

- 1 15. In summary, Defendant testified that his trial counsel, Mr. Oronoz never told him  
2 when his appeal was denied or the status of the appeal. Id. Defendant's mom  
3 discovered the appeal was closed/denied. Id. Defendant contacted Mr. Oronoz and  
4 the State Bar of Nevada. Id. Defendant then filed Motions with the Nevada Supreme  
5 Court and the district court trying to remedy this alleged error and proceed with post-  
6 conviction relief. Id. Eventually, Mr. Oronoz filed something with the district court  
7 which obtained the appointment of current counsel, Mr. Brower to pursue this Petition  
8 for Writ of Habeas Corpus (Post-Conviction). Id.
- 9 16. This Court also reviewed the letters sent between Defendant and Mr. Oronoz. R.T.  
10 July 11, 2013, pgs. 7, 12-13.
- 11 17. Even in the best case scenario Defendant had notice of the denial of his appeal in July  
12 2010, no later than July 27, 2010, but did not file his Petition for Writ of Habeas  
13 Corpus (Post-Conviction) until over a year after he received notice. R.T. July 11,  
14 2013, pgs. 24-25.
- 15 18. Defendant's petition, filed October 10, 2011, was filed outside the one-year limitation  
16 as strictly mandated by NRS 34.726; as such, the petition is time barred.
- 17 19. A petition subject to procedural bars may be considered on its merits if good cause is  
18 shown.
- 19 20. Defendant failed to plead facts sufficient to demonstrate to the satisfaction of the  
20 court that good cause for delay exists sufficient to overcome the one-year time bar.
- 21 21. Defendant failed to show good cause to overcome the one-year time bar through  
22 evidence, testimony, and argument presented at the Evidentiary Hearing.
- 23 22. Defendant failed to demonstrate that he filed his state post-conviction relief petition  
24 within a reasonable time after he should have known that his counsel was not  
25 pursuing his direct appeal, July 2010, pursuant to Hathaway.
- 26 23. Defendant's petition is denied procedurally and therefore not addressed on the merits  
27 at this time.
- 28 24. Defendant's petition was time barred prior to Mr. Brower being appointed.

1 25. Defendant's petition is time-barred pursuant to NRS 34.726 and he has made no  
2 showing of good cause to overcome that mandatory time bar; therefore, Defendant's  
3 Petition is properly denied on the procedural issues alone without addressing the  
4 issues raised within the Petition on the merits.

5 26. This Findings of Fact, Conclusions of Law, and Order shall take the place of the  
6 Findings of Fact, Conclusions of Law, and Order filed January 6, 2012 and stayed on  
7 February 21, 2012.

### 8 CONCLUSIONS OF LAW

9 1. The mandatory provisions of NRS 34.726 read:

10 Unless there is good cause shown for delay, a petition that  
11 challenges the validity of a judgment or sentence must be filed  
12 *within 1 year after entry of the judgment of conviction or, if an*  
13 *appeal has been taken from the judgment, within 1 year after the*  
14 *supreme court issues its remittitur.* For the purposes of this  
15 subsection, good cause for delay exists if the petitioner  
16 demonstrates to the satisfaction of the court:

17 That the delay is not the fault of the petitioner; and

18 That dismissal of the petition as untimely will unduly  
19 prejudice the petitioner. . . .

20 (Emphasis added).

21 2. NRS 34.726 has been strictly applied. In Gonzales v. State, 118 Nev. 590, 593, 590  
22 P.3d 901, 902 (2002), the Nevada Supreme Court rejected a habeas petition that was  
23 filed two days late, pursuant to the "clear and unambiguous" mandatory provisions of  
24 NRS 34.726(1). Gonzales reiterated the importance of filing the petition with the  
25 district court within the one year mandate, absent a showing of "good cause" for the  
26 delay in filing. Id. at 593, 590 P.3d at 902. The one-year time bar is therefore strictly  
27 construed.

28 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. 30, 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, 105 Nev. 63, 769

P.2d 72 (1989); see also Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247, 252 (1997); Phelps v. Director, 104 Nev. 656, 764 P.2d 1303 (1988).

4. Such an external impediment could be "that the factual or legal basis for a claim was not reasonably available to counsel, or that 'some interference by officials' made compliance impracticable." Hathaway, 71 P.3d at 506; quoting Murray v. Carrier, 477 U.S. 478, 488, 106 S.Ct. 2639, 2645 (1986); see also Gonzales, 118 Nev. at 595, 53 P.3d at 904; citing Harris v. Warden, 114 Nev. 956, 959-60 n. 4, 964 P.2d 785 n. 4 (1998).

5. In addition, to find good cause there must be a "substantial reason; one that affords a legal excuse." Hathaway, 71 P.3d at 506; quoting Collev v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989), quoting State v. Estencion, 625 P.2d 1040, 1042 (Haw. 1981).

6. The Nevada Supreme Court has specifically held that the district court has a duty to consider whether the procedural bars apply to a post-conviction petition and not arbitrarily disregard them. In State v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d 1070 (2005), the Nevada Supreme Court held as follows:

Given the untimely and successive nature of [defendant's] petition, the district court *had a duty imposed by law* to consider whether any or all of [defendant's] claims were barred under NRS 34.726, NRS 34.810, NRS 34.800, or by the law of the case . . . [and] the court's failure to make this determination here constituted an arbitrary and unreasonable exercise of discretion.

7. [Emphasis added.] 121 Nev. at 234. (See also State v. Haberstroh, 119 Nev. 173, 180-81, 69 P.3d 676, 681-82 (2003) wherein the Nevada Supreme Court held that parties cannot stipulate to waive, ignore or disregard the mandatory procedural default rules nor can they empower a court to disregard them.) A defendant's petition will not be considered on the merits if it is subject to the procedural bars and no good cause is shown. Id.

//

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1 8. The lack of the assistance of counsel when preparing a petition, and even the failure  
2 of trial counsel to forward a copy of the file to a petitioner, have been found to not  
3 constitute good cause. See Phelps v. Director Nevada Department of Prisons, 104  
4 Nev. 656, 660, 764 P.2d 1303 (1988); Hood v. State, 111 Nev. 335, 890 P.2d 797  
5 (1995). Also, the failure of counsel to inform the petitioner of his right to direct  
6 appeal did not rise to good cause for overcoming the time bar. Dickerson v. State,  
7 114 Nev. 1084, 967 P.2d 1132 (1998).

8 9. In Harris v. Warden, Southern Desert Correctional Center, 114 Nev. 956, 964 P.2d  
9 785 (1998) the Court addressed this specific issue and held. "[w]e now reaffirm our  
10 conclusion and hold that an allegation that trial counsel was ineffective in failing to  
11 inform a claimant of the right to appeal from the judgment of conviction, or any other  
12 allegation that a claimant was deprived of a direct appeal without his or her consent,  
13 does not constitute good cause to excuse the untimely filing of a petition pursuant to  
14 N.R.S. 34.726." Id. at 959, 964 P.2d at 787.

15 10. Additionally, the Nevada Supreme Court has specifically held that "there is no  
16 constitutional requirement that counsel must always inform a defendant who pleads  
17 guilty of the right to pursue a direct appeal." Thomas v. State, 115 Nev. 148, 150,  
18 979 P.2d 222, 223 (1999).

19 11. Finally, the Nevada Supreme Court has held:

20 The court in Loveland [v. Hatcher], 231 F.3d 640 (9th Cir.2000)]  
21 held that a petitioner's reliance upon his counsel to file a direct  
22 appeal is sufficient cause to excuse a procedural default if the  
23 petitioner demonstrates: "(1) he actually believed his counsel  
24 was pursuing his direct appeal, (2) his belief was objectively  
25 reasonable, and (3) he filed his state post-conviction relief  
26 petition within a reasonable time after he should have known  
27 that his counsel was not pursuing his direct appeal." We  
28 conclude that the test set forth in Loveland is a reasonable test  
for evaluating an allegation of good cause based upon a  
petitioner's mistaken belief that counsel had filed a direct appeal.  
Thus, a petitioner can establish good cause for the delay under  
NRS 34.726(1) if the petitioner establishes that the petitioner  
reasonably believed that counsel had filed an appeal and that the  
petitioner filed a habeas corpus petition within a reasonable time  
after learning that a direct appeal had not been filed.

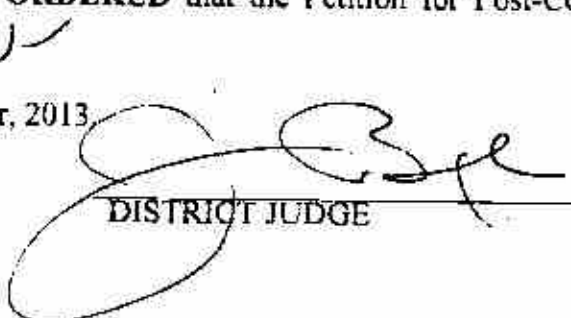
Hathaway v. State, 119 Nev. 248, 254-55, 71 P.3d 503, 507-08 (2003).



**ORDER**

THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and is, DENIED.

DATED this 5<sup>th</sup> day of October, 2013.

  
DISTRICT JUDGE

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

BY 

LISA LUZAICH  
Chief Deputy District Attorney  
Nevada Bar #005056

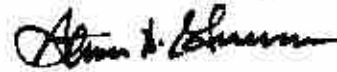
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KEITH BROWER, ESQ.  
e-mail: [browerlawoffice@aol.com](mailto:browerlawoffice@aol.com)

Secretary for the District Attorney's Office

hjc/SVU

NEO



CLERK OF THE COURT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

DELARIAN K. WILSON,

Petitioner,

Case No: 07C232494-1

Dept No: XXIV

vs.

THE STATE OF NEVADA,

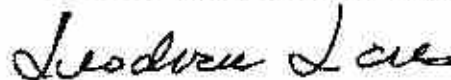
Respondent,

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

**PLEASE TAKE NOTICE** that on November 12, 2013, 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 November 19, 2013

STEVEN D. GRIERSON, CLERK OF THE COURT



Teodora Jones, Deputy Clerk

**CERTIFICATE OF MAILING**

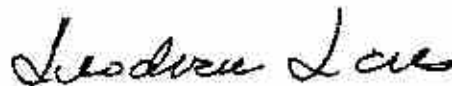
I hereby certify that on this 19 day of November 2013, I placed a copy of this Notice of Entry in:

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:

Delarian K. Wilson # 1022177  
P O Box 208  
Indian Springs, NV 89070

Keith C. Brower, Esq.  
8275 S. Eastern #200  
Las Vegas, NV 89123



Teodora Jones, Deputy Clerk

# ORIGINAL

## ORDR

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
LISA LUZAICH  
Chief Deputy District Attorney  
Nevada Bar #005056  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

Electronically Filed  
11/12/2013 10:24:04 AM

  
CLERK OF THE COURT

### DISTRICT COURT CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

DELARIAN WILSON,  
#1966773

Defendant.

CASE NO: 07C232494-1  
DEPT NO: XXIV

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

DATES OF HEARINGS: DECEMBER 13, 2011 AND JULY 11, 2013  
TIME OF HEARINGS: 8:30 A.M.

THIS CAUSE having come on for hearing before the Honorable Judge Bixler, District Judge, on the 13th day of December, 2011, and on the 11th day of July, 2013; Petitioner not being present on the 13th day of December, 2011, present on the 11th day of July, 2013, and represented By KEITH BROWER, ESQ.; Respondent being represented by STEVEN B. WOLFSON, District Attorney, by and through LISA LUZAICH, Chief Deputy District Attorney; and, the Court having considered the matter, including briefs, transcripts, arguments of counsel, testimony of DELARIAN K. WILSON, the Defendant, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

//

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## FINDINGS OF FACT

1. On April 17, 2007, the State of Nevada (hereinafter "State") filed an Amended Criminal Complaint charging Delarian K. Wilson (hereinafter "Defendant") with the following: Conspiracy to Commit Burglary (Gross Misdemeanor - NRS 199.480, 205.060); Conspiracy to Commit Robbery (Felony - NRS 199.480, 200.380); Burglary while in Possession of a Deadly Weapon (Felony - NRS 205.060); Robbery with Use of a Deadly Weapon (Felony - NRS 200.380, 193.165); Assault with Use of a Deadly Weapon (Felony - NRS 200.471, 193.165); First Degree Kidnapping with Use of a Deadly Weapon (Felony - NRS 200.310, 200.320, 193.165); Sexual Assault with Use of a Deadly Weapon (Felony - NRS 200.364, 200.366, 193.165); Coercion with Use of a Deadly Weapon (Felony - NRS 207.190, 193.165); and Open or Gross Lewdness with Use of a Deadly Weapon (Gross Misdemeanor - NRS 201.210, 193.165).
2. Thereafter, Defendant entered into negotiations with the State, and on August 20, 2007, the State filed an Information charging Defendant with the crimes alleged in the Amended Criminal Complaint.
3. On March 28, 2008, the State filed an Amended Information charging Defendant with the following: Counts 1 and 2 - Robbery with Use of a Deadly Weapon (Felony - NRS 200.380, 193.165); and Count 3 - Sexual Assault (Felony - NRS 200.364, NRS 200.366) and Defendant entered into a Guilty Plea Agreement with the State whereby he pled guilty to the crimes alleged in his Amended Information. On April 1, 2008, the court conducted its guilty plea canvass of Defendant and accepted his guilty plea.
4. On July 3, 2008, Defendant was sentenced as follows: Count 1 - Robbery with Use of a Deadly Weapon - a maximum of 180 months with a minimum parole eligibility of 72 months, with an equal and consecutive term, for the use of a deadly weapon, of a maximum of 180 months and a minimum of 72 months; Count 2 - Robbery with Use of a Deadly Weapon - a maximum of 180 months with a minimum parole eligibility of 72 months, with an equal and consecutive term, for the use of a deadly weapon, of



1 a maximum of 180 months and a minimum of 72 months; and Count 3 – Sexual  
2 Assault – life with the possibility of parole after 10 years. The court ruled that all  
3 sentences were to run consecutive to one another. The court also granted Defendant  
4 five hundred (500) days credit for time served.

5 5. Defendant's Judgment of Conviction was filed on July 16, 2008.

6 6. On August 5, 2008 Defendant filed his Notice of Appeal.

7 7. On July 7, 2009, the Nevada Supreme Court affirmed Defendant's Judgment of  
8 Conviction (Case No 52104). Remittitur issued on August 4, 2009.

9 8. On October 10, 2011, Defendant filed a Petition for Writ of Habeas Corpus. On  
10 November 1, 2011, the State filed its Response and Motion to Dismiss Defendant's  
11 Petition.

12 9. This Court held argument on Defendant's Petition on December 13, 2011 and denied  
13 the Petition both procedurally and on the merits. The Findings of Fact, Conclusions  
14 of Law, and Order was filed January 6, 2012.

15 10. Defendant filed a Motion for Clarification and/or Reconsideration of Denial of  
16 Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) on January 30,  
17 2012. The State filed its Opposition February 24, 2012.

18 11. On February 21, 2012, this Court entered an Order Staying the Findings of Fact,  
19 Conclusions of Law, and Order filed January 6, 2012.

20 12. Defendant filed a Notice of Appeal on February 21, 2012. The appeal was later  
21 withdrawn because of procedural issues which required further consideration in the  
22 district court first. R.T. July 11, 2013, pg. 4.

23 13. On June 4, 2013, this Court set the matter for an Evidentiary Hearing on the limited  
24 issue of alleged good cause to excuse the procedural bars. R.T. July 11, 2013, pgs. 7-  
25 9.

26 14. Defendant testified on his own behalf. R.T. July 11, 2013, pgs. 16-23.

27 //

28 //

- 1 15. In summary, Defendant testified that his trial counsel, Mr. Oronoz never told him  
2 when his appeal was denied or the status of the appeal. Id. Defendant's mom  
3 discovered the appeal was closed/denied. Id. Defendant contacted Mr. Oronoz and  
4 the State Bar of Nevada. Id. Defendant then filed Motions with the Nevada Supreme  
5 Court and the district court trying to remedy this alleged error and proceed with post-  
6 conviction relief. Id. Eventually, Mr. Oronoz filed something with the district court  
7 which obtained the appointment of current counsel, Mr. Brower to pursue this Petition  
8 for Writ of Habeas Corpus (Post-Conviction). Id.
- 9 16. This Court also reviewed the letters sent between Defendant and Mr. Oronoz. R.T.  
10 July 11, 2013, pgs. 7, 12-13.
- 11 17. Even in the best case scenario Defendant had notice of the denial of his appeal in July  
12 2010, no later than July 27, 2010, but did not file his Petition for Writ of Habeas  
13 Corpus (Post-Conviction) until over a year after he received notice. R.T. July 11,  
14 2013, pgs. 24-25.
- 15 18. Defendant's petition, filed October 10, 2011, was filed outside the one-year limitation  
16 as strictly mandated by NRS 34.726; as such, the petition is time barred.
- 17 19. A petition subject to procedural bars may be considered on its merits if good cause is  
18 shown.
- 19 20. Defendant failed to plead facts sufficient to demonstrate to the satisfaction of the  
20 court that good cause for delay exists sufficient to overcome the one-year time bar.
- 21 21. Defendant failed to show good cause to overcome the one-year time bar through  
22 evidence, testimony, and argument presented at the Evidentiary Hearing.
- 23 22. Defendant failed to demonstrate that he filed his state post-conviction relief petition  
24 within a reasonable time after he should have known that his counsel was not  
25 pursuing his direct appeal, July 2010, pursuant to Hathaway.
- 26 23. Defendant's petition is denied procedurally and therefore not addressed on the merits  
27 at this time.
- 28 24. Defendant's petition was time barred prior to Mr. Brower being appointed.

25. Defendant's petition is time-barred pursuant to NRS 34.726 and he has made no showing of good cause to overcome that mandatory time bar; therefore, Defendant's Petition is properly denied on the procedural issues alone without addressing the issues raised within the Petition on the merits.

26. This Findings of Fact, Conclusions of Law, and Order shall take the place of the Findings of Fact, Conclusions of Law, and Order filed January 6, 2012 and stayed on February 21, 2012.

### CONCLUSIONS OF LAW

1. The mandatory provisions of NRS 34.726 read:

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:

That the delay is not the fault of the petitioner; and

That dismissal of the petition as untimely will unduly prejudice the petitioner. . . .

(Emphasis added).

2. NRS 34.726 has been strictly applied. In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada Supreme Court rejected a habeas petition that was filed two days late, pursuant to the "clear and unambiguous" mandatory provisions of NRS 34.726(1). Gonzales reiterated the importance of filing the petition with the district court within the one year mandate, absent a showing of "good cause" for the delay in filing. Id. at 593, 590 P.3d at 902. The one-year time bar is therefore strictly construed.

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. 30, 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, 105 Nev. 63, 769

1 P.2d 72 (1989); see also Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247, 252  
2 (1997); Phelps v. Director, 104 Nev. 656, 764 P.2d 1303 (1988).

3 4. Such an external impediment could be "that the factual or legal basis for a claim was  
4 not reasonably available to counsel, or that 'some interference by officials' made  
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6 477 U.S. 478, 488, 106 S.Ct. 2639, 2645 (1986); see also Gonzales, 118 Nev. at 595,  
7 53 P.3d at 904; citing Harris v. Warden, 114 Nev. 956, 959-60 n. 4, 964 P.2d 785 n. 4  
8 (1998).

9 5. In addition, to find good cause there must be a "substantial reason; one that affords a  
10 legal excuse." Hathaway, 71 P.3d at 506; quoting Colley v. State, 105 Nev. 235, 236,  
11 773 P.2d 1229, 1230 (1989), quoting State v. Estencion, 625 P.2d 1040, 1042 (Haw.  
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13 6. The Nevada Supreme Court has specifically held that the district court has a duty to  
14 consider whether the procedural bars apply to a post-conviction petition and not  
15 arbitrarily disregard them. In State v. Eighth Judicial District Court, 121 Nev. 225,  
16 112 P.3d 1070 (2005), the Nevada Supreme Court held as follows:

17 Given the untimely and successive nature of [defendant's]  
18 petition, the district court *had a duty imposed by law* to consider  
19 whether any or all of [defendant's] claims were barred under  
20 NRS 34.726, NRS 34.810, NRS 34.800, or by the law of the case  
... [and] the court's failure to make this determination here  
constituted an arbitrary and unreasonable exercise of discretion.

21 7. [Emphasis added.] 121 Nev. at 234. (See also State v. Haberstroh, 119 Nev. 173,  
22 180-81, 69 P.3d 676, 681-82 (2003) wherein the Nevada Supreme Court held that  
23 parties cannot stipulate to waive, ignore or disregard the mandatory procedural default  
24 rules nor can they empower a court to disregard them.) A defendant's petition will  
25 not be considered on the merits if it is subject to the procedural bars and no good  
26 cause is shown. Id.

27 //

28 //

1 8. The lack of the assistance of counsel when preparing a petition, and even the failure  
2 of trial counsel to forward a copy of the file to a petitioner, have been found to not  
3 constitute good cause. See Phelps v. Director Nevada Department of Prisons, 104  
4 Nev. 656, 660, 764 P.2d 1303 (1988); Hood v. State, 111 Nev. 335, 890 P.2d 797  
5 (1995). Also, the failure of counsel to inform the petitioner of his right to direct  
6 appeal did not rise to good cause for overcoming the time bar. Dickerson v. State,  
7 114 Nev. 1084, 967 P.2d 1132 (1998).

8 9. In Harris v. Warden, Southern Desert Correctional Center, 114 Nev. 956, 964 P.2d  
9 785 (1998) the Court addressed this specific issue and held, "[w]e now reaffirm our  
10 conclusion and hold that an allegation that trial counsel was ineffective in failing to  
11 inform a claimant of the right to appeal from the judgment of conviction, or any other  
12 allegation that a claimant was deprived of a direct appeal without his or her consent,  
13 does not constitute good cause to excuse the untimely filing of a petition pursuant to  
14 N.R.S. 34.726." Id. at 959, 964 P.2d at 787.

15 10. Additionally, the Nevada Supreme Court has specifically held that "there is no  
16 constitutional requirement that counsel must always inform a defendant who pleads  
17 guilty of the right to pursue a direct appeal." Thomas v. State, 115 Nev. 148, 150,  
18 979 P.2d 222, 223 (1999).

19 11. Finally, the Nevada Supreme Court has held:

20 The court in Loveland v. Hatcher, 231 F.3d 640 (9th Cir.2000)  
21 held that a petitioner's reliance upon his counsel to file a direct  
22 appeal is sufficient cause to excuse a procedural default if the  
23 petitioner demonstrates: "(1) he actually believed his counsel  
24 was pursuing his direct appeal, (2) his belief was objectively  
25 reasonable, and (3) he filed his state post-conviction relief  
26 petition within a reasonable time after he should have known  
27 that his counsel was not pursuing his direct appeal." We  
28 conclude that the test set forth in Loveland is a reasonable test  
for evaluating an allegation of good cause based upon a  
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Thus, a petitioner can establish good cause for the delay under  
NRS 34.726(1) if the petitioner establishes that the petitioner  
reasonably believed that counsel had filed an appeal and that the  
petitioner filed a habeas corpus petition within a reasonable time  
after learning that a direct appeal had not been filed.

Hathaway v. State, 119 Nev. 248, 254-55, 71 P.3d 503, 507-08 (2003).



ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and is, DENIED.

DATED this 5<sup>th</sup> day of October, 2013

  
DISTRICT JUDGE

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

BY 

LISA LUZACH  
Chief Deputy District Attorney  
Nevada Bar #005056

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KEITH BROWER, ESQ.  
e-mail: [browerlawoffice@aol.com](mailto:browerlawoffice@aol.com)

Secretary for the District Attorney's Office

## hjc/SVL

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

NOV 21 2013

BY

  
TERESA SLADE, DEPUTY

1 KEITH C. BROWER, ESQ.  
2 NEVADA BAR#007288  
3 THE LAW OFFICES OF KEITH C. BROWER, LLC  
4 8275 SOUTH EASTERN #200  
5 LAS VEGAS, NEVADA 89123  
6 (702) 451-4921

7 **EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA**

8 State of Nevada,  
9 Plaintiff,

vs.

Delarian Wilson,  
Defendant.

District Court Case No.: 07C232494-1

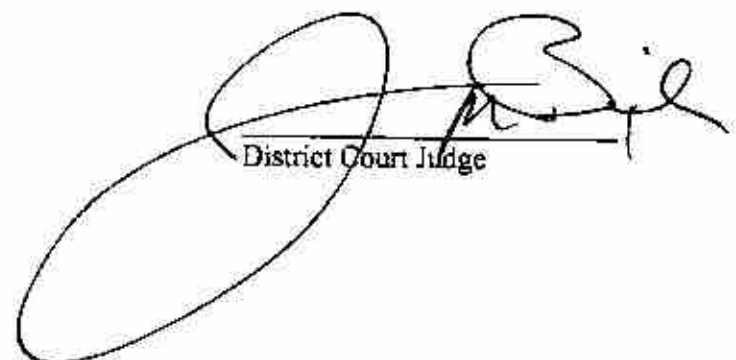
DEPT: XXIV


10 **ORDER FOR TRANSCRIPT**

11 Upon the ex-parte application of the Defendant's court appointed counsel, Keith C. Brower,  
12 and good cause appearing therefor,

13 It is HEREBY ORDERED that a transcript of the July 11, 2013 hearing on Defendant's  
14 Motion For Reconsideration heard by the Honorable James Bixler be prepared by Bill Nelson, Court  
15 Reporter/Recorder.

16 Dated this 21<sup>st</sup> day of November, 2013.

17   
18 District Court Judge

19   
20 By: Keith C. Brower, Esq.  
21 NV Bar# 7288  
22 The Law Offices Of Keith C. Brower, LLC  
23 8275 South Eastern #200  
24 Las Vegas, NV 89123  
25 (702) 451-4921  
26 Attorney For The Defendant Delarian Wilson  
27  
28

002216

1 KEITH C. BROWER, ESQ.  
2 NEVADA BAR#007288  
3 THE LAW OFFICES OF KEITH C. BROWER, LLC  
4 8275 SOUTH EASTERN #200  
5 LAS VEGAS, NEVADA 89123  
6 (702) 451-4921

*Agnes L. Lawrence*  
CLERK OF THE COURT

7 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND**  
8 **FOR THE COUNTY OF CLARK**

9 STATE OF NEVADA )  
10 Plaintiff, )

Case No. : 07C232494-1  
Dept. No. : XXIV

11 vs. )

12 DELARIAN WILSON, )  
13 ID# 1966773 )  
14 Defendant )

15 **NOTICE OF APPEAL**

16 Notice is hereby given that Delarian Wilson, defendant above named, hereby appeals to the  
17 Supreme Court of Nevada from the denial of Defendant's Post Conviction Petition For Writ Of  
18 Habeas Corpus and The Findings Of Fact, Conclusions Of Law And Order filed on or about  
19 November 12, 2013 with a Notice Of Entry Of Order filed on or about November 19, 2013.

20 Dated this 10<sup>th</sup> day of December, 2013.

21 *Keith C. Brower*  
22 Keith C. Brower, Esq.  
23 The Law Offices Of Keith C. Brower, LLC.  
24 8275 South Eastern #200  
25 Las Vegas, NV 89123  
26 (702) 451-4921  
27 Attorney For Appellant  
28

002217

1 KEITH C. BROWER, ESQ.  
2 NEVADA BAR#007288  
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10  
11 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND  
12 FOR THE COUNTY OF CLARK**

13 STATE OF NEVADA )  
14 Plaintiff, )

15 vs. )

16 DELARIAN WILSON, )  
17 ID# 1966773 )  
18 Defendant )

19 Case No. : 07C232494-1  
20 Dept. No.: XXIV

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21   
22 CLERK OF THE COURT

23 **CASE APPEAL STATEMENT**

24 1. Name of appellant filing this case appeal statement:

25 DELARIAN WILSON

26 2. Identify the judge issuing the decision, judgment, or order appealed from:

27 The Honorable James Bixler, Eighth Judicial District Court Department XXIV.

28 3. Identify each appellant and the name and address of counsel for each appellant:

Keith C. Brower  
The Law Offices Of Keith C. Brower, LLC  
8275 South Eastern #200  
Las Vegas, NV 89123

4. Identify each respondent and the name and address of appellate counsel, if known,  
for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as  
much and provide the name and address of that respondent's trial counsel):

Steven Wolfson  
Clark County District Attorney  
200 Lewis Avenue  
Las Vegas8, NV 89101

002218



1       5.    Indicate whether any attorney identified above in response to question 3 or 4 is not  
2   licensed to practice law in Nevada and, if so, whether the district court granted that attorney  
3   permission to appear under SCR 42 (attach a copy of any district court order granting such  
4   permission):  
5

6           Not Applicable

7       6.    Indicate whether appellant was represented by appointed or retained counsel in the  
8   district court:  
9

10          Appointed

11       7.    Indicate whether appellant is represented by appointed or retained counsel on  
12   appeal:  
13

14          Appointed

15       8.    Indicate whether appellant was granted leave to proceed in forma pauperis, and the  
16   date of entry of the district court order granting such leave:  
17

18          Not Applicable

19       9.    Indicate the date the proceedings commenced in the district court (e.g., date  
20   complaint, indictment, information, or petition was filed):  
21

22          On or about April 19, 2007.

23       10.   Provide a brief description of the nature of the action and result in the district  
24   court, including the type of judgment or order being appealed and the relief granted by the  
25   district court:  
26

27          This case stems from the reconsideration of Appellant's Petition For Writ Of Habeas  
28   Corpus, and the denial of Appellant's Petition based upon time-barred issues. This appeal

1 follows.

2 11. Indicate whether the case has previously been the subject of an appeal to or  
3 original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court  
4 docket number of the prior proceeding:  
5

6 Nevada Supreme Court Case Numbers 52104 and 60309.

7 12. Indicate whether this appeal involves child custody or visitation:  
8

9 No.

10 13. If this is a civil case, indicate whether this appeal involves the possibility of  
11 settlement:

12 Not Applicable  
13

14 Dated this 10<sup>th</sup> day of December 2013.

15  
16  
17 Keith C. Brower, Esq.  
18 The Law Offices Of Keith C. Brower, LLC.  
8275 South Eastern #200, Las Vegas, NV 89123  
19 Attorney For Appellant

20 **CERTIFICATE OF DELIVERY**

21 I certify that on the 10th of December 2013, I electronically filed with an electronic delivery  
22 to the Clark County District Attorney's Office this document along with mailing this document to  
the District Attorney's Office at 200 Lewis, Las Vegas, Nevada.

23 Dated this 10<sup>th</sup> day of December 2013.

24  
25  
26 Keith C. Brower, Esq.  
27 The Law Offices Of Keith C. Brower, LLC.  
8275 South Eastern #200, Las Vegas, NV 89123  
28 Attorney For Delarian Wilson

  
CLERK OF THE COURT

0001  
Keith C. Brower  
Nevada Bar # 7288  
The Law Offices Of Keith C. Brower, LLC  
8275 South Eastern #200  
Las Vegas, NV 89123  
Phone: (702) 451-4921

**EIGHTH JUDICIAL DISTRICT COURT, STATE OF NEVADA**

STATE OF NEVADA,  
Plaintiff,

Case No.: 07C232494-1  
Dept. No.: XXIV

vs.


DELARIAN WILSON,  
ID# 1966773  
Defendant

**MOTION TO WITHDRAW DUE TO CONFLICT**

Defendant Delarian Wilson, by and through his attorney Keith C. Brower, Esq., respectfully requests that this Court allow Keith C. Brower, Esq. to withdraw as attorney of record for Delarian Wilson and that this Court appoint independent counsel for Delarian Wilson due to a conflict of interest.

This Motion is made based upon the papers and pleadings on file, the attached Declaration Of Counsel, as well as any oral argument this Court may entertain at the hearing on this Motion.

DATED this 6th day of August, 2014.

  
By: \_\_\_\_\_  
Keith C. Brower  
The Law Offices Of Keith C. Brower, LLC  
8275 South Eastern #200  
Las Vegas, NV 89123  
Phone: (702) 451-4921

002221

**DECLARATION OF COUNSEL**

Keith C. Brower, Esq. makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada.
2. I was the Court Appointed attorney assigned to represent Delarian Wilson on his Post-Conviction matters
3. That I have a conflict with any continued representation regarding Defendant's case.
4. That I actively advised Delarian Wilson to withdraw an appeal to the Nevada Supreme Court, an appeal regarding time-bar issues; and to pursue a claim involving the Withdrawal Of His Guilty Plea. That due to the Nevada Supreme Court's decision in Harris v. State, 130 Nev. Advance Opinion 47 (2014); that which came down several weeks after Delarian Wilson withdrew his appeal means that my advice on his legal claims/challenges are no longer available.
5. That as such, Defendant's available claim and any claims regarding my ineffectiveness need to be handled by another attorney.
6. That Defendant's claims are complex, and due to the complexity Defendant requires the assistance of court appointed counsel in the continuation of his case.
7. That the effective representation of my client requires that I step down from this case.
8. Therefore, I request that this Court allow me to withdraw as the attorney of record in this case and that this Court appoint independent counsel to represent Delarian Wilson from this point forward.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

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DATED this 6th day of August, 2014.

3

002223



  
CLERK OF THE COURT

1 **SUPP**

2 **Matthew D. Carling**

3 Nevada Bar No. 007302

4 1100 S. Tenth Street

5 Las Vegas, NV 89101

6 Telephone: (702) 419-7330

7 Facsimile: (702) 446-8065

8 Cedarllegal@gmail.com

9 *Attorney for Petitioner/ Defendant*

10 DELARIAN WILSON

11  
12  
13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**  
15

STATE OF NEVADA,

Plaintiff,

Case No. 07C232494-1

-vs-

Dept. No. XXIV

DELARIAN WILSON,

Defendant.

16  
17 **SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS**  
18 **(POST CONVICTION)**  
19

20 COMES NOW Defendant Delarian Wilson ("Wilson"), by and through counsel  
21 Matthew D. Carling and, pursuant to NRS. 34.724, hereby submits this *Supplemental Petition for*  
22 *Writ of Habeas Corpus* (the "**Petition**"), which is supported by the following:

23 1. **Name of Institution and county in which Petitioner is presently**  
24 **imprisoned or where and who Petitioner is presently retrained of his liberty:** Elv State  
25 Prison, White Pine County.

26 2. **Name and location of court which entered the judgment of conviction**  
27 **under attack:** Eighth Judicial District Court, Clark County, Nevada.

002224

3. Date of Judgment of Conviction: July 15, 2008.

4. Case Number: C232494

5. (a) Length of Sentence: Count 1 – Robbery with Use of a Deadly Weapon – a maximum of 180 months with a minimum parole eligibility of 72 months, plus an equal and consecutive term of 180 months maximum and 72 months minimum for the Use of a Deadly Weapon; Count 2 – Robbery with Use of a Deadly Weapon – a maximum of 180 months with a minimum parole eligibility of 72 months, plus an equal and consecutive term of 180 months maximum and 72 months minimum for the Use of a Deadly Weapon, and; Count 3 – Sexual Assault – LIFE, with a minimum parole eligibility of 10 years. The Counts were ordered to run consecutive to each other, with 500 days credit for time served.

(b) If sentence is death, state any date upon which execution is scheduled: N/A.

6. Is Petitioner presently serving a sentence for a conviction other than the conviction under attack in this motion? If "Yes", list the crime, case number and sentence being served at this time: No.

7. Nature of offense involved in conviction being challenged: Two (2) Counts of Robbery with Use of A Deadly Weapon, a Category B Felony, and one (1) Count of Sexual Assault, a Category A Felony.

8. What was Petitioner's Plea? Guilty.

9. If Petitioner entered a guilty plea to one count of an indictment or information, and a not guilty plea to another count of an indictment or information, or if a guilty plea was negotiated, give details: N/A.

1       10.    If Petitioner was found guilty after a plea of not guilty, the finding was  
2 made by: N/A

3       11.    Did the Petitioner testify at trial? No.

4       12.    Did Petitioner appeal from his judgment of conviction? Yes.

5       13.    If Petitioner appealed, answer the following:

6           (1) Name of the Court: Nevada Supreme Court.

7           (2) Case number or citation: 52104

8           (3) Result: Affirmed.

9           (4) Date of Decision: July 7, 2009. Remittitur – August 4, 2009.

10      14.    If Petitioner did not appeal, explain briefly why he did not: N/A

11      15.    Other than a direct appeal from the judgment of conviction and  
12 sentence, has Petitioner previously file any petitions, applications or motion with  
13 respect to this judgment in any court, state or federal? Yes.

14      16.    If your answer to No. 15 was "Yes", give the following information:

15           (1) Name of the Court: Eighth District Court, Clark County, State of  
16 Nevada.

17           (2) Nature of Proceedings: Petition for Writ of Habeas Corpus.

18           (3) Grounds raised: 1) Wilson was deprived of effective assistance of  
19 counsel when Mr. Oronoz failed to review the trial transcripts of the accomplice, Narcus  
20 Wesley, prior to Wilson's sentencing when the trial court referred to Wilson as the "ring  
21 leader" and thus Mr. Oronoz was unprepared to refute this statement, and; 2) Wilson was  
22 deprived of effective assistance of counsel when Mr. Oronoz failed to cite any case law in

1 his brief on direct appeal, which resulted in the Nevada Supreme Court refusing to  
2 determine issues that are inadequately briefed.

3 (4) Did Petitioner receive an evidentiary hearing on his petition,  
4 application or motion? Yes; however, the petition was denied.

5 17. Has any ground being raised in this petition been previously presented  
6 to this or any other court by way of petition for habeas corpus, motion or application  
7 or any other post-conviction proceeding? If so, identify:

8 (a) Which of the grounds are the same:

9 (b) The proceedings in which these grounds were raised:

10 (c) Briefly explain why you are again raising these grounds:

11 18. If any of the grounds listed in Nos. 23(a) *et seq.* or listed on any  
12 additional pages you have attached, were not previously presented in any other  
13 court, state or federal, list briefly what grounds were not so presented, and give your  
14 reasons for not presenting them:

15 19. Is Petitioner filing this petition more than one (1) year following the  
16 filing of the judgment of conviction or the filing of a decision on direct appeal? If so,  
17 state briefly the reasons for the delay: Yes. Wilson previously pursued a petition after the  
18 procedural time bar and this Court found good cause did not exist to overcome it. However,  
19 due to ineffective assistance in that proceeding, good cause did exist and is presented herein.

20 20. Does Petitioner have a petition or appeal now pending in any court,  
21 either state or federal, as to the judgment under attack? No.

1       21. Give the name of each attorney who represented you in the proceeding  
2 resulting in your conviction and on direct appeal: James A. Oronoz.

3       22. Does Petitioner have any future sentences to serve after you complete  
4 the sentence imposed by the judgment under attack? No.

5                               STATEMENT OF THE CASE

6       A. Facts Regarding Sentencing.

7       On April 19, 2007, Wilson was charged by the State upon the filing of the *Information*,  
8 which charged Wilson with the following, to wit: Conspiracy to Commit Burglary (Gross  
9 Misdemeanor); Conspiracy to Commit Robbery (Felony); Burglary while in Possession of a  
10 Deadly Weapon (Felony); Robbery with Use of a Deadly Weapon (Felony); Assault with Use  
11 of a Deadly Weapon (Felony); Sexual Assault with Use of a Deadly Weapon (Felony); First  
12 Degree Kidnapping with Use of a Deadly Weapon (Felony); Coercion with Use of a Deadly  
13 Weapon (Felony), and; Open or Gross Lewdness with Use of a Deadly Weapon (Gross  
14 Misdemeanor). Wilson was initially arraigned on May 9 and 16, 2007. On May 17, 2007,  
15 Wilson requested his release on his recognizance or a reduction in bail, which was denied  
16 upon hearing on May 22, 2007. Wilson was appointed counsel and James A. Oronoz  
17 represented Wilson in the proceedings.

18       On March 6, 2008, Wilson moved to sever this case from that of his co-defendant,  
19 Narcus Wesley (hereinafter, "Wesley") and to suppress evidence, which the State opposed.  
20 These motions were heard at hearing in March of 2008, and a *Franks* Hearing was scheduled  
21 for March 31, 2008, which was continued to April 9, 2008. The *Franks* Hearing and jury trial  
22 dates were vacated due to successful plea negotiations between the parties.

1 As a result of the plea negotiations, the State filed its *Amended Complaint*, which  
2 charged Wilson with the following: Counts 1 and 2 – Robbery with Use of a Deadly Weapon  
3 (Felony), and; Count 3 – Sexual Assault (Felony). Wilson entered into a *Guilty Plea Agreement*  
4 with the State based on the *Amended Complaint*, which was accepted by the trial court on  
5 April 1, 2008.

6 On July 3, 2008, Defendant was sentenced as follows: Count 1 – Robbery with Use  
7 of a Deadly Weapon – a maximum of 180 months with a minimum parole eligibility of 72  
8 months, plus an equal and consecutive term of 180 months maximum and 72 months  
9 minimum for the Use of a Deadly Weapon; Count 2 – Robbery with Use of a Deadly  
10 Weapon – a maximum of 180 months with a minimum parole eligibility of 72 months, plus  
11 an equal and consecutive term of 180 months maximum and 72 months minimum for the  
12 Use of a Deadly Weapon, and; Count 3 – Sexual Assault – LIFE, with a minimum parole  
13 eligibility of 10 years. The Counts were ordered to run consecutive to each other, with 500  
14 days credit for time served. It was additionally ordered that a special sentence of a lifetime of  
15 supervision was imposed upon release from any term of imprisonment, probation, or parole.  
16 Wilson was ordered to register as a sex offender within 48 hours of release from custody.  
17 Wilson was also assessed fines in the amount of \$25.00 in administrative fee, \$150.00 DNA  
18 analysis fee, and \$3,196.00 restitution, which was to be paid jointly and severally with Wesley.

19 **B. Facts Regarding Direct Appeal.**

20 The *Judgment of Conviction* in this matter was filed on July 15, 2008 (hereinafter, the  
21 “**Judgment of Conviction**”) and Wilson filed his *Notice of Appeal* on August 5, 2008. On

1 July 15, 2009, the Nevada Supreme Court affirmed the *Judgment of Conviction* in a written  
2 opinion (the "**Order of Affirmance**") and the *Remittitur* was issued on August 4, 2009.

3 The Order of Affirmance indicated that Wilson attacked his sentence on appeal by  
4 arguing it was excessive because (1) his sentence was unreasonably disproportionate to  
5 Wesley's sentence, and (2) the trial court relied on highly suspect or impalpable evidence in  
6 sentencing Wilson. The Opinion determined the trial court had wide discretion in its  
7 sentencing and the gravity of the crime supported the severity of Wilson's sentence. Further,  
8 Wilson did not contend the sentencing statutes used by the trial court were unconstitutional  
9 or that the sentences were not within the statutory limits and thus, the trial court did not  
10 abuse its discretion. Lastly, the Nevada Supreme Court rejected Wilson's argument that the  
11 trial court abused its discretion when it relied on evidence from Wesley's trial that Wilson  
12 was the ring leader and thus deserving of a more severe sentence because Wilson did not cite  
13 any legal authority to support his claim. Hence, because it is an appellant's responsibility to  
14 present the relevant authority and cogent argument, the court declined to address the claim  
15 further.

16 On August 5, 2010, Wilson filed *pro se*, in the district court, *Motion for An Order*  
17 *Instructing the Attorney of Record to Provide Petitioner with a Complete and Copy of the Case File in the*  
18 *Above Entitled Cases Number*, which requested that Mr. Oronoz be ordered to provide Wilson  
19 with the entire copy of his file, as Mr. Oronoz had failed to do so despite repeated requests  
20 and as Wilson had not received notice of the disposition of the direct appeal until very  
21 recently, despite the fact the direct appeal had resolved in 2009. The motion was heard on



1 August 17, 2010, wherein the motion was granted and Mr. Oronoz was directed to provide  
2 the files to Wilson. On August 19, 2010, Mr. Oronoz mailed Wilson's case file to Wilson.

3 On August 27, 2010, Wilson filed *Application for Extension of Time* in the Nevada  
4 Supreme Court, which requested the extension of the remittitur in order to file a petition for  
5 writ of habeas corpus based on Mr. Oronoz's failure to alert Wilson to the Order of  
6 Affirmance in a timely manner. Wilson requested this continuance *pro se*. A copy of this  
7 request was sent to the State. Wilson requested that the time be extended from August 4,  
8 2010, to August 4, 2011, within which to file a petition for writ of habeas corpus, a post-  
9 conviction appeal, and all other petitions in state or federal court. On September 7, 2010, the  
10 Nevada Supreme Court issued its *Order* regarding the extension of time, in which it directed  
11 the clerk to file the motion, despite the fact the appeal was closed and the remittitur had  
12 been issued on August 4, 2009. The Order stated Wilson had not asserted any grounds in  
13 which to recall the issuance of the remittitur and it could not extend the time for the filing of  
14 a petition for a writ of habeas corpus. The court instructed Wilson to file the petition in the  
15 district court and, if such petition was untimely, to prove good cause and prejudice to  
16 overcome any procedural bar. Accordingly, Wilson's motion was denied.

17 On October 1, 2010, Wilson requested, again *pro se*, transcripts of court proceedings  
18 in the district court. The motion was heard on October 19, 2010, wherein the motion was  
19 denied without prejudice because the trial court was unsure what issues Wilson wished to  
20 pursue in post-conviction proceedings. It was also reflected that Mr. Oronoz was no longer  
21 on the case but had supplied Wilson with a copy of his file.

1 On October 27, 2010, Wilson filed his *Motion to Appoint Post Conviction Relief Counsel*,  
2 which was opposed by the State. The motion was heard on November 30, 2010, and Wilson  
3 was not present. The trial court determined to appoint counsel for Wilson. On December  
4 14, 2010, Mr. Keith Brower was appointed to represent Wilson and the matter was  
5 continued to set a briefing schedule. On January 13, 2011, the matter was convened for a  
6 status check and the briefing schedule was set. Wilson's opening brief was set to be filed on  
7 April 25, 2011, the State's response on July 25, 2011, and Wilson's reply on September 26,  
8 2011. However, on October 4, 2011, the matter convened for hearing and an abbreviated  
9 briefing schedule was set, which required Wilson's opening brief to be filed on October 10,  
10 2011, the State's response on November 28, 2011, and Wilson's reply on December 5, 2011,  
11 and set the matter for argument on December 13, 2011.

12 **C. Facts Occurring Post-Appeal.**

13 On October 10, 2011, Wilson filed his *Petition for Writ of Habeas Corpus* (the "**First**  
14 **Petition**"). Wilson raised two (2) grounds in the First Petition, which were that (1) Wilson  
15 was deprived of effective assistance of counsel when Mr. Oronoz failed to review the  
16 transcripts of Wesley's trial and was thus unprepared to address whether Wilson was the  
17 "ring leader" of the perpetration of the crime at the time of sentencing, and (2) Wilson was  
18 deprived of effective assistance of counsel when Mr. Oronoz failed to cite any case law in his  
19 brief on direct appeal in support of his legal arguments. The State opposed the First Petition  
20 and moved to dismiss, arguing the First Petition was time barred as it was filed well past the  
21 year deadline from the disposition of the direct appeal. In reply, Wilson argued there was

1 good cause for the late filing, which Wilson argued had already been determined by the trial  
2 court.

3 A hearing on the First Petition was held on December 13, 2011, and the trial court  
4 denied the First Petition both procedurally and on its merits. The *Findings of Fact, Conclusions*  
5 *of Law, and Order* was filed on January 6, 2012 (the "**Findings and Conclusions**"), which  
6 Wilson requested to be clarified and/or reconsidered; however, the trial court determined to  
7 enter an order staying the findings and conclusions after briefing on Wilson's request to  
8 clarify or stay the *Findings and Conclusions* on February 21, 2012.

9 Wilson's request to clarify or stay the *Findings and Conclusions* was based upon the  
10 argument that there was misapplication of the facts therein. Wilson argued he could not have  
11 been aware of the need to file a petition for a writ of habeas corpus when he discovered the  
12 appeal had been resolved due to the erroneous information from Mr. Oronoz.

13 Wilson appealed the *Findings and Conclusions* on February 21, 2012. This appeal was  
14 withdrawn based on Wilson's new counsel's advice to pursue the withdrawal of Wilson's  
15 guilty plea; however, based on *Harris v. State*, which was issued weeks after the withdrawal of  
16 the appeal, Wilson was unable to pursue the withdrawal of his guilty plea. Thus, Wilson's  
17 remaining option was to pursue further proceedings in the trial court to determine the issue  
18 of the time bars governing habeas corpus petitions.

19 On June 4, 2013, the matter was set for evidentiary hearing on the limited issue of  
20 good cause to excuse procedural bars. Testimony and other evidence were received by the  
21 trial court. On November 12, 2013, the trial court entered its *Findings of Fact, Conclusions of*  
22 *Law and Order*, which dismissed the First Petition on the basis that Wilson had failed to plead

1 sufficient facts to demonstrate good cause for delaying to file the First Petition within the  
2 one (1) year deadline. Further, this Court determined Mr. Brower was appointed subsequent  
3 to the time bar for the First Petition. Thus, the trial court dismissed the First Petition as  
4 untimely.

5 On August 19, 2014, Mr. Brower moved to withdraw as counsel for Wilson, alleging  
6 a conflict of interest. Mr. Brower stated that he advised Wilson to withdraw his appeal in the  
7 Nevada Supreme Court regarding time-bar issues and instead pursue withdrawing his guilty  
8 plea. However, after withdrawing the appeal, *Harris v. State* was issued, which rendered  
9 Wilson's claims unavailable based on the holdings therein. Thus, Mr. Brower stated Wilson's  
10 available claim was his ineffectiveness and needed to be handled by another attorney. He  
11 requested that a new attorney be appointed to assist Wilson in pursuing the claim.

## 12 STATEMENT OF THE FACTS

### 13 **A. March 28, 2008, Change of Plea Hearing.**

14 On March 28, 2008, Wilson appeared for a change of plea hearing, in which he was  
15 questioned by the trial court regarding the voluntariness of his plea. *See*, 3/28/2008 Tr.  
16 Wilson described the events supporting his pleas. *Id.* at p. 7. Wilson robbed two (2) people at  
17 gunpoint and aided a sexual assault. *Id.* at p. 8. Wilson committed these acts with Wesley, his  
18 co-defendant. *Id.* Wilson also took one (1) of the people to an ATM machine to get money  
19 out. *Id.* Wesley was the actual person who committed the sexual assault, but Wilson admitted  
20 this also made him liable for having committed the sexual assault. *Id.* at p. 9.

### 21 **B. July 3, 2008, Sentencing Hearing.**

1 On July 3, 2008, both Wilson and Wesley appeared together for sentencing.  
2 7/3/2008 Tr. at p. 2. The trial court determined that it would apply the newly amended  
3 guidelines at that time to both defendants, despite the State's argument to the contrary. *Id.* at  
4 p. 4. The State argued that all leniency had been extended to Wilson in the plea negotiation  
5 and no further mercy should be extended because, had Wilson gone to trial, he would have  
6 faced 12 life sentences while negotiations gave him one (1) life sentence with a ten (10) year  
7 minimum. *Id.* at pp. 6, 8. Wesley, however, was convicted of 18 counts of varying crimes,  
8 including Conspiracy to Commit Burglary, Open and Gross Lewdness, Assault with the Use  
9 of a Deadly Weapon, Second Degree Kidnapping, Sexual Assault with the Use of a Deadly  
10 Weapon, Coercion with the Use of a Deadly Weapon. *Id.* at pp. 33-35. When the sentences  
11 were compared, it was determined Wesley would serve seventeen (17) years less than Wilson.  
12 *Id.* at p. 35. The theory presented by the State and agreed to by the trial court was that  
13 Wilson "played the lead role" in this criminal episode engaged in by both Wilson and  
14 Wesley. *Id.* at p. 31. The trial court stated, "...even though [Wilson]'s only got three counts,  
15 he's going to end up doing more time than Narcus, but they are both doing substantial,  
16 substantial amounts of time." *Id.* at p. 32, ln. 1-3.

17 **C. December 13, 2011, Hearing.**

18 Wilson was not present for the hearing on December 13, 2011. *See*, 12/13/2011 Tr.  
19 at p. 2. The hearing was convened for arguments upon whether Wilson had timely filed the  
20 First Petition. *See, id.* The trial court determined that the First Petition was time barred and  
21 further, even upon the merits of the First Petition, Wilson could not win. *Id.* at p. 4. The trial  
22 court stated that the co-defendant, Wesley, had gone to trial and had been convicted on each

1 count. *Id.* at p. 5. The trial court also noted that Wilson "...was the one who started the  
2 whole thing." *Id.*, ln. 22-23. The trial court stated on the record regarding the sentences  
3 imposed upon both Wilson and Wesley: "[t]hey got hit pretty hard. They deserved every  
4 single year. They tortured those kids that were in that house, absolutely. This thing has been  
5 completely reviewed, reviewed, reviewed. There is not one single meritorious issue in favor  
6 of this writ on behalf of this Defendant. It is denied." *Id.* at p. 6, ln. 8-16. The trial court then  
7 appointed Keith Brower to continue to represent Wilson for the appeal. *Id.* at pp. 6-7.

8 **D. July 11, 2013, Hearing.**

9 The First Petition was again heard on July 11, 2013, wherein Mr. Brower explained to  
10 the trial court that Wilson entered a guilty plea with the trial court, Wesley went to trial, both  
11 defendants were sentenced at the same time after the same trial court presided over Wesley's  
12 trial, and there had been miscommunication between Wilson and Mr. Oronoz, who was trial  
13 and direct appeal counsel for Wilson. 7/11/2013 Tr. at pp. 2-3. Mr. Brower argued that  
14 Wilson had not been present for the December 13, 2011, hearing, and that the issue raised  
15 by the First Petition was that there was an error with sentencing. *Id.* at p. 3. It was not  
16 Wilson's desire to withdraw his guilty plea. *Id.* However, the First Petition was dismissed  
17 because the trial court determined it was untimely, as it was due within a year of the  
18 disposition of the direct appeal. *See, id.*

19 Mr. Brower stated that the *Findings and Conclusions* from the December 13, 2011,  
20 hearing presented an issue for the appeal from them, which the trial court stayed; however,  
21 Mr. Brower stated he was instructed to file the notice of appeal to preserve Wilson's rights.  
22 *Id.* at p. 4. Mr. Brower then filed a motion to remand to the trial court with the Nevada



1 Supreme Court, which resulted in a "weird" ruling that instructed Wilson to get permission  
2 from the trial court. *Id.* When Wilson requested this permission from the trial court, Mr.  
3 Brower stated it was agreed that the Nevada Supreme Court ordered Wilson to do briefing  
4 but because Mr. Brower was not able to do that in the right amount of time, he withdrew the  
5 appeal "...because we're trying to address the reconsideration of the time bar issue, which is  
6 the whole reason we're here." *Id.* at ln. 18-20.

7 The trial court clarified that the basis of the First Petition was the ineffectiveness of  
8 Mr. Oronoz because he did not have the transcript of the Wesley's trial at the time of  
9 sentencing and therefore he was not adequately prepared to address the issues at sentencing,  
10 particularly because the same trial court presided over Wesley's trial and sentenced both  
11 defendants. *Id.* at pp. 5-6. Mr. Brower argued the transcripts were necessary for Mr. Oronoz  
12 to be prepared to counter that Wilson was the ringleader, which was Wesley's position in his  
13 trial. *Id.* at p. 6.

14 However, the trial court stated the disposition of the appeal occurred in July of 2009  
15 and the First Petition was filed in the Fall of 2011, which was past the time for post-  
16 conviction writs. *Id.* at pp. 6-7. Mr. Brower stated that Wilson had not been informed of the  
17 appeal's disposition by Mr. Oronoz and Wilson had retained the correspondence between  
18 himself and Mr. Oronoz. *Id.* at p. 7. As a result of this failure of Mr. Oronoz to inform  
19 Wilson of the disposition of the appeal, Wilson reported Mr. Oronoz to the bar and, in  
20 response to the bar's involvement with the matter, Mr. Oronoz stated he would send Wilson  
21 his file and try to have counsel appointed to help Wilson pursue post-conviction remedy,  
22 which is how Mr. Brower was appointed. *Id.* at pp. 7-8. The trial court stated that any delay



1 occurred after Mr. Brower's appointment. *Id.* at p. 8. Mr. Brower argued this hearing was  
2 necessary because Wilson was not present for the previous hearing and Wilson was in  
3 possession of the letters between himself and Mr. Oronoz and had brought them with him  
4 to court. *Id.*

5 The State argued Wilson was required to appeal the time-barred issue and then  
6 Wilson could come back and address the merits of the First Petition. *Id.* at pp. 10-11.  
7 However, Wilson argued he could not submit documents to the appellate court without first  
8 submitting them to the trial court for consideration, particularly since Wilson was arguing  
9 good cause existed to excuse the delay of the filing of the First Petition. *Id.* at p. 11. The trial  
10 court agreed to review the correspondence between Mr. Oronoz and Wilson. *Id.*

11 However, the State argued that Wilson received notice from Mr. Oronoz regarding  
12 the disposition of the direct appeal July 27, 2010, but did not file the First Petition until  
13 October of 2011. *Id.* at pp. 15-16. Thus, the State argued Wilson waited a full year after  
14 receiving notice of the disposition of the appeal to file the First Petition, when he should  
15 have filed when he first realized the appeal had been completed. *Id.*

16 Wilson was sworn in and testified regarding the timeline of the events. *Id.* at p. 16.  
17 Wilson testified it took four (4) to five (5) months to simply get a copy of the appeal from  
18 Mr. Oronoz. *Id.* at p. 18. Wilson testified he called Mr. Oronoz's office twice a month and  
19 asked about the status of the appeal and Mr. Oronoz would always state he had not heard  
20 anything yet. *Id.* Wilson testified this continued for a year. *Id.* Wilson testified he discovered  
21 the appeal was closed when he spoke to his mother, who had found the appeal closed  
22 online. *Id.* at pp. 18-19. Wilson's mother contacted Mr. Oronoz's office and the secretary

1 told her there was nothing to report on the appeal; however, ten (10) minutes later, the  
2 secretary called his mother back and told her the appeal had been denied a year ago. *Id.* at p.  
3 19. Wilson then called Mr. Oronoz directly, who told Wilson he would take care of it. *Id.*  
4 Wilson then filed a motion for an extension of time with the Nevada Supreme Court, which  
5 directed him to address the issue with his attorney of record. *Id.* at p. 20. Wilson continued  
6 to attempt to contact Mr. Oronoz but was not receiving any contact from him or his office.  
7 *Id.* Wilson then wrote and filed a 68 page complaint with the Nevada Bar Association  
8 because he felt Mr. Oronoz had tried to sabotage his post-conviction relief. *Id.* A few weeks  
9 later, Wilson was contacted by telephone by Mr. Oronoz, who apologized and told Wilson  
10 he would fix things and get Wilson a new attorney to fight the appeal. *Id.* Mr. Oronoz  
11 confirmed to Wilson that he had made a mistake and apologized. *Id.* at p. 21. Wilson also  
12 filed a motion with the trial court requesting that Mr. Oronoz hand over all his court  
13 documents because he never received the remittitur from the Nevada Supreme Court. *Id.*

14 At the time Wilson filed the motion for extension of time with the Nevada Supreme  
15 Court, he was directed to address the issue with Mr. Oronoz. *Id.* Mr. Oronoz told Wilson he  
16 was going to come to court, appoint a new attorney, and Wilson would be able to continue  
17 to pursue his post-conviction relief. *Id.* Wilson testified he received a letter thereafter  
18 showing him the motion for the appointment of a new attorney, which resulted in Mr.  
19 Brower being appointed to represent Wilson in post-conviction proceedings. *Id.*

20 Mr. Brower argued that, when he was appointed, briefing schedules were set. *Id.* at p.  
21 23. Mr. Brower requested the trial court to allow him to make the record in order for Wilson

1 to pursue an appeal. *Id.* Mr. Brower further argued good cause existed to allow the  
2 untimeliness of the First Petition. *Id.*

3 The trial court began to state the timeline of this case, including that, by the time  
4 Wilson had actual notice in July of 2010 regarding his appeal, the deadline had passed. Mr.  
5 Brower stated the fact that the First Petition was not filed until October of 2011 because he  
6 requested a briefing schedule and this was his fault. *Id.* at p. 24. Mr. Brower stated, "I'm the  
7 one that actually filed the one writ, but again I thought we were already past the time bar  
8 issues when that occurred," *Id.*, ln. 19-21. Despite this, the trial court determined Wilson was  
9 past the time bar in filing the First Petition. *Id.* at p. 25. Mr. Brower then requested  
10 transcripts of the hearing and updated findings, which the trial court ordered. *Id.* at p. 26.

11 **E. Facts Pertaining to Contact Between Wilson and His Attorneys.**

12 On December 24, 2008, Mr. Oronoz wrote to Wilson stating he had ordered  
13 transcripts from Wesley's trial but had yet to receive some of them and thus had requested a  
14 continuance in order to file the opening brief in Wilson's appeal. Mr. Oronoz felt the  
15 transcripts were necessary in order to argue the variance of sentences between Wilson and  
16 Wesley.

17 On March 23, 2009, Wilson wrote to Mr. Oronoz requesting a copy of his brief and  
18 appendix in the appeal as well as copies of the sentencing documents. On December 13,  
19 2009, Wilson wrote to Mr. Oronoz that all of his appellate materials had been mistakenly  
20 destroyed and requested all copies of documents relating to the current appeal. Wilson also  
21 requested specific transcripts from hearings earlier in the case, which he had requested from

1 Mr. Oronoz almost a year previously. Wilson noted that these materials would likely be  
2 valuable for future appeals.

3 Lisa Wilson, the mother of Wilson, was searching the internet on July 13, 2010, in  
4 order to locate information regarding Wilson's appeal since the appeal had been pending for  
5 a long time and she had not heard about any outcome. Mrs. Wilson accessed a website that  
6 indicated to her that Wilson's appeal was listed as "closed". Due to the hour, Mrs. Wilson  
7 determined to call Mr. Oronoz the next morning to determine what this meant. Mrs. Wilson  
8 called Mr. Oronoz's office the next morning and discovered he had changed offices and his  
9 phone number. Upon calling the new number, Mrs. Wilson was informed that Mr. Oronoz  
10 was not available to take her call; however, the receptionist stated Wilson had called earlier  
11 that morning and she had explained to him there had not been any decisions in his case as of  
12 that day. Mrs. Wilson then asked why Wilson's appeal was being listed as closed, which the  
13 receptionist answered it merely meant the original case was closed but not the appeal. After  
14 ending the call, the receptionist called Mrs. Wilson back within five (5) minutes and stated  
15 the appeal decision had been rendered in July. Mr. Oronoz's office mailed a copy of the  
16 Order of Affirmance to Mrs. Wilson on July 14, 2010, which revealed the Order of  
17 Affirmance was dated July 7, 2009. Mrs. Wilson called Mr. Oronoz's office to determine why  
18 it had taken a year to send the Order of Affirmance and left messages on July 19, 21, and 22,  
19 2010, and never received a call back from Mr. Oronoz or his office. Mrs. Wilson spoke with  
20 Wilson on July 22, 2010, and discussed with him the contact she had with Mr. Oronoz and  
21 her discovery of the Order of Affirmance.

1 On July 21, 2010, Wilson wrote to Mr. Oronoz detailing that his mother had  
2 discovered the Order of Affirmance, which Wilson stated he had no knowledge of even  
3 though Wilson had called Mr. Oronoz's office numerous times and had been told nothing  
4 had been heard on the appeal. Wilson thus requested a copy of his file and all related  
5 materials.

6 On July 25, 2010, Wilson wrote to Mr. Oronoz and requested his entire file and all  
7 other related materials, including certain pleadings. Wilson also requested transcripts for  
8 certain hearings in the matter, which Mr. Oronoz had previously requested in the case.  
9 Wilson requested Mr. Oronoz's prompt response.

10 On July 26, 2010, Wilson wrote a letter to the trial court in this matter, which was  
11 filed and made part of the record herein. Wilson alerted the parties to the fact that he had  
12 only been recently informed of the Order of Affirmance and had yet to receive any response  
13 from Mr. Oronoz regarding his concerns. Wilson also inquired as to what he was supposed  
14 to do next.

15 On August 1, 2010, Wilson wrote to Mr. Oronoz that Mr. Oronoz had stated to  
16 Wilson that he thought he told Wilson about the Order of Affirmance but if Wilson did not  
17 remember this, then Mr. Oronoz guessed he did not in fact tell Wilson. Wilson wrote that,  
18 because of this failure, Wilson was likely procedurally time barred to pursue other relief.  
19 Wilson again requested his file and any other related materials.

20 On August 14, 2010, Wilson again wrote to Mr. Oronoz requesting his case file  
21 and other materials.

22 **ARGUMENT**

1 I. BROWER WAS INEFFECTIVE FOR ADVISING WILSON TO  
2 VOLUNTARILY DISMISS HIS APPEAL FROM THE FIRST PETITION  
3 DENIAL IN FAVOR OF FILING A MOTION TO WITHDRAW HIS  
4 GUILTY PLEA WITHOUT INFORMING WILSON OF THE  
5 PRECEDENT AND LAW THAT CONTRADICTED THIS STRATEGY.  
6

7 A. Brower was Ineffective for Advising Wilson to Dismiss His Appeal From  
8 the First Petition.  
9

10 "To establish ineffective assistance of counsel, a claimant must show both that  
11 counsel's performance was deficient and that the deficient performance prejudiced the  
12 defense. To show prejudice, the claimant must show a reasonable probability that but for  
13 counsel's errors the result of the trial would have been different." *Thomas v. State*, 120 Nev.  
14 37, 83 P.3d 818, 823 (2004). The standard of deficient performance is stated as follows:

15 "Deficient" assistance of counsel is representation that falls below an  
16 objective standard of reasonableness. *Dawson v. State*, 108 Nev. 112, 115, 825  
17 P.2d 593, 595 (1992). "A fair assessment of attorney performance requires that  
18 every effort be made to eliminate the distorting effects of hindsight, to  
19 reconstruct the circumstances of counsel's challenged conduct, and to evaluate  
20 the conduct from counsel's perspective at the time." *Strickland v. Washington*,  
21 466 U.S. 668, 689, 104 S.Ct. 2052, 2065, 80 L.Ed.2d 674 (1984); accord *Dawson*,  
22 108 Nev. at 115, 825 P.2d at 595.  
23

24 *Kirksey v. State*, 112 Nev. 980, 923 P.2d 1102, 1107 (1996). "To show prejudice, the claimant  
25 must show a reasonable probability that but for counsel's errors the result of the trial would  
26 have been different. Judicial review of a lawyer's representation is highly deferential, and a  
27 claimant must overcome the presumption that a challenged action might be considered  
28 sound strategy." *Thomas v. State*, 120 Nev. 37, 83 P.3d 818, 823 (2004).

29 "The failure of an attorney to inform his client of the relevant law clearly satisfies the  
30 first prong of the *Strickland* analysis..." *Mitchell v. Kemp*, 483 U.S. 1026, 107 S.Ct. 3248, 3251  
31 (1987), citing *Hill v. Lockhart*, 474 U.S. 52, 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985) (WHITE,



1 J., concurring in judgment). "...[A]lthough counsel need not be a fortune teller, he must be  
2 a reasonably competent legal historian. Though he need not see into the future, he must  
3 reasonably recall (or at least research) the past..." *Kennedy v. Maggio*, 725 F.2d 269, 272 (5th  
4 Cir. 1984), citing *Cookes v. United States*, 461 F.2d 530, 532 (5th Cir.1972).

5 NRS 176.165 states as follows with regard to the withdrawal of a guilty plea:  
6

7 Except as otherwise provided in this section, a motion to withdraw a plea of  
8 guilty, ... may be made only before sentence is imposed or imposition of  
9 sentence is suspended. To correct manifest injustice, the court after sentence  
10 may set aside the judgment of conviction and permit the defendant to  
11 withdraw the plea.  
12

13 NRS 34.724(2) states as follows with regard to petitions for writ of habeas corpus:  
14

15 Such a petition:

- 16 (a) Is not a substitute for and does not affect any remedies which are incident  
17 to the proceedings in the trial court or the remedy of direct review of the  
18 sentence or conviction,  
19 (b) Comprehends and takes the place of all other common-law, statutory or  
20 other remedies which have been available for challenging the validity of  
21 the conviction or sentence, and must be used exclusively in place of them.  
22 (c) Is the only remedy available to an incarcerated person to challenge the  
23 computation of time that the person has served pursuant to a judgment of  
24 conviction.  
25

26 NRS 34.810(2) further states as follows:  
27

28 A second or successive petition must be dismissed if the judge or justice  
29 determines that it fails to allege new or different grounds for relief and that the  
30 prior determination was on the merits or, if new and different grounds are  
31 alleged, the judge or justice finds that the failure of the petitioner to assert  
32 those grounds in a prior petition constituted an abuse of the writ.  
33

34 "Under the law of the case doctrine, issues previously determined by this court on appeal  
35 may not be reargued as a basis for habeas relief." *Pellegrini v. State*, 117 Nev. 86(), 34 P.3d 519,  
36 538 (2001). In *Harris v. State*, 329 P.3d 619 (Nev. 2014), the Nevada Supreme Court  
37 explicitly overruled *State v. Hart*, 116 Nev. 558, 1 P.3d 969 (2000). *Harris* noted that the



1 language contained in NRS 176.165 has been construed as allowing for a post-sentence  
2 motion to withdraw a guilty plea; however, it found that "this would run afoul of NRS  
3 34.724(2)(b), which provides the exclusive remedy for withdrawing a plea in the form of  
4 filing a petition for writ of habeas corpus. *Ibid.* at 621-622. *Harris* noted two exceptions to  
5 the exclusive remedy provision of NRS 34.724(2)(b) as "an appeal from the judgment of  
6 conviction and 'any remedies which are incident to the proceedings in the trial court.'" *Id.* at  
7 622. *Hart* had held that the exclusive remedy provision did not eliminate the post-sentence  
8 motion to withdraw a guilty plea, holding that the motion was "incident to the proceedings  
9 in the trial court." *Id.*, citing *Hart* at 561-62, 1 P.3d at 971. This created a problem since the  
10 post-conviction habeas petitions were subject to a time restriction and the motions to  
11 withdraw guilty pleas were not. *Id.* at 622. *Hart* attempted to correct this error by placing a  
12 limitation on filing the motions under the "manifest injustice" language of NRS 176.165 and  
13 analyzing the matter under the doctrine of laches, which "flipped the doctrine from a  
14 defense that must be asserted by the opposing party (the State) to a filing requirement that  
15 the criminal defendant must satisfy in order to litigate the merits of his or her claims." *Id.* at  
16 623.

17 The *Harris* court rule that *Hart* was unsound for having not analyzed the phrase  
18 "incident to the proceedings in the trial court" and for failing to consider the purpose behind  
19 the exclusive-remedy provision contained in NRS 34.724(2). It specifically noted that the  
20 post-conviction relief petition was "not to be a substitute for a direct appeal or 'any remedies  
21 which are incident to the proceedings in the trial court,'" *Ibid.* at 626.

1 On August 19, 2014, Mr. Brower moved to withdraw as counsel for Wilson, alleging  
2 a conflict of interest. Mr. Brower admitted therein that he advised Wilson to withdraw his  
3 appeal in the Nevada Supreme Court challenging the time-bar issues and instead pursue  
4 withdrawing his guilty plea. However, after withdrawing the appeal, *Harris v. State*, 329 P.3d  
5 619 (Nev. 2014), was issued, which Brower believed rendered Wilson's claims unavailable  
6 based on the holdings therein. Thus, Mr. Brower stated Wilson's only available claim was  
7 through writ of habeas corpus proceedings on Brower's ineffectiveness, which needed to be  
8 handled by another attorney. Brower requested that a new attorney be appointed to assist  
9 Wilson in pursuing the claim.

10 Brower's performance in advising Wilson to dismiss his appeal and file a motion to  
11 withdraw his guilty plea was deficient, and that the deficient performance prejudiced Wilson  
12 in depriving him of his right to appeal. *Thomas* at 823; *Kirksey* at 1107, citing *Dawson* at 115;  
13 *Strickland v. Washington*, 466 U.S. at 689, 104 S.Ct. at 2065; accord *Dawson*, 108 Nev. at 115, 825  
14 P.2d at 595. But for Brower's errors in improperly advising Wilson or failing to try and  
15 remedy it by reinstatement of the appeal, the result would have been different. *Thomas* at  
16 823. Brower's perspective at the time he advised Wilson was based in *Hart's* decision  
17 authorizing the motion to withdraw a guilty plea separate from habeas petitions; however,  
18 this authority was suspect given the provisions pertaining to such petitions. *Kirksey* at 1107.  
19 Brower even attested in his motion to withdraw that this was not sound strategy for Wilson's  
20 case. *Thomas* at 823.

21 Brower failed to inform Wilson of the relevant law, which clearly satisfies the first  
22 prong of the *Strickland* analysis, *Mitchell*, 483 U.S. 1026, 107 S.Ct. 3248, citing *Hill*, 474 U.S. at

1 52, 106 S.Ct. 366. Brower was not required to be a fortune teller and predict that the *Hart*  
2 holding would be overruled by *Harris*; however, the *Harris* decision relied entirely upon the  
3 plain language of NRS 34.724(2), which any "competent legal historian" like Brower should  
4 have known. With competing provisions, voluntary dismissal of the appeal was too risky.  
5 *Kennedy* at 272, citing *Cooks* at 532.

6 While NRS 176.165 combined with *Hart* would seem to support Brower's advice to  
7 dismiss the appeal in favor of filing a motion to withdraw, an attorney would have to entirely  
8 ignore standing precedent on post-conviction relief petitions being the sole remedy for  
9 withdrawing a guilty plea. NRS 34.724(2). In this matter, Brower did not inform Wilson of  
10 such precedent that contradicted his planned strategy. Brower did not inform Wilson that  
11 seeking withdrawal of a guilty plea was not an adequate substitute for an appeal from the  
12 denial of his First Petition. NRS 34.724(2)(a). Brower did not alert Wilson as to the  
13 provisions of NRS 34.810(2) respecting subsequent petitions being dismissed, which is what  
14 a motion to withdraw a guilty plea would have been under standing precedent. Brower failed  
15 to inform Wilson that he was required to have raised the challenge to his guilty plea in his  
16 First Petition or it would be considered an abuse of the writ. NRS 34.810(2).

17 The analysis in *Harris* was not new as Brower indicated in his motion to withdraw,  
18 but relied upon standing precedent regarding petitions for writ of habeas corpus, as well as  
19 the plain language of the statute contained therein. *Hart* undertook some inexplicable  
20 analysis weaving the doctrine of laches as a defendant's filing requirement with an  
21 interpretation that did not comport with even the plain language of NRS 176.165 in allowing  
22 for an unrestricted post-sentence motion to withdraw a guilty plea outside the provisions of

1 NRS 34.724(2)(b). Brower should, at a minimum, have informed Wilson of the competing  
2 precedent and law to the chosen avenue of voluntarily dismissing the appeal. Having failed  
3 to do so, Brower's representation fell below a reasonable standard by only partially  
4 informing Wilson of the law rather than giving him a full picture of all risks he was  
5 undertaking by dismissing his appeal. This severely prejudiced Wilson by not enabling him  
6 to pursue an appeal that had a likelihood of prevailing, as argued further below.

7 **B. "Good Cause" Existed for the Untimely Filing of Wilson's First Petition for**  
8 **Writ of Habeas Corpus, Which Challenge Had a Likelihood of Prevailing**  
9 **on Direct Appeal Absent Wilson's Dismissal On Advice of Brower's.**

10  
11 NRS 34.726 states as follows:

12  
13 1. Unless there is good cause shown for delay, a petition that challenges the  
14 validity of a judgment or sentence must be filed within 1 year after entry of the  
15 judgment of conviction or, if an appeal has been taken from the judgment,  
16 within 1 year after the appellate court of competent jurisdiction pursuant to  
17 the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the  
18 Nevada Constitution issues its remittitur. For the purposes of this subsection,  
19 good cause for delay exists if the petitioner demonstrates to the satisfaction of  
20 the court:

- 21 (a) That the delay is not the fault of the petitioner; and  
22 (b) That dismissal of the petition as untimely will unduly prejudice the  
23 petitioner.  
24

25 "Generally, 'good cause' means a 'substantial reason; one that affords a legal excuse.' In  
26 order to demonstrate good cause, a petitioner must show that an impediment external to the  
27 defense prevented him or her from complying with the state procedural default rules." *Hathaway v. State*, 119 Nev. 248, 71 P.3d 503, 506 (2003). "Prejudice occurs where the errors  
28 worked to a defendant's 'actual and substantial disadvantage, infecting his entire trial with  
29 error of constitutional dimensions.'" *Bejarano v. State*, 122 Nev. 1066, 146 P.3d 265, 270  
30 (2006).  
31

1                   (1) Wilson's Appellate Attorney on Direct Appeal Failed to Provide Wilson  
2                   With His Case File in this Matter. Thereby Prejudicing Wilson's Ability to  
3                   Timely Petition for Habeas Corpus Relief upon Wilson's Discovery of the  
4                   Entry of the Remittitur.  
5

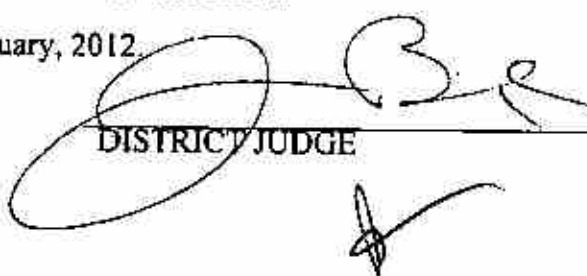

6                   Criminal defendants have the right to appear and defend in person and with counsel.  
7                   NRS CONST. ART. 1, § 8(1). Further, "[n]o person shall be deprived of life, liberty, or  
8                   property without due process of law." NRS CONST. ART. 1, § 8(5). "Every defendant  
9                   accused of a gross misdemeanor or felony who is financially unable to obtain counsel is  
10                  entitled to have counsel assigned to represent the defendant at every stage of the  
11                  proceedings from the defendant's initial appearance before a magistrate or the court through  
12                  appeal..." NRS 178.397. "The constitutional right to effective assistance of counsel extends  
13                  to a direct appeal." *Thomas v. State*, 120 Nev. 37, 83 P.3d 818, 823 (2004). "Only the Supreme  
14                  Court may appoint counsel to represent indigent criminal defendants and indigent habeas  
15                  corpus petitioners in original proceedings before the Supreme Court." NEV. R. APP. P. 46(c).

16                  "A lawyer shall act with reasonable diligence and promptness in representing a  
17                  client" NEV. R. PROF. CON. 1.3. "An attorney who has been discharged by his or her client  
18                  shall, upon demand and payment of the fee due from the client, immediately deliver to the  
19                  client all papers, documents, pleadings and items of tangible personal property which belong  
20                  to or were prepared for that client." NRS 7.055(1). An attorney who fails to deliver such  
21                  papers, documents, pleadings, and other items can be ordered by a court to deliver them to  
22                  the client and may "...adjudge the attorney guilty of contempt and may or imprison him or  
23                  her until the contempt is purged." NRS 7.055(2). "If the court finds that the attorney has,  
24                  without just cause, withheld the client's papers, documents, pleadings or other property, the  
25                  attorney is liable for costs and attorney's fees." *Id.*

1 inasmuch as the said Defendant is currently incarcerated in the S.D.C.C. located in Indian  
2 Springs, Nevada, and his presence will be required in Las Vegas, Nevada, commencing on  
3 MARCH 13, 2012, at the hour of 8:30 o'clock a.m. and continuing until completion of the  
4 prosecution's case against the said Defendant.

5 **IT IS FURTHER ORDERED** that DOUGLAS C. GILLESPIE, Sheriff of Clark  
6 County, Nevada, shall accept and retain custody of the said Defendant in the Clark County  
7 Detention Center, Las Vegas, Nevada, pending completion of said matter in Clark County,  
8 or until the further Order of this Court; or in the alternative shall make all arrangements for  
9 the transportation of the said Defendant to and from the Nevada Department of Corrections  
10 facility which are necessary to insure the Defendant's appearance in Clark County pending  
11 completion of said matter, or until further Order of this Court.

12 DATED this 27 day of February, 2012.

13   
14 DISTRICT JUDGE  
15 

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

19 BY

20   
21 JAMES R. SWEETIN  
22 Chief Deputy District Attorney  
23 Nevada Bar #005144  
24  
25  
26  
27  
28

hjc/SVU



FILED

SEP 27 2012

Clerk of Court  
CLERK OF COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA



ORIGINAL

THE STATE OF NEVADA,

Plaintiff,

vs.

DELARIAN WILSON,

Defendant.

Case No.  
C232494  
Dept. No. 24

07C232494-1  
TRAN  
Transcript of Proceedings  
1872456



HEARING

Before the Honorable James M. Bixler  
Tuesday, December 13, 2011, 8:30 a.m.

Reporter's Transcript of Proceedings

APPEARANCES:

For the State:

Lisa Luzaich, Esq.  
Chief Deputy District  
Attorney

For the Defendant:

Keith Brower, Esq.  
Las Vegas, Nevada

REPORTED BY: ROBERT A. CANGEMI, CCR No. 888

RECEIVED  
SEP 27 2012

CLERK OF COURT

002151



1 TRAN

IN THE EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DELARIAN WILSON,

Defendant.

Case No.  
C232494  
Depr. No. 24

HEARING

Before the Honorable James M. Bixler  
Tuesday, December 13, 2011, 8:30 a.m.

Reporter's Transcript of Proceedings

APPEARANCES:

For the State: Lisa Luzaich, Esq.  
Chief Deputy District  
Attorney

For the Defendant: Keith Brower, Esq.  
Las Vegas, Nevada

REPORTED BY: ROBERT A. CANGEMI, CCR No. 868

Las Vegas, Nevada, Tuesday, December 13,  
2011

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THE CLERK: The next is Wilson for  
Mr. Brower, the bottom of 2.

THE COURT: State of Nevada versus Delarian  
Wilson, who is in custody in the Nevada Department  
of Corrections.

He is not present here.

MS. LUZAICH: Judge, Lisa Luzaich for the  
State.

THE COURT: There was a new reply by  
Mr. Brower.

MR. BROWER: Judge, there was a very brief  
reply. I tried to keep it condensed.

We only had a short period of time before  
the hearing today.

You have read the documents. The only thing  
I have to add, Judge, is that I still believe,  
according to what we have written, that A; pursuant  
to your previous rulings, we were timely in filing  
all of this.

And B; that he was entitled to have the  
transcripts before he was sentenced. You have the  
documents prepared by us. We will submit it.

MS. LUZAICH: Well, it is time barred. The  
appeal was done, a remittitur was filed, and 2 years  
later a PCR gets filed.

The State's position is that it is time  
barred period.

The Supreme Court has been very clear about  
that courts are supposed to follow their rules about  
time.

If the Court chooses not to, on the merits,  
we would still be meritorious, because you don't  
wait for the co-Defendant's transcripts to go  
forward with sentencing for several reasons.

One, it could take a year. The victims are  
entitled to closure; but not only that, they are  
just not entitled to the trial transcripts.

You sat through the trial. The facts came  
out exactly as they appeared in the police report,  
so nothing new or exciting came out at trial.

And the fact of matter is that Delarian  
Wilson admitted that he started it. His statement  
came in, in the co-Defendant's trial, over my  
objection.

THE COURT: I wish this guy was here.

MS. LUZAICH: Do you want him here?

MR. BROWER: We expected him to be here. He

is only at High Desert.

If you want to move this for a week or 2, we  
can.

THE COURT: Every time I say that, I get  
beet up. It comes back from the Supreme Court  
saying you have to have him here.

MS. LUZAICH: If there is an evidentiary  
hearing --

THE COURT: This is the ruling.

2 things: first of all, I agree with the  
State, I think it is time barred. But even on the  
merits, you don't win.

MR. BROWER: Judge, just for clarification,  
if you recall, this was the case where the appeal  
was done by another attorney.

We was not notified of the fact that the  
appeal had come back, and that's when I was  
appointed, because it was already time barred when I  
was appointed and ordered to do this order.

I believe you found good cause existed at  
that time.

I am just trying to clarify that.

THE COURT: I understand that. I understand  
there was a --

MR. BROWER: I just don't want to have a

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1 ruling coming down that I was late in filing  
2 this.

3 THE COURT: No, you weren't. You weren't  
4 even on the case.

5 But even in the event that there was  
6 sufficient reason for the Court not to kick this  
7 because it was way past a year, meritoriously you  
8 just don't win either.

9 When this kid got sentenced, the other kid  
10 in the case went to trial and got convicted on every  
11 single count, every single count.

12 He got hammered when it came time for  
13 sentencing. This is the kid that started the whole  
14 thing.

15 He got hammered too, but he 2 only got  
16 hammered on the 3 counts he plead to.

17 MS. LUZAICH: He plead to 3 counts, although  
18 I don't really agree that the co-Defendant got  
19 hammered.

20 THE COURT: The co-Defendant didn't get  
21 hammered as much as this kid, and what really  
22 happened was that this kid was the one who started  
23 the whole thing.

24 I love the way he said he talked that other  
25 kid into coming with him and said: let's go do a

1 lick.

2 Now, that other kid -- these were 2 kids  
3 that played football for UNLV. Now they are doing a  
4 minimum of 15 to 18 to life.

5 One is doing life with the possibility of  
6 parole, that's this kid?

7 MS. LUZAICH: They both are doing life.

8 THE COURT: They got hit pretty hard. They  
9 deserved every single year.

10 They tortured those kids that were in that  
11 house, absolutely.

12 This thing has been completely reviewed,  
13 reviewed, reviewed. There is not one single  
14 meritorious issue in favor of this writ on behalf of  
15 this Defendant.

16 It is denied.

17 MR. BROWER: Just one question, since I was  
18 appointed for purposes of the writ, are you  
19 relieving me of duty to file the notice of appeal  
20 and send it to him file, and just file the appeal  
21 and have it taken care of in Court, or am I  
22 appointed to do the appeal as well?

23 THE COURT: What do you want to do?

24 MR. BROWER: I am almost certain that the  
25 Supreme Court, when I file the notice of appeal, is

1 going to tell me I have to do it anyway.

2 The problem is if I am not appointed --

3 THE COURT: You are appointed, no  
4 problem.

5 MR. BROWER: I appreciate that.

6  
7 [Proceedings concluded.]  
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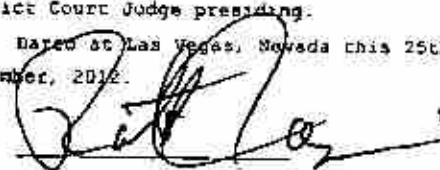
2 STATE OF NEVADA )

3 ) ss.

4 CLARK COUNTY )  
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10 I, Robert A. Cangemi, CCR 888, do hereby  
11 certify that I reported the foregoing proceedings,  
12 and that the same is true and accurate as reflected  
13 by my original machine shorthand notes taken at said  
14 time and place before the Hon. James M. Bixler,  
15 District Court Judge presiding.

16 Dated at Las Vegas, Nevada this 25th day of  
17 September, 2012.

18   
19 Robert A. Cangemi, CCR 888  
20 Certified Court Reporter  
21 Las Vegas, Nevada  
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23  
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*John J. [Signature]*  
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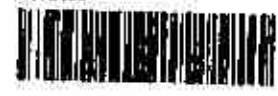
IN THE EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

 ORIGINAL

THE STATE OF NEVADA,  
Plaintiff,  
vs.  
DELARIAN WILSON,  
Defendant.

Case No.  
C232494  
Dept. No. 24

07C232494-1  
TRAN  
Transcript of Proceedings  
1872458



HEARING

Before the Honorable James M. Bixler  
Tuesday, March 13, 2012, 8:30 a.m.

Reporter's Transcript of Proceedings

APPEARANCES:

for the State: Timothy Fattig, Esq.  
Deputy District Attorney

for the Defendant: Keith Brower, Esq.  
Las Vegas, Nevada

REPORTED BY: ROBERT A. CANGEMI, CCR No. 888

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CLERK OF THE COURT



1 TRAN

IN THE EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DELAIRIAN WILSON,

Defendant.

Case No.  
C232494  
Dept. No. 24

HEARING

Before The Honorable James M. Bixler  
Tuesday, March 13, 2012, 9:30 a.m.  
Reporter's Transcript of Proceedings

APPEARANCES:

For the State: Timothy Fattig, Esq.  
Deputy District Attorney

For the Defendant: Keith Brower, Esq.  
Las Vegas, Nevada

REPORTED BY: ROBERT A. CANGEMI, CCR No. 888

Las Vegas, Nevada, Tuesday, March 13,  
2012

\*\*\*\*\*

THE CLERK: Next, Mr. Brower, top of one.

THE COURT: Top of one, Delairian Wilson.

This is motion for clarification of my  
previous denial of the writ.

MR. BROWER: That is correct, Judge.

If you recall, Mr. Wilson was not present at  
the hearing on the writ.

We stayed -- you stayed, pursuant to an  
order with Mr. Fattig's presence, the actual  
findings of fact.

However, in reviewing some of the procedural  
issues, it looked like a stay may not work for his  
appeal issues, so a notice of appeal was filed.

The Supreme Court has not directed me as to  
whether they treated the stay as a final decision  
or -- excuse me -- as staying the final decision, or  
if they have actually determined it is a final  
decision.

I think the State filed an opposition.

THE COURT: The State's basic response is,  
there is a notice of appeal.

MR. BROWER: That's correct.

THE COURT: Until such time as the Supreme  
Court has done something, I really don't have any  
jurisdiction to rule on it.

MR. BROWER: Judge, I am asking the Supreme  
Court remand it down here for a decision on the one  
hearing.

As you recall, my one issue, you ruled this  
was procedurally time barred.

If you recall, I was not even appointed to  
this case until after the case.

THE COURT: I can't remember who counsel  
was, but the problem was, according to the  
Defendant, he wasn't aware of -- the problem is the  
one year -- they denied the initial appeal, but he,  
according to the Defendant, was not aware of when  
that appeal was denied.

And therefore, without any knowledge of when  
the appeal was denied, the one year couldn't have  
started to run.

MR. BROWER: That's correct, and  
without him being here at the hearing, Judge, we  
were unable to address that further in front of Your  
Honor.

I believe I did address it with Your Honor,  
and tried to refresh Your Honor's recollection

regarding my appointment, which was when the other  
attorney was present.

However, Mr. Wilson not being here, was  
unable to address that any further, and that  
was one of the reasons we are asking for  
reconsideration.

THE COURT: I don't mind ruling, but get the  
Supreme Court, get them to order the case remanded  
for the purpose of reconsideration of your motion to  
reconsider or clarify, however you are going to  
approach it; but absent their remand for that  
purpose, I really can't do anything.

MR. BROWER: I understand, Judge, and I am  
not trying to waste the Court's time. I am just  
trying to make sure that Mr. Wilson, because of some  
of the issues that happened in this case, doesn't  
lose any further hearings.

Judge, we did have an issue getting  
Mr. Wilson here, and we will obviously  
request that he be transported for any further  
hearings.

THE COURT: Absolutely. I believe that  
there had been an order to transport.

MR. BROWER: He just wasn't brought.

THE COURT: He just wasn't brought, as if we

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1 were ignoring the fact that he should have been  
2 here, we did an order to transport, and they just  
3 overlooked transporting him.  
4 MR. BROWER: And you can understand  
5 Mr. Wilson's frustration. He is concerned that he  
6 hasn't been able to voice any of his issues, or that  
7 I may not have voiced them correctly.

8 THE COURT: No problem.

9 THE DEFENDANT: What happened was,  
10 Mr. Oronoz was my attorney before, and he never  
11 notified me on the decision of my direct appeal,  
12 which was denied.

13 What happened was, my mother was able to  
14 find out on the computer, when she said that my  
15 appeal was closed, so I had contacted Mr. Oronoz,  
16 and he told me that he was going to take care of it,  
17 but he was delaying.

18 So I wrote a complaint to the Nevada Bar,  
19 which contacted Mr. Oronoz.

20 Mr. Oronoz filed a motion in this Court, and  
21 I was under the impression that -- I had a  
22 conference call when I was in prison with  
23 Mr. Oronoz, and he was clarifying that he was  
24 getting me new counsel, and that I wasn't time  
25 barred.

1 Then Mr. Brower came on my case, and we  
2 filed my writ, and then it was denied on the merits,  
3 as well as procedurally barred, and that's just  
4 been an issue, and I haven't been able to come to  
5 Court to discuss the issue, because I can't further  
6 seek relief from my criminal conviction if I am  
7 procedurally barred.

8 And it is clear that it was not my fault,  
9 and Mr. Oronoz has already confirmed that he was of  
10 course, and I just don't understand why I still have  
11 this issue of being procedurally barred.

12 THE COURT: We will fix it. We will make  
13 sure that you are here for everything, and we will  
14 let the Supreme Court review it.

15 First they need to send it back so that I  
16 can make a ruling.

17 So I will just take this matter off calendar  
18 until I see you have gotten an order from the  
19 Supreme Court so I can do something.

20 MR. BROWER: I understand, Judge.

21 I believe our intent was to try to have you  
22 reconsider it, but unfortunately given some of the  
23 issues, I am just afraid that we may lose any  
24 rights, and I am hesitant to have the Supreme Court,  
25 if I had not filed a notice of appeal --

1 THE COURT: At least you preserved the right  
2 to have the appeal.

3 MR. BROWER: Judge, excuse me, the CO is  
4 going through a large, large stack of paperwork. I  
5 could not give Mr. Wilson the box, but it is all of  
6 the paperwork he requested on this case.

7 They are going through that. I believe they  
8 are going to provide that to him.

9 THE DEFENDANT: So I am waiting for the  
10 Nevada Supreme Court --

11 THE COURT: You are waiting for the Supreme  
12 Court to just make a temporary ruling to send this  
13 back so that I can rule on the motion to  
14 reconsider.

15 THE DEFENDANT: Thank you.

16 (Proceedings concluded.)  
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1 C E R T I F I C A T E

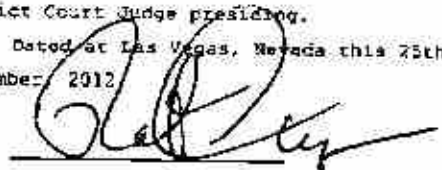
2 STATE OF NEVADA )

3 ) ss.

4 CLARK COUNTY )  
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9 I, Robert A. Cangani, CCR 888, do hereby  
10 certify that I reported the foregoing proceedings,  
11 and that the same is true and accurate as reflected  
12 by my original machine shorthand notes taken at said  
13 time and place before the Hon. James M. Sixler,  
14 District Court Judge presiding.

15 Dated at Las Vegas, Nevada this 25th day of  
16 September, 2012.

17   
18  
19 Robert A. Cangani, CCR 888  
20 Certified Court Reporter  
21 Las Vegas, Nevada  
22  
23  
24  
25

## A

able (5:6) (5:13) (6:4)  
 absent (4:11)  
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 accurate (8:11)  
 actual (2:12)  
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 bixler (1:15) (8:13)  
 box (7:5)  
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## C

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 confirmed (6:9)  
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## G

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	thank (7:15)	
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that's {2:25}{3:20}{6:3}  
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try {6:21}  
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under {5:21}  
understand {4:13}{5:4}{6:10}{6:20}  
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voice {5:6}  
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{4:1}{4:2}{4:3}{4:5}{5:9}{5:10}{5:12}{5:13}{5:15}  
{5:16}{5:17}{5:21}{5:22}{5:23}{6:2}{6:8}{6:9}{6:21}  
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well {6:3}  
were {3:22}{5:1}  
what {5:9}{5:13}  
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writ {2:7}{2:10}{6:2}  
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year {3:18}  
you {2:9}{2:11}{3:7}{3:9}{4:10}{5:4}{6:13}{6:18}  
{6:21}{7:11}{7:11}{7:15}

your {3:22}{3:24}{3:25}{4:9}

002162

1 KEITH C. BROWER, ESQ. NEVADA BAR#007288  
2 THE LAW OFFICES OF KEITH C. BROWER, LLC  
3 8275 SOUTH EASTERN #200  
4 LAS VEGAS, NEVADA 89123  
5 (702) 451-4921

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IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND  
FOR THE COUNTY OF CLARK

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STATE OF NEVADA

Plaintiff,

vs.

DELARIAN WILSON,  
ID# 1966773  
Defendant

Case No. : 07C232494

Dept. No. : XXIV

*Alvin L. L...*  
CLERK OF THE COURT

**MOTION TO PLACE ON CALENDAR**

Delarian Wilson, hereinafter Defendant, by and through his counsel Keith C. Brower, Esq., requests that this matter be placed on calendar so that a court date can be set on Defendant's previously filed and unheard Motion For Reconsideration.

Dated this 23<sup>rd</sup> day of May, 2013.

Respectfully Submitted By:

*Keith C. Brower, Esq.*  
Keith C. Brower, Esq  
THE LAW OFFICES OF KEITH C. BROWER, LLC  
8275 SOUTH EASTERN #200  
LAS VEGAS, NEVADA 89123  
ATTORNEY FOR THE DEFENDANT

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that the undersigned will bring the foregoing **MOTION TO PLACE ON CALENDAR** on for hearing on the 4 day of June 2013, at the hour of 8 : 3 0 a.m, in Department 24 of the Eighth Judicial District Court.

DATED this 23<sup>rd</sup> day of May, 2013.

*Keith C. Brower, Esq.*  
Keith C. Brower, Esq.  
Attorney for Defendant

002163

  
CLERK OF THE COURT

**ORDER**

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
LISA LUZAICH  
Chief Deputy District Attorney  
Nevada Bar #5056  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

CASE NO: C232494-1

-vs-

DEPT NO: XXIV

DELARIAN K. WILSON, aka.  
Delarian Kameron Wilson, #1966773  
Defendant.

**ORDER FOR TRANSCRIPT**

Upon the ex-parte application of the State of Nevada, represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through, LISA LUZAICH, Chief Deputy District Attorney, and good cause appearing therefor,

IT IS HEREBY ORDERED that a transcript of the Defendant's Petition for Writ of Habeas Corpus proceedings heard on the 11th day of July, 2013, be prepared by Bill Nelson/Bob Cangemi, Court Reporter for the above-entitled Court.

DATED this 30<sup>th</sup> day of July, 2013.

  
DISTRICT JUDGE

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

BY

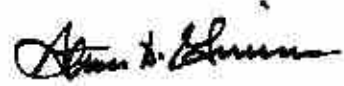
  
LISA LUZAICH  
Chief Deputy District Attorney  
Nevada Bar #5056



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TRAN

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CLERK OF THE COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DELARIAN WILSON, )  
 )  
Defendant. )

Case No. C232494-1  
Dept. No. 24

WRIT

Before the Honorable James M. Bixler  
Thursday, July 11, 2013, 8:30 a.m.

Reporter's Transcript of Proceedings

APPEARANCES:

For the State: Lisa Luzaich, Esq.  
Deputy District Attorney  
Las Vegas, Nevada

For the Defendant: Keith Brower, Esq.  
Attorney at Law  
Las Vegas, Nevada

REPORTED BY: BILL NELSON, RMR, CCR No. 191

002165



1 Las Vegas, Nevada, Thursday, July 11, 2013

2  
3 \* \* \* \* \*

4 THE COURT: Wilson, Delarian Kameron Wilson.

5 This is the Defendant's writ, post-conviction.

6 What exactly -- I read through all of this  
7 yesterday, and I'm a tad bit confused exactly.

8 This has to do with ineffective assistance of  
9 counsel, both from at trial, on appeal?

10 MR. BROWER: Not totally, Judge.

11 What happened is, Mr. Wilson entered a guilty  
12 plea with Your Honor.

13 THE COURT: Right.

14 His Co-Defendants went to trial.

15 MR. BROWER: His Co-Defendant went to trial.

16 Mr. Wilson was sentenced at the same time as the  
17 Co-Defendant after the Co-Defendant's trial was heard by  
18 Your Honor.

19 Mr. Oronoz then did an appeal to the Nevada  
20 Supreme Court based on the sentence handed down.

21 Then when we came back in front of Your Honor,  
22 there was conversation at the bench.

23 When I was appointed in this case, Mr. Oronoz  
24 filed paperwork to have somebody appointed.

25 Part of the reason we're here is because there

002166

1 was an argument of a time bar delay, and Mr. Wilson was  
2 not present at the last hearing.

3 When I was appointed to the case, we addressed  
4 some of that issue with Your Honor.

5 Mr. Oronoz approached with me, there was some  
6 communication delays between Mr. Oronoz and Mr. Wilson,  
7 he had written letters to the Nevada Supreme Court, some  
8 other issues involved, and we were brought back here.

9 The only argument I made essentially at the post  
10 conviction writ was that there was an error with the  
11 sentencing.

12 Mr. Wilson does not wish to withdraw his plea or  
13 do anything else regards to that.

14 The argument we made, tried to present, was that  
15 because Your Honor had based his decisions on the  
16 sentencing -- or at sentencing on some of the  
17 information presented at trial, that Mr. Wilson did not  
18 have access to -- he was unable to go -- or actually try  
19 to counter that or present anything to Your Honor based  
20 on that because he was not at the trial.

21 We didn't get to that argument because you ruled  
22 there was a time delay.

23 If you recall, Mr. Wilson had not been  
24 transported down the last time to address any of those  
25 issues.

**002167**

1 And again, Mr. Oronoz had been here when we first  
2 had me appointed.

3 THE COURT: We did this last December I think it  
4 was.

5 MR. BROWER: We did this quite a while back, and  
6 I filed a notice to the Supreme Court because there was  
7 an issue with the way the findings of fact came out.

8 You actually stayed the findings of fact, but bar  
9 counsel told me I had to file a Notice of Appeal anyway  
10 to preserve his rights.

11 I then filed a motion to have the case remanded  
12 from Supreme Court.

13 They gave this weird ruling, said I had to come  
14 in, get permission from you.

15 When I came in to get permission from you, we had  
16 agreed that the Supreme Court ordered me to do briefing  
17 because we weren't able to do it in the right amount of  
18 time, and then we withdrew the appeal because we're  
19 trying to address the reconsideration of the time bar  
20 issue, which is the whole reason we're here.

21 I think that is all.

22 THE COURT: When you get back to the construction  
23 of this, I understand what he's asserting, he's  
24 asserting at trial, and basically at sentencing.

25 He plead, he didn't have a trial.

002168

1 The Co-Defendant had the trial.

2 MR. BROWER: That's correct.

3 THE COURT: At the time of sentencing the basis  
4 for your ineffective assistance is I think Mr. Gronoz  
5 didn't have the transcript of the trial of the  
6 Co-Defendant at the time of the sentencing, and  
7 therefore couldn't be adequately prepared to approach  
8 issues that were raised during the Co-Defendant's trial.  
9 That is basically what it is, and that overlapped into  
10 the appeal because the construction of the ineffective  
11 assistance of counsel upon the appellate issue  
12 overlapped also on the same issue, that he also didn't  
13 have the transcript of the Co-Defendant's trial, so as  
14 to be able to analyze and raise issues in regards to  
15 what happened to the Defendant at sentencing, again  
16 because of a lack of the transcript of the  
17 Co-Defendant's trial.

18 MR. BROWER: Right.

19 And the statements by Your Honor at sentencing  
20 were essentially that you were well aware of what  
21 happened, you sat through the trial, there was some  
22 other issues with that.

23 When the Supreme Court wrote their one opinion,  
24 they wrote down -- or filed the first opinion, said the  
25 Judge can take, being Your Honor can take, into account

002169

1 all kind of personal knowledge known to him.

2 The problem is, when you were raising those  
3 issues, Mr. Cronoz was unable to, in our opinion, unable  
4 to go forward with any of the counter steps because he  
5 didn't know what had been raised at trial because he  
6 didn't sit through the entire thing, he entered a plea  
7 on Mr. Wilson, so we're not asking to re-address the  
8 plea itself, just looking at trying to get him a  
9 sentencing that can address any of the issues originally  
10 concerned, Your Honor.

11 One, being during the trial Mr. Wilson was  
12 alleged to have been the ring leader, and a bunch of  
13 that information came before Your Honor that Mr. Cronoz  
14 was unable to counter at the time of sentencing without  
15 being aware of what was said at the trial.

16 That's the whole construction of the issue why we  
17 are here, Judge.

18 THE COURT: Well, what happens, properly this  
19 case went up on appeal, this Defendant's, not the  
20 Co-Defendant's, this Defendant's case went up on appeal.

21 The Supreme Court affirmed what happened at the  
22 time of sentencing.

23 MR. BROWER: That's correct.

24 THE COURT: And that was in July I think the  
25 remand came, the affirmation, the remand from the

002170

1 Supreme Court came in July of '09.

2 MR. BROWER: That's correct, Judge.

3 THE COURT: And this writ was filed in the Fall  
4 of 2011. That was way past the one year limitation for  
5 post-conviction writs.

6 Even understanding the basis of the ineffective  
7 assistance of counsel claimed in the writ, where is  
8 there good cause for having waited a year, over a year  
9 past the one year limit?

10 MR. BROWER: So what happened, Judge, that is the  
11 reason we needed Mr. Wilson here in our opinion.

12 Mr. Wilson had been corresponding with Mr.  
13 Oronoz's office and had been asking for updates on his  
14 appeal.

15 He had been told that the appeal was not -- or  
16 had not been processed, they had not had a firm answer,  
17 so he's written to the bar, and when he writes to the  
18 bar, we have these letters here today, he says, I'm  
19 worried this is going on, I just learned my appeal came  
20 down, I just learned my appeal came down, and I feel  
21 that Mr. Oronoz is trying to sabotage my efforts to go  
22 off a post-conviction writ.

23 Mr. Oronoz replies to the bar that that opinion  
24 came down in July of 2010, and now these letters are  
25 taking place in 2011, and that he will send Mr. Wilson

002171

1 his file and try to get him appointed counsel.

2 He then goes in, and everything is filed in front  
3 of Your Honor, and I'm appointed at the time -- at that  
4 point in time, and everything is filed there.

5 It's already after the delay with Mr. Wilson.

6 THE COURT: I said in one of the orders, I think  
7 the last -- I just got done reading it at your request,  
8 I acknowledged and commented on the fact that the delay  
9 of your appointment came after all of this had occurred.

10 MR. BROWER: That's correct.

11 THE COURT: You weren't responsible for any of  
12 the delay.

13 That doesn't make the delay any less of an issue,  
14 and doesn't make it any less important that good cause  
15 has to be established before you can overlook the filing  
16 of a writ over a year overdue.

17 MR. BROWER: That's all correct.

18 So part of the reason we needed Mr. Wilson here  
19 was so he could bring some of his file, which again I  
20 just saw one of the letters today, but that had his  
21 correspondence to the State Bar, Mr. Oronoz sending  
22 letters saying, please tell me what is going on with my  
23 appeal, all of these other issues, and he wasn't getting  
24 a response, and he actually didn't know his appeal had  
25 come down.

002172



1           Because he didn't know his appeal come down, he's  
2     trying to get that information from Mr. Oronoz's office,  
3     and it's not coming.

4           He didn't file a writ because you have a year  
5     from the Judgment of Conviction, but if you don't know  
6     the judgment has been issued --

7           THE COURT: The Judgment of Conviction.

8           MR. BROWER: -- a year from the Judgment of  
9     Conviction, or issuance of the remittitur, and if you  
10    don't know the remittitur occurred because you are  
11    trying to correspond with your attorney's office, don't  
12    have access, and your attorney's telling you, or their  
13    office, that it has not come down yet, then you are in  
14    an issue of you don't know to file your post-conviction.

15          So as soon as he finds all this stuff out, Mr.  
16    Wilson -- or Mr. Oronoz and Mr. Wilson end up in front  
17    of Your Honor, and that's when I was appointed and this  
18    briefing occurred.

19          I honestly believe we had addressed all these  
20    issues when I was appointed at the bench, and Mr. Oronoz  
21    was explaining some of the procedural histories to Your  
22    Honor at that point in time.

23          So when we filed the writ on Mr. Wilson's behalf,  
24    I was under the assumption, and maybe erroneously so, we  
25    were already past the time bar issue, and the only thing

002173

1 working was that one particular appellate issue.

2 THE COURT: I think I have a bad habit of doing  
3 this, but when something is past the time bar, but  
4 obviously the merits are all laid out, I have a kind of  
5 a bad habit of ruling on the issue of the time bar, and  
6 then even if I have ruled the petition is time barred, I  
7 tend to go back and just make it clear, review the  
8 merits to begin with, and kind of make findings on the  
9 merits, when technically I should keep my mouth shut  
10 because the matter in my opinion is time barred to begin  
11 with, so I think it's time I let the State say  
12 something.

13 MS. LUZAICH: Thank you.

14 Time barred, period. It needs to end there.

15 And that's what the Supreme Court on my cases  
16 alone, on three other occasions, have told you not to  
17 mention the other cases, so it's time barred.

18 Let him appeal the time barred decision, and then  
19 come back.

20 If the Supreme Court says, it's okay, and argue  
21 the merits, it's not for this Court to do.

22 This Court ruled it's time barred. This Court  
23 cannot rule on the merits.

24 He's got to appeal the time barred issue to the  
25 Supreme Court. That's based on the Supreme Court's

002174

1 decision, not anything that the District Courts do, it's  
2 the Supreme Court that has said that, and they are very  
3 clear, when it's time barred, it's time barred, period.

4 THE COURT: They don't provide a lot of wiggle  
5 room.

6 MS. LUZAICH: No, there is none, it's all  
7 statutory.

8 MR. BROWER: So, Judge, there is a little bit of  
9 room if you can find for good cause, and if you remember  
10 when I asked for the motion for reconsideration, part of  
11 the argument I was making was that Mr. Wilson was not  
12 here to be addressed or cover any of the issues with the  
13 Court, we made that decision, he had not been  
14 transported down, and I asked to do it, and then with  
15 the argument it was time barred.

16 He does have letters sending everything to Mr.  
17 Oronoz.

18 And part of the reason we need this for the  
19 appeal is, I can't put documents into the appeal that  
20 have not been presented to the Court, so when I asked  
21 for the State, and they graciously agreed, we're trying  
22 to get something so that if we do appeal, we have an  
23 actual appellate issue with the Supreme Court.

24 THE COURT: Show me what it is that you have that  
25 pertains to the issue of good cause.

**002175**

1 MR. BROWER: Judge, I'm going to show this to the  
2 State.

3 THE COURT: Give them to Cliff, and we'll make  
4 three copies of those.

5 Are those from the Defendant too?

6 MR. BROWER: One to the State Bar with a response  
7 for Mr. Oronoz in there.

8 Another one from the Defendant to Mr. Oronoz,  
9 copies of what he was saying from the jail, and in a  
10 writ he filed -- or motion he filed in August of 2010.  
11 That again shows a pattern of what he's been doing and  
12 where the correspondence is.

13 THE COURT: Any letters there from Mr. Oronoz?

14 MR. BROWER: There is a letter from Mr. Oronoz to  
15 the State Bar, which is written after the fact, that it  
16 says that -- Excuse me.

17 Here is a another one. This is written after the  
18 fact.

19 The State Bar, in response to one of the  
20 Complaints, and here is one more I forgot to give Cliff,  
21 a couple lines written in November of 2010 for Mr.  
22 Oronoz that says, dear, Delarian, enclosed please find a  
23 copy of the Defendant's motion to appoint post  
24 conviction relief counsel. Please feel free to contact  
25 me if you require further assistance. That is dated

002176

1 November 15th, 2010.

2 That is again after the issue that we're going  
3 forward on.

4 THE COURT: What is the first --

5 MR. BROWER: They are in the files I just gave  
6 Cliff.

7 THE COURT: Is there any reference by Mr. Cronoz  
8 that documents when the Defendant was informed of the  
9 Supreme Court's --

10 MR. BROWER: There was a reference from Mr.  
11 Cronoz, he puts the wrong year into the response to the  
12 bar, he has a Complaint done in August, and he says, Mr.  
13 Wilson's Complaint -- or remittitur came down in 2010,  
14 not in 2009, and I sent him his file and will work with  
15 him to try to go forward from there. This is after all  
16 the correspondence from Mr. Wilson where he's trying to  
17 get the information about his appeal and what is going  
18 on, and made contact with Mr. Cronoz, and he's prepared  
19 to help give this Court any information which we would  
20 have wanted to do when he's here when he did try to  
21 figure out what was going on in his appeal. They don't  
22 have computers up in the prison. He's been to several  
23 different prisons during the course of this already.

24 So again, that is what we believe we needed him  
25 here for, we needed to have a record in case we were

**002177**

1 still on the time bar issue to go forward, but that's  
2 why we asked for the reconsideration.

3 So the letters Cliff is copying are back there.

4 Mr. Wilson can say anything to the Court, and  
5 he's subject -- anything he says can be questioned by  
6 the State, but he's prepared to go forward and I can  
7 direct any questions at him as well.

8 MS. LUZAICH: But wait, the bottom line shows he  
9 had actual knowledge in 2010, and -- but he didn't file  
10 a petition.

11 If he knew in 2010 that the year had passed, or  
12 remittitur issued, and the year passed, he should have  
13 immediately filed the writ. He still waited a year  
14 after that.

15 So if you want to even whittle on the time bar,  
16 he should have immediately filed once he had knowledge,  
17 not waited yet another year.

18 THE COURT: Let me look at them.

19 I think that I'll need to make some -- I think  
20 there is one additional document he forgot to give you.

21 MR. BROWER: I didn't actually have these.

22 Mr. Wilson brought them with him today.

23 THE COURT: Okay.

24 MR. BROWER: Again, I read that entire letter.

25 THE COURT: Okay. Let me take a couple minutes

002178

1 and peruse through this.

2 MR. BROWER: Judge, I've been given one other  
3 document, which is a notice of a teleconference call by  
4 the warden of the prison, which was set up by Mr. Oronoz  
5 to discuss his case with him, I believe.

6 He would have to address the actual issue of that  
7 with the Court, but there is a teleconference call set  
8 up by the department of prisons. That is again in 2010  
9 well after the time.

10 Judge, I'm going to look through Mr. Wilson's  
11 file one more time.

12 MS. LUZAICH: Is the Court reading through what  
13 was provided?

14 THE COURT: Yes.

15 MS. LUZAICH: In the stapled copy on page 3 of 5  
16 the very first thing the Defendant says, dated July  
17 27th, 2010, is that he knows that the Supreme Court  
18 issued its decision, so July of 2010, even if you say  
19 that the time, which it doesn't, but if you are going to  
20 find good cause and say, the time starts running July  
21 27th of 2010, he waits more than a year to file the  
22 petition after that, the petition is filed October 10th,  
23 2011, so that is almost three months more than a year,  
24 it's 365 days, if it's filed 366 days later, it's time  
25 barred.

**002179**



1           This is filed a year and three months after he  
2           had actual knowledge, actual knowledge written in his  
3           own hand.

4           THE COURT:   Okay.  Let's wrap this up.

5           MR. BROWER:  That's fine, Judge.

6           THE COURT:  Do you want to put your client under  
7           oath and have him testify?

8           MR. BROWER:  I would prefer to have Mr. Wilson  
9           have every opportunity to testify today as to anything  
10          this Court wishes to ask him, so we can have an accurate  
11          record made.

12          THE COURT:  Sure.

13          I don't think that is out of line.

14          Mr. Wilson, stand up, and raise your right hand.

15          (Defendant sworn in by the clerk.)

16          THE CLERK:  Thank you.

17          Please state your name, and spell your first and  
18          last name for the record.

19          THE WITNESS:  Delarian Wilson, D-e-l-a-r-i-a-n,  
20          Wilson, W-i-l-s-o-n.

21          THE CLERK:  Thank you.

22          THE COURT:  Go ahead.

23

24

25

002180

- - -

DIRECT EXAMINATION OF DELARIAN WILSON

BY MR. BROWER:

Q. Good morning, Mr. Wilson.

How are you today?

A. I'm doing okay.

Q. Okay. You recall entering into negotiations with Mr. Orcoz in this case, is that correct?

A. Yes, sir.

Q. Okay. And at the time you entered the negotiations with Mr. Orcoz you had a sentencing date that came up later, is that correct?

A. Yes, sir.

Q. And you did not go to trial on this case?

A. No.

Q. And you did not attend a hearing on that, is that also correct?

A. No, sir.

Q. And Mr. Orcoz did not attend any hearings on this at well?

A. No.

MS. LUZAICH: Objection.

All of this is irrelevant.

THE COURT: I'm going to let you -- give you a good amount of leeway, but let's get past all this.

**002181**

1 BY MR. BROWER:

2 Q. So ultimately you get sentence, correct?

3 A. Yes.

4 Q. And a sentence comes down, and you appeal, you  
5 ask to appeal that sentence, is that correct?

6 A. Yes, sir.

7 Q. And to your knowledge is Mr. Gronoz does the  
8 appeal?

9 A. Yes, sir.

10 Q. Please tell this Court what you did after you  
11 asked for the appeal and corresponded with Mr. Gronoz.

12 A. Well, the very first thing I did was that I asked  
13 for a copy of the appeal, which took a while.

14 Q. Do you know how long that took?

15 A. I want to say, at least four or five months.

16 As I continued to stay in contact with him, I  
17 would frequently call about twice a month and ask him  
18 what the status of my appeal would be, and he would  
19 always state that he had not heard anything yet.

20 So my mother would contact him also to ask him  
21 what the status of my appeal was.

22 I want to say, about one whole year he continued  
23 to state he heard nothing, there was nothing to report  
24 on my appeal.

25 So one day I used the prison phone, called my

002182

1 mom, and she is crying, and I'm asking her what she's  
2 crying about, and she was like, there is something on  
3 the computer says your appeal closed, and I was like,  
4 oh, I didn't know what she was talking about, so  
5 immediately when she was concerned she contacted Mr.  
6 Oronoz's office, and the secretary was still stating to  
7 her there was nothing to report on my appeal, so my mom  
8 asked her, well, what does this mean, the appeal is  
9 closed, and so she asked my mom to hold on for a second,  
10 and she would actually call her back.

11 She called my mother back ten months later -- or  
12 I mean, ten minutes later and stated the appeal had been  
13 denied and over about a year ago.

14 So my mom let me know.

15 The very next morning when I was able to get to  
16 the phone I contacted Mr. Oronoz and talked to him  
17 directly, and I told him that I found out my appeal was  
18 denied, and you never told me.

19 Mr. Oronoz stated -- He seemed confused at the  
20 time, and then he put me on hold, and he got back on,  
21 and he said that he would take care of it.

22 So I waited I want to say a week to see if he  
23 would do anything. I continued to contact him.

24 In the meantime, as soon as that happened, I'm  
25 not really familiar with the law, I went to the legal

002183

1 library to ask what I could do, and the first thing I  
2 did was file a motion for an extension of time in the  
3 Nevada Supreme Court.

4 When I filed the motion for extension of time,  
5 they immediately responded back to me telling me that I  
6 needed to address the issue with my attorney of record  
7 because that's who was issued the denial of my appeal.

8 So when I contacted Mr. Oronoz, it was several  
9 times because of the issue, I kept asking him, could you  
10 please tell me what is going on with my appeal.

11 I started to notice I wasn't getting any contact,  
12 so I became even more worried, so I wrote a 68 page  
13 Complaint to the Nevada Bar Association alleging I felt  
14 that basically -- explaining to them I felt Mr. Oronoz  
15 was deliberately trying to sabotage my post conviction  
16 relief.

17 So I want to say less than a couple weeks after  
18 that I got a teleconference at the prison saying Mr.  
19 Oronoz wanted to have a conversation with me over the  
20 phone.

21 So Mr. Oronoz gets on the phone, and he says, I  
22 apologize, this is not your fault, I'm going to take --  
23 or fix all of this, I'm going to appoint you a new  
24 attorney so you can get to fight your appeal, and it's  
25 not your fault.

002184

1 I was explaining to him over the phone, I said, I  
2 never even knew my appeal was denied, and he confirmed  
3 he had made a mistake and that he apologized, and that  
4 he was taking care of it.

5 In the meantime, I believe I filed a motion in  
6 this Court basically asking the Court to demand Mr.  
7 Oronoz to hand over all my Court documents because I had  
8 never issued -- or was -- never got the paper or  
9 remittitur to know my time wasn't started.

10 When I found out my appeal was denied, I had one  
11 week before the remittitur was done, the one year, and  
12 that's when I had filed this motion to the Nevada  
13 Supreme Court for extension of time. I didn't even know  
14 if that was the right thing to do, I was just asking  
15 prison law clerks in the law library what happened to  
16 me, and they suggested that I do this.

17 When I filed the motion, the Nevada Supreme Court  
18 wrote me back with copies of everything that they had  
19 sent to Mr. Oronoz, and that I needed to address the  
20 issue with Mr. Oronoz.

21 Mr. Oronoz told me on the teleconference he was  
22 going to come to court, going to appoint me a new  
23 attorney, and I would be able to continue my post  
24 conviction relief.

25 So I didn't hear anything, then he contacted me,

**002185**



1 sent me a letter showing me the motion that he appointed  
2 me a new attorney, and I was waiting for the new  
3 attorney, and that's when Keith Brower told me he was my  
4 new attorney, and then he filed the motion -- I mean, he  
5 filed my writ, and then it was denied for time bar.

6 This whole time I've been trying to figure out --  
7 I didn't even know that my appeal was ever even denied.

8 When I did find out my appeal was denied, I did  
9 what I thought I was supposed to do.

10 I didn't -- The first thing I did was ask for  
11 more time because I noticed I had a week left before I  
12 know my one year to be over. That's when I filed the  
13 motion for extension of time, and the Nevada Supreme  
14 Court -- I found out that wasn't the proper procedure,  
15 and I continued to try to talk to Mr. Oronoz, as well as  
16 my mother.

17 I wasn't getting constant feedback that I wished,  
18 so I took it to the Nevada Supreme Court and to see if  
19 anybody would help me. I tried all different avenues.

20 When I finally got in contact with Mr. Oronoz, he  
21 contacted me and set up a teleconference call.

22 MS. LUZAICH: Objection.

23 He's going through the same thing again we have  
24 heard.

25 THE COURT: I heard.

002186

1           Basically you are kind of repeating what  
2 happened.

3           I know the first time you said it how it went.

4           He said he would handle it and get another  
5 attorney for you and start the process.

6           THE DEFENDANT: Yes, sir.

7           THE COURT: Anything that I haven't heard?

8           THE DEFENDANT: I don't think so, sir.

9           THE COURT: Okay. Let's hear your argument.

10          MR. BROWER: Judge, the only thing I can say is,  
11 that if Mr. Wilson didn't know his time, he can't file a  
12 writ. He just -- out of luck he does what he does to  
13 try to get this case heard.

14          When I'm appointed, we get briefing schedules  
15 set, everything else. Motions for extension of time, he  
16 got everything else.

17          If you are going to deny this case on a time bar,  
18 we just want to have an accurate record to try to appeal  
19 it, that is exactly where we're at.

20          I think he had good cause to ask for the delay,  
21 given what happened, that's why I was appointed, we felt  
22 we needed to flush this issue out, so it was all before  
23 Your Honor, and you know where we sit at this point in  
24 time, Judge.

25          THE COURT: Do you have anything you want to say

002187

1 for the record?

2 MS. LUZAICH: No.

3 THE COURT: I am not saying I don't have a little  
4 sympathy or whatever, empathy might be the right word,  
5 for the Defendant's situation, but here's how I  
6 understand the facts as them to be:

7 It was in the middle of July of 2010 when even at  
8 the best case scenario for the Defendant's situation he  
9 was aware of the fact that the time was running, and in  
10 reality the time had already run, but assuming that you  
11 give him that much of a concession, still as the State  
12 just pointed out from that point in the middle of 2010,  
13 the middle of July of 2010, the end of July of 2010, the  
14 actual writ is not filed for in excess of a year past  
15 that point.

16 MR. BROWER: That is most likely my fault, Judge,  
17 because I asked for a briefing schedule and more time  
18 because we had come in to get things, and Mr. Wilson has  
19 limited visiting days. I'm the one that actually filed  
20 the one writ, but again I thought we were already past  
21 the time bar issues when that occurred.

22 THE COURT: Well, we were past the time bar  
23 issues technically.

24 MR. BROWER: But I had a briefing schedule, and  
25 we asked for more time, and that was addressed with the

002188

1 Court.

2 THE COURT: I think the law in Nevada is the fact  
3 that the attorney has failed to inform a Defendant of a  
4 time issue is in and of itself an excuse that is the  
5 predicate for good cause for failing to file a writ  
6 within the time.

7 The fact is, if -- and from the records it  
8 appears that sometime before this was written on July  
9 27th of 2010 that Mr. Oronoz had informed the Defendant  
10 of the fact that his remittitur -- his appeal had been  
11 denied, with all of those situations I don't even think  
12 that is of itself good cause, but even if it was, and  
13 even if that was the point in time when the time started  
14 to click, he still is past it.

15 So under the circumstances I think we've bent  
16 over backwards trying to afford the Defendant a full and  
17 complete and a fair opportunity to review, but the fact  
18 of the matter is, it's still time barred, and I would  
19 love to have have the Supreme Court look at this and  
20 say, I think the Court abused their discretion, and I  
21 think it's sufficient cause for good cause existed, and  
22 this matter is to be set back and heard on the merits.  
23 I mean, if they say that, I would be pleased to hear  
24 this on the merits, but I'm not going to comment on it  
25 until that is the case.

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1 MR BROWER: So, Judge, we had stayed the one  
2 finding before.

3 Can I have updated findings submitted based on  
4 the testimony presented today and submit that to the  
5 Court, so we can go forward?

6 THE COURT: Yes.

7 MR. BROWER: I would ask at this point in the  
8 interest time -- I'm Court appointed, if I can get a  
9 copy of the transcript. I don't know if your reporter,  
10 he will need an order.

11 I'll get an order to Your Honor today, and if I  
12 could prepare those, so we can have those signed and  
13 updated with what Mr. Wilson has testified to, that  
14 would help.

15 THE COURT: Absolutely.

16 MR. BROWER: Thank you, Your Honor.

17 THE COURT: All right.

18 MS. LUZAICH: Thank you.

19 THE COURT: Thank you very much.

20 (Proceedings concluded.)  
21  
22  
23  
24  
25

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C E R T I F I C A T E

STATE OF NEVADA )

) ss.

CLARK COUNTY )

I, Bill Nelson, RMR, CCR 191, do hereby certify that I reported the foregoing proceedings; that the same is true and correct as reflected by my original machine shorthand notes taken at said time and place before the Hon. James M. Bixler, District Court Judge, presiding.

Dated at Las Vegas, Nevada this 24th day of September, 2013.

/s/ Bill Nelson

-----  
Bill Nelson, RMR, CCR 191  
Certified Court Reporter  
Las Vegas, Nevada

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# ORIGINAL

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

9 THE STATE OF NEVADA, )

10 Plaintiff, )

11 -vs- )

12 DELARIAN WILSON,  
13 #1966773 )

14 Defendant. )

CASE NO: 07C232494-1

DEPT NO: XXIV

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

17 DATES OF HEARINGS: DECEMBER 13, 2011 AND JULY 11, 2013  
18 TIME OF HEARINGS: 8:30 A.M.

19 THIS CAUSE having come on for hearing before the Honorable Judge Bixler,  
20 District Judge, on the 13th day of December, 2011, and on the 11th day of July, 2013;  
21 Petitioner not being present on the 13th day of December, 2011, present on the 11th day of  
22 July, 2013, and represented By KEITH BROWER, ESQ.; Respondent being represented by  
23 STEVEN B. WOLFSON, District Attorney, by and through LISA LUZAICH, Chief Deputy  
24 District Attorney; and, the Court having considered the matter, including briefs, transcripts,  
25 arguments of counsel, testimony of DELARIAN K. WILSON, the Defendant, and  
26 documents on file herein, now therefore, the Court makes the following findings of fact and  
27 conclusions of law:

28 //

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## **FINDINGS OF FACT**

1. On April 17, 2007, the State of Nevada (hereinafter "State") filed an Amended Criminal Complaint charging Delarian K. Wilson (hereinafter "Defendant") with the following: Conspiracy to Commit Burglary (Gross Misdemeanor – NRS 199.480, 205.060); Conspiracy to Commit Robbery (Felony – NRS 199.480, 200.380); Burglary while in Possession of a Deadly Weapon (Felony – NRS 205.060); Robbery with Use of a Deadly Weapon (Felony – NRS 200.380, 193.165); Assault with Use of a Deadly Weapon (Felony – NRS 200.471, 193.165); First Degree Kidnapping with Use of a Deadly Weapon (Felony – NRS 200.310, 200.320, 193.165); Sexual Assault with Use of a Deadly Weapon (Felony – NRS 200.364, 200.366, 193.165); Coercion with Use of a Deadly Weapon (Felony – NRS 207.190, 193.165); and Open or Gross Lewdness with Use of a Deadly Weapon (Gross Misdemeanor – NRS 201.210, 193.165).
2. Thereafter, Defendant entered into negotiations with the State, and on August 20, 2007, the State filed an Information charging Defendant with the crimes alleged in the Amended Criminal Complaint.
3. On March 28, 2008, the State filed an Amended Information charging Defendant with the following: Counts 1 and 2 - Robbery with Use of a Deadly Weapon (Felony – NRS 200.380, 193.165); and Count 3 - Sexual Assault (Felony – NRS 200.364, NRS 200.366) and Defendant entered into a Guilty Plea Agreement with the State whereby he pled guilty to the crimes alleged in his Amended Information. On April 1, 2008, the court conducted its guilty plea canvass of Defendant and accepted his guilty plea.
4. On July 3, 2008, Defendant was sentenced as follows: Count 1 – Robbery with Use of a Deadly Weapon – a maximum of 180 months with a minimum parole eligibility of 72 months, with an equal and consecutive term, for the use of a deadly weapon, of a maximum of 180 months and a minimum of 72 months; Count 2 – Robbery with Use of a Deadly Weapon – a maximum of 180 months with a minimum parole eligibility of 72 months, with an equal and consecutive term, for the use of a deadly weapon, of



1 a maximum of 180 months and a minimum of 72 months; and Count 3 – Sexual  
2 Assault – life with the possibility of parole after 10 years. The court ruled that all  
3 sentences were to run consecutive to one another. The court also granted Defendant  
4 five hundred (500) days credit for time served.

5 5. Defendant's Judgment of Conviction was filed on July 16, 2008.

6 6. On August 5, 2008 Defendant filed his Notice of Appeal.

7 7. On July 7, 2009, the Nevada Supreme Court affirmed Defendant's Judgment of  
8 Conviction (Case No 52104). Remittitur issued on August 4, 2009.

9 8. On October 10, 2011, Defendant filed a Petition for Writ of Habeas Corpus. On  
10 November 1, 2011, the State filed its Response and Motion to Dismiss Defendant's  
11 Petition.

12 9. This Court held argument on Defendant's Petition on December 13, 2011 and denied  
13 the Petition both procedurally and on the merits. The Findings of Fact, Conclusions  
14 of Law, and Order was filed January 6, 2012.

15 10. Defendant filed a Motion for Clarification and/or Reconsideration of Denial of  
16 Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) on January 30,  
17 2012. The State filed its Opposition February 24, 2012.

18 11. On February 21, 2012, this Court entered an Order Staying the Findings of Fact,  
19 Conclusions of Law, and Order filed January 6, 2012.

20 12. Defendant filed a Notice of Appeal on February 21, 2012. The appeal was later  
21 withdrawn because of procedural issues which required further consideration in the  
22 district court first. R.T. July 11, 2013, pg. 4.

23 13. On June 4, 2013, this Court set the matter for an Evidentiary Hearing on the limited  
24 issue of alleged good cause to excuse the procedural bars. R.T. July 11, 2013, pgs. 7-  
25 9.

26 14. Defendant testified on his own behalf. R.T. July 11, 2013, pgs. 16-23.

27 //

28 //

founded on facts supported only by palpable or highly suspect evidence." Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Moreover, regardless of its severity, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994). In considering whether a sentence is grossly disproportionate to an offense, a court must consider not only the gravity of the current offense, but also the seriousness of a defendant's criminal history. Ewing v. California, 538 U.S. 11, 28-29 (2003) (Kennedy, J., concurring).

Wilson first contends that his sentence was unreasonably disproportionate to the sentence that his codefendant, Narcus Wesley, received. Particularly, Wilson contends that the district court failed to take into account his remorse for the crime, his accepting responsibility for his actions by pleading guilty, his lack of prior convictions, and the fact that he did not actually commit the sexual assaults, but rather merely assisted and encouraged them. In contrast, Wesley expressed no remorse at the sentencing hearing, placed all the blame for the crimes on Wilson, and committed the actual sexual assault of the female victim. Wesley opted for his right to trial and was convicted on 18 counts. The district court sentenced Wesley to concurrent terms on all counts.<sup>1</sup>

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<sup>1</sup>Wilson cites to Biondi v. State, 101 Nev. 252, 699 P.2d 1062 (1985), in support of his claim that such disparity in sentencing is  
*continued on next page . . .*

Although Wilson did not have a significant criminal history, the gravity of the crime supported the severity of Wilson's sentence. Wilson and Wesley robbed six individuals in their residence at gunpoint. Wilson took one of the victims to an ATM machine, and when he returned, Wilson and Wesley forced two of the victims to participate in sexual acts with each other, and then Wesley further sexually assaulted the female victim. The district court justified a more severe sentence for Wilson based on his role as "ring leader" of the robbery. "[S]entencing is an individualized process; therefore, no rule of law requires a court to sentence codefendants to identical terms," Nobles v. Warden, 106 Nev. 67, 68, 787 P.2d 390, 391 (1990) (citing People v. Walford, 716 P.2d 137 (Colo. App. 1985)), and it is within the discretion of the district court to impose consecutive sentences. See NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 303, 429 P.2d 549, 552 (1967). Moreover, Wilson has not contended that the relevant sentencing statutes are unconstitutional<sup>2</sup> or that the

... continued

unconstitutional. Biondi was a death penalty case in which this court conducted a proportionality review of the death sentence pursuant to former NRS 177.055(2) and has no applicability to the present case.

<sup>2</sup>Wilson appears to briefly argue that when sentenced to a deadly weapon enhancement, a jury must make the determination that the defendant used a deadly weapon in the commission of a crime pursuant to Apprendi v. New Jersey, 530 U.S. 466 (2000). Wilson pleaded guilty to robbery with the use of a deadly weapon and admitted to facts supporting the enhancement; thereby waiving the right to a jury determination as to whether he used a deadly weapon. See Blakely v. Washington, 542 U.S. 296, 303 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is "the maximum sentence a judge may

continued on next page ...

sentences are not within the statutory limits.<sup>3</sup> Thus, the district court did not abuse its discretion at sentencing.

Second, Wilson contends that the district court relied on highly suspect and impalpable evidence in determining that he was the "ring leader" behind the crime. Particularly, Wilson contends that the district court relied on evidence adduced at Wesley's trial, and by relying on such evidence, supported Wesley's defense theory that he acted under duress when committing the crime, which the jury had rejected.<sup>4</sup>

The district court's wide discretion in its sentencing determinations enables the sentencing judge to consider a wide, largely unlimited variety of information to ensure that the punishment fits not only the crime, but also the individual defendant. Norwood v. State, 112 Nev. 438, 440, 915 P.2d 277, 278 (1996). Wilson has not cited to any legal authority to support his claim that the district court cannot consider evidence presented at a codefendant's trial in determining the proper sentence for a defendant. See Maresca v. State, 103 Nev. 669, 673, 748

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*... continued*

impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant").


<sup>3</sup>See NRS 200.380(2) (setting forth a sentence of 2 to 15 years for robbery); 1995 Nev. Stat., ch. 455, §1 at 1431 (setting forth an equal and consecutive sentence for use of a deadly weapon); NRS 200.366(2)(b) (setting forth a sentence of ten to life for sexual assault).

<sup>4</sup>Wesley's trial transcripts were not included as a part of the record and the victims did not testify at the sentencing hearing. We further note that the jury's rejection of Wesley's defense of duress does not amount to the conclusion that Wilson was not the ring leader.

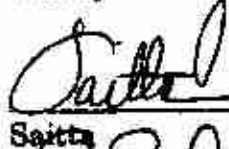
P.2d 3, 6 (1987) (holding that "[i]t is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court"). Thus, we decline to address this claim further.

Having considered Wilson's contentions and determined they are without merit, we

ORDER the judgment of conviction AFFIRMED.

 J.

Cherry

 J.

Saitta

 J.

Gibbons

cc: Hon. James M. Bixler, District Judge  
Draskovich & Oronoz, P.C.  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

DELARIAN K. WILSON A/K/A DELARIAN KAMERON  
WILSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 52104

District Court Case No. C232494

**REMITTITUR**

TO: Edward A. Friedland, Clark District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.  
Receipt for Remittitur.

DATE: August 4, 2009

Tracie Lindeman, Clerk of Court

By:   
Deputy Clerk


cc (without enclosures):

Hon. James M. Bixler, District Judge  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Draskovich & Oronoz, P.C.

**RECEIPT FOR REMITTITUR**

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on AUG 6 6 2009.

**BRANDI J. WENDEL**

 District Court Clerk

002104

09-17555



● ORIGINAL ●

1 **ORDER**

2 DAVID ROGER  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 H. LEON SIMON  
6 Deputy District Attorney  
7 Nevada Bar #000411  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 DELARIAN K. WILSON,

12 Defendant.

Case No. 07C232494-1  
Dept No. XXIV

APPLICATION AND  
ORDER FOR TRANSCRIPTS

13 TO: BOB CANGEMI, COURT REPORTER, DEPT. NO. XXIV

14 Upon the application of the District Attorney's Office, by and through Deputy District  
15 Attorney H. LEON SIMON, Appellate Division, attorney for Plaintiff in the above-entitled  
16 matter, and good cause appearing therefor,

17 IT IS HEREBY ORDERED that an original and two copies of Reporter's Transcript  
18 of Proceedings on JANUARY 13, 2011 (Status Check), be prepared by ASAP at State  
19 expense in order for the State to adequately address the issues presented in defendant's post-  
20 conviction matters.

21 Dated this 12 day of October, 2011.

22  
23  
24  
25  
26  
27  
28  
DISTRICT JUDGE

DAVID ROGER, District Attorney

BY H. Leon Simon  
H. LEON SIMON, Deputy District Attorney  
Nevada Bar #000411

07C232494-1  
ORDER  
Order  
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HLS/jg

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1 ORDR  
2 DAVID ROGER  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 H. LEON SIMON  
6 Deputy District Attorney  
7 Nevada Bar #000411  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 -vs-

15 DELARIAN K. WILSON,

16 Defendant.

Case No. 07C232494-1  
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APPLICATION AND  
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21 IT IS HEREBY ORDERED that an original and two copies of Reporter's Transcript  
22 of Proceedings on JANUARY 13, 2011 (Status Check), be prepared by ASAP at State  
23 expense in order for the State to adequately address the issues presented in defendant's post-  
24 conviction matters.

25 Dated this 13 day of September, 2011.

DISTRICT JUDGE

26 DAVID ROGER, District Attorney

27 BY H. LEON SIMON, Deputy District Attorney  
28 Nevada Bar #000411

07C232494-1  
ORDER  
Order  
1000940

HLS/jg



002106

  
CLERK OF THE COURT

1 RSPN  
2 DAVID ROGER  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 LISA LUZAICH  
6 Chief Deputy District Attorney  
7 Nevada Bar #005056  
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,

07C232494-1

10 Plaintiff,

CASE NO: ~~C-07-232494-1-1~~

11 -vs-

DEPT NO: XXIV

12 DELARIAN WILSON,  
13 #1966773

14 Defendant.

15 **RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF**  
16 **HABEAS CORPUS (POST-CONVICTION)**  
17 **AND MOTION TO DISMISS**

18  
19 DATE OF HEARING: NOVEMBER 29, 2011  
TIME OF HEARING: 8:30 AM

20 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through  
21 LISA LUZAICH, Chief Deputy District Attorney, and hereby submits the attached Points  
22 and Authorities in Response to Defendant's Petition for Writ of Habeas Corpus (Post-  
23 Conviction) and Motion to Dismiss.

24 This response is made and based upon all the papers and pleadings on file herein, the  
25 attached points and authorities in support hereof, and oral argument at the time of hearing, if  
26 deemed necessary by this Honorable Court.

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On April 17, 2007, the State of Nevada (hereinafter "State") filed an Amended  
4 Criminal Complaint charging Delarian K. Wilson (hereinafter "Defendant") with the  
5 following: Conspiracy to Commit Burglary (Gross Misdemeanor – NRS 199.480, 205.060);  
6 Conspiracy to Commit Robbery (Felony – NRS 199.480, 200.380); Burglary while in  
7 Possession of a Deadly Weapon (Felony – NRS 205.060); Robbery with Use of a Deadly  
8 Weapon (Felony – NRS 200.380, 193.165); Assault with Use of a Deadly Weapon (Felony –  
9 NRS 200.471, 193.165); First Degree Kidnapping with Use of a Deadly Weapon (Felony –  
10 NRS 200.310, 200.320, 193.165); Sexual Assault with Use of a Deadly Weapon (Felony –  
11 NRS 200.364, 200.366, 193.165); Coercion with Use of a Deadly Weapon (Felony – NRS  
12 207.190, 193.165); and Open or Gross Lewdness with Use of a Deadly Weapon (Gross  
13 Misdemeanor – NRS 201.210, 193.165).

14 Thereafter, Defendant entered into negotiations with the State, and on August 20,  
15 2007, the State filed an Information charging Defendant with the crimes alleged in the  
16 Amended Criminal Complaint.

17 On March 28, 2008, the State filed an Amended Information charging Defendant with  
18 the following: Counts 1 and 2 – Robbery with Use of a Deadly Weapon (Felony – NRS  
19 200.380, 193.165); and Count 3 – Sexual Assault (Felony – NRS 200.364, NRS 200.366).

20 Also on March 28, 2008, Defendant entered into a Guilty Plea Agreement with the  
21 State whereby he pled guilty to the crimes alleged in his Amended Information. On April 1,  
22 2008, the court conducted its guilty plea canvass of Defendant and accepted his guilty plea.

23 On July 3, 2008, Defendant appeared for sentencing with his counsel, Mr. Oronoz.  
24 The court, after hearing arguments by both the State and Mr. Oronoz, sentenced Defendant  
25 as follows: Count 1 – Robbery with Use of a Deadly Weapon – a maximum of 180 months  
26 with a minimum parole eligibility of 72 months, with an equal and consecutive term, for the  
27 use of a deadly weapon, of a maximum of 180 months and a minimum of 72 months; Count  
28 2 – Robbery with Use of a Deadly Weapon – a maximum of 180 months with a minimum

1 parole eligibility of 72 months, with an equal and consecutive term, for the use of a deadly  
2 weapon, of a maximum of 180 months and a minimum of 72 months; and Count 3 – Sexual  
3 Assault – life with the possibility of parole after 10 years. The court ruled that all sentences  
4 were to run consecutive to one another. The court also granted Defendant five hundred  
5 (500) days credit for time served. Defendant's Judgment of Conviction was filed on July 16,  
6 2008.

7 On August 5, 2008 Defendant filed his Notice of Appeal.

8 On July 7, 2009, the Nevada Supreme Court affirmed Defendant's Judgment of  
9 Conviction (Case No 52104). Remittitur issued on August 4, 2009.

10 On October 10, 2011, Defendant filed the instant petition to which the State's  
11 response follows.

## 12 ARGUMENT

### 13 I. DEFENDANT'S PETITION SHOULD BE DISMISSED BECAUSE IT IS 14 TIME BARRED PURSUANT TO NRS 34.726.

15 The mandatory provisions of NRS 34.726 state:

16 1. Unless there is good cause shown for delay, a petition that  
17 **challenges the validity of a judgment or sentence must be**  
18 **filed within 1 year after entry of the judgment of conviction**  
19 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:

20 (a) That the delay is not the fault of the petitioner; and

21 (b) That dismissal of the petition as untimely will unduly  
22 prejudice the petitioner.

23 (Emphasis added).

24 NRS 34.726 has been strictly applied. In Gonzales v. State, 118 Nev. 590, 53 P.3d 901  
25 (2002), the Nevada Supreme Court rejected a habeas petition that was filed *two days late*,  
26 pursuant to the "clear and unambiguous" mandatory provisions of NRS 34.726(1). Gonzales  
27 reiterated the importance of filing the petition with the district court within the one year  
28 mandate, absent a showing of "good cause" for the delay in filing. Id. at 593, at 902.

1 In this case, Defendant filed Notice of Appeal on August 5, 2008. The Nevada  
2 Supreme Court affirmed Defendant's Judgment of Conviction on July 7, 2009 and remittitur  
3 was issued on August 4, 2009. Defendant's instant petition, filed October 10, 2011, was filed  
4 outside the one-year limitation as strictly mandated by NRS 34.726. Thus, absent good cause  
5 shown, the instant petition and all subsequent petitions for post-conviction relief should be  
6 dismissed.

7 **II. DEFENDANT HAS FAILED TO SHOW GOOD CAUSE TO**  
8 **OVERCOME THE TIME BAR.**

9 "In order to demonstrate good cause, a petitioner must show that an impediment  
10 external to the defense prevented him or her from complying with the state procedural  
11 default rules." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); citing  
12 Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); Lozada v. State, 110  
13 Nev. 349, 353, 871 P.2d 944, 946 (1994); Passanisi v. Director, 105 Nev. 63, 769 P.2d 72  
14 (1989); see also Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247, 252 (1997); Phelps v.  
15 Director, 104 Nev. 656, 764 P.2d 1303 (1988).

16 Such an external impediment could be "that the factual or legal basis for a claim was  
17 not reasonably available to counsel, or that 'some interference by officials' made compliance  
18 impracticable." Hathaway, 71 P.3d at 506; quoting Murray v. Carrier, 477 U.S. 478, 488,  
19 106 S.Ct. 2639, 2645 (1986); see also Gonzalez, 53 P.3d at 904; citing Harris v. Warden,  
20 114 Nev. 956, 959-60 n. 4, 964 P.2d 785 n. 4 (1998). Clearly, any delay in filing of the  
21 petition must not be the fault of the petitioner, NRS 34.726(1)(a).

22 To find good cause there must be a "substantial reason; one that affords a legal excuse."  
23 Hathaway, 71 P.3d at 506; quoting Colley v. State, 105 Nev. 235, 236, 773 p.2d 1229, 1230  
24 (1989), quoting State v. Estencion, 625 P.2d 1040, 1042 (Haw. 1981).

25 In the instant case, Defendant has failed to set forth any facts whatsoever to constitute  
26 good cause for the late filing. The filing of the instant petition must be within one year of the  
27 date of remittitur. As such, because Defendant has failed to demonstrate either good cause or  
28 actual prejudice sufficient to excuse his failure to comply with the procedural bars set forth



1 in NRS 34.726, Defendant's petition should be dismissed.

2 **III. THE ONE YEAR TIME BAR IS STRICTLY CONSTRUED.**

3 As stated in State's argument I *supra*, per Gonzales v. State, 118 Nev. 590, 53 P.3d  
4 901(2002), the one year time bar is strictly construed. Here, Defendant has failed to show  
5 good cause for his late filing. As such, Defendant's petition and all subsequent petitions for  
6 post conviction relief should be dismissed.

7 **IV. THE APPLICATION OF PROCEDURAL BARS IS MANDATORY.**

8 The Nevada Supreme Court has specifically held that the district court has a duty to  
9 consider whether the procedural bars apply to a post-conviction petition and not arbitrarily  
10 disregard them. In State v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d 1070  
11 (2005), the Nevada Supreme Court held as follows:

12 Given the untimely and successive nature of [defendant's]  
13 petition, the district court *had a duty imposed by law* to consider  
14 whether any or all of [defendant's] claims were barred under  
15 NRS 34.726, NRS 34.810, NRS 34.800, or by the law of the case  
... [and] the court's failure to make this determination here  
constituted an arbitrary and unreasonable exercise of discretion.

16 [Emphasis added.] 121 Nev. at 234. (See also State v. Haberstroh, 119 Nev. 173, 180-81,  
17 69 P.3d 676, 681-82 (2003) wherein the Nevada Supreme Court held that parties cannot  
18 stipulate to waive, ignore or disregard the mandatory procedural default rules nor can they  
19 empower a court to disregard them.) A defendant's petition will not be considered on the  
20 merits if it is subject to the procedural bars and no good cause is shown. *Id.* Again,  
21 Defendant has not shown good cause for filing an untimely petition, and thus his petition  
22 should be dismissed.

23 If the court nonetheless wishes to consider the merits of Defendant's petition, the  
24 State submits as follows:

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1           **V.     DEFENDANT RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL**  
2           **AT SENTENCING.**

3           In order to assert a claim for ineffective assistance of counsel, a defendant must prove  
4           that he was denied "reasonably effective assistance" of counsel by satisfying the two-prong  
5           test set forth in Strickland v. Washington, 466 U.S. 668, 686-87, 104 S.Ct. 2052, 2063-64  
6           (1984). Under this test, the defendant must show: first, that his counsel's representation fell  
7           below an objective standard of reasonableness, and second, that but for counsel's errors,  
8           there is a reasonable probability that the result of the proceedings would have been different.  
9           See Strickland, 466 U.S. at 687-688, 694, 104 S.Ct. at 2065, 2068. "Effective counsel does  
10          not mean errorless counsel, but rather counsel whose assistance is "[w]ithin the range of  
11          competence demanded of attorneys in criminal cases." Jackson v. Warden, Nevada State  
12          Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397  
13          U.S. 759, 771, 90 S.Ct. 1441, 1449 (1970)).

14          The court begins with the presumption of effectiveness and then must determine  
15          whether the defendant has demonstrated by a preponderance of the evidence that counsel  
16          was ineffective. Means v. State, 120 Nev. 1001, 103 P.3d 35 (2004). This analysis does not  
17          indicate that the court should "second guess reasoned choices between trial tactics, nor does  
18          it mean that defense counsel, to protect himself against allegations of inadequacy, must make  
19          every conceivable motion no matter how remote the possibilities are of success." Donovan,  
20          94 Nev. at 675, 584 P.2d at 711; citing Cooper, 551 F.2d at 1166 (9th Cir. 1977). In essence,  
21          the court must "judge the reasonableness of counsel's challenged conduct on the facts of the  
22          particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690, 104  
23          S.Ct. at 2066.

24          Even if a defendant can demonstrate that his counsel's representation fell below an  
25          objective standard of reasonableness, he must still demonstrate prejudice and show a  
26          reasonable probability that, but for counsel's errors, the result of the trial would have been  
27          different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
28          Strickland, 466 U.S. at 687.) "A reasonable probability is a probability sufficient to



1 undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-89, 694).

2 Here, Defendant claims his counsel was ineffective for failing to request a  
3 continuance at sentencing in order to review the transcripts of Co-Defendant Wesley's trial,  
4 so that counsel would be prepared to rebut any presumptions or inferences that may have  
5 been made by the trial court. However, Defendant fails to realize that client representation  
6 during sentencing proceedings is a strategic decision that is entitled to deference per  
7 Strickland. Defense counsel argued vigorously on Defendant's behalf. See pages 12-16 of  
8 Transcript of July 3, 2008. Defendant's present allegation that counsel should have  
9 proceeded differently is the type of hindsight criticism that Strickland cautions against.

10 Furthermore, Defendant has failed to meet the prejudice prong of Strickland.  
11 Defendant has not shown that if counsel had in fact proceeded as Defendant claims counsel  
12 should have, that there is a reasonable probability that Defendant would have received a  
13 more lenient sentence. Defendant admitted his guilt in this case and took responsibility for  
14 his actions. It was this admission that prompted the court to sentence Defendant in such a  
15 manner, not counsel's chosen mode of representation. As such, since Defendant has not  
16 demonstrated counsel was deficient per Strickland, his Petition should be denied.

17 **VI. DEFENDANT'S CLAIM THAT APPELLATE COUNSEL WAS**  
18 **INEFFECTIVE LACKS MERIT.**

19 To succeed on a claim of ineffective assistance of appellate counsel, the defendant  
20 must satisfy the two-prong test set forth by Strickland; that 1) appellate counsel's conduct  
21 fell below an objective reasonable standard, and 2) the omitted issue had a reasonable  
22 probability of success. 466 U.S. at 687-688, 694, 104 S. Ct. at 2065, 2068. There is a strong  
23 presumption that appellate counsel's performance fell within "the wide range of reasonable  
24 professional assistance." See United States v. Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990).

25 The Nevada Supreme Court has held that all appeals must be "pursued in a manner  
26 meeting high standards of diligence, professionalism and competence." Burke v. State, 110  
27 Nev. 1366, 1368, 887 P.2d 267, 268 (1994). In Jones v. Barnes, 463 U.S. 745, 751-52, 103  
28 S. Ct. 3308, 3313 (1983), the Supreme Court recognized that part of professional diligence

and competence involves “winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues.” In particular, a “brief that raises every colorable issue runs the risk of burying good arguments . . . in a verbal mound made up of strong and weak contentions.” *Id.* at 753, at 3313. The Court also held that, “for judges to second-guess reasonable professional judgments and impose on appointed counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very goal of vigorous and effective advocacy.” *Id.* at 754, at 3314.

Here, Defendant claims appellate counsel was ineffective for failing to cite to case law to support argument regarding the District Court's ability to consider a Co-Defendant's trial at sentencing. However, appellate counsel presented sufficient argument as to other issues that the Nevada Supreme Court did consider on the merits. The style of client representation and strategy employed by appellate counsel is entitled to deference per Strickland. Counsel's conduct did not fall below an objectively reasonable standard. The issue lacking case law citation was essentially moot. Moreover, should counsel's conduct be deemed unreasonable, Defendant cannot satisfy the prejudice prong of Strickland. Defendant cannot show a reasonable likelihood that the findings of the Court would have been different had appellate counsel proceeded in the fashion Defendant claims counsel should have. Thus, Defendant's claim is without merit.

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**CONCLUSION**

Based on the foregoing arguments, the State respectfully requests that the Court dismiss Defendant's Petition for Writ of Habeas Corpus.

DATED this 1st day of November, 2011.

Respectfully submitted,

DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781

BY /s/ LISA LUZAICH  
LISA LUZAICH  
Chief Deputy District Attorney  
Nevada Bar #005144

**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that service of the above and foregoing, was made this 1st day of November, 2011, by Electronic Filing to:

KEITH BROWER, ESQ.  
Email: kcbrower@aol.com

/s/ HOWARD CONRAD  
Secretary for the District Attorney's Office

hjc/SVC

FILED

Nov 17 10 37 AM '11

*John L. Johnson*  
CLERK OF THE COURT

1 TRAN

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IN THE EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

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6

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 ORIGINAL

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 DELARIAN K. WILSON,

12 Defendant.

Case No.  
07C232494-1  
Dept. No. 24

13

14

STATUS CHECK

15

16

Before the Honorable James M. Bixler  
Thursday, January 13, 2011, 8:30 a.m.

17

Reporter's Transcript of Proceedings

18

19

20 APPEARANCES:

21

22 For the State: Barbara Schifalacqua,  
Deputy District Attorney

23 For the Defendant: Keith Brower, Esq.

24

25 REPORTED BY: ROBERT A. CANGEMI, CCR No. 888

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CLERK OF THE COURT 102116

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4 IN THE EIGHTH JUDICIAL DISTRICT COURT  
5 CLARK COUNTY, NEVADA  
6

7  
8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 DELARJAN K. WILSON,

12 Defendant.  
13

Case No.  
07C232494  
Dept. No. 24

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15 Before the Honorable James M. Bixler  
16 Thursday, January 13, 2011, 8:30 a.m.

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20 APPEARANCES:

21 For the State: Barbara Schifalacqua,  
22 Deputy District Attorney

23 For the Defendant: Keith Brower, Esq.  
24

25 REPORTED BY: ROBERT A. CANGEMI, CCR No. 888

1 Las Vegas, Nevada, Thursday, January  
2 13, 2011  
3  
4

5 THE COURT: State of Nevada  
6 versus Wilson.

7 MR. BROWER: May we approach  
8 very briefly?

9 THE COURT: Sure.  
10

11 (Bench conference had.)  
12

13 THE COURT: Delarian Wilson,  
14 who is not present, but in custody  
15 at the Nevada Department of  
16 Corrections

17 We need a briefing  
18 schedule.

19 MR. BROWER: We do. I  
20 received a banker's box of documents  
21 from Jim Wornese on this --

22 THE COURT: Do you want a  
23 little more than 45?

24 MR. BROWER: He is actually  
25 up in Lovelock, so the problem I have  
is we have to visit personally with

1 the Defendants, and unfortunately  
2 Lovelock is not the easiest prison to  
3 get into.

4 I have to fly into Reno,

5 THE COURT: It is a lovely  
6 drive.

7 MR. BROWER: Their visits are  
8 only Monday morning, so if you can  
9 give me perhaps 75 days.

10 THE COURT: You got it.

11 MR. BROWER: 3 months would  
12 be fine, Judge.

13 THE CLERK: April 18th

14 MR. BROWER: Judge, can you  
15 give me until next Monday the  
16 25th?

17 THE COURT: April 25th,  
18 opening.

19 MS. SCHIFALACQUA: The  
20 minimum, I think, is 60 days. I  
21 don't know if --

22 MR. BROWER: If you want to  
23 give them a little more, I am okay  
24 with that, pursuant to stipulation,  
25 depending when I get to the prison

1 and ask for time, I am sure the State  
2 will give it to me.

3 I am okay with giving them  
4 more time. I have a one hundred page  
5 handwritten writ that my client  
6 wanted me to file.

7 THE CLERK: Monday, July 25,  
8 is 90 days.

9 MR. BROWER: Judge, I will be  
10 narrowing the issues.

11 THE COURT: 30 or 60 days?

12 MR. BROWER: If you can give  
13 me 60 to reply.

14 THE COURT: We will set it  
15 down for argument: can you do it  
16 October 4th?

17 THE CLERK: October 4th,  
18 8:30.

19 MR. BROWER: This was one  
20 where there was a time argument, but  
21 I have been appointed and will be  
22 doing the briefing schedule pursuant  
23 to our order today.

24 THE COURT: Excellent.  
25

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(Proceedings concluded.)  
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C E R T I F I C A T E

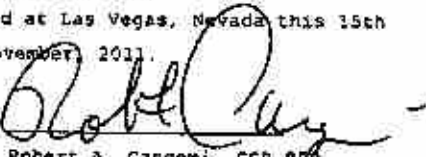
STATE OF NEVADA )

) ss.

CLARK COUNTY )

I, Robert A. Cangemi, CCR 888, do  
hereby certify that I reported the foregoing  
proceedings, and that the same is true and  
accurate as reflected by my original machine  
shorthand notes taken at said time and place  
before the Hon. James M. Bixler, District  
Court Judge presiding.

Dated at Las Vegas, Nevada this 15th  
day of November, 2011.



Robert A. Cangemi, CCR 888

Certified Court Reporter

Las Vegas, Nevada

002118

<p>* (2:13)</p>	<p>for (1:21) (1:23) (4:1) (4:15)  foregoing (6:10)  from (2:20)</p>
<p><b>A</b></p> <p>accurate (6:12)  actually (2:23)  appearances (1:20)  appointed (4:21)  approach (2:6)  april (3:13) (3:17)  are (3:7)  argument (4:15) (4:20)  ask (4:1)  attorney (1:22)</p>	<p><b>G</b></p> <p>get (3:3) (3:25)  give (3:9) (3:15) (3:23) (4:2) (4:12)  giving (4:3)  got (3:10)</p>
<p><b>B</b></p> <p>banker's (2:19)  barbara (1:21)  been (4:21)  before (1:15) (6:14)  bench (2:10)  bivler (1:15) (6:14)  box (2:19)  briefing (2:16) (4:22)  briefly (2:7)  brower (1:23) (2:6) (2:18) (2:23) (3:7) (3:11) (3:14) (3:22)  (4:9) (4:12) (4:19)  but (2:13) (4:20)</p>	<p><b>H</b></p> <p>had (2:10)  handwritten (4:5)  have (2:24) (2:25) (3:4) (4:4) (4:21)  hereby (6:10)  hen (6:14)  honorable (1:15)  hundred (4:4)</p> <p><b>I</b></p> <p>into (3:3) (3:4)  issues (4:10)</p>
<p><b>C</b></p> <p>can (3:8) (3:14) (4:12) (4:15)  cangama (1:25) (6:9) (6:20)  case (1:10)  car (1:25) (6:9) (6:20)  certified (6:21)  certify (6:10)  check (1:14)  clark (1:4) (6:4)  clerk (3:13) (4:7) (4:17)  client (4:5)  concluded (5:2)  conference (2:10)  corrections (2:15)  county (1:4) (6:4)  court (1:4) (2:4) (2:8) (2:12) (2:21) (3:5) (3:10) (3:17)  (4:11) (4:14) (4:24) (6:15) (6:21)  custody (2:13)</p>	<p><b>J</b></p> <p>james (1:15) (6:14)  january (1:16) (2:1)  jim (2:20)  judge (3:12) (3:14) (4:9) (6:15)  judicial (1:4)  july (4:7)</p> <p><b>K</b></p> <p>keith (1:23)  know (3:21)</p>
<p><b>D</b></p> <p>dated (6:16)  day (6:17)  days (3:9) (3:20) (4:8) (4:11)  defendant (1:12) (1:23)  defendants (3:1)  delarian (1:11) (2:12)  department (2:14)  depending (3:25)  dept (1:11)  deputy (1:22)  district (1:4) (1:22) (6:14)  documents (2:19)  doing (4:22)  don't (3:21)  down (4:15)  drive (3:6)</p>	<p><b>L</b></p> <p>las (2:1) (6:16) (6:22)  little (2:22) (3:23)  lovelock (2:24) (3:2)  lovely (3:5)</p> <p><b>M</b></p> <p>machine (6:12)  may (2:6)  minimum (3:20)  monday (3:8) (3:15) (4:7)  months (3:11)  more (2:22) (3:23) (4:4)  morning (3:8)</p>
<p><b>E</b></p> <p>easiest (3:2)  eighth (1:4)  eq (1:23)  excellent (4:24)</p>	<p><b>N</b></p> <p>narrowing (4:10)  need (2:16)  nevada (1:4) (1:8) (2:1) (2:4) (2:14) (6:2) (6:16) (6:22)  next (3:15)  not (2:13) (3:2)  notes (6:13)  november (6:17)</p>
<p><b>F</b></p> <p>file (4:6)  fine (3:12)  fly (3:4)</p>	<p><b>O</b></p> <p>october (4:16) (4:17)  okay (3:23) (4:3)  one (4:4) (4:19)  only (3:8)  opening (3:18)  order (4:23)  original (6:12)  our (4:23)</p> <p><b>P</b></p> <p>page (4:4)  perhaps (3:9)  personally (2:25)  place (6:13)  plaintiff (1:9)  present (2:13)  presiding (6:15)</p>



prison (3:2)(3:25)  
 problem (2:24)  
 proceedings (1:17)(5:2)(6:11)  
 pursuant (3:24)(4:22)

## R

received (2:19)  
 reflected (6:12)  
 redo (3:4)  
 reply (4:13)  
 reported (1:25)(6:10)  
 reporter (6:21)  
 reporter's (1:17)  
 robert (1:25)(6:9)(6:20)

## S

said (6:13)  
 same (6:11)  
 schedule (2:17)(4:22)  
 schifalacqua (1:21)(3:19)  
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 shorthand (6:13)  
 state (1:8)(1:21)(2:4)(4:1)(6:2)  
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 stipulation (3:24)  
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## T

taken (6:13)  
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 tran (1:1)  
 transcript (1:17)  
 true (6:11)

## U

unfortunately (3:1)  
 until (3:15)

## V

vegas (2:1)(6:16)(6:22)  
 versus (2:5)  
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 visit (2:25)  
 visits (3:7)

## W

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 was (4:19)(4:20)  
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 will (4:2)(4:9)(4:14)(4:21)  
 wilson (1:11)(2:5)(2:12)  
 with (2:23)(3:24)(4:3)  
 wormose (2:20)  
 would (3:11)  
 writ (4:5)

## Y

you (2:21)(3:8)(3:10)(3:14)(3:22)(4:12)(4:15)

1 Keith C. Brower, Esq.  
2 Nevada Bar #007288  
3 The Law Offices Of Keith C. Brower, LLC  
4 8275 South Eastern Suite 200  
5 Las Vegas, NV 89123  
6 (702) 451-4921  
7 Attorney For The Defendant

8 **EIGHTH JUDICIAL DISTRICT COURT COURT**

9 **CLARK COUNTY, NEVADA**

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10 STATE OF NEVADA, )

11 Plaintiff, )

12 vs. )

13 DELARIAN WILSON, )

ID# 1966773 )

Defendant )

Case No.: 07C232404-1

Dept. No.: XXIV

CLERK OF THE COURT

14 **REPLY TO STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF**  
15 **HABEAS CORPUS (POST-CONVICTION) AND MOTION TO DISMISS**

16 Defendant, by and through his attorney makes the following arguments regarding the  
17 State's response to his Petition For Writ Of Habeas Corpus.

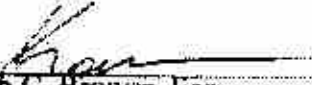
18 Defendant's Petition For Writ Of Habeas Corpus (Post-Conviction) is timely. This  
19 honorable Court has found good cause for the delay in the filing of Defendant's Post-  
20 Conviction Writ, and as such the State's arguments to dismiss are MOOT.

21 Defendant did not receive the adequate assistance of counsel at his sentencing or on  
22 appeal. The State would have this Court believe that because counsel showed up at  
23 sentencing and filed an appeal that counsel was adequate. This is simply not true. At  
24 sentencing, this Court stated that it was aware that Defendant was the "ringleader". This  
25 knowledge was garnered from a trial held on the Co-Defendant's case. As counsel had  
26 neither witnessed the trial, or reviewed the transcripts, he could not be adequately prepared  
27 to argue mitigating facts at the sentencing. Thus, as stated in Defendant's petition, he did  
28 not receive adequate counsel under United States v. Sullivan, 694 F.2d 1348 (US Ct. App.

002121

1 2<sup>nd</sup> Cir (1982) and Gardner v. Florida, 430 U.S. 349, 97 S.Ct. 1197, 51 L.Ed. 2d 393 (1977).  
2 Additionally, Defendant would point out that these trial transcripts were necessary to present  
3 mitigating evidence so that Counsel would be aware of the arguments that had been  
4 presented to this honorable Court and as such, Counsel, and Appellate Counsels.  
5 performance was inadequate. See United States v. Revnoso, 254 F.3d 467 (3rd Cir. 2001).

6 Dated this 5th day of December 2011.

7  
8 By:   
9 Keith C. Brower, Esq.  
10 Attorney For The Defendant  
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*Ann L. P.*  
CLERK OF DISTRICT COURT

1 **ORDR**  
2 **DAVID ROGER**  
3 **Clark County District Attorney**  
4 **Nevada Bar #002781**  
5 **LISA LUZAICH**  
6 **Chief Deputy District Attorney**  
7 **Nevada Bar #005056**  
8 **200 Lewis Avenue**  
9 **Las Vegas, Nevada 89155-2212**  
10 **(702) 671-2500**  
11 **Attorney for Plaintiff**

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

14 **THE STATE OF NEVADA,**  
15 **Plaintiff,**

16 **-vs-**

17 **DELARIAN WILSON,**  
18 **#1966773**

19 **Defendant.**

**CASE NO: 07C232494-1**

**DEPT NO: XXIV**

20 **FINDINGS OF FACT, CONCLUSIONS OF**

21 **LAW AND ORDER**

22 **DATE OF HEARING: DECEMBER 13, 2011**  
23 **TIME OF HEARING: 8:30 A.M.**

24 **THIS CAUSE** having come on for hearing before the Honorable Judge JAMES  
25 **BIXLER**, District Judge, on the 13th day of December, 2011, the Petitioner not being  
26 **present**, represented By **KEITH BROWER, ESQ.**, the Respondent being represented by  
27 **DAVID ROGER**, District Attorney, by and through **LISA LUZAICH**, Chief Deputy District  
28 **Attorney**, and the Court having considered the matter, including briefs, transcripts,  
arguments of counsel, and documents on file herein, now therefore, the Court makes the  
following findings of fact and conclusions of law:

29 //

30 //

07C232494-1  
FFGD  
Findings of Fact, Conclusions of Law and C  
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CLERK OF THE COURT

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### FINDINGS OF FACT

1. On April 17, 2007, the State of Nevada (hereinafter "State") filed an Amended Criminal Complaint charging Delarian K. Wilson (hereinafter "Defendant") with the following: Conspiracy to Commit Burglary (Gross Misdemeanor – NRS 199.480, 205.060); Conspiracy to Commit Robbery (Felony – NRS 199.480, 200.380); Burglary while in Possession of a Deadly Weapon (Felony – NRS 205.060); Robbery with Use of a Deadly Weapon (Felony – NRS 200.380, 193.165); Assault with Use of a Deadly Weapon (Felony – NRS 200.471, 193.165); First Degree Kidnapping with Use of a Deadly Weapon (Felony – NRS 200.310, 200.320, 193.165); Sexual Assault with Use of a Deadly Weapon (Felony – NRS 200.364, 200.366, 193.165); Coercion with Use of a Deadly Weapon (Felony – NRS 207.190, 193.165); and Open or Gross Lewdness with Use of a Deadly Weapon (Gross Misdemeanor – NRS 201.210, 193.165).
2. Thereafter, Defendant entered into negotiations with the State, and on August 20, 2007, the State filed an Information charging Defendant with the crimes alleged in the Amended Criminal Complaint.
3. On March 28, 2008, the State filed an Amended Information charging Defendant with the following: Counts 1 and 2 - Robbery with Use of a Deadly Weapon (Felony – NRS 200.380, 193.165); and Count 3 - Sexual Assault (Felony – NRS 200.364, NRS 200.366) and Defendant entered into a Guilty Plea Agreement with the State whereby he pled guilty to the crimes alleged in his Amended Information. On April 1, 2008, the court conducted its guilty plea canvass of Defendant and accepted his guilty plea.
4. On July 3, 2008, Defendant was sentenced as follows: Count 1 – Robbery with Use of a Deadly Weapon – a maximum of 180 months with a minimum parole eligibility of 72 months, with an equal and consecutive term, for the use of a deadly weapon, of a maximum of 180 months and a minimum of 72 months; Count 2 – Robbery with Use of a Deadly Weapon – a maximum of 180 months

1 with a minimum parole eligibility of 72 months, with an equal and consecutive  
2 term, for the use of a deadly weapon, of a maximum of 180 months and a  
3 minimum of 72 months; and Count 3 – Sexual Assault – life with the possibility  
4 of parole after 10 years. The court ruled that all sentences were to run  
5 consecutive to one another. The court also granted Defendant five hundred  
6 (500) days credit for time served.

- 7 5. Defendant's Judgment of Conviction was filed on July 16, 2008.
- 8 6. On August 5, 2008 Defendant filed his Notice of Appeal.
- 9 7. On July 7, 2009, the Nevada Supreme Court affirmed Defendant's Judgment of  
10 Conviction (Case No 52104). Remittitur issued on August 4, 2009.
- 11 8. On October 10, 2011, Defendant filed a Petition for Writ of Habeas Corpus. On  
12 November 1, 2011, the State filed its Response and Motion to Dismiss  
13 Defendant's Petition.
- 14 9. Defendant's petition, filed October 10, 2011, was filed outside the one-year  
15 limitation as strictly mandated by NRS 34.726; as such, the petition is time  
16 barred.
- 17 10. A petition subject to procedural bars may be considered on its merits if good  
18 cause is shown.
- 19 11. Defendant failed to plead facts sufficient to demonstrate to the satisfaction of  
20 the court that good cause for delay exists sufficient to overcome the one-year  
21 time bar.
- 22 12. Defendant received effective assistance of trial counsel.
- 23 13. Defendant received effective assistance of appellate counsel.
- 24 14. Defendant's petition is denied procedurally and on the merits.
- 25 15. Defendant's petition was time barred prior to Mr. Brower being appointed.

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CONCLUSIONS OF LAW

1. The mandatory provisions of NRS 34.726 read:

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.

(Emphasis added).

2. NRS 34.726 has been strictly applied. In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada Supreme Court rejected a habeas petition that was filed two days late, pursuant to the "clear and unambiguous" mandatory provisions of NRS 34.726(1). Gonzales reiterated the importance of filing the petition with the district court within the one year mandate, absent a showing of "good cause" for the delay in filing. Id., at 593, 590 P.3d at 902. The one-year time bar is therefore strictly construed.

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. 30, 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, 105 Nev. 63, 769 P.2d 72 (1989); see also Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247, 252 (1997); Phelps v. Director, 104 Nev. 656, 764 P.2d 1303 (1988).

5. Such an external impediment could be "that the factual or legal basis for a claim was not reasonably available to counsel, or that 'some interference by officials' made compliance impracticable." Hathaway, 71 P.3d at 506; quoting Murray v. Carrier, 477 U.S. 478, 488, 106 S.Ct. 2639, 2645 (1986); see also Gonzales, 118 Nev. at 595, 53 P.3d at 904; citing Harris v. Warden, 114 Nev. 956, 959-60 n. 4, 964 P.2d 785 n. 4 (1998).



1       6. In addition, to find good cause there must be a "substantial reason; one that  
2 affords a legal excuse." Hathaway, 71 P.3d at 506; quoting Colley v. State, 105 Nev. 235,  
3 236, 773 P.2d 1229, 1230 (1989), quoting State v. Estencion, 625 P.2d 1040, 1042 (Haw.  
4 1981).

5       7. The Nevada Supreme Court has specifically held that the district court has a  
6 duty to consider whether the procedural bars apply to a post-conviction petition and not  
7 arbitrarily disregard them. In State v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d  
8 1070 (2005), the Nevada Supreme Court held as follows:

9               Given the untimely and successive nature of [defendant's]  
10 petition, the district court *had a duty imposed by law* to consider  
11 whether any or all of [defendant's] claims were barred under  
12 NRS 34.726, NRS 34.810, NRS 34.800, or by the law of the case  
... [and] the court's failure to make this determination here  
constituted an arbitrary and unreasonable exercise of discretion.

13       [Emphasis added.] 121 Nev. at 234. (See also State v. Haberstroh, 119 Nev. 173,  
14 180-81, 69 P.3d 676, 681-82 (2003) wherein the Nevada Supreme Court held that parties  
15 cannot stipulate to waive, ignore or disregard the mandatory procedural default rules nor can  
16 they empower a court to disregard them.) A defendant's petition will not be considered on  
17 the merits if it is subject to the procedural bars and no good cause is shown. Id.

18       8. In order to assert a claim for ineffective assistance of counsel, a defendant  
19 must prove that he was denied "reasonably effective assistance" of counsel by satisfying the  
20 two-prong test set forth in Strickland v. Washington, 466 U.S. 668, 686-87, 104 S.Ct. 2052,  
21 2063-64 (1984). Under this test, the defendant must show: first, that his counsel's  
22 representation fell below an objective standard of reasonableness, and second, that but for  
23 counsel's errors, there is a reasonable probability that the result of the proceedings would  
24 have been different. See Strickland, 466 U.S. at 687-688, 694, 104 S.Ct. at 2065, 2068.  
25 "Effective counsel does not mean errorless counsel, but rather counsel whose assistance is  
26 '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v.  
27 Warden, Nevada State Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting  
28 McMann v. Richardson, 397 U.S. 759, 771, 90 S.Ct. 1441, 1449 (1970)).

1           9. The court begins with the presumption of effectiveness and then must  
2 determine whether the defendant has demonstrated by a preponderance of the evidence that  
3 counsel was ineffective. Means v. State, 120 Nev. 1001, 103 P.3d 35 (2004). This analysis  
4 does not indicate that the court should "second guess reasoned choices between trial tactics,  
5 nor does it mean that defense counsel, to protect himself against allegations of inadequacy,  
6 must make every conceivable motion no matter how remote the possibilities are of success."  
7 Donovan, 94 Nev. at 675, 584 P.2d at 711; citing Cooper, 551 F.2d at 1166 (9th Cir. 1977).  
8 In essence, the court must "judge the reasonableness of counsel's challenged conduct on the  
9 facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S.  
10 at 690, 104 S.Ct. at 2066.

11           10. Even if a defendant can demonstrate that his counsel's representation fell  
12 below an objective standard of reasonableness, he must still demonstrate prejudice and show  
13 a reasonable probability that, but for counsel's errors, the result of the trial would have been  
14 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
15 Strickland, 466 U.S. at 687.) "A reasonable probability is a probability sufficient to  
16 undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-89, 694).

17           11. To succeed on a claim of ineffective assistance of appellate counsel, the  
18 defendant must satisfy the two-prong test set forth by Strickland; that 1) appellate counsel's  
19 conduct fell below an objective reasonable standard, and 2) the omitted issue had a  
20 reasonable probability of success. 466 U.S. at 687-688, 694, 104 S. Ct. at 2065, 2068.  
21 There is a strong presumption that appellate counsel's performance fell within "the wide  
22 range of reasonable professional assistance." See United States v. Aguirre, 912 F.2d 555,  
23 560 (2nd Cir. 1990).

24           12. The Nevada Supreme Court has held that all appeals must be "pursued in a  
25 manner meeting high standards of diligence, professionalism and competence." Burke v.  
26 State, 110 Nev. 1366, 1368, 887 P.2d 267, 268 (1994). In Jones v. Barnes, 463 U.S. 745,  
27 751-52, 103 S. Ct. 3308, 3313 (1983), the Supreme Court recognized that part of  
28 professional diligence and competence involves "winnowing out weaker arguments on

1 appeal and focusing on one central issue if possible, or at most on a few key issues." In  
2 particular, a "brief that raises every colorable issue runs the risk of burying good arguments  
3 . . . in a verbal mound made up of strong and weak contentions." *Id.* at 753, at 3313. The  
4 Court also held that, "for judges to second-guess reasonable professional judgments and  
5 impose on appointed counsel a duty to raise every 'colorable' claim suggested by a client  
6 would disserve the very goal of vigorous and effective advocacy." *Id.* at 754, at 3314.

7  
8 **ORDER**

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

11 DATED this 12 day of December, 2011.

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28  
  
DISTRICT JUDGE


14 DAVID ROGER  
15 DISTRICT ATTORNEY  
16 Nevada Bar #002781

17 BY

  
18 LISA LUZAICH  
19 Chief Deputy District Attorney  
20 Nevada Bar #005056

**CERTIFICATE OF SERVICE**

I, HOWARD CONRAD, certify that on the 19th day of December, 2011, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to KEITH BROWER, ESQ., AT 8275 SOUTH EASTERN AVE., LAS VEGAS, NEVADA 89123, for his review.

A handwritten signature in black ink, appearing to read 'Howard Conrad', is written over a horizontal line.

FILED

JAN 18 2012

*Heather Ungermann*  
CLERK OF COURT

1 NOED

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4  
5 DELARIAN K. WILSON,

6 Petitioner,

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

07C232494-1  
NOED  
Notice of Entry of Decision and Order  
1744181



Case No: 07C232494-1  
Dept No: XXIV

NOTICE OF ENTRY OF  
DECISION AND ORDER

11 PLEASE TAKE NOTICE that on January 6, 2012, the court entered a decision or order in this matter, a  
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you  
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is  
15 mailed to you. This notice was mailed on January 18, 2012.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 By: *Heather Ungermann*  
18 Heather Ungermann, Deputy Clerk

19 CERTIFICATE OF MAILING

20 I hereby certify that on this 18 day of January 2012, I placed a copy of this Notice of Entry of Decision and  
21 Order in:

22 The bin(s) located in the Office of the District Court Clerk of:  
23 Clark County District Attorney's Office  
Attorney General's Office - Appellate Division

24 ☒ The United States mail addressed as follows:

25 Delarian Wilson # 1022177  
26 P.O. Box 208  
Indian Springs, NV 89070

Keith C. Brower, Esq.  
8275 S. Eastern, Suite 200  
Las Vegas, NV 89123

27 *Heather Ungermann*  
28 Heather Ungermann, Deputy Clerk

ORIGINAL

43  
FILED

JAN 6 11 00 AM '12

*Ann L. ...*  
CLERK OF THE COURT

1 **ORDR**  
2 **DAVID ROGER**  
3 **Clark County District Attorney**  
4 **Nevada Bar #002781**  
5 **LISA LUZAICH**  
6 **Chief Deputy District Attorney**  
7 **Nevada Bar #005056**  
8 **200 Lewis Avenue**  
9 **Las Vegas, Nevada 89155-2212**  
10 **(702) 671-2500**  
11 **Attorney for Plaintiff**

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

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

12 **-vs-**

13 **DELARIAN WILSON,**  
14 **#1966773**

15 **Defendant.**

**CASE NO: 07C232494-1**

**DEPT NO: XXIV**

16 **FINDINGS OF FACT, CONCLUSIONS OF**

17 **LAW AND ORDER**

18 **DATE OF HEARING: DECEMBER 13, 2011**  
19 **TIME OF HEARING: 8:30 A.M.**

20 **THIS CAUSE** having come on for hearing before the Honorable Judge JAMES  
21 **BIXLER**, District Judge, on the 13th day of December, 2011, the Petitioner not being  
22 **present**, represented By **KEITH BROWER, ESQ.**, the Respondent being represented by  
23 **DAVID ROGER**, District Attorney, by and through **LISA LUZAICH**, Chief Deputy District  
24 **Attorney**, and the Court having considered the matter, including briefs, transcripts,  
25 **arguments of counsel**, and documents on file herein, now therefore, the Court makes the  
26 **following findings of fact and conclusions of law:**

27 //

28 //

07C232494-1  
FFCO  
Findings of Fact, Conclusions of Law and C  
1739641

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CLERK OF THE COURT

JAN 06 2012

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**FINDINGS OF FACT**

1. On April 17, 2007, the State of Nevada (hereinafter "State") filed an Amended Criminal Complaint charging Delarian K. Wilson (hereinafter "Defendant") with the following: Conspiracy to Commit Burglary (Gross Misdemeanor – NRS 199.480, 205.060); Conspiracy to Commit Robbery (Felony – NRS 199.480, 200.380); Burglary while in Possession of a Deadly Weapon (Felony – NRS 205.060); Robbery with Use of a Deadly Weapon (Felony – NRS 200.380, 193.165); Assault with Use of a Deadly Weapon (Felony – NRS 200.471, 193.165); First Degree Kidnapping with Use of a Deadly Weapon (Felony – NRS 200.310, 200.320, 193.165); Sexual Assault with Use of a Deadly Weapon (Felony – NRS 200.364, 200.366, 193.165); Coercion with Use of a Deadly Weapon (Felony – NRS 207.190, 193.165); and Open or Gross Lewdness with Use of a Deadly Weapon (Gross Misdemeanor – NRS 201.210, 193.165).
2. Thereafter, Defendant entered into negotiations with the State, and on August 20, 2007, the State filed an Information charging Defendant with the crimes alleged in the Amended Criminal Complaint.
3. On March 28, 2008, the State filed an Amended Information charging Defendant with the following: Counts 1 and 2 - Robbery with Use of a Deadly Weapon (Felony – NRS 200.380, 193.165); and Count 3 - Sexual Assault (Felony – NRS 200.364, NRS 200.366) and Defendant entered into a Guilty Plea Agreement with the State whereby he pled guilty to the crimes alleged in his Amended Information. On April 1, 2008, the court conducted its guilty plea canvass of Defendant and accepted his guilty plea.
4. On July 3, 2008, Defendant was sentenced as follows: Count 1 – Robbery with Use of a Deadly Weapon – a maximum of 180 months with a minimum parole eligibility of 72 months, with an equal and consecutive term, for the use of a deadly weapon, of a maximum of 180 months and a minimum of 72 months; Count 2 – Robbery with Use of a Deadly Weapon – a maximum of 180 months



1 with a minimum parole eligibility of 72 months, with an equal and consecutive  
2 term, for the use of a deadly weapon, of a maximum of 180 months and a  
3 minimum of 72 months; and Count 3 – Sexual Assault – life with the possibility  
4 of parole after 10 years. The court ruled that all sentences were to run  
5 consecutive to one another. The court also granted Defendant five hundred  
6 (500) days credit for time served.

- 7 5. Defendant's Judgment of Conviction was filed on July 16, 2008.
- 8 6. On August 5, 2008 Defendant filed his Notice of Appeal.
- 9 7. On July 7, 2009, the Nevada Supreme Court affirmed Defendant's Judgment of  
10 Conviction (Case No 52104). Remittitur issued on August 4, 2009.
- 11 8. On October 10, 2011, Defendant filed a Petition for Writ of Habeas Corpus. On  
12 November 1, 2011, the State filed its Response and Motion to Dismiss  
13 Defendant's Petition.
- 14 9. Defendant's petition, filed October 10, 2011, was filed outside the one-year  
15 limitation as strictly mandated by NRS 34.726; as such, the petition is time  
16 barred.
- 17 10. A petition subject to procedural bars may be considered on its merits if good  
18 cause is shown.
- 19 11. Defendant failed to plead facts sufficient to demonstrate to the satisfaction of  
20 the court that good cause for delay exists sufficient to overcome the one-year  
21 time bar.
- 22 12. Defendant received effective assistance of trial counsel.
- 23 13. Defendant received effective assistance of appellate counsel.
- 24 14. Defendant's petition is denied procedurally and on the merits.
- 25 15. Defendant's petition was time barred prior to Mr. Brower being appointed.

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CONCLUSIONS OF LAW

1. The mandatory provisions of NRS 34.726 read:

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.

(Emphasis added).

2. NRS 34.726 has been strictly applied. In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada Supreme Court rejected a habeas petition that was filed two days late, pursuant to the "clear and unambiguous" mandatory provisions of NRS 34.726(1). Gonzales reiterated the importance of filing the petition with the district court within the one year mandate, absent a showing of "good cause" for the delay in filing. Id., at 593, 590 P.3d at 902. The one-year time bar is therefore strictly construed.

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. 30, 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, 105 Nev. 63, 769 P.2d 72 (1989); see also Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247, 252 (1997); Phelps v. Director, 104 Nev. 656, 764 P.2d 1303 (1988).

5. Such an external impediment could be "that the factual or legal basis for a claim was not reasonably available to counsel, or that 'some interference by officials' made compliance impracticable." Hathaway, 71 P.3d at 506; quoting Murray v. Carrier, 477 U.S. 478, 488, 106 S.Ct. 2639, 2645 (1986); see also Gonzales, 118 Nev. at 595, 53 P.3d at 904; citing Harris v. Warden, 114 Nev. 956, 959-60 n. 4, 964 P.2d 785 n. 4 (1998).

1       6. In addition, to find good cause there must be a "substantial reason; one that  
2 affords a legal excuse." Hathaway, 71 P.3d at 506; quoting Colley v. State, 105 Nev. 235,  
3 236, 773 P.2d 1229, 1230 (1989), quoting State v. Estencion, 625 P.2d 1040, 1042 (Haw.  
4 1981).

5       7. The Nevada Supreme Court has specifically held that the district court has a  
6 duty to consider whether the procedural bars apply to a post-conviction petition and not  
7 arbitrarily disregard them. In State v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d  
8 1070 (2005), the Nevada Supreme Court held as follows:

9               Given the untimely and successive nature of [defendant's]  
10 petition, the district court *had a duty imposed by law* to consider  
11 whether any or all of [defendant's] claims were barred under  
12 NRS 34.726, NRS 34.810, NRS 34.800, or by the law of the case  
... [and] the court's failure to make this determination here  
constituted an arbitrary and unreasonable exercise of discretion.

13       [Emphasis added.] 121 Nev. at 234. (See also State v. Haberstroh, 119 Nev. 173,  
14 180-81, 69 P.3d 676, 681-82 (2003) wherein the Nevada Supreme Court held that parties  
15 cannot stipulate to waive, ignore or disregard the mandatory procedural default rules nor can  
16 they empower a court to disregard them.) A defendant's petition will not be considered on  
17 the merits if it is subject to the procedural bars and no good cause is shown. Id.

18       8. In order to assert a claim for ineffective assistance of counsel, a defendant  
19 must prove that he was denied "reasonably effective assistance" of counsel by satisfying the  
20 two-prong test set forth in Strickland v. Washington, 466 U.S. 668, 686-87, 104 S.Ct. 2052,  
21 2063-64 (1984). Under this test, the defendant must show: first, that his counsel's  
22 representation fell below an objective standard of reasonableness, and second, that but for  
23 counsel's errors, there is a reasonable probability that the result of the proceedings would  
24 have been different. See Strickland, 466 U.S. at 687-688, 694, 104 S.Ct. at 2065, 2068.  
25 "Effective counsel does not mean errorless counsel, but rather counsel whose assistance is  
26 '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v.  
27 Warden, Nevada State Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting  
28 McMann v. Richardson, 397 U.S. 759, 771, 90 S.Ct. 1441, 1449 (1970)).

1           9. The court begins with the presumption of effectiveness and then must  
2 determine whether the defendant has demonstrated by a preponderance of the evidence that  
3 counsel was ineffective. Means v. State, 120 Nev. 1001, 103 P.3d 35 (2004). This analysis  
4 does not indicate that the court should "second guess reasoned choices between trial tactics,  
5 nor does it mean that defense counsel, to protect himself against allegations of inadequacy,  
6 must make every conceivable motion no matter how remote the possibilities are of success."  
7 Donovan, 94 Nev. at 675, 584 P.2d at 711; citing Cooper, 551 F.2d at 1166 (9th Cir. 1977).  
8 In essence, the court must "judge the reasonableness of counsel's challenged conduct on the  
9 facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S.  
10 at 690, 104 S.Ct. at 2066.

11           10. Even if a defendant can demonstrate that his counsel's representation fell  
12 below an objective standard of reasonableness, he must still demonstrate prejudice and show  
13 a reasonable probability that, but for counsel's errors, the result of the trial would have been  
14 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
15 Strickland, 466 U.S. at 687.) "A reasonable probability is a probability sufficient to  
16 undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-89, 694).

17           11. To succeed on a claim of ineffective assistance of appellate counsel, the  
18 defendant must satisfy the two-prong test set forth by Strickland; that 1) appellate counsel's  
19 conduct fell below an objective reasonable standard, and 2) the omitted issue had a  
20 reasonable probability of success. 466 U.S. at 687-688, 694, 104 S. Ct. at 2065, 2068.  
21 There is a strong presumption that appellate counsel's performance fell within "the wide  
22 range of reasonable professional assistance." See United States v. Aguirre, 912 F.2d 555,  
23 560 (2nd Cir. 1990).

24           12. The Nevada Supreme Court has held that all appeals must be "pursued in a  
25 manner meeting high standards of diligence, professionalism and competence." Burke v.  
26 State, 110 Nev. 1366, 1368, 887 P.2d 267, 268 (1994). In Jones v. Barnes, 463 U.S. 745,  
27 751-52, 103 S. Ct. 3308, 3313 (1983), the Supreme Court recognized that part of  
28 professional diligence and competence involves "winnowing out weaker arguments on

1 appeal and focusing on one central issue if possible, or at most on a few key issues." In  
2 particular, a "brief that raises every colorable issue runs the risk of burying good arguments .  
3 . . in a verbal mound made up of strong and weak contentions." *Id.* at 753, at 3313. The  
4 Court also held that, "for judges to second-guess reasonable professional judgments and  
5 impose on appointed counsel a duty to raise every 'colorable' claim suggested by a client  
6 would disserve the very goal of vigorous and effective advocacy." *Id.* at 754, at 3314.

7 **ORDER**

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

10 DATED this 12<sup>th</sup> day of December, 2012.

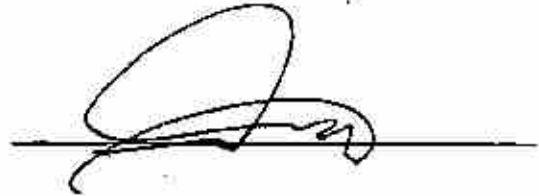
11   
12 DISTRICT JUDGE

13  
14 DAVID ROGER  
15 DISTRICT ATTORNEY  
16 Nevada Bar #002781

17 BY   
18 LISA LUZAICH  
19 Chief Deputy District Attorney  
20 Nevada Bar #005056  
21  
22  
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28


**CERTIFICATE OF SERVICE**

I, HOWARD CONRAD, certify that on the 19th day of December, 2011, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to KEITH BROWER, ESQ., AT 8275 SOUTH EASTERN AVE., LAS VEGAS, NEVADA 89123, for his review.

A handwritten signature in black ink, appearing to read 'Howard Conrad', is written over a horizontal line.



1 Keith C. Brower, Esq.  
2 Nevada Bar #007288  
3 The Law Offices Of Keith C. Brower, LLC  
4 8275 South Eastern Suite 200  
5 Las Vegas, NV 89123  
6 (702) 451-4921  
7 Attorney For The Defendant



CLERK OF THE COURT

8 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN**  
9 **AND FOR THE COUNTY OF CLARK**

10 STATE OF NEVADA, )  
11 Plaintiff, )  
12 vs. )

Case No.: 07C232494-1  
Dept. No.: XXIV

13 DELARIAN WILSON, )  
14 ID# 1966773 )  
15 Defendant )

16 **MOTION FOR CLARIFICATION AND/OR RECONSIDERATION OF DENIAL OF**  
17 **DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST-**  
18 **CONVICTION)**

19 Delarian Wilson, hereinafter Defendant, by and through his counsel brings this  
20 Motion For Clarification And/Or Reconsideration Of Denial Of Defendant's Petition For  
21 Writ Of Habeas Corpus (Post-Conviction).

22 On or about December 13, 2011, Defendant's Petition For Writ Of Habeas Corpus  
23 (Post-Conviction) was heard in this honorable Court. This petition was heard in the  
24 Defendant's absence. Defendant wishes to have this Court clarify, in his presence, its  
25 position regarding the denial of his petition, and Defendant wishes to address issues that he  
26 believes this Court misapplied in ruling on his petition.

27 Specifically, Defendant is concerned about this Court's ruling that his petition was  
28 procedurally time-barred. As Defendant has attempted to make known to this Court, prior  
counsel for the Defendant did not inform him of the progress of his appeal with the Nevada  
Supreme Court. Defendant believes that this Court was not adequately advised of his claim  
that his prior counsel did not inform him of his case status, and the Supreme Court's denial

002140

1 of his appeal, and instead advised Defendant that his case was still pending in the Nevada  
2 Supreme Court. With this erroneous information from prior counsel, Defendant submits that  
3 he could not be aware of the need to file a petition to avoid a procedural time-bar. As this  
4 Court received information from prior counsel in a bench conference prior to the  
5 appointment of counsel regarding the instant petition, Defendant prays that this Court can  
6 reconsider his petition and/or clarify its decision regarding its ruling.

7 Defendant prays that this Court will order his presence at this proceeding and that he  
8 be allowed to address this Court regarding his petition at the time set forth for the hearing on  
9 this motion.


10 Dated this 30<sup>th</sup> day of January, 2012.

11  
12 By:   
13 Keith C. Brower, Esq.  
14 Attorney For The Defendant

15 **NOTICE OF MOTION**

16  
17 PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion For  
18 Clarification And/Or Reconsideration Of Denial Of Defendant's Petition For Writ Of  
19 Habeas Corpus (Post-Conviction) on for hearing on the 14 day of February 2012, at the  
20 hour of 8:30 a.m, in Department 24 of the Clark County District Court.

21 DATED this 30<sup>th</sup> day of January, 2012.

22  
23   
24 Keith C. Brower, Esq.  
25 Nevada Bar#7288  
26 8275 South Eastern #200  
27 Las Vegas, Nevada 89123  
28 Attorney for Defendant

1 KEITH C. BROWER, ESQ.  
2 NEVADA BAR#007288  
3 THE LAW OFFICES OF KEITH C. BROWER, LLC  
4 8275 SOUTH EASTERN #200  
5 LAS VEGAS, NEVADA 89123  
6 (702) 451-4921

FILED

FEB 21 2012

*John L. Bixler*  
CLERK OF COURT

ORIGINAL

7 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND  
8 FOR THE COUNTY OF CLARK

9 STATE OF NEVADA  
10 Plaintiff,

11 vs.

12 DELARJAN WILSON,  
13 ID# 1966773  
14 Defendant

Case No.: 07C232494-1

Dept. No.: XXIV

07C232494-1  
ORDR  
Order  
1776210



15 ORDER STAYING THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

16 It is hereby ORDERED, ADJUDGED, AND DECREED, that The Findings Of  
17 Fact, Conclusions Of Law And Order filed on or about January 6, 2012 with a Notice Of Entry Of  
18 Order filed on or about January 18, 2012 be stayed until Defendant's timely filed Motion For  
19 Reconsideration can be heard.

20 IT IS SO ORDERED.

21 Dated this 24<sup>th</sup> day of February, 2012.

22 By: *James Bixler*  
23 The Honorable James Bixler

24 Respectfully Submitted By:

25 *Keith C. Brower*  
26 Keith C. Brower, Esq


RECEIVED

FEB 21 2012

CLERK OF THE COURT

602142

1 KEITH C. BROWER, ESQ.  
2 NEVADA BAR#007288  
3 THE LAW OFFICES OF KEITH C. BROWER, LLC  
4 8275 SOUTH EASTERN #200  
5 LAS VEGAS, NEVADA 89123  
6 (702) 451-4921

  
CLERK OF THE COURT

7 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND**  
8 **FOR THE COUNTY OF CLARK**

9 STATE OF NEVADA )  
10 Plaintiff, )

Case No. : 07C232494-1  
Dept. No.: XXIV


11 vs. )

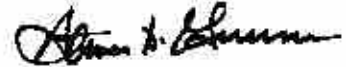
12 DELARIAN WILSON, )  
13 ID# 1966773 )  
14 Defendant )

15 **NOTICE OF APPEAL**

16 Notice is hereby given that Delarian Wilson, defendant above named, hereby appeals to the  
17 Supreme Court of Nevada from the denial of Defendant's Post Conviction Petition For Writ Of  
18 Habeas Corpus and The Findings Of Fact, Conclusions Of Law And Order filed on or about January  
19 6, 2012 with a Notice Of Entry Of Order filed on or about January 18, 2012.

20 Dated this 21<sup>st</sup> day of February, 2012.

21   
22 Keith C. Brower, Esq.  
23 The Law Offices Of Keith C. Brower, LLC.  
24 8275 South Eastern #200  
25 Las Vegas, NV 89123  
26 (702) 451-4921  
27 Attorney For Appellant  
28

  
CLERK OF THE COURT

1 **OPPS**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 LISA LUZAICH  
6 Chief Deputy District Attorney  
7 Nevada Bar #005056  
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-

12 DELARIAN WILSON,  
13 #1966773

14 Defendant.

CASE NO: C-07-232494-1-1

DEPT NO: XXIV

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR CLARIFICATION**  
16 **AND/OR RECONSIDERATION OF DENIAL OF DEFENDANT'S**  
17 **PETITION FOR WRIT OF HABEAS CORPUS**

18 DATE OF HEARING: MARCH 13, 2012  
19 TIME OF HEARING: 8:30 A.M.

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
21 District Attorney, through JAMES R. SWEETIN, Chief Deputy District Attorney, and  
22 hereby submits the attached Points and Authorities in Opposition to Defendant's Motion for  
23 Clarification and/or Reconsideration of Denial of Defendant's Petition for Writ of Habeas  
24 Corpus.

25 This Opposition is made and based upon all the papers and pleadings on file herein,  
26 the attached points and authorities in support hereof, and oral argument at the time of  
27 hearing, if deemed necessary by this Honorable Court.

28 //

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On April 17, 2007, the State of Nevada (hereinafter "State") filed an Amended  
4 Criminal Complaint charging Delarian K. Wilson (hereinafter "Defendant") with the  
5 following: Conspiracy to Commit Burglary (Gross Misdemeanor – NRS 199.480, 205.060);  
6 Conspiracy to Commit Robbery (Felony – NRS 199.480, 200.380); Burglary while in  
7 Possession of a Deadly Weapon (Felony – NRS 205.060); Robbery with Use of a Deadly  
8 Weapon (Felony – NRS 200.380, 193.165); Assault with Use of a Deadly Weapon (Felony –  
9 NRS 200.471, 193.165); First Degree Kidnapping with Use of a Deadly Weapon (Felony –  
10 NRS 200.310, 200.320, 193.165); Sexual Assault with Use of a Deadly Weapon (Felony –  
11 NRS 200.364, 200.366, 193.165); Coercion with Use of a Deadly Weapon (Felony – NRS  
12 207.190, 193.165); and Open or Gross Lewdness with Use of a Deadly Weapon (Gross  
13 Misdemeanor - NRS 201.210, 193.165).

14 Thereafter, Defendant entered into negotiations with the State, and on August 20,  
15 2007, the State filed an Information charging Defendant with the crimes alleged in the  
16 Amended Criminal Complaint.

17 On March 28, 2008, the State filed an Amended Information charging Defendant with  
18 the following: Counts 1 and 2 - Robbery with Use of a Deadly Weapon (Felony – NRS  
19 200.380, 193.165); and Count 3 - Sexual Assault (Felony – NRS 200.364, NRS 200.366).

20 Also on March 28, 2008, Defendant entered into a Guilty Plea Agreement with the  
21 State whereby he pled guilty to the crimes alleged in his Amended Information. On April 1,  
22 2008, the court conducted its guilty plea canvass of Defendant and accepted his guilty plea.

23 On July 3, 2008, Defendant appeared for sentencing with his counsel, Mr. Oronoz.  
24 The court, after hearing arguments by both the State and Mr. Oronoz, sentenced Defendant  
25 as follows: Count 1 – Robbery with Use of a Deadly Weapon – a maximum of 180 months  
26 with a minimum parole eligibility of 72 months, with an equal and consecutive term, for the  
27 use of a deadly weapon, of a maximum of 180 months and a minimum of 72 months; Count  
28 2 – Robbery with Use of a Deadly Weapon – a maximum of 180 months with a minimum



1 parole eligibility of 72 months, with an equal and consecutive term, for the use of a deadly  
2 weapon, of a maximum of 180 months and a minimum of 72 months; and Count 3 – Sexual  
3 Assault – life with the possibility of parole after 10 years. The court ruled that all sentences  
4 were to run consecutive to one another. The court also granted Defendant five hundred  
5 (500) days credit for time served. Defendant's Judgment of Conviction was filed on July 16,  
6 2008.

7 On August 5, 2008 Defendant filed his Notice of Appeal.

8 On July 7, 2009, the Nevada Supreme Court affirmed Defendant's Judgment of  
9 Conviction (Case No 52104). Remittitur issued on August 4, 2009.

10 On October 10, 2011, Defendant filed a Petition for Writ of Habeas Corpus. On  
11 November 1, 2011, the State filed its Response and Motion to Dismiss. On December 5,  
12 2011, Defendant filed his Reply. On December 13, 2011, the District Court denied  
13 Defendant's Petition. The Findings of Fact, Conclusions of Law, and Order was filed on  
14 January 6, 2012.

15 On January 30, 2012, Defendant filed the instant Motion for Clarification and/or  
16 Reconsideration.

17 On February 21, 2012, the District Court filed an Order Staying the Findings of Fact,  
18 Conclusions of Law, and Order filed on January 6, 2012.

19 On February 21, 2012, Defendant filed a Notice of Appeal.

20 The State responds to Defendant's Motion for Clarification and/or Reconsideration as  
21 follows.

## 22 **ARGUMENT**

### 23 **I. THIS COURT LACKS JURISDICTION OVER DEFENDANT'S** 24 **MOTION**

25 The district court lacks jurisdiction to consider Defendant's present motion.  
26 "Jurisdiction in an appeal is vested solely in the Supreme Court until remittitur issues to the  
27 district court...the Supreme Court has control and supervision of an appealed matter from  
28 filing of the notice of appeal until issuance of the certificate of judgment. The certificate of

1 judgment and various other documents constitute remittitur...a district judge lacks  
2 jurisdiction over a case until remittitur is issued." Buffington v. State, 110 Nev. 124, 126,  
3 868 P.2d 643, 644 (1994).

4 In this case, Defendant filed a Notice of Appeal of the denial of his Petition for Writ  
5 of Habeas Corpus on February 21, 2012. Defendant's case came under the control and  
6 supervision of the Nevada Supreme Court when the Notice of Appeal was filed and remains  
7 under their control until remittitur issues on the appeal. Therefore, this Court lacks  
8 jurisdiction over Defendant's case until the Supreme Court issues remittitur and cannot  
9 consider Defendant's present motion.

10 **II. EVEN IF THIS COURT HAD JURISDICTION, DEFENDANT'S**  
11 **MOTION MUST STILL BE DENIED.**

12 Defendant's motion is not properly before the Court because Defendant has not  
13 obtained leave of the Court to file it per Eighth Judicial District Court Rule (EJDCR) 2.24(a)  
14 which states: "No motions once heard and disposed of may be renewed (a) in the same  
15 cause, nor may the same matters therein embraced be reheard, unless by leave of the court  
16 granted upon motion therefore, after notice of such motion to the adverse parties."

17 Furthermore, there is no reason to reconsider the motion because Defendant has not  
18 shown that the Court overlooked or misapprehended any material issue of fact or law. See  
19 NRAP 40(a). Instead, Defendant claims as good cause that Defendant was unaware that his  
20 appeal was denied. Per Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003), in order for  
21 that to constitute good cause to overcome the one year time bar, Defendant must have filed  
22 his petition within a reasonable time after he learned or reasonably should have learned that  
23 his appeal was denied. Defendant cannot meet that test in this case.

24 //

25 //

26 //

27 //

28 //

1 **CONCLUSION**


2 Based on the foregoing arguments, the State respectfully requests that Defendant's  
3 motion be denied.

4 DATED this 24th day of February, 2012.

5 Respectfully submitted,

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

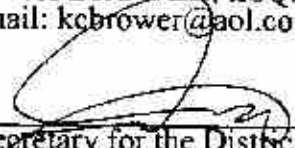
9 BY

10   
11 LISA LUZAICH  
12 Chief Deputy District Attorney  
13 Nevada Bar #005056  
14  
15  
16  
17  
18  
19

20 **CERTIFICATE OF ELECTRONIC FILING**

21 I, HOWARD CONRAD, hereby certify that service of the above and foregoing, was  
22 made this 24th day of February, 2012, by Electronic Filing to:

23 KEITH BROWER, ESQ.  
24 Email: kcbrower@aol.com

25   
26 Secretary for the District Attorney's Office  
27  
28

hjc/SVU

ORIGINAL

FILED

MAR 1 10 41 AM '12

CLERK

OPI

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
JAMES R. SWEETIN  
Chief Deputy District Attorney  
Nevada Bar #005144  
200 Lewis Avenue  
Las Vegas, Nevada, 89155-2211  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DELARIAN KAMERON WILSON,  
#1966773

Defendant.

Case No. C-07-232494-1

Dept No. XXIV

070232494-1  
OPI  
Order for Production of Inmate  
1787124



ORDER FOR PRODUCTION OF INMATE

DELARIAN KAMERON WILSON, BAC # 1022177

DATE OF HEARING: MARCH 13, 2012

TIME OF HEARING: 8:30 A.M.

TO: BRIAN WILLIAMS, WARDEN, S.D.C.C.

TO: DOUGLAS C. GILLESPIE, Sheriff of Clark County, Nevada

Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by STEVEN B. WOLFSON, District Attorney, through JAMES R. SWEETIN, Chief Deputy District Attorney, and good cause appearing therefor,

IT IS HEREBY ORDERED that BRIAN WILLIAMS, WARDEN of S.D.C.C. shall be, and is, hereby directed to produce DELARIAN KAMERON WILSON, Defendant in Case No. C-07-232494-1, on a charge of ROBBERY WITH USE OF A DEADLY WEAPON and SEXUAL ASSAULT wherein THE STATE OF NEVADA is the Plaintiff,

RECEIVED

MAR - 1 2012

P:\WPDOCS\ORDR\FORDR\OUTLYING\7H07H031710.doc


002149

Dear Mr. Oronoz,

3/23/09

I hope this letter finds you in the best of health and spirits. First and foremost I want to thank you for working on and finalizing my appeal. I also want to wish you the best on your present and future cases.

I write to you today in request of a copy of my brief and appendix as well as copies of my testimony and co-defendants' "witness" trial. I've been in direct contact with these items for several weeks now. I've called your office but have been unable to reach you. I also was able to speak to Mr. Perdoma who informed it would send them but I have yet to receive them. Due to the time constraints during the appeal process it is very important to have all materials pertaining to my case or appeals. So I would ask of your earliest convenience that you would have these three materials sent directly to me as soon as possible. Please your prompt response to this matter would be greatly appreciated. Thanks and God bless.

Sincerely,  


002050

7 of 7

ROBERT M. DRASKOVICH  
JAMES A. ORONoz

# DRASKOVICH & ORONoz

TRIAL LAWYERS

AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

THOMAS A. ERICSSON  
of Counsel

December 24, 2008

Delarian Wilson  
ID Number 1022177  
Ely State Prison  
P.O. Box 1989  
Ely, Nevada 89301

Dear Delarian,

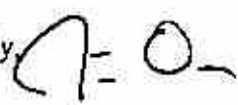
We are in receipt of your correspondence and hope that you are doing well. Please allow this letter to update you on the status of your appeal.

On September 10, 2008, we filed a transcript request form requesting the production of transcripts of numerous district court proceedings. On November 17, 2008, the Nevada Supreme Court ordered court reporters Jackie Jenelle and Lee Bahr to produce the requested transcripts within 30 days, and granted us 70 days from the day of the order to file and serve the Opening Brief and Appendix. To date, we have not received transcripts for the following requested dates: 4/10/08; 4/11/08; 4/14/08; 4/15/08; 4/16/08; 4/17/08; 4/18/2008; and 4/21/08. These are the trial transcripts, and may be helpful to your appeal. Therefore, we have filed a motion to increase the time to file our opening brief.

With regard to your substantive appeal issues, as we have discussed, we intend to pursue issues related to the constitutionality of your sentence, in light of the variance between your sentence and that of your co-defendant, Narcus Wesley. Some of your appeal issues may be shaped by the content of transcripts which we have not yet received, and we look forward to discussing your appeal issues with you in greater detail in the near future.

Please contact me with any questions regarding the above issues.

Sincerely,



James A. Oronoz, Esq.

CC Lisa Wilson



#1022177

DETROIT WILSON

PO BOX 1989

ELI, NV 89301

LEGAL MAIL

CONFIDENTIAL



ORIGINAL

27

CERT  
JAMES A. ORONOZ, ESQ.  
Nevada Bar No. 6769  
ORONOZ LAW OFFICES  
700 South 3rd Street  
Las Vegas, Nevada 89101  
702-878-2889  
Attorney for Defendant

FILED

AUG 28 4 33 PM '10

*James A. Ornoz*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DELARIAN WILSON, aka Delarian

Kameron Wilson

Defendant.

CASE NO: C232497  
DEPT. NO: XXIV

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on August 19, 2010, a true and correct copy of the ENTIRE  
CASE FILE was deposited in the US Mail in Las Vegas, Nevada, first class mail postage prepaid  
in full and affixed thereon, addressed to:

DELARIAN WILSON #1022177  
C/O Ely State Prison  
P.O. Box 1989  
Ely, Nevada 89301

07C232464-1  
CERT  
Certificate of Mailing  
906419



RECEIVED

AUG 20 2010

CLERK OF THE COURT

*[Signature]*  
An Employee of JAMES A. ORONOZ, ESQ.

002053

FILED  
SEP 29 2010  
CLERK OF COURT

IN THE 8TH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

DELORIAN K. WILSON

CASE NO. CZ32994-1

PETITIONER,

CAUSE NO. 24

STATE OF NEVADA

RESPONDENT

07C232194-1  
REQT  
Request  
983751



10/19/10

REQUEST FOR TRANSCRIPTS / COURT PROCEEDINGS

COMES NOW, PETITIONER, DELORIAN K. WILSON, PRO PER, AND  
RESPECTFULLY MOVES THIS HONORABLE COURT FOR AN ORDER TO MR. JAMES  
A. ORANGE, THE CLERK ATTORNEY OF RECORD, OR ALTERNATIVELY THE CLERK OF  
THE COURT TO GRANT PETITIONER A COPY OF TRANSCRIPTS FOR DISTRICT  
COURT PROCEEDINGS 5/9/07, 6/13/07, 11/1/07, 1/24/08, 3/27/08, TRIED  
CALENDAR CALL; 4/10/08, 4/11/08, 4/14/08, 4/15/08, 4/16/08, 4/17/08, 4/18/08,  
4/21/08; AND MOTIONS FILED IN THIS COURT "MOTION TO REVOKE INVESTIGATION"  
8/16/07; MOTION TO REVOKE SENTENCING, 5/10/08.

REITERATION

THE PETITIONER, DELORIAN K. WILSON AN INDIGENT PRISONER FILED  
A MOTION IN THE COURT 8/4/10 FOR AN ORDER INSTRUCTING THE ATTORNEY OF  
RECORD TO PROVIDE PETITIONER WITH A COMPLETE AND ACCURATE COPY OF THE  
CASE FILE IN THE ABOVE ENTITLED CASE NUMBER INCLUDING THE ABOVE COURT  
DOCUMENTS. IN REPLY OF YOUR ORDER PETITIONER DID RECEIVE A CASE FILE  
FROM MR. ORANGE'S OFFICE BUT WITHOUT THE DOCUMENTS LISTED ABOVE. PETITIONER  
HAS TRIED CONTACTING MR. ORANGE ABOUT THIS MATTER BUT CONTINUES TO BE UNSUCCESSFUL.

Pg. 1

002054

RECEIVED

SEP 28 2010

CLERK OF THE COURT

1 ESSEX (SEE EXHIBIT). AS MENTIONED IN THE PREVIOUS MOTION FILED IN  
2 THIS COURT PETITIONERS HAVE BEEN REQUESTING THESE DOCUMENTS FROM  
3 COUNSEL FOR OVER TWO YEARS NOW. COUNSEL CONTINUES TO CLAIM HE DOES  
4 NOT HAVE THESE COURT DOCUMENTS, WHEN THE MOTIONS FILED ON MY  
5 BEHALF, TRANSCRIPTS OF ALL COUNCILOR CALLS, AND TRANSCRIPTS OF PETITIONERS  
6 CO-DEFENDANTS TRIAL (AMARUS WISLEY). PETITIONERS AS WELL AS AIR. GRANDE  
7 WANTED THESE TRANSCRIPTS WOULD BE HELPFUL FOR IDENTIFYING ISSUES TO  
8 APPEAL (SEE EXHIBIT). ON 9/10/08 AIR. GRANDE FILED A TRANSCRIPT REQUEST  
9 FOR THESE PROCEEDINGS (SEE EXHIBIT), AND THE NEVADA SUPREME COURT CLERK  
10 OF COURT GUARANTEED A NOTICE TO COURT REPORTERS JAMIE JANEUE NELSON  
11 AND BILL NELSON TO SUBMIT THE REQUESTED DOCUMENTS TO AIR. GRANDE'S OFFICE  
12 ON 10/21/08 (SEE EXHIBIT). FURTHERMORE COURT REPORTER LEE M. SMITH PROVIDED  
13 A CERTIFICATE OF DELIVERY TO THE SUPREME COURT OF NEVADA ON 11/5/08  
14 INFORMING THE COURT HE WAS DELIVERING THE REQUESTED TRANSCRIPTS TO  
15 AIR. GRANDE'S OFFICE (SEE EXHIBIT).

16 THEREFORE, PETITIONERS RESPECTFULLY REQUEST THIS COURT TO HAVE  
17 AIR. JAMES A. GRANDE Supply THESE DOCUMENTS TO PETITIONERS, OR ALTERNI-  
18 ACTIVELY THE CLERK OF THIS COURT WITH MINIMAL FRAGMENT OF DELAY DUE  
19 TO COURT TIME LIMITS IN THE APPELLATE PROCESS. PETITIONERS ALSO REQUEST  
20 THAT THESE COURT DOCUMENTS BE PROVIDED TO PETITIONERS WITHOUT COST.  
21 PETITIONERS ARE TRYING TO IDENTIFY ISSUES TO APPEAL AND THESE DOCUMENTS  
22 ARE ESSENTIAL TO THAT REQUEST. THANK YOU.

### 23 POINTS AND AUTHORITIES

24 IN GRUBIN V. ILLINOIS, 357 U.S. 12, 76: O. CT 585, 100 L.ED. 591  
25 THE UNITED STATES SUPREME COURT HELD THAT IT VIOLATES THE DUE PROCESS  
26 AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENTS WHEN  
27

1 A STATE DENIES AN INDIGENT DEFENDANT THE TRANSCRIPTS NECESSARY  
2 FOR HIS APPEAL. THE COURT HELD:

3 "THERE CAN BE NO EQUAL JUSTICE WHERE THE KIND OF TRIAL A PERSON  
4 GETS DEPENDS UPON THE AMOUNT OF MONEY HE HAS. DISTRICT DEFENDANTS  
5 MUST BE AFFORDED AN ADEQUATE APPEAL REVIEW AS DEFENDANTS WHO  
6 HAVE MONEY ENOUGH TO BUY TRANSCRIPTS. PLAINLY THE ABILITY TO PAY COSTS  
7 IN PRIVATE BRINGS NO RATIONAL RELATIONSHIP TO THE DEFENDANT'S GUILT OR  
8 INNOCENCE AND CITING OF WEALTH AS AN EXCUSE TO DENY A DEFENDANT  
9 OF A FAIR TRIAL."

10 THIS GRIFPIN PRINCIPLE HAS BEEN APPLIED IN OTHER UNITED STATES  
11 (SUPERIOR COURT CASES AS WELL. SEE BURNS V. OHIO 360 US 252, 79:  
12 O. CT 1164, 3 L. ED. 1207 (APPLICABLE TO STATE COLLATERAL PROCEEDINGS)  
13 ALSO, SMITH V. DENNETT, 305 US. 708, 81: O. CT 895, 6 L. ED. 59 (NO  
14 REQUIREMENT OF PAYING JUDICIAL FEES). THE NEVADA (SUPREME COURT  
15 HAS ALSO ADOPTED THE GRIFPIN PRINCIPLE TO NEVADA. SEE STATE VS  
16 EIGHTH JUDICIAL DISTRICT COURT, 596 P. 2d 680.

### 17 CONCLUSION

18 BASED UPON THE ABOVE CITED FACTS, POINTS, AUTHORITIES, AND  
19 ARGUMENTS, PETITIONER RESPECTFULLY REQUEST THIS COURT TO  
20 GRANT THIS REQUEST

21  
22 DATED THIS 23<sup>rd</sup> DAY OF SEPTEMBER 2010

23  
24 RESPECTFULLY SUBMITTED,

25 *Sharon K. Wilson*

26 PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY PURSUANT TO N.R.C.P. 5(b) THAT I AM  
THE PETITIONER IN THE FOREGOING NOTICE OF MOTION FOR REQUEST  
FOR TRANSCRIPTS / COURT PROCEEDINGS ON THIS 23rd DAY OF  
SEPTEMBER, 2010, I DID SERVE A TRUE AND CORRECT COPY  
OF THE ABOVE MENTIONED DOCUMENT, BY GIVING IT TO A PRISON  
OFFICIAL AT THE ELI STATE PRISON TO DEPOSIT IN THE US MAIL, SEALED  
IN AN ENVELOPE, POSTAGE PRE-PAYED, AND ADDRESSED AS FOLLOWS:

CLERK OF THE COURT

DAVID ROGER

200 LEWIS AVE. 3RD FLOOR

OFFICE OF THE DISTRICT ATTORNEY

LAS VEGAS, NV 89155-1160

200 LEWIS AVENUE

LAS VEGAS, NV 89155-2212

DATED THIS 23rd DAY OF SEPTEMBER, 2010.

Debra K. Wilson

PETITIONER

AFFIRMATION

PURSUANT TO N.R.S. 289A.030

THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PRECEDING REQUEST  
FOR TRANSCRIPTS / COURT PROCEEDINGS

(TRUE OF DOCUMENT)

FILED IN DISTRICT COURT CASE NO. C23294

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY  
PERSON

Debra K. Wilson

PG. 4

SEPTEMBER 23rd, 2010

102057



EXHIBITS

" MATERIAL EVIDENCE "

002058

# Draskovich & Oronoz

Trial Lawyers

April 16, 2009

Delarian Wilson  
ID Number 1022177  
Ely State Prison  
P.O. Box 1989  
Ely, Nevada 89301

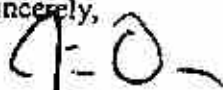
Dear Delarian,

We received your correspondence and hope this response finds you well. Yesterday we received the State's response to our opening brief. Accordingly, we will file a reply brief.

The transcripts you requested will be forthcoming, as well as copies of all appellate pleadings.

Please contact me with any questions regarding the above issues.

Sincerely,



James A. Oronoz, Esq.

August 25, 2010; 11:20 AM

Dear Mr. Cronoz,

I am in receipt of your letter written August 19, 2010. I received a copy of my case file with the exception of a few items that were requested for (specifically),

- (1) Motion to Appoint Investigator, Filed 8-16-07
- (2) Motion to Rebut Sentencing, Filed 5-10-08
- (3) Transcripts of Chandler Call, Dates 5/9/07, 6/13/07, 11/1/07, 1/24/08, 3/27/08

- (4) Transcripts of Co-Defendants Nickles West's Trial.

You have told me that you've had these transcripts, but I have yet to receive them. They were certainly handed to you and I am sure you get the three copies, for they will be helpful for my motion.

- (5) I (again) ask for the two letters you said you would write for me. A letter of withdrawal of counsel, as our time has commenced two, a letter concerning I was not notified about my order of appearance, and my remittitur clock starting by you until first, a telephone conversation on the afternoon of 7/30/10 and by mail in receipt of my motion to order instructing counsel to provide a copy of entire case file and all documents in cases C23294 (District Court, 5/2/04) (New Mexico Supreme Court) dated 8/24/10.
- Again, your prompt response to this letter will much appreciated.

Debra Wilson

002060

ROBERT M. DRASKOVICH  
JAMES A. ORONOZ

# DRASKOVICH & ORONOZ

TRIAL LAWYERS

AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

THOMAS A. ERICSSON  
of Counsel

December 24, 2008

Delarian Wilson  
ID Number 1022177  
Ely State Prison  
P.O. Box 1989  
Ely, Nevada 89301

Dear Delarian,

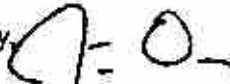
We are in receipt of your correspondence and hope that you are doing well. Please allow this letter to update you on the status of your appeal.

On September 10, 2008, we filed a transcript request form requesting the production of transcripts of numerous district court proceedings. On November 17, 2008, the Nevada Supreme Court ordered court reporters Jackie Jenelle and Lee Bahr to produce the requested transcripts within 30 days, and granted us 70 days from the day of the order to file and serve the Opening Brief and Appendix. To date, we have not received transcripts for the following requested dates: 4/10/08; 4/11/08; 4/14/08; 4/15/08; 4/16/08; 4/17/08; 4/18/2008; and 4/21/08. These are the trial transcripts, and may be helpful to your appeal. Therefore, we have filed a motion to increase the time to file our opening brief.

With regard to your substantive appeal issues, as we have discussed, we intend to pursue issues related to the constitutionality of your sentence, in light of the variance between your sentence and that of your co-defendant, Narcus Wesley. Some of your appeal issues may be shaped by the content of transcripts which we have not yet received, and we look forward to discussing your appeal issues with you in greater detail in the near future.

Please contact me with any questions regarding the above issues.

Sincerely,



James A. Oronoz, Esq.

CC Lisa Wilson

ORIGINAL

RECEIVED  
Las Vegas Drop Box  
CLERK OF SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA  
2008 SEP 5 PM 4:21

DELARIAN WILSON,

NO. 52104

FILED

Appellant,

SEP 10 2008

vs.

THE STATE OF NEVADA,

TRACE K. LIPIDMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

Respondent.

**REQUEST FOR TRANSCRIPT OF PROCEEDINGS**

TO: J&B Nelson, Court Reporter, District Court, Department No. XXIV

Appellant requests preparation of a transcript of the proceedings before the district court as follows:

Judge or officer hearing the proceeding: The Honorable James Bixler.

Number of copies required: one

<u>Date</u>	<u>Proceeding</u>	<u>Reporter</u>
March 28, 2008	change of plea	J&B Nelson
July 3, 2008	Sentencing	J&B Nelson
April 9, 2008	Trial by Jury	J&B Nelson
April 10, 2008	Trial by Jury	J&B Nelson
April 11, 2008	Trial by Jury	J&B Nelson
April 14, 2008	Trial by Jury	J&B Nelson
April 15, 2008	Trial by Jury	J&B Nelson
April 16, 2008	Trial by Jury	J&B Nelson
April 17, 2008	Trial by Jury	J&B Nelson
April 18, 2008	Trial by Jury	J&B Nelson
April 21, 2008	Trial by Jury	J&B Nelson



002062

10-23431

1 I hereby certify that on or about the 5<sup>th</sup> day of September 2008, an Order  
2 requesting these transcripts was submitted to the district court and the court reporter  
3 named above. A deposit was not paid as this is a criminal case and the Defendant is  
4 indigent.

5 Dated this 5<sup>th</sup> day of September, 2008.

6  
7 DRASKOVICH & ORONOZ, P.C.

8   
9 JAMES A. ORONOZ, ESQ.  
Nevada Bar No. 8769

10  
11 CERTIFICATE OF MAILING

12 I hereby certify that in accordance with NRAP 25(1)(d) I sent true and accurate  
13 copies of the Request for Transcript of Proceedings, on the 5<sup>th</sup> day of September,  
2008, via United States mail, prepaid First-Class postage affixed thereto and  
addressed as follows:

14 J&B Nelson  
15 Clark County District Attorney  
c/o Department Appellate Division  
16 District Court  
200 S. Lewis Avenue  
Las Vegas, NV 89155

17 Attorney General  
Criminal Division  
555 E. Washington Ave. #3900  
18 Las Vegas, NV 89101

19   
20 An employee of DRASKOVICH & ORONOZ, P.C.

21 Dated this 5<sup>th</sup> day of September, 2008.

22 DRASKOVICH & ORONOZ, P.C.

23   
24 JAMES A. ORONOZ, ESQ.  
Nevada Bar No. 8769

002063



FILED  
SEP 17 4 29 PM '08  
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

DELAAN WILSON,

Defendant.

REQUEST FOR ROUGH DRAFT TRANSCRIPT

TO: Hon. Judge, Court Reporter  
District Court, Department 11, JTV

DELAAN WILSON, Defendant named above, requests a  
rough draft transcript of the proceedings before the District Court, as follows:

Dates or dates of proceedings. Change of plea: March  
26, 2008; sentencing: July 3, 2008; trial by jury: April 9, 2008,  
April 10, 2008, April 11, 2008, April 14, 2008, April 15, 2008,  
April 16, 2008, April 17, 2008, April 18, 2008, April 21, 2008.

Portion of the transcript requested: Entire hearing &  
trial transcript. All conversations, including with the jury and  
all proceedings, opening statements, testimony, and all other  
proceedings.

002064

There are two types of  $\alpha$ - $\beta$  unsaturated carbonyl compounds. The first type is the  $\alpha,\beta$ -unsaturated ketone, and the second type is the  $\alpha,\beta$ -unsaturated aldehyde. The  $\alpha,\beta$ -unsaturated ketone is formed by the condensation of a ketone with an enolate ion, and the  $\alpha,\beta$ -unsaturated aldehyde is formed by the condensation of an aldehyde with an enolate ion. The  $\alpha,\beta$ -unsaturated ketone is more stable than the  $\alpha,\beta$ -unsaturated aldehyde because of the presence of the carbonyl group. The  $\alpha,\beta$ -unsaturated ketone is also more reactive than the  $\alpha,\beta$ -unsaturated aldehyde because of the presence of the carbonyl group.

I conclude that a 100% probability serve is easy at this level, at the same time, since 50% are all opposing column.

That the above-named child requester shall have twenty  
 (20) days from the date of service of this document to prepare an  
 original and three copies at State expense and file with the  
 Clerk of Court in the County of \_\_\_\_\_, State of \_\_\_\_\_,  
 requested herein.

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 $\frac{1}{2} \times 4 = 2$ 

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1 the court  
2 reporter shall also deliver copies of the rough draft transcript  
3 to the Supreme Court Clerk, the appellant's counsel and respondent  
4 counsel. The court shall also deliver a copy of the  
5 rough draft transcript to the court reporter.

6  
7 If the court shall so order, the court reporter shall  
8 deliver a copy of the rough draft transcript to the court reporter.

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CLERK H. ORONOV, ESS,  
815 E. Casino Center Boulevard  
Las Vegas, Nevada 89101  
Tel. 474-6222

002066

COMPUTATION OF FEES

To all the parties to this case, I have the honor to acknowledge the receipt of your letter of the 17th day of September, 2008, in which you requested that I compute the fees for the services rendered by me in this case.

I have reviewed the bill submitted by you, and I find that the same is correct. I have also reviewed the bill submitted by you, and I find that the same is correct.

David Rogers, Clerk of Court, is the one who has been assigned to this case. He is the one who has been assigned to this case.

By: David Rogers  
Clerk of Court

ARTIST OF CASE NO. 08-17-00000 Request for Rough Draft  
The artist of the rough draft is the one who has been assigned to this case.

DAVID ROGERS  
Clerk of Court

By: [Signature]

IT IS SO ORDERED that the transcripts of March 26, 2008; July 3, 2008; April 9, 2008; April 10, 2008; April 11, 2008; April 14, 2008; April 15, 2008; April 16, 2008; April 17, 2008; April 18, 2008; April 21, 2008, on notice hearing, including your direct examination of witnesses, opening statements, and closing arguments of trial counsel, recorded by J. H. Nelson, be transcribed at the expense of the State of Nevada.

DAVID AND ROGER CLERK

[Signature]  
September 17, 2008

002067

SUPREME COURT OF THE STATE OF NEVADA  
OFFICE OF THE CLERK

DELARIAN K. WILSON A/K/A DELARIAN KAMERON WILSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent

Supreme Court No. 52104  
District Court Case No. C232494

**NOTICE TO COURT REPORTER/RECORDER**

TO: Jackie Janelle (Nelson), Court Reporter  
Bill Nelson, Court Reporter

Pursuant to NRAP 9(b), the court reporter/recorder is required to submit to this court a certificate acknowledging delivery of requested transcripts within 10 days after the transcripts are delivered to the requesting party.

Please submit the required document to this office within 10 days.

DATE: October 21, 2008

Tracie Lindeman, Clerk of Court

By:   
Deputy Clerk

Notification List

Electronic

Paper

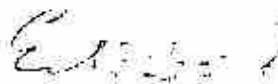
Draskovich & Oronoz, P.C. and James A. Oronoz  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Edward A. Friedland, District Court Clerk

08-27068

002068

FILED

DEC 5 11 11 AM '08

  
CLERK OF THE COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

THE HON. JAMES M. BIXLER, DISTRICT COURT JUDGE, PRESIDING

DELARIAN K. WILSON, aka  
DELARIAN KAMERON WILSON,  
Appellant,Sup. Ct. No. 52104  
District Court No. C-232494v.  
THE STATE OF NEVADA,  
Respondent

Certificate of Delivery to the Supreme Court

COURTHOUSE

December 5, 2008

Las Vegas, Nevada

Submitted by:

Lee M. Bahr, CP, CCR 173  
Court Reporter



CERTIFICATE OF DELIVERY

Lee M. Bahr, CP, CCR 173, Court Reporter, do hereby certify as follows:

That on or about November 17, 2008, I received an Order Regarding Transcript from the Supreme Court, which included:

1. Change of plea hearing regarding Delarian K. Wilson, aka Delarian Kameron Wilson, said hearing held before Judge James M. Bixler on 3/28/08.

2. Jury trial of Delarian K. Wilson (Narcus Wesley?) commencing April 9, 2008.

This change of plea transcript was prepared within a day or two of March 28, 2008, and filed with the Clerk of Court's office, with copies to the D. A.'s office, James Oronoz, counsel for Mr. Wilson, and Casey Landis of the Public Defender's office, representing Narcus Wesley, codefendant of Mr. Wilson.

The codefendant, Narcus Wesley, C-232494, was tried in Judge Bixler's court commencing April 9, 2008, and I reported the first three days of the jury trial of Mr. Wesley (codefendant) commencing on April 9, 10 and 11, 2008.

This Certificate of Delivery is to acknowledge that I personally received notice from the Supreme Court to transcribe the 3/28/08 hearing of the change of plea of Mr. Wilson (which had already been transcribed on or about 4/1/08, a 20 page transcript), and the first three days of the jury trial above-referred to, 4/9, 4/10 and 4/11/08.

I have now completed preparing the first three days of trial, April 9, 10 and 11, 2008 and I have filed said transcript with the Clerk of Court on December 5, 2008.

If the Supreme Court, or any counsel involved in these cases have any further questions, please contact.

I am supplying a duplicate cc of the 3/28/08 hearing to counsel involved, and copies of the April 10, 11 and 12, 2008, and the jury trial of Narcus Wesley will be supplied to Mr. Oronoz's office (representing Darnanian Kameron Wilson, and Mr. Winder's office (representing Narcus Wesley. Thank you.

Sincerely,

*Lee M. Bahr*

Lee M. Bahr, CP, CCR 173, Court Reporter  
CC to:

Clark County D. A. Appellate Division

Hon. James M. Bixler, District Judge

Attorney General's office

Nevada Certified Court Reporter's Board

Ed Friedland, Executive Officer

Public Defender's office; Draskovic/Oronoz Law Office

DAN WINDER

Deborah K. Wilson #1022177  
40 Sep 1989  
Ely, NV 89301

Legal mail

Edward N. Friedland  
Clerk of Court  
200 Lewis Ave. 3rd Floor  
Ely, NV 89301

Legal mail



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CLERK OF THE COURT

1 **OPPS**  
2 **DAVID ROGER**  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 **JAMES R. SWEETIN**  
6 Chief Deputy District Attorney  
7 Nevada Bar #005144  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

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

10 THE STATE OF NEVADA, )

11 Plaintiff, )

12 -vs- )

13 **DELARIAN K. WILSON,** )  
14 aka Delarian Kameron Wilson )  
15 #1966773 )

Defendant. )

CASE NO: C232494-1

DEPT NO: XXIV

16 **STATE'S OPPOSITION TO DEFENDANT'S REQUEST FOR**  
17 **TRANSCRIPTS/COURT PROCEEDINGS**

18 DATE OF HEARING: 10/19/2010  
19 TIME OF HEARING: 8:30 AM

20 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through  
21 JAMES R. SWEETIN, Chief Deputy District Attorney, and hereby submits the attached  
22 Points and Authorities in Opposition to Defendant's Request for Transcripts/Court  
23 Proceedings.

24 This opposition is made and based upon all the papers and pleadings on file herein,  
25 the attached points and authorities in support hereof, and oral argument at the time of  
26 hearing, if deemed necessary by this Honorable Court.

27 //

28 //

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On April 20, 2007, Delarian Wilson (hereinafter referred to as "Defendant") was  
4 charged by way of Information with Count 1 - Conspiracy to Commit Burglary (Gross  
5 (Gross Misdemeanor - NRS 199.480, 205.060); Count 2 - Conspiracy to Commit Robbery  
6 (Felony - NRS 199.480, 200.380); Counts 3 & 11 - Burglary While In Possession Of A  
7 Deadly Weapon (Felony - NRS 205.060); Counts 4, 6 & 9 - Robbery With Use Of A  
8 Deadly Weapon (Felony - NRS 200.380, 193.165); Counts 5 & 8 - Assault With Use Of A  
9 Deadly Weapon (Felony - NRS 200.471, 193.165); Count 10 - First Degree Kidnapping  
10 With Use Of A Deadly Weapon (Felony - NRS 200.310, 200.320, 193.165); Counts 12, 13,  
11 14, 15 & 17 - Sexual Assault With Use Of A Deadly Weapon (Felony - NRS 200.364,  
12 200.366, 193.165); Count 16 - Coercion With Use Of A Deadly Weapon (Felony - NRS  
13 207.190, 193.165); and Count 18 - Open Or Gross Lewdness With Use Of A Deadly  
14 Weapon (Gross Misdemeanor - NRS 201.210, 193.165).

15 On March 28, 2008, pursuant to a Guilty Plea Agreement filed in open court,  
16 Defendant pled guilty to Counts 1 & 2 - Robbery With Use Of A Deadly Weapon and Count  
17 3 - Sexual Assault. An Amended Information was filed on the same day to reflect  
18 Defendant's guilty plea.

19 On July 3, 2008, Defendant was sentenced as follows: as to Count 1 - to a maximum  
20 of one hundred eighty (180) months with a minimum parole eligibility of seventy-two (72)  
21 months, plus an equal and consecutive term of one hundred eighty (180) months maximum  
22 and seventy-two (72) months minimum for the use of a deadly weapon; as to Count 2 - to a  
23 maximum of one hundred eighty (180) months with a minimum parole eligibility of seventy-  
24 two (72) months, plus an equal and consecutive term of one hundred eighty (180) months  
25 maximum and seventy-two (72) months minimum for the use of a deadly weapon; as to  
26 Count 3 - to life with a minimum parole eligibility of ten (10) years; Counts 1, 2, & 3 to run  
27 consecutive to each other, with five hundred (500) days credit for time served. Judgment of  
28 Conviction was filed on July 16, 2008.

002073

1 Defendant filed a Notice of Appeal on July 24, 2008 challenging his judgment of  
2 conviction. On July 7, 2009, the Nevada Supreme Court affirmed Defendant's conviction.  
3 Remittitur was issued on August 4, 2009.

4 Defendant filed the instant Request for Transcripts/Court Proceedings on October 1,  
5 2010. The State responds as follows:

### 6 **ARGUMENT**

#### 7 **I. DEFENDANT IS NOT ENTITLED TO TRANSCRIPTS AT THE** 8 **STATE'S EXPENSE.**

9 The State is not required to furnish transcripts at its expense upon the inadequate  
10 request of a petitioner claiming inability to pay for them. Petitioner must satisfy the court  
11 that the points raised have merit, which will tend to be supported by a review of the record  
12 before he may have court records supplied at state expense. Peterson v. Warden, 87 Nev.  
13 134, 135-36, 483 P.2d 204, 205 (1971).

14 An indigent appellant's right to have access to needed transcripts was established in  
15 Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585 (1956). The protection of indigents from  
16 preclusive monetary requirements has been extended to other post-conviction proceedings.  
17 See Smith v. Bennett, 365 U.S. 708, 81 S.Ct. 895 (1961); Douglas v. Green, 363 U.S. 192,  
18 80 S.Ct. 1048 (1960) (docket fees in habeas corpus proceedings). However, the United  
19 States Supreme Court reiterated in Eskridge v. Washington State Board of Prison Terms and  
20 Paroles, 357 U.S. 214, 216, 78 S.Ct. 1061, 1062 (1958), what it said in Griffin: "We do not  
21 hold that a State must furnish a transcript in every case involving an indigent defendant."  
22 Although the Nevada Supreme Court recently ruled that an indigent defendant is entitled to  
23 free transcripts for his direct appeal, George v. State, 127 P.3d 1055 (2006), it also stated  
24 that Peterson remains good law as to post-conviction proceedings beyond the direct appeal.

25 Here, Defendant made a general request for transcripts with no supporting facts to  
26 show that his claims have any merit, that such merit would tend to be supported by the  
27 contents of the transcripts, and why he was unable to pay for a copy himself. He simply  
28 alleged that he wanted the transcripts and that they "would be helpful for identifying issues

1 to appeal." Such blanket statements fail to show how his argument has any merit to warrant  
2 furnishing transcripts at the State's expense, especially in light of the fact that the Nevada  
3 Supreme Court has already affirmed Defendant's conviction. Therefore, Defendant fails in  
4 his showing under Peterson.

5 **CONCLUSION**

6 Based upon the arguments as set forth above, the State respectfully requests that the  
7 court DENY Defendant's Request for Transcripts/Court Proceedings.

8 DATED this 13th day of October, 2010.

9 Respectfully submitted,

10 DAVID ROGER  
11 Clark County District Attorney  
12 Nevada Bar #002781

13 BY /s/ JAMES R. SWEETIN  
14 JAMES R. SWEETIN  
15 Chief Deputy District Attorney  
16 Nevada Bar #005144

17  
18  
19 **CERTIFICATE OF FACSIMILE TRANSMISSION**

20 I hereby certify that service of STATE'S OPPOSITION TO DEFENDANT'S  
21 REQUEST FOR TRANSCRIPTS/COURT PROCEEDINGS, was made this 13th day of  
22 October, 2010, by facsimile transmission to:

23 JAMES ORONoz, ESQ.  
24 FAX #474-1320

25 /s/ HOWARD CONRAD  
26 Secretary for the District Attorney's Office

27  
28 hjc/SVU

002075



ORIGINAL

FILED

OCT 27 2010

*John J. [Signature]*  
CLERK OF COURT

1 **MOT**  
2 JAMES A. ORONoz, ESQ.  
3 Nevada Bar No. 6769  
4 ORONoz LAW OFFICES  
5 700 SOUTH 3RD STREET  
6 Las Vegas, Nevada 89101  
7 Telephone: (702) 878-2889  
8 Facsimile: (702) 522-1542  
9 jim@oronozlawyers.com  
10 Attorney for Defendant

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 THE STATE OF NEVADA,  
14 Plaintiff,  
15 vs.  
16 DELARIAN K. WILSON  
17 Defendant.

CASE NO.: C232494  
DEPT. NO.: XXIV

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1023435



18 **DEFENDANT'S MOTION TO APPOINT POST-CONVICTION RELIEF COUNSEL**

19 COMES NOW, defendant, DELARIAN WILSON, by and through his attorney of  
20 record, James A. Oronoz, Esq., and files the above-titled Motion. This Motion is made and  
21 based upon the attached Points and Authorities, any and all pleadings on file herein, and any  
22 oral argument deemed necessary by this Court.

23 DATED this 21 day of October, 2010.

ORONoz LAW OFFICES

By: *[Signature]*

JAMES A. ORONoz  
Nevada Bar No. 6769  
700 South 3rd Street  
Las Vegas, Nevada 89101  
(702) 878-2889  
Attorney for Defendant

24 **RECEIVED**

OCT 27 2010

CLERK OF THE COURT

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DEFENDANT'S MOTION TO APPOINT POST-CONVICTION RELIEF COUNSEL will be

1

DATED this 27 day of October, 2010.

ORNOZ LAW OFFICES

**By:**

**JAMES A. OROÑOZ**  
Nevada Bar No. 6769  
700 South 3rd Street  
Las Vegas, Nevada 89101  
(702) 878-2889  
*Attorney for Defendant*

1 POINTS AND AUTHORITIES

2 FACTUAL AND PROCEDURAL BACKGROUND

3 Pursuant to District Court Case No. C232494, Wilson, was charged by way of Amended  
4 Criminal Complaint, with the following crimes: Count 1, Conspiracy to Commit Burglary;  
5 Count 2, Conspiracy to Commit Robbery; Counts 3 and 11, Burglary while in Possession of a  
6 Deadly Weapon; Counts 4, 5, 6, 7 and 9, Robbery with use of a Deadly Weapon; Count 8,  
7 Assault with use of a Deadly Weapon; Count 10, First Degree Kidnapping with use of a Deadly  
8 Weapon; Count 12, 13, 14, 15, and 17, Sexual Assault with a Deadly Weapon; Count 16,  
9 Coercion with use of a Deadly Weapon; and Count 18, Open or Gross Lewdness with use of a  
10 Deadly Weapon. On March 28, 2008, Wilson pled guilty to one count of Robbery with use of a  
11 Deadly Weapon and one count of Sexual Assault. Wilson was sentenced on July 3, 2008 as  
12 follows: Count 1: 72 Months to 180 Months with an equal and consecutive term of 72 Months  
13 to 180 Months; Count 2: 72 Months to 180 Months with an equal and consecutive term of 72  
14 Months to 180 Months, consecutive to Count 1; Count 3: Life with Possibility of Parole,  
consecutive to Count 1.

15 Trial counsel represented Wilson pro bono on direct appeal because Wilson is an  
16 indigent defendant. On August 6, 2008, Wilson filed a Notice of Appeal. Accordingly, Wilson  
17 filed his Opening Brief on March 12, 2009; the State filed an Answering Brief on April 14,  
18 2009; and Wilson filed his Reply Brief on May 19, 2009. On July 7, 2009, the Nevada Supreme  
19 Court issued an Order of Affirmance, ordering Wilson's judgment of conviction affirmed. On  
20 August 4, 2009 The Nevada Supreme Court issued its Remittitur.

21 ARGUMENT

22 **A. THE COURT SHOULD APPOINT POST-CONVICTION RELIEF**  
23 **COUNSEL BECAUSE WILSON'S CASE PRESENTS COMPLEX ISSUES**  
24 **AND SEVERE CONSEQUENCES.**

Under Nevada law, the district court may appoint counsel to represent an indigent

002078

1 defendant in post-conviction proceedings. See N.R.S. 34.750. In determining whether to appoint  
2 counsel, the court may consider: (1) the severity of the consequences, (2) whether the issues  
3 presented are difficult, (3) whether the petitioner is unable to comprehend the proceedings, or  
4 (4) whether counsel is necessary to proceed with discovery. See *Id.*; *Aguilar v. State*, 238 P.3d  
5 790 (2008).

6 The instant case is complex because it involves a co-defendant and allegations of  
7 robbery and sexual assault. During the pretrial process, Wilson raised issues regarding the  
8 suppression of his allegedly voluntary statement to law enforcement and the suppression of  
9 evidence obtained through an illegal search conducted by law enforcement. On direct appeal,  
10 Wilson raised issues regarding the disproportionality and constitutionality of his sentence. Thus,  
11 there is little doubt that the litigation is complex as contemplated by NRS 34.750.

12 In addition, prior to the instant case, Wilson had only one arrest and no convictions.  
13 Thus, although Wilson has some college-level education, he lacks personal experience in  
14 dealing with Nevada's criminal justice system. As such, Wilson lacks the knowledge necessary  
15 to adequately seek post-conviction relief

16 Lastly, there is no question the consequences stemming from Wilson's conviction are  
17 severe. The court imposed a sentence of six (6) to fifteen (15) years for count 1, a consecutive  
18 sentence of six (6) to fifteen (15) years for count 2, and a consecutive sentence of life with the  
19 possibility of parole after 10 years for count 3. Because Wilson's sentence ranges from a  
20 minimum of twenty-two years to a maximum of life imprisonment, the consequences he faces  
21 are severe.

22 ///

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DATED this 27 day of October, 2010.

By:                       
JAMES A. ORNOZ  
Nevada Bar No. 6769  
700 South 3rd Street  
Las Vegas, Nevada 89101  
(702) 878-2889  
*Attorney for Defendant*

1 **ROC**

2 JAMES A. ORONOZ, ESQ.

3 Nevada Bar No. 6769

4 ORONOZ LAW OFFICES

5 700 SOUTH 3RD STREET

6 Las Vegas, Nevada 89101

7 Telephone: (702) 878-2889

8 Facsimile: (702) 522-1542

9 jim@oronozlawyers.com

10 *Attorney for Defendant*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 THE STATE OF NEVADA,

14 Plaintiff,

15 vs.

16 DELARIAN K. WILSON

17 Defendant.

18 CASE NO.: C232494

19 DEPT. NO.: XXIV

20 **RECEIPT OF COPY**

21 **RECEIPT of DEFENDANT'S MOTION TO APPOINT POST-CONVICTION RELIEF**

22 COUNSEL is hereby acknowledged this \_\_\_\_ day of \_\_\_\_\_, 2010.

23 \_\_\_\_\_  
24 Deputy District Attorney  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89101

002081

ORIGINAL

FILED

Nov 1 10 45 AM '10

*Ann D. Sullivan*  
CLERK OF THE COURT

1 **ORDR**

2 **DAVID ROGER**  
3 **Clark County District Attorney**  
4 **Nevada Bar #002781**  
5 **JAMES R. SWEETIN**  
6 **Chief Deputy District Attorney**  
7 **Nevada Bar #005144**  
8 **200 Lewis Avenue**  
9 **Las Vegas, NV 89155-2212**  
10 **(702) 671-2500**  
11 **Attorney for Plaintiff**

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

07C232494-1  
ORDR  
Order Denying  
1020782



11 **THE STATE OF NEVADA,**  
12 **Plaintiff,**

13 **-vs-**

14 **DELARIAN K. WILSON,**  
15 **aka Delarian Kameron Wilson,**  
16 **#1966773**

17 **Defendant.**

Case No. **C232494-1**  
Dept No. **XXIV**

18 **ORDER DENYING DEFENDANT'S REQUEST FOR T**  
19 **RANSRIPTS/COURT PROCEEDINGS**

20 **DATE OF HEARING: 10/19/2010**  
21 **TIME OF HEARING: 8:30 A.M.**

22 **THIS MATTER** having come on for hearing before the above entitled Court on the  
23 **19TH** day of October, 2010, the Defendant not being present, **IN PROPER PERSON**, the  
24 **Plaintiff** being represented by **DAVID ROGER**, District Attorney, through **TIMOTHY**  
25 **FATTING**, Chief Deputy District Attorney, and the Court having heard the arguments of  
26 **counsel and good cause appearing therefor,**

27 **//**

28 **//**

**//**

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**NOV 01 2010**

**CLERK OF THE COURT**

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**002082**




1 IT IS HEREBY ORDERED that the DEFENDANT'S REQUEST FOR  
2 TRANSCRIPTS/COURT PROCEEDINGS, shall be, and is, DENIED.


3 DATED this 28<sup>th</sup> day of October, 2010.

4  
5   
6 DISTRICT JUDGE  
7

8 DAVID ROGER  
9 DISTRICT ATTORNEY  
10 Nevada Bar #002781

11   
12 TIMOTHY FATTIG  
13 Chief Deputy District Attorney  
14 Nevada Bar #006639  
15  
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28 hje/SVU

  
CLERK OF THE COURT

1 **OPPS**  
2 **DAVID ROGER**  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 **LISA LUZAICH**  
6 Chief Deputy District Attorney  
7 Nevada Bar #005056  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

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

10 THE STATE OF NEVADA,  
11  
12 Plaintiff,

13 -vs-

14 DELARIAN K. WILSON,  
15 #1966773

16 Defendant.

CASE NO: **C232494-1**

DEPT NO: **XXIV**

17 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO**  
18 **APPOINT POST-CONVICTION RELIEF COUNSEL**

19 DATE OF HEARING: NOVEMBER 30, 2010  
20 TIME OF HEARING: 9:00 AM

21 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through  
22 LISA LUZAICH, Chief Deputy District Attorney, and hereby submits the attached Points  
23 and Authorities in Opposition to Defendant's Motion to Appoint Post-Conviction Relief  
24 Counsel.

25 This Opposition is made and based upon all the papers and pleadings on file herein,  
26 the attached points and authorities in support hereof, and oral argument at the time of  
27 hearing, if deemed necessary by this Honorable Court.

28 //

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On April 17, 2007, the State of Nevada (hereinafter "State") filed an Amended  
4 Criminal Complaint charging Delarian K. Wilson (hereinafter "Defendant") with the  
5 following: Conspiracy to Commit Burglary (Gross Misdemeanor – NRS 199.480, 205.060);  
6 Conspiracy to Commit Robbery (Felony – NRS 199.480, 200.380); Burglary while in  
7 Possession of a Deadly Weapon (Felony – NRS 205.060); Robbery with Use of a Deadly  
8 Weapon (Felony – NRS 200.380, 193.165); Assault with Use of a Deadly Weapon (Felony –  
9 NRS 200.471, 193.165); First Degree Kidnapping with Use of a Deadly Weapon (Felony –  
10 NRS 200.310, 200.320, 193.165); Sexual Assault with Use of a Deadly Weapon (Felony –  
11 NRS 200.364, 200.366, 193.165); Coercion with Use of a Deadly Weapon (Felony – NRS  
12 207.190, 193.165); and Open or Gross Lewdness with Use of a Deadly Weapon (Gross  
13 Misdemeanor – NRS 201.210, 193.165).

14 Thereafter, Defendant entered into negotiations with the State, and on August 20,  
15 2007, the State filed an Information charging Defendant with the crimes alleged in the  
16 Amended Criminal Complaint.

17 On March 28, 2008, the State filed an Amended Information charging Defendant with  
18 the following: Counts 1 and 2 - Robbery with Use of a Deadly Weapon (Felony – NRS  
19 200.380, 193.165); and Count 3 - Sexual Assault (Felony – NRS 200.364, NRS 200.366).

20 Also on March 28, 2008, Defendant entered into a Guilty Plea Agreement with the  
21 State whereby he pled guilty to the crimes alleged in his Amended Information.<sup>1</sup> On April 1,  
22 2008, the court conducted its guilty plea canvass of Defendant and accepted his guilty plea.

23 //

24 //

25 //

26  
27  
28 <sup>1</sup> The State notes that while Defendant's Motion states that he pled guilty to one count of Robbery with Use of a Deadly Weapon and one count of Sexual Assault, pursuant to the Guilty Plea Agreement and the guilty plea canvass, Defendant actually pled guilty to two counts of Robbery with Use of a Deadly Weapon and one count of Sexual Assault.

1 On July 3, 2008, Defendant appeared for sentencing with his counsel, Mr. Oronoz.  
2 The court, after hearing arguments by both the State and Mr. Oronoz, sentenced Defendant  
3 as follows: Count 1 – Robbery with Use of a Deadly Weapon – a maximum of 180 months  
4 with a minimum parole eligibility of 72 months, with an equal and consecutive term, for the  
5 use of a deadly weapon, of a maximum of 180 months and a minimum of 72 months; Count  
6 2 – Robbery with Use of a Deadly Weapon – a maximum of 180 months with a minimum  
7 parole eligibility of 72 months, with an equal and consecutive term, for the use of a deadly  
8 weapon, of a maximum of 180 months and a minimum of 72 months; and Count 3 – Sexual  
9 Assault – life with the possibility of parole after 10 years. The court ruled that all sentences  
10 were to run consecutive to one another. The court also granted Defendant five hundred  
11 (500) days credit for time served. Defendant's Judgment of Conviction was filed on July 15,  
12 2009.

13 On August 8, 2008 Defendant filed his Notice of Appeal.

14 On July 7, 2009, the Nevada Supreme Court affirmed Defendant's Judgment of  
15 Conviction (Case No 52104). Remittitur issued on August 4, 2009.

16 On October 27, 2010, Defendant filed the instant motion to which the State's  
17 Opposition follows.

### 18 ARGUMENT

19 **I. DEFENDANT FAILS TO MAKE THE THRESHOLD SHOWING THAT**  
20 **ANY PETITION HE MIGHT FILE WILL NOT BE SUMMARILY**  
21 **DISMISSED AND SO HIS REQUEST FOR APPOINTMENT OF**  
22 **COUNSEL SHOULD BE DENIED.**

23 The Sixth Amendment of the Constitution of the United States of America does not  
24 provide a right to counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S.  
25 722, 111 S.Ct. 2546 (1991). Likewise, the Nevada Supreme Court notes that "[t]he Nevada  
26 Constitution...does not guarantee a right to counsel in post-conviction proceedings, as we  
27 interpret the Nevada Constitution's right to counsel provision as being coextensive with the  
28 Sixth Amendment to the United States Constitution." McKague v. Warden, 112 Nev. 159,  
163, 912 P.2d 255, 258 (1996). However, pursuant to NRS 34.750, a district court judge has

1 the discretion to appoint counsel under the following conditions:

2 A petition may allege that the petitioner is unable to pay the costs  
3 of the proceedings or to employ counsel. If the court is satisfied  
4 that the allegation of indigency is true and the petition is not  
5 dismissed summarily, the court may appoint counsel at the time  
the court orders the filing of an answer and a return. In making  
its determination, the court may consider whether:

- 6 (a) the issues are difficult;  
7 (b) the petitioner is unable to comprehend the  
proceedings; or  
8 (c) counsel is necessary to proceed with discovery.

9 NRS 34.750 (emphasis added).

10 Thus, consistent with McKague, NRS 34.750 provides the court with discretion in  
11 determining whether to appoint counsel, because, with the exception of cases in which  
12 appointment of counsel is mandated by statute, one does not have "[a]ny constitutional or  
13 statutory right to counsel at all" in post-conviction proceedings. 112 Nev. at 164. However,  
14 defendant "must show that the requested review is not frivolous before he may have an  
15 attorney appointed." Peterson v. Warden, Nevada State Prison, 87 Nev. 134, 136, 483 P.2d  
16 204, 205 (1971).

17 Here, Defendant cannot make the threshold showing, required under NRS 34.750,  
18 that any petition he may file will not be summarily dismissed by the court. The Nevada  
19 Supreme Court issued its Remittitur on Defendant's direct appeal, on August 4, 2009. As  
20 over one year has passed since the Court issued its Remittitur, Defendant cannot make the  
21 requisite showing, required for the appointment of counsel, that the court will not summarily  
22 dismiss any petition he may file as time barred pursuant to NRS 34.726. Because Defendant  
23 has not met the threshold test pursuant to NRS 34.750 and Peterson, he is not entitled to  
24 appointment of counsel, and his motion requesting such should be denied.

25 //

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**CONCLUSION**

For the foregoing reasons, the State respectfully asks the Court to deny Defendant's Motion to Appoint Post-Conviction Relief Counsel.

DATED this 23rd day of November, 2010.

Respectfully submitted,

DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781

BY /s/ LISA LUZAICH  
LISA LUZAICH  
Chief Deputy District Attorney  
Nevada Bar #005056

**CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that service of STATE'S OPPOSITION TO DEFENDANT'S MOTION TO APPOINT POST-CONVICTION RELIEF COUNSEL, was made this 23rd day of November, 2010, by facsimile transmission to:

JAMES ORONoz, ESQ.  
FAX #522-1542

/s/ HOWARD CONRAD  
Secretary for the District Attorney's Office

hjc/SVU

ORIGINAL

FILED

DEC 17 3 45 PM '10

*John A. Lawrence*  
CLERK OF THE COURT

JAMES A. ORONOZ, ESQ.  
Nevada Bar No. 6769  
ORONOZ LAW OFFICES  
700 South Third Street  
Las Vegas, Nevada 89101  
Phone (702) 878-2889  
Fax (702) 522-1542  
jim@oronozlawyers.com  
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DELARIAN WILSON,

Defendant.

CASE NO: C232494

DEPT NO: XXIV

07C232494-1

RCPT

Receipt

1114450



RECEIPT OF FILE

The undersigned hereby acknowledges receipt of the original file in the above referenced action.

\*\*\*\*Please note that the documents are all originals and there are no copies/duplicates in the office of Oronoz Law Offices.

DATED this 16<sup>th</sup> day of December, 2010.

*Keith Brower*  
EMPLOYEE OF KEITH BROWER

RECEIVED

DEC 17 2010

CLERK OF THE COURT



DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED

13

JUN 15 8 23 AM '11

THE STATE OF NEVADA VS  
DELARIAN K WILSON

CASE NO: 07C232494-1

Department 24

*Steven D. Grierson*  
CLERK OF THE COURT

NOTICE OF CHANGE OF HEARING

The hearing on the Decision, presently set for , at 8:30 AM, has been moved to  
the, 4th day of October, 2011 at 8:30 AM and will be heard by Judge James  
Bixler.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: *J. Arevalo*  
Jennifer Arevalo,  
Deputy Clerk of the Court

CERTIFICATE OF MAILING

I hereby certify that on the 15th day of June, 2011:

☒ I placed a copy of the foregoing Notice of Change of Hearing in the  
appropriate attorney folder located in the Clerk of the Court's Office:

David J. Roger  
Keith Brower

*J. Arevalo*  
Jennifer Arevalo,  
Deputy Clerk of the Court

RECEIVED

JUN 15 2011

CLERK OF THE COURT

07C232494-1  
NDCH  
Notice of Change of Hearing  
1470116



002090

KEITH C. BROWER, ESQ.  
NEVADA BAR#007288  
THE LAW OFFICES OF KEITH C. BROWER, LLC  
8275 SOUTH EASTERN #200  
LAS VEGAS, NEVADA 89123  
(702) 451-4921

FILED

OCT 10 9 46 AM '11

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND  
FOR THE COUNTY OF CLARK

DELARIAN WILSON  
ID#1966773  
Petitioner,  
vs.

Case No.: 07C232494-1  
Dept. No.: XXIV

BRIAN E WILLIAMS, SR.,  
Warden Southern Nevada  
Correctional Center,  
Respondent.

07C232494-1  
PWNC  
Petition for Writ of Habeas Corpus  
1844362



11/29/11  
2830

PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: Southern Desert Correctional Center.
2. Name and location of court which entered the judgment of conviction under attack: Department 24, Eighth Judicial District Court, Clark County Nevada.
3. Date of judgment of conviction:
4. Case number: 07C232494-1
5. Length of sentence: Due to consecutive sentences total of thirty-four years to life.
6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? No.
7. Nature of offense involved in conviction being challenged:
8. What was your plea? Guilty
9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details: Not applicable.

RECEIVED

OCT 10 2011

CLERK OF THE COURT

002091

- 1 10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the  
2 finding made by: (check one)
- 3 (a) Jury .....
- 4 (b) Judge without a jury .....
- 5 11. Did you testify at the trial? Not Applicable.
- 6 12. Did you appeal from the judgment of conviction? Yes
- 7 13. If you did appeal, answer the following:
- 8 (a) Name of court: Nevada Supreme Court
- 9 (b) Case number or citation: 52104
- 10 (c) Result: Judgment Affirmed
- 11 (d) Date of result: Remittitur August 4, 2009
- 12 (Attach copy of order or decision, if available.)
- 13 14. If you did not appeal, explain briefly why you did not: Not Applicable.
- 14 15. Other than a direct appeal from the judgment of conviction and sentence, have you  
15 previously filed any petitions, applications or motions with respect to this judgment in any  
16 court, state or federal? Motion To Appoint Post-Conviction Relief Counsel
- 17 16. If your answer to No. 15 was "yes," give the following information:
- 18 (a) (1) Name of court: Department 24, Eighth Judicial District Court.
- 19 (2) Nature of proceeding: Good Cause Appearing Motion Granted.
- 20 (3) Grounds raised: Motion For Appointment Of Post-Conviction Relief Counsel for  
21 purpose of filing a Post-Conviction Writ.
- 22 (4) Did you receive an evidentiary hearing on your petition, application or motion?  
23 No.
- 24 (5) Result: Counsel appointed to file a petition.
- 25 (6) Date of result: 11/30/2010; 12/14/2010; and 01/13/2011.
- 26 (7) If known, citations of any written opinion or date of orders entered pursuant to  
27 such result: Not applicable.
- 28 (b) As to any second petition, application or motion, give the same information:

- 1 (1) Name of court: .....
- 2 (2) Nature of proceeding: .....
- 3 (3) Grounds raised: .....
- 4 (4) Did you receive an evidentiary hearing on your petition, application or motion?
- 5 Yes ..... No .....
- 6 (5) Result: .....
- 7 (6) Date of result: .....
- 8 (7) If known, citations of any written opinion or date of orders entered pursuant to
- 9 such result:
- 10 .....
- 11 (c) As to any third or subsequent additional applications or motions, give the same
- 12 information as above, list them on a separate sheet and attach.
- 13 (d) Did you appeal to the highest state or federal court having jurisdiction, the result or
- 14 action taken on any petition, application or motion?
- 15 (1) First petition, application or motion? Yes ..... No .....
- 16 Citation or date of decision: .....
- 17 (2) Second petition, application or motion? Yes ..... No .....
- 18 Citation or date of decision: .....
- 19 (3) Third or subsequent petitions, applications or motions? Yes ..... No .....
- 20 Citation or date of decision: .....
- 21 (e) If you did not appeal from the adverse action on any petition, application or motion,
- 22 explain briefly why you did not. (You must relate specific facts in response to this question.
- 23 Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition.
- 24 Your response may not exceed five handwritten or typewritten pages in length.)
- 25 .....
- 26 17. Has any ground being raised in this petition been previously presented to this or any
- 27 other court by way of petition for habeas corpus, motion, application or any other
- 28 postconviction proceeding? If so, identify:

- 1 (a) Which of the grounds is the same: .....
- 2 (b) The proceedings in which these grounds were raised: .....
- 3 (c) Briefly explain why you are again raising these grounds. (You must relate specific
- 4 facts in response to this question. Your response may be included on paper which is 8 1/2 by
- 5 11 inches attached to the petition. Your response may not exceed five handwritten or
- 6 typewritten pages in length.)

7 .....

8 18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional

9 pages you have attached, were not previously presented in any other court, state or federal,

10 list briefly what grounds were not so presented, and give your reasons for not presenting

11 them. (You must relate specific facts in response to this question. Your response may be

12 included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may

13 not exceed five handwritten or typewritten pages in length.)

14 .....

15 19. Are you filing this petition more than 1 year following the filing of the judgment of

16 conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the

17 delay. (You must relate specific facts in response to this question. Your response may be

18 included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may

19 not exceed five handwritten or typewritten pages in length.)

20 Petitioner was not informed of the filing of the remittitur in this case, and after a

21 finding of good cause the district court granted the appointment of counsel for the filing of

22 this petition.

23 20. Do you have any petition or appeal now pending in any court, either state or federal, as

24 to the judgment under attack? Yes ..... No .....xx

25 If yes, state what court and the case number: .....

26 21. Give the name of each attorney who represented you in the proceeding resulting in your

27 conviction and on direct appeal: .....

28 22. Do you have any future sentences to serve after you complete the sentence imposed by

1 the judgment under attack? Yes ..... No .....XX

2 If yes, specify where and when it is to be served, if you know: .....

3 23. State concisely every ground on which you claim that you are being held unlawfully.  
4 Summarize briefly the facts supporting each ground. If necessary you may attach pages  
5 stating additional grounds and facts supporting same.

6 (a) Ground one:

7 Wilson was deprived the effective assistance of counsel at the sentencing phase of his  
8 case, when counsel did not ask for time to review the transcripts of the Co-Defendant's trial  
9 so that counsel would be prepared to rebut any presumptions/inferences that may have been  
10 made by the trial court.

11 Supporting FACTS (Tell your story briefly without citing cases or law.):

12 At the time of sentencing, the trial court stated "I mean, I'm certainly familiar with  
13 this whole thing, since we did have a trial on Wesley [the Co-Defendant]. I'm familiar with  
14 everything that went on. Knowing the Defendant's background, he had the lead role in this  
15 whole scenario." [Sentencing Transcripts page 5].

16 It is clear from this transcript that counsel was unprepared for sentencing, as he was  
17 unable to review the trial transcripts to rebut any presumptions that may have been made by  
18 the Court. Without knowing what was said at trial, counsel should not have gone forward  
19 with sentencing and should have requested a continuance for the preparation and review of  
20 the Co-Defendant's trial transcripts.

21 As other courts have held, "at sentencing, a defendant has the right to assistance of  
22 counsel." United State's v. Sullivan, 694 F.2d 1348 (US. Ct. App. 2<sup>nd</sup> Cir. 19982) Citing  
23 Gardner v. Florida, 430 U.S. 349, 97 S.Ct. 1197, 51 L.Ed. 2d 393 (1977). In addition, a  
24 Defendant has the right to present information in mitigation of punishment. Id. In this case,  
25 without the Co-Defendant's trial transcripts, "Defendant's attorney did not have a reasonable  
26 opportunity to familiarize himself with the trial proceedings." Id. Without the transcripts,  
27 Counsel was not able to adequately "search the actual record for material supporting a plea  
28 of clemency." Id. As such, Defendant was prejudiced at sentencing due to counsel's



1 inability to respond to the sentencing court's knowledge or understanding of the  
2 proceedings.

3 At a minimum, counsel should have requested a continuance to review the trial  
4 transcripts in this case so that he could adequately argue sentencing in this matter.

5 (b) Ground two:


6 Appellate counsel was ineffective for failing to cite case law in their brief.

7 Supporting FACTS (Tell your story briefly without citing cases or law.):

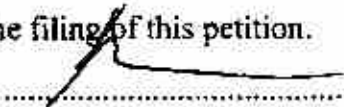
8 On appeal, appellate counsel offered no supporting case law in their argument  
9 regarding a district court's ability to consider a co-defendant's trial at sentencing.

10 WHEREFORE, petitioner prays that the court grant petitioner relief to which petitioner  
11 may be entitled in this proceeding.

12 EXECUTED this 10<sup>th</sup> day of October, 2011.

13  
14   
15 Keith C. Brower, Esq.  
16 The Law Offices Of Keith C. Brower, LLC.  
17 8275 South Eastern #200  
18 Las Vegas, NV 89123  
19 (702) 451-4921  
20 Attorney For Petitioner

21 Under penalty of perjury, the undersigned declares that the undersigned is the attorney  
22 for the petitioner named in the foregoing petition and knows the contents thereof; that the  
23 pleading is true of the undersigned's own knowledge, except as to those matters stated on  
24 information and belief, and as to such matters the undersigned believes them to be true, and  
25 that he has the permission of the Petitioner for the filing of this petition.

26   
27 Keith C. Brower, Esq.  
28 The Law Offices Of Keith C. Brower, LLC.  
8275 South Eastern #200  
Las Vegas, NV 89123  
(702) 451-4921  
Attorney For Petitioner



CERTIFICATE OF SERVICE BY MAIL


I, Keith C. Brower, Esq., hereby certify, pursuant to N.R.C.P. 5(b), that on this 10<sup>th</sup> day of the month of October of the year 2011, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

Brian E. Williams, Sr., Warden  
Southern Desert Correctional Center  
P.O. Box 208  
Indian Springs, NV 89070

And that I hand delivered a copy of this petition to:

Leon Simon  
Criminal Appeals Division  
Clark County District Attorney's Office  
200 Lewis Avenue  
Las Vegas, NV 89155

Dated this 10<sup>th</sup> day of October, 2011.

  
Keith C. Brower, Esq.  
The Law Offices Of Keith C. Brower, LLC.  
8275 South Eastern #200  
Las Vegas, NV 89123  
(702) 451-4921  
Attorney For Petitioner

IN THE SUPREME COURT OF THE STATE OF NEVADA

DELARIAN K. WILSON A/K/A DELARIAN KAMERON  
WILSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 52104

District Court Case No. C232494

2009 AUG -7 12 5:50

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 7th day of July, 2009.

IN WITNESS WHEREOF, I have subscribed my name and affixed  
the seal of the Supreme Court at my Office in Carson City,  
Nevada, this 4th day of August, 2009

Tracie Lindeman, Supreme Court Clerk

By: Deputy Clerk

A. Ingersoll



EXHIBIT 1

002098

IN THE SUPREME COURT OF THE STATE OF NEVADA

DELARIAN K. WILSON A/K/A  
DELARIAN KAMERON WILSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52104

**FILED**

JUL 07 2009

TRACIE A. LINDEMAN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of robbery with the use of a deadly weapon and one count of sexual assault. Eighth Judicial District Court, Clark County; James M. Bixler, Judge. The district court sentenced appellant Delarian Kameron Wilson to prison terms of 72 to 180 months for the robbery counts, plus equal and consecutive sentences for the deadly weapon enhancements, and ten years to life for the sexual assault, all terms to run consecutively.

Wilson contends that his sentence was excessive for two reasons: (1) his sentence was unreasonably disproportionate to his codefendant's sentence, and (2) the district court relied on highly suspect or impalpable evidence.

This court has consistently afforded the district court wide discretion in its sentencing decisions. See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). This court will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations

1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2  
3       **DELARIAN K. WILSON,**  
          Appellant,  
4       vs.  
5       **THE STATE OF NEVADA**  
          Respondent.

**Supreme Court No.:**  
District Court Case No. C232494

Electronically Filed  
Nov 12 2015 10:18 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

6  
7                   **APPELLANT'S APPENDIX - VOLUME IX - PAGES 2000-2249**

8  
9       **MATTHEW D. CARLING**  
10      51 East 400 North, Bldg. #1  
11      Cedar City, Utah 84720  
12      (702) 419-7330 (Office)  
13      Attorney for Appellant

**STEVEN B. WOLFSON**  
          Clark County District Attorney  
          200 Lewis Avenue, 3<sup>rd</sup> Floor  
          Las Vegas, Nevada 89155  
          Counsel for Respondent

14               **CATHERINE CORTEZ MASTO**  
15               Attorney General  
16               100 North Carson Street  
17               Carson City, Nevada 89701-4717  
18               Counsel for Respondent

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**Wilson, Delarian**

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16	Notice of Motion and Motion to Correct Illegal Sentence filed on 09/05/08	0878-0881
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18	Notice of Appeal filed on 12/10/13	2217
19	Case Appeal Statement filed on 12/10/13	2218-2220
20	Motion to Withdraw Due to Conflict filed on 08/06/14	2221-2223
21	Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)	2224-2265
22	State's Response and Motion to Dismiss Defendant's "Supplemental" Petition for Writ of Habeas Corpus (Post-Conviction) filed on 03/06/15	2266-2276
23	Stipulation to Enlarge Briefing Schedule and Order filed on 03/26/15	2277-2278
24	Reply to State's Response and Motion to Dismiss Defendant's Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) filed on 04/20/15	2279-2296
25	Findings of Fact, Conclusions of Law and Order filed on 07/22/15	2297-2303
26	Notice of Entry of Findings of Fact, Conclusions of Law and Order filed on 07/24/15	2304-2311
27	Notice of Appeal filed on 08/04/15	2312-2313
28	Case Appeal Statement filed on 08/04/15	2314-2316
	Request for Rough Draft Transcripts filed on 08/04/15	2317-2319



## TRANSCRIPTS

Document	Page No.
Transcript – Preliminary Hearing filed on 05/23/07	0127-0201
Transcript – Preliminary Hearing filed on 05/23/07	0202-0333
Transcript – Change of Plea as to Defendant Wilson filed on 04/01/08	0499-0518
Transcript – Defendant Wesley's Motion to Suppress filed on 04/11/08	0533-0648
Transcript – Opening Statement of Mr. Landis filed on 04/21/08	0713-0722
Transcript – Judgment and Sentencing and filed on 06/03/08	0748-0753
Transcript – Defendant's Pro Per Motion for Bail Pending Sentencing/Appeal Defendant's Motion for New Trial filed on 07/03/08	0766-0786
Transcript – Sentencing filed on 09/03/08	0857-0877
Transcript – Jury Trial filed on 11/12/08	0906-0988
Transcript – Jury Trial filed on 11/12/08	0989-1029
Transcript – Jury Trial filed on 11/12/08	1030-1034
Transcript – Sentencing filed on 11/12/08	1035-1040
Transcript – Jury Trial filed on 11/12/08	1041-1110
Transcript – Sentencing filed on 11/12/08	1111-1131
Transcript – Jury Trial filed on 11/12/08	1132-1171
Transcript – Sentencing filed on 11/12/08	1172-1192
Transcript – Jury Trial filed on 12/05/08	1193-1415
Transcript – Jury Trial filed on 12/05/08	1416-1700
Transcript – Jury Trial filed on 12/05/08	1701-1995
Transcript – Change of Plea as to Defendant Wilson filed on 12/09/08	2001-2020
Transcript – Status Check filed on 11/17/11	2116-2120
Transcript – Hearing filed on 09/27/12	2151-2156
Transcript – Hearing filed on 09/27/12	2157-2162
Transcript – Writ filed on 09/23/13	2165-2196
Transcript –	

Addendum to Supreme Court as to Certificate of Delivery  
12/5/08

Dated December 9, 2008

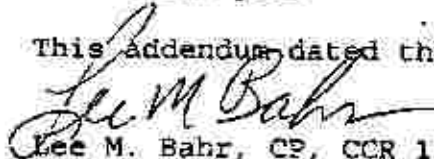
Upon filing the above-referred to transcripts dated April 9, 10, and 11, 2008, pertaining to Narcus Samone Wesley and Darnanian Wilson, I checked with the Clerk of Court as to whether the 3/28/08, 20 page change of plea transcript regarding Darnanian Wilson was on file. The Deputy Clerk indicated it was not. I had run a duplicate of the 3/28/08 20 page transcript, and had it with me, and I noticed for the first time that the date on page 1 of said transcript was March 28, 2007 not March 28, 2008. My certificate page on page 20 did indicate the correct date of preparation, which was March 28, 2008.

So as of this date, I have run a duplicate of the 3/28/08, 20 page transcript, and refiled it with the Clerk of Court so that there will not be any further confusion, and I have supplied copies to the D. A.'s office, Mr. Oronoz's office and Mr. Winder's office at no extra charge. I was paid for the 20 page transcript in early April, 2008 by Clark County. At this time, all parties have copies of the transcripts I have prepared in State v. Darnanian Wilson (20 page transcript dated 3/28/08), and the first three days of jury trial (April 9, 10, and 11, 2008,) (803 pages), before the Hon. James M. Bixler.

If anyone has any questions about any of the above, please contact my office immediately. I apologize to the Supreme Court, and counsel for all the parties for any confusion that may have been caused by having the wrong date March 28, 2007 typed on page 1 of the 20 page transcript of the change of plea of Dalarian Kameron Wilson, which I court reported on 3/28/08.

Thank you.

This addendum dated the 9th day of December, 2008.

  
Lee M. Bahr, CP, CCR 173  
Court Reporter

CC: Mr. Oronoz  
Mr. Winder  
D. A.'s office (Appellate Division)  
A. G.'s office.  
Judge James Bixler, District Judge  
Ed Friedland, Executive Officer  
Mr. Landis, Deputy P. D.  
Nev. CCR Board

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Dec 9 11 25 AM '08

*E. J. Bixler*  
CLERK OF THE COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

THE HON. JAMES M. BIXLER, DISTRICT COURT JUDGE, PRESIDING

THE STATE OF NEVADA,  
Plaintiff,

v.

DELARIAN K. WILSON, aka  
DELARIAN KAMERON WILSON,  
NARCUS S. WESLEY, ESQ., aka  
NARCUS SAMONE WESLEY,  
Defendant. .

Case No. C-232494  
Dept. 24

TRANSCRIPT OF PROCEEDINGS

Change of Plea as to Defendant Wilson

COURTHOUSE

March 28, 2008

Las Vegas, Nevada

Reported by:

Lee M. Bahr, CP, CCR 173

RECEIVED

DEC 09 2008

CLERK OF THE COURT

Lee M. Bahr, CCR 173

702-804-6167

002001

## 1 APPEARANCES:

2  
3 For the State:STACY KOLLINS, ESQ.  
Deputy D. A.  
200 Lewis Ave.  
Las Vegas, NV. 89155

4 and

5 CHRISTOPHER LAURANT, ESQ.  
6 Deputy D. A.  
7 200 Lewis Ave.  
8 Las Vegas, NV. 89155

9 Defendant Wilson present in court in custody.

10 For Defendant Wilson:

by

DRASKOVICH LAW OFFICE  
JAMES A. ORONoz, ESQ.  
Attorney at Law  
Las Vegas, NV. 8910112  
13 Defendant Wesley not present in court out of custody.

14 For Defendant Wesley:

15 CASEY LANDIS ESQ.  
16 Deputy Public Defender  
17 Las Vegas, NV.18  
19  
20 No other appearances.21  
22 \*\*\*\*\*  
23  
24  
25

002002

TRANSCRIPT OF PROCEEDINGS

THE BAILIFF: All rise.

Department 24 is now in session, the Hon. Judge  
James M. Bixler presiding.

Please be seated.

THE COURT: Okay. This is the matter of the  
State of Nevada v. Delarian Wilson.

And we are also on for Narcus Wesley, are we  
not, Mr. Landis?

MR. LANDIS: Technically, Judge. I don't have  
the Defendant present.

THE COURT: Okay.

MR. LAURANT: With regard to Mr. Wilson, the  
other one, I am filling in right now for Ms. Luzaich on  
the Wilson matter, which she has familiarity with, but  
I know nothing about any new trial dates or anything  
like that.

THE COURT: Okay, no problem.

MR. LAURANT: Thank you.

THE COURT: We are primarily dealing with Mr.  
Wilson. It is my understanding that Mr. Wilson is going  
to take the offer that was made?

MR. ORONoz: Yes, sir.

THE COURT: All right, do we have -- okay.

002003

1 All right. Mr. Wilson, is it your understanding  
2 that this morning you are going to withdraw your plea of  
3 not guilty and enter a plea of guilty to one count of  
4 robbery with the use of a deadly weapon and one count  
5 of sexual assault, is that it?

6 Two counts.

7 MR. ORONOZ: Two counts of robbery.

8 THE COURT: Two counts of robbery with use of  
9 a deadly weapon and one count of sexual assault, is that  
10 correct, Mr. Wilson?

11 DEFENDANT WILSON: Yes, sir.

12 THE COURT: Okay.

13 And I have in my hand a guilty plea agreement.  
14 Have you read through it?

15 DEFENDANT WILSON: Yes, sir.

16 THE COURT: Did you go through it with your  
17 attorney?

18 DEFENDANT WILSON: Yes, sir.

19 THE COURT: Fine. Did you understand everything?

20 DEFENDANT WILSON: Yes, sir.

21 THE COURT: On page five of this guilty plea  
22 agreement, is what I am showing you, there is a signature.  
23 Is that your signature?

24 DEFENDANT WILSON: Yes, sir.

25 THE COURT: And did you read through it, discuss

002004

1 it with your attorney, and understand everything that is  
2 contained in this guilty plea agreement before you signed  
3 it?

4 DEFENDANT WILSON: Yes, sir.

5 THE COURT: Okay.

6 A couple of things that are contained in the  
7 guilty plea agreement that I need to touch upon to make  
8 sure that you understand.

9 Did you discuss with your attorney the possible  
10 sentences that the Court could impose as a result of your  
11 entering a plea of guilty to these charges?

12 DEFENDANT WILSON: Yes, sir.

13 THE COURT: What is your understanding of the  
14 possible sentence that the Court could impose in return  
15 for your -- in exchange for your plea of guilty on these  
16 charges?

17 DEFENDANT WILSON: The sentences could be run  
18 consecutive, and that I could face anywhere from 10 to  
19 25 from 10 to life.

20 THE COURT: Okay.

21 And that's your understanding, and you understand  
22 that what happens to you when it comes time for sentencing,  
23 if I understand correctly, the State retains the right to  
24 argue at sentencing, is that correct?

25 MR. ORONOZ: Yes, Your Honor.

002005



1 THE COURT: Is Mr. Order.

2 THE COURT: What happens to you at the time of  
3 sentencing is entirely up to the Court.

4 Your attorney is going to be arguing for the --  
5 on the lesser end of the sentence, and the State will  
6 be arguing for the maximum sentence, and do you understand  
7 that?

8 DEFENDANT WILSON: Yes, sir.

9 THE COURT: And what happens to you at the time  
10 of sentencing, and nobody can promise or predict what is  
11 going to happen.

12 Do you understand that?

13 DEFENDANT WILSON: Yes, sir.

14 DEFENDANT WILSON: Did you also read through  
15 and understand that you have certain rights in regards  
16 to having a trial.

17 Those trial rights are explained to you in the  
18 guilty plea agreement.

19 DEFENDANT WILSON: Yes, sir.

20 THE COURT: Did you discuss those rights with  
21 your attorney?

22 DEFENDANT WILSON: Yes, I did.

23 THE COURT: Do you understand those rights?

24 DEFENDANT WILSON: Yes, sir.

25 THE COURT: Okay.

002026

1 Do you understand that by accepting this guilty  
2 plea agreement, and entering these pleas of guilty today  
3 that you will by necessity have to give up your right to  
4 have a trial.

5 Do you understand that?

6 DEFENDANT WILSON: Yes, sir.

7 THE COURT: Is that what you want to do?

8 DEFENDANT WILSON: Yes, I do.

9 THE COURT: Other than that which is contained  
10 in this guilty plea agreement, has anybody promised you  
11 anything that's not contained in here in return for your  
12 plea of guilty to these charges?

13 DEFENDANT WILSON: No, sir.

14 THE COURT: Has anybody threatened or coerced  
15 you in any fashion, or in any manner, in order to get you  
16 to plead guilty to these charges?

17 DEFENDANT WILSON: No.

18 THE COURT: In the amended information, it  
19 indicates that these three charges that you are pleading  
20 guilty to occurred on or about February 18, 2007 within  
21 Clark County, State of Nevada.

22 Tell me in your own words what happened on  
23 February 18, 2007, which causes you to plead guilty  
24 today to these charges?

25 DEFENDANT WILSON: I came in Las Vegas.

002007

1 THE COURT REPORTER: Speak up, please.

2 DEFENDANT WILSON: I'm sorry. I came into  
3 Las Vegas, and I went in there, and I robbed two people,  
4 I robbed these people at gunpoint, and aided and abided  
5 in a sexual assault that was going on.

6 THE COURT: The -- your friend, Mr. Wesley,  
7 who you were -- was who you had committed these acts  
8 with?

9 DEFENDANT WILSON: Yes, sir.

10 THE COURT: And these were acts that were  
11 committed with the use of a firearm.

12 Is that correct?

13 DEFENDANT WILSON: Yes, sir.

14 THE COURT: How many people were in the house  
15 when you guys went in there?

16 DEFENDANT WILSON: Six, I believe.

17 THE COURT: And then somebody took one of these  
18 people to the ATM machine and got -- had them get money  
19 out of an ATM machine, is that right?

20 DEFENDANT WILSON: Yes, sir.

21 THE COURT: Who did that?

22 DEFENDANT WILSON: I did, sir.

23 THE COURT: And then in regards to the sexual  
24 assault, your partner actually committed the sexual  
25 assault, but you assisted and encouraged in the overall

1 commission of the crime.

2 Is that right?

3 DEFENDANT WILSON: Yes, sir.

4 THE COURT: You understand that still makes  
5 you viable of having committed a sexual assault?

6 DEFENDANT WILSON: Yes, sir.

7 THE COURT: And you went through that with your  
8 attorney, and you understand why?

9 DEFENDANT WILSON: Yes, sir.

10 THE COURT: Okay.

11 And are you pleading guilty to the two counts  
12 of robbery with the use of a deadly weapon and the one  
13 count of sexual assault because in truth and in fact  
14 you are actually guilty of committing those offenses?

15 DEFENDANT WILSON: Yes, sir.

16 THE COURT: And you are not pleading guilty  
17 for any other reason.

18 DEFENDANT WILSON: No, sir.

19 MR. ORONOZ: And, Your Honor, I also -- could  
20 the Court canvass him about the penalties on the sexual  
21 assault?

22 And I also discussed with him the penalties  
23 associated with the robberies with use, and explained  
24 to him that they could be run either concurrently or  
25 consecutively.

1 THE COURT: Did you understand that?

2 DEFENDANT WILSON: Yes.

3 THE COURT: That the sentences that the Court  
4 could impose on each of the three counts could run  
5 consecutive to each other, one after the other.

6 Do you understand that?

7 DEFENDANT WILSON: Yes, sir.

8 THE COURT: And do you understand that these  
9 are mandatory prison sentences so that after you plead  
10 guilty that there is no possibility that you are not  
11 going to prison.

12 Do you understand that?

13 DEFENDANT WILSON: Yes, sir.

14 THE COURT: Anything else?

15 MS. KOLLINS: Your Honor, did you canvass him  
16 on the fact that there will be lifetime supervision as  
17 well as restitution in this matter?

18 THE COURT: No, I didn't.

19 On the sexual assault charge, there is a  
20 requirement that at the back end, at some point in time,  
21 you will be released from prison, but when you get out  
22 of prison, in addition to whatever conditions may be  
23 imposed if you were on parole, after a parole has expired,  
24 there still is a requirement that you stay registered for  
25 a lifetime.

002010

1 It's called lifetime supervision.

2 And the terms of the lifetime supervision aren't  
3 even known at this point because they won't be known until  
4 you get out of prison, and then they formulate whatever  
5 conditions would be appropriate at the time.

6 But I can't tell you what those conditions are  
7 going to be for lifetime supervision because they are not  
8 known at the time, but I am putting you on notice that when  
9 you do get out of prison and when you do expire your parole,  
10 there are going to be requirements that you have to comply  
11 with for the rest of your life.

12 Have you ever had that explained to you?

13 DEFENDANT WILSON: Yes, sir.

14 THE COURT: Okay.

15 MS. KOLLINS: And, Your Honor, I guess the last  
16 thing, before he is parole eligible, he will have to undergo  
17 a psychosexual examination that determines that he is less  
18 than a high risk to reoffend sexually, and that will be  
19 reviewed by the Parole Board.

20 THE COURT: That is a statutory requirement  
21 prior to being admitted to parole.

22 Do you understand that?

23 In other words, you are going to talk to a  
24 psychiatrist, and you are going to go through a psychosexual  
25 evaluation, and the result of that evaluation must indicate

002011

1 that you are something less than a high risk for recidivism  
2 in terms of a sexual crime.

3 DEFENDANT WILSON: Yes, sir.

4 THE COURT: Now, understanding all that, is it  
5 your desire still to enter your plea of guilty to these  
6 three charges, two counts of robbery with use of a deadly  
7 weapon, and one count of sexual assault.

8 Is that correct?

9 DEFENDANT WILSON: Yes, sir.

10 THE COURT: Okay. Anything else?

11 MS. KOLLINS: No, Your Honor. Thank you.

12 THE COURT: All right.

13 The Court is going to accept your plea of guilty  
14 to those three charges, Count I, Count II, robbery with the  
15 use of a deadly weapon, and Count III, sexual assault, as  
16 having been freely and voluntarily entered.

17 We need what, 45 days?

18 MS. KOLLINS: 45 days should do it. There is  
19 no requirement for the psychosexual on the front end,  
20 but just to be on the safe side.

21 THE COURT: Okay, all right.

22 MR. ORONOS: Could we do it in 30?

23 THE COURT: We can try, but I will be honest  
24 with you, you know, anything --

25 MR. ORONOS: 45 days will be fine.

002012



1 THE COURT: We are probably going to be wasting  
2 time if we try to do it 30.

3 MR. ORONOZ: Okay.

4 THE COURT: Because we get letters from them,  
5 for anything approaching 30 days, we are getting letters  
6 from P and P asking for more time so we might as well just  
7 go ahead and pass it for 45 days.

8 THE CLERK: May 13, at 8:30.

9 MR. LANDIS: And as to Mr. Wesley, his presence  
10 is waived today?

11 THE COURT: Yes, I waived Mr. Wesley's presence,  
12 Mr. Landis. Now that Mr. Wilson's matter is over with,  
13 I guess you guys are up, right?

14 MS. KOLLINS: That's correct.

15 THE COURT: And we are set for a Franks hearing  
16 Monday afternoon at 1:30, right?

17 MS. KOLLINS: Yes, and just to let the Court  
18 know, Detective Westby (phonetically) left the jurisdiction,  
19 and Ms. Luzaich and I were unaware of that.

20 What I have for you this morning is an affidavit  
21 that is an offer of proof of what he would testify to.

22 I also have coordinated with him with Mr.  
23 Landis's and the Court's permission to telephonically  
24 conduct the Franks hearing.

25 He will be as far away as Texas and will be

002013

1 traveling back here, believing that we were starting later  
2 in the week. He didn't understand the necessity for the  
3 Franks hearing when he left town.

4 THE COURT: Why don't we do this then?

5 I suspect that Mr. Landis is going to be wanting  
6 to look the detective in the eye when he is testifying.

7 MS. KOLLINS: Well, and here's the thing. If  
8 we could just preliminarily do it on Monday over the phone,  
9 have it recorded, then he will get him in the jurisdiction,  
10 and then Mr. Landis can conclude any of his cross-examination  
11 that he feels is necessary if he likes.

12 Here is the issue.

13 Understandably, the incorrect name or the name was  
14 not put in the affidavit, and I have an explanation and an  
15 offer of proof and an affidavit for this Court explaining  
16 why that is.

17 The detective got the information verbally that  
18 the address had been changed.

19 Not till he had drafted the search warrant, got  
20 it confirmed that the vehicle was at that address, you  
21 know, was gone from the station, not till he returned was  
22 that subpoena, that administrative subpoena complied with  
23 such that the paper document came in.

24 He never received that information verbally.  
25 He didn't get that until after the warrant was drafted,

002014

1 approved, executed.

2 Do you see what I am saying?

3 I mean, the facts didn't come in until long  
4 after he was gone from the station and had split to Nevada  
5 Power.

6 So that's -- I mean, that is the issue.

7 So on that limited basis, if we could do it by  
8 virtue of a phone conference then --

9 THE COURT: What you are suggesting actually  
10 is that you want to bifurcate it.

11 You want to go ahead, and put him under oath  
12 on the telephone, have you guys quiz him and say that  
13 we get his testimony presumptively will coincide with  
14 what he is giving you in terms of an affidavit, and  
15 then set it over to Wednesday morning, and then Mr.  
16 Landis can then cross-examine him as to whatever matters  
17 he chose?

18 MS. KOLLINS: Right.

19 THE COURT: Okay.

20 MR. LANDIS: I do disagree with their factual  
21 basis that they've stated.

22 I believe that he attached that Nevada Power  
23 record to his search court affidavit at the time he  
24 submitted it. But there is other issues --

25 MS. KOLLINS: (Interposing) Perhaps after when

1 he filed it.

2 MR. LANDIS: Whatever it may be, I do have some  
3 questions for this guy.

4 I do think I have the right to cross-examine  
5 him under Franks.

6 THE COURT: I agree.

7 MR. LANDIS: I understand the issue.

8 I think it is best that Monday we address him  
9 over the phone, maybe that will resolve it, maybe that  
10 will give me at least a better idea of how the Court is  
11 going to rule so I can start preparing for trial.

12 THE COURT: Are you going to give him a copy  
13 of this?

14 MS. KOLLINS: I am, Your Honor. I only brought  
15 one with me.

16 THE COURT: We will make one. Joe?

17 MS. KOLLINS: Can he make one?

18 THE COURT: Yeah. Do I need a copy?

19 MS. KOLLINS: Yes, Judge, I would make one copy  
20 for the Court.

21 THE COURT: All right, get a copy of this.

22 Let's plan on 1:30 Monday. We will see what he  
23 has to say, and then I will certainly not, you know, we  
24 will get an idea of what he is going to say. We are going  
25 to read it, and we are going to hear him, and put him under

002016

1 oath.

2 MS. KOLLINS: And that's why I have that drafted  
3 so that Mr. Landis would have -- everyone would have a  
4 concrete understanding of the chronology of what transpired,  
5 and the State is still taking the position that, you know,  
6 sans the Nevada Power, there is still sufficient probable  
7 cause --

8 THE COURT: I understand.

9 MS. KOLLINS: -- for the location of the vehicle.

10 THE COURT: I understand.

11 There is other information in the application,  
12 but let's address this first.

13 MR. LANDIS: Obviously, if they want to concede  
14 and take that out, we could just address the probable cause  
15 basis itself.

16 THE COURT: Let's let him -- let's hear from him  
17 first.

18 MS. KOLLINS: You want to not believe.

19 THE COURT: All right. Well then, just hang on,  
20 everybody gets their copies of the affidavit, and we will  
21 crank it up at 1:30 on Monday afternoon, and hear what  
22 the detective has to say.

23 MS. KOLLINS: And on behalf of the State, if we  
24 could just mark that as a Court's exhibit. There is no  
25 previous Court's exhibits in this matter, if we could mark

002017

1 that as Court's Exhibit 1, that would be nothing that would  
2 ever go to the jury.

3 THE COURT: Okay, we will make sure. Mark this  
4 as a Court's exhibit.

5 THE CLERK: Okay.

6 THE COURT: Okay. Then we are done this morning,  
7 right?

8 MR. LANDIS: I apologize for my dress, Judge.

9 THE COURT: Oh, I think it's nice.

10 MR. LANDIS: Thank you, Judge.

11 THE CLERK: Could I have your bar number, please,  
12 counsel?

13 MR. LANDIS: 9424.

14 THE CLERK: Thank you.

15 So the motion on Wilson is moot, and the trial  
16 still will be vacated?

17 THE COURT: Right, and the motion -- the motion  
18 on Wilson for today now is moot.

19 MS. KOLLINS: And as to the suppression motion  
20 on Wesley stands, and the trial date on Wesley stands?

21 THE COURT: Yes.

22 To clarify, the hearing -- the Franks hearing for  
23 Wesley is 1:30 Monday. The trial will commence 10 o'clock  
24 Wednesday. We will probably move that back so that --

25 MR. LANDIS: We will see what happens Monday.

002018

1 THE COURT: Right, right. All right.

2 THE CLERK: So his motion is to continue on  
3 Monday?

4 THE COURT: As of now, it is going to be denied  
5 because Wilson has pled.

6 Actually, it did get moved to Monday. It was  
7 originally scheduled for Monday. Now, it's moot.

8 The motion to continue was granted, and the  
9 trial is Wednesday.

10 THE CLERK: Oh, I got the record, and the trial  
11 is on Wednesday.

12 THE COURT: Right.

13 THE CLERK: Okay.

14 THE COURT: Yes, all right.

15 MS. KOLLINS: Judge, the only other thing that  
16 I forgot to ask you in court, what size of a panel are you  
17 bringing up, do you know?

18 THE COURT: 80.

19 MS. KOLLINS: Okay, thank you.

20 THE COURT: Is that enough?

21 MS. KOLLINS: Yes.

22 THE COURT: Okay.

23 \*\*\*\*\*

24 (End of proceedings.)

25 \*\*\*\*\*

002019



## CERTIFICATE

STATE OF NEVADA       )  
                              ) ss.  
CLARK COUNTY           )

I, LEE M. BAHR, CP, CCR 173, do hereby certify  
that I reported the foregoing proceedings; that the same  
is true and correct as reflected by my original machine  
shorthand notes taken at said time and place before the  
Hon. James M. Bixler, District Judge, presiding.

Dated at Las Vegas, Nevada, this  
28th day of March, 2008.



LEE M. BAHR, CP, CCR 173

002020

IN THE SUPREME COURT OF THE STATE OF NEVADA

DELARIAN K. WILSON AKA DELARIAN KAMERON  
WILSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 52104

District Court Case No. C232494

2009 AUG -7 1P 5:50

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 7th day of July, 2009.

IN WITNESS WHEREOF, I have subscribed my name and affixed  
the seal of the Supreme Court at my Office in Carson City,  
Nevada, this 4th day of August, 2009.

Tracie Lindeman, Supreme Court Clerk

By: Deputy Clerk

A. Ingersoll

002021

IN THE SUPREME COURT OF THE STATE OF NEVADA

DELARIAN K. WILSON A/K/A  
DELARIAN KAMERON WILSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52104

**FILED**

JUL 07 2009

TRACIE L. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of robbery with the use of a deadly weapon and one count of sexual assault. Eighth Judicial District Court, Clark County; James M. Bixler, Judge. The district court sentenced appellant Delarian Kameron Wilson to prison terms of 72 to 180 months for the robbery counts, plus equal and consecutive sentences for the deadly weapon enhancements, and ten years to life for the sexual assault, all terms to run consecutively.

Wilson contends that his sentence was excessive for two reasons: (1) his sentence was unreasonably disproportionate to his codefendant's sentence, and (2) the district court relied on highly suspect or impalpable evidence.

This court has consistently afforded the district court wide discretion in its sentencing decisions. See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). This court will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations

founded on facts supported only by impalpable or highly suspect evidence." Silka v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Moreover, regardless of its severity, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994). In considering whether a sentence is grossly disproportionate to an offense, a court must consider not only the gravity of the current offense, but also the seriousness of a defendant's criminal history. Ewing v. California, 538 U.S. 11, 28-29 (2003) (Kennedy, J., concurring).

Wilson first contends that his sentence was unreasonably disproportionate to the sentence that his codefendant, Narcus Wesley, received. Particularly, Wilson contends that the district court failed to take into account his remorse for the crime, his accepting responsibility for his actions by pleading guilty, his lack of prior convictions, and the fact that he did not actually commit the sexual assaults, but rather merely assisted and encouraged them. In contrast, Wesley expressed no remorse at the sentencing hearing, placed all the blame for the crimes on Wilson, and committed the actual sexual assault of the female victim. Wesley opted for his right to trial and was convicted on 18 counts. The district court sentenced Wesley to concurrent terms on all counts.<sup>1</sup>

---

<sup>1</sup>Wilson cites to Biondi v. State, 101 Nev. 252, 699 P.2d 1062 (1985), in support of his claim that such disparity in sentencing is  
*continued on next page . . .*

Although Wilson did not have a significant criminal history, the gravity of the crime supported the severity of Wilson's sentence. Wilson and Wesley robbed six individuals in their residence at gunpoint. Wilson took one of the victims to an ATM machine, and when he returned, Wilson and Wesley forced two of the victims to participate in sexual acts with each other, and then Wesley further sexually assaulted the female victim. The district court justified a more severe sentence for Wilson based on his role as "ring leader" of the robbery. "[S]entencing is an individualized process; therefore, no rule of law requires a court to sentence codefendants to identical terms," Nobles v. Warden, 106 Nev. 67, 68, 787 P.2d 390, 391 (1990) (citing People v. Walford, 716 P.2d 137 (Colo. App. 1985)), and it is within the discretion of the district court to impose consecutive sentences. See NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 303, 429 P.2d 549, 552 (1967). Moreover, Wilson has not contended that the relevant sentencing statutes are unconstitutional<sup>2</sup> or that the

... continued

unconstitutional. Bigodi was a death penalty case in which this court conducted a proportionality review of the death sentence pursuant to former NRS 177.055(2) and has no applicability to the present case.

<sup>2</sup>Wilson appears to briefly argue that when sentenced to a deadly weapon enhancement, a jury must make the determination that the defendant used a deadly weapon in the commission of a crime pursuant to Apprendi v. New Jersey, 530 U.S. 466 (2000). Wilson pleaded guilty to robbery with the use of a deadly weapon and admitted to facts supporting the enhancement; thereby waiving the right to a jury determination as to whether he used a deadly weapon. See Blakely v. Washington, 542 U.S. 296, 303 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is "the maximum sentence a judge may

continued on next page ...

sentences are not within the statutory limits.<sup>3</sup> Thus, the district court did not abuse its discretion at sentencing.

Second, Wilson contends that the district court relied on highly suspect and impalpable evidence in determining that he was the "ring leader" behind the crime. Particularly, Wilson contends that the district court relied on evidence adduced at Wesley's trial, and by relying on such evidence, supported Wesley's defense theory that he acted under duress when committing the crime, which the jury had rejected.<sup>4</sup>

The district court's wide discretion in its sentencing determinations enables the sentencing judge to consider a wide, largely unlimited variety of information to ensure that the punishment fits not only the crime, but also the individual defendant. Norwood v. State, 112 Nev. 438, 440, 915 P.2d 277, 278 (1996). Wilson has not cited to any legal authority to support his claim that the district court cannot consider evidence presented at a codefendant's trial in determining the proper sentence for a defendant. See Maresca v. State, 103 Nev. 669, 673, 748

... continued

impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant").

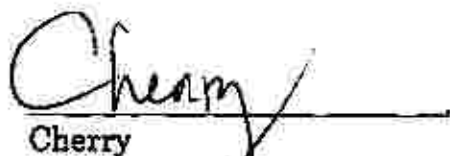
<sup>3</sup>See NRS 200.380(2) (setting forth a sentence of 2 to 15 years for robbery); 1995 Nev. Stat., ch. 455, §1 at 1431 (setting forth an equal and consecutive sentence for use of a deadly weapon); NRS 200.366(2)(b) (setting forth a sentence of ten to life for sexual assault).

<sup>4</sup>Wesley's trial transcripts were not included as a part of the record and the victims did not testify at the sentencing hearing. We further note that the jury's rejection of Wesley's defense of duress does not amount to the conclusion that Wilson was not the ring leader.

P.2d 3, 6 (1987) (holding that "[i]t is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court"). Thus, we decline to address this claim further.

Having considered Wilson's contentions and determined they are without merit, we

ORDER the judgment of conviction AFFIRMED.

 J.

Cherry

 J.

Saitta

 J.

Gibbons

cc: Hon. James M. Bixler, District Judge  
Draskovich & Oronoz, P.C.  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk



IN THE SUPREME COURT OF THE STATE OF NEVADA

DELARIAN K. WILSON A/K/A DELARIAN KAMERON  
WILSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 52104

District Court Case No. C232494

**REMITTITUR**

TO: Edward A. Friedland, Clark District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.  
Receipt for Remittitur.

DATE: August 4, 2009

Tracie Lindeman, Clerk of Court

By:

Deputy Clerk

*H. Ingersoll*

cc (without enclosures):

Hon. James M. Bixler, District Judge

Attorney General Catherine Cortez Masto/Carson City

Clark County District Attorney David J. Roger

Draskovich & Oronoz, P.C.

**RECEIPT FOR REMITTITUR**

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on AUG 05 2009.

**BRANDI J. WENDEL**

*Brandi J. Wendel*  
District Court Clerk

002027

09-17555

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

APR 12 2010

NARCUS S. WESLEY A/K/A NARCUS SAMONE  
WESLEY,  
Appellant,

Supreme Court No. 52127

*Tracie Lindeman*  
CLERK OF COURT

vs.  
THE STATE OF NEVADA,  
Respondent.

District Court Case No. C232494

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 11th day of March, 2010.

IN WITNESS WHEREOF, I have subscribed my name and affixed  
the seal of the Supreme Court at my Office in Carson City,  
Nevada, this 8th day of April, 2010.

Tracie Lindeman, Supreme Court Clerk

By: *A. Ingerson*  
Deputy Clerk

002028

10-6427

IN THE SUPREME COURT OF THE STATE OF NEVADA

NARCUS S. WESLEY A/K/A NARCUS  
SAMONE WESLEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52127

**FILED**

MAR 11 2010

TRACEY R. LUNDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit burglary, conspiracy to commit robbery, two counts of burglary while in possession of a deadly weapon, four counts of robbery with the use of a deadly weapon, two counts of assault with a deadly weapon, second-degree kidnapping, five counts of sexual assault with the use of a deadly weapon, coercion with the use of a deadly weapon, and open or gross lewdness with the use of a deadly weapon. Eighth Judicial District Court, Clark County; James M. Bixler, Judge. Appellant Narcus Wesley raises several claims of error.

First, Wesley claims that the district court erred by admitting his coconspirator Delarian Wilson's hearsay statements and guilty plea. Wesley's claims are without merit. Wilson's statements during the perpetration of the crime were non-hearsay pursuant to NRS 51.035(3)(e). And Wilson's confession and guilty plea were admitted by the defense over the State's objections. See Ford v. State, 122 Nev. 796, 805, 138 P.3d 500, 506 (2006) (confrontation rights may be waived through counsel); Carter v. State, 121 Nev. 759, 769, 121 P.3d 592, 599 (2005) ("A party who

participates in an alleged error is estopped from raising any objection on appeal.”).

Second, Wesley claims that the district court erred by denying a motion to suppress his statements based on (1) a deficient search warrant and (2) the violation of his rights under Miranda v. Arizona, 384 U.S. 436 (1966). Wesley's claims are without merit. Although the record reveals that some information in the affidavit supporting the search warrant was inaccurate, the district court did not err in finding that (1) the errors in the affidavit were not made intentionally or with a reckless disregard for the truth and (2) absent the misinformation the affidavit still provided probable cause for a warrant to issue. See Franks v. Delaware, 438 U.S. 154, 171-72 (1978). And Wesley was properly informed of his Miranda rights before he consented to questioning. His father's request for an opportunity to contact the family attorney did not constitute an invocation of Wesley's right to counsel. See, e.g., Terry v. LeFevre, 862 F.2d 409, 412 (2d. Cir. 1988) (providing that mother cannot invoke right to counsel on behalf of son); Dewey v. State, 123 Nev. 483, 485, 169 P.3d 1149, 1150 (2007) (concluding that request for counsel must be “clear, unequivocal, and unambiguous”).

Third, Wesley claims that there is insufficient evidence to support his convictions. However, in addition to the consistent testimony of six victims regarding the crime and their identification of Wesley as matching the description of one of the two perpetrators, Wesley admitted his willing involvement. The evidence was more than sufficient for a rational juror to find beyond a reasonable doubt that Wesley was guilty of all of the charged crimes. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Fourth, Wesley claims that his sentences are cumulative and excessive because he was sentenced to ten life terms with the possibility of

parole related to one alleged act of digital penetration. Wesley misstates the facts. He was found guilty of one count of sexual assault with the use of a deadly weapon for the digital penetration of one victim. The remaining four counts of sexual assault with the use of a deadly weapon resulted from forcing two victims to perform several sexual acts on one another at gun point. And Wesley's sentences for each individual act—and the pertinent weapon enhancements—are within the statutory guidelines. See NRS 200.366; 1995 Nev. Stat., ch. 455, § 1, at 1431; State v. Dist. Ct. (Pullin), 124 Nev. \_\_\_, \_\_\_, 188 P.3d 1079, 1080-81 (2008).

Finally, Wesley claims that trial counsel was ineffective for admitting guilt during opening statements. We decline to address this claim because "[o]n direct appeal, this court does not address claims of ineffective assistance of counsel." Ouanbengboune v. State, 125 Nev. \_\_\_, \_\_\_, 220 P.3d 1122, 1125 n.1 (2009).

Having considered Wesley's claims and concluded that no relief is warranted,<sup>1</sup> we

ORDER the judgment of conviction AFFIRMED.

Hardesty J.  
Hardesty

Douglas J.  
Douglas

Pickering J.  
Pickering

<sup>1</sup>Wesley makes a passing claim in the conclusion of his opening brief that the district court erred by permitting the peremptory challenge of an African-American potential juror in violation of Batson v. Kentucky, 476 U.S. 79 (1986). Our review of the record reveals no error in this regard.

cc: Hon. James M. Bixler, District Judge  
The Law Office of Dan M. Winder, P.C.  
Clark County District Attorney  
Eighth District Court Clerk

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 04-08-2010 BY 60322  
A. HERSH

002033



IN THE SUPREME COURT OF THE STATE OF NEVADA

NARCUS S. WESLEY A/K/A NARCUS SAMONE  
WESLEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 52127

District Court Case No. C232494

**REMITTITUR**

TO: Steven D. Grierson, Clark District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.  
Receipt for Remittitur.

DATE: April 8, 2010

Tracie Lindeman, Clerk of Court

By: A. Ingersoll  
Deputy Clerk

cc (without enclosures):

Hon. James M. Bixler, District Judge  
Clark County District Attorney  
The Law Office of Dan M. Winder, P.C.

**RECEIPT FOR REMITTITUR**

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on APR 9 2010

KEATHE H. LOFOLIST

Deputy District Court Clerk

002034

10-06999



CLERK OF THE COURT

DAN M. WINDER, ESQ.  
Nevada Bar No. 001569  
LAW OFFICE OF DAN M. WINDER, P.C.  
3507 W. Charleston Blvd.  
Las Vegas, NV 89102  
Telephone: (702) 474-0523  
Facsimile: (702) 474-0631  
[winderdanattv@aol.com](mailto:winderdanattv@aol.com)

Attorney for Defendant

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

THE STATE OF NEVADA,

Plaintiff,

vs.

NARCUS WESLEY,

Defendant.

District Court Case No.: C232494

Dept. No.: IV

Supreme Court Case No. 52127

**ATTORNEY TIME AND COSTS**

**OUT OF COURT TIME:**

**DISTRICT COURT:**

07/25/08	Filed Request for Transcript of Proceedings	1.0 hours
07/25/08	Draft-Letter to client with copy of Request for Transcript of Proceedings	.75 hours
07/31/08	Filed Certified Copy of Notice of Cross-Appeal	.75 hours
07/31/08	Review- Issued Notice to File Case Appeal Statement	.50 hours
07/31/08	Review-Filed Order /Show Cause	1.0 hours
08/06/08	Review-Response to Order to Show Cause Answer to Order to Show Cause	1.0 hours
08/07/08	File-Case Appcal Statement	2.0 hours
08/07/08	Draft-Letter to client with copy of Case Appeal Statement	.50 hours
08/26/08	Review- Notice of File Docketing Statement & Request for Transcripts	.50 hours

1	09/03/08	Review- Order Dismissing Appeal by State	1.0 hours
2	09/12/08	File-Motion to Extend Time to file Docketing Statement	.50 hours
3	09/30/08	Review-Order Granting Motion & Conditionally Imposing Sanctions	.75 hours
4	09/30/08	Draft-Letter to client with copy of Motion to Extend Time to file Docketing Statement with Order Granting motion	.50 hours
5	10/10/08	File- Docketing Statement	1.75 hours
6	10/13/08	Draft-Letter to client with copy of Docketing Statement	.50 hours
7	11/03/08	Review- Order Regarding Sanctions	.50 hours
8	11/10/08	File- Motion for Relief from Sanctions	1.0 hours
9	11/10/08	File-Request for Transcript of Proceedings	1.0 hours
10	11/14/08	Review- Notice from Court Report, regarding requested transcripts were delivered	.50 hours
11	12/03/08	Review-Order Granting Motion & Vacating Sanctions	1.0 hours
12	01/12/09	File- Motion to Extend Time/Opening Brief	.50 hours
13	01/15/09	Review- Order Granting Motion/Opening Brief	.75 hours
14	01/15/09	Draft-Letter to client with copy of Motion to Extend Time to file Opening Brief & Order Granting motion	.50 hours
15	03/06/09	File-Motion to Extend Time/ Opening Brief	.50 hours
16	03/12/09	Review-Order Granting Motion/Opening Brief	.75 hours
17	03/13/09	Draft-Letter to Client regarding status of Opening Brief	.50 hours
18	03/31/09	Draft- Letter to client in response to list letter with requested documents	1.0 hours
19	04/07/09	File-Motion to Extend Time/Opening Brief	.50 hours

1	04/13/09	Review-Order Granting Motion/Opening Brief	.75 hours
2			
3	04/14/09	Draft-Letter to client with copy of Motion to Extend Time to file Opening Brief & Order Granting motion	.50 hours
4			
5	05/03/09	Review File; research Re: Issues	4.5 hours
6	05/05/09	File-Motion to Extend Time to File Opening Brief	.50 hours
7	05/11/09	Review-Order Granting Extension to Time to File Opening Brief	.75 hours
8			
9	05/11/09	Draft-Letter to Client with copy of Motion to Extend Time to File Opening Brief & Order Granting	.50 hours
10			
11	06/08/09	File-Motion to Extend Time/Opening Brief	.50 hours
12	06/18/09	Review-Order Granting Extension to Time to File Opening Brief	.50 hours
13	06/22/09	Draft- Letter to client with copy of Motion for Extension of Time & Order Granting Extension	.50 hours
14			
15	07/05/09	Review Transcripts; Research Re: Issues	5.0 hours
16	07/06/09	Draft-Letter to Supreme Court w/attachment Motion for Extension of Time	.75 hours
17			
18	07/08/09	File-Motion to Extend Time/Opening Brief	.50 hours
19	07/10/09	Review-Order Granting Extension to Time to File Opening Brief	.50 hours
20	07/13/09	Research Re: Issues, review transcripts	7.0 hours
21	07/14/09	Draft-Letter to Client with copy of Motion to Extend Time to File Opening Brief & Order Granting	.50 hours
22			
23	07/30/09	Research Re: Issues	8.0 hours
24	08/01/09	Prepare Opening Brief	9.0 hours
25	08/03/09	Draft-Letter to Supreme Court w/attachments Opening Brief	1.0 hours
26			
27			
28			

1	08/04/09	Draft-Letter to client with copy of Opening Brief	.50 hours
2			
3	08/05/09	File-Appellant's Opening Brief/Appendix Volumes 1-6	1.0 hours
4	08/28/09	Review - Motion to Extend Time to File Answering Brief	.50 hours
5			
6	08/28/09	Review-Motion/Stipulation Approved Extension of Time to file Answering Brief	.75 hours
7	09/28/09	Review-Respondent's Motion to Extended Time to file Answering Brief	.50 hours
8			
9	10/01/09	Review-Order Granting Motion on Respondent's Motion for Extension of Time to file Answering Brief	.75 hours
10			
11	10/01/09	Draft-Letter to client with copy of Respondent's Motion for Extension of Time to file Answering Brief	.50 hours
12			
13	10/12/09	Draft-Letter to client regarding upcoming visit to Ely State Prison	.50 hours
14	10/20/09	Visit with client Ely State Prison	10.0 hours
15	10/28/09	Review-Respondent's Answering Brief	4.5 hours
16	11/03/09	Draft-Letter to client with copy of Respondent's Answering Brief	.50 hours
17			
18	11/18/09	Draft-Letter to client in response to his letters regard extension of time to file Reply Brief	.50 hours
19			
20	11/19/09	Research Re: Issue or Reply	6.0 hours
21	11/25/09	File-Ex-Parte Motion for Enlargement of Time to File Reply Brief	.50 hours
22	11/25/09	Review-Motion/Stipulation Approved on Enlargement of Time to file Reply Brief	.75 hours
23			
24	12/08/09	Prepare Reply Brief	7.5 hours
25	12/09/09	File-Reply Brief	1.0 hours
26	12/11/09	Draft-Letter to client with copy of Reply Brief	.50 hours

12/14/09	Visit with client Ely State Prison	8.0 hours
01/26/10	Review-Order Submitting for Decision Without Oral Argument	1.0 hours
03/11/10	Review- Order Affirmance	2.5 hours
03/26/10	Draft-Letter to client with copy of Decision from Supreme Court	1.0 hours
04/08/10	Review- Remittitur	.50 hours
04/15/10	File-Remittitur, Received by County Clerk on 04/12/10	.50 hours

OUT OF COURT TIME FOR DISTRICT COURT 115.50 X \$100.00/HOUR     \$ 11,550.00

IN COURT TIME:     00.0 HOURS (COURT APPOINTED APPEAL)

OUT OF COURT TIME:	115.5 HOURS	
TOTAL	115.5 HOURS X \$100.00/HOUR =	\$ 11,550.00
COSTS:	COPIES 758 pgs X .10¢ =	\$ 78.00
	POSTAGE =	\$ 9.90
	TOTAL =	\$ <u>11,637.90</u>

1 of 59

(On the 8<sup>th</sup> Judicial District Court of  
THE STATE of NEVADA IN AND FOR THE  
County of CLARK

FILED

AUG - 4 2010

Clerk of Court

Debra K. Wilson  
PETITIONER

CASE NO. C23294

DEPT NO. 24

VS.

DOCKET NO.

07C232464-1  
MAGN  
Motion for Order  
887071



STATE of NEVADA  
RESPONDENT

8/17/10

MOTION FOR AN ORDER INSTRUCTING THE ATTORNEY  
OF RECORD TO PROVIDE PETITIONER WITH A COMPLETE AND  
COPY OF THE CASE FILE IN THE ABOVE ENTITLED CASE NUMBER

COMES NOW, PETITIONER, Debra K. Wilson, pro  
per, and respectfully urges this Honorable Court for an Order  
Instructing, JAMES A. DRONOV, ESQ. TO PROVIDE A  
COMPLETE AND ACCURATE COPY OF PETITIONER'S CASE FILE IN THE ABOVE  
ENTITLED CASE NUMBER SPECIFICALLY ALL PRE TRIAL MOTIONS, IN  
CLUDING BUT NOT LIMITED TO, "MOTION TO APPOINT INVESTIGATOR" filed 8.16.07,  
"MOTION TO SEVER DEFENDANT" filed 3.11.08, "MOTION TO SIGNER STATEMENT"  
filed 3.24.08, "MOTION TO RESET VENTURING DATE" filed 5.10.08, "ANY  
AND ALL PRE-TRIAL MOTIONS IN REQUEST OF CONTINUANCES" "TRANSCRIPTS  
OF ALL PROCEEDINGS MENTIONED IN THE PETITION" "TRANSCRIPTS OF  
EACH CALENDAR CALL 5/9/07, 6/12/07, 11/1/07, 1/24/08, 3/27/08,  
TRANSCRIPTS OF PROCEEDINGS 5/26/08 TITLED "ALL PENDING MOTIONS"  
PRE-TRIAL MOTIONS SPECIFICALLY BUT NOT LIMITED TO "MOTION FOR

CLERK OF THE COURT

AUG 13 2010

RECEIVED

2040

13



REQUEST of TRANSCRIPTS of NUMEROUS DISTRICT COURT PROCEEDINGS  
FILED 9.10.08, SPECIFICALLY 4/10/08, 4/11/08, 4/14/08, 4/15/08,  
4/16/08, 4/17/08, 4/18/08, 4/21/08, ANY AND ALL DOCUMENTS  
FILED TO THE NEVADA SUPREME COURT, INCLUDING ANY DECISIONS OR  
MOTIONS IN REGARD TO MY DIRECT APPEAL (NO. 52104).

### Affirmation:

THE PETITIONER, DELTRIAN L. WILSON, AN UNPAID  
PRISONER CURRENTLY INCARCERATED AT ELI/STATE PRISON HAS MADE  
REPEATED REQUEST TO JAMES A. ORANIZ, THE ATTORNEY OF RECORD  
ON BOTH DISTRICT COURT CASE NO. C23294 AND NEVADA SUPREME  
COURT NO. 52104 FOR COPIES OF ALL DOCUMENTS LISTED IN THIS  
MOTION. MR. ORANIZ HAS WITHHELD THESE DOCUMENTS FROM ME FOR  
ALMOST TWO YEARS. I HAVE NEVER RECEIVED ANY COPIES OF  
"ANY" MOTIONS FILED IN THIS COURT OR THE NEVADA SUPREME  
COURT FOR WHICH I, PETITIONER WILSON HAVE ASKED MR. ORANIZ  
NUMEROUS OF TIMES. (As regards to COURT PROCEEDINGS 4/10, 4/11,  
4/14, 4/15, 4/16, 4/17, 4/18, AND 4/21/08, THERE ARE THREE  
TRANSCRIPTS THAT PETITIONER AS WELL AS MR. ORANIZ WOULD  
WOULD BE HELPFUL FOR MY APPEAL. MR. ORANIZ NOW CLAIMS HE  
NO LONGER HAS THESE DOCUMENTS WITHIN IN FILE ON 11/17/08  
THE NEVADA SUPREME COURT ORDERED COURT REPORTERS JACKIE JENELLE  
AND LEE SMITH TO PRODUCE THE REQUESTED TRANSCRIPTS WITHIN 30  
DAYS OF THE 11/17/08 DATE. MR. ORANIZ HAS WITHHELD THE TRANSCRIPTS  
FROM PETITIONER EVERY SINCE THIS COURT WAS ORDERED TO PRODUCE  
THEM TO MR. ORANIZ. I, THE PETITIONER FEEL THESE DOCUMENTS  
ARE CRUCIAL TO IDENTIFYING ISSUES TO MY APPEAL. MR. ORANIZ  
HAS NOT GIVEN ME ANY UPDATES IN REGARDS TO MY DIRECT APPEAL NO. 52104

002041

I HAVE ASKED MR. DRAOZ NUMEROUS OF TIMES ABOUT THE STATUS OF MY APPEAL. IN WHICH MR. DRAOZ HAS STATED THERE IS NOTHING TO REPORT. JUST RECENTLY VIA MY MOTION I LEARNED THAT THE SUPREME COURT MADE A DECISION ON MY APPEAL NO. 32104. MR. DRAOZ HAS NEVER GIVE PETITIONER ANY DOCUMENTS IN REGARDS TO THIS MOTION. DUE TO THE STRICT GUIDELINES SET FORTH IN THE APPEALS PROCESS PETITIONER IS ASKING THE COURT TO ORDER JAMES A. DRAOZ TO PROVIDE A COMPLETE AND ACCURATE COPY OF PETITIONER'S CASE FILE, SPECIFICALLY DOCUMENTS LISTED IN THIS MOTION IN IT'S ENTIRETY AND IN A TIMELY MANNER. FURTHER PETITIONER REQUEST THE COURT ORDER THE NAME ATTORNEY IN THIS MOTION TO TURN OVER THESE DOCUMENTS WITHOUT COST AND WITH A MINIMUM AMOUNT OF DELAY DUE TO THE STRICT GUIDELINES AND TIME LIMITS IN THE APPEALS PROCESS.

DATED THE 2<sup>TH</sup> DAY OF JULY, 2019

RESPECTFULLY SUBMITTED

( ) DOUGLAS K. WILSON

PETITIONER

THIS MOTION IS MADE AND BASED UPON NEV. REV. STAT. 7.055, AND NEV. SUP. CT. RULES 166(4), 173, 176, AND 203, AND RULES 11 AND 20 OF THE RULES OF THE DISTRICT COURTS OF THE STATE OF NEVADA.

### POINTS AND AUTHORITIES

NEV. REV. STAT. 7.055 PROVIDES THAT:

AN ATTORNEY WHO HAS BEEN DISCHARGED BY HIS CLIENT SHALL, UPON DEMAND... IMMEDIATELY DELIVER TO CLIENT ALL PAPERS, DOCUMENTS

002042

PLEADINGS AND ITEMS OF TANGIBLE PERSONAL PROPERTY WHICH BELONG TO OR WERE PREPARED FOR THIS CLIENT.

SEE ALSO NEW SUP. CT. RULE 144(4):

UPON TERMINATION OF REPRESENTATION, A LAWYER SHALL TAKE STEPS TO THE EXTENT REASONABLY PRACTICABLE TO PROTECT A CLIENT'S INTEREST, SUCH AS... SUMMONING PAPERS AND PROPERTY TO WHICH THE CLIENT IS ENTITLED."

PETITIONER WOULD RESPECTFULLY POINT OUT TO THIS COURT AND THE ATTORNEY OF RECORD THAT THERE IS CONTROLLING LAW ON THIS ISSUE. THIS CITATION OF AUTHORITY IS PRECAUTIONARY ONLY. IN THE CASES OF IN RE YOUNT, 93 ARIZ. 322, 380 P.2d 780 (1963), AND STATE V. ALVEY, 215 KAN. 460, 324 P.2d 747 (1974), BOTH CASES DEAL WITH A FACTUAL SITUATION INVOLVING A ATTORNEY REFUSING TO DELIVER A FORMER CLIENT HIS DOCUMENTS AFTER BEING REQUESTED TO DO SO BY THE CLIENT. THE COURT IN YOUNT SUPRA, ORDERED THE ATTORNEY DISBARRED, WHILE IN ALVEY SUPRA, THE COURT HAD THE ATTORNEY CENSURED.

WHEN IT HAS COME TO THE END OF A ATTORNEY AND CLIENTS CASE EITHER BY WITHDRAWAL, TERMINATION, OR SIMPLY THE END OF CLIENTS CASE IT IS THE DUTY OF THE ATTORNEY TO NOTIFY THE CLIENT OF THIS FACT REQUIRED BY THESE STATUTES AND RULES, AS WELL AS ISSUING THE CLIENT A COMPLETE AND ACCURATE COPY OF CLIENTS FILE AND ANY AND ALL RELATED DOCUMENTS WHICH THE CLIENT IS ENTITLED TO

THEREFORE, LET THIS COURT BE SO NOTIFIED THAT THIS IS THE DESIRE OF THE PETITIONER THAT THE COURT ISSUE AN ORDER TO MR. JAMES A ORDOZ TO HAND OVER ALL ABOVE DOCUMENTS LISTED IN THIS MOTION, SO THAT FURTHER ACTIONS IN THE ABOVE ENTITLED CASES CAN BE CONDUCTED BY PETITIONER IN PROPER PERSON.

CONCLUSION

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WHEREFORE, ALL THE ABOVE REASONS, PETITIONER RESPECTFULLY REQUEST THIS HONORABLE COURT TO GRANT HIS MOTION TO ISSUE AN ORDER TO THOMAS A. DRANDE TO HAND OVER ALL DOCUMENTS IN PETITIONER'S FILE, OR ANY AND ALL DOCUMENTS ENTITLED TO PETITIONER SPECIFICALLY DOCUMENTS MENTIONED ABOVE THAT PERTAIN TO THIS COURT OR THE NEXT HIGHER COURT SO THAT PETITIONER MAY CONTINUE TO RAISE ISSUES ON MURKIN. PETITIONER REQUEST THIS WITH THE COURT'S FAIR AND JUST CONSIDERATION OF THE FACTS OF THE CASE.

### CERTIFICATE OF MAILING

I HEREBY CERTIFY PURSUANT TO N.R.C.P. 5(d) THAT I AM THE PETITIONER IN THE FOREGOING NOTICE OF MOTION FOR AN ORDER INSTRUCTING THE ATTORNEY THOMAS A. DRANDE TO PROVIDE PETITIONER WITH A COMPLETE AND ACCURATE COPY OF THE CASE FILE AND DOCUMENTS LISTED ABOVE IN THIS MOTION ON THIS 27<sup>TH</sup> DAY OF JULY, 2010. I DID SEND A TRUE AND CORRECT COPY OF THE ABOVE MENTIONED DOCUMENT, BY GIVING IT TO A PRISON OFFICIAL AT THE ELI STATE PRISON TO DEPOSIT IN THE U.S. MAIL, SEALED IN A ENVELOPE, POSTAGE PREPAID, AND ADDRESSED AS FOLLOWS:

DAVID ROGERS

DISTRICT ATTORNEY

200 LEWIS AVE. 3<sup>RD</sup> FLOOR

LAS VEGAS, NV 89135-2212

DATED THIS 27<sup>TH</sup> DAY OF JULY

EDWARD A. FRIEDLAND

CLERK OF THE COURT

200 LEWIS AVE. 3<sup>RD</sup> FLOOR

LAS VEGAS, NV 89155-1140

2010

DEBORAH K. WILSON

PETITIONER

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# EXHIBITS

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7-21-10

Dear Mr. Diaz,

I come to you today on Request of my Decision from the Nevada Supreme Court on Regards to my Direct Appeal. Apparently which I just learned via my mother that I was denied Relief on my Direct Appeal as of April 2010. You and your office over-satisfied me of this Very Important Matter. Even though I have called you numerous of times on Regards to my Appeal as stated as April + May of 2010. On which you told me you have not heard anything on Regards to my Appeal. Mr. Diaz I ask that you send me a copy that all materials from the Nevada Supreme Court pertaining to my Appeal. I also ask that you satisfy the Nevada Supreme Court that I am just being satisfied of this Decision that Request that I may be granted an extension for any future petitions on Regards to my Conviction. As a result of you not satisfying me on a timely manner. Your prompt response to these matters would be greatly appreciated. Thanks. I am aware your office is suppose to mail & fax a copy to my Mother as of 7-22-10 but I ask that your office also mails me my own copy too. Thanks

Respectfully,  
R. [Signature] 002046

7/25/10

Dear Mr. O'Connor,

I come today to you in regards of some very important matters. Due to the fact that we have reach the conclusion of your 10 day Counsel I need to address some important matters. I continue in my Pursuit of Relief of my Criminal Conviction.

I ask that you mail my entire file that record to me the soon as possible that includes all filed motions on my behalf to either the District or Nevada Supreme Court. To be specific:

- Motion to Appoint Investigator, and for fee's on excess of Statutory (filed 8/16/07)
- Motion to Sever Defendants (filed 3/11/08)
- Motion to Suppress Statements (filed 3/24/08)
- Motion to Reset Sentencing Rate (filed 5/10/08)

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I would like a copy of the motion you filed "transcript Request form" requesting transcripts of numerous District Court Proceedings

of the following dates 4-10-08, 4-11-08, 4-14-08, 4-15-08, 4-16-08, 4-17-08, 4-18-08 and 4-21-08.

There are also your transcripts of the State of Nevada vs. Markus.

I have requested copies of these proceedings for almost two years. I would also like a copy of the motion to increase

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the time to file my opening brief. The motion filed  
from the request of Desely's final proceedings were filed  
9/10/08 according to your letter 12/24/08 on 11/17/08.  
The Nevada Supreme Court ordered Court Reporter Jackie  
Tencello and her wife to produce the requested transcripts  
within 30 days. The Nevada Supreme Court granted you  
70 days from the day of the order to file and serve  
the opening brief and Appendix. Again this is all according  
to the letter you wrote me on 12/24/08. I have never  
received any copies of any of the matters listed above.

As you know me because there is very strict and specific  
time limits on these appellate procedures. So I am asking that  
you respond promptly to these important matters. I need  
copies of all the materials mentioned in this letter. Your  
prompt response would be greatly appreciated. Thanks

Respectfully,

Deborah Wilson  
#1022177

Mr. O'Neil,

December 13<sup>th</sup>, 2009

First off let me thank you for taking the time to address this letter. I also would like to wish you and your family a happy and blessed holiday season. I write again in regards to some legal materials of mine that I have been requesting but still have not received. As I mentioned before that my online appellate materials were mistakenly destroyed I ask that you please send me copies of all items pertaining to my current appeal.

Secondly, it is nearly approaching a year that I have asked for but not received the following items which I have been told numerous of times they would be sent:

- Co-Defendant "Nathan Wesley's" trial transcripts
- Transcripts of my "Calendar Call" (3-27-08)
- All motions that were filed on my behalf.

Mr. O'Neil, I cannot stress enough the importance of these materials that I do not have in my possession. Not only would I just like a copy for myself, but they may be valuable for my future appeals if need be. So I again politely ask that you please make copies of these legal materials at your earliest convenience. Items may be sent directly to me or to my mother's address (878 S. Kallispell Cir. #106 Garden, CO-80017).

Thanks for your time. Respectfully, Defendant 0002049