IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

EDDIE RENCHER, JR.,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: A-18-780636-W
Related Case 06C225668
Docket No: 78199

RECORD ON APPEAL

ATTORNEY FOR APPELLANT
EDDIE RENCHER #1024946,
PROPER PERSON
P.O. BOX 208
INDIAN SPRINGS, NV 89070

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

A-18-780636-W **Eddie Rencher, Jr., Plaintiff(s)**
vs.
Warden Jerry Howell, Defendant(s)

I N D E X

Eddie Rencher, 1024946
Petitioner/In Propia Persona
Post Office Box 208, SDCC
Indian Springs, Nevada 89070

FILED
AUG 31 2018
CLERK OF COURT

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

Eddie Rencher JR,
Petitioner,
vs.
Warden Jerry Howell,
,
,
Respondent(s).

A-18-780636-W
Dept. XIX
Case No. 225668
Dept. No. ____
Docket ____

EVIDENTIARY HEARING REQUESTED
ACTUAL INNOCENCE

PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

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 are not in a specific institution of the department 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 and sentence.

Failure to raise all grounds I 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.

(7) If your petition challenges the validity of your conviction or sentence, the original and one copy must be filed with the clerk of the district court for the county in which the conviction occurred. Petitions raising any other claim must be filed with the clerk of the district court for the county in which you are incarcerated. 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 who you are presently restrained of your liberty: Southern Desert Correctional Center.

2. Name the location of court which entered the judgment of conviction under attack: _____
The Eighth Judicial District Court of The STATE OF NEVADA

3. Date of judgment of conviction: Filed on SEPTEMBER 23rd, 2008

4. Case number: 225668

5. (a) Length of sentence: Two (2) Lifes without the Possibility of parole.

(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: Fourteen (14) Counts of Sexual Assault with a minor under Fourteen, Six (6) counts of Lewdness with a child under the age of 14.

_____.

8. What was your plea? (Check one)

(a) Not guilty ✓

(b) Guilty _____

(c) Nolo contendere ____

9. If you entered a guilty plea to one count of an indictment or information, and a not guilty plea to another count of an indictment or information, or if a guilty plea 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 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: THE SUPREME COURT OF THE STATE OF NEVADA

(b) Case number or citation: 52355

(c) Result: DENIED

(d) Date of appeal: 3-26-09

(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: Eighth Judicial District Court, NEVADA, CLARK County.

(2) Nature of proceedings: WRIT OF HABEAS CORPUS FOR POST CONVICTION RELIEF AND REQUEST FOR EVIDENTIARY HEARING.

(3) Grounds raised: TRIAL COUNSEL FAILED to RETAIN/CALL A MEDICAL EXPERT, [redacted] TRIAL COUNSEL FAILED to CONFRONT CHANDLER CLAYTON, TRIAL COUNSEL WAS INEFFECTIVE BECAUSE SHE MADE HERSELF A REBUTTAL WITNESS, TRIAL COUNSEL FAILED to CALL AN EXPERT To testify REGARDING CHILDREN MAKING FALSE ALLEGATIONS,

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

Yes ✓ No ___

(5) Result: DENIED

(6) Date of result: SEPTEMBER 20th, 2011

(7) If known, citations of any written opinion or date of orders entered pursuant to each result: NOT KNOWN

(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 or any written opinion or date of orders entered pursuant to each result: ___

(c) As to any third or subsequent additional application 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: MARCH 31ST, 2017.

(2) Second petition, application or motion?

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 may relate specific facts in response to this question. Your response may be included on paper which is 8 ½ x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length). A COA WAS NOT GRANTED

___

_____.

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 or application or any other post-conviction proceeding? If so, identify: NO

(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 ½ x 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 Nos. 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 ½ x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length). _____

_____.

19. Are you filing this petition more than one (1) 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 ½ x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length). _____

_____

_____

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 the case number: _____

_____.

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: TRIAL - ATTORNEY MARSHA KIMBLE-SIMMS

DIRECT APPEAL - ATTORNEY CYNTHIA L. DUSTIN

_____.

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: ____

_____.

"WARNING"

Petitioner has submitted for Filing a Petition For Writ of Habeas Corpus (Post-Conviction), Actual Innocence (Writ), challenging the constitutionality of Senate Bill No. 182 - Committee on Finance CHAPTER 304 [Approved March 22, 1951] Statutes of Nevada 1951 (S.B. No. 182), and subsequent acts as set forth in SECTION 1 of S.B. No. 182.

Petitioner regards it as just and necessary to give fair warning to this court of the consequences of its failure to follow the Constitution of Nevada and uphold its oath and duty in this matter, being that it can result in this court committing acts of TREASON, USURPATION, and TYRANNY. Such trespasses would be clearly evident to the public, especially in light of the Constitution Articles that are involved here which leave no room for construction, and in light of the numerous adjudications upon them as herein stated.

The failure to uphold these clear and plain provisions of our Constitution cannot be regarded as mere error in judgment, yet "DELIBERATE USURPATION."

To assume jurisdiction, or to assume that this court had jurisdiction, etc., in this case would result in TREASON. Chief Justice John Marshall once stated: We [judges] have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution. Cohens v. Virginia, 6 Wheat. (19 U.S.) 264, 404 (1821).

Should this Court depart from the clear meaning of the Constitution of the State of Nevada King v. Board of Regents, 65 Nev. 542, 565, 200 P.2d 221 (1948), it will be regarded as

a blatant act of TYRANNY. Any exercise of power is done without the support of law or beyond what the law allows is TYRANNY. It has been said, with much truth, "Where the law ends, tyranny begins." Merritt v. Welsh, 104 U.S. 694, 702 (1881).

"An arbitrary or capricious exercise of discretion is one founded on prejudice or preference rather than on reason, or contrary to the evidence or established rules of law." State v. Eighth Judicial Dist. Court, (Armstrong), 127 Nev. 927, 931-32, 267 P.3d 777, 780 (2011)(citation omitted)(internal quotation marks omitted)).

This court is "specifically" reminded of well established decisions of the Supreme Court of the State of Nevada (Sup. Ct. of Nev.), that are germane and very pertinent to the ground and sub-grounds, issues brought forth in this Writ.

In Fernley v. State, 132 Nev. Adv. Rep. 4, 366 P.3d 699, 706 (2016), the Sup. Ct. of Nev. held: Although the statute of limitations may time-bar a claim, it does not prohibit this court from reviewing the constitutionality of an enacted statute. See Black v. Ball Janitorial Serv., Inc., 1986 OK 75, 730 P.2d 510, 515 (Okla. 1986)(reaching the merits of a special legislation constitutional challenge even after holding the statute of limitations had passed); see also State ex rel. State Bd. of Equalization v. Bakst, 122 Nev. 1403, 1409, 148 P.3d 717, 721 (2006) ("[W]e will declare a government action invalid if it violates the Constitution."); King v. Bd. of Regents of Univ. of Nev., 65 533, 542, 200 P.2d 221, 225 (1948)("It is undoubtedly the duty of courts to uphold statutes passed by the legislature,

unless their unconstitutionality clearly appears, in which case it is equally their duty to declare them null." (quoting State v. Arrington, 18 Nev. 412, 4 P. 735, 737 (1884))).
The Legislature has considerable law-making authority, but it is not unlimited. Clean Water Coal., 127 Nev. at 309, 255 P.3d at 253 (interpreting the constitutionality of legislation under Nev. Const. art. 4 §§ 20-21); We the People Nev. ex rel. Angle v. Miller, 124 Nev. 874, 890 n.55, 192 P.3d 1166, 1177 n.55 (2008). "The Nevada Constitution is the 'supreme law of the state,' which 'control[s] over any conflicting statutory provisions.'" Thomas v. Nev. Yellow Cab Corp., 130 Nev. Adv. Op. 52, 327 P.3d 518, 521 (2014) (quoting Clean Water Coal., 127 Nev. at 309, 255 P.3d at 253). "It is fundamental to our federal, constitutional system of government that a state legislature 'has not the power to enact any law conflicting with the federal constitution, the laws of congress, or the constitution of its particular State.'" Thomas, 130 Nev., Adv. Op. 52, 327 P.3d at 520-21 (quoting State v. Rhodes, 3 Nev. 240, 3 Nev. 247, 250 (1867)). While this court will try to construe statutes to be in harmony with the constitution, if the "statute 'is irreconcilably repugnant' to a constitutional amendment, the statute is deemed to have been impliedly repealed by the amendment." Thomas, 130 Nev. Adv. Op. 52, 327 P.3d at 521 (quoting Mengelkamp v. List, 88 Nev. 542, 545-46, 501 P.2d 1032, 1034 (1972)). "If the Legislature could change the Constitution by ordinary enactment, no longer would the Constitution be superior paramount law, unchangeable by ordinary means. It would be on a level with ordinary legislative acts, and, like

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other acts, alterable when the legislature shall please to alter it." Id. at 522 (internal quotations omitted). Therefore, "the principle of constitutional supremacy prevents the Nevada Legislature from creating exceptions to the rights and privileges protected by Nevada's Constitution." Id.

The Supreme Court of the United States of America in Yick Wo v Hopkins, 118 U.S. 36, 373-74 (1886) (holding that laws that are administered with an "unequal hand" and an "evil eye" are unconstitutional).

Each of these cases cited above are applicable to the petition submitted, these cases and the argument of Petitioner in the grounds, sub-grounds, issues must guide this court in the resolution of Petitioner's Writ.

Additionally, may this court be sufficiently warned that failure to uphold the aforesaid, and to provide Petitioner the Due Process of the Fourteenth (14th), Amendment of the United States Constitution of America (USCA), the application of these and other decisions of the Sup. Ct. of Nev., and the Supreme Court of the United States of America (Sup. Ct. U.S.A.), will be regarded as a blatant act of TYRANNY.

Respectfully submitted:

Dated this 29th day of August 2018

x Eddie Rencher JR

PETITIONER PRO SE

23. GROUND ONE: Petitioner does hereby raise a claim of "**actual innocence**," as is more fully set forth in the Supporting Facts below.
23. SUPPORTING FACTS: The Supreme Court of Nevada (Sup. Ct. of Nev.), has iterated: A colorable showing of actual innocence may overcome procedural bars under the fundamental miscarriage of justice standard. Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); House v. Bell, 547 U.S. 518, 536-37 (2006); Schlup v. Delo, 513 U.S. 298, 327 (1995); Coleman v. Thompson, 501 U.S. 722, 750 (1991); and Murray v. Carrier, 477 U.S. 478, 495-96 (1986). In Berry v. State, 131 Nev. ____, ____, 363 P.3d 1148, 1155 (2015), the Sup. Ct. of Nev. held a petitioner claiming actual innocence is entitled to an "evidentiary hearing" on a claim of actual innocence if he presents "specific factual allegations that, if true, and not belied by the record, would show that it is more likely than not that no reasonable juror would have convicted him beyond a reasonable doubt given the new evidence." In deciding whether the petitioner has made such a showing, the district court must "evaluate whether the new evidence presents specific facts that are not belied by the record and then, if so, to evaluate whether the new evidence, considered in light of all the evidence at trial, would support a conclusion that petitioner has met the actual-innocence test." Id.

The following sections below will set forth factual allegations "not belied by the record, supporting no "reasonable" juror would have convicted Petitioner beyond a reasonable doubt.

THE FOLLOWING SPECIFIC FACTUAL ALLEGATIONS ARE NOT BELIED BY THE RECORD (A)

Petitioner submits that no "reasonable" juror would have

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GROUNDS ONE CONTINUED:

convicted Petitioner pursuant to laws that do not exist, or that are made criminal only by an unconstitutional law via an unconstitutional legislative act. Kelley v. Meyers, 263 P. 903, 905 (Ore. 1928), see also Bible v. Malone, 68 Nev. 32, 44, 231 P.2d 599, 603 (1951); Norton v. Shelby County, 118 U.S. 425, 442 (1886); and State ex rel. Stevenson v. Tufly, 20 Nev. 427, 22 P. 1054.

This is based upon the following: In 1951, the Legislature of the State of Nevada (Legis. of Nev.), Created and passed Senate Bill (S.B.), No. 182 - Committe on Finance CHAPTER 304 Approved March 22, 1951 (See Exhibit "1")(S.B. No. 182, 1951).

Petitioner states that S.B. No. 182, 1951, SECTION 1, is facially unconstitutional, contravenes, and is repugnant to the Constitution of the State of Nevada (Const. of Nev.), article (art.), 3, §1, and art. 6, §11, plain and unambiguous language.

Art. 3, §1, reads in part as follows:

> "... and no persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions, appertaining to either of the others; ..."

(See Exhibit "2"), and

Art. 6, §11, reads in part as follows:

> "The justices of the Supreme Court and the ... shall be ineligible to any office other than a judicial office, during the term for which they shall have been elected or appointed; and all elections or appointments of any such judges by the people, Legislature, or otherwise, during said period, to any office other than judicial, shall be void."

(See Exhibit "3").

When construing constitutional provisions the Supreme Court of Nevada (Sup. Ct. of Nev.), utilizes the same rules of construction

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GROUND ONE CONTINUED:

used to interpret statutes. See Nevada Mining Ass'n v. Erdoes, 117 Nev. 531, 538, 26 P.3d 753, 757 (2001); Barrios-Lomeli v. State, 114 Nev. 779, 780, 961 P.2d 750, 751 (1998); and Del Papa v. Board of Regents, 114 Nev. 388, 956 P.2d 770, 773-74 (1998).

"A legislative enactment is presumed to be constitutional absent a 'clear showing to the contrary.'" See Halverson v. Secretary of State, 124 Nev. 484, 487, 186 P.3d 893, 896 (2008); Nevadans for Nevada v. Beers, 122 Nev. 930, 939, 142 P.3d 339, 345 2006); and Starlets Int'l v. Christensen, 106 Nev. 732, 735, 801 P.2d 1343, 1344 (1990).

THE FOLLOWING IS A CLEAR SHOWING TO THE CONTRARY THAT THE LEGISLATIVE ENACTMENT S.B. NO. 182, 1951, SECTION 1, IS FACIALLY UNCONSTITUTIONAL (B)

S.B. No. 182, 1951, SECTION 1, being facially an unconstitutional legislative act, no "reasonable" juror would have convicted Petitioner pursuant to laws that don't exist Bible, 68 Nev. at 44, 231 P.2d at 603; Norton, 118 U.S. at 442; or under laws that are made criminal only by an unconstitutional law via an unconstitutional legislative act. Kelley, 263 P. at 905.

Section 1, of S.B. No. 182, 1951, reads in part as follows:

> "There is hereby created a commission of the State of Nevada, to be known as the 'commission for revision and compilation of Nevada laws,' hereinafter referred to as the commission, Such commission shall be composed of three members, and said members shall be the three justices of the supreme court. The members of such commission shall have the powers and duties prescribed by this act, and shall each receive such salary for their services as shall be prescribed by this act, and subsequent enactments."

(Emphasis added to original)(See Exhibit "1").

The three justices of the Sup Ct. of Nev. in 1951, appointed to the commission were Milton B. Badt (Justice Badt); Edgar Eather

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GROUND ONE CONTINUED:

(Justice Eather); and Charles M. Merrill (Justice Merrill). That, this commission continued until July 1, 1963.

First, S.B. No. 182, 1951, Section 1, is facially unconstitutional, contravene's, and is repugnant to the Const. of Nev. art. 6, §11, plain and unambiguous language, by mandating that art. 6, justices of the Sup. Ct. of Nev. be appointed, etc., to another office other than a judicial office, see art. 6, §11, via legislative enactment.

Art. 6, of the Const. of Nev. was approved to be amended by the people of Nevada, to add SECTION 11. (See Exhibit "3" which reads: Proposed and passed by the 1947 Legislature; agreed to and passed by the 1949 Legislature; and approved and ratified by the people at the 1950 General Election. See: Statutes of Nevada 1947, p 878; Statutes of Nevada 1949. p 684).

The commission was an office (another office other than a judicial), as it was created by "legislative enactment." In State ex rel. Kendall v. Cole, 38 Nev. 215, 219, 148 P. 551, 552 (1915), the Sup. Ct. of Nev. iterated: "An office does not spring into existance spontaneously. It is brought into existance, either under the terms of the constitution, by legislative enactment, or by some municiple body, pursuant to authority delegated to it." See also Mathews v. Murray, 70 Nev. 116, 120-21, 258 P.2d 982, 983-84 (1953).

Wherefore, the commission with the mandatory placement of the three justices of the Sup. Ct. of Nev. on the commission, is within the prohibited unambiguous language of art. 6, §11 of the Const. of Nev.

Thus, appointment by the Legis. of Nev. of these justices to the commission was, and shall forever have been "void." Const. of Nev. art. 6, § 11.

This factor alone is enough to find S.B. No. 182, 1951, SECTION 1, to be

GROUND ONE CONTINUED:

a facially unconstitutional legislative act. Yet, another fact establishes that S.B. No. 182, 1951, SECTION 1, to be an unconstitutional legislative act, by mandating art. 6, justices to another office. Should the commission by some stretch of the imagination been a judicial office, etc., the justices would not have to have been given a "salary" for the work they performed, other than their salary as Supreme court justices.

THE JUSTICES WERE NOT JUST "MERELY" ON THE COMMISSION (C)

A review of (Exhibits "4" FOREWARD, and Exhibit "4A" LEGISLATIVE COUNSEL'S PREFACE), demonstrates the active participation of Justice Badt, Justice Eather, and Justice Merrill, as members of the commission, in the revision and compilation of Nevada laws.

Exhibit "4" As the work progressed, Mr. McDonald submitted drafts of chapter after chapter as recompiled and revised, and the "the members of the commission individually and in conference meticulously checked all revisions." In the vast majority of cases these revisions were promptly approved. Many required further conferences with the director. Some were modified and redrafted.

Exhibit "4A," lists further work completed by the commission, see numbers 1-5.

SECOND BASIS THAT S.B. NO. 182, 1951, SECTION 1 IS FACIALLY UNCONSTITUTIONAL (D)

Second, S.B. No. 182, SECTION 1, is facially unconstitutional, contravene's, and is repugnant to the Const. of Nev. art. 3, §1, by mandating that art. 6, justices of the Sup. Ct. of Nev., shall have the powers and duties prescribed by this act. (Exhibit "1").

The powers and duties prescribed by the act S.B. No. 182, 1951, SECTION 1, are the powers and duties (functions), of revision

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GROUNDS ONE CONTINUED:

and compiling Nevada laws. (See Exhibit "1").

Providing art. 6, justices of the Const. of Nev. with the powers and duties of revising and compiling, as mandated in S.B. No. 182, 1951, SECTION 1, contravenes and is repugnant to art. 3, § 1, of the Const. of Nev.; which specifically prohibits persons charged with the exercise of powers properly belonging to one of these departments from exercising **"any functions," appertaining to either of the others, ...**

This point is effectively made clear in the Sup. Ct. of Nev.'s ruling, opinion of Galloway v. Truesdell, 83 Nev. 13, 19, 422 P.2d 237, 241-42 (1967), the court held: "The Constitution confirms and firmly fixes this principle of separation of governmental powers by creating, in Article 4, Article 5, and Article 6, a legislature, an executive, and a judiciary. 'In the' opening words of 'each Articles first section the whole power there 'granted' is 'lodged in that branch,' ...." Id.

Galloway, also holds: "The separation of powers, the independence of one branch from the others; the 'requirement that one department 'can not exercise the powers of the other two' is 'fundamental' in our system of government.'"

This fundamental requirement to the system of government, to Nevada's tripartite government has been trampled upon, in S.B. No. 182, 1951, SECTION 1.

In King v. The Board of Regents, 65 Nev. 535, 556, 200 P.2d 221, 232 (1948), the Sup. Ct. of Nev. opined:

> "A Constitution being the paramount law of a state, designed to separate the powers of government and to define their extent and limit their exercise by the several departments, as well as to secure and protect private rights, no other instrument is of equal significance. It has been very properly defined to be a legislative act of the people themselves in their sovereign capacity, and when the people have declared by it that certain powers shall be

GROUND ONE CONTINUED:

possessed and, duties performed by a particular officer or department, their exercise and discharge by any other office or department are 'forbidden' by a necessary and unavoidable implication, Every positive delegation of power to one officer or department implies a negation of its exercise by any other officer, department, or person.'"

S.B. No. 182, 1951, SECTION 1, is a clear demonstration of the willfull, deliberate act of the members of the tri-partite government of the State of Nevada in 1951, to unlawfully, unconstitutionally, contravene, violate the plain and unambiguous language of art. 3, §1, of the Const. of Nev.; such that S.B. No. 182, 1951, is and has been an unconstitutional legislative act, and is always to be treated as though it never existed. Bible, 68 Nev. at 44, 231 P.2d at 603; Norton, 118 U.S. at 442; Stevenson, 20 Nev. 427, 22 P. 1054.

S.B. NO. 182, 1951, IS FACIALLY AN UNCONSTITUTIONAL LEGISLATIVE ACT, IT CREATED NO OFFICE, IT IS TO ALWAYS BE TREATED AS THOUGH IT NEVER EXISTED. ANY LEGISLATIVE ACT AMENDING S.B. NO. 182, CHAPTER 304 STATUTES OF NEVADA 1951, MUST ALSO BE TREATED AS THOUGH THEY NEVER EXISTED (E)

The Sup. Ct. of Nev. in Bible, 68 Nev. at 44, 231 P.2d at 603 citing Walcott v. Wells, 21 Nev. 47, 55, 24 P. 367, 370, 9 L.R.A. 59, the court states: "We admit that there can be no officer, either de jure or de facto, if there be no office to fill; that an office attempted to be created by an unconstitutional law has no legal existence, is without any validity, and that any person attempting to fill such a pretended office, whether by appointment or otherwise, is a usurper, whose acts would be absolutely null and void, and could be questioned by any private suitor, in any kind of an action or proceeding. It would be a misnomer of terms to call a person an 'officer' who holds no office. A public office cannot exist

GROUNDS ONE CONTINUED:

without authority of law. An office cannot be created by an unconstitutional act, for such an act is no law. It confers no rights, imposes no duties, affords no protection, furnishes no shield, and gives no authority. It is in legal contemplation to be regarded as never having been possessed of any legal force or effect, and is always to be treated as though it never existed." Stevenson, 20 Nev. 427, 22 P. 1054; Norton, 118 U.S. at 442.

Any decision concerning the commission, must rest on the finding that Justice Badt, Justice Eather, and Justice Merrill, were appointed, mandated to a wholly nonexistent office known as the commission, pursuant to an unconstitutional legislative act; which could not constitutionally create such an office., and they were guilty of usurping, intruding into and unlawfully holding or exercising the office of the commission. That, any revision and compilation of Nevada laws performed by them is void art. 6, § 11, and does not exist! Norton, 118 U.S. at 442.

It is elementary that an unconstitutional law is no law at all. Meagher v. Storey County, 5 Nev. 244; Stevenson, 20 Nev. 427, 22 P. 1054. Hence it must follow that an unconstitutional law cannot create an office.

The tripartite government of the State of Nevada cannot exculpate themselves from the "facts," the exhibits, evidence, setting forth the contravention of the Const. of Nev. via S.B. No. 182, 1951, SECTION 1, which was a deliberate, willfull, contemplated act by the tripartite government of the State of Nevada of 1951.

The only thing that exists in the State of Nevada are alleged laws named the Nevada Revised Statutes (NRS), which are made criminal only by an unconstitutional law via an unconstitutional legislative act. Bible, 68 Nev. at 44, 231 P.2d at 603; Kelley, 263 P. at 905; Norton, 118 US at 442

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GROUND ONE CONTINUED:

THIS COURT MUST PROVIDE PROTECTION TO PETITIONERS FEDERAL CONSTITUTIONAL RIGHTS (F)

In Morrissey v. Brewer, 408 U.S. 471, 481 (1972), the Supreme Court of United States delineated: recognizing that "due process is fexible and calls for such procedural protections as the particular situation demands." See also Burleigh v. State Bar, 98 Nev. 140, 145, 643 P.2d 1201, 1204 (1982)

In Taylor v. Beckham, 178 US 548, 570 (1900), the Court held: The constitutional provision that no state shall deprive any person life..., without due process of law is a protection to the individual and every right he has, against arbitrary spoliation by a state. Additionally, this court can enforce the provisions of the federal Constitution by declaring null and void an alleged arbitrary action of the Legis. of Nev., denying those rights, when such action is sought to be judicially enforced.

Unconstitutional laws, derived from an unconstitutional legislative act(s), of the Legis. of Nev. have been used against Petitioner to deprive him of his right to life and liberty. These laws have been judicially enforced upon Petitioner, and other sovereigns of the State of Nevada.

The guarantee of due process protects citizens against "deliberate" harm from government officials. See Daniels v. Williams, 474 US 327, 337 (1986); see also Grant v. Bowels, 2005 U.S. Dist. LEXIS 44462.

The ultimate inquiry in any substantive due process case is whether the "behavior of the government officer is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience" or "interferes with rights implicit in the

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GROUNDS ONE CONTINUED:

concept of ordered liberty." See City of Sacramento v. Lewis, 523 U.S. 833, 847 (1998)(&n.8)(Emphasis added to original).

In the instant matter before this court the facts, exhibits, evidence, establish that the Legis. of Nev. during the 45th Session of the Legislature of Nevada 1951, made an **"egregious, outrageous mistake of law,"** in creating, passing S.B. No. 182, 1951, SECTION 1, with the "mandatory placement of art. 6, justices of the Sup. Ct. of Nev. on the commission;" contrary to the plain and unambiguous language of art. 6, § 11, of the Const. of Nev. This mistake of law shocks the contemporary conscience of any reasonable juror, and interferes with rights implicit in the concept of ordered liberty. Lewis, 523 U.S. at 847. (See Exhibits "1" & "3").

Additionally, this **mistake of law,** was compounded in S.B. No. 182, 1951, SECTION 1, by the mandatory language that, "The members of such commission shall have the powers and duties prescribed by this act, ..."

Again, the powers, duties (functions), prescribed by the act were "revision and compilation of Nevada laws, ..." This **mistake of law** is contrary to the plain and unambiguous language of art. 3, § 1, of the Const. of Nev. and was completely egregious, outrageous, to fairly be said to shock the contemporary conscience of any reasonable juror; and interfered with rights implicit in the concept of ordered liberty. Lewis, 523 U.S. at 847 (& n.8).

In Peugh v. United States, 569 US ____, 133 S Ct 2072, 186 L.Ed 2D 84 (2013), the High Court held: The Clause ensures that individuals have fair warning of applicable laws and guard against vindictive legislative action.

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GROUNDS ONE CONTINUED:

Here the **mistake of law**, that is S.B. No. 182, 1951, SECTION 1, can only be found to be vindictive legislative action, based upon a clear showing that the legislative action took place, after the people of Nevada ratified at the 1950, General Election that, Art. 6, would be amended to add SECTION 11. Peugh, supra, that must be found to contravene the Const. of Nev. art. 6, § 11, to also include art. 3, § 1.

In Carmell v. Texas, 529 US 513, 533 (2000), the High Court opined: There is plainly a fundamental fairness interest, even apart from any claim of reliance or notice, in having the government abide by the rules of law it establishes to govern the circumstances under which it can deprive a person of his or her liberty or life.

The 45TH Session of the Legis. of Nev. did not abide by the paramount law of the state, the Const. of Nev. art. 3, § 1; and art. 6, § 11; when it created and passed S.B. No. 182, 1951, SECTION 1. The Const. of Nev., its art.'s, are the rules of law established in the State of Nevada by which the tripartite government is to abide, in creating laws of the state.

The tripartite government of the State of Nevada has not, did not abide by the Const. of Nev., in establishing laws to govern the circumstances under which it could deprive Petitioner of his life or liberty. Carmell, 529 US at 533. The State had no power to proscribe the conduct for which petitioner was imprisoned, it cannot constitutionally insist that Petitioner remain in jail. See Desist v United States, 394 U.S. 244, 261, n. 2 (1969).

In Ex parte Siebold, 100 U.S. 371, 376 (1880), The Court explained that if "this position is well taken, it affects the foundation of

GROUND ONE CONTINUED:

the whole proceedings." A conviction under an unconstitutional law

> "is not merely erroneous, but it is illegal and void, and cannot be a legal cause of imprisonment. It is true, if no writ of error lies, the judgment may be final, in the sense that there may be no means of reversing it. But... if the laws are unconstitutional and void, the Circuit Court acquired no jurisdiction of the cases." Id., at 376-377... ("Broadly speaking, the original sphere for collateral attack on a conviction was where the tribunal lacked jurisdiction either in the usual sense or because the statute under which the defendant had been prosecuted was unconstitutional..." (footnotes omitted)). A Conviction or ... imposed in violation of a substantive rule is not just erroneous but contrary to law and, as a result, void. See Siebold, 100 US at 376. It follows, as a general principle, that a court has no authority to leave in place a conviction or ... that violates a substantive rule, regardless of whether the conviction...."

S.B. No. 182, 1951, SECTION 1, is "facially unconstitutional" which logically follows that all legislative acts amending from S.B. No. 182, 1951, chapter 304, are also unconstitutional legislative acts. That, Petitioner's conviction under an unconstitutional legislative act, law, is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment. Siebold, 100 U.S. at 376-377; see also Desist, 394 U.S. at 261, n.2.

The State of Nevada had no power to proscribe illegal the conduct for which Petitioner has been imprisoned. Desist, 394 U.S. at 261, n.2, in that the lawful laws of the State of Nevada, the **Nevada Compiled Laws (NCL)**, have been illegally, and unconstitutionally repealed, via unconstitutional legislative acts. Norton, 118 U.S. at 442.

An unconstitutional legislative act cannot be amended for the legislative act sought to be amended is no law at all. Bible, 68 Nev. at 44, 231 P.2d at 603; Norton, 118 U.S. at 442.

Thus, Petitioner must be allowed the opportunity to challenge the unconstitutional legislative act, S.B. No. 182, 1951, SECTION 1, this opportunity is necessary because the privilege of bringing every law to the test of the constitution belongs to the humblest citizen, who owes no obedience to any legislative act which transcends constitutional

GROUND ONE CONTINUED:

limits. See Levingston v. Washoe County By and Through Sheriff of Washoe County, 112 Nev. 479, 482, 916 P.2d 163, 166 (Nev. 1996).

Facially, S.B. No. 182, 1951, SECTION 1, transcends constitutional limits of art. 3, §1, and art. 6, §11, of the Const. of Nev. that Petitioner owed, owes no obedience to S.B. No. 182, 1951, CHAPTER 304 Statutes of Nevada, 1951; nor to chapter 280, Statutes of Nevada 1953; chapter 248, Statutes of Nevada 1955; and chapter 2, Statutes of Nevada 1957.

This state recognizes that Due Process Clause requires that a person have the opportunity to "establish any fact" which would be "protection to him," .... The Due Process Clause of the Const. of Nev. art. 1, §8, not only requires that a person shall be properly brought into court (subject matter jurisdiction), yet that he shall have opportunity to "establish any fact" which according to usages of common law or provisions of constitution, would be protection to him .... (Emphasis added to original). See Wright v. Cradlebaugh, 3 Nev. 341 (1867); cited Persing v. Reno Stock Brokerage Co., 30 Nev. 342, 34 Pac. 1054 (1908).

Petitioner is before this court via his claim of "actual innocence," to establish that he is actually innocent, as the State of Nevada had no power to proscribe the conduct for which Petitioner is imprisoned, and cannot constitutionally insist that he remain in jail. Desist, 394 U.S. at 261, n.2.

THE LEGISLATURE OF THE STATE OF NEVADA SOUGHT TO UTILIZE A SOPHISTICATED MODE OF INFRINGING ON CONSTITUTIONAL PROTECTIONS OF PETITIONERS FEDERAL AND STATE CONSTITUTIONAL RIGHTS (G)

In Lane v. Wilson, 307 U.S. 268, 275 (1939), the Court delineated as follows: The Constitution nullifies sophisticated

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GROUND ONE CONTINUED:

modes of infringing on constitutional protections.

Pursuant to the Const. of Nev. the legislative, executive, and judicial departments are separate and co-equal branches of the State government. Blackjack Bonding v. Las Vegas Mun. Ct., 116 Nev. 1213, 1218, 14 P.3d 1275, 1279 (2000). Accordingly, no branch of government may exercise "functions" apertaining to either of the others. Const. of Nev. art. 3, §1. The United States Constitution contains substantially similar divisions of power between the legislative, executive and judicial departments of the federal government. See, U.S. Const. art. 1, §1, id., art. 2, §1, id., art. 3, §1; Mistretta v. United States, 488 U.S. 361, 380 (1989) ("Each of the three general departments of government [must remain] entirely free from the control or coercive influence, direct or indirect, of either of the others.") (quoting Humphrey's Executor v. U.S., 295 U.S. 602, 629 (1935)), 55 S.Ct. 869, 79 L.Ed. 1611 (Second alteration in original).

As previously iterated above, the people of the State of Nevada via the Legis. of Nev. amended art. 6, of the Const. of Nev., to add SECTION 11, which was proposed and passed by the 1947 Legislature; agreed to and passed by the 1949 Legislature; and approved and ratified by the people at the 1950 General Election. (SEE Exhibit "3").

The amendment of the Const. of Nev. to add to art 6, SECTION 11, was a legislative act of the people themselves in their sovereign capacity, and when the people have declared it that certain powers shall be possessed and, duties performed by a particular officer or department, their exercise and discharge by "any other office or department are "forbidden" by a necessary

GROUNDS ONE CONTINUED:

and unavoidable implication. King, 65 Nev. at 556, 200 P.2d at 232.

Here the members of the 45th Session of the Legis. of Nev. clandestinedly, created and passed S.B. No. 182, 1951, which was approved by the then governor of Nevada, on March 22, 1951, and became effective after May 1st, 1951.

Yet, before the commission began any work of revision and compilation, chapter 304, Statutes of Nevada 1951, was amended via chapter 280, Statutes of Nevada 1953, and chapter 248, Statutes of Nevada 1955, which ultimately led to chapter 2, Statutes of Nevada 1957, after the work of revision and compilation was completed.

It is believed that the members of legislature, the governor(s), and the justice(s), all knew and or should have known that each and every legislative act iterated above was, is contrary to, contravened, and is repugnant to the aforesaid art.'s of the Const. of Nev.

Its believed that Justice Badt, Justice Eather, Justice Merrill, and subsequent justices of the Sup. Ct. of Nev., knew that their participation as members on the commission was contrary to art. 6, § 11, of the Const. of Nev., as well as art. 15, § 2, of the Const. of Nev. This is believed based upon the fact that Justice Badt wrote the opinion in King, supra, while Justice Eather dissented, and Justice Eather wrote the opinion in Bible, supra, in which Justice Badt, C.J., and Justice Merrill, concur, that, in Mathews, supra, Justice Merrill wrote the opinion, in which Justice Eather, C.J., and Justice Badt, concur.

Each of these cases relate to specific matters relative to

GROUND ONE CONTINUED:

S.B. No. 182, 1951, SECTION 1, being an unconstitutional legislative act, and or violation of, contravention of art. 3, §1; and art. 6, §11; of the Const. of Nev.

Substantially these justices, members of the commission, had more than a working knowledge of what constituted an illegal, unlawful office, and an unconstitutional legislative act, additionally citing the United States Supreme Court decision of Norton, 118 US at 442, in their opinion of Bible, supra.

SINCE PETITIONER WAS NOT CHARGED UNDER THE NEVADA COMPILED LAWS THE DISTRICT COURT LACKED SUBJECT MATTER JURISDICTION (H.)

Structural error plagues the proceedings of Petitioner's conviction, which affects the foundation of the whole proceedings. Siebold, 100 U.S at 376-377. See also Arizona v. Fulminante, 499 U.S. 279 (1991) (structural error as error that obstructs the entire trial process. Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 29; Tumey v. Ohio, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749, distinguished.

Constitutional legislative acts, laws, clothed courts with authority to act, render valid judgments, decrees, orders, etc. See Valley v. Northern Fires & Marine Ins. Co., 254 U.S. 348, 353-54 (1920) (Courts are constituted by authority, and they cannot go beyond that authority, and certainly not in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply void and this even prior to reversal.) Elliot v. Peirsol, 1 Pet. 328, 340.

Subject-Matter jurisdiction defines the court's authority

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GROUND ONE CONTINUED:

to hear a given type of case. United States v. Morton, 467 U.S. 822, 828 (1984).

Where a court has jurisdiction, it has a right to decide every question which occurs in the cause, and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other court. But if it act without authority, its judgments and orders are nullities; they are not voidable, but simply void, and form no bar to recovery sought, even prior to a reversal, in opposition to them; they constitute no justification, and all persons concerned in executing such judgments, or sentences, are considered in law as trespassers. Williamson v. Berry, 8 How. 495, 540 (1850); see also Gschwind v. Cessna Air Craft Co., 232 F.3d 1342, 1347 (10th Cir. 2000); Hooker v. Boles, 346 F.2d 285, 286 (1965)("No authority need be cited for the proposition that when a court lacks jurisdiction, any judgment rendered by it is void and unenforceable.")

Additionally, the conviction of Petitioner is rebutted by showing that the conviction had been obtained by some type of fraud. Crescent City Live Stock Co. v. Butchers' Union Slaughter-House Co., 120 U.S. 141, 150-51 (1887)

Again, Petitioner iterates that he is actually innocent as the State had no power to proscribe the conduct for which Petitioner is imprisoned Desist, 394 U.S. at 261, n.2, Petitioner was not arrested, charged pursuant to the NCL's, which were illegally, and unconstitutionally repealed; via an unconstitutional legislative act of the Legis. of Nev., which legislative act is to always be treated as though it never existed. Norton,

GROUND ONE CONTINUED:

118 US at 442.

In Montgomery v. Louisiana, 136 S.Ct. 718, 731-32 (2016), which has also cited Desist, supra, and Siebold, supra, the Court iterated: If a State may not constitutionally insist that a prisoner remain in jail on federal habeas review, it may not constitutionally insist on the same result in its own post-conviction proceedings. Under the Supremacy Clause of the Constitution, state collateral review courts have no greater power than federal habeas courts to mandate that a prisoner continue to suffer punishment barred by the Constitution. If a state collateral proceeding is open to a claim controlled by federal law, the state court "has a duty to grant relief that federal law requires." Yates v. Aiken, 484 U.S. 211, 218 (1988).

The Fourteenth (14th), Amendment to the United States Constitution reads: SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Federal law requires states to abide the 14th amendment See Duncan v. Louisiana, 391 U.S. 145, 147-48 (1968)

The unconstitutional legislative enactment of S.B. No. 182, 1951, SECTION 1, was, is a severe mistake of law by the Legis. of Nev., and violates the federal requirement under the 14th amend-

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GROUND ONE CONTINUED:

ment, and is an arbitrary spoliation by the state Taylor, 178 US at 570, to which Petitioner is to be protected from. Daniels, 474 US at 337, and is so egregious, outrageous, as to be fairly said to shock the contemporary conscience; and has interfered with Petitioners rights implicit in the concept of ordered liberty. Lewis, 523 U.S. at 847, such that Petitioner's conviction is rebutted by the facts, and the new evidence. Cresent City Live Stock Co., 120 U.S. at 150-51.

As to the Supremacy Clause, Art. VI, cl. 2 reads:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, Under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." It is apparent that this Clause creates a rule of decision: Courts "shall" regard the "Constitution," and all laws "made in Pursuance thereof," as "the supreme Law of the Land." They must not give effect to state laws that conflict with federal laws. Gibbons v. Ogden, 22 U.S. 1, 9 Wheat. 1, 210, 6 L. Ed. 23 (1824).

Under the Supremacy Clause, Congress has the power to pre-empt state law expressly. See Brown v. Hotel Employees, 468 U.S. 491, 500-501 (1984). State law is pre-empted "to the extent of any conflict with a federal statute." Crosby v. National Foreign Trade Council, 530 U.S. 363, 372 (2000) (citing Hines v. Davidowitz, 312 U.S. 52, 66-67 (1941)). Such a conflict occurs when . . . , or when the state law "stands

GROUND ONE CONTINUED:

as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Hines, 312 U.S., at 67.

There is not - and from the very nature of the problem there cannot be - any rigid formula or rule which can be used as a universal pattern to determine the meaning and purpose of every act of Congress. The United States Supreme Court in considering the validity of state laws in the light of treaties or federal laws touching the same subject, has made use of the following expressions: conflicting; contrary to; occupying the field; repugnance; difference; irreconcilability; inconsistency; violation; curtailment; and interference E.G. Hauenstein v. Lynham, 100 US 483, 489; Geofroy v. Riggs, 133 US 258, 267, But none of these expressions provides an infallible constitutional test or an exclusive constitutional yardstick. Hines, 312 U.S., at 67.

S.B. No. 182, 1951, SECTION 1, stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. S.B. No. 182, 1951, SECTION 1 conflicts with, is contrary to; is repugnant to; in violation of; and interferes with rights, privileges to, etc., of the Constitution of the United States of America, i.e. the 14th Amendment.

This court must stand ready to protect Petitioner's federal and state constitutional rights, pursuant to its oath of office under the Const. of Nev. art. 15, § 2.

Petitioner's petition being supported by a convincing Schlup gateway showing raises[s] sufficient doubt about Petitioner's guilt to undermine confidence in the result of the trial without the assurance that that was untainted by constitutional error;

GROUND ONE CONTINUED:

hence, a review of the merits of the constitutional claim is justified. House, 547 U.S. at 537 (quoting Schlup, 513 U.S. at 317).

The Sup. Ct. of Nev. "has long recognized a petitioners right to a post-conviction evidentiary hearing when the petitioner asserts claims supported by specific factual allegations not belied by the record that, if true, would entitle him to relief." Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002)

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other than carrying out the legitimate functions of the Nevada Children's Foundation, Inc., the same shall be taxed.

Eleventh—Notwithstanding any other provisions of this act or any section or subsection thereof, all claims for tax exemptions on real property shall be filed on or before the second Monday of July of the year for which the exemption is claimed.

SEC. 2. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 3. This act shall be in effect immediately upon its passage and approval.

Senate Bill No. 182—Committee on Finance

CHAPTER 304

AN ACT establishing a permanent commission for the revision, compilation, annotation, and publishing of the laws of the State of Nevada and certain laws of the United States; prescribing certain duties of a temporary nature; prescribing certain duties of a permanent nature; making an appropriation therefor, and other matters properly connected therewith.

[Approved March 22, 1951]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. There is hereby created a commission of the State of Nevada, to be known as the "commission for revision and compilation of Nevada laws," hereinafter referred to as the commission. Such commission shall be composed of three members, and said members shall be the three justices of the supreme court. The members of such commission shall have the powers and duties prescribed by this act, and shall each receive such salary for their services as shall be prescribed by this act, and subsequent enactments.

SEC. 2. As soon as practicable after the effective date hereof the commission shall commence the preparation of a complete revision and compilation of the constitution and the laws of the State of Nevada of general application, together with brief annotations and marginal notes to sections thereof. Such compilation when completed shall be known as "Revised Laws of Nevada,....," and the year of first publication shall be filled in the blank space of such title, for brevity such title may be cited as "Rev. Laws.....,....."

SEC. 3. In preparing such compilation the commission is hereby authorized to adopt such system of numbering as it deems practical, to cause said compilation to be published in such number of volumes, but such volumes shall not exceed 750 pages, as shall be deemed convenient, and to cause such volumes to be bound in loose-leaf binders of good, and so far as possible, permanent quality. The pages of such compilation shall conform in size and printing style to the pages of the Statutes of Nevada, except that if necessary for marginal notes, the same may be of greater width, and roman style type only, shall

EXHIBIT 11 1 pg 1

be used. In general, it is recommended, but not required, that such compilation should follow the plan of organization used in the compilation heretofore made and known as the "Revised Laws of Nevada, 1912," as authorized by chapter CCXXXVI, Statutes of 1909.

SEC. 4. Upon completion of each portion of said "Revised Laws," the commission is authorized and directed to have the same printed at the state printing office, and upon completion of the final printing the separate volumes shall be bound as heretofore required and forwarded to the secretary of state for safekeeping and disposition as set forth hereinafter. Sufficient copies of each page shall be printed so that there shall be bound 2,500 copies of each volume of said "Revised Laws." A master copy of said "Revised Laws of Nevada, ...," shall be kept in the office of the commission, and such master copy shall not be removed from said office except in the custody of a member of the commission.

SEC. 5. In complying with the provisions of this act, and within the limitation of available appropriations, the commission is authorized to employ such clerical assistance as it deems necessary, to be compensated at the same rate as other state employees of comparable position, and such assistants in drafting and research as may be necessary, and shall be familiar with methods of compilation and drafting of laws. The terms of the employment and compensation of such assistants shall be fixed by the commission.

SEC. 6. The commission shall reimburse the state printer from the appropriation hereby made for the cost of printing and binding required by this act.

SEC. 7. From and after the completion of "Revised Laws of Nevada, ...," and the delivery of the same to the secretary of state, the said secretary of state shall forward one set of the same to the office of each elected or appointed state officer, and take the official receipt of said officer therefor, thirty sets shall be reserved at all times for the exclusive use of the legislature, one set shall be furnished to each county of the state for the use of the district judge and district attorney of that county, one set shall be furnished to each library in the state maintained by public funds, and such number of sets as may be necessary, not to exceed 50 sets, shall be made available to the state librarian for reciprocal trading with state libraries of sister states and federal territories. The remaining sets shall be sold by the secretary of state at a price of $10 per volume, and all proceeds of such sales shall be deposited in the general fund.

SEC. 8. The compilation herein authorized to be made, shall be accompanied by as complete an index as it shall be practical to prepare, which index shall be printed and bound in the same manner and style as the "Revised Laws."

SEC. 9. The secretary of state shall make available to the commission all records of his office which are or may be of use to the commission, and any books or statutes in the custody of the said secretary shall likewise be made available to said commission.

SEC. 10. Upon request of the commission, the superintendent of

EXHIBIT 1 pg 2

buildings and grounds shall assign and make available to the commission suitable and convenient rooms or space for the use of the commission and its employees.

SEC. 11. The commission is authorized to purchase or otherwise secure, necessary supplies and equipment.

SEC. 12. Upon the completion of "Revised Laws of Nevada,....," the commission is authorized and directed to prepare and have printed such replacement and supplementary pages for such laws, as may from time to time be necessary. In any event, said commission shall prepare the replacement and supplementary pages made necessary by the sessions of the legislature, as soon as possible after each such session. The intent of this section is that such "Revised Laws" shall be kept current insofar as may be possible. Distribution of the same is to be made as for the original volumes, and prices shall be set by the commission as near as possible to the cost of preparing and printing, provided, that where distribution of the original volumes was without charge, no charge shall be made for replacement.

SEC. 13. Upon completion, "Revised Laws of Nevada,....," may be cited as prima-facie evidence of the law in all of the courts of this state. Such evidence may be rebutted by proof that the same differ from the official Statutes of Nevada.

SEC. 14. The commission shall, from time to time, make recommendations for clarification of specific statutes, for elimination of obsolete statutes, and calling the attention of the legislature to conflicting statutes, and such other matter as it deems necessary.

SEC. 15. The members of the commission shall each receive a salary of one hundred twenty-five dollars ($125) per month, paid as are the salaries of other state officers, and out of the appropriation hereby made, for the period commencing on the effective date hereof, and expiring June 30, 1953.

SEC. 16. There is hereby appropriated from the general fund, for the purposes of this act, the sum of seventy-five thousand dollars ($75,000). Claims against this appropriation shall be allowed and paid in the same manner as are other claims against the state.

SEC. 17. This act shall be effective from and after May 1, 1951.

EXHIBIT "1" pg 3

EXHIBIT "1" pg. 4

BARBARA K. CEGAVSKE
Secretary of State

GAIL J. ANDERSON
Deputy Secretary for Southern Nevada

CADENCE MATIJEVICH
Deputy Secretary for Operations

STATE OF NEVADA

OFFICE OF THE
SECRETARY OF STATE

SCOTT W. ANDERSON
Chief Deputy Secretary of State

KIMBERLEY PERONDI
Deputy Secretary for Commercial Recordings

WAYNE THORLEY
Deputy Secretary for Elections

September 28, 2017

3723 Southern Light Dr.
Las Vegas, NV 89115

Re: Certified Copy – Senate Bill 182, Chapter 304 – Approved March 22, 1951

Dear Mr. Cabrera:

Pursuant to your public records request referenced above, please find enclosed a copy of SB 182, approved March 22, 1951. I was able to locate the bill in our Statutes of Nevada, 1951 volume (copy enclosed). If you require an official certified copy of the actual bill, please contact:

Nevada State Library and Archives
100 North Stewart Street, Suite 200
Carson City, NV 89701

Telephone: (775) 684-0135
Fax: (775) 684-0118

Please be aware there may be a fee for certified copy requests. I hope you find this information helpful. Thank you for contacting the Secretary of State Elections Division.

Sincerely,

Barbara K. Cegavske
Secretary of State

By: Janet Stokes
Janet Stokes, Elections Division

/jfs
Enclosure

EXHIBIT "1" pg. 5

NEVADA STATE CAPITOL
101 N. Carson Street, Suite 3
Carson City, Nevada 89701-3714

MEYERS ANNEX
COMMERCIAL RECORDINGS
202 N. Carson Street
Carson City, Nevada 89701-4201

LAS VEGAS OFFICE
555 E. Washington Avenue, Suite 5200
Las Vegas, Nevada 89101-1090

nvsos.gov

Statute permitting disqualification of judge in civil action without filing of affidavit of bias or grounds for disqualification held unconstitutional. Former statute which established peremptory challenge procedure permitting any party in civil action to disqualify judge without filing affidavit of bias or otherwise alleging any grounds for disqualification (see sec. 2 of ch. 398, Stats. 1977, codified as former NRS 1.240) constituted unwarranted interference with courts in exercise of judicial function and violated doctrine of separation of powers and therefore was unconstitutional. Johnson v. Goldman, 94 Nev. 6, 575 P.2d 929 (1978)

Section. 1. Three separate departments; separation of powers. The powers of the Government of the State of Nevada shall be divided into three separate departments,—the Legislative,—the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases herein expressly directed or permitted.

—ANNOTATIONS—

Constitutional Debates.

Nevada Constitutional Debates and Proceedings, pp. 138, 246, 787, 836.

Nevada Cases.

Exercise of judicial function by board of county commissioners is constitutional. Exercise of judicial function by board of county commissioners is not violation of Nev. Art. 3, § 1, which provides for separation of legislative, executive and judicial powers, because that section is limited by Nev. Art. 4, § 26, which provides that legislature shall prescribe duties of boards of county commissioners. State ex rel. Mason v. Board of County Comm'rs, 7 Nev. 392 (1872)

Construction to be placed on act can be determined only by courts, not legislature. Construction to be placed on act can be determined only by courts, and attempted exercise of this power by legislature, in providing that nothing in act authorizing raffle should be construed as authorizing lottery contrary to provisions of constitution, was assumption of functions of judiciary in violation of Nev. Art. 3, § 1, and was disregarded by court. Ex parte Blanchard, 9 Nev. 101 (1874)

Separation of powers provision of Nevada constitution. Under Nev. Art. 3, § 1, state government is divided into executive, legislative and judicial departments, and no person charged with exercise of powers properly belonging to one of these departments may exercise any functions appertaining to either of the others, except in cases expressly directed or permitted by constitution. Ex parte Blanchard, 9 Nev. 101 (1874).

Legislative appointment of officers. The offices and agencies of a municipal corporation, through which its affairs are administered, are created by the legislature, and persons to fill such offices are chosen or appointed in the mode prescribed by the law of incorporation. Nev. Art. 3, § 1, which separates powers and duties of respective branches of state government, does not prevent legislative appointment because that power is not generally conferred upon executive, and Nev. Art. 15, § 10, exclusively authorizes legislature to provide for election or appointment. State ex rel. Rosenstock v. Swift, 11 Nev. 128 (1876)

Legislature cannot adjudicate claims where only private interests are involved. Where only private interests are involved, legislature cannot adjudicate upon disputed claims, and statute directing city treasurer to set apart certain amount of money as special fund and to pay certain enumerated indebtednesses against city, insofar as it undertook to fix amount due listed persons, was attempt by legislature to exercise judicial powers and repugnant to Nev. Art. 3, § 1, pertaining to separation of powers. State ex rel. Arick v. Hampton, 13 Nev. 439 (1878)

Statute providing for reduction of jail time is void insofar as it attempts to commute any portion of sentence imposed by courts before time act took effect. Ch. 78, Stats. 1881 (cf. NRS 209.433), relating to government of state prison, insofar as it attempts to commute any portion of sentence imposed by courts prior to time act took effect,

EXHIBIT "2" pg. 1

provisions. State ex rel. Coffin v. Atherton, 19 Nev. 332, 10 Pac. 901 (1886)

Statute's provision allowing judges necessary expenses actually paid in traveling did not violate section. Where statute redistricted state into one judicial district, and provided for election in such district of three judges having equal and concurrent jurisdiction, fact that statute allowed judges, in addition to their salary, necessary expenses actually paid by them in traveling by public conveyance in going to and from place of holding court, did not violate Nev. Art. 6, § 10, which prohibits judicial officers from receiving to their own use any fees or perquisites of office. State ex rel. Coffin v. Atherton, 19 Nev. 332, 10 Pac. 901 (1886)

Compensation allowed trustee under statute not prohibited fee or perquisite. Under sec. 7, ch. 28, Stats. 1869, as amended by sec. 3, ch. 82, Stats. 1871 (cf. NRS 325.070), which authorizes trustee of townsite on public land to charge fee for his time and services while employed in such trust, fact that person became trustee by virtue of his office as district judge did not prevent his making charge for his services as trustee, because compensation allowed trustee under statute is not fee or perquisite of office of district judge, and therefore does not come within prohibition of Nev. Art. 6, § 10, which forbids judicial officer to receive to his own use any fees or perquisites of office. State ex rel. Jennett v. Stevens, 34 Nev. 128, 116 Pac. 601 (1911)

Statute prohibiting justices of the peace from solemnizing marriages in certain townships did not violate provision requiring uniform system of county and township government. NRS 122.080, which prohibits justices of the peace from solemnizing marriages in certain townships in populous counties did not violate Nev. Art. 4, § 25, which requires uniform system of county and township government, because classification of townships had reasonable basis and did not constitute unconstitutional denial of perquisites of office, because Nev. Art. 6, § 10, which prohibits other judicial officers from accepting fees, did not give justices of the peace any right to marriage fees or limit power of legislature under former provisions of Nev. Art. 6, § 8, to fix their powers, duties and responsibilities. Reid v. Woofter, 88 Nev. 378, 498 P.2d 361 (1972); cited, State ex rel. Brennan v. Bowman, 89 Nev. 330, at 334, 512 P.2d 1321 (1973), Anthony v. State, 94 Nev. 337, at 341, 580 P.2d 939 (1978), County of Clark v. City of Las Vegas, 97 Nev. 260, at 264; 628 P.2d 1120 (1981)

Sec. 11. Justices and judges ineligible for other offices. The justices of the supreme court and the district judges shall be ineligible to any office, other than a judicial office, during the term for which they shall have been elected or appointed; and all elections or appointments of any such judges by the people, legislature, or otherwise, during said period, to any office other than judicial, shall be void.

[Amended in 1950. Proposed and passed by the 1947 legislature; agreed to and passed by the 1949 legislature; and approved and ratified by the people at the 1950 general election. See: Statutes of Nevada 1947, p. 878; Statutes of Nevada 1949, p. 684.]

—ANNOTATIONS—

Constitutional Debates.

Nevada Constitutional Debates and Proceedings, pp. 537, 676, 728, 802, 843.

Nevada Cases.

District judge not prevented from becoming trustee of townsite on public land. Under Nev. Art. 6, § 11, which provides that justices of supreme court and judges of district court shall be ineligible to any office, other than judicial office, during term for which they shall have been elected or appointed, district judge was not prevented from becoming trustee of townsite on public land, because even though he became trustee by virtue of his office of district judge, and certain of his duties as trustee were judicial in character, his trusteeship was at all times separate and distinct from his office of district judge. State ex rel. Jennett v. Stevens, 34 Nev. 128, 116 Pac. 601 (1911)

EXHIBIT "3" pg

Statute permitting disqualification of judge in civil action without filing of affidavit of bias or grounds for disqualification held unconstitutional. Former statute which established peremptory challenge procedure permitting any party in civil action to disqualify judge without filing affidavit of bias or otherwise alleging any grounds for disqualification (see sec. 2 of ch. 398, Stats. 1977, codified as former NRS 1.240) constituted unwarranted interference with courts in exercise of judicial function and violated doctrine of separation of powers and therefore was unconstitutional. Johnson v. Goldman, 94 Nev. 6, 575 P.2d 929 (1978)

Section. 1. Three separate departments; separation of powers. The powers of the Government of the State of Nevada shall be divided into three separate departments,—the Legislative,—the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases herein expressly directed or permitted.

—ANNOTATIONS—

Constitutional Debates.

Nevada Constitutional Debates and Proceedings, pp. 138, 246, 787, 836.

Nevada Cases.

Exercise of judicial function by board of county commissioners is constitutional. Exercise of judicial function by board of county commissioners is not violation of Nev. Art. 3, § 1, which provides for separation of legislative, executive and judicial powers, because that section is limited by Nev. Art. 4, § 26, which provides that legislature shall prescribe duties of boards of county commissioners. State ex rel. Mason v. Board of County Comm'rs, 7 Nev. 392 (1872)

Construction to be placed on act can be determined only by courts, not legislature. Construction to be placed on act can be determined only by courts, and attempted exercise of this power by legislature, in providing that nothing in act authorizing raffle should be construed as authorizing lottery contrary to provisions of constitution, was assumption of functions of judiciary in violation of Nev. Art. 3, § 1, and was disregarded by court. Ex parte Blanchard, 9 Nev. 101 (1874)

Separation of powers provision of Nevada constitution. Under Nev. Art. 3, § 1, state government is divided into executive, legislative and judicial departments, and no person charged with exercise of powers properly belonging to one of these departments may exercise any functions appertaining to either of the others, except in cases expressly directed or permitted by constitution. Ex parte Blanchard, 9 Nev. 101 (1874)

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EXHIBIT "3" pg 1

FOREWORD

By the provisions of chapter 304, Statutes of Nevada 1951, amended by chapter 280, Statutes of Nevada 1953, and chapter 248, Statutes of Nevada 1955, the legislature of the State of Nevada created the statute revision commission comprised of the three justices of the supreme court, authorized such commission to appoint a reviser of statutes to be known as the director of the statute revision commission, and charged the commission to commence the preparation of a complete revision and compilation of the laws of the State of Nevada to be known as Nevada Revised Statutes. Reference is made to chapter 220 of Nevada Revised Statutes for the further duties and authority of the statute revision commission relating to the preparation of Nevada Revised Statutes, the numbering of sections, binding, printing, classification, revision and sale thereof.

The commission employed as director Russell W. McDonald, a member of the State Bar of Nevada, who, with his staff, undertook and performed this monumental task with such methods, care, precision, completeness, accuracy and safeguards against error as to evoke the highest praise of the commission and the commendation of the bench and bar of the state.

As the work progressed, Mr. McDonald submitted drafts of chapter after chapter as recompiled and revised, and the members of the commission individually and in conference meticulously checked all revisions. In the vast majority of cases these revisions were promptly approved. Many required further conferences with the director. Some were modified and redrafted. As the several chapters were returned with approval to the director, they were in turn delivered to the superintendent of state printing for printing, to the end that upon the convening of the 1957 legislature Nevada Revised Statutes was ready to present for approval. By the provisions of chapter 2, Statutes of Nevada 1957, Nevada Revised Statutes, consisting of NRS 1.010 to 710.590, inclusive, was "adopted and enacted as law of the State of Nevada."

STATUTE REVISION COMMISSION

MILTON B. BADT
EDGAR EATHER
CHARLES M. MERRILL

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LEGISLATIVE COUNSEL'S PREFACE

History and Objectives of the Revision

Nevada Revised Statutes is the result of the enactment, by the 45th session of the legislature of the State of Nevada, of chapter 304, Statutes of Nevada 1951 (subsequently amended by chapter 280, Statutes of Nevada 1953, and chapter 248, Statutes of Nevada 1955), which created the statute revision commission and authorized the commission to undertake, for the first time in the state's history, a comprehensive revision of the laws of the State of Nevada of general application. Although revision was not commenced until 1951, the need for statutory revision had been recognized as early as 1865 when an editorial published in the *Douglas County Banner* stated:

> One subject which ought to engage the early, and serious consideration of the Legislature, about to convene, and one which should be acted upon without delay, is the revision and codification of the laws of Nevada. Amendment has been added to amendment, in such manner as to leave, in many instances, the meaning of the Legislature, that last resort of the jurist, in determining the application of the law, more than doubtful * * *. The most serviceable members of the Legislature will be those gentlemen who will do something toward reducing to order our amendment-ridden, imperfectly framed and jumbled up statutes at large.

From 1861 to 1951 the legislature made no provisions for statutory revision, although during that period 8,423 acts were passed by the legislature and approved by the governor. During the period from 1873 to 1949 eight compilations of Nevada statutes were published. "Compiling" must be distinguished from "revising." Ordinarily, the "compiling" of statutes involves the following steps: Removing from the last compilation the sections that have been specifically repealed since its publication; substituting the amended text for the original text in the case of amended sections; inserting newly enacted sections; rearranging, to a limited extent, the order of sections; and bringing the index up to date.

"Revising" the statutes, on the other hand, involves these additional and distinguishing operations: (1) The collection into chapters of all the sections and parts of sections that relate to the same subject and the orderly arrangement into sections of the material assembled in each chapter. (2) The elimination of inoperative or obsolete, duplicated, impliedly repealed and unconstitutional (as declared by the Supreme Court of the State of Nevada) sections and parts of sections. (3) The elimination of unnecessary words and the improvement of the grammatical structure and physical form of sections.

The revision, instead of the recompilation, of the statutes was undertaken, therefore, first, to eliminate sections or parts of sections which, though not specifically repealed, were nevertheless ineffective and, second, to clarify, simplify, classify and generally make more accessible, understandable and usable the remaining effective sections or parts of sections.

With respect to the accomplishment of the second purpose of revision specified above, the following revisions, in addition to those mentioned elsewhere in this preface, were made:

EXHIBIT "4A" pg. 1

1. Long sections were divided into shorter sections. The division of long sections facilitates indexing and reduces the complications and expense incident to future amendment of the statutes.

2. Whole sections or parts of sections relating to the same subject were sometimes combined.

3. Sentences within a section, and words within a sentence, were rearranged, and tabulations were employed where indicated.

4. Such words and phrases as "on and after the effective date of this act," "heretofore," "hereinafter," "now," and "this act" were replaced by more explicit words when possible.

5. The correct names of officers, agencies or funds were substituted for incorrect designations.

The general types of revisions to be made by the reviser, as well as the broad policies governing the work of revision, were determined by the statute revision commission at frequent meetings. Precautions were taken to ensure the accomplishment of the objectives of the program without changing the meaning or substance of the statutes.

Upon completion of the revision of the text of the statutes in December 1956, the commission turned to the solution of a vital problem: Would it recommend the enactment of the revised statutes or would it request the legislature merely to adopt the revised statutes as evidence of the law? The commission concluded that the enactment of the revised statutes as law, rather than the mere adoption thereof as evidence of the law, would be the more desirable course of action. Accordingly, *Nevada Revised Statutes* in typewritten form was submitted to the 48th session of the legislature in the form of a bill providing for its enactment as law of the State of Nevada. This bill, Senate Bill No. 2 (hereafter referred to in this preface as "the revision bill"), was passed without amendment or dissenting vote, and on January 25, 1957, was approved by Governor Charles H. Russell.

On July 1, 1963, pursuant to the provisions of chapter 403, Statutes of Nevada 1963, the statute revision commission was abolished, and its powers, duties and functions were transferred to the legislative counsel of the State of Nevada.

SCOPE AND EFFECT OF NEVADA REVISED STATUTES

Nevada Revised Statutes, including the supplementary and replacement pages, constitutes all of the statute laws of Nevada of a general nature enacted by the legislature. All statutes of a general nature enacted before the regular legislative session of 1957 have been repealed. See section 3 of chapter 2, Statutes of Nevada 1957, immediately following this preface.

The revised statutes were the result of 7 years of labor by the statute revision commission and its editorial staff addressed to the problem of eliminating from the accumulation of 95 years of legislation those provisions no longer in force and restating and compiling the remainder in an understandable form. This involved elimination of duplicating, conflicting, obsolete and unconstitutional provisions, and those provisions that had been repealed by implication. It involved a complete reclassification, bringing together those laws and parts of laws which, because of similarity of subject matter, properly belonged together, and an arrangement of the laws within each class in a logical order. It involved the elimination of thousands of needless words and redundant expressions. It was a labor involving almost infinite detail, as well as the problems of classification and the general plan of arrangement.

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CONCLUSION

Petitioner's petition/writ, asserts claims supported by "very specific factual allegations of 'who, what, when, where, why, and how,'" as concerns "S.B. No. 182," etc., facts and evidence that "are not belied by the record, being 'true,' entitle Petitioner to relief; to include the lack of subject matter jurisdiction.

Petitioner respectfully requests that this court will:

1. Require the Respondent to answer each and every Ground, and subgrounds herein this petition/writ;

2. Afford Petitioner every procedural protection under the Constitution of the State of Nevada, to include the Constitution's Due Process protection Article 1, 8, yet not limited thereto, for the habeas proceedings before this court;

3. Afford Petitioner Due Process protections as is guaranteed by the United States Constitution Fifth (5th), and Fourteenth (14th), Amendments;

4. Determine whether the "trial court," acted in a manner inconsistent with Due Process, as concerns subject matter jurisdiction (the lack thereof), and or as to any other proceedings had before the court?;

5. Provide resolution of the foregoing petition/writ to prevent "manifest injustice," and or a "fundamental miscarriage of justice," denial of Due Process;

6. Resolve the "State" created impediment, that is external to the defense, that is something external to Petitioner, which "cannot be 'fairly' attributed to Petitioner," and attorney ignorance or inadvertence is not

cause. I.e. look to the procedural deficiencies, Due Process protections, etc., that the "facial unconstitutionality," that S.B. No. 182 has violated;

7. Determine whether "reconstructing any of the circumstances of the challenged conduct..." can only be done adequately at an evidentiary hearing, that, these particular issues provides support for the necessity of Petitioner's request for an evidentiary hearing in this matter. Clearly an evidentiary hearing is necessary in this matter because a number of questions "need to be answered." Without an evidentiary hearing, it is impossible to determine the totality of the detriment of the constitutional violations, as to the issues herein;

8. GRANT the petition/writ setting the matter for an evidentiary hearing, to develop a full, fair, and factual record, for the specific purpose, reason, that the Sup. Ct. of Nev. "is not" a "fact finding tribunal," and there are factual matters herein that must be resolved;

9. That, this court provide such further relief, that this court determines is fair, just, and proper, under the Constitution and laws, etc., of the United States of America, applicable to the circumstances, and the issues, nature of the petition/writ, as well as the Constitution of the State of Nevada.

Respectfully submitted this 29th day of August 2018.

x Eddie Rencher JR

PETITIONER PRO SE

-7 W-

WHEREFORE, Eddie Rencher, prays that the court grant Post Conviction relief to which he may be entitled in this proceeding.

EXECUTED at Southern Desert Correctional Center on the 29th day of August, 2018.

Mr. Eddie Rencher
Signature of Petitioner

VERIFICATION

Under penalty of perjury, pursuant to N.R.S. 208.165 et seq., the undersigned declares that he is the Petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true and correct of his own personal knowledge, except as to those matters based on information and belief, and to those matters, he believes them to be true.

Mr. Eddie Rencher
Signature of Petitioner

Attorney for Petitioner

CERTFICATE OF SERVICE BY MAILING

I, Eddie Rencher JR, hereby certify, pursuant to NRCP 5(b), that on this 29th day of August, 2018, I mailed a true and correct copy of the foregoing, "Petition For Writ of Habeas Corpus (Post-Conviction) Request For Evidentiary Hearing" by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

CLARK County District Attorney
200 Lewis Ave
P.O. Box 552212
Las Vegas, NV. 89155-2212

Brian Sandoval
Governor State of Nevada
Capitol Complex
Carson City, NV. 89701

Attorney General
State of Nevada
555 E. Washington Ave Ste 3900
Las Vegas, NV. 89101

CC:FILE

DATED: this 29th day of August, 20___.

Mr Eddie Rencher JR
EDDIE RENCHER JR #1034946
Appellant Prose /In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

46

FILED

2018 SEP 13 A 11:09

CLERK OF THE COURT

PPOW

DISTRICT COURT

CLARK COUNTY, NEVADA

Eddie Rencher, Jr.,

Petitioner,

vs.

Warden Jerry Howell,

Respondent,

Case No: A-18-780636-W
Department 19

ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on August 31, 2018. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's Calendar on the 12th day of December, 2018, at the hour of 8:30 A.M. o'clock for further proceedings.

RECEIVED
SEP 13 2018
CLERK OF THE COURT

District Court Judge

A-18-780636-W
OPWH
Order for Petition for Writ of Habeas Corpu
4779212

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

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

EDDIE RENCHER,
#1924353

Defendant.

CASE NO: **A-18-780636-W**
06C225668

DEPT NO: **XIX**

STATE'S RESPONSE TO DEFENDANT'S PETITION

FOR WRIT OF HABEAS CORPUS

DATE OF HEARING: **DECEMBER 12, 2018**
TIME OF HEARING: **8:30 AM**

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JAMES R. SWEETIN, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Petition for Writ of Habeas Corpus.

This response is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On August 31, 2006, Petitioner was charged by way of Information with 14 counts of Sexual Assault of a Child under 14 Years of Age and 6 counts of Lewdness with a Child under 14 Years of Age. Trial began on July 7, 2008. The jury found Petitioner guilty on counts 1, 3–7, 11–12, and 14–20. The Judgment of Conviction was filed on September 23, 2008. Petitioner was sentenced to 15 terms of life without the possibility of parole, two of which were ordered to run consecutively.

Petitioner filed a Notice of Appeal on September 5, 2008. On November 5, 2009, the Nevada Supreme Court affirmed Petitioner's conviction. Remittitur was issued on December 1, 2009.

Petitioner filed his first Petition for Writ of Habeas Corpus on March 4, 2010. The State responded on May 18, 2010. Petitioner filed a supplement to his petition on January 28, 2011, and the State responded on March 24, 2011. On June 17, 2011, the District Court denied Petitioner's first petition. Petitioner filed a second Notice of Appeal on September 23, 2011. On June 13, 2012, the Nevada Supreme Court affirmed the district court's denial of Petitioner's first petition. Remittitur was issued on July 9, 2012.

Petitioner then filed a Federal Petition for Writ of Habeas Corpus. On August 18, 2014, the United States District Court for the District of Nevada found that Petitioner's first petition contained both exhausted and unexhausted claims and was subject to dismissal.

Petitioner filed his second petition on November 21, 2014. The State responded on January 7, 2015. The District Court denied his second petition on January 26, 2015. On February 23, 2015, Petitioner filed a third Notice of Appeal. The Nevada Supreme Court affirmed the denial and Remittitur was issued on July 14, 2015.

Petitioner filed this third petition on August 31, 2018.

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ARGUMENT

I. THE PETITION IS PROCEDURALLY BARRED.

Petitioner's petition is procedurally barred for being untimely with no good cause shown and as a successive petition. Further, the State pleads laches.

a. The petition is untimely.

A petition challenging a judgment of conviction's validity must be filed within one year of the judgment filed or within one year of the remittitur issued, unless there is good cause to show delay. NRS 34.726(1). The Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873–74, 34 P.3d 519, 528 (2001). Under the statute, the one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998).

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

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

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

Id. (quoting Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984)). Additionally, the Court noted that procedural bars "cannot be ignored [by the district court] when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court

has granted no discretion to the district courts regarding whether to apply the statutory procedural bars; the rules *must* be applied.

Here, Petitioner's petition is filed well beyond the one-year time bar. The Judgment of Conviction was filed on September 23, 2008. Petitioner filed a direct appeal and Remittitur was issued on December 1, 2009. That is almost nine years ago. Also, Petitioner's second petition was denied as untimely. Therefore, this petition should be dismissed as untimely, absent a showing of good cause.

b. The petition is successive.

Petitioner's petition is procedurally barred because it is successive. NRS 34.810(2) reads:

> 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.

(emphasis added).

Second or successive petitions are petitions that either fail to allege new or different grounds for relief and the grounds have already been decided on the merits or that allege new or different grounds but a judge finds that the petitioner's failure to assert those grounds in a prior petition would constitute an abuse of the writ. Second or successive petitions will only be decided on the merits if the petitioner can show good cause and prejudice. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

The Nevada Supreme Court has stated: "Without such limitations on the availability of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-conviction remedies. In addition, meritless, successive and untimely petitions clog the court system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950. The Nevada Supreme Court recognizes that "[u]nlike 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). In other words, if the claim or allegation was previously available with reasonable diligence, it is an abuse of

the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497–98 (1991). Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

Here, Petitioner's claim was available to him when he filed his previous petitions, and thus it is an abuse of the writ to assert them now. His claim is based on legislation from 1951, which would have been available to him in 2010 and 2014. Also, Petitioner's second petition was denied as successive and an abuse of the writ. Therefore, Petitioner's petition should be dismissed as a successive petition, absent a showing of good cause.

c. Petitioner cannot show good cause.

Good cause for delay requires that: 1) the delay is not the petitioner's fault, and 2) the dismissal as untimely will unduly prejudice the petitioner. NRS 34.726(1). The petitioner must show some external factor that prevented him from complying with the time-bar. Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003). Also, a petitioner cannot attempt to create good cause. Id. at 621, 81 P.3d at 526.

Petitioner cannot show good cause. The delay is Petitioner's fault because he could have included this claim in his previous petitions. His claim is based on legislation from 1951, which would have been available to him in 2010 and 2014. Also, the court found no good cause for delay for Petitioner's second petition. Thus, because the delay is Petitioner's fault, he is prevented from showing good cause.

d. The State pleads laches.

There is a rebuttable presumption that the State is prejudiced when five or more years elapses between a decision on direct appeal of a judgment of conviction and the filing of a petition for writ of habeas corpus. NRS 34.800(2). The Nevada Supreme Court observed in Groesbeck v. Warden, "[P]etitions that are filed many years after conviction are an unreasonable burden on the criminal justice system. The necessity for a workable system dictates that there must exist a time when a criminal conviction is final." 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984).

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Here, the State affirmatively pleads laches. The Judgment of Conviction was filed on September 23, 2008. Petitioner appealed and Remittitur was filed on December 1, 2009. That is almost nine years ago. Thus, there is a rebuttable presumption that the State is prejudiced.

II. PETITIONER'S REQUEST FOR AN EVIDENTIARY HEARING SHOULD BE DENIED BECAUSE THERE IS NO NEED TO EXPAND THE RECORD.

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

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

NRS 34.770.

If a petition can be resolved without expanding the record, then an evidentiary hearing is not required. Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual allegations, which, if true, would entitle him to relief unless the factual allegations are repelled by the record. Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605 (1994); see also Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that "[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record").

Here, the petition can be resolved without expanding the record. Petitioner makes no factual allegation that entitles him to relief. Instead, Petitioner's petition is procedurally barred and must be dismissed. Because his petition is procedurally barred, there is no reason to expand the record. Thus, Petitioner's request for an evidentiary hearing should be denied.

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CONCLUSION

Based on the foregoing, the State respectfully requests that Petitioner's Third Petition for Writ of Habeas Corpus be DENIED.

DATED this 25th day of October, 2018.

Respectfully submitted,

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

BY /s/ JAMES R. SWEETIN
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144

CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing was made this 25TH day of OCTOBER, 2018, to:

EDDIE RENCHER, BAC#1024946
S.D.C.C.
P.O. BOX 208
INDIAN SPRINGS, NV 89070

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

hjc/SVU

ORIGINAL

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

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

EDDIE RENCHER,
#1924353

Defendant.

CASE NO: **A-18-780636-W**
06C225668

DEPT NO: **XIX**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: **DECEMBER 12, 2018**
TIME OF HEARING: **8:30 AM**

THIS CAUSE having presented before the Honorable WILLIAM D. KEPHART, District Judge, on the 12th day of December, 2018; Petitioner not being present, proceeding IN PROPER PERSON; Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through MICHAEL DICKERSON, Deputy District Attorney; and having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

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FINDINGS OF FACT

CONCLUSIONS OF LAW

On August 31, 2006, Petitioner was charged by way of Information with 14 counts of Sexual Assault of a Child under 14 Years of Age and 6 counts of Lewdness with a Child under 14 Years of Age. Trial began on July 7, 2008. The jury found Petitioner guilty on counts 1, 3–7, 11–12, and 14–20. The Judgment of Conviction was filed on September 23, 2008. Petitioner was sentenced to 15 terms of life without the possibility of parole, two of which were ordered to run consecutively.

Petitioner filed a Notice of Appeal on September 5, 2008. On November 5, 2009, the Nevada Supreme Court affirmed Petitioner's conviction. Remittitur was issued on December 1, 2009.

Petitioner filed his first Petition for Writ of Habeas Corpus on March 4, 2010. The State responded on May 18, 2010. Petitioner filed a supplement to his petition on January 28, 2011, and the State responded on March 24, 2011. On June 17, 2011, the District Court denied Petitioner's first petition. Petitioner filed a second Notice of Appeal on September 23, 2011. On June 13, 2012, the Nevada Supreme Court affirmed the district court's denial of Petitioner's first petition. Remittitur was issued on July 9, 2012.

Petitioner then filed a Federal Petition for Writ of Habeas Corpus. On August 18, 2014, the United States District Court for the District of Nevada found that Petitioner's first petition contained both exhausted and unexhausted claims and was subject to dismissal.

Petitioner filed his second petition on November 21, 2014. The State responded on January 7, 2015. The District Court denied his second petition on January 26, 2015. On February 23, 2015, Petitioner filed a third Notice of Appeal. The Nevada Supreme Court affirmed the denial and Remittitur was issued on July 14, 2015.

Petitioner filed his third petition on August 31, 2018. The State responded on October 25, 2018. The Court denied the petition on December 12, 2018.

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ANALYSIS

I. THE PETITION IS PROCEDURALLY BARRED.

Petitioner's petition is procedurally barred for being untimely with no good cause shown and as a successive petition. Further, the State pleaded laches.

a. The petition is untimely.

A petition challenging a judgment of conviction's validity must be filed within one year of the judgment filed or within one year of the remittitur issued, unless there is good cause to show delay. NRS 34.726(1). The Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873–74, 34 P.3d 519, 528 (2001). Under the statute, the one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998).

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

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

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

Id. (quoting Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984)). Additionally, the Court noted that procedural bars "cannot be ignored [by the district court] when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court

has granted no discretion to the district courts regarding whether to apply the statutory procedural bars; the rules *must* be applied.

Here, Petitioner's petition is filed well beyond the one-year time bar. The Judgment of Conviction was filed on September 23, 2008. Petitioner filed a direct appeal and Remittitur was issued on December 1, 2009. That is almost nine years ago. Also, Petitioner's second petition was denied as untimely. Therefore, this petition is dismissed as untimely.

b. The petition is successive.

Petitioner's petition is procedurally barred because it is successive. NRS 34.810(2) reads:

> 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.

(emphasis added).

Second or successive petitions are petitions that either fail to allege new or different grounds for relief and the grounds have already been decided on the merits or that allege new or different grounds but a judge finds that the petitioner's failure to assert those grounds in a prior petition would constitute an abuse of the writ. Second or successive petitions will only be decided on the merits if the petitioner can show good cause and prejudice. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

The Nevada Supreme Court has stated: "Without such limitations on the availability of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-conviction remedies. In addition, meritless, successive and untimely petitions clog the court system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950. The Nevada Supreme Court recognizes that "[u]nlike 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). In other words, if the claim or allegation was previously available with reasonable diligence, it is an abuse of

the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497–98 (1991). Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

Here, Petitioner's claim was available to him when he filed his previous petitions, and thus it is an abuse of the writ to assert them now. His claim is based on legislation from 1951, which would have been available to him in 2010 and 2014. Also, Petitioner's second petition was denied as successive and an abuse of the writ. Therefore, Petitioner's petition is dismissed as a successive petition.

c. Petitioner cannot show good cause.

Good cause for delay requires that: 1) the delay is not the petitioner's fault, and 2) the dismissal as untimely will unduly prejudice the petitioner. NRS 34.726(1). The petitioner must show some external factor that prevented him from complying with the time-bar. Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003). Also, a petitioner cannot attempt to create good cause. Id. at 621, 81 P.3d at 526.

Petitioner cannot show good cause. The delay is Petitioner's fault because he could have included this claim in his previous petitions. His claim is based on legislation from 1951, which would have been available to him in 2010 and 2014. Also, the Court found no good cause for delay for Petitioner's second petition. Thus, because the delay is Petitioner's fault, he is prevented from showing good cause.

a. The State pleaded laches.

There is a rebuttable presumption that the State is prejudiced when five or more years elapses between a decision on direct appeal of a judgment of conviction and the filing of a petition for writ of habeas corpus. NRS 34.800(2). The Nevada Supreme Court observed in Groesbeck v. Warden, "[P]etitions that are filed many years after conviction are an unreasonable burden on the criminal justice system. The necessity for a workable system dictates that there must exist a time when a criminal conviction is final." 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984).

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Here, the petition can be resolved without expanding the record. Petitioner makes no factual allegation that entitles him to relief. Instead, Petitioner's petition is procedurally barred and must be dismissed. Because his petition is procedurally barred, there is no reason to expand the record. Thus, Petitioner's request for an evidentiary hearing is denied.

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ORDER

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

DATED this 11th day of January, 2019.

DISTRICT JUDGE

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

BY _____ for
MICHAEL DICKERSON
Deputy District Attorney
Nevada Bar #013476

Electronically Filed
1/22/2019 2:49 PM
Steven D. Grierson
CLERK OF THE COURT

NEO

DISTRICT COURT
CLARK COUNTY, NEVADA

EDDIE RENCHER, JR,

Petitioner,

vs.

WARDEN JERRY HOWELL,

Respondent,

Case No: A-18-780636-W

Dept No: XIX

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

PLEASE TAKE NOTICE that on January 18, 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 January 22, 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 22 day of January 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:
Eddie Rencher # 1024946
P.O. Box 208
Indian Springs, NV 89070

/s/ Debra Donaldson
Debra Donaldson, Deputy Clerk

ORIGINAL

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

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

EDDIE RENCHER,
#1924353

Defendant.

CASE NO: **A-18-780636-W**
06C225668

DEPT NO: **XIX**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: **DECEMBER 12, 2018**
TIME OF HEARING: **8:30 AM**

THIS CAUSE having presented before the Honorable WILLIAM D. KEPHART, District Judge, on the 12th day of December, 2018; Petitioner not being present, proceeding IN PROPER PERSON; Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through MICHAEL DICKERSON, Deputy District Attorney; and having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

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FINDINGS OF FACT

CONCLUSIONS OF LAW

On August 31, 2006, Petitioner was charged by way of Information with 14 counts of Sexual Assault of a Child under 14 Years of Age and 6 counts of Lewdness with a Child under 14 Years of Age. Trial began on July 7, 2008. The jury found Petitioner guilty on counts 1, 3–7, 11–12, and 14–20. The Judgment of Conviction was filed on September 23, 2008. Petitioner was sentenced to 15 terms of life without the possibility of parole, two of which were ordered to run consecutively.

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Petitioner's petition is procedurally barred because it is successive. NRS 34.810(2) reads:

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Here, the petition can be resolved without expanding the record. Petitioner makes no factual allegation that entitles him to relief. Instead, Petitioner's petition is procedurally barred and must be dismissed. Because his petition is procedurally barred, there is no reason to expand the record. Thus, Petitioner's request for an evidentiary hearing is denied.

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ORDER

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

DATED this 11th day of January, 2019.

DISTRICT JUDGE

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

BY _____ for
MICHAEL DICKERSON
Deputy District Attorney
Nevada Bar #013476

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	**COURT MINUTES**	**December 12, 2018**

A-18-780636-W Eddie Rencher, Jr., Plaintiff(s)
vs.
Warden Jerry Howell, Defendant(s)

December 12, 2018 **8:30 AM** **Petition for Writ of Habeas Corpus**

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES PRESENT: Dickerson, Michael Attorney

JOURNAL ENTRIES

- Court noted Defendant not present and in custody with the Nevada Department of Corrections. Further, Court noted this is the third petition filed by Defendant, Defendant was convicted in 2008 with the conviction being affirmed by the Supreme Court in 2009; therefore, Court FINDS the petition to be time barred pursuant to NRS 34.726 and Defendant has failed to show good cause for the delay as well as the petition is successive. COURT ORDERED, Petition DENIED.

NDC

Certification of Copy and Transmittal of Record

State of Nevada
County of Clark } **SS:**

Pursuant to the Supreme Court order dated April 2, 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 71.

EDDIE RENCHER, JR.,

Plaintiff(s),

vs.

WARDEN JERRY HOWELL,

Defendant(s),

Case No: A-18-780636-W
Related Case 06C225668
Dept. No: XIX

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 24 day of January 2020.

Steven D. Grierson, Clerk of the Court

Heather Ungermann, Deputy Clerk