

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Electronically Filed
Aug 31 2017 03:47 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

BRENDAN DUNCKLEY,

Petitioner,

vs.

THE STATE OF NEVADA,
ROBERT LEGRAND,

Respondent.

Sup. Ct. Case No. 73095

Case No. CR07-1728

Dept. 4

RECORD ON APPEAL

VOLUME 6 OF 11

DOCUMENTS

APPELLANT

Brendan Dunckley #1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

RESPONDENT

Washoe County District
Attorney's Office
Terrance McCarthy, Esq.
P.O. Box 30083
Reno, Nevada 89502-3083

APPEAL INDEX
SCN 73095
CASE NO. CR07-1728
BRENDAN DUNCKLEY vs STATE OF NEVADA, ROBERT LEGRAND
Date: AUGUST 31, 2017

PLEADING	DATE FILED	VOL.	PAGE NO.
ACCEPTANCE OF ELECTRONIC DOCUMENT SUBMITTED FOR FILING	03-02-10	3	407
ACCEPTANCE OF ELECTRONIC DOCUMENT SUBMITTED FOR FILING	06-09-10	3	449
ACCEPTANCE OF ELECTRONIC DOCUMENT SUBMITTED FOR FILING	06-09-10	3	450
ACCEPTANCE OF ELECTRONIC DOCUMENT SUBMITTED FOR FILING	06-09-10	3	451
ACCEPTANCE OF ELECTRONIC DOCUMENT SUBMITTED FOR FILING	06-09-10	3	452
ACCEPTANCE OF ELECTRONIC DOCUMENT SUBMITTED FOR FILING	06-09-10	3	453
ACCEPTANCE OF ELECTRONIC DOCUMENT SUBMITTED FOR FILING	06-09-10	3	454
AFFIDAVIT IN SUPPORT OF APPLICATION TO PROCEED IN FORMA PAUPERIS	07-21-09	7	2-3
AFFIDAVIT IN SUPPORT OF MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND TRANSFER OF RECORDS	07-07-09	3	301-303
AMENDED INFORMATION	02-28-08	2	205-208
ANSWER TO PETITION AND SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)	05-05-10	9	624-626
ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)	01-05-17	6	891-893
APPLICATION FOR ORDER TO PRODUCE PRISONER	02-16-17	6	914-916
APPLICATION FOR ORDER TO PRODUCE PRISONER	10-07-10	9	634-636
APPLICATION FOR ORDER TO PRODUCE THE PRISONER	02-23-17	6	926-929
APPLICATION FOR SETTING	07-03-07	2	4-5
APPLICATION FOR SETTING	09-26-07	2	177
APPLICATION FOR SETTING	10-08-07	2	178
APPLICATION FOR SETTING	01-24-11	4	540-541
APPLICATION FOR SETTING	03-11-11	4	543-544
APPLICATION FOR SETTING	07-01-10	9	632
APPLICATION FOR SETTING	11-03-10	9	647-648

APPEAL INDEX
SCN 73095
CASE NO. CR07-1728
BRENDAN DUNCKLEY vs STATE OF NEVADA, ROBERT LEGRAND
Date: AUGUST 31, 2017

PLEADING	DATE FILED	VOL.	PAGE NO.
APPLICATION FOR SETTING	03-11-11	9	653-654
APPLICATION TO PROCEED IN FORMA PAUPERIS	07-21-09	7	1
BAILBOND POSTED	07-24-07	2	161-166
BAILBOND POSTED	07-24-07	2	167-169
CASE APPEAL STATEMENT	09-09-08	3	273-276
CASE APPEAL STATEMENT	03-01-10	3	401-402
CASE APPEAL STATEMENT	12-30-11	4	708-712
CASE APPEAL STATEMENT	05-19-17	6	968-969
CASE APPEAL STATEMENT	12-30-11	10	813-817
CERTIFICATE OF CLERK	09-10-08	3	277
CERTIFICATE OF CLERK	03-02-10	3	404
CERTIFICATE OF CLERK – RECORD ON APPEAL	06-09-10	3	446
CERTIFICATE OF CLERK AND TRANSMITTAL	08-17-17	6	1003
CERTIFICATE OF CLERK AND TRANSMITTAL	09-05-12	10	844
CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL	12-30-11	4	714
CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL	05-19-17	6	970
CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL	12-30-11	10	820
CERTIFICATE OF MAILING	02-22-17	6	923
CERTIFICATE OF SERVICE	02-17-10	3	398
CERTIFICATE OF TRANSMITTAL	09-10-08	3	278
CERTIFICATE OF TRANSMITTAL	03-02-10	3	405
CERTIFICATE OF TRANSMITTAL – RECORD ON APPEAL	06-09-10	3	447
CORRECTED ORDER	05-31-11	4	567-569
COURT SERVICES REPORT	07-03-07	2	1-3

APPEAL INDEX
SCN 73095
CASE NO. CR07-1728
BRENDAN DUNCKLEY vs STATE OF NEVADA, ROBERT LEGRAND
Date: AUGUST 31, 2017

PLEADING	DATE FILED	VOL.	PAGE NO.
DEFENDANT'S RESPONSE TO STATE'S OPPOSITION TO MOTION TO WITHDRAW GUILTY PLEA, SUPPLEMENTAL TO MOTION TO WITHDRAW GUILTY PLEA AND SUPPLEMENTAL IN CONSIDERATION OF MOTION TO WITHDRAW GUILTY PLEA	11-03-10	4	495-508
DESIGNATION OF RECORD ON APPEAL	05-16-17	6	961-964
EX PARTE APPLICATION FOR INTERIM CLAIM FOR FEES	04-01-10	11	28-37
EX PARTE APPLICATION FOR INTERIM CLAIM FOR FEES	06-30-10	11	41-48
EX PARTE APPLICATION FOR INTERIM CLAIM FOR FEES	11-01-10	11	52-60
EX PARTE APPLICATION FOR INTERIM CLAIM FOR FEES	02-10-11	11	67-75
EX PARTE APPLICATION FOR INTERIM CLAIM FOR FEES	06-21-11	11	79-88
EX PARTE APPLICATION FOR INTERIM CLAIM FOR FEES	02-03-12	11	92-101
EX PARTE APPLICATION FOR INTERIM CLAIM FOR FEES	01-03-13	11	105-116
EX PARTE MOTION FOR APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING	07-21-09	7	4-6
FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT	06-29-17	6	976-982
FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT	12-29-11	10	787-793
GUILTY PLEA MEMORANDUM	03-06-08	2	211-217
INFORMATION	07-12-07	2	6-10
JUDGMENT	08-11-08	3	239-240
MINUTES – ARRAIGNMENT	07-18-07	2	12
MINUTES – CONFERENCE CALL – TELEPHONIC DECISION	08-18-11	4	695
MINUTES – CONFERENCE CALL – TELEPHONIC DECISION	08-18-11	10	785
MINUTES – CRIMINAL PROGRESS SHEET	07-17-07	2	11
MINUTES – ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE	09-16-08	3	280
MINUTES – EVIDENTIARY HEARING ON PETITION FOR HABEAS CORPUS TO EXHAUST STATE CLAIMS/ORAL ARGUMENTS ON MOTION TO DISMISS PETITION	08-08-17	6	996

APPEAL INDEX
SCN 73095
CASE NO. CR07-1728
BRENDAN DUNCKLEY vs STATE OF NEVADA, ROBERT LEGRAND
Date: AUGUST 31, 2017

PLEADING	DATE FILED	VOL.	PAGE NO.
MINUTES – MOTION FOR WITHDRAWAL OF GUILTY PLEA	07-26-11	4	693
MINUTES – MOTION TO CONFIRM TRIAL DATE / ARRAIGNMENT ON AMENDED INFORMATION	06-26-08	2	234
MINUTES – PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)	07-26-11	10	782-783
MOTION FOR DEFAULT BENCH DECISION FOR THE MOTION(S) TO WITHDRAW GUILTY PLEA AND SUPPLEMENTALS IN CONSIDERATION OF MOTION TO WITHDRAW PLEA	03-18-11	4	546-553
MOTION FOR FEES FOR COPY COSTS	10-25-10	9	641-646
MOTION FOR JUDGMENT IN THE INTEREST OF JUSTICE	11-25-09	3	382-390
MOTION FOR MODIFICATION OF SENTENCE	07-08-09	3	304-337
MOTION FOR ORDER TO PRODUCE THE PRISONER	10-11-10	9	637
MOTION FOR RECONSIDERATION OF SETTING	03-28-11	4	554-559
MOTION FOR SETTING OF ORAL ARGUMENTS ON MOTION(S) TO WITHDRAW PLEA	01-21-11	4	533-539
MOTION FOR SUBMISSION OF MOTION TO WITHDRAW DEFENDANT'S GUILTY PLEA MEMORANDUM, SUPPLEMENTAL TO MOTION TO WITHDRAW GUILTY PLEA, AND SUPPLEMENT IN CONSIDERATION OF MOTION TO WITHDRAW GUILTY PLEA	11-17-10	4	512-518
MOTION FOR WITHDRAW OF GUILTY PLEA	03-03-10	3	409-423
MOTION TO ALLOW LEAVE TO FILE A BELATED NOTICE OF INTENT TO SEEK ADMISSION OF OTHER BAD ACT EVIDENCE FOR REBUTTAL PURPOSES	02-04-08	2	182-188
MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)	03-01-17	6	930-937
MOTION TO GRANT PETITIONER'S UNOPPOSED WRIT FOR HABEAS CORPUS TO EXHAUST STATE CLAIMS	01-11-17	6	898-903
MOTION TO STRIKE STATE'S OPPOSITION TO DEFENDANT'S MOTION(S) TO WITHDRAW GUILTY PLEA MEMORANDUM & MOTION FOR SUBMISSION OF DECISION	12-30-10	4	519-524
MOTION TO SUBMIT MOTION TO WITHDRAW GUILTY PLEA AND ALSO DEFENDANT'S SUPPLEMENTAL MOTION TO WITHDRAW GUILTY PLEA	09-21-10	3	475-478

APPEAL INDEX
SCN 73095
CASE NO. CR07-1728
BRENDAN DUNCKLEY vs STATE OF NEVADA, ROBERT LEGRAND
Date: AUGUST 31, 2017

PLEADING	DATE FILED	VOL.	PAGE NO.
NOTICE OF APPEAL	09-08-08	3	270-272
NOTICE OF APPEAL	03-01-10	3	399-400
NOTICE OF APPEAL	12-30-11	4	700-706
NOTICE OF APPEAL	05-16-17	6	957-960
NOTICE OF APPEAL	12-30-11	10	795-806
NOTICE OF CHANGE OF ADDRESS	11-05-10	4	509-511
NOTICE OF CHANGE OF ADDRESS	05-16-17	6	965-967
NOTICE OF CHANGE OF ADDRESS	02-16-12	10	835-837
NOTICE OF CHANGE OF RESPONSIBLE ATTORNEY	01-05-17	5	888-890
NOTICE OF DOCUMENT RECEIVED BUT CONSIDERED BY THE COURT	08-05-08	2	235-238
NOTICE OF ENTRY OF ORDER	06-30-17	6	985-993
NOTICE OF ENTRY OF ORDER	01-11-12	10	824-832
NOTICE OF INTENT TO SEEK ADMISSION OF OTHER ACTS EVIDENCE FOR PURPOSES OF REBUTTAL	02-04-08	2	189-200
NOTICE OF MOTION AND MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND TRANSFER OF RECORDS	07-07-09	3	297-300
NOTICE REGARDING TRANSCRIPT AT PUBLIC EXPENSE	01-11-12	11	26-27
NOTICE TO FILE DOCKETING STATEMENT AND REQUEST TRANSCRIPTS	10-06-08	3	281
OPPOSITION TO MOTION FOR MODIFICATION OF SENTENCE	11-04-09	3	361-363
OPPOSITION TO MOTION TO GRANT PETITIONER'S UNOPPOSED WRIT FOR HABEAS CORPUS TO EXHAUST STATE CLAIMS	01-23-17	6	904-906
OPPOSITION TO MOTION TO STRIKE STATE'S OPPOSITION TO MOTION TO WITHDRAW GUILTY PLEA AND SUPPLEMENT IN CONSIDERATION OF MOTION TO WITHDRAW GUILTY PLEA	01-03-11	4	525-527
OPPOSITION TO MOTION TO WITHDRAW GUILTY PLEA, SUPPLEMENT TO MOTION TO WITHDRAW GUILTY PLEA AND SUPPLEMENT IN CONSIDERATION OF MOTION TO WITHDRAW GUILTY PLEA	10-21-10	4	490-493

APPEAL INDEX
SCN 73095
CASE NO. CR07-1728
BRENDAN DUNCKLEY vs STATE OF NEVADA, ROBERT LEGRAND
Date: AUGUST 31, 2017

PLEADING	DATE FILED	VOL.	PAGE NO.
ORDER	10-23-09	3	354-356
ORDER	10-27-09	3	358-359
ORDER	02-10-10	3	391-393
ORDER	04-12-10	3	438-440
ORDER	04-23-10	3	442-444
ORDER	07-08-10	3	461-463
ORDER	10-15-10	4	480-482
ORDER	01-07-11	4	529-531
ORDER	05-31-11	4	563-565
ORDER	11-21-16	5	884-885
ORDER	02-15-17	6	909-911
ORDER	03-28-17	6	952-954
ORDER	10-28-09	9	587-588
ORDER DENYING MOTION TO WITHDRAW GUILTY PLEAS	12-29-11	4	697-698
ORDER GRANTING IN FORMA PAUPERIS	10-28-09	9	584-586
ORDER GRANTING STIPULATION FOR CONTINUANCE OF HEARING DATE	03-11-11	9	655-656
ORDER TO PRODUCE PRISONER	02-21-17	6	919-920
ORDER TO PRODUCE PRISONER	10-12-10	9	638-639
ORDER TO SET	06-17-10	9	628-630
PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)	07-21-09	7	7-83
PETITION FOR WRIT OF HABEAS CORPUS TO EXHAUST STATE CLAIMS	11-07-16	5	734-883
PRESENTENCE INVESTIGATION REPORT	08-05-08	11	1-25
PRETRIAL ORDER	07-20-07	2	155-160
PROCEEDINGS	07-19-07	2	13-154
PROOF OF SERVICE OF ELECTRONIC FILING	03-11-11	9	658

APPEAL INDEX
 SCN 73095
 CASE NO. CR07-1728
 BRENDAN DUNCKLEY vs STATE OF NEVADA, ROBERT LEGRAND
 Date: AUGUST 31, 2017

PLEADING	DATE FILED	VOL.	PAGE NO.
PROOF OF SERVICE OF ELECTRONIC FILING	10-23-09	3	357
PROOF OF SERVICE OF ELECTRONIC FILING	10-27-09	3	360
PROOF OF SERVICE OF ELECTRONIC FILING	11-04-09	3	364
PROOF OF SERVICE OF ELECTRONIC FILING	11-25-09	3	381
PROOF OF SERVICE OF ELECTRONIC FILING	02-10-10	3	394
PROOF OF SERVICE OF ELECTRONIC FILING	03-01-10	3	403
PROOF OF SERVICE OF ELECTRONIC FILING	03-02-10	3	406
PROOF OF SERVICE OF ELECTRONIC FILING	03-02-10	3	408
PROOF OF SERVICE OF ELECTRONIC FILING	03-04-10	3	425
PROOF OF SERVICE OF ELECTRONIC FILING	03-18-10	3	434
PROOF OF SERVICE OF ELECTRONIC FILING	04-12-10	3	441
PROOF OF SERVICE OF ELECTRONIC FILING	04-23-10	3	445
PROOF OF SERVICE OF ELECTRONIC FILING	06-09-10	3	448
PROOF OF SERVICE OF ELECTRONIC FILING	06-09-10	3	455-456
PROOF OF SERVICE OF ELECTRONIC FILING	06-16-10	3	458
PROOF OF SERVICE OF ELECTRONIC FILING	07-08-10	3	464
PROOF OF SERVICE OF ELECTRONIC FILING	09-16-10	3	474
PROOF OF SERVICE OF ELECTRONIC FILING	09-21-10	4	479
PROOF OF SERVICE OF ELECTRONIC FILING	10-15-10	4	483
PROOF OF SERVICE OF ELECTRONIC FILING	10-15-10	4	489
PROOF OF SERVICE OF ELECTRONIC FILING	10-21-10	4	494
PROOF OF SERVICE OF ELECTRONIC FILING	01-03-11	4	528
PROOF OF SERVICE OF ELECTRONIC FILING	01-07-11	4	532
PROOF OF SERVICE OF ELECTRONIC FILING	01-24-11	4	542
PROOF OF SERVICE OF ELECTRONIC FILING	03-11-11	4	545

APPEAL INDEX
 SCN 73095
 CASE NO. CR07-1728
 BRENDAN DUNCKLEY vs STATE OF NEVADA, ROBERT LEGRAND
 Date: AUGUST 31, 2017

PLEADING	DATE FILED	VOL.	PAGE NO.
PROOF OF SERVICE OF ELECTRONIC FILING	05-31-11	4	566
PROOF OF SERVICE OF ELECTRONIC FILING	05-31-11	4	570
PROOF OF SERVICE OF ELECTRONIC FILING	07-13-11	4	692
PROOF OF SERVICE OF ELECTRONIC FILING	07-26-11	4	694
PROOF OF SERVICE OF ELECTRONIC FILING	08-18-11	4	696
PROOF OF SERVICE OF ELECTRONIC FILING	12-29-11	4	699
PROOF OF SERVICE OF ELECTRONIC FILING	12-30-11	4	707
PROOF OF SERVICE OF ELECTRONIC FILING	12-30-11	4	713
PROOF OF SERVICE OF ELECTRONIC FILING	12-30-11	4	715
PROOF OF SERVICE OF ELECTRONIC FILING	01-03-12	5	721
PROOF OF SERVICE OF ELECTRONIC FILING	01-09-12	5	723
PROOF OF SERVICE OF ELECTRONIC FILING	01-11-12	5	724
PROOF OF SERVICE OF ELECTRONIC FILING	01-24-13	5	727
PROOF OF SERVICE OF ELECTRONIC FILING	02-14-13	5	733
PROOF OF SERVICE OF ELECTRONIC FILING	10-28-09	9	589
PROOF OF SERVICE OF ELECTRONIC FILING	12-14-09	9	593
PROOF OF SERVICE OF ELECTRONIC FILING	03-17-10	9	596
PROOF OF SERVICE OF ELECTRONIC FILING	05-05-10	9	627
PROOF OF SERVICE OF ELECTRONIC FILING	06-17-10	9	631
PROOF OF SERVICE OF ELECTRONIC FILING	07-01-10	9	633
PROOF OF SERVICE OF ELECTRONIC FILING	10-12-10	9	640
PROOF OF SERVICE OF ELECTRONIC FILING	11-03-10	9	649
PROOF OF SERVICE OF ELECTRONIC FILING	02-14-11	9	652
PROOF OF SERVICE OF ELECTRONIC FILING	03-11-11	9	657
PROOF OF SERVICE OF ELECTRONIC FILING	06-21-11	9	659

APPEAL INDEX
 SCN 73095
 CASE NO. CR07-1728
 BRENDAN DUNCKLEY vs STATE OF NEVADA, ROBERT LEGRAND
 Date: AUGUST 31, 2017

PLEADING	DATE FILED	VOL.	PAGE NO.
PROOF OF SERVICE OF ELECTRONIC FILING	07-13-11	10	781
PROOF OF SERVICE OF ELECTRONIC FILING	07-26-11	10	784
PROOF OF SERVICE OF ELECTRONIC FILING	08-18-11	10	786
PROOF OF SERVICE OF ELECTRONIC FILING	12-29-11	10	794
PROOF OF SERVICE OF ELECTRONIC FILING	12-30-11	10	812
PROOF OF SERVICE OF ELECTRONIC FILING	12-30-11	10	818
PROOF OF SERVICE OF ELECTRONIC FILING	12-30-11	10	819
PROOF OF SERVICE OF ELECTRONIC FILING	12-30-11	10	821
PROOF OF SERVICE OF ELECTRONIC FILING	01-09-12	10	823
PROOF OF SERVICE OF ELECTRONIC FILING	01-11-12	10	833
PROOF OF SERVICE OF ELECTRONIC FILING	02-03-12	10	834
PROOF OF SERVICE OF ELECTRONIC FILING	02-16-12	10	838
PROOF OF SERVICE OF ELECTRONIC FILING	03-12-12	10	839
PROOF OF SERVICE OF ELECTRONIC FILING	08-13-12	10	841
PROOF OF SERVICE OF ELECTRONIC FILING	09-04-12	10	843
PROOF OF SERVICE OF ELECTRONIC FILING	09-05-12	10	845
PROOF OF SERVICE OF ELECTRONIC FILING	01-03-13	10	846
PROOF OF SERVICE OF ELECTRONIC FILING	01-24-13	10	852
PROOF OF SERVICE OF ELECTRONIC FILING	02-06-13	10	853
PROOF OF SERVICE OF ELECTRONIC FILING	02-14-13	10	862
RECOMMENATION AND ORDER GRANTING DEFENSE FEES	11-09-10	11	61-63
RECOMMENDATION AND ORDER FOR APPOINTMENT OF COUNSEL	12-14-09	9	590-592
RECOMMENDATION AND ORDER FOR PAYMENT OF ATTORNEY'S FEES	04-22-10	11	38-40
RECOMMENDATION AND ORDER FOR PAYMENT OF INTERIM ATTORNEY'S FEES	07-16-10	11	49-51

APPEAL INDEX
SCN 73095
CASE NO. CR07-1728
BRENDAN DUNCKLEY vs STATE OF NEVADA, ROBERT LEGRAND
Date: AUGUST 31, 2017

PLEADING	DATE FILED	VOL.	PAGE NO.
RECOMMENDATION AND ORDER FOR PAYMENT OF INTERIM ATTORNEY'S FEES	11-15-10	11	64-66
RECOMMENDATION AND ORDER FOR PAYMENT OF INTERIM ATTORNEY'S FEES	03-08-11	11	76-78
RECOMMENDATION AND ORDER FOR PAYMENT OF INTERIM ATTORNEY'S FEES	07-01-11	11	89-91
RECOMMENDATION AND ORDER FOR PAYMENT OF INTERIM ATTORNEY'S FEES	03-12-12	11	102-104
RECOMMENDATION AND ORDER FOR PAYMENT OF INTERIM ATTORNEY'S FEES	02-06-13	11	117-119
REQUEST FOR CONTINUANCE, STIPULATION AND ORDER	03-03-08	2	209-210
REQUEST FOR ROUGH DRAFT TRANSCRIPT	10-13-08	3	282-285
REQUEST FOR ROUGH DRAFT TRANSCRIPT	01-03-12	5	716-720
REQUEST FOR ROUGH DRAFT TRANSCRIPT	12-30-11	10	807-811
REQUEST FOR SUBMISSION	09-30-09	3	352-353
REQUEST FOR SUBMISSION	11-25-09	3	379-380
REQUEST FOR SUBMISSION	02-17-10	3	395-397
REQUEST FOR SUBMISSION	05-09-11	4	560-562
REQUEST FOR SUBMISSION	03-14-17	6	948-949
REQUEST FOR SUBMISSION OF MOTION	03-22-10	3	435-437
REQUEST FOR SUBMISSION OF MOTION	06-17-10	3	459-460
REQUEST, STIPULATION AND ORDER RE PRE-PRELIMINARY HEARING AND PRE-TRIAL RECIPROCAL DISCOVERY (FELONY AND GROSS MISDEMEANOR CASES)	02-25-08	2	201-204
RESPONSE TO DEFENDANT'S NOTICE AND MOTION FOR WITHDRAWAL OF ATTORNEY OR RECORD AND TRANSFER OF RECORDS	07-23-09	3	338-347
RESPONSE TO STATE'S MOTION TO DISMISS	03-13-17	6	940-947
RESPONSE TO STATES OPPOSITION TO MOTION FOR MODIFICATION OF SENTENCE	11-13-09	3	365-378
RETURN OF NEF	11-21-16	5	886-887

APPEAL INDEX
 SCN 73095
 CASE NO. CR07-1728
 BRENDAN DUNCKLEY vs STATE OF NEVADA, ROBERT LEGRAND
 Date: AUGUST 31, 2017

PLEADING	DATE FILED	VOL.	PAGE NO.
RETURN OF NEF	01-05-17	6	894-895
RETURN OF NEF	01-05-17	6	896-897
RETURN OF NEF	01-23-17	6	907-908
RETURN OF NEF	02-15-17	6	912-913
RETURN OF NEF	02-16-17	6	917-918
RETURN OF NEF	02-21-17	6	921-922
RETURN OF NEF	02-22-17	6	924-925
RETURN OF NEF	03-01-17	6	938-939
RETURN OF NEF	03-14-17	6	950-951
RETURN OF NEF	03-28-17	6	955-956
RETURN OF NEF	05-19-17	6	971-972
RETURN OF NEF	05-23-17	6	974-975
RETURN OF NEF	06-29-17	6	983-984
RETURN OF NEF	06-30-17	6	994-995
RETURN OF NEF	08-08-17	6	997-998
RETURN OF NEF	08-17-17	6	1001-1002
RETURN OF NEF	08-17-17	6	1004-1005
RETURN OF NEF	08-29-17	6	1008-1009
STIPULATION AND ORDER FOR EXTENSION OF TIME IN WHICH TO FILE SUPPLEMENTAL PETITION	03-17-10	9	594-595
STIPULATION AND ORDER VACATING HEARING	10-19-07	2	179-181
STIPULATION FOR CONTINUANCE OF HEARING DATE	02-14-11	9	650-651
SUPPLEMENT TO MOTION TO WITHDRAW GUILTY PLEA	03-04-10	3	426-432
SUPPLEMENTAL IN CONSIDERATION OF MOTION TO WITHDRAW GUILTY PLEA	07-14-10	3	465-471
SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)	03-23-10	9	597-623

APPEAL INDEX
 SCN 73095
 CASE NO. CR07-1728
 BRENDAN DUNCKLEY vs STATE OF NEVADA, ROBERT LEGRAND
 Date: AUGUST 31, 2017

PLEADING	DATE FILED	VOL.	PAGE NO.
SUPPORTING DOCUMENTATION FOR PETITIONER'S POST CONVICTION WRIT OF HABEAS CORPUS PETITION – PART NO. II	07-21-09	7	84-209
SUPPORTING DOCUMENTATION FOR PETITIONER'S POST CONVICTION WRIT OF HABEAS CORPUS PETITION – PART NO. IV	07-21-09	8	302-443
SUPPORTING DOCUMENTATION FOR PETITIONER'S POST CONVICTION WRIT OF HABEAS CORPUS PETITION – PART NO. V	07-21-09	9	444-583
SUPPORTING DOCUMENTATION FOR PETITIONERS POST – CONVICTION WRIT OF HABEAS CORPUS PETITION – PART NO. III	07-21-09	8	210-301
SUPREME COURT CLERK'S CERTIFICATE & JUDGMENT	06-03-09	3	291
SUPREME COURT CLERK'S CERTIFICATE & JUDGMENT	10-15-10	4	485
SUPREME COURT CLERK'S CERTIFICATE & JUDGMENT	02-14-13	5	731
SUPREME COURT CLERK'S CERTIFICATE & JUDGMENT	02-14-13	10	855
SUPREME COURT ORDER DIRECTING ENTRY AND TRANSMISSION OF WRITTEN ORDER	08-17-17	6	999-1000
SUPREME COURT ORDER DIRECTING TRANSMISSION OF RECORD	03-18-10	3	433
SUPREME COURT ORDER DIRECTING TRANSMISSION OF RECORD	08-29-17	6	1006-1007
SUPREME COURT ORDER GRANTING MOTION AND DIRECTING DISTRICT CLERK TO TRANSMIT DOCUMENTS UNDER SEAL	09-04-12	10	842
SUPREME COURT ORDER GRANTING MOTION AND DIRECTING DISTRICT COURT CLERK TO TRANSMIT DOCUMENTS UNDER SEAL	08-13-12	10	840
SUPREME COURT ORDER OF AFFIRMANCE	05-11-09	3	286-289
SUPREME COURT ORDER OF AFFIRMANCE	06-03-09	3	292-296
SUPREME COURT ORDER OF AFFIRMANCE	09-16-10	3	472-473
SUPREME COURT ORDER OF AFFIRMANCE	10-15-10	4	486-488
SUPREME COURT ORDER OF AFFIRMANCE	01-24-13	5	725-726
SUPREME COURT ORDER OF AFFIRMANCE	02-14-13	5	728-730

APPEAL INDEX
 SCN 73095
 CASE NO. CR07-1728
 BRENDAN DUNCKLEY vs STATE OF NEVADA, ROBERT LEGRAND
 Date: AUGUST 31, 2017

PLEADING	DATE FILED	VOL.	PAGE NO.
SUPREME COURT ORDER OF AFFIRMANCE	01-24-13	10	847-851
SUPREME COURT RECEIPT FOR DOCUMENTS	09-15-08	3	279
SUPREME COURT RECEIPT FOR DOCUMENTS	03-04-10	3	424
SUPREME COURT RECEIPT FOR DOCUMENTS	06-16-10	3	457
SUPREME COURT RECEIPT FOR DOCUMENTS	01-09-12	5	722
SUPREME COURT RECEIPT FOR DOCUMENTS	05-23-17	6	973
SUPREME COURT RECEIPT FOR DOCUMENTS	01-09-12	10	822
SUPREME COURT REMITTITUR	06-03-09	3	290
SUPREME COURT REMITTITUR	10-15-10	4	484
SUPREME COURT REMITTITUR	02-14-13	5	732
SUPREME COURT REMITTITUR	02-14-13	10	854
SURPEME COURT ORDER OF AFFIRMANCE	02-14-13	10	856-861
TRANSCRIPT OF PROCEEDINGS – ARRAIGNMENT – JULY 17, 2007	08-16-07	2	170-176
TRANSCRIPT OF PROCEEDINGS – MOTION TO CONFIRM TRIAL – THURSDAY, MARCH 6, 2008	04-02-08	2	218-233
TRANSCRIPT OF PROCEEDINGS – MOTION TO WITHDRAW PLEA – FRIDAY, JUNE 3, 2011	07-13-11	4	571-691
TRANSCRIPT OF PROCEEDINGS – MOTION TO WITHDRAW PLEA – FRIDAY, JUNE 3, 2011	07-13-11	10	660-780
TRANSCRIPT OF PROCEEDINGS – SENTENCING – AUGUST 5, 2008	09-05-08	3	241-269
WITHDRAWAL OF ATTORNEY	07-23-09	3	348-351

1 CODE #1130
2 CHRISTOPHER J. HICKS
3 #7747
4 P.O. Box 11130
5 Reno, Nevada 89520
6 (775) 328-3200
7 Attorney for Respondent

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
10
11 IN AND FOR THE COUNTY OF WASHOE

12 * * *

13 BRENDAN DUNCKLEY,

14 Petitioner,

15 v.

Case No. CR07-1728

16 THE STATE OF NEVADA, ROBERT
17 LEGRAND,

Dept. No. 4

18 Respondent.
19 _____/

20 ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS
21 (POST-CONVICTION)

22 COMES NOW, Respondent, by and through counsel, to answer the petition filed on
23 November 7, 2016, as follows:

- 24 1. That Respondent denies any and all allegations contained in the petition.
25 2. That your affiant is informed and does believe that all relevant pleadings and
26 transcripts necessary to resolve the petition are currently available.
27 3. That aside from an unsuccessful appeal from his judgment of conviction, an
28 unsuccessful appeal from the denial of a motion to modify sentence, an unsuccessful appeal
29 from an order denying motion to withdraw guilty pleas, an unsuccessful petition for writ of
30 habeas corpus, and an unsuccessful appeal from the denial of his petition, Respondent is

///

1 informed and does believe that Petitioner has not applied for any other relief from this
2 conviction.

3 AFFIRMATION PURSUANT TO NRS 239B.030

4 The undersigned does hereby affirm that the preceding document does not contain the
5 social security number of any person.

6 DATED: January 5, 2017.

7 CHRISTOPHER J. HICKS
8 District Attorney

9 By /s/ JOSEPH R. PLATER
10 JOSEPH R. PLATER
Appellate Deputy

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on January 5, 2017, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Brendan Dunckley #1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

/s/ DESTINEE ALLEN
DESTINEE ALLEN

Return Of NEF**Recipients**

DIV. OF PAROLE & PROBATION - Notification received on 2017-01-05 14:50:48.485.
JOSEPH PLATER, III, ESQ. - Notification received on 2017-01-05 14:50:48.423.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07-1728

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

01-05-2017:14:15:50

Clerk Accepted:

01-05-2017:14:50:20

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. BRENDAN DUNCKLEY (D4)

Document(s) Submitted:

Notice of Change of Attorney

Filed By:

Joseph Plater

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

DIV. OF PAROLE & PROBATION

JOSEPH R. PLATER, III, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

BRENDAN DUNCKLEY for BRENDAN
DUNCKLEY

STATE OF NEVADA for STATE OF NEVADA

Return Of NEF**Recipients**

DIV. OF PAROLE & PROBATION - Notification received on 2017-01-05 14:57:22.522.
JOSEPH PLATER, III, ESQ. - Notification received on 2017-01-05 14:57:22.444.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07-1728

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

01-05-2017:14:16:31

Clerk Accepted:

01-05-2017:14:55:50

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. BRENDAN DUNCKLEY (D4)

Document(s) Submitted:

Answer

Filed By:

Joseph Plater

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

DIV. OF PAROLE & PROBATION

JOSEPH R. PLATER, III, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

BRENDAN DUNCKLEY for BRENDAN
DUNCKLEY

STATE OF NEVADA for STATE OF NEVADA

FILED

2017 JAN 11 AM 9:23

JUDICIAL DISTRICT COURT
CLERK

1 BRENDAN DUNCKLEY *1023236

2 LOVELOCK CORRECTIONAL CENTER

3 1200 PRISON ROAD

4 LOVELOCK, NEVADA 89419

5 PETITIONER IN PRO SE

6

7

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE

8

OF NEVADA IN AND FOR THE COUNTY OF WASHOE

9

10 BRENDAN DUNCKLEY,

11 PETITIONER,

CASE NUMBER : CR07-1728

12 vs.

DEPT. NUMBER : 4

13 STATE OF NEVADA,

14 RESPONDENTS,

MOTION TO GRANT PETITIONER'S UNOPPOSED15 WRIT FOR HABEAS CORPUS TO EXHAUST STATE16 CLAIMS

17 (NRS 34.480 AND NRS 34.500(2)(9))

18 THIS PETITIONER, BRENDAN DUNCKLEY, APPEARING IN PRO SE, DOES HEREBY

19 SUBMIT THIS MOTION TO GRANT PETITIONER'S UNOPPOSED WRIT FOR HABEAS CORPUS

20 TO EXHAUST STATE CLAIMS, PURSUANT TO DISTRICT COURT RULE (DCR) 13.3, AND

21 THIS COURT'S ORDER DATED NOVEMBER 20, 2016 FILED ON NOVEMBER 21, 2016 IN

22 THE ABOVE REFERENCED CASE BEFORE THE HONORABLE JUDGE C. STEINHEIMER. IN

23 CONNECTION WITH ALL THE PLEADINGS, PAPERS, FILINGS AND DOCUMENTS ON FILE HEREIN

24 ARE SUPPORTED BY THE FOLLOWING RELEVANT POINTS AND AUTHORITIES:

25 //

26

CR07-1728
STATE VS. BRENDAN DUNCKLEY
District Court
Washoe County
01/11/2017 09:23 AM
2490
NAR
DC-09900083763-003
6 Pages
BRYANT

POINTS AND AUTHORITIES

1
2
3 ON NOVEMBER 20, 2016 THIS COURT ORDERED, DIRECTLY THAT THE
4 RESPONDENTS, WASHOE COUNTY DISTRICT ATTORNEY TO RESPOND TO THIS PETITIONER'S
5 INSTANT WRIT. TO DATE THE 45 DAY TIME PERIOD GIVEN THE STATE HAS NOW
6 EXPIRED WITH NO RESPONSE OR ANSWER OF ANY TYPE. AS SUCH THE PETITIONER'S
7 WRIT OF HABEAS CORPUS TO EXHAUST STATE CLAIMS SHOULD BE VIEWED AS
8 MERITORIOUS.

9 AS DCR 13.3 STATES: "WITHIN 10 DAYS [45 DAYS ORDERED BY THIS COURT]
10 AFTER SERVICE OF THE MOTION THE OPPOSING PARTY SHALL SERVE AND FILE
11 HIS WRITTEN OPPOSITION THERETO, TOGETHER WITH A MEMORANDUM OF POINTS
12 AND AUTHORITIES AND SUPPORTING AFFIDAVITS, IF ANY, STATING FACTS SHOWING
13 WHY THE MOTION SHOULD BE DENIED. FAILURE OF THE OPPOSING PARTY TO SERVE
14 AND FILE HIS MOTION, AND HIS WRITTEN OPPOSITION MAY BE CONSTRUED AS
15 AN ADMISSION THAT THE MOTION IS MERITORIOUS AND A CONSENT TO GRANTING
16 THE SAME." (EMPHASIS ADDED)

17 ADMISSION BY SILENCE WOULD BE THE PROPER LEGAL TERM: "IF A
18 STATEMENT IS MADE BY ANOTHER PERSON IN THE PRESENCE OF A PARTY TO
19 THE ACTION, CONTAINING ASSERTIONS OF FACTS WHICH, IF UNTRUE, THE
20 PARTY WOULD UNDER ALL THE CIRCUMSTANCES NATURALLY BE EXPECTED TO
21 DENY, THEIR FAILURE TO SPEAK [OR RESPOND] HAS TRADITIONALLY BEEN
22 RELEVABLE AGAINST HIM [THEM] AS AN ADMISSION." (BLACKS LAW DICTIONARY,
23 5TH EDITION, PAGE 44)

24 FURTHER IS CASE CITATION IN SUPPORT OF GRANTING THIS MOTION
25 AND VIEWING IT AS FULLY MERITORIOUS IS FOUND AT COLTON V. MURPHY,

1 (71 NEV. 71, 72) (NEV. 1955) "WHERE A PARTY ALLOWS AN ISSUE TO STAND UNCHALLENGED,
2 THIS COURT MAY INFER A CONCESSION THAT ARGUMENT HAS MERIT."

3 THE VERY PREMISE OF OUR ADVERSARY SYSTEM OF CRIMINAL JUSTICE IS THAT PARTISAN
4 ADVOCACY ON BOTH SIDES OF A CASE WILL BEST PROMOTE THE ULTIMATE OBJECTIVE,
5 THAT THE GUILTY BE CONVICTED AND THE INNOCENT GO FREE. (HERRING V. NEW YORK,
6 422 U.S. 853, 862, 45 L. ED. 2D 593, 95 S. CT. 2550 (1975)). THAT CONDUCT DID NOT
7 OCCUR IN 2008. THERE WAS ABSOLUTELY NO ADVERSARIAL NATURE. THESE "OFFICERS
8 OF THE COURT" REPEATEDLY INTRODUCED COMMENTS THEY ALL KNEW TO BE FALSE.
9 SUCH ACTIONS HAD A CLEAR EFFECT AND BEARING ON THE DECISIONS OF THIS COURT.
10 BELMONTES V. WOODFORD, 350 F.3d 861, 881 (9th CIR. 2003) DEMAND THAT THIS CONDUCT BE
11 DEEMED SERIOUS ENOUGH TO SET ASIDE THE CONVICTION. (SEE ALSO IMBLER V. PACHTMAN,
12 424 U.S. 667, 105 S. CT. 3375 (1985); STATE V. BENNETT, 81 P.3d 1, 119 NEV 589 (NEV. 2003);
13 US V. LAPAGE, 231 F.3d 488, 492 (9th CIR. 2000); US V. ALLI, 344 F.3d 1002, 1006 (9th CIR. 2003);
14 HIGH V. HEAD, 209 F.3d 1257 (GA. 2000); & PEOPLE V. TREVINO, 704 P.2d 719 (CA. 1985)).

15 CONCLUSION AND PRAYER FOR RELIEF

16 IN THE LEAST THIS PETITIONER HAS CLEARLY SHOWN BY A PREPONDERANCE OF EVIDENCE
17 THAT THERE CAN BE ABSOLUTELY NO CONFIDENCE THAT THIS INSTANT CASE IS WITHOUT OBVIOUS
18 CRUCIAL CONSTITUTIONAL ERROR FROM ALL THE "OFFICERS OF THE COURT" (EXCLUDING HER HONOR).
19 A MORE CLEARLY ESTABLISHED CASE OF MANIFEST INJUSTICE WOULD BE HARD TO FIND. PREJUDICE
20 IS NOT ONLY SHOWN, BUT PRESUMED BY THE EVIDENCE WILLFULLY WITHHELD FROM THIS COURT, AN
21 ACTUAL INTEREST OF JUSTICE DEMANDING A CORRECTION OF THIS MISARRANGE OF JUSTICE,
22 DEEMS IT NECESSARY TO TAKE NO FURTHER DELAY TO GRANT THIS WRIT.

23 THE VERY PEOPLE ENTRUSTED WITH UPHOLDING THE LAWS OF THE LAND CAN NOT JUSTIFY
24 THE CONDUCT OF THE PREVIOUS "OFFICERS" WHO KNOWINGLY AND INTENTIONALLY CONVICTED
25 AN INNOCENT MAN. THIS PETITIONER THEREFORE PRAYS FOR THE FOLLOWING RELIEF:

1 IN THE INTEREST OF JUSTICE AND GOOD CAUSE BEING SHOWN THE FOLLOWING
2 RELIEF IS HUMBL Y REQUESTED:

3 1) THIS COURT GRANT THIS WRIT OF HABEAS CORPUS, TO WITHDRAW (REVERSE)
4 THE GUILTY PLEA IN CASE CRO7-1728 PURSUANT TO NRS 34.480, NRS 34.500(2)(9);

5 2) THE ORDER BEING GIVEN FOR THE IMMEDIATE RELEASE FROM NDOC CUSTODY
6 FROM **LOVELOCK CORRECTIONAL CENTER, DIRECTLY**, A SPECIFIC ORDER TO THE
7 NDOC DIRECTOR THAT THIS PETITIONER'S RELEASE BE **IMMEDIATE**, WITHOUT
8 ANY DELAY;

9 3) AS THE EVIDENCE HAS NEGATED ALL "PROBABLE CAUSE", THE EGREGIOUS
10 CONDUCT OF ADA VILORIA, HATLESTAD, CLIFTON, D.A. GAMMICK, DAVID O'MARA,
11 TOM BROOME (RIPD RET.) WARRANT A **FULL DISMISSAL** OF ALL CHARGES IN
12 CASE CRO7-1728, **WITH PREJUDICE**.

13 4) AS DETECTIVE TOM BROOME'S CONDUCT IS TO BE VIEWED AS UNETHICAL
14 AND UNCONSTITUTIONAL: AN ORDER TO EXPUNGE ALL RELEVANT PUBLIC
15 RECORDS PERTAINING TO ANY ARREST IN CONNECTION TO CRO7-1728 AND/OR
16 RCR 2007-033884;

17 5) REMOVE ANY AND ALL "GENETIC MARKERS" FROM ANY AND ALL DATABASES,
18 SINCE DEFENDANT (PETITIONER) IS TO BE VIEWD AS AN INNOCENT
19 CITIZEN;

20 6) ANY AND ALL RIGHTS (CONSTITUTIONAL AND CIVIL) TO BE REINSTATED IN
21 DIRECT CONNECTION TO NRS 176A.860; 213.090; 213.155; 213.157;

22 7) AN ORDER TO WASHOE COUNTY DISTRICT ATTORNEY TO ENFORCE NRS 179A.160
23 FOR EXPUNGEMENT FROM "RECORD OF CRIMINAL HISTORY AND INFORMATION
24 RELATING TO PUBLIC SAFETY, CENTRAL REPOSITORY FOR NEVADA RECORDS OF
25 CRIMINAL HISTORY".

1 8) A COURT ORDER TO REQUIRE A SEAL OF ALL RECORDS IN DIRECT
2 RELATION TO THE INSTANT CASE(S) FROM PUBLIC ACCESS; BUT THIS PETITIONER
3 BE ALLOWED TO USE ANY AND ALL RECORDS, PLEADINGS, FILINGS, EXHIBITS,
4 ECT. IN ANY FUTURE CIVIL ACTION WITH THE FEDERAL COURTS, AND ANY
5 FURTHER RELIEF UNDER NRS 179.245 AND 179.255;

6 9) ANY OTHER RELIEF THAT THIS HONORABLE COURT DEEMS NECESSARY
7 IN THE INTEREST OF JUSTICE, SO LET IT BE ORDERED.

8 IN THE EVENT THAT THIS COURT DOES NOT SEE FIT TO ORDER A FULL DISMISSAL
9 OF THESE CHARGES WITH PREJUDICE; IT IS HEREBY RESPECTFULLY REQUESTED
10 OF THIS COURT THE FOLLOWING RELIEF:

11 1) A ORDER OF OFFICIAL RELEASE ON THE DEFENDANTS OWN RECOGNICENSE;
12 "OR" PENDING TRIAL, AS THIS PETITIONER HAS A VESTED INTEREST IN APPEARING;

13 2) THIS PETITIONER WOULD ALSO REQUEST THAT IF THE STATE INTENDS TO
14 PROCEED FOWARD WITH THESE CHARGES, A SPEEDY TRIAL BE HELD IN THE NEXT
15 60 DAYS.

16 THIS MOTION IS HEREBY SUBMITTED TO THIS COURT FOR ADJUDICATION OF THIS
17 MATTER, TO FINALLY RULE ON THE EVIDENCE AND THIS MISCARRAGE OF JUSTICE.

18
19 SUBMITTED THIS 4th DAY OF JANUARY, 2017

20

21

Brendan Dunchley #1023236

22

BRENDAN DUNCHLEY #1023236

23

PETITIONER IN PRO SE

24

25

26

CERTIFICATE OF SERVICE

1
2 THE UNDERSIGNED DOES HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THIS
3 MOTION TO GRANT PETITIONER'S UNOPPOSED WRIT OF HABEAS CORPUS TO EXHAUST STATE CLAIMS,
4 HAS BEEN SERVED UPON THE BELOW ADDRESSES, BY PLACING THE SAME INTO THE MAIL,
5 THROUGH PRISON LAW LIBRARY STAFF, PURSUANT TO NRCPS:

6	CLERKS OF THE COURT	TERRENCE MCCARTHY, ESQ.
7	SECOND JUDICIAL DISTRICT	WASHOE COUNTY DISTRICT ATTORNEY OFFICE
8	P.O. Box 11130	P.O. Box 11130
9	RENO, NEVADA 89520	RENO NEVADA 89520

10
11 DATED THIS 4th DAY OF JANUARY, 2017

12 Brendan Dunchley #1023236

13 BRENDAN DUNCKLEY #1023236

14 PETITIONER IN PRO SE

15 AFFIRMATION PURSUANT TO NRS 239B.030

16 THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PRECEEDING MOTION DOES NOT
17 CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSON IN RELATION TO DISTRICT
18 COURT CASE NUMBER- CRO7PH128 / CRO7-1728.

19
20 DATED THIS 4th DAY OF JANUARY, 2017

21 Brendan Dunchley #1023236

22 BRENDAN DUNCKLEY #1023236

23 PETITIONER IN PRO SE.

24

25

26

1 CODE #2645
CHRISTOPHER J. HICKS
2 #7747
P. O. Box 11130
3 Reno, Nevada 89520
(775)328-3200
4 Attorney for Respondent
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 BRENDAN DUNCKLEY,

10 Petitioner,

11 v.

Case No. CR07-1728

12 THE STATE OF NEVADA,

Dept. No. 4

13 Respondent.
14 _____/

15 OPPOSITION TO MOTION TO GRANT PETITIONER'S UNOPPOSED WRIT FOR HABEAS
16 CORPUS TO EXHAUST STATE CLAIMS

17 Petitioner moves the Court to grant his post-conviction petition for a writ of habeas
18 corpus. He asserts the State has not opposed his petition. The State filed an answer to the
19 petition on January 5, 2017. Thus, the petition is not unopposed. Further, the Court cannot
20 enter judgment against the State without a hearing. NRS 34.770; *Beets v. State*, 110 Nev. 339,
21 871 P.2d 357 (1994) (summary judgement cannot be entered in favor of a petitioner in light of
22 the statutory framework of deciding post-conviction habeas claims). Accordingly, the Court
23 should deny the motion.

24 / / /

25 / / /

26 / / /

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: January 23, 2017

CHRISTOPHER J. HICKS
District Attorney

By /s/ JOSEPH R. PLATER
JOSEPH R. PLATER
Appellate Deputy

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on January 23, 2017, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Brendan Dunckley #1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

/s/ DESTINEE ALLEN
DESTINEE ALLEN

Return Of NEF**Recipients**

DIV. OF PAROLE & PROBATION - Notification received on 2017-01-23 10:16:37.531.
JOSEPH PLATER, III, ESQ. - Notification received on 2017-01-23 10:16:36.86.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07-1728

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

01-23-2017:08:11:34

Clerk Accepted:

01-23-2017:10:15:51

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. BRENDAN DUNCKLEY (D4)

Document(s) Submitted:

Opposition to Mtn

Filed By:

Joseph Plater

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JOSEPH R. PLATER, III, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

BRENDAN DUNCKLEY for BRENDAN
DUNCKLEY

STATE OF NEVADA for STATE OF NEVADA

1 CODE
2
3
4
56 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
89 BRENDAN DUNCKLEY,
1011 Petitioner,
12

Case No. CR07-1728

13 vs.
14

Dept. No. 4

15 THE STATE OF NEVADA,
1617 Respondent.
18
19
20
21
22
23
24
25
26
27
28ORDER

On November 7, 2016, the Petitioner, Brendan Dunkley, in pro per, filed a *Petition for Habeas Corpus to Exhaust State Claims*. On November 21, 2016, the Court entered an *Order* directing the State of Nevada to respond to the Petition within forty-five (45) days of the date of the order. On January 5, 2017, the State of Nevada, by and through Christopher J. Hicks, District Attorney, and Joseph Plater, Deputy District Attorney, filed an *Answer*. On January 11, 2017, the Petitioner filed a *Motion to Grant Petitioner's Unopposed Writ of Habeas Corpus to Exhaust Claims* wherein the Petitioner is requesting that the Court render a decision on the *Petition for Habeas Corpus To Exhaust State Claims*.

///

///

///

///

1 This Court having reviewed the pleadings filed herein, in the interests of justice and
2 good cause appearing,

3 IT IS HEREBY ORDERED that an evidentiary hearing *Petition for Habeas Corpus*
4 *to Exhaust State Claims* is set for April 27, 2017 at 3:00 p.m.

5 DATED this 14 day of February, 2017.

6
7
8 Connie J. Steinheimer
9 DISTRICT JUDGE
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 15th day of February, 2017, I filed the attached document with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

 Personal delivery to the following: [NONE]

 X Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the efile User Agreement:

Joseph Plater, Esq.
Deputy District Attorney

 X Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and certified mailing with the United States Postal Service in Reno, Nevada:

Brendan Dunckley
Inmate no. 1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419


 Placed a true copy in a sealed envelope for service via:

 Reno/Carson Messenger Service – [NONE]

 Federal Express or other overnight delivery service – [NONE]

 Inter-Office Mail – [NONE]

DATED this 15th day of February, 2017.



Return Of NEF

Recipients

DIV. OF PAROLE & PROBATION - Notification received on 2017-02-15 13:43:21.067.
JOSEPH PLATER, III, ESQ. - Notification received on 2017-02-15 13:43:20.973.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07-1728

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

02-15-2017:13:42:14

Clerk Accepted:

02-15-2017:13:42:50

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. BRENDAN DUNCKLEY (D4)

Document(s) Submitted:

Ord Setting Hearing

Filed By:

Court Clerk MTrabert

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JOSEPH R. PLATER, III, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

BRENDAN DUNCKLEY for BRENDAN
DUNCKLEY

STATE OF NEVADA for STATE OF NEVADA

CODE #1260
CHRISTOPHER J. HICKS
#7747
P.O. Box 11130
Reno, Nevada 89520-0027
(775) 328-3200
Attorney for Respondent

IN THE SECOND JUDICIAL DISTRICT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

BRENDAN DUNCKLEY,

Petitioner,

v.

Case No. CR07-1728

THE STATE OF NEVADA,

Dept. No. 4

Respondent.

_____ /

APPLICATION FOR ORDER TO PRODUCE PRISONER

COMES NOW, the State of Nevada, by and through CHRISTOPHER J. HICKS,
District Attorney of Washoe County, by JOSEPH R. PLATER, Appellate Deputy, and
alleges as follows:

1. That the above Petitioner, BRENDAN DUNCKLEY #1023236, is presently incarcerated at the Lovelock Correctional Center, Lovelock, Nevada.
2. That the above BRENDAN DUNCKLEY is scheduled for a post-conviction hearing before the Second Judicial District Court on April 27, 2017, at 3:00 p.m.

WHEREFORE, Applicant prays that an Order be made ordering the appearance of the said BRENDAN DUNCKLEY before the Second Judicial District Court, and from

time to time thereafter at such times and places as may be ordered and directed by the Court for such proceedings as thereafter may be necessary and proper in the premises, and directing the execution of said Order by the Warden of the Lovelock Correctional Center, Lovelock, Nevada.

AFFIRMATION

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: February 16, 2017.

CHRISTOPHER J. HICKS
District Attorney

By /s/JOSEPH R. PLATER
JOSEPH R. PLATER
Appellate Deputy

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on February 16, 2017, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Brendan Dunckley #1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

/s/ DESTINEE ALLEN
DESTINEE ALLEN

Return Of NEF**Recipients**

DIV. OF PAROLE & PROBATION - Notification received on 2017-02-16 15:27:31.826.
JOSEPH PLATER, III, ESQ. - Notification received on 2017-02-16 15:27:31.733.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07-1728

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

02-16-2017:15:12:18

Clerk Accepted:

02-16-2017:15:26:51

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. BRENDAN DUNCKLEY (D4)

Document(s) Submitted:

Application Produce Prisoner

Filed By:

Joseph Plater

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

DIV. OF PAROLE & PROBATION
JOSEPH R. PLATER, III, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

STATE OF NEVADA for STATE OF NEVADA
BRENDAN DUNCKLEY for BRENDAN
DUNCKLEY

1 CODE #3340
CHRISTOPHER J. HICKS
2 #7747
P.O. Box 11130
3 Reno, Nevada 89520-0027
(775) 328-3200
4 Attorney for Respondent

5 IN THE SECOND JUDICIAL DISTRICT OF THE STATE OF NEVADA
6
7 IN AND FOR THE COUNTY OF WASHOE

8 ***

9 BRENDAN DUNCKLEY,

10 Petitioner,

11 v.

Case No. CR07-1728

12 THE STATE OF NEVADA,

Dept. No. 4

13 Respondent.
14 _____/

15 ORDER TO PRODUCE PRISONER

16 IT APPEARING to the satisfaction of the above-entitled Court that it is necessary
17 that the Petitioner above named, BRENDAN DUNCKLEY #1023236, presently
18 incarcerated in the Lovelock Correctional Center, Lovelock, Nevada, be brought before
19 the Second Judicial District Court for a post-conviction hearing in the above-entitled
20 action.

21 NOW, THEREFORE, IT IS HEREBY ORDERED that the Warden of the Lovelock
22 Correctional Center, Lovelock, Nevada, bring the said BRENDAN DUNCKLEY before
23 the Second Judicial District Court on April 27, 2017, at 3:00 p.m., for a post-conviction
24 hearing in the above-entitled action, and from time to time thereafter at such time and

1 places as may be ordered and directed by the Court for such proceedings as thereafter
2 may be necessary and proper in the premises.

3
4 DATED this 17 day of February, 2017.

5
6 Connie J. Steinberg
7 DISTRICT JUDGE
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Return Of NEF**Recipients**

DIV. OF PAROLE & PROBATION - Notification received on 2017-02-21 11:46:51.96.
JOSEPH PLATER, III, - Notification received on 2017-02-21 11:46:51.882.
ESQ.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07-1728

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

02-21-2017:11:45:52

Clerk Accepted:

02-21-2017:11:46:25

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. BRENDAN DUNCKLEY (D4)

Document(s) Submitted:

Ord to Produce Prisoner

Filed By:

Court Clerk MTrabert

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

DIV. OF PAROLE & PROBATION
JOSEPH R. PLATER, III, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

STATE OF NEVADA for STATE OF NEVADA
BRENDAN DUNCKLEY for BRENDAN
DUNCKLEY

1 CODE #1356
CHRISTOPHER J. HICKS
2 #7747
P. O. Box 11130
3 Reno, Nevada 89520
(775)328-3200
4 Attorney for Respondent
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 BRENDAN DUNCKLEY,

10 Petitioner,

11 v.

Case No. CR07-1728

12 THE STATE OF NEVADA,

Dept. No. 4

13 Respondent.
14 _____/

15 CERTIFICATE OF MAILING

16 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County
17 District Attorney's Office and that on February 22, 2017, I deposited for mailing through the
18 U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of Order to
19 Produce Prisoner, filed February 21, 2017, addressed to:

20 Brendan Dunckley #1023236
Lovelock Correctional Center
21 1200 Prison Road
22 Lovelock, NV 89419

23 AFFIRMATION PURSUANT TO NRS 239B.030

24 The undersigned does hereby affirm that the preceding document does not contain the
25 social security number of any person.

26 Destinee Allen
Washoe County District Attorney's Office

Return Of NEF**Recipients**

DIV. OF PAROLE & PROBATION - Notification received on 2017-02-22 10:18:46.105.
JOSEPH PLATER, III, ESQ. - Notification received on 2017-02-22 10:18:45.778.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07-1728

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

02-22-2017:08:39:01

Clerk Accepted:

02-22-2017:10:18:13

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. BRENDAN DUNCKLEY (D4)

Document(s) Submitted:

Certificate of Mailing

Filed By:

Joseph Plater

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

DIV. OF PAROLE & PROBATION
JOSEPH R. PLATER, III, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

STATE OF NEVADA for STATE OF NEVADA
BRENDAN DUNCKLEY for BRENDAN
DUNCKLEY

CR07-1728
DC-09900084047-207
STATE VS. BRENDAN DUNCKLEY 4 Pages
District Court 02/23/2017 04:22 PM
Washoe County 1260
MCHM TCC

FILED

2017 FEB 23 PM 4:23

JACQUELINE BRYANT
CLERK OF THE COURTBY M. [Signature]
DEPUTY

1 BRENDAN DUNCKLEY #1023236
2 LOVELOCK CORRECTIONAL CENTER
3 1200 PRISON ROAD
4 LOVELOCK, NEVADA 89419
5 PETITIONER IN PRO PER
6

7 IN THE SECOND JUDICIAL DISTRICT OF THE STATE OF
8 NEVADA IN AND FOR THE COUNTY OF WASHOE
9

10 BRENDAN DUNCKLEY,
11 PETITIONER, CASE NO: CR07-1728
12 v. DEPT. NO: 4
13 THE STATE OF NEVADA,
14 RESPONDENT. APPLICATION FOR ORDER TO
15 PRODUCE THE PRISONER
16

17 Comes Now, THE PETITIONER, BRENDAN DUNCKLEY #1023236, IN PRO PER
18 ALLEGES AS FOLLOWS:

19 1) THAT THE ABOVE PETITIONER, BRENDAN DUNCKLEY #1023236, IS PRESENTLY
20 INCARCERATED AT THE LOVELOCK CORRECTIONAL CENTER, LOVELOCK, NEVADA.
21 (LCC).

22 2) THAT THE ABOVE PETITIONER, BRENDAN DUNCKLEY IS SCHEDULED FOR A
23 POST-CONVICTION HEARING BEFORE THE SECOND JUDICIAL DISTRICT COURT ON APRIL
24 27, 2017, AT 3:00 PM.

25 WHEREFORE, APPLICANT PRAYS THAT AN ORDER BE MADE ORDERING THE APPEARANCE
26 OF SAID, BRENDAN DUNCKLEY BEFORE THE SECOND JUDICIAL DISTRICT COURT.

27 FURTHERMORE, APPLICANT PRAYS THAT THE ORDER TO PRODUCE PRISONER BE A
28 SPECIFIC ORDER OF DAY OF COURT TRANSPORT AND RETURN. NDOC POLICY A V6.926

1 THE SAME DAY TRANSPORT OF A PRISONER TO COURT AND RETURN TO "CLASSIFIED
2 YARD", IF SO ORDERED BY THE JURISDICTIONAL COURT.

3 THIS APPLICANT IS RESPECTFULLY REQUESTING THIS SPECIFIC NON-TRANSFER
4 ORDER, FOR THE FOLLOWING "IMPORTANT" REASONS:

5 THE PREVIOUS APPLICATION FOR ORDER TO PRODUCE PRISONER WAS OCTOBER
6 12, 2010, AND THE EVIDENTIARY HEARING WAS RESCHEDULED THREE TIMES. IT
7 TOOK UNTIL FEBRUARY 12, 2012 FOR PETITIONER TO RETURN TO LOVELOCK
8 CORRECTIONAL CENTER (LCC). DUE TO NOT BEING CLASSIFIED FOR THE
9 TRANSFERRED YARD, PETITIONER WAITED EIGHT MONTHS IN SEGREGATED HOUSING TO
10 GO BACK TO LCC. THIS EXCESSIVE DELAY CAUSED THE PETITIONER TO LOSE HIS
11 PHASE I PRIVILEGES (AS PETITIONER CURRENTLY ENJOYS). SOME PRIVILEGES A
12 TRANSFER WOULD EFFECT ARE EMPLOYMENT, EDUCATION, YARD ACCESS, GYM
13 ACCESS, NOT TO MENTION WHAT IS VIEWED AS MOST IMPORTANT TO THIS PETITIONER,
14 THE OPPORTUNITY TO ATTEND ALL HIS RELIGIOUS SERVICES AS AN ORDAINED MINISTER
15 OF JEHOVAH'S WITNESSES. (PHASE II AND III HAVE VERY LIMITED ACCESS TO CHAPEL)

16 ON THAT SPECIFIC TOPIC OF RELIGIOUS IMPORTANCE, THE PETITIONER'S TRANSFER
17 (AS OPPOSED TO TRANSPORT) WOULD HAVE A DETRIMENTAL EFFECT ON HIS CURRENT
18 MINISTRIES; CURRENT STUDIES ON THE BIBLE HE IS CONDUCTING (TO THE BETTERMENT
19 AND REHABILITATION OF NUMEROUS MEN). IN ADDITION THE TRANSFER TO ANOTHER
20 INSTITUTION (NO MATTER HOW BRIEF) WOULD RESULT IN THE LOSS OF THIS PETITIONER'S
21 PERSONAL AND EXTENSIVE THEOCRATIC LIBRARY, THE LOSS OF WHICH COULD EFFECT
22 AND DEPRIVE HIS ENTIRE CONGREGATION OF THIS VALUABLE SPIRITUAL FOOD.

23 THIS PETITIONER UNDERSTANDS THAT HER HONOR, MAY ALSO NEED A CERTAIN
24 AMOUNT OF ADDITIONAL TIME TO DECIDE ON THIS MATTER, SO UNTIL SUCH TIME
25 THE PETITIONER WOULD REMAIN IN CUSTODY OF THE NDOC. TO BE TRANSFERRED TO
26 ANOTHER INSTITUTION WOULD ALSO EFFECT HIS FAMILY. AS PETITIONER'S PARENTS
27 HAVE RELOCATED TO LOVELOCK, NEVADA FROM NEW YORK, TO FULLY SUPPORT THEIR SON,
28 TO TRANSFER PETITIONER AND NOT ORDER A TRANSPORT FOR THE SAME DAY

1 PUTTING UNDO HARDSHIP ON THEM AS WELL. IN ADDITION IF HER HONOR DEEMS
2 IT APPROPRIATE TO GRANT THIS PETITIONER THE RELIEF HE SEEKS, IMMEDIATELY,
3 HE WOULD STILL NEED TO BE "PROCESSED OUT" OF THE NDOC, WHICH COULD
4 TAKE 24-48 HOURS. AS SUCH MR. & MRS. DUNKLEY WOULD HAVE TO TRAVEL FROM
5 LOVELOCK TO RENO (FOR THE APRIL 27TH HEARING), BACK TO LOVELOCK. THEN AGAIN FROM
6 LOVELOCK TO CARSON CITY (EITHER FOR VISITATION OR RELEASE PICK-UP).
7 WHEREAS, THE PETITIONER BEING MERELY TRANSPORTED TO RENO AND RETURNED
8 TO LCC (TO AWAIT DECISION OR RELEASE PROCESSING) WOULD NOT CAUSE ANY
9 UNDO HARDSHIP ON THE PETITIONER'S PARENTS.

10 UNFORSEEN DELAYS OCCUR, AND MATTERS ON THE COURT'S CALENDAR
11 MAY, AT TIMES, NEED TO BE RESCHEDULED. SO ALL THIS PETITIONER IS ASKING
12 IS THAT HIS DAILY ROUTINE OF MINISTERING (OVER 120+ HOURS P/MONTH), FREQUENT
13 VISITS OF HIS PARENTS (FOR BOTH EMOTIONAL AND SPIRITUAL SUPPORT TO PERSEVERE
14 AND ENDURE THIS UNFORTUNATE INJUSTICE), AND ALL THE PHASE I PRIVILEGES
15 HE HAS WORKED SO HARD TO EARN. (ESPECIALLY HIS EVENING ATTENDANCE AT HIS
16 CONGREGATIONAL MEETINGS) NOT TO BE AFFECTED, THIS PETITIONER, THEREFORE
17 HUMBLY PRAYS:

18 THEREFORE, THIS COURT HEREBY ORDERS AND DIRECTS THAT THE WARDEN
19 OF LOVELOCK CORRECTIONAL CENTER, LOVELOCK, NEVADA, OFFENDER MANAGEMENT
20 DIVISION (OMD), NDOC TRANSPORTATION OFFICERS FOR LOVELOCK CORRECTIONAL
21 CENTER, TRANSPORT PRISONER, BRENDAN DUNKLEY #1023236 FROM THE LOVELOCK
22 CORRECTIONAL CENTER, LOVELOCK, NEVADA, DIRECTLY TO THIS SECOND JUDICIAL
23 DISTRICT COURT, ON APRIL 27, 2017, BY 3:00 PM, AND UPON THE CONCLUSION OF
24 ABOVE REFERENCED POST-CONVICTION HEARING, RETURN PRISONER TO THE WARDEN
25 OF LOVELOCK CORRECTIONAL CENTER, LOVELOCK, NEVADA. (PENDING ANY ORDER /OR/
26 DENIAL OF RELIEF SOUGHT.)

27 //

28 //

AS THE RESPONDENT HAS FILED AN APPLICATION FOR ORDER TO PRODUCE
 PRISONER ON FEBRUARY 16, 2017, THIS PETITIONER PRAYS THAT THIS INSTANT
 APPLICATION TAKE PRECEDENT AND BECOME THE ENACTED ORDER OF THIS
 HONORABLE COURT

AFFIRMATION

THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PRECEEDING DOCUMENT DOES NOT
 CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSON.

DATE: FEBRUARY 20, 2017



BRENDAN DUNCKLEY # 1023236

PETITIONER IN PRO PER

CERTIFICATE OF SERVICE

PURSUANT TO NRCP 5 (b) THE UNDERSIGNED DOES HEREBY CERTIFY, BEING THE
 PETITIONER /APPLICANT, THAT A TRUE COPY OF THE FOREGOING DOCUMENT WAS DEPOSITED
 FOR MAILING THROUGH U.S. MAIL SERVICE, BY MEANS OF NDOC LAW LIBRARY PERSONEL,
 TO THE FOLLOWING ADDRESSES:

JOSEPH R. PLATER

CLERK OF THE COURT

WASHOE COUNTY DISTRICT ATTORNEY

SECOND JUDICIAL DISTRICT

APPELLATE DIVISION

% DEPT 4

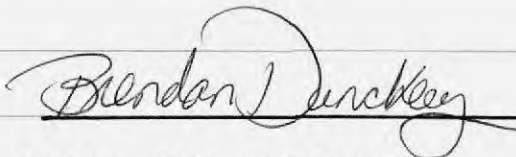
P.O. Box 11130

P.O. Box 11130

RENO, NEVADA 89520

RENO, NEVADA 89520

DATE: FEBRUARY 20, 2017



BRENDAN DUNCKLEY #1023236

1 CODE #2300
CHRISTOPHER J. HICKS
2 #7747
P. O. Box 11130
3 Reno, Nevada 89520
(775)328-3200
4 Attorney for Respondent
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 BRENDAN DUNCKLEY,

10 Petitioner,

11 v.

Case No. CR07-1728

12 THE STATE OF NEVADA, ROBERT
LEGRAND,

Dept. No. 4

13 Respondent.
14 _____/

15 MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

16 On August 5, 2008, this Court convicted petitioner, pursuant to his guilty plea, of
17 lewdness with a child under the age of fourteen years and attempted sexual assault. On May 8,
18 2009, the Nevada Supreme Court affirmed the judgment of conviction on direct appeal. On
19 July 8, 2009, petitioner filed a motion in this Court to modify his sentence, arguing he was
20 innocent. This Court denied the motion, and on September 9, 2010, the Nevada Supreme
21 Court affirmed this Court's order. On July 21, 2009, petitioner filed a post-conviction petition
22 for a writ of habeas corpus. The Court denied the petition after an evidentiary hearing, and on
23 January 16, 2013, the Nevada Supreme Court affirmed this Court's order denying habeas relief.
24 On November 7, 2016, petitioner filed a second post-conviction petition for a writ of habeas
25 corpus. The State moves this Court to dismiss the petition because it is untimely and
26 successive.

1 A petitioner must file a post-conviction petition for a writ of habeas corpus within one
 2 year after entry of the judgment of conviction, or one year after the Supreme Court issues its
 3 remittitur, if an appeal is taken. NRS 34.726(1).¹ An untimely or successive petition is
 4 procedurally barred and must be dismissed absent a demonstration of good cause for the delay
 5 and undue prejudice. *Id.*; NRS 34.810(1)(b)(2)²; *State v. Haberstroh*, 119 Nev. 173, 180, 69

6
 7 ¹NRS 34.726 provides, in part, that

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

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

13 ²NRS 34.810 provides for dismissal based on waiver and abusive filing of successive
 petitions. It states, in relevant part:

14 1. The court shall dismiss a petition if the court determines that:

15

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

- 17 (1) Presented to the trial court;
- 18 (2) Raised in a direct appeal or a prior petition for a writ of habeas corpus or
 post-conviction relief; or
- 19 (3) Raised in any other proceeding that the petitioner has taken to secure relief
 from his conviction and sentence, unless the court finds both cause for the failure
 to present the grounds and actual prejudice to the petitioner.

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

22 3. Pursuant to subsections 1 and 2, the petitioner has the burden of pleading and proving
 specific facts that demonstrate:

- 23 (a) Good cause for the petitioner's failure to present the claim or for presenting the
 claim again; and
- 24 (b) Actual prejudice to the petitioner.

25 NRS 34.726(1) and NRS 34.810(3) both require a petitioner to demonstrate a valid basis
 26 exists to excuse the procedural bars. Otherwise, the district court must dismiss the petition
 without an evidentiary hearing. See NRS 34.745(4) (providing for summary dismissal of

P.3d 676, 681 (2003) (application of the procedural default rules to post-conviction petitions for writs of habeas corpus is mandatory); *Pellegrini v. State*, 117 Nev. 860, 876, 34 P.3d 519, 530 (2001) (the Nevada Legislature “never intended for petitioners to have multiple opportunities to obtain post-conviction relief absent extraordinary circumstances.”).

The statement of good cause must appear on the face of the petition. NRS 34.735 (requiring the petitioner to state reasons for filing an untimely petition in the petition itself). Good cause is established by showing that an impediment external to the defense prevented a petitioner from filing a timely petition. *See Harris v. Warden*, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998), *clarified by Hathaway v. State*, 119 Nev. 248, 71 P.3d 503 (2003); *see also Murray v. Carrier*, 477 U.S. 478, 488 (1986). “An impediment external to the defense may be demonstrated by a showing ‘that the factual or legal basis for a claim was not reasonably available to counsel, or that ‘some interference by officials,’ made compliance impracticable.’ ” *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (*quoting Murray*, 477 U.S. at 488 (1986) (citations omitted)).

“[A]ctual prejudice” requires a showing “ ‘not merely that the errors [complained of] created a possibility of prejudice, but that they worked to [the petitioner's] actual and substantial disadvantage, in affecting the state proceeding with error of constitutional dimensions.’ ” *Hogan v. Warden*, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (*quoting United States v. Frady*, 456 U.S. 152, 170 (1982)). A claim of ineffective assistance of

///

///

successive petitions); NRS 34.770(1)-(2) (providing that where a judge determines upon review of the pleadings and supporting documents “that the petitioner is not entitled to relief and an evidentiary hearing is not required, he shall dismiss the petition without a hearing”); *Dickerson v. State*, 114 Nev. 1084, 1088, 967 P.2d 1132, 1134 (1998) (discussing dismissal for failure to allege sufficient basis to overcome time bar at NRS 34.726); *Bejarano v. Warden*, 112 Nev. 1466, 1471, 929 P.2d 922, 925–26 (1996) (discussing dismissal for failure to allege sufficient basis to overcome procedural bars at NRS 34.810).

1 post-conviction counsel may provide good cause for filing a successive petition, *Crump v.*
 2 *Warden*, 113 Nev. 293, 304–05, 934 P.2d 247, 254 (1997); *see also McKague v. Warden*, 112
 3 Nev. 159, 164–65 & n. 5, 912 P.2d 255, 258 & n. 5 (1996), but such a claim is still subject to
 4 other procedural bars, including timeliness under NRS 34.726, *State v. Dist. Ct. (Riker)*, 121
 5 Nev. 225, 235, 112 P.3d 1070, 1077 (2005); *see also Hathaway v. State*, 119 Nev. 248, 252–53,
 6 71 P.3d 503, 506 (2003) (explaining that “to constitute adequate cause, the ineffective
 7 assistance of counsel claim itself must not be procedurally defaulted”).

8 The failure to show good cause may be excused where the prejudice from a failure to
 9 consider the claim amounts to a “fundamental miscarriage of justice.” *Mazzan v. Warden*, 112
 10 Nev. 838, 842, 921 P.2d 920, 922 (1996); *Hogan*, 109 Nev. at 959, 860 P.2d at 715–16; cf. NRS
 11 34.800(1)(b). This standard can be met where the petitioner makes a colorable showing he is
 12 actually innocent of the crime or is ineligible for the death penalty. *See Mazzan*, 112 Nev. at
 13 842, 921 P.2d at 922; *Hogan*, 109 Nev. at 954–55, 959, 860 P.2d at 712, 715–16. A claim of
 14 actual innocence requires a petitioner to show that it is more likely than not that no reasonable
 15 juror would have convicted him absent a constitutional violation. *Schlup v. Delo*, 513 U.S. 298,
 16 327 (1995) (*quoting Carrier*, 477 U.S. at 496). “‘[A]ctual innocence’ means factual innocence,
 17 not mere legal insufficiency.” *Bousley v. United States*, 523 U.S. 614, 623–24 (1998) (*citing*
 18 *Sawyer v. Whitley*, 505 U.S. 333, 339 (1992)); *see also, Rozzelle v. Sec’y, Florida Dep’t of*
 19 *Corr.*, 672 F.3d 1000, 1016 (11th Cir. 2012) (explaining that the actual innocence exception
 20 contemplates the “extremely rare” cases where the State convicted an innocent man, not “run
 21 of the mill” cases where the petitioner argues that he is guilty of a lesser offense than that for
 22 which he was convicted). “‘To be credible,’ a claim of actual innocence must be based on
 23 reliable evidence not presented at trial.” *Calderon v. Thompson*, 523 U.S. 538, 559 (1998)
 24 (*quoting Schulp*, 513 U.S. at 324 (1995)).

25 Here, petitioner filed his second post-conviction habeas petition on November 7, 2016.
 26 The Nevada Supreme Court affirmed the judgment of conviction on May 8, 2009, and issued

1 the remittitur on June 2, 2009. Thus, the present petition is untimely and successive. It is
2 barred absent a demonstration of good cause and prejudice or actual innocence to overcome
3 the procedural bars. NRS 34.726(1); NRS 34.810(1)(b)(2).

4 Petitioner claims he is actually innocent and provides exhibits that purportedly show he
5 was in other cities when he committed his crimes.³ The exhibits, however, do not show
6 petitioner was never in Reno during the time the State alleged he committed his crimes,
7 although they do tend to show he may have also been in other places during the time frame. In
8 other words, petitioner may have been in other cities and in Reno during the relevant time
9 alleged in the information. In short, petitioner's exhibits do not show he is actually innocent.
10 Nor is the alibi evidence new. According to petitioner's allegations in his petition (pp.28-29),
11 both his lawyer and the prosecutor knew of the evidence. And petitioner pursued his alibi
12 defense at his first habeas proceeding. There, as the Nevada Supreme Court noted, "[t]he
13 district court denied Dunckley relief on this ground because it found credible counsel's
14 testimony that he investigated Dunckley's alibi defense yet Dunckley insisted on pleading guilty
15 in an attempt to receive probation." *Dunckley v. State*, Docket No. 59958 (Order of Affirmance,
16 January 16, 2013). Because this Court's findings were supported by substantial evidence, the
17 Nevada Supreme Court found Dunckley had failed to demonstrate his counsel's performance
18 was deficient. *Id.* Thus, Dunckley failed to prove that even if he had an alibi defense, he would
19 not have pleaded guilty and would have insisted on proceeding to trial. *See Hill v. Lockhart*,
20 474 U.S. 52, 58-59 (1985) (To state a claim of ineffective assistance of counsel sufficient to
21 invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that
22 his counsel's performance was deficient in that it fell below an objective standard of
23

24 ³Petitioner appears to assert actual innocence more as a substantive claim for habeas
25 relief rather than a procedural claim to overcome the procedural bars. *See Berry v. State*, 131
26 Nev. Adv. Op. 96, 363 P.3d 1148, 1154-55 (2015) (explaining that actual innocence provides a
gateway to have procedurally defaulted claims heard on the merits). The State addresses the
actual innocence claim procedurally and substantively.

1 reasonableness, and that there is a reasonable probability that, but for counsel's errors,
2 petitioner would not have pleaded guilty and would have insisted on going to trial); *Kirksey v.*
3 *State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). The Nevada Supreme Court's ruling is law
4 of the case and may not be litigated again, absent new and unforeseen evidence of actual
5 innocence. See *Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) ("The law of a first
6 appeal is the law of the case on all subsequent appeals in which the facts are substantially the
7 same." (quoting *Walker v. State*, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969))). Thus, petitioner's
8 actual innocence claim, as a substantive claim, fails to show he is entitled to relief. As a
9 procedural claim it has no legal force since this Court and the Nevada Supreme Court
10 determined it had no effect on petitioner's plea.

11 Petitioner also asserts he is actually innocent because DNA results show the absence of
12 his DNA. This, however, is not evidence of actual innocence. There are any number of reasons
13 why there was no DNA evidence. The absence of DNA does not show petitioner did not assault
14 the victim. It is also not new evidence. Petitioner litigated the effect of the DNA results on his
15 guilty plea, this Court rejected the claim, and the Nevada Supreme Court affirmed this Court's
16 ruling. *Dunkley v. State*, *supra*. Thus, the DNA evidence is irrelevant both as a substantive
17 claim and as a procedural device to overcome defaulted claims, where petitioner decided to
18 plead guilty regardless of the results of the DNA testing.

19 The State also moves to dismiss the petition because "[a] period exceeding 5 years
20 between the filing of a . . . decision on direct appeal of a judgment of conviction and the filing of
21 a petition challenging the validity of a judgment of conviction creates a rebuttable presumption
22 of prejudice to the State." NRS 34.800(2).

23 For the foregoing reasons, the Court should dismiss the post-conviction petition for a
24 writ of habeas corpus.

25 / / /

26 / / /

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: March 1, 2017

CHRISTOPHER J. HICKS
District Attorney

By /s/ JOSEPH R. PLATER
JOSEPH R. PLATER
Appellate Deputy

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on March 1, 2017, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Brendan Dunckley #1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

/s/ DESTINEE ALLEN
DESTINEE ALLEN

Return Of NEF**Recipients**

DIV. OF PAROLE & PROBATION - Notification received on 2017-03-01 09:51:03.382.
JOSEPH PLATER, III, ESQ. - Notification received on 2017-03-01 09:51:02.15.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07-1728

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

03-01-2017:08:46:16

Clerk Accepted:

03-01-2017:09:50:07

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. BRENDAN DUNCKLEY (D4)

Document(s) Submitted:

Mtn to Dismiss Pet

Filed By:

Joseph Plater

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

DIV. OF PAROLE & PROBATION
JOSEPH R. PLATER, III, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

STATE OF NEVADA for STATE OF NEVADA
BRENDAN DUNCKLEY for BRENDAN
DUNCKLEY

FILED

2017 MAR 13 AM 9:18

JACQUELINE BRYANT
CLERK OF THE COURTBY M. Cholet
DEPUTY

1 BRENDAN DUNCKLEY #1023236

2 LOVELOCK CORRECTIONAL CENTER

3 1200 PRISON ROAD

4 LOVELOCK, NEVADA 89419

5 PETITIONER IN PRO SE

6
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF

8 NEVADA, IN AND FOR THE COUNTY OF WASHOE

9
10 BRENDAN DUNCKLEY,11 PETITIONER, CASE NO: CRO7-172812 V. DEPT. NO: 4

13 THE STATE OF NEVADA,

14 RESPONDENT, RESPONSE TO STATE'S MOTION TO DISMISS15
16 THE STATE FILED A MOTION TO DISMISS ON MARCH 1, 2017. THE FOLLOWING IS

17 THE PETITIONER'S RESPONSE TO SAID MOTION.

18 SETTING ASIDE THE OBVIOUS ISSUE FOR THE MOMENT THAT THE MOTION TO DISMISS

19 ACTUALLY ARGUES THE MERITS OF THE PETITION AND IS THEREFORE A "REPLY BRIEF"

20 MASKED AS A 'MOTION TO DISMISS', AND AS SUCH ITS SUBMISSION IS FIFTY-FOUR (54) DAYS

21 PAST THIS COURT'S ORDERED FORTY-FIVE (45) DAY LIMIT. THAT WOULD BE THE PROPER

22 USE OF "UNTIMELY."

23 NOW THERE SEEMS TO BE A RUNNING THREAD ON HOW TO PRESENT INFORMATION

24 TO THIS COURT ON BEHALF OF THE WASHOE COUNTY DISTRICT ATTORNEY OFFICE, TO ONLY

25 GIVE PARTIAL INFORMATION PERTAINENT TO BENEFITTING THEIR AGENDA, AND TO

26 CONTINUALLY WITHHOLD, MISREPRESENT, IGNORE, OR 'FORGET' TO PRESENT ANY TYPE

27 OF EVIDENCE, DOCUMENTATION, RECORD, TEST RESULT, REPORT THAT COULD POSSIBLY DAMAGE

28 THEIR CASE. AN EXCELLENT EXAMPLE IS THIS MOTION TO DISMISS, FILED AS V6. 940

1 TO CAST A FAULTY LIGHT IN THE EYES OF THE COURT. TO PRESENT 'ARGUMENTS' THAT
 2 ARE FULLY CONTRARY TO THE ACTUAL RECORD, EXHIBITS AND EVIDENCE. ONE OF
 3 THE ARGUMENTS IS THAT THE PETITIONER'S CASE HAS BEEN INACTIVE SINCE JANU-
 4 ARY 16, 2013 (Pg.1;23) OR IS IT SINCE JUNE 2, 2009 (Pg.5;1) BUT CERTAINLY 'A PERIOD
 5 EXCEEDING 5 YEARS...' (Pg.6;19). INTERESTING THAT THERE IS NO MENTION OF THE FACTS
 6 THAT 1] THE PETITIONER'S CASE HAS BEEN CONTINUOUSLY 'ACTIVE' SINCE 2013 IT HAS
 7 BEEN IN THE U.S. DISTRICT COURT. 2] WAS GRANTED A STAY AND ABAYANCE BY THE U.S.
 8 DISTRICT COURT ON SEPTEMBER 22, 2016, INSTRUCTING THE PETITIONER TO RETURN TO
 9 THE STATE COURTS TO EXHAUST HIS UNEXHAUSTED CLAIMS. ERGO THE FULL AND PROPER
 10 TITLE OF THE PETITION (PETITION FOR WRIT OF HABEAS CORPUS TO EXHAUST STATE CLAIMS).
 11 SEPTEMBER 22, 2016 ORDER WAS ATTACHED TO NOVEMBER 7, 2016 FILING WITH THIS
 12 COURT. 3] AN ACTUAL REVIEW OF THE "TOLLING TIME" OF 1 YEAR AS DEFINED BY NRS
 13 34.726 IN THIS PETITIONER'S CASE WILL SHOW THAT HE HAS NOT EXCEEDED THE 1 YEAR
 14 OF 'INACTIVITY', PRIOR TO THE PETITIONER'S FILING WITH THE FEDERAL COURTS. SINCE
 15 2009 THE PETITIONER HAS BEEN CONTINUOUSLY FIGHTING TO CORRECT THE INJUSTICES
 16 PERPETRATED UPON HIM BY THE UNETHICAL, UNCONSTITUTIONAL BEHAVIOUR AND CONDUCT
 17 OF THE PROSECUTION. EVERYTIME THE STATE FILES A MOTION, NO MATTER HOW
 18 DESPERATE AND FRIVOLOUS THEY MAY BE, THIS PETITIONER HAS ALWAYS RESPONDED IN
 19 THE PROCEDURALLY ALLOTTED TIME FRAME.

20 IN ALL THE STATE'S MOTION TO DISMISS SHOULD BE STRICKEN AS IT IS
 21 CLEARLY A 'REPLY BRIEF' DISGUISED AS A MOTION TO DISMISS. IF THE STATE WANTED TO RAISE
 22 THESE PREPOSTEROUS ARGUMENTS, THEN THE PROPER TIME WAS BEFORE THE ORDERED 45
 23 DAYS EXPIRED. THIS COURT HAS SEEN IT FITTING TO ORDER AN EVIDENTIARY HEARING
 24 FOR APRIL 27, 2017, AND IT IS AT THAT HEARING THE STATE CAN MAKE THESE ABSURD
 25 ARGUMENTS. (IF HER HONOR DOES NOT CHOSE TO DENY THIS MOTION EARLIER)

26 BUT ALAS, PROCEDURE DEMANDS THAT THE PETITIONER RESPOND TO THE STATE'S MOTION
 27 TO DISMISS, LESS HIS SILENCE BE GROUNDS TO GRANT SAID MOTION. TO OVERCOME A
 28 MOTION TO DISMISS THE NON-MOVING PARTY (PETITIONER) MUST SHOW THAT 'TRU' V6. 9413'

1 OR MATERIAL FACTS AND ISSUES STILL EXIST AND NEED TO BE PRESENTED FURTHER
2 TO THE COURT (TRIER OF FACTS). SO BECAUSE THIS IS THE LINE OF ARGUMENT THAT
3 THIS 'NEW' DA'S OFFICE WISHED TO BASE THEIR STRATEGY ON, LET US 'EXAMINE'
4 THE STATE'S STAND ON THE DNA EVIDENCE.

5 "PETITIONER ALSO ASSERTS THAT HE IS ACTUALLY INNOCENT BECAUSE DNA
6 RESULTS SHOW THE ABSENCE OF HIS DNA. THIS, HOWEVER, IS NOT EVIDENCE OF ACTUAL
7 INNOCENCE. THERE ARE ANY NUMBER OF REASONS WHY THERE IS NO DNA EVIDENCE. THE
8 ABSENCE OF DNA DOES NOT SHOW PETITIONER DID NOT ASSAULT THE VICTIM" (Pg 6; 11-14).

9 BEFORE WE 'EXAMINE' THIS ARGUMENT, IT WOULD BE PROPER TO REVIEW EXACTLY
10 WHAT THE ALLEGATION WAS AND COMPARE THAT SUMMATION WITH THE ACTUAL
11 EVIDENCE AND RECORD. - JESSICA H. (THE ALLEGED VICTIM) STATED THAT AN UNKNOWN
12 ASSAILANT CONFRONTED HER AND DEMANDED THAT SHE PERFORM ORAL (FELATIO)
13 ON HIM. SHE PROCEEDED TO BITE HER ASSAILANT'S ERECT PENIS FOUR TIMES,
14 HARD ENOUGH TO DRAW BLOOD FROM HIM, CAUSING HIM TO LOSE HIS ERECTION
15 WHILE SHE CONTINUED BITING HIM. - THE ACTUAL RECORD OF THE NIGHT IN QUEST-
16 ION FROM THE ORIGINAL R.P.D. REPORT (AND TRANSCRIPTS OF OFFICER'S RECORDINGS) CONFIRM:
17 1) THE PETITIONER WAS THE PERSON WHO CONTACTED THE RENO POLICE DEPARTMENT (R.P.D.)
18 2) R.P.D. ARRIVED ON SCENE IN ABOUT FOUR MINUTES; 3) PETITIONER WAS BEING WATCHED
19 BY A DOZEN WITNESSES; 4) UPON R.P.D.'S ARRIVAL THE PETITIONER ACCOMPANIED TWO
20 OFFICERS TO A RESTROOM, TO CONSENT TO BOTH A VISUAL INSPECTION AND A DNA
21 SWAB OF HIS (PETITIONER'S) PENIS. (THE DNA TEST WAS CONDUCTED AND SAMPLE WAS
22 COLLECTED WITHIN TEN MINUTES OF THE ALLEGED ATTACK). THE R.P.D. REPORT OF THAT
23 NIGHT STATES NO VISIBLE MARKS, OR LACERATIONS UPON INSPECTION OF DUNCKEY'S
24 PENIS, SHAFT, HEAD OR BASE. SO NO BITE MARKS, ADD TO THE FACT THAT THE DNA
25 TEST RESULT STATED: 'NO FOREIGN DNA TO SOURCE, BRENDAN DUNCKEY, OBTAINED
26 FROM GENITAL SWABS.' WHEN THE STATE WROTE 'THE ABSENCE OF HIS DNA' IT
27 WAS MISREPRESENTING THE EVIDENCE TO THE COURT. IT WAS INFACIT THE ABSENCE OF
28 HER DNA, WHICH IS IN FACT EXTREMELY RELEVANT, AND CERTAINLY THE COURT'S. V6. 942

1 SHOULD BE FINALLY ALLOWED TO DETERMINE WHAT IS RELEVANT AND WHAT IS
 2 NOT. BUT WHEN IT COMES TO HOW TO INTERPRET THE RELEVANCE, (IMPORTANCE OF
 3 THE DNA TEST RESULTS, WHICH THE STATE CONTINUOUSLY ATTEMPTS TO DISTANCE ITSELF FROM):
 4 "WHEN THE DNA FROM THE TRACE EVIDENCE CLEARLY DOES NOT MATCH THE DNA
 5 SAMPLES FROM THE SUSPECT, THE DNA ANALYSIS DEMONSTRATES THAT THE SUSPECT'S
 6 DNA IS NOT IN THE FORENSIC SAMPLE, TYPICALLY, PROOF TENDING TO SHOW THAT THE
 7 DEFENDANT IS THE SOURCE INCRIMINATES THE DEFENDANT, WHILE PROOF THAT SOME
 8 ONE ELSE IS THE SOURCE EXCULPATES THE DEFENDANT." (REFERENCE MANUAL ON SCIENTIFIC
 9 EVIDENCE, SECOND EDITION, PAGE 516, FEDERAL JUDICIAL CENTER, 2000)

10 NOW, GOING FURTHER, THE PROSECUTION REPEATEDLY STATES THAT THIS AND ALL
 11 THE PRESENTED EVIDENCE IS NOT "NEW EVIDENCE". AS STATED IN THE PETITION LEE V
 12 V. LAMBERT, 607 F.SUPP. 2d 1209, 2009 US LEXIS 25445, STATES: "UNDER THE GATEWAY
 13 STANDARD OF ACTUAL INNOCENCE, AS A THRESHOLD MATTER, A HABEAS PETITIONER
 14 MUST SUPPORT HIS ALLEGATIONS OF CONSTITUTIONAL ERROR WITH NEW EVIDENCE,
 15 WHETHER IT BE EXCULPATORY SCIENTIFIC EVIDENCE, TRUSTWORTHY EYEWITNESSES'
 16 ACCOUNTS, OR CRITICAL PHYSICAL EVIDENCE - THAT WAS NOT PRESENTED AT TRIAL.
 17 "NEW EVIDENCE" DOES NOT NECESSARILY MEAN NEWLY DISCOVERED EVIDENCE.
 18 ALSO INCLUDED IS EVIDENCE AVAILABLE BUT NOT PRESENTED AT TRIAL, OR
 19 IMPROPERLY EXCLUDED AT TRIAL. WHETHER AN ITEM CONSTITUTES RELIABLE NEW
 20 EVIDENCE, MUST BE VIEWED IN THE CONTEXT OF THE EVIDENCE AS A WHOLE."

21 THERE IS ABSOLUTELY NO DISPUTING THE FACT THAT THIS PETITIONER DID IN FACT
 22 ARGUE (IN THE WRIT) THE EXISTENCE OF THIS 'ALIBI EVIDENCE', AND HIS COUNSEL DID
 23 MENTION THESE DOCUMENTS EXISTANCE ON THE RECORD AT THE PREVIOUS EVIDENTIARY
 24 HEARING. IT CAN EVEN BE AGREED BY ALL PARTIES THAT ORIGINAL DEFENSE COUNSEL
 25 O'MARA ADMITTED TO 1) HAVING ALL THIS INFORMATION; 2) HANDING OVER ALL THE EVIDEN-
 26 CE (ALIBI) TO ADA VILORIA, AND, 3) NO ONE EVER ACTUALLY PRESENTED THE EVIDENCE TO HER
 27 HONOR, AS THE TRIER OF FACT, SHE HAD A CONSTITUTIONAL, ETHICAL RIGHT TO BE FULLY INFORMED
 28 OF ALL THE MATERIAL FACTS KNOWN BY THE OFFICERS OF THE COURT, BEFORE SHE DECIDED TO

1 ACCEPT A GUILTY PLEA, TO CHARGES (THAT SHE WAS LED TO BELIEVE) WERE FULLY
 2 SUPPORTED BY A FACTUAL BASIS, THAT ALL THE ELEMENTS OF THE OFFENSES WERE
 3 PRESENT. AFTERALL, HER HONOR IS THE LAST LINE OF DEFENSE TO ENSURE THAT THE
 4 DEFENDANT'S CONSTITUTIONAL RIGHTS ARE PROTECTED. STATE V. McVAY, 641 P.2d 857,
 5 131 ARIZ 369 (ARIZ. 1982): "FOR THE PURPOSE OF RULES REQUIRING THAT THERE BE A FACTUAL
 6 BASIS FOR A GUILTY PLEA, ALTHOUGH THE FACTS NEED NOT SHOW FACTS BEYOND A
 7 REASONABLE DOUBT, THERE MUST BE STRONG EVIDENCE OF ACTUAL GUILT." AND IN
 8 STATE V. REED, 809 P.2d 553: "FACTUAL BASIS EXISTS FOR A PLEA, WHERE PROSECUTORS PRE-
 9 SENT EVIDENCE TO THE COURT, AND THE EVIDENCE SHOWS THAT ALL THE ELEMENTS OF
 10 THE CRIME ARE PRESENT."

11 WE COULD ALSO USE PEOPLE V. TREVINO, 704 P.2d 719, 217 CAL. RPTR. 652, 39 C.3d 667:
 12 "PROSECUTORS MAY NOT BRING CRIMINAL CHARGES AGAINST AN INDIVIDUAL UNLESS SUPPORTED
 13 BY PROBABLE CAUSE, AND ONCE CHARGES ARE INSTITUTED, MUST REVEAL TO THE COURT ANY
 14 INFORMATION WHICH NEGATES THE EXISTANCE OF PROBABLE CAUSE." THE ABSENCE OF THE
 15 ALLEGED VICTIM'S DNA IS EXTREMELY RELEVANT, AND AS SUCH SHOULD HAVE BEEN
 16 INTRODUCED TO THE JUSTICE COURT AT THE PRELIMINARY HEARING (AT LEAST) BUT CERTAINLY
 17 SHOULD HAVE BEEN BROUGHT TO HER HONOR'S ATTENTION. ESPECIALLY IN COMPARISON
 18 OF THE DNA TEST RESULT (COLLECTED WITHIN 10 MINUTES OF "ASSAULT") AND HOW ADA
 19 NILORIA 'PRESENTED' THE CASE AT THE CHANGE OF PLEA HEARING ON MARCH 6, 2008.
 20 AND AT SENTENCING ON AUGUST 5, 2008, HOW THE TEST RESULT FULLY EXONER-
 21 ATED THE DEFENDANT.

22 THAT AND ALL THE OTHER EVIDENCE THAT NEGATED (OR SEVERLY WEAKENED) THE
 23 "PROBABLE CAUSE" MUST FINALLY COME TO LIGHT AND BE PRESENTED TO THIS COURT ON THE
 24 RECORD. WHICH IS EXACTLY WHAT THE EVIDENTIARY HEARING IS FOR. AT WHICH TIME THIS
 25 PETITIONER CAN AND WILL SHOW HOW ALL THIS 'IRRELEVANT' EVIDENCE IN FACT IS NOT
 26 ONLY RELEVANT, BUT SHOWS A REASONABLE DOUBT IS ESTABLISHED, AND THAT THIS
 27 PETITION WILL SYSTEMATICALLY DISMANTLE THE STATE'S "ELEMENTS" OF THE
 28 CHARGED OFFENSES.

1 FOR EXAMPLE AT THE EVIDENTIARY HEARING THE SUMMATION OF COUNT 1
 2 IS THAT - ASHLEY V. CLAIMS THAT SHE SPENT THE NIGHT AT THE PETITIONER'S
 3 HOUSE (ON PLUMAS) DOZENS AND DOZENS OF TIMES. (RESIDENCY / JURISDICTION); THEN
 4 ONE MORNING WHILE DRIVING HER HOME, THEY STOPPED ON LONGLY LANE AND
 5 PROCEEDED TO HAVE CONSENSUAL SEX IN THE BACK SEAT OF THE PETITIONER'S
 6 FORD TAURUS (SCENE OF THE CRIME). FINALLY ASHLEY STATED THAT SHE WAS 12 YEARS
 7 OLD, AND IT ONLY HAPPENED ONE TIME. (WINDOW OF OFFENSE). WITH A DATE OF BIRTH OF
 8 AUGUST 14, 1986, THE WINDOW OF OFFENSE WOULD BE AUGUST 14, 1998 TO AUGUST 13, 1999.
 9 NOT, AS THE STATE CONTINUES TO ASSERT THAT IT WOULD CONTINUE TO AUGUST 13, 2000,
 10 OR AS STATED, "DURING THE RELEVANT TIME ALLEGED IN THE INFORMATION" (PG. 5; 8, 9)
 11 SO TO SIMPLIFY MATTERS THE PETITIONER SUBMITS TO THIS HONORABLE COURT AND
 12 MR. PLATER THAT THE THREE 'ELEMENTS' OF THIS SPECIFIC OFFENSE ARE ① THE
 13 JURISDICTION / RESIDENCY; ② SCENE OF THE CRIME (TAURUS); AND (AS THE 'VICTIM' STATES
 14 1) INCIDENT OCCURED ONLY ONCE; 2) WHEN SHE WAS 12 YEARS OLD.) THE ③ WINDOW OF
 15 OFFENSE (AUGUST 14, 1998 TO AUGUST 13, 1999). IMPLOING THAT THE SUMMATIONS OF
 16 BOTH THESE CHARGES AND THESE ELEMENTS BE CONCEDED TO PRIOR TO THE
 17 EVIDENTIARY HEARING.

18 THE EVIDENCE SHOWS THAT PETITIONER WAS INFACIT RESIDING EVERYWHERE ELSE
 19 BUT RENO, SO AGAIN AN OBVIOUS ATTEMPT TO PROVIDE MISINFORMATION TO THE COURT.
 20 IT SHOULD BE FURTHER VIEWED AS RATHER TELLING THAT THE STATE ONLY ADDRESSED
 21 TWO OF THE THREE GROUNDS, SO TECHNICALLY THE REMAINING GROUND (PROSECUTORIAL
 22 MISCONDUCT) BEING UNADDRESSED AND THEREFORE REMAIN UNCHALLENGED. IT IS ENOUGH TO
 23 SURVIVE THE MOTION TO DISMISS, ON ALL GROUNDS. THE EVIDENCE FURTHER GOES TO
 24 SHOW WHY THE PETITIONER'S WRIT SHOULD BE GRANTED, IN THE LEAST WARRENT THE SETTING
 25 ASIDE OF THE JUDGMENT OF CONVICTION, AND THE WITHDRAWAL OF THIS GUILTY PLEA.

26 THEN, IF THE STATE IS STILL SO CONFIDENT THAT THE CASE WOULD BE SO STRONG
 27 SO AS TO OBTAIN A 'GUILTY' BEYOND A REASONABLE DOUBT AT TRIAL, WE WILL GO TO TRIAL.
 28 (PROVIDED IT SURVIVES THE PREPARED PRE-TRIAL MOTION TO DISMISS, OR A DISMISSAL WITH PREJUDICE)

1 IF THE STATE IS NOT COMPLETELY CONFIDENT IN ITS CASE, THEN HOW CAN THIS COURT BE?

2 THE PROSECUTION SEEMS TO CONTINUALLY FORGET ITS DUTY IS TO ENSURE THAT
3 JUSTICE IS DONE. SO ITS FAILURE TO BRING THIS EVIDENCE FORWARD AND TO DISMISS THE
4 CHARGES, AS THE EVIDENCE DEMANDED IT, CERTAINLY HAD AN EFFECT ON THE PETIT -
5 IONER'S PLEA. THE STATE NEVER LEGALLY SHOULD HAVE DRAFTED SUCH A FRAUDULENT
6 DOCUMENT TO CONTINUE TO HIDE IT'S UNETHICAL CONDUCT AND IT'S MOTION TO
7 DISMISS IS A CONTINUAL ATTEMPT TO CHERRY-PICK THE FACTS, AND 'ALTER' THE
8 ACTUAL FACTS OF THIS CASE.

9 THIS PETITIONER, THEREFORE, HUMBLLY REQUESTS THAT THE STATE'S MOTION TO
10 DISMISS BE STRICKEN, AS IT IS NOTHING MORE THAN A 'REPLY BRIEF' MASKED
11 AS A MOTION TO DISMISS, OR OUTRIGHT DENY. FURTHER, CONTINUE TO THE COURT
12 ORDERED EVIDENTIARY HEARING DATED APRIL 27, 2017 AT 3:00 PM.

13 THIS MOTION ENTITLED 'RESPONSE TO STATE'S MOTION TO DISMISS' IS HEREBY
14 SUBMITTED TO THIS COURT FOR CONSIDERATION AND ADJUDICATION BY THIS COURT
15 AT, OR PRIOR TO THE EVIDENTIARY HEARING.

16
17 DATED THIS 6th DAY OF MARCH, 2017

18
19 Brendan Dunckley

20 BRENDAN DUNCKLEY (#1023236)

21 PETITIONER IN PRO SE.
22
23
24
25
26
27
28

AFFIRMATION

THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PRECEDING DOCUMENT
DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSON,

DATED THIS 6th DAY OF MARCH, 2017

Brendan Dunchley

BRENDAN DUNCHLEY (#1023236)

PETITIONER IN PRO SE

CERTIFICATE OF SERVICE

PURSUANT TO NRC.P 5(b) THE UNDERSIGNED BEING THE PETITIONER DOES HEREBY
CERTIFY THAT A TRUE COPY OF THE FOREGOING DOCUMENT WAS DEPOSITED FOR
MAILING THROUGH U.S. MAIL SERVICE, BY MEANS OF NDOC LAW LIBRARY PERSONNEL
TO THE FOLLOWING ADDRESSES,

JOSEPH B. PLATER, APPELLATE DEPUTY

WASHOE COUNTY DISTRICT ATTORNEY

APPELLATE DIVISION

P.O. Box 11130

RENO, NEVADA 89520

CLERK OF THE COURT

SECOND JUDICIAL DISTRICT

% DEPT. 4

P.O. Box 11130

RENO, NEVADA 89520

DATED THIS 6th DAY OF MARCH, 2017

Brendan Dunchley

BRENDAN DUNCHLEY (#1023236)

1 CODE #3860
CHRISTOPHER J. HICKS
2 #7747
P.O. Box 11130
3 Reno, Nevada 89520
(775)328-3200
4 Attorney for Respondent
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 BRENDAN DUNCKLEY,

10 Petitioner,

11 v.

Case No. CR07-1728

12 THE STATE OF NEVADA, ROBERT
LEGRAND,

Dept. No. 4

13 Respondent.
14 _____/

15 REQUEST FOR SUBMISSION

16 It is requested that the Motion to Dismiss Petition for Writ of Habeas Corpus (Post-
17 Conviction), filed on March 1, 2017, be submitted to the Court for decision.

18 AFFIRMATION PURSUANT TO NRS 239B.030

19 The undersigned does hereby affirm that the preceding document does not contain the
20 social security number of any person.

21 DATED: March 14, 2017.

22 CHRISTOPHER J. HICKS
DISTRICT ATTORNEY

23
24 By /s/ JOSEPH R. PLATER
JOSEPH R. PLATER
25 Appellate Deputy
26

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on March 14, 2017, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Brendan Dunckley #1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

/s/ DESTINEE ALLEN
DESTINEE ALLEN

Return Of NEF**Recipients**

DIV. OF PAROLE & PROBATION - Notification received on 2017-03-14 10:02:20.08.
JOSEPH PLATER, III, - Notification received on 2017-03-14 10:02:18.769.
ESQ.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07-1728

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

03-14-2017:09:52:04

Clerk Accepted:

03-14-2017:09:59:41

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. BRENDAN DUNCKLEY (D4)

Document(s) Submitted:

Request for Submission

Filed By:

Joseph Plater

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

DIV. OF PAROLE & PROBATION

JOSEPH R. PLATER, III, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

STATE OF NEVADA for STATE OF NEVADA

BRENDAN DUNCKLEY for BRENDAN
DUNCKLEY

1 CODE
2
3
4
56 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
89 BRENDAN DUNCKLEY,
10Petitioner,
11Case No. CR07-1728
12vs.
13Dept. No. 4
14THE STATE OF NEVADA,
15Respondent.
16
17
18
19
20
21
22
23
24
25
26
27
28ORDER

On November 7, 2016, the Petitioner, Brendan Dunkley, in pro per, filed a *Petition for Habeas Corpus to Exhaust State Claims*. On November 21, 2016, the Court entered an *Order* directing the State of Nevada to respond to the Petition within forty-five (45) days of the date of the order. On January 5, 2017, the State of Nevada, by and through Christopher J. Hicks, District Attorney, and Joseph Plater, Deputy District Attorney, filed an *Answer*. On January 11, 2017, the Petitioner filed a *Motion to Grant Petitioner's Unopposed Writ of Habeas Corpus to Exhaust Claims* wherein the Petitioner is requesting that the Court render a decision on the *Petition for Habeas Corpus to Exhaust State Claims*. On February 15, 2017, the Court entered an Order setting an evidentiary hearing on the *Petition for Habeas Corpus to Exhaust State Claims* for April 27, 2017 at 3:00 p.m. On March 1, 2017, the State filed a *Motion to Dismiss Petition for Writ of Habeas Corpus (Post-Conviction)*. On March 13, 2017, the Petitioner filed a *Response to State's Motion to*

///

1 *Dismiss.* On March 14, 2017, the *Motion to Dismiss Petition for Writ of Habeas Corpus*
2 (*Post-Conviction*) was formally submitted to the Court for Decision.

3 This Court having reviewed the pleadings filed herein, in the interests of justice and
4 good cause appearing,

5 IT IS HEREBY ORDERED that oral arguments on the *Motion to Dismiss Petition*
6 *for Writ of Habeas Corpus (Post-Conviction)* are set for April 27, 2017 at 3:00 p.m. The
7 oral arguments on the Motion to Dismiss shall be presented to the Court prior to the
8 evidentiary hearing on the *Petition for Habeas Corpus to Exhaust State Claims* set the
9 same day.

10 DATED this 27 day of March, 2017.

11
12
13 Connie T. Steinheimer
14 DISTRICT JUDGE
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 18th day of March, 2017, I filed the attached document with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

 Personal delivery to the following: [NONE]

☒ **Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the efile User Agreement:**

Joseph Plater, Esq.
Deputy District Attorney

☒ **Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and certified mailing with the United States Postal Service in Reno, Nevada:**

Brendan Dunckley
Inmate no. 1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

 Placed a true copy in a sealed envelope for service via:

 Reno/Carson Messenger Service – **[NONE]**

 Federal Express or other overnight delivery service – **[NONE]**

 Inter-Office Mail – **[NONE]**

DATED this 18th day of March, 2017.



Return Of NEF**Recipients**

DIV. OF PAROLE & PROBATION - Notification received on 2017-03-28 11:56:34.839.
JOSEPH PLATER, III, ESQ. - Notification received on 2017-03-28 11:56:34.777.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07-1728

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

03-28-2017:11:55:30

Clerk Accepted:

03-28-2017:11:56:07

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. BRENDAN DUNCKLEY (D4)

Document(s) Submitted:

Ord Setting Hearing

Filed By:

Court Clerk MTrabert

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JOSEPH R. PLATER, III, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

BRENDAN DUNCKLEY for BRENDAN
DUNCKLEY

STATE OF NEVADA for STATE OF NEVADA

FILED

MAY 16 2017

JACQUELINE BRYANT, CLERK
By: [Signature]
DEPUTY CLERKCase No: CR07-1728Dept. No: 4IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADAIN AND FOR THE COUNTY OF WASHOEBRENDAN DUNCKLEY)
Petitioner/Plaintiff,)

VS.)

NOTICE OF APPEALSTATE OF NEVADA)
Respondent/Defendant,)NOTICE IS HEREBY GIVEN that: PETITIONER BRENDAN DUNCKLEYhereby appeals the judgement entered in this Honorable court on or about the 27th day ofAPRIL, 2017DATED this 4th, day of MAY, 2017Brendan Dunckley
Petitioner / PlaintiffBRENDAN DUNCKLEY 7023236
(Print Name) In Proper Persona

1 PURSUANT TO N.R.S. 208.165, I understand that a false statement or answer to any question
2 In this declaration will subject me to penalties of perjury, I DECLARE UNDER PENALTY OF
3 PERJURY UNDER THE LAWS OF THE STATE OF NEVADA THAT THE FOREGOING
4 IS TRUE AND CORRECT. See N.R.S. 208.165.

5
6 Signed at

N.N.C.C.

(Location)

Brendan Dunchley

(Signature)

7
8 MAY, 4, 2017

(Date)

1023236

(Inmate Number)

CERTIFICATE OF SERVICE BY MAIL

Pursuant to F.R.C.P. Rule 5(b), I hereby certify that I am the petitioner/Defendant named herein and
that on this 5th day of MAY 2017, I deposited in the United States

Mails in Carson City, Nevada a true a correct copy of the foregoing addressed to:

Second Judicial District Court
CLERK OF THE COURT

P.O. Box 11130

RENO, NV 89520

Joseph Platter

%
WASHOE COUNTY D.A.

P.O. Box 11130

RENO, NEVADA 89520

Brendan Dunchley

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

NOTICE OF APPEAL

(Title of Document)

filed in case number: CR07-1720



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: MAY 4, 2017

Brendan Dunckley
(Signature)

BRENDAN DUNCKLEY
(Print Name)

PRO PER
(Attorney for)

Dept No: 4**FILED**

MAY 16 2017

JACQUELINE BRYANT, CLERK
DEPUTY CLERKIN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOEBRENDAN DUNCKLEY

Petitioner / Plaintiff

-VS-

DESIGNATION OF RECORD
ON APPEALSTATE OF NEVADA

Respondent / Defendant

COMES NOW, BRENDAN DUNCKLEY Petitioner/Plaintiff herein designates the
 record on appeal to be certified by the Clerk of the Court and transcribed to the Clerk of the Nevada
 Supreme Court.

All Motions, Pleading, and Transcripts.

Dated this 4th day of May, 2017Brendan Dunckley
Petitioner / PlaintiffBRENDAN DUNCKLEY (#102322)
(Print Name) In Proper Persona

PURSUANT TO N.R.S. 208.165, I understand that a false statement or answer to any question

In this declaration will subject me to penalties of perjury, I DECLARE UNDER PENALTY OF
PERJURY UNDER THE LAWS OF THE STATE OF NEVADA THAT THE FOREGOING
IS TRUE AND CORRECT. See N.R.S. 208.165.

Signed at

N.N.C.C.

(Location)

Brendan Dunchley

(Signature)

MAY, 4, 2017

(Date)

1023236

(Inmate Number)

CERTIFICATE OF SERVICE BY MAIL

Pursuant to F.R.C.P. Rule 5(b), I hereby certify that I am the petitioner/Defendant named herein and that on this 5TH day of MAY 2017, I deposited in the United States Mails in Carson City, Nevada a true a correct copy of the foregoing addressed to:

Second Judicial District Court
CLERK OF THE COURT
P.O. Box 11130
RENO, NV 89520

Joseph Platter,
%
WASHOE COUNTY D.A.
P.O. Box 11130
RENO, NEVADA 89520

Brendan Dunchley

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

NOTICE OF APPEAL

(Title of Document)

filed in case number: CR07-1720



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: MAY 4, 2017

Brendan Dunckley
(Signature)

BRENDAN DUNCKLEY
(Print Name)

PRO PER
(Attorney for)

DC-09900084599-021
STATE VS. BRENDAN DUNCKLEY 3 Pages
District Court 05/16/2017 09:16 AM
Washoe County 2525
VUT:ADTC

FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA MAY 16 2017

JACQUELINE BRYANT, CLERK
By: *[Signature]*
DEPUTY CLERK

CR07-1728

THE STATE OF NEVADA,

Respondent,

vs.

NOTICE OF CHANGE OF ADDRESSBRENDAN DUNCKLEY

Appellant.

TO: The Clerk of the Nevada Supreme Court of the State
of Nevada.

PLEASE BE ADVISED and enter into the records of the above
entitled case the following change of address:

OLD ADDRESS: BRENDAN DUNCKLEY #1023236
L.C.C.
1200 PRISON ROAD
LOVELOCK, NEVADA 89419

NEW ADDRESS: BRENDAN DUNCKLEY NDOP # 1023236
Northern Nevada Correctional Center
Post Office Box 7000
Carson City, Nevada 89702

Please direct all further Court mail to the new address
herein noticed.

Respectfully submitted this 10th day of MAY, 2017 .

Brendan Dunckley

CERTIFICATE OF SERVICE BY MAIL

Pursuant to N.R.C.P. Rule 5 (b), I hereby certify that I am the petitioner/Defendant named herein and that on this 10th day of MAY 2017, I mailed a true a correct copy of the foregoing document to the following:

JOSEPH PLATTER
% W.C.D.A.
P.O. Box 11130
RENO, NV 89520

CLERK of the COURT
Second Judicial Court
P.O. Box 11130
RENO, NEVADA 89520

Brendan D. [Signature]

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

NOTICE OF CHANGE of Address

(Title of Document)

filed in case number: CR 07-1728



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: MAY 10, 2017

Brendan Donckley
(Signature)

BRENDAN DONCKLEY
(Print Name)

Pro. Per
(Attorney for)

Code 1310

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

BRENDAN DUNCKLEY,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

Case No. CR07-1728
Dept. No. 4

CASE APPEAL STATEMENT

This case appeal statement is filed pursuant to N.R.A.C.P. 3(f).

1. Appellant is Brendan Dunckley
2. This appeal is from an order entered by the Honorable Judge Connie Steinheimer.
3. Appellant is representing himself in Proper Person on appeal. The Appellant's address is:
Brendan Dunckley
N.N.C.C.
P.O. Box 7000
Carson City, Nevada 89702
4. Respondent is the State of Nevada. Respondent is represented by: the Washoe County District Attorney's Office
Terrance McCarthy, Esq., SBN 2745
P.O. Box 30083
Reno, NV 89520
5. Respondent's attorney is not licensed to practice law in Nevada: n/a
6. Appellant was represented by appointed counsel in District Court.

7. Appellant is not represented by appointed counsel on appeal.
8. Appellant was granted leave to proceed in forma pauperis in the District Court filed on October 28, 2009.
9. Proceeding commenced by an Information filed on July 12, 2007.
10. This is a criminal proceeding and the Appellant's Notice of Appeal does not designate the Judgment, order or part thereof being appealed as required by N.R.A.C.P. 3 (C)(1)(B). It appears that Appellant is appealing the Order filed March 28, 2017.
11. The case has been the subject of a previous appeal to the Supreme Court:
Supreme Court No.: 52383, 55545, 59957 and 59958
12. This case does not involve child custody or visitation.
13. This is not a civil case involving the possibility of a settlement.

Dated this 19th day of May, 2017.

Jacqueline Bryant
Clerk of the Court

By: /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Code 1350

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

BRENDAN DUNCKLEY,

Case No. CR07-1728

Petitioner,

Dept. No. 4

vs.

THE STATE OF NEVADA,

Respondent.

_____ /

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 19th day of May, 2017, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 19th day of May, 2017

Jacqueline Bryant
Clerk of the Court

By /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2017-05-19 09:07:03.093.
DIV. OF PAROLE & PROBATION - Notification received on 2017-05-19 09:07:03.233.
JOSEPH PLATER, III, ESQ. - Notification received on 2017-05-19 09:07:03.171.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07-1728

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

05-19-2017:09:05:59

Clerk Accepted:

05-19-2017:09:06:32

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. BRENDAN DUNCKLEY (D4)

Document(s) Submitted:

Case Appeal Statement
Certificate of Clerk

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JOSEPH R. PLATER, III, ESQ. for STATE OF
NEVADA
DIV. OF PAROLE & PROBATION
TERRENCE P. MCCARTHY, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

STATE OF NEVADA for STATE OF NEVADA
BRENDAN DUNCKLEY for BRENDAN
DUNCKLEY

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

BRENDAN DUNCKLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 73095
District Court Case No. CR071728

dy

RECEIPT FOR DOCUMENTS

TO: Brendan Dunckley
Washoe County District Attorney \ Terrence P. McCarthy, Deputy District Attorney
Jacqueline Bryant, Washoe District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

05/22/2017 Appeal Filing Fee waived. Criminal.

05/22/2017 Filed Notice of Appeal/Proper Person. Appeal docketed in the
Supreme Court this day.

DATE: May 22, 2017

Elizabeth A. Brown, Clerk of Court
lh

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2017-05-23 11:19:06.182.
DIV. OF PAROLE & PROBATION - Notification received on 2017-05-23 11:19:06.353.
JOSEPH PLATER, III, ESQ. - Notification received on 2017-05-23 11:19:06.275.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07-1728

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

05-23-2017:11:17:50

Clerk Accepted:

05-23-2017:11:18:32

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. BRENDAN DUNCKLEY (D4)

Document(s) Submitted:

Supreme Court Receipt for Doc

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JOSEPH R. PLATER, III, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

TERRENCE P. MCCARTHY, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

STATE OF NEVADA for STATE OF NEVADA

BRENDAN DUNCKLEY for BRENDAN
DUNCKLEY

1 CODE No. 3370
2
3
4

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
6
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 BRENDAN DUNCKLEY,

10 Petitioner,

11 v.

Case No. CR07-1728

12 Dept. No. 4

13 THE STATE OF NEVADA,
14 ROBERT LEGRAND,

15 Respondent.
16 _____/

17 FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

18 This matter comes before the Court on Petitioner's post-conviction petition for a writ of
19 habeas corpus. The Court held a hearing on the State's motion to dismiss the petition on April
20 27, 2017. The Court grants the motion to dismiss and makes the following findings of fact and
21 conclusions of law.

22 1. On August 5, 2008, this Court convicted petitioner, pursuant to his guilty plea, of
23 lewdness with a child under the age of fourteen years and attempted sexual assault. On May 8,
24 2009, the Nevada Supreme Court affirmed the judgment of conviction on direct appeal.
25 *Dunkley v. State*, Docket No. 52383 (Order of Affirmance, May 8, 2009).

26 ///

///

1 2. On July 8, 2009, petitioner filed a motion in this Court to modify his sentence,
2 arguing he was innocent. This Court denied the motion, and on September 9, 2010, the
3 Nevada Supreme Court affirmed this Court's order. *Dunkley v. State*, Docket No. 55545
4 (Order of Affirmance, September 9, 2010).

5 3. On July 21, 2009, petitioner filed a post-conviction petition for a writ of habeas
6 corpus. The Court denied the petition after an evidentiary hearing, and on January 16, 2013,
7 the Nevada Supreme Court affirmed this Court's order denying habeas relief. *Dunkley v.*
8 *State*, Docket No. 59957 (Order of Affirmance, January 16, 2013).

9 4. On November 7, 2016, petitioner filed a second post-conviction petition for a writ of
10 habeas corpus. The State moved this Court to dismiss the petition because it is untimely and
11 successive.

12 5. A petitioner must file a post-conviction petition for a writ of habeas corpus within
13 one year after entry of the judgment of conviction, or one year after the Supreme Court issues
14 its remittitur, if an appeal is taken. NRS 34.726(1). An untimely or successive petition is
15 procedurally barred and must be dismissed absent a demonstration of good cause for the delay
16 and undue prejudice. *Id.*; NRS 34.810(1)(b)(2); *State v. Haberstroh*, 119 Nev. 173, 180, 69
17 P.3d 676, 681 (2003) (application of the procedural default rules to post-conviction petitions
18 for writs of habeas corpus is mandatory); *Pellegrini v. State*, 117 Nev. 860, 876, 34 P.3d 519,
19 530 (2001) (the Nevada Legislature "never intended for petitioners to have multiple
20 opportunities to obtain post-conviction relief absent extraordinary circumstances.").

21 6. Good cause is established by showing that an impediment external to the defense
22 prevented a petitioner from filing a timely petition. *See Harris v. Warden*, 114 Nev. 956, 959,
23 964 P.2d 785, 787 (1998), *clarified by Hathaway v. State*, 119 Nev. 248, 71 P.3d 503 (2003);
24 *see also Murray v. Carrier*, 477 U.S. 478, 488 (1986).

25 7. "An impediment external to the defense may be demonstrated by a showing 'that the
26 factual or legal basis for a claim was not reasonably available to counsel, or that 'some

1 interference by officials,' made compliance impracticable.' ” *Hathaway v. State*, 119 Nev. 248,
2 252, 71 P.3d 503, 506 (2003) (quoting *Murray*, 477 U.S. at 488 (1986) (citations omitted)).

3 8. “[A]ctual prejudice” requires a showing “ ‘not merely that the errors [complained of]
4 created a possibility of prejudice, but that they worked to [the petitioner's] actual and
5 substantial disadvantage, in affecting the state proceeding with error of constitutional
6 dimensions.’ ” *Hogan v. Warden*, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting
7 *United States v. Frady*, 456 U.S. 152, 170 (1982)).

8 9. A claim of ineffective assistance of post-conviction counsel may provide good cause
9 for filing a successive petition if counsel was appointed under statutory mandate, *Crump v.*
10 *Warden*, 113 Nev. 293, 304–05, 934 P.2d 247, 254 (1997); see also *McKague v. Warden*, 112
11 Nev. 159, 164–65 & n. 5, 912 P.2d 255, 258 & n. 5 (1996), but such a claim is still subject to
12 other procedural bars, including timeliness under NRS 34.726, *State v. Dist. Ct. (Riker)*, 121
13 Nev. 225, 235, 112 P.3d 1070, 1077 (2005); see also *Hathaway v. State*, 119 Nev. 248, 252–53,
14 71 P.3d 503, 506 (2003) (explaining that “to constitute adequate cause, the ineffective
15 assistance of counsel claim itself must not be procedurally defaulted”).

16 10. The failure to show good cause may be excused where the prejudice from a failure to
17 consider the claim amounts to a “fundamental miscarriage of justice.” *Mazzan v. Warden*, 112
18 Nev. 838, 842, 921 P.2d 920, 922 (1996); *Hogan*, 109 Nev. at 959, 860 P.2d at 715–16; cf. NRS
19 34.800(1)(b). This standard can be met where the petitioner makes a colorable showing he is
20 actually innocent of the crime or is ineligible for the death penalty. See *Mazzan*, 112 Nev. at
21 842, 921 P.2d at 922; *Hogan*, 109 Nev. at 954–55, 959, 860 P.2d at 712, 715–16.

22 11. To prove actual innocence as a gateway to reach procedurally-barred constitutional
23 claims of error, a petitioner must show that “ ‘it is more likely than not that no reasonable juror
24 would have convicted him in light of the new evidence.’ ” *Calderon v. Thompson*, 523 U.S.
25 538, 559 (1998); see also *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537. “ ‘[A]ctual innocence’

26 ///

1 means factual innocence, not mere legal insufficiency.” *Bousley v. United States*, 523 U.S. 614,
2 623-24 (1998) (citing *Sawyer v. Whitley*, 505 U.S. 333, 339 (1992)); see also *Rozzelle v. Sec’y,*
3 *Florida Dep’t of Corr.*, 672 F.3d 1000, 1016 (11th Cir. 2012) (explaining that the actual
4 innocence exception contemplates the “extremely rare” cases where the State convicted an
5 innocent man, not “run of the mill” cases where the petitioner argues that he is guilty of a
6 lesser offense than that for which he was convicted). “‘To be credible,’ a claim of actual
7 innocence must be based on reliable evidence not presented at trial.” *Calderon v. Thompson*,
8 523 U.S. 538, 559 (1998) (quoting *Schulp*, 513 U.S. at 324 (1995)).

9 12. Here, petitioner filed his second post-conviction habeas petition on November 7,
10 2016. The Nevada Supreme Court affirmed petitioner’s judgment of conviction on direct
11 appeal on May 8, 2009, and issued the remittitur on June 2, 2009. Thus, the present petition
12 is untimely and successive. It is barred absent a demonstration of good cause and prejudice or
13 actual innocence to overcome the procedural bars. NRS 34.726(1); NRS 34.810(1)(b)(2).

14 13. Petitioner claims he is actually innocent because certain exhibits he has provided
15 purportedly show he was in other cities when he committed his crimes.¹ The exhibits, however,
16 do not show petitioner was never in Reno during the time the State alleged he committed his
17 crimes, although they do tend to show he may have also been in other places during the general
18 time frame the State contends he committed his crimes. In other words, petitioner may have
19 been in other cities and in Reno during the relevant time period alleged in the Information. In
20 short, petitioner’s exhibits do not show he is actually innocent.

21 14. Nor is the alibi evidence new. According to petitioner’s allegations in his petition
22 (pp.28-29), both his lawyer and the prosecutor knew of the evidence.

23
24 ¹Petitioner appears to assert actual innocence more as a substantive claim for habeas
25 relief rather than a procedural claim to overcome the procedural bars. See *Berry v. State*, 131
26 Nev. Adv. Op. 96, 363 P.3d 1148, 1154-55 (2015) (explaining that actual innocence provides a
gateway to have procedurally defaulted claims heard on the merits). The Court addresses the
actual innocence claim procedurally and substantively.

1 15. Petitioner also pursued his alibi defense at his first habeas proceeding. There, as the
2 Nevada Supreme Court noted, “[t]he district court denied Dunckley relief on this ground
3 because it found credible counsel’s testimony that he investigated Dunckley’s alibi defense yet
4 Dunckley insisted on pleading guilty in an attempt to receive probation.” *Dunckley v. State*,
5 Docket No. 59958 (Order of Affirmance, January 16, 2013). The Nevada Supreme Court
6 concluded this Court’s finding was supported by substantial evidence, and affirmed this Court’s
7 finding that Dunckley had failed to demonstrate his counsel’s performance was deficient. *Id.*
8 Thus, Dunckley failed to prove that even if he had an alibi defense, he would not have pleaded
9 guilty and would have insisted on proceeding to trial. *See Hill v. Lockhart*, 474 U.S. 52, 58-59
10 (1985) (To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment
11 of conviction based on a guilty plea, a petitioner must demonstrate that his counsel’s
12 performance was deficient in that it fell below an objective standard of reasonableness, and
13 that there is a reasonable probability that, but for counsel’s errors, petitioner would not have
14 pleaded guilty and would have insisted on going to trial); *Kirksey v. State*, 112 Nev. 980, 988,
15 923 P.2d 1102, 1107 (1996).

16 16. The Nevada Supreme Court’s ruling is law of the case and may not be litigated again,
17 absent new and unforeseen evidence of actual innocence. *See Hall v. State*, 91 Nev. 314, 315,
18 535 P.2d 797, 798 (1975) (“The law of a first appeal is the law of the case on all subsequent
19 appeals in which the facts are substantially the same.” (quoting *Walker v. State*, 85 Nev. 337,
20 343, 455 P.2d 34, 38 (1969))). Thus, petitioner’s actual innocence claim, as a substantive and
21 procedural claim, fails to show he is entitled to relief.

22 17. Petitioner also asserts he is actually innocent because DNA results show the absence
23 of the victim’s DNA on him. He alleges that if he forced the victim to perform fellatio on him,
24 certainly her DNA would have been on him, since police officers responded within minutes of
25 the victim’s report.

26 ///

1 18. The absence of DNA, however, is not evidence of actual innocence. There are any
2 number of reasons why there was no DNA evidence found on Dunckley.

3 19. The DNA evidence is also not new evidence. Petitioner litigated the effect of the
4 DNA results on his guilty plea, this Court rejected the claim, and the Nevada Supreme Court
5 affirmed this Court's ruling. *Dunckley v. State, supra*. Thus, the DNA evidence is irrelevant
6 both as a substantive claim and as a procedural device to overcome defaulted claims, it is not
7 new evidence, and the claim is barred by the law of the case.

8 20. At the hearing on the State's motion to dismiss, petitioner argued the fact that
9 because he pursued habeas relief in federal court good cause exists to overcome the procedural
10 bars. The Court disagrees. *See Colley v. State*, 105 Nev. 235, 773 P.2d 1229 (1989).

11 21. The State also moves to dismiss the petition because "[a] period exceeding 5 years
12 between the filing of a . . . decision on direct appeal of a judgment of conviction and the filing of
13 a petition challenging the validity of a judgment of conviction creates a rebuttable presumption
14 of prejudice to the State." NRS 34.800(2).

15 22. Petitioner has failed to rebut the presumption of prejudice to the State because of
16 laches. The Court dismisses the petition for this additional reason.

17 23. Wherefore, the Court dismisses the post-conviction petition for a writ of habeas
18 corpus.

19
20 DATED this 28 day of June, 2017.

21
22 Connie J. Steinheimer
23 DISTRICT JUDGE
24
25
26

CERTIFICATE OF SERVICE

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 29th day of June, 2017, I filed the attached document with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

 Personal delivery to the following: [NONE]

X **Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the efile User Agreement:**

Joseph Plater, Esq.
Deputy District Attorney

X **Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and certified mailing with the United States Postal Service in Reno, Nevada:**

Brendan Dunckley
Inmate no. 1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

 Placed a true copy in a sealed envelope for service via:

 Reno/Carson Messenger Service – **[NONE]**

 Federal Express or other overnight delivery service – **[NONE]**

 Inter-Office Mail – **[NONE]**

DATED this 29th day of June, 2017.



Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2017-06-29 14:30:10.819.
DIV. OF PAROLE & PROBATION - Notification received on 2017-06-29 14:30:10.959.
JOSEPH PLATER, III, ESQ. - Notification received on 2017-06-29 14:30:10.897.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07-1728

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

06-29-2017:14:29:06

Clerk Accepted:

06-29-2017:14:29:40

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. BRENDAN DUNCKLEY (D4)

Document(s) Submitted:

Findings, Conclusions & Judg

Filed By:

Court Clerk MTrabert

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JOSEPH R. PLATER, III, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

TERRENCE P. MCCARTHY, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

STATE OF NEVADA for STATE OF NEVADA
BRENDAN DUNCKLEY for BRENDAN
DUNCKLEY

CODE: 2540

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

BRENDAN DUNCKLEY,
Petitioner,

CASE NO: CR07-1728

vs.

DEPT. NO.: 4

THE STATE OF NEVADA,
ROBERT LEGRAND,

Respondent,

_____ /

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 29th day of June, 2017 the Court entered a decision or order in this matter, a true and correct copy of which is attached hereto.

You may appeal to the Supreme Court from the decision or order of the 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 the 30th day of June, 2017.

JACQUELINE BRYANT
Clerk of the Court

By /s/ Mia Cholico
Deputy Clerk

CERTIFICATE OF SERVICE

CASE NO. CR07-1728

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; and that on the 30th day of June, 2017, I electronically filed the Notice of Entry of Order with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to:

Terrence McCarthy, Esq. for State of Nevada

Joseph Plater, III, Esq. for State of Nevada

Div. of Parole & Probation

I further certify that on the 30th day of June, 2017, I deposited in the Washoe County mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true and correct copy of the Notice of Entry of Order, addressed to:

Brendan Dunckley #1023236
c/o LCC
1200 Prison Road
Lovelock, NV 89419

Attorney General's Office
100 N. Carson Street
Carson City, NV 89701-4717

/s/ Mia Cholico
Mia Cholico

1 CODE No. 3370
2
3
4

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
6
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 BRENDAN DUNCKLEY,

10 Petitioner,

11 v.

Case No. CR07-1728

12 Dept. No. 4

13 THE STATE OF NEVADA,
14 ROBERT LEGRAND,

15 Respondent.
16 _____/

17 FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

18 This matter comes before the Court on Petitioner's post-conviction petition for a writ of
19 habeas corpus. The Court held a hearing on the State's motion to dismiss the petition on April
20 27, 2017. The Court grants the motion to dismiss and makes the following findings of fact and
21 conclusions of law.

22 1. On August 5, 2008, this Court convicted petitioner, pursuant to his guilty plea, of
23 lewdness with a child under the age of fourteen years and attempted sexual assault. On May 8,
24 2009, the Nevada Supreme Court affirmed the judgment of conviction on direct appeal.
25 *Dunkley v. State*, Docket No. 52383 (Order of Affirmance, May 8, 2009).

26 ///

///

1 2. On July 8, 2009, petitioner filed a motion in this Court to modify his sentence,
2 arguing he was innocent. This Court denied the motion, and on September 9, 2010, the
3 Nevada Supreme Court affirmed this Court's order. *Dunkley v. State*, Docket No. 55545
4 (Order of Affirmance, September 9, 2010).

5 3. On July 21, 2009, petitioner filed a post-conviction petition for a writ of habeas
6 corpus. The Court denied the petition after an evidentiary hearing, and on January 16, 2013,
7 the Nevada Supreme Court affirmed this Court's order denying habeas relief. *Dunkley v.*
8 *State*, Docket No. 59957 (Order of Affirmance, January 16, 2013).

9 4. On November 7, 2016, petitioner filed a second post-conviction petition for a writ of
10 habeas corpus. The State moved this Court to dismiss the petition because it is untimely and
11 successive.

12 5. A petitioner must file a post-conviction petition for a writ of habeas corpus within
13 one year after entry of the judgment of conviction, or one year after the Supreme Court issues
14 its remittitur, if an appeal is taken. NRS 34.726(1). An untimely or successive petition is
15 procedurally barred and must be dismissed absent a demonstration of good cause for the delay
16 and undue prejudice. *Id.*; NRS 34.810(1)(b)(2); *State v. Haberstroh*, 119 Nev. 173, 180, 69
17 P.3d 676, 681 (2003) (application of the procedural default rules to post-conviction petitions
18 for writs of habeas corpus is mandatory); *Pellegrini v. State*, 117 Nev. 860, 876, 34 P.3d 519,
19 530 (2001) (the Nevada Legislature "never intended for petitioners to have multiple
20 opportunities to obtain post-conviction relief absent extraordinary circumstances.").

21 6. Good cause is established by showing that an impediment external to the defense
22 prevented a petitioner from filing a timely petition. *See Harris v. Warden*, 114 Nev. 956, 959,
23 964 P.2d 785, 787 (1998), *clarified by Hathaway v. State*, 119 Nev. 248, 71 P.3d 503 (2003);
24 *see also Murray v. Carrier*, 477 U.S. 478, 488 (1986).

25 7. "An impediment external to the defense may be demonstrated by a showing 'that the
26 factual or legal basis for a claim was not reasonably available to counsel, or that 'some

1 interference by officials,' made compliance impracticable.' " *Hathaway v. State*, 119 Nev. 248,
2 252, 71 P.3d 503, 506 (2003) (quoting *Murray*, 477 U.S. at 488 (1986) (citations omitted)).

3 8. "[A]ctual prejudice" requires a showing " 'not merely that the errors [complained of]
4 created a possibility of prejudice, but that they worked to [the petitioner's] actual and
5 substantial disadvantage, in affecting the state proceeding with error of constitutional
6 dimensions.' " *Hogan v. Warden*, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting
7 *United States v. Frady*, 456 U.S. 152, 170 (1982)).

8 9. A claim of ineffective assistance of post-conviction counsel may provide good cause
9 for filing a successive petition if counsel was appointed under statutory mandate, *Crump v.*
10 *Warden*, 113 Nev. 293, 304–05, 934 P.2d 247, 254 (1997); see also *McKague v. Warden*, 112
11 Nev. 159, 164–65 & n. 5, 912 P.2d 255, 258 & n. 5 (1996), but such a claim is still subject to
12 other procedural bars, including timeliness under NRS 34.726, *State v. Dist. Ct. (Riker)*, 121
13 Nev. 225, 235, 112 P.3d 1070, 1077 (2005); see also *Hathaway v. State*, 119 Nev. 248, 252–53,
14 71 P.3d 503, 506 (2003) (explaining that "to constitute adequate cause, the ineffective
15 assistance of counsel claim itself must not be procedurally defaulted").

16 10. The failure to show good cause may be excused where the prejudice from a failure to
17 consider the claim amounts to a "fundamental miscarriage of justice." *Mazzan v. Warden*, 112
18 Nev. 838, 842, 921 P.2d 920, 922 (1996); *Hogan*, 109 Nev. at 959, 860 P.2d at 715–16; cf. NRS
19 34.800(1)(b). This standard can be met where the petitioner makes a colorable showing he is
20 actually innocent of the crime or is ineligible for the death penalty. See *Mazzan*, 112 Nev. at
21 842, 921 P.2d at 922; *Hogan*, 109 Nev. at 954–55, 959, 860 P.2d at 712, 715–16.

22 11. To prove actual innocence as a gateway to reach procedurally-barred constitutional
23 claims of error, a petitioner must show that " 'it is more likely than not that no reasonable juror
24 would have convicted him in light of the new evidence.' " *Calderon v. Thompson*, 523 U.S.
25 538, 559 (1998); see also *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537. "[A]ctual innocence'

26 ///

1 means factual innocence, not mere legal insufficiency.” *Bousley v. United States*, 523 U.S. 614,
2 623-24 (1998) (citing *Sawyer v. Whitley*, 505 U.S. 333, 339 (1992)); see also *Rozzelle v. Sec’y,*
3 *Florida Dep’t of Corr.*, 672 F.3d 1000, 1016 (11th Cir. 2012) (explaining that the actual
4 innocence exception contemplates the “extremely rare” cases where the State convicted an
5 innocent man, not “run of the mill” cases where the petitioner argues that he is guilty of a
6 lesser offense than that for which he was convicted). “‘To be credible,’ a claim of actual
7 innocence must be based on reliable evidence not presented at trial.” *Calderon v. Thompson*,
8 523 U.S. 538, 559 (1998) (quoting *Schulp*, 513 U.S. at 324 (1995)).

9 12. Here, petitioner filed his second post-conviction habeas petition on November 7,
10 2016. The Nevada Supreme Court affirmed petitioner’s judgment of conviction on direct
11 appeal on May 8, 2009, and issued the remittitur on June 2, 2009. Thus, the present petition
12 is untimely and successive. It is barred absent a demonstration of good cause and prejudice or
13 actual innocence to overcome the procedural bars. NRS 34.726(1); NRS 34.810(1)(b)(2).

14 13. Petitioner claims he is actually innocent because certain exhibits he has provided
15 purportedly show he was in other cities when he committed his crimes.¹ The exhibits, however,
16 do not show petitioner was never in Reno during the time the State alleged he committed his
17 crimes, although they do tend to show he may have also been in other places during the general
18 time frame the State contends he committed his crimes. In other words, petitioner may have
19 been in other cities and in Reno during the relevant time period alleged in the Information. In
20 short, petitioner’s exhibits do not show he is actually innocent.

21 14. Nor is the alibi evidence new. According to petitioner’s allegations in his petition
22 (pp.28-29), both his lawyer and the prosecutor knew of the evidence.

23
24 ¹Petitioner appears to assert actual innocence more as a substantive claim for habeas
25 relief rather than a procedural claim to overcome the procedural bars. See *Berry v. State*, 131
26 Nev. Adv. Op. 96, 363 P.3d 1148, 1154-55 (2015) (explaining that actual innocence provides a
gateway to have procedurally defaulted claims heard on the merits). The Court addresses the
actual innocence claim procedurally and substantively.

1 15. Petitioner also pursued his alibi defense at his first habeas proceeding. There, as the
2 Nevada Supreme Court noted, “[t]he district court denied Dunckley relief on this ground
3 because it found credible counsel’s testimony that he investigated Dunckley’s alibi defense yet
4 Dunckley insisted on pleading guilty in an attempt to receive probation.” *Dunckley v. State*,
5 Docket No. 59958 (Order of Affirmance, January 16, 2013). The Nevada Supreme Court
6 concluded this Court’s finding was supported by substantial evidence, and affirmed this Court’s
7 finding that Dunckley had failed to demonstrate his counsel’s performance was deficient. *Id.*
8 Thus, Dunckley failed to prove that even if he had an alibi defense, he would not have pleaded
9 guilty and would have insisted on proceeding to trial. *See Hill v. Lockhart*, 474 U.S. 52, 58-59
10 (1985) (To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment
11 of conviction based on a guilty plea, a petitioner must demonstrate that his counsel’s
12 performance was deficient in that it fell below an objective standard of reasonableness, and
13 that there is a reasonable probability that, but for counsel’s errors, petitioner would not have
14 pleaded guilty and would have insisted on going to trial); *Kirksey v. State*, 112 Nev. 980, 988,
15 923 P.2d 1102, 1107 (1996).

16 16. The Nevada Supreme Court’s ruling is law of the case and may not be litigated again,
17 absent new and unforeseen evidence of actual innocence. *See Hall v. State*, 91 Nev. 314, 315,
18 535 P.2d 797, 798 (1975) (“The law of a first appeal is the law of the case on all subsequent
19 appeals in which the facts are substantially the same.” (quoting *Walker v. State*, 85 Nev. 337,
20 343, 455 P.2d 34, 38 (1969))). Thus, petitioner’s actual innocence claim, as a substantive and
21 procedural claim, fails to show he is entitled to relief.

22 17. Petitioner also asserts he is actually innocent because DNA results show the absence
23 of the victim’s DNA on him. He alleges that if he forced the victim to perform fellatio on him,
24 certainly her DNA would have been on him, since police officers responded within minutes of
25 the victim’s report.

26 ///

1 18. The absence of DNA, however, is not evidence of actual innocence. There are any
2 number of reasons why there was no DNA evidence found on Dunckley.

3 19. The DNA evidence is also not new evidence. Petitioner litigated the effect of the
4 DNA results on his guilty plea, this Court rejected the claim, and the Nevada Supreme Court
5 affirmed this Court's ruling. *Dunckley v. State, supra*. Thus, the DNA evidence is irrelevant
6 both as a substantive claim and as a procedural device to overcome defaulted claims, it is not
7 new evidence, and the claim is barred by the law of the case.

8 20. At the hearing on the State's motion to dismiss, petitioner argued the fact that
9 because he pursued habeas relief in federal court good cause exists to overcome the procedural
10 bars. The Court disagrees. *See Colley v. State*, 105 Nev. 235, 773 P.2d 1229 (1989).

11 21. The State also moves to dismiss the petition because "[a] period exceeding 5 years
12 between the filing of a . . . decision on direct appeal of a judgment of conviction and the filing of
13 a petition challenging the validity of a judgment of conviction creates a rebuttable presumption
14 of prejudice to the State." NRS 34.800(2).

15 22. Petitioner has failed to rebut the presumption of prejudice to the State because of
16 laches. The Court dismisses the petition for this additional reason.

17 23. Wherefore, the Court dismisses the post-conviction petition for a writ of habeas
18 corpus.

19
20 DATED this 28 day of June, 2017.

21
22 Connie J. Steinheimer
23 DISTRICT JUDGE
24
25
26

CERTIFICATE OF SERVICE

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 29th day of June, 2017, I filed the attached document with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

 Personal delivery to the following: [NONE]

X **Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the efile User Agreement:**

Joseph Plater, Esq.
Deputy District Attorney

X **Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and certified mailing with the United States Postal Service in Reno, Nevada:**

Brendan Dunckley
Inmate no. 1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

 Placed a true copy in a sealed envelope for service via:

 Reno/Carson Messenger Service – **[NONE]**

 Federal Express or other overnight delivery service – **[NONE]**

 Inter-Office Mail – **[NONE]**

DATED this 29th day of June, 2017.



Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2017-06-30 08:15:45.109.
DIV. OF PAROLE & PROBATION - Notification received on 2017-06-30 08:15:45.265.
JOSEPH PLATER, III, ESQ. - Notification received on 2017-06-30 08:15:45.187.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07-1728

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

06-30-2017:08:14:01

Clerk Accepted:

06-30-2017:08:15:12

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. BRENDAN DUNCKLEY (D4)

Document(s) Submitted:

Notice of Entry of Ord

Filed By:

Deputy Clerk MCholico

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

JOSEPH R. PLATER, III, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

BRENDAN DUNCKLEY

CASE NO. CR07-1728
(POST-CONVICTION)**TITLE: THE STATE OF NEVADA VS. BRENDAN DUNCKLEY**DATE, JUDGE
OFFICERS OF**COURT PRESENT****APPEARANCES-HEARING****CONT'D TO**

4/27/17

EVIDENTIARY HEARING ON PETITION FOR HABEAS CORPUS TO

HONORABLE

EXHAUST STATE CLAIMS/ORAL ARGUMENTS ON MOTION TO

CONNIE

DISMISS PETITION

STEINHEIMER

Petitioner, Brendan Dunckley, present representing himself. Deputy District Attorney Joseph Plater represented the State.

DEPT. NO.4

M. Stone

Motion to Dismiss the Petition for Habeas Corpus to Exhaust State Claims by State's counsel; presented argument; objection and argument by Petitioner; reply argument by State's counsel. Petitioner presented further argument against the Motion to Dismiss the Petition.

(Clerk)

J. Schonlau

(Reporter)

Although the Petitioner has well-thought out issues and a strong ideas, the statutes regulate and this instant petition is successive and the Petitioner is unable to overcome that procedural bar. Therefore, **COURT ENTERED ORDER** granting the Motion to Dismiss the Petition for Habeas Corpus to Exhaust State Claims.

State's counsel shall prepare proposed Order for the Court.

Court recessed.

Defendant remanded to the custody of the Warden.

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2017-08-08 08:36:07.915.
DIV. OF PAROLE & PROBATION - Notification received on 2017-08-08 08:36:08.056.
JOSEPH PLATER, III, ESQ. - Notification received on 2017-08-08 08:36:07.978.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07-1728

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

08-08-2017:08:35:08

Clerk Accepted:

08-08-2017:08:35:37

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. BRENDAN DUNCKLEY (D4)

Document(s) Submitted:

***Minutes

Filed By:

Court Clerk MTrabert

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

JOSEPH R. PLATER, III, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

BRENDAN DUNCKLEY

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRENDAN DUNCKLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

CR07-1728
No. 73095 04

FILED

AUG 16 2017

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

*ORDER DIRECTING ENTRY AND TRANSMISSION OF
WRITTEN ORDER*

This is a pro se appeal from a decision dismissing a postconviction petition for a writ of habeas corpus. The documents before this court do not contain a written order memorializing the court's decision made on April 27, 2017. A copy of the written order is essential to a determination of this court's jurisdiction to consider this appeal.¹ The district court shall have 60 days from the date of this order to: (1) enter a written order, (2) inform this court in writing that it is reconsidering its decision, or (3) inform this court in writing that additional time is needed to enter the written order. In the event the district court enters a written order (or has already entered a written order of which this court is

¹Prior to the entry of a final written judgment, and the timely filing of a notice of appeal, the district court technically retains jurisdiction over appellant's case. See *Bradley v. State*, 109 Nev. 1090, 1094-95, 864 P.2d 1272, 1275 (1993). In a criminal case, a notice of appeal filed after announcement of the decision, but before entry of the written judgment or order is deemed to have been filed after such entry and on the day thereof. NRAP 4(b)(2).

unaware), the clerk of the district court shall immediately transmit a certified copy of the order to the clerk of this court.

It is so ORDERED.

Cherry, C.J.

cc: Hon. Connie J. Steinheimer, District Judge
Brendan Duncley
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2017-08-17 10:52:12.528.
DIV. OF PAROLE & PROBATION - Notification received on 2017-08-17 10:52:12.981.
JOSEPH PLATER, III, ESQ. - Notification received on 2017-08-17 10:52:12.591.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07-1728

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

08-17-2017:10:51:10

Clerk Accepted:

08-17-2017:10:51:40

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. BRENDAN DUNCKLEY (D4)

Document(s) Submitted:

Supreme Ct Order Directing

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

JOSEPH R. PLATER, III, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

BRENDAN DUNCKLEY

Code 1350

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

BRENDAN DUNCKLEY,

Petitioner,

Case No. CR07-1728

Dept. No. 4

Vs,

**THE STATE OF NEVADA
ROBERT LEGRAND,**

Respondent.

_____ /

CERTIFICATE OF CLERK AND TRANSMITTAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe. On the 17th day of August, 2017, I electronically filed to the Supreme Court the Findings of Fact, Conclusions of Law and Judgment filed June 29, 2017. The Order is transmitted pursuant to the Supreme Court's Order Directing Entry and Transmission of Written Order filed August 16, 2017.

I further certify that the transmitted record is a copy of the original pleadings on file with the Second Judicial District Court.

Dated this 17th day of August, 2017.

Jacqueline Bryant
Clerk of the Court

By /s/Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2017-08-17 10:58:03.655.
DIV. OF PAROLE & PROBATION - Notification received on 2017-08-17 10:58:03.796.
JOSEPH PLATER, III, ESQ. - Notification received on 2017-08-17 10:58:03.718.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07-1728

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

08-17-2017:10:56:51

Clerk Accepted:

08-17-2017:10:57:36

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. BRENDAN DUNCKLEY (D4)

Document(s) Submitted:

Certificate of Clerk

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

JOSEPH R. PLATER, III, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

BRENDAN DUNCKLEY

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRENDAN DUNCKLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

CR07-1728 (P)
04
No. 73095**FILED**

AUG 28 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK*ORDER DIRECTING TRANSMISSION OF RECORD*

This court has concluded that its review of the complete record is warranted. *See* NRAP 10(a)(1). Accordingly, the clerk of the district court shall have 30 days from the date of this order to transmit to the clerk of this court a certified copy of the complete trial court record of this appeal. *See* NRAP 11(a)(2). The record shall include copies of documentary exhibits submitted in the district court proceedings, but shall not include any physical, non-documentary exhibits or the original documentary exhibits. The record shall also include any presentence investigation reports submitted in a sealed envelope identifying the contents and marked confidential. *See* NRS 176.156(5).

Within 120 days, appellant may file either (1) a brief that complies with the requirements in NRAP 28(a) and NRAP 32; or (2) the "Informal Brief Form for Pro Se Parties" provided by the supreme court clerk. NRAP 31(a)(1). If no brief is submitted, the appeal may be decided on the record on appeal. NRAP 34(g).

It is so ORDERED.

Cherry, C.J.

cc: Brendan Dunckley
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2017-08-29 10:50:32.499.
DIV. OF PAROLE & PROBATION - Notification received on 2017-08-29 10:50:32.671.
JOSEPH PLATER, III, ESQ. - Notification received on 2017-08-29 10:50:32.593.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07-1728

Judge:

HONORABLE CONNIE J. STEINHEIMER

Official File Stamp:

08-29-2017:10:49:28

Clerk Accepted:

08-29-2017:10:50:00

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. BRENDAN DUNCKLEY (D4)

Document(s) Submitted:

Supreme Ct Order Directing

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

JOSEPH R. PLATER, III, ESQ. for STATE OF
NEVADA

DIV. OF PAROLE & PROBATION

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

BRENDAN DUNCKLEY