



**EIGHTH JUDICIAL DISTRICT COURT
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Tracie K. Lindeman
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November 25, 2014

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

RE: STATE OF NEVADA vs. OSCAR A. STANLEY
S.C. CASE: 66827
D.C. CASE: C180446

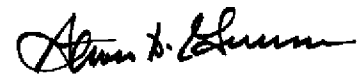
Dear Ms. Lindeman:

Pursuant to your Notice to Transmit Required Document, dated November 19, 2014, enclosed is a certified copy of the Findings of Fact, Conclusions of Law and Order filed November 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 black ink, reading "Heather Ungermann", is written over a horizontal line.

Heather Ungermann, Deputy Clerk



CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
K. NICHOLAS PORTZ
Deputy District Attorney
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200 Lewis Avenue
Las Vegas, Nevada 89155-2212
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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

OSCAR A. STANLEY,
#1686133

Defendant.

CASE NO: 01C180446

DEPT NO: XXV

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: OCTOBER 22, 2014
TIME OF HEARING: 9:00 AM

THIS CAUSE having come on for hearing before the Honorable KATHLEEN E. DELANEY, District Judge, on the 22nd day of October, 2014, the Petitioner not being present, PROCEEDING IN FORMA PAUPERIS, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through K. NICHOLAS PORTZ, 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 December 31, 2001, Oscar Stanley (Defendant) was charged by way of Information as follows: two counts of Robbery (Counts 1 and 9) (Felony-NRS 200.380); Larceny from the Person (Count 2) (Felony-NRS 205.270); Grand Larceny Auto (Count 3)

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1 (Felony-NRS 205.228); two counts of Burglary (Counts 4 and 8) (Felony-NRS 205.060);
2 Attempt Murder with use of a Deadly Weapon (Count 5) (Felony- NRS 200.010, 200.030,
3 193.330, 193.165); Battery with use of a Deadly Weapon with Substantial Bodily Harm (Count
4 6) (Felony – NRS 200.481); Mayhem (Count 7) (Felony – NRS 200.280); Attempt Robbery,
5 Victim 65 Years of Age or Older (Count 10) (Felony – NRS 200.380, 193.167, 193.330); and
6 Attempt Grand Larceny Auto (Count 11) (Felony – NRS 205.220, 205.222, 193.330). On
7 February 5, 2002, the State filed an Amended Information charging Defendant with the same
8 crimes that included a notice of intent to seek habitual criminal treatment.

9 2. On March 4, 2002, Defendant proceeded to trial, and on March 12, 2002, the jury
10 returned a verdict of guilty as to the two counts of robbery, one count larceny from the person,
11 one count unlawful taking of vehicle without consent owner (a lesser included offense of grand
12 larceny auto), one count battery with deadly weapon with substantial bodily harm, and
13 mayhem; and not guilty as to the two counts of burglary and one count attempt murder with
14 use of a deadly weapon.

15 3. On May 3, 2002, pursuant to Defendant's pre-sentence Motion to Strike, the court
16 dismissed counts 3 and 11, and struck the enhancement in count 10.

17 4. On May 10, 2002, Defendant was adjudicated as a habitual criminal and sentenced
18 to the Nevada Department of Corrections as follows: count 1 – life without the possibility of
19 parole; count 2 – twelve (12) to forty-eight (48) months; count 6 – seventy-two (72) to one
20 hundred eighty (180) months; count 7 – forty-eight (48) to one hundred twenty (120) months;
21 count 9 – life without the possibility of parole; count 10 – forty-eight (48) to one hundred
22 twenty (120) months; all counts to run consecutive to each other; with one hundred ninety-
23 seven (197) days credit for time served. The Judgment of Conviction was filed on June 4,
24 2002.

25 5. On June 7, 2002, Defendant filed a Notice of Appeal. On November 4, 2003, the
26 Nevada Supreme Court filed an Order Affirming in Part, Reversing in Part. Remittitur issued
27 on December 2, 2003. On January 16, 2004, an Amended Judgment of Conviction was filed.
28 Defendant did not appeal from the AJOC.

1 6. On April 19, 2004, Defendant filed a Petition for Writ of Habeas Corpus. On June
2 25, 2004, the State filed an Opposition to the Petition. On July 8, 2004, Defendant filed a
3 Reply. On March 18, 2005, the court held a hearing on the petition and denied it on the merits.
4 On April 4, 2005, Defendant filed a Notice of Appeal. On May 10, 2005, the court filed its
5 Findings of Fact, Conclusions of Law and Order.

6 7. On December 6, 2005, the Nevada Supreme Court filed an Order of Affirmance.
7 Remittitur issued on January 3, 2006. See Stanley v. State, No. 45079 (Dec. 6 2005).

8 8. On June 12, 2014, Defendant filed Motion for Copy of Recording of 911 Tape of
9 Billy Barba. The State filed its Opposition on June 25, 2014. On July 7, 2014, the court denied
10 the motion. The order of denial was filed on July 17, 2014.

11 9. On July 29, 2014, Defendant filed the instant Petition for Writ of Habeas Corpus.
12 The State responded on August 29, 2014.

13 10. Defendant's Petition is time barred pursuant to NRS 34.726(1). Remittitur was
14 issued on December 2, 2003. Thus, Defendant had until December 2, 2004 to file a timely
15 petition. In the instant matter, Defendant did not file his Petition until July 29, 2014.
16 Therefore, the Petition is time barred.

17 11. Defendant's Petition is successive pursuant to NRS 34.810(2). Defendant filed his
18 first Petition for Writ of Habeas Corpus (Post-Conviction) on April 19, 2004. This Court
19 denied Defendant's Petition on the merits, with the Nevada Supreme Court affirming the
20 decision on December 6, 2005. See Stanley v. State, No. 45079 (Dec. 6, 2005). Thus,
21 Defendant's instant Petition is successive.

22 12. Defendant has failed to show good cause. Defendant's lack of education and
23 intelligence is insufficient to demonstrate good cause to overcome the procedural bars.

24 13. Application of the procedural bars is mandatory.

25 14. The State has pled laches and Defendant has failed to overcome the statutory
26 presumption that his delay of more than five years has prejudiced the State.

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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. . .

2. 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.

3. The one-year period for filing post-conviction habeas corpus petitions begins to run from the entry of the judgment of conviction, or “from the issuance of the remittitur from a timely direct appeal.” Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998) (emphasis removed).

4. “Generally, ‘good cause’ means a ‘substantial reason; one that affords a legal excuse.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003), quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). “In order to demonstrate good cause, a petitioner must show that an impediment external to the defense prevented him or her from complying with State procedural default rules.” Id., citing Pellegrini, 117 Nev. at 886-87, 34 P.3d at 537); Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994); Passanisi v. Director, 105 Nev. 63, 66, 769 P.2d 72, 74 (1989). An impediment external to the defense can be demonstrated by showing “that the factual or legal basis for the claim was not reasonably available to counsel or that ‘some interference by officials’ made compliance impracticable.” Hathaway, 119 Nev. at 252, 71 P.3d at 506, quoting Murray v. Carrier, 477 U.S. 478, 488

1 (1986)). Clearly, any delay in filing of the petition must not be the fault of the petitioner. NRS
2 34.726(1)(a).

3 5. The Nevada Supreme Court has held that lack of education or intelligence is not
4 a sufficient showing of good cause to overcome the procedural bars. See Phelps v. Dir., Nev.
5 Dep't of Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding that a claim of brain
6 damage, mental retardation, and reliance on assistance from an inmate law clerk did not
7 constitute good cause for filing a successive post-conviction petition).

8 6. A petitioner must also show undue prejudice resulting from the errors of which
9 he complains, i.e., "a petitioner must show that errors in the proceedings underlying the
10 judgment worked to the petitioner's actual and substantial disadvantage." State v. Huebler,
11 128 Nev. Adv. Op. 19, 275 P.3d 91, 94-95 (2012), citing Hogan v. Warden, 109 Nev. 952,
12 959-60, 860 P.2d 710, 716 (1993).

13 7. The court may also excuse a failure to show cause where prejudice from a failure
14 to consider the claim amounts to a "fundamental miscarriage of justice." Mazzan v. Warden,
15 112 Nev. 838, 842, 921 P.2d 920, 922 (1996); Hogan, 109 Nev. at 959, 860 P.2d at 715-16.
16 The miscarriage of justice exception is narrow in scope and employed only in extraordinary
17 circumstances. Calderon v. Thompson, 523 U.S. 538, 559, 118 S. Ct. 1489, 1502-03 (1998).
18 This standard can only be met where the petitioner makes a colorable showing that he is
19 actually innocent of the crime committed. Pellegrini, 117 Nev. 860, 887, 34 P.3d 519, 537
20 (2001); see also Mazzan, 112 Nev. at 842, 921 P.2d at 922; Hogan, 109 Nev. at 954-55, 959,
21 860 P.2d at 712, 715-16. "To avoid application of the procedural bar to claims attacking the
22 validity of the conviction, a petitioner claiming actual innocence must show that it is more
23 likely than not that no reasonable juror would have convicted him absent a constitutional
24 violation." Pellegrini, 117 Nev. at 887, 34 P.3d at 537. "To be credible," a claim of actual
25 innocence must be based on reliable evidence not presented at trial. Schlup v. Delo, 513 U.S.
26 298, 324, 115 S.Ct. 851, 865 (1995).

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1 8. In State v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d 1070 (2005),
2 the Court held that “[a]pplication of the statutory procedural default rules to post-conviction
3 habeas petitions is mandatory,” and “cannot be ignored when properly raised by the State.”
4 Id. at 231, 233, 112 P.3d at 1074, 1075. There, the Court reversed the district court’s decision
5 not to bar the defendant’s untimely and successive petition, holding that “[g]iven the untimely
6 and successive nature of [defendant’s] petition, the district court had a duty imposed by law to
7 consider whether...[defendant’s] claims were barred...” Id. at 234, 112 P.3d at 1076. The
8 Court justified this holding by noting that “[t]he necessity for a workable system dictates that
9 there must exist a time when a criminal conviction is final.” Id. at 231, 112 P.3d 1074 (citation
10 omitted); see also State v. Haberstroh, 119 Nev. 173, 180-81, 69 P.3d 676, 681-82 (2003)
11 (wherein the Nevada Supreme Court held that parties cannot stipulate to waive, ignore or
12 disregard the mandatory procedural default rules nor can they empower a court to disregard
13 them). Recently, the Nevada Supreme Court reaffirmed this holding in State v. Greene, 129
14 Nev. Adv. Op. 58, __ P.3d __ (2013).

15 9. NRS 34.800 creates a rebuttable presumption of prejudice to the State if “[a]
16 period exceeding five years between the filing of a judgment of conviction, an order imposing
17 a sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the
18 filing of a petition challenging the validity of a judgment of conviction....” The statute also
19 requires that the State plead laches in its motion to dismiss the petition. NRS 34.800.

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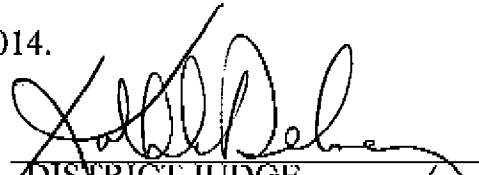
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1 ORDER

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

4 DATED this 13th day of November, 2014.

5 
6 DISTRICT JUDGE

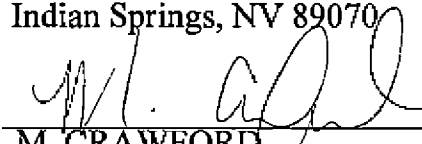
7 STEVEN B. WOLFSON
8 Clark County District Attorney
Nevada Bar #001565

9 
10 BY K. NICHOLAS PORTZ
11 Deputy District Attorney
12 Nevada Bar #012473

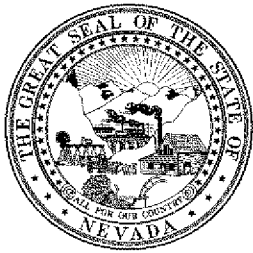
13 CERTIFICATE OF SERVICE

14 I certify that on the 17th day of November, 2014, I mailed a copy of the foregoing
15 proposed Findings of Fact, Conclusions of Law, and Order to:
16

17 OSCAR A. STANLEY #73085
18 High Desert State Prison
19 P.O. Box 650
Indian Springs, NV 89070

20 BY 
21 M. CRAWFORD
22 Secretary for the District Attorney's Office
23
24
25
26
27

28 01F18277X/WR/mcL4



Clerk of the Courts
Steven D. Grierson

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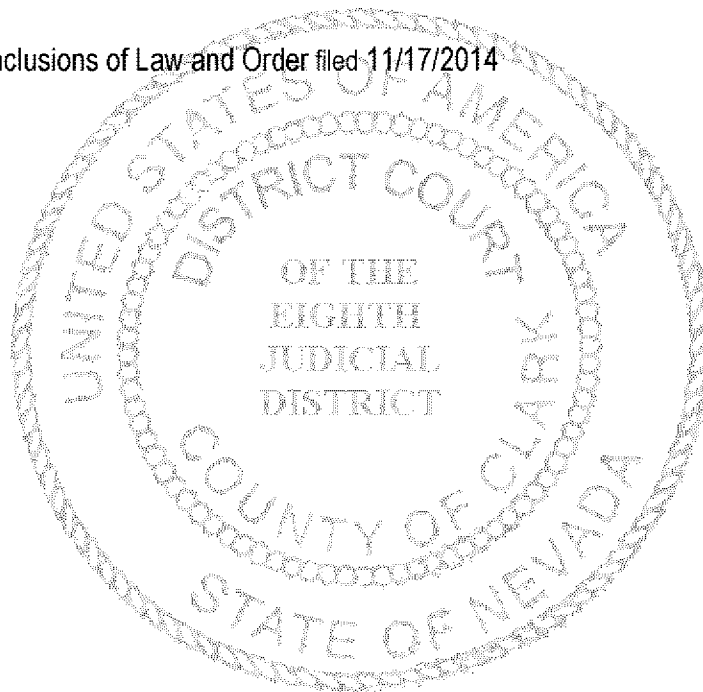
November 25, 2014

Case No.: C180446

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 11/17/2014



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 9:42 AM on November 25, 2014.


STEVEN D. GRIERSON, CLERK OF THE COURT