

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEL BURKETT,
Appellant(s),

vs.

WILLIAM A. GITTERE, WARDEN,
Respondent(s),

Electronically Filed
Jun 27 2019 02:51 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-19-788633-W

Docket No: 78868

RECORD ON APPEAL

ATTORNEY FOR APPELLANT

JOEL BURKETT #16111,
PROPER PERSON
P.O. BOX 7000
CARSON CITY, NV 89702

ATTORNEY FOR RESPONDENT

STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NV 89155-2212

I N D E X

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Case No. 81052190

Dept. No. 12

FILED

FEB 01 2019

John J. Johnson
CLERK OF COURT

IN THE 5th JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

JOEL BURKEIT
Petitioner,

A-19-788633-W
Dept. XII

v.

WILLIAM A. CITIZER
Respondent.

PETITION FOR WRIT
OF HABEAS CORPUS

(PURSUANT TO
NRS 34.500(2)(9))

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you're not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

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FEB 01 2019

CLERK OF THE COURT

A-19-788633-W
IPWHC
Inmate Filed - Petition for Writ of Habeas
4813131



(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: EIV STATE PRISON

2. Name and location of court which entered the judgment of conviction under attack: _____

FIGHTING CLUB DIST CT

3. Date of judgment of conviction: 5-4-1981

4. Case number: C052190

5. (a) Length of sentence: 4 ~~YRS~~ LIFE/10 AND 30 YRS

(b) If sentence is death, state any date upon which execution is scheduled: _____

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes _____ No X

If "yes", list crime, case number and sentence being served at this time: _____

7. Nature of offense involved in conviction being challenged: 1ST DEGREE

KIDNAPING, SEXUAL ABUSE, DEADLY WEAPON

8. What was your plea? (check one):

(a) Not guilty X (b) Guilty _____ (c) Nolo contendere _____

9. If you entered a plea of guilty to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty was negotiated, give details: _____

10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

(a) Jury X (b) Judge without a jury _____

11. Did you testify at the trial? Yes X No _____

12. Did you appeal from the judgment of conviction? Yes X No _____

13. If you did appeal, answer the following:

(a) Name of Court: NEWADA SUPREME COURT

(b) Case number or citation: DONT HAVE

(c) Result: REVERSED 5-11-83

(d) Date of result: 5-11-83
(Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not: _____

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

16. If your answer to No. 15 was "yes", give the following information:

(a)(1) Name of court: CO. COURT HOUSE

(2) Nature of proceeding: POST CONVICTION

(3) Grounds raised: INEFFECTIVE COUNSEL

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☒ No ☐

(5) Result: DO NOT HAVE

(6) Date of result: DO NOT HAVE

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: _____

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: _____

(2) Nature of proceeding: N/A

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result: _____

(6) Date of result: _____

(7) If known, citations of any written opinion or date of orders entered pursuant to such a result: _____

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion? Yes ☐ No ☐

Citation or date of decision: _____

(2) Second petition, application or motion? Yes ☐ No ☐

Citation or date of decision: _____

(3) Third or subsequent petitions, applications or motions? Yes ☐ No ☐

Citation or date of decision: _____

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) _____

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same: N/A

(b) The proceedings in which these grounds were raised: _____

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) _____

18. If any of the grounds listed in No.'s 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

NEW U.S. SUPREME COURT RULING 2018 -
MCCOY V. LOUISIANA 200 LED. 20 388 (BREWER CASE)

19. Are you filing this petition more than one year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

NEW U.S. SUPREME COURT
RULING, PETITION BROUGHT PURSUANT
TO 42 U.S.C. 1983 (SEE SUPPORTING FACTS)

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes ☐ No ☒

If yes, state what court and case number: _____

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: N/A

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes ☐ No ☒

If yes, specify where and when it is to be served, if you know: _____

23. State concisely every ground on which you claim that you are being held unlawfully. summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

(a) Ground One:

~~CONSTITUTIONAL VIOLATION~~
SIX AMENDMENT VIOLATION RIGHT TO TRIAL BY
JURY (STRUCTURAL ERROR) EFFECTIVE
COUNSEL, STRUCTURAL ERROR - RIGHT TO
(MAINTAIN INNOCENCE AT TRIAL)

Supporting FACTS (Tell your story briefly without citing cases or law.):

SEE SUPPORTING FACTS ATTACHED
HERE TO AT PAGE 10

(b) Ground Two:

Supporting FACTS (Tell your story briefly without citing cases or law.):

(c) Ground Three:

Supporting FACTS (Tell your story briefly without citing cases or law.):

(d) Ground Four:

Supporting FACTS (Tell your story briefly without citing cases or law.):

(a) **Ground Five:** _____

Supporting **FACTS** (Tell your story briefly without citing cases or law.): _____

(b) **Ground Six:** _____

Supporting **FACTS** (Tell your story briefly without citing cases or law.): _____

(c) **Ground Seven:** _____

Supporting **FACTS** (Tell your story briefly without citing cases or law.): _____

(d) **Ground Eight:** _____

Supporting **FACTS** (Tell your story briefly without citing cases or law.): _____

(a) **Ground Nine:** _____

Supporting **FACTS** (Tell your story briefly without citing cases or law.): _____

(b) **Ground Ten:** _____

Supporting **FACTS** (Tell your story briefly without citing cases or law.): _____

(c) **Ground Eleven:** _____

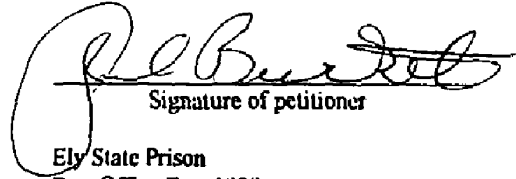
Supporting **FACTS** (Tell your story briefly without citing cases or law.): _____

(d) **Ground Twelve:** _____

Supporting **FACTS** (Tell your story briefly without citing cases or law.): _____

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

EXECUTED at Ely State Prison, on the 27 day of the month of June of the year 2019.


Signature of petitioner

Ely State Prison
Post Office Box 1989
Ely, Nevada 89301-1989

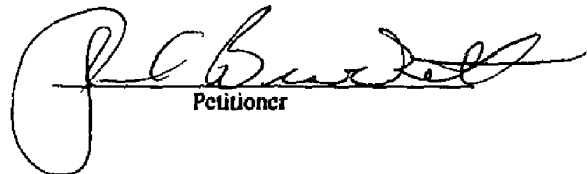
Signature of Attorney (if any)

Attorney for petitioner

Address

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.


Petitioner

Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I, JOEL BURKE, hereby certify pursuant to N.R.C.P. 5(b), that on this 27 day of the month of JAN, of the year 2019 I mailed a true and correct copy of the foregoing **PETITION FOR WRIT OF HABEAS CORPUS** addressed to:

William Bittere
Respondent prison or jail official
PO BOX 989
ELY, NV 89301
Address

Attorney General
Heroes' Memorial Building
100 North Carson Street
Carson City, Nevada 89710-4717

STEVEN L. WILSON
District Attorney of County of Conviction
200 HENRI'S AVE
LAS VEGAS
Address

[Signature]
Signature of Petitioner

AFFIRMATION PURSUANT TO NRS 239B.030

I, JOEL BURKETT, NDOC# 16011

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE
ATTACHED DOCUMENT ENTITLED WRIT OF HABEAS
Corpus

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 27 DAY OF Jan, 20 19.

SIGNATURE: 

INMATE PRINTED NAME: JOEL BURKETT

INMATE NDOC # 16011

INMATE ADDRESS: ELY STATE PRISON
P. O. BOX 1989
ELY, NV 89301

DECLARATION PURSUANT TO: N.R.S. 208.165

I, José Burkett, OF INMATE IDENTIFICATION
NUMBER: 16111, AM A LAWFULLY
COMMITTED PRISONER OF THE NEVADA DEPARTMENT OF
CORRECTIONS, PRESENTLY IN THE LAWFUL CARE AND
CUSTODY OF ELY STATE PRISON, LOCATED AT: 12000 NORTH
BOTHWICK ROAD, (MAILING) P.O. BOX 1989, IN CITY OF: ELY,
COUNTY: WHITE PINE, STATE: NEVADA, 89301. DOES AFFIRM
THAT THE ATTACHED DOCUMENT
ENTITLED: WRIT OF HABEAS CORPUS,
IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE &
BELIEF, AND ANY FALSE STATEMENT OF MATERIAL FACT
MADE THERE IN SHALL BE SUBJECTED TO THE PAINS AND
PENALTIES OF PERJURY PURSUANT TO: N.R.S. 208.165,
THIS 27 DAY OF Jan, 2011.

INMATE SIGNATURE: [Signature]

INMATE NAME (PRINTED): José Burkett

ADDRESS: ELY STATE PRISON

P.O. BOX 1989, ELY, NEVADA 89301

GROUNDONE, SUPPORTING FACTS:

1.

2. (1) AT BURKEET'S 1981 JURY TRIAL, THE
3. JURY WAS INSTRUCTED "THAT IF THE
4. ATTORNEYS STIPULATE OR AGREE TO
5. THE EXISTANCE OF A FACT, YOU
6. MUST ACCEPT THE STIPULATION
7. AS EVIDENCE AND REGARD THE
8. FACT PROVEN;

9.

10. (2) BURKEET INFORMED COUNSEL THAT
11. HE WAS NOT GUILTY OF ANY
12. CRIME CHARGED AND TOOK THE
13. STAND AND TESTIFIED HE WAS
14. NOT GUILTY

15.

16. (3) IN CLOSING ARGUMENTS COUNSEL
17. CONCEDED BURKEET'S GUILT TO
18. THE JURY FOR THE CRIME OF
19. SEXUAL ASSAULT WHEN HE STATED:
20. WHAT COULD YOU FIND HIM GUILTY
21. OF THESE FOUR COUNTS. TAKEN THE
22. BEST EVIDENCE... THAT HEAVES ONE
23. COUNT OF SEXUAL ASSAULT
24. BECAUSE SHE AGREED IT WAS NOT
25. WITH HER CONSENT... THIS
26. EVIDENCE OF SEXUAL ASSAULT.

27.

28.

GROUNDS SUPPORTING FACTS CONTINUED;

1. YOU CAN ONLY FIND HIM GUILTY OF ONE
2. COUNT OF SEXUAL ASSAULT, BECAUSE TO
3. FIND HIM GUILTY OF THE REST YOU HAVE
4. TO FIND BEYOND A REASONABLE DOUBT.
- 5.
6. (4) BURKEET CONTENDS THAT HE HAD A RIGHT TO
7. MAINTAIN HIS INNOCENCE AT TRIAL AND
8. THAT IN LIGHT OF THE UNITED STATES
9. SUPREME COURT'S RULING IN,
10. McCOY V. LOUISIANA, 2015, 2018
11. (2018) CONDEMNATIONS CONSTITUTE
12. STRUCTURAL ERROR, AND BURKEET IS
13. ENTITLED TO DISCHARGE.
- 14.
15. (5) COUNSEL EFFECTUALLY READ BURKEET
16. GUILTY WITHOUT HIS CONSENT OR
17. KNOWLEDGE.
- 18.
19. (6) BURKEET BRINGS THIS ACTION
20. PURSUANT TO 34.002(2); (F), WRIT
21. OF HABEAS CORPUS, AND NOT UNDER
22. THE RULES OF POST-CONVICTION
- 23.
- 24.
- 25.
- 26.
- 27.
- 28.

Grounds Supporting Rices Continued

- 1.
2. (7) AS TO QUESTIONS 18 AT 194, BURKEET
3. COULD NOT HAVE RAISED THE ISSUE
4. BECAUSE AS IT IS A NEW CONSTITUTIONAL
5. RULE OF STRUCTURAL ERROR MADE
6. RETROACTIVE BY THE NATURE OF
7. THE CONSTITUTIONAL ISSUE (VIOLATION)
8. SEE MCCOY V. LOUISIANA 200 L.E.D. 20
9. 821 (2018) RULED ON MAY 14TH
10. 2018, BURKEET HAS BROUGHT
11. THE ISSUE WITHIN ONE YEAR
12. OF THE COURT'S RULING. MOREOVER,
13. BURKEET HAS BROUGHT THIS
14. PETITION PURSUANT TO 285 34,500 (X) (9)
15. POST-CONVICTION RULES DO NOT
16. APPLY

17.

18.

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28.

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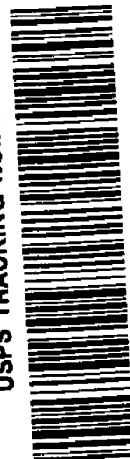
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1 JOEL BURKETT 16111
2 ADOK 1989
3 EIV 201 88301

FILED

FEB 07 2019 7

John L. Blum
CLERK OF COURT

4
5 EIGHTH JUDICIAL DISTRICT
6 COURT, STATE OF NEVADA
7 COUNTY OF CLARK

8 NAME, JOEL BURKETT

9 Plaintiff(s),

A-19-788633-W
Dept. XII

10 -VS-

11 NAME, William Bitter

12 Defendant(s).

REQUEST TO FILE

AMENDED PETITION

FOR WRIT OF HABEAS

CORPUS 34.500(2)(9)

13
14
15
16
17 COMES NOW JOEL BURKETT in PRO PER and herein above respectfully

18 Moves this Honorable Court for a ORDER ALLOWING THE

19 ABOVE PETITION FOR WRIT OF HABEAS

20 CORPUS TO BE AMENDED.

21
22
23 The above is made and based on the following Memorandum of Points and Authorities.

24
25
26
27
28
RECEIVED
FEB - 7 2019
CLERK OF THE COURT
A-19-788633-W
MOT
MOTION
4814691



MEMORANDUM OF POINTS AND AUTHORITIES

ON BURKEET FILED THE
ABOVE PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT TO WRS
34.500(2)(9)
AT WHICH TIME BURKEET DID NOT
HAVE COPIES OF HIS JURY
INSTRUCTIONS OR CLOSING
ARGUMENT TRANSCRIPTS, AND
WAS UNABLE TO REFER TO
PAGE AND LINE NUMBERS THEREIN.
TRANSCRIPTS LATTER TRIAL
COUNSEL CONCEDED BURKEET'S
GUILT TO THE JURY, EFFECTIVELY
PLEADING BURKEET GUILTY
WITHOUT HIS KNOWLEDGE OR
CONSENT.

BURKEET HAS SUBMITTED
HEREWITH AN AMENDED PETITION

FOR WRIT OF HABEAS CORPUS
CITING TO PAGE AND LINES
WITHIN THOSE TRANSCRIPTS
IN SUPPORT OF HIS CLAIM UNDER
THE SIXTH AMEND. U.S. CONST.

AND FOR THOSE REASONS REQUEST
THE COURT ACCEPT THE AMENDED
PETITION FOR WRIT OF HABEAS
CORPUS

Dated this 3 day of FEB, 2019

By: 

CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP Rule 5 (b), I hereby certify that I am the Petitioner/Defendant named herein
and that on this 3 day of FEB, 2019, I mailed a true and correct copy of this
foregoing Request to amend writ of Habeas Corpus to the following:

William Gitter
PO Box 1889
ELY, MO 64501

BROOKLYN
200 BOWEN AVE
LYONS

BY: 

AFFIRMATION

Pursuant to NRS 239b.030

The undersigned does hereby affirm that the preceding document, REQUEST TO

AMEND THE WIT OF HABEAS CORPUS

(Title of Document)

Filed in case number: 2K052190

☒ Document does not contain the social security number of any person

Or

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

☐ A Specific state or federal law, to wit

Or

☐ For the administration of a public program

Or

☐ For an application for a federal or state grant

Or

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

DATE: 2-3-18

[Signature]
(Signature)

JOEL BURKETT
(Print Name)

(Attorney for)

Case No. 81C052190

Dept. No. 12

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

JOEL BURKETT
Petitioner,

v.

WILLIAM GITTERE
Respondent.

AMENDED
PETITION FOR WRIT
OF HABEAS CORPUS
(REDACTED)
PURSUANT TO
NRS 34.500(2)(9)

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you're not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

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FEB - 7 2019

CLERK OF COURT

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: ELY STATE PRISON, WHITE PINE COUNTY

2. Name and location of court which entered the judgment of conviction under attack: EIGHTH JUD. DIST CLARK COUNTY NEV.

3. Date of judgment of conviction: 5/4/1981

4. Case number: C052190

5. (a) Length of sentence: 4 LIFE/WITH AND 35 YEARS

(b) If sentence is death, state any date upon which execution is scheduled: _____

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes _____ No ✓

If "yes", list crime, case number and sentence being served at this time: _____

7. Nature of offense involved in conviction being challenged: SEXUAL ASSAULT, KIDNAPING, ROBBERY

8. What was your plea? (check one):

(a) Not guilty ✓ (b) Guilty _____ (c) Nolo contendere _____

9. If you entered a plea of guilty to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty was negotiated, give details: _____

10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

(a) Jury ✓ (b) Judge without a jury _____

11. Did you testify at the trial? Yes ✓ No _____

12. Did you appeal from the judgment of conviction? Yes ✓ No _____

13. If you did appeal, answer the following:

(a) Name of Court: NEV SUPREME COURT

(b) Case number or citation: DO NOT HAVE

(c) Result: DENIED

(d) Date of result: 5/11/1983
(Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not: _____

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

16. If your answer to No. 15 was "yes", give the following information:

(a)(1) Name of court: 1ST JUD DIST CT

(2) Nature of proceeding: WRIT OF HABEAS CORPUS POST-CONVICTION

(3) Grounds raised: INEFFECTIVE ASSISTANCE OF COUNSEL

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☒ No ☐

(5) Result: denied

(6) Date of result: 8-20-1987

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: _____

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: _____

(2) Nature of proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result: _____

(6) Date of result: _____

(7) If known, citations of any written opinion or date of orders entered pursuant to such a result: _____

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion? Yes ☐ No ☐

Citation or date of decision: _____

(2) Second petition, application or motion? Yes ☐ No ☐

Citation or date of decision: _____

(3) Third or subsequent petitions, applications or motions? Yes ☐ No ☐

Citation or date of decision: _____

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/4 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) _____

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same: _____

(b) The proceedings in which these grounds were raised: _____

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) _____

18. If any of the grounds listed in No.'s 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

GROUND ONE, NEW CONSTITUTIONAL RULE did NOT
EXIST PRIOR TO 2018

19. Are you filing this petition more than one year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

YES. NEW CONSTITUTIONAL RULE
MADE RETROACTIVE, SEE SUPPORTING FACTS
ATTACHED HERETO

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes _____ No ☒

If yes, state what court and case number: _____

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: _____

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes ☒ No _____

If yes, specify where and when it is to be served, if you know: WHITEHOUSE

COUNTY 6 MONTH COUNTY JAIL TERM

23. State concisely every ground on which you claim that you are being held unlawfully, summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

(a) Ground One: INEFFECTIVE ASSISTANCE OF COUNSEL

BURKEE WAS DENIED THE RIGHT TO
ASSISTANCE AUTOMATICALLY

Supporting FACTS (Tell your story briefly without citing cases or law.):

SEE SUPPORTING FACTS ATTACHED
HEREIN AT Pg 10.

(b) Ground Two:

Supporting FACTS (Tell your story briefly without citing cases or law.):

(c) Ground Three:

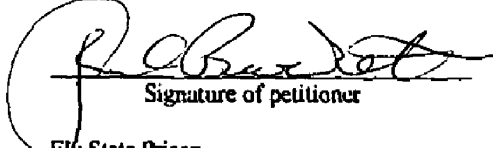
Supporting FACTS (Tell your story briefly without citing cases or law.):

(d) Ground Four:

Supporting FACTS (Tell your story briefly without citing cases or law.):

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

EXECUTED at Ely State Prison, on the 3 day of the month of Feb of the year 2019.


Signature of petitioner

Ely State Prison
Post Office Box 1989
Ely, Nevada 89301-1989

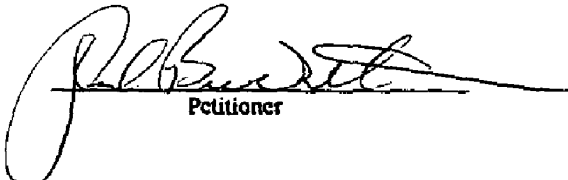
Signature of Attorney (if any)

Attorney for petitioner

Address

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.


Petitioner

Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I, JOEL BURKE, hereby certify pursuant to N.R.C.P. 5(b), that on this 3 day of the month of FEB, of the year 2019 I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

William G. GIBBE
Respondent prison or jail official
P.O. Box 988 ELY NV
89306
Address

Attorney General
Heroes' Memorial Building
100 North Carson Street
Carson City, Nevada 89710-4717

STEVEN L. WATSON
District Attorney of County of Conviction
200 KENNEDY AVE
245 12543 NV
Address

Joel Burke
Signature of Petitioner

AFFIRMATION PURSUANT TO NRS 239B.030

I, JOEL BURKEY, NDOC# 16411

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE
ATTACHED DOCUMENT ENTITLED Amended Petition of
Habeas Corpus

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 3rd DAY OF Feb, 2018.

SIGNATURE: [Signature]

INMATE PRINTED NAME: JOEL BURKEY

INMATE NDOC # 16411

INMATE ADDRESS: ELY STATE PRISON
P. O. BOX 1989
ELY, NV 89301

GROUND ONE, SUPPORTING FACTS:

1.
2. PETITIONER TESTIFIED IN HIS OWN DEFENSE
3. THAT HE WAS NOT GUILTY OF ANY
4. CRIME CHARGED. HIS DEFENSE WAS
5. CONSENT WITHOUT CONFERRING WITH
6. PETITIONER AND AGAINST PETITIONERS
7. OWN DEFENSE TRIAL COUNSEL CONCEDED
8. HIS GUILT TO THE CRIME OF
9. SEXUAL ASSAULT. HIS TRIAL COUNSEL
10. BEEN AWARE OF THE DEFENSE OF
11. CONSENT THERE CAN BE NO JUSTIFICATION
12. FOR HIM TAKING THE STAND THAT
13. PETITIONER WAS GUILTY OF RAPE.
14. "WHAT COULD YOU FIND HIM GUILTY
15. OF. THESE FOUR COUNTS, THAT HEAVES
16. ONE COUNT... THAT HE HAD SEXUAL
17. INTERCOURSE WITH HER AGAINST HER
18. WILL, BY FORCE OR FEAR, A SEXUAL
19. ASSAULT, MORE REFINED WAY FOR
20. RAPE, ALL RIGHT, AND THERE WAS
21. EVIDENCE OF THAT TAKING THE
22. BEST EVIDENCE, BECAUSE SHE
23. AGREED IT WASN'T WITH HER
24. CONSENT (T.O.T. Pg 477)

25.
26. (CONTINUED ON Pg 11.)

27.

28.

GROUND ONE SUPPORTING FACTS CONTINUED FR. PG 10:

1.
2. "THIS EVIDENCE OF RAPE" (T.T. PG 477)
3. "YOU COULD COME BACK WITH A VERDICT
4. OF GUILTY OF SEXUAL ASSAULT" (T.T. PG 477)
5. "ONLY ONE CRIME YOU CAN FIND HIM
6. GUILTY OF, THAT'S SEXUAL ASSAULT,
7. ONE COUNT OF HAVING SEXUAL
8. INTERCOURSE WITH THAT CAGE,
9. BECAUSE TO FIND HIM GUILTY OF THE
10. REST, YOU HAVE TO FIND BEYOND
11. A REASONABLE DOUBT" (T.T. PG 479)
12. COUNSEL WENT ON TO INFORM THE
13. JURY: "SO, WE REALLY ARE DEALING,
14. NOT A VERY HARD PROBLEM AS FAR AS
15. YOUR CONCERNED, BECAUSE, COURSE, I'M
16. HERE TO TRY AND CONVINCE YOU
17. OTHERWISE" (T.T. PG 480) "YOU KNOW
18. IT COULD BE IN PART TRUE
19. EVERYTHING AFTER THE FACT OF
20. GOING OUT IN THE DESERT MAKE
21. HE FORCED HIMSELF ON HER" (T.T. PG 481)

22.
23. THE JURY WAS INSTRUCTED IF
24. THE ATTORNEY'S

25.
26. (CONTINUED ON PG 13)

27.

28.

Grounds, Supporting Facts, Continued Fr. Pg 11,

1.

2. STIPULATE OR AGREE TO THE EXISTENCE
3. OF A FACT, YOU MUST ACCEPT THE
4. STIPULATION AS EVIDENCE AND
5. REGARD THE FACT AS PROVEN.
6.

7.

8. THE PETITIONER WAS 19 YEARS OLD AT
9. THE TIME OF HIS TRIAL WITH A 7TH GRADE
10. EDUCATION, AND 74 I.Q. SCORE,
11. COUNSEL NEVER COUNTERED OR
12. INFORMED PETITIONER HE WAS GOING
13. TO CONCEDE HIS GUILT
14.

15. IN LIGHT OF THE UNITED STATES
16. SUPREME COURT'S RULING IN,
17. MCCOY V. LOUISIANA 138 S. CT 1500,
18. 200 L. ED. 2D 821 (2008) WHEREIN, THE
19. COURT RULED "VIOLATION OF A
20. DEFENDANT'S SIXTH AMENDMENT
21. SECURED AUTONOMY CONSTITUTIONAL
22. STRUCTURAL ERROR"

23.

24. BURKEET COUNTERS MCCOY (SUPRA)
25. APPLIES RETROACTIVELY
26.

27. (Continued on Pg 13)

28.

12.

Grounds, Supporting Facts Continued Pg 12.

1.
2. AS TO QUESTION 18, 19 OF THE
3. PETITION FOR WRIT OF HABEAS CORPUS.
4. PETITIONER CONTENDS THAT THE
5. HABEAS CORPUS IS BASED UPON A
6. NEW RULE OF CONSTITUTIONAL
7. LAW WHICH APPLIES RETROACTIVELY
8. McCoy (Bulra) THAT CASE WAS
9. DECIDED MAY 14TH 2012, THUS
10. PETITIONER HAS BROUGHT HIS
11. CLAIM WITHIN ONE YEAR OF
12. THE COURT'S RULING.

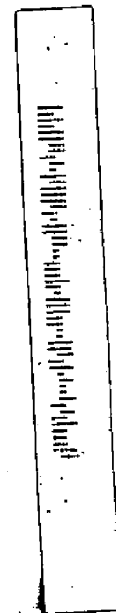
13.
14. PETITIONER BRINGS THIS WRIT OF
15. HABEAS CORPUS PURSUANT TO
16. N.B.S. 34.500(2)(9).

Joe, Dark Knight
PO Box 989
E1900
89301



Las Vegas NV 89199
TUE 05 FEB 2019 PM

Clark, Bruce, Dick, Jason
Box 989
3rd Floor
Las Vegas, NV
89155-2212



STATE PRISON
FEB 03 2019
U4

27

1 JOEL BURKETT #76111
2 PO BOX 1989
3 EIV. NV 89301

FILED

MAR 13 2019

John A. Blum
CLERK OF COURT

4
5 EIGHTH JUDICIAL DISTRICT
6 COURT, COUNTY OF CLATSOP
7 STATE OF OREGON

8 NAME JOEL BURKETT

9 Plaintiff(s),

10 -VS-

11 NAME WILLIAM BIERRE

12 Defendant(s).

CASE NO. A-19-788633-W

NOTICE OF
CORRECTION

13
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16
17 COMES NOW, JOEL BURKETT, in PRO PER and herein above respectfully

18 Moves this Honorable Court for a CORRECTION IN THE
19 RECORD

20
21
22
23 The above is made and based on the following Memorandum of Points and Authorities.

24 RECEIVED
25 MAR 13 2019
26 CLERK OF THE COURT

27 A-19-788633-W
NOTC
Notice
4822262



MEMORANDUM OF POINTS AND AUTHORITIES

ON 2-7-19 BURKEIT FILED A REQUEST
TO AMEND THE PETITION. AMENDED
PETITION AND MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF THE
PETITION FOR WRIT OF HABEAS CORPUS

IN THE MEMORANDUM OF POINTS
OF AUTHORITIES BURKEIT CONTENDED
THAT COUNSEL'S CONFESSIONS WOULD
IMPACT A GUILTY PLEA IN LIGHT OF
THE JURY BEING INSTRUCTED:

" IF THE ATTORNEYS STIPULATE
OR AGREE TO THE EXISTENCE
OF A FACT YOU MUST ACCEPT
THE STIPULATIONS AS EVIDENCE
AND REGARD THE FACT AS
PROVEN (JURY INSTRUCTION 20)

BURKEIT FAILED TO CITE
(JURY INSTRUCTION [#] 20) IN THE
RECORD.

1
2 BURKEET RESPECTFULLY REQUEST
3 THE COURT CORRECT THE
4 RECORD TO SHOW THAT
5 THE JURY INSTRUCTION STATED
6 THEREIN IS IN FACT
7 JURY INSTRUCTION 20

18
19 Respectfully
20 Submitted

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22
23
24 Dated this 10th day of March, 2018

25
26 By: 

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CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCR Rule 5 (b), I hereby certify that I am the Petitioner/Defendant named herein
and that on this 10 day of MARCH, 2019, I mailed a true and correct copy of this
foregoing NOTICE OF CORRECTIONS to the following:

STEVEN WILSON
200 KENNEDY AVE
LOS ANGELES, CA

WILLIAM RUTHER
P.O. BOX 1878
EL PASO

BY: [Signature]

AFFIRMATION

Pursuant to NRS 239b.030

The undersigned does hereby affirm that the preceding document, Notice

OF CORRECTION

(Title of Document)

Filed in case number: 19-722633-LS

☒ Document does not contain the social security number of any person

Or

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

☐ A Specific state or federal law, to wit

Or

☐ For the administration of a public program

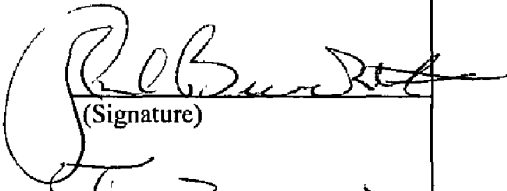
Or

☐ For an application for a federal or state grant

Or

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

DATE: 3-10-19


(Signature)

Rob Burket
(Print Name)

(Attorney for)

DECLARATION PURSUANT TO: N.R.S. 208.165

I, JOEL BURKE, OF INMATE IDENTIFICATION
NUMBER: 1611, AM A LAWFULLY
COMMITTED PRISONER OF THE NEVADA DEPARTMENT OF
CORRECTIONS, PRESENTLY IN THE LAWFUL CARE AND
CUSTODY OF ELY STATE PRISON, LOCATED AT: 12000 NORTH
BOTHWICK ROAD, (MAILING) P.O. BOX 1989, IN CITY OF: ELY,
COUNTY: WHITE PINE, STATE: NEVADA, 89301. DOES AFFIRM
THAT THE ATTACHED DOCUMENT
ENTITLED: NOTICE OF CORRECTION,
IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE &
BELIEF, AND ANY FALSE STATEMENT OF MATERIAL FACT
MADE THERE IN SHALL BE SUBJECTED TO THE PAINS AND
PENALTIES OF PERJURY PURSUANT TO: N.R.S. 208.165,
THIS, 10, DAY OF: MARCH, 2017.

INMATE SIGNATURE

INMATE NAME (PRINTED):

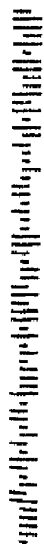
ADDRESS: ELY STATE PRISON

P.O. BOX 1989, ELY, NEVADA 89301

JOE BUREK 1000
Re BOK 1986
E14.00
87361

ELY STATE PRISON
MAR 10 2019
UB

89155-221212



Clerk at County
Ree Lewis Ave
3rd Floor
Las Vegas, NV
89155-2212

LAS VEGAS NV 890
11 MAR 2019 PM 3:11





1 ORDR

2
3 EIGHTH JUDICIAL DISTRICT
4 CLARK COUNTY, NEVADA

5 JOEL BURKETT,

6 Petitioner,

7 vs.

8 THE STATE OF NEVADA

9 Respondent

Case No.: A-19-788633-W

DEPT. No.: XII
(Tenth Petition)

10 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

11 FINDINGS OF FACT

12
13 1. On January 19, 1981, the State of Nevada charged Joel Burkett
14 ("Petitioner") by way of Information with Count 1, ROBBERY & USE OF A
15 DEADLY WEAPON IN COMMISSION OF A CRIME (Felony – NRS 200.380,
16 193.165); Count 2, FIRST DEGREE KIDNAPPING & USE OF A DEADLY
17 WEAPON IN COMMISSION OF A CRIME (Felony – NRS 200.310, 193.165); Count
18 3, SEXUAL ASSAULT (Felony – NRS 200.364, 200.366); and Count 4, SEXUAL
19 ASSAULT (Felony – NRS 200.364, 200.366).

20 2. On May 4, 1981, the jury found the Petitioner guilty of Count 1,
21 ROBBERY WITH USE OF A DEADLY WEAPON; Count 2, FIRST DEGREE
22 KIDNAPPING WITH USE OF A DEADLY WEAPON; Count 3, SEXUAL
23 ASSAULT; and Count 4, SEXUAL ASSAULT.

24 3. On June 2, 1981, Petitioner was sentenced to serve a term in the Nevada
25 State Prison as follows: Count 1, Fifteen years for Robbery and a consecutive fifteen
26 (15) years for Use of a Deadly Weapon in Commission of a Crime; Count 2, Life with
27 Possibility of Parole and a consecutive term of Life with the Possibility of Parole for
28 Use of a Deadly Weapon in Commission of a Crime; Count 2 is to be served
consecutive to Count 1; Count 3, Life with Possibility of Parole; Count 3 to run
concurrent to count 2; and Count 4, Life with Possibility of Parole. Count 4 to be
served consecutive to count 3.

4. On June 19, 1981, Petitioner filed a direct appeal.

5. On July 29, 1981, the District Court filed the Judgment of Conviction.

MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

1

1 6. On April 21, 1983, the Supreme Court of the State of Nevada dismissed
2 the appeal. Remittitur issued on May 10, 1983.

3 7. On February 2, 1994, Petitioner filed his first Petition for Writ of Habeas
4 Corpus (Post-Conviction).

5 8. On February 28, 1994, the District Court filed an Amended Judgment of
6 Conviction.

7 9. On June 7, 1999, Petitioner filed his second Petition for Writ of Habeas
8 Corpus (Post-Conviction).

9 10. On August 18, 1999, the District Court filed the Findings of Fact,
10 Conclusions of Law, and Order whereby the District Court denied Petitioner's second
11 Petition for Writ of Habeas Corpus (Post-Conviction).

12 11. On August 31, 1999, Petitioner filed a Notice of Appeal of the District
13 Court's denial of his second Petition for Writ of Habeas Corpus (Post-Conviction).

14 12. On August 21, 2001, the Supreme Court of the State of Nevada affirmed
15 the District Court's denial of Petitioner's second Petition for Writ of Habeas Corpus
16 (Post-Conviction).

17 13. On November 19, 2001, Petitioner filed his third Petition for Writ of
18 Habeas Corpus (Post-Conviction).

19 14. On February 14, 2002, the District Court filed the Findings of Fact,
20 Conclusions of Law, and Order whereby the District Court denied Petitioner's third
21 Petition for Writ of Habeas Corpus (Post-Conviction).

22 15. On March 20, 2002, Petitioner filed a Notice of Appeal of the District
23 Court's denial of his third Petition for Writ of Habeas Corpus (Post-Conviction).

24 16. On February 19, 2003, Petitioner filed his fourth Petition for Writ of
25 Habeas Corpus (Post-Conviction).

26 17. On March 7, 2003, in response to Petitioner's Notice of Appeal of the
27 District Court's denial of his third Petition for Writ of Habeas Corpus (Post-
28 Conviction), the Nevada Supreme Court ordered "the judgment of the district court
REVERSED AND REMANDED to the district court for proceedings consistent with
this order."

 18. On May 14, 2003, the District Court filed an Order whereby the District
Court denied Petitioner's fourth petition for Writ of Habeas Corpus (Post-Conviction).

1 19. On May 27, 2003, Petitioner filed a Notice of Appeal of the District
2 Court's denial of his fourth Petition for Writ of Habeas Corpus (Post-Conviction).

3 20. On April 2, 2004, the Supreme Court of the State of Nevada affirmed the
4 District Court's denial of Petitioner's fourth Petition for Writ of Habeas Corpus (Post-
5 Conviction).

6 21. On September 1, 2004, Petitioner filed his fifth Petition for Writ of
7 Habeas Corpus (Post-Conviction).

8 22. On November 1, 2004, the District Court filed the findings of Fact,
9 Conclusions of Law and Order whereby the District Court denied Petitioner's fifth
10 Petition for Writ of Habeas Corpus (Post-Conviction).

11 23. On May 13, 2005, Petitioner filed his sixth Petition for Writ of Habeas
12 Corpus (Post-Conviction).

13 24. On July 25, 2005, the District Court filed the Findings of Fact,
14 Conclusions of Law and Order whereby the District Court dismissed Petitioner's sixth
15 Petition for Writ of Habeas Corpus (Post-Conviction).

16 25. On August 9, 2005, Petitioner filed a Notice of Appeal of the district
17 Court's denial of his sixth Petition for Writ of Habeas Corpus (Post-Conviction).

18 26. On December 16, 2005, the Supreme Court of the State of Nevada
19 affirmed the District Court's denial of Petitioner's sixth Petition for Writ of Habeas
20 Corpus (Post-Conviction).

21 27. On July 7, 2011, Petitioner filed his seventh Petition for Writ of Habeas
22 Corpus (Post-Conviction).

23 28. On November 14, 2011, the District Court filed an Order Granting
24 State's Motion to Dismiss and Order Directing Clerk of Court to Transfer [the seventh]
25 Petition for Writ of Habeas Corpus to the Seventh Judicial District.

26 29. On June 14, 2013, Petitioner filed his eighth Petition for Writ of Habeas
27 Corpus (Post-Conviction).

28 30. On July 10, 2013, the District Court filed the Findings of Fact,
Conclusions of Law and Order whereby the District Court denied Petitioner's eighth
Petition for Writ of Habeas Corpus (Post-Conviction).

 31. On July 22, 2013, Petitioner filed a Notice of Appeal of the District
Court's denial of his eighth Petition for Writ of Habeas Corpus (Post-Conviction).

1 32. On February 20, 2014, the Supreme Court of the State of Nevada
2 affirmed the District Court's denial of Petitioner's eighth Petition for Writ of Habeas
3 Corpus (Post-Conviction).

4 33. On September 7, 2016, Petitioner filed his ninth Petition for Writ of
5 Habeas Corpus (Post-Conviction).

6 34. On October 31, 2016, the District Court filed the Findings of Fact,
7 Conclusions of Law and Order whereby the District Court denied Petitioner's ninth
8 Petition for Writ of Habeas Corpus (Post-Conviction).

9 35. On November 10, 2016, Petitioner filed a Notice of Appeal of the
10 District Court's denial of his ninth Petition for Writ of Habeas Corpus (Post-
11 Conviction).

12 36. On August 14, 2017, the Supreme Court of the State of Nevada reversed
13 and remanded the District Court's denial of Petitioner's ninth Petition for Writ of
14 Habeas Corpus (Post-Conviction) because the Petition was a time computation issue
15 and should have been filed in the county where the Petitioner is currently serving his
16 prison term.

17 37. On March 2, 2018, the District Court filed an Amended Judgement of
18 Conviction clarifying that Count 3 was to run concurrent to Count 2, and Count 4 was
19 to run consecutive to Count 3.

20 38. On June 14, 2018, Petitioner filed a notice of appeal on the Amended
21 Judgement of Conviction and Writ of Mandamus seeking the Supreme Court of the
22 State of Nevada to direct the Nevada Department of Corrections to accurately calculate
23 his sentence.

24 39. On January 17, 2019, the Appeals Court of the State of Nevada filed an
25 Order dismissing the appeal.

26 40. On February 1, 2019, Petitioner filed the instant tenth Petition for Writ of
27 Habeas Corpus (Post-Conviction).

28 41. On February 7, 2019, Petitioner filed a Motion to Amend the Petition for
Writ of Habeas Corpus, and supplemented his argument.

 42. The instant petition is untimely. Absent good cause for the failure to
present the claim in a prior petition or for presenting the claim again, and actual
prejudice, the petition must be dismissed.

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CONCLUSIONS OF LAW

1. NRS 34.810(2), governing "Additional reasons for dismissal of petition," requires that "[a] second or successive petition must be dismissed if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are alleged, the judge or justice finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ."

2. The petitioner has the burden of pleading and proving specific facts that demonstrate both good cause for failing to present a claim or for presenting a claim again and actual prejudice. NRS 34.810(3). *See also State v. Haberstroh*, 119 Nev. 173, 181, 69 P.3d 676, 681 (2003).

3. A court must dismiss a habeas petition if it presents claims that either were presented in an earlier proceeding 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, 621-622, 28 P.3d 498, 507 (2001).

4. Unlike initial petitions which certainly require a careful review of the record, successive petitions may be dismissed based solely on the face of the petition. *Ford v. Warden*, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

5. Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory. *State v. District Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005).

6. Meritless, successive and untimely petitions clog the court system and undermine the finality of convictions. *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

7. The instant petition is a successive petition, and therefore is subject to dismissal pursuant to NRS 34.810(2); NRS 34.810(3). The petition must be dismissed if petitioner failed to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are raised in the petition and the court determines the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ. Absent good cause for the failure to present the claim in a prior petition or for presenting the claim again, and actual prejudice, the petition must be dismissed.

8. Here, the Petitioner contends his attorney conceded guilt to the sexual assault charge during closing argument at his trial in violation of his sixth amendment rights. Petitioner contends the recent United States Supreme Court case of *McCoy v. Louisiana*, 584 U.S. _____, 138 S.Ct. 1500, (2018) is applicable and he is therefore entitled to relief in the instant petition.

1
2 9. The United States Supreme Court decided *McCoy v. Louisiana* on May
3 14, 2018. Thus, the Petitioner's instant claim that his attorney conceded guilt without
4 his consent, in his Petition filed on February 1, 2019, within a year of the *McCoy*
5 decision, may support good cause to overcome the Petitioner's failure to file his Petition
6 within a year of the remittitur issued from direct appeal on May 10, 1983. It is also good
7 cause to overcome the Petitioner's failure to bring the claim in a previous petition
8 because it is a new claim that could not have been brought before the *McCoy* decision.
9 *See Hathaway v. State*, 119 Nev. 248 (2003).

10 10. However, a review of the record and closing argument of defense
11 counsel indicates the Petitioner's claim is without merit. Defense counsel vigorously
12 argued to the jury that the State failed to meet their burden of proof and that the jury
13 should return a verdict of not guilty as to all counts. The Petitioner took the stand in his
14 own defense at the time of trial. On direct examination, Petitioner testified that he had
15 sex with the victim, but claimed it was consensual. (*See* trial transcript, pg. 397).

16 Petitioner's trial counsel argued to the jury that their verdict would be guided by
17 who they believed. They heard both sides of the story. They heard the testimony of the
18 victim and the Petitioner. Counsel stated let's say you don't believe anything my client
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20 put on a defense" (*See* trial transcript, pg.471). "So what I'm trying to show you is if
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22 argue against -- where can you go from here?" (*See* trial transcript, pg. 471).

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24 there was reasonable doubt. He stated, "[a]ll right. Taking it in the best event, then, of
25 what could you find him guilty of, these four counts, that leaves one count -- that he had
26 sexual intercourse with her against her will, by force or fear. A sexual assault. More
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29 you take our case and throw it out the window -- don't believe anything from him. Don't
30 believe anybody, or her, with a vengeance of conviction, and going with the State's --
31 simply back to the 18th Century -- then you could come back with a verdict of guilty of
32 sexual assault" (*See* trial transcript pg. 477). Counsel then continues to argue there was
33 no evidence of forced sex because the victim and Petitioner both had no marks on them
34 (*See* trial transcript, pg. 478). Counsel also vigorously argued the victim was not
35 truthful in her testimony to the jury pointing out inconsistencies in her testimony and
36 her statements to the police, and arguing the medical examiner found no evidence of
37 anal sex which the victim reported. (*See* trial transcript pg's. 476- 486).

38 Defense counsel further stated, "Now, again, we're still talking in the best
39 evidence of the State's case." "Now, what are we going to find him guilty of? Only one
40 crime you can find him guilty of. That's sexual assault, one count of having sexual
41 intercourse with Tina Cage" (*See* trial transcript, pg. 479).

1 A review of the entire closing argument indicates defense counsel did not concede guilt
2 to the sexual assault charge. Accordingly, Petitioner's claim is without merit. *McCay*
3 *v. Louisiana* is not applicable. Petitioner failed to show prejudice, and therefore, the
petition must be denied.

4 **ORDER**

5 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas
6 Corpus (Post-Conviction) shall be, and it is, hereby DENIED.

7 Dated this 18 day of April, 2019.

8 
9 MICHELLE LEAVITT
10 DISTRICT COURT JUDGE
11 DEPARTMENT XII
12 EIGHTH JUDICIAL DISTRICT
13
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MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

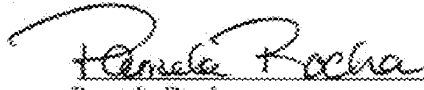
1
2 CERTIFICATE OF MAILING
3

4 I hereby certify that on the date filed, I placed a copy of the Order for
5 Petition for Writ of Habeas Corpus (Post-Conviction) in the U.S. Mail, postage
6 prepaid to:

7 Joel Burkett #16111
8 Ely State Prison
9 P.O. Box 1989
Ely, Nevada 89301

Steven B. Wolfson
Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155

10 Aaron Ford
11 Nevada Attorney General
12 555 E. Washington, Suite 3900
Las Vegas, NV 89101-1068
13
14

15 
16 Pamela Rocha
17 Judicial Executive Assistant
18 Department XII
Eighth Judicial District Court
19

20 C052190

21 Joel Burkett

22 vs.

23 William Gittere

24 (Tenth Petition)
25
26
27
28



1 NEO

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4
5 JOEL BURKETT,

6 Petitioner,

Case No: A-19-788633-W

Dept No: XII

7 vs.

8 WILLIAM GITTERE,

9 Respondent,

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

10
11 **PLEASE TAKE NOTICE** that on April 18, 2019, the court entered a decision or order in this matter, a
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
15 mailed to you. This notice was mailed on April 22, 2019.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Debra Donaldson

18 Debra Donaldson, Deputy Clerk

19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 22 day of April 2019, I served a copy of this Notice of Entry on the following:

21 ☒ By e-mail:

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

24 ☒ The United States mail addressed as follows:

25 Joel Burkett # 16111
26 P.O. Box 1989
27 Ely, NV 89301

28 /s/ Debra Donaldson

Debra Donaldson, Deputy Clerk

Respondent

1 6. On April 21, 1983, the Supreme Court of the State of Nevada dismissed
2 the appeal. Remittitur issued on May 10, 1983.

3 7. On February 2, 1994, Petitioner filed his first Petition for Writ of Habeas
4 Corpus (Post-Conviction).

5 8. On February 28, 1994, the District Court filed an Amended Judgment of
6 Conviction.

7 9. On June 7, 1999, Petitioner filed his second Petition for Writ of Habeas
8 Corpus (Post-Conviction).

9 10. On August 18, 1999, the District Court filed the Findings of Fact,
10 Conclusions of Law, and Order whereby the District Court denied Petitioner's second
11 Petition for Writ of Habeas Corpus (Post-Conviction).

12 11. On August 31, 1999, Petitioner filed a Notice of Appeal of the District
13 Court's denial of his second Petition for Writ of Habeas Corpus (Post-Conviction).

14 12. On August 21, 2001, the Supreme Court of the State of Nevada affirmed
15 the District Court's denial of Petitioner's second Petition for Writ of Habeas Corpus
16 (Post-Conviction).

17 13. On November 19, 2001, Petitioner filed his third Petition for Writ of
18 Habeas Corpus (Post-Conviction).

19 14. On February 14, 2002, the District Court filed the Findings of Fact,
20 Conclusions of Law, and Order whereby the District Court denied Petitioner's third
21 Petition for Writ of Habeas Corpus (Post-Conviction).

22 15. On March 20, 2002, Petitioner filed a Notice of Appeal of the District
23 Court's denial of his third Petition for Writ of Habeas Corpus (Post-Conviction).

24 16. On February 19, 2003, Petitioner filed his fourth Petition for Writ of
25 Habeas Corpus (Post-Conviction).

26 17. On March 7, 2003, in response to Petitioner's Notice of Appeal of the
27 District Court's denial of his third Petition for Writ of Habeas Corpus (Post-
28 Conviction), the Nevada Supreme Court ordered "the judgment of the district court
REVERSED AND REMANDED to the district court for proceedings consistent with
this order."

 18. On May 14, 2003, the District Court filed an Order whereby the District
Court denied Petitioner's fourth petition for Writ of Habeas Corpus (Post-Conviction).

1 19. On May 27, 2003, Petitioner filed a Notice of Appeal of the District
2 Court's denial of his fourth Petition for Writ of Habeas Corpus (Post-Conviction).

3 20. On April 2, 2004, the Supreme Court of the State of Nevada affirmed the
4 District Court's denial of Petitioner's fourth Petition for Writ of Habeas Corpus (Post-
5 Conviction).

6 21. On September 1, 2004, Petitioner filed his fifth Petition for Writ of
7 Habeas Corpus (Post-Conviction).

8 22. On November 1, 2004, the District Court filed the findings of Fact,
9 Conclusions of Law and Order whereby the District Court denied Petitioner's fifth
10 Petition for Writ of Habeas Corpus (Post-Conviction).

11 23. On May 13, 2005, Petitioner filed his sixth Petition for Writ of Habeas
12 Corpus (Post-Conviction).

13 24. On July 25, 2005, the District Court filed the Findings of Fact,
14 Conclusions of Law and Order whereby the District Court dismissed Petitioner's sixth
15 Petition for Writ of Habeas Corpus (Post-Conviction).

16 25. On August 9, 2005, Petitioner filed a Notice of Appeal of the district
17 Court's denial of his sixth Petition for Writ of Habeas Corpus (Post-Conviction).

18 26. On December 16, 2005, the Supreme Court of the State of Nevada
19 affirmed the District Court's denial of Petitioner's sixth Petition for Writ of Habeas
20 Corpus (Post-Conviction).

21 27. On July 7, 2011, Petitioner filed his seventh Petition for Writ of Habeas
22 Corpus (Post-Conviction).

23 28. On November 14, 2011, the District Court filed an Order Granting
24 State's Motion to Dismiss and Order Directing Clerk of Court to Transfer [the seventh]
25 Petition for Writ of Habeas Corpus to the Seventh Judicial District.

26 29. On June 14, 2013, Petitioner filed his eighth Petition for Writ of Habeas
27 Corpus (Post-Conviction).

28 30. On July 10, 2013, the District Court filed the Findings of Fact,
Conclusions of Law and Order whereby the District Court denied Petitioner's eighth
Petition for Writ of Habeas Corpus (Post-Conviction).

31. On July 22, 2013, Petitioner filed a Notice of Appeal of the District
Court's denial of his eighth Petition for Writ of Habeas Corpus (Post-Conviction).

1 32. On February 20, 2014, the Supreme Court of the State of Nevada
2 affirmed the District Court's denial of Petitioner's eighth Petition for Writ of Habeas
3 Corpus (Post-Conviction).

4 33. On September 7, 2016, Petitioner filed his ninth Petition for Writ of
5 Habeas Corpus (Post-Conviction).

6 34. On October 31, 2016, the District Court filed the Findings of Fact,
7 Conclusions of Law and Order whereby the District Court denied Petitioner's ninth
8 Petition for Writ of Habeas Corpus (Post-Conviction).

9 35. On November 10, 2016, Petitioner filed a Notice of Appeal of the
10 District Court's denial of his ninth Petition for Writ of Habeas Corpus (Post-
11 Conviction).

12 36. On August 14, 2017, the Supreme Court of the State of Nevada reversed
13 and remanded the District Court's denial of Petitioner's ninth Petition for Writ of
14 Habeas Corpus (Post-Conviction) because the Petition was a time computation issue
15 and should have been filed in the county where the Petitioner is currently serving his
16 prison term.

17 37. On March 2, 2018, the District Court filed an Amended Judgement of
18 Conviction clarifying that Count 3 was to run concurrent to Count 2, and Count 4 was
19 to run consecutive to Count 3.

20 38. On June 14, 2018, Petitioner filed a notice of appeal on the Amended
21 Judgement of Conviction and Writ of Mandamus seeking the Supreme Court of the
22 State of Nevada to direct the Nevada Department of Corrections to accurately calculate
23 his sentence.

24 39. On January 17, 2019, the Appeals Court of the State of Nevada filed an
25 Order dismissing the appeal.

26 40. On February 1, 2019, Petitioner filed the instant tenth Petition for Writ of
27 Habeas Corpus (Post-Conviction).

28 41. On February 7, 2019, Petitioner filed a Motion to Amend the Petition for
Writ of Habeas Corpus, and supplemented his argument.

 42. The instant petition is untimely. Absent good cause for the failure to
present the claim in a prior petition or for presenting the claim again, and actual
prejudice, the petition must be dismissed.

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CONCLUSIONS OF LAW

1. NRS 34.810(2), governing "Additional reasons for dismissal of petition," requires that "[a] second or successive petition must be dismissed if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are alleged, the judge or justice finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ."

2. The petitioner has the burden of pleading and proving specific facts that demonstrate both good cause for failing to present a claim or for presenting a claim again and actual prejudice. NRS 34.810(3). *See also State v. Haberstroh*, 119 Nev. 173, 181, 69 P.3d 676, 681 (2003).

3. A court must dismiss a habeas petition if it presents claims that either were presented in an earlier proceeding 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, 621-622, 28 P.3d 498, 507 (2001).

4. Unlike initial petitions which certainly require a careful review of the record, successive petitions may be dismissed based solely on the face of the petition. *Ford v. Warden*, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

5. Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory. *State v. District Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005).

6. Meritless, successive and untimely petitions clog the court system and undermine the finality of convictions. *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

7. The instant petition is a successive petition, and therefore is subject to dismissal pursuant to NRS 34.810(2); NRS 34.810(3). The petition must be dismissed if petitioner failed to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are raised in the petition and the court determines the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ. Absent good cause for the failure to present the claim in a prior petition or for presenting the claim again, and actual prejudice, the petition must be dismissed.

8. Here, the Petitioner contends his attorney conceded guilt to the sexual assault charge during closing argument at his trial in violation of his sixth amendment rights. Petitioner contends the recent United States Supreme Court case of *McCoy v. Louisiana*, 584 U.S. _____, 138 S.Ct. 1500, (2018) is applicable and he is therefore entitled to relief in the instant petition.

1
2 9. The United States Supreme Court decided *McCoy v. Louisiana* on May
3 14, 2018. Thus, the Petitioner's instant claim that his attorney conceded guilt without
4 his consent, in his Petition filed on February 1, 2019, within a year of the *McCoy*
5 decision, may support good cause to overcome the Petitioner's failure to file his Petition
6 within a year of the remittitur issued from direct appeal on May 10, 1983. It is also good
7 cause to overcome the Petitioner's failure to bring the claim in a previous petition
8 because it is a new claim that could not have been brought before the *McCoy* decision.
9 *See Hathaway v. State*, 119 Nev. 248 (2003).

10 10. However, a review of the record and closing argument of defense
11 counsel indicates the Petitioner's claim is without merit. Defense counsel vigorously
12 argued to the jury that the State failed to meet their burden of proof and that the jury
13 should return a verdict of not guilty as to all counts. The Petitioner took the stand in his
14 own defense at the time of trial. On direct examination, Petitioner testified that he had
15 sex with the victim, but claimed it was consensual. (*See* trial transcript, pg. 397).

16 Petitioner's trial counsel argued to the jury that their verdict would be guided by
17 who they believed. They heard both sides of the story. They heard the testimony of the
18 victim and the Petitioner. Counsel stated let's say you don't believe anything my client
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32 sexual assault" (*See* trial transcript pg. 477). Counsel then continues to argue there was
33 no evidence of forced sex because the victim and Petitioner both had no marks on them
34 (*See* trial transcript, pg. 478). Counsel also vigorously argued the victim was not
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41 intercourse with Tina Cage" (*See* trial transcript, pg. 479).

1 A review of the entire closing argument indicates defense counsel did not concede guilt
2 to the sexual assault charge. Accordingly, Petitioner's claim is without merit. *McCay*
3 *v. Louisiana* is not applicable. Petitioner failed to show prejudice, and therefore, the
petition must be denied.

4 **ORDER**

5 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas
6 Corpus (Post-Conviction) shall be, and it is, hereby DENIED.

7 Dated this 18 day of April, 2019.

8 
9 MICHELLE LEAVITT
10 DISTRICT COURT JUDGE
11 DEPARTMENT XII
12 EIGHTH JUDICIAL DISTRICT
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MICHELLE LEAVITT
DISTRICT JUDGE
DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

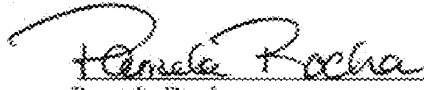
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2 CERTIFICATE OF MAILING
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5 Petition for Writ of Habeas Corpus (Post-Conviction) in the U.S. Mail, postage
6 prepaid to:

7 Joel Burkett #16111
8 Ely State Prison
9 P.O. Box 1989
Ely, Nevada 89301

Steven B. Wolfson
Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155

10 Aaron Ford
11 Nevada Attorney General
12 555 E. Washington, Suite 3900
Las Vegas, NV 89101-1068
13
14

15 
16 Pamela Rocha
17 Judicial Executive Assistant
18 Department XII
Eighth Judicial District Court
19

20 C052190

21 Joel Burkett

22 vs.

23 William Gittere

24 (Tenth Petition)
25
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27
28

(ORIGINAL)

Electronically Filed
5/20/2019 11:51 AM
Steven D. Grierson
CLERK OF THE COURT

Case No. A-19-788633-W

Dept. No. XII

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

JOEL BURKETT

Petitioner/Plaintiff,

vs.

THE STATE OF NEVADA

Respondent/Defendant.

NOTICE OF APPEAL

Notice is hereby given that JOEL BURKETT, Petitioner/Defendant
above named, hereby appeals to the Court of Appeals for the State of Nevada from the final
judgment / order (JOEL BURKETT V. THE STATE OF NEVADA

A-19-788633-W)

Entered in this action on the 18th day of April, 2019.

Dated this 14 day of May, 2019.

Joel Burkett
NDOC # 16111
Appellant - Pro Per

~~Ely State Prison~~

~~P.O. Box 1989~~

~~Ely, Nevada 89301-1989~~

N.N.C.G

P.O. BOX 7000

CARSON CITY, NV

89702

RECEIVED

MAY 20 2019

CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAIL

I, JOEL BURKETT, hereby certify pursuant to Rule 5(b) of the NRCP, that on this 14 day of MAY, 2019, I served a true and correct copy of the above-entitled NOTICE OF APPEAL postage prepaid and addressed as follows:

William Bitter

PO Box 1989

ELY, NV 89703

Signature

Joel Burkett

Print Name

JOEL BURKETT

~~Ely State Prison~~

~~P.O. Box 1089~~

~~Ely, Nevada 89301-1089~~

N.N.C.C.

PO BOX 7000

CARSON CITY, NV

89702

AFFIRMATION PURSUANT TO NRS 239B.030

I, JOEL BURKETT, NDOC# 160111

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE
ATTACHED DOCUMENT ENTITLED NOTICE OF APPEAL

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 14 DAY OF May, 2019.

SIGNATURE: JOEL BURKETT

INMATE PRINTED NAME: JOEL BURKETT

INMATE NDOC # 160111

INMATE ADDRESS: ~~ELY STATE PRISON~~

~~P.O. BOX 1989~~

~~ELY, NV 89301~~

NACC
PO BOX 7000

CARSON CITY, NV
89202

JOE BURKE 1611
N.W. C.C.
P.O. Box 7000
CAROUSEY, NC
89202

LEGAL MAIL
CONFIDENTIAL

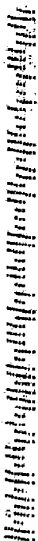
Cherif Clout

*200 Lewis Ave
3rd Floor*

100 Vegas, NV

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

9 JOEL BURKETT,

10 Plaintiff(s),

11 vs.

12 WILLIAM A. GITTERE,

13 Defendant(s),

Case No: A-19-788633-W

Dept No: XII

14
15
16 **CASE APPEAL STATEMENT**

17
18 1. Appellant(s): Joel Burkett

19 2. Judge: Michelle Leavitt

20 3. Appellant(s): Joel Burkett

21 Counsel:

22 Joel Burkett #16111
23 P.O. Box 7000
24 Carson City, NV 89702

25 4. Respondent (s): William A. Gittere

26 Counsel:

27 Aaron D. Ford, Attorney General
28 555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101-1068

Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89155-2212

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5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A
- Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A
6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No
7. Appellant Represented by Appointed Counsel On Appeal: N/A
8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A
***Expires 1 year from date filed*
Appellant Filed Application to Proceed in Forma Pauperis: Yes,
Date Application(s) filed: February 1, 2019
9. Date Commenced in District Court: February 1, 2019
10. Brief Description of the Nature of the Action: Civil Writ
Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus
11. Previous Appeal: No
Supreme Court Docket Number(s): N/A
12. Child Custody or Visitation: N/A
13. Possibility of Settlement: Unknown

Dated This 22 day of May 2019.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann
Heather Ungermann, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: Joel Burkett

Steven D. Grierson

OSCC

DISTRICT COURT
CLARK COUNTY, NEVADA

JOEL BURKETT, PLAINTIFF(S)
VS.
WILLIAM A GITTERE,
DEFENDANT(S)

CASE NO.: A-19-788633-W
DEPARTMENT 12

CIVIL ORDER TO STATISTICALLY CLOSE CASE

Upon review of this matter and good cause appearing,
IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
statistically close this case for the following reason:

DISPOSITIONS:

- ☐ Default Judgment
- ☐ Judgment on Arbitration
- ☐ Stipulated Judgment
- ☒ Summary Judgment
- ☐ Involuntary Dismissal
- ☐ Motion to Dismiss by Defendant(s)
- ☐ Stipulated Dismissal
- ☐ Voluntary Dismissal
- ☐ Transferred (before trial)
- ☐ Non-Jury – Disposed After Trial Starts
- ☐ Non-Jury – Judgment Reached
- ☐ Jury – Disposed After Trial Starts
- ☐ Jury – Verdict Reached
- ☐ Other Manner of Disposition

DATED this 6 day of June, 2019.

Michelle Leavitt
MICHELLE LEAVITT
DISTRICT COURT JUDGE

MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated June 25, 2019, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 80.

JOEL BURKETT,

Plaintiff(s),

vs.

WILLIAM A. GITTERE,

Defendant(s),

Case No: A-19-788633-W

Dept. No: XII

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 27 day of June 2019.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk