

No. C-13-29159-1

Dept. No. XX

Electronically Filed
10/06/2015 11:36:40 AM

IN THE 8th JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF Clark

Electronically Filed
Oct 6 2015 12:12 pm
Tracie K. Lindeman
CLERK OF THE COURT
Clerk of Supreme Court

FRANK HEARING
Petitioner/Plaintiff,

v.

State of Nevada

Respondent/Defendant.

NOTICE OF APPEAL

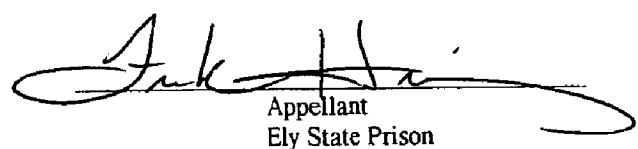
Notice is hereby given that FRANK HEARING, Petitioner/Defendant above named,

hereby appeals to the Supreme Court of Nevada from the final judgment/order

Petition For Writ of Habeas Corpus (Post Conviction)

entered in this action on the 1st day of October, 2015.

Dated this 1st day of October, 2015.



Appellant
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989

RECEIVED

51 OCT 06 2015

CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAIL

I, FRANK HEARING, hereby certify pursuant to Rule 5(b) of the NRCP, that on this 1st day of October, 20 15, I served a true and correct copy of the above-entitled Notice OF Appeal postage prepaid and addressed as follows:

Carl Arnold
1148 S. Maryland PKWY
Las Vegas, NV 89104

Steven Wolfson
Distict Attorney
200 Lewis Ave
Las Vegas, NV 89155

Signature

Print Name

Frank Hearing
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989

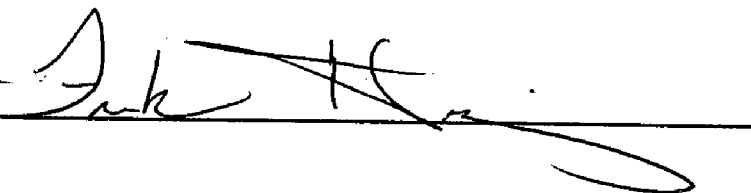
AFFIRMATION PURSUANT TO NRS 239B.030

I, Frank Herring, NDOC# 1006445,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE
ATTACHED DOCUMENT ENTITLED Notice OF Appeal For
Petition For Writ OF Habeas Corpus (post-Conviction)

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 1st DAY OF October, 20 15.

SIGNATURE: 

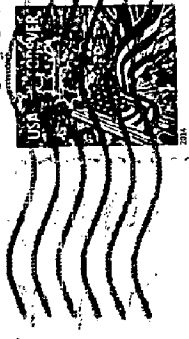
INMATE PRINTED NAME: FRANK Herring

INMATE NDOC # 1006445

INMATE ADDRESS: ELY STATE PRISON
P. O. BOX 1989
ELY, NV 89301

FRANK HEARING #10060445
ELY STATE PRISON
P.O. BOX 1989
ELY, NV 89301

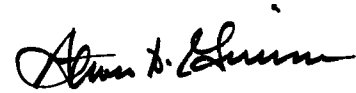
LAS VEGAS NV 890
02 OCT 2015 PM 5 L



STEVEN GRIERSON
200 LEWIS AVE 3rd Floor
Las Vegas, NV 89155

00006910168
|||

ELY STATE PRISON
CCT 01 2015
U8



CLERK OF THE COURT

ASTA

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

STATE OF NEVADA,

Plaintiff(s),

vs.

FRANK HEARRING, JR. aka
FRANK HEARRING,

Defendant(s),

Case No: C-13-291159-1

Dept No: XX

CASE APPEAL STATEMENT

1. Appellant(s): Frank Hearing

2. Judge: Eric Johnson

3. Appellant(s): Frank Hearing

Counsel:

Frank Hearing #1006445
P.O. Box 1989
Ely, NV 89301

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.

Las Vegas, NV 89101
(702) 671-2700

5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A

6. Appellant Represented by Appointed Counsel In District Court: No

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9. Date Commenced in District Court: July 15, 2013

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

Type of Judgment or Order Being Appealed: Post-Conviction Relief

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

Dated This 7 day of October 2015.

Steven D. Grierson, Clerk of the Court



Mary Kielty, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: Frank Herring

DEPARTMENT 20
CASE SUMMARY
CASE NO. C-13-291159-1

State of Nevada
vs
Frank Herring, Jr.

§ Location: **Department 20**
§ Judicial Officer: **Johnson, Eric**
§ Filed on: **07/15/2013**
§ Case Number History:
§ Cross-Reference Case **C291159**
§ Number:
§ Defendant's Scope ID #: **1774466**
§ ITAG Booking Number: **1300028814**
§ ITAG Case ID: **1502004**
§ Lower Court Case # Root: **13F08177**
Lower Court Case Number: **13F08177X**

CASE INFORMATION

Offense	Deg	Date	Case Type:	Felony/Gross Misdemeanor
1. MURDER (SECOND DEGREE) WITH THE USE OF A DEADLY WEAPON	F	05/17/2013	Case Flags:	Appealed to Supreme Court Custody Status - Nevada Department of Corrections Charge Description Updated
Filed As: MURDER WITH USE OF A DEADLY WEAPON	F	7/15/2013		
Arrest: 05/31/2013				
2. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON	F	05/17/2013		
Arrest: 05/31/2013				
3. DISCHARGING A FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT OR WATERCRAFT	F	05/17/2013		
Arrest: 05/31/2013				
4. POSSESSION OF FIREARM BY EX-FELON	F	05/17/2013		
Arrest: 05/31/2013				

Statistical Closures

01/08/2014 Guilty Plea with Sentence (before trial)

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	C-13-291159-1
Court	Department 20
Date Assigned	05/04/2015
Judicial Officer	Johnson, Eric




PARTY INFORMATION

Defendant	Herring, Frank, Jr.	<i>Lead Attorneys</i>
		Pro Se 702-624-4542(H)
Plaintiff	State of Nevada	Wolfson, Steven B 702-671-2700(W)















DATE

EVENTS & ORDERS OF THE COURT






INDEX

07/15/2013	 Information <i>Information</i>
07/15/2013	 Criminal Bindover <i>Criminal Bindover</i>
07/18/2013	 Initial Arraignment (9:30 AM) (Judicial Officer: De La Garza, Melisa)

















DEPARTMENT 20
CASE SUMMARY
CASE NO. C-13-291159-1

07/26/2013	 Notice of Witnesses and/or Expert Witnesses <i>Notice of Expert Witnesses</i>
08/08/2013	 Notice of Witnesses and/or Expert Witnesses <i>Notice of Witnesses</i>
08/09/2013	 Notice of Witnesses and/or Expert Witnesses <i>Supplemental NOtice of Witnesses</i>
08/12/2013	 Notice of Witnesses and/or Expert Witnesses <i>Second Supplemental Notice of Witnesses</i>
08/13/2013	 Calendar Call (8:30 AM) (Judicial Officer: Tao, Jerome T.) <i>Calendar Call (#1)</i>
08/19/2013	CANCELED Jury Trial (9:00 AM) (Judicial Officer: Tao, Jerome T.) <i>Vacated</i> <i>Jury Trial (#1)</i>
09/05/2013	 Reporters Transcript <i>Reporter's Transcript of Preliminary Hearing, 7/11/2013</i>
09/16/2013	 Notice of Witnesses and/or Expert Witnesses <i>Supplemental Notice of Expert Witnesses</i>
09/17/2013	 Notice of Witnesses and/or Expert Witnesses <i>Second Supplemental Notice of Expert Witnesses</i>
09/24/2013	 Receipt of Copy <i>Receipt of Copy</i>
09/25/2013	 Motion <i>Motion in Limine</i>
09/30/2013	 Notice of Witnesses and/or Expert Witnesses <i>Third Supplemental Notice of Witnesses NRS 174.234(a)(a)</i>
10/01/2013	Calendar Call (8:30 AM) (Judicial Officer: Tao, Jerome T.) <i>Calendar Call #2</i>
10/01/2013	Request (8:30 AM) (Judicial Officer: Tao, Jerome T.) <i>State's Request: Motion in Limine</i>
10/01/2013	 All Pending Motions (8:30 AM) (Judicial Officer: Tao, Jerome T.)
10/07/2013	 Jury Trial (9:00 AM) (Judicial Officer: Tao, Jerome T.) <i>Jury Trial</i>
10/07/2013	 Guilty Plea Agreement <i>Guilty Plea Agreement</i>
10/07/2013	

DEPARTMENT 20
CASE SUMMARY
CASE NO. C-13-291159-1

	 Amended Information <i>Amended Information Filed in Open Court</i>
10/07/2013	Disposition (Judicial Officer: Tao, Jerome T.) 2. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON Charges Amended/Dropped PCN: Sequence: 3. DISCHARGING A FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT OR WATERCRAFT Charges Amended/Dropped PCN: Sequence: 4. POSSESSION OF FIREARM BY EX-FELON Charges Amended/Dropped PCN: Sequence:
10/07/2013	Plea (Judicial Officer: Tao, Jerome T.) 1. MURDER (SECOND DEGREE) WITH THE USE OF A DEADLY WEAPON Guilty PCN: Sequence:
11/20/2013	 PSI
11/22/2013	 Motion <i>Motion to Marry</i>
12/10/2013	 Sentencing (8:30 AM) (Judicial Officer: Tao, Jerome T.)
12/10/2013	Disposition (Judicial Officer: Tao, Jerome T.) 1. MURDER (SECOND DEGREE) WITH THE USE OF A DEADLY WEAPON Guilty PCN: Sequence:
12/10/2013	Sentence (Judicial Officer: Tao, Jerome T.) 1. MURDER (SECOND DEGREE) WITH THE USE OF A DEADLY WEAPON Adult Adjudication Sentenced to Nevada Dept. of Corrections Term: Life with the possibility of parole after: 10 Years Consecutive Enhancement: Deadly Weapon, Minimum: 96 Months, Maximum: 240 Months Credit for Time Served: 293 Days Fee Totals: Administrative Assessment Fee --- 25.00 Crim fee sch DNA Analysis Fee --- Crim fee sch - 150.00 \$150 Fee Totals \$ 175.00
12/17/2013	 Motion to Marry (8:30 AM) (Judicial Officer: Tao, Jerome T.) <i>Defendant Motion to Marry</i>
12/17/2013	CANCELED Motion to Marry (8:30 AM) (Judicial Officer: Tao, Jerome T.) <i>Vacated - On In Error</i> <i>Defendant Motion to Marry</i>

DEPARTMENT 20
CASE SUMMARY
CASE NO. C-13-291159-1

12/30/2013	 Judgment of Conviction <i>JUDGMENT OF CONVICTION (PLEA OF GUILTY)</i>
01/08/2014	 Criminal Order to Statistically Close Case <i>Criminal Order to Statistically Close Case</i>
01/09/2014	 Status Check (8:30 AM) (Judicial Officer: Tao, Jerome T.) 01/09/2014, 01/23/2014 <i>Status Check: Restitution</i>
05/15/2014	 Notice of Motion <i>Notice of Motion</i>
05/15/2014	 Motion <i>Motion to Withdraw Counsel</i>
06/12/2014	 Motion (8:30 AM) (Judicial Officer: Tao, Jerome T.) <i>Defendant's Pro Per Motion to Withdraw Counsel</i>
11/12/2014	 Motion <i>Motion for the Appointment of Counsel Request for Evidentiary Hearing</i>
11/25/2014	 Response <i>State's Response to Defendant's Motion for the Appointment of Counsel and Opposition to Defendant's Request for Evidentiary Hearing</i>
12/04/2014	 Motion for Appointment of Attorney (8:30 AM) (Judicial Officer: Tao, Jerome T.) <i>Defendant's Motion for the Appointment of Counsel Request for Evidentiary Hearing</i>
12/10/2014	 Notice of Motion <i>Notice of Motion</i>
12/10/2014	 Motion <i>Motion to Withdrawal Plea</i>
12/15/2014	 Order <i>Order Denying Defendant's Motion for the Appointment of Counsel and Request for Evidentiary Hearing</i>
12/18/2014	 Recorders Transcript of Hearing <i>Recorder's Transcript of Jury Trial, Monday, October 7, 2013</i>
12/22/2014	 Opposition <i>State's Opposition to Defendant's Motion to Withdraw Plea</i>
12/26/2014	 Order <i>Application and Order for Transcripts</i>
01/06/2015	 Motion to Withdraw Plea (8:30 AM) (Judicial Officer: Thompson, Charles) <i>Defendant's Pro Per Motion to Withdraw Plea</i>

DEPARTMENT 20
CASE SUMMARY
CASE NO. C-13-291159-1

01/16/2015	 Order Denying <i>Order Denying Defendant's Motion to Withdraw Plea</i>
03/30/2015	 Petition for Writ of Habeas Corpus
05/04/2015	Case Reassigned to Department 20 <i>Case reassigned from Judge Jerome Tao Dept 20</i>
05/26/2015	 Notice of Motion <i>Notice of Motion</i>
05/26/2015	 Request <i>Request for Records/Court Case Documents</i>
05/29/2015	 Order for Petition for Writ of Habeas Corpus
06/16/2015	 Motion (8:30 AM) (Judicial Officer: Johnson, Eric) <i>Defendant's Pro Per Request for Records/Court Case Documents</i>
07/31/2015	 Response <i>State's Response to Defendant's Post-Conviction Petition for Writ of Habeas Corpus</i>
08/04/2015	 Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer: Johnson, Eric)
09/14/2015	 Findings of Fact, Conclusions of Law and Order
09/21/2015	 Notice of Entry <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
10/06/2015	 Notice of Appeal (criminal) <i>Notice of Appeal</i>
10/07/2015	 Case Appeal Statement <i>Case Appeal Statement</i>

DATE	FINANCIAL INFORMATION	
	Defendant Herring, Frank, Jr.	
	Total Charges	175.00
	Total Payments and Credits	113.07
	Balance Due as of 10/7/2015	61.93


CLERK OF THE COURT

1 **FCL**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **STEVEN S. OWENS**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #004352**
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 **FRANK HEARRING, aka,**
13 **Frank Herring, Jr. #1774466**

14 **Defendant.**

CASE NO: C-13-291159-1

DEPT NO: XX

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

17 **DATE OF HEARING: AUGUST 4, 2015**
18 **TIME OF HEARING: 8:30 AM**

19 **THIS CAUSE** having come on for hearing before the Honorable ERIC JOHNSON,
20 **District Judge**, on the 4th day of August, 2015, the Petitioner not being present, **PROCEEDING**
21 **IN FORMA PAUPERIS**, the Respondent being represented by **STEVEN B. WOLFSON**,
22 **Clark County District Attorney**, by and through **STEVEN S. OWENS**, Chief Deputy District
23 **Attorney**, and the Court having considered the matter, including briefs, transcripts, arguments
24 **of counsel**, and documents on file herein, now therefore, the Court makes the following
25 **findings of fact and conclusions of law:**

26 **///**

27 **///**

28 **///**

///

1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 On July 15, 2013, the State charged Frank Herring ("Herring") by way of Information
3 with the following: Count 1 – Murder With Use of a Deadly Weapon; Count 2 – Attempt
4 Murder With Use of a Deadly Weapon; Count 3 – Discharging Firearm At or Into Structure,
5 Vehicle, Aircraft or Watercraft; and Count 4 – Possession of Firearm by Ex-Felon.

6 On October 7, 2013, pursuant to negotiations, Herring entered into a Guilty Plea
7 Agreement ("GPA") with the State, wherein, he agreed to plead guilty to one count of Murder
8 (Second Degree) With Use of a Deadly Weapon. The same day, the court conducted a plea
9 canvass on the record and thereafter accepted Herring's plea. An Amended Information was
10 filed in open court reflecting the charge contained in the GPA.

11 On December 10, 2013, Herring was sentenced to life imprisonment in the Nevada
12 Department of Corrections with parole eligibility after ten years, plus a consecutive sentence
13 of a maximum of 240 months and a minimum of 96 months for the deadly weapon
14 enhancement. Herring received 293 days credit for time served. Judgment of Conviction
15 was filed on December 30, 2013. Herring did not file a direct appeal.

16 On May 15, 2014, Herring filed a Motion to Withdraw Counsel. On June 12, 2014,
17 the Motion was granted.

18 On November 12, 2014, Herring filed a Motion for Appointment of Counsel and
19 Request for Evidentiary Hearing. The State filed its Response on November 25, 2014. On
20 December 4, 2014, the court denied the Motion, finding the request for evidentiary hearing
21 was made prematurely and could be renewed in a Petition for Writ of Habeas Corpus.

22 On December 10, 2014, Herring filed a Motion to Withdraw Plea. On December 22,
23 2014, the State filed an Opposition. On January 6, 2015, the district court denied Herring's
24 Motion. The district court filed its Order on January 16, 2015.

25 On March 30, 2015, Herring filed a Pro Per post-conviction Petition for Writ of
26 Habeas Corpus. On July 31, 2015, the State filed its Response. A hearing was held on August
27 4, 2015.

28 ///

1 This Court finds that Herring's Petition for Writ of Habeas Corpus is time barred with
2 no good cause shown for delay. Pursuant to NRS 34.726(1):

3 Unless there is good cause shown for delay, a petition that
4 challenges the validity of a judgment or sentence must be filed
5 within 1 year of the entry of the judgment of conviction or, if an
6 appeal has been taken from the judgment, within 1 year after the
7 Supreme Court issues its remittitur. For the purposes of this
8 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.

9 The Supreme Court of Nevada has held that NRS 34.726 should be construed by its
10 plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per
11 the language of the statute, the one-year time bar prescribed by NRS 34.726 begins to run from
12 the date the Judgment of Conviction is filed or a remittitur from a timely direct appeal is filed.
13 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998). The one-year time
14 limit for preparing petitions for post-conviction relief under NRS 34.726 is strictly applied. In
15 Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002), the Nevada Supreme Court
16 rejected a habeas petition that was filed two days late despite evidence presented by the
17 defendant that he purchased postage through the prison and mailed the Notice within the one-
18 year time limit.

19 Herring's Judgment of Conviction was filed on December 30, 2013, and he did not
20 file a direct appeal. Therefore, Herring had until December 30, 2014, to file a timely Petition.
21 Herring did not file his Petition until March 30, 2015. This Court finds this is over one year
22 after the date of the Judgment of Conviction and in excess of the one-year time frame.

23 This Court finds Herring has not shown good cause to excuse the untimely filing.
24 Herring alleges good cause by stating that his "reasons for any delays after one year deadline
25 was because a Motion to Withdraw Guilty Plea was filed". To show good cause for delay
26 under NRS 34.726(1), a petitioner must demonstrate the following: (1) "[t]hat the delay is not
27 the fault of the petitioner" and (2) that the petitioner will be "unduly prejudice[d]" if the
28 petition is dismissed as untimely. Under the first requirement, "a petitioner must show that an

1 impediment external to the defense prevented him or her from complying with the state
2 procedural default rules.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003)
3 (citing Pellegrini, 117 Nev. at 886-87, 34 P.3d at 537; Lozada v. State, 110 Nev. 349, 353, 871
4 P.2d 944, 946 (1994); Passanisi v. Director, Dep't Prisons, 105 Nev. 63, 66, 769 P.2d 72, 74
5 (1989). “An impediment external to the defense may be demonstrated by a showing ‘that the
6 factual or legal basis for a claim was not reasonably available to counsel, or that some
7 interference by officials, made compliance impracticable.’” Id. (quoting Murray v. Carrier,
8 477 U.S. 478, 488, 106 S.Ct. 2639 (1986) (citations and quotations omitted)). Clearly, any
9 delay in filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a). Once
10 a petitioner has established cause, he must show actual prejudice resulting from the errors of
11 which he complains, i.e., “a petitioner must show that errors in the proceedings underlying the
12 judgment worked to the petitioner’s actual and substantial disadvantage.” State v. Huebler,
13 128 Nev. Adv. Rep. 19, ___, 275 P.3d 91, 94-95 (2012) (citing Hogan v. Warden, 109 Nev.
14 952, 959–60, 860 P.2d 710, 716 (1993)).

15 This Court finds that simply waiting for a pending Motion to Withdraw a Guilty Plea
16 is not an impediment external to the defense that prevented Herring from complying with the
17 one-year time bar. Additionally, Herring raised some similar issues in his Motion, so he was
18 clearly aware of these issue and could have raised them in a timely Petition. Hathaway, 119
19 Nev. at 252, 71 P.3d at 506. Additionally, this Court finds that Herring has failed to even
20 allege actual prejudice. Herring raises a variety of claims, generally arguing that his counsel
21 was ineffective for not interviewing witnesses, presenting mitigating evidence, and filings.
22 However, this Court finds these claims to be simply bare allegations as Herring fails to
23 explain what relevant information would have been obtained and how it would have caused
24 him to plead not guilty and pursue a trial. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533,
25 538 (2004). Additionally, Herring re-alleges claims from his Motion to Withdraw Guilty
26 Plea, which this Court has already denied without merit. Thus, this Court finds that Herring
27 has failed to show that he would suffer any actual prejudice as a result of the denial of his
28


Petition. Accordingly, this Court finds Herring failed to demonstrate good cause and prejudice to overcome the procedural bar.

Additionally, this Court finds that Herring is not entitled to an evidentiary hearing. A defendant is entitled to an evidentiary hearing only if his petition is supported by specific factual allegations, which, if true, would entitle her to relief. Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605 (1994). "The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required." NRS 34.770(1). Further, "[i]f the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, the judge or justice shall dismiss the petition without a hearing." NRS 34.770(2). Since Herring's Petition is procedurally time-barred and he has failed to demonstrate good cause or prejudice to overcome the time-bar, this Court finds that it is unnecessary to expand the record, thus, Herring's request for an evidentiary hearing is denied.

ORDER


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

DATED this 10 day of ^{September} ~~August~~, 2015.



DISTRICT JUDGE
ERIC JOHNSON

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

BY  FOR OWENS

STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352

///

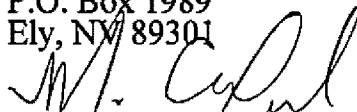
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CERTIFICATE OF SERVICE

I certify that on the 24th day of August, 2015, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

FRANK HEARRING #1006445
ELY STATE PRISON
P.O. Box 1989
Ely, NV 89301

BY



M. CRAWFORD
Secretary for the District Attorney's Office

13F08177X/ED/mc/L4


CLERK OF THE COURT

NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

FRANK HEARRING, JR.,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C-13-291159-1

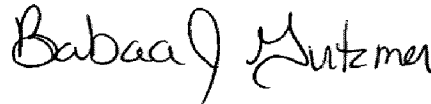
Dept No: XX

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

PLEASE TAKE NOTICE that on September 14, 2015, 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 September 21, 2015.

STEVEN D. GRIERSON, CLERK OF THE COURT

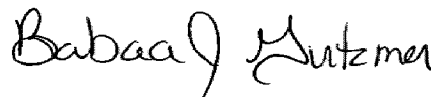


Barbara J. Gutzmer, Deputy Clerk

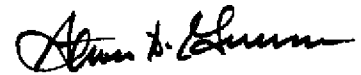
CERTIFICATE OF MAILING

I hereby certify that on this 21 day of September 2015, 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:
Frank Hearring, Jr. # 1006445
P.O. Box 1989
Ely, NV 89301



Barbara J. Gutzmer, Deputy Clerk



CLERK OF THE COURT

1 **FCL**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **STEVEN S. OWENS**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #004352**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

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

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

11 **-vs-**

CASE NO: C-13-291159-1

12 **FRANK HEARRING, aka,**
13 **Frank Herring, Jr. #1774466**

DEPT NO: XX

14 **Defendant.**

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

17 **DATE OF HEARING: AUGUST 4, 2015**
18 **TIME OF HEARING: 8:30 AM**

19 **THIS CAUSE** having come on for hearing before the Honorable ERIC JOHNSON,
20 **District Judge**, on the 4th day of August, 2015, the Petitioner not being present, **PROCEEDING**
21 **IN FORMA PAUPERIS**, the Respondent being represented by **STEVEN B. WOLFSON**,
22 **Clark County District Attorney**, by and through **STEVEN S. OWENS**, Chief Deputy District
23 **Attorney**, and the Court having considered the matter, including briefs, transcripts, arguments
24 **of counsel**, and documents on file herein, now therefore, the Court makes the following
25 **findings of fact and conclusions of law:**

26 **///**

27 **///**

28 **///**

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On October 7, 2013, pursuant to negotiations, Herring entered into a Guilty Plea Agreement ("GPA") with the State, wherein, he agreed to plead guilty to one count of Murder (Second Degree) With Use of a Deadly Weapon. The same day, the court conducted a plea canvass on the record and thereafter accepted Herring's plea. An Amended Information was filed in open court reflecting the charge contained in the GPA.

On May 15, 2014, Herring filed a Motion to Withdraw Counsel. On June 12, 2014, the Motion was granted.

On December 10, 2014, Herring filed a Motion to Withdraw Plea. On December 22, 2014, the State filed an Opposition. On January 6, 2015, the district court denied Herring's Motion. The district court filed its Order on January 16, 2015.

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1 This Court finds that Herring's Petition for Writ of Habeas Corpus is time barred with
2 no good cause shown for delay. Pursuant to NRS 34.726(1):

3 Unless there is good cause shown for delay, a petition that
4 challenges the validity of a judgment or sentence must be filed
5 within 1 year of the entry of the judgment of conviction or, if an
6 appeal has been taken from the judgment, within 1 year after the
7 Supreme Court issues its remittitur. For the purposes of this
8 subsection, good cause for delay exists if the petitioner
demonstrates to the satisfaction of the court:

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

12 The Supreme Court of Nevada has held that NRS 34.726 should be construed by its
13 plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per
14 the language of the statute, the one-year time bar prescribed by NRS 34.726 begins to run from
15 the date the Judgment of Conviction is filed or a remittitur from a timely direct appeal is filed.
16 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998). The one-year time
17 limit for preparing petitions for post-conviction relief under NRS 34.726 is strictly applied. In
18 Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002), the Nevada Supreme Court
19 rejected a habeas petition that was filed two days late despite evidence presented by the
20 defendant that he purchased postage through the prison and mailed the Notice within the one-
21 year time limit.

22 Herring's Judgment of Conviction was filed on December 30, 2013, and he did not
23 file a direct appeal. Therefore, Herring had until December 30, 2014, to file a timely Petition.
24 Herring did not file his Petition until March 30, 2015. This Court finds this is over one year
25 after the date of the Judgment of Conviction and in excess of the one-year time frame.

26 This Court finds Herring has not shown good cause to excuse the untimely filing.
27 Herring alleges good cause by stating that his "reasons for any delays after one year deadline
28 was because a Motion to Withdraw Guilty Plea was filed". To show good cause for delay
under NRS 34.726(1), a petitioner must demonstrate the following: (1) "[t]hat the delay is not
the fault of the petitioner" and (2) that the petitioner will be "unduly prejudice[d]" if the
petition is dismissed as untimely. Under the first requirement, "a petitioner must show that an

1 impediment external to the defense prevented him or her from complying with the state
2 procedural default rules.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003)
3 (citing Pellegrini, 117 Nev. at 886-87, 34 P.3d at 537; Lozada v. State, 110 Nev. 349, 353, 871
4 P.2d 944, 946 (1994); Passanisi v. Director, Dep’t Prisons, 105 Nev. 63, 66, 769 P.2d 72, 74
5 (1989). “An impediment external to the defense may be demonstrated by a showing ‘that the
6 factual or legal basis for a claim was not reasonably available to counsel, or that some
7 interference by officials, made compliance impracticable.’” Id. (quoting Murray v. Carrier,
8 477 U.S. 478, 488, 106 S.Ct. 2639 (1986) (citations and quotations omitted)). Clearly, any
9 delay in filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a). Once
10 a petitioner has established cause, he must show actual prejudice resulting from the errors of
11 which he complains, i.e., “a petitioner must show that errors in the proceedings underlying the
12 judgment worked to the petitioner’s actual and substantial disadvantage.” State v. Huebler,
13 128 Nev. Adv. Rep. 19, ___, 275 P.3d 91, 94-95 (2012) (citing Hogan v. Warden, 109 Nev.
14 952, 959–60, 860 P.2d 710, 716 (1993)).

15 This Court finds that simply waiting for a pending Motion to Withdraw a Guilty Plea
16 is not an impediment external to the defense that prevented Herring from complying with the
17 one-year time bar. Additionally, Herring raised some similar issues in his Motion, so he was
18 clearly aware of these issue and could have raised them in a timely Petition. Hathaway, 119
19 Nev. at 252, 71 P.3d at 506. Additionally, this Court finds that Herring has failed to even
20 allege actual prejudice. Herring raises a variety of claims, generally arguing that his counsel
21 was ineffective for not interviewing witnesses, presenting mitigating evidence, and filings.
22 However, this Court finds these claims to be simply bare allegations as Herring fails to
23 explain what relevant information would have been obtained and how it would have caused
24 him to plead not guilty and pursue a trial. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533,
25 538 (2004). Additionally, Herring re-alleges claims from his Motion to Withdraw Guilty
26 Plea, which this Court has already denied without merit. Thus, this Court finds that Herring
27 has failed to show that he would suffer any actual prejudice as a result of the denial of his
28

1 Petition. Accordingly, this Court finds Herring failed to demonstrate good cause and
2 prejudice to overcome the procedural bar.

3 Additionally, this Court finds that Herring is not entitled to an evidentiary hearing.
4 A defendant is entitled to an evidentiary hearing only if his petition is supported by specific
5 factual allegations, which, if true, would entitle her to relief. Marshall v. State, 110 Nev. 1328,
6 1331, 885 P.2d 603, 605 (1994). "The judge or justice, upon review of the return, answer and
7 all supporting documents which are filed, shall determine whether an evidentiary hearing is
8 required." NRS 34.770(1). Further, "[i]f the judge or justice determines that the petitioner is
9 not entitled to relief and an evidentiary hearing is not required, the judge or justice shall dismiss
10 the petition without a hearing." NRS 34.770(2). Since Herring's Petition is procedurally
11 time-barred and he has failed to demonstrate good cause or prejudice to overcome the time-
12 bar, this Court finds that it is unnecessary to expand the record, thus, Herring's request for an
13 evidentiary hearing is denied.


14 **ORDER**

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

17 DATED this 10 day of ^{September} ~~August~~, 2015.

18
19 
20 DISTRICT JUDGE
ERIC JOHNSON Jh

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

23
24 BY  For Owens
25 STEVEN S. OWENS
26 Chief Deputy District Attorney
Nevada Bar #004352

27 ///

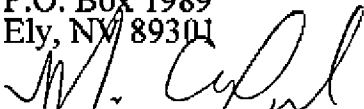
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CERTIFICATE OF SERVICE

I certify that on the 24th day of August, 2015, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

FRANK HEARRING #1006445
ELY STATE PRISON
P.O. Box 1989
Ely, NV 89301

BY



M. CRAWFORD
Secretary for the District Attorney's Office

13F08177X/ED/mc/L4

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 18, 2013

C-13-291159-1 State of Nevada
 vs
 Frank Herring, Jr.

July 18, 2013 9:30 AM Initial Arraignment

HEARD BY: De La Garza, Melisa **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Roshonda Mayfield

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

PRESENT:	Arnold, Carl E.	Attorney
	Herring, Frank, Jr.	Defendant
	Mitchell, Scott Steven	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT. HEARRING ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE.
COURT ORDERED, matter set for trial. COURT FURTHER ORDERED, Counsel is allowed 21 days
from today and/or 21 days from the filing of the transcript for there to be any filings as to writs.

CUSTODY

8/13/13 8:30 A.M. CALENDAR CALL (DEPT. 2)

8/19/13 9:00 A.M. JURY TRIAL (DEPT. 2)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 13, 2013

C-13-291159-1 State of Nevada
 vs
 Frank Herring, Jr.

August 13, 2013 8:30 AM Calendar Call

HEARD BY: Tao, Jerome T. **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Linda Skinner

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Arnold, Carl E.	Attorney
	Herring, Frank, Jr.	Defendant
	Schwartz, Michael J.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Upon Court's inquiry, Mr. Arnold advised he just finished a murder trial and is not up to speed on this one. Additionally, he and Mr. Schwartz just realized they do not have the Preliminary Hearing transcript. Mr. Arnold stated Defendant does not want to waive his right to a speedy trial and feels he could be ready in two weeks. Mr. Schwartz advised this was a short setting and that there is discovery coming in every day. Following additional colloquy, COURT ORDERED, trial date VACATED and RESET on the first week of next criminal stack.

CUSTODY

10/1/13 8:30 AM CALNEDAR CALL (#3)

10/7/13 9:00 AM JURY TRIAL (#3)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 01, 2013

C-13-291159-1 State of Nevada
 vs
 Frank Herring, Jr.

October 01, 2013 8:30 AM All Pending Motions

HEARD BY: Tao, Jerome T. **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Linda Skinner

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Arnold, Carl E.	Attorney
	Herring, Frank, Jr.	Defendant
	Joseph, Lindsey D	Attorney
	Schwartzter, Michael J.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- CALENDAR CALL...STATE'S REQUEST: MOTION IN LIMINE

AS TO CALENDAR CALL: Upon Court's inquiry, Ms. Joseph advised the State is ready to proceed with 20-25 witnesses and lasting 7-8 days. Mr. Arnold advised he is ready as well. Mr. Schwartzter advised an offer has been submitted to Mr. Arnold. Conference at the Bench. Court advised Jury selection would begin at 9:00 AM on Monday.

AS TO MOTION IN LIMINE: Court noted it did not receive an opposition from Mr. Arnold. Mr. Arnold advised he has no objection as he was going to raise the same issues. COURT ORDERED, Motion GRANTED as unopposed.

M. SCHWARTZER - L. JOSEPH / C. ARNOLD / 20-25 WITNESSES / 7-8 DAYS

CUSTODY

10/7/13 9:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 07, 2013

C-13-291159-1 State of Nevada
 vs
 Frank Herring, Jr.

October 07, 2013 9:00 AM Jury Trial

HEARD BY: Tao, Jerome T. **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Linda Skinner

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Arnold, Carl E.	Attorney
	Herring, Frank, Jr.	Defendant
	Joseph, Lindsey D	Attorney
	Schwartzter, Michael J.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mr. Arnold advised this matter has been resolved. There being no objection, Amended Information and Guilty Plea Agreement FILED IN OPEN COURT. NEGOTIATIONS: Defendant to plead guilty to Amended Information. State retains the right to argue at time of sentencing. Mr. Schwartzter concurred. DEFENDANT HEARRING WITHDREW NOT GUILTY PLEAS AND PLED GUILTY to MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON (F). Court ACCEPTED plea; referred matter to the Division of Parole and Probation for a Pre-sentence Investigation Report and ORDERED, trial date VACATED and set for sentencing.

CUSTODY

12/10/13 8:30 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 10, 2013

C-13-291159-1 State of Nevada
 vs
 Frank Herring, Jr.

December 10, 2013 8:30 AM Sentencing

HEARD BY: Tao, Jerome T. **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Katherine Streuber

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Arnold, Carl E.	Attorney
	Herring, Frank, Jr.	Defendant
	Joseph, Lindsey D	Attorney
	Schwartzter, Michael J.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT. HEARRING ADJUDGED GUILTY of MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON (F). Argument by the State. Colloquy regarding restitution. Statement by Deft. Argument by counsel. Victim Witness addressed the Court. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee and a \$150.00 DNA Analysis fee including testing to determine genetic markers, Deft. SENTENCED to LIFE in the Nevada Department of Corrections (NDC) with parole eligibility after TEN (10) YEARS, plus a CONSECUTIVE term of a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS and a MINIMUM of NINETY-SIX (96) MONTHS in the Nevada Department of Corrections (NDC) for the use of a deadly weapon, with TWO HUNDRED NINETY-THREE (293) DAYS credit for time served. FURTHER, matter SET for status check regarding restitution.

NDC

01-09-14 8:30 AM STATUS CHECK: RESTITUTION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 17, 2013

C-13-291159-1 State of Nevada
 vs
 Frank Herring, Jr.

December 17, 2013 8:30 AM Motion to Marry

HEARD BY: Tao, Jerome T. **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Carole D'Aloia

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Arnold, Carl E.	Attorney
	Herring, Frank, Jr.	Defendant
	Rhoades, Kristina A.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- COURT ORDERED, motion GRANTED. Court directed Mr. Arnold to prepare and submit the appropriate Order.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 09, 2014

C-13-291159-1 State of Nevada
 vs
 Frank Herring, Jr.

January 09, 2014 8:30 AM Status Check Restitution

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Athena Trujillo
 Andrea Natali

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Arnold, Carl E.	Attorney
	Herring, Frank, Jr.	Defendant
	Radovic, Michael	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Deft. present in custody. Mr. Radovic stated the victim was requesting restitution; however, the letter of restitution had been sent to the wrong address; therefore, requested the matter be continued two weeks to obtain proof of restitution. Mr. Arnold requested the Deft. be sent to prison to serve his term. Upon Court's inquiry, Deft. agreed with Mr. Arnold's representations. COURT ORDERED, matter CONTINUED, Deft. s presence WAIVED the next date.

NDC

1/23/14 8:30 AM - STATUS CHECK: RESTITUTION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 23, 2014

C-13-291159-1 State of Nevada
 vs
 Frank Herring, Jr.

January 23, 2014 8:30 AM Status Check

HEARD BY: Tao, Jerome T. **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Linda Skinner

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT: Arnold, Carl E. Attorney
 Joseph, Lindsey D Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Court noted Defendant is in prison and not present. Upon Court's inquiry, Ms. Joseph advised they never received anything back from the victim's widow as to restitution and that it is unclear if she understands what would be covered under restitution. Following colloquy, COURT ORDERED, no restitution will be ordered and the matter is OFF CALENDAR.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 12, 2014

C-13-291159-1 State of Nevada
 vs
 Frank Herring, Jr.

June 12, 2014 8:30 AM Motion

HEARD BY: Tao, Jerome T. **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Linda Skinner

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT: Jones, Jr., John T. Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Court advised Defendant is in the Nevada Department of Corrections and not present, that this is post-conviction in nature and Mr. Arnold is not present, however, COURT ORDERED, Deft's Pro Per Motion is GRANTED. Further, Mr. Arnold to be contacted to send the file to Defendant with the proper redactions.

NDC

CLERK'S NOTE: JEA contacted Mr. Arnold's Office to advise of above.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 04, 2014

C-13-291159-1 State of Nevada
vs
Frank Hearring, Jr.

December 04, 2014 8:30 AM Motion for Appointment of Attorney

HEARD BY: Tao, Jerome T. **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Linda Skinner

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT: PORTZ, KENNETH Attorney
State of Nevada Plaintiff

JOURNAL ENTRIES

- Court noted Defendant is in prison, not present today and proffered a Motion for Counsel and a hearing. However, Court noted this is premature as Defendant has not filed a Writ of Habeas Corpus to show what grounds he wants to raise and if counsel need to be appointed and/or a hearing needs to be set. As this is premature, COURT ORDERED, DENIED.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 06, 2015

C-13-291159-1 State of Nevada
 vs
 Frank Herring, Jr.

January 06, 2015 8:30 AM Motion to Withdraw Plea

HEARD BY: Thompson, Charles **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Linda Skinner

RECORDER: Susan Dolorfino

REPORTER:

PARTIES

PRESENT: State of Nevada Plaintiff
 Sudano, Michelle L. Attorney

JOURNAL ENTRIES

- Court noted Defendant is in prison and not present today, that he has proffered a Motion to Withdraw his Plea. Court advised it has read Defendant's Motion and the State's Response, the claim that his plea was not voluntary is belied by the record and the claim of ineffectiveness of counsel is without merit. Therefore, COURT ORDERED, Motion DENIED.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 16, 2015

C-13-291159-1 State of Nevada
 vs
 Frank Herring, Jr.

June 16, 2015 8:30 AM Motion

HEARD BY: Johnson, Eric **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Linda Skinner

RECORDER:

REPORTER: Amber Riggio

PARTIES

PRESENT: Overly, Sarah Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Court noted Defendant is in prison and not present today and that it did not receive a response from the State. Ms. Overly advised they have no opposition and submitted the matter. Court stated its FINDINGS including that this Motion needs to be more specific as to what Court records Defendant wants and why. Therefore, COURT ORDERED, Pro Per Motion DENIED WITHOUT PREJUDICE.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 04, 2015

C-13-291159-1 State of Nevada
 vs
 Frank Herring, Jr.

**August 04, 2015 8:30 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Johnson, Eric **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Linda Skinner

RECORDER:

REPORTER: Amber Riggio

PARTIES

PRESENT: Jones, Jr., John T. Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Defendant not present. Court noted it has an opposition from the State. Mr. Jones submitted on written opposition. Court stated its FINDINGS including that the Petition is untimely, filed one year past the filing of the Judgment of Conviction and Defendant has not shown good cause to overcome procedural bar. Therefore, COURT ORDERED, Petition DENIED.

NDC

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; NOTICE OF
ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT
MINUTES

STATE OF NEVADA,

Plaintiff(s),

vs.

FRANK HEARRING, JR. aka
FRANK HEARRING,

Defendant(s).

Case No: C291159

Dept No: XX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 7 day of October 2015.

Steven D. Grierson, Clerk of the Court



Mary Kielty, Deputy Clerk

