



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

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Mar 31 2014 10:48 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

Steven D. Grierson  
Clerk of the Court

March 28, 2014

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

RE: STATE OF NEVADA vs. CLYDE LEWIS  
**S.C. CASE: 65186**  
D.C. CASE: C120857-2

Dear Ms. Lindeman:

Pursuant to your Notice to Transmit Required Document, dated March 25, 2014, enclosed is a certified copy of the Findings of Fact, Conclusions of Law and Order filed March 13, 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 black ink, reading "Heather Ungermann", is written over a horizontal line.

Heather Ungermann, Deputy Clerk

FCL  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
GIANCARLO PESCI  
Chief Deputy District Attorney  
Nevada Bar #007135  
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-

LOUIS RANDOLPH,  
aka, Clyde Lewis, #1356378  
Defendant.

CASE NO: 94C120857-2  
DEPT NO: XXIII

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND ORDER

DATE OF HEARING: FEBRUARY 10, 2014  
TIME OF HEARING: 9:30 AM

THIS CAUSE having come on for hearing before the Honorable STEFANY MILEY, District Judge, on the 10th day of February, 2014, the Defendant not being present, PROCEEDING IN FORMA PAUPERIS, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through GIANCARLO PESCI, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, no arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. On October 5, 1994, the State filed an Information charging LOUIS RANDOLPH, aka, Clyde Lewis (hereinafter "Defendant") with COUNT 1 – Burglary (Felony – NRS 205.060, 200.380); COUNT 2 – Robbery With Use of a Deadly Weapon (Felony –

1 NRS 200.380, 193.165); COUNT 3 – Battery With Use of a Deadly Weapon (Felony – NRS  
2 200.481) and COUNT 4 – Murder With Use of a Deadly Weapon (Felony – NRS 200.010,  
3 200.030, 193.165) and Aiding and Abetting (NRS 195.020). On July 5, 1995, the State filed  
4 an Amended Information clarifying the language within the document but not otherwise  
5 modifying the charges.

6 2. Defendant's jury trial commenced on August 23, 1995. On September 5, 1995,  
7 the jury returned a verdict of guilty as to COUNT 3 – Battery With Use of a Deadly Weapon.  
8 The jury did not reach a verdict as to COUNTS 1, 2 & 4, and the court declared a mistrial as  
9 to those counts.

10 3. On November 30, 1995, Defendant appeared in court with counsel for  
11 sentencing. The court sentenced Defendant as to COUNT 3 to the Nevada Department of  
12 Prisons (Corrections) for EIGHT (8) YEARS with FOUR HUNDRED EIGHTY-ONE (481)  
13 DAYS credit for time served. The Judgment of Conviction was filed on December 14, 1995.  
14 Defendant did not file a direct appeal.

15 4. On March 3, 1997, Defendant's jury trial in reference to COUNTS 1, 2 & 4  
16 commenced. On March 10, 1997, the jury found Defendant guilty of the three (3) remaining  
17 counts as follows: COUNT 1 – Burglary; COUNT 2 – Robbery With Use of a Deadly  
18 Weapon; and COUNT 4 – Murder of the First Degree With Use of a Deadly Weapon.

19 5. On April 29, 1997, Defendant appeared in court with counsel for sentencing.  
20 The court sentenced defendant to the Nevada Department of Corrections (NDC) as follows:  
21 COUNT 1 – TEN (10) YEARS, consecutive to COUNT 3; COUNT 2 – FIFTEEN (15)  
22 YEARS, plus an equal and consecutive sentence of FIFTEEN (15) YEARS for the Use of a  
23 Deadly Weapon, consecutive to COUNTS 1 & 3; COUNT 4 – LIFE with the possibility of  
24 parole, plus an equal and consecutive sentence of LIFE with the possibility of parole for the  
25 Use of a Deadly Weapon, consecutive to COUNTS 1, 2 & 3, with ONE THOUSAND  
26 TWENTY-THREE (1,023) DAYS credit for time served. A Judgment of Conviction was filed  
27 on May 23, 1997.

28 //

1           6. Defendant filed a Notice of Appeal on June 9, 1997 (Docket No. 30567). On  
2 July 10, 1998, Defendant filed his first Petition for Writ of Habeas Corpus (Post-Conviction)  
3 challenging his December, 14, 1995, Judgment of Conviction. The State filed its Opposition  
4 on July 27, 1998. On September 4, 1998, Defendant filed a Reply to the State's Opposition.  
5 On October 5, 1998, the District Court denied Defendant's Petition. On the same day,  
6 Defendant filed a Notice of Appeal to the Nevada Supreme Court from the denial of his  
7 Petition (Docket No. 33145). On November 17, 1998, the District Court filed its Findings of  
8 Fact, Conclusions of Law, and Order and a Notice of Entry of Decision and Order.

9           7. On March 31, 2000, the Nevada Supreme Court ordered Defendant's two (2)  
10 appeals consolidated. On February 7, 2001, the Nevada Supreme Court affirmed the District  
11 Court's denial of Defendant's Petition as well as Defendant's May 23, 1997, Judgment of  
12 Conviction. Defendant filed a Petition for Rehearing on March 12, 2001. On January 24,  
13 2002, the Nevada Supreme Court denied Defendant's Petition for Rehearing. Remittitur  
14 issued on February 11, 2002.

15           8. On November 22, 2011, Defendant filed a second Petition for Writ of Habeas  
16 Corpus (Post-Conviction), challenging the judgments rendered at both of his trials. On January  
17 31, 2012, the State filed its Response to and Motion to Dismiss Defendant's Petition. On  
18 February 15, 2012, Defendant filed his Reply to the State's Response and Motion to Dismiss.  
19 On March 5, 2012, the District Court denied Defendant's Petition. On March 23, 2012, the  
20 District Court filed a Notice of Entry of Decision and Order.

21           9. On March 22, 2012, Defendant filed a Notice of Appeal from the denial of his  
22 Petition. On December 12, 2012, the Nevada Supreme Court affirmed the District Court's  
23 denial of Defendant's Petition. Remittitur issued on January 8, 2013.

24           10. On December 2, 2013, Defendant filed the instant Petition for Writ of Habeas  
25 Corpus (Post-Conviction), Request for Evidentiary Hearing and Motion to Appoint Counsel.  
26 The State's filed its Response and Motion to Dismiss to Defendant's Petition and its Opposition  
27 to Defendant's Request for Evidentiary Hearing and Motion to Appoint Counsel on January  
28 15, 2014. On February 10, 2014, this Court made the following findings.

11. Defendant's Petition is time-barred. On February 11, 2002, remittitur issued from the Court's decision affirming Defendant's May 23, 1997 Judgment of Conviction and the denial of his petition from the December, 14, 1995, Judgment of Conviction. Accordingly, Defendant had until February 11, 2003, to file a timely post-conviction petition. However, Defendant's instant petition was not filed until December 2, 2013, more than ten years after the expiration of the one-year time limit in his case.

12. Defendant's claim of ineffective assistance of counsel is insufficient to demonstrate good cause. Defendant failed to explain why he has waited more than ten (10) years to file the instant petition, when all his claims of ineffective assistance of counsel were readily available to him at the time of the Court's issuance of remittitur on February 11, 2002. Additionally, as Defendant was not entitled to the assistance of counsel on his post-conviction matters, this also cannot create good cause to overcome the procedural bars.

13. The Nevada Supreme Court's decision to consolidate Defendant's two (2) appeals was procedural in nature and did not impact Defendant's substantive rights on appeal. As such this claim is insufficient to demonstrate good case.

14. The State has pled laches under NRS 34.800 and Defendant has not overcome the statutory presumption that his delay of more than five (5) years in filing the instant Petition has prejudiced the State.

15. Defendant has failed to make a nonfrivolous showing for relief and is not entitled to the assistance of counsel.

16. As Defendant's Petition was untimely and barred by statutory laches, Defendant was not entitled to an evidentiary hearing on the matter and did not have a right to be present during this Court's ruling.

## CONCLUSIONS OF LAW

1. The mandatory provisions of NRS 34.726 state:

1. Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year after entry of the judgment of conviction or, if an 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:

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

NRS 34.726(1).

2. The Nevada Supreme Court has justified the one-year rule with regard to the filing of post-conviction petitions in Colley v. State, 105 Nev. 235, 773 P.2d 1229 (1989), when it upheld a district court's dismissal of a petition based on NRS 34.726(1). The Court reasoned that:

At some point, we must give finality to criminal cases. Darnell v. State, 98 Nev. 518, 521, 654 P.2d 1009, 1011 (1982). Should we allow Colley's post-conviction relief proceeding to go forward, we would encourage offenders to file groundless petitions for federal habeas corpus relief, secure in the knowledge that a petition for post-conviction relief remained indefinitely available to them. This situation would prejudice both the accused and the State since the interest of both the petitioner and the government are best served if post-conviction claims are raised while the evidence is still fresh.

Id. at 236, 773 P.2d at 1230.

3. Furthermore, the one-year time bar is strictly construed and enforced. In Gonzales v. State, 118 Nev. 590, 53 P.3d 901 (2002), the Nevada Supreme Court rejected a habeas petition that was filed two (2) days late. The Court reiterated that the "clear and unambiguous" provisions of NRS 34.726(1) mandate dismissal absent a showing of "good cause" for the delay in filing. Id. at 593, 53 P.3d at 902.

4. To show good cause for delay under NRS 34.726(1), a petitioner must demonstrate the following: 1) "[t]hat the delay is not the fault of the petitioner" and 2) that the petitioner will be "unduly prejudice[d]" if the petition is dismissed as untimely. Under the first requirement, "a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (citing Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994); Passanisi v. Director, Dep't Prisons, 105 Nev. 63, 66, 769 P.2d 72, 74 (1989)). "An impediment external

1 to the defense may be demonstrated by a showing 'that the factual or legal basis for a claim  
2 was not reasonably available to counsel, or that some interference by officials, made  
3 compliance impracticable.'" Id. (quoting Murray v. Carrier, 477 U.S. 478, 488, 106 S. Ct. 2639  
4 (1986) (citations and quotations omitted)). Any delay in filing of the petition must not be the  
5 fault of the petitioner. NRS 34.726(1)(a).

6 5. Once a petitioner has established cause, he must show actual prejudice resulting  
7 from the errors of which he complains, i.e., "a petitioner must show that errors in the  
8 proceedings underlying the judgment worked to the petitioner's actual and substantial  
9 disadvantage." State v. Huebler, 128 Nev. \_\_\_, 275 P.3d 91, 94-95 (2012) (citing Hogan v.  
10 Warden, 109 Nev. 952, 959-60, 860 P.2d 710, 716 (1993)).

11 6. A proper petition for post-conviction relief must set forth specific factual  
12 allegations. NRS 34.735(6) states, in pertinent part:

13 [Petitioner] must allege specific facts supporting the claims in the  
14 petition [he] file[s] seeking relief from any conviction or sentence.  
15 Failure to raise specific facts rather than just conclusions may  
cause [the] petition to be dismissed.

16 See also Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (holding that bare  
17 or naked allegations are insufficient to entitle a defendant to post-conviction relief).

18 7. The Nevada Supreme Court has recognized that, "[a] claim of ineffective  
19 assistance of counsel may...excuse a procedural default if counsel was so ineffective as to  
20 violate the Sixth Amendment." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506  
21 (2003). However, in order to constitute good cause, the ineffective assistance of counsel claim  
22 itself must not be procedurally defaulted. Id. "In other words, a petitioner must demonstrate  
23 cause for raising the ineffective assistance of counsel claim in an untimely fashion....a claim  
24 or allegation that was reasonably available to the petitioner during the statutory time period  
25 would not constitute good cause to excuse the delay." Id. at 252-53, 71 P.3d at 506. See also  
26 Edwards v. Carpenter, 529 U.S. 446, 452-53, 120 S. Ct. 1587, 1591-92 (2000) (concluding  
27 that claims of ineffective assistance of counsel cannot serve as cause for other procedurally  
28 defaulted claims); Stewart v. LaGrand, 526 U.S. 115, 120, 119 S. Ct. 1018, 1021 (1999)

1 (concluding that an ineffective assistance of counsel claim failed as good cause because claim  
2 was itself procedurally defaulted).

3 8. Defendants do not have the right to assistance of counsel in post-conviction  
4 proceedings. Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546 (1991); McKague v.  
5 Warden, 112 Nev. 159, 912 P.2d 255 (1996). As such, a defendant also does not have the right  
6 to the effective assistance of post-conviction counsel. See, e.g., Crump v. Warden, 113 Nev.  
7 293, 934 P.2d 247 (1997) (holding that where appointment of counsel is not mandated by  
8 statute, defendant is not entitled to effective assistance of counsel and cannot rely on claims  
9 of ineffective assistance as good cause to overcome procedural bars). Compare Douglas v.  
10 People of State of Cal., 372 U.S. 353, 83 S. Ct. 814 (1963) (extending the right of effective  
11 assistance of counsel to first appeals as a matter of right); with Coleman v. Thompson, 501  
12 U.S. 722, 111 S. Ct. 2546 (1991) (declining to extend the right of counsel to discretionary  
13 appeals and post-conviction proceedings).

14 9. Martinez v. Ryan, 566 U.S. 1, \_\_\_, 132 S. Ct. 1309, 1320 (2012), does not apply  
15 in state habeas proceedings. The Martinez Court had before it the question of whether there is  
16 a constitutional right to effective assistance of post-conviction counsel, but specifically  
17 declined to answer that question, opting instead to hold that “ineffective assistance in an initial-  
18 review collateral proceeding on a claim of ineffective assistance at trial may provide cause for  
19 a procedural default in a federal habeas proceeding.” Martinez, 132 S. Ct. at 1315. It bears  
20 highlighting that the Supreme Court did *not* do two things germane to Nevada’s state habeas  
21 procedures: 1) the Supreme Court did *not* create a constitutional right to post-conviction  
22 counsel—and therefore the right to the appointment and effective assistance of that counsel—  
23 and 2) it did *not* apply this rule in the context of state habeas litigation:

24 This is but one of the differences between a constitutional ruling  
25 and the equitable ruling of this case. A constitutional ruling would  
26 provide defendants a freestanding constitutional claim to raise; it  
27 would require the appointment of counsel in initial-review  
28 collateral proceedings; it would impose the same system of  
appointing counsel in every State; and it would require a reversal  
in all state collateral cases on direct review from state courts if the  
States’ system of appointing counsel did not conform to the  
constitutional rule.



1 Id. at 1319. Accordingly, the limited recognition in Martinez of ineffective assistance of initial  
2 post-conviction counsel as good cause to overcome procedural default, applies only in federal  
3 court as an equitable exception in the federal habeas context and has no application to state  
4 habeas proceedings.

5 10. NRS 34.800 creates a rebuttable presumption of prejudice to the State if “[a]  
6 period exceeding five (5) years [elapses] between the filing of a judgment of conviction, an  
7 order imposing a sentence of imprisonment or a decision on direct appeal of a judgment of  
8 conviction and the filing of a petition challenging the validity of a judgment of conviction...”  
9 The Nevada Supreme Court observed in Groesbeck v. Warden, “[P]etitions that are filed many  
10 years after conviction are an unreasonable burden on the criminal justice system. The  
11 necessity for a workable system dictates that there must exist a time when a criminal conviction  
12 is final.” 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984). To invoke the presumption, the  
13 statute requires that the State plead laches in its motion to dismiss the petition. NRS 34.800(2).

14 11. In Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546 (1991), the United  
15 States Supreme Court ruled that the Sixth Amendment provides no right to counsel in post-  
16 conviction proceedings. In McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the  
17 Nevada Supreme Court similarly observed that “[t]he Nevada Constitution...does not  
18 guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada  
19 Constitution’s right to counsel provision as being coextensive with the Sixth Amendment to  
20 the United States Constitution.”

21 NRS 34.750 provides, in pertinent part:

22 A petition may allege that the Defendant is unable to pay the costs  
23 of the proceedings or employ counsel. If the court is satisfied that  
24 the allegation of indigency is true and the petition *is not dismissed*  
25 *summarily*, the court may appoint counsel at the time the court  
26 orders the filing of an answer and a return. In making its  
27 determination, the court may consider whether:

- 28 (a) The issues are difficult;
- (b) The Defendant is unable to comprehend the proceedings; or
- (c) Counsel is necessary to proceed with discovery.

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(emphasis added). The Nevada Supreme Court has observed that a petitioner “must show that the requested review is not frivolous before he may have an attorney appointed.” Peterson v. Warden, 87 Nev. 134, 136, 483 P.2d 204, 205 (1971) (citing former statute NRS 177.345(2))

12. NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

1. The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required. A petitioner must not be discharged or committed to the custody of a person other than the respondent *unless an evidentiary hearing is held*.

2. If the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, he shall dismiss the petition without a hearing.

3. If the judge or justice determines that an evidentiary hearing is required, he shall grant the writ and shall set a date for the hearing.

The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual allegations, which, if true, would entitle him to relief unless the factual allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; See also Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (1984) (holding that “[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

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1 **ORDER**

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

4 DATED this 11 day of March, 2014.

5  
6   
7 DISTRICT JUDGE

JUDGE STEFANY A. MILEY

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

10 BY 

11 GIANCARLO PESCI  
12 Chief Deputy District Attorney  
Nevada Bar #007135

13  
14  
15  
16 **CERTIFICATE OF SERVICE**

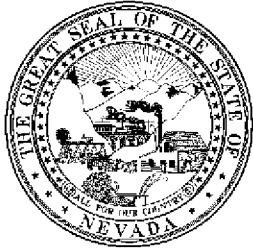
17 I certify that on the 3rd day of March, 2014, I mailed a copy of the foregoing proposed  
18 Findings of Fact, Conclusions of Law, and Order to:

19 LOUIS RANDOLPH,  
20 aka, Clyde Lewis #48875  
21 SOUTHERN DESERT CORRECTIONAL CENTER  
22 20825 COLD CREEK RD.  
P. O. BOX 208  
INDIAN SPRINGS, NV 89070

23 BY 

24 R. JOHNSON  
25 Secretary for the District Attorney's Office  
26  
27  
28

MS/GP/rj/M-1



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

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

March 28, 2014

Case No.: C120857-2

### **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 03/13/2014

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 1:10 PM on March 28, 2014.

  
STEVEN D. GRIERSON, CLERK OF THE COURT