

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS GODOREFO PIMENTEL, III,
Appellant(s),

vs.

RENEE BAKER; AND THE STATE OF
NEVADA,
Respondent(s),

Electronically Filed
Oct 14 2019 01:41 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-19-793359-W

Docket No: 79674

RECORD ON APPEAL

ATTORNEY FOR APPELLANT

LUIS PIMENTEL #1144889,
PROPER PERSON
1200 PRISON RD.
LOVELOCK, NV 89419

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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LCCL FORM 26.082

1 Case No. A-19-296234
2 Dept. No. 5

FILED
APR 22 2019
[Signature]
CLERK OF COURT

A-19-793359-W
Dept. V

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

8 * * * * *

9 Pimentel, Luis L)
10 Petitioner,)
11 -vs-)
12 Warden, Baker)
13 Respondent.)

PETITION FOR WRIT
OF HABEAS CORPUS
(POST-CONVICTION)

14 INSTRUCTIONS:

- 15 (1) This petition must be legibly handwritten or
16 typewritten, signed by the petitioner and verified.
- 17 (2) Additional pages are not permitted except where noted
18 or with respect to the facts which you rely upon to support your
19 grounds for relief. No citation of authorities need be
submitted in the form of a separate memorandum.
- 20 (3) If you want an attorney appointed, you must complete
21 the Affidavit in Support of Request to Proceed in Forma
22 Pauperis. You must have an authorized officer at the prison
23 complete the certificate as to the amount of money and
24 securities on deposit to your credit in any account in the
25 institution.
- 26 (4) You must name as respondent the person by whom you are
27 confined or restrained. If you are in a specific institution of
28 the Department of Corrections, name the warden or head of the
institution. If you are not in a specific institution of the
Department but within its custody, name the Director of the
Department of Corrections.
- (5) You must include all grounds or claims for relief which
you may have regarding your conviction or sentence. Failure to
raise all grounds in this petition may preclude you from filing

1 future petitions challenging your conviction and sentence.

2 (6) You must allege specific facts supporting the claims in
3 the petition you file seeking relief from any conviction or
4 sentence. Failure to allege specific facts rather than just
5 conclusions may cause your petition to be dismissed. If your
6 petition contains a claim of ineffective assistance of counsel,
7 that claim will operate to waive the attorney-client privilege
8 for the proceeding in which you claim your counsel was
9 ineffective.

10 (7) When the petition is fully completed, the original and
11 one copy must be filed with the clerk of the state district
12 court for the county in which you were convicted. One copy must
13 be mailed to the respondent, one copy to the Attorney General's
14 Office, and one copy to the district attorney of the county in
15 which you were convicted or to the original prosecutor if you
16 are challenging your original conviction or sentence. Copies
17 must conform in all particulars to the original submitted for
18 filing.

19 PETITION

20 1. Name of institution and county in which you are presently
21 imprisoned or where and how you are presently restrained of your
22 liberty: Lovelock Correctional Center, Pershing County, Nevada.

23 2. Name and location of court which entered the judgment of
24 conviction under attack: 8th Judicial District Ct
25 Clark County Las Vegas Nev

26 3. Date of judgment of conviction: 6-04-2015

27 4. Case number: C-14-296234-1

28 5. (a) Length of sentence: 20-50 years 2

(b) If sentence is death, state any date upon which
execution is scheduled: N/A

6. Are you presently serving a sentence for a conviction
other than the conviction under attack in this motion?

Yes ☐ No ☒

If "yes," list crime, case number and sentence being
served at this time:

7. Nature of offense involved in conviction being challenged:
1st degree Murder

8. What was your plea? (check one)

- 1
2 (a) Not guilty ☒
3 (b) Guilty _____
4 (c) Guilty but mentally ill _____
5 (d) Nolo contendere _____

6 9. If you entered a plea of guilty or guilty but mentally ill
7 to one count of an indictment or information, and a plea of not
8 guilty to another count of an indictment or information, or if a
9 plea of guilty or guilty but mentally ill was negotiated, give
10 details: _____
11 _____
12 _____

13 10. If you were found guilty or guilty but mentally ill after
14 a plea of not guilty, was the finding made by: (check one)

15 (a) Jury ☒ (b) Judge without a jury _____

16 11. Did you testify at the trial? Yes ☒ No _____

17 12. Did you appeal from the judgment of conviction?

18 Yes ☒ No _____

19 13. If you did appeal, answer the following:

20 (a) Name of court: Nevada Supreme Court

21 (b) Case number or citation: _____

22 (c) Result: Reversed Decision Affirmed

23 (d) Date of result: June 22, 2017

(Attach copy of order or decision, if available.)

24 14. If you did not appeal, explain briefly why you did not:

25 Public defender didn't clarify why

26 15. Other than a direct appeal from the judgment of conviction
27 and sentence, have you previously filed any petitions,
28 applications or motions with respect to this judgment in any
court, state or federal? Yes ☒ No _____

16. If your answer to No. 15 was "yes," give the following
information:

23 (a) (1) Name of court: Nevada Supreme Court

24 (2) Nature of proceeding: Motion for rehearing

25 (3) Grounds raised: Court overruled, ignored, misapprehended
26 material facts

27 (4) Did you receive an evidentiary hearing on your
28 petition, application or motion? Yes _____ No ☒

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(5) Result: Denied

(6) Date of result: N/A never received literature

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: MA
never received literature

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: _____

(2) Nature of proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ___ No ___

(5) Result: _____

(6) Date of result: _____

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: _____

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion? Yes ___ No ___

Citation or date of decision: _____

(2) Second petition, application or motion? Yes ___ No ___

Citation or date of decision: _____

(3) Third or subsequent petitions, applications or motions? Yes ___ No ___

Citation or date of decision: _____

1 (e) If you did not appeal from the adverse action on any
2 petition, application or motion, explain briefly why you did
3 not. (You must relate specific facts in response to this
4 question. Your response may be included on paper which is 8 1/2
by 11 inches attached to the petition. Your response may not
exceed five handwritten or typewritten pages in length.)

5
6 17. Has any ground being raised in this petition been
7 previously presented to this or any other court by way of
8 petition for habeas corpus, motion, application or any other
postconviction proceeding? If so, identify:

9 (a) Which of the grounds is the same: _____

10 (b) The proceedings in which these grounds were raised:
11 _____

12 (c) Briefly explain why you are again raising these
13 grounds. (You must relate specific facts in response to this
14 question. Your response may be included on paper which is 8 1/2
by 11 inches attached to the petition. Your response may not
exceed five handwritten or typewritten pages in length.)

15
16 18. If any of the grounds listed in Nos. 23(a), (b), (c) and
17 (d), or listed on any additional pages you have attached, were
18 not previously presented in any other court, state or federal,
19 list briefly what grounds were not so presented, and give your
20 reasons for not presenting them. (You must relate specific facts
in response to this question. Your response may be included on
paper which is 8 1/2 by 11 inches attached to the petition. Your
response may not exceed five handwritten or typewritten pages in
length.)

21 *23, trial attorney felt it "unnecessary"*
24, appeal attorney didn't want to list too many
grounds

22 19. Are you filing this petition more than 1 year following
23 the filing of the judgment of conviction or the filing of a
24 decision on direct appeal? If so, state briefly the reasons for
25 the delay. (You must relate specific facts in response to this
question. Your response may be included on paper which is 8 1/2
by 11 inches attached to the petition. Your response may not
exceed five handwritten or typewritten pages in length.)

26 *was held 1 had extensive after a motion for rehearing*

27
28 20. Do you have any petition or appeal now pending in any
court, either state or federal, as to the judgment under attack?

1
2 Yes ____ No ____

3 If yes, state what court and the case number: _____

4 21. Give the name of each attorney who represented you in the
5 proceeding resulting in your conviction and on direct appeal:

6 Irish, Lemcke, Money, Slife, Conner - direct appeal William
Winters

7 22. Do you have any future sentences to serve after you
8 complete the sentence imposed by the judgment under attack?

9 Yes ____ No X

10 If yes, specify where and when it is to be served, if you
11 know: _____

12 23. State concisely every ground on which you claim that you
13 are being held unlawfully. Summarize briefly the facts
14 supporting each ground. If necessary you may attach pages
15 stating additional grounds and facts supporting same.

16 (a) Ground one: State witnesses Holland, Schizer, and
17 Hilderbrand gave contradicting testimony which should have
18 resulted in mistrial

19 Supporting FACTS (Tell your story briefly without
20 citing cases or law.): During trial State witnesses & direct
21 eyewitnesses' Holland, Schizer, Hilderbrand gave blatantly
22 contradicting & inconsistent testimonies & accounts of events
23 which should have warranted a mistrial.

24 (b) Ground two: ineffective assistance of counsel,

25 Supporting FACTS (Tell your story briefly without
26 citing cases or law.): trial counsel ~~was~~ advised against
27 objecting to or noting state witnesses inconsistent testimony.

(c) Ground three: ineffective assistance of counsel.

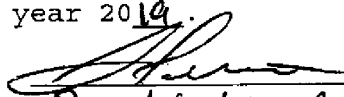
Supporting FACTS (Tell your story briefly without citing cases or law.): appeal attorney failed to bring up rulings in which higher courts have ruled on illegality of laws prohibiting a self-defense, defense when there is evidence to show.

(d) Ground four: ineffective assistance of counsel

Supporting FACTS (Tell your story briefly without citing cases or law.): appeal attorney never refuted defendant of conclusion of rehearing motion.

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

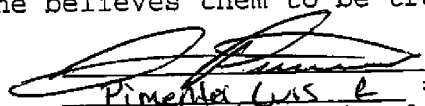
EXECUTED at Lovelock Correctional Center on the 20 day of the month of March of the year 2019.


Pimentel Luis E. #11446119
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

1 VERIFICATION

2 Under penalty of perjury, the undersigned declares that he
3 is the petitioner named in the foregoing petition and knows the
4 contents thereof; that the pleading is true of his own
5 knowledge, except as to those matters stated on information and
6 belief, and as to such matters he believes them to be true.

7 
8 Pimentel Luis E # 1144889
9 Lovelock Correctional Center
10 1200 Prison Road
11 Lovelock, Nevada 89419

12 Petitioner In Pro Se

13 CERTIFICATE OF SERVICE BY MAIL

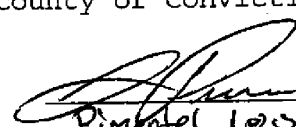
14 I, Pimentel Luis E, hereby certify, pursuant to
15 N.R.C.P. 5(b), that on this 20th day of the month of
16 March of the year 2019, I mailed a true and correct
17 copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS
18 addressed to:

19 Warden Baker
20 Lovelock Correctional Center
21 1200 Prison Road
22 Lovelock, Nevada

23 Adam Paul Laxal
24 Nevada Attorney General
25 100 N. Carson Street
26 Carson City, Nevada 89701-4717

27 JAM Wolfson
28 Clerk County District Attorney
29 300 LEONAS AVE
30 LAS VEGAS, Nevada 89155

31 (District Attorney of County of Conviction)

32 
33 Pimentel Luis E # 1144889
34 Lovelock Correctional Center
35 1200 Prison Road
36 Lovelock, Nevada 89419

37 Petitioner In Pro Se

Lot's Printed Matter
L.C.C.
1300 Prison St
Levecke, Nev 89419



Eight Judicial District Court
Clark County
Civil Division
200 Lewis Ave
Las Vegas, Nev 89155-2311

INMATE LEGAL

U.S. MAIL PERMIT NO. 1000 LAS VEGAS, NEV

Case No. A-14-206234-1Dept. No. 5**FILED**

APR 22 2019

Alvin L. Blum
CLERK OF COURTIN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADAIN AND FOR THE COUNTY OF Clerk

* * * * *

Pimentel, Luis A,)

Petitioner,)

-vs-)

Werden Baker,)

Respondent.)

A-19-793359-W
Dept. VMOTION FOR APPOINTMENT
OF COUNSEL

COMES NOW Petitioner, Pimentel, Luis, in pro se,
and moves the Court for an order appointing counsel in the
instant petition for writ of habeas corpus (post-conviction).

This motion is made and based upon NRS 34.750; all papers,
pleadings and documents on file herein; and the points and
authorities below.

POINTS AND AUTHORITIES

Petitioner is unable to afford counsel. See Application to
Proceed In Forma Pauperis on file herein.

The substantive issues and procedural requirements of this
case are difficult and incomprehensible to Petitioner.

Petitioner, due to his incarceration, cannot investigate,
take depositions or otherwise proceed with discovery herein.

Petitioner's sentence is: 20-50 years.

1 There ___ are ___ are not additional facts in support of
2 this motion attached hereto on separate page(s).

3 Counsel would assist Petitioner with a clearer presentation
4 of his issues before this Court and would likewise facilitate
5 and ease this Court's task of discerning the issues and
6 adjudicating same upon their merits.

7 Discretion lies with the Court to appoint counsel under NRS
8 34.750. Crump v. Warden, 113 Nev. 293, 934 P.2d 247, 254
9 (1997). The Court is to consider: (1) the complexity of the
10 issues; (2) whether Petitioner comprehends the issues; (3)
11 whether counsel is necessary to conduct discovery; and (4) the
12 severity of Petitioner's sentence. NRS 34.750(1)-(1)(c).

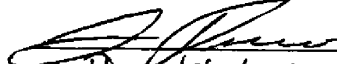
13 Under similar discretionary standards, Federal courts are
14 encouraged to appoint counsel when the interests of justice so
15 require - a showing which increases proportionately with the
16 increased complexities of the case and the penalties involved in
17 the conviction. Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir.
18 1986). Attorneys should be appointed for indigent petitioners
19 who cannot "adequately present their own cases." Jeffers v.
20 Lewis, 68 F.3d 295, 297-98 (9th Cir. 1995).

21 Although Petitioner need meet but one (1) of the enumerated
22 criteria of NRS 34.750 in order to merit appointment of counsel,
23 he meets all of them. He also presents a classic example of one
24 meriting counsel under the interest of justice test bespoken by
25 the Ninth Circuit. Indeed, Petitioner's sentence, coupled with
26 the other factors set forth above, demonstrate that appointment
27 of counsel to him would not only satisfy justice, but
28 fundamental fairness, as well.

1 CONCLUSION

2 For the reasons set forth above, the Court should appoint
3 counsel to represent Petitioner in and for all further
4 proceedings in this habeas corpus action.

5 Dated this 20th day of March, 2019.

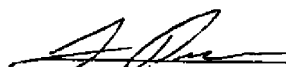
6 
7 Pimentel, Luis # 1144019
8 Lovelock Correctional Center
9 1200 Prison Road
10 Lovelock, Nevada 89419

11 Petitioner In Pro Se

12 CERTIFICATE OF SERVICE

13 I do certify that I mailed a true and correct copy of the
14 foregoing MOTION FOR APPOINTMENT OF COUNSEL to the below address
15 on this 20th day of March, 2019, by placing same
16 in the U.S. Mail via prison law library staff:


17 Attorney For Respondent

18 
19 Pimentel, Luis
20 Petitioner In Pro Se

21 AFFIRMATION PURSUANT TO NRS 239B.030

22 The undersigned does hereby affirm that the preceding
23 MOTION FOR APPOINTMENT OF COUNSEL DOES not contain the social
24 security number of any person.

25 Dated this 20th day of March, 2019.

26 
27 Pimentel, Luis
28 Petitioner In Pro Se

THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
13 - 17
WILL FOLLOW VIA
U.S. MAIL

27

FILED

MAY 16 2019

John L. Pimentel
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

1 PPOW

4 LUIS PIMENTEL,

5 *Petitioner,*

6 -vs-

7 WARDEN BAKER,

8 *Respondent,*

CASE NO: A-19-793359-W

(C-14-296234-1)

DEPT NO: V

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

10 Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on
11 April 22, 2019. The Court has reviewed the Petition and has determined that a response
12 would assist the Court in determining whether Petitioner is illegally imprisoned and
13 restrained of his/her liberty, and good cause appearing therefore,

14 **IT IS HEREBY ORDERED** that Respondent shall, within 45 days after the date of
15 filing this Order, answer or otherwise respond to the Petition and file a return in accordance
16 with the provisions of NRS 34.360 to 34.830, inclusive, and a printed courtesy copy
17 **SHALL** be delivered to chambers upon filing.

18 **IT IS HEREBY FURTHER ORDERED** that this matter shall be placed on this
19 Court's Calendar on Monday the 22nd day of July, 2019, at the hour of 9:00A.M. for further
20 proceedings.

21 DATED this 15th day of May, 2019.

22 *Carolyn Ellsworth*
23 CAROLYN ELLSWORTH
24 DISTRICT JUDGE

RECEIVED

MAY 16 2019

CLERK OF THE COURT

A - 19 - 793359 - W
OPWH
Order for Petition for Writ of Habeas Corpu
4836668



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DOCUMENT,
NUMBERED PAGE(S)
19
WILL FOLLOW VIA
U.S. MAIL



1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JONATHAN VANBOSKERCK
6 Chief Deputy District Attorney
7 Nevada Bar #006528
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Respondent

DISTRICT COURT
CLARK COUNTY, NEVADA

9 LUIS PIMENTEL, aka,
10 Luis Godofredo Pimentel, III,
11 #1444838

Petitioner,

-vs-

13 THE STATE OF NEVADA

14 Respondent.

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

15 **STATE'S OPPOSITION TO PETITIONER'S PETITION**
16 **FOR POST-CONVICTION RELIEF**

17 DATE OF HEARING: JULY 22, 2019
18 TIME OF HEARING: 9:00 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through JONATHAN VANBOSKERCK, Chief Deputy District Attorney,
21 and moves this Honorable Court for an order denying the Defendant's Petition for Post-
22 Conviction Relief heretofore filed in the above entitled matter.

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

26 ///

27 ///

28 ///

1
2 **POINTS AND AUTHORITIES**

3 **STATEMENT OF THE CASE**

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

8 On July 9, 2014, Petitioner filed a pre-trial Petition for Writ of Habeas Corpus. The
9 State filed its Return on July 25, 2014. Petitioner filed his Reply on August 6, 2014. On August
10 11, 2014, the court denied the Petition. The court entered the Order on August 27, 2014. On
11 August 19, 2014, Petitioner filed an Emergency Petition for Writ of Prohibition/Mandamus.
12 Subsequently, the State filed its Answer. On September 24, 2014, the Nevada Supreme Court
13 filed an Order Granting Petition in Part, ordering that the Challenge-to-Fight language be
14 stricken from the Information because it was not sufficiently pleaded. On October 6, 2014, the
15 State filed a Motion to Amend Information to specifically plead the Challenge-to-Fight theory
16 of liability. Petitioner filed his Opposition on October 15, 2014. The State filed its Reply on
17 October 17, 2014. The court granted the State's Motion to Amend on October 22, 2014. On
18 May 4, 2015, the State filed an Amended Information with the same charges and clarified the
19 challenge-to-fight theory pursuant to the Nevada Supreme Court order.

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

23 On May 11, 2015, Petitioner's jury trial commenced. On May 27, 2015, the jury found
24 Petitioner guilty of First Degree Murder with Use of a Deadly Weapon and not guilty of
25 Carrying Concealed Firearm or Other Deadly Weapon. On July 17, 2015, the court sentenced
26 Petitioner to 20 to 50 years, plus a consecutive term of 32 to 144 months for the deadly weapon
27 enhancement. The court entered the Judgment of Conviction on August 7, 2015.
28

Petitioner filed his Notice of Appeal on August 25, 2015. 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 appeal 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.

ARGUMENT

I. PETITIONER WAIVED HIS SUFFICIENCY OF THE EVIDENCE ARGUMENT BY NOT RAISING IT ON APPEAL

NRS 34.810(1) reads:

The court shall dismiss a petition if the court determines that:

(a) The petitioner's conviction was upon a plea of guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea was involuntarily or unknowingly or that the plea was entered without effective assistance of counsel.

(b) The petitioner's conviction was the result of a trial and the grounds for the petition could have been:

(2) Raised in a direct appeal or a prior petition for a writ of habeas corpus or postconviction relief.

The Nevada Supreme Court has held that “challenges to the validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must first be pursued in post-conviction proceedings.... [A]ll other claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be *considered waived in subsequent proceedings*.” Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)).

“A court must dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner.” *Evans v. State*, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001).

1 Petitioner's first claim is waived because it is not suitable for a Petition for Writ of
2 Habeas Corpus. Petitioner advances a veritable sufficiency of the evidence claim in Ground
3 one. Petition at 6. ("state witnesses...blatantly contradict[ed]...events which should have
4 warranted a mistrial."). This claim appears to sound in sufficient evidence and whether the
5 Court should have granted a mistrial. This claim should have been raised on direct appeal
6 because it does not allege ineffective assistance of counsel. Thus, Petitioner's claim is waived
7 as to this Petition.

8 Petitioner's Ground one is waived.

9
10 **II. THE PETITION IS TIME-BARRED AND MUST BE DENIED**

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

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

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

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

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

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

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

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

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

22 The Court must find that the Petition for Writ of Habeas Corpus is time barred.

23
24 **III. PETITIONER HAS NOT ASSERTED GOOD CAUSE SUFFICIENT TO**
25 **OVERCOME THE PROCEDURAL BARS**

26 A showing of good cause and prejudice may the overcome procedural bars. “To
27 establish good cause, defendants *must* show that an impediment external to the defense
28 prevented their compliance with the applicable procedural rule. A qualifying impediment

1 might be shown where the factual or legal basis for a claim was not reasonably available at
2 the time of default.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis
3 added). The Court continued, “appellants cannot attempt to manufacture good cause[.]” Id. at
4 621, 81 P.3d at 526. Examples of good cause include interference by State officials and the
5 previous unavailability of a legal or factual basis. See State v. Huebler, 128 Nev. Adv. Op. 19,
6 275 P.3d 91, 95 (2012).

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

21 The Court must find that Petitioner has not advanced good cause to overcome the time
22 bar.

23 **IV. PETITIONER HAS NOT DEMONSTRATED PREJUDICE SUFFICIENT**
24 **TO OVERCOME THE PROCEDURAL BARS**

25 In order to establish prejudice, the Petitioner must show “not merely that the errors of
26 [the proceedings] created possibility of prejudice, but that they worked to his actual and
27 substantial disadvantage, in affecting the state proceedings with error of constitutional
28

1 dimensions.” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United
2 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)).

3 Petitioner alleges four different grounds. Petition at 6-7.

4 **a. Petitioner’s Inconsistent Witness Claim, a Veritable Sufficiency of the**
5 **Evidence Claim, is a Bare and Naked Allegation that Cannot Constitute**
6 **Prejudice Sufficient to Overcome the Procedural Bars**

7 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the
8 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
9 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
10 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
11 be supported with specific factual allegations, which if true, would entitle the petitioner to
12 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”
13 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
14 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims
15 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your
16 petition to be dismissed.” (emphasis added).

17 Petitioner’s allegations in Ground one, Petition at 6, are no more than bare and naked
18 allegations suitable for summary denial under Hargrove. Despite alleging inconsistent
19 witnesses, Petitioner does not demonstrate how these witnesses were inconsistent nor does he
20 explain how these allegations would, if true, would have entitled him to any relief in this case.
21 Moreover, the jury reviewed the testimony of these allegedly inconsistent witnesses and still
22 convicted Petitioner. Petitioner cannot transform what is really a credibility determination into
23 relief here, subject to the jury’s decision and not review by the Court. Even if the witnesses
24 were inconsistent, *arguendo*, Petitioner offers no authority for the proposition that the jury
25 could not still convict him—and they still have that ability.

26 These allegations cannot constitute prejudice to overcome the procedural bars.

27 //

28

1 **b. Trial Counsel's Strategic Decision not to Challenge Alleged Inconsistent**
2 **Statements by Witnesses Cannot Serve as Prejudice Sufficient to**
3 **Overcome the Procedural Bars**

4 "There are countless ways to provide effective assistance in any given case. Even the
5 best criminal defense attorneys would not defend a particular client in the same way."
6 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. "Strategic choices made by counsel after
7 thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State,
8 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
9 P.2d 951, 953 (1989). In essence, the court must "judge the reasonableness of counsel's
10 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
11 conduct." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

12 Ground two cannot serve as prejudice. See Petition at 6. In this ground, Petitioner
13 informs the Court that his trial attorney "advised against objecting to or noting [that the]
14 state['s] witnesses inconsistent[ly] testified." Id. Petitioner's allegations, if taken as true by
15 the Court, are unreviewable strategic decisions that cannot constitute prejudice to overcome
16 the procedural bars. Moreover, Petitioner—again—does not demonstrate how these witnesses
17 were inconsistent nor does he explain how these allegations would, if true, entitle him to any
18 relief in this case. Petitioner fails to recognize the inherent reality that when to object at trial
19 is an art that most attorneys do differently. In other words, when to object is a determination
20 that cannot be reviewed by a court. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002)
21 (trial counsel has the "immediate and ultimate responsibility of deciding if and when to object,
22 which witnesses, if any, to call, and what defenses to develop."). Moreover, it is not clear that
23 the rules of evidence allow for an attorney to object for an inconsistency when compared to
24 other witnesses. Petitioner has not provided any authority for this proposition.

25 Ground two cannot serve as prejudice sufficient to overcome the procedural bars.

26 //

27 //

28 //

1 **c. Petitioner's Naked Allegation that Trial Counsel Ineffectively**
2 **Represented him on Appeal Cannot Serve as a Prejudice Sufficient to**
3 **Overcome the One-Year Time Bar**

4 There is a strong presumption that appellate counsel's performance was reasonable and
5 fell within "the wide range of reasonable professional assistance." See United States v.
6 Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990); citing Strickland, 466 U.S. at 689, 104 S. Ct. at
7 2065. A claim of ineffective assistance of appellate counsel must satisfy the two-prong test set
8 forth by Strickland. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). In order
9 to satisfy Strickland's second prong, the defendant must show that the omitted issue would
10 have had a reasonable probability of success on appeal. Id.

11 The professional diligence and competence required on appeal involves "winnowing
12 out weaker arguments on appeal and focusing on one central issue if possible, or at most on a
13 few key issues." Jones v. Barnes, 463 U.S. 745, 751-52, 103 S. Ct. 3308, 3313 (1983). In
14 particular, a "brief that raises every colorable issue runs the risk of burying good arguments .
15 . . in a verbal mound made up of strong and weak contentions." Id. at 753, 103 S. Ct. at 3313.
16 For judges to second-guess reasonable professional judgments and impose on appointed
17 counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very
18 goal of vigorous and effective advocacy." Id. at 754, 103 S. Ct. at 3314.

19 As a matter of law, Petitioner's allegations in Ground three cannot constitute prejudice
20 sufficient to overcome the procedural bars. Petitioner alleges in Ground three that his appellate
21 attorney failed to cite to other jurisdictions that have found that it is illegal to prohibit a self-
22 defense argument, apparently in his factual scenario. Petition at 7. Ignoring for the moment
23 that this allegation cannot escape Hargrove's reach—Petitioner does not inform the Court of
24 any decision from any jurisdiction for this proposition of law—an appellate attorney's job on
25 appeal is to narrow out weaker issues. It is unclear how citing other, non-binding,
26 jurisdictions, likely not interpreting Nevada law, would have—at all—changed the result of
27 the proceeding on appeal. This type of argument would have been comparing apples to
28 automobiles.

1 This issue looks even weaker when reviewing the appellate brief filed by Appellate
2 counsel at the Nevada Supreme Court. The record on appeal shows that Petitioner's appellate
3 counsel did challenge the trial court's denial of a self-defense instruction in the Opening Brief,
4 by trying to distinguish Petitioner's factual scenario from—binding—Nevada case law. Luis
5 PETITIONER, Appellant, v. THE STATE OF NEVADA, Respondent., 2016 WL 1298579
6 (Nev.), 43. Appellate counsel wisely chose to not attempt to convince the Nevada Supreme
7 Court to rely on irrelevant and non-binding case law where Nevada case law bound the court,
8 case law interpreting Nevada authority, and instead wisely focused on squarely addressing
9 existing binding case law and distinguishing Petitioner's factual scenario.

10 Petitioner's allegations in Ground three come woefully short of providing prejudice to
11 overcome the procedural bars.

12 **d. Petitioner's Bare and Naked Allegation that Appellate Counsel did not**
13 **Inform him of the Denial of his Petition for Re-Hearing Cannot Serve as**
14 **Prejudice to Overcome the Procedural Bars**

15 The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the
16 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
17 the evidence." Means, 120 Nev. at 1012, 103 P.3d at 33. Furthermore, claims of ineffective
18 assistance of counsel asserted in a petition for post-conviction relief must be supported with
19 specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove, 100
20 Nev. at 502, 686 P.2d at 225.

21 Petitioner's allegations in Ground four do not, if true, entitle him to relief. Accepting
22 Petitioner's allegations as true in Ground four, that he did not receive notice of the Nevada
23 Supreme Court's denial of his Petition for Rehearing, Petition at 4. This event is not relevant
24 whatsoever to his Petition for Writ of Habeas Corpus. Petitioner appears to be trying to create
25 a separate claim out of his good cause allegation as it is nearly identical to the reason he
26 proffered as good cause to overcome the time bar. Petition at 4. But the Petition for Rehearing
27 is not relevant to any stand-alone claim of ineffective assistance of counsel because it does not
28 relate to the merits of his case. And even looking at Ground four in the context of good cause

1 it is not relevant: the remittitur is the triggering event for the time to run on the procedural
2 bars—not the Petition for Rehearing. NRS 34.726(1).

3 Petitioner’s Ground four cannot establish prejudice to overcome the procedural bar.

4 **V. THE COURT SHOULD NOT EXERCISE ITS DISCRETION TO APPOINT**
5 **COUNSEL**

6 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-
7 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566
8 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada
9 Supreme Court similarly observed that “[t]he Nevada Constitution...does not guarantee a right
10 to counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right to
11 counsel provision as being coextensive with the Sixth Amendment to the United States
12 Constitution.” McKague specifically held that with the exception of NRS 34.820(1)(a)
13 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
14 “any constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at
15 164, 912 P.2d at 258.

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

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

- 22 (a) The issues are difficult;
23 (b) The Defendant is unable to comprehend the proceedings;
24 or
(c) Counsel is necessary to proceed with discovery.

25 (emphasis added).

26 Under NRS 34.750, it is clear that the court has discretion in determining whether to
27 appoint counsel. It should deny the Motion as this Petition will not be difficult to resolve since
28

1 it is procedurally barred without sufficient good cause and prejudice to ignore the procedural
2 defaults.

3 **CONCLUSION**

4 For the foregoing reasons, the Court should deny Petitioner's relief.

5 DATED this / day of July, 2019.

6 Respectfully submitted,

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

10 BY

Jonathan VanBoskerck

11 JONATHAN VANBOSKERCK
12 Chief Deputy District Attorney
13 Nevada Bar #006528

14 **CERTIFICATE OF MAILING**

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

18 LUIS PIMENTEL BAC #1144889
19 LOVELOCK CORRECTIONAL CENTER
20 1200 PRISON ROAD
21 LOVELOCK, NEVADA 89419

22 BY

J. Robertson

23 J. ROBERTSON
24 Secretary for the District Attorney's Office

25
26
27
28 13F20476X/JEV/ea/L-1



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**

4
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
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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.

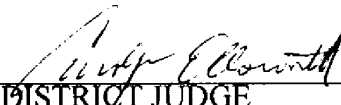
16 (emphasis added).

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.

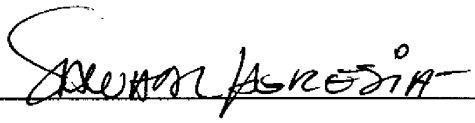
25 
26 DISTRICT JUDGE
27
28

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 



1 NEO

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 LUIS PIMENTEL,

6 Petitioner,

Case No: A-19-793359-W

Dept No: V

7 vs.

8 WARDEN BAKER,

9 Respondent,

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

10
11 PLEASE TAKE NOTICE that on August 16, 2019, the court entered a decision or order in this matter, a
12 true and correct copy of which is attached to this notice.

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

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Debra Donaldson

18 Debra Donaldson, Deputy Clerk

19 CERTIFICATE OF E-SERVICE / MAILING

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

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

24 ☒ The United States mail addressed as follows:
25 Luis Pimentel # 1144889
26 1200 Prison Rd.
Lovelock, NV 89419

27 /s/ Debra Donaldson

28 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
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

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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

4 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
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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.

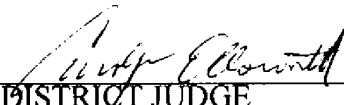
16 (emphasis added).

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.

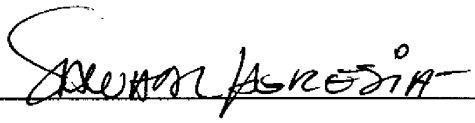
25 
26 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

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 

Steven D. Grierson

Case No. A-19-793359

Dept. No. V

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

* * * * *

Luis Pimentel,)
Plaintiff,)
-VS-)
WARDEN PAKE)
Defendant__)

NOTICE OF APPEAL

NOTICE IS GIVEN that Plaintiff, Pimentel, Luis,
in pro se, hereby appeals to the Nevada Supreme Court the
Findings 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 #1114489
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Plaintiff In Pro Se

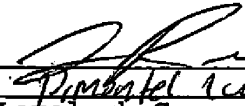
RECEIVED LL FORM 26-062

SEP 16 2019

CLERK OF THE COURT

1
2 CERTIFICATE OF SERVICE

3 I do certify that I mailed a true and correct copy of the
4 foregoing NOTICE OF APPEAL to the below address(es) on this
5 20th day of August, 20 19, by placing same in the
6 U.S. Mail via prison law library staff:

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17  # 1144588
18 Lovelock Correctional Center
19 1200 Prison Road
20 Lovelock, Nevada 89419

21 Plaintiff In Pro Se

22 AFFIRMATION PURSUANT TO NRS 239B.030

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

26 Dated this 20th day of August, 20 19.

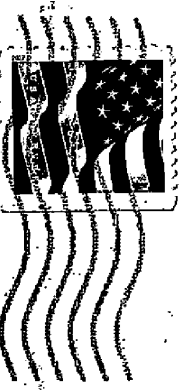
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28 Plaintiff In Pro Se

Luis Pimentel #1146669
L.C.C.
1200 Prison 25
Las Vegas, NV 89119

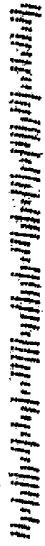
RENO NV 895

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

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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 LUIS PIMENTEL,

10 Plaintiff(s),

11 vs.

12 WARDEN BAKER,

13 Defendant(s),
14
15

Case No: A-19-793359-W

Dept No: V

16
17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): Luis Pimentel

19 2. Judge: Carolyn Ellsworth

20 3. Appellant(s): Luis Pimentel

21 Counsel:

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

25 4. Respondent (s): Warden Baker

26 Counsel:

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

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5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A
- Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A
6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No
7. Appellant Represented by Appointed Counsel On Appeal: N/A
8. Appellant Granted Leave to Proceed in Forma Pauperis**: Yes, June 4, 2019
***Expires 1 year from date filed*
Appellant Filed Application to Proceed in Forma Pauperis: N/A
Date Application(s) filed: N/A
9. Date Commenced in District Court: April 22, 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 September 2019.

Steven D. Grierson, Clerk of the Court

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

cc: Luis Pimentel



OSCC

DISTRICT COURT
CLARK COUNTY, NEVADA

LUIS PIMENTEL, PLAINTIFF(S)

CASE NO.: A-19-793359-W

VS.

WARDEN BAKER, DEFENDANT(S)

DEPARTMENT 5

CIVIL ORDER TO STATISTICALLY CLOSE CASE

Upon review of this matter and good cause appearing,
IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
statistically close this case for the following reason:

DISPOSITIONS:

- ☐ Default Judgment
- ☐ Judgment on Arbitration
- ☐ Stipulated Judgment
- ☐ Summary Judgment
- ☐ Involuntary Dismissal
- ☐ Motion to Dismiss by Defendant(s)
- ☐ Stipulated Dismissal
- ☐ Voluntary Dismissal
- ☐ Transferred (before trial)
- ☐ Non-Jury – Disposed After Trial Starts
- ☐ Non-Jury – Judgment Reached
- ☐ Jury – Disposed After Trial Starts
- ☐ Jury – Verdict Reached
- ☒ Other Manner of Disposition

DATED this 25th day of September, 2019.


CAROLYN ELLSWORTH
DISTRICT COURT JUDGE

**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)
---------------	--

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
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
Lovelock Correctional Center

PRINT DATE: 10/14/2019

Page 1 of 2

Minutes Date: July 22, 2019

A-19-793359-W

1200 Prison Road
Lovelock, Nevada 89419

(7/31/19 jmv)

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated October 2, 2019, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 54.

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 14 day of October 2019.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk