

IN THE SUPREME COURT OF THE STATE OF NEVADA

DOMONIC RONALDO MALONE,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Electronically Filed
Feb 28 2020 10:29 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-19-801802-W

Docket No: 80493
Consolidated with 80492

RECORD ON APPEAL

ATTORNEY FOR APPELLANT

DOMONIC MALONE #69418,
PROPER PERSON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT

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

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1	DOMONIC R. MALONE NO. 69418	FILED
2	HDSP	SEP 09 2019
3	P.O. Box 650	
4	Indian Springs, NV 89070	CLERK OF COURT
5	In Proper Person	
6	EIGHTH JUDICIAL DISTRICT COURT	
7	STATE OF NEVADA COUNTY OF CLARK	
8	DOMONIC RONALDO MALONE	A-19-801802-W
9	-v- Petitioner	Dept. XVII
10	B. WILLIAMS	* EVIDENTIARY HEARING REQUESTED *
11	Respondent	
12	AN ORIGINAL ACTION IN PROCEED FOR PETITION FOR WRIT	
13	OF HABEAS CORPUS IN ACCORDANCE TO THE PROVISION	
14	ALLOWED IN MCCOY V. LOUISIANA	
15	THE foregoing is An ORIGINAL ACTION IN PROCEEDING FOR PETITION OF	
16	WRIT OF HABEAS CORPUS (Writ, citing MCCOY v. Louisiana, 138 S Ct. 1500 (2018))	
17	to "adauseam." (Emphasis added)	
18	In the above entitled action Petitioner, DOMONIC RONALDO MALONE (Petitioner), re-	
19	spectfully shows:	
20	1. The Petitioner is proceeding Prose;	
21	2. That, Petitioner makes application herein for Writ of Habeas Corpus, on Petitioner's	
22	own behalf, as well as the interested of the State of Nevada and the Government	
23	of the UNITED STATES, being no less concerned in the transaction than the STATE	
24	Government is. That, Petitioner is imprisoned and restrained of his liberty at: High	
25	Desert State Prison (H.D.S.P.) Indian Springs Nevada, County of Clark, by B. Willi-	
26	ams, Warden of said facility.	
27	3. That, by virtue of this writ, Petitioner is challenging the unlawfulness of	
28	his restraint and imprisonment in violation of the Constitution of the UNITED	

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1 States, Fifth (5th) Amendments right to Due Process; Fourteenth (14th) Amendment
2 right to Due Process and Equal Protection of Law, and the Sixth (6th) Amendment
3 right to secure autonomy

4 4. That, no other Original Action IN PROCEEDING for Petition for Writ of Habeas
5 Corpus citing McCoy v. Louisiana, 138 S. Ct. 1500 (2018), has been filed on
6 behalf of Petitioner from his illegal confinement.

7 Wherefore, Petitioner does respectfully moves this COURT, pursuant to the decision of
8 McCoy v. Louisiana, 138 S. Ct. 1500 (2018), to issue the Writ, setting forth a date for
9 evidentiary hearing before this Court, for the express purpose of the taking of testimony
10 and exhibits on the part of both petitioner and respondent, to inquire further into petitioner
11 illegal confinement.

12 Dated this 25th day of JULY, 2019

13 Dominick R. Malone

14 *Dominick R. Malone*

15 Petitioner Pro, Se

16 H.D.S.P.

17 P.O. Box 650

18 Indian Springs, NV. 89070

POINTS AND AUTHORITIES

On May 15, 2018, the Supreme Court decided the case *McCoy v. Louisiana*, which outlined a new rule of constitutional law guaranteeing, under the Sixth Amendment, an accused's right under the Sixth Amendment to choose the objective of his defense and to maintain his innocence if he chooses. 138 S. Ct. 1500 (2018).

In this petition for writ of habeas corpus MALONE is alleging his trial counsel conceded his guilt to First Degree Kidnapping / Murder with use of a deadly weapon without his consent and the trial court did not adequately canvass MALONE about this concession. Malone's new claim is based on the Sixth Amendment right to secured autonomy affirmed in *McCoy*.

Legal standard

The United States Supreme Court holds allegations of a pro se complaint to less stringent standards than formal pleadings drafted by lawyers. See *Haines v. Kerner* 92 S. Ct. 913 (1972). To overcome the procedural bars of NRS 34.726, NRS 34.810, and NRS 34.800, a petitioner has the burden to show "good cause" for delay in bringing his claim or for presenting the same claims again. See *Pellegrini v. State*, 117 Nev. 800, 887, 34 P.3d 519, 537 (2001). One manner in which a petitioner can establish good cause is to show that the legal basis for the claim was not reasonably available at the time of the default. A claim based on newly available legal basis must rest on a previously unavailable constitutional claim. A petitioner has one-year to file a petition from the date that the claim has become available unless he can show that "[i]n impediment external to the defense prevented him... from complying with the state procedural default rules.

The Supreme Court's recent decision in *McCoy v. Louisiana* 138 S. Ct. 1500 (2018) provides good cause for overcoming the procedural bars. *McCoy* established a new rule of constitutional law, namely that a defendant has the "secured autonomy" to decide the objective of his defense, and to "make the fundamental choices about his own defense."

1 This new rule of constitutional law was not previously available to MALONE,
2 Although McCoy was decided on May 14, 2018. IT was not made known to
3 MALONE til July 1, 2019 Due to the on-going conflict that he has with the
4 High Desert State Prison Legal law library / NDOC. see case No. 2:18-cv-01994-
5 JAD-NJK.

6 McCoy applies to my case and here is why:

7 Trial Counsel did concede guilt when he places me @ the Hard Rock
8 with the co-defendants being an active participant in the search of the
9 girls @ 4 o'clock in the morning (closing argument pg. 96 line 8-17)
10 Trial Counsel concede guilt when he places me @ the South Cove during /
11 or around the time of the kidnapping / or death of the deceased (closing
12 arguments pg. 96 line 23) Although Trial Counsel argue that the witness
13 "got it wrong"! However, by doing so Trial Counsel inadvertently bolstered the
14 States case by comparison. Sarah Matthews: claims to had witness me
15 commit the crime of kidnapping @ the South Cove during the Afternoon
16 12 o'clock hours) The State: via cell tower records claim that this same
17 crime of kidnapping happen around 12:59 AM. Being that Trial Counsel
18 provided no independent expert witness on their own, so therefore the jury
19 was left with only two (2) choices both in favor of the State. When trial
20 Counsel inadvertently bolstered the States case when he uttered "she got
21 it wrong" which indicates that the state (must have gotten it right
22 then)...

23 I never relinquish my Sixth Amendment right to secure autonomy
24 meaning: I never waived my right to maintain my innocence, nor made
25 any decision to allow counsel to concede charges to the jury on my behalf.

26 The McCoy decision was not available to me as I was found guilty seven
27 (7) yrs. prior to McCoy v. Louisiana. Unlike Jones v. State, decided in 1994, McCoy,
28 on the other hand, creates no requirement that the defendant testified on his

1 on his behalf in order for there to be a Sixth Amendment violation. Rather, McCoy explicitly
2 frames the issue as a Sixth Amendment right to secured autonomy held by the defendant.
3 "Because a client's autonomy, not counsel's competence, is in issue. A violation of this
4 right is structural, requiring no prejudice inquiry. This is the right that I am
5 asserting was violated, not my Sixth Amendment right to the effective assistance of
6 counsel.

7 McCoy reflects a categorical guarantee of "the defendant's right to make the funda-
8 mental choices about his own defense," in particular the "[a]utonomy to decide that
9 the objective of the defense is to assert innocence." It ensures this right by carving out
10 a specific class of defendants defined by a shared status: defendants whose express
11 opposition to their counsel's admission of their guilt was disregarded. Its holding
12 recognizes that such defendants merit distinct constitutional protection from conviction
13 and punishment by the state. →

14 The Supreme Court has indicated that only cases establishing rules of significance
15 similar to that of *Gideon v. Wainwright* 372 U.S. 335 (1963) are likely to fall under the
16 second Teague exception. McCoy is such a case. The risk of unfair trials and inaccurate
17 inaccurate verdicts that McCoy curbs is the exact same risk *Gideon* protects against.
18 The obvious truth in our adversary system of criminal justice cannot be realized
19 if a defendant's lawyer refuses to assert the defendant's express instruction.

20 The Supreme Court's holding in McCoy preserves the basic tenets of our
21 adversary system of criminal justice, decreases the likelihood of the innocent being
22 convicted, applies in every criminal case, and protects numerous rights beyond the
23 one directly in question in that case. As such, it has the requisite "primacy and
24 centrality" to fall within the Teague exception for procedural rules, *Whorton*, 549
25 U.S. @ 421. and therefore applies on collateral review in my case.

26 II. The relinquishing of the Sixth Amendment right to secured
27 autonomy required a full canvass.

28 MALONE here argues that he should have been canvassed

1 about his attorney's concession of guilt, by the trial judge in this case.
2 Because, "Like other constitutional rights, a defendant's waiver of this right
3 to maintain his innocence, and decision to allow counsel to concede charges to the
4 jury, must be knowing, voluntary, and intelligent."

5 Although these are cornerstone basic rights of a defendant. However, the
6 record is silent of MALONE's trial judge ever canvassing him about
7 his attorney's concession of guilt making his conviction unconstitutional.

8 CONCLUSION

9 Accordingly, for the reasons stated in the petition Malone respectfully
10 submits that he has demonstrated sufficient grounds to overcome any purported
11 procedural bars and respectfully requests that this Court:

12 1. Issue a writ of habeas corpus to have Malone brought before the Court
13 so that he may be discharged from his unconstitutional confinement and sen-
14 tence;

15 2. To the extent any pertinent facts are in dispute, conduct an evidentiary
16 hearing at which proof may be offered concerning such matters; and

17 3. Grant such other and further relief as, in the interest of justice, may be
18 appropriate.

19 Dated this 25th Day of July 2019

20 Respectfully submitted,

21  Dominic R. Malone

22 Dominic R. Malone

23 Proper Person

24

25

26

27

28

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2019, I mailed a true copy of the foregoing document to the Clerk of the Eighth Judicial District Court.

I further certify that I am not registered with the Court's electronic filing system. And therefore request that this document be forward to the following person:

Michael J. Bongard
Senior Deputy Attorney General
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

STEVEN D. GRIERSON, Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV. 89155-1160

Dominic R. Malone
No. 69418
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

STEVEN B. WOLFSON, District Attorney
Office of the District Attorney
200 Lewis Avenue
P.O. Box 552212
Las Vegas, NV. 89155-2212

Dated: this 25th day of July 2019

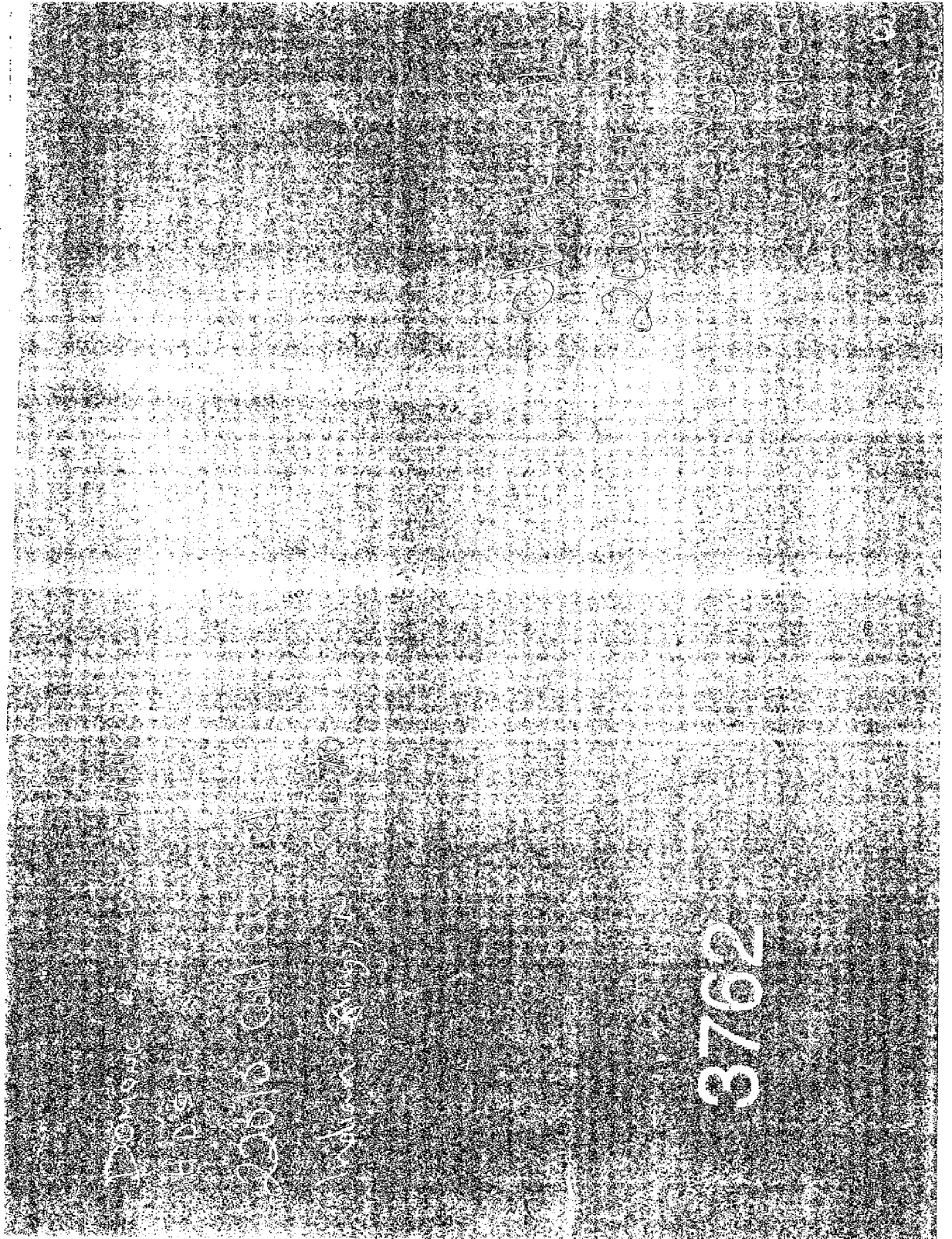
Dominic R. Malone

Dominic R. Malone #69418

P.O. Box 650 [HDSP]

Indian Springs, NV. 89070

IN FORMA PAUPERIS:



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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Domonic Ronaldo Malone,

Petitioner,

vs.

B Williams,

Respondent,

Case No: A-19-801802-W
Department 17

**ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS**

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on September 09, 2019. 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 20th day of November, 20 19, at the hour of

09:00a o'clock for further proceedings.

[Signature]

District Court Judge **MICHAEL P. VILLANI**

[Signature]

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FILED

SEP 27 2019

[Signature]
CLERK OF COURT

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

5

Domonic Ronaldo Malone,

6

Petitioner,

7

vs.

8

B Williams,

9

Respondent,

10

Case No: A-19-801802-W
Department 17

**AMENDED ORDER FOR PETITION
FOR
WRIT OF HABEAS CORPUS**

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14

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on September 09, 2019. 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,

15

16

17

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.

18

19

20

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's Calendar on the 13th day of November, 2019, at the hour of 9:00 am o'clock for further proceedings.

CLERK OF THE COURT

[Signature]

[Signature]

District Court Judge

MICHAEL P. VILLANI

[Signature]

A-19-801802-W
AMOR
Amended Order
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DEPT 17 ON
SEP 26 2019



1 **RSPN**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **JOHN NIMAN**
6 **Deputy District Attorney**
7 **Nevada Bar #14408**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 **THE STATE OF NEVADA,**

11 **Plaintiff,**

12 **-vs-**

13 **DOMONIC RONALDO MALONE,**
14 **#1670891**

15 **Defendant.**

CASE NO: A-19-801802-W

06C224572-2

DEPT NO: XVII

16 **STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS**
17 **CORPUS (POST-CONVICTION)**

18 **DATE OF HEARING: DECEMBER 11, 2019**
19 **TIME OF HEARING: 8:30 AM**

20 **COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County**
21 **District Attorney, through JOHN NIMAN, Deputy District Attorney, and hereby submits the**
22 **attached Points and Authorities in Response to Defendant's Petition For Writ Of Habeas**
23 **Corpus (Post-Conviction).**

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

27 **//**

28 **//**

//

//

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On August 2, 2006, DOMONIC RONALDO MALONE (hereinafter "Petitioner"), was
4 charged by way of Information with: COUNTS 1, 4, 13 & 14 - First Degree Kidnapping
5 (Felony - NRS 200.310, 200.320); COUNTS 2 & 5 - Battery with Substantial Bodily Harm
6 (Felony - NRS 200.481); COUNTS 3 & 7 - Conspiracy to Commit Kidnapping (Felony - NRS
7 200.310, 200.320, 199.480); COUNT 6 - Robbery (Felony - NRS 200.380); COUNTS 8 & 9
8 - Pandering (Felony - NRS 201.300); COUNT 10 - Conspiracy to Commit Murder (Felony -
9 NRS 200.010, 200.030, 199.480); COUNT 11 - Conspiracy to Commit Burglary (Gross
10 Misdemeanor - NRS 205.060, 199.480); COUNT 12 - Burglary (Felony - NRS 205.060);
11 COUNTS 15 & 16 - Murder with Use of a Deadly Weapon (Felony - NRS 200.010, 200.030,
12 193.165); and COUNTS 17 & 18 - Robbery with Use of a Deadly Weapon (Felony - NRS
13 200.380, 193.165). On August 16, 2006, Petitioner entered a plea of Not Guilty to the charges
14 set forth in the Information.

15 On August 30, 2006, the State filed an Amended Information, wherein the substantive
16 charges remained the same. On this same date, the State filed a Notice of Intent to Seek the
17 Death Penalty.

18 On January 7, 2009, Petitioner filed a Pro Per Motion to Dismiss Counsel, without
19 attaching any points or authorities in support of said motion. Finding no good cause existed to
20 dismiss counsel, the district court denied the Motion on January 20, 2009. Upon Petitioner's
21 insistence, the district court set a hearing for a Faretta Canvass on January 8, 2010. After
22 canvassing Petitioner, the district court found that he had knowingly and voluntarily waived
23 his right to counsel. The district court then granted Petitioner's request, and appointed
24 Petitioner's former counsel as stand-by.

25 On November 3, 2010, the State filed a Second Amended Information removing one
26 count of Pandering from the Amended Information.

27 On January 8, 2011, Petitioner filed a Pro Per Motion to Dismiss Stand-By Counsel,
28 but failed to provide the district court with any points and authorities in support of his Motion.

1 On January 25, 2011, the district court questioned Petitioner regarding his Motion and, finding
2 his complaints baseless and the absence of any points and authorities improper, denied the
3 Motion without prejudice.

4 On June 29, 2011, Petitioner filed a pleading entitled "Ex Parte Communication
5 Defendant Memorandum to Court." Petitioner alleged that he had been forced against his
6 wishes to represent himself in the underlying case. On July 19, 2011, a hearing was held in
7 which the district court confirmed that Petitioner filed the Ex Parte Communications and
8 verified that the statements therein were true. Based on Petitioner's statements, the district
9 court revoked his request to represent himself, and appointed the Special Public Defender,
10 currently stand-by counsel, to represent Petitioner once again.

11 Petitioner's jury trial commenced on January 10, 2012. On January 30, 2012, the State
12 filed a Third Amended Information, striking the first degree kidnapping charge alleged in
13 COUNT 1. The Third Amended Information thus charged Petitioner as follows: COUNTS 1
14 & 4 - Battery with Substantial Bodily Harm (Felony - NRS 200.481); COUNTS 2 & 8 -
15 Conspiracy to Commit Kidnapping (Felony - NRS 200.310, 200.320, 199.480); COUNTS 3,
16 11 & 12 - First Degree Kidnapping (Felony - NRS 200.310, 200.320); COUNT 5 - Robbery
17 (Felony - NRS 200.380); COUNT 6 - Pandering (Felony - NRS 201.300); COUNT 7 -
18 Conspiracy to Commit Burglary (Gross Misdemeanor - NRS 205.060, 199.480); COUNT 9 -
19 Conspiracy to Commit Murder (Felony - NRS 200.010, 200.030, 199.480); COUNT 10 -
20 Burglary (Felony - NRS 205.060); COUNTS 13 & 14 - Murder with Use of a Deadly Weapon
21 (Felony - NRS 200.010, 200.030, 193.165); and COUNTS 15 & 16 - Robbery with Use of a
22 Deadly Weapon (Felony - NRS 200.380, 193.165).

23 On February 1, 2012, the jury returned its verdict. The jury found Petitioner Guilty of:
24 COUNT 1 - Battery with Substantial Bodily Harm; COUNT 2 - Conspiracy to Commit
25 Kidnapping; COUNT 3 - First Degree Kidnapping; COUNT 4 - Battery without Substantial
26 Bodily Harm; COUNT 7 - Conspiracy to Commit Burglary; COUNT 8 - Conspiracy to
27 Commit Kidnapping; COUNT 9 - Conspiracy to Commit Murder; COUNT 11 - First Degree
28 Kidnapping; COUNT 12 - First Degree Kidnapping; COUNT 13 - First Degree Murder with

1 Use of a Deadly Weapon; COUNT 14 - First Degree Murder with Use of a Deadly Weapon;
2 COUNT 15 - Robbery with Use of a Deadly Weapon; and COUNT 16 - Robbery with Use of
3 a Deadly Weapon. The jury found Defendant Not Guilty of COUNT 5 - Robbery; COUNT 6
4 - Pandering; and COUNT 10 - Burglary. On February 10, 2012, the jury returned with a Special
5 Verdict as to COUNTS 13 & 14, Murder of the First Degree with Use of a Deadly Weapon,
6 finding that the aggravating circumstances outweighed any mitigating circumstances, and
7 imposed a sentence of Life Without the Possibility of Parole as to both counts.

8 On April 24, 2012, Petitioner was sentenced as to COUNT 1 - a maximum of 48
9 months, and a minimum of 19 months in the Nevada Department of Corrections ("NDC");
10 COUNT 2 - a maximum of 60 months and a minimum of 24 months, in the NDC, consecutive
11 to COUNT 1; COUNT 3 - Life with Parole Eligibility beginning after a minimum of 5 years
12 served in the NDC, concurrent with COUNT 2; COUNT 4 - 6 months in the Clark County
13 Detention Center ("CCDC"), concurrent with COUNT 3; COUNT 7 - 12 months in the CCDC,
14 consecutive to COUNT 3; COUNT 8 - maximum of 60 months and a minimum of 24 months
15 in the NDC, concurrent with COUNT 7; COUNT 9: maximum of 120 months and a minimum
16 of 48 months in the NDC, consecutive to COUNT 8; COUNTS 11 & 12 - Life Without the
17 Possibility of Parole for each count in the NDC, consecutive to COUNTS 9 & 11 respectively;
18 COUNTS 13 & 14 - Life Without the Possibility of Parole in the NDC, plus a consecutive
19 term of Life Without the Possibility of Parole for use of a deadly weapon for each count,
20 consecutive to COUNTS 12 & 13 respectively; COUNT 15 - a maximum of 180 months and
21 a minimum of 48 months in the NDC, plus a consecutive term of a maximum of 180 months
22 and a minimum of 48 months for use of a deadly weapon, concurrent with COUNT 14;
23 COUNT 16 - a maximum of 180 months and a minimum of 48 months in the NDC, plus a
24 consecutive term of 180 months and a minimum of 48 months for use of a deadly weapon,
25 consecutive to COUNT 15. Petitioner received 6 consecutive terms of Life Without the
26 Possibility of Parole. Petitioner also received 2,148 days credit for time served. The Judgment
27 of Conviction was filed on May 8, 2012. Petitioner filed a timely Notice of Appeal on June 5,
28

1 2012. The Supreme Court affirmed the lower court's judgment on December 18, 2013, and
2 Remittitur was issued on January 15, 2014.

3 On August 13, 2014, Petitioner filed a Post-Conviction Petition for Writ of Habeas
4 Corpus, along with a Motion for Appointment of Attorney. On September 2, 2014, the district
5 court granted Petitioner's request for an attorney as it was his first Petition. Betsy Allen, Esq.
6 was appointed as counsel on September 18, 2014.

7 On February 18, 2016, Petitioner filed a Pro Per Amended Supplemental Petition for
8 Writ of Habeas Corpus. The State submitted its Response to this fugitive document on June 2,
9 2016. On May 27, 2016, in violation of the Court's briefing schedule, counsel filed a
10 Supplemental Memorandum of Points and Authorities in Support of Petition for Writ of
11 Habeas Corpus.

12 On February 9, 2017, the State responded to Petitioner's February 18, 2016 Amended
13 Supplemental Petition for Writ of Habeas Corpus and Supplement. Following a hearing on
14 March 8, 2017, the Court denied Petitioner's Supplemental Petition for Writ of Habeas Corpus.
15 The Findings of Fact, Conclusions of Law and Order was filed on May 5, 2017.

16 On November 21, 2017, Petitioner filed a Motion to Correct Illegal Sentence. The State
17 filed its Opposition on December 11, 2017. Following a hearing on December 12, 2017, the
18 Court denied the Motion.

19 On September 9, 2019, Petitioner filed the instant Post-Conviction Petition for Writ of
20 Habeas Corpus. The State responds as follows.

21 **ARGUMENT**

22 I. THE PETITION MUST BE DISMISSED BECAUSE IT IS TIME-BARRED

23 The claim itself is time-barred pursuant to NRS 34.726. The mandatory provision of
24 NRS 34.726(1) states:

25 Unless there is good cause shown for delay, a petition that challenges the
26 validity of a judgment or sentence must be filed within 1 year after entry of
27 the judgment of conviction or, if an appeal has been taken from the judgment,
28 within 1 year after the Supreme Court issues its remittitur. For the purposes
of this subsection, good cause for delay exists if the petitioner demonstrates
to the satisfaction of the court:

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

1 (b) That dismissal of the petition as untimely will unduly prejudice the
2 petitioner.

3 (emphasis added). "[T]he statutory rules regarding procedural default are mandatory and
4 cannot be ignored when properly raised by the State." *State v. Dist. Ct. (Riker)*, 121 Nev. 225,
5 233, 112 P.3d 1070, 1075 (2005).

6 Per the language, the one-year time bar prescribed by NRS 34.726 begins to run from
7 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
8 *Dickerson v. State*, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998); see *Pellegrini v.*
9 *State*, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001) (NRS 34.726 should be construed by its
10 plain meaning).

11 In *Gonzales v. State*, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada Supreme
12 Court rejected a habeas petition that was filed two days late, pursuant to the "clear and
13 unambiguous" mandatory provisions of NRS 34.726(1). *Gonzales* reiterated the importance of
14 filing the petition with the District Court within the one-year mandate, absent a showing of
15 "good cause" for the delay in filing. *Gonzales*, 118, Nev. at 593, 590 P.3d at 902.

16 A showing of good cause and prejudice may overcome procedural bars. To avoid
17 procedural default, a defendant has the burden of pleading and proving specific facts that
18 demonstrate good cause for his failure to present his claim in earlier proceedings or to
19 otherwise comply with the statutory requirements. See *Hogan v. Warden*, 109 Nev. 952, 959-
20 60, 860 P.2d 710, 715-16 (1993); *Phelps v. Nevada Dep't of Prisons*, 104 Nev. 656, 659, 764
21 P.2d 1303, 1305 (1988).

22 "To establish good cause, [a petitioner] must show that an impediment external to the
23 defense prevented their compliance with the applicable procedural rule. A qualifying
24 impediment might be shown where the factual or legal basis for a claim was not reasonably
25 available at the time of default." *Clem v. State*, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003)
26 (emphasis added). The Court continued, "appellants cannot attempt to manufacture good
27 cause[.]" *Id.* at 621, 81 P.3d at 526. Examples of good cause include interference by State
28

1 officials and the previous unavailability of a legal or factual basis. See *State v. Huebler*, 128
2 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012).

3 In order to establish prejudice, a petitioner must show "not merely that the errors of
4 [the proceedings] created possibility of prejudice, but that they worked to his actual and
5 substantial disadvantage, in affecting the state proceedings with error of constitutional
6 dimensions." *Hogan v. Warden*, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting *United*
7 *States v. Frady*, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there
8 must be a "substantial reason; one that affords a legal excuse." *Hathaway v. State*, 119 Nev.
9 248, 252, 71 P.3d 503, 506 (2003) (quoting *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229,
10 1230 (1989)). "A petitioner must show that an impediment external to the defense ... prevented
11 him from complying with the state procedural default rules." *Id.* 119 Nev. at 251, 71 P.3d at
12 505. The claim of good cause must also be raised within a reasonable time. *Id.* Clearly, any
13 delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

14 In the instant case, Petitioner cannot establish good cause that would warrant
15 overcoming the mandatory bars of NRS 34.726, 34.800, and 34.810. Petitioner's only claim is
16 that *McCoy v. Louisiana*, 138 S. Ct. 1500, 200 L.Ed.2d 821, 86 USLW 4271 (2018), provides
17 a new basis to challenge his Judgment of Conviction because trial counsel conceded his guilt
18 without his consent. The United States Supreme Court decided *McCoy* on May 15, 2018.
19 Petitioner did not file the instant Petition until September 9, 2019, more than one year after the
20 Supreme Court decided *McCoy*. Petitioner cannot establish good cause to overcome the
21 mandatory procedural time-bar pursuant to *Hathaway*. Absent a showing of good cause for the
22 delay, this claim must be denied.

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CONCLUSION

Based on the foregoing, the State requests that this Court deny the Petition for Writ of Habeas Corpus (Post-Conviction).

DATED this 2nd day of December, 2019.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #1565

BY /s/JOHN NIMAN
JOHN NIMAN
Deputy District Attorney
Nevada Bar #14408

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 2nd day of December, 2019, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

DOMONIC MALONE #69418
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89070-0650

BY /s/D. Daniels
Secretary for the District Attorney's Office

06FH0742/JN/BS-APPEALS/dd/MVU

29

FILED

DEC 24 2019

DOMONIC MALONE #64418
Petitioner - IN PROPER PERSON
High Desert State Prison
P.O. Box #660
Indian Springs, NV, 89400

[Signature]
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

CASE NO.: A-19-801802-W

06C224572-2

-vs-

DEPT. NO.: XV-II

DOMONIC RONALDO MALONE,
Defendant.

DEFENDANT'S REPLY TO STATES RESPONSE TO PETITION FOR WRIT OF HABEAS
CORPUS (POST-CONVICTION)

COMES NOW, DOMONIC RONALDO MALONE, Petitioner, Processing IN PROPER
PERSON and hereby submits the accompanying Memorandum of Points and Authorities,
Replying to the states response to Malone's Petition for Writ of Habeas Corpus (Post-
Conviction).

This REPLY is made and based upon all the papers and pleadings on file
herein, with the accompanying Memorandum of Points and Authorities in
support hereof, and oral Argument and Arrangement of transport of Petitioner
at the time of hearing scheduled by this Court.

DATED THIS DAY OF DECEMBER, 2019.

[Signature]

DOMONIC MALONE #64418
Petitioner - IN PROPER PERSON
High Desert State Prison
P.O. Box #660
Indian Springs, NV, 89400

A-19-801802-W
RPL
Reply
4884680



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CLERK OF THE COURT

MEMORANDUM OF POINTS AND AUTHORITIES

SUMMARY OF PROCEDURAL HISTORY:

On August 2, 2006, DOMONIC RONALDO MALONE (hereinafter "petitioner"), was charged by way of information with: Counts 1, 4, 13 & 14 - First degree kidnapping; Counts 2 & 5 - Battery with Substantial Bodily Harm; Counts 3 & 7 - Conspiracy to Commit Kidnapping; Count 6 - Robbery; Counts 8 & 9 - Possessing - Count 10 - Burglary; Counts 15 & 16 - Murder with use of a deadly weapon; Count 12 - Conspiracy to Commit Murder; Count 11 - Conspiracy to Commit Burglary; and Counts 17 & 18 - Robbery with use of a deadly weapon. On August 16, 2006, Petitioner entered a plea of not guilty to the charges set forth in the information.

Petitioner's jury trial commenced on JANUARY 10, 2012. On February 1, 2012, the jury returned its verdict finding Petitioner Guilty of: Count 1 - Battery with Substantial bodily harm; Count 2 - Conspiracy to Commit Kidnapping; Count 3 - First degree kidnapping; Count 4 - Battery without Substantial bodily harm; Count 7 - Conspiracy to commit Burglary; Count 8 - Conspiracy to Commit Kidnapping; Count 9 - Conspiracy to Commit Murder; Count 11 - First degree kidnapping; Count 12 - First degree kidnapping; Count 13 - First degree Murder with use of a deadly weapon; Count 14 - First degree Murder with use of a deadly weapon; Count 15 - Robbery with use of a deadly weapon; and Count 16 - Robbery with use of a deadly weapon. The jury found the defendant not guilty of Count 5 - Robbery; Count 6 - Possessing; and Count 10 - Burglary. On February 10, 2012, the jury returned with a Special Verdict as to Counts 13 & 14, Murder with use of a deadly weapon, finding that the aggravating circumstances outweighed any mitigating circumstances; and imposed a sentence of Life without the possibility of Parole as to both Counts.

1 on April 24, 2012, Petitioner was sentenced as to Count 1 a maximum of
2 48 months and a minimum of 18 months in the Nevada Department of Corrections (NDC);
3 Count 2 a maximum of 60 months and a minimum of 24 months in the NDC, consecutive
4 to Count 1; Count 3 Life with the possibility of Parole after a minimum of 5 years
5 served in the NDC, Concurrent with Count 2; Count 4-6 months in the Clark County
6 Detention Center (CDC), Concurrent with Count 3; Count 7-12 months in CDC
7 consecutive to Count 3; Count 8- maximum of 60 months and a minimum months in
8 the NDC, Concurrent with Count 7; Count 9- maximum of 120 months and a minimum
9 of 48 months in the NDC, consecutive to Count 8; Counts 11 & 12- Life without the
10 possibility of Parole for each Count in the NDC, consecutive to Counts 9 & 11; Counts 13
11 & 14- Life without the possibility of Parole in the NDC, plus a consecutive term of Life
12 without the possibility of Parole for use of a deadly weapon for each Count, consecutive
13 to Counts 13 & 14; Count 15- a maximum of 180 months and a minimum of 48 months
14 in the NDC, plus a consecutive term of 180 months and a minimum of 48 months for
15 use of a deadly weapon, consecutive to Count 15. The judgement of conviction was
16 filed on May 8, 2012. Petitioner filed a timely Notice of Appeal on June 5, 2012. The
17 Supreme Court affirmed the lower Court's judgement on December 18, 2013, and
18 Remittitur was issued on January 15, 2014.

19 On August 13, 2014, Petitioner filed a Post-Conviction Petition for writ of
20 Habeas Corpus along with a Motion for Appointment of Attorney. On September 2, 2014,
21 the district Court granted Petitioner's request for an Attorney as it was his first Petition.
22 Betsy Allen, Esq., was appointed as Counsel on September 18, 2014.

23 On February 18, 2016, Petitioner filed a Pro Per Amended Supplemental Petition
24 for writ of Habeas Corpus. The state submitted its response to this fugitive document
25 on June 21, 2016.

26 On May 27, 2016, in violation of the Court's briefing Schedule, Counsel filed
27 a Supplemental Memorandum of points and Authorities in support of Petition for writ
28 of Habeas Corpus.

1 on February 9, 2017, the State responded to Petitioner's February 18, 2016
2 Amended Supplemental Petition For writ of Habeas Corpus and Supplement. Following
3 a hearing on March 8, 2017, Conclusions of Law and order was filed on May 8, 2017.
4 On November 21, 2017, Petitioner filed a motion to correct illegal sentence.
5 The State filed its opposition on December 11, 2017. Following a hearing on December
6 12, 2017, the Court denied the Motion.
7 On May 15, 2018, the United States Supreme Court decided *McLoy v. Louisiana*,
8 138 S.Ct. 1500, 200 L.Ed. 2d 821, 86 USLW (2018). The Supreme Court ruled that it is
9 structural error under the Sixth Amendment for a criminal defendant's trial Attorney
10 to conceal his client's guilty without his expressed consent. The new rule of
11 Constitutional Law issued by the Court guarantees under the Sixth Amendment, an
12 accused's right to choose the objective of his defense, and to maintain his innocence if
13 he chooses. 138 S.Ct. 1500 (2018). The new rule of Constitutional Law by the U.S. Supreme
14 Court was not available to petitioner before his conviction at trial. Petitioner had until
15 May 15, 2019, pursuant to NRS 34.726 (1) to file a [timely] "Successive" petition for
16 writ of Habeas Corpus.
17 From May 15, 2018 to July 1, 2019, Prison officials has refused to give
18 petitioner physical access to the prison Law Library upon request to discover any
19 new rulings of Law by the Courts.
20 On July 1, 2019, is when Petitioner McLoy was granted Physical Law Library
21 access, and for the first time became "aware" of the new rule of Law decided in
22 *McLoy v. Louisiana*, 138 S.Ct. 1500 (2018).
23 On September 9, 2019, Petitioner filed a successive petition for writ of Habeas
24 Corpus (Post-Conviction) invoking (invoking) AEDPA Federal Jurisdiction pursuant to title
25 28 § 2244 of the United States Constitution. The issue of petitioner McLoy not
26 being able to file a timely "Successive" petition for writ of Habeas Corpus arises
27 from prison officials at High Desert State Prison (HOSP) causing an impediment
28 external to the defense, due the continuous interference by Prison officials.

1 refusal to provide adequate access to the prison Law Library. Prison officials at
2 HDSP only allows 4 hours per week of inadequate Law Library Access. Petitioner
3 has only been provided with Law Library access approximately three (3) times
4 Since the new ruling in Melby decided MAY 15, 2018, and its deadline to file a
5 successive petition due by MAY 15, 2019, to raise the new rule of Law from the
6 Supreme Court that wasn't available at the time before Malone's Conviction.

7
8 on December 2, 2019, the State of Nevada filed an untimely reply after
9 being ordered by the Eighth District Court to respond within 45 days of its
10 order.

11 on December 11, 2019, the Eighth Judicial District Court filed an order denying
12 Petitioner Malone's Post-Conviction, Petition For writ of Habeas Corpus finding that
13 it was time barred pursuant to NRS 34.726. The district Court violated Malone's
14 "due process" rights to respond and Reply to the state's response, to his Petition
15 For writ of Habeas Corpus to show "Good Cause" for the delay in filing a timely
16 writ of Habeas Corpus pursuant to NRS 34.726(1), within 30 days from the time
17 of the filing of a Response by the state. The Court filed an order erroneously
18 and prematurely before Petitioner had an opportunity to Reply before denying
19 his petition, as mandated by the Language in chapter 34.

20 21 i.7 introduction:

22 "A Pro Se Petitioner is entitled to the granting of Equitable
23 tolling, overcoming the procedural bars in filing a successive Petition For writ of Habeas
24 Corpus (Post-Conviction), so long as the petitioner can demonstrate a showing of "Good -
25 Cause". NRS 34.726(1); Harris v. Warden, 114 Nev. 1071, 959 P.2d 705, 12.4.944 P.2d 705, 11.4.999.
26 The Supreme Court of Nevada explained that "Good Cause" must be some impediment external
27 to the defense. Id. Such impediment could include "Some interference by state
28 officials that made compliance impracticable." Id. Quoting Murray v. Carrier.

1 477 U.S. 478, 488, 91 L.Ed. 2d 397, 106 S.Ct. 2639 (1986) (Quoting Brown v. Allen,

2 344 U.S. 413, 486, 97 L.Ed. 469, 73 S.Ct. 397 (1953)).

3 4 LEGAL ARGUMENT

5
6 [I.] PRISON OFFICIALS' CONTINUOUS INTERFERENCE WITH MALONE'S CONSTITUTIONAL
7 RIGHTS IN ACCESSING THE PRISON LAW LIBRARY CREATED AN IMPEDIMENT
8 EXTERNAL TO HIS DEFENSE IN BECOMING "AWARE" OF THE NEW RULING IN
9 McLOY V. LOUISIANA, HAS MADE BEING IN COMPLIANCE WITH APPLICABLE
10 PROCEDURAL RULES UNDER NRS 34.726(1) IMPROBABLE, IN VIOLATION
11 OF PETITIONER'S 1ST, 5TH, 6TH, 8TH, AND 14TH AMENDMENT RIGHTS PURSUANT
12 TO BOTH NEVADA AND UNITED STATES CONSTITUTIONS.

13
14 HARRIS, 114 NEV. AT 960, N.W. 964 P.2D AT 785; SEC. CLEM V. STATE, 119 NEV. 615, 621
15 81 P.2D 521, 525 (2003). -- ON MAY 15, 2018, THE UNITED STATES SUPREME COURT
16 DECIDED McLOY V. LOUISIANA, 138 S.Ct. 1500, 200 L.Ed.2d 821, 86 U.S.W. (2018).
17 THE SUPREME COURT RULED THAT IT IS "STRUCTURAL ERROR" UNDER THE SIXTH AMENDMENT
18 FOR CRIMINAL DEFENDANT'S TRIAL ATTORNEY CONCEDES THE GUILT OF HIS CLIENT WITHOUT
19 HIS EXPRESSED CONSENT. ID. THE NEW RULE OF CONSTITUTIONAL LAW ISSUED BY THE
20 SUPREME COURT GUARANTEED UNDER THE SIXTH AMENDMENT, AN ACCUSED RIGHT TO
21 CHOOSE THE OBJECTIVE OF HIS DEFENSE AND MAINTAIN HIS INNOCENCE, IF HE CHOOSES ID,
22 138 S.Ct. AT 1500. McLOY WAS A RULE OF LAW THAT WASN'T AVAILABLE AT THE TIME
23 OF MALONE'S CONVICTION AT TRIAL WHEN HIS TRIAL ATTORNEY CONCEALED HIS GUILT AT TRIAL.
24 TITLE 20 USC § 2244. PETITIONER MALONE NEEDED THIS RULED IN A TIMELY SUCCESSFUL
25 PETITION FOR WRIT OF HABEAS CORPUS TO INVOKE AEDAPA FEDERAL JURISDICTION UNDER 28
26 USC § 2244. PRISON OFFICIALS CAUSED AN IMPEDIMENT EXTERNAL MALONE'S DEFENSE
27 MAKING COMPLIANCE WITH NRS 34.726(1) IMPROBABLE. HARRIS, 114 NEV. AT 960,
28 N.W. 964 P.2D 785 (1985).

1 From MAY 15, 2018, when the U.S. Supreme Court decided *McCoy v. Louisiana*,
2 138 S. Ct. 1500, until MAY 15, 2019, the deadline for Petitioner Piling a successive
3 Petition for writ of Habeas Corpus to reuse McCoy, Prison officials has refused to give
4 Petitioner Nelson adequate physical Law Library access to the prison Law Library
5 upon request to discover any new rulings of Law by the Courts.
6 July 1, 2018 is when petitioner was finally granted physical Access to the prison
7 Law Library at HDSO, and for the first time became "AWARE" of the new rule of
8 Constitutional Law decided in *McCoy v. Louisiana*, 138 S. Ct. 1500. Petitioner argues
9 that had not prison officials continuously interfered with his right to accessing
10 the prison Law Library to access the Courts new ruling in *McCoy v. Louisiana*
11 he would have been able to properly research, prepare, and draft a writ of
12 Habeas Corpus to meet the may 15, 2019 deadline to be in Compliance with NRS
13 34, 726(1). No other alternative remedies was available pursuant to A.R. 722 Prison
14 Policy governing the Law Library Access, made Compliance with NRS 34, 726(1)
15 impracticable to comply with. *Harris*, 114 Nev. at 960, 964 P.2d at 725 Citing *Nurray*
16 *v. Carrier*, 417 U.S. 478, 480, 91 L.Ed.2d 397, 106 S. Ct. 2639 (1986) Citing *Brown*
17 *v. Allen*, 344 U.S. 443, 486, 97 L.Ed. 469, 73 S. Ct. 397 (1953)
18 Petitioner McCoy has demonstrated "Good Cause" due to prison officials continuous
19 interference in denying him access to the prison Law Library to gain access to
20 the Courts new ruling in *McCoy*, 138 S. Ct. 1500. The new ruling of Constitutional
21 Law decided in *McCoy* where it was structural error when Petitioner's trial
22 Attorney Conceded his guilt to the jury, was a ruling that was previous unavailable
23 for a legal and factual basis. See *State v. Huebler*, 128 Nev. Adv. Op. R. 275
24 P.2d 91, 95 (2012). This [structural] error by Petitioner's trial Attorney resulted
25 in prejudice, and worked to his actual and substantial disadvantage, resulting
26 in an absurd result, and affected the state [trial] proceeding with error of
27 Constitutional dimensions. *Hagan v. Warden*, 109 Nev. 952, 960, 860 P.2d 710,
28 716, (1993) Citing *United States v. Fryd*, 456 U.S. 156, 170, 102 S. Ct. 1584,

1 1586 (1996). Good Cause was shown by Petitioner Malone when prison officials at MSPD
2 violated his "due process" rights in accessing the Courts through the Prison Law Library to
3 become "aware" of the Maloy decision in order to comply with NRS 34.726(1) is a
4 substantial reason, one that affects a legal excuse. *Holloway v. State*, 19 Nev. 248, 250
5 71 P.3d 502, 506, (2002) (quoting *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230
6 (1989)). Petitioner has substantially shown that prison officials created an impediment
7 external to his defense. . . . Prevented him from complying with state procedural
8 default rules. *Id.*, 19 Nev. at 254, 71 P.3d at 505.
9 Petitioner Malone asks that this Court grant him equitable tolling overcoming procedural bars
10 due to the undue delay of prison officials' continuous interference in preventing him in
11 accessing the Law Library and the Courts to become "aware" of the ruling in Maloy to
12 properly and timely comply with NRS 34.726(1), 34.800, and 34.810. *Id.*
13 19 Nev. at 251, 71 P.3d at 505.
14

15 [A.] PRISON OFFICIALS' CONTINUOUS INTERFERENCE BY ENFORCING INADEQUATE
16 LAW LIBRARY POLICY RESULTED IN IT HAVING NO FLEXIBILITY BUILT INTO
17 IT TO CONDUCT LEGAL RESEARCH TO DISCOVER NEW COURT RULINGS, THE
18 PREPARING, DRAFTING OF LEGAL DOCUMENTS TO MEET COURT DEADLINES
19 PURSUANT TO NRS 34.726(1), VIOLATED MALONE'S 1st, 5th, 6th, 8th and 14th
20 AMENDMENT RIGHTS TO AN ADEQUATE LAW LIBRARY AND ACCESS TO THE COURTS.
21

22 The United States Constitution commands that "additional time shall be allowed
23 a physical LAW LIBRARY necessary to meet Court deadline. NRS 34.726(1); *Gluth v.*
24 *Kongas*, 773 F. Supp. 1201, 1317 (D. ARIZ. 1999), aff'd 951 F.2d 1504 (9th Cir. 1991). Prison
25 officials arbitrary and malicious enforcement of policy which only allows Malone and
26 others similarly situated 4 hours per week of physical LAW LIBRARY access, twice
27 per week with only two (2) hours per visit based on the scheduled LAW LIBRARY
28 appointments between May 15, 2018 to May 18, 2019. Petitioner has only been allowed
29 8.

1 Law Library Access approximately three (3) times. By the time that Petitioner wants for
2 an escort by correctional officers which takes between 30 to 45 minutes, plus the
3 7 to 10 minute walk to the Prison Law Library, Malone only has about between 15 minutes
4 to a little over an hour to conduct legal research in support of drafting legal papers. By
5 the time that Malone comes up to legal research, it's already time to go. Not to mention
6 prison policy only allows updates on legal case law at 6 months to a year to become
7 aware of any new rulings by the Courts. This type of physical Law Library Access by
8 prison officials has been deemed seriously unconstitutional. See *Tiller v. Owens*, 719
9 F. Supp. 1256, 1282 (W.D. Pa. 1989) (Holding that 4 hours per month in the Law Library
10 at a jail or prison was not sufficient.) (Emphasis mine), order aff'd 907 F.2d 418 (3rd
11 Cir 1990), where the same Court stated that "Four hours per week in the Law Library
12 provided by jail or prison officials was insufficient and that one per week, per inmate at
13 any time was unconstitutional. See also *In Maderu v. Helgemone*, 821 F.2d 411 (1st Cir.
14 1987).

15 Prison officials' continuous interferences in preventing Malone access to adequate time in
16 the prison Law Library and to the Courts rulings in Court cases. Such interferences
17 by prison officials infringes continuously on Malone's First Amendment right to
18 access to the Courts. See *Bowles v. Smith*, 430 U.S. 897 (1977). Petitioner further
19 argues that 45 minute intervals to conduct legal research in the Prison Law
20 Library cannot resolve all legal issues. *Williams v. Leeke*, 584 F.2d 1336 (1978),
21 where the Court held:

22 "We believe that meaningful legal research on most
23 legal problems cannot be done in 45 minute intervals.
24 ... and one cannot expect a pre-trial detainee or prisoner
25 immediately to discover the legal avenue to properly
26 explore in search of an answer to their problems."

27 *Id.* at 1380 (Emphasis mine)

28

1 Prison officials Continuous interference with Law Library access and access to the courts
2 to learn of and become aware of the new McRoy ruling in the U.S. Supreme Court caused
3 actual injury and loss to his Court litigation by missing a very important and critical Court
4 deadline by MAY 15, 2014 per 34.786(1) irreparable, that defeated the claim raised in his
5 successive Petition for writ of Habeas Corpus Filed September 9, 2019.
6 Courts ruled that the states are required to provide "indigent inmates with access
7 to a reasonably adequate law library for preparation of legal actions" *Wolpe v.*
8 *McDonnell* 418 U.S. 539, 578-79 (1974), whether they are being held after conviction or
9 awaiting a trial in which they will be representing themselves; The demands of said
10 Protection of the Law cannot be satisfied with less

11
12 [B.] ~~THE~~ THE EIGHTH JUDICIAL DISTRICT COURT VIOLATED MALONE'S DUE PROCESS
13 UNDER BOTH NEVADA AND UNITED STATES CONSTITUTIONS IN DENYING HIS
14 WRIT OF HABEAS BEFORE PETITIONER WAS ABLE TO REPLY TO THE
15 STATE'S RESPONSE.

16
17 Art 1 § 8, U.S. Const. Amend. 5, 8, and 14 Amend. Constitution of the United States.
18 Petitioner had a Constitutional right pursuant to the Nevada Constitution to Reply to the state
19 within 30 days after a response by the state, chapter 34 Nev. Rev. Stat. Judge
20 Michael Villani abused his discretion in issuing an order deny Malone's successive
21 Petition for writ of Habeas Corpus before he had an opportunity to reply to the state's
22 response to his writ of Habeas Corpus. The state doesn't deny that Malone has shown
23 and demonstrated "Good Cause" due to the continuous interference by prison officials in
24 preventing him from making a timely filing of a Habeas Corpus after becoming aware of
25 the McRoy decision past the filing deadline. The state nowhere in its response did it
26 say that Petitioner was at fault for an untimely filing. Petitioner asks this Court to
27 vacate its order and permit Malone to demonstrate "Good Cause" overcoming procedural bars
28 before issuing an order of conclusions and facts, law and order.

Damonie E. Mac~~ca~~# 69418
4058
P.O. Box 650
Indian Springs, W. 89070

3762

— Legal Mail —

Attn: Clerk of the Court

200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

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00-0204670-2

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(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

DOMINIC RONALDO MALONE,
#1670891
Defendant.

CASE NO: A-19-801802-W
06C224572-2
DEPT NO: XVII

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

DATE OF HEARING: December 11, 2019
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable MICHAEL P. VILLANI, District Judge, on the 11th day of December, 2019, the Petitioner not being present, not represented by counsel, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through CHRISTOPHER HAMNER, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

///

///

///

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1
2 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

3 STATEMENT OF THE CASE

4 On August 2, 2006, DOMONIC RONALDO MALONE (hereinafter "Petitioner"),
5 was charged by way of Information with: COUNTS 1, 4, 13 & 14 – First Degree Kidnapping
6 (Felony – NRS 200.310, 200.320); COUNTS 2 & 5 – Battery with Substantial Bodily Harm
7 (Felony – NRS 200.481); COUNTS 3 & 7 – Conspiracy to Commit Kidnapping (Felony –
8 NRS 200.310, 200.320, 199.480); COUNT 6 – Robbery (Felony – NRS 200.380); COUNTS
9 8 & 9 - Pandering (Felony – NRS 201.300); COUNT 10 – Conspiracy to Commit Murder
10 (Felony – NRS 200.010, 200.030, 199.480); COUNT 11 – Conspiracy to Commit Burglary
11 (Gross Misdemeanor – NRS 205.060, 199.480); COUNT 12 – Burglary (Felony – NRS
12 205.060); COUNTS 15 & 16 – Murder with Use of a Deadly Weapon (Felony – NRS
13 200.010, 200.030, 193.165); and COUNTS 17 & 18 – Robbery with Use of a Deadly
14 Weapon (Felony – NRS 200.380, 193.165). On August 16, 2006, Petitioner entered a plea of
15 Not Guilty to the charges set forth in the Information.

16 On August 30, 2006, the State filed an Amended Information, wherein the substantive
17 charges remained the same. On this same date, the State filed a Notice of Intent to Seek the
18 Death Penalty.

19 On January 7, 2009, Petitioner filed a Pro Per Motion to Dismiss Counsel, without
20 attaching any points or authorities in support of said motion. Finding no good cause existed to
21 dismiss counsel, the district court denied the Motion on January 20, 2009. Upon Petitioner's
22 insistence, the district court set a hearing for a Faretta Canvass on January 8, 2010. After
23 canvassing Petitioner, the district court found that he had knowingly and voluntarily waived
24 his right to counsel. The district court then granted Petitioner's request, and appointed
25 Petitioner's former counsel as stand-by.
26

27 On November 3, 2010, the State filed a Second Amended Information removing one
28 count of Pandering from the Amended Information.

1
2 On January 8, 2011, Petitioner filed a Pro Per Motion to Dismiss Stand-By Counsel,
3 but failed to provide the district court with any points and authorities in support of his Motion.
4 On January 25, 2011, the district court questioned Petitioner regarding his Motion and, finding
5 his complaints baseless and the absence of any points and authorities improper, denied the
6 Motion without prejudice.

7 On June 29, 2011, Petitioner filed a pleading entitled "Ex Parte Communication
8 Defendant Memorandum to Court." Petitioner alleged that he had been forced against his
9 wishes to represent himself in the underlying case. On July 19, 2011, a hearing was held in
10 which the district court confirmed that Petitioner filed the Ex Parte Communications and
11 verified that the statements therein were true. Based on Petitioner's statements, the district
12 court revoked his request to represent himself, and appointed the Special Public Defender,
13 currently stand-by counsel, to represent Petitioner once again.

14 Petitioner's jury trial commenced on January 10, 2012. On January 30, 2012, the State
15 filed a Third Amended Information, striking the first degree kidnapping charge alleged in
16 COUNT 1. The Third Amended Information thus charged Petitioner as follows: COUNTS 1
17 & 4 – Battery with Substantial Bodily Harm (Felony – NRS 200.481); COUNTS 2 & 8 –
18 Conspiracy to Commit Kidnapping (Felony – NRS 200.310, 200.320, 199.480); COUNTS 3,
19 11 & 12 – First Degree Kidnapping (Felony – NRS 200.310, 200.320); COUNT 5 – Robbery
20 (Felony – NRS 200.380); COUNT 6 – Pandering (Felony – NRS 201.300); COUNT 7 –
21 Conspiracy to Commit Burglary (Gross Misdemeanor – NRS 205.060, 199.480); COUNT 9 –
22 Conspiracy to Commit Murder (Felony – NRS 200.010, 200.030, 199.480); COUNT 10 –
23 Burglary (Felony – NRS 205.060); COUNTS 13 & 14 – Murder with Use of a Deadly Weapon
24 (Felony – NRS 200.010, 200.030, 193.165); and COUNTS 15 & 16 – Robbery with Use of a
25 Deadly Weapon (Felony – NRS 200.380, 193.165).
26

27 On February 1, 2012, the jury returned its verdict. The jury found Petitioner Guilty of:
28 COUNT 1 – Battery with Substantial Bodily Harm; COUNT 2 – Conspiracy to Commit
Kidnapping; COUNT 3 – First Degree Kidnapping; COUNT 4 – Battery *without* Substantial

Bodily Harm; COUNT 7 – Conspiracy to Commit Burglary; COUNT 8 – Conspiracy to Commit Kidnapping; COUNT 9 – Conspiracy to Commit Murder; COUNT 11 – First Degree Kidnapping; COUNT 12 – First Degree Kidnapping; COUNT 13 – First Degree Murder with Use of a Deadly Weapon; COUNT 14 – First Degree Murder with Use of a Deadly Weapon; COUNT 15 – Robbery with Use of a Deadly Weapon; and COUNT 16 – Robbery with Use of a Deadly Weapon. The jury found Defendant Not Guilty of COUNT 5 – Robbery; COUNT 6 – Pandering; and COUNT 10 – Burglary. On February 10, 2012, the jury returned with a Special Verdict as to COUNTS 13 & 14, Murder of the First Degree with Use of a Deadly Weapon, finding that the aggravating circumstances outweighed any mitigating circumstances, and imposed a sentence of Life Without the Possibility of Parole as to both counts.

On April 24, 2012, Petitioner was sentenced as to COUNT 1 – a maximum of 48 months, and a minimum of 19 months in the Nevada Department of Corrections (“NDC”); COUNT 2 – a maximum of 60 months and a minimum of 24 months, in the NDC, consecutive to COUNT 1; COUNT 3 – Life with Parole Eligibility beginning after a minimum of 5 years served in the NDC, concurrent with COUNT 2; COUNT 4 – 6 months in the Clark County Detention Center (“CCDC”), concurrent with COUNT 3; COUNT 7 – 12 months in the CCDC, consecutive to COUNT 3; COUNT 8 – maximum of 60 months and a minimum of 24 months in the NDC, concurrent with COUNT 7; COUNT 9: maximum of 120 months and a minimum of 48 months in the NDC, consecutive to COUNT 8; COUNTS 11 & 12 – Life Without the Possibility of Parole for each count in the NDC, consecutive to COUNTS 9 & 11 respectively; COUNTS 13 & 14 – Life Without the Possibility of Parole in the NDC, plus a consecutive term of Life Without the Possibility of Parole for use of a deadly weapon for each count, consecutive to COUNTS 12 & 13 respectively; COUNT 15 – a maximum of 180 months and a minimum of 48 months in the NDC, plus a consecutive term of a maximum of 180 months and a minimum of 48 months for use of a deadly weapon, concurrent with COUNT

1
2 14; COUNT 16 – a maximum of 180 months and a minimum of 48 months in the NDC, plus
3 a consecutive term of 180 months and a minimum of 48 months for use of a deadly weapon,
4 consecutive to COUNT 15. Petitioner received 6 consecutive terms of Life Without the
5 Possibility of Parole. Petitioner also received 2,148 days credit for time served. The Judgment
6 of Conviction was filed on May 8, 2012. Petitioner filed a timely Notice of Appeal on June 5,
7 2012. The Supreme Court affirmed the lower court's judgment on December 18, 2013, and
8 Remittitur was issued on January 15, 2014.

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10 Corpus, along with a Motion for Appointment of Attorney. On September 2, 2014, the district
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15 2016. On May 27, 2016, in violation of the Court's briefing schedule, counsel filed a
16 Supplemental Memorandum of Points and Authorities in Support of Petition for Writ of
17 Habeas Corpus.

18 On February 9, 2017, the State responded to Petitioner's February 18, 2016 Amended
19 Supplemental Petition for Writ of Habeas Corpus and Supplement. Following a hearing on
20 March 8, 2017, the Court denied Petitioner's Supplemental Petition for Writ of Habeas Corpus.
21 The Findings of Fact, Conclusions of Law and Order was filed on May 5, 2017.

22 On November 21, 2017, Petitioner filed a Motion to Correct Illegal Sentence. The State
23 filed its Opposition on December 11, 2017. Following a hearing on December 12, 2017, the
24 Court denied the Motion.

25 On September 9, 2019, Petitioner filed the instant Post-Conviction Petition for Writ of
26 Habeas Corpus. The State filed its Response on December 2, 2019.
27
28

Following the hearing on December 11, 2019, this Court finds and concludes as follows:

LEGAL AUTHORITY

I. THE PETITION IS DISMISSED BECAUSE IT IS TIME-BARRED

The claim itself is time-barred pursuant to NRS 34.726. The mandatory provision of NRS 34.726(1) states:

Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence *must be filed within 1 year after entry of the judgment of conviction* or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its remittitur. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:

- (a) That the delay is not the fault of the petitioner; and
- (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

(emphasis added). “[T]he statutory rules regarding procedural default are mandatory and cannot be ignored when properly raised by the State.” State v. Dist. Ct. (Riker), 121 Nev. 225, 233, 112 P.3d 1070, 1075 (2005).

Per the language, the one-year time bar prescribed 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); see Pellegrini v. State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001) (NRS 34.726 should be construed by its plain meaning).

In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada Supreme Court rejected a habeas petition that was filed two days late, pursuant to the “clear and unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the importance of filing the petition with the District Court within the one-year mandate, absent a showing of “good cause” for the delay in filing. Gonzales, 118, Nev. at 593, 590 P.3d at 902.

A showing of good cause and prejudice may overcome procedural bars. To avoid procedural default, a defendant has the burden of pleading and proving specific facts that

1
2 demonstrate good cause for his failure to present his claim in earlier proceedings or to
3 otherwise comply with the statutory requirements. See Hogan v. Warden, 109 Nev. 952, 959–
4 60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep’t of Prisons, 104 Nev. 656, 659, 764
5 P.2d 1303, 1305 (1988).

6 “To establish good cause, [a petitioner] *must* show that an impediment external to the
7 defense prevented their compliance with the applicable procedural rule. A qualifying
8 impediment might be shown where the factual or legal basis for a claim was not reasonably
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12 officials and the previous unavailability of a legal or factual basis. See State v. Huebler, 128
13 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012).

14 In order to establish prejudice, a petitioner must show “not merely that the errors of
15 [the proceedings] created possibility of prejudice, but that they worked to his actual and
16 substantial disadvantage, in affecting the state proceedings with error of constitutional
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18 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there
19 must be a “substantial reason; one that affords a legal excuse.” Hathaway v. State, 119 Nev.
20 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229,
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22 him from complying with the state procedural default rules.” Id. 119 Nev. at 251, 71 P.3d at
23 505. The claim of good cause must also be raised within a reasonable time. Id. Clearly, any
24 delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

25
26 In the instant case, Petitioner cannot establish good cause that would warrant
27 overcoming the mandatory bars of NRS 34.726, 34.800, and 34.810. Petitioner’s only claim is
28 that McCoy v. Louisiana, 138 S. Ct. 1500, 200 L.Ed.2d 821, 86 USLW 4271 (2018), provides

1
2 a new basis to challenge his Judgment of Conviction because trial counsel conceded his guilt
3 without his consent. The United States Supreme Court decided McCoy on May 15, 2018.
4 Petitioner did not file the instant Petition until September 9, 2019, more than one year after the
5 Supreme Court decided McCoy. Petitioner cannot establish good cause to overcome the
6 mandatory procedural time-bar pursuant to Hathaway. Absent a showing of good cause for the
7 delay, this claim is denied.

8 **ORDER**

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

11 DATED this 20 day of December, 2019.

12
13 
14 DISTRICT JUDGE

15 . MICHAEL P. VILLANI ^{DB}

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

19 BY /s/JOHN NIMAN
20 JOHN NIMAN
21 Deputy District Attorney
22 Nevada Bar #014408

23 **CERTIFICATE OF MAILING**

24 I hereby certify that service of the above and foregoing was made this 17th day of
25 December, 2019, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

26 DOMONIC MALONE #69418
27 HIGH DESERT STATE PRISON
28 P.O. BOX 650
INDIAN SPRINGS, NV 89070-0650

BY /s/D. Daniels
Secretary for the District Attorney's Office

06FH0742/JN/ab-APPEALS/dd/MVU



1 NEO

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

4 DOMONIC MALONE,

5
6 Petitioner,

Case No: A-19-801802-W

Dept No: XVII

7 vs.

8 B WILLIAMS,

9 Respondent,

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

10
11 **PLEASE TAKE NOTICE** that on January 16, 2020, the court entered a decision or order in this matter,
a true and correct copy of which is attached to this notice.

12 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
13 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
14 mailed to you. This notice was mailed on January 22, 2020.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

17
18
19 **CERTIFICATE OF E-SERVICE / MAILING**

20 I hereby certify that on this 22 day of January 2020, I served a copy of this Notice of Entry on the
following:

21 ☒ By e-mail:

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

23
24 ☒ The United States mail addressed as follows:

25 Domonic Malone # 69418
P.O. Box 650
Indian Springs, NV 89070

26
27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk



FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN NIMAN
Deputy District Attorney
Nevada Bar #014408
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-

DOMINIC RONALDO MALONE,
#1670891
Defendant.

CASE NO: A-19-801802-W
06C224572-2
DEPT NO: XVII

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

DATE OF HEARING: December 11, 2019
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable MICHAEL P. VILLANI, District Judge, on the 11th day of December, 2019, the Petitioner not being present, not represented by counsel, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through CHRISTOPHER HAMNER, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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RECEIVED BY
DEPT 17 ON
DEC 19 2019

1
2 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

3 STATEMENT OF THE CASE

4 On August 2, 2006, DOMONIC RONALDO MALONE (hereinafter "Petitioner"),
5 was charged by way of Information with: COUNTS 1, 4, 13 & 14 – First Degree Kidnapping
6 (Felony – NRS 200.310, 200.320); COUNTS 2 & 5 – Battery with Substantial Bodily Harm
7 (Felony – NRS 200.481); COUNTS 3 & 7 – Conspiracy to Commit Kidnapping (Felony –
8 NRS 200.310, 200.320, 199.480); COUNT 6 – Robbery (Felony – NRS 200.380); COUNTS
9 8 & 9 - Pandering (Felony – NRS 201.300); COUNT 10 – Conspiracy to Commit Murder
10 (Felony – NRS 200.010, 200.030, 199.480); COUNT 11 – Conspiracy to Commit Burglary
11 (Gross Misdemeanor – NRS 205.060, 199.480); COUNT 12 – Burglary (Felony – NRS
12 205.060); COUNTS 15 & 16 – Murder with Use of a Deadly Weapon (Felony – NRS
13 200.010, 200.030, 193.165); and COUNTS 17 & 18 – Robbery with Use of a Deadly
14 Weapon (Felony – NRS 200.380, 193.165). On August 16, 2006, Petitioner entered a plea of
15 Not Guilty to the charges set forth in the Information.

16 On August 30, 2006, the State filed an Amended Information, wherein the substantive
17 charges remained the same. On this same date, the State filed a Notice of Intent to Seek the
18 Death Penalty.

19 On January 7, 2009, Petitioner filed a Pro Per Motion to Dismiss Counsel, without
20 attaching any points or authorities in support of said motion. Finding no good cause existed to
21 dismiss counsel, the district court denied the Motion on January 20, 2009. Upon Petitioner's
22 insistence, the district court set a hearing for a Faretta Canvass on January 8, 2010. After
23 canvassing Petitioner, the district court found that he had knowingly and voluntarily waived
24 his right to counsel. The district court then granted Petitioner's request, and appointed
25 Petitioner's former counsel as stand-by.
26

27 On November 3, 2010, the State filed a Second Amended Information removing one
28 count of Pandering from the Amended Information.

1
2 On January 8, 2011, Petitioner filed a Pro Per Motion to Dismiss Stand-By Counsel,
3 but failed to provide the district court with any points and authorities in support of his Motion.
4 On January 25, 2011, the district court questioned Petitioner regarding his Motion and, finding
5 his complaints baseless and the absence of any points and authorities improper, denied the
6 Motion without prejudice.

7 On June 29, 2011, Petitioner filed a pleading entitled "Ex Parte Communication
8 Defendant Memorandum to Court." Petitioner alleged that he had been forced against his
9 wishes to represent himself in the underlying case. On July 19, 2011, a hearing was held in
10 which the district court confirmed that Petitioner filed the Ex Parte Communications and
11 verified that the statements therein were true. Based on Petitioner's statements, the district
12 court revoked his request to represent himself, and appointed the Special Public Defender,
13 currently stand-by counsel, to represent Petitioner once again.

14 Petitioner's jury trial commenced on January 10, 2012. On January 30, 2012, the State
15 filed a Third Amended Information, striking the first degree kidnapping charge alleged in
16 COUNT 1. The Third Amended Information thus charged Petitioner as follows: COUNTS 1
17 & 4 – Battery with Substantial Bodily Harm (Felony – NRS 200.481); COUNTS 2 & 8 –
18 Conspiracy to Commit Kidnapping (Felony – NRS 200.310, 200.320, 199.480); COUNTS 3,
19 11 & 12 – First Degree Kidnapping (Felony – NRS 200.310, 200.320); COUNT 5 – Robbery
20 (Felony – NRS 200.380); COUNT 6 – Pandering (Felony – NRS 201.300); COUNT 7 –
21 Conspiracy to Commit Burglary (Gross Misdemeanor – NRS 205.060, 199.480); COUNT 9 –
22 Conspiracy to Commit Murder (Felony – NRS 200.010, 200.030, 199.480); COUNT 10 –
23 Burglary (Felony – NRS 205.060); COUNTS 13 & 14 – Murder with Use of a Deadly Weapon
24 (Felony – NRS 200.010, 200.030, 193.165); and COUNTS 15 & 16 – Robbery with Use of a
25 Deadly Weapon (Felony – NRS 200.380, 193.165).
26

27 On February 1, 2012, the jury returned its verdict. The jury found Petitioner Guilty of:
28 COUNT 1 – Battery with Substantial Bodily Harm; COUNT 2 – Conspiracy to Commit
Kidnapping; COUNT 3 – First Degree Kidnapping; COUNT 4 – Battery *without* Substantial

Bodily Harm; COUNT 7 – Conspiracy to Commit Burglary; COUNT 8 – Conspiracy to Commit Kidnapping; COUNT 9 – Conspiracy to Commit Murder; COUNT 11 – First Degree Kidnapping; COUNT 12 – First Degree Kidnapping; COUNT 13 – First Degree Murder with Use of a Deadly Weapon; COUNT 14 – First Degree Murder with Use of a Deadly Weapon; COUNT 15 – Robbery with Use of a Deadly Weapon; and COUNT 16 – Robbery with Use of a Deadly Weapon. The jury found Defendant Not Guilty of COUNT 5 – Robbery; COUNT 6 – Pandering; and COUNT 10 – Burglary. On February 10, 2012, the jury returned with a Special Verdict as to COUNTS 13 & 14, Murder of the First Degree with Use of a Deadly Weapon, finding that the aggravating circumstances outweighed any mitigating circumstances, and imposed a sentence of Life Without the Possibility of Parole as to both counts.

On April 24, 2012, Petitioner was sentenced as to COUNT 1 – a maximum of 48 months, and a minimum of 19 months in the Nevada Department of Corrections (“NDC”); COUNT 2 – a maximum of 60 months and a minimum of 24 months, in the NDC, consecutive to COUNT 1; COUNT 3 – Life with Parole Eligibility beginning after a minimum of 5 years served in the NDC, concurrent with COUNT 2; COUNT 4 – 6 months in the Clark County Detention Center (“CCDC”), concurrent with COUNT 3; COUNT 7 – 12 months in the CCDC, consecutive to COUNT 3; COUNT 8 – maximum of 60 months and a minimum of 24 months in the NDC, concurrent with COUNT 7; COUNT 9: maximum of 120 months and a minimum of 48 months in the NDC, consecutive to COUNT 8; COUNTS 11 & 12 – Life Without the Possibility of Parole for each count in the NDC, consecutive to COUNTS 9 & 11 respectively; COUNTS 13 & 14 – Life Without the Possibility of Parole in the NDC, plus a consecutive term of Life Without the Possibility of Parole for use of a deadly weapon for each count, consecutive to COUNTS 12 & 13 respectively; COUNT 15 – a maximum of 180 months and a minimum of 48 months in the NDC, plus a consecutive term of a maximum of 180 months and a minimum of 48 months for use of a deadly weapon, concurrent with COUNT

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4 consecutive to COUNT 15. Petitioner received 6 consecutive terms of Life Without the
5 Possibility of Parole. Petitioner also received 2,148 days credit for time served. The Judgment
6 of Conviction was filed on May 8, 2012. Petitioner filed a timely Notice of Appeal on June 5,
7 2012. The Supreme Court affirmed the lower court's judgment on December 18, 2013, and
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Following the hearing on December 11, 2019, this Court finds and concludes as follows:

LEGAL AUTHORITY

I. THE PETITION IS DISMISSED BECAUSE IT IS TIME-BARRED

The claim itself is time-barred pursuant to NRS 34.726. The mandatory provision of NRS 34.726(1) states:

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- (a) That the delay is not the fault of the petitioner; and
- (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

(emphasis added). “[T]he statutory rules regarding procedural default are mandatory and cannot be ignored when properly raised by the State.” State v. Dist. Ct. (Riker), 121 Nev. 225, 233, 112 P.3d 1070, 1075 (2005).

Per the language, the one-year time bar prescribed 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); see Pellegrini v. State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001) (NRS 34.726 should be construed by its plain meaning).

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25
26 In the instant case, Petitioner cannot establish good cause that would warrant
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4 Petitioner did not file the instant Petition until September 9, 2019, more than one year after the
5 Supreme Court decided McCoy. Petitioner cannot establish good cause to overcome the
6 mandatory procedural time-bar pursuant to Hathaway. Absent a showing of good cause for the
7 delay, this claim is denied.

8 **ORDER**

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

11 DATED this 20 day of December, 2019.

12
13 
14 DISTRICT JUDGE

15 . MICHAEL P. VILLANI ^{DB}

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

19 BY /s/JOHN NIMAN
20 JOHN NIMAN
21 Deputy District Attorney
22 Nevada Bar #014408

23 **CERTIFICATE OF MAILING**

24 I hereby certify that service of the above and foregoing was made this 17th day of
25 December, 2019, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

26 DOMONIC MALONE #69418
27 HIGH DESERT STATE PRISON
28 P.O. BOX 650
INDIAN SPRINGS, NV 89070-0650

BY /s/D. Daniels
Secretary for the District Attorney's Office

06FH0742/JN/ab-APPEALS/dd/MVU

Steven D. Grierson

1 Dominic Ronaldo Malone
2 69418 In Proper Person
3 P.O. Box 650 H.D.S.P. 78
4 Indian Springs, Nevada 89018

5 8th DISTRICT COURT
6 CLARK COUNTY NEVADA

8 Dominic Ronaldo Malone,
9 Petitioner,

10 -v-

11 The State of Nevada,
12 Respondent,

A-19-801802-W

Case No. 06-C-224572-2

Dept.No. 17

Docket _____

14 NOTICE OF APPEAL

15 Notice is hereby given that the Defendant, Dominic R.
16 Malone, by and through himself in proper person, does now appeal
17 to the Supreme Court of the State of Nevada, the decision of the District
18 Court Dismissing the action referenced by the Case no.
19 Contained herein. Please see next page for relevant
20 facts in support of this Appeal

21 Dated this date, January 21, 2020.

23 Respectfully Submitted,

25 Dominic R. Malone

26 In Proper Person

27 RECEIVED

28 JAN 24 2020

CLERK OF THE COURT

1 Continued.

2

3 The defendant, Appeals the order of the District
4 Court, Clark County. That denied the action as
5 set forth within the documents submitted under
6 case no. A-19-801802-W and 06-C-224572-2
7 in Dept. # 17.

8

9 In the findings of facts on pg 6
10 the documents states: The petition is dismissed
11 because it is Time barred pursuant to NRS 34.726.
12 However, The petitioner asserts sub-section (b) as the
13 basis for this appeal. Whereas, any reference of
14 McCoy v. Louisiana 138 S.Ct. 1500. was not meant
15 to be a new Claim it was merely to assist the
16 Court in its decision making process based on
17 relevant case law. The Claim within the timely
18 filed writ for Habeas Corpus, was the deprivation
19 of rights secured by the U.S. Constitution i.e. the
20 5th & 14th amendments. The claim was supplemented
21 by a set of supporting facts. The petitioner, cited
22 the case law of McCoy, as an addendum to
23 the supporting facts of his claim. The defendant,
24 from the outset has steadfastly maintained the
25 claims as a deprivation of fundamental rights
26 as guaranteed by the United States Constitution
27 and hereby files this appeal.

28

CERTIFICATE OF SERVICE BY MAILING

I, Dominic Ronald Malone, hereby certify, pursuant to NRCP 5(b), that on this 21st
day of January, 2020, I mailed a true and correct copy of the foregoing, " NOTICE OF
APPEAL

by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Steven D. Grierson Clerk of the Court
200 Lewis Avenue 3rd Floor
Las Vegas, NV 89155-1160

Please forward also to:

Supreme Court of Nevada Clerk of the Court
201 South Carson St.
Carson City, NV 89701

District Attorney Steve Wolfson
200 Lewis Avenue
Las Vegas, NV 89155

DATED: this 22 day of January, 2020.

Dominic R. Malone
Dominic R. Malone # 69418
/In Propria Persona
Post Office box 650 [HDSP]
Indian Springs Nevada 89014 70

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding notice

of Appeal / Appeal
(Title of Document)

filed in District Court Case number _____

☐ Does not contain the social security number of any person.

-OR-

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

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.

Dominic R. Malone
Signature

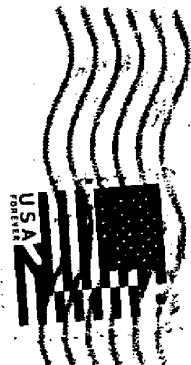
1/21/2020
Date

Dominic R. Malone
Print Name

In River Person / Freeman
Title

Mrs. DONALD R. McALONE # 671418
HOSP.
P.O. BOX 650
Indian Springs, NV. 89070

LAS VEGAS NV 890
23 JAN 2020 PM 3 L



HIGH MAIL

891555-1160

Steven D. Emerson Clerk of the Court
200 Lewis Avenue 3rd Floor
Las Vegas, NV 89155-1160
Case NO. A-19-801809-W
DO-C-204573-2
Oct. 17. Notice of Appeal enclosed
Filed stamp copy requested
Implying this is a copy of the original
forwarding envelope for the original
sup. Ct.

HIGH DESERT STATE PRISON
JAN 22 2020
UNIT 7 A/B



1 ASTA

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

9 DOMONIC R. MALONE,

10 Plaintiff(s),

11 vs.

12 B. WILLIAMS,

13 Defendant(s),
14
15

Case No: A-19-801802-W

Dept No: XVII

16
17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): Domonic R. Malone

19 2. Judge: Michael Villani

20 3. Appellant(s): Domonic R. Malone

21 Counsel:

22 Domonic R. Malone #69418

23 P.O. Box 650

24 Indian Springs, NV 89070

25 4. Respondent (s): B. Williams

26 Counsel:

27 Steven B. Wolfson, District Attorney

28 200 Lewis Ave.

Las Vegas, NV 89155-2212

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5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A
- Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A
6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No
7. Appellant Represented by Appointed Counsel On Appeal: N/A
8. Appellant Granted Leave to Proceed in Forma Pauperis**: Yes, September 16, 2019
***Expires 1 year from date filed*
Appellant Filed Application to Proceed in Forma Pauperis: N/A
Date Application(s) filed: N/A
9. Date Commenced in District Court: September 9, 2019
10. Brief Description of the Nature of the Action: Civil Writ
Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus
11. Previous Appeal: No
Supreme Court Docket Number(s): N/A
12. Child Custody or Visitation: N/A
13. Possibility of Settlement: Unknown

Dated This 27 day of January 2020.

Steven D. Grierson, Clerk of the Court

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

cc: Domonic R. Malone

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

November 13, 2019

A-19-801802-W	Domonic Malone, Plaintiff(s)
	vs.
	B Williams, Defendant(s)

November 13, 2019	9:00 AM	Petition for Writ of Habeas Corpus
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HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Natalie Ortega

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT:	Di Giacomo, Marc P.	Attorney
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JOURNAL ENTRIES

- COURT ORDERED, matter SET for Status Check regarding Decision.

12/11/19 9:00 AM STATUS CHECK: DECISION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

December 11, 2019

A-19-801802-W Domonic Malone, Plaintiff(s)
vs.
B Williams, Defendant(s)

December 11, 2019 9:00 AM Status Check

HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Olivia Black

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT: Hamner, Christopher S. Attorney

JOURNAL ENTRIES

- Court noted it was basing its decision on the pleadings on file herein and not accepting oral argument. Court noted the Judgment of Conviction was filed May of 2012, the Remittitur was issued in January of 2014, FINDING the Petition time barred pursuant to NRS 34.726, with no good cause for delay shown by the Defendant. Court further noted the Defendant's petition was filed sixteen months after the McCoy Supreme Court Decision and ORDERED, Petition for Writ of Habeas Corpus DENIED. Court directed State to prepare the Order and FURTHER ORDERED matter set for Status Check on the filing of the Order. Court noted the Status Check date would be vacated if the Order was filed.

NDC

01/08/2020 9:00 AM STATUS CHECK: ORDER

CLERK'S NOTE: The above minute order has been distributed to:
DOMONIC MALONE #69418
P O BOX 650
INDIAN SPRINGS, NV 89070//sr 12-11-2019

PRINT DATE: 02/28/2020

Page 2 of 3

Minutes Date: November 13, 2019

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

January 08, 2020

A-19-801802-W Domonic Malone, Plaintiff(s)
vs.
B Williams, Defendant(s)

January 08, 2020 9:00 AM Status Check Status Check: Order

HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: April Watkins

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT: Di Giacomo, Marc P. Attorney

JOURNAL ENTRIES

- Court noted petition previously ruled on and inquired of counsel as to the submission of the order. Mr. Di Giacomo stated he will check on the order. COURT ORDERED, matter CONTINUED.

NDC

CONTINUED TO: 1/22/2020 9:00 AM

CLERK'S NOTE: After court, this Court's Law Clerk, notified order has been received and the Court VACATED the January 22, 2020, court date. aw

CLERK'S NOTE: The above minute order has been distributed to: Domonic Malone #69418, High Desert State Prison, P.O. Box 650, Indian Springs, NV 89070. aw

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated February 18, 2020, 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 68.

DOMONIC RONALDO MALONE,

Plaintiff(s),

vs.

B. WILLIAMS,

Defendant(s),

Case No: A-19-801802-W

Dept. No: XVII

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 28 day of February 2020.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk