EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT
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Steven D. Grierson
Clerk of the Court

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Elizabeth A. Brown
Clerk of Supreme Court

Anntoinette Naumec-Miller
Acting Court Division Administrator

June 4, 2018

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

RE: STATE OF NEVADA vs. JUSTIN LANGFORD
S.C. CASE: 75825
D.C. CASE: C-14-296556-1

Dear Ms. Brown:

Pursuant to your Order Directing Entry and Transmission of Written Orders, dated May 24, 2018, enclosed is a certified copy of the Order Denying Defendant's Motion to Modify and/or Correct Illegal Sentence and "Judicial Notice of Lack of Jurisdiction" filed June 1, 2018 and the Findings of Fact, Conclusions of Law and Order filed June 1, 2018 in the above referenced case. If you have any questions regarding this matter, please do not hesitate to contact me at (702) 671-0512.

Sincerely,
STEVEN D. GRIERSON, CLERK OF THE COURT

Heather Ungermann

Heather Ungermann, Deputy Clerk

Detached order deny defendant's Motion to Modify and/or correct Illegal sentence and filed in 76075 per order 6/13/18.

ORIGINAL

ORDR
STEVEN B. WOLFSON
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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JUSTIN LANGFORD,
#2748452

Defendant.

CASE NO: **C-14-296556-1**

DEPT NO: **XXII**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: **APRIL 24, 2018**
TIME OF HEARING: **8:30 A.M.**

THIS CAUSE having come before the Honorable SUSAN JOHNSON, District Judge, on the 24th Day of April, 2018; Petitioner not being present, IN PROPER PERSON; the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through STEVEN WATERS, Chief Deputy District Attorney; and having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

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FINDINGS OF FACT

CONCLUSIONS OF LAW

On March 14, 2014, JUSTIN ODELL LANGFORD (hereinafter "Langford") was charged by way of Information with the following: COUNTS 1, 2, 6, 7, 8, 10, 11, and 12 – Lewdness With A Child Under The Age Of 14 (Category A Felony - NRS 201.230); COUNTS 3, 4, and 5 – Sexual Assault With A Minor Under Fourteen Years Of Age (Category A Felony - NRS 200.364, 200.366); and COUNT 9 – Child Abuse, Neglect, or Endangerment (Category B Felony - NRS 200.508(1)).

On March 7, 2016, a jury trial convened and lasted nine days. On March 17, 2016, the jury returned a guilty verdict as to COUNT 2, and not guilty as to all other Counts.

On May 10, 2016, Langford was sentenced to Life with a possibility of parole after a term of 10 years have been served in the Nevada Department of Corrections ("NDOC"). Langford received 841 days credit for time served. The Judgment of Conviction was filed on May 17, 2016.

On June 1, 2016, Langford filed a Notice of Appeal from his conviction. On June 27, 2017, the Nevada Supreme Court affirmed the Judgment of Conviction. Remittitur issued July 28, 2017.

On July 19, 2017, Langford filed a Motion to Modify And/Or Correct Sentence ("Motion to Modify"), Motion for Sentence Reduction ("Motion for Reduction"), Motion for Production of Documents, Papers, Pleadings, and Tangible Property of Defendant, a Motion for Transcripts at the State's Expense and Memorandum of Point and Authorities in Support of Request for Transcripts at State's Expense, a Motion to Obtain a Copy of a Sealed Record, and a Motion to Withdraw Counsel. The State filed its Response to Langford's Motion to Modify And/Or Correct Sentence and Motion for Sentence Reduction on August 2, 2017.

On August 10, 2017, the Court denied Langford's Motion for Sentence Reduction, granted Langford's Motion for Production of Documents, Papers, Pleadings, and Tangible Property of Defendant, denied Langford's Motion for Transcripts at State's Expense, granted Langford's Motion to withdraw Counsel, granted Langford's Motion to Obtain Copy of a

Sealed Record, and denied Langford's Motion to Modify/Correct Illegal Sentence.

On October 10, 2017, Langford filed a Motion to Claim and Exercise Rights Guaranteed by the Constitution for the United States of America and Require the Presiding Judge to Rule upon this Motion, and All Public Officers of this Court to Uphold Said Rights and an affidavit in support of that Motion. He also filed a Motion to Reconsider Transcripts at State's Expense, a Motion to Compel Court Orders, and a Motion to Reconsider Motions for Correction of Illegal Sentence and Sentence Reduction. The State responded to the Motion to Reconsider Motions for Correction of Illegal Sentence and Sentence Reduction on October 30, 2017. On October 31, 2017, the Court denied all of Langford's Motions, and the order was filed on November 7, 2017.

On November 27, 2017, Langford filed a Motion for Ancillary Services and a Motion for Transcripts and Other Court Documents and State's Expense. The State filed its Opposition to Langford's Motion for Ancillary Services on December 13, 2017. The Court denied Langford's Motions on December 19, 2017, and the order was filed on December 29, 2017.

On December 29, 2017, Langford filed a "Notice of Understanding of Intent and Claim of Right as well as a Notice of Denial of Consent." He additionally filed the subject Petition for Writ of Habeas Corpus (Post-Conviction), Memorandum in Support of Petition, Motion for Appointment of Counsel, and Request for Evidentiary Hearing. The State filed its Response to Langford's Petition for Writ of Habeas Corpus (Post-Conviction), Memo in Support, Motion to Appoint Counsel, and Motion for Evidentiary Hearing on February 20, 2018. On April 24, 2018, the Court held a hearing.

STATEMENT OF THE FACTS

On June 21, 2014, the minor victim H.H. (DOB: 06/22/2001) disclosed that she had been sexually abused by her stepfather, Langford. The abuse began when she was eight years old. While at Langford's residence in Searchlight, Nevada, Langford would call H.H. into his bedroom and have H.H. take off her clothes. Langford would make H.H. lie on the bed and he would rub baby oil on H.H's legs. Langford then placed his private parts in between her legs

and rubbed himself back and forth until he ejaculated. H.H. stated that Langford placed a white hand towel on the bed and had the victim lie on the towel during the molestation incidents. He would then use the towel to clean up the baby oil. The abuse continued until the victim reported the abuse in January 2014.

H.H. testified of several instances of sexual abuse committed by Langford. H.H. described instances including Langford sucking on her breasts, putting his penis in her anus, putting his penis into her mouth more than once, touching her genital area with his hands and his penis, and fondling her buttocks and/or anal area with his penis.

On January 21, 2014, the Las Vegas Metropolitan Police Department served a search warrant on Langford's residence in Searchlight. Officers recovered a white hand towel that matched the description given by H.H. in the exact location H.H. described. The police also recovered a bottle of baby oil found in the same drawer as the hand towel and bedding. These items were tested for DNA. Several stains on the white towel came back consistent with a mixture of two individuals. The partial major DNA profile contributor was consistent with Langford. The partial minor DNA profile was consistent with victim H.H. The statistical significance of both partial profiles was at least one in 700 billion.

ANALYSIS

I. TRIAL COUNSEL WAS NOT INEFFECTIVE

The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The United States Supreme Court has long recognized that "the right to counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64; see also Love, 109 Nev. at 1138, 865 P.2d at 323. Under Strickland, a defendant must show first that his counsel's representation

fell below an objective standard of reasonableness, and second, that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. Strickland, 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). "[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

Defendants are entitled to "effective assistance of counsel at critical stages of a criminal proceeding." Lafler v. Cooper, 566 U.S. 156, 165, 132 S. Ct. 1376, 1386 (2012). This includes at sentencing in both capital and noncapital cases. Id. (internal citations omitted). The Nevada Supreme Court has found that in order to be effective, counsel at sentencing must be aware of the sentencing options available and present mitigating evidence, if available. See Brown v. Nevada, 110 Nev. 846, 851, 877 P.2d 1071, 1074 (1994). When evaluating the effectiveness of counsel at sentencing, claims are evaluated using the two-pronged test from Strickland. Id. at 848, 877 P.2d at 1072.

With all ineffective assistance claims, the court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975).

Counsel cannot be ineffective for failing to make futile objections or arguments. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the "immediate and ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and what defenses to develop." Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002).

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Further, a defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have rendered a more favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

Based on the above law, the role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). This analysis does not mean that the court should "second guess reasoned choices between trial tactics nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Id. To be effective, the Constitution "does not require that counsel do what is impossible or unethical. If there is no bona fide defense to the charge, counsel cannot create one and may disserve the interests of his client by attempting a useless charade." United States v. Cronic, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

"There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." Strickland, 466 U.S. at 689, 104 S. Ct. at 2065. "Strategic choices made by counsel after thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). In essence, the court must "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066 (emphasis added). Indeed, the Court has recognized that:

> Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proven unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.

Strickland, 466 U.S. at 698, 104 S. Ct. at 2065.

Even if a defendant can demonstrate that his counsel's representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and show a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-89, 694, 104 S. Ct. at 2064-65, 2068).

The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence." Means, 120 Nev. at 1012, 103 P.3d at 33. Furthermore, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant part, "[Petitioner] must allege specific facts supporting the claims in the petition[.]. . .Failure to allege specific facts rather than just conclusions may cause [the] petition to be dismissed." (emphasis added).

Here, Langford takes issue with a slew of things trial counsel did or did not do. None of his complaints warrant relief; they are belied by the record, do not have support in the law, or fail to show deficient performance by counsel and prejudice to Langford as required by Strickland.

Many of Langford's complaints center around counsel's performance at sentencing. These include Grounds One G, O, G1, and H1. Petition at 6. He complains specifically that "counsel showed him no loyalty...by agreeing with the [State] that [Langford's sentence is statutorily mandated]." Memo at 5. Langford was convicted of Lewdness with a Child Under the Age of 14 pursuant to NRS 201.230. That statute states, in relevant part:

> 2. Except as otherwise provided in subsections 4 and 5, a person who commits lewdness with a child under the age of 14 years is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of

parole, with eligibility for parole beginning when a minimum of 10 years has been served, and may be further punished by a fine of not more than $10,000.

(emphasis added). The legislature made clear that the District Court has no discretion in sentencing for this crime. If Langford's trial counsel had attempted to argue for a lower sentence or present evidence or witnesses at sentencing in an attempt at a more lenient sentence, such action would have been futile. Since counsel cannot be ineffective for not taking futile actions, this claim is denied. See Ennis, 122 Nev. at 706, 137 P.3d at 1103.

Langford also complains about his counsel's representation with regard to obtaining the victim's psychological records. Memo at 11-13; Petition claims Ground One A and B. Counsel in this case filed a Motion to Compel Psychological Records of H.H., as well as a Motion to Compel Independent Psychological Examination of [Victim]. The State opposed, and after argument by counsel this Court denied both motions on September 24, 2015. Langford claims that the argument offered by counsel was inadequate and amounts to ineffective assistance. Memo at 12. However, while Langford points to arguments he wishes counsel would have made, he fails to show that counsel's arguments fell below an objectively reasonable standard of care. The standard for effective assistance of counsel under Strickland is objectively reasonable representation, not whether counsel made every single possible argument. Moreover, Langford has failed to show that he was prejudiced by counsel's representation. As discussed infra, this Court properly denied Langford's motions (a ruling that was affirmed by the Supreme Court). Langford was not legally entitled to the victim's counseling records, and further argument on the issue would have been futile. Since counsel cannot be ineffective for not making futile arguments, this claim is denied. See Ennis, 122 Nev. at 706, 137 P.3d at 1103.

Langford further complains that his trial counsel "failed to use any expert witnesses for this petitioners [sic] trial to counter act [sic] the States' [sic] witnesses." Memo at 13. He goes on to cover pages quoting from other cases where other defense attorneys were found ineffective for not consulting experts or conducting any investigation. Memo at 14-17; 21-22. However, he fails to identify how those cases apply here – he instead alleges that "there should

have been some kind of consultation with a medical expert. And a medical expert witnesses [sic] called to rebut anything the State could say." Memo at 17. In his Petition, he lists seven claims related to experts: He claims that expert testimony should have been presented to counteract the testimony of Tiffany Adams and Sandra Cetl (Grounds One D and E); that his counsel should have conducted "research and consultation with [an] expert" (Ground One S); that his counsel had a duty to retain a forensic expert (Ground One U); that his counsel failed to retain a forensic expert with regard to hair and DNA (Ground One W); that a sexual abuse medical expert should have been consulted (Ground One Y); and that his counsel should have sought expert opinion and services (Ground One B1). However, Langford never states what an expert witness would have been able to say, how one could have rebutted the State's witnesses, or how consulting an expert could have helped trial counsel. Although he cites to copious case law, this claim is bare and naked in that Langford fails to identify specific ways that his counsel was objectively deficient or how her performance prejudiced him. Bare and naked claims are not sufficient to entitle Langford to relief, and this claim is therefore denied. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

Langford next complains about the investigation conducted by his attorney. A defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have rendered a more favorable outcome probable. Molina, 120 Nev. at 192, 87 P.3d at 538.

Langford argues that counsel was ineffective for not collecting DNA from everyone in the home. Memo at 13-14; Petition Ground One F.[1] As discussed infra, Langford cannot show that collecting DNA samples would have changed the fact that both his and H.H.'s DNA was found on the towel he used while molesting her. The possibility of other DNA on the towel would have only served to implicate him, and it was not objectively unreasonable for defense counsel to not expose him to that possibility.

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[1] In his Petition, Langford alleges that his counsel was ineffective for not "retriev[ing] DNA and other evidence from [the] crime lab." Petition Ground One X. However, he does not address this any further in his Memo. Therefore, this claim is bare and naked and is denied. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

Langford additionally alleges that counsel should have visited the crime scene and investigated or interviewed the victim. Memo at 18; Petition Grounds One P and V. Again, Langford quotes case law where in other cases counsel was ineffective for not visiting the home and interviewing other occupants, but fails to explain why his counsel should have done so in this case. Memo at 18-19. Each case is unique based on its own set of facts. Langford has only established that in some cases with some facts counsel may be ineffective for not visiting the crime scene. He has not alleged what evidence counsel here would have found by visiting the home where H.H. was molested over a period of years. Because he has failed to allege specific facts to support his Petition, this claim is denied. NRS 34.735(6).

Langford also claims that his counsel should have "secure[d] all records possible for an alibi defense, to prove [Langford] was somewhere else a majority of these accusations," including at Rawson-Neal Psychiatric Hospital. Memo at 24; Petition Grounds One Q and R. Langford claims this amounted to not "using all evidence readily available to counsel..." Memo at 26; Petition Ground One L. However, Langford was accused of committing these crimes over a period of six and a half years, from June, 2007, to January, 2014. Information at 1.[2] Even if counsel had obtained all of the records Langford wished her to, it would have been insufficient to provide Langford with an alibi for all six and a half years and would have been futile to present. Indeed, it may have not even been permitted as evidence because the relevance of showing that Langford was not at the home every minute of every day is difficult to comprehend. Therefore, Langford has failed to show that not obtaining these records amounted to deficient performance, nor that he was prejudiced by this decision, and this claim is denied.

Langford also has a series of sub-claims relating to the advice his counsel gave him. He complains that counsel was not present with him during his interview for the Presentence Investigation Report (hereinafter "PSI"). Memo at 9; Petition Ground One N. He cites to one California case to support his claim that "had...counsel actually knew and understood the laws as required, counsel would have known how important the presentence interview is for a

[2] Although some charges had more precise dates, they all consisted of a wide range of time. Moreover, the count Langford was convicted of had this six and a half year range.

chance to possibly get a recommendation for a lower sentence." Memo at 9-10. However, he has failed to show that in Nevada it is expected that attorneys attend the PSI interview with their clients – indeed, doing so would be rare, and not doing so does not constitute objectively unreasonable performance. More importantly, Langford again misunderstands the nature of his sentence. As discussed supra, the sentence Langford received was mandatory and set by statute. His PSI interview did not affect his sentence at all, and he cannot show that he was prejudiced by counsel not being present for the interview. Therefore, this claim is denied.

Langford further complains that counsel did not ensure that he was present for all proceedings. Memo at 27; Petition Ground One E1. The only instance he points to where he was not present was "the part after the verdict came back and it was read aloud to the Court, [Langford] was removed from the court instead of being left present where counsel and prosecution got to question the jury." Memo at 27. Langford misunderstands the nature of what occurred. The trial was over when the verdict was entered. The jury was dismissed, was no longer prohibited from speaking about the case, and was no longer required to be present. Transcript of Proceedings, March 17, 2016, Filed August 16, 2016, p. 9-10. Some of them apparently chose to remain in the courthouse and speak to the attorneys since the prohibition on speaking was lifted. Private conversations between released jury members and counsel after the close of trial do not constitute a "proceeding" at which Langford was entitled to be present. At that point, Langford was a convicted felon and was properly removed to custody.

Langford also alleges that he was "not able to legally waive [his] speedy trial," and that counsel was ineffective for allowing him to do so. Petition Ground One M1; Memo at 134. Langford relies on Zedner v. U.S., 547 U.S. 489, 126 S. Ct. 1976 (2006) to support this claim. Memo at 134. However, Zedner interpreted the Speedy Trial Act and ruled that, under that Act, a defendant may not waive his speedy trial rights "for all time." Id. at 503, 126 S. Ct. at 1987. Zedner is not applicable here because the Speedy Trial Act is not in question. As with any other right, Langford was permitted to waive his right to a speedy trial and properly did so here.

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Langford further contends that his counsel "failed to fully inform [him]," and that she provided "inadequate advice." Petition Grounds One Z and A1. However, he fails to identify in what way she did not advise or misadvised him. Petitions must allege specific facts to support the claims, and those that do not are insufficient to support relief. NRS 34.735(6); Hargrove, 100 Nev. at 502, 686 P.2d at 225. Because Langford has failed to allege facts to support these claims, they are denied.

Langford also has numerous claims relating to his counsel's performance at trial. Many of these include complaints about the way his counsel examined witnesses. It is important to remember that trial counsel has the "immediate and ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and what defenses to develop." Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002).

Langford begins by alleging that his counsel "failed to adequately cross-examine H.H. at trial because [counsel] did not have H.H.'s psychological [records] or all of H.H.'s statements made out of court." Memo at 18; Petition Ground One C. As discussed both supra and infra, Langford was not legally entitled to the victim's confidential counseling records. Counsel was not ineffective for not convincing this Court to make a ruling contrary to the law, nor was counsel ineffective for not questioning the victim regarding records not in counsel's possession.

Langford further alleges that counsel should have impeached H.H. with her "multiple statements that were all different in numerous ways." Memo at 19; Petition Grounds One H, J, and D1. Again, Langford makes this bare and naked allegation and then spends pages quoting other cases, without ever relating those cases to this case. Memo at 19-21. Langford does not identify what specifically he thinks counsel should have questioned H.H. about, nor does he establish how not asking those unidentified questions amounts to anything more than a strategic decision. H.H. was a child victim of sexual assault over a period of at least six and a half years. Consequently, if and to the extent she made inconsistent statements, it was likely due to her young age and the length and severity of the abuse. That counsel did not want to draw attention to the any of those factors by delving into questioning about why she did not

remember or was inconsistent on whatever topics Langford has in mind does not amount to an objectively unreasonable decision. Likewise, the decision to not harshly cross-examine a young victim and alienate the jury does not indicate an objectively unreasonable decision. Not only is Langford's claim bare and naked, it fails to establish deficient performance and is therefore denied.

Langford next complains that his counsel did not object during the State's closing argument or to alleged prosecutorial misconduct. Memo at 23; Petition Grounds One M and F1. Langford does not allege specific points at which he thinks his trial counsel should have objected. To the extent he alleges she did not object at all, that is belied by the record. See Transcript of Proceedings, March 14, 2016, Filed August 16, 2016, p. 18-19, 78, 88, 92-94, 98 (wherein defense trial counsel objected multiple times during the State's closing argument). To the extent Langford is alleging that counsel should have objected to the specific instances of alleged misconduct discussed in Ground Five of his Petition, those instances do not amount of prosecutorial misconduct, as discussed infra. Because the State did not act improperly, any objection made by trial counsel would have been futile. Therefore, this argument is not only bare and naked, but his claims are also belied by the record and are denied. Moreover, because any objection by counsel would have been futile and counsel cannot be ineffective for not making futile objections, this claim is denied. See Ennis, 122 Nev. at 706, 137 P.3d at 1103.

Langford further complains that his counsel was unprepared "for any unexpected witnesses," and lists himself as the only example. Petition Ground One T; Memo at 26. Langford fails to identify any way in which counsel was unprepared for his testimony. In reviewing the record, counsel questioned him about his relationship with the victim and other family members, asked him if he ever molested the victim, and gave him an opportunity to explain what the towel and baby oil in the drawer were used for. See Transcript of Proceedings, March 11, 2016, Filed August 16, 2016, p. 141-45. On re-direct examination, counsel attempted to rehabilitate Langford and gave him an opportunity to clarify questions asked by the State. Id. at 152-55. Langford has failed to even allege how this amounts to being unprepared for his testimony, much less shown deficient performance by counsel.

Therefore, this claim is denied.

Langford next complains that "pointing to holes in the State's case [was] not a strategy." Petition Ground One I1; Memo at 29. Langford misunderstands the defense's responsibility in a criminal trial. The defense is not required to present evidence or "prove" anything. Instead, the defense is responsible for requiring the State to prove its case beyond a reasonable doubt. Pointing to holes in the State's case is the way to establish reasonable doubt for the jury, and counsel was not ineffective for attempting to establish reasonable doubt. Indeed, this strategy was apparently effective as Langford was ultimately convicted of only one of the twelve counts. Langford has not established the counsel was ineffective for directing the jury to ways to find reasonable doubt and this claim is therefore denied.

Langford additionally contends that his counsels should have filed a motion for new trial based on lack of evidence. Memo at 29; Petition Ground One K1. Not only has Langford not established that there was not sufficient evidence to convict him of one count of Lewdness with a Child Under the Age of 14, he utterly fails to address why any competent counsel would request a new trial when a defendant was found not guilty of eleven of twelve counts. Choosing to accept one conviction which was supported by the evidence presented rather than risk going to trial again and being convicted of twelve serious charges was not objectively unreasonable. Moreover, Langford has failed to show that such a motion would have been granted. He cannot show that there was a lack of evidence nor that he was entitled to a new trial based on such; he has therefore not established prejudice. Because he has not shown deficient performance nor prejudice, this claim is denied.

Langford next complains that his counsel did not call the original investigator who was assigned to his case. Memo at 32; Petition Ground One L1. This claim is bare and naked. Langford states that counsel said "she would call [the] investigator as a witness during trial and never did." Memo at 32. However, he fails to identify when or to whom counsel said she would call the investigator, nor does he show what the investigator would have testified to. It is trial counsel's responsibility to decide which witnesses to call, and Langford has not shown that counsel's decision not to call the investigator was objectively unreasonable nor that he

was prejudices by that decision. Therefore, this claim is denied.

Langford also argues that counsel was ineffective for not moving for a directed verdict, not moving to dismiss or seeking a bill of particulars, for not objecting to a lack of corroborating evidence, and based on "due process, combined trial errors." Petition Grounds One I, K, C1, and J1. Langford does not appear to address these claims in his memo and they are therefore bare and naked. Petitions must allege specific facts to support the claims, and those that do not are insufficient to support relief. NRS 34.735(6); Hargrove, 100 Nev. at 502, 686 P.2d at 225. Because Langford has failed to allege facts to support these claims, they are denied.

All of Langford's claims regarding ineffective assistance of trial counsel are either bare and naked, belied by the record, or he has failed to establish that counsel's performance was objectively unreasonable and caused him prejudice. Because Langford has failed to establish even one instance of ineffective assistance of trial counsel, these claims are denied.

II. APPELLATE COUNSEL WAS NOT INEFFECTIVE

The federal courts have held that in order to claim ineffective assistance of appellate counsel, the defendant must satisfy the two-prong test of deficient performance and prejudice set forth by Strickland, 466 U.S. at 687-688, 694. See Williams v. Collins, 16 F.3d 626, 635 (5th Cir. 1994); Hollenback v. United States, 987 F.2d 1272, 1275 (7th Cir. 1993); Heath v. Jones, 941 F.2d 1126, 1130 (11th Cir. 1991).

Further, there is a strong presumption that counsel's performance was reasonable and fell within "the wide range of reasonable professional assistance." See United States v. Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990). The Nevada Supreme Court has held that all appeals must be "pursued in a manner meeting high standards of diligence, professionalism and competence." Burke, 110 Nev. at 1368, 887 P.2d at 268. To prove that appellate counsel's alleged error was prejudicial, a defendant must show that the omitted issue would have had a reasonable probability of success on appeal. See Duhamel v. Collins, 955 F.2d 962, 967 (5th Cir. 1992); Heath, 941 F.2d at 1132.

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The defendant has the ultimate authority to make fundamental decisions regarding his case. Jones v. Barnes, 463 U.S. 745, 751 (1983). However, the defendant does not have a constitutional right to "compel appointed counsel to press nonfrivolous points requested by the client, if counsel, as a matter of professional judgment, decides not to present those points." Id. In reaching this conclusion the United States Supreme Court has recognized the "importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues." Id. at 751 -752. In particular, a "brief that raises every colorable issue runs the risk of burying good arguments. . .in a verbal mound made up of strong and weak contentions." Id. 753. The Court also held that, "for judges to second-guess reasonable professional judgments and impose on appointed counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy." Id. at 754.

Here, Langford asserts that appellate counsel was ineffective for not raising the substantive claims he raises here (sufficiency of the evidence; actual innocence; that the NRS are unconstitutional; prosecutorial misconduct; and cumulative error). As discussed infra, each of those claims are without merit and would have been frivolously raised by appellate counsel. Langford can therefore not show that his counsel's performance was deficient. Moreover, because Langford cannot show that any of these issues would have had a reasonable probability of success on appeal he cannot show he was prejudiced. Thus, these issues cannot serve to support a claim of ineffective assistance of counsel.

Langford also complains that his appellate counsel did not sufficiently argue the claim regarding the District Court's denial of his motion to compel the victim's counseling records. Specifically, he argues that "counsel provided outdated case law [regarding the argument on appeal about the victim's psychological records], and failed to quote Nevada Supreme Court and United States Supreme [Court] rulings that say this stuff has to be handed over." Memo at 38. However, Langford has failed to identify any case law which was "outdated" or missing with regard to the counseling records.[3] Bare and naked claims are not sufficient to entitle

[3] In its Order of Affirmance, the Nevada Supreme Court noted that Langford argued the records were required under Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972), and United States v. Bagley, 473 U.S. 667

Langford to relief, and this claim is denied. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

Finally, Langford argues that his appellate counsel was ineffective for "sumitt[ing] a dead-bang winner." Petition at 7; see also Memo at 38-39. Langford seems to be arguing that appellate counsel improperly raised some arguments which distracted from other, stronger arguments. Memo at 38. However, Langford has failed to identify any other claims which had a reasonable probability of winning on appeal, and therefore cannot show that he was prejudiced by any alleged error in appellate counsel's performance.

For these reasons, this claim is without merit. Therefore, this claim must be, and is, denied.

III. LANGFORD'S CLAIM OF INSUFFICIENT EVIDENCE IS WAIVED

NRS 34.810(1) reads:

> The court shall dismiss a petition if the court determines that:
>
> (a) The petitioner's conviction was upon a plea of guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea was involuntarily or unknowingly or that the plea was entered without effective assistance of counsel.
>
> (b) The petitioner's conviction was the result of a trial and the grounds for the petition could have been:
>
> . . .
>
> (2) Raised in a direct appeal or a prior petition for a writ of habeas corpus or postconviction relief.

The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must first be pursued in post-conviction proceedings...[A]ll other claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings." Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). "A court must dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646-

(1985). Order of Affirmance, Case Number 70536, p.4. All of those cases are still valid and relevant law which are not "outdated."

47, 29 P.3d 498, 523 (2001).

"To establish good cause, appellants must show that an impediment external to the defense prevented their compliance with the applicable procedural rule." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. "A qualifying impediment might be shown where the factual or legal basis for a claim was not reasonably available at the time of default." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003). The Court continued, "appellants cannot attempt to manufacture good cause[.]" Id. at 621, 81 P.3d at 526. Examples of good cause include interference by State officials and the previous unavailability of a legal or factual basis. See State v. Huebler, 128 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012). In order to establish prejudice, the defendant must show "'not merely that the errors of [the proceedings] created possibility of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state proceedings 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, 102 S. Ct. 1584, 1596 (1982)).

Langford here cannot show that an impediment external to the defense prevented him raising this issue on appeal. Nothing has changed regarding the facts or the law since Langford's appeal. Indeed, counsel could have brought this claim if it were relevant. However, this claim has no merit and counsel properly chose not to raise a frivolous claim.

The standard of review for sufficiency of the evidence upon appeal is whether the jury, acting reasonably, could have been convinced of the defendant's guilt beyond a reasonable doubt. Edwards v. State, 90 Nev. 255, 258-59, 524 P.2d 328, 331 (1974). In reviewing a claim of insufficient evidence, the relevant inquiry is "whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Origel-Candid v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998) (quoting Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984)); see also Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979). "Where there is substantial evidence to support a jury verdict, it [the verdict] will not be

disturbed on appeal." Smith v. State, 112 Nev. 1269, 927 P.2d 14, 20 (1996); Kazalyn v. State, 108 Nev. 67, 71, 825 P.2d 578, 581 (1992); Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Moreover, "it is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of the witnesses." Origel-Candido, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (quoting McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992)); see also Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221 (1979) (Court held it is the function of the jury to weigh the credibility of the identifying witnesses); Azbill v. Stet, 88 Nev. 240, 252, 495 P.2d 1064, 1072 (1972) (In all criminal proceedings, the weight and sufficiency of the evidence are questions for the jury; its verdict will not be disturbed if there is evidence to support it and the evidence will not be weighed by an Appellate Court) (cert. denied by 429 U.S. 895, 97 S. Ct. 257 (1976)). This does not require this Court to decide whether "it believes that the evidence at the trial established guilt beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. at 319-20, 99 S. Ct. at 2789 (quoting Woodby v. INS, 385 U.S. 895, 87 S. Ct. 483, 486 (1966)). This standard thus preserves the fact finder's role and responsibility "[to fairly] resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." Id. at 319, 99 S. Ct. at 2789. Also, the Nevada Supreme Court has consistently held that circumstantial evidence alone may sustain a conviction. Deveroux v. State, 96 Nev. 388, 391, 610 P.2d 722, 724 (1980) (citing Crawford v. State, 92 Nev. 456, 552 P.2d 1378 (1976)).

Here, the State presented testimony by H.H. detailing the molestation by Langford. Additionally, she told police where they could find the towel used by Langford while he was molesting her, and both her DNA and Langford's DNA was found on that towel. Taken in the light most favorable to the prosecution, it is eminently possible that a reasonable jury could have been convinced of Langford's guilt beyond a reasonable doubt based on this evidence. Therefore, Langford cannot show prejudice to overcome his waiver of this claim.

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Moreover, Langford's claim of "actual innocence" is without merit. The United States Supreme Court has held that in order for a defendant to obtain a reversal of his conviction based on a claim of actual innocence, he must prove that "'it is more likely than not that no reasonable juror would have convicted him in light of the new evidence' presented in habeas proceedings." Calderon v. Thompson, 523 U.S. 538, 560, 118 S. Ct. 1489, 1503 (1998) (quoting Schlup v. Delo, 513 U.S. 298, 327, 115 S. Ct. 851, 867 (1995)). In an effort to support his claim of actual innocence, Langford focuses on inconsistences in the victim's statement and on her testimony at the preliminary hearing. Memo at 41-66. This is not an affirmative showing of innocence. Moreover, the victim's testimony at the preliminary hearing is of no consequence since he was convicted at trial. See Lisle v. State, 114 Nev. 221, 224, 954 P.2d 744, 746 (1998) (Any effort from a grand jury proceeding is harmless when a defendant is found guilty, beyond a reasonable doubt, at trial). Because Langford has not even properly alleged actual innocence, he cannot show prejudice to overcome his waiver of this issue. Therefore, this fails.

For these reasons, this claim is waived and is therefore denied.

IV. LANGFORD'S CLAIM REGARDING ABUSE OF DISCRETION BY THIS COURT IS BARRED BY LAW OF THE CASE

Langford next complains that this Court abused its discretion by denying him access to H.H.'s psychology records.

As discussed supra, the court must deny a petition if the claims raised within could have been raised in a direct appeal. Indeed, Langford did raise this claim on direct appeal, and the Supreme Court ruled that he was not entitled to the victim's counseling records. Thus, this claim is barred by the law of the case doctrine. "The law of a first appeal is law of the case on all subsequent appeals in which the facts are substantially the same." Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). "The doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings." Id. at 316, 535 P.2d at 799. Under the law of the case doctrine, issues previously

decided on direct appeal may not be reargued in a habeas petition. Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing McNelton v. State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this Court cannot overrule the Nevada Supreme Court. NEV. CONST. Art. VI § 6. As such, since the Nevada Supreme Court has already rejected this claim, it is barred by the law of the case and must also be denied here.

Moreover, if this issue were considered it would still fail because Langford cannot show that he was entitled to the H.H.'s psychological records, and this Court properly so ruled. The victim began counseling after Langford molested her, and he has been seeking her counseling records ever since he found this out, claiming that he is entitled to them under Brady and its progeny. In the pre-trial pleadings, Langford asked that the mental health records be produced from third party treatment provider Mojave Health. In addition to his request to compel production directly from the provider, Langford also argued that the State had an obligation to turn over the records under Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963) and Giglio v. United States, 405 U.S. 150 (1972). In doing so, he asked this Court to expand the State's discovery obligations beyond the relevant statute and case law. That request for the victim's psychological records was overbroad with regard to both the State and Mojave Health, and was not supported by Nevada statutes on discovery in criminal cases.

The Nevada Revised Statutes provide the discovery obligations for the State. NRS 174.235 outlines what discovery is to be provided by the State of Nevada. It includes:

> 1. Written or recorded statements or confessions made by the defendant or any witness the State intends to call during the case in chief of the State, within the custody of the State or which the State can obtain by an exercise of due diligence. (1)(a).
>
> 2. Results or reports of physical or mental examinations, scientific tests or scientific experiments made in connection to the case, within the control of the State, or which the State may learn of by an exercise of due diligence. (1)(b).
>
> 3. Books, papers, documents, tangible objects which the State intends to introduce during its case in chief, within the possession of the State, or which the State may find by an exercise of due diligence. (1)(c).

The statute makes clear that the defense is not entitled to any internal report, document,

or memorandum prepared by the State in connection with the investigation or prosecution of the case, nor is the defense entitled to any report or document that is privileged. Multiple provisions of the Nevada Revised Statutes govern the privileged nature of treatment information. Under NRS 49.209:

> A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications between himself and his psychologist or any other person who is participating in the diagnosis or treatment under the direction of the psychologist, including a member of the patient's family.

(emphasis added).

Similarly, NRS 49.225 provides that:

> A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications among himself, his doctor or persons who are participating in the diagnosis or treatment under the direction of the doctor, including members of the patient's family

Finally, under NRS 49.252:

> A client has a privilege to refuse to disclose, and to prevent any other person from disclosing confidential communications among himself, his social worker or any other person who is participating in the diagnosis or treatment under the direction of the social worker.

Thus, pursuant to the above statutes, neither the State nor Langford were entitled to the treatment records as they were in the presence of a third party and were privileged and confidential. There is no evidence that privilege was waived at any point by H.H. Therefore, this Court did not abuse its discretion by denying Langford's Motion.

Despite the clear statutory prohibitions barring his request, Langford nonetheless claimed that the State had an obligation, pursuant to Brady, to provide the victim's mental health treatment records because the records were exculpatory. Brady disclosures are distinct from statutory discovery obligations. See Weatherford v. Bursy, 429 U.S. 545, 559, 97 S. Ct. 837, 846 (1977) ("There is no general constitutional right to discovery in a criminal case, and Brady did not create one...'the Due Process Clause has little to say regarding the amount of discovery which the parties must be afforded.'" (internal citations omitted)). As such, determining whether the state adequately disclosed information under Brady requires

consideration of both factual circumstances and legal issues.

Brady and its progeny require a prosecutor to disclose evidence favorable to the defense when that evidence is material either to guilt or to punishment. See Jimenez v. State, 112 Nev. 610, 618-19, 918 P.2d 687, 692 (1996); Mazzan, 116 Nev. at 66, 993 P.2d at 36. To establish a Brady violation, a defendant must demonstrate that: (1) the prosecution suppressed evidence in its possession; (2) the evidence was favorable to the defense; and (3) the evidence was material to an issue at trial. See, e.g., Mazzan, 116 Nev. at 67, 993 P.2d at 37. An accused cannot complain that exculpatory evidence has been suppressed by the prosecution when the information is known to him or could have been discovered through reasonable diligence. Rippo v. State, 113 Nev. 1239, 1258, 946 P.2d 1017, 1029 (1997). Conclusory allegations of Brady violations, unsupported by specific facts, are insufficient to justify extraordinary relief. Jones v. Gomez, 66 F.3d 199, 204 (9th Cir. 1995).

> [E]vidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome.

United States v. Bagley, 473 U.S. 667, 683, 105 S. Ct. 3375, 3383 (1985). "The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense." United States v. Agurs, 427 U.S. 97, 111, 96 S. Ct. 2392, 2400 (1976).

The State accepted its continuing disclosure obligation as defined in Brady and its progeny. The rule in Brady requires the State to disclose to the defendant exculpatory evidence and is founded on the constitutional requirement of a fair trial. Brady is not a rule of discovery, however. As the United State Supreme Court held in Weatherford, there is no general constitutional right to discovery in a criminal case, and Brady did not create one. 429 U.S. at 559, 97 S. Ct. at 846.

Brady has been interpreted to require prosecutors, in the absence of any specific request, to turn over all obviously exculpatory material. Agurs, 427 U.S. 97, 96 S. Ct. 2392. However, Brady does not require the State to conduct an investigation on behalf of the defense

in order to obtain records that it does not possess and then disclose them. Langford moved to compel production of the victim's mental health records from Mojave Mental Health and Psychologist Lisa Schaeffer. These records were not within the State's possession.[4] The State had no burden to obtain and produce records that it never had, and this Court did not abuse its discretion by so ruling.

While the fact that the records were never in the State's possession was sufficient to make his claim of a Brady violation meritless, Langford's claim further failed because he did not make a showing under the remaining two prongs of Brady. He did not show that the records would have been favorable to the defense. Given that the counseling records exist only because H.H. sought treatment after Langford's sexual abuse, logic would dictate that they are more likely to be harmful than helpful, as their very existence is predicated on his assault of his stepdaughter.

Likewise, Langford failed to meet his burden of demonstrating that the records would have changed the outcome of the trial. Steese v. State, 114 Nev. 479, 492, 960 P.2d 321, 330 (1998) ("Evidence is material when there is a reasonable probability that had the evidence been available to the defense, the result of the proceeding would have been different."). Langford offered no explanation for why or how records of treatment the victim received as a result of his abuse would have changed the outcome of the trial, particularly given that the State presented DNA evidence (including semen stains) that corroborated the victim. The evidence Langford demanded was neither in the possession of the State nor was it material, and this Court properly denied the Motion to Compel.

Moreover, Langford failed to show that this Court should have compelled discovery of the records from the mental health provider because they could be used to impeach the victim. Under Giglio, the State must disclose evidence that affects the credibility of prosecution witnesses. Giglio v. United States, 405 U.S. 150, 153-55, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972); Mazzan, 116 Nev. at 67, 993 P.2d at 37. Giglio did not create a constitutional right to pretrial discovery of all potential witnesses from any source. As with Brady, in order to be

[4] Nor could they be without overcoming the statutory privileges as discussed supra.

entitled to disclosure of information under Giglio, a defendant must show that (1) the prosecution suppressed evidence in its possession; (2) the evidence was favorable to the defense; and (3) the evidence was material to an issue at trial. See Smith v. Secretary Dept. of Corrections, 50 F.3d 801, 824-26 (10th Cir. 1995).

As discussed supra, the State was not in possession of the treatment records, and could not have obtained them because they are privileged by statute. Additionally, Langford failed to meet his burden of any showing whatsoever that the treatment records would have been exculpatory. The very nature of the treatment – counseling sought by H.H. because of Langford's sexual abuse – makes them more likely to be harmful than exculpatory. Moreover, the nondisclosed information must be material if a defendant is to be entitled to relief under Giglio. Kyles v. Whitley, 514 U.S. 419, 433-34, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995). In Giglio, for example, the government's case depended almost entirely on the alleged co-conspirator's testimony. Giglio, 405 U.S. at 154, 92 S. Ct. at 766. Therefore, the United States Supreme Court reasoned, nondisclosure by the government of evidence relevant to the co-conspirator's credibility would have affected the outcome of the trial. Id. In contrast, the State's case against Langford was not built solely on H.H.'s testimony. Instead, the evidence introduced by the State included testimony of other witnesses and corroborating DNA evidence. Langford failed to make even a cursory showing of how the treatment records, which exist only because H.H. sought counseling as a result of the sexual abuse she suffered, would have been favorable and could have changed the outcome of a trial in which physical evidence confirmed H.H.'s testimony. Therefore, this Court did not abuse its discretion by denying Langford's Motion.

For these reasons, this claim is barred by the law of the case since the Nevada Supreme Court has already considered and denied this claim. Moreover, even if this claim had been considered, it still fails. Accordingly, this claim is denied.

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V. LANGFORD'S CLAIM OF PROSECUTORIAL MISCONDUCT IS WAIVED

Pursuant to NRS 34.810(1)(b)(2), the court shall dismiss a petition if it determines that the petitioner's conviction was the result of a trial and the grounds for the petition could have been raised in a direct appeal or any other proceeding that the petitioner has taken to secure relief from his conviction and sentence. Similarly, the Nevada Supreme Court has explained that all claims that are appropriate for a direct appeal except for challenges to the validity of a guilty plea and ineffective assistance of counsel claims "must be pursued on direct appeal, or they will be considered waived in subsequent proceedings." Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994).

Here, Langford alleges that the State committed misconduct by allegedly: misstating facts during closing argument; presenting false evidence and perjured testimony; prosecuting him under unconstitutional law; and committing misconduct in discovery. Because prosecutorial misconduct is one of the many issues that must be pursued on direct appeal, lest the issue be waived, see Lara v. State, 120 Nev. 177, 179, 87 P.3d 528, 529 (2004) (holding that the district court properly denied a prosecutorial misconduct claim first raised in a petition for habeas corpus because the claim should have been raised on direct appeal), this Court must deny the Petition.

Moreover, Langford cannot show good cause to overcome this waiver because the law and facts were available to him at the time of his appeal. Likewise, he cannot show prejudice to overcome this waiver because this claim is without merit. The Nevada Supreme Court employs a two-step analysis when considering claims of prosecutorial misconduct. Valdez v. State, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). First, the Court determines if the conduct was improper. Id. Second, the Court determines whether the misconduct warrants reversal. Id. As to the first factor, argument is not misconduct unless "the remarks...were 'patently prejudicial.'" Riker v. State, 111 Nev. 1316, 1328, 905 P.2d 706, 713 (1995) (quoting Libby v. State, 109 Nev. 905, 911, 859 P.2d 1050, 1054 (1993)). Notably, "statements by a prosecutor, in argument...made as a deduction or conclusion from the evidence introduced in

the trial are permissible and unobjectionable." Parker v. State, 109 Nev. 383, 392, 849 P.2d 1062, 1068 (1993) (quoting Collins v. State, 87 Nev. 436, 439, 488 P.2d 544, 545 (1971)). Further, the State may respond to defense theories and arguments. Williams v. State, 113 Nev. 1008, 1018-19, 945 P.2d 438, 444-45 (1997) (receded from on other grounds by Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000)).

With respect to the second step, the Court will not reverse if the misconduct was harmless error, which depends on whether it was of constitutional dimension. Valdez, 124 Nev. at 1188, 196 P.3d at 476. Error of a constitutional dimension requires impermissible comment on the exercise of a specific constitutional right, or if in light of the proceedings as a whole, the misconduct "so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id. at 1189, 196 P.3d at 477. If the error is not of a constitutional dimension, the Court will reverse only if the error substantially affected the jury's verdict. Id.

Importantly, a defendant is entitled to a fair trial, not a perfect one, and therefore "a criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone[.]" United States v. Young, 470 U.S. 1, 11, 105 S. Ct. 1038, 1044 (1985); see also Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1105 (1990). "[W]here evidence of guilt is overwhelming, even aggravated prosecutorial misconduct may constitute harmless error." Smith v. State, 120 Nev. 944, 948, 102 P.3d 569, 572 (2004) (citing King v. State, 116 Nev. 349, 356, 998 P.2d 1172, 1176 (2000)). In determining prejudice, the Court considers whether a comment had: 1) a prejudicial impact on the verdict when considered in the context of the trial as a whole; or 2) seriously affects the integrity or public reputation of the judicial proceedings. Rose v. State, 123 Nev. 194, 208-209, 163 P.3d 408, 418 (2007).

Where a defendant fails to offer a contemporaneous objection, the Court will only review claims of prosecutorial misconduct for plain error. Hernandez, 118 Nev. at 525, 50 P.3d at 1109. Plain error asks whether an error is "so unmistakable that it reveals itself by a casual inspection of the record." Patterson, 111 Nev. at 1530, 907 P.2d at 987 (internal citations omitted); Sterling, 108 Nev. at 394, 834 P.2d at 402. In determining whether an error

is plain this Court must consider "whether there was 'error,' whether the error was 'plain' or clear, and whether the error affected the defendant's substantial rights. Additionally, the burden is on an appellant to show actual prejudice or a miscarriage of justice." Green, 119 Nev. at 545, 80 P.3d at 95 (footnote omitted).

Here, Langford claims that CPS did not properly investigate this case because they did not collect DNA samples from everyone living in the house and, therefore, the State presented testimony of "false and misleading DNA reports." Memo at 87.[5] However, not collecting DNA evidence from everyone living in the house does not indicate that the DNA that was collected was in any way improper or incorrect. Langford's and H.H.'s DNA was found on the towel Langford used when he molested H.H. – DNA testing of additional people would not have changed that fact.

Langford next argues that the State knowingly presented perjured testimony because of the discrepancies in H.H.'s testimony. Memo at 91. However, in spite of any alleged discrepancies by the victim, Langford has failed to prove that H.H. offered perjured testimony rather than making incongruent statements that would be expected from a fourteen year old victim witness, testifying against her stepfather about molestation events that began when she was seven or eight years old. Moreover, assuming arguendo that H.H. did commit perjury, Langford has failed to show that the State knowingly presented such false testimony.

Langford also complains about the State's truthful statement during closing argument that defendants wait until the end of the trial to decide whether or not to testify. Memo at 92. He claims that the State bolstered their witnesses by arguing that Langford had heard all of the testimony of other witnesses before testifying himself. Memo at 93. Not only was this fact obvious to the jurors who sat through the trial, it does not amount to bolstering the State's witnesses. Such a statement was not patently prejudicial, particularly because the jurors were aware that Langford heard the other testimony before he testified himself.

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[5] In Langford's Memo pages 87, 88, and 90 are minimized and overlapping on one page, and page 89 appears to be missing altogether.

Finally, Langford continues to complain about this Court's ruling on the victim's counseling records. As discussed supra, Langford was not entitled to H.H.'s counseling records and the State did not engage in prosecutorial misconduct by not providing him with discovery to which he was not entitled, and which the State did not have in its possession. Because Langford's claim of prosecutorial misconduct is without merit, he cannot show prejudice to overcome his waiver of this issue. Thus, this claim is denied.

Therefore, this claim is waived. Moreover, even if this claim were considered, it is without merit. As such, this claim must be, and is, denied.

VI. LANGFORD'S CLAIM REGARDING THE CONSTITUTIONALITY OF THE NEVADA REVISED STATUTES IS WAIVED

As with the majority of Langford's other claims, his argument regarding the constitutionality of the NRS is waived because it was not raised on direct appeal. As such, this claim is denied.

Moreover, Langford has failed to address good cause for his failure to raise it on appeal, nor can he show that he will be prejudiced by not considering it here because this claim is without merit. "Statutes are presumed to be valid, and the challenger bears the burden of showing that a statute is unconstitutional. In order to meet that burden, the challenger must make a clear showing of invalidity." Silvar v. Eighth Judicial Dist. Court, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006).

"'[E]very reasonable construction must be resorted to, in order to save a statute from unconstitutionality.'" State v. Castaneda, 245 P.3d 550, 552, 126 Nev. 478, 481 (2010) (quoting Hooper v. California, 155 U.S. 648, 657, 15 S. Ct. 207 (1895)); accord Virginia & T. R.R. v. Henry, 8 Nev. 165, 174 (1873) ("It requires neither argument nor reference to authorities to show that when the language of a statute admits of two constructions, one of which would render it constitutional and valid and the other unconstitutional and void, that construction should be adopted which will save the statute."). The constitutionality of a statute is a question of law that the Court reviews de novo. Berry v. State, 125 Nev. 265, 279, 212 P.3d 1085, 1095 (2009).

Moreover, as with his other waived claims, Langford has again failed to show good cause and prejudice to overcome his waiver. As to Langford's argument that SB 182 is void because it violates Nevada's Constitutional requirement of separation of powers, Memo at 103, "one of the settled maxims in constitutional law is that the power conferred upon the Legislature to make laws cannot be delegated to any other body or authority." Banegas v. State Industrial Insurance System, 117 Nev. 222, 227, 19 P.3d 245, 248 (2001) (quoting Nev. Const. Art. 3, § 1). However, it is likewise settled that no such delegation occurs where the legislature does not delegate its power to actually make laws. See Villanueva v. State, 117 Nev. 664, 668, 27 P.3d 443, 446 (2001); State v. Shaughnessy, 47 Nev. 129, 217 P. 581, 583 (1923); Marshall Field & Co. v. Clark, 143 U.S. 649, 12 S. Ct. 495 (1892).

The Statute Revision Commission was created by:

> enactment, by the 45th Session of the Legislature of the State of Nevada, of chapter 304, Statutes of Nevada 1951 (subsequently amended by chapter 280, Statutes of Nevada 1953, and chapter 248, Statutes of Nevada 1955), which created the Statute Revision Commission and authorized the Commission to undertake, for the first time in the state's history, a comprehensive revision of the laws of the State of Nevada of general application.

Legislative Counsel's Preface to the Nevada Revised Statutes, available at http://www.leg.state.nv.us/Division/Research/Library/Documents/HistDocs/Preface.pdf. This committee was charged with compiling and revising the existing Statutes of Nevada:

> [T]o the end that upon the convening of the 1957 legislature Nevada Revised Statutes was ready to present for approval. By the provisions of chapter 2, Statutes of Nevada 1957, Nevada Revised Statutes, consisting of NRS 1.010 to 710.590, inclusive, was 'adopted and enacted as law of the State of Nevada.'

Foreword to the Nevada Revised Statutes, available at https://www.leg.state.nv.us/Division/Research/Library/Documents/HistDocs/Foreword.pdf (emphasis added); see also Legislative Counsel's Preface to the Nevada Revised Statutes ("This bill, Senate Bill No. 2. . .was passed without amendment or dissenting vote, and on January 25, 1957, was approved by Governor Charles H. Russell.").

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Langford alleges that the presence of three Nevada Supreme Court justices on the Statute Revision Commission was an improper delegation of legislative power to the judicial branch. A bill may originate in either house, Nevada Constitution Art. 4, § 16, at which point it must pass through the procedures enumerated in Art. 4, § 18, and be signed by the governor, Art. 4, § 35, before it may become a law. Langford—who has the burden of demonstrating unconstitutionality—presents no authority holding that a statute may not be drafted, revised, or compiled by an extra-legislative body before it originates in a house of the legislature. Moreover, as the Commission took no part in any of the steps enumerated in Art. 4, it did not actually make any law. Consequently, no improper delegation of legislative authority occurred where Senate Bill No. 2 originated in the Senate, was presented to the Legislature, and was duly adopted, signed, and enacted. As such, the Nevada Revised Statutes are not unconstitutional.

Langford's claim that the Legislative Counsel Bureau is unconstitutional because it required the three justices on the commission to hold a second "office" is likewise unpersuasive. Memo at 103. NRS 261A.160 defines a public officer and reads:

> 1. Public officer means a person who is:
>
> (a) Elected or appointed to a position which:
>
> (1) Is established by the Constitution of the State of Nevada, a statute of this State or a charter or ordinance of any county, city or other political subdivision; and
>
> (2) Involves the exercise of a public power, trust or duty; or
>
> (b) Designated as a public officer for the purposes of this chapter pursuant to NRS 281A.182.
>
> 2. As used in this section, 'the exercise of a public power, trust or duty' means:
>
> (a) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy;
>
> (b) The expenditure of public money; and
>
> (c) The administration of laws and rules of the State or any county, city or other political subdivision.

3. Public officer does not include:

(a) Any justice, judge or other officer of the court system;

(b) Any member of a board, commission or other body whose function is advisory;

...

4. Public office does not include an office held by:

(a) Any justice, judge or other officer of the court system;

(b) Any member of a board, commission or other body whose function is advisory;

...

(emphasis added).

In the case of the commission established by SB 182, its members did not administer any laws or rules of the State. Rather, they were tasked with "check[ing] all revisions," which were later "adopted and enacted as law of the State of Nevada." Foreword to the Nevada Revised Statutes, available at https://www.leg.state.nv.us/Division/Research/Library/Documents/HistDocs/Foreword.pdf. The commission members were simply in charge of revising and compiling existing law in order for the Legislature to vote on. SB 182. In that way, they were more like an advisory commission to the Legislature. The commission determined how to organize and arrange existing law, as well as how to best word the existing statutes. They then gave their product to the Legislature as a recommendation for the best way to organize Nevada's statutes – the Legislature was free to take or reject the commission's advice, because the commission had no power to enact the revised statutes itself. Because the commission had no power to enact the revised statutes, it served as an advisory commission for the Legislature and was therefore not comprised of public officers.

Langford's claim that SB 2 (which enacted the suggested revisions) is void because it contained more than one subject matter in violation of Art. 4, §17 of the Nevada Constitution is also without merit. Memo at 96. SB 2 was titled:

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> An act to revise the laws and statutes of the State of Nevada of a general or public nature; to adopt and enact such revised laws and statutes, to be known as the Nevada Revised Statues, as the law of the State of Nevada; to repeal all prior laws and statutes of a general, public and permanent nature; providing penalties; and other matters relating thereto.

Because the statutes were preexisting, the subject matter of SB 2 was the revocation and revision of the previous statutory scheme. The laws themselves were preexisting and continued to exist; the organization of those laws changed with the revision. Because SB 2 dealt with one subject only, it did not violate Art. 4, §17 and Langford's claim is without merit.

As to Langford's claim that the process of revising the Nevada Statues was unconstitutional because there was only one enactment, Memo at 96, Langford is again incorrect. While it is well-established that the laws of Nevada must include an enacting clause, the Nevada Revised Statutes do not have the same requirement, as they are not laws enacted by the legislature. Instead, the Nevada Revised Statutes consist of previously enacted laws, which have been classified, codified, and annotated by the Legislative Counsel. See NRS 220.120. Thus, the reason the Nevada Revised Statutes are referenced in criminal proceedings is because they "constitute the official codified version of the Statutes of Nevada and may be cited as prima facie evidence of the law." NRS 220.170(3) (emphasis added). Further, the content requirements for the Nevada Revised Statutes, as laid out in NRS 220.110, do not require the enacting clause to be republished in them. See NRS 220.110. Therefore, the lack of an enacting clause in the Nevada Revised Statutes does not render them unconstitutional and Langford's claim is without merit.

This claim is waived and must be denied. Moreover, because Langford's claim regarding the constitutionality of the Nevada Revised Statutes is without merit, he has failed to show prejudice to overcome his waiver of this claim. Therefore, this claim is denied.

VII. LANGFORD FAILS TO DEMONSTRATE CUMULATIVE ERROR

In Ground Seven of his Petition, Langford argues that cumulative error denied him due process. However, because Langford fails to show any instances of error and fails to demonstrate cumulative error sufficient to warrant reversal, this claim is without merit.

The Nevada Supreme Court has not endorsed application of its direct appeal cumulative error standard to the post-conviction Strickland context. McConnell v. State, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009). Nor should cumulative error apply on post-conviction review. Middleton v. Roper, 455 F.3d 838, 851 (8th Cir. 2006) (cert. denied by 549 U.S. 1134, 1275 S. Ct. 980 (2007)) ("a habeas petitioner cannot build a showing of prejudice on series of errors, none of which would by itself meet the prejudice test").

Nevertheless, even where available, a cumulative error finding in the context of a Strickland claim is extraordinarily rare and requires an extensive aggregation of errors. See Harris By and Through Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995). In fact, logic dictates that there can be no cumulative error where the defendant fails to demonstrate any single violation of Strickland. See Turner v. Quarterman, 481 F.3d 292, 301 (5th Cir. 2007) ("where individual allegations of error are not of constitutional stature or are not errors, there is 'nothing to cumulate'") (quoting Yohey v. Collins, 985 F.2d 222, 229 (5th Cir. 1993)); Hughes v. Epps, 694 F.Supp.2d 533, 563 (N.D. Miss. 2010) (citing Leal v. Dretke, 428 F.3d 543, 552-553 (5th Cir. 2005)). Since Langford has not demonstrated any claim warrants relief under Strickland, there are no errors to cumulate.

In addressing a claim of cumulative error, the relevant factors are: (1) whether the issue of guilt is close; (2) the quantity and character of the error; and (3) the gravity of the crime charged. Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 854-5 (2000).

Here, the issue of guilt was not close as the evidence against Langford was overwhelming. H.H. testified that Langford molested her many times in a variety of ways. She told the police exactly where they could find the baby oil and semen covered towel used by Langford when he molested her, and both Langford's and H.H.'s DNA was found on the towel. Secondly, even assuming that some or all of Langford's allegations of deficiency have merit, he has failed to establish that, when aggregated, the errors deprived him of a reasonable likelihood of a better outcome at trial. Accordingly, even if counsel was in any way deficient, there is no reasonable probability that Langford would have received a better result but for the alleged deficiencies. Finally, Langford certainly has not shown that the cumulative effect of

these errors was so prejudicial as to undermine the court's confidence in the outcome of Langford's case. Therefore, Langford's cumulative error claim is without merit and is denied.

VIII. LANGFORD IS NOT ENTITLED TO THE APPOINTMENT OF COUNSEL

Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996) the Nevada Supreme Court similarly observed that "[t]he Nevada Constitution...does not guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution's right to counsel provision as being coextensive with the Sixth Amendment to the United States Constitution." McKague specifically held that with the exception of NRS 34.820(1)(a) (entitling appointed counsel when petitioner is under a sentence of death), one does not have "any constitutional or statutory right to counsel at all" in post-conviction proceedings. Id. at 164, 912 P.2d at 258.

However, the Nevada Legislature has given courts the discretion to appoint post-conviction counsel under NRS 34.750. NRS 34.750 reads:

> A petition may allege that the Defendant is unable to pay the costs of the proceedings or employ counsel. If the court is satisfied that the allegation of indigency is true and the petition is not dismissed summarily, the court may appoint counsel at the time the court orders the filing of an answer and a return. In making its determination, the court may consider whether:
>
> (a) The issues are difficult;
>
> (b) The Defendant is unable to comprehend the proceedings; or
>
> (c) Counsel is necessary to proceed with discovery.

(emphasis added). Under NRS 34.750, the court has discretion in determining whether to appoint counsel.

Here, Langford has already filed a Petition for Writ of Habeas Corpus. He drafted a 160 page Memo arguing seven grounds, each with multiple sub-claims, plus a Motion to Appoint Counsel and Request for Evidentiary Hearing. Langford is clearly able to comprehend the proceedings and represent himself. Moreover, as discussed supra, Langford's

Petition is summarily denied. Langford's claims are all without basis in the law. The vast majority of them are waived for failure to raise on appeal. His two appropriate claims, those of ineffective assistance of counsel, do not indicate a basis for relief. Because Langford's Petition is summarily denied, and because Langford has already filed a complete Petition, his motion for the appointment of counsel is denied.

IX. LANGFORD IS NOT ENTITLED TO AN EVIDENTIARY HEARING

NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

> 1. The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required. A petitioner must not be discharged or committed to the custody of a person other than the respondent unless an evidentiary hearing is held.
>
> 2. If the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, he shall dismiss the petition without a hearing.
>
> 3. If the judge or justice determines that an evidentiary hearing is required, he shall grant the writ and shall set a date for the hearing.

The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual allegations, which, if true, would entitle him to relief unless the factual allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that "[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is improper to hold an evidentiary hearing simply to make a complete record. See State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) ("The district court considered itself the 'equivalent of. . .the trial judge' and consequently wanted 'to make as complete a record as possible.' This is an incorrect basis for an evidentiary hearing.").

Further, the United States Supreme Court has held that an evidentiary hearing is not required simply because counsel's actions are challenged as being unreasonable strategic decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge post hoc rationalization for counsel's decision-making that contradicts the available evidence of counsel's actions, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. Id. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Id. (citing Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the objective reasonableness of counsel's performance, not counsel's subjective state of mind. 466 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

Here, Langford's Petition claims have no support in law, are belied by the record, or are waived because he did not address them on direct appeal. All of these claims can be resolved without expanding the record. Therefore, no evidentiary hearing is warranted and this request is denied.

ORDER

THEREFORE, **IT IS HEREBY ORDERED** that the Petition for Writ of Habeas Corpus (Post-Conviction), Memo in Support, Motion to Appoint Counsel, and Motion for Evidentiary Hearing shall be, and are, denied.

DATED this 30th day of May, 2018.

DISTRICT JUDGE

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

C 296556 ym.

BY _____ for
STEVEN WATERS
Chief Deputy District Attorney
Nevada Bar #006162

CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing was made this 29th day of MAY 2017, to:

JUSTIN LANGFORD, BAC#1159546
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

BY /s/ HOWARD CONRAD
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU

Clerk of the Courts
Steven D. Grierson

200 Lewis Avenue
Las Vegas, NV 89155-1160
(702) 671-4554

June 4, 2018

Case No.: C-14-296556-1

CERTIFICATION OF COPY

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

Order Denying Defendant's Motion to Modify and/or Correct Illegal Sentence and "Judicial Notice of Lack of Jurisdiction" filed 06/01/2018

Findings of Fact, Conclusions of Law and Order filed 06/01/2018

UNITED STATES OF AMERICA DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT COUNTY OF CLARK STATE OF NEVADA

now on file and of

In witness whereof, I have hereunto set my hand and affixed the seal of the Eighth Judicial District Court at my office, Las Vegas, Nevada, at 3:04 PM on June 4, 2018.

STEVEN D. GRIERSON, CLERK OF THE COURT