter was taken under advisement so the district court could review the extensive record. A
13 Minute Order Decision was issued on May 13, 2010 dismissing the Fourth State Petition as
14 procedurally barred.

15 STATEMENT OF FACTS

16 On March 26, 1980, around noon, a Sears' security officer, Keith Kinsey, observed
17 Howard take a sander from a shelf, remove the packing and then claim a fraudulent refund
18 slip from a cashier. Kinsey approached Howard and asked him to accompany Kinsey to a
19 security office. Kinsey enlisted the aid of two other store employees. Howard was
20 cooperative, alert and indicated there must be some mistake. In the security office, Kinsey
21 observed Howard had a gun under his jacket and attempted to handcuff Howard for safety
22 reasons. A struggle broke out and Howard drew a .357 revolver and pointed it at the three
23 men. Howard had the men lay face down on the floor and took Kinsey's security badge, ID
24 and a portable radio (walkie-talkie). Howard threatened to kill the three men if they
25

26 ⁵ Although both defense counsel and this Court received a copy of the Opposition and
27 Amended Motion to Dismiss, for some reason it was not filed. This Court authorized the
28 District Attorney's Office to file a Notice of Errata and attach a copy of the previously
distributed Opposition and Amended Motion to Dismiss. This was filed on February 4,
2010. Subsequently, the missing document was located and the original Amended Motion to
Dismiss was officially filed on May 11, 2010.

1 followed him and he fled to his car in the parking lot. A yellow gold jewelry ID bracelet was
2 found at the scene and impounded. It was later identified as Howard's. The Sears in
3 question was located at the corner of Desert Inn Road and Maryland Parkway at the
4 Boulevard Mall in Las Vegas, Nevada.

5 Dawana Thomas, Howard's girlfriend, was waiting for him in the car. Howard had
6 told her to wait for him and she was unaware of his intentions to obtain money through a
7 false refund transaction. Fleeing from the robbery, Howard hopped into the car, a 1980
8 black Oldsmobile Cutlass with New York plates 614 ZHQ and sped away from the mall.
9 While escaping, Howard rear-ended a white corvette driven by Stephen Houchin. Houchin
10 followed Howard when Howard left the scene of the accident. Howard pointed the .357
11 revolver out the window of the Olds and at Houchin's face, telling Houchin to mind his own
12 business.

13 Howard drove to the Castaways Motel on Las Vegas Boulevard South and parked the
14 car for a few hours. Thomas and Howard walked about and Howard made some phone calls.
15 Later that evening Howard left for a couple of hours. When he returned he told Thomas that
16 he had met up with a pimp, but the pimps' girls were with him so he couldn't rob him.
17 Howard indicated he had arranged to meet with the "pimp" the next morning and would rob
18 him then.

19 Howard and Thomas drove to the Western Six motel located on the Boulder Highway
20 near the intersection of Desert Inn Road. The couple had stayed at this motel before and
21 Howard instructed Thomas to register under an assumed name, Barbara Jackson. The motel
22 registration card under that name was admitted into evidence and a documents' examiner
23 compared handwriting on the card with Thomas' and indicated they matched.

24 Around 6:00 a.m. on March 27, 1980, Thomas and Howard left the motel and went to
25 breakfast. After breakfast, Thomas dropped Howard off in the alley behind Dr. George
26 Monahan's office. This was at approximately 7:00 a.m. Thomas went back to the motel
27 room. Approximately an hour later, Howard returned to the motel. Howard had a CB radio
28 with him that had loose wires and a gold watch she had never seen before. Howard told

1 Thompson that he was tired of Las Vegas and to pack up their things as they were leaving
2 for California.

3 Dr. Monahan was a dentist with a practice located on Desert Inn Road within walking
4 distance of the Boulevard Mall. He was attempting to sell a uniquely painted van and would
5 park the van in the parking lot of the mall, at the Desert Inn and Maryland intersection and
6 near the Sears store, then walk to his office. The van had a sign in it listing Dr. Monahan's
7 home and business phone numbers and the business address.

8 About 4:00 p.m. on March 26, 1980, the afternoon of the Sears robbery, Dr.
9 Monahan's wife, Mary Lou Monahan, received a phone call at her home inquiring about the
10 van. The caller was a male who identified himself as "Keith" and stated he was a Security
11 Guard at Caesar's Palace. He indicated he was interested in purchasing the van and wanted
12 to know if someone could meet him at Caesar's during his break time at 8:00 p.m. Mrs.
13 Monahan indicated the caller would have to talk to her husband who was expected home
14 shortly. A second call was made around 4:30 p.m. and Dr. Monahan made arrangements to
15 meet "Keith" at Caesar's later that night.

16 The Monahans and two relatives, Barbara Zemen and Mary Catherine Monahan, met
17 "Keith" that evening at the appointed time and place. Howard was identified as the man
18 who called himself "Keith". Howard was carrying a walkie-talkie radio at the time. Howard
19 talked to Dr. Monahan for about ten minutes about purchasing the van and looked inside the
20 van but did not touch the door handle while doing so. Howard arranged to meet Dr.
21 Monahan the next morning to take a test drive. The Monahan's left Caesar's and parked the
22 van at Dr. Monahan's office before returning home in another vehicle.

23 The next day, March 27, 1980, Dr. Monahan left his home at about 6:50 a.m. He took
24 with him his wallet, a gold Seiko watch, daily receipts and the van title. When Mrs.
25 Monahan arrived at the office at about 8:00 a.m. Dr. Monahan was not there and a patient
26 was waiting for him. Dr. Monahan's truck was in the parking lot to the rear of the office.
27 Dr. Monahan had not entered the office. A Black man wearing a radio or walkie-talkie on
28 his belt came into the office at about 7:00 a.m. that morning looking for Dr. Monahan and

1 stating that he had an appointment with the doctor.

2 Mrs. Monahan called Caesar's Palace and learned no "Keith" fitting the description
3 she gave worked security. After obtaining this information, Mrs. Monahan called the police
4 to report her husband as a missing person. This occurred at about 9:00 a.m.

5 Charles Marino owned the Dew Drop Inn located near the corner of Desert Inn and
6 Boulder Highway, just a few blocks from Dr. Monahan's office and almost across the road
7 from the Western Six motel. Early on the morning of March 27, 1980, as he approached his
8 business, he observed the Monahan van backing into the rear of the bar. When he arrived at
9 the Inn, he looked in the driver's side and saw no one. He asked patrons if they knew
10 anything about the van and no one spoke up. Marino remained at the business until the early
11 afternoon. The van was still there and had not been moved. Later that day, at around 7:00
12 p.m. he received a call to return to the bar as a dead body had been found in the van.

13 In response to television coverage, the police learned the Monahan van was behind
14 the Dew Drop Inn around 6:45 p.m. Dr. Monahan's body was found in the van under an
15 overturned table and some coverings. He had been shot once in the head. The bullet went
16 through Dr. Monahan's head and a projectile was recovered on the floor of the van. The
17 projectile was compared to Howard's .357 revolver. Because the bullet was so badly
18 damaged; forensic analysis could not establish an exact match. It was determined that the
19 bullet could have come from certain makes and models of revolvers, Howard's included.
20 The van's CB radio and a tape deck had been removed. Dr. Monahan's watch and wallet
21 were missing. A fingerprint recovered from one of the van's doors matched Howard's.

22 Homicide detectives were aware of the Sears robbery that had occurred on March
23 26th. The description of the Sears suspect matched that given by Mrs. Monahan of the man
24 calling himself Keith at Caesar's Palace. Based upon that, the use of the name Keith, the
25 walkie-talkie in possession of the suspect, the close proximity of the dental office to the
26 Sears and the fact that the van had been parked in the Sears' parking lot, the police issued a
27 bulletin to state and out-of-state law enforcement agencies describing the suspect and the car
28 used in the Sears' robbery.

1 On March 27, 1980, while the police were searching for Dr. Monahan, Howard and
2 Thompson drove to California. They left the motel between 8:00 a.m. and 9:00 a.m. and on
3 the way they stopped for gas. At that time Howard had a brown or black wallet that had
4 credit cards and photos in it. Howard went to the gas station rest room and when he returned
5 he no longer had the wallet.

6 On March 28, 1980, Howard and Thompson went to a Sears in San Bernadino,
7 California. Once again Howard left Thompson in the car while he entered the Sears, picked
8 up merchandize and tried to obtain a refund on it. This time he used the stolen Kinsey Sears
9 security badge in the attempt. The Sears personal were suspicious and left Howard at the
10 register while they called Las Vegas. When they returned Howard had left. Howard had
11 returned to the car and Thompson and Howard ducked down when the people from Sears
12 stepped outside to view the parking lot.

13 On or about April 1, 1980, at around noon, Howard went to the Stonewood Shopping
14 Center in Downey, California. He entered a jewelry store and talked to a security agent,
15 Manny Velasquez. Another agent in the store, Robert Slater, who also worked as a police
16 officer in Downey, saw Howard and noticed the grip of a gun under Howard's jacket. Slater
17 talked to Velasquez and decided to call the Downey Police. Howard left the jewelry store
18 went to the west end of the mall near a Thrifty drugstore. Downey Police officers observed
19 Howard walking up and down the aisles of the drugstore, picking items up and replacing
20 them on shelves. Howard was stopped on suspicion of carrying a concealed weapon. No
21 gun was found on him nor was he carrying the walkie-talkie. A search of the aisles he had
22 been in revealed a .357 magnum revolver and the walkie-talkie and Sears' security badge
23 stolen from Kinsey.

24 Howard was arrested for carrying a concealed weapon and then identified and booked
25 for a San Bernadino robbery. Howard was given his Miranda rights by Downey Police
26 officers. Disputed evidence was presented regarding his response and whether he invoked
27 his right to silence. Based on information in the all-points bulletin, the California authorities
28 contacted the Las Vegas Metropolitan Police Department about Howard. On April 2, 1980,

1 LVMPD Detective Alfred Leavitt went to California and, after reading Howard his Miranda
2 rights, which Howard indicated he understood, interviewed Howard regarding the Sears
3 robbery and Dr. Monahan's murder. Howard did not invoke his right to remain silent or to
4 counsel at this time.

5 Howard told Detective Leavitt he recalled being at the Sears department store but no
6 details about what happened and that he did not remember anything about March 27, 1980.
7 He stated he could have killed Dr. Monahan but he didn't know.

8 Ed Schwartz was working as a car salesman in New York on October 5, 1979. When
9 he arrived at work at approximately 9:00 a.m. Howard entered the agency and was looking at
10 an Oldsmobile car. Howard showed Schwartz a New York driver's license and checkbook
11 and told Schwartz that he worked for a security firm in New York. Howard asked if they
12 could take a demonstration ride and Schwartz drove the car for a few blocks while Howard
13 was the passenger. Howard asked if he could drive the car and the men switched seats.
14 After driving for a short time, Howard pulled over and pointed an automatic pistol at
15 Schwartz. Schwartz was told to get down on the floor of the car and remove his shoes and
16 pants. Schwartz complied and Howard took Schwartz' watch, ring and wallet. Schwartz got
17 out of the car when ordered to do so and Howard drove off. The car was later found
18 abandoned.⁶

19 Howard called witnesses who testified they saw the Monahan van being driven by a
20 Black man who did not match Howard's description, in particular the man had a large afro
21 and Howard had short hair. John McBride state that he saw the van around 8:30 to 8:45 a.m.
22 in his apartment complex which is located about five miles from Desert Inn and Boulder
23 Highway. Lora Mallek was employed at a Mobile gas station at the corner of DI and
24 Boulder Highway and she stated serviced the van when it pulled into the station between
25 3:00 p.m. and 4:00 p.m. Mallek testified that a Black man with a large afro was driving, a
26 Black woman who did not match Thomas' description was in the passenger seat and a white
27

28 ⁶ This evidence was admitted to show identity and motive for the Monahan murder.

1 man was sitting in the back.

2 Howard testified over the objection of counsel. He indicated he did not recall much
3 about March 26, 1980. He remembered being in Las Vegas in general on and off and that at
4 one point Dwana Thomas' brother, who was about Howard's height, age and weight, and
5 had a large afro, visited them. Howard said he remembers incidents, not dates and Kinsey
6 could have been telling the truth about the Sears store. Howard indicated he wasn't sure
7 because when the Sears people gathered around him, it reminded him of Vietnam and he
8 kind of had a flashback. Howard said he thinks he left Las Vegas immediately after the
9 Sears incident. Howard also stated that he did not meet Dr. Monahan, rob or kill him as he
10 couldn't be that callous.

11 On cross-examination, Howard admitted he left New York in the middle of his
12 robbery trial and was asked about statements he made to Detective Leavitt. Howard also
13 acknowledged he has used a number of aliases including Harold Stanback. Howard
14 indicated he was taking the blame for Dawana and her brother Lonnie.

15 Dawana Thomas was called in rebuttal and indicated her brother Lonnie had not been
16 in Las Vegas in March of 1980.

17 In the penalty phase, the State presented evidence on the details of Howard's 1979
18 New York conviction for Robbery. A college nurse, who knew Howard, Dorothy Weisband,
19 testified that Howard robbed her at gunpoint taking her wallet and car. He forced her into a
20 closet and demanded she removed her clothes. She refused and he left. After the robbery,
21 Howard called Weisband trying to get more cash from her in return for her car and
22 threatened her.

23 Howard testified regarding his military, family and mental health histories. Howard
24 discussed his military service and stated he had suffered a concussion and received a purple
25 heart.⁷ Howard also stated he was on veteran's disability in New York.⁸ He said he was in

26
27 ⁷ The military records attached to the current Fourth Petition do not reflect any such injury or
award.

28 ⁸ Howard's military records do not support this and there is nothing in the record
substantiating any admission to a veteran's hospital. The record reflects Howard was never

1 various mental health facilities in California including being housed in the same facility as
2 Charlie Manson. He testified he had been diagnosed as a schizophrenic, but that some of the
3 doctors thought he was malingering. When asked about his childhood, Howard became
4 upset. He indicated he didn't want to talk about the death of his mother and sister. Howard
5 indicated he was not mentally ill and knew what he was doing at all times.

6 FINDINGS OF FACT

- 7 1. The Court adopts the above Procedural History as its first Finding of Fact.
- 8 2. The Court adopts the above Statement of Facts as its second Finding of Fact.
- 9 3. This is Howard's fourth state petition for post-conviction relief.
- 10 4. The current Petition for Post-Conviction Relief was filed on October 27, 2007,
11 approximately twenty-one years after Howard's conviction and nineteen years after
12 remittitur was issued on direct appeal from the Judgment of Conviction.

13 5. The following claims raised in the original Fourth State Petition are time-
14 barred under NRS 34.726 as they were filed more than one year from the remittitur on direct
15 appeal: Claims 2(1) conflict of interest, 2(2) ineffective assistance of trial counsel –
16 mitigation evidence, 2(3) polygraphing policy; Claim 3 – competency and validity of
17 mitigation evidence waiver; Claim 4 – insufficiency of the evidence, failure to conduct
18 neuro-psychological testing, failure to develop post-traumatic stress disorder evidence;
19 Claim 5 – invalidity of New York Robbery conviction; Claim 6 – denial of motion to sever
20 counts; Claim 7 – denial of evidentiary hearing to suppress statements; Claim 8 – speedy
21 trial violation; Claim 9 – denial of motions to dismiss counsel and motions to withdraw;
22 Claim 10 - failure to give accomplice instruction; Claims 11(A) – reasonable doubt
23 instruction, 11(B) – lesser-included Second Degree Murder instruction, 11(C) –
24 premeditation and malice instructions; Claim 12 – validity of Instruction # 20; Claim 13 –
25 *Kazalyn* instruction; Claim 14 – improper malice instructions; Claim 15 – anti-sympathy
26 instruction; Claim 16 – failure to instruct on mental/emotional disturbance mitigating

27
28 actually admitted to a hospital in New York because it required identification and he could
not identify himself due to existing warrants for his arrest.

1 circumstance; Claim 17 – improper limitation of mitigating circumstances; Claim 18 – forms
2 and instructions implied mitigating circumstances must be unanimous finding; Claim 19 –
3 prosecutorial misconduct; Claim 21 – ineffective assistance of trial counsel; Claims 22 –
4 ineffective assistance of appellate counsel; Claim 23 – ineffective assistance of post-
5 conviction counsel; Claim 24 – Nevada’s death penalty scheme is arbitrary and capricious in
6 application; Claim 25 – Nevada Supreme Court fails to adequately review death penalty
7 cases; Claim 26 – lethal injection; Claim 27 – elected judiciary; Claim 28 – restrictive death
8 row conditions; Claim 29 – international law; Claim 30 – Nevada’s death penalty scheme
9 unconstitutional; Claim 31 – evolving standards of decency; Claim 32 – cumulative errors.

10 6. The following claims in the original Fourth State Petition involve issues that
11 either were, or could have been, raised at trial, on direct appeal or in a previous timely post-
12 conviction petition. They are therefore procedurally barred under NRS 34.810 as either
13 waived, successive or an abuse of the writ. Claims 2(1) conflict of interest, 2(2) ineffective
14 assistance of trial counsel – mitigation evidence, 2(3) polygraphing policy; Claim 3 –
15 competency and validity of mitigation evidence waiver; Claim 4 – insufficiency of the
16 evidence, failure to conduct neuro-psychological testing, failure to develop post-traumatic
17 stress disorder evidence; Claim 5 – invalidity of New York robbery conviction; Claim 6 –
18 denial of motion to sever counts; Claim 7 – denial of evidentiary hearing to suppress
19 statements; Claim 8 – speedy trial violation; Claim 9 – denial of motions to dismiss counsel
20 and motions to withdraw; Claim 10 - failure to give accomplice instruction; Claims 11(A) –
21 reasonable doubt instruction, 11(B) – lesser-included second degree murder instruction,
22 11(C) – premeditation and malice instructions; Claim 12 – validity of Instruction # 20; Claim
23 13 – *Kazalyn* instruction; Claim 14 – improper malice instructions; Claim 15 – anti-
24 sympathy instruction; Claim 16 – failure to instruct on mental/emotional disturbance
25 mitigating circumstance; Claim 17 – improper limitation of mitigating circumstances; Claim
26 18 – forms and instructions implied mitigating circumstances must be unanimous finding;
27 Claim 19 – prosecutorial misconduct; Claim 21 – ineffective assistance of trial counsel;
28 Claims 22 – ineffective assistance of appellate counsel; Claim 23 – ineffective assistance of

1 post-conviction counsel; Claim 24 – Nevada’s death penalty scheme is arbitrary and
2 capricious in application; Claim 25 – Nevada Supreme Court fails to adequately review
3 death penalty cases; Claim 26 – lethal injection; Claim 27 – elected judiciary; Claim 28 –
4 restrictive death row conditions; Claim 29 – international law; Claim 30 – Nevada’s death
5 penalty scheme unconstitutional; Claim 31 – evolving standards of decency; Claim 32 –
6 cumulative errors.

7 7. In its Motion to Dismiss the original Fourth State Petition, the State alleged
8 laches under NRS 34.800. The Fourth State Petition was filed over twenty years after the
9 entry of the Judgment of Conviction. Therefore the rebuttable presumption of prejudice to
10 the State under NRS 34.800 applies.

11 8. The legal and factual issues surrounding the claims raised in the original
12 Fourth State Petition are intertwined and the State is likely to have difficulty with memories,
13 location and availability of witnesses from the 1980’s creating actual prejudice.

14 9. Howard failed to meet his burden to prove facts by a preponderance of the
15 evidence to rebut the presumption of prejudice.

16 10. The following claims in the original Fourth State Petition are procedurally
17 barred pursuant to NRS 34.800: Claims 2(1) conflict of interest, 2(2) ineffective assistance
18 of trial counsel – mitigation evidence, 2(3) polygraphing policy; Claim 3 – competency and
19 validity of mitigation evidence waiver; Claim 4 – insufficiency of the evidence, failure to
20 conduct neuro-psychological testing, failure to develop post-traumatic stress disorder
21 evidence; Claim 5 – invalidity of New York robbery conviction; Claim 6 – denial of motion
22 to sever counts; Claim 7 – denial of evidentiary hearing to suppress statements; Claim 8 –
23 speedy trial violation; Claim 9 – denial of motions to dismiss counsel and motions to
24 withdraw; Claim 10 - failure to give accomplice instruction; Claims 11(A) – reasonable
25 doubt instruction, 11(B) – lesser-included second degree murder instruction, 11(C) –
26 premeditation and malice instructions; Claim 12 – validity of Instruction # 20; Claim 13 –
27 *Kazalyn* instruction; Claim 14 – improper malice instructions; Claim 15 – anti-sympathy
28 instruction; Claim 16 – failure to instruct on mental/emotional disturbance mitigating

1 circumstance; Claim 17 – improper limitation of mitigating circumstances; Claim 18 – forms
2 and instructions implied mitigating circumstances must be unanimous finding; Claim 19 –
3 prosecutorial misconduct; Claim 21 – ineffective assistance of trial counsel; Claims 22 –
4 ineffective assistance of appellate counsel; Claim 23 – ineffective assistance of post-
5 conviction counsel; Claim 24 – Nevada’s death penalty scheme is arbitrary and capricious in
6 application; Claim 25 – Nevada Supreme Court fails to adequately review death penalty
7 cases; Claim 26 – lethal injection; Claim 27 – elected judiciary; Claim 28 – restrictive death
8 row conditions; Claim 29 – international law; Claim 30 – Nevada’s death penalty scheme
9 unconstitutional; Claim 31 – evolving standards of decency; Claim 32 – cumulative errors.

10 11. Claims 1 and 20 of the original Fourth State Petition involve a claim under
11 McConnell v. State, 120 Nev. 1043, 102 P.3d 606 (2004). McConnell was decided in 2004
12 and the instant petition was filed in 2007, over two years after issuance of the decision. The
13 claim was available in 2004 and nothing prevented Howard from raising the claim prior to
14 2007 and arguing McConnell should be retroactively applied. Howard acted unreasonably in
15 waiting until the Nevada Supreme Court addressed the issue of retroactivity before raising
16 this claim. Thus the decision in Bejarno v. State, 122 Nev. 1066, 146 P.3d 265 (2006) does
17 not constitute good cause for the delay in raising the claim. Accordingly, Claims 1 and 20
18 are time-barred under NRS 34.726.

19 12. Howard filed an Amended Petition for Writ of Habeas Corpus on February
20 24, 2009. For purposes of applying the procedural bars, the original petition filing date of
21 October 27, 2007 still applies. Thus the claims in the Amended Petition were raised
22 approximately twenty-one years after Howard’s conviction and nineteen years after
23 remittitur was issued on direct appeal from the Judgment of Conviction.

24 12. The following claims in the Amended Fourth State Petition are time-barred
25 under NRS 34.726: Claim 1 – validity of New York prior felony aggravator; Claim 2(1) –
26 actual conflict of interest, Claim 2(2) – ineffective assistance of counsel (mitigation issues),
27 Claim 2(3) – polygraph/resources allegations, Claim 2(4) – failure of trial court grant
28 motions for new counsel; Claim 3 – *Kazalyn* instruction fails to distinguish first and second

1 degree murder and violates *Byford*; Claim 4 – Nevada statutes permit the death penalty to be
2 imposed for second degree murder; Claim 5 – instructions and verdict form implied
3 mitigating circumstances must be unanimous finding; Claim 6 – prosecutorial misconduct;
4 Claim 7 – ineffective assistance of appellate counsel; Claim 8 – Nevada Supreme Court fails
5 to conduct fair and adequate review of death cases; Claim 9 – Nevada’s capital system is
6 arbitrary and capricious; Claim 10 – cumulative error.

7 13. Claim 1 of the Amended Petition also asserts a McConnell claim which is also
8 time-barred under NRS 34.726 for the reasons set forth in Finding # 11.

9 14. The State’s motion to dismiss the Amended Fourth State Petition asserted
10 laches under NRS 34.800. As noted in Findings # 8 and # 9, the State has suffered actual as
11 well as presumptive prejudice and Howard has not overcome that presumption.

12 15. The following claims of the Amended Fourth State Petition are barred under
13 NRS 34.800: Claim 1 – validity of New York prior felony aggravator; Claim 2(1) – actual
14 conflict of interest, Claim 2(2) – ineffective assistance of counsel (mitigation issues), Claim
15 2(3) – polygraph/resources allegations, Claim 2(4) – failure of trial court grant motions for
16 new counsel; Claim 3 – *Kazalyn* instruction fails to distinguish first and second degree
17 murder; Claim 4 – Nevada statutes permit the death penalty to be imposed for second degree
18 murder; Claim 5 – instructions and verdict form implied mitigating circumstances must be
19 unanimous finding; Claim 6 – prosecutorial misconduct; Claim 7 – ineffective assistance of
20 appellate counsel; Claim 8 – Nevada Supreme Court fails to conduct fair and adequate
21 review of death cases; Claim 9 – Nevada’s capital system is arbitrary and capricious; Claim
22 10 – cumulative error.

23 16. The following claims in the Amended Fourth State Petition involve issues that
24 either were, or could have been, raised at trial, on direct appeal or in a previous timely post-
25 conviction petition. They are therefore procedurally barred under NRS 34.810 as with
26 waived, successive or an abuse of the writ: Claim 2(1) – actual conflict of interest, Claim
27 2(2) – ineffective assistance of counsel (mitigation issues), Claim 2(3) – polygraph/resources
28 allegations, Claim 2(4) – failure of trial court grant motions for new counsel; Claim 3 –

1 *Kazalyn* instruction fails to distinguish first and second degree murder; Claim 4 – Nevada
2 statutes permit the death penalty to be imposed for second degree murder; Claim 5 –
3 instructions and verdict form implied mitigating circumstances must be unanimous finding;
4 Claim 6 – prosecutorial misconduct; Claim 7 – ineffective assistance of appellate counsel;
5 Claim 8 – Nevada Supreme Court fails to conduct fair and adequate review of death cases;
6 Claim 9 – Nevada’s capital system is arbitrary and capricious; Claim 10 – cumulative error.

7 17. As good cause to excuse the procedural delays, in the original or amended
8 petitions, Howard asserts: 1) ineffective assistance of trial, appellate and post-conviction
9 counsel; 2) inconsistent application of procedural bars; 3) delay was not the result of any
10 direct fault of Howard; 4) Howard was litigating in Federal court; 5) as to the *Kazalyn* claim,
11 the Ninth Circuit decision Polk v. Sandoval, 503 F.3d 903 (2007).

12 18. Howard’s claims of ineffective assistance of trial and appellate counsel are, in
13 themselves, procedurally barred.

14 19. Under the Statutes of Nevada in 1987, Howard was not entitled to the
15 appointment of post-conviction counsel on his first state petition for post-conviction relief.

16 20. Even if Howard had been entitled to counsel during his first state petition, any
17 claim of ineffective assistance of post-conviction counsel is, in itself, procedurally barred.

18 21. Actions of Howard’s counsel are attributable to Howard.

19 22. Nothing in Polk v Sandoval indicates it is retroactive to cases that were final
20 when the Nevada Supreme Court issued its opinion in Byford v. State, 116 Nev. 215, 994
21 P.2d 700 (2000).

22 23. Howard’s conviction became final when remittitur issued on his direct appeal
23 on February 12, 1988. Neither Byford nor Polk are applicable to Howard’s conviction.

24 24. None of allegations raised to explain the delays in bringing these claims
25 constitute good cause.

26 25. Howard also asserts a claim of “actual innocence” of the death penalty as
27 justification for excusing the procedural bars.

28 26. Howard has not demonstrated clear and convincing evidence that the

1 Legislature intended the prior felony aggravator to apply only to cases in which a judgment
2 of conviction was entered as opposed to a jury verdict.

3 27. Howard has not produced any evidence or factual allegations let alone, clear
4 and convincing evidence that he is innocent of the New York robbery.

5 28. To the extent that anything in the pleadings is intended to assert a claim of
6 "actual innocence" with respect to guilt, Howard has not produced any evidence or factual
7 allegations, let alone clear and convincing evidence, that he is not the killer of Dr. Monahan.

8 29. The only allegations of "new evidence" involve mitigating circumstances.

9 30. Even if Howard's McConnell claim is not untimely, Howard has failed to
10 establish prejudice. Without the "in the commission of a robbery" aggravator, the jury still
11 heard evidence that Howard committed a violent robbery with a gun in New York only one
12 year before he committed the instant crimes. The facts of that robbery indicated he
13 terrorized a nurse who was trying to help him, forcing her to remove her clothes and locking
14 her in closet before stealing her car. The mitigation evidence consisted of Howard's own
15 statements concerning his service in Vietnam, the time spent in some California mental
16 health facilities until doctors concluded he was malingering and his expression of sympathy
17 to Dr. Monahan's family while maintaining his innocence. Given this evidence, this Court
18 concludes, beyond a reasonable doubt, that the jury would still have determined the
19 aggravating circumstances were not outweighed by the mitigating circumstances without the
20 "in the commission of the robbery" aggravator.

21 31. In considering the effect of the aggravator on the ultimate sentence of death,
22 the Court concludes, beyond a reasonable doubt, that the jury would have sentenced Howard
23 to death absent that aggravator. In addition to the facts of the Sears robbery and Monahan
24 murder, the jury heard evidence Howard committed two violent robberies in New York. All
25 these crimes were committed within a two year period.

26 32. To the extent that any conclusion of law stated below can also be considered a
27 finding of fact, it shall be so treated.

28

CONCLUSIONS OF LAW

1
2 1. Under NRS 34.810(1)(b) every challenge to a conviction that could have been
3 raised at trial or on direct appeal cannot be raised in a post-conviction habeas proceeding. In
4 addition, under NRS 34.810(2), all claims of ineffective assistance of trial and appellate
5 counsel are required to be raised in a first petition for post-conviction relief and any claims
6 of ineffective assistance of post-conviction are required to be filed in a second petition for
7 post-conviction relief. Failure to do so constitutes either a successive petition or an abuse of
8 the writ. Any claims in a post-conviction petition that fail to comply with the statute are
9 procedurally barred.

10 2. NRS 34.810(2) incorporates the concept that where a subsequent petition
11 raises new or different grounds for relief and those grounds could have been asserted in a
12 prior petition, it is an abuse of the writ. In essence, it encompasses the same concerns as
13 NRS 34.810(1)(b), the waiver provision, except that it applies to all petitions, not just those
14 arising from trial. It also reflects the policy behind the Law of the Case Doctrine; rulings on
15 previous issues cannot be avoided by a more detailed or precisely focused argument. Hogan
16 v. State, 109 Nev. 952, 860 P.2d 710 (1993). In other words, if the information or argument
17 was previously available, it is an abuse of the writ to wait to assert it in a second or
18 subsequent petition. McClesky v. Zant, 499 U.S. 457, 497-498 (1991).

19 3. As noted in Findings # 6 and # 16, all of Howard's claims and sub-claims were
20 either raised in previous proceedings and denied on their merits (or found to be procedurally
21 barred) or could have been raised in previous proceedings and were not. Thus they are
22 barred under NRS 34.810.

23 4. Under NRS 34.726, any challenge to Howard's conviction based upon a
24 substantive claim of ineffective assistance of trial and/or appellate counsel was required to
25 be filed within one year of the remittitur, which was February 12, 1988. However, pursuant
26 to Pellegrini v. State, 117 Nev. 860, 34 P.3d 519, 537 (2001), that period would be extended
27 to January 1, 1994. The instant petition was filed in 2007, thus, as noted in Findings # 5, #
28 11, # 12 and #13, all claims and subclaims are untimely and procedurally barred under NRS

1 34.726.

2 5. NRS 34.726 is strictly enforced. In Gonzales v. State, 118 Nev. 61, 590 P.3d
3 901 (2002), the Nevada Supreme Court rejected a habeas petition that was filed two days
4 late, pursuant to the "clear and unambiguous" mandatory provisions of NRS 34.726(1).

5 6. Besides the provisions of NRS 34.726, NRS 34.800 recognizes that a post-
6 conviction petition should be dismissed when delay in presenting issues would prejudice the
7 State in responding to the petition or in retrial. NRS 34.800(1)(a)(b).

8 7. NRS 34.800(2) creates a rebuttable presumption of prejudice to the State
9 where a period of five years has elapsed between the filing a decision on direct appeal of a
10 judgment of conviction and the filing of a petition challenging the validity of a judgment of
11 conviction. To invoke the presumption, the statute requires that the State plead laches in its
12 motion to dismiss the petition. NRS 34.800(2). Once the presumption is invoked, the
13 petitioner has the burden of pleading specific facts to overcome the presumption.

14 8. The decision on direct appeal was rendered in 1987. The instant petition was
15 filed in 2007. The State plead laches in its motion to dismiss, therefore the presumption of
16 prejudice applies.

17 9. Because Howard failed to plead or prove factual allegations to overcome the
18 presumption of prejudice all claims and sub-claims, except the McConnell claim, are
19 procedurally barred under NRS 34.800.

20 10. To overcome the procedural bars under NRS 34.726, NRS 34.800 and NRS
21 34.810, Howard must show either show good cause and prejudice for the delay or manifest
22 injustice.

23 11. Good cause means an impediment external to the defense that prevented
24 petitioner from complying with the state procedural default rules. Hathaway v. State, 119
25 Nev. 248, 252, 71 P.3d 503, 506 (2003); citing Pellegrini v. State, 117 Nev. 860, 886-87, 34
26 P.3d 519, 537 (2001); Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994);
27 Passanisi v. Director, 105 Nev. 63, 66, 769 P.2d 72, 74 (1989); see also Crump v. Warden,
28 113 Nev. 293, 295, 934 P.2d 247, 252 (1997); Phelps v. Director, 104 Nev. 656, 764 P.2d

1 1303 (1988).

2 12. An external impediment exists if the factual or legal basis for a claim was not
3 reasonably available to counsel, or where some interference by officials' made compliance
4 impracticable. Hathaway, 71 P.3d at 506; quoting Murray v. Carrier, 477 U.S. 478, 488, 106
5 S.Ct. 2639, 2645 (1986); see also Gonzales, 118 Nev. at 595, 53 P.3d at 904; citing Harris v.
6 Warden, 114 Nev. 956, 959-60 n. 4, 964 P.2d 785 n. 4 (1998).

7 13. Fault of the petitioner encompasses not only a petitioner's own actions, but
8 also actions of a petitioner's counsel or agents. For example, trial counsel's failure to
9 forward a copy of the file to a petitioner is not good cause for excusing a delay in filing. See
10 Phelps, 104 Nev. at 660; Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995). Other than
11 implying that any "fault" in the delay was that of his attorneys, Howard presented no
12 evidence of an external impediment.

13 14. A claim of ineffective assistance of counsel that is procedurally barred cannot
14 constitute good cause for excusing the procedural bars, for itself or any other claim.
15 State v. District Court (Riker), 121 Nev. 225, 112 P.3d 1070 (2005). See also Edwards v.
16 Carpenter, 529 U.S. 446, 453 (2000) (procedurally barred ineffective assistance of counsel
17 claim is not good cause). See generally Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d
18 503, 506-07 (2003) (stating that a claim reasonably available to the petitioner during the
19 statutory time period did not constitute good cause to excuse a delay in filing).

20 15. As Howard fails to show good cause for not bringing his ineffective assistance
21 of counsel claims in a timely manner, they are procedurally barred and do not constitute
22 good cause for overcoming the procedural bars. Moreover, as to the claims of ineffective
23 assistance of counsel that were brought in prior petitions and decided on their merits, these
24 claims would be successive and new arguments in support of the claims would be an abuse
25 of the writ, so they are also procedurally barred under NRS 34.810 and cannot constitute
26 good cause for delay. Any claims that were not previously raised in the first or second post-
27 conviction petitions would be waived and barred under NRS 34.810(1)(b) and likewise
28 cannot establish good cause for delay.

1 16. Because Howard was not entitled to post-conviction counsel at the time of his
2 first post-conviction petition, he cannot maintain a claim of ineffective assistance of post-
3 conviction counsel and thus this cannot constitute good cause for any delays. See Pellegrini,
4 117 Nev. at 888, 34 P.3d at 538, fn. 125.

5 17. The Nevada Supreme Court has gone to great lengths to refute claims that it
6 arbitrarily and inconsistently applies the procedural default rules. See State v. Dist.Ct.
7 (Riker), 121 Nev. 225, 112 P.3d 1070 (2005). Nevada does not inconsistently apply its
8 procedural bars and this allegation does not demonstrate good cause for the delay in the
9 filing of Howard's claims in the instant petition.

10 18. Howard claims Polk v. Sandoval constitutes good cause for the delay in raising
11 his challenge to the *Kazalyn* instruction. As noted in Nika v. State, 198 P.3d 839 (2008),
12 Polk v. Sandoval misconstrues the Nevada Supreme Court's decision in Byford v. State, 116
13 Nev. 215, 994 P.2d 700 (2000). Further Nika notes that Byford would only apply to cases
14 that were not final when Byford was issued. Howard's case was final in 1988 and Byford
15 was issued in 2000. Thus Byford and Polk are not applicable to Howard and cannot
16 constitute good cause for the delay in raising the *Kazalyn* issue in the instant petition.

17 19. Generally, a defendant who has procedurally defaulted on a claim may
18 subsequently raise the claim in a habeas petition upon a showing of manifest injustice which
19 is defined as "actual innocence". Bousley v. State, 523 U.S. 614, 1611, 118 S.Ct. 1604,
20 1611 (1998). Courts have consistently found "actual innocence" to be a miscarriage of
21 justice sufficient to overcome any procedural post-conviction time bar or default without
22 analyzing good cause and prejudice. See Sawyer v. Whitley, 505 U.S. 333, 338-39, 112
23 S.Ct. 2514, 2518-19 (1992). In other words, actual innocence acts as a "gateway" for
24 innocent defendants to present constitutional challenges to a court years after the procedural
25 defaults and bars have ran. See Sawyer at 315.

26 20. A claim of actual innocence requires both an allegation that the defendant's
27 constitutional rights were violated and the presentation of newly discovered evidence. The
28 Eighth Circuit Court of Appeals has "rejected free-standing claims of actual innocence as a

1 basis for habeas review stating, “[c]laims of actual innocence based on newly discovered
2 evidence have never been held to state a ground for federal habeas relief absent an
3 independent constitutional violation occurring in the underlying state criminal proceeding.”
4 Meadows v. Delo, 99 F.3d 280, 283 (8th Cir. 1996) (citing Herrera v. Collins, 506 U.S. 390,
5 400, 113 S. Ct. 853, 860 (1993)).

6 21. Furthermore, the newly discovered evidence suggesting the defendant’s
7 innocence must be “so strong that a court cannot have confidence in the outcome of the
8 trial.” Id. at 316, at 861. Actual innocence focuses on actual not legal innocence, and
9 therefore, a defendant who only challenges the validity of evidence presented at trial has not
10 sufficiently claimed actual innocence to overcome the procedural bars and defaults. See
11 Sawyer, 112 U.S. at 339, 505 S. Ct. at 2519. The United States Supreme Court has held that,
12 “Without any new evidence of innocence, even the existence of a concededly meritorious
13 constitutional violation is not itself sufficient to establish a miscarriage of justice that would
14 allow a habeas court to reach the merits of the barred claim.” Schlup v. Delo, 513 U.S. 298,
15 316, 115 S. Ct. 851, 861 (1995).

16 22. The applicable standard applied to the actual innocence analysis depends upon
17 whether the defendant is challenging his conviction or his death ineligibility:

18 To avoid application of the procedural bar to claims attacking the
19 *validity of the conviction*, a petitioner claiming actual innocence
20 *must show that it is more likely than not* that no reasonable juror
21 would have convicted him absent a constitutional violation.
22 Where the petitioner has argued that the procedural default
should be ignored because he is *actually ineligible for the death*
penalty, he must show by *clear and convincing evidence* that, but
for a constitutional error no reasonable juror would have found
him death eligible. (Emphasis added).

23 Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

24 23. Once a defendant has made such a showing, he may then use the claim of
25 actual innocence as a “gateway” to present his constitutional challenges to the court and
26 require the court to decide them on the merits. Schlup, 513 U.S. at 315, 115 S. Ct. at 861.

27 24. As a matter of federal constitutional law, the Sawyer Court also indicated that
28 to qualify for “actual innocence” sufficient to overcome the procedural bars, a petitioner

1 must eliminate all aggravating circumstances.

2 "Thus, a petitioner may make a colorable showing that he is
3 actually innocent of the death penalty by presenting evidence that
4 an alleged constitutional error implicates *all* of the aggravating
5 factors found to be present by the sentencing body. That is, but
6 for the alleged constitutional error, the sentencing body *could not*
7 have found *any* aggravating factors and thus the petitioner was
ineligible for the death penalty. In other words, the petitioner
must show that absent the alleged constitutional error, the jury
would have lacked the discretion to impose the death penalty;
that is, that he is *ineligible* for the death penalty." *Johnson v.*
Singletery, 938 F.2d, at 1183 (emphasis in original).

8 Sawyer, 505 U.S. at 347, 112 S.Ct. at 2523.

9 25. In addition, any new evidence regarding mitigating factors is not considered in
10 an "actual innocence" death eligibility determination. The United States Supreme Court has
11 indicated that the "actual innocence" standard is a very narrow and limited method of
12 overcoming procedural bars and should be based on objective standards, not subjective
13 issues relating to the weight to be given to mitigating evidence. Sawyer, 505 U.S. at 345-46,
14 112 S.Ct. at 2522.

15 26. Because the Nevada Supreme Court relied upon Sawyer in Pelligrini, the
16 limitations on the "actual innocence" doctrine discussed in Sawyer also apply to Howard's
17 petition and State law procedural bars.

18 27. The Nevada Supreme Court recognizes one other form of "actual innocence"
19 involving aggravating circumstances. Leslie v. Warden, 118 Nev. 773, 59 P.3d 440 (2002).
20 In Leslie, which involved a timely filed first state petition for post-conviction relief, the
21 Nevada Supreme Court received evidence that the legislative history did not support the
22 previous interpretation of the "random and no apparent motive" aggravator.⁹ Based on this
23 evidence, the Court examined the trial record and concluded that there was insufficient
24 evidence in the record to support that aggravator, as correctly interpreted. The Supreme
25 Court then struck the aggravator and conducted a reweighing analysis. Concluding that there
26 was a reasonable probability the jury would not have given a death sentence without that

27 _____
28 ⁹ The claim was procedurally barred under NRS 34.810(1)(b) waiver provision. It was not
barred under NRS 34.726 or NRS 34.800.

1 aggravator, the Supreme Court found Leslie met the actual innocence standard and that the
2 procedural bar was excused. After considering the merits of the claims, a new sentencing
3 hearing was ordered.

4 28. The Nevada Supreme Court in Leslie relied upon its earlier decision in
5 Pelligrini, which recognized the "actual innocence" standard set forth in Sawyer. See
6 Pellegrini, 117 Nev. at 887, 34 P.3d at 537. When read with Pellegrini and Sawyer, Leslie
7 makes it clear that to be "actually innocent" of an aggravating circumstance under Leslie a
8 defendant must demonstrate, by clear and convincing evidence, that: 1) the Legislative
9 History demonstrates a previous interpretation of an aggravating circumstance was actually
10 incorrect and in direct contradiction to legislative intent; and 2) under the correct
11 interpretation, based upon the evidence presented at trial, no reasonable juror would have
12 found the existence of that aggravating factor beyond a reasonable doubt. If the defendant
13 can meet this standard, then the defendant is actually innocent of that aggravating
14 circumstance and it is stricken.

15 However, after striking the aggravating circumstance, a court must still reweigh the
16 remaining valid aggravators with the mitigating factors derived from the evidence at trial. If
17 it is clear the remaining aggravating circumstance(s) are not outweighed by the mitigating
18 circumstances, then the defendant is still death qualified and the claim of gateway "actual
19 innocence" fails. If the court cannot make such a determination, then Defendant has
20 demonstrated sufficient evidence that Defendant is actually innocent of the death penalty and
21 a new penalty hearing is ordered. Leslie, 118 Nev. at 783, 59 P.3d at 447.

22 29. Howard alleges that he is actually innocent of the death penalty because the
23 two aggravators in his case, the murder was committed during a robbery and he had been
24 previously convicted of a violent felony are invalid

25 30. With respect to the felony robbery McConnell aggravator, Leslie is
26 inapplicable. As noted in Findings # 31 and # 32, even if Howard's McConnell claim is
27 timely, striking that aggravator would not result in actual innocence. The Court concludes
28 beyond a reasonable doubt that the jury would still have found the aggravating circumstance

1 was not outweighed by any mitigating circumstances. The violent nature of the New York
2 robbery conviction, the fact that it occurred one year before the robberies and murders in the
3 instant case and the self-serving and inconsistent nature of the mitigation evidence
4 demonstrate this.

5 31. Given the calculated manner in which Howard planned his robberies; lured Dr.
6 Monahan; shot Dr. Monahan execution style in the head; terrorized or threatened to kill his
7 robbery victims in New York and Las Vegas as well as considering his activities in
8 California prior to his arrest, this Court also concludes beyond a reasonable doubt, that
9 absent the *McConnell* aggravator, the jury would still have sentenced Howard to death.

10 32. With respect to the New York prior violent felony robbery, Howard presented
11 to evidence that it falls within the narrow holding of *Leslie* and the Supreme Court already
12 held the New York jury verdict was sufficient to satisfy the prior crime of violence
13 aggravator. Therefore Howard has not demonstrated he is actually innocent of that
14 aggravator. As that aggravator remains, he is not actually innocent of the death penalty and
15 he cannot, therefore, overcome the procedural bars on this ground.


16 **ORDER**

17 THEREFORE, IT IS HEREBY ORDERED that the Fourth State Petition for Post-
18 Conviction Relief shall be, and it is, hereby denied.

19 DATED this 5 day of November, 2010.

20 
21 DISTRICT JUDGE 

22
23 DAVID ROGER
24 DISTRICT ATTORNEY
25 Nevada Bar #002781

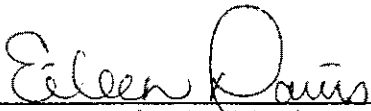
26 BY 
27 NANCY A. BECKER
28 Deputy District Attorney
Nevada Bar #00145

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing, was made this 4th day
of November, 2010, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

MICHAEL B. CHARLTON
Assistant Federal Public Defender
411 E. Bonneville, Ste. 250
Las Vegas, Nevada 89101



Employee for the District Attorney's
Office

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	2591	
CONNECTION TEL		3885819
CONNECTION ID		
ST. TIME	10/20 08:44	
USAGE T	03'29	
PGS. SENT	20	
RESULT	OK	



OFFICE OF THE DISTRICT ATTORNEY

CRIMINAL APPEALS UNIT

DAVID ROGER
District Attorney

CHRIS OWENS
Assistant District Attorney

TERESA M. LOWRY
Assistant District Attorney

MARY-ANNE MILLER
County Counsel

STEVEN S. OWENS
Chief Deputy

NANCY BECKER
Deputy

FACSIMILE TRANSMISSION

Fax No. (702) 382-5815

Telephone No. (702) 671-2750

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

FROM: Nancy A. Becker *NAB*

SUBJECT: Samuel Howard, 81C053867, Proposed Findings

DATE: October ²⁰~~19~~, 2010

1 of 2

Mr. Charlton,
The following Findings will be submitted to the Judge on November 2, 2010.
Sincerely,

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	2592	
CONNECTION TEL		3885819
CONNECTION ID		
ST. TIME	10/20 08:49	
USAGE T	02'29	
PGS. SENT	16	
RESULT	OK	



OFFICE OF THE DISTRICT ATTORNEY
CRIMINAL APPEALS UNIT

DAVID ROGER
District Attorney

CHRIS OWENS
Assistant District Attorney

TERESA M. LOWRY
Assistant District Attorney

MARY-ANNE MILLER
County Counsel

STEVEN S. OWENS
Chief Deputy

NANCY BECKER
Deputy

FACSIMILE TRANSMISSION

Fax No. (702) 382-5815

Telephone No. (702) 671-2750

TO: Michael Charlton

FAX#: (702) 388-5819

FROM: Nancy A. Becker *NAB*

SUBJECT: Samuel Howard, 81C053867, Proposed Findings

DATE: October ²⁰~~19~~, 2010*2 of 2*

Mr. Charlton,
The following Findings will be submitted to the Judge on November 2, 2010.
Sincerely,