



**CLARK COUNTY COURTS  
EIGHTH JUDICIAL DISTRICT COURT  
CLERK OF THE COURT**



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Jun 28 2012 03:25 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

Steven D. Grierson  
Clerk of the Court

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June 28, 2012

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

RE: THE STATE OF NEVADA vs. JUSTIN D. PORTER  
**S.C. CASE: 60843**  
D.C. CASE: C174954

Dear Ms. Lindeman:

Pursuant to your Notice to Transmit Required Document, dated June 22, 2012, enclosed is a certified copy of the Findings of Fact, Conclusions of Law and Order filed June 11, 2012 in the above referenced case. If you have any questions regarding this matter, please do not hesitate to contact me at (702) 671-0512.

Sincerely,  
STEVEN D. GRIERSON, CLERK OF THE COURT

  
Sarah Bartholomew, Deputy Clerk

ORIGINAL

FILED

JUN 11 2012

CLERK OF COURT

1 **ORDR**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 LISA LUZAICH  
6 Chief Deputy District Attorney  
7 Nevada Bar #005056  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

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

01C174954  
FFCO  
Findings of Fact, Conclusions of Law and C  
1870881



14 THE STATE OF NEVADA,  
15  
16 Plaintiff,

17 -vs-

CASE NO: C-01-174954-1

18 JUSTIN PORTER,  
19 #1682627

DEPT NO: VI

20 Defendant.

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

23 DATE OF HEARING: APRIL 23, 2012  
24 TIME OF HEARING: 8:30 A.M.

25 THIS CAUSE having come on for hearing before the Honorable ELISSA CADISH,  
26 District Judge, on the 23rd day of April, 2012, the Petitioner being present, PROCEEDING  
IN FORMA PAUPERIS, the Respondent being represented by STEVEN B. WOLFSON,  
Clark County District Attorney, by and through LISA LUZAICH, Chief Deputy District  
Attorney, and the Court having considered the matter, including briefs, transcripts,  
arguments of counsel, and documents on file herein, now therefore, the Court makes the  
following findings of fact and conclusions of law:

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**FINDINGS OF FACT**

1. On April 26, 2001, the State of Nevada, by way of Information, charged Justin Porter (hereinafter "Defendant") with over forty (40) felony counts, related to nine (9) events over a four month period involving twelve (12) victims.
2. On June 18, 2008, the Court granted Defendant's Motion to Sever and ordered the murder event be tried separately. The State subsequently filed an Amended Information in the instant case on April 30, 2009, charging Defendant with one (1) count Burglary While in Possession of a Deadly Weapon (Felony – NRS 205.060, 193.165), one (1) count Attempt Robbery With Use of a Deadly Weapon (Felony – NRS 193.330, 200.380, 193.165), and one (1) count Murder With Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165).
3. On May 8, 2009, a jury found Defendant guilty of Second Degree Murder With Use of a Deadly Weapon (Count 3) and not guilty of Burglary While in Possession of a Deadly Weapon (Count 1) and Attempt Robbery With Use of a Deadly Weapon (Count 2).
4. On September 30, 2009, the Court sentenced Defendant to the Nevada Department of Corrections for One Hundred Twenty (120) Months to Life, plus a consecutive term of One Hundred Twenty (120) Months to Life for the Use of a Deadly Weapon enhancement. The Court entered a Judgment of Conviction on <sup>October</sup> ~~October~~ 13, 2009.
5. On November 8, 2010, the Nevada Supreme Court affirmed the Judgment of Conviction. Remittitur issued December 3, 2010.
6. On February <sup>10</sup> ~~14~~, 2012, Defendant filed a Petition for Writ of Habeas Corpus, asserting the following claims:
  - Claim 1: the State presented insufficient evidence at trial to convict Defendant;
  - Claim 2: the Court improperly admitted Defendant's confessions, allegedly obtained in violation of Miranda; and
  - Claim 3: the Court improperly sentenced Defendant to One Hundred Twenty (120) Months to Life for the Deadly Weapon enhancement.

- 1 7. The State filed a Response to Defendant's Petition on March 21, 2012.
- 2 8. The parties appeared before the Court on April 23, 2012. The Court ruled on
- 3 Defendant's Petition without hearing argument.
- 4 9. Defendant's Petition is untimely.
- 5 10. While Defendant claims he was unaware the Nevada Supreme Court affirmed his
- 6 conviction until recently, he fails to allege sufficient facts to establish he filed the
- 7 instant petition within a reasonable amount of time of <sup>learning</sup> ~~hearing~~ of the affirmance. As
- 8 such, Defendant fails to demonstrate good cause to overcome the procedural time bar.
- 9 11. Even if Defendant filed the instant petition within a reasonable time of discovering
- 10 the Nevada Supreme Court affirmed his conviction and therefore established good
- 11 cause to overcome the time bar, his claims lack merit.
- 12 12. Claim 1, insufficient evidence, and Claim 2, based on alleged Miranda violations,
- 13 were both considered and rejected by the Nevada Supreme Court on appeal. Porter v.
- 14 State, Case No. 54866, Order of Affirmance, p.1-2. As such, both are precluded by
- 15 the law of the case and are therefore denied.
- 16 13. Claim 3 also lacks merit. In 2000, when Defendant murdered the instant victim, NRS
- 17 193.165 required a sentence equal and consecutive to the underlying offense for a
- 18 Deadly Weapon enhancement. As Defendant's crime predated the change in the law,
- 19 the Court properly sentenced Defendant as contemplated by the statute. Claim 3 is
- 20 therefore denied.

### 21 CONCLUSIONS OF LAW

#### 22 1. Pursuant to NRS 34.726:

23 Unless there is good cause shown for delay, a petition that

24 challenges the validity of a judgment or sentence must be filed

25 within 1 year after entry of the judgment of conviction or, if an

26 appeal has been taken from the judgment, within 1 year after the

supreme court issues its remittitur. For the purposes of this

subsection, good cause for delay exists if the petitioner

demonstrates to the satisfaction of the court:

- 27 (a) That the delay is not the fault of the petitioner; and
- 28 (b) That dismissal of the petition as untimely will unduly
- prejudice the petitioner.

- 1 2. The one year time-bar must be strictly construed. Gonzales v. State, 118 Nev. 61, 590  
2 P.3d 901 (2002). The district court has a duty to consider whether the procedural bars  
3 apply to a post-conviction petition and not arbitrarily disregard them. State v. Eighth  
4 Judicial District Court, 121 Nev. 225, 112 P.3d 1070 (2005).
- 5 3. "In order to demonstrate good cause, a petitioner must show that an impediment  
6 external to the defense prevented him or her from complying with the state  
7 procedural default rules." Hathaway v. State, 119 Nev. 30, 71 P.3d 503, 506 (2003);  
8 citing Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); Lozada v.  
9 State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994); Passanisi v. Director, 105 Nev.  
10 63, 769 P.2d 72 (1989); See also Crump v. Warden, 113 Nev. 293, 295, 934 P.2d  
11 247, 252 (1997); Phelps v. Director, Nevada Department of Prisons, 104 Nev. 656,  
12 764 P.2d 1303 (1988). Such an external impediment could be "that the factual or  
13 legal basis for a claim was not reasonably available to counsel, or that 'some  
14 interference by officials' made compliance impracticable." Hathaway, 71 P.3d at  
15 506; quoting Murray v. Carrier, 477 U.S. 478, 488, 106 S.Ct. 2639, 2645 (1986); See  
16 also Gonzales, 118 Nev. 590, 595, 53 P.3d 901, 904; citing Harris v. Warden, 114  
17 Nev. 956, 959-60 n. 4, 964 P.2d 785 n. 4 (1998). Clearly, any delay in filing of the  
18 petition must not be the fault of the petitioner. NRS 34.726(1)(a). To find good cause  
19 there must be a "substantial reason; one that affords a legal excuse." Hathaway, 71  
20 P.3d at 506; quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989),  
21 quoting State v. Estencion, 625 P.2d 1040, 1042 (Haw. 1981).
- 22 4. A defendant's low intelligence is insufficient to amount to good cause to overcome  
23 the procedural time bar. Phelps, 104 Nev. at 659-60.
- 24 5. A defendant's mistaken belief that the Nevada Supreme Court has not yet issued  
25 remittitur may provide good cause to overcome the time bar, but only where the  
26 defendant files a petition within a reasonable amount of time after learning of the  
27 affirmance. See Hathaway v. State, 119 Nev. at 254-55.

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- 1 6. Claims asserted in petition must be supported with specific factual allegations, which  
2 if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502,  
3 686 P.2d 222, 225 (1984). Bare and naked allegations are insufficient. Id.  
4 7. Defendant's conviction is supported by sufficient evidence. Porter v. State, Case No.  
5 54866, Order of Affirmance p.1.  
6 8. Defendant voluntarily, knowingly, and intelligently waived his Miranda rights,  
7 therefore the district court did not err in admitting Defendant's statements at trial.  
8 Porter v. State, Case No. 54866, Order of Affirmance p.1-2.  
9 9. The law of a first appeal is the law of the case on all subsequent appeals in which the  
10 facts are substantially the same. Hall v. State, 91, Nev. 314, 315, 535 P.2d 797, 798  
11 (1975). The doctrine of the law of the case cannot be avoided by a more detailed and  
12 precisely focused argument. Id. at 316.  
13 10. In 2000, NRS 193.165 read as follows:  
14 "Except as otherwise provided in NRS 193.169, any person who  
15 uses a firearm or other deadly weapon or a weapon containing  
16 or capable of emitting tear gas, whether or not its possession is  
17 permitted by NRS 202.375, in the commission of a crime shall  
18 be punished by imprisonment in the state prison for a term equal  
19 to and in addition to the term of imprisonment prescribed by  
20 statute for the crime. The sentence prescribed by this section  
21 runs consecutively with the sentence prescribed by statute for  
22 the crime." 1995 Statutes of Nevada, p.1431.  
23 11. A defendant is sentenced in accordance with the sentencing statutes in place at the  
24 time of the crime, rather than at the time of sentencing. See Tellis v. State, 84 Nev.  
25 587, 445 P.2d 938 (1968); NRS 193.130.

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1 ORDER

2 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction  
3 Relief shall be, and is, denied.

4 DATED this 18<sup>th</sup> day of April, 2012.

5  
6 John F. Galt  
DISTRICT JUDGE

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

10  
11 BY [Signature]

12 LISA LUZAICH  
13 Chief Deputy District Attorney  
14 Nevada Bar #005056

15 NOTICE OF SERVICE

16 I, HOWARD CONRAD, hereby certify that the State forwarded a copy of these  
17 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER on the 18<sup>th</sup> day of  
18 MAY, 2012, to:

20 JUSTIN PORTER, BAC#1042449  
21 HIGH DESERT STATE PRISON  
22 P.O. BOX 650  
23 INDIAN SPRINGS, NV 89070

24 [Signature]  
Secretary for the District Attorney's Office

25  
26  
27 hjc/SVU

