

JOEL BURKETT

(Name)

16111

(I.D. No.)

Northern Nevada Correctional Center  
Post Office Box 7000  
Carson City, Nevada 89702

Electronically Filed  
Nov 12 2019 03:57 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

JOEL BURKETT

Petitioner/Defendant,

vs.

ISIDRO BACA

Respondent/Plaintiff

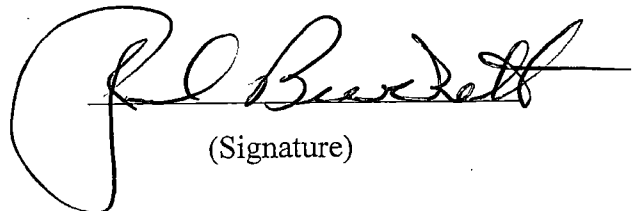
Case No.: A-19-800052-W

Dept. No. 12

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that I, JOEL BURKETT appeal the  
Judgment / Order entered on the 16th day of OCTOBER, 20 19 by this  
court.

Dated this 30 day of OCT, 20 19.

  
(Signature)

RECEIVED  
NOV 04 2019  
CLERK OF THE COURT

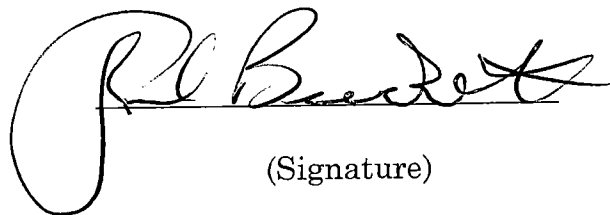
CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP Rule 5(b), I hereby certify that I am the Defendant named herein and that on this 30 day of OCT, 2019, I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the following:

CLARK County District Attorney

200 LEWIS AVE

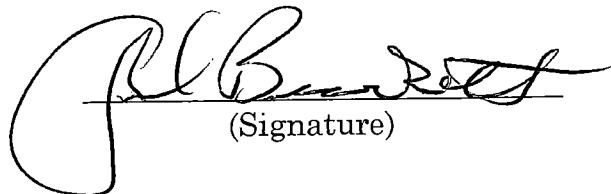
LAS VEGAS, NV 89155-2212

  
(Signature)

AFFIRMATION PURSUANT TO NRS 239B.030

\*\* I certify that the foregoing document DOES NOT contain the social security number of any persons.

10-30-19  
(Date)

  
(Signature)

Joei Burkett 1611  
PO Box 7000  
Chesapeake City, MD  
21703

Clerk of Court

200 Lewis Ave  
3rd Floor

Lt's Veggies, MD  
28155-1160

6510185300 0075



Hasler

10/31/2019

US POSTAGE

3717

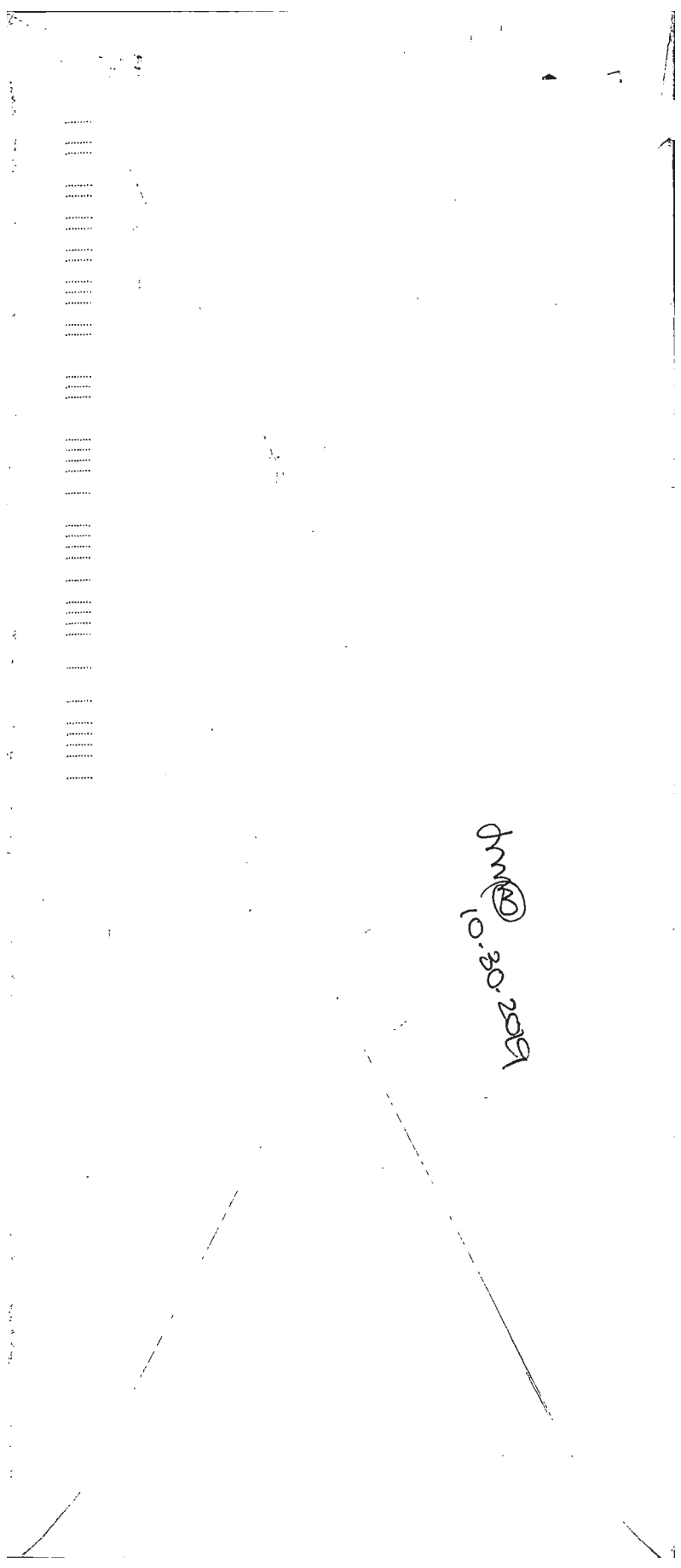
FIRST-CLASS MAIL

\$00.50<sup>2</sup>



ZIP 89701

011D12692124



done @ 10-30-2019

JOEL BURKEETT 16111

10-30-19

NWCC

P.O. BOX 7060

CARSON CITY, NV

89202

RE: JOEL BURKEETT V. SIDRA DAKA

CASE NO: A-19-80052-W

DEPT NO: 12

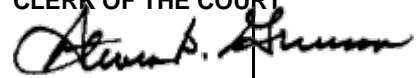
DEAR CLERK

PLEASE FIND ENCLOSED FOR FILING  
IN THE ABOVE MATTER;  
"NOTICE OF APPEAL" AND ONE  
COPY THEREOF

THANK YOU

Joel Burkeett

RECEIVED  
NOV 14 2019  
CLERK OF THE COURT



1 ASTA

2  
3  
4  
5  
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  
11 Petitioner(s),

12 vs.

13 ISIDRO BACA,

14 Respondent(s),

Case No: A-19-800052-W

Dept No: XII

15  
16  
17 **CASE APPEAL STATEMENT**

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): Isidro Baca

26 Counsel:

27 Steven B. Wolfson, District Attorney  
28 200 Lewis Ave.  
Las Vegas, NV 89155-2212

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: August 5, 2019

11          9. Date Commenced in District Court: August 5, 2019

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 7 day of November 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  
27 cc: Joel Burkett  
28

# CASE SUMMARY

## CASE NO. A-19-800052-W

Joel Burkett, Plaintiff(s)  
vs.  
Isidro Baca, Defendant(s)

§  
§  
§  
§  
§

Location: **Department 12**  
Judicial Officer: **Leavitt, Michelle**  
Filed on: **08/05/2019**  
Cross-Reference Case Number: **A800052**

### CASE INFORMATION

#### Related Cases

81C052190 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Case Status: **08/05/2019 Open**

### DATE

### CASE ASSIGNMENT

#### Current Case Assignment

Case Number A-19-800052-W  
Court Department 12  
Date Assigned 08/05/2019  
Judicial Officer Leavitt, Michelle

### PARTY INFORMATION

#### Plaintiff

Burkett, Joel

Lead Attorneys

Pro Se

#### Defendant

Isidro Baca

State of Nevada

Wolfson, Steven B  
Retained  
702-455-5320(W)


### DATE

### EVENTS & ORDERS OF THE COURT


### INDEX

#### EVENTS


08/05/2019

 Inmate Filed - Petition for Writ of Habeas Corpus  
Party: Plaintiff Burkett, Joel  
Pursuant to NRS 34.500(2)(9)

08/05/2019

 Application to Proceed in Forma Pauperis  
Filed By: Plaintiff Burkett, Joel  
Order Not Submitted


08/30/2019

 Order for Petition for Writ of Habeas Corpus  
Order for Petition for Writ of Habeas Corpus

10/10/2019

 Response  
State's Response to Defendant's Petition for Writ of Habeas Corpus

10/16/2019

 Findings of Fact, Conclusions of Law and Order  
Findings of Fact, Conclusions of Law, and Order

10/21/2019

 Notice of Entry  
Notice of Entry of Findings of Fact, Conclusions of Law and Order



## CASE SUMMARY

CASE NO. A-19-800052-W

11/04/2019



Notice of Appeal

Filed By: Plaintiff Burkett, Joel

*Notice of Appeal*

11/07/2019



Case Appeal Statement

Filed By: Plaintiff Burkett, Joel

*Case Appeal Statement*

### **HEARINGS**

10/17/2019

**Petition for Writ of Habeas Corpus (8:30 AM)** (Judicial Officer: Leavitt, Michelle)

Denied;

Journal Entry Details:

*COURT STATED a Finding of Facts and Conclusions of Law was signed and ORDERED, Petition DENIED as it is time barred and successive; the Defendant raises issues that are not cognizable for post conviction relief. Court noted the Order has already been prepared and filed.;*

## DISTRICT COURT CIVIL COVER SHEET

A-19-800052-W  
Dept. XII

County, Nevada

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone): Joel Burkett	Defendant(s) (name/address/phone): Isidro Baca
Attorney (name/address/phone):	Attorney (name/address/phone):

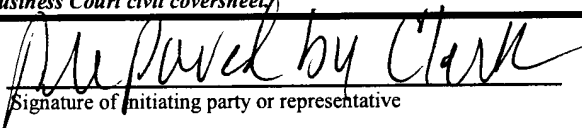
**II. Nature of Controversy** (please select the one most applicable filing type below)**Civil Case Filing Types**

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

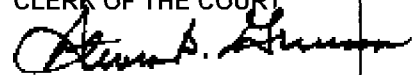
Business Court filings should be filed using the Business Court civil coversheet.

August 5, 2019

Date

  
 Signature of initiating party or representative

See other side for family-related case filings.



1     ORDR

2  
3                     EIGHTH JUDICIAL DISTRICT  
4                     CLARK COUNTY, NEVADA

5     JOEL BURKETT,                                     )  
6                     Petitioner,                     )  
7             vs.                                     )  
8     ISIDRO BACA                                     )  
9                     Respondent                     )

Case No.: A-19-800052-W  
DEPT. No.: XII  
(Eleventh 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 ("Petitioner")  
14     by way of Information with Count 1, ROBBERY & USE OF A DEADLY WEAPON IN  
15     COMMISSION OF A CRIME (Felony – NRS 200.380, 193.165); Count 2, FIRST  
16     DEGREE KIDNAPPING & USE OF A DEADLY WEAPON IN COMMISSION OF A  
17     CRIME (Felony – NRS 200.310, 193.165); Count 3, SEXUAL ASSAULT (Felony – NRS  
18     200.364, 200.366); and Count 4, SEXUAL ASSAULT (Felony – NRS 200.364, 200.366).

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

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

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

**MICHELLE LEAVITT**  
DISTRICT JUDGE

DEPARTMENT TWELVE  
LAS VEGAS, NEVADA 89155

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

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

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

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

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

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

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

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

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

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

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

28          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).

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

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

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

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

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

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

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

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

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

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

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

26           30.     On July 10, 2013, the District Court filed the Findings of Fact, Conclusions  
27 of Law and Order whereby the District Court denied Petitioner's eighth Petition for Writ of  
28 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).

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

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

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

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

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

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

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

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

20           40. On February 1, 2019, Petitioner filed his tenth Petition for Writ of Habeas  
21 Corpus (Post-Conviction).

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

24           42. On April 18, 2019, the court issued Findings of Fact and Conclusions of Law  
25 denying Petitioner's tenth Petition for Writ of Habeas Corpus (Post-Conviction). Notice of  
26 Entry of Order was filed on April 22, 2019 and Petitioner thereafter filed a Notice of Appeal  
27 on May 20, 2019.

28           43. While his appeal is still pending on the denial of his tenth Petition for Writ of  
Habeas Corpus, Petitioner filed the instant eleventh Petition for Writ of Habeas Corpus  
(Post-Conviction) on August 5, 2019.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CONCLUSIONS OF LAW

1. NRS 34.726(1) governing “Limitations on time to file...,” requires that a petition for writ of habeas corpus “must be filed within 1 year after entry of judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of article 6 of the Nevada Constitution issues its remittitur.” Late filing of a petition may be excused from procedural default if the petitioner can establish good cause for delay in bringing the claim. *Id.* Good cause for late filing consists of showing that: (1) “delay is not the fault of the petitioner”; and (2) “dismissal of the petition as untimely will unduly prejudice the petitioner.” *Id.* at (1)(a)-(b).

2. A successive petition must be dismissed if the court determines that the petitioner failed to allege new or different grounds for relief and that the prior determination was on the merits or, if the court determines that the petitioner’s failure to assert those grounds in a prior petition constituted an abuse of the writ. NRS 34.810(2).

3. A petitioner may file a successive petition if he can demonstrate: (1) good cause for failure to present the claim or for presenting the claim again; and (2) actual prejudice. NRS 34.810(3)(a)(b).

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 unless the petitioner can demonstrate good cause why the grounds were not raised in a prior petition or within the statutorily permitted time period. *State v. District Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). A court must dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both: (1) good cause for failing to present the claims earlier or for raising them again; and (2) actual prejudice to the petitioner. *Evans v. State*, 117 Nev. 609, 621-622, 28 P.3d 498, 507 (2001); NRS 34.810.

6. The court may excuse the failure to show good cause where the prejudice from a failure to consider the claim amounts to a fundamental miscarriage of justice. *Mazzan v. Whitley*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996); *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). To meet this standard, a petitioner “must show that it is more likely than not that no reasonable juror would have convicted him absent a constitutional violation.” *Id.*

7. This is Petitioner’s eleventh Petition for Writ of Habeas Corpus (post-conviction). He filed it on August 5, 2019 thirty six (36) years after issuance of the remittitur on direct appeal on May 10, 1983. Thus, the petition was untimely filed. *See* NRS 34.726(1). Moreover, the petition is successive because Petitioner previously filed ten

(10) petitions for relief. *See* NRS 34.810(2). The petition is procedurally barred absent a showing of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

Petitioner attempts to establish good cause by alleging the grounds were not previously available, and therefore, he can demonstrate good cause. Pursuant to his hearing before the Parole Board, Petitioner underwent an evaluation pursuant to NRS 213.1214 which resulted in Petitioner being assessed as a high risk to reoffend. Petitioner believes the high risk rating was the result of his PTSD and misconduct reports. Petitioner contends he has PTSD as a result of spending sixteen (16) years in solitary confinement. *See* Petition, pg. 15.

Petitioner alleges the parole board made specific recommendations that petitioner receive mental health counseling to reduce his overall risk to reoffend, and that the Nevada Department of Corrections failed to provide any mental health services for him. Further, petitioner alleges the Nevada Department of Corrections violated his eighth amendment rights by placing him in solitary confinement for sixteen (16) years which caused the PTSD. He contends those same violations were used to score him the highest risk to reoffend pursuant to NRS 213.1214 which has effectively denied him the right to parole on counts 2, 3 and 4 of the judgment of conviction. Accordingly, petitioner contends his sentence has become unconstitutional and he is entitled to be released or resentenced to a determinate amount of time on counts 2, 3 and 4. *See* Petition pg. 16-17.

The Nevada Supreme Court has previously held that a petition for writ of habeas corpus may challenge the validity of current confinement, but not the conditions thereof. *Bowen v. Warden*, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984); see also *Rogers v. Warden*, 84 Nev. 539, 445 P.2d 28 (1968). In *Rogers*, the court held that a claim of brutal treatment at the hands of prison officials was not cognizable on a habeas petition because the claim spoke to the conditions and not the validity of confinement. *Rogers* 84 Nev. at 540. Petitioner's inability to challenge the conditions of his confinement does not provide the good cause to overcome the mandatory procedural bar. Furthermore, petitioner failed to demonstrate that an impediment external to the defense excused his procedural defects. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

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

Dated this 16 day of October, 2019.

  
MICHELLE LEAVITT  
DISTRICT COURT JUDGE  
DEPARTMENT XII  
EIGHTH JUDICIAL DISTRICT



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28


**CERTIFICATE OF MAILING**

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

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

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

Aaron Ford  
Nevada Attorney General  
555 E. Washington, Suite 3900  
Las Vegas, NV 89101-1068

  
Pamela Rocha  
Judicial Executive Assistant  
Department XII  
Eighth Judicial District Court

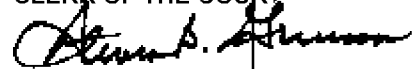
C052190

Joel Burkett

vs.

Isidro Baca

(Eleventh Petition)



NEO

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JOEL BURKETT,

Petitioner,

vs.

ISIDRO BACA; ET AL,

Respondent,

Case No: A-19-800052-W

Dept No: XII

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

**PLEASE TAKE NOTICE** that on October 16, 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 October 21, 2019.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Debra Donaldson

Debra Donaldson, Deputy Clerk

**CERTIFICATE OF E-SERVICE / MAILING**

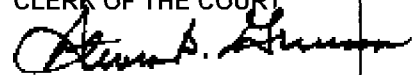
I hereby certify that on this 21 day of October 2019, I served a copy of this Notice of Entry on the following:

☒ By e-mail:  
Clark County District Attorney's Office  
Attorney General's Office – Appellate Division-

☒ The United States mail addressed as follows:  
Joel Burkett # 16111  
P.O. Box 7000  
Carson City, NV 89702

/s/ Debra Donaldson

Debra Donaldson, Deputy Clerk



1     ORDR

2  
3                     EIGHTH JUDICIAL DISTRICT  
4                     CLARK COUNTY, NEVADA

5     JOEL BURKETT,                                     )  
6                     Petitioner,                     )  
7             vs.                                     )  
8     ISIDRO BACA                                     )  
9                     Respondent                     )

Case No.: A-19-800052-W  
DEPT. No.: XII  
(Eleventh 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 ("Petitioner")  
14     by way of Information with Count 1, ROBBERY & USE OF A DEADLY WEAPON IN  
15     COMMISSION OF A CRIME (Felony – NRS 200.380, 193.165); Count 2, FIRST  
16     DEGREE KIDNAPPING & USE OF A DEADLY WEAPON IN COMMISSION OF A  
17     CRIME (Felony – NRS 200.310, 193.165); Count 3, SEXUAL ASSAULT (Felony – NRS  
18     200.364, 200.366); and Count 4, SEXUAL ASSAULT (Felony – NRS 200.364, 200.366).

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

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

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

**MICHELLE LEAVITT**  
DISTRICT JUDGE

DEPARTMENT TWELVE  
LAS VEGAS, NEVADA 89155

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

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

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

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

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

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

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

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

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

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

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

28          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).

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

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

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

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

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

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

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

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

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

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

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

26           30.     On July 10, 2013, the District Court filed the Findings of Fact, Conclusions  
27 of Law and Order whereby the District Court denied Petitioner's eighth Petition for Writ of  
28 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).

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

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

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

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

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

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

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

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

20           40. On February 1, 2019, Petitioner filed his tenth Petition for Writ of Habeas  
21 Corpus (Post-Conviction).

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

24           42. On April 18, 2019, the court issued Findings of Fact and Conclusions of Law  
25 denying Petitioner's tenth Petition for Writ of Habeas Corpus (Post-Conviction). Notice of  
26 Entry of Order was filed on April 22, 2019 and Petitioner thereafter filed a Notice of Appeal  
27 on May 20, 2019.

28           43. While his appeal is still pending on the denial of his tenth Petition for Writ of  
Habeas Corpus, Petitioner filed the instant eleventh Petition for Writ of Habeas Corpus  
(Post-Conviction) on August 5, 2019.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CONCLUSIONS OF LAW

1. NRS 34.726(1) governing “Limitations on time to file...,” requires that a petition for writ of habeas corpus “must be filed within 1 year after entry of judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of article 6 of the Nevada Constitution issues its remittitur.” Late filing of a petition may be excused from procedural default if the petitioner can establish good cause for delay in bringing the claim. *Id.* Good cause for late filing consists of showing that: (1) “delay is not the fault of the petitioner”; and (2) “dismissal of the petition as untimely will unduly prejudice the petitioner.” *Id.* at (1)(a)-(b).

2. A successive petition must be dismissed if the court determines that the petitioner failed to allege new or different grounds for relief and that the prior determination was on the merits or, if the court determines that the petitioner’s failure to assert those grounds in a prior petition constituted an abuse of the writ. NRS 34.810(2).

3. A petitioner may file a successive petition if he can demonstrate: (1) good cause for failure to present the claim or for presenting the claim again; and (2) actual prejudice. NRS 34.810(3)(a)(b).

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 unless the petitioner can demonstrate good cause why the grounds were not raised in a prior petition or within the statutorily permitted time period. *State v. District Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). A court must dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both: (1) good cause for failing to present the claims earlier or for raising them again; and (2) actual prejudice to the petitioner. *Evans v. State*, 117 Nev. 609, 621-622, 28 P.3d 498, 507 (2001); NRS 34.810.

6. The court may excuse the failure to show good cause where the prejudice from a failure to consider the claim amounts to a fundamental miscarriage of justice. *Mazzan v. Whitley*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996); *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). To meet this standard, a petitioner “must show that it is more likely than not that no reasonable juror would have convicted him absent a constitutional violation.” *Id.*

7. This is Petitioner’s eleventh Petition for Writ of Habeas Corpus (post-conviction). He filed it on August 5, 2019 thirty six (36) years after issuance of the remittitur on direct appeal on May 10, 1983. Thus, the petition was untimely filed. *See* NRS 34.726(1). Moreover, the petition is successive because Petitioner previously filed ten

(10) petitions for relief. *See* NRS 34.810(2). The petition is procedurally barred absent a showing of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

Petitioner attempts to establish good cause by alleging the grounds were not previously available, and therefore, he can demonstrate good cause. Pursuant to his hearing before the Parole Board, Petitioner underwent an evaluation pursuant to NRS 213.1214 which resulted in Petitioner being assessed as a high risk to reoffend. Petitioner believes the high risk rating was the result of his PTSD and misconduct reports. Petitioner contends he has PTSD as a result of spending sixteen (16) years in solitary confinement. *See* Petition, pg. 15.

Petitioner alleges the parole board made specific recommendations that petitioner receive mental health counseling to reduce his overall risk to reoffend, and that the Nevada Department of Corrections failed to provide any mental health services for him. Further, petitioner alleges the Nevada Department of Corrections violated his eighth amendment rights by placing him in solitary confinement for sixteen (16) years which caused the PTSD. He contends those same violations were used to score him the highest risk to reoffend pursuant to NRS 213.1214 which has effectively denied him the right to parole on counts 2, 3 and 4 of the judgment of conviction. Accordingly, petitioner contends his sentence has become unconstitutional and he is entitled to be released or resentenced to a determinate amount of time on counts 2, 3 and 4. *See* Petition pg. 16-17.

The Nevada Supreme Court has previously held that a petition for writ of habeas corpus may challenge the validity of current confinement, but not the conditions thereof. *Bowen v. Warden*, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984); see also *Rogers v. Warden*, 84 Nev. 539, 445 P.2d 28 (1968). In *Rogers*, the court held that a claim of brutal treatment at the hands of prison officials was not cognizable on a habeas petition because the claim spoke to the conditions and not the validity of confinement. *Rogers* 84 Nev. at 540. Petitioner's inability to challenge the conditions of his confinement does not provide the good cause to overcome the mandatory procedural bar. Furthermore, petitioner failed to demonstrate that an impediment external to the defense excused his procedural defects. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

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

Dated this 16 day of October, 2019.

  
MICHELLE LEAVITT  
DISTRICT COURT JUDGE  
DEPARTMENT XII  
EIGHTH JUDICIAL DISTRICT



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28


**CERTIFICATE OF MAILING**

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

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

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

Aaron Ford  
Nevada Attorney General  
555 E. Washington, Suite 3900  
Las Vegas, NV 89101-1068

  
Pamela Rocha  
Judicial Executive Assistant  
Department XII  
Eighth Judicial District Court

C052190

Joel Burkett

vs.

Isidro Baca

(Eleventh Petition)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**October 17, 2019**

---

A-19-800052-W      Joel Burkett, Plaintiff(s)  
vs.  
Isidro Baca, Defendant(s)

---

**October 17, 2019      8:30 AM      Petition for Writ of Habeas  
Corpus**

**HEARD BY:** Leavitt, Michelle

**COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Haly Pannullo

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:** Marland, Melanie H.      Attorney

**JOURNAL ENTRIES**

- COURT STATED a Finding of Facts and Conclusions of Law was signed and ORDERED, Petition DENIED as it is time barred and successive; the Defendant raises issues that are not cognizable for post conviction relief. Court noted the Order has already been prepared and filed.

# 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

JOEL BURKETT,

Plaintiff(s),

vs.

ISIDRO BACA,

Defendant(s),

Case No: A-19-800052-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 7 day of November 2019.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk