

No. C052190

FILED
Dept. No. 77

JUL 22 12 22 PM '13

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK

Electronically Filed
Jul 24 2013 10:06 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

JOEL BURKE

Petitioner/Plaintiff,

v.

THE STATE OF NEVADA

Respondent/Defendant.

81C052190

NOTICE OF APPEAL

Notice is hereby given that PETITIONER, Petitioner/Defendant above named,
hereby appeals to the Supreme Court of Nevada from the final judgment/order
ORDER

entered in this action on the 9TH day of JULY, 2013

Dated this 14TH day of JULY, 2013

Paul Burdett
Appellant
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989

81C052190
NOASC
Notice of Appeal (criminal)
2735754



RECEIVED
JUL 22 2013
CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAIL

I, JOEL BURKE, hereby certify pursuant to Rule 5(b) of the NRCP, that on this 14th day of July, 2013, I served a true and correct copy of the above-entitled NOTICE OF APPEAL postage prepaid and addressed as follows:

STEVEN B. WATSON
200 LEWIS AVE
LAS VEGAS NV
89155

CATHERINE CORTEZ MASTO
555 E WASHINGTON
SUITE 3900
LAS VEGAS NV
89101-1068

Signature

Print Name

JOEL BURKE

JOEL BURKE

Ely State Prison

P.O. Box 1989

Ely, Nevada 89301-1989

AFFIRMATION PURSUANT TO: N.R.S. 239B.010

I, HEREBY CERTIFY THAT I AM THE UNDERSIGNED
INDIVIDUAL AND THAT THE ATTACHED DOCUMENT
THAT IS ENTITLED: NOTICE OF APPEAL

_____, DOES NOT
CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSON, UNDER THE PAINS AND PENALTIES OF
PERJURY, THIS, 14, DAY OF, July, 2013.

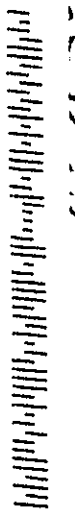
SIGNATURE: 

INMATE NAME PRINTED: Josh Burnett

INMATE NUMBER: 16111

ADDRESS: ELY STATE PRISON, P.O. BOX 1989, ELY, NV 89301

Jose Duran
P.O. Box 14
Eliz. NV
89301



Clerk of Court
200 Louis Ave
3rd Floor
Las Vegas, NV
89155



Las Vegas P9DC 89199
FRI 19 JUL 2013 AM



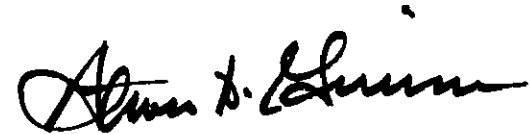
ELY STATE PRISON

JUL 17 2013

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7-17-13

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CLERK OF THE COURT

ASTA

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff(s),

vs.

JOEL BURKETT aka RAYMOND HAIRE,

Defendant(s),

Case No: 81C052190

Dept No: XII

CASE APPEAL STATEMENT

1. Appellant(s): Joel Burkett

2. Judge: Michelle Leavitt

3. Appellant(s): Joel Burkett

Counsel:

Joel Burkett #16111
P.O. Box 1989
Ely, NV 89301-1989

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89101
(702) 671-2700

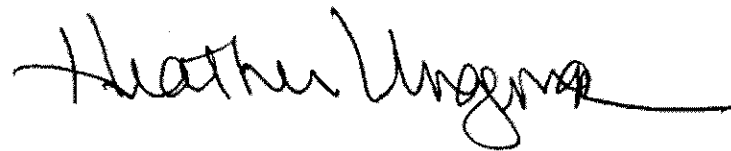
5. Respondent's Attorney Licensed in Nevada: Yes

6. Appellant Represented by Appointed Counsel In District Court: Yes

- 1 7. Appellant Represented by Appointed Counsel On Appeal: N/A
- 2 8. Appellant Granted Leave to Proceed in Forma Pauperis: Yes, February 28, 1994,
- 3 August 12, 1999 &
- 4 January 24, 2001
- 5 9. Date Commenced in District Court: January 16, 1981
- 6 10. Brief Description of the Nature of the Action: Criminal
- 7 Type of Judgment or Order Being Appealed: Writ of Habeas Corpus
- 8 11. Previous Appeal: Yes
- 9 Supreme Court Docket Number(s): 13600, 26242, 34767, 39400, 41504, 45769
- 10 12. Child Custody or Visitation: N/A
- 11

12 Dated This 23 day of July 2013.

13 Steven D. Grierson, Clerk of the Court

14 

15

16 Heather Ungermann, Deputy Clerk
17 200 Lewis Ave
18 PO Box 551601
19 Las Vegas, Nevada 89155-1601
20 (702) 671-0512
21
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DEPARTMENT 12
CASE SUMMARY
CASE NO. 81C052190

The State of Nevada vs Joel Burkett

§ Location: **Department 12**
§ Judicial Officer: **Leavitt, Michelle**
§ Filed on: **01/16/1981**
§ Case Number History:
§ Conversion Case Number: **C052190**
§ Defendant's Scope ID #: **0609533**
§ Lower Court Case Number: **80F05126**

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. KIDNAP WITH USE OF A DEADLY WEAPON	F	01/01/1900	
3. SEXUAL ASSUALT	F	01/01/1900	
4. SEXUAL ASSUALT	F	01/01/1900	

Statistical Closures

09/19/2005	USJR Reporting Statistical Closure
05/19/2005	USJR Reporting Statistical Closure
09/22/2003	USJR Reporting Statistical Closure
02/27/2003	USJR Reporting Statistical Closure
08/05/2002	USJR Reporting Statistical Closure
02/12/2002	USJR Reporting Statistical Closure
02/01/1994	USJR Reporting Statistical Closure
09/24/2003	USJR Reporting Statistical Closure
07/10/2001	USJR Reporting Statistical Closure
05/11/2006	USJR Reporting Statistical Closure

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	81C052190
Court	Department 12
Date Assigned	09/02/2004
Judicial Officer	Leavitt, Michelle

PARTY INFORMATION

		<i>Lead Attorneys</i>
Defendant	Burkett, Joel	Pro Se
Plaintiff	State of Nevada	Wolfson, Steven B 702-671-2700(W)

DATE

EVENTS & ORDERS OF THE COURT





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01/16/1981	 Conversion Case Event Type <i>CRIMINAL COMPLAINT</i>	<i>81C0521900001.tif pages</i>
01/19/1981	 Information <i>INFORMATION</i>	<i>81C0521900002.tif pages</i>
01/20/1981	Initial Arraignment (9:00 AM) <i>INITIAL ARRAIGNMENT</i>	
01/20/1981	Hearing	<i>81C0521900003.tif pages</i>







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01/21/1981	 Statement <i>SUPPLEMENTAL STATEMENT FOR WRIT OF HABEAS CORPUS, DATED 1/14/81</i>	81C0521900040.tif pages
01/23/1981	 Request <i>MOTION TO DISMISS PRO PER PETITION FOR WRIT OF HABEAS CORPUS</i>	81C0521900041.tif pages
01/26/1981	 Points and Authorities <i>POINTS AND AUTHORITIES IN SUPPORT OF WRIT OF HABEAS CORPUS</i>	81C0521900042.tif pages
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04/23/1981	 Order <i>ORDER</i>	81C0521900049.tif pages
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05/04/1981	 Subpoena Duces Tecum <i>SUBPOENA DUCES TECUM</i>	81C0521900055.tif pages


















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05/04/1981	 Instructions to the Jury <i>INSTRUCTIONS TO THE JURY</i>	81C0521900060.tif pages
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06/02/1981	Disposition (Judicial Officer: User, Conversion) 1. ROBBERY WITH A DEADLY WEAPON Guilty	
06/02/1981	Disposition (Judicial Officer: User, Conversion)	
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06/02/1981	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: 0001 and Sentence#: 0002 Converted Disposition:	

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	<p>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 165 Days to Maximum 165 Days</p>	
06/02/1981	<p>Sentence (Judicial Officer: User, Conversion) 2. KIDNAP WITH USE OF A DEADLY WEAPON Adult Adjudication Converted Disposition: Sentence# 0001: LIFE WITH POSSIBILITY OF PAROLE Cons/Conc: Consecutive w/Charge Item: 0002 and Sentence#: 0002 Converted Disposition: Sentence# 0002: LIFE WITH POSSIBILITY OF PAROLE Cons/Conc: Consecutive w/Charge Item: 0001 and Sentence#: 0001</p>	
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07/13/1994	Petition (9:00 AM) Events: 06/30/1994 Petition <i>PROPER PERSON MOTION FOR ENLARGEMENT OF TIME Court Clerk: JULIE</i>	











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CASE NO. 81C052190

HALL Reporter/Recorder: PATSY SMITH Heard By: MAUPIN, A. WILLIAM










07/19/1994	 Response <i>PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR ENLARGEMENT OF TIME</i>	81C0521900017.tif pages
08/03/1994	Petition (9:00 AM) <i>PROPER PERSON MOTION FOR ENLARGEMENT OF TIME Court Clerk: JULIE HALL Reporter/Recorder: PATSY SMITH Heard By: A. William Maupin</i>	
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06/07/1999	 Certificate Filed By: Defendant Burkett, Joel <i>FINANCIAL CERTIFICATE</i>	81C0521900025.tif pages
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06/07/1999	 Petition <i>DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS</i>	81C0521900029.tif pages
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ORDER RE PETITION FOR WRIT OF HABEAS CORPUS

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08/12/1999	Petition for Writ of Habeas Corpus (8:30 AM) Events: 06/07/1999 Petition <i>DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS Heard By: Joseph Pavlikowski</i>	
08/12/1999	Petition to Proceed in Forma Pauperis (8:30 AM) Events: 06/07/1999 Motion <i>DEFT'S PRO PER MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS Heard By: Joseph Pavlikowski</i>	
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08/31/1999	 Notice of Appeal Filed By: Defendant Burkett, Joel <i>NOTICE OF APPEAL</i>	81C0521900037.tif pages
08/31/1999	 Statement Filed by: Defendant Burkett, Joel <i>CASE APPEAL STATEMENT</i>	81C0521900038.tif pages
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11/19/2001	 Conversion Case Event Type Party: Defendant Burkett, Joel <i>ARGUMENT IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS</i>	81C0521900082.tif pages
11/19/2001	 Request Filed by: Defendant Burkett, Joel <i>MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS</i>	81C0521900083.tif pages
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DEPARTMENT 12
CASE SUMMARY
CASE NO. 81C052190

	Filed By: Defendant Burkett, Joel <i>FINANCIAL CERTIFICATE</i>	
11/19/2001	 Affidavit in Support Filed By: Defendant Burkett, Joel <i>AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS</i>	<i>81C0521900085.tif pages</i>
11/19/2001	 Petition Filed by: Defendant Burkett, Joel <i>PETITION FOR WRIT OF HABEAS CORPUS - POST CONVICTION</i>	<i>81C0521900086.tif pages</i>
11/30/2001	Petition <i>DEFT'S PRO PER PTN FOR WRIT OF HABEAS CORPUS</i>	<i>81C0521900089.tif pages</i>
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01/24/2002	Petition to Proceed in Forma Pauperis (9:00 AM) Events: 11/30/2001 Motion <i>DEFT'S PRO PER MOTION FOR TO PROCEED IN FORMA PAUPERIS Heard By: Michael Douglas</i>	
01/24/2002	Motion (9:00 AM) Events: 12/24/2001 Motion <i>DEFT'S PRO PER MTN TO APPEAR/14 Heard By: Michael Douglas</i>	
01/28/2002	Motion <i>ALL PENDING MOTIONS 01/24/02</i>	<i>81C0521900095.tif pages</i>
02/13/2002	 Motion <i>DEFT'S PRO PER MTN FOR LEAVE TO AMEND PTN FOR WRIT HABEAS CORPUS/16</i>	<i>81C0521900097.tif pages</i>
02/13/2002	 Notice Filed By: Defendant Burkett, Joel <i>NOTICE</i>	<i>81C0521900098.tif pages</i>
02/13/2002	 Conversion Case Event Type	<i>81C0521900099.tif pages</i>








DEPARTMENT 12
CASE SUMMARY
CASE No. 81C052190

	Party: Defendant Burkett, Joel <i>SUPPLEMENTAL ARGUMENT IN SUPPORT OF AMENDED PETITION FOR WRIT OF HABEAS CORPUS CORPUS</i>	
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02/19/2002	 Notice of Entry of Decision and Order <i>NOTICE OF ENTRY OF DECISION AND ORDER</i>	81C0521900101.tif pages
02/19/2002	 Response <i>STATES RESPONSE TO DEFENDANTS PROPER PERSON SUPPLEMENTAL ARGUMENT IN SUPPORT OF AMENDED PETITION FOR WRIT OF HABEAS CORPUS - POST CONVICTION SUPPORT OF AMENDED PETITION FOR WRIT OF HABEAS CORPUS - POST CONVICTION</i>	81C0521900102.tif pages
02/26/2002	Motion (9:00 AM) Events: 02/13/2002 Motion <i>DEFT'S PRO PER MTN FOR LEAVE TO AMEND PTN FOR WRIT HABEAS CORPUS/16 Relief Clerk: Amber Farley Reporter/Recorder: Cat Nelson Heard By: Michael Douglas</i>	
02/27/2002	 Motion <i>DEFT'S PRO PER MTN FOR DOCUMENTS/17</i>	81C0521900103.tif pages
03/07/2002	 Order <i>ORDER DENYING DEFENDANTS PROPER PERSON MOTION FOR LEAVE OF THE COURT TO AMEND PETITION FOR WRIT OF HABEAS CORPUS AMEND PETITION FOR WRIT OF HABEAS CORPUS</i>	81C0521900104.tif pages
03/12/2002	Motion (9:00 AM) Events: 02/27/2002 Motion <i>DEFT'S PRO PER MTN FOR DOCUMENTS/17 Court Clerk: Nora Pena Relief Clerk: Barbara Blankenship Reporter/Recorder: Cat Nelson Heard By: Michael Douglas</i>	
03/15/2002	 Order <i>ORDER DENYING DEFENDANTS MOTION FOR DOCUMENTS</i>	81C0521900105.tif pages
03/20/2002	 Notice of Appeal Filed By: Defendant Burkett, Joel <i>NOTICE OF APPEAL</i>	81C0521900106.tif pages
03/21/2002	 Statement Filed by: Defendant Burkett, Joel <i>CASE APPEAL STATEMENT</i>	81C0521900107.tif pages
03/25/2002	Notice of Appeal <i>NOTICE OF APPEAL</i>	81C0521900109.tif pages
03/26/2002	 Statement Filed by: Defendant Burkett, Joel <i>CASE APPEAL STATEMENT</i>	81C0521900108.tif pages
02/19/2003	 Petition Filed by: Defendant Burkett, Joel <i>PETITION FOR WRIT OF HABEAS CORPUS - POST CONVICTION</i>	81C0521900113.tif pages

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02/19/2003	 Request Filed by: Defendant Burkett, Joel <i>MOTION FOR LEAVE TO AMEND THE PETITION FOR WRIT OF HABEAS CORPUS</i>	81C0521900114.tif pages
02/19/2003	 Request Filed by: Defendant Burkett, Joel <i>MOTION FOR DOCUMENTS</i>	81C0521900115.tif pages
02/28/2003	Motion <i>DEFT'S MTN FOR DOCUMENTS</i>	81C0521900117.tif pages
02/28/2003	Motion <i>DEFT'S MTN FOR LEAVE TO AMENDED PTN FOR WRIT OF HABEAS CORPUS</i>	81C0521900118.tif pages
02/28/2003	Petition <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS /20 (VH 3/20/03)</i>	81C0521900119.tif pages
02/28/2003	 Order for Petition for Writ of Habeas Corpus <i>ORDER FOR PETITION FOR A WRIT OF HABEAS CORPUS</i>	81C0521900120.tif pages
03/07/2003	Judgment Filed By: Defendant Burkett, Joel <i>CLERK'S CERTIFICATE REVERSED/REMANDED</i>	81C0521900121.tif pages
03/07/2003	 NV Supreme Court Clerks Certificate/Judgment -Remanded USJR <i>NEVADA SUPREME COURT CLERKS CERTIFICATE/ JUDGMENT - REVERSED AND REMANDED</i>	81C0521900122.tif pages
03/18/2003	Motion (9:00 AM) Events: 02/28/2003 Motion <i>DEFT'S MTN FOR DOCUMENTS Heard By: Michael Douglas</i>	
03/18/2003	Motion to Amend (9:00 AM) Events: 02/28/2003 Motion <i>DEFT'S MTN FOR LEAVE TO AMENDED PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Douglas</i>	
03/18/2003	All Pending Motions (9:00 AM) <i>ALL PENDING MOTIONS (3/18/03) Court Clerk: Sharon Chun Reporter/Recorder: Kit MacDonald Heard By: Michael Douglas</i>	
03/18/2003	Motion <i>ALL PENDING MOTIONS (3/18/03)</i>	81C0521900123.tif pages
03/19/2003	 Response <i>STATES RESPONSE TO DEFENDANTS MOTION FOR DOCUMENTS</i>	81C0521900125.tif pages
03/20/2003	Motion (9:00 AM) <i>DEFT'S MTN FOR DOCUMENTS Heard By: Michael Douglas</i>	
03/20/2003	Motion to Amend (9:00 AM) <i>DEFT'S MTN FOR LEAVE TO AMENDED PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Douglas</i>	
03/20/2003	All Pending Motions (9:00 AM) <i>ALL PENDING MOTIONS (3/20/03) Court Clerk: Sharon Chun Reporter/Recorder: Kit MacDonald Heard By: Michael Douglas</i>	

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03/20/2003	Petition <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS</i>	81C0521900124.tif pages
03/20/2003	Motion <i>ALL PENDING MOTIONS (3/20/03)</i>	81C0521900128.tif pages
03/24/2003	 Conversion Case Event Type <i>ORDER TO TRANSPORT PRISONER</i>	81C0521900126.tif pages
04/03/2003	 Answer <i>ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS</i>	81C0521900129.tif pages
04/11/2003	 Motion <i>STATE'S MTN TO DISMISS DEFT'S PTN FOR WRIT OF HABEAS CORPUS/24</i>	81C0521900130.tif pages
04/14/2003	 Motion <i>DEFT'S PRO PER MTN TO STRIKE /25</i>	81C0521900131.tif pages
04/14/2003	 Reply Filed by: Defendant Burkett, Joel <i>PETITIONERS REPLY</i>	81C0521900132.tif pages
04/15/2003	CANCELED Petition for Writ of Habeas Corpus (9:00 AM) Events: 02/28/2003 Petition <i>Vacated</i>	
04/15/2003	Motion to Dismiss (9:00 AM) Events: 04/11/2003 Motion <i>STATE'S MTN TO DISMISS DEFT'S PTN FOR WRIT OF HABEAS CORPUS/24 Court Clerk: Sharon Chun Reporter/Recorder: Kit MacDonald Heard By: Douglas, Michael L</i>	
04/22/2003	 Opposition <i>STATES OPPOSITION TO DEFENDANTS MOTION FOR LEAVE TO AMEND THE PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR DOCUMENTS WRIT OF HABEAS CORPUS AND MOTION FOR DOCUMENTS</i>	81C0521900133.tif pages
04/22/2003	 Opposition Filed By: Defendant Burkett, Joel <i>OPPOSITION TO RESPONDANTS MOTION TO DISMISS</i>	81C0521900134.tif pages
04/24/2003	Motion (9:00 AM) <i>DEFT'S MTN FOR DOCUMENTS Heard By: Michael Douglas</i>	
04/24/2003	Motion to Amend (9:00 AM) <i>DEFT'S MTN FOR LEAVE TO AMENDED PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Douglas</i>	
04/24/2003	Petition for Writ of Habeas Corpus (9:00 AM) Events: 03/20/2003 Petition <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Douglas</i>	
04/24/2003	Motion to Dismiss (9:00 AM) <i>STATE'S MTN TO DISMISS DEFT'S PTN FOR WRIT OF HABEAS CORPUS/24 Heard By: Michael Douglas</i>	
04/24/2003	All Pending Motions (9:00 AM)	

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ALL PENDING MOTIONS (4/24/03) Court Clerk: Sharon Chun Reporter/Recorder: Kit MacDonald Heard By: Nancy Saitta

04/24/2003	Motion <i>ALL PENDING MOTIONS (4/24/03)</i>	81C0521900135.tif pages
04/29/2003	Motion to Strike (9:00 AM) Events: 04/14/2003 Motion <i>DEFT'S PRO PER MTN TO STRIKE /25 Heard By: Michael Douglas</i>	
05/01/2003	Motion (9:00 AM) <i>DEFT'S MTN FOR DOCUMENTS Heard By: Michael Douglas</i>	
05/01/2003	Motion to Amend (9:00 AM) <i>DEFT'S MTN FOR LEAVE TO AMENDED PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Douglas</i>	
05/01/2003	Petition for Writ of Habeas Corpus (9:00 AM) <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Douglas</i>	
05/01/2003	Motion to Dismiss (9:00 AM) <i>STATE'S MTN TO DISMISS DEFT'S PTN FOR WRIT OF HABEAS CORPUS/24 Court Clerk: Sharon Chun Reporter/Recorder: Kit MacDonald Heard By: Michael Douglas</i>	
05/01/2003	Motion to Strike (9:00 AM) <i>DEFT'S PRO PER MTN TO STRIKE /25 Heard By: Michael Douglas</i>	
05/01/2003	All Pending Motions (9:00 AM) <i>ALL PENDING MOTIONS (5/1/03) Court Clerk: Sharon Chun/SC Relief Clerk: Kristen Brown Reporter/Recorder: Kit MacDonald Heard By: Michael Douglas</i>	
05/01/2003	Motion <i>ALL PENDING MOTIONS (5/1/03)</i>	81C0521900136.tif pages
05/14/2003	 Order <i>ORDER</i>	81C0521900137.tif pages
05/14/2003	 Notice Filed By: Defendant Burkett, Joel <i>NOTICE</i>	81C0521900138.tif pages
05/14/2003	 Reply Filed by: Defendant Burkett, Joel <i>PETITIONERS REPLY TO STATES OPPOSITION TO AMEND AND MOTION FOR DOCUMENTS</i>	81C0521900139.tif pages
05/15/2003	 Judgment <i>FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER</i>	81C0521900140.tif pages
05/16/2003	 Notice <i>NOTICE OF ENTRY OF ORDER</i>	81C0521900141.tif pages
05/27/2003	 Statement <i>CASE APPEAL STATEMENT</i>	81C0521900142.tif pages
05/27/2003	 Notice of Appeal Filed By: Defendant Burkett, Joel	81C0521900143.tif pages

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	<i>NOTICE OF APPEAL</i>	
06/02/2003	 Notice of Entry of Decision and Order <i>NOTICE OF ENTRY OF DECISION AND ORDER</i>	81C0521900144.tif pages
04/02/2004	Judgment <i>CLERK'S CERTIFICATE JUDGMENT AFFIRMED</i>	81C0521900148.tif pages
04/02/2004	 NV Supreme Court Clerks Certificate/Judgment - Affirmed <i>NEVADA SUPREME COURT CLERKS CERTIFICATE/ JUDGMENT - AFFIRMED</i>	81C0521900149.tif pages
09/01/2004	 Petition <i>PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION</i>	81C0521900153.tif pages
09/01/2004	 Brief Filed By: Defendant Burkett, Joel <i>PETITIONERS BRIEF IN SUPPORT OF THE PETITION FOR WRIT OF HABEAS CORPUS</i>	81C0521900154.tif pages
09/02/2004	Petition <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS</i>	81C0521900152.tif pages
09/02/2004	 Order for Petition for Writ of Habeas Corpus <i>ORDER FOR PETITION FOR A WRIT OF HABEAS CORPUS</i>	81C0521900155.tif pages
09/16/2004	 Motion <i>DEFT'S PRO PER MTN TO APPEAR/29</i>	81C0521900156.tif pages
09/28/2004	Motion (9:15 AM) Events: 09/16/2004 Motion <i>DEFT'S PRO PER MTN TO APPEAR/29 Court Clerk: Sue Deaton Reporter/Recorder: Jo A. Scott Heard By: Michelle Leavitt</i>	
10/12/2004	 Response <i>STATES RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS</i>	81C0521900157.tif pages
10/19/2004	Petition for Writ of Habeas Corpus (9:15 AM) Events: 09/02/2004 Petition <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS Court Clerk: Sue Deaton/sd Relief Clerk: Kristen Brown Reporter/Recorder: Jo A. Scott Heard By: Michelle Leavitt</i>	
10/22/2004	 Reply Filed by: Defendant Burkett, Joel <i>PETITIONER REPLY TO THE STATES RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS</i>	81C0521900158.tif pages
11/01/2004	 Judgment <i>FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER</i>	81C0521900159.tif pages
11/09/2004	 Notice of Entry of Decision and Order <i>NOTICE OF ENTRY OF DECISION AND ORDER</i>	81C0521900160.tif pages
05/13/2005	 Writ Filed by: Defendant Burkett, Joel <i>PETITION FOR WRIT OF HABEAS CORPUS</i>	81C0521900161.tif pages

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05/20/2005	Petition <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS /30</i>	81C0521900162.tif pages
05/20/2005	 Order for Petition for Writ of Habeas Corpus <i>ORDER FOR PETITION FOR A WRIT OF HABEAS CORPUS</i>	81C0521900164.tif pages
06/07/2005	 Response <i>STATES RESPONSE AND MOTION TO DISMISS DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION CORPUS POST CONVICTION</i>	81C0521900165.tif pages
06/15/2005	 Opposition Filed By: Defendant Burkett, Joel <i>PETITIONERS OPPOSITION TO THE STATES RESPONSE AND MOTION TO DISMISS</i>	81C0521900166.tif pages
07/05/2005	Petition for Writ of Habeas Corpus (9:15 AM) Events: 05/20/2005 Petition <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS /30 Court Clerk: Sue Deaton Relief Clerk: Greer Jennison/gj Reporter/Recorder: Sharon Howard Heard By: Michelle Leavitt</i>	
07/25/2005	 Judgment <i>FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER</i>	81C0521900167.tif pages
07/26/2005	 Notice of Entry of Decision and Order <i>NOTICE OF ENTRY OF DECISION AND ORDER</i>	81C0521900168.tif pages
08/09/2005	 Notice of Appeal Filed By: Defendant Burkett, Joel <i>NOTICE OF APPEAL</i>	81C0521900169.tif pages
08/10/2005	 Statement <i>CASE APPEAL STATEMENT</i>	81C0521900170.tif pages
09/21/2005	Notice of Appeal <i>APPEAL TO THE SUPREME COURT</i>	81C0521900181.tif pages
12/16/2005	Judgment <i>CLERK'S CERTIFICATE JUDGMENT AFFIRMED</i>	81C0521900183.tif pages
12/16/2005	 NV Supreme Court Clerks Certificate/Judgment - Affirmed <i>NEVADA SUPREME COURT CLERKS CERTIFICATE/ JUDGMENT - AFFIRMED</i>	81C0521900184.tif pages
07/07/2011	 Petition for Writ of Habeas Corpus Filed by: Defendant Burkett, Joel	
07/07/2011	 Notice Filed By: Defendant Burkett, Joel <i>Notice to the Court</i>	
07/07/2011	 Motion Filed By: Defendant Burkett, Joel <i>Motion in Support of Petition for Writ of Habeas Corpus</i>	
07/07/2011	 Certificate	

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Financial Certificate

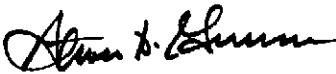
07/07/2011	 Motion for Leave to Proceed in Forma Pauperis Filed By: Defendant Burkett, Joel
07/07/2011	 Motion for Appointment of Attorney Filed By: Defendant Burkett, Joel <i>Motion for the Appointment of Counsel</i>
08/24/2011	 Order for Petition for Writ of Habeas Corpus
09/20/2011	 Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer: Leavitt, Michelle) 09/20/2011, 10/25/2011 Events: 08/24/2011 Order for Petition for Writ of Habeas Corpus <i>Attorney General Reply</i>
10/21/2011	 Motion to Dismiss <i>State's Motion to Dismiss</i>
10/25/2011	Countermotion (8:30 AM) (Judicial Officer: Leavitt, Michelle) <i>State's Motion to Dismiss</i>
10/25/2011	 All Pending Motions (8:30 AM) (Judicial Officer: Leavitt, Michelle)
11/14/2011	 Order <i>Order Granting State's Motion to Dismiss and Order Directing Clerk of Court to Transfer Petition for Writ of Habeas Corpus to Seventh Judicial District</i>
06/14/2013	 Petition for Writ of Habeas Corpus Filed by: Defendant Burkett, Joel
06/14/2013	 Motion for Leave to Proceed in Forma Pauperis Filed By: Defendant Burkett, Joel
06/14/2013	 Affidavit in Support Filed By: Defendant Burkett, Joel <i>Affidavit in Support of Motion to Proceed In Forma Pauperis</i>
06/14/2013	 Motion for Appointment of Attorney Filed By: Defendant Burkett, Joel <i>and Request for Evidentiary Hearing</i>
07/10/2013	 Findings of Fact, Conclusions of Law and Judgment Filed by: Plaintiff State of Nevada <i>Findings Of Fact, Conclusions Of Law, And Order</i>
07/11/2013	 Notice of Entry Filed By: Plaintiff State of Nevada <i>Notice of Entry of Findings of Fact, Conclusions of Law, and Order</i>
07/22/2013	 Notice of Appeal (criminal) Party: Defendant Burkett, Joel <i>Notice of Appeal (criminal)</i>

DEPARTMENT 12
CASE SUMMARY
CASE NO. 81C052190

07/23/2013



Case Appeal Statement
Filed By: Defendant Burkett, Joel
Case Appeal Statement


CLERK OF THE COURT

ORDR

EIGHTH JUDICIAL DISTRICT
CLARK COUNTY, NEVADA

JOEL BURKETT,)	Case No.: C052190
)	
Petitioner,)	DEPT. No.: XII
)	
vs.)	
)	
THE STATE OF NEVADA)	
)	
Respondent)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

FINDINGS OF FACT

1. On January 19, 1981, the State of Nevada charged Joel Burkett ("Defendant") by way of Information with Count 1, ROBBERY & USE OF A DEADLY WEAPON IN COMMISSION OF A CRIME (Felony - NRS 200.380, 193.165); Count 2, FIRST DEGREE KIDNAPPING & USE OF A DEADLY WEAPON IN COMMISSION OF A CRIME (Felony - NRS 200.310, 193.165); Count 3, SEXUAL ASSAULT (Felony - NRS 200.364, 200.366); and Count 4, SEXUAL ASSAULT (Felony - NRS 200.364, 200.366).

2. On May 4, 1981, the jury found the Defendant guilty of Count 1, ROBBERY WITH USE OF A DEADLY WEAPON; Count 2, FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON; Count 3, SEXUAL ASSAULT; and Count 4, SEXUAL ASSAULT.

3. On June 2, 1981, Defendant was sentenced to serve a term in the Nevada State Prison as follows: Count 1, Fifteen years for Robbery and an additional fifteen (15) years for Use of a Deadly Weapon in Commission of a Crime, to be served consecutively; Count 2, Life with Possibility of Parole and an additional term of Life with the Possibility of Parole for Use of a Deadly Weapon in Commission of a Crime, to be served consecutively. Count 2 is to be served consecutive to Count 1; Count 3, Life with Possibility of Parole; and Count 4, Life with Possibility of Parole. Counts 3 and 4 to be served concurrent to the sentences imposed in Counts 1 and 2. Defendant granted credit for time served of 165 days.

4. On June 19, 1981, the Defendant filed Notice of Appeal.

5. On July 29, 1981, the Judgment of Conviction was filed.


MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

1
2 6. On April 21, 1983, the Nevada Supreme Court dismissed the Appeal.
3 Remittitur issued on May 10, 1983.

4 7. On February 2, 1994, the Defendant filed a Petition for Writ of Habeas
5 Corpus (Post-Conviction).

6 8. On February 28, 1994, the District Court granted in part and denied in
7 part the Defendant's Petition for Writ of Habeas Corpus (Post-Conviction).

8 9. On June 7, 1999, the Defendant filed a Second Petition for Writ of
9 Habeas Corpus (Post-Conviction). The State filed its Response on August 4, 1999.

10 10. On August 12, 1999, the District Court denied the Defendant's Petition
11 for Writ of Habeas Corpus (Post-Conviction). The Findings of Fact, Conclusions of
12 Law, and Order was filed on August 18, 1999.

13 11. On August 31, 1999, the Defendant filed a Notice of Appeal.

14 12. On July 10, 2001, the Nevada Supreme Court affirmed the judgment
15 of the District Court. Remittitur issued on August 7, 2001.

16 13. On November 19, 2001, the Defendant filed a Third Petition for Writ
17 of Habeas Corpus (Post-Conviction). The State filed its Response on January 23,
18 2002.

19 14. On January 24, 2002, the District Court denied the Defendant's
20 Petition for Writ of Habeas Corpus (Post-Conviction). The Findings of Fact,
21 Conclusions of Law, and Order was filed on February 14, 2002.

22 15. On March 20, 2002, the Defendant filed a Notice of Appeal.

23 16. On February 6, 2003, the Nevada Supreme Court reversed the
24 judgment of the District Court and remanded the matter. Remittitur issued on March
25 4, 2003.

26 17. On February 19, 2003, the Defendant filed a Fourth Petition for Writ
27 of Habeas Corpus (Post-Conviction).

28 18. On April 3, 2003, the Attorney General filed its Response to the
Defendant's Third Petition for Writ of Habeas Corpus (Post-Conviction).

19. On May 1, 2003, the District Court denied the Defendant's Third and
Fourth Petition for Writ of Habeas Corpus (Post-Conviction). The Findings of Fact,
Conclusions of Law, and Order were filed on May 14, 2003 and May 15, 2003
respectively.

1
2 20. On May 27, 2003, the Defendant filed a Notice of Appeal.

3 21. On March 5, 2004, the Nevada Supreme Court affirmed the District
4 Court's denial of the Defendant's Fourth Petition for Writ of Habeas Corpus (Post-
Conviction). Remittitur issued on March 30, 2004.

5 22. On September 1, 2004, the Defendant filed a Fifth Petition for Writ of
6 Habeas Corpus (Post-Conviction). The State filed its Response on October 12, 2004.

7 23. On October 19, 2004, the District Court denied the Defendant's Fifth
8 Petition for Writ of Habeas Corpus (Post-Conviction). The Findings of Fact,
Conclusions of Law, and Order was filed on November 1, 2004.

9 24. On May 13, 2005, the Defendant filed a Sixth Petition for Writ of
10 Habeas Corpus (Post-Conviction). The State filed its Response on June 7, 2005.

11 25. On July 5, 2005, the District Court dismissed the Defendant's Sixth
12 Petition for Writ of Habeas Corpus (Post-Conviction). The Findings of Fact,
Conclusions of Law and Order was filed on July 25, 2005.

13 26. On August 9, 2005, the Defendant filed a Notice of Appeal.

14 27. On November 15, 2005, the Nevada Supreme Court affirmed the
15 judgment of the District Court. Remittitur issued on December 13, 2005.

16 28. On July 7, 2011, the Defendant filed a Seventh Petition for Writ of
17 Habeas Corpus (Post-Conviction). The State filed a Motion to Dismiss on October 21,
2011.

18 29. On October 25, 2011, the District Court granted the State's Motion to
19 Dismiss and Ordered the clerk of the court to transfer the Petition to the Seventh
Judicial District.

20 30. On June 14, 2013, the Defendant filed the instant Eighth Petition for
21 Writ of Habeas Corpus.

22 CONCLUSIONS OF LAW

23 1. NRS 34.726(1), governing "Limitations on time to file..." requires
24 that a petition for a writ of habeas corpus "must be filed within 1 year after entry of
25 the judgment of conviction or, if an appeal has been taken from the judgment, within
26 1 year after the Supreme Court issues its remittitur." Late-filing of a petition may be
excused from procedural default if the Petitioner can establish good cause for delay in
bringing the claim. *Id.* Good cause for late-filing consists of a showing that: (1)
27 "delay is not the fault of the petitioner"; and (2) "dismissal of the petition as untimely
will unduly prejudice the petitioner." *Id.* at (1)(a)-(b).
28

1
2 2. To avoid dismissal the defendant must plead and prove specific facts
3 that demonstrate good cause for his failure to present claims before and actual
4 prejudice. *See State v. District Court*, 121 Nev. 225, 232, 112 P.3d 1070, 1074
(2005).

5 3. In order to demonstrate good cause, a petitioner must show that an
6 impediment external to the defense prevented him or her from complying with the
7 state procedural default rules. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503,
506 (2003).

8 4. The court may excuse the failure to show good cause where the
9 prejudice from a failure to consider the claim amounts to a fundamental miscarriage
of justice. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

10 5. NRS 34.726 applies to successive petitions. *Pellegrini v. State*, 117
11 Nev. 860, 870, 34 P.3d 519, 526 (2001).

12 6. NRS 34.745(4), governing "Summary dismissal of successive
13 petitions," requires that "if the petition is a second or successive petition challenging
14 the validity of a judgment of conviction or sentence and if it plainly appears from the
15 face of the petition or an amended petition and documents and exhibits that are
16 annexed to it, or from records of the court that the petitioner is not entitled to relief
based on any of the grounds set forth in subsection 2 of NRS 34.810, the judge or
justice shall enter an order for its summary dismissal and cause the petitioner to be
notified of the entry of the order."

17 7. NRS 34.810(2), governing "Additional reasons for dismissal of
18 petition," requires that "[a] second or successive petition must be dismissed if the
19 judge or justice determines that it fails to allege new or different grounds for relief
20 and that the prior determination was on the merits or, if new and different grounds are
alleged, the judge or justice finds that the failure of the petitioner to assert those
grounds in a prior petition constituted an abuse of the writ."

21 8. The petitioner has the burden of pleading and proving specific facts
22 that demonstrate both good cause for failing to present a claim or for presenting a
23 claim again and actual prejudice. NRS 34.810(3). *See also State v. Haberstroh*, 119
Nev. 173, 181, 69 P.3d 676, 681 (2003).

24 9. A court must dismiss a habeas petition if it presents claims that either
25 were or could have been presented in an earlier proceeding, unless the court finds
26 both cause for failing to present the claims earlier or for raising them again and actual
27 prejudice to the petitioner. *Evans v. State*, 117 Nev. 609, 621-622, 28 P.3d 498, 507
(2001).

1
2 10. Unlike initial petitions which certainly require a careful review of the
3 record, successive petitions may be dismissed based solely on the face of the petition.
4 *Ford v. Warden*, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

5 11. Application of the statutory procedural default rules to post-conviction
6 habeas petitions is mandatory. *State v. District Court (Riker)*, 121 Nev. 225, 231, 112
7 P.3d 1070, 1074 (2005).

8 12. Meritless, successive and untimely petitions clog the court system and
9 undermine the finality of convictions. *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d
10 944, 950 (1994).

11 13. The Petitioner had one year from May 10, 1983, the date the Nevada
12 Supreme Court issued its remittitur, to file the Petition for Writ of Habeas Corpus
13 (Post-Conviction).

14 14. The Petitioner failed to establish both good cause for the delay in filing
15 the instant post-conviction petition and prejudice to the petitioner.

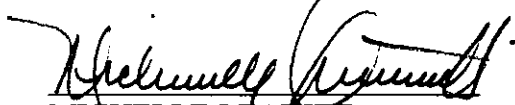
16 15. The petition is successive as the Petitioner filed seven prior petitions.

17 16. The petition neither set forth good cause for the Petitioner's failure to
18 present this claim in the prior petitions nor actual prejudice to the Petitioner.

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ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas
Corpus (Post-Conviction) shall be, and it is, hereby DENIED.

Dated this 9 day of July, 2013.


MICHELLE LEAVITT
DISTRICT COURT JUDGE
DEPARTMENT XII
EIGHTH JUDICIAL DISTRICT

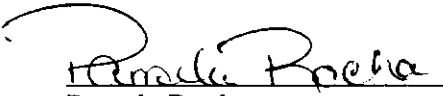
1
2 **CERTIFICATE OF MAILING**

3
4 I hereby certify that on the 10th day of July, 2013, I placed a copy of the
5 Order for Petition for Writ of Habeas Corpus (Post-Conviction) in the U.S. Mail,
6 postage prepaid to:

7 Joel Burkett #16111
8 Ely State Prison
9 P.O. Box 1989
Ely, Nevada 89301

Steven B. Wolfson
Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155

10 Catherine Cortez Masto
11 Nevada Attorney General
12 555 E. Washington, Suite 3900
Las Vegas, NV 89101-1068

13
14
15
16 
17 Pamela Rocha
18 Judicial Executive Assistant, Dept. XII

19
20 C052190

21 Joel Burkett

22 vs.

23 The State of Nevada
24
25
26
27
28

NEO


CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JOEL BURKETT,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: 81C052190

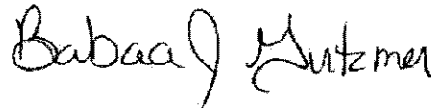
Dept No: XII

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

PLEASE TAKE NOTICE that on July 10, 2013, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on July 11, 2013.

STEVEN D. GRIERSON, CLERK OF THE COURT



Barbara J. Gutzmer, Deputy Clerk

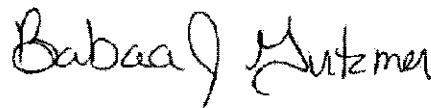
CERTIFICATE OF MAILING

I hereby certify that on this 11 day of July 2013, I placed a copy of this Notice of Entry in:

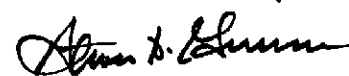
The bin(s) located in the Regional Justice Center of:
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☒ The United States mail addressed as follows:

Joel Burkett # 16111
P.O. Box 1989
Ely, NV 89301



Barbara J. Gutzmer, Deputy Clerk



CLERK OF THE COURT

ORDR

EIGHTH JUDICIAL DISTRICT
CLARK COUNTY, NEVADA

JOEL BURKETT,

Petitioner,

vs.

THE STATE OF NEVADA

Respondent

Case No.: C052190

DEPT. No.: XII

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

FINDINGS OF FACT

1. On January 19, 1981, the State of Nevada charged Joel Burkett ("Defendant") by way of Information with Count 1, ROBBERY & USE OF A DEADLY WEAPON IN COMMISSION OF A CRIME (Felony – NRS 200.380, 193.165); Count 2, FIRST DEGREE KIDNAPPING & USE OF A DEADLY WEAPON IN COMMISSION OF A CRIME (Felony – NRS 200.310, 193.165); Count 3, SEXUAL ASSAULT (Felony – NRS 200.364, 200.366); and Count 4, SEXUAL ASSAULT (Felony – NRS 200.364, 200.366).

2. On May 4, 1981, the jury found the Defendant guilty of Count 1, ROBBERY WITH USE OF A DEADLY WEAPON; Count 2, FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON; Count 3, SEXUAL ASSAULT; and Count 4, SEXUAL ASSAULT.

3. On June 2, 1981, Defendant was sentenced to serve a term in the Nevada State Prison as follows: Count 1, Fifteen years for Robbery and an additional fifteen (15) years for Use of a Deadly Weapon in Commission of a Crime, to be served consecutively; Count 2, Life with Possibility of Parole and an additional term of Life with the Possibility of Parole for Use of a Deadly Weapon in Commission of a Crime, to be served consecutively. Count 2 is to be served consecutive to Count 1; Count 3, Life with Possibility of Parole; and Count 4, Life with Possibility of Parole. Counts 3 and 4 to be served concurrent to the sentences imposed in Counts 1 and 2. Defendant granted credit for time served of 165 days.

4. On June 19, 1981, the Defendant filed Notice of Appeal.

5. On July 29, 1981, the Judgment of Conviction was filed.


MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

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2 6. On April 21, 1983, the Nevada Supreme Court dismissed the Appeal.
3 Remittitur issued on May 10, 1983.

4 7. On February 2, 1994, the Defendant filed a Petition for Writ of Habeas
5 Corpus (Post-Conviction).

6 8. On February 28, 1994, the District Court granted in part and denied in
7 part the Defendant's Petition for Writ of Habeas Corpus (Post-Conviction).

8 9. On June 7, 1999, the Defendant filed a Second Petition for Writ of
9 Habeas Corpus (Post-Conviction). The State filed its Response on August 4, 1999.

10 10. On August 12, 1999, the District Court denied the Defendant's Petition
11 for Writ of Habeas Corpus (Post-Conviction). The Findings of Fact, Conclusions of
12 Law, and Order was filed on August 18, 1999.

13 11. On August 31, 1999, the Defendant filed a Notice of Appeal.

14 12. On July 10, 2001, the Nevada Supreme Court affirmed the judgment
15 of the District Court. Remittitur issued on August 7, 2001.

16 13. On November 19, 2001, the Defendant filed a Third Petition for Writ
17 of Habeas Corpus (Post-Conviction). The State filed its Response on January 23,
18 2002.

19 14. On January 24, 2002, the District Court denied the Defendant's
20 Petition for Writ of Habeas Corpus (Post-Conviction). The Findings of Fact,
21 Conclusions of Law, and Order was filed on February 14, 2002.

22 15. On March 20, 2002, the Defendant filed a Notice of Appeal.

23 16. On February 6, 2003, the Nevada Supreme Court reversed the
24 judgment of the District Court and remanded the matter. Remittitur issued on March
25 4, 2003.

26 17. On February 19, 2003, the Defendant filed a Fourth Petition for Writ
27 of Habeas Corpus (Post-Conviction).

28 18. On April 3, 2003, the Attorney General filed its Response to the
Defendant's Third Petition for Writ of Habeas Corpus (Post-Conviction).

19. On May 1, 2003, the District Court denied the Defendant's Third and
Fourth Petition for Writ of Habeas Corpus (Post-Conviction). The Findings of Fact,
Conclusions of Law, and Order were filed on May 14, 2003 and May 15, 2003
respectively.

1
2 20. On May 27, 2003, the Defendant filed a Notice of Appeal.

3 21. On March 5, 2004, the Nevada Supreme Court affirmed the District
4 Court's denial of the Defendant's Fourth Petition for Writ of Habeas Corpus (Post-
Conviction). Remittitur issued on March 30, 2004.

5 22. On September 1, 2004, the Defendant filed a Fifth Petition for Writ of
6 Habeas Corpus (Post-Conviction). The State filed its Response on October 12, 2004.

7 23. On October 19, 2004, the District Court denied the Defendant's Fifth
8 Petition for Writ of Habeas Corpus (Post-Conviction). The Findings of Fact,
Conclusions of Law, and Order was filed on November 1, 2004.

9 24. On May 13, 2005, the Defendant filed a Sixth Petition for Writ of
10 Habeas Corpus (Post-Conviction). The State filed its Response on June 7, 2005.

11 25. On July 5, 2005, the District Court dismissed the Defendant's Sixth
12 Petition for Writ of Habeas Corpus (Post-Conviction). The Findings of Fact,
Conclusions of Law and Order was filed on July 25, 2005.

13 26. On August 9, 2005, the Defendant filed a Notice of Appeal.

14 27. On November 15, 2005, the Nevada Supreme Court affirmed the
15 judgment of the District Court. Remittitur issued on December 13, 2005.

16 28. On July 7, 2011, the Defendant filed a Seventh Petition for Writ of
17 Habeas Corpus (Post-Conviction). The State filed a Motion to Dismiss on October 21,
2011.

18 29. On October 25, 2011, the District Court granted the State's Motion to
19 Dismiss and Ordered the clerk of the court to transfer the Petition to the Seventh
Judicial District.

20 30. On June 14, 2013, the Defendant filed the instant Eighth Petition for
21 Writ of Habeas Corpus.

22 CONCLUSIONS OF LAW

23 1. NRS 34.726(1), governing "Limitations on time to file...", requires
24 that a petition for a writ of habeas corpus "must be filed within 1 year after entry of
25 the judgment of conviction or, if an appeal has been taken from the judgment, within
26 1 year after the Supreme Court issues its remittitur." Late-filing of a petition may be
excused from procedural default if the Petitioner can establish good cause for delay in
27 bringing the claim. *Id.* Good cause for late-filing consists of a showing that: (1)
"delay is not the fault of the petitioner"; and (2) "dismissal of the petition as untimely
will unduly prejudice the petitioner." *Id.* at (1)(a)-(b).

1
2 2. To avoid dismissal the defendant must plead and prove specific facts
3 that demonstrate good cause for his failure to present claims before and actual
4 prejudice. *See State v. District Court*, 121 Nev. 225, 232, 112 P.3d 1070, 1074
(2005).

5 3. In order to demonstrate good cause, a petitioner must show that an
6 impediment external to the defense prevented him or her from complying with the
7 state procedural default rules. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503,
506 (2003).

8 4. The court may excuse the failure to show good cause where the
9 prejudice from a failure to consider the claim amounts to a fundamental miscarriage
of justice. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

10 5. NRS 34.726 applies to successive petitions. *Pellegrini v. State*, 117
11 Nev. 860, 870, 34 P.3d 519, 526 (2001).

12 6. NRS 34.745(4), governing "Summary dismissal of successive
13 petitions," requires that "if the petition is a second or successive petition challenging
14 the validity of a judgment of conviction or sentence and if it plainly appears from the
15 face of the petition or an amended petition and documents and exhibits that are
16 annexed to it, or from records of the court that the petitioner is not entitled to relief
based on any of the grounds set forth in subsection 2 of NRS 34.810, the judge or
justice shall enter an order for its summary dismissal and cause the petitioner to be
notified of the entry of the order."

17 7. NRS 34.810(2), governing "Additional reasons for dismissal of
18 petition," requires that "[a] second or successive petition must be dismissed if the
19 judge or justice determines that it fails to allege new or different grounds for relief
20 and that the prior determination was on the merits or, if new and different grounds are
alleged, the judge or justice finds that the failure of the petitioner to assert those
grounds in a prior petition constituted an abuse of the writ."

21 8. The petitioner has the burden of pleading and proving specific facts
22 that demonstrate both good cause for failing to present a claim or for presenting a
23 claim again and actual prejudice. NRS 34.810(3). *See also State v. Haberstroh*, 119
Nev. 173, 181, 69 P.3d 676, 681 (2003).

24 9. A court must dismiss a habeas petition if it presents claims that either
25 were or could have been presented in an earlier proceeding, unless the court finds
26 both cause for failing to present the claims earlier or for raising them again and actual
27 prejudice to the petitioner. *Evans v. State*, 117 Nev. 609, 621-622, 28 P.3d 498, 507
(2001).

1
2 10. Unlike initial petitions which certainly require a careful review of the
3 record, successive petitions may be dismissed based solely on the face of the petition.
4 *Ford v. Warden*, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

5 11. Application of the statutory procedural default rules to post-conviction
6 habeas petitions is mandatory. *State v. District Court (Riker)*, 121 Nev. 225, 231, 112
7 P.3d 1070, 1074 (2005).

8 12. Meritless, successive and untimely petitions clog the court system and
9 undermine the finality of convictions. *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d
10 944, 950 (1994).

11 13. The Petitioner had one year from May 10, 1983, the date the Nevada
12 Supreme Court issued its remittitur, to file the Petition for Writ of Habeas Corpus
13 (Post-Conviction).

14 14. The Petitioner failed to establish both good cause for the delay in filing
15 the instant post-conviction petition and prejudice to the petitioner.


16 15. The petition is successive as the Petitioner filed seven prior petitions.

17 16. The petition neither set forth good cause for the Petitioner's failure to
18 present this claim in the prior petitions nor actual prejudice to the Petitioner.

19 **ORDER**

20 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas
21 Corpus (Post-Conviction) shall be, and it is, hereby DENIED.

22 Dated this 9 day of July, 2013.

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MICHELLE LEAVITT
DISTRICT COURT JUDGE
DEPARTMENT XII
EIGHTH JUDICIAL DISTRICT

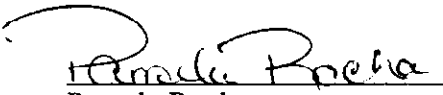
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2 **CERTIFICATE OF MAILING**

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4 I hereby certify that on the 10th day of July, 2013, I placed a copy of the
5 Order for Petition for Writ of Habeas Corpus (Post-Conviction) in the U.S. Mail,
6 postage prepaid to:

7 Joel Burkett #16111
8 Ely State Prison
9 P.O. Box 1989
Ely, Nevada 89301

Steven B. Wolfson
Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155

10 Catherine Cortez Masto
11 Nevada Attorney General
12 555 E. Washington, Suite 3900
Las Vegas, NV 89101-1068

13
14
15
16 
17 Pamela Rocha
18 Judicial Executive Assistant, Dept. XII

19
20 C052190

21 Joel Burkett

22 vs.

23 The State of Nevada
24
25
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27
28

MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

THE SEALED PORTION
OF THESE MINUTES
WILL FOLLOW VIA
U.S. MAIL.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 20, 2011

81C052190

The State of Nevada vs Joel Burkett

September 20, 2011 8:30 AM

**Petition for Writ of Habeas
Corpus**

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Louisa Garcia; Denise Trujillo

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS

Deft not present, in NDC. Court noted this matter should be handled by the Attorney General's Office as the Deft is raising issues his time is not being calculated by the prison. COURT ORDERED, matter CONTINUED for Attorney General to respond and State to forward motion and notify the Attorney General's office.

NDC

CONTINUED TO: 10/25/11 8:230 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 25, 2011

81C052190

The State of Nevada vs Joel Burkett

October 25, 2011

8:30 AM

All Pending Motions

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Sandra Harrell

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT:

Resch, Jamie J.
State of Nevada

Attorney
Plaintiff

JOURNAL ENTRIES

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

Defendant not present, incarcerated at NDC. COURT ORDERED, Writ DISMISSED WITHOUT PREJUDICE, as not filed in the appropriate county. State to prepare Order.

NDC

CLERK'S NOTE: A copy of the above minute order was mailed to Joel Burkett #16111, c/o Ely State Prison, P.O. Box 1989, Ely NV 89301./sjh

PLAINTIFF'S EXHIBITS

CASE NO. C52190

1-A Underpanties

OFFERED ADMITTED

1. Evidence Envelope & Contents	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no obj
2. Black Leather Vest	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no obj
3. Knife & Case	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no obj
4. Knife	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no obj
5. Green Jacket	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no obj
6. Knife - Black Leather handle	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no obj
7. Left Buckle	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no obj
8. Photo	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no obj
9. Photo	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no obj
10. Photo	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no
11. Photo	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no obj
12. Photograph	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no obj
13. Fingerprint exemplars of Dept (SPC cards)	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no obj
14. photo	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no obj
15. photo	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no obj
16. Latent finger print	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no obj
17. Records of Stop & Go	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no obj
18. 4 photos of Capt. Joel Buckett	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no obj
19. Photo	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no obj
20. photo	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no obj
21. photo	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no obj
22. photo	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no obj
23. photo	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no obj
24. photo	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no obj
25. photo	<input checked="" type="checkbox"/> 4/30	<input checked="" type="checkbox"/> no obj

PLAINTIFF'S EXHIBITS

OFFERED ADMITTED

26. photo	<input checked="" type="checkbox"/>	4/30/81	<input checked="" type="checkbox"/>	no obj
27. photo	<input checked="" type="checkbox"/>	4/30	<input checked="" type="checkbox"/>	no obj
28. photo	<input checked="" type="checkbox"/>	4/30	<input checked="" type="checkbox"/>	no obj
29. photo	<input checked="" type="checkbox"/>	4/30 SUST.	<input checked="" type="checkbox"/>	no obj
30. photo	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
31. photo	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
32. photo	<input checked="" type="checkbox"/>	4/30/81 SUST.	<input checked="" type="checkbox"/>	no obj
33. photo	<input checked="" type="checkbox"/>	4/30/81	<input checked="" type="checkbox"/>	no obj
34. photo	<input checked="" type="checkbox"/>	4/30	<input checked="" type="checkbox"/>	no obj
35. Evidence Envelope	<input checked="" type="checkbox"/>	35 a - black & white T-Shirt	<input checked="" type="checkbox"/>	
36. Evidence Envelope & Contents (Empty Camel Cigarette Package)	<input checked="" type="checkbox"/>	4/30	<input checked="" type="checkbox"/>	no obj
37. Evidence Envelope & Contents (Marlboro Cigarettes)	<input checked="" type="checkbox"/>	4/30	<input checked="" type="checkbox"/>	no obj
38. Evidence Bag & Contents (MATTRESS COVER)	<input checked="" type="checkbox"/>	4/30	<input checked="" type="checkbox"/>	no obj
39. Evidence Bag & Contents	<input checked="" type="checkbox"/>	4/30	<input checked="" type="checkbox"/>	no obj
40. Booking Sheet	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
41. Rape Kit	<input checked="" type="checkbox"/>	5/1	<input checked="" type="checkbox"/>	no obj
42. Hair Coll. Kit	<input checked="" type="checkbox"/>	5/1	<input checked="" type="checkbox"/>	no obj
43. Hair Sample	<input checked="" type="checkbox"/>	5/1	<input checked="" type="checkbox"/>	no obj
44. Hair Sample - (Car)	<input checked="" type="checkbox"/>	5/1	<input checked="" type="checkbox"/>	no obj
45. Hair Sample	<input checked="" type="checkbox"/>	5/1	<input checked="" type="checkbox"/>	no obj
46. Hair Coll. Kit from T. Burkett	<input checked="" type="checkbox"/>	5/1	<input checked="" type="checkbox"/>	no obj
47. Eviden. Env. & Hair	<input checked="" type="checkbox"/>	5/1	<input checked="" type="checkbox"/>	no obj
	<input checked="" type="checkbox"/>	5/1	<input checked="" type="checkbox"/>	no obj

PLAINTIFF'S EXHIBITS

OFFERED ADMITTED

48. Env. w/ Hair sub.

☒ no obj ☒ 5/1

49. Env. Env. Hair sub.

☒ no obj ☒ 5/1

50. Social-Nevada Identification Card

☒ no obj ☒ 5/1

51. Application for Nevada I.D.

☒ no obj ☒ 5/1

52. Birth Certificate (Certified Copy)

☒ no obj ☒ 5/1

53. Substitution of Attorneys

☒ no obj ☒ 5/1☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

DEFENDANT'S EXHIBITS:

CASE NO. C52190

	OFFERED	ADMITTED
A. <u>work Application of Raymond Haire</u>	<input checked="" type="checkbox"/> 5/1	<input checked="" type="checkbox"/> 10/28
B. <u>Note book on interviews of Applicants</u>	<input checked="" type="checkbox"/> 5/1	<input checked="" type="checkbox"/> 10/28
C. _____	<input type="checkbox"/>	<input type="checkbox"/>
D. _____	<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"/>
Z. _____	<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 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER; DISTRICT COURT
MINUTES; EXHIBITS LIST

STATE OF NEVADA,

Plaintiff(s),

vs.

JOEL BURKETT aka RAYMOND HAIRE,

Defendant(s).

Case No: C052190
Dept No: XII

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 23 day of July 2013.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

