

GARY L. LEWIS

P.O. BOX 7000

CARSON CITY, NEVADA 89702

# 47615

IN PRO SE

*Alvin D. Lindeman*

CLERK OF THE COURT

Electronically Filed  
Apr 28 2014 01:20 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

GARY, L. LEWIS, CASE NO. 95CI29824

-VS- PETITIONER, DEPT NO. XII

STATE OF NEVADA,

RESPONDENT /

" NOTICE OF APPEAL, AND ATTACHED  
STATEMENT OF APPEAL FOR PETITION FOR  
WRIT OF HABEAS CORPUS. "

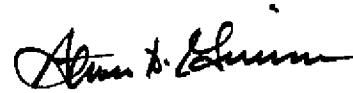
NOTICE IS HEREBY GIVEN THAT GARY L. LEWIS, HEREBY  
APPEALS THE JUDGMENT ENTERED BY THIS HONORABLE COURT  
ON ~~DECEMBER~~ MARCH 31, 2014  
DATED: APRIL 10, 2014

ⓧ

GARY L. LEWIS - 47615

P.O. BOX 7000

CARSON CITY, NEVADA 89702



CLERK OF THE COURT

ASTA

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff(s),

vs.

GARY L. LEWIS,

Defendant(s),

Case No: 95C129824  
Dept No: XII

**CASE APPEAL STATEMENT**

1. Appellant(s): Gary L. Lewis

2. Judge: Michelle Leavitt

3. Appellant(s): Gary L. Lewis

Counsel:

Gary L. Lewis #47615  
P.O. Box 7000  
Carson City, NV 89702

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: N/A

3 9. Date Commenced in District Court: August 3, 1995

4 10. Brief Description of the Nature of the Action: Criminal

5 Type of Judgment or Order Being Appealed: Writ of Habeas Corpus

6 11. Previous Appeal: Yes

7 Supreme Court Docket Number(s): 53779, 57980

8 12. Child Custody or Visitation: N/A

9  
10 Dated This 25 day of April 2014.

11 Steven D. Grierson, Clerk of the Court

12  
13 

14 Heather Ungermann, Deputy Clerk  
15 200 Lewis Ave  
16 PO Box 551601  
17 Las Vegas, Nevada 89155-1601  
18 (702) 671-0512  
19  
20  
21  
22  
23  
24  
25  
26  
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28

GARY L. LEWIS  
POST OFFICE BOX 7000  
CARSON CITY, NEVADA 89702  
# 47615  
IN PRO SE

*Allen D. Lamm*  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \*

GARY L. LEWIS, CASE NO. C-129824  
-VS- PETITIONER. DEPT NO. XII  
STATE OF NEVADA,  
RESPONDENT /

"PRO SE PETITIONER'S STATEMENT OF APPEAL"

THIS PETITIONER DEMANDS THAT THIS COURT VIEW THIS PRO SE, PLEADING UNDER THE LEGAL PRINCIPAL FOUND IN HAYES V. KERNER, 404 U.S. 519 (1972) AND APPLY THE FUNDAMENTAL FAIRNESS DOCTRINE TO SUCH AN APPEAL.

THE EIGHT JUDICIAL DISTRICT COURT ORDERED THE APPOINTMENT OF GREG DENUE ESQ, TO DETERMINE WHETHER OR NOT IT WOULD BE ADVANTAGEOUS TO DO ANALYSIS OF THE DNA EVIDENCE WHICH IS MANDATORY UNDER N.R.S. 176.0918 ) WHICH SUCH STATUTE HAS BEEN MADE RETROACTIVE BY LAW.

GREG DENUE ESQ, HAS NEVER ACTED ON THE ORDER OF THE COURT WHICH WAS MADE DECEMBER 22, 2011 THEREFORE THE PETITIONER SOUGHT AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM.

THIS NEVADA SUPREME COURT MUST VIEW THIS MATTER

FOR JUSTICE DELAYED IS JUSTICE DENIED BY LAW. AND  
FOR THE COURT APPOINTED COUNSEL TO IGNORE THE ORDER  
OF THE COURT IS CLEARLY A MANIFEST OF JUSTICE.

RELIEF SOUGHT.

THIS NEVADA SUPREME COURT MUST INTERVENE AND  
ORDER THAT D.N.A. ANALYSIS BE TAKEN ON THE  
D.N.A. EVIDENCE IN WHICH THE STATE CLAIM TO HAVE  
HAD PRIOR TO THE PETITIONER ENTERING A PLEA OF GUILT.

THE COURT SHALL ALSO ORDER THE PETITIONER RELEASE  
IF THE STATE CAN NOT PRODUCE ANY D.N.A. EVIDENCE  
TO BE ANALYSIS, AND APPOINTMENT OF NEW COUNSEL IF NEEDED.  
THE ORDER OF THIS COURT SHALL BE FORTH.

DATED: APRIL 2, 2014

(X)

CERTIFICATE OF SERVICE BY MAIL

Pursuant to FRCP Rule 5 (b), I hereby certify that I am the petitioner named herein and that on this

17 day of APRIL, 2014, I mailed a true and correct copy of the foregoing :

NOTICE OF APPEAL to the following:

DISTRICT ATTORNEY

700 LEWIS AVE

LAS VEGAS NEVADA

89101

(X) Day Lyn Davis  
Petitioner in PRO. PER.

13367

STEVEN PERRY  
P.O. BOX 7000  
CARSON CITY NEVADA

89702

RENO NV 895  
21 APR 2014 PM 2 T

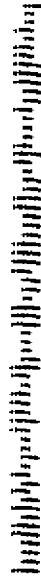


CLERK OF COURT  
200 LENTIS AVE  
LAS VEGAS NEVADA

89101

LEGAL MAIL  
REGISTERED MAIL  
FIRST CLASS

ES1C13E300



APR 16 2014

NORTHERN NEVADA  
CORRECTIONAL CENTER



DEPARTMENT 12  
**CASE SUMMARY**  
**CASE No. 95C129824**

**The State of Nevada vs Gary L Lewis**

§ Location: **Department 12**  
§ Judicial Officer: **Leavitt, Michelle**  
§ Filed on: **08/03/1995**  
§ Case Number History:  
§ Cross-Reference Case **C129824**  
§ Number:  
§ Defendant's Scope ID #: **1302110**  
§ Lower Court Case Number: **95F06244**  
§ Supreme Court No.: **57980**

**CASE INFORMATION**

<b>Offense</b>	<b>Deg</b>	<b>Date</b>	<b>Case Type:</b>	<b>Felony/Gross Misdemeanor</b>
1. SEXUAL ASSAULT	F	01/01/1900	<b>Case Flags:</b>	<b>Bail Set</b>
				<b>Appealed to Supreme Court</b>

**Related Cases**

95F06244X (Bind Over Related Case)

**Statistical Closures**

07/09/2012	Guilty Plea with Sentence (before trial)
06/23/2009	USJR Reporting Statistical Closure
07/12/2007	USJR Reporting Statistical Closure
03/17/2011	USJR Reporting Statistical Closure
07/19/2007	USJR Reporting Statistical Closure

**DATE**

**CASE ASSIGNMENT**

**Current Case Assignment**

Case Number	95C129824
Court	Department 12
Date Assigned	07/13/2007
Judicial Officer	Leavitt, Michelle



**PARTY INFORMATION**

<b>Defendant</b>	<b>Lewis, Gary L</b>	<i>Lead Attorneys</i>
		<b>Pro Se</b>
<b>Plaintiff</b>	<b>State of Nevada</b>	<b>Bell, Stewart L.</b> 702-455-4277(W)











**DATE**

**EVENTS & ORDERS OF THE COURT**




**INDEX**

01/01/1900	<b>Plea</b> (Judicial Officer: User, Conversion) 1. SEXUAL ASSAULT Guilty	
08/03/1995	 Criminal Bindover <i>CRIMINAL BINDOVER</i>	
08/04/1995	Hearing <i>INITIAL ARRAIGNMENT</i>	
08/15/1995	 Information <i>INFORMATION</i>	95C1298240003.tif pages
08/16/1995	<b>Initial Arraignment</b> (9:00 AM) Events: 08/04/1995 Hearing	

DEPARTMENT 12  
**CASE SUMMARY**  
**CASE No. 95C129824**

	<i>INITIAL ARRAIGNMENT Court Clerk: LORI BROWN Reporter/Recorder: PATSY SMITH Heard By: A. William Maupin</i>	
09/01/1995	 Reporters Transcript <i>REPORTER'S TRANSCRIPT OF AUGUST 1, 1995</i>	
10/27/1995	 Order <i>ORDER FOR PRODUCTION OF INMATE</i>	<i>95C1298240007.tif pages</i>
12/14/1995	 Order <i>ORDER FOR PRODUCTION OF INMATE</i>	<i>95C1298240008.tif pages</i>
01/17/1996	 Subpoena Duces Tecum Filed by: Defendant Lewis, Gary L. <i>SUBPOENA</i>	<i>95C1298240009.tif pages</i>
01/31/1996	<b>Calendar Call</b> (9:00 AM) <i>CALENDAR CALL Court Clerk: TINA HURD Reporter/Recorder: PATSY SMITH Heard By: A. William Maupin</i>	
02/05/1996	<b>CANCELED Jury Trial</b> (10:00 AM) <i>Vacated</i>	
02/08/1996	 Subpoena Duces Tecum Filed by: Defendant Lewis, Gary L. <i>SUBPOENA</i>	<i>95C1298240012.tif pages</i>
02/23/1996	 Order <i>ORDER FOR PRODUCTION OF INMATE</i>	<i>95C1298240013.tif pages</i>
03/20/1996	<b>Calendar Call</b> (9:00 AM) <i>CALENDAR CALL Court Clerk: LORI BROWN Reporter/Recorder: PATSY SMITH Heard By: A. William Maupin</i>	
03/25/1996	<b>CANCELED Jury Trial</b> (10:00 AM) <i>Vacated</i>	
06/12/1996	<b>Calendar Call</b> (9:00 AM) <i>CALENDAR CALL Court Clerk: LORI BROWN Reporter/Recorder: PATSY SMITH Heard By: A. William Maupin</i>	
06/12/1996	Conversion Case Event Type <i>SENTENCING</i>	
06/12/1996	 Information <i>AMENDED INFORMATION</i>	<i>95C1298240017.tif pages</i>
06/12/1996	 Memorandum <i>GUILTY PLEA AGREEMENT PURSUANT TO ALFORD DECISION</i>	
06/12/1996	 Information <i>AMENDED INFORMATION</i>	<i>95C1298240019.tif pages</i>
06/14/1996	 Subpoena Duces Tecum Filed by: Defendant Lewis, Gary L. <i>SUBPOENA</i>	<i>95C1298240020.tif pages</i>











DEPARTMENT 12  
**CASE SUMMARY**  
**CASE No. 95C129824**

06/17/1996	<b>CANCELED Jury Trial</b> (10:00 AM) <i>Vacated</i>
07/24/1996	<b>Sentencing</b> (9:00 AM) Events: 06/12/1996 Conversion Case Event Type <i>SENTENCING Court Clerk: LORI BROWN Reporter/Recorder: PATSY SMITH Heard By: MAUPIN, A. WILLIAM</i>
07/31/1996	<b>Sentencing</b> (9:00 AM) <i>SENTENCING Court Clerk: TINA HURD Reporter/Recorder: TOM MERCER Heard By: HUFFAKER, STEPHEN</i>
08/02/1996	<b>Sentencing</b> (9:00 AM) <i>SENTENCING Court Clerk: LORI BROWN Reporter/Recorder: PATSY SMITH Heard By: A. William Maupin</i>
08/02/1996	<b>Disposition</b> (Judicial Officer: User, Conversion) 1. SEXUAL ASSAULT Guilty
08/02/1996	<b>Disposition</b> (Judicial Officer: User, Conversion)
08/02/1996	<b>Sentence</b> (Judicial Officer: User, Conversion) 1. SEXUAL ASSAULT Adult Adjudication Converted Disposition: Sentence# 0001: LIFE WITH POSSIBILITY OF PAROLE Cons/Conc: Concurrent w/Charge Item: 0003 and Sentence#: 0006 in Case#: 94C122079 Converted Disposition: Sentence# 0002: ADMINISTRATION FEE Amount: \$25.00
08/14/1996	 <b>Judgment</b> <i>JUDGMENT OF CONVICTION (PLEA)</i>
08/14/1996	<b>Judgment</b> <i>ADMINISTRATION/ASSESSMENT FEE</i>
07/13/2007	<b>Hearing</b> <i>DEFT'S REQUEST TO WDRAW PD AS ATTORNEY</i>
07/19/2007	<b>Request</b> (9:30 AM) Events: 07/13/2007 Hearing <i>DEFT'S REQUEST TO WDRAW PD AS ATTORNEY Court Clerk: April Watkins Reporter/Recorder: Thelma Stapley Heard By: Michelle Leavitt</i>
02/03/2009	 <b>Motion</b> <i>MOTION FOR ORDER OF WITHDRAWAL OF ATTORNEY OF RECORD AND TRANSFER OF ALL RECORDS</i>
02/04/2009	 <b>Certificate</b> Filed By: Defendant Lewis, Gary L. <i>CERTIFICATE OF MAILING</i>
02/17/2009	<b>Motion</b> (8:30 AM) Events: 02/03/2009 Motion














95C1298240029.tif pages

DEPARTMENT 12  
**CASE SUMMARY**  
**CASE No. 95C129824**

*DEFT'S PRO PER MTN FOR ORDER OF WITHDRAWAL/10 Court Clerk: April Watkins  
Reporter/Recorder: Kerry Esparza Heard By: Michelle Leavitt*

02/19/2009	 <b>Petition</b> Filed by: Defendant Lewis, Gary L <i>FIRST AMENDMENT PETITION WRIT OF HABEAS CORPUS CHAPTER 34 ET SEQ. AND JUDICIAL NOTICE</i>	
02/26/2009	<b>Minute Order (9:00 AM)</b> <i>MINUTE ORDER RE: DENYING DEFT'S PETITION FOR WRIT OF HABEAS CORPUS Court Clerk: April Watkins Heard By: Michelle Leavitt</i>	
02/26/2009	Hearing <i>MINUTE ORDER RE: DENYING DEFT'S PETITION FOR WRIT OF HABEAS CORPUS</i>	
03/09/2009	 <b>Order</b> <i>ORDER GRANTING DEFENDANT'S PRO PER MOTION TO WITHDRAW ATTORNEY OF RECORD</i>	
03/23/2009	 <b>Petition</b> Filed by: Defendant Lewis, Gary L. <i>FIRST AMENDED PETITION WRIT OF HABEAS CORPUS NRS CHAPTER 34 ET SEQ. AND AND JUDICIAL NOTICE OF COURT - EVIDENTIARY HEARING REQUESTED</i>	
05/01/2009	<b>Minute Order (9:00 AM)</b> <i>MINUTE ORDER RE: DENYING FIRST AMENDMENT PETITION Court Clerk: April Watkins Heard By: Michelle Leavitt</i>	
05/01/2009	Hearing <i>MINUTE ORDER RE: DENYING FIRST AMENDMENT PETITION</i>	95C1298240034.tif pages
05/11/2009	 <b>Notice of Appeal</b> Filed By: Defendant Lewis, Gary L <i>NOTICE OF APPEAL TO THE NEVADA SUPREME COURT DENIAL OF MAY 1, 2009</i>	
05/12/2009	 <b>Statement</b> <i>CASE APPEAL STATEMENT</i>	95C1298240036.tif pages
05/29/2009	 <b>Order</b> <i>ORDER DENYING DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS</i>	
06/02/2009	 <b>Notice of Entry of Decision and Order</b> <i>NOTICE OF ENTRY OF DECISION AND ORDER</i>	95C1298240038.tif pages
12/01/2009	 <b>Judgment</b> <i>NEVADA SUPREME COURT CLERK'S CERTIFICATE JUDGMENT - AFFIRMED</i>	
09/23/2010	 <b>Motion</b> Filed By: Defendant Lewis, Gary L. <i>Motion to Appoint Counsel</i>	
09/23/2010	 <b>Motion</b> Filed By: Defendant Lewis, Gary L <i>Motion for an Evidentiary Hearing.</i>	
09/23/2010		

DEPARTMENT 12  
**CASE SUMMARY**  
**CASE No. 95C129824**

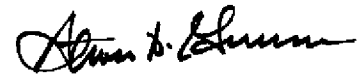
	 <b>Petition for Writ of Habeas Corpus</b> Filed by: Defendant Lewis, Gary L. <i>PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)</i>
11/06/2010	 <b>Order for Petition for Writ of Habeas Corpus</b>
12/30/2010	 <b>Response</b> <i>STATE'S Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) and OPPOSITION TO DEFENDANT'S Motions for an Evidentiary Hearing and Appointment of Counsel</i>
01/27/2011	<b>Petition for Writ of Habeas Corpus (8:30 AM)</b> (Judicial Officer: Leavitt, Michelle) Events: 11/06/2010 Order for Petition for Writ of Habeas Corpus
01/27/2011	<b>Motion for Appointment of Attorney (8:30 AM)</b> (Judicial Officer: Leavitt, Michelle) <i>Deft's Pro Per Motion to Appoint Counsel</i>
01/27/2011	<b>Motion (8:30 AM)</b> (Judicial Officer: Leavitt, Michelle) <i>Deft's Pro Per Motion for Evidentiary Hearing</i>
01/27/2011	 <b>All Pending Motions (8:30 AM)</b> (Judicial Officer: Leavitt, Michelle)
03/01/2011	 <b>Findings of Fact, Conclusions of Law and Order</b> Filed By: Plaintiff State of Nevada
03/14/2011	 <b>Notice of Appeal (criminal)</b> Party: Defendant Lewis, Gary L
03/17/2011	 <b>Case Appeal Statement</b>
03/17/2011	 <b>Notice of Entry of Decision and Order</b>
10/19/2011	 <b>NV Supreme Court Clerks Certificate/Judgment - Affirmed</b> <i>Nevada Supreme Court Clerk's Certificate Judgment - Affirmed</i>
11/29/2011	 <b>Motion</b> Filed By: Defendant Lewis, Gary L. <i>Pro Se Motion to Withdraw the Alford Plea for the Entire Proceeding was in Direct Violation of the Constitution</i>
11/29/2011	 <b>Motion</b> Filed By: Defendant Lewis, Gary L. <i>Pro Se Post Conviction Petition Requesting a Genetic Marker Analysis of Evidence Within The Possession or Custody of the State of Nevada</i>
12/14/2011	 <b>Opposition to Motion</b> <i>State's Opposition to Defendant's Petition Requesting Genetic Marker Analysis Of Evidence Within Possession Of The State Of Nevada</i>
12/14/2011	 <b>Opposition to Motion</b> <i>State's Opposition to Defendant's Motion To Withdraw Guilty Plea</i>
12/22/2011	<b>Motion (8:30 AM)</b> (Judicial Officer: Smith, Douglas E.) Events: 11/29/2011 Motion

DEPARTMENT 12  
**CASE SUMMARY**  
**CASE NO. 95C129824**

*Pro Se Motion to Withdraw the Alford Plea for the Entire Proceeding was in Direct Violation of the Constitution*

12/22/2011	<b>Motion</b> (8:30 AM) (Judicial Officer: Smith, Douglas E.) Events: 11/29/2011 Motion <i>Pro Se Post Conviction Petition Requesting a Genetic Marker Analysis of Evidence Within The Possession or Custody of the State of Nevada</i>
12/22/2011	 <b>All Pending Motions</b> (8:30 AM) (Judicial Officer: Smith, Douglas E.)
01/12/2012	 Order Filed By: Plaintiff State of Nevada
07/09/2012	 Criminal Order to Statistically Close Case Filed By: Plaintiff State of Nevada
03/11/2014	 Order Filed By: Plaintiff State of Nevada <i>Order Transferring Action</i>
03/11/2014	 Petition for Writ of Habeas Corpus Filed by: Defendant Lewis, Gary L. <i>Petition for Writ of Habeas Corpus (Post Conviction)</i>
03/31/2014	 Findings of Fact, Conclusions of Law and Order <i>Findings of Fact, Conclusions of Law, and Order</i>
04/07/2014	 Notice of Entry Filed By: Plaintiff State of Nevada <i>Notice of Entry of Findings of Fact, Conclusions of Law, and Order</i>
04/24/2014	 Notice of Appeal (criminal) <i>Notice of Appeal and Attached Statement of Appeal for Petition for Writ of Habeas Corpus</i>
04/24/2014	 Case Appeal Statement <i>Pro Se Petition's Statement of Appeal</i>
04/25/2014	 Case Appeal Statement Filed By: Defendant Lewis, Gary L. <i>Case Appeal Statement</i>

1 ORDR



CLERK OF THE COURT

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5 GARY L. LEWIS,

) Case No.: C129824

6 Petitioner,

) DEPT. No.: XII

7 vs.

8 THE STATE OF NEVADA,

9 Respondent.

10 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

11 FINDINGS OF FACT

12 1. On August 15, 1995, the State of Nevada ("State") charged Gary L. Lewis  
13 ("Defendant") by way of Information with SEXUAL ASSAULT WITH A MINOR UNDER  
14 SIXTEEN YEARS OF AGE (Felony - NRS 200.364, 200.366).

15 2. On June 12, 1996, the State filed an Amended Information charging the  
16 Defendant with SEXUAL ASSAULT (Felony - NRS 200.364, 200.366) and the Defendant,  
pursuant to *North Carolina v. Alford*, pled guilty to the charge in the Amended Information.

17 3. On August 2, 1996, the District Court adjudged the Defendant guilty and  
18 sentenced the Defendant to the Nevada Department of Prisons for a term of LIFE WITH THE  
19 POSSIBILITY OF PAROLE, to be served CONCURRENTLY with C122079. Defendant  
received ZERO days credit for time served.

20 4. On August 14, 1996, the District Court entered the Judgment of Conviction.

21 5. On February 19, 2009, the Defendant filed a "First Amendment Petition Writ  
22 of Habeas Corpus [sic]."

23 6. On February 26, 2009, the District Court denied the Defendant's Petition for  
24 Writ of Habeas Corpus.

25 7. On March 23, 2009, the Defendant filed a "First Amendment Petition Writ of  
Habeas Corpus [sic]."

26 8. On May 1, 2009, the District Court ordered that the "First Amended Petition"  
27 that was filed on March 23, 2009 was an improper amendment or supplement as the original  
28 petition was orally denied by the District Court.

33114  
MICHELLE LEAVITT  
DISTRICT JUDGE

DEPARTMENT TWELVE  
LAS VEGAS, NEVADA 89155

1           9.       On May 11, 2009, the Defendant filed a Notice of Appeal.

2           10.       On June 2, 2009, the District Court entered the Notice of Entry of Order  
3 Denying Defendant's Petition for Writ of Habeas Corpus.

4           11.       On October 28, 2009, The Supreme Court Of The State Of Nevada affirmed  
5 the judgment of the District Court. Remittitur issued November 24, 2009.

6           12.       On September 23, 2010, the Defendant filed a Petition for Writ of Habeas  
7 Corpus (Post-Conviction). The State filed its response on December 30, 2010.

8           13.       On January 27, 2011, the District Court denied the Defendant's Petition for  
9 Writ of Habeas Corpus (Post-Conviction). The Notice of Entry of Findings of Fact,  
10 Conclusions Of Law, and Order was filed on March 17, 2011.

11           14.       On March 14, 2011, the Defendant filed a Notice of Appeal.

12           15.       On September 15, 2011, The Supreme Court Of The State Of Nevada affirmed  
13 the judgment of the District Court. Remittitur issued October 12, 2011.

14           16.       On November 29, 2011, the Defendant filed a "Motion to Withdraw the *Alford*  
15 Plea for [sic] the Entire Proceeding was in Direct Violation of the Constitution." The State  
16 filed its opposition on December 14, 2011.

17           17.       On December 22, 2011, the District Court denied the Defendant's "Motion to  
18 Withdraw the *Alford* Plea for [sic] the Entire Proceeding was in Direct Violation of the  
19 Constitution."

20           18.       On March 11, 2014, the Defendant filed a Petition for Writ of Habeas Corpus  
21 (Post-Conviction).

### 22                               CONCLUSIONS OF LAW

23           1.       NRS 34.726(1), governing "Limitations on time to file...", requires that a  
24 petition for a writ of habeas corpus "must be filed within 1 year after entry of the judgment of  
25 conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme  
26 Court issues its remittitur." Late-filing of a petition may be excused from procedural default if  
27 the Petitioner can establish good cause for delay in bringing the claim. *Id.* Good cause for  
28 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).

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

          3.       In order to demonstrate good cause, 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).



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

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

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

12           7.       The petitioner has the burden of pleading and proving specific facts that  
13 demonstrate both good cause for failing to present a claim or for presenting a claim again and  
14 actual prejudice. NRS 34.810(3). *See also State v. Haberstroh*, 119 Nev. 173, 181, 69 P.3d  
15 676, 681 (2003).

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

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

23           10.      Application of the statutory procedural default rules to post-conviction habeas  
24 petitions is mandatory. *State v. District Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070,  
25 1074 (2005).

26           11.      Meritless, successive and untimely petitions clog the court system and  
27 undermine the finality of convictions. *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d 944, 950  
28 (1994).

          12.      NRS 34.745(4), governing "Summary dismissal of successive petitions,"  
requires that "if the petition is a second or successive petition challenging the validity of a  
judgment of conviction or sentence and if it plainly appears from the face of the petition or an  
amended petition and documents and exhibits that are 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."

          13.      The Defendant failed to file the petition within one year after the District Court  
entered the judgment of conviction on August 14, 1996.

1 14. The Defendant failed to establish good cause for the delay in filing the petition  
2 and prejudice to the Defendant.

3 15. The petition is successive as the District Court previously denied the  
4 Defendant's post-conviction petitions that were filed on February 19, 2009, and September  
5 23, 2010.

6 16. The petition neither sets forth good cause for the Defendant's failure to present  
7 these claims in the prior petitions nor actual prejudice to the Defendant.

8 **ORDER**

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

10 Dated this 27 day of March, 2014.

11 

12 MICHELLE LEAVITT  
13 DISTRICT COURT JUDGE  
14 DEPARTMENT XII  
15 EIGHTH JUDICIAL DISTRICT COURT  
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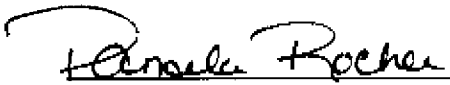
**CERTIFICATE OF MAILING**

I hereby certify that on the 31<sup>st</sup> day of March, 2014, I placed a copy of the Findings of Fact, Conclusions of Law, and Order in the U.S. Mail, postage prepaid to:

Gary L. Lewis #47615  
Northern Nevada Correctional Center  
P.O. Box 7000  
Carson City, NV 89702

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

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

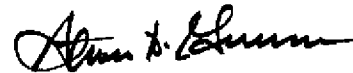
  
Pamela Rocha  
Judicial Executive Assistant  
Department XII  
Eighth Judicial District Court

C129824

Gary L. Lewis

vs.

The State of Nevada



CLERK OF THE COURT

NEO

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

GARY L. LEWIS,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: 95C129824

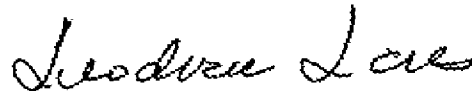
Dept No: XII

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

**PLEASE TAKE NOTICE** that on March 31, 2014, 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 April 7, 2014.

STEVEN D. GRIERSON, CLERK OF THE COURT



Teodora Jones, Deputy Clerk

**CERTIFICATE OF MAILING**

I hereby certify that on this 7 day of April 2014, 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-

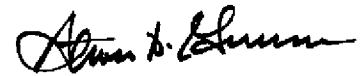
☒ The United States mail addressed as follows:

Gary L. Lewis # 47615  
P.O. Box 7000  
Carson City, NV 89702



Teodora Jones, Deputy Clerk

1 ORDR



CLERK OF THE COURT

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5 GARY L. LEWIS,

) Case No.: C129824

6 Petitioner,

) DEPT. No.: XII

7 vs.

8 THE STATE OF NEVADA,

9 Respondent.

10 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

11 FINDINGS OF FACT

12 1. On August 15, 1995, the State of Nevada ("State") charged Gary L. Lewis  
13 ("Defendant") by way of Information with SEXUAL ASSAULT WITH A MINOR UNDER  
14 SIXTEEN YEARS OF AGE (Felony - NRS 200.364, 200.366).

15 2. On June 12, 1996, the State filed an Amended Information charging the  
16 Defendant with SEXUAL ASSAULT (Felony - NRS 200.364, 200.366) and the Defendant,  
pursuant to *North Carolina v. Alford*, pled guilty to the charge in the Amended Information.

17 3. On August 2, 1996, the District Court adjudged the Defendant guilty and  
18 sentenced the Defendant to the Nevada Department of Prisons for a term of LIFE WITH THE  
19 POSSIBILITY OF PAROLE, to be served CONCURRENTLY with C122079. Defendant  
received ZERO days credit for time served.

20 4. On August 14, 1996, the District Court entered the Judgment of Conviction.

21 5. On February 19, 2009, the Defendant filed a "First Amendment Petition Writ  
22 of Habeas Corpus [sic]."

23 6. On February 26, 2009, the District Court denied the Defendant's Petition for  
24 Writ of Habeas Corpus.

25 7. On March 23, 2009, the Defendant filed a "First Amendment Petition Writ of  
Habeas Corpus [sic]."

26 8. On May 1, 2009, the District Court ordered that the "First Amended Petition"  
27 that was filed on March 23, 2009 was an improper amendment or supplement as the original  
28 petition was orally denied by the District Court.

33114  
MICHELLE LEAVITT  
DISTRICT JUDGE

DEPARTMENT TWELVE  
LAS VEGAS, NEVADA 89155

1           9.       On May 11, 2009, the Defendant filed a Notice of Appeal.

2           10.       On June 2, 2009, the District Court entered the Notice of Entry of Order  
3 Denying Defendant's Petition for Writ of Habeas Corpus.

4           11.       On October 28, 2009, The Supreme Court Of The State Of Nevada affirmed  
5 the judgment of the District Court. Remittitur issued November 24, 2009.

6           12.       On September 23, 2010, the Defendant filed a Petition for Writ of Habeas  
7 Corpus (Post-Conviction). The State filed its response on December 30, 2010.

8           13.       On January 27, 2011, the District Court denied the Defendant's Petition for  
9 Writ of Habeas Corpus (Post-Conviction). The Notice of Entry of Findings of Fact,  
10 Conclusions Of Law, and Order was filed on March 17, 2011.

11           14.       On March 14, 2011, the Defendant filed a Notice of Appeal.

12           15.       On September 15, 2011, The Supreme Court Of The State Of Nevada affirmed  
13 the judgment of the District Court. Remittitur issued October 12, 2011.

14           16.       On November 29, 2011, the Defendant filed a "Motion to Withdraw the *Alford*  
15 Plea for [sic] the Entire Proceeding was in Direct Violation of the Constitution." The State  
16 filed its opposition on December 14, 2011.

17           17.       On December 22, 2011, the District Court denied the Defendant's "Motion to  
18 Withdraw the *Alford* Plea for [sic] the Entire Proceeding was in Direct Violation of the  
19 Constitution."

20           18.       On March 11, 2014, the Defendant filed a Petition for Writ of Habeas Corpus  
21 (Post-Conviction).

### 22                               CONCLUSIONS OF LAW

23           1.       NRS 34.726(1), governing "Limitations on time to file...", requires that a  
24 petition for a writ of habeas corpus "must be filed within 1 year after entry of the judgment of  
25 conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme  
26 Court issues its remittitur." Late-filing of a petition may be excused from procedural default if  
27 the Petitioner can establish good cause for delay in bringing the claim. *Id.* Good cause for  
28 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).

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

3           3.       In order to demonstrate good cause, 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).

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

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

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

12           7.       The petitioner has the burden of pleading and proving specific facts that  
13 demonstrate both good cause for failing to present a claim or for presenting a claim again and  
14 actual prejudice. NRS 34.810(3). *See also State v. Haberstroh*, 119 Nev. 173, 181, 69 P.3d  
15 676, 681 (2003).

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

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

23           10.      Application of the statutory procedural default rules to post-conviction habeas  
24 petitions is mandatory. *State v. District Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070,  
25 1074 (2005).

26           11.      Meritless, successive and untimely petitions clog the court system and  
27 undermine the finality of convictions. *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d 944, 950  
28 (1994).

          12.      NRS 34.745(4), governing "Summary dismissal of successive petitions,"  
requires that "if the petition is a second or successive petition challenging the validity of a  
judgment of conviction or sentence and if it plainly appears from the face of the petition or an  
amended petition and documents and exhibits that are 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."

          13.      The Defendant failed to file the petition within one year after the District Court  
entered the judgment of conviction on August 14, 1996.

1 14. The Defendant failed to establish good cause for the delay in filing the petition  
2 and prejudice to the Defendant.

3 15. The petition is successive as the District Court previously denied the  
4 Defendant's post-conviction petitions that were filed on February 19, 2009, and September  
5 23, 2010.

6 16. The petition neither sets forth good cause for the Defendant's failure to present  
7 these claims in the prior petitions nor actual prejudice to the Defendant.

8 **ORDER**

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

10 Dated this 27 day of March, 2014.

11 

12 MICHELLE LEAVITT  
13 DISTRICT COURT JUDGE  
14 DEPARTMENT XII  
15 EIGHTH JUDICIAL DISTRICT COURT  
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**CERTIFICATE OF MAILING**

I hereby certify that on the 31<sup>st</sup> day of March, 2014, I placed a copy of the Findings of Fact, Conclusions of Law, and Order in the U.S. Mail, postage prepaid to:

Gary L. Lewis #47615  
Northern Nevada Correctional Center  
P.O. Box 7000  
Carson City, NV 89702

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

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

  
Pamela Rocha  
Judicial Executive Assistant  
Department XII  
Eighth Judicial District Court

C129824

Gary L. Lewis

vs.

The State of Nevada

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

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****January 27, 2011**

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95C129824

The State of Nevada vs Gary L Lewis

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**January 27, 2011****8:30 AM****All Pending Motions****HEARD BY:** Leavitt, Michelle**COURTROOM:** RJC Courtroom 14D**COURT CLERK:** April Watkins**RECORDER:** Kerry Esparza**REPORTER:****PARTIES****PRESENT:**Ponticello, Frank M.  
State of NevadaAttorney  
Plaintiff

**JOURNAL ENTRIES**

- DEFT'S PETITION FOR WRIT OF HABEAS CORPUS...DEFT'S PRO PER MOTION TO APPOINT COUNSEL...DEFT'S PRO PER MOTION FOR EVIDENTLARY HEARING

Court FINDS petition is successive, time barred, no good cause and ORDERED, petition and motions DENIED. State to prepare the order.

NDC

CLERK'S NOTE: The above minute order has been distributed to: Gary Lewis, BAC#47615, S.D.C.C., P.O. Box 208, Indian Springs, NV 89070. aw

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****December 22, 2011**

95C129824

The State of Nevada vs Gary L Lewis

**December 22, 2011****8:30 AM****All Pending Motions****HEARD BY:** Smith, Douglas E.**COURTROOM:** RJC Courtroom 14D**COURT CLERK:** Susan Jovanovich**RECORDER:** Kerry Esparza**REPORTER:****PARTIES****PRESENT:**Ponticello, Frank M.  
State of NevadaAttorney  
Plaintiff**JOURNAL ENTRIES**

- Deft. not present; incarcerated in the Nevada Department of Corrections (NDC).

DEFENDANT'S PRO PER MOTION TO WITHDRAW THE ALFORD PLEA FOR THE ENTIRE PROCEEDING WAS IN DIRECT VIOLATION OF THE CONSTITUTION

COURT ORDERED, Motion DENIED.

DEFENDANT'S PRO PER POST CONVICTION PETITION REQUESTING A GENETIC MARKER ANALYSIS OF EVIDENCE WITHIN THE POSSESSION OR CUSTODY OF THE STATE OF NEVADA (NRS 176.0918)

Court stated it is not sure if there is evidence for testing. Mr. Ponticello advised State filed a written opposition, further noting he will not argue this as Deft. is not present in Court. Thereafter, State submitted on the pleadings. Court reviewed the Motion, noting it is inclined to allow to have testing, due to Deft. entering a plea pursuant to Alford. Court further noted Deft. needs to provide three points on the equitable laches arguments, including whether or not there was excusable delay, implied review, and if circumstances exist whether or not prejudiced by the State. COURT ORDERED, no ruling will be done at this time on this motion; Greg Denué, Esq. is hereby

95C129824

APPOINTED to review the motion to determine whether or not it would be advantageous to do analysis of the DNA evidence.

NDC

CLERK'S NOTE: A copy of the above minute order has been delivered by regular mail to: Gary Lewis #47615, S.D.C.C., P.O. BOX 208, Indian Springs, NV 89070. /// sj

# 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, AND ATTACHED STATEMENT OF APPEAL FOR PETITION FOR WRIT OF HABEAS CORPUS."; CASE APPEAL STATEMENT; "PRO SE PETITIONER'S STATE OF APPEAL."; 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

STATE OF NEVADA,

Plaintiff(s),

vs.

GARY L. LEWIS,

Defendant(s).

Case No: C129824

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 25 day of April 2014.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk