



**EIGHTH JUDICIAL DISTRICT COURT  
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER  
200 LEWIS AVENUE, 3<sup>rd</sup> FL.  
LAS VEGAS, NEVADA 89155-1160  
(702) 671-4554

Electronically Filed  
Mar 21 2014 04:35 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

Steven D. Grierson  
Clerk of the Court

March 21, 2014

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

RE: STATE OF NEVADA vs. DONTE JOHNSON  
**S.C. CASE: 65168**  
D.C. CASE: C153154

Dear Ms. Lindeman:

Pursuant to your Notice to Transmit Required Document, dated March 18, 2014, enclosed is a certified copy of the Findings of Fact, Conclusions of Law and Order filed March 17, 2014 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

A handwritten signature in cursive script, reading "Teodora Jones", is written over a horizontal line.

Teodora Jones, Deputy Clerk

**FFCL**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**STEVEN S. OWENS**  
Chief Deputy District Attorney  
Nevada Bar #004352  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO: 98C153154

DONTE JOHNSON,  
#1586283

DEPT NO: VI

Defendant.

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

DATE OF HEARING: 6/21/13  
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable ELISSA F. CADISH, District Judge, on the 21<sup>st</sup> day of June, 2013, the Petitioner being present, represented by CHRISTOPHER R. ORAM, ESQ., the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through STEVEN S. OWENS, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, testimony, arguments of counsel, and documents on file herein, now makes the following findings of fact and conclusions of law:

Before the Court is Defendant's Petition for Writ of Habeas Corpus, Supplemental Brief in Support of Defendants Writ of Habeas Corpus, Second Supplemental Brief in Support of Defendants Writ of Habeas Corpus, State's Response, Defendant's Reply to the State's Response, and Defendant's Reply Brief on Mr. Johnson's Initial Trial Issues. The Court heard

1 argument followed by an evidentiary hearing at which Mr. Johnson's trial attorneys from his  
2 2000 and 2005 trials testified. After review of the briefs, exhibits, and evidence presented to  
3 the Court, the Court hereby denies Defendant's Petition for Writ of Habeas Corpus.

4 In 2000, Mr. Johnson was found guilty by the jury, but the jury was unable to reach a  
5 unanimous verdict on the appropriate penalty in the penalty phase. Thereafter, a three-judge  
6 panel held a penalty hearing and imposed the death penalty on Mr. Johnson for all four  
7 murders. On appeal, the Nevada Supreme Court noted the overwhelming evidence of Mr.  
8 Johnson's guilt and affirmed his convictions by the jury. However, under the United States  
9 Supreme Court's decision in Ring v. Arizona, the Court reversed the imposition of death by  
10 the three-judge panel and remanded the case for a new penalty phase before a new jury. In  
11 2005, the jury imposed a sentence of death for all four murders. This sentence was affirmed  
12 on appeal to the Nevada Supreme Court. Mr. Johnson asserts ineffective assistance of counsel  
13 at his trials and on his appeals. Under Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052  
14 (1984), to establish ineffective assistance, Defendant must show first that his counsel's  
15 representation fell below an objective standard of reasonableness, and second, that but for  
16 counsel's errors, there is a reasonable probability that the result of the proceedings would have  
17 been different.

18 Here, Mr. Johnson asserts that his first appeal should have challenged various issues  
19 relating to the jury selection process. Given that the jury did not reach a verdict on the penalty  
20 and the Nevada Supreme Court reversed the death penalty imposed by the three-judge panel,  
21 the alleged appeal deficiencies could only be prejudicial if they would have resulted in a  
22 reversal of the convictions herein. With respect to the alleged underrepresentation of African  
23 Americans in the jury venire, there is no evidence presented that this was a systematic  
24 underrepresentation and the issue, if raised on appeal, would not have been successful.  
25 Additionally, the State is permitted to use its peremptory challenges to strike life-affirming  
26 jurors, and no authority is provided indicating this is in any way improper. This issue would  
27 not be likely to succeed on the direct appeal. Mr. Johnson also argues that appellate counsel  
28 should have raised the trial court's denial of cause challenges for jurors who would have

1 automatically voted for death or otherwise should have been stricken for cause, but the trial  
2 court had denied those challenges. At trial, defense counsel used its peremptory challenges to  
3 strike these jurors. Thus, the jurors in question did not sit on the jury that made decisions about  
4 Mr. Johnson's case. There is no indication that the actual jurors had improper biases, and no  
5 authority that the forced use of peremptory challenges violated Mr. Johnson's rights other than  
6 a dissenting opinion in a United States Supreme Court case. Thus, this issue would likely have  
7 been rejected if raised on appeal, and it is not below an objective standard of reasonableness  
8 to fail to make this argument. Mr. Johnson also argues that his counsel should have moved to  
9 dismiss the kidnapping charges as incidental to the robbery charges. However, under  
10 applicable case law, the movement and restraints used in this case would likely have been  
11 found to have substantially increased the risk of harm to the victims and the motion would not  
12 have been successful. Accordingly, no prejudice has been shown. The Court has also reviewed  
13 each of the other arguments about alleged ineffective assistance at the 2000 trial and appeal  
14 therefrom and finds that neither prong of Strickland is met as to those matters.

15 With respect to the 2005 penalty phase, the Court similarly finds that Mr. Johnson's  
16 counsel neither fell below an objective standard of reasonableness, nor has prejudice been  
17 shown. Specifically, the failure to list on the verdict form the mitigators listed by the jury at  
18 the first penalty phase is not ineffective given that those matters were argued in any event and  
19 the jurors could consider them in evaluating the penalty. Additionally, there is no showing of  
20 prejudice from this failure. The failure to obtain and present a PET scan was not unreasonable  
21 given that Mr. Johnson was noted to be bright, the conflicting testimony about whether his  
22 mother had been drinking during her pregnancy with him, and the fact it was not general  
23 practice to do one at the time. Additionally, there is no showing that a PET scan would have  
24 assisted Mr. Johnson in presenting mitigation evidence to the jury. The decisions not to present  
25 evidence of the co-defendants' sentences or to attempt to present Mr. Johnson's father as a  
26 witness were strategic decisions that do not rise to the level of ineffective assistance, and were  
27 not shown to be prejudicial. Similarly, all other matters raised regarding the 2005 penalty  
28 phase and the appeal therefrom are also rejected as failing under both prongs of Strickland.

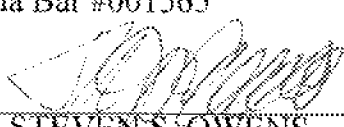
1 ACCORDINGLY, the Petition for Writ of Habeas Corpus is denied.

2 DATED this 14 day of March, 2014.

3  
4   
DISTRICT JUDGE

5  
6 STEVEN B. WOLFSON  
7 Clark County District Attorney  
Nevada Bar #001565

8  
9 BY

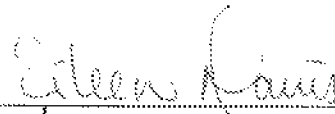
  
STEVEN S. OWENS  
Chief Deputy District Attorney  
Nevada Bar #004352

1                                    **CERTIFICATE OF ELECTRONIC TRANSMISSION**

2                    I hereby certify and affirm that service of the above and foregoing, was made this 12<sup>th</sup>  
3 day of March, 2014, by electronic transmission to:

4  
5                                    CHRISTOPHER R. ORAM, ESQ.  
6                                    crorambusiness@aol.com

7  
8                                    BY



9                                    Employee,  
10                                    Clark County District Attorney's Office

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26                    SSO/ed

**Eileen Davis**

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**From:** Eileen Davis  
**Sent:** Wednesday, March 12, 2014 9:38 AM  
**To:** 'crorambusiness@aol.com'  
**Cc:** Steven Owens  
**Subject:** Donte Johnson, 98C153154, Findings submitted to Judge for signature.  
**Attachments:** Johnson, Donte, 98C153154, Findings, 2014.pdf

Eileen Davis  
Paralegal  
Criminal Appeals  
Clark County District Attorney  
eileen.davis@ccdavn.com  
(702) 671-2750



**Eileen Davis**

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**From:** Eileen Davis  
**Sent:** Tuesday, March 04, 2014 9:17 AM  
**To:** 'crorambusiness@aol.com'  
**Cc:** Steven Owens  
**Subject:** Donte Johnson, 98C153154, Findings.  
**Attachments:** Johnson, Donte, 98C153154, FOFCL&O.pdf

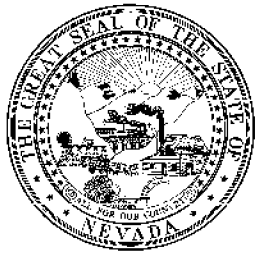
Attorney Oram:

The attached Findings will be submitted to the Judge on March 12, 2014.

Sincerely,

Steven S. Owens





*Clerk of the Courts*  
*Steven D. Grierson*

200 Lewis Avenue  
Las Vegas, NV 89155-1160  
(702) 671-4554

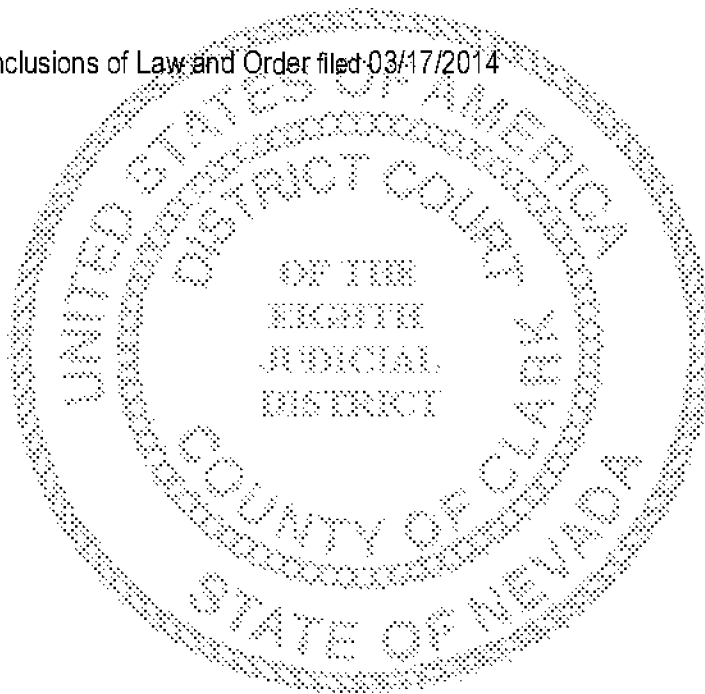
March 21, 2014

Case No.: C153154

### **CERTIFICATION OF COPY**

**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):

Findings of Fact, Conclusions of Law and Order filed 03/17/2014



now on file and of

**In witness whereof**, I have hereunto set my hand and affixed the seal of the Eighth Judicial District Court at my office, Las Vegas, Nevada, at 1:33 PM on March 21, 2014.

  
STEVEN D. GRIERSON, CLERK OF THE COURT