



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

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

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May 10 2017 09:58 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Steven D. Grierson
Clerk of the Court

Brandi J. Wendel
Court Division Administrator

May 10, 2017

Elizabeth A. Brown
Clerk of the Court
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

RE: STATE OF NEVADA vs. CEDRIC JACKSON
S.C. CASE: 72409
D.C. CASE: 10C265339-1

Dear Ms. Brown:

In response to the e-mail dated May 9, 2017, enclosed is a certified copy of the Findings of Fact, Conclusions of Law and Order filed March 7, 2017 and the Notice of Entry of Findings of Fact, Conclusions of Law and Order filed March 15, 2017 in the above referenced case. If you have any questions regarding this matter, please do not hesitate to contact me at (702) 671-0512.

Sincerely,
STEVEN D. GRIERSON, CLERK OF THE COURT

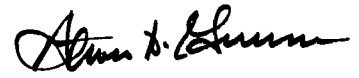
A handwritten signature in black ink, appearing to read "Heather Ungermann", with a long horizontal flourish extending to the right.

Heather Ungermann, Deputy Clerk

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

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CLERK OF THE COURT

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 CEDRIC LEROB JACKSON,
14 #1581340

Defendant.

CASE NO: 10C265339-1

DEPT NO: X

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

17 DATE OF HEARING: JANUARY 25, 2017
18 TIME OF HEARING: 8:30 A.M.

19 THIS CAUSE having come on for hearing before the Honorable JOSEPH T.
20 BONAVENTURE, District Judge, on the 25th day of January, 2017, the Petitioner not being
21 present, proceeding in forma pauperis, the Respondent being represented by STEVEN B.
22 WOLFSON, Clark County District Attorney, by and through HETTY WONG, Chief Deputy
23 District Attorney, and the Court having considered the matter, including briefs, transcripts,
24 and documents on file herein, now therefore, the Court makes the following findings of fact
25 and conclusions of law:

26 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

27 On June 16, 2010, the State of Nevada charged CEDRIC LEROB JACKSON
28 (hereinafter "Defendant") by way of Information as follows: COUNT 1 – Murder with Use
of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165), COUNT 2 – Attempt Murder

1 with Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.330, 193.165), COUNT
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8 200.030), COUNT 9 – Discharging Firearm at or into Structure, Vehicle, Aircraft, or
9 Watercraft (Felony – NRS 202.285), and COUNT 10 – Discharging Firearm Out of Motor
10 Vehicle (Felony – NRS 202.287).

11 On September 17, 2014, pursuant to negotiations, the State filed an Amended
12 Information charging Defendant as follows: COUNT 1 – Second Degree Murder with Use of
13 a Deadly Weapon (Category A Felony – NRS 200.010, 200.030, 193.165 – NOC 50011) and
14 COUNT 2 – Attempt Murder with Use of a Deadly Weapon (Category B Felony – NRS
15 200.010, 200.030, 193.330, 193.165 – NOC 50031). That same day, Defendant pleaded guilty
16 to both counts in the Amended Information.

17 Defendant appeared before the District Court on November 14, 2014, and was
18 sentenced on COUNT 1 to a maximum of 25 years with a minimum parole eligibility of 10
19 years, plus a consecutive term of 12 years with a minimum parole eligibility of four years for
20 the Use of a Deadly Weapon, and on COUNT 2 to a maximum of 60 months with a minimum
21 parole eligibility of 24 months, plus a consecutive term of 30 months with a minimum parole
22 eligibility of 12 months for the Use of a Deadly Weapon, COUNT 2 to run concurrent with
23 COUNT 1. Defendant received 1,748 days credit for time served. The Judgment of
24 Conviction was entered on November 21, 2014.

25 On June 22, 2016, Defendant filed a Motion to Modify and/or Correct by Setting Aside
26 Illegal Sentence Based Upon Lack of Subject Matter Jurisdiction (“Motion to Modify”). The
27 State filed its response to that motion on July 12, 2016. The District Court denied the motion
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1 July 13, 2016. On November 14, 2016, Defendant filed an untimely Notice of Appeal from
2 that denial. The matter is still pending before the Nevada Supreme Court.

3 On January 1, 2017, Defendant filed the instant Petition for Writ of Habeas Corpus
4 ("Petition"). The State responded on January 20, 2017. The Court now orders the Petition
5 denied.

6 **I. DEFENDANT'S PETITION IS PROCEDURALLY BARRED AND MUST BE**
7 **DENIED.**

8 Defendant's Petition for Writ of Habeas Corpus is time barred with no good cause
9 shown for delay. Pursuant to NRS 34.726(1):

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 of the 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
demonstrates to the satisfaction of the court:

- 16 (a) That the delay is not the fault of the petitioner; and
17 (b) That dismissal of the petition as untimely will
18 unduly prejudice the petitioner.

19 A showing of good cause and prejudice may overcome procedural bars. "To establish
20 good cause, appellants *must* show that an impediment external to the defense prevented their
21 compliance with the applicable procedural rule. A qualifying impediment might be shown
22 where the factual or legal basis for a claim was not reasonably available at the time of default."
23 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added).

24 In the instant case, the Judgment of Conviction was filed on November 21, 2014, and
25 Defendant did not file a direct appeal. Thus, the one-year time bar began to run from this date.
26 The instant Petition was not filed until January 6, 2017, more than two years after the Judgment
27 of Conviction was entered and in excess of the one-year time frame. Absent a showing of
28 good cause for this delay and undue prejudice, Defendant's claim must be dismissed because
of its tardy filing.

Additionally, Defendant has not even alleged good cause, and certainly has not
demonstrated that an external impediment prevented his compliance with NRS 34.726(1).

1 Accordingly, because his Petition was not filed within the one-year timeframe and he has not
2 shown good cause, the Petition is denied.

3 **II. DEFENDANT'S PETITION DOES NOT COMPLY WITH NRS 34.735 AND**
4 **MUST BE DENIED.**

5 NRS 34.735 requires that a defendant filing a post-conviction Petition for Writ of
6 Habeas Corpus answer 23 questions set forth within the statute. In the present case, Defendant
7 has not met the relevant statutory requirement to file his petition in the proper form because
8 he has failed to answer all 23 questions. Therefore, his Petition is denied for failing to meet
9 the standard set forth by NRS 34.735.

10 **III. THE DISTRICT COURT DID NOT ERR IN IMPOSING A SENTENCE FOR**
11 **USE OF A DEADLY WEAPON.**

12
13 Defendant's first claim is that the District Court erred by imposing a consecutive
14 sentence on each of the two counts for use of a deadly weapon. Specifically, he argues that
15 such an enhancement sentence should not have been imposed without factual findings being
16 made by a jury or Defendant admitting to using a deadly weapon. Petition Memorandum at
17 1-3. He claims that neither happened and thus the sentence is illegal. *Id.* However, this issue
18 has already been adjudicated by this Court and *res judicata* prevents further review.
19 Additionally, this case involved a guilty plea and the right to trial by jury was waived, thus
20 Defendant's claim has no merit.

21 Moreover, in conjunction with claiming that there was no factual finding at the time of
22 the guilty plea (that he did not admit) Defendant claims that he was not properly canvassed as
23 to the enhancement portion of the sentence. Petition Memorandum at 2. This claim, though,
24 is belied by the record.

25 **A. This Claim Is Waived.**

26 In challenging the imposition of the consecutive sentence, Defendant has brought forth
27 a claim that should have been raised on direct appeal. As the claim was not raised in such a
28 proceeding, it is waived on post-conviction review.

1 NRS 34.810(1) reads:

2 The court shall dismiss a petition if the court determines that:

3 (a) The petitioner's conviction was upon a plea of guilty
4 or guilty but mentally ill and the petition is not based upon an
5 allegation that the plea was involuntarily or unknowingly or that
6 the plea was entered without effective assistance of counsel.

7 (b) The petitioner's conviction was the result of a trial
8 and the grounds for the petition could have been:

9 (2) Raised in a direct appeal or a prior petition
10 for a writ of habeas corpus or post-conviction relief.

11 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and
12 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-
13 conviction proceedings.... [A]ll other claims that are appropriate for a direct appeal must be
14 pursued on direct appeal, or they will be *considered waived in subsequent proceedings.*"
15 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)
16 (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)).

17 Since this claim does not challenge the validity of Defendant's guilty plea, nor does it
18 allege ineffective assistance of counsel, and Defendant did not raise it on a direct appeal from
19 the Judgment of Conviction, it must be deemed waived and is denied.

20 **B. This Court Has Already Adjudicated This Matter.**

21 Even if this Court were to entertain this claim, it falls under the doctrine of *res judicata*.
22 For an issue to fall under *res judicata*, it must have already been decided in a prior proceeding.
23 The following three conditions must be met: (1) the issue decided in the prior litigation must
24 be identical to the issue presented in the current action, (2) the initial ruling must have been
25 on the merits and have become final, and (3) the party against whom the judgment is asserted
26 must have been a party or in privity with a party to the prior litigation. Pulley v. Preferred
27 Risk Mutual Insurance, 111 Nev. 856, 858, 897 P.2d 1101, 1102-03 (1995).

28 When Defendant filed his Motion to Modify, he made the exact same claim that he
brings here. This Court denied that motion. See Order Denying Defendant's Pro Per Motion
to Appoint Counsel and Order Denying Defendant's Pro Per Motion to Modify and/or Correct
by Setting Aside Illegal Sentence Based Upon Lack of Subject Matter Jurisdiction at 2.

1 Because Defendant reiterates the same arguments here, using the exact same language from
2 the Motion to Modify – see Petition Memorandum at 2-3 – the District Court previously ruled
3 on the issue on the merits, and Defendant was a party in that case, the doctrine of *res judicata*
4 applies here. Accordingly, this claim is denied.

5 **C. Defendant Had No Right to a Determination on the Facts by a Jury.**

6 Defendant's claim regarding a factual determination that should have been made by a
7 jury is completely without merit. In Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348
8 (2000), the United States Supreme Court announced that "[o]ther than the fact of a prior
9 conviction, any fact that increases the penalty for a crime beyond the prescribed statutory
10 maximum must be submitted to a jury, and proved beyond a reasonable doubt." Id. 530 U.S.
11 at 490, 120 S.Ct. 2362-63. However, the Supreme Court has also held that "the valid entry of
12 a guilty plea in a state criminal court involves the waiver of several federal constitutional
13 rights. Among these 'is the right to trial by jury.'" Colwell v. State, 118 Nev. 807, 823, 59
14 P.3d 463, 474 (2002) (citing Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969)). The
15 Nevada Supreme Court has ruled held that when a defendant pleads guilty, he waives the right
16 guaranteed by Apprendi to have enhancing or aggravating facts determined by a jury and
17 provide beyond a reasonable doubt. Id. 118 Nev. at 822-23, 59 P.3d 473-74.

18 Defendant pleaded guilty and knowingly waived all rights to trial by jury. Defendant's
19 guilty plea and waiver of his right to trial by jury also served to waive his right to have any
20 enhancing or aggravating facts determined by a jury and proved beyond a reasonable doubt.
21 Therefore, this claim, being completely without merit, is denied.

22 **D. Defendant's Claim Regarding the Plea Canvass and His Knowledge Is**
23 **Belied by the Record.**

24 Defendant's claim regarding the plea canvass, there being no admission as to the facts
25 required for the enhancement, and his knowledge regarding these issues is belied by the record.
26 "Bare" and "naked" allegations are not sufficient to warrant post-conviction relief, nor are
27 those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222,
28 225 (1984). "A claim is 'belied' when it is contradicted or proven to be false by the record as

1 it existed at the time the claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228,
2 1230 (2002). NRS 34.735(6) states in relevant part that a Defendant “*must* allege specific facts
3 supporting the claims in the petition,” and that “[f]ailure to allege specific facts rather than just
4 conclusions may cause your petition to be dismissed.” (emphasis added).

5 Defendant’s claim is belied by the Guilty Plea Agreement (GPA) entered on September
6 17, 2014, wherein he acknowledged the offenses with which he was charged and the possible
7 sentences they carried. Therefore, Defendant’s claim about being unaware of the consecutive
8 sentence and being improperly canvassed is belied by the record.

9 For these reasons, the sentence was appropriate and legal. The District Court did not
10 err in rendering such a sentence. Therefore, this claim is denied.

11 **IV. DEFENDANT’S COUNSEL WAS NOT INEFFETIVE.**

12 Defendant also raises two claims of ineffective assistance of counsel. First, he claims
13 that counsel was for ineffective for failing to object to the District Court imposing the
14 consecutive term of imprisonment for use of a deadly weapon. Second, he claims that counsel
15 was ineffective for failing to inform Defendant that he only had one year to file a post-
16 conviction petition. As for his first claim, Defendant cannot demonstrate either deficient
17 performance or prejudice for the reasons provided *supra* demonstrating that he had no right to
18 a jury making a factual determination. His second claim also fails as counsel has no obligation
19 to provide such information.

20 Ineffective assistance of counsel claims are analyzed under a two-prong test set forth in
21 Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984), wherein the
22 petitioner must show: (1) that counsel’s performance was deficient, and (2) that the deficient
23 performance prejudiced the defense.

24 **A. Counsel Was Not Ineffective For Failing to Object to the Consecutive** 25 **Sentence.**

26 As this Court stated *supra*, Defendant had no right to have a factual determination on
27 the deadly weapon enhancement be made by a jury. The District Court’s finding and the
28 subsequent imposition of the consecutive sentence was legal and valid. Thus, any objection

1 made by counsel regarding the imposition of that sentence would have been futile. Because
2 counsel cannot be deemed ineffective for failing to make futile objections, his performance
3 was not deficient. Likewise, because such an objection would have been futile, Defendant
4 cannot demonstrate prejudice.

5 For each of these reasons, Defendant has failed to demonstrate that counsel was
6 ineffective. Therefore, this claim is denied.

7 **B. Counsel Was Not Ineffective For Failing to Inform Defendant About the**
8 **Procedural Bars to Post-Conviction Petitions.**

9 Defendant's final claim is that counsel was ineffective for failing to inform him of the
10 one-year time bar that applies to post-conviction petitions for writs of habeas corpus. He has
11 failed to demonstrate that counsel had any obligation to provide him with such information or
12 that he was prejudiced by any deficient performance.

13 Defendant has cited no relevant authority. Thus, his subsequent argument is not cogent.
14 By providing no relevant authority and no cogent argument, he has failed to meet his burden
15 in demonstrating ineffective assistance. See Browning v. State, 120 Nev. 347, 365, 91 P.3d
16 39, 52 (2004); Lader v. Warden, 121 Nev. 682, 120 P.3d 1164 (2005); Colwell, 118 Nev. at
17 813, 59 P.3d at 467; Evans v. State, 117 Nev. 609, 646, 28 P.3d 498, 523 (2001). Therefore,
18 this claim is denied.

19 Second, even if Defendant has presented relevant authority and cogent argument, he
20 cannot demonstrate deficient performance or prejudice. Generally, counsel is not
21 constitutionally required to advise a defendant who has pleaded guilty of his right to appeal.
22 Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999). Further, there is no entitlement
23 to counsel on post-conviction. It can be inferred from these two facts – that there is no right
24 to post-conviction counsel and that, even regarding proceedings where a defendant is entitled
25 to counsel, there is no obligation for trial counsel to inform the defendant about those
26 proceedings – that there was no obligation for counsel to inform Defendant of the one-year
27 time bar that applies to post-conviction petitions. Thus, counsel cannot be found to have been
28 deficient in his performance.

1 Finally, *in arguendo*, even if counsel was deficient in his performance, Defendant
2 cannot demonstrate prejudice on this claim. Through the GPA, Defendant stated that he
3 understood he was waiving his right to appeal and also that he understood that he remained
4 "free to challenge [his] conviction through other post-conviction remedies including a habeas
5 corpus petition pursuant to NRS Chapter 34." Because Defendant was already aware of his
6 right to challenge his conviction and the GPA directed him to the relevant statutory chapter
7 that enumerates the procedural rules governing the process by which he could challenge his
8 conviction, he could not have been prejudiced by counsel's failure to inform him of the time
9 bar as he already had been informed of his rights and where he could find all relevant
10 information.

11 For these reasons, this claim is denied.

12 **ORDER**

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

15 DATED this 21st day of February, 2017.

16
17 
DISTRICT JUDGE 

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

20
21 BY 

STEVEN S. OWENS
Deputy District Attorney
Nevada Bar #004352

CERTIFICATE OF SERVICE

I certify that on the 15th day of February, 2017, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

CEDRIC LEROB JACKSON #1130512
SOUTHERN DESERT CORRECTIONAL CENTER
P.O. BOX 208
INDIAN SPRINGS, NV 89070-0208

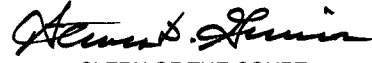
BY



R. JOHNSON

Secretary for the District Attorney's Office

AR/SSO/rj/M-1


CLERK OF THE COURT

NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CEDRIC JACKSON,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: 10C265339-1

Dept No: X

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

PLEASE TAKE NOTICE that on March 7, 2017, 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 March 15, 2017.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on this 15 day of March 2017, 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:
Cedric Jackson # 1130512
P.O. Box 208
Indian Springs, NV 89070

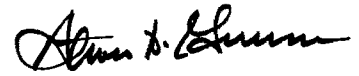
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CASE NO: 10C265339-1

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14 #1581340

DEPT NO: X

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23 District Attorney, and the Court having considered the matter, including briefs, transcripts,
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demonstrates to the satisfaction of the court:

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28 good cause for this delay and undue prejudice, Defendant's claim must be dismissed because
of its tardy filing.

Additionally, Defendant has not even alleged good cause, and certainly has not
demonstrated that an external impediment prevented his compliance with NRS 34.726(1).

1 Accordingly, because his Petition was not filed within the one-year timeframe and he has not
2 shown good cause, the Petition is denied.

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24 is belied by the record.

25 **A. This Claim Is Waived.**

26 In challenging the imposition of the consecutive sentence, Defendant has brought forth
27 a claim that should have been raised on direct appeal. As the claim was not raised in such a
28 proceeding, it is waived on post-conviction review.

1 NRS 34.810(1) reads:

2 The court shall dismiss a petition if the court determines that:

3 (a) The petitioner's conviction was upon a plea of guilty
4 or guilty but mentally ill and the petition is not based upon an
5 allegation that the plea was involuntarily or unknowingly or that
6 the plea was entered without effective assistance of counsel.

7 (b) The petitioner's conviction was the result of a trial
8 and the grounds for the petition could have been:

9 ...
10 (2) Raised in a direct appeal or a prior petition
11 for a writ of habeas corpus or post-conviction relief.

12 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and
13 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-
14 conviction proceedings.... [A]ll other claims that are appropriate for a direct appeal must be
15 pursued on direct appeal, or they will be *considered waived in subsequent proceedings.*"
16 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)
17 (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)).

18 Since this claim does not challenge the validity of Defendant's guilty plea, nor does it
19 allege ineffective assistance of counsel, and Defendant did not raise it on a direct appeal from
20 the Judgment of Conviction, it must be deemed waived and is denied.

21 **B. This Court Has Already Adjudicated This Matter.**

22 Even if this Court were to entertain this claim, it falls under the doctrine of *res judicata*.
23 For an issue to fall under *res judicata*, it must have already been decided in a prior proceeding.
24 The following three conditions must be met: (1) the issue decided in the prior litigation must
25 be identical to the issue presented in the current action, (2) the initial ruling must have been
26 on the merits and have become final, and (3) the party against whom the judgment is asserted
27 must have been a party or in privity with a party to the prior litigation. Pulley v. Preferred
28 Risk Mutual Insurance, 111 Nev. 856, 858, 897 P.2d 1101, 1102-03 (1995).

When Defendant filed his Motion to Modify, he made the exact same claim that he
brings here. This Court denied that motion. See Order Denying Defendant's Pro Per Motion
to Appoint Counsel and Order Denying Defendant's Pro Per Motion to Modify and/or Correct
by Setting Aside Illegal Sentence Based Upon Lack of Subject Matter Jurisdiction at 2.

1 Because Defendant reiterates the same arguments here, using the exact same language from
2 the Motion to Modify – see Petition Memorandum at 2-3 – the District Court previously ruled
3 on the issue on the merits, and Defendant was a party in that case, the doctrine of *res judicata*
4 applies here. Accordingly, this claim is denied.

5 **C. Defendant Had No Right to a Determination on the Facts by a Jury.**

6 Defendant's claim regarding a factual determination that should have been made by a
7 jury is completely without merit. In Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348
8 (2000), the United States Supreme Court announced that "[o]ther than the fact of a prior
9 conviction, any fact that increases the penalty for a crime beyond the prescribed statutory
10 maximum must be submitted to a jury, and proved beyond a reasonable doubt." Id. 530 U.S.
11 at 490, 120 S.Ct. 2362-63. However, the Supreme Court has also held that "the valid entry of
12 a guilty plea in a state criminal court involves the waiver of several federal constitutional
13 rights. Among these 'is the right to trial by jury.'" Colwell v. State, 118 Nev. 807, 823, 59
14 P.3d 463, 474 (2002) (citing Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969)). The
15 Nevada Supreme Court has ruled held that when a defendant pleads guilty, he waives the right
16 guaranteed by Apprendi to have enhancing or aggravating facts determined by a jury and
17 provide beyond a reasonable doubt. Id. 118 Nev. at 822-23, 59 P.3d 473-74.

18 Defendant pleaded guilty and knowingly waived all rights to trial by jury. Defendant's
19 guilty plea and waiver of his right to trial by jury also served to waive his right to have any
20 enhancing or aggravating facts determined by a jury and proved beyond a reasonable doubt.
21 Therefore, this claim, being completely without merit, is denied.

22 **D. Defendant's Claim Regarding the Plea Canvass and His Knowledge Is**
23 **Belied by the Record.**

24 Defendant's claim regarding the plea canvass, there being no admission as to the facts
25 required for the enhancement, and his knowledge regarding these issues is belied by the record.
26 "Bare" and "naked" allegations are not sufficient to warrant post-conviction relief, nor are
27 those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222,
28 225 (1984). "A claim is 'belied' when it is contradicted or proven to be false by the record as

1 it existed at the time the claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228,
2 1230 (2002). NRS 34.735(6) states in relevant part that a Defendant “*must* allege specific facts
3 supporting the claims in the petition,” and that “[f]ailure to allege specific facts rather than just
4 conclusions may cause your petition to be dismissed.” (emphasis added).

5 Defendant’s claim is belied by the Guilty Plea Agreement (GPA) entered on September
6 17, 2014, wherein he acknowledged the offenses with which he was charged and the possible
7 sentences they carried. Therefore, Defendant’s claim about being unaware of the consecutive
8 sentence and being improperly canvassed is belied by the record.

9 For these reasons, the sentence was appropriate and legal. The District Court did not
10 err in rendering such a sentence. Therefore, this claim is denied.

11 **IV. DEFENDANT’S COUNSEL WAS NOT INEFFETIVE.**

12 Defendant also raises two claims of ineffective assistance of counsel. First, he claims
13 that counsel was for ineffective for failing to object to the District Court imposing the
14 consecutive term of imprisonment for use of a deadly weapon. Second, he claims that counsel
15 was ineffective for failing to inform Defendant that he only had one year to file a post-
16 conviction petition. As for his first claim, Defendant cannot demonstrate either deficient
17 performance or prejudice for the reasons provided *supra* demonstrating that he had no right to
18 a jury making a factual determination. His second claim also fails as counsel has no obligation
19 to provide such information.

20 Ineffective assistance of counsel claims are analyzed under a two-prong test set forth in
21 Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984), wherein the
22 petitioner must show: (1) that counsel’s performance was deficient, and (2) that the deficient
23 performance prejudiced the defense.

24 **A. Counsel Was Not Ineffective For Failing to Object to the Consecutive** 25 **Sentence.**

26 As this Court stated *supra*, Defendant had no right to have a factual determination on
27 the deadly weapon enhancement be made by a jury. The District Court’s finding and the
28 subsequent imposition of the consecutive sentence was legal and valid. Thus, any objection

1 made by counsel regarding the imposition of that sentence would have been futile. Because
2 counsel cannot be deemed ineffective for failing to make futile objections, his performance
3 was not deficient. Likewise, because such an objection would have been futile, Defendant
4 cannot demonstrate prejudice.

5 For each of these reasons, Defendant has failed to demonstrate that counsel was
6 ineffective. Therefore, this claim is denied.

7 **B. Counsel Was Not Ineffective For Failing to Inform Defendant About the**
8 **Procedural Bars to Post-Conviction Petitions.**

9 Defendant's final claim is that counsel was ineffective for failing to inform him of the
10 one-year time bar that applies to post-conviction petitions for writs of habeas corpus. He has
11 failed to demonstrate that counsel had any obligation to provide him with such information or
12 that he was prejudiced by any deficient performance.

13 Defendant has cited no relevant authority. Thus, his subsequent argument is not cogent.
14 By providing no relevant authority and no cogent argument, he has failed to meet his burden
15 in demonstrating ineffective assistance. See Browning v. State, 120 Nev. 347, 365, 91 P.3d
16 39, 52 (2004); Lader v. Warden, 121 Nev. 682, 120 P.3d 1164 (2005); Colwell, 118 Nev. at
17 813, 59 P.3d at 467; Evans v. State, 117 Nev. 609, 646, 28 P.3d 498, 523 (2001). Therefore,
18 this claim is denied.

19 Second, even if Defendant has presented relevant authority and cogent argument, he
20 cannot demonstrate deficient performance or prejudice. Generally, counsel is not
21 constitutionally required to advise a defendant who has pleaded guilty of his right to appeal.
22 Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999). Further, there is no entitlement
23 to counsel on post-conviction. It can be inferred from these two facts – that there is no right
24 to post-conviction counsel and that, even regarding proceedings where a defendant is entitled
25 to counsel, there is no obligation for trial counsel to inform the defendant about those
26 proceedings – that there was no obligation for counsel to inform Defendant of the one-year
27 time bar that applies to post-conviction petitions. Thus, counsel cannot be found to have been
28 deficient in his performance.

1 Finally, *in arguendo*, even if counsel was deficient in his performance, Defendant
2 cannot demonstrate prejudice on this claim. Through the GPA, Defendant stated that he
3 understood he was waiving his right to appeal and also that he understood that he remained
4 "free to challenge [his] conviction through other post-conviction remedies including a habeas
5 corpus petition pursuant to NRS Chapter 34." Because Defendant was already aware of his
6 right to challenge his conviction and the GPA directed him to the relevant statutory chapter
7 that enumerates the procedural rules governing the process by which he could challenge his
8 conviction, he could not have been prejudiced by counsel's failure to inform him of the time
9 bar as he already had been informed of his rights and where he could find all relevant
10 information.

11 For these reasons, this claim is denied.

12 **ORDER**

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

15 DATED this 21st day of February, 2017.

16
17 

DISTRICT JUDGE 

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

20
21 BY 

STEVEN S. OWENS
22 Deputy District Attorney
Nevada Bar #004352
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that on the 15th day of February, 2017, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

CEDRIC LEROB JACKSON #1130512
SOUTHERN DESERT CORRECTIONAL CENTER
P.O. BOX 208
INDIAN SPRINGS, NV 89070-0208

BY



R. JOHNSON

Secretary for the District Attorney's Office

AR/SSO/rj/M-1



Clerk of the Courts
Steven D. Grierson

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May 10, 2017

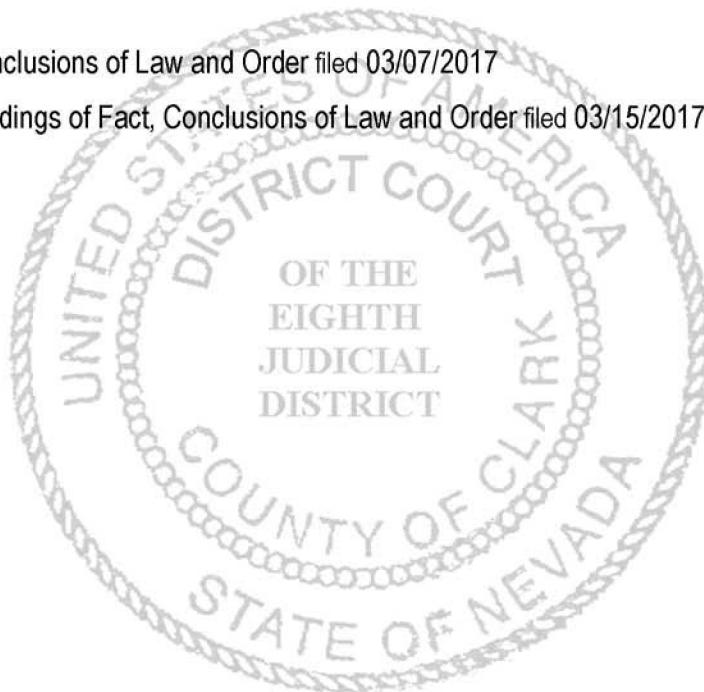
Case No.: 10C265339-1

CERTIFICATION OF COPY

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

Findings of Fact, Conclusions of Law and Order filed 03/07/2017

Notice of Entry of Findings of Fact, Conclusions of Law and Order filed 03/15/2017



now on file and of

In witness whereof, I have hereunto set my hand and affixed the seal of the Eighth Judicial District Court at my office, Las Vegas, Nevada, at 8:10 AM on May 10, 2017.

A handwritten signature of Steven D. Grierson in black ink.
STEVEN D. GRIERSON, CLERK OF THE COURT