

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIE TERRY CARTER,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Electronically Filed
Mar 18 2020 11:52 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-19-804110-W

Docket No: 80631
Consolidated with 80630

RECORD ON APPEAL

ATTORNEY FOR APPELLANT

WILLIE CARTER #1114323,
PROPER PERSON
P.O. BOX 208
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT

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

I N D E X

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1 Willie Terry Carter #1114323
2 Southern Desert Correctional Center
3 22010 Cold Creek Rd.
4 P.O. Box 208
5 Indian Springs, NV 89070

FILED

OCT 17 2019

Alma J. Johnson
CLERK OF COURT

District Court
Clark County, Nevada

A-19-804110-W
Dept. XVIII

7 Willie Terry Carter #1114323
8 Petitioner/Plaintiff

9 #VS=

11 The State of Nevada
12 Respondant/Defendant

14 Petition for Writ of Habeas Corpus (Post Conviction)
15 Challenge/Declaration of an illegal sentence

16 Comes now, Petitioner/Plaintiff Willie Terry Carter pro-per,
17 and respectfully moves this Honorable Court to issue a
18 petition for Writ of Habeas Corpus, being filed contempor-
19 aneously herewith, directing the state of Nevada to
20 correct an illegal sentence by nullifying/removing the
21 weapons enhancement from his sentence.

23 This motion is made and based pursuant to the
24 supporting points and authorities attached hereto as well
25 as all papers, pleadings, documents on file in this case,
26 as well as oral arguments deemed necessary by this
27 honorable court. "Dated this 13th day of October 2019"

28 Respectfully submitted

29 X Willie Carter
(pg 1)

Statement of Facts

1 The petitioner/plaintiff Willie Terry Carter being found
2 guilty of the crimes of Count 1 and 2-Robbery with the
3 use of a Deadly Weapon (Category B Felony) in
4 violation of NRS 200.380, 193.165; and count 3-
5 Attempted Murder (Category B Felony) in violation of
6 NRS 200.010, was sentenced on the 7th day of
7 January, 2014 as follows:

8 As to count 1 and 2-Robbery with the use of
9 a Deadly Weapon 6 to 15 years concurrent with Count 3
10 Attempted Murder 6 to 20 years consecutive to the
11 Deadly Weapons Enhancement of Counts 1 and 2- 6 to 15
12 years. The imposed sentence is to be served in the
13 Nevada Department of Corrections

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(Pg 2)

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Points And Authorities

Legal Argument

7 I. The State of Nevada Illegally
8 applied a Weapons Enhancement NRS
9 193.165, to Willie Terry Carter's
10 sentence in violation of NRS 193.165(4)

12 Petitioner/Plaintiff Willie Terry Carter claims
13 that The State of Nevada illegally applied a
14 Weapons Enhancement NRS 193.165 to his sentence.
15 NRS 193.165(4) clearly states the following:
16 (NRS 193.165(4) The provisions of subsections
17 1, 2 and 3 do not apply where the use of a
18 firearm or other deadly weapon or tear gas
19 "is a necessary element of such crime.") Based
20 on NRS 193.165(4) Willie Terry Carter was clearly
21 a victim of an error made by The State of
22 Nevada, which ultimately led to him being
23 illegally sentenced and forced to endure a
24 harsh penalty that goes against the plain
25 language of NRS 193.165(4).

26 Petitioner/Plaintiff Willie Terry Carter was
27 found guilty of Robbery with the use of a
28 Deadly Weapon (Category B Felony) NRS 200.380,
(pg 3)

1 and Attempted Murder (Category B Felony) NRS 200.010,
2 both crimes are inconsistent with the application
3 of a Weapons Enhancement NRS 193.165 because
4 NRS 193.165(4) states: The provisions of
5 subsections 1, 2 and 3 do not apply where the
6 use of a firearm, other deadly weapon or tear
7 gas is a necessary element of such crime.
8 Based on the language of NRS 193.165(4) the
9 Petitioner/Plaintiff Willie Terry Carter was illegally
10 sentenced by the State of Nevada, because
11 Robbery with the use of a deadly weapon NRS 200.380
12 and Attempted Murder NRS 200.010 are both crimes
13 in which a deadly weapon is a necessary
14 element. Therefore, a weapons enhancement
15 cannot legally be applied to the Petitioner/
16 Plaintiff Willie Terry Carter's sentence.

17 //

18 //

19 "II. Conclusion

20 Therefore, all of the above states reasons
21 The Petitioner/Plaintiff respectfully requests this
22 Honorable Court to order The State of Nevada
23 to remove the Weapons Enhancements from his
24 sentence.

25 "Dated this 13th day of October 2019 "

26 Respectfully Submitted

27 Willie Carter = Willie Terry Carter
28 Petitioner/Plaintiff

(pg 4)

Certificate of Service by Mailing

2

3 I, Willie Terry Carter, hereby certify, pursuant to
4 NRCPS(b), that on this 13th day of October, 2019,
5 I mailed a true and correct copy of the following,
6 "Writ of Habeas Corpus (Challenge/Declaration of
7 an Illegal Sentence) by depositing it in the
8 "Southern Desert Correctional Center, legal library,
9 First-Class Postage, Fully prepaid addressed as follows:

10

11 Clark County DA's office
12 200 Lewis Ave
13 Las Vegas, NV 89115

14

15 Clerk of the Court
16 200 Lewis Ave
17 Las Vegas, NV 89115

18

19 "CC: File

20

21 Dated this 13th Day of October, 2019

22

23

24

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26

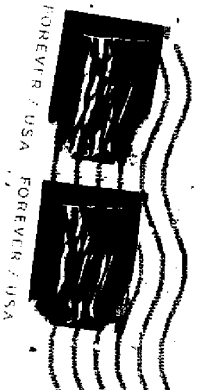
27

28

Willie Carter
Willie Terry Carter #1114323
Plaintiff / In Propria Personam
Post Office Box 208 (SDCC)
Indian Springs, NV 89070
IN FORMA PAUPERIS

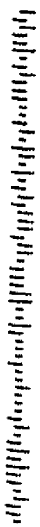
Willie Carter #1114323
SDCC
PO Box 208
Indian Springs, NV
89070

LAS VEGAS NV 890
15 OCT 2019 PM 5 L



Clerk of the Court
200 Lewis Ave.
Las Vegas, NV 89115

89101-690000



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FILED
OCT 29 2019

DISTRICT COURT
CLARK COUNTY, NEVADA

[Signature]
CLERK OF COURT

Willie Terry Carter,

Petitioner,

vs.
State of Nevada,

Respondent,

Case No: A-19-804110-W
Department 18

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

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on October 17, 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 19 day of December, 2019, at the hour of

9:00 o'clock for further proceedings.

[Signature: Mary Kay Hattus]
District Court Judge

A-19-804110-W
OPWH
Order for Petition for Writ of Habeas Corpus
4872496



RECEIVED

OCT 29 2019

CLERK OF THE COURT



1 **OPPM**
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

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 WILLIE TERRY CARTER
13 #5181937
14 Defendant.

CASE NO: A-19-804110-W

C-13-292507-2

DEPT NO: XVIII

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO CORRECT AN**
16 **ILLEGAL SENTENCE/ PETITION FOR WRIT OF HABEAS CORPUS (POST-**
17 **CONVICTION)**

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

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
19 District Attorney, through JOHN NIMAN, Deputy District Attorney, and hereby submits the
20 attached Points and Authorities in Opposition to Defendant's Motion to Correct an Illegal
21 Sentence and/or Response to Petition for Writ of Habeas Corpus (Post-Conviction).

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

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27 //

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1 **POINTS AND AUTHORITIES**

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

22 Through investigations, a neighbor's outdoor video
23 camera showed a dark colored SUV vehicle pull up, then three
24 male subjects exited the vehicle and walked up to the victim's
25 front door. One subject appeared to knock at the door while the
26 other two subjects moved to the side door. A female subject
27 opened the door and appeared to talk with the first subject for a
28 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
5 into custody. On Mr. Carter's person, the officer located a cell
6 phone. The victims were taken to the scene and a one-on-one
7 was conducted; Victim 2, Victim 6, and Victim 4 identified Mr.
8 Carter as one of the subjects who entered the home with a gun.
9 Victim 2 stated that Mr. Carter, "...left after taking his cell
10 phone. He let 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
13 for people to get on the floor. Victim 1 looked downstairs and
14 saw unknown male subjects and he went back into the room to
15 get his girlfriend's gun. While retrieving the gun, Victim 1 heard
16 the subject saying, "He ran upstairs! Go get him, he ran
17 upstairs!" Victim 1 grabbed the gun and went back towards the
18 stairs and saw a male subject coming up the stairs with a gun in
19 his hands. Victim 1 pointed his gun at the male subject and fired
20 two to three times. The male subject retreated down the stairs.
21 Victim 1 recalled that someone fired a gun at him from
22 downstairs. Victim 1 stated that he was in fear for his life and the
23 well-being of his 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
28 was 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

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

14 Due to the aforementioned factors, Mr. Carter was
15 arrested and booked accordingly at the Clark County Detention
16 Center.

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

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

22 ARGUMENT

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

24 Defendant's Petition for Writ of Habeas Corpus (Post-Conviction)
25 should be denied because it is time barred.

26 A petition challenging a judgment of conviction's validity must be filed within one year
27 of the judgment filed or within one year of the remittitur issues, unless there is good cause to
28 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 should
19 deny this 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 should find 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) should be denied
13 because 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 //

28 //

1 Other claims attacking the conviction or sentence must be raised by a timely filed direct appeal
2 or a timely filed Petition for a Post-Conviction Writ of Habeas Corpus per NRS 34.720-34.830,
3 or other appropriate motion. See Id.

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

10 NRS 193.165(4) provides:

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

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

28 //

//

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

2 Clearly, NRS 193.165(5) contemplates the use of a deadly weapon enhancement being
3 applicable to both murder and robbery. Id. And, since a deadly weapon is not an essential
4 element of either crime, Defendant's claim that NRS 193.165(4) applies to the matter at hand
5 is without merit. Thus, this Court should deny Defendant's claim.

6 **CONCLUSION**

7 For the forgoing reasons the State respectfully requests that Defendant's Motion to
8 Correct an Illegal Sentence/Petition for Writ of Habeas Corpus (Post-Conviction) be DENIED.

9 DATED this 3 day of December, 2019.

10 Respectfully submitted,

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

14 BY 

15 JOHN NIMAN
16 Deputy District Attorney
17 Nevada Bar #14408

18 **CERTIFICATE OF MAILING**

19 I hereby certify that service of the above and foregoing was made this 3rd day of
20 December, 2019, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

21 WILLIE TERRY CARTER, NDOC #1114323
22 SDCC
23 P.O. BOX 208
24 INDIAN SPRINGS, NV, 89070

25 BY 

26 Secretary for the District Attorney's Office

27
28 13F13793B/mc/JN/ckb/L4



1 FCL
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

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 WILLIE TERRY CARTER
13 #1114323

14 Defendant.

CASE NO: A-19-804110-W

C-13-292507-2

DEPT NO: XVIII

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

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

18 THIS CAUSE having come on for hearing before the Honorable MARY KAY
19 HOLTHUS, District Judge, on the 19th day of December 2019, the Petitioner not being
20 present, represented by counsel, the Respondent being represented by STEVEN B.
21 WOLFSON, Clark County District Attorney, by and through MEGAN THOMSON, Chief
22 Deputy District Attorney, and the Court having considered the matter, including briefs,
23 transcripts, and documents on file herein, now therefore, the Court makes the following
24 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
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22 Guilty Plea Agreement was filed the same day in open court.

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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-
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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
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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
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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
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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
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11 The officer interviewed Victim 1 who stated that he was
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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
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23 family and friends who were in his house.

24 The other victims of the house reported that there was a
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27 get on the ground. Victim 6 reported that Mr. Carter's firearm was
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While in the closet, they heard two gunshots then heard Victim 1
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10 victim's residence. Mr. Carter stated that he did not have a gun,
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12 Due to the aforementioned factors, Mr. Carter was arrested
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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).

29 The one-year limit for preparing petitions for post-conviction relief under NRS 34.726
30 is strictly applied. In Gonzalez v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002), the
31 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
weapon or tear gas in the commission of any of the following
23 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 ^{January, 2020} day of ~~December~~, 2019.

8 
9 DISTRICT JUDGE

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

12 BY 
13 JOHN NIMAN
14 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 E. DEL PADRE
25 Secretary for the District Attorney's Office
26
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,
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 15, 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 15 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 Willie Carter # 1114323
P.O. Box 208
Indian Springs, NV 89070

26
27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk



1 FCL
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

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 WILLIE TERRY CARTER
13 #1114323

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C-13-292507-2

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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).

29 The one-year limit for preparing petitions for post-conviction relief under NRS 34.726
30 is strictly applied. In Gonzalez v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002), the
31 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
weapon or tear gas in the commission of any of the following
23 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 JOHN NIMAN
14 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 E. DEL PADRE
25 Secretary for the District Attorney's Office
26
27
28



1 **ORDR**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 WILLIAM J. MERBACK
6 Chief Deputy District Attorney
7 Nevada Bar #009126
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 WILLIE TERRY CARTER,
14 #5181937

15 Defendant.

CASE NO: A-19-804110-W

DEPT NO: XVIII

16 **ORDER DENYING DEFENDANT'S MOTION TO CORRECT**
17 **ILLEGAL SENTENCE**

18 DATE OF HEARING: January 09, 2020

19 TIME OF HEARING: 09:00 A.M.

20 THIS MATTER having come on for hearing before the above entitled Court on the
21 9th day of January, 2020, the Defendant not being present, REPRESENTED BY ANTHONY
22 M. GOLDSTEIN, ESQ., the Plaintiff being represented by STEVEN B. WOLFSON, District
23 Attorney, through WILLIAM J. MERBACK, Chief Deputy District Attorney, and the Court
24 without argument, based on the pleadings and good cause appearing therefor,

25 ///

26 ///

27 ///

28 ///

W:\2013\2013F\13793\13F13793-ORDR-(CARTER_WILLIE)-001.DOCX


1 IT IS HEREBY ORDERED that the Defendant's Motion to Correct Illegal Sentence,
2 shall be, and it is DENIED. The Motion had already been ruled upon and denied for the same
3 reason.

4 DATED this 30 day of January, 2020.

5 
6 DISTRICT JUDGE 

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

9
10 BY


11 WILLIAM L. MERBACK
12 Chief Deputy District Attorney
13 Nevada Bar #009126
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28 13F13793B/jh/GCU

Steven D. Grierson

1 Willie Carter #1114323

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

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

7
8
9 Willie Carter

10 Plaintiff,

11 vs.

12 the State of Nevada

13 Defendant.

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

14
15
16 **NOTICE OF APPEAL**

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

21 Habeas Corpus/Motion To Correct Illegal Sentence

22 _____
23 ruled on the 13th day of January, 2020.

24
25 Dated this 11th day of February, 2020.

26 Respectfully Submitted,

27 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. Defendants 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 NRS193.165
5 NRS193.165(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 NRS193.165(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 NRS193.165(5) speaks to what charges are not
20 probationable under Nevada law. NRS193.165(5)
21 does not ~~comp~~ 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.

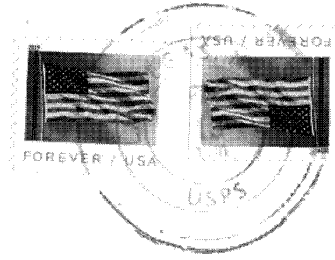
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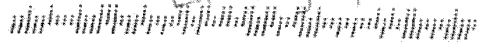
29

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



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

6910136300 0075



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

Electronically Filed
2/18/2020 10:21 AM
Steven D. Grierson
CLERK OF THE COURT

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



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 WILLIE TERRY CARTER,

10 Plaintiff(s),

11 vs.

12 THE STATE OF NEVADA,

13 Defendant(s),
14
15

Case No: A-19-804110-W

Dept No: XVIII

16
17 **CASE APPEAL STATEMENT**

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

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5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A
- Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A
6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No
7. Appellant Represented by Appointed Counsel On Appeal: N/A
8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A
***Expires 1 year from date filed*
Appellant Filed Application to Proceed in Forma Pauperis: No
Date Application(s) filed: N/A
9. Date Commenced in District Court: October 17, 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 19 day of February 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: Willie Carter

**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 and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated March 13, 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 48.

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 18 day of March 2020.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk