



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

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

Electronically Filed
Sep 16 2015 03:51 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

Steven D. Grierson
Clerk of the Court

Brandi J. Wendel
Court Division Administrator

September 16, 2015

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

RE: STATE OF NEVADA vs. GREGORY S. HERMANSKI
S.C. CASE: 68392
D.C. CASE: C167783

Dear Ms. Lindeman:

In response to the e-mail dated September 16, 2015, enclosed is a certified copy of the Findings of Fact, Conclusions of Law and Order filed July 30, 2015 and the Notice of Entry of Findings of Fact, Conclusions of Law and Order filed August 4, 2015 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, appearing to read "Heather Ungermann", is written over a horizontal line.

Heather Ungermann, Deputy Clerk


CLERK OF THE COURT

1 **FCL**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **RYAN MACDONALD**
6 **Deputy District Attorney**
7 **Nevada Bar #12615**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **THE STATE OF NEVADA,**
10 **Plaintiff,**

11 **-vs-**

CASE NO: 00C167783

12 **GREGORY SCOTT HERMANSKI,**
13 **#1679345**

DEPT NO: VI

14 **Defendant.**

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

17 **DATE OF HEARING: JUNE 17, 2015**
18 **TIME OF HEARING: 8:30 AM**

19 **THIS CAUSE** having come on for hearing before the Honorable ELISSA CADISH,
20 **District Judge,** on the 17 day of June, 2015, the Petitioner not being present, **PROCEEDING**
21 **IN FORMA PAUPERIS,** the Respondent being represented by **STEVEN B. WOLFSON,**
22 **Clark County District Attorney,** by and through **CHARLES THOMAN,** Deputy District
23 **Attorney,** and the Court having considered the matter, including briefs, transcripts, and
24 **documents on file herein,** now therefore, the Court makes the following findings of fact and
25 **conclusions of law:**

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27 **///**

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Hermanski was convicted of both counts by a jury of his peers on March 15, 2001, and was sentenced as a habitual offender to 120 to 300 months in the Nevada Department of Corrections. Hermanski's Judgment of Conviction was filed on May 18, 2001. On June 8, 2001, Hermanski appealed his conviction. The Nevada Supreme Court affirmed Hermanski's convictions but remanded the case for the following corrections to the sentence and Judgment of Conviction: (1) to correct the Judgment of Conviction so that it reflects that Hermanski was convicted pursuant to jury verdict and not a plea of guilty, (2) for the district court to specifically indicate under which statute Hermanski was adjudicated as a habitual criminal, and (3) for the district court to specify a sentence for each of Hermanski's two convictions as the Judgment of Conviction only set forth one definite term for one offense.

Hermanski filed his first post-conviction petition for writ of habeas corpus on July 13, 2005. The district court denied his petition on February 3, 2006. The Nevada Supreme Court affirmed the district court's decision, but remanded for the sole purpose of correcting a clerical error. Remittitur was issued on August 8, 2006. Pursuant to the Supreme Court's order, a Second Amended Judgment of Conviction was filed on July 27, 2006.

1 Hermanski filed the instant post-conviction petition on March 13, 2015 (an amended
2 petition was filed on March 23, 2015). Notably, this petition was filed more than one year
3 after remittitur was issued from Hermanski's direct appeal. Thus, Hermanski's petition is
4 untimely. NRS 34.726(1). Moreover, this is Hermanski's third attempt at post-conviction
5 relief. Hermanski's first post-conviction petition was filed on July 13, 2005, denied by the
6 district court on February 3, 2006, and affirmed by the Nevada Supreme Court on July 13,
7 2006. Hermanski v. State, No. 47011 (July 13, 2006). Therefore, Hermanski's petition is also
8 successive. NRS 34.810. Hermanski's petition is accordingly procedurally barred absent a
9 demonstration of good cause—cause for the delay and undue prejudice. Good cause must be
10 an impediment external to the defense. See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d
11 503, 506 (2003).

12 As grounds for good cause, Hermanski asserts the State failed to file certified judgments
13 of convictions to support him being sentenced under the large habitual offender statute and he
14 was not made aware of this until a letter dated February 5, 2014. Nonetheless, Hermanski fails
15 to demonstrate an impediment external to the defense. Notably, Hermanski filed a motion to
16 vacate his adjudication as a habitual offender on February 25, 2014. In said motion,
17 Hermanski raised the exact same claims he does in the instant petition. Accordingly, to the
18 extent Hermanski's claim is accepted as true, he cannot demonstrate good cause for the time
19 period between his motion to vacate and the instant petition and therefore this Court finds that
20 Hermanski has failed to demonstrate legal cause to excuse the mandatory procedural defaults
21 and his petition must be accordingly denied.¹

22
23 ¹ In any event, Hermanski's claim is belied by the record. At his sentencing hearing on April
24 30, 2003, the district court stated, "All right. Mr. Hermanski, pursuant to jury verdict March
25 15, 2001, on the charge, Count I, robbery, felony, and Count II, burglary while in possession
26 of deadly weapon, felony, you are hereby adjudicated guilty of those crimes, and State has
27 previously submitted the certified copies of convictions." RT 4-30-2003 at 2 (emphasis
28 added). Moreover, the record demonstrates the Nevada Supreme Court reviewed Hermanski's
criminal record in 2004. "Gregory Scott Hermanski's criminal record reflects 11 prior felony
convictions, four of which involved violent offenses." Hermanski v. State, No. 41405 at 3 fn.
2 (July 1, 2004). This is in direct contradiction to the letter in which Hermanski uses to support

1 Lastly, the State affirmatively pleaded laches pursuant to NRS 34.800 in the instant
2 matter. NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period
3 exceeding five years [elapses] between the filing of a judgment of conviction, an order
4 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of
5 conviction and the filing of a petition challenging the validity of a judgment of conviction..."
6 This Court finds that Hermanski has failed to overcome the presumption of prejudice to the
7 State and thus his petition is dismissed pursuant to NRS 34.800.²

8 **ORDER**


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

11 DATED this 27 day of July, 2015.

12 
13 _____
14 DISTRICT JUDGE *RE*

15 STEVEN B. WOLFSON
16 Clark County District Attorney
17 Nevada Bar #001565

18 BY


19 RYAN MACDONALD
20 Deputy District Attorney
21 Nevada Bar #12615

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26 his claim for good cause. Simply put, the State filed certified copies and the Supreme Court
27 reviewed Hermanski's criminal record.

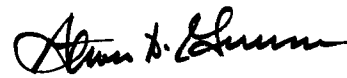
28 ² Because Hermanski's petition is procedurally defaulted and is being summarily denied, his
motions for appointment of attorney and for an evidentiary hearing are also denied. NRS
34.750; NRS 34.770.

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GREGORY S. HERMANSKI #69140
Northern Nevada Correctional Center
P.O. BOX 7000
CARSON CITY, NV, 89702

CC
~~E. Jimenez~~ C. Centola
Secretary for the District Attorney's Office

RM/cmj/L3



CLERK OF THE COURT

1 NEO

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**
4

5 GREGORY S. HERMANSKI

Petitioner,

Case No: 00C167783

6 vs.

Dept No: VI

7 THE STATE OF NEVADA,

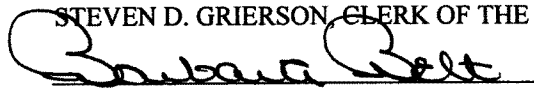
8 Respondent,

9 **NOTICE OF ENTRY OF FINDINGS OF**
10 **FACT, CONCLUSIONS OF LAW AND**
11 **ORDER**

12 **PLEASE TAKE NOTICE** that on July 30, 2015, the court entered a decision or order in this matter, a
13 true and correct copy of which is attached to this notice.

14 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
15 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
16 mailed to you. This notice was mailed on August 4, 2015.

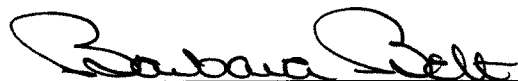
17 STEVEN D. GRIERSON, CLERK OF THE COURT


Barbara Belt, Deputy Clerk

18 **CERTIFICATE OF MAILING**
19

20 I hereby certify that on this 4th day of August 2015, I placed a copy of this Notice of Entry in:

- 21 ☒ The bin(s) located in the Regional Justice Center of:
22 Clark County District Attorney's Office
23 Attorney General's Office – Appellate Division-
- 24 ☒ The United States mail addressed as follows:
25 Gregory S. Hermanski #69140
26 P.O. Box 7000
27 Carson City, NV 89702
28


Barbara Belt, Deputy Clerk


CLERK OF THE COURT

1 **FCL**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **RYAN MACDONALD**
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11 DATED this 27 day of July, 2015.

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14 DISTRICT JUDGE *RE*

15 STEVEN B. WOLFSON
16 Clark County District Attorney
17 Nevada Bar #001565

18 BY


19 RYAN MACDONALD
20 Deputy District Attorney
21 Nevada Bar #12615

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GREGORY S. HERMANSKI #69140
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CC
~~E. Jimenez~~ C. Centola
Secretary for the District Attorney's Office

RM/cmj/L3



Clerk of the Courts
Steven D. Grierson

200 Lewis Avenue
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September 16, 2015

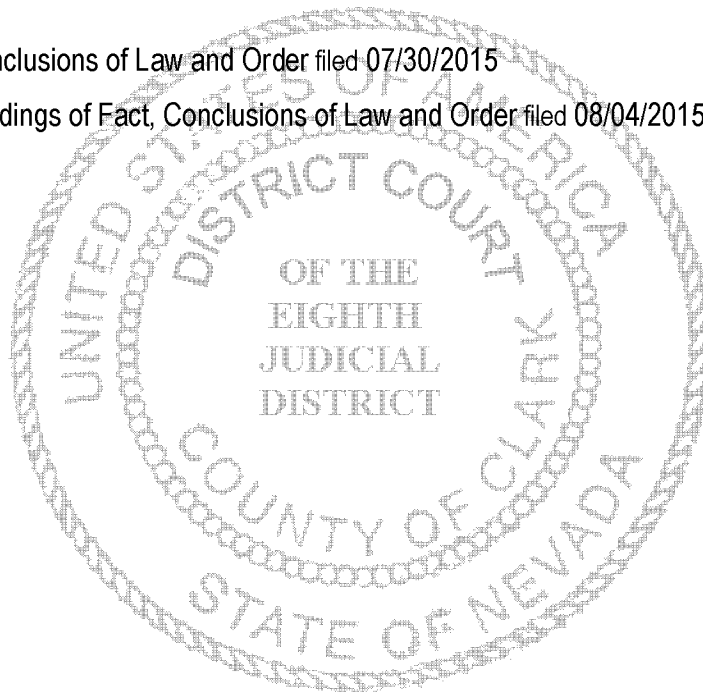
Case No.: C167783

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 07/30/2015

Notice of Entry of Findings of Fact, Conclusions of Law and Order filed 08/04/2015



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 12:35 PM on September 16, 2015.


STEVEN D. GRIERSON, CLERK OF THE COURT