

Steven D. Grierson

DISTRICT COURT
CLARK COUNTY, NEVADA

ROY MORAGA,

CASE NO: A-18-782168-W

Petitioner,

Dept. No: VI

vs.

Electronically Filed
Feb 25 2019 08:56 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

ISIDOR BALA,

Respondent.

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that: Roy Moraga,
hereby Appeals the, Notice of entry of Findings of Fact,
CONCLUSIONS OF LAW AND Order Entered in by this Court
ON or About the, 5th day of Feb. 2019.

Dated this 10th day of Feb. 2019.

Respectfully Submitted,

Roy Moraga

Roy Moraga # 31584

N.N.C.C. P.O. Box 7000

CARSON CITY, NV 89702

RECEIVED
FEB 14 2019
CLERK OF THE COURT

ROY, D. MORGAN # 31584
N. N. C. P.O. Box 7000
CARSON CITY, NV 89702

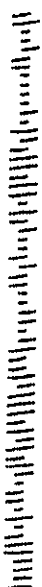
REHD NV 805

11 FEB 2019 PM 2 L

Legal
mail

Clerk of the County
200 Lewis Avenue 3rd Floor
LAS VEGAS, NEVADA 89155

BN 0156300



NORTHERN NEVADA CORRECTIONAL CENTER

FEB 11 1971

1 ASTA

2
3 Electronically Filed
02/20/2019

4 
5
6 CLERK OF THE COURT

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

10 ROY D. MORAGA,

11 Petitioner(s),

12 vs.

13 ISIDOR BACA,

14 Respondent(s),

Case No: A-18-782168-W

Dept No: VI

15
16
17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): Roy Moraga

19 2. Judge: James Bixlar

20 3. Appellant(s): Roy Moraga

21 Counsel:

22 Roy Moraga #31584
23 P.O. Box 7000
24 Carson City, NV 89702

25 4. Respondent (s): Isidor Baca

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.
Las Vegas, NV 89155

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

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

5 6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No

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

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

8 ***Expires 1 year from date filed*

9 Appellant Filed Application to Proceed in Forma Pauperis: Yes,
10 Date Application(s) filed: October 1, 2018

11 9. Date Commenced in District Court: October 1, 2018

12 10. Brief Description of the Nature of the Action: Civil Writ

13 Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus

14 11. Previous Appeal: No

15 Supreme Court Docket Number(s): N/A

16 12. Child Custody or Visitation: N/A

17 13. Possibility of Settlement: Unknown

18 Dated This 20 day of February 2019.

19 Steven D. Grierson, Clerk of the Court

20 /s/ Amanda Hampton

21 Amanda Hampton, Deputy Clerk

22 200 Lewis Ave

23 PO Box 551601

24 Las Vegas, Nevada 89155-1601

25 (702) 671-0512

26 cc: Roy Moraga

CASE SUMMARY

CASE NO. A-18-782168-W

Roy Moraga, Plaintiff(s)
vs.
Isidor Baca, Defendant(s)

§
§
§
§
§

Location: **Department 6**
 Judicial Officer: **Vacant, DC 6**
 Filed on: **10/01/2018**
 Case Number History:
 Cross-Reference Case Number: **A782168**

CASE INFORMATION

Related Cases

89C092174 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Statistical Closures

01/31/2019 Other Manner of Disposition

Case Status: **01/31/2019 Closed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-18-782168-W
 Court Department 6
 Date Assigned 01/07/2019
 Judicial Officer Vacant, DC 6

PARTY INFORMATION

Plaintiff Moraga, Roy D

Lead Attorneys

Pro Se

Defendant Baca, Isidor







Sweetin, James R
Retained
 7026712699(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX


EVENTS

10/01/2018	 Petition for Writ of Habeas Corpus Filed by: Plaintiff Moraga, Roy D <i>Petition for Writ of Habeas Corpus (Post Conviction)</i>
10/01/2018	 Application to Proceed in Forma Pauperis Filed By: Plaintiff Moraga, Roy D <i>No Order Attached</i>
10/04/2018	Trigger for Original Proceedings Packet
10/16/2018	 Order for Petition for Writ of Habeas Corpus
11/09/2018	 Motion for Appointment of Attorney Filed By: Plaintiff Moraga, Roy D <i>Motion for Appointment of Counsel Pursuant to NRS 34.750</i>
11/30/2018	 Response <i>State's Response to Defendant s Petition for Writ of Habeas Corpus (Post-Conviction)</i>
12/26/2018	 Reply


CASE SUMMARY


CASE NO. A-18-782168-W

Filed by: Plaintiff Moraga, Roy D
Petitioner's Reply and Objection to State's Response to Habeas - Corpus

01/31/2019  Order to Statistically Close Case
Civil Order to Statistically Close Case


01/31/2019  Findings of Fact, Conclusions of Law and Order

02/05/2019  Notice of Entry
Notice of Entry of Findings of Fact, Conclusions of Law and Order

02/14/2019  Notice of Appeal
Filed By: Plaintiff Moraga, Roy D
Notice of Appeal

02/20/2019  Case Appeal Statement

HEARINGS

01/02/2019  **Petition for Writ of Habeas Corpus (8:30 AM)** (Judicial Officer: Bixler, James)
Denied;
Journal Entry Details:
Defendant not present. Present on behalf of the State, Deputy District Attorney Brad Turner. Court noted the late reply to the State's opposition. Matter submitted on the pleadings by Mr. Turner. Court stated findings and ORDERED, Defendant's request for appointment of counsel DENIED, Petition For Writ of Habeas Corpus DENIED; State to prepare the order. NDC ;

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

Case No. _____

(Assigned by Clerk's Office)

A-18-782168-W

IV

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

Roy Moraga

Defendant(s) (name/address/phone):

U. Sidor Boca

Attorney (name/address/phone):

Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)

Civil Case Filing Types

<p style="text-align: center;">Real Property</p> <p>Landlord/Tenant</p> <p><input type="checkbox"/> Unlawful Detainer</p> <p><input type="checkbox"/> Other Landlord/Tenant</p> <p>Title to Property</p> <p><input type="checkbox"/> Judicial Foreclosure</p> <p><input type="checkbox"/> Other Title to Property</p> <p>Other Real Property</p> <p><input type="checkbox"/> Condemnation/Eminent Domain</p> <p><input type="checkbox"/> Other Real Property</p>	<p style="text-align: center;">Negligence</p> <p><input type="checkbox"/> Auto</p> <p><input type="checkbox"/> Premises Liability</p> <p><input type="checkbox"/> Other Negligence</p> <p>Malpractice</p> <p><input type="checkbox"/> Medical/Dental</p> <p><input type="checkbox"/> Legal</p> <p><input type="checkbox"/> Accounting</p> <p><input type="checkbox"/> Other Malpractice</p>	<p style="text-align: center;">Torts</p> <p>Other Torts</p> <p><input type="checkbox"/> Product Liability</p> <p><input type="checkbox"/> Intentional Misconduct</p> <p><input type="checkbox"/> Employment Tort</p> <p><input type="checkbox"/> Insurance Tort</p> <p><input type="checkbox"/> Other Tort</p>
<p style="text-align: center;">Probate</p> <p>Probate (select case type and estate value)</p> <p><input type="checkbox"/> Summary Administration</p> <p><input type="checkbox"/> General Administration</p> <p><input type="checkbox"/> Special Administration</p> <p><input type="checkbox"/> Set Aside</p> <p><input type="checkbox"/> Trust/Conservatorship</p> <p><input type="checkbox"/> Other Probate</p> <p>Estate Value</p> <p><input type="checkbox"/> Over \$200,000</p> <p><input type="checkbox"/> Between \$100,000 and \$200,000</p> <p><input type="checkbox"/> Under \$100,000 or Unknown</p> <p><input type="checkbox"/> Under \$2,500</p>	<p style="text-align: center;">Construction Defect & Contract</p> <p>Construction Defect</p> <p><input type="checkbox"/> Chapter 40</p> <p><input type="checkbox"/> Other Construction Defect</p> <p>Contract Case</p> <p><input type="checkbox"/> Uniform Commercial Code</p> <p><input type="checkbox"/> Building and Construction</p> <p><input type="checkbox"/> Insurance Carrier</p> <p><input type="checkbox"/> Commercial Instrument</p> <p><input type="checkbox"/> Collection of Accounts</p> <p><input type="checkbox"/> Employment Contract</p> <p><input type="checkbox"/> Other Contract</p>	<p style="text-align: center;">Judicial Review/Appeal</p> <p>Judicial Review</p> <p><input type="checkbox"/> Foreclosure Mediation Case</p> <p><input type="checkbox"/> Petition to Seal Records</p> <p><input type="checkbox"/> Mental Competency</p> <p>Nevada State Agency Appeal</p> <p><input type="checkbox"/> Department of Motor Vehicle</p> <p><input type="checkbox"/> Worker's Compensation</p> <p><input type="checkbox"/> Other Nevada State Agency</p> <p>Appeal Other</p> <p><input type="checkbox"/> Appeal from Lower Court</p> <p><input type="checkbox"/> Other Judicial Review/Appeal</p>
<p style="text-align: center;">Civil Writ</p> <p>Civil Writ</p> <p><input checked="" type="checkbox"/> Writ of Habeas Corpus</p> <p><input type="checkbox"/> Writ of Mandamus</p> <p><input type="checkbox"/> Writ of Quo Warrant</p> <p><input type="checkbox"/> Writ of Prohibition</p> <p><input type="checkbox"/> Other Civil Writ</p>		<p style="text-align: center;">Other Civil Filing</p> <p>Other Civil Filing</p> <p><input type="checkbox"/> Compromise of Minor's Claim</p> <p><input type="checkbox"/> Foreign Judgment</p> <p><input type="checkbox"/> Other Civil Matters</p>

Business Court filings should be filed using the Business Court civil coversheet.

10-1-2018

Date

Prepared by Clerk

Signature of initiating party or representative

See other side for family-related case filings.



ORIGINAL

Electronically Filed
1/31/2019 4:35 PM
Steven D. Grierson
CLERK OF THE COURT

Steven B. Wolfson

FCCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

ROY MORAGA,
#938554

Defendant.

CASE NO: **A-18-782168-W**
89C092174

DEPT NO: **VI**

FINDINGS OF FACT, CONCLUSIONS OF

LAW AND ORDER

DATE OF HEARING: **JANUARY 2, 2019**
TIME OF HEARING: **8:30 AM**

THIS CAUSE having presented before the Honorable JAMES BIXLER, District Judge,
on the 2nd day of January, 2019; Petitioner not being present, proceeding IN FORMA
PAUPERIS; Respondent being represented by STEVEN B. WOLFSON, Clark County
District Attorney, by and through ROBERT TURNER, 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:

//

//

//

PROCEDURAL BACKGROUND

On January 9, 1990, Roy Moraga (hereinafter "Defendant") was charged by way of Information with two (2) counts of Burglary (Felony – NRS 205.060) and two (2) counts of Sexual Assault (Felony – NRS 200.364, 200.366). On January 11, 1990, Defendant entered a plea of not guilty and his case proceeded to trial.

Defendant's jury trial began on March 12, 1990. On March 15, 1990, the jury found Defendant guilty of all counts. On June 4, 1990, the State filed a Notice of Motion to Amend Information in order to seek habitual treatment. On June 13, 1990, pursuant to an Amended Information filed the same day, Defendant was sentenced to life imprisonment without the possibility of parole under the "large" habitual criminal statute, NRS 207.010. Defendant filed a Notice of Appeal on June 27, 1990. The Judgement of Conviction was filed on July 7, 1990.

On August 27, 1991, the Nevada Supreme Court affirmed Defendant's conviction but remanded for the district court to resentence Defendant separately on the underlying counts rather than giving him a single life sentence under the habitual criminal statute. Remittitur issued on September 7, 1991.

On October 21, 1991, pursuant to the Nevada Supreme Court's Remand Order, the district court took notice of the felony convictions entered at Defendant's initial sentencing and resented Defendant to the following: as to Count I – ten (10) years in the Nevada Department of Corrections ("NDC"); as to Count II- ten (10) years in NDC consecutive to Count I; as to Count III – life imprisonment with parole eligibility beginning after five (5) years, consecutive to Count II; and as to Count IV – pursuant to NRS 201.010, life without the possibility of parole, consecutive to Count III. The Amended Judgement of Conviction was filed on November 13, 1991.¹

Defendant filed a Notice of Appeal on October 30, 1991. On October 4, 1995, the Nevada Supreme Court dismissed Defendant's appeal. Remittitur issued on October 24, 1995.

//

¹ A Second Amended Judgement of Conviction was filed on September 29, 1993, to reflect one hundred eighty (180) days credit for time served.

1 On February 20, 1996, Defendant filed his first Petition for Writ of Habeas Corpus
2 (Post-Conviction). The State filed its response on April 4, 1996. Defendant filed a Supplement
3 on June 13, 1996. The State filed its response on June 27, 1996. On July 16, 1996, Defendant
4 filed a Reply to the State's Response. On July 19, 1996, the district court denied Defendant's
5 first Petition. On September 6, 1996, the district court filed its Findings of Fact, Conclusions
6 of Law and Order. The Notice of Entry of Order was filed on September 20, 1996. Defendant
7 filed a Notice of Appeal on September 27, 1996.

8 On April 30, 1998, Defendant filed a Motion to Modify or in the Alternative Correct
9 Illegal Sentence. The State filed an Opposition on May 8, 1998. On May 28, 1998, the district
10 court entered an Order Denying Defendant's Motion to Modify or Correct Illegal Sentence.
11 On June 13, 1998, Defendant filed a Notice of Appeal from the Oder denying his motion.

12 On April 20, 1999, the Nevada Supreme Court consolidated the appeal from the orders
13 denying Defendant's first Petition for Writ of Habeas Corpus and Defendant's Motion to
14 Modify Sentence or Correct Illegal Sentence. Both decisions were affirmed. Remittitur issued
15 on May 18, 1999.

16 Defendant filed his second Petition for Writ of Habeas Corpus (Post-Conviction) on
17 January 10, 2006. The State filed a Response and Motion to Dismiss on February 27, 2006.
18 Defendant filed a Reply to the State's Response on May 24, 2006. On June 26, 2006, the
19 district court denied Defendant's second Petition for Writ of Habeas Corpus. The district court
20 filed its Findings of Fact, Conclusions of Law and Order on February 8, 2007. Notice of Entry
21 of Order was filed on February 13, 2007. On March 2, 2007, Defendant filed a Notice of
22 Appeal. On August 16, 2007, the Nevada Supreme Court issued an Order of Affirmance.
23 Remittitur issued on September 11, 2007.

24 Defendant filed his third Petition for Writ of Habeas Corpus (Post-Conviction) on
25 December 8, 2010, in Pershing County. The Petition was transferred to the Eighth Judicial
26 District on April 29, 2011, but was filed under Case No. 11-A640265-W and did not
27 immediately come before the court. Defendant filed a Supplement to his Petition on November
28 4, 2011. On March 14, 2012, Defendant filed a Motion for Judicial Action on his Petition. The

1 State filed an Opposition to this motion on March 23, 2012. On May 16, 2012, the State filed
2 a Response and Motion to Dismiss Defendant's third Petition.

3 On July 16, 2012, the district court denied Defendant's third Petition for Writ of Habeas
4 Corpus. On August 6, 2012, Defendant filed a Motion to Reconsider. The State filed an
5 Opposition to Motion to Reconsider on August 9, 2012. On August 13, 2012, the district court
6 issued a Findings of Fact, Conclusions of Law, and Order denying Defendant's third Petition.
7 A Notice of Entry of Order was filed on August 21, 2012. The district court issued an Order
8 denying Defendant's Motion to Reconsider on October 5, 2012.

9 On September 17, 2012, Defendant filed a Notice of Appeal from the order denying his
10 third Petition. The Nevada Supreme Court issued an Order of Affirmance on July 13, 2013.
11 Defendant filed a Petition for Rehearing on August 6, 2013. On September 25, 2013, the court
12 denied Defendant's Petition for Rehearing.

13 Defendant filed his fourth Petition for Writ of Habeas Corpus and Motion for
14 Appointment of Counsel on August 14, 2013. The State responded on September 19, 2013.
15 On October 21, 2013, the court denied Defendant's fourth Petition for Writ of Habeas Corpus.
16 The Findings of Fact, Conclusions of Law and Order was issued on December 4, 2013. On
17 December 16, 2013, Defendant filed a Notice of Appeal from the order denying his fourth
18 Petition. The Nevada Supreme Court issued an Order of Affirmance on April 10, 2014.

19 On October 1, 2018, Defendant filed the instant's fifth Petition for Writ of Habeas
20 Corpus. The State responded on November 30, 2018. Defendant replied on December 26,
21 2018.

22 ANALYSIS

23 **I. THIS PETITION IS PROCEDURALLY BARRED UNDER NRS 34.726(1).**

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

26 *Unless there is good cause shown for delay, a petition that challenges*
27 *the validity of a judgment or sentence must be filed within 1 year of*
28 *the entry of the judgment of conviction or, if an appeal has been taken*
from the judgment, within 1 year after the Supreme Court issues its

1 *remittitur*. For the purposes of this subsection, good cause for delay
2 exists if the petitioner demonstrates to the satisfaction of the court:

3 (a) That the delay is not the fault of the petitioner; and

4 (b) That dismissal of the petition as untimely will unduly prejudice
5 the petitioner.

6 (Emphasis added). The Supreme Court of Nevada has held that NRS 34.726 should be
7 construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528
8 (2001). As per the language of the statute, the one-year time bar proscribed by NRS 34.726
9 begins to run from the date the judgment of conviction is filed or a remittitur from a timely
10 direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

11 The one-year time limit for preparing petitions for post-conviction relief under NRS
12 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
13 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
14 evidence presented by the defendant that he purchased postage through the prison and mailed
15 the Notice within the one-year time limit.

16 Furthermore, the Nevada Supreme Court has held that the district court has a duty to
17 consider whether a defendant's post-conviction petition claims are procedurally barred. State
18 v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The
19 Riker Court found that "[a]pplication of the statutory procedural default rules to post-
20 conviction habeas petitions is mandatory," noting:

21 Habeas corpus petitions that are filed many years after conviction are
22 an unreasonable burden on the criminal justice system. The necessity
23 for a workable system dictates that there must exist a time when a
24 criminal conviction is final.

25 Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district
26 court] when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme
27 Court has granted no discretion to the district courts regarding whether to apply the statutory
28 procedural bars; the rules must be applied.

//

//

1 Further, the entry of an Amended Judgement of Conviction does not automatically
2 restart the statutory time limit for post-conviction claims. Sullivan v. State, 120 Nev. 537, 540-
3 41, 96 P.3d 761, 764 (2204). Since the district court may amend the judgement of conviction
4 at any time to correct a clerical error or an illegal sentence, “restarting the one-year time period
5 for all purposes every time an amendment occurs would frustrate the purpose and spirit of
6 NRS 34.726.” Id. at 540, 96 P.3d at 764. Consequently, where a Petitioner is not challenging
7 the proceedings related to an Amended Judgment of Conviction, the one-year time bar runs
8 from the date on which the original Judgement of Conviction was entered or, if an appeal was
9 taken from the original judgment, within one year after the appellate court issues its remittitur.
10 Id. at 540, 96 P.3d at 764.

11 In the instant case, Defendant’s Judgement of Conviction was filed on July 7, 1990.
12 Defendant filed a direct appeal, and remittitur was issued on September 17, 1991. An Amended
13 Judgement of Conviction was filed on November 13, 1991, and a Second Amended Judgement
14 of Conviction was filed on September 29, 1993. Defendant appealed the Second Amended
15 Judgement of Conviction, and remittitur issued on October 24, 1994. Appellant’s instant
16 Petition was not filed until October 1, 2018. This is more than one year after the Judgement of
17 Conviction, the Amended Judgement of Conviction, and the Second Amended Judgement of
18 Conviction. Consequently, it is not necessary to address the argument of whether the one-year
19 period should flow from the date of the original judgment or the date of an amended
20 judgement, as more than one year has passed since the entry of all. Absent a showing of good
21 cause for this delay and undue prejudice, this Court finds Defendant’s claim must be dismissed
22 because of its tardy filing.

23 **II. DEFENDANT’S FIFTH PETITION IS SUCCESSIVE**

24 Defendant’s Petition is also successive pursuant to NRS 34.810(2). The relevant
25 portions of NRS 34.810 state:

26 2. A second or successive petition must be dismissed if the judge or
27 justice determines that it fails to allege new or different grounds for
28 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 the Defendant to assert those grounds in a prior petition constituted an abuse of the writ.

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

(a) Good cause for the petitioner's failure to present the claim or for presenting the claim again; and

(b) Actual prejudice to the petitioner.

Id. This is Defendant's fifth Petition. Defendant has previously filed four other Petitions spanning from February 20, 1996, to August 14, 2013, regarding the same issues. All of these prior Petitions have either been denied or disposed of. Furthermore, Defendant has given no good cause for the delay, and has failed to demonstrate actual prejudice. As such, this Court finds this fifth Petition must be denied as successive.

III. DEFENDANT'S FIFTH PETITION IS BARRED BY LACHES

NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period exceeding five years between the filing of a judgment of conviction, an order imposing a sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the filing of a petition challenging the validity of a judgment of conviction...." The statute also requires that the State plead laches, which the State does. NRS 34.800.

Defendant's Judgement of Conviction was filed on July 7, 1990. Defendant filed a direct appeal, and remittitur was issued on September 17, 1991. An Amended Judgement of Conviction was filed on November 13, 1991, and a Second Amended Judgement of Conviction was filed on September 29, 1993. Defendant appealed the Second Amended Judgement of Conviction, and remittitur issued on October 24, 1994. Since more than five years have elapsed from any given date, NRS 34.800 directly applies in this case and a presumption of prejudice to the State arises. Defendant does not rebut this presumption. Therefore, pursuant to NRS 34.800, this Court finds this Petition must be denied.

//

//

//

//

1 **IV. DEFENDANT HAS NOT PROVIDED GOOD CAUSE OR EVIDENCE OF**
2 **ACTUAL INNOCENCE TO OVERCOME THE PROCEDURAL BARS**

3 A showing of good cause and prejudice may overcome procedural bars. "To establish
4 good cause, Defendant must show that an impediment external to the defense prevented their
5 compliance with the applicable procedural rule. A qualifying impediment might be shown
6 where the factual or legal basis for a claim was not reasonably available at the time of default."
7 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court
8 continued, "appellants cannot attempt to manufacture good cause[.]" Id. at 621, 81 P.3d at 526.

9 In order to establish prejudice, the defendant must show "not merely that the errors of
10 [the proceedings] created the possibility of prejudice, but that they worked to his actual and
11 substantial disadvantage, in affecting the state proceedings with error of constitutional
12 dimensions." Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United
13 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there
14 must be a "substantial reason; one that affords a legal excuse." Hathaway v. State, 119 Nev.
15 248, 252, 71 P.3d 503, 506 (2003). Clearly, any delay in the filing of the petition must not be
16 the fault of the petitioner. NRS 34.726(1)(a).

17 Where a petition is procedurally barred and the petitioner cannot demonstrate good
18 cause, the district court may nevertheless reach the merits of any constitutional claims if the
19 petitioner demonstrates that failure to consider those constitutional claims would result in a
20 fundamental miscarriage of justice. Lisle v. State, 351 P.3d 725, 729-730 (2015), citing
21 Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). A fundamental miscarriage of
22 justice requires "a colorable showing" that the petitioner "is actually innocent of the crime or
23 is ineligible for the death penalty." Id. This generally requires the petitioner to present new
24 evidence of his innocence. House v. Bell, 547 U.S. 518, 536-37, 126 S. Ct. 2064 (2006);
25 Schlup v. Delo, 513 U.S. 298, 316, 115 S. Ct. 851 (1995).

26 When claiming a fundamental miscarriage based on actual innocence, the petitioner
27 "must show that it is more likely than not that no reasonable juror would have convicted him
28 absent a constitutional violation. Crump v. State, 2016 Nev. Unpub. LEXIS 374, *9-10, citing

1 Pellegrini v. State, 117 Nev. at 887, 34 P.3d at 537 (2001). In this context, actual innocence
2 means "factual innocence, not mere legal insufficiency." Mitchell v. State, 122 Nev. 1269,
3 1273-74, 149 P.3d 33, 36 (2006).

4 In the instant case, Defendant failed to raise any issue of good cause for the untimely
5 delay in filing his Petition. Instead Defendant asserts his actual innocence and cites to NRS
6 207.010 and Walker v. Deeds, 50 F.3d 670, 673 (9th Cir. 1995) to support his claim that he
7 was wrongfully adjudicated a habitual criminal because nonviolent property crimes do not
8 warrant harsh sanctions under the habitual criminal statute. Petition at 4. This argument was
9 already rejected by the Nevada Supreme Court in Defendant's first Petition, and as such is
10 barred from other review by the doctrine of the law of the case. "The law of the first appeal is
11 law of the case on all subsequent appeals in which the facts are substantially the same." Hall
12 v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting Walker v. State, 85 Nev. 337,
13 343, 455 P.2d 34, 38 (1969)). "The doctrine of the law of the case cannot be avoided by a more
14 detailed and precisely focused argument subsequently made after reflection upon the previous
15 proceedings." Hall, 91 Nev. at 316, 535 P.2d at 799. Under the law of the case doctrine, issues
16 previously decided on direct appeal may not be reargued in a habeas petition. Pellegrini v.
17 State, 117 Nev. 860, 34 P.3d 519 (2001) (citing McNelson v. State, 115 Nev. 396, 414-15, 990
18 P.2d 1263, 1275 (1999)).

19 In denying Defendant's first Post-Conviction Petition, the Nevada Supreme Court
20 noted that the State adequately proved Defendant had three prior convictions and the district
21 court was entitled to use these convictions for sentence enhancement purposes. See Order
22 Dismissing Appeal 10/30/95. Additionally, the case Defendant cites to was decided after his
23 sentencing and cannot be applied retroactively. Furthermore, Defendant has failed to provide
24 any facts that would show he would be prejudiced by having to comply with the procedural
25 time bar.

26 As such, Defendant cannot show good cause or actual prejudice and this Court finds
27 this Petition must be denied.

28 //

ORDER

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

DATED this 28 day of January, 2019.


DISTRICT JUDGE

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

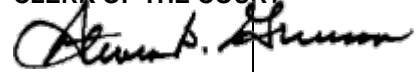
BY


ROBERT TURNER

for

Chief Deputy District Attorney
Nevada Bar #006526

hjc/SVU



NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ROY MORAGA,

Petitioner,

vs.

ISIDOR BACA,

Respondent,

Case No: A-18-782168-W

Dept No: VI

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

PLEASE TAKE NOTICE that on January 31, 2019, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on February 5, 2019.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Debra Donaldson

Debra Donaldson, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 5 day of February 2019, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☒ The United States mail addressed as follows:

Roy Moraga # 31584
P.O. Box 7000
Carson City, NV 89702

/s/ Debra Donaldson

Debra Donaldson, Deputy Clerk

ORIGINAL

Electronically Filed
1/31/2019 4:35 PM
Steven D. Grierson
CLERK OF THE COURT

Steven B. Wolfson

FCCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

ROY MORAGA,
#938554

Defendant.

CASE NO: **A-18-782168-W**
89C092174

DEPT NO: **VI**

FINDINGS OF FACT, CONCLUSIONS OF

LAW AND ORDER

DATE OF HEARING: **JANUARY 2, 2019**
TIME OF HEARING: **8:30 AM**

THIS CAUSE having presented before the Honorable JAMES BIXLER, District Judge,
on the 2nd day of January, 2019; Petitioner not being present, proceeding IN FORMA
PAUPERIS; Respondent being represented by STEVEN B. WOLFSON, Clark County
District Attorney, by and through ROBERT TURNER, 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:

//

//

//

PROCEDURAL BACKGROUND

On January 9, 1990, Roy Moraga (hereinafter "Defendant") was charged by way of Information with two (2) counts of Burglary (Felony – NRS 205.060) and two (2) counts of Sexual Assault (Felony – NRS 200.364, 200.366). On January 11, 1990, Defendant entered a plea of not guilty and his case proceeded to trial.

Defendant's jury trial began on March 12, 1990. On March 15, 1990, the jury found Defendant guilty of all counts. On June 4, 1990, the State filed a Notice of Motion to Amend Information in order to seek habitual treatment. On June 13, 1990, pursuant to an Amended Information filed the same day, Defendant was sentenced to life imprisonment without the possibility of parole under the "large" habitual criminal statute, NRS 207.010. Defendant filed a Notice of Appeal on June 27, 1990. The Judgement of Conviction was filed on July 7, 1990.

On August 27, 1991, the Nevada Supreme Court affirmed Defendant's conviction but remanded for the district court to resentence Defendant separately on the underlying counts rather than giving him a single life sentence under the habitual criminal statute. Remittitur issued on September 7, 1991.

On October 21, 1991, pursuant to the Nevada Supreme Court's Remand Order, the district court took notice of the felony convictions entered at Defendant's initial sentencing and resented Defendant to the following: as to Count I – ten (10) years in the Nevada Department of Corrections ("NDC"); as to Count II- ten (10) years in NDC consecutive to Count I; as to Count III – life imprisonment with parole eligibility beginning after five (5) years, consecutive to Count II; and as to Count IV – pursuant to NRS 201.010, life without the possibility of parole, consecutive to Count III. The Amended Judgement of Conviction was filed on November 13, 1991.¹

Defendant filed a Notice of Appeal on October 30, 1991. On October 4, 1995, the Nevada Supreme Court dismissed Defendant's appeal. Remittitur issued on October 24, 1995.

//

¹ A Second Amended Judgement of Conviction was filed on September 29, 1993, to reflect one hundred eighty (180) days credit for time served.

1 On February 20, 1996, Defendant filed his first Petition for Writ of Habeas Corpus
2 (Post-Conviction). The State filed its response on April 4, 1996. Defendant filed a Supplement
3 on June 13, 1996. The State filed its response on June 27, 1996. On July 16, 1996, Defendant
4 filed a Reply to the State's Response. On July 19, 1996, the district court denied Defendant's
5 first Petition. On September 6, 1996, the district court filed its Findings of Fact, Conclusions
6 of Law and Order. The Notice of Entry of Order was filed on September 20, 1996. Defendant
7 filed a Notice of Appeal on September 27, 1996.

8 On April 30, 1998, Defendant filed a Motion to Modify or in the Alternative Correct
9 Illegal Sentence. The State filed an Opposition on May 8, 1998. On May 28, 1998, the district
10 court entered an Order Denying Defendant's Motion to Modify or Correct Illegal Sentence.
11 On June 13, 1998, Defendant filed a Notice of Appeal from the Oder denying his motion.

12 On April 20, 1999, the Nevada Supreme Court consolidated the appeal from the orders
13 denying Defendant's first Petition for Writ of Habeas Corpus and Defendant's Motion to
14 Modify Sentence or Correct Illegal Sentence. Both decisions were affirmed. Remittitur issued
15 on May 18, 1999.

16 Defendant filed his second Petition for Writ of Habeas Corpus (Post-Conviction) on
17 January 10, 2006. The State filed a Response and Motion to Dismiss on February 27, 2006.
18 Defendant filed a Reply to the State's Response on May 24, 2006. On June 26, 2006, the
19 district court denied Defendant's second Petition for Writ of Habeas Corpus. The district court
20 filed its Findings of Fact, Conclusions of Law and Order on February 8, 2007. Notice of Entry
21 of Order was filed on February 13, 2007. On March 2, 2007, Defendant filed a Notice of
22 Appeal. On August 16, 2007, the Nevada Supreme Court issued an Order of Affirmance.
23 Remittitur issued on September 11, 2007.

24 Defendant filed his third Petition for Writ of Habeas Corpus (Post-Conviction) on
25 December 8, 2010, in Pershing County. The Petition was transferred to the Eighth Judicial
26 District on April 29, 2011, but was filed under Case No. 11-A640265-W and did not
27 immediately come before the court. Defendant filed a Supplement to his Petition on November
28 4, 2011. On March 14, 2012, Defendant filed a Motion for Judicial Action on his Petition. The

1 State filed an Opposition to this motion on March 23, 2012. On May 16, 2012, the State filed
2 a Response and Motion to Dismiss Defendant's third Petition.

3 On July 16, 2012, the district court denied Defendant's third Petition for Writ of Habeas
4 Corpus. On August 6, 2012, Defendant filed a Motion to Reconsider. The State filed an
5 Opposition to Motion to Reconsider on August 9, 2012. On August 13, 2012, the district court
6 issued a Findings of Fact, Conclusions of Law, and Order denying Defendant's third Petition.
7 A Notice of Entry of Order was filed on August 21, 2012. The district court issued an Order
8 denying Defendant's Motion to Reconsider on October 5, 2012.

9 On September 17, 2012, Defendant filed a Notice of Appeal from the order denying his
10 third Petition. The Nevada Supreme Court issued an Order of Affirmance on July 13, 2013.
11 Defendant filed a Petition for Rehearing on August 6, 2013. On September 25, 2013, the court
12 denied Defendant's Petition for Rehearing.

13 Defendant filed his fourth Petition for Writ of Habeas Corpus and Motion for
14 Appointment of Counsel on August 14, 2013. The State responded on September 19, 2013.
15 On October 21, 2013, the court denied Defendant's fourth Petition for Writ of Habeas Corpus.
16 The Findings of Fact, Conclusions of Law and Order was issued on December 4, 2013. On
17 December 16, 2013, Defendant filed a Notice of Appeal from the order denying his fourth
18 Petition. The Nevada Supreme Court issued an Order of Affirmance on April 10, 2014.

19 On October 1, 2018, Defendant filed the instant's fifth Petition for Writ of Habeas
20 Corpus. The State responded on November 30, 2018. Defendant replied on December 26,
21 2018.

22 ANALYSIS

23 **I. THIS PETITION IS PROCEDURALLY BARRED UNDER NRS 34.726(1).**

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

26 *Unless there is good cause shown for delay, a petition that challenges*
27 *the validity of a judgment or sentence must be filed within 1 year of*
28 *the entry of the judgment of conviction or, if an appeal has been taken*
from the judgment, within 1 year after the Supreme Court issues its

1 *remittitur*. For the purposes of this subsection, good cause for delay
2 exists if the petitioner demonstrates to the satisfaction of the court:

3 (a) That the delay is not the fault of the petitioner; and

4 (b) That dismissal of the petition as untimely will unduly prejudice
5 the petitioner.

6 (Emphasis added). The Supreme Court of Nevada has held that NRS 34.726 should be
7 construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528
8 (2001). As per the language of the statute, the one-year time bar proscribed by NRS 34.726
9 begins to run from the date the judgment of conviction is filed or a remittitur from a timely
10 direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

11 The one-year time limit for preparing petitions for post-conviction relief under NRS
12 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
13 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
14 evidence presented by the defendant that he purchased postage through the prison and mailed
15 the Notice within the one-year time limit.

16 Furthermore, the Nevada Supreme Court has held that the district court has a duty to
17 consider whether a defendant's post-conviction petition claims are procedurally barred. State
18 v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The
19 Riker Court found that "[a]pplication of the statutory procedural default rules to post-
20 conviction habeas petitions is mandatory," noting:

21 Habeas corpus petitions that are filed many years after conviction are
22 an unreasonable burden on the criminal justice system. The necessity
23 for a workable system dictates that there must exist a time when a
24 criminal conviction is final.

25 Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district
26 court] when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme
27 Court has granted no discretion to the district courts regarding whether to apply the statutory
28 procedural bars; the rules must be applied.

//

//

1 Further, the entry of an Amended Judgement of Conviction does not automatically
2 restart the statutory time limit for post-conviction claims. Sullivan v. State, 120 Nev. 537, 540-
3 41, 96 P.3d 761, 764 (2204). Since the district court may amend the judgement of conviction
4 at any time to correct a clerical error or an illegal sentence, “restarting the one-year time period
5 for all purposes every time an amendment occurs would frustrate the purpose and spirit of
6 NRS 34.726.” Id. at 540, 96 P.3d at 764. Consequently, where a Petitioner is not challenging
7 the proceedings related to an Amended Judgment of Conviction, the one-year time bar runs
8 from the date on which the original Judgement of Conviction was entered or, if an appeal was
9 taken from the original judgment, within one year after the appellate court issues its remittitur.
10 Id. at 540, 96 P.3d at 764.

11 In the instant case, Defendant’s Judgement of Conviction was filed on July 7, 1990.
12 Defendant filed a direct appeal, and remittitur was issued on September 17, 1991. An Amended
13 Judgement of Conviction was filed on November 13, 1991, and a Second Amended Judgement
14 of Conviction was filed on September 29, 1993. Defendant appealed the Second Amended
15 Judgement of Conviction, and remittitur issued on October 24, 1994. Appellant’s instant
16 Petition was not filed until October 1, 2018. This is more than one year after the Judgement of
17 Conviction, the Amended Judgement of Conviction, and the Second Amended Judgement of
18 Conviction. Consequently, it is not necessary to address the argument of whether the one-year
19 period should flow from the date of the original judgment or the date of an amended
20 judgement, as more than one year has passed since the entry of all. Absent a showing of good
21 cause for this delay and undue prejudice, this Court finds Defendant’s claim must be dismissed
22 because of its tardy filing.

23 **II. DEFENDANT’S FIFTH PETITION IS SUCCESSIVE**

24 Defendant’s Petition is also successive pursuant to NRS 34.810(2). The relevant
25 portions of NRS 34.810 state:

26 2. A second or successive petition must be dismissed if the judge or
27 justice determines that it fails to allege new or different grounds for
28 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 the Defendant to assert those grounds in a prior petition constituted an abuse of the writ.

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

(a) Good cause for the petitioner's failure to present the claim or for presenting the claim again; and

(b) Actual prejudice to the petitioner.

Id. This is Defendant's fifth Petition. Defendant has previously filed four other Petitions spanning from February 20, 1996, to August 14, 2013, regarding the same issues. All of these prior Petitions have either been denied or disposed of. Furthermore, Defendant has given no good cause for the delay, and has failed to demonstrate actual prejudice. As such, this Court finds this fifth Petition must be denied as successive.

III. DEFENDANT'S FIFTH PETITION IS BARRED BY LACHES

NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period exceeding five years between the filing of a judgment of conviction, an order imposing a sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the filing of a petition challenging the validity of a judgment of conviction...." The statute also requires that the State plead laches, which the State does. NRS 34.800.

Defendant's Judgement of Conviction was filed on July 7, 1990. Defendant filed a direct appeal, and remittitur was issued on September 17, 1991. An Amended Judgement of Conviction was filed on November 13, 1991, and a Second Amended Judgement of Conviction was filed on September 29, 1993. Defendant appealed the Second Amended Judgement of Conviction, and remittitur issued on October 24, 1994. Since more than five years have elapsed from any given date, NRS 34.800 directly applies in this case and a presumption of prejudice to the State arises. Defendant does not rebut this presumption. Therefore, pursuant to NRS 34.800, this Court finds this Petition must be denied.

//

//

//

//

1 **IV. DEFENDANT HAS NOT PROVIDED GOOD CAUSE OR EVIDENCE OF**
2 **ACTUAL INNOCENCE TO OVERCOME THE PROCEDURAL BARS**

3 A showing of good cause and prejudice may overcome procedural bars. "To establish
4 good cause, Defendant must show that an impediment external to the defense prevented their
5 compliance with the applicable procedural rule. A qualifying impediment might be shown
6 where the factual or legal basis for a claim was not reasonably available at the time of default."
7 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court
8 continued, "appellants cannot attempt to manufacture good cause[.]" Id. at 621, 81 P.3d at 526.

9 In order to establish prejudice, the defendant must show "not merely that the errors of
10 [the proceedings] created the possibility of prejudice, but that they worked to his actual and
11 substantial disadvantage, in affecting the state proceedings with error of constitutional
12 dimensions." Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United
13 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there
14 must be a "substantial reason; one that affords a legal excuse." Hathaway v. State, 119 Nev.
15 248, 252, 71 P.3d 503, 506 (2003). Clearly, any delay in the filing of the petition must not be
16 the fault of the petitioner. NRS 34.726(1)(a).

17 Where a petition is procedurally barred and the petitioner cannot demonstrate good
18 cause, the district court may nevertheless reach the merits of any constitutional claims if the
19 petitioner demonstrates that failure to consider those constitutional claims would result in a
20 fundamental miscarriage of justice. Lisle v. State, 351 P.3d 725, 729-730 (2015), citing
21 Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). A fundamental miscarriage of
22 justice requires "a colorable showing" that the petitioner "is actually innocent of the crime or
23 is ineligible for the death penalty." Id. This generally requires the petitioner to present new
24 evidence of his innocence. House v. Bell, 547 U.S. 518, 536-37, 126 S. Ct. 2064 (2006);
25 Schlup v. Delo, 513 U.S. 298, 316, 115 S. Ct. 851 (1995).

26 When claiming a fundamental miscarriage based on actual innocence, the petitioner
27 "must show that it is more likely than not that no reasonable juror would have convicted him
28 absent a constitutional violation. Crump v. State, 2016 Nev. Unpub. LEXIS 374, *9-10, citing

1 Pellegrini v. State, 117 Nev. at 887, 34 P.3d at 537 (2001). In this context, actual innocence
2 means "factual innocence, not mere legal insufficiency." Mitchell v. State, 122 Nev. 1269,
3 1273-74, 149 P.3d 33, 36 (2006).

4 In the instant case, Defendant failed to raise any issue of good cause for the untimely
5 delay in filing his Petition. Instead Defendant asserts his actual innocence and cites to NRS
6 207.010 and Walker v. Deeds, 50 F.3d 670, 673 (9th Cir. 1995) to support his claim that he
7 was wrongfully adjudicated a habitual criminal because nonviolent property crimes do not
8 warrant harsh sanctions under the habitual criminal statute. Petition at 4. This argument was
9 already rejected by the Nevada Supreme Court in Defendant's first Petition, and as such is
10 barred from other review by the doctrine of the law of the case. "The law of the first appeal is
11 law of the case on all subsequent appeals in which the facts are substantially the same." Hall
12 v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting Walker v. State, 85 Nev. 337,
13 343, 455 P.2d 34, 38 (1969)). "The doctrine of the law of the case cannot be avoided by a more
14 detailed and precisely focused argument subsequently made after reflection upon the previous
15 proceedings." Hall, 91 Nev. at 316, 535 P.2d at 799. Under the law of the case doctrine, issues
16 previously decided on direct appeal may not be reargued in a habeas petition. Pellegrini v.
17 State, 117 Nev. 860, 34 P.3d 519 (2001) (citing McNelson v. State, 115 Nev. 396, 414-15, 990
18 P.2d 1263, 1275 (1999)).

19 In denying Defendant's first Post-Conviction Petition, the Nevada Supreme Court
20 noted that the State adequately proved Defendant had three prior convictions and the district
21 court was entitled to use these convictions for sentence enhancement purposes. See Order
22 Dismissing Appeal 10/30/95. Additionally, the case Defendant cites to was decided after his
23 sentencing and cannot be applied retroactively. Furthermore, Defendant has failed to provide
24 any facts that would show he would be prejudiced by having to comply with the procedural
25 time bar.

26 As such, Defendant cannot show good cause or actual prejudice and this Court finds
27 this Petition must be denied.

28 //

ORDER

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

DATED this 28 day of January, 2019.


DISTRICT JUDGE

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

BY


ROBERT TURNER
Chief Deputy District Attorney
Nevada Bar #006526

for

hjc/SVU

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

January 02, 2019

A-18-782168-W Roy Moraga, Plaintiff(s)
vs.
Isidor Baca, Defendant(s)

**January 02, 2019 8:30 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Bixler, James

COURTROOM: RJC Courtroom 10C

COURT CLERK: Keith Reed

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Defendant not present.

Present on behalf of the State, Deputy District Attorney Brad Turner. Court noted the late reply to the State's opposition. Matter submitted on the pleadings by Mr. Turner. Court stated findings and ORDERED, Defendant's request for appointment of counsel DENIED, Petition For Writ of Habeas Corpus DENIED; State to prepare the order.

NDC

Certification of Copy

State of Nevada }
County of Clark } SS:

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

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

ROY D. MORAGA,

Petitioner(s),

vs.

ISIDOR BACA,

Respondent(s),

Case No: A-18-782168-W

Dept No: VI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 20 day of February 2019.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk