

Steven D. Grierson

Willie Carter #1114323

In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018

Electronically Filed
Feb 20 2020 03:31 p.m.
Elizabeth A. Brown
Clerk of Nevada Supreme Court

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF Clark

Willie Carter
Plaintiff,
vs.
The State of Nevada
Defendant.

A-19-804110-W
Case No. C-13-292507-2
Dept. No. XVIII
Docket _____

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN, That the Petitioner/Defendant,
Willie Carter, in and through his proper person, hereby
appeals to the Supreme Court of Nevada from the ORDER denying and/or
dismissing the

Habeas Corpus/Motion To Correct Illegal Sentence

ruled on the 13th day of January, 2020.

Dated this 11th day of February, 2020.

Respectfully Submitted,

Willie Carter, Willie Carter

RECEIVED
FEB 18 2020

CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAILING

I, Willie Carter, hereby certify, pursuant to NRCP 5(b), that on this 11
day of February, 2020, I mailed a true and correct copy of the foregoing, "Notice
of Appeal for Habeas Corpus"
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

Clerk of The Court
200 Lewis Ave
Las Vegas, NV 89155

CC:FILE

DATED: this 11 day of February, 2020.

Willie Carter
Willie Carter # 1114323
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Habeas Corpus
(Title of Document)

filed in District Court Case number A-19-804110-W

☒ 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.

Willie Carter
Signature

2/11/20
Date

Willie Carter
Print Name

Title

I. Defendant Was Subject Of Ineffective Counsel

Defendant filed petition of Habeas Corpus to make the court aware of the illegal application of a weapons enhancement to his sentence. Defendant did not file petition of Habeas Corpus to prove innocence for the crimes he was convicted of. Ineffective Counsel was a major factor in the defendant being illegally sentenced as his court appointed attorney never argued NRS193.165. Indeed, defendant is procedurally time barred from filing a Habeas Corpus, but he failed to file because of ineffective counsel on part of his court appointed Attorney Anthony Goldstein. Defendant's attorney seemed oblivious to the nuances of NRS193.165, because he never argued about the illegal application of the weapons enhancement being applied to the sentence of the defendant. Based on the existence of ineffective counsel this petition for Habeas Corpus should prove worthy of being dissected in court regardless of procedural time bar.

II. Defendant Was Illegally Sentenced

Defendant was illegally sentenced based on the plain language of NRS193.165(4). Subsections 1, 2, and 3 of NRS193.165 focus on how to apply the weapons enhancement to the sentence of those who qualify for such a penalty to be imposed. NRS193.165(4) states: The provisions of subsections 1, 2, and 3 do not apply where the use of a firearm, other deadly weapon or tear gas is a necessary element of such crime. Per PSI, defendant was convicted of NRS200.380 Robbery with use of a deadly weapon, which is not a generic robbery as erroneously stated by the respondent. To be convicted of Robbery with the use of a deadly weapon one must possess a weapon during the commission of the crime. Thus, Robbery with the use of a deadly weapon carries a more harsh penalty than a generic robbery because of the existence of a weapon, but robbery with the use of a deadly weapon can't be followed by the application of a weapons enhancement because of NRS193.165(4). NRS193.165(4) supports the defendant's claim of being illegally sentenced because a firearm or other deadly weapon is a necessary element in both crimes the defendant was convicted of NRS200.380, NRS200.010, Robbery with use of deadly weapon and Attempted Murder. Defendant was convicted of Attempted Murder NRS200.010 Per PSI. A firearm or other deadly weapon is a necessary element for one to be charged or convicted of Attempted Murder NRS200.010

1
2 which further supports the defendant's claim of
3 being illegally sentenced by way of the erroneous
4 application of the weapons enhancement NRS 193.165
5 NRS 193.165(4) specifies that the defendant can not
6 have a weapons enhancement applied legally to his
7 sentence because a firearm, other deadly weapon or
8 tear gas is a necessary element in both crimes the
9 defendant was convicted of.

10 Furthermore NRS 193.165(5) states:

11 The court shall not grant probation to or suspend the
12 sentence of any person who is convicted of using a
13 firearm, other deadly weapon or tear gas in the
14 commission of any of the following crimes:

15 (a) murder

16 (b) kidnapping in first degree

17 (c) sexual assault or

18 (d) robbery

19 NRS 193.165(5) speaks to what charges are not
20 probationable under Nevada law. NRS 193.165(5)
21 does not ~~contemplate~~ contemplate or speak to what crimes
22 can have a weapons enhancement applied to them
23 as erroneously stated by the respondent. Per PSI
24 defendant was never charged or convicted of
25 Murder as erroneously stated by the respondent.

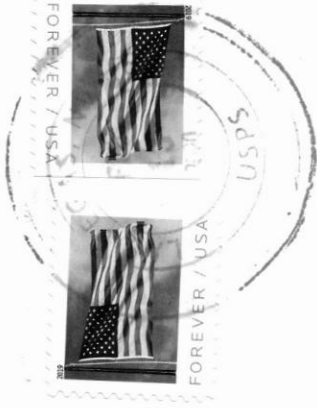
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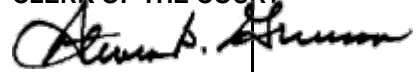
Willie Carter #1114323
SDCC
PO Box 208
Indian Springs, NV
89070



Clerk of the Court
200 Lewis Ave
Las Vegas, NV 89155

0910186300 0075





1 ASTA

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5
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**

9 WILLIE TERRY CARTER,

10 Plaintiff(s),

11 vs.

12 THE STATE OF NEVADA,

13 Defendant(s),
14

Case No: A-19-804110-W

Dept No: XVIII

15
16 **CASE APPEAL STATEMENT**
17

18 1. Appellant(s): Willie Carter

19 2. Judge: Mar y Kay Holthus

20 3. Appellant(s): Willie Carter

21 Counsel:

22 Willie Carter #1114323
23 P.O. Box 208
24 Indain Springs, NV 89070

25 4. Respondent (s): The State of Nevada

26 Counsel:

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

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

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

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

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

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

8 **Expires 1 year from date filed

9 Appellant Filed Application to Proceed in Forma Pauperis: No
10 Date Application(s) filed: N/A

11 9. Date Commenced in District Court: October 17, 2019

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

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

14 11. Previous Appeal: No

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

16 12. Child Custody or Visitation: N/A

17 13. Possibility of Settlement: Unknown

18 Dated This 19 day of February 2020.

19 Steven D. Grierson, Clerk of the Court

20 /s/ Amanda Hampton

21 Amanda Hampton, Deputy Clerk
22 200 Lewis Ave
23 PO Box 551601
24 Las Vegas, Nevada 89155-1601
25 (702) 671-0512

26 cc: Willie Carter
27
28

Willie Carter, 1114323
Petitioner/In Propria Persona
Post Office Box 208, SDCC
Indian Springs, Nevada 89070-0208

Steven D. Grierson

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF Clark

Willie Carter,
Plaintiff,
vs.
The State of Nevada,
Defendant.

A-19-804110-W
CASE No. C-13-292507-2
DEPT. No. XVIII

Clerk of The Court DESIGNATION OF RECORD ON APPEAL
TO: 200 LEWIS AVE.
Las Vegas, NV
89155-2212

The above-named Plaintiff hereby designates the entire record of the above-entitled case, to include all the papers, documents, pleadings, and transcripts thereof, as and for the Record on Appeal.

DATED this 11 day of February, 2020.

RESPECTFULLY SUBMITTED BY:

Willie Carter
Willie Carter # 1114323
Plaintiff/In Propria Persona

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-19-804110-W

Willie Carter, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

§
§
§
§
§

Location: **Department 18**
Judicial Officer: **Holthus, Mary Kay**
Filed on: **10/17/2019**
Cross-Reference Case Number: **A804110**

CASE INFORMATION

Related Cases

C-13-292507-2 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Case Status: **10/17/2019 Open**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-19-804110-W
Court Department 18
Date Assigned 10/17/2019
Judicial Officer Holthus, Mary Kay

PARTY INFORMATION

Plaintiff **Carter, Willie Terry**

Lead Attorneys

Pro Se

Defendant **State of Nevada**







Thomson, Megan
Retained

DATE

EVENTS & ORDERS OF THE COURT

INDEX

EVENTS

10/17/2019	 Inmate Filed - Petition for Writ of Habeas Corpus Party: Plaintiff Carter, Willie Terry <i>Post Conviction</i>
10/29/2019	 Order for Petition for Writ of Habeas Corpus <i>Order for Petition for Writ of Habeas Corpus</i>
12/03/2019	 Opposition to Motion Filed By: Plaintiff Carter, Willie Terry <i>State's Opposition to Defendant's Motion to Correct an Illegal Sentence/Petition for Writ of Habeas Corpus (Post-Conviction)</i>
01/13/2020	 Findings of Fact, Conclusions of Law and Order <i>Findings of Fact, Conclusions of Law, and Order</i>
01/15/2020	 Notice of Entry Filed By: Defendant State of Nevada <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
02/04/2020	 Order Denying Motion Filed By: Plaintiff Carter, Willie Terry

CASE SUMMARY
CASE NO. A-19-804110-W

Order Denying Defendant's Motion to Correct Illegal Sentence

02/18/2020



Notice of Appeal
Notice of Appeal

02/18/2020



Designation of Record on Appeal
Designation of Record on Appeal

02/19/2020



Case Appeal Statement
Filed By: Plaintiff Carter, Willie Terry
Case Appeal Statement

DISPOSITIONS

01/13/2020

Order of Dismissal (Judicial Officer: Holthus, Mary Kay)
Debtors: State of Nevada (Defendant)
Creditors: Willie Terry Carter (Plaintiff)
Judgment: 01/13/2020, Docketed: 01/13/2020

HEARINGS

12/19/2019



Petition for Writ of Habeas Corpus (9:00 AM) (Judicial Officer: Holthus, Mary Kay)
Denied;
Journal Entry Details:
Plaintiff not present. Court noted it would not be taking any argument; therefore, COURT ORDERED, Petition for Writ of Habeas Corpus was hereby DENIED. The State to prepare an Order. ;

DISTRICT COURT CIVIL COVER SHEET

A-19-804110-W
Dept. XVIII

County, Nevada

Case No.

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone): Willie Carter	Defendant(s) (name/address/phone): State of Nevada
Attorney (name/address/phone):	Attorney (name/address/phone):

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

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

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

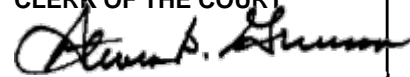
October 17, 2019

Date

PREPARED BY CLERK

Signature of initiating party or representative

See other side for family-related case filings.



FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN NIMAN
Deputy District Attorney
Nevada Bar #14408
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-

WILLIE TERRY CARTER
#1114323

Defendant.

CASE NO: A-19-804110-W
C-13-292507-2
DEPT NO: XVIII

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

DATE OF HEARING: DECEMBER 19, 2019
TIME OF HEARING: 9:00 AM

THIS CAUSE having come on for hearing before the Honorable MARY KAY HOLTHUS, District Judge, on the 19th day of December 2019, the Petitioner not being present, represented by counsel, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through MEGAN THOMSON, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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

2 **STATEMENT OF THE CASE**

3 On September 11, 2013, Willie Terry Carter (hereinafter "Defendant") was indicted by
4 the Grand Jury with the crimes of: one count Conspiracy To Commit Robbery (Category B
5 Felony- NRS 199.480, 200.380); one count Robbery With Use of a Deadly Weapon (Category
6 B Felony- NRS 205.060); seven counts Attempt Murder With Use of a Deadly Weapon
7 (Category B Felony-NRS 200.010, 200.030, 193.165), one count Assault With a Deadly
8 Weapon (Category B Felony 200.471), and one count Discharge of Firearm Within A
9 Structure (Category B Felony- NRS 202.287).

10 On October 14, 2013, Defendant filed a Petition for Writ of Habeas Corpus (Pretrial).
11 On October 29, 2013, Defendant advised the Court that issues raised in the Petition had been
12 resolved and that there was no need to address the Petition.

13 On October 30, 2013, the State filed a Superseding Indictment charging Defendant with
14 the crimes of: two counts Robbery With Use of a Deadly Weapon (Category B Felony – NRS
15 200.380, 193.165), and one count Attempt Murder (Category B Felony- NRS 200.010,
16 200.030, 193.330). Defendant was arraigned and pled not guilty to the Superseding
17 Indictment.

18 On October 31, 2013, the State moved to file in open court a Second Amended
19 Superseding Indictment. The same day Defendant was arraigned and pled guilty to: Counts 1
20 & 2- Robbery With Use of a Deadly Weapon (Category B Felony- NRS 200.380, 193.165)
21 and Count 3- Attempt Murder (Category B Felony- NRS 200.010, 200.030, 193.330). The
22 Guilty Plea Agreement was filed the same day in open court.

23 On January 7, 2014, Defendant was sentenced on Count 1- Robbery- to a maximum of
24 fifteen (15) years and a minimum of six (6) years in the Nevada Department of Corrections
25 (NDC) and a consecutive maximum of fifteen (15) years and a minimum of six (6) years in
26 the Nevada Department of Corrections (NDC) for the Use of a Deadly Weapon; Count 2-
27 Robbery- to a maximum of fifteen (15) years and a minimum of six (6) years in the Nevada
28 Department of Corrections (NDC) and a consecutive maximum of fifteen (15) years and a

1 minimum of six (6) years in the Nevada Department of Corrections (NDC) for the Use of a
2 Deadly Weapon; Counts 1 & 2 to run concurrent with each other; and on Count 3- Defendant
3 sentenced to a maximum of twenty (20) years and a minimum of six (6) years in the Nevada
4 Department of Corrections; Count 3 to run concurrent with Counts 1 & 2; and Defendant to
5 receive 138 days credit for time served. Bond, if any, Exonerated. On January 16, 2014, the
6 Judgement of Conviction was filed.

7 On October 17, 2019, Defendant filed a Petition for Writ of Habeas Corpus (Post-
8 Conviction). On October 29, 2019, the Court filed an Order for Defendant's Petition holding
9 that a response would assist the Court in determining whether Petitioner is illegally
10 imprisoned. The Court ordered the State respond to Defendant's Petition. The State's response
11 now follows.

12 STATEMENT OF THE FACTS

13 The Court relied on the following factual summary in sentencing Defendant:

14 On August 22, 2013, responded [sic] to a residence in a reference
15 to a robbery with a deadly weapon. Victim 1 called the police and
16 stated that three male subjects with guns kicked in the door of his
17 residence; Victim 1 retrieved his girlfriend's gun from the upstairs
18 bedroom and shot one of subjects. The subjects then fled the
19 residence. Officer's arrived on the scene and learned that Victim
20 1 along with seven other individuals, including minor children
21 (DOB 07-23-2000 and 05-05-2010), where [sic] inside the home
22 at the time of the robbery. Minutes later, officers learned that a
23 male subject was located at a local store, had been shot, and was
24 bleeding. The male subject was identified as Cory Hubbard and he
25 was transported to UMC for his injuries.

26 Through investigations, a neighbor's outdoor video camera
27 showed a dark colored SUV vehicle pull up, then three male
28 subjects exited the vehicle and walked up to the victim's front
door. One subject appeared to knock at the door while the other
two subjects moved to the side door. A female subject opened the
door and appeared to talk with the first subject for a few seconds.
At that point, the three subjects rushed into the residence. Closing
the door behind them. Approximately two minutes later, two
subjects ran out leaving one subject inside. The two subjects fled
the scene in the SUV. The third subject then exited the residence
and fled on foot.

1 Officers were attempting to locate the suspects and the
2 suspects' vehicle when a male subject jumped over the side gate
3 of a residence. The subject matched the description of one of the
4 robbery suspects; he was identified as Willie Carter and taken into
5 custody. On Mr. Carter's person, the officer located a cell phone.
6 The victims were taken to the scene and a one-on-one was
7 conducted; Victim 2, Victim 6, and Victim 4 identified Mr. Carter
8 as one of the subjects who entered the home with a gun. Victim 2
9 stated that Mr. Carter, "...left after taking his cell phone. He let
10 off a round and then fled the scene."

11 The officer interviewed Victim 1 who stated that he was
12 upstairs when he heard voices coming from downstairs yelling for
13 people to get on the floor. Victim 1 looked downstairs and saw
14 unknown male subjects and he went back into the room to get his
15 girlfriend's gun. While retrieving the gun, Victim 1 heard the
16 subject saying, "He ran upstairs! Go get him, he ran upstairs!"
17 Victim 1 grabbed the gun and went back towards the stairs and
18 saw a male subject coming up the stairs with a gun in his hands.
19 Victim 1 pointed his gun at the male subject and fired two to three
20 times. The male subject retreated down the stairs. Victim 1
21 recalled that someone fired a gun at him from downstairs. Victim
22 1 stated that he was in fear for his life and the well-being of his
23 family and friends who were in his house.

24 The other victims of the house reported that there was a
25 knock at the door; Victim 5 opened the door and three male
26 subjects with firearms barged into the home and told everyone to
27 get on the ground. Victim 6 reported that Mr. Carter's firearm was
28 pointed at the center of her face and also pointed the firearm at
Victim 4 and her three-year-old child (Victim 7) and threatened to
shoot them. Mr. Carter took Victim 5's Ipad [sic] and Victim 6's
and Victim 2's cell phones; Victim 2, Victim 3, and Victim 4 did
not have property stolen from them. When the subjects questioned
if someone was upstairs, Victim 5 and Victim 6 ran into a closet.
While in the closet, they heard two gunshots then heard Victim 1
question whether the male subjects had left the residence. Victim
6 recalled that Mr. Carter shot at Victim 1 but missed. When
leaving the closet, Victim 5 observed the three male subjects
tripping over each other trying to exit the front door. The victims
were in fear of their lives as well as their children's lives.

 On August 23, 2013, an interview was conducted with Mr.
Carter who stated that he lives in California and had only been in
Las Vegas for a few days when he met a male subject known to
him as "E." E stated that it was always pooping [sic] at his house
and invited him over. Mr. Carter knocked on the front door and
was met by a female. Mr. Carter entered the residence and was

1 only there thirty seconds before someone started shooting. Mr.
2 Carter fled from the area on foot and was later detained by officers.
3 The officer informed Mr. Carter of the surveillance video which
4 showed him arriving to the victim's house with two other male
5 subjects. Mr. Carter responded by saying he was just looking to
6 party and that he did not remember any details of what happened
7 as he had been drinking earlier that day. Mr. Carter could not
8 remember where he had been picked up by his co-conspirators, or
9 the identity of the people he was with when they drove to the
10 victim's residence. Mr. Carter stated that he did not have a gun,
11 fire a gun, nor threatened anyone with a gun.

12 Due to the aforementioned factors, Mr. Carter was arrested
13 and booked accordingly at the Clark County Detention Center.

14 Contact was made with Mr. Hubbard at UMC; he claimed
15 to have been walking in an unknown area and was shot be an
16 unknown person. Mr. Hubbard only told the officer he was shot
17 and would not talk to officers until he was released.

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Presentence Investigation Report, December 13, 2013 at 5-6.

AUTHORITY

I. DEFENDANT'S PETITION IS PROCEDURALLY TIME BARRED

Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) is denied because it is time barred, and Petitioner failed to show good cause or prejudice.

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 issues, 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, 107, 967 P.2d 1132, 1133-34 (1998).

The one-year limit for preparing petitions for post-conviction relief under NRS 34.726 is strictly applied. In Gonzalez 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

1 presented by the defendant that he purchased postage through the prison and mailed the Notice
2 within the one-year time limit.

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

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

11 Id. (quoting Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984)).
12 Additionally, the Court noted that procedural bars "cannot be ignored [by the district court]
13 when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
14 has granted no discretion to the district courts regarding whether to apply the statutory
15 procedural bars; the rules must be applied.

16 In this case, the Judgement of Conviction ("JOC") was filed on January 16, 2014.
17 Defendant filed his Petition on October 17, 2019. This is nearly five (5) years after the filing
18 of Defendant's JOC. This is beyond the one-year time bar. Accordingly, this Court denies this
19 petition as it is time-barred and absent a showing of good cause and prejudice.

20 A showing of good cause and prejudice may overcome procedural bars. "To establish
21 good cause, appellants *must* show that an impediment external to the defense prevented their
22 compliance with the applicable procedural rule. A qualifying impediment might be shown
23 where the factual or legal basis for a claim was not reasonably available at the time of default."
24 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court
25 continued, "appellants cannot manufacture good cause[.]" Id. at 621, 81 P.3d at 526. To
26 establish prejudice, the defendant must show "not merely that the errors of [the proceedings]
27 created possibility of prejudice, but that they worked to his actual and substantial disadvantage,
28 in affecting the state proceedings with error of constitutional dimensions.'" Hogan v. Warden,

1 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152,
2 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there must be a “substantial reason;
3 one that affords a legal excuse.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506
4 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Clearly, any
5 delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

6 Here, Defendant fails to show good cause. Defendant filed this petition on October 17,
7 2019, five (5) years after filing of the JOC. All of the facts and law necessary to raise his
8 complaints were available for a timely petition. This Court finds Defendant failed to
9 demonstrate good cause. Additionally, Defendant failed to show prejudice, which is addressed
10 below. see Section II.

11 II. DEFENDANT’S SENTENCE IS NOT ILLEGAL

12 Defendant’s Petition for Writ of Habeas Corpus (Post-Conviction) is denied because
13 Defendant was legally and accurately sentenced.

14 NRS 176.555 states that “[t]he court may correct an illegal sentence at any time.” See
15 also Passanisi v. State, 108 Nev. 318, 321, 831 P.2d 1371, 1372 (1992). However, the grounds
16 to correct an illegal sentence are interpreted narrowly under a limited scope. See Edwards v.
17 State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996); see also Haney v. State, 124 Nev. 408,
18 411, 185 P.3d 350, 352 (2008). “A motion to correct an illegal sentence is an appropriate
19 vehicle for raising the claim that a sentence is facially illegal at any time; such a motion cannot
20 be used as a vehicle for challenging the validity of a judgment of conviction or sentence based
21 on alleged errors occurring at trial or sentencing.” Edwards, 112 Nev. at 708, 918 P.2d at 324.

22 “Motions to correct illegal sentences address only the facial legality of a sentence.” Id.
23 Motions to correct illegal sentences evaluate whether the sentence imposed on the defendant
24 is ““at variance with the controlling statute, or illegal in the sense that the court goes beyond
25 its authority by acting without jurisdiction or imposing a sentence in excess of the statutory
26 maximum provided.”” Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).
27 Other claims attacking the conviction or sentence must be raised by a timely filed direct appeal
28

1 or a timely filed Petition for a Post-Conviction Writ of Habeas Corpus per NRS 34.720-34.830,
2 or other appropriate motion. See Id.

3 Here, Defendant claims that the State illegally applied a weapons enhancement, NRS
4 193.165, to his sentence. Petition at 3. Defendant alleges that he was illegally sentenced
5 because Robbery (NRS 200.380) and Attempted Murder (NRS 200.010) are both crimes in
6 which a deadly weapon is a necessary element, and therefore any deadly weapon enhancement
7 was illegally applied pursuant to NRS 193.165(4). Petition at 4. However, even if this petition
8 is construed as a Motion to Correct an Illegal Sentence, Defendant's claim fails.

9 NRS 193.165(4) provides:

10 4. The provisions of subsections 1, 2 and 3 do not apply where
11 the use of a firearm, other deadly weapon or tear gas is a
necessary element of such crime.

12 Nev. Rev. Stat. Ann. § 193.165 (West)

13 Defendant alleges that NRS 193.165(4) is relevant to his case because a "deadly
14 weapon" is a necessary element of both Robbery and Attempt Murder, therefore precluding
15 any enhancement during sentencing. However, Defendant's robbery charge under NRS
16 200.380 is a generic robbery, and a deadly weapon is not one of the elements. Similarly,
17 murder proscribed by NRS 200.010 does not require a deadly weapon to charge a defendant
18 with murder or attempt murder. The use of a deadly weapon is not inherent in any robbery or
19 an attempt murder conviction-both could occur, for instance, by using one's hands. Further,
20 NRS 193.165(5) states:

21 5. The court shall not grant probation to or suspend the sentence
22 of any person who is convicted of using a firearm, other deadly
23 weapon or tear gas in the commission of any of the following
crimes:

- 24 (a) **Murder**;
25 (b) Kidnapping in the first degree;
(c) Sexual assault; or
(d) **Robbery**.

26 Nev. Rev. Stat. Ann. § 193.165(5) (West)

27 Clearly, NRS 193.165(5) contemplates the use of a deadly weapon enhancement
28 being applicable to both murder and robbery. Id. And, since a deadly weapon is not an

1 essential element of either crime, Defendant's claim that NRS 193.165(4) applies to the
2 matter at hand is without merit. Thus, this Court denies Defendant's claim.

3 **ORDER**

4 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus
5 (Post-Conviction) shall be, and it is, hereby denied. The State's Motion to Dismiss shall be,
6 and it is, hereby granted.

7 DATED this 13 day of January, 2020
~~December, 2019.~~

8 
DISTRICT JUDGE

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

12 BY 
13

14 JOHN NIMAN
Deputy District Attorney
Nevada Bar #14408

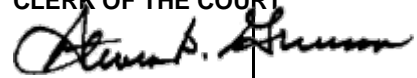
15
16 **CERTIFICATE OF MAILING**

17 I hereby certify that service of the above and foregoing was made this 13 day of
18 January, 2020, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

19 WILLIE TERRY CARTER, #1114323
20 SOUTHERN DESERT CORRECTIONAL
21 PO BOX 208
INDIAN SPRINGS, NV 89070

22
23 BY 
24

25 E. DEL PADRE
26 Secretary for the District Attorney's Office
27
28



1 NEO

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

4 WILLIE CARTER,

5
6 Petitioner,

Case No: A-19-804110-W

Dept No: XVIII

7 vs.

8 STATE OF NEVADA,

9 Respondent,

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

10
11 **PLEASE TAKE NOTICE** that on January 13, 2020, the court entered a decision or order in this matter,
12 a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
15 mailed to you. This notice was mailed on January 15, 2020.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

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

20 I hereby certify that on this 15 day of January 2020, I served a copy of this Notice of Entry on the
21 following:

22 ☒ By e-mail:

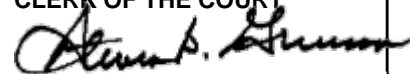
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

23
24 ☒ The United States mail addressed as follows:

Willie Carter # 1114323
P.O. Box 208
Indian Springs, NV 89070

25
26
27 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk



FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN NIMAN
Deputy District Attorney
Nevada Bar #14408
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-

WILLIE TERRY CARTER
#1114323

Defendant.

CASE NO: A-19-804110-W
C-13-292507-2
DEPT NO: XVIII

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

DATE OF HEARING: DECEMBER 19, 2019
TIME OF HEARING: 9:00 AM

THIS CAUSE having come on for hearing before the Honorable MARY KAY HOLTHUS, District Judge, on the 19th day of December 2019, the Petitioner not being present, represented by counsel, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through MEGAN THOMSON, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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

2 **STATEMENT OF THE CASE**

3 On September 11, 2013, Willie Terry Carter (hereinafter "Defendant") was indicted by
4 the Grand Jury with the crimes of: one count Conspiracy To Commit Robbery (Category B
5 Felony- NRS 199.480, 200.380); one count Robbery With Use of a Deadly Weapon (Category
6 B Felony- NRS 205.060); seven counts Attempt Murder With Use of a Deadly Weapon
7 (Category B Felony-NRS 200.010, 200.030, 193.165), one count Assault With a Deadly
8 Weapon (Category B Felony 200.471), and one count Discharge of Firearm Within A
9 Structure (Category B Felony- NRS 202.287).

10 On October 14, 2013, Defendant filed a Petition for Writ of Habeas Corpus (Pretrial).
11 On October 29, 2013, Defendant advised the Court that issues raised in the Petition had been
12 resolved and that there was no need to address the Petition.

13 On October 30, 2013, the State filed a Superseding Indictment charging Defendant with
14 the crimes of: two counts Robbery With Use of a Deadly Weapon (Category B Felony – NRS
15 200.380, 193.165), and one count Attempt Murder (Category B Felony- NRS 200.010,
16 200.030, 193.330). Defendant was arraigned and pled not guilty to the Superseding
17 Indictment.

18 On October 31, 2013, the State moved to file in open court a Second Amended
19 Superseding Indictment. The same day Defendant was arraigned and pled guilty to: Counts 1
20 & 2- Robbery With Use of a Deadly Weapon (Category B Felony- NRS 200.380, 193.165)
21 and Count 3- Attempt Murder (Category B Felony- NRS 200.010, 200.030, 193.330). The
22 Guilty Plea Agreement was filed the same day in open court.

23 On January 7, 2014, Defendant was sentenced on Count 1- Robbery- to a maximum of
24 fifteen (15) years and a minimum of six (6) years in the Nevada Department of Corrections
25 (NDC) and a consecutive maximum of fifteen (15) years and a minimum of six (6) years in
26 the Nevada Department of Corrections (NDC) for the Use of a Deadly Weapon; Count 2-
27 Robbery- to a maximum of fifteen (15) years and a minimum of six (6) years in the Nevada
28 Department of Corrections (NDC) and a consecutive maximum of fifteen (15) years and a

1 minimum of six (6) years in the Nevada Department of Corrections (NDC) for the Use of a
2 Deadly Weapon; Counts 1 & 2 to run concurrent with each other; and on Count 3- Defendant
3 sentenced to a maximum of twenty (20) years and a minimum of six (6) years in the Nevada
4 Department of Corrections; Count 3 to run concurrent with Counts 1 & 2; and Defendant to
5 receive 138 days credit for time served. Bond, if any, Exonerated. On January 16, 2014, the
6 Judgement of Conviction was filed.

7 On October 17, 2019, Defendant filed a Petition for Writ of Habeas Corpus (Post-
8 Conviction). On October 29, 2019, the Court filed an Order for Defendant's Petition holding
9 that a response would assist the Court in determining whether Petitioner is illegally
10 imprisoned. The Court ordered the State respond to Defendant's Petition. The State's response
11 now follows.

12 STATEMENT OF THE FACTS

13 The Court relied on the following factual summary in sentencing Defendant:

14 On August 22, 2013, responded [sic] to a residence in a reference
15 to a robbery with a deadly weapon. Victim 1 called the police and
16 stated that three male subjects with guns kicked in the door of his
17 residence; Victim 1 retrieved his girlfriend's gun from the upstairs
18 bedroom and shot one of subjects. The subjects then fled the
19 residence. Officer's arrived on the scene and learned that Victim
20 1 along with seven other individuals, including minor children
21 (DOB 07-23-2000 and 05-05-2010), where [sic] inside the home
22 at the time of the robbery. Minutes later, officers learned that a
23 male subject was located at a local store, had been shot, and was
24 bleeding. The male subject was identified as Cory Hubbard and he
25 was transported to UMC for his injuries.

26 Through investigations, a neighbor's outdoor video camera
27 showed a dark colored SUV vehicle pull up, then three male
28 subjects exited the vehicle and walked up to the victim's front
door. One subject appeared to knock at the door while the other
two subjects moved to the side door. A female subject opened the
door and appeared to talk with the first subject for a few seconds.
At that point, the three subjects rushed into the residence. Closing
the door behind them. Approximately two minutes later, two
subjects ran out leaving one subject inside. The two subjects fled
the scene in the SUV. The third subject then exited the residence
and fled on foot.

1 Officers were attempting to locate the suspects and the
2 suspects' vehicle when a male subject jumped over the side gate
3 of a residence. The subject matched the description of one of the
4 robbery suspects; he was identified as Willie Carter and taken into
5 custody. On Mr. Carter's person, the officer located a cell phone.
6 The victims were taken to the scene and a one-on-one was
7 conducted; Victim 2, Victim 6, and Victim 4 identified Mr. Carter
8 as one of the subjects who entered the home with a gun. Victim 2
9 stated that Mr. Carter, "...left after taking his cell phone. He let
10 off a round and then fled the scene."

11 The officer interviewed Victim 1 who stated that he was
12 upstairs when he heard voices coming from downstairs yelling for
13 people to get on the floor. Victim 1 looked downstairs and saw
14 unknown male subjects and he went back into the room to get his
15 girlfriend's gun. While retrieving the gun, Victim 1 heard the
16 subject saying, "He ran upstairs! Go get him, he ran upstairs!"
17 Victim 1 grabbed the gun and went back towards the stairs and
18 saw a male subject coming up the stairs with a gun in his hands.
19 Victim 1 pointed his gun at the male subject and fired two to three
20 times. The male subject retreated down the stairs. Victim 1
21 recalled that someone fired a gun at him from downstairs. Victim
22 1 stated that he was in fear for his life and the well-being of his
23 family and friends who were in his house.

24 The other victims of the house reported that there was a
25 knock at the door; Victim 5 opened the door and three male
26 subjects with firearms barged into the home and told everyone to
27 get on the ground. Victim 6 reported that Mr. Carter's firearm was
28 pointed at the center of her face and also pointed the firearm at
Victim 4 and her three-year-old child (Victim 7) and threatened to
shoot them. Mr. Carter took Victim 5's Ipad [sic] and Victim 6's
and Victim 2's cell phones; Victim 2, Victim 3, and Victim 4 did
not have property stolen from them. When the subjects questioned
if someone was upstairs, Victim 5 and Victim 6 ran into a closet.
While in the closet, they heard two gunshots then heard Victim 1
question whether the male subjects had left the residence. Victim
6 recalled that Mr. Carter shot at Victim 1 but missed. When
leaving the closet, Victim 5 observed the three male subjects
tripping over each other trying to exit the front door. The victims
were in fear of their lives as well as their children's lives.

 On August 23, 2013, an interview was conducted with Mr.
Carter who stated that he lives in California and had only been in
Las Vegas for a few days when he met a male subject known to
him as "E." E stated that it was always pooping [sic] at his house
and invited him over. Mr. Carter knocked on the front door and
was met by a female. Mr. Carter entered the residence and was

1 only there thirty seconds before someone started shooting. Mr.
2 Carter fled from the area on foot and was later detained by officers.
3 The officer informed Mr. Carter of the surveillance video which
4 showed him arriving to the victim's house with two other male
5 subjects. Mr. Carter responded by saying he was just looking to
6 party and that he did not remember any details of what happened
7 as he had been drinking earlier that day. Mr. Carter could not
8 remember where he had been picked up by his co-conspirators, or
9 the identity of the people he was with when they drove to the
10 victim's residence. Mr. Carter stated that he did not have a gun,
11 fire a gun, nor threatened anyone with a gun.

12 Due to the aforementioned factors, Mr. Carter was arrested
13 and booked accordingly at the Clark County Detention Center.

14 Contact was made with Mr. Hubbard at UMC; he claimed
15 to have been walking in an unknown area and was shot be an
16 unknown person. Mr. Hubbard only told the officer he was shot
17 and would not talk to officers until he was released.

18 Presentence Investigation Report, December 13, 2013 at 5-6.

19 AUTHORITY

20 **I. DEFENDANT'S PETITION IS PROCEDURALLY TIME BARRED**

21 Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) is denied because it
22 is time barred, and Petitioner failed to show good cause or prejudice.

23 A petition challenging a judgment of conviction's validity must be filed within one year
24 of the judgment filed or within one year of the remittitur issues, unless there is good cause to
25 show delay. NRS 34.726(1). The Supreme Court of Nevada has held that NRS 34.726 should
26 be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528
27 (2001). Under the statute, the one-year time bar proscribed by NRS 34.726 begins to run from
28 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
Dickerson v. State, 114 Nev. 1084, 107, 967 P.2d 1132, 1133-34 (1998).

The one-year limit for preparing petitions for post-conviction relief under NRS 34.726
is strictly applied. In Gonzalez 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

1 presented by the defendant that he purchased postage through the prison and mailed the Notice
2 within the one-year time limit.

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

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

12 Id. (quoting Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984)).
13 Additionally, the Court noted that procedural bars "cannot be ignored [by the district court]
14 when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
15 has granted no discretion to the district courts regarding whether to apply the statutory
16 procedural bars; the rules must be applied.

17 In this case, the Judgement of Conviction ("JOC") was filed on January 16, 2014.
18 Defendant filed his Petition on October 17, 2019. This is nearly five (5) years after the filing
19 of Defendant's JOC. This is beyond the one-year time bar. Accordingly, this Court denies this
20 petition as it is time-barred and absent a showing of good cause and prejudice.

21 A showing of good cause and prejudice may overcome procedural bars. "To establish
22 good cause, appellants *must* show that an impediment external to the defense prevented their
23 compliance with the applicable procedural rule. A qualifying impediment might be shown
24 where the factual or legal basis for a claim was not reasonably available at the time of default."
25 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court
26 continued, "appellants cannot manufacture good cause[.]" Id. at 621, 81 P.3d at 526. To
27 establish prejudice, the defendant must show "not merely that the errors of [the proceedings]
28 created possibility of prejudice, but that they worked to his actual and substantial disadvantage,
in affecting the state proceedings with error of constitutional dimensions.'" Hogan v. Warden,

1 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152,
2 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there must be a “substantial reason;
3 one that affords a legal excuse.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506
4 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Clearly, any
5 delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

6 Here, Defendant fails to show good cause. Defendant filed this petition on October 17,
7 2019, five (5) years after filing of the JOC. All of the facts and law necessary to raise his
8 complaints were available for a timely petition. This Court finds Defendant failed to
9 demonstrate good cause. Additionally, Defendant failed to show prejudice, which is addressed
10 below. see Section II.

11 II. DEFENDANT’S SENTENCE IS NOT ILLEGAL

12 Defendant’s Petition for Writ of Habeas Corpus (Post-Conviction) is denied because
13 Defendant was legally and accurately sentenced.

14 NRS 176.555 states that “[t]he court may correct an illegal sentence at any time.” See
15 also Passanisi v. State, 108 Nev. 318, 321, 831 P.2d 1371, 1372 (1992). However, the grounds
16 to correct an illegal sentence are interpreted narrowly under a limited scope. See Edwards v.
17 State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996); see also Haney v. State, 124 Nev. 408,
18 411, 185 P.3d 350, 352 (2008). “A motion to correct an illegal sentence is an appropriate
19 vehicle for raising the claim that a sentence is facially illegal at any time; such a motion cannot
20 be used as a vehicle for challenging the validity of a judgment of conviction or sentence based
21 on alleged errors occurring at trial or sentencing.” Edwards, 112 Nev. at 708, 918 P.2d at 324.

22 “Motions to correct illegal sentences address only the facial legality of a sentence.” Id.
23 Motions to correct illegal sentences evaluate whether the sentence imposed on the defendant
24 is ““at variance with the controlling statute, or illegal in the sense that the court goes beyond
25 its authority by acting without jurisdiction or imposing a sentence in excess of the statutory
26 maximum provided.”” Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).
27 Other claims attacking the conviction or sentence must be raised by a timely filed direct appeal
28

1 or a timely filed Petition for a Post-Conviction Writ of Habeas Corpus per NRS 34.720-34.830,
2 or other appropriate motion. See Id.

3 Here, Defendant claims that the State illegally applied a weapons enhancement, NRS
4 193.165, to his sentence. Petition at 3. Defendant alleges that he was illegally sentenced
5 because Robbery (NRS 200.380) and Attempted Murder (NRS 200.010) are both crimes in
6 which a deadly weapon is a necessary element, and therefore any deadly weapon enhancement
7 was illegally applied pursuant to NRS 193.165(4). Petition at 4. However, even if this petition
8 is construed as a Motion to Correct an Illegal Sentence, Defendant's claim fails.

9 NRS 193.165(4) provides:

10 4. The provisions of subsections 1, 2 and 3 do not apply where
11 the use of a firearm, other deadly weapon or tear gas is a
12 necessary element of such crime.

13 Nev. Rev. Stat. Ann. § 193.165 (West)

14 Defendant alleges that NRS 193.165(4) is relevant to his case because a "deadly
15 weapon" is a necessary element of both Robbery and Attempt Murder, therefore precluding
16 any enhancement during sentencing. However, Defendant's robbery charge under NRS
17 200.380 is a generic robbery, and a deadly weapon is not one of the elements. Similarly,
18 murder proscribed by NRS 200.010 does not require a deadly weapon to charge a defendant
19 with murder or attempt murder. The use of a deadly weapon is not inherent in any robbery or
20 an attempt murder conviction-both could occur, for instance, by using one's hands. Further,
21 NRS 193.165(5) states:

22 5. The court shall not grant probation to or suspend the sentence
23 of any person who is convicted of using a firearm, other deadly
24 weapon or tear gas in the commission of any of the following
25 crimes:

- 26 (a) **Murder**;
- 27 (b) Kidnapping in the first degree;
- 28 (c) Sexual assault; or
- (d) **Robbery**.

29 Nev. Rev. Stat. Ann. § 193.165(5) (West)

Clearly, NRS 193.165(5) contemplates the use of a deadly weapon enhancement
being applicable to both murder and robbery. Id. And, since a deadly weapon is not an

1 essential element of either crime, Defendant's claim that NRS 193.165(4) applies to the
2 matter at hand is without merit. Thus, this Court denies Defendant's claim.

3 **ORDER**

4 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus
5 (Post-Conviction) shall be, and it is, hereby denied. The State's Motion to Dismiss shall be,
6 and it is, hereby granted.

7 DATED this 13 day of January, 2020
~~December, 2019.~~

8 
DISTRICT JUDGE

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

12 BY 
13

14 JOHN NIMAN
Deputy District Attorney
Nevada Bar #14408

15
16 **CERTIFICATE OF MAILING**

17 I hereby certify that service of the above and foregoing was made this 13 day of
18 January, 2020, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

19 WILLIE TERRY CARTER, #1114323
20 SOUTHERN DESERT CORRECTIONAL
21 PO BOX 208
INDIAN SPRINGS, NV 89070

22
23 BY 
24

25 E. DEL PADRE
26 Secretary for the District Attorney's Office
27
28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

December 19, 2019

A-19-804110-W Willie Carter, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

**December 19, 2019 9:00 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Holthus, Mary Kay **COURTROOM:** RJC Courtroom 03F

COURT CLERK: Dara Yorke

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT: Thomson, Megan Attorney

JOURNAL ENTRIES

- Plaintiff not present. Court noted it would not be taking any argument; therefore, COURT ORDERED, Petition for Writ of Habeas Corpus was hereby DENIED. The State to prepare an Order.

Certification of Copy

State of Nevada }
County of Clark } SS:

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

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

WILLIE TERRY CARTER,

Plaintiff(s),

vs.

THE STATE OF NEVADA,

Defendant(s),

Case No: A-19-804110-W

Dept No: XVIII

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 19 day of February 2020.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk