

Steven D. Grierson

Case No. A-19-793359

Dept. No. V

Electronically Filed
Sep 25 2019 01:14 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Clark

* * * * *

Luis Pimentel,)

Plaintiff,)

-vs-)

NOTICE OF APPEAL

WARDEN RAKE)

Defendant)

NOTICE IS GIVEN that Plaintiff, Pimentel, Luis,
in pro se, hereby appeals to the Nevada Supreme Court the
Finding of Fact, Conclusions of Law and Order
as filed/entered on the 16th day of August, 2019,
(complete if applicable) and the

, as filed/entered on the _____ day of
, 20____, in the above-entitled Court.

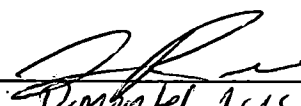
Dated this 20th day of August, 2019.

Luis Pimentel
Pimentel Luis O # 1144089
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Plaintiff In Pro Se

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the below address(es) on this 20th day of August, 20 19, by placing same in the U.S. Mail via prison law library staff:


Luis Pimentel # 1144380
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Plaintiff In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding NOTICE OF APPEAL filed in District Court Case No. A-19-793359 does not contain the social security number of any person.

Dated this 20th day of August, 20 19.

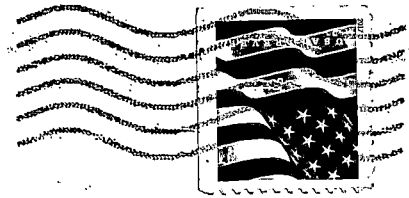

Luis Pimentel

Plaintiff In Pro Se

Luis Pimentel #11440669
L.C.C.
1200 Prison Rd
Las Vegas, NEV 89119

RENO NV 895

10 SEP 2019 PM 2 T



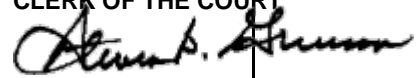
**INMATE LEGAL
MAIL CONFIDENTIAL**

Clerk of Courts
Dept V
Regional Justice Center
200 Lewis Ave
Las Vegas NEV 89110

LCOLAW LIBRARY

SEP 09 2019

RECEIVED



1 ASTA

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3
4
5
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**

9 LUIS PIMENTEL,

10 Plaintiff(s),

11 vs.

12 WARDEN BAKER,

13 Defendant(s),

Case No: A-19-793359-W

Dept No: V

14
15
16 **CASE APPEAL STATEMENT**

17 1. Appellant(s): Luis Pimentel

18 2. Judge: Carolyn Ellsworth

19 3. Appellant(s): Luis Pimentel

20 Counsel:

21 Luis Pimentel #1144889
22 1200 Prison Rd.
23 Lovelock, NV 89419

24 4. Respondent (s): Warden Baker

25 Counsel:

26 Steven B. Wolfson, District Attorney
27 200 Lewis Ave.
28 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**: Yes, June 4, 2019

8 **Expires 1 year from date filed

9 Appellant Filed Application to Proceed in Forma Pauperis: N/A

10 Date Application(s) filed: N/A

11 9. Date Commenced in District Court: April 22, 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 September 2019.

19 Steven D. Grierson, Clerk of the Court

20 /s/ Heather Ungermann

21 Heather Ungermann, Deputy Clerk

22 200 Lewis Ave

23 PO Box 551601

24 Las Vegas, Nevada 89155-1601

25 (702) 671-0512

26 cc: Luis Pimentel

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-19-793359-W

Luis Pimentel, Plaintiff(s)
vs.
Warden Baker, Defendant(s)

§
§
§
§
§

Location: **Department 5**
 Judicial Officer: **Ellsworth, Carolyn**
 Filed on: **04/22/2019**
 Cross-Reference Case Number: **A793359**

CASE INFORMATION

Related Cases

C-14-296234-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Case Status: **04/22/2019 Open**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-19-793359-W
 Court Department 5
 Date Assigned 04/22/2019
 Judicial Officer Ellsworth, Carolyn

PARTY INFORMATION

Plaintiff **Pimentel, Luis**

Pro Se


Defendant **Warden Baker**


DATE


EVENTS & ORDERS OF THE COURT


INDEX


EVENTS


04/22/2019  Inmate Filed - Petition for Writ of Habeas Corpus
 Party: Plaintiff Pimentel, Luis
Post Conviction


04/22/2019  Motion for Appointment of Attorney
 Filed By: Plaintiff Pimentel, Luis

04/22/2019  Application to Proceed in Forma Pauperis
 Filed By: Plaintiff Pimentel, Luis

05/16/2019  Order for Petition for Writ of Habeas Corpus
Order for Petition for Writ of Habeas Corpus

06/04/2019  Order to Proceed In Forma Pauperis
 Granted for: Plaintiff Pimentel, Luis

07/01/2019  Opposition
 Filed By: Plaintiff Pimentel, Luis
State's Opposition to Petitioner's Petition for Post-Conviction Relief

08/16/2019  Findings of Fact, Conclusions of Law and Order
 Filed By: Plaintiff Pimentel, Luis

CASE SUMMARY
CASE NO. A-19-793359-W

08/19/2019



Notice of Entry

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

09/16/2019



Notice of Appeal

Notice of Appeal

09/19/2019



Case Appeal Statement

Filed By: Plaintiff Pimentel, Luis

Case Appeal Statement

HEARINGS

07/22/2019



Petition for Writ of Habeas Corpus (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Denied;

Journal Entry Details:

APPEARANCES: Vivian Luong, Deputy District Attorney, present. Deft. not present; in Nevada Department of Corrections (NDC). COURT NOTED, in addition to the Petition for Writ of Habeas Corpus, the Deft. also filed a motion to appoint counsel. COURT ORDERED, Petition summarily DENIED as time barred, further NOTING it was not addressing anything on the merits; and FURTHER ORDERED, motion to appoint counsel summarily DENIED. State to prepare the orders. NDC CLERK'S NOTE: A copy of the foregoing minute order was distributed via general mail to the following person: Luis Pimentel #1144809 NDOC Lovelock Correctional Center 1200 Prison Road Lovelock, Nevada 89419 (7/31/19 jmv) ;

DISTRICT COURT CIVIL COVER SHEET

A-19-793359-W

County, Nevada

Dept. V

Case No.

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone): Luis Pimentel	Defendant(s) (name/address/phone): Warden Baker
Attorney (name/address/phone):	Attorney (name/address/phone):

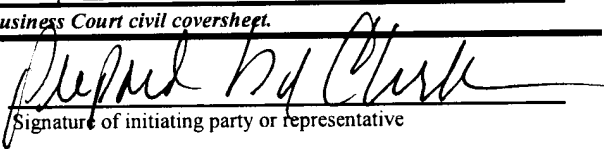
II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

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 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 Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

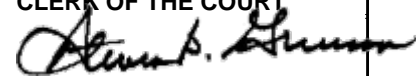
Business Court filings should be filed using the Business Court civil coversheet.

April 22, 2019

Date


 Signature of initiating party or representative

See other side for family-related case filings.



1 FCL

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 LUIS PIMENTEL, aka,
5 Luis Godofredo Pimentel, III,
#1444838

6 Petitioner,

7 -vs-

8 THE STATE OF NEVADA

9 Respondent.

CASE NO: A-19-793359-W
DEPT NO: V

10 **FINDINGS OF FACT, CONCLUSIONS OF**
11 **LAW AND ORDER**

12 DATE OF HEARING: JULY 22, 2019
13 TIME OF HEARING: 8:30 AM

14 THIS CAUSE having come on for hearing before the Honorable CAROLYN
15 ELLSWORTH, District Judge, on the 22nd day of July, 2019, the petitioner not being
16 present, PROCEEDING IN PROPER PERSON, the respondent being represented by
17 STEVEN B. WOLFSON, Clark County District Attorney, by and through VIVIAN
18 LUONG, Chief Deputy District Attorney, and the Court having considered the matter
19 without argument, now therefore, the Court makes the following findings of fact and
20 conclusions of law:

21 **PROCEDURAL HISTORY**

22 On February 28, 2014, the State filed an Information charging Luis Pimentel
23 ("Petitioner") with Count 1 – Murder with Use of a Deadly Weapon (Category A Felony –
24 NRS 200.010, 200.030.1, 193.165) and Count 2 – Carrying Concealed Firearm or Other
25 Deadly Weapon (Category C Felony – NRS 202.350(1)(d)(3)).

26 On July 9, 2014, Petitioner filed a pre-trial Petition for Writ of Habeas Corpus. The
27 State filed its Return on July 25, 2014. Petitioner filed his Reply on August 6, 2014. On

28 //

1 August 11, 2014, the court denied the Petition. The court entered the Order on August 27,
2 2014. On August 19, 2014, Petitioner filed an Emergency Petition for Writ of
3 Prohibition/Mandamus. Subsequently, the State filed its Answer. On September 24, 2014,
4 the Nevada Supreme Court filed an Order Granting Petition in Part, ordering that the
5 Challenge-to-Fight language be stricken from the Information because it was not sufficiently
6 pleaded. On October 6, 2014, the State filed a Motion to Amend Information to specifically
7 plead the Challenge-to-Fight theory of liability. Petitioner filed his Opposition on October
8 15, 2014. The State filed its Reply on October 17, 2014. The court granted the State's
9 Motion to Amend on October 22, 2014. On May 4, 2015, the State filed an Amended
10 Information with the same charges and clarified the challenge-to-fight theory pursuant to the
11 Nevada Supreme Court order.

12 On September 8, 2014, Petitioner filed a Motion to Suppress Defendant's Statement.
13 The State filed its Opposition on September 18, 2014. The court held a hearing and denied
14 Petitioner's Motion on October 7, 2014.

15 On May 11, 2015, Petitioner's jury trial commenced. On May 27, 2015, the jury
16 found Petitioner guilty of First Degree Murder with Use of a Deadly Weapon and not guilty
17 of Carrying Concealed Firearm or Other Deadly Weapon. On July 17, 2015, the court
18 sentenced Petitioner to 20 to 50 years, plus a consecutive term of 32 to 144 months for the
19 deadly weapon enhancement. The court entered the Judgment of Conviction on August 7,
20 2015.

21 Petitioner filed his Notice of Appeal on August 25, 2015. After the parties completed
22 briefing, the Nevada Supreme Court issued a unanimous En Banc order affirming
23 Petitioner's Judgment of Conviction on June 22, 2017. On July 6, 2017, Petitioner filed a
24 Petition for Rehearing. After briefing, the Nevada Supreme Court denied Petitioner's appeal
25 on December 19, 2017. On January 17, 2018, remittitur issued. The district court received
26 the remittitur on January 25, 2018. Petitioner executed and mailed his Petition for Writ of
27 Habeas Corpus on March 20, 2019. The Petitioner filed his Petition about a month later, on

28 //

1 April 22, 2019. The State filed an Opposition to the Petition on July 1, 2019. The Petition
2 came up for hearing before the Court on July 22, 2019.

3 ANALYSIS

5 **I. THE PETITION IS TIME-BARRED AND MUST BE DENIED**

6 Petitioner's Petition for Writ of Habeas Corpus is time barred with no good cause
7 shown for delay. Pursuant to NRS 34.726(1):

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

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

18 The Supreme Court of Nevada has held that NRS 34.726 should be construed by its
19 plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per
20 the language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run
21 from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is
22 filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

23 The one-year time limit for preparing petitions for post-conviction relief under NRS
24 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
25 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
26 evidence presented by the defendant that he purchased postage through the prison and mailed
27 the Notice within the one-year time limit.

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

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conviction habeas petitions is mandatory,” noting:

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

Id. Additionally, the Court noted that procedural bars “cannot be ignored [by the district court] when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court has granted no discretion to the district courts regarding whether to apply the statutory procedural bars; the rules *must* be applied.

Petitioner’s Petition is time barred. After the parties completed briefing, the Nevada Supreme Court issued a unanimous En Banc order affirming Petitioner’s Judgment of Conviction on June 22, 2017. On July 6, 2017, Petitioner filed a Petition for Rehearing. After briefing, the Nevada Supreme Court denied Petitioner’s Petition on December 19, 2017. On January 17, 2018, remittitur issued. The district court received the remittitur on January 25, 2018. Petitioner executed and mailed his Petition for Writ of Habeas Corpus on March 20, 2019. The Petitioner filed his Petition about a month later, on April 22, 2019. Petitioner had until January 18, 2019, to Petition the Court. By either measure, mail date or file date, Petitioner failed to petition the Court in time.

The Court finds that the Petition for Writ of Habeas Corpus is time barred.

II. PETITIONER HAS NOT ASSERTED GOOD CAUSE SUFFICIENT TO OVERCOME THE PROCEDURAL BARS

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

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

3 Petitioner does not assert good cause sufficient to overcome the time bar. Petitioner
4 had all of the facts and law available to him at the appropriate times to file his Petition
5 timely. But instead, Petitioner slept on his rights. The Court will not reward this dilatory
6 conduct. Petitioner alleges that that he “was told” that he had to wait after the resolution of
7 his Motion for Rehearing. Petition at 5. It is true that Petitioner needed to wait until the
8 resolution of his Petition for Rehearing to file the instant Petition. Until the Nevada Supreme
9 Court issued the remittitur, the Court would be without jurisdiction to entertain a Petition for
10 Writ of Habeas Corpus. This true statement aside, knowledge of the Petition for Rehearing
11 cannot constitute good cause to overcome the time bar because it is not an impediment
12 external to the defense and is not a relevant trigger event of the one-year period. Petitioner
13 had from January 2018 until January 2019 to file his Petition for Writ of Habeas Corpus and
14 he did not. This time period had nothing to do with the denial of his Petition for Rehearing.
15 The Petition for Rehearing did not prevent him from petitioning the Court during this year
16 after the Nevada Supreme Court decided his Petition for Rehearing.

17 The Court finds that Petitioner has not advanced good cause to overcome the time bar.

18 **III. THE COURT DECLINES TO EXERCISE ITS DISCRETION TO** 19 **APPOINT COUNSEL FOR PETITIONER**

20 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in
21 post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546,
22 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the
23 Nevada Supreme Court similarly observed that “[t]he Nevada Constitution...does not
24 guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada
25 Constitution’s right to counsel provision as being coextensive with the Sixth Amendment to
26 the United States Constitution.” McKague specifically held that with the exception of NRS
27 34.820(1)(a) (entitling appointed counsel when petitioner is under a sentence of death), one
28 //

1 does not have “any constitutional or statutory right to counsel at all” in post-conviction
2 proceedings. Id. at 164, 912 P.2d at 258.

3 However, the Nevada Legislature has given courts the discretion to appoint post-
4 conviction counsel so long as “the court is satisfied that the allegation of indigency is true
5 and the petition is not dismissed summarily.” NRS 34.750. NRS 34.750 reads:

6 A petition may allege that the Defendant is unable to pay the costs
7 of the proceedings or employ counsel. If the court is satisfied that
8 the allegation of indigency is true and the petition *is not dismissed*
9 *summarily*, the court may appoint counsel at the time the court
10 orders the filing of an answer and a return. In making its
11 determination, the court may consider whether:

- 12 (a) The issues are difficult;
13 (b) The Defendant is unable to comprehend the proceedings;
14 or
15 (c) Counsel is necessary to proceed with discovery.


16 (emphasis added).

17 Under NRS 34.750, it is clear that the court has discretion in determining whether to
18 appoint counsel. Here, the Court declines to exercise its discretion to entertain counsel; this
19 Petition is not difficult to resolve: it is procedurally barred without sufficient good cause and
20 prejudice to ignore the procedural defaults.

21 **ORDER**

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

24 DATED this 16th day of August, 2019.

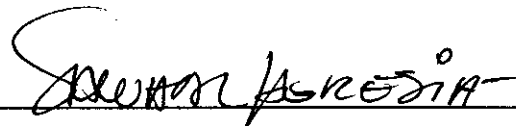
25 
26 DISTRICT JUDGE
27
28

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on or about the date filed he served the foregoing Order by faxing, mailing, or electronically serving a copy to counsel as listed below:

STEVEN B. WOLFSON
Johnathan Vanboskerck, Esq.
Clark County District Attorney

Luis Pimentel #1144889
Lovelock Correctional Center
1200 Prison Rd
Lovelock, NV 89419
Defendant



Sal Heredia, Relief Judicial Executive Assistant

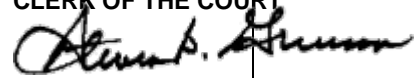
AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Order filed in District Court case number A793359 **DOES NOT** contain the social security number of any person.

/s/ Carolyn Ellsworth

Date 8/16/19 *SH*



NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LUIS PIMENTEL,

Petitioner,

vs.

WARDEN BAKER,

Respondent,

Case No: A-19-793359-W

Dept No: V

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

PLEASE TAKE NOTICE that on August 16, 2019, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on August 19, 2019.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Debra Donaldson

Debra Donaldson, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

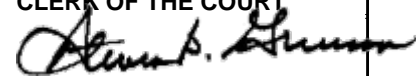
I hereby certify that on this 19 day of August 2019, I served a copy of this Notice of Entry on the following:

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

☒ The United States mail addressed as follows:
Luis Pimentel # 1144889
1200 Prison Rd.
Lovelock, NV 89419

/s/ Debra Donaldson

Debra Donaldson, Deputy Clerk



1 FCL

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 LUIS PIMENTEL, aka,
5 Luis Godofredo Pimentel, III,
#1444838

6 Petitioner,

7 -vs-

8 THE STATE OF NEVADA

9 Respondent.

CASE NO: A-19-793359-W
DEPT NO: V

10 **FINDINGS OF FACT, CONCLUSIONS OF**
11 **LAW AND ORDER**

12 DATE OF HEARING: JULY 22, 2019
13 TIME OF HEARING: 8:30 AM

14 THIS CAUSE having come on for hearing before the Honorable CAROLYN
15 ELLSWORTH, District Judge, on the 22nd day of July, 2019, the petitioner not being
16 present, PROCEEDING IN PROPER PERSON, the respondent being represented by
17 STEVEN B. WOLFSON, Clark County District Attorney, by and through VIVIAN
18 LUONG, Chief Deputy District Attorney, and the Court having considered the matter
19 without argument, now therefore, the Court makes the following findings of fact and
20 conclusions of law:

21 **PROCEDURAL HISTORY**

22 On February 28, 2014, the State filed an Information charging Luis Pimentel
23 ("Petitioner") with Count 1 – Murder with Use of a Deadly Weapon (Category A Felony –
24 NRS 200.010, 200.030.1, 193.165) and Count 2 – Carrying Concealed Firearm or Other
25 Deadly Weapon (Category C Felony – NRS 202.350(1)(d)(3)).

26 On July 9, 2014, Petitioner filed a pre-trial Petition for Writ of Habeas Corpus. The
27 State filed its Return on July 25, 2014. Petitioner filed his Reply on August 6, 2014. On

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1 August 11, 2014, the court denied the Petition. The court entered the Order on August 27,
2 2014. On August 19, 2014, Petitioner filed an Emergency Petition for Writ of
3 Prohibition/Mandamus. Subsequently, the State filed its Answer. On September 24, 2014,
4 the Nevada Supreme Court filed an Order Granting Petition in Part, ordering that the
5 Challenge-to-Fight language be stricken from the Information because it was not sufficiently
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8 15, 2014. The State filed its Reply on October 17, 2014. The court granted the State's
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18 sentenced Petitioner to 20 to 50 years, plus a consecutive term of 32 to 144 months for the
19 deadly weapon enhancement. The court entered the Judgment of Conviction on August 7,
20 2015.

21 Petitioner filed his Notice of Appeal on August 25, 2015. After the parties completed
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23 Petitioner's Judgment of Conviction on June 22, 2017. On July 6, 2017, Petitioner filed a
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1 April 22, 2019. The State filed an Opposition to the Petition on July 1, 2019. The Petition
2 came up for hearing before the Court on July 22, 2019.

3 ANALYSIS

5 **I. THE PETITION IS TIME-BARRED AND MUST BE DENIED**

6 Petitioner's Petition for Writ of Habeas Corpus is time barred with no good cause
7 shown for delay. Pursuant to NRS 34.726(1):

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

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

18 The Supreme Court of Nevada has held that NRS 34.726 should be construed by its
19 plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per
20 the language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run
21 from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is
22 filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

23 The one-year time limit for preparing petitions for post-conviction relief under NRS
24 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
25 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
26 evidence presented by the defendant that he purchased postage through the prison and mailed
27 the Notice within the one-year time limit.

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

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conviction habeas petitions is mandatory,” noting:

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

Id. Additionally, the Court noted that procedural bars “cannot be ignored [by the district court] when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court has granted no discretion to the district courts regarding whether to apply the statutory procedural bars; the rules *must* be applied.

Petitioner’s Petition is time barred. After the parties completed briefing, the Nevada Supreme Court issued a unanimous En Banc order affirming Petitioner’s Judgment of Conviction on June 22, 2017. On July 6, 2017, Petitioner filed a Petition for Rehearing. After briefing, the Nevada Supreme Court denied Petitioner’s Petition on December 19, 2017. On January 17, 2018, remittitur issued. The district court received the remittitur on January 25, 2018. Petitioner executed and mailed his Petition for Writ of Habeas Corpus on March 20, 2019. The Petitioner filed his Petition about a month later, on April 22, 2019. Petitioner had until January 18, 2019, to Petition the Court. By either measure, mail date or file date, Petitioner failed to petition the Court in time.

The Court finds that the Petition for Writ of Habeas Corpus is time barred.

II. PETITIONER HAS NOT ASSERTED GOOD CAUSE SUFFICIENT TO OVERCOME THE PROCEDURAL BARS

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

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

3 Petitioner does not assert good cause sufficient to overcome the time bar. Petitioner
4 had all of the facts and law available to him at the appropriate times to file his Petition
5 timely. But instead, Petitioner slept on his rights. The Court will not reward this dilatory
6 conduct. Petitioner alleges that that he “was told” that he had to wait after the resolution of
7 his Motion for Rehearing. Petition at 5. It is true that Petitioner needed to wait until the
8 resolution of his Petition for Rehearing to file the instant Petition. Until the Nevada Supreme
9 Court issued the remittitur, the Court would be without jurisdiction to entertain a Petition for
10 Writ of Habeas Corpus. This true statement aside, knowledge of the Petition for Rehearing
11 cannot constitute good cause to overcome the time bar because it is not an impediment
12 external to the defense and is not a relevant trigger event of the one-year period. Petitioner
13 had from January 2018 until January 2019 to file his Petition for Writ of Habeas Corpus and
14 he did not. This time period had nothing to do with the denial of his Petition for Rehearing.
15 The Petition for Rehearing did not prevent him from petitioning the Court during this year
16 after the Nevada Supreme Court decided his Petition for Rehearing.

17 The Court finds that Petitioner has not advanced good cause to overcome the time bar.

18 **III. THE COURT DECLINES TO EXERCISE ITS DISCRETION TO** 19 **APPOINT COUNSEL FOR PETITIONER**

20 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in
21 post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546,
22 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the
23 Nevada Supreme Court similarly observed that “[t]he Nevada Constitution...does not
24 guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada
25 Constitution’s right to counsel provision as being coextensive with the Sixth Amendment to
26 the United States Constitution.” McKague specifically held that with the exception of NRS
27 34.820(1)(a) (entitling appointed counsel when petitioner is under a sentence of death), one
28 //

1 does not have “any constitutional or statutory right to counsel at all” in post-conviction
2 proceedings. Id. at 164, 912 P.2d at 258.

3 However, the Nevada Legislature has given courts the discretion to appoint post-
4 conviction counsel so long as “the court is satisfied that the allegation of indigency is true
5 and the petition is not dismissed summarily.” NRS 34.750. NRS 34.750 reads:

6 A petition may allege that the Defendant is unable to pay the costs
7 of the proceedings or employ counsel. If the court is satisfied that
8 the allegation of indigency is true and the petition *is not dismissed*
9 *summarily*, the court may appoint counsel at the time the court
10 orders the filing of an answer and a return. In making its
11 determination, the court may consider whether:

- 12 (a) The issues are difficult;
13 (b) The Defendant is unable to comprehend the proceedings;
14 or
15 (c) Counsel is necessary to proceed with discovery.


16 (emphasis added).

17 Under NRS 34.750, it is clear that the court has discretion in determining whether to
18 appoint counsel. Here, the Court declines to exercise its discretion to entertain counsel; this
19 Petition is not difficult to resolve: it is procedurally barred without sufficient good cause and
20 prejudice to ignore the procedural defaults.

21 **ORDER**

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

24 DATED this 16th day of August, 2019.

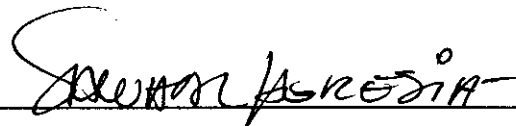
25 
26 DISTRICT JUDGE
27
28

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on or about the date filed he served the foregoing Order by faxing, mailing, or electronically serving a copy to counsel as listed below:

STEVEN B. WOLFSON
Johnathan Vanboskerck, Esq.
Clark County District Attorney

Luis Pimentel #1144889
Lovelock Correctional Center
1200 Prison Rd
Lovelock, NV 89419
Defendant




Sal Heredia, Relief Judicial Executive Assistant

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Order filed in District Court case number A793359 **DOES NOT** contain the social security number of any person.

/s/ Carolyn Ellsworth

Date 8/16/19 

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 22, 2019

A-19-793359-W	Luis Pimentel, Plaintiff(s) vs. Warden Baker, Defendant(s)
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July 22, 2019	9:00 AM	Petition for Writ of Habeas Corpus
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HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 16D

COURT CLERK: Jeanette Velazquez/jmv
Jill Chambers

RECORDER: Trisha Garcia

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- APPERANCES: Vivian Luong, Deputy District Attorney, present. Deft. not present; in Nevada Department of Corrections (NDC).

COURT NOTED, in addition to the Petition for Writ of Habeas Corpus, the Deft. also filed a motion to appoint counsel. COURT ORDERED, Petition summarily DENIED as time barred, further NOTING it was not addressing anything on the merits; and FURTHER ORDERED, motion to appoint counsel summarily DENIED. State to prepare the orders.

NDC

CLERK'S NOTE: A copy of the foregoing minute order was distributed via general mail to the following person:

Luis Pimentel #1144809
NDOC

PRINT DATE: 08/01/2019

Page 1 of 2

Minutes Date: July 22, 2019

A-19-793359-W

Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

(7/31/19 jmv)

Certification of Copy

State of Nevada }
County of Clark } SS:

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

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

LUIS PIMENTEL,

Plaintiff(s),

vs.

WARDEN BAKER,

Defendant(s),

Case No: A-19-793359-W

Dept No: V

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 September 2019.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk