

No. 71296

NEVADA SUPREME COURT
OFFICE OF THE CLERK
201 S. CARSON ST. # 201
CARSON CITY, NEV 89701

FILED

OCT 18 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

DEAR CLERK,

ON OR ABOUT THE 16th DAY OF SEPTEMBER, 2016, I DID
RECEIVE A NOTICE OF DEFICIENCY FOR NOT MAILING
THE ORDER AND NOTICE OF ENTRY OF ORDER.

PLEASE FIND THOSE DOCUMENTS ENCLOSED HEREIN
AND IF YOU WOULD BE SO KIND AS TO RETURN A STAMPED
RECEIVED COPY BACK TO THE PETITIONER NAMED BELOW.

THANK-YOU.

P.S. CAN YOU PLEASE PROVIDE
PETITIONER WITH A CURRENT
COPY OF THE DOCKET SHEET
FOR 37964, 58517.

THANK-YOU.

RESPECTFULLY.

MACK MASON # 69060

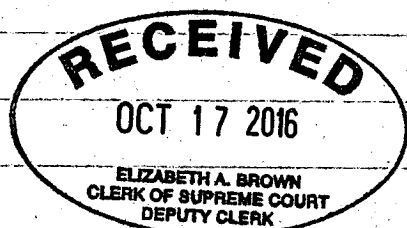
SDCC

P.O. BOX 208

INDIAN SPRINGS, NEV.

89070

16-32509



Heather S. Hemin
CLERK OF THE COURT

COPY

NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MACK C. MASON,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: 99C161426

Dept No: XX

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

PLEASE TAKE NOTICE that on September 19, 2016, 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 22, 2016.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Chaunte Pleasant

Chaunte Pleasant, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on this 22 day of September 2016, 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:
Mack C. Mason # 69060
P.O. Box 208
Indian Springs, NV 89070

/s/ Chaunte Pleasant

Chaunte Pleasant, 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-

12 MACK MASON,
13 aka Mack C. Mason, #0309692

14 Defendant.

CASE NO: 99C161426

DEPT NO: XX

15 FINDINGS OF FACT, CONCLUSIONS OF
16 LAW AND ORDER

17 DATE OF HEARING: JULY 5, 2016
18 TIME OF HEARING: 8:30 AM

19 THIS CAUSE having come on for hearing before the Honorable KATHY
20 HARDCASTLE, District Judge, on the 5th day of July, 2016, the Petitioner not being present,
21 PROCEEDING IN FORMA PAUPERIS, the Respondent being represented by STEVEN B.
22 WOLFSON, Clark County District Attorney, by and through CHAD N. LEXIS, Chief Deputy
23 District Attorney, and the Court having considered the matter, including briefs, transcripts,
24 arguments of counsel, and documents on file herein, now therefore, the Court makes the
25 following findings of fact and conclusions of law:

26 FINDINGS OF FACT, CONCLUSIONS OF LAW

27 On September 3, 1999, the State of Nevada charged MACK MASON, aka Mack C.
28 Mason ("Petitioner") by way of Information with: COUNT 1 – Burglary While in Possession
of a Firearm (Felony – NRS 205.060, 193.165); COUNT 2 – Grand Larceny of a Firearm

1 (Felony – NRS 205.226); COUNT 3 – Burglary While in Possession of a Firearm (Felony –
2 NRS 205.060, 193.165); COUNT 4 – Murder With Use of a Deadly Weapon (Felony – NRS
3 200.010, 200.030, 193.165); COUNT 5 – Second Degree Kidnapping With Use of a Deadly
4 Weapon (Felony – NRS 200.310, 200.330, 193.165); COUNT 6 – Possession of a Firearm by
5 Ex-Felon (Felony – NRS 202.360). Petitioner's jury trial commenced on February 14, 2001.
6 On February 27, 2001, the jury returned guilty verdicts on COUNTS 1, 3, 4 & 5. The penalty
7 phase of Petitioner's trial commenced on March 5, 2001.

8 On April 4, 2001, Petitioner was sentenced to the Nevada Department of Corrections
9 ("NDC") to the following: COUNT 1 – a maximum term of 180 months with a minimum
10 parole eligibility of 40 months; as to COUNT 3 – maximum term of one 180 months with a
11 minimum of 40 months, concurrent with COUNT 1; as to COUNT 4 – Life without the
12 possibility of parole plus an equal and consecutive term of Life without the possibility of parole
13 for use of a deadly weapon, concurrent with COUNTS 1 & 3; as to COUNT 5 – maximum of
14 one hundred 180 months with a minimum of 40 months with a consecutive and equal term for
15 use of a deadly weapon, consecutive to COUNT 4. Petitioner was given 719 days credit for
16 time served. The Judgment of Conviction was filed on May 9, 2001. Petitioner filed a Notice
17 of Appeal on May 25, 2001. On August 9, 2002, the Nevada Supreme Court affirmed
18 Petitioner's conviction. Remittitur was issued on September 3, 2002.

19 On September 5, 2002, Petitioner filed a post-conviction Petition for Writ of Habeas
20 Corpus. On September 25, 2002, Petitioner filed a motion to voluntarily dismiss his petition
21 based on new information. That motion was granted on October 15, 2002. Petitioner then
22 filed a new Petition for Writ of Habeas Corpus on January 23, 2003. The State filed its
23 response on May 2, 2003. On May 14, 2003, the Court denied Petitioner's petition on the
24 merits, with a written order issuing on June 4, 2003. Petitioner did not appeal denial of this
25 second petition.¹

26 //

27
28 ¹ It appears Petitioner attempted to file some sort of pleading styled as an appellate brief, but, by his own admission, that pleading was returned to him and no appeal was adjudicated based on his failure to file a notice of appeal.

1 On January 31, 2011, Petitioner filed another Petition for Writ of Habeas Corpus. The
2 State filed its Response on February 28, 2011. On April 19, 2011, the Court denied Petitioner's
3 second Petition as procedurally barred. A written order denying Petitioner's Petition was filed
4 on May 13, 2011. On June 1, 2011, Petitioner filed a Notice of Appeal. On November 17,
5 2011, the Nevada Supreme Court affirmed the District Court's denial of Petitioner's Petition.
6 Remittitur was issued on December 13, 2011.

7 On June 9, 2016, Petitioner filed a Motion alleging actual innocence and challenging
8 his judgment of conviction base on a claim of ineffective assistance of counsel.

9 As a post-conviction petition for a writ of habeas corpus is the exclusive remedy for
10 challenging the validity of a conviction or sentence aside from direct review of a judgment of
11 conviction on appeal and remedies that are incident to the proceedings in the trial court, the
12 court treats this motion as a Petition for a Writ of Habeas Corpus. NRS 34.724(2)(a).

13 Petitioner's Petition was not filed within one year after his Remittitur, thus, his Petition
14 is time-barred. Petitioner's Remittitur was issued on September 3, 2002. Therefore, Petitioner
15 had until September 3, 2003, to file a timely Petition. However, Petitioner's instant Petition
16 was not filed until June 9, 2016—over 12 years after the one-year time frame expired.
17 Therefore the petition is dismissed for untimeliness.

18 In addition, Petitioner filed a prior Petition on January 23, 2003, which the Court denied
19 on the merits. However, Petitioner's claim of actual innocence and the claims that counsel
20 was ineffective for failing to object to Petitioner being found guilty on a charge that involved
21 a weapon he was found not guilty of taking and for failing to hire an expert are presented for
22 the first time in the instant Petition. Petitioner presents claims that could have been presented
23 in an earlier proceeding. Petitioner fails to demonstrate good cause for failing to present his
24 claims earlier. As such, this Court dismisses Petitioner's Petition because it is successive.

25 Petitioner has failed to make an adequate showing of actual innocence. The United
26 States Supreme Court has held that in order for a Petitioner to obtain a reversal of his
27 conviction based on a claim of actual innocence, he must prove that "'it is more likely than
28 not that no reasonable juror would have convicted him in light of the new evidence' presented

1 in habeas proceedings.” Calderon v. Thompson, 523 U.S. 538, 560, 118 S. Ct. 1489, 1503
2 (1998) (quoting Schlup v. Delo, 513 U.S. 298, 327, 115 S. Ct. 851, 867 (1995)). Here,
3 Petitioner has not presented any new evidence – let alone any new evidence making it more
4 likely than not that no juror would convict him in light of that new evidence. Therefore,
5 Petitioner fails to demonstrate good cause based on actual innocence.

6 Furthermore, Petitioner has failed to demonstrate prejudice. NRS 34.726(1)(b); see
7 Pellegrini, 117 Nev. at 887, 34 P.3d at 537 (noting that defendant failed to demonstrate “good
8 cause and actual prejudice to overcome the [mandatory] statutory procedural bars. Therefore,
9 Petitioner has failed to demonstrate good cause to overcome the procedural bars.

10 In his Petition, Petitioner attempts to reargue a claim that was explicitly rejected by the
11 Nevada Supreme Court on direct appeal. Petitioner has already argued that there was
12 insufficient evidence to support his conviction, in part, because the jury had found him not
13 guilty of taking the weapon they found him guilty of using. The Nevada Supreme Court
14 determined that there was sufficient evidence to support Petitioner’s conviction. Where an
15 issue has already been decided on the merits by the Nevada Supreme Court, the Court’s ruling
16 is law of the case, and the issue will not be revisited. Pellegrini v. State, 117 Nev. 860, 34
17 P.3d 519 (2001); see also McNelson v. State, 115 Nev. 396, 990 P.2d 1263, 1276 (1999); Hall
18 v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975); Valerio v. State, 112 Nev. 383,
19 386, 915 P.2d 874, 876 (1996); Hogan v. Warden, 109 Nev. 952, 860 P.2d 710 (1993).
20 Accordingly, as Petitioner raises an identical claim in the instant Petition, such a claim is
21 barred by the doctrine of law of the case.

22 The State affirmatively pleaded laches in this case. Remittitur in Petitioner’s direct
23 appeal was entered on September 3, 2002. Almost 13 years later, Petitioner filed the instant
24 petition. Petitioner’s delay exceeds the statute’s presumptively prejudicial time period. The
25 State would be unreasonably burdened to identify witnesses and evidence in order to refute
26 Petitioner’s allegations. Petitioner has failed to rebut the presumption of prejudice and thus
27 this petition is barred pursuant to statutory laches.

28 //

ORDER

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

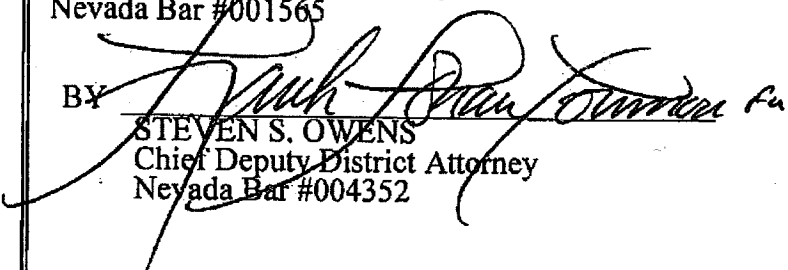
DATED this 6 day of ~~August~~^{September}, 2016.


DISTRICT JUDGE

ERIC JOHNSON

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

BY



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

CERTIFICATE OF SERVICE

I certify that on the 19th day of August, 2016, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

MACK MASON,
aka Mack C. Mason #69060
SOUTHERN DESERT CORRECTIONAL CENTER
P.O. BOX 208
INDIAN SPRINGS, NV 89070-0208

BY


R. JOHNSON
Secretary for the District Attorney's Office

MS/SSO/rj/M-1