

NOASC  
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Electronically Filed  
Jun 04 2020 04:03 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

SAMUEL RICHARD RUBIN  
FEDERAL DEFENDER  
JONAH J. HORWITZ (admitted *pro hac vice*)  
Idaho Bar No. 10494  
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DEBORAH A. CZUBA (admitted *pro hac vice*)  
ASSISTANT FEDERAL DEFENDERS  
Idaho Bar No. 9648  
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702 West Idaho Street, Suite 900  
Boise, ID 83702  
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Attorneys for Petitioner Samuel Howard

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

SAMUEL HOWARD,

Petitioner,

vs.

WILLIAM GITTERE, Warden, and  
AARON D. FORD, Attorney General for  
the State of Nevada,

Respondents.

Case Nos. 81C053867; A-18-780434-W  
Dept. No. XVII

**NOTICE OF APPEAL**

(Death Penalty Case)

NOTICE is hereby given that the Petitioner, Samuel Howard, appeals to the Nevada Supreme Court from the Findings of Fact, Conclusions of Law, and Order, which was filed in this action on May 18, 2020. The Notice of Entry was filed on May 21, 2020.

NOTICE OF APPEAL - 1

1 DATED this 29th day of May 2020.

2 HENDRON LAW GROUP LLC

3 /s/ Lance J. Hendron

4 LANCE J. HENDRON, ESQ.

5 Nevada Bar No. 11151

6 625 S. Eighth St.

7 Las Vegas, Nevada 89101

8 FEDERAL DEFENDER

9 SERVICES OF IDAHO

10 /s/ Deborah A. Czuba

11 DEBORAH A. CZUBA, ESQ. (*pro hac vice*)

12 Idaho Bar No. 9648

13 720 West Idaho Street, Suite 900

14 Boise, Idaho 83702

15 /s/ Jonah J. Horwitz

16 JONAH J. HORWITZ, ESQ. (*pro hac vice*)

17 Idaho Bar No. 10494

18 720 West Idaho Street, Suite 900

19 Boise, Idaho 83702

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**CERTIFICATE OF SERVICE**

I hereby certify that service of this Notice of Appeal was made this 29th day of May 2020, by Electronic Filing and by email to:

Jonathan E. VanBoskerck  
Chief Deputy District Attorney  
Office of the Clark County District Attorney  
[Jonathan.VanBoskerck@clarkcountyda.com](mailto:Jonathan.VanBoskerck@clarkcountyda.com)

I also certify that service of this Notice of Appeal was made this 29th day of May 2020 by mail to:

Adam Paul Laxalt  
Nevada Attorney General  
100 North Carson Street  
Carson City, NV 89701

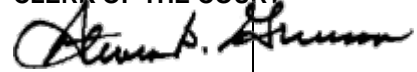
Samuel Howard, #18329  
High Desert State Prison  
P.O. Box 650  
Indian Springs, NV 89070

/s/ L. Hollis Ruggieri

L. Hollis Ruggieri

Paralegal

Federal Defender Services of Idaho



ASTA  
HENDRON LAW GROUP LLC  
LANCE J. HENDRON  
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Attorneys for Petitioner Samuel Howard

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

SAMUEL HOWARD,

Petitioner,

vs.

WILLIAM GITTERE, Warden, and  
AARON D. FORD, Attorney General for  
the State of Nevada,

Respondents.

Case Nos. 81C053867; A-18-780434-W  
Dept. No. XVII

**CASE APPEAL STATEMENT**

(Death Penalty Case)

**1. Name of appellant filing this case appeal statement:**

Samuel Howard.

**2. Identify the judge issuing the decision, judgment, or order appealed from:**

The Honorable Michael P. Villani

CASE APPEAL STATEMENT - 1

1 **3. Identify each appellant and the name and address of counsel for each appellant:**

2 Samuel Howard, represented by:

3 Lance J. Hendron, Esq.  
4 625 S. Eighth St.  
5 Las Vegas, Nevada 89101

Jonah Horwitz & Deborah Czuba  
720 West Idaho Street, Suite 900  
Boise, Idaho 83702

6 **4. Identify each respondent and the name and address of appellate counsel, if known, for**  
7 **each respondent (if the name of a respondent's appellate counsel is unknown, indicate**  
8 **as much and provide the name and address of that respondent's trial counsel:**

9 The respondents are William Gittere, Warden of the Ely State Prison, and Aaron D. Ford,  
10 Attorney General for the State of Nevada. Undersigned counsel believe that respondents'  
11 appellate counsel are:

12 Steven B. Wolfson  
13 Clark County District Attorney  
Jonathan E. VanBoskerck  
14 Chief Deputy District Attorney  
15 200 East Lewis Avenue  
16 Las Vegas, Nevada 89155-2212

Adam Paul Laxalt  
Nevada Attorney General  
100 North Carson Street  
Carson City, Nevada 89701

17 **5. Indicate whether any attorney identified above in response to question 3 or 4 is not**  
18 **licensed to practice law in Nevada, and if so, whether the district court granted that**  
19 **attorney permission to appear under SCR 42 (attach a copy of any district court order**  
20 **granting such permission):**

21 Deborah A. Czuba and Jonah J. Horwitz are not licensed to practice law in Nevada.

22 However, the district court granted those attorneys permission to appear under SCR 42 on  
23 September 11, 2018, as reflected by the attached docket sheet.

24 **6. Indicate whether appellant was represented by appointed or retained counsel in the**  
25 **district court:**

26 Appellant was represented in the district court by Deborah A. Czuba, Jonah J. Horwitz, and  
27 Lance J. Hendron. Ms. Czuba and Mr. Horwitz are attorneys with the Federal Defender  
28 Services of Idaho, which has been appointed to represent Appellant by the Nevada Supreme  
Court in case number 57469 on November 15, 2012, the United States Court of Appeals for

1 the Ninth Circuit in case number 10-99003 on August 10, 2012, and the United States  
2 District Court for the District of Nevada in case number 2:93-cv-1209 on September 12,  
3 2015. Mr. Hendron associated as local counsel with Ms. Czuba and Mr. Horwitz for  
4 purposes of representing appellant in this post-conviction action. The motion to associate  
5 was granted by the district court on September 11, 2018.

6 **7. Indicate whether appellant is represented by appointed or retained counsel on appeal:**

7 Appellant is represented on appeal by Deborah A. Czuba, Jonah J. Horwitz, and Lance J.  
8 Hendron. Ms. Czuba and Mr. Horwitz are attorneys with the Federal Defender Services of  
9 Idaho, which has been appointed to represent Appellant by the Nevada Supreme Court in  
10 case number 57469 on November 15, 2012, the United States Court of Appeals for the  
11 Ninth Circuit in case number 10-99003 on August 10, 2012, and the United States District  
12 Court for the District of Nevada in case number 2:93-cv-1209 on September 12, 2015. Mr.  
13 Hendron associated as local counsel with Ms. Czuba and Mr. Horwitz for purposes of  
14 representing appellant in this post-conviction action. The motion to associate was granted  
15 by the district court on September 11, 2018.

16 **8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the**  
17 **date of entry of the district court order granting such leave:**

18 Appellant did not apply in the district court for leave to proceed in forma pauperis on his  
19 sixth post-conviction petition, which is the subject of the instant appeal. However,  
20 appellant was allowed by the district court to proceed in forma pauperis on his fourth post-  
21 conviction petition in an order rendered on November 6, 2007, and reflected in the minutes  
22 for that day. Furthermore, appellant's counsel was granted by the district court a waiver of  
23 the pro hac vice application fees pursuant to SCR 42(3)(e) on his fifth post-conviction  
24 petition, in an order entered on November 4, 2016. Appellant was also granted leave to  
25 proceed in forma pauperis in his ongoing federal habeas action by the United States District  
26 Court for the District of Nevada in case number 2:93-cv-1209, on January 12, 1994.

27 **9. Indicate the date the proceedings commenced in the district court (e.g., date**  
28 **complaint, indictment, information, or petition was filed):**

1 The petition for writ of habeas corpus was filed on September 4, 2018.

2 **10. Provide a brief description of the nature of the action and result in the district court,**  
3 **including the type of judgment or order being appealed and the relief granted by the**  
4 **district court:**

5 This is a post-conviction action lodging a constitutional challenge to a death sentence. In  
6 the order being appealed, the district court denied the post-conviction petition.

7 **11. Indicate whether the case has previously been the subject of an appeal to or original**  
8 **writ proceeding in the Supreme Court and, if so, the caption and Supreme Court**  
9 **docket number of the prior proceeding:**

10 The case has previously been the subject of the following appeals and original writs:

11 *Howard v. State*, No. 15113;

12 *Howard v. State*, No. 20368;

13 *Howard v. State*, No. 23386;

14 *Howard v. State*, No. 42593;

15 *Howard v. State*, No. 57469;

16 *Howard v. State*, No. 73223;

17 *Armeni v. Eighth Jud. Dist. Ct.*, No. 73462.

18 **12. Indicate whether this appeal involves child custody or visitation:**

19 This appeal does not involve child custody or visitation.

20 **13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:**

21 The Nevada Supreme Court has stated that “habeas corpus is a proceeding which should be  
22 characterized as neither civil nor criminal for all purposes. It is a special statutory remedy  
23 which is essentially unique.” *Hill v. Warden*, 96 Nev. 38, 40, 604 P.2d 807, 808 (1980). To  
24 the extent this question applies to habeas corpus matters, there have been extensive  
25 settlement discussions between the parties. However, as of today, those discussions have  
26 ended and the parties were not able to reach an agreement to resolve the case.

27 DATED this 29th day of May 2020.

1 HENDRON LAW GROUP LLC

2 */s/ Lance J. Hendron*

3 LANCE J. HENDRON, ESQ.

4 Nevada Bar No. 11151

5 625 S. Eighth St.

6 Las Vegas, Nevada 89101

7 FEDERAL DEFENDER  
8 SERVICES OF IDAHO

9 */s/ Deborah A. Czuba*

10 DEBORAH A. CZUBA, ESQ. (*pro hac vice*)

11 Idaho Bar No. 9648

12 720 West Idaho Street, Suite 900

13 Boise, Idaho 83702

14 */s/ Jonah J. Horwitz*

15 JONAH J. HORWITZ, ESQ. (*pro hac vice*)

16 Idaho Bar No. 10494

17 720 West Idaho Street, Suite 900

18 Boise, Idaho 83702



1 **CERTIFICATE OF SERVICE**

2 I hereby certify that service of this Case Appeal Statement was made this 29th day of  
3 May 2020, by Electronic Filing and by email to:

4 Jonathan E. VanBoskerck  
5 Chief Deputy District Attorney  
6 Office of the Clark County District Attorney  
7 [Jonathan.VanBoskerck@clarkcountyda.com](mailto:Jonathan.VanBoskerck@clarkcountyda.com)

8 I also certify that service of this Case Appeal Statement was made this 29th day of May  
9 2020 by mail to:

10 Adam Paul Laxalt  
11 Nevada Attorney General  
12 100 North Carson Street  
13 Carson City, NV 89701

14 /s/ L. Hollis Ruggieri

15 L. Hollis Ruggieri

16 Paralegal

17 Federal Defender Services of Idaho  
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*Samuel Howard v. William Gittere,*  
Case Nos. 81C053867; A-18-780434-W  
Filed in Support of Case Appeal Statement

# **Exhibit 1**

**(Docket Sheet for Case No. 81C053867 as of May 29, 2020)**

## Case Information

81C053867 | The State of Nevada vs Samuel Howard

Case Number

81C053867

File Date

05/21/1981

Court

Department 17

Case Type

Felony/Gross

Misdemeanor

Judicial Officer

Villani, Michael

Case Status

Closed

## Party

Plaintiff

State of Nevada

Active Attorneys ▼

Attorney

Noxon, Arthur G.

Attorney

Barker, David B.

Attorney

Becker, Nancy A.

Attorney

Smith, Ulrich W.

Attorney

Vanboskerck,

Jonathan

Attorney

Vanboskerck,

Jonathan

Attorney

Paine, Charles A.

---

Attorney  
Tufteland, James N.

---

Attorney  
Harmon, Melvyn T.

---

Attorney  
Bloxham, Ronald C.

---

Attorney  
Monroe, Vicki J.

---

Attorney  
Owens, Steven S.

---

Attorney  
Peterson, Clark A.

---

Attorney  
Thomas, Michelle L.

---

Attorney  
Jeanney, Jacqueline

---

Attorney  
Radovic, Michael

---

Lead Attorney  
Wolfson, Steven B

---

---

Defendant  
Howard, Samuel

Aliases  
AKA Keith

Active Attorneys ▼  
Lead Attorney  
Public Defender  
Retained

---

Attorney  
Sisolak, Ashley L.

## Charge

Charges  
Howard, Samuel

	Description	Statute	Level	Date
1	ROBBERY WITH USE OF A DEADLY WEAPON	200.380	Felony	01/01/1900
2	ROBBERY WITH USE OF A DEADLY WEAPON	200.380	Felony	01/01/1900
3	FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON	200.030.1	Felony	01/01/1900

## Disposition Events

01/01/1900 Plea▼

Judicial Officer  
User, Conversion

1	ROBBERY WITH USE OF A DEADLY WEAPON	Not Guilty
---	-------------------------------------	------------

01/01/1900 Plea▼

Judicial Officer  
User, Conversion

2 ROBBERY WITH USE OF A DEADLY WEAPON Not Guilty

---

01/01/1900 Plea ▼

Judicial Officer  
User, Conversion

3 FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON Not Guilty

---

04/22/1983 Disposition ▼

Judicial Officer  
User, Conversion

1 ROBBERY WITH USE OF A DEADLY WEAPON Guilty

---

04/22/1983 Disposition ▼

Judicial Officer  
User, Conversion

2 ROBBERY WITH USE OF A DEADLY WEAPON Guilty

---

04/22/1983 Disposition ▼

Judicial Officer  
User, Conversion

3 FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON Guilty

---

04/22/1983 Adult Adjudication ▼

1 ROBBERY WITH USE OF A DEADLY WEAPON Adult Adjudication

---

Converted Disposition

Sentence# 0001:

Converted Disposition

Sentence# 0002:

Converted Disposition

Sentence# 0003: CREDIT FOR TIME SERVED

04/22/1983 Adult Adjudication ▼

2 ROBBERY WITH USE OF A DEADLY WEAPON Adult Adjudication

Converted Disposition

Sentence# 0001:

Converted Disposition

Sentence# 0002:

04/22/1983 Adult Adjudication ▼

3 FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON Adult Adjudication

## Converted Disposition

Sentence# 0001: DEATH PENALTY

## Events and Hearings

05/21/1981 Conversion Case Event Type ▼

Comment

CRIMINAL COMPLAINT

05/21/1981 Indictment ▼

Comment

(GRAND JURY) INDICTMENT

02/13/1991 Motion ▼

Comment

MOTION FOR FEES IN EXCESS OF STATUTORY GUIDELINES

02/15/1991 Receipt of Copy ▼

Comment

RECEIPT OF COPY OF REQUEST TO PLACE ON CALENDAR  
AND SUPPLEMENTAL BILLING BY CIVIL DISTRICT ATTORNEYS  
OFFICE CIVIL DISTRICT ATTORNEYS OFFICE

02/19/1991 Response ▼

Comment

RESPONSE TO DEFENDANTS MOTION FOR FEES IN EXCESS  
OF STATUTORY MAXIMUM

02/26/1991 Motion ▼



Hearing Time

9:00 AM

Result

Matter Continued

Comment

MOTION FOR FEES IN EXCESS OF STATUTORY GUIDELINES Court  
Clerk: ALONA FUJII Reporter/Recorder: SHIRLEE CHRISTOFFERSON  
Heard By: SOBEL, JEFFREY

02/26/1991 Certificate ▼

Comment

CERTIFICATE OF MAILING TO ATTORNEY GENERAL OF  
REQUEST TO PLACE ON CALENDAR

03/07/1991 Motion ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

MOTION FOR FEES IN EXCESS OF STATUTORY GUIDELINES Court  
Clerk: ALONA FUJII Reporter/Recorder: SHIRLEE CHRISTOFFERSON  
Heard By: Jeffrey Sobel

03/12/1991 Motion ▼

Comment

MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL  
WARRANT OF EXECUTION

03/25/1991 Order ▼

Comment

ORDER GRANTING MOTION FOR FEES IN EXCESS OF  
STATUTORY GUIDELINES

03/26/1991 Motion ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL  
WARRANT OF EXECUTION Court Clerk: ALONA FUJII Relief Clerk:  
SANDRA SMITH Reporter/Recorder: SHIRLEE CHRISTOFFERSON  
Heard By: SOBEL, JEFFREY

04/02/1991 Motion ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL  
WARRANT OF EXECUTION Court Clerk: ALONA FUJII

Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL,  
JEFFREY

Parties Present ▲

Plaintiff

Attorney: Monroe, Vicki J.

04/09/1991 Motion ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL  
WARRANT OF EXECUTION Court Clerk: ALONA FUJII

Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL,  
JEFFREY

Parties Present ▲

Plaintiff

Attorney: Smith, Ulrich W.

12/16/1991 Petition ▼

Comment

PETITION FOR POST CONVICTION RELIEF

12/16/1991 Notice ▼

Comment

NOTICE OF PETITION

02/04/1992 Petition for Post Conviction Relief ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

PETITION FOR POST CONVICTION RELIEF Court Clerk: ALONA CANDITO Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL, JEFFREY

Parties Present ▲

Plaintiff

Attorney: Harmon, Melvyn T.

02/10/1992 Request ▼

Comment

MOTION TO DISMISS AMENDED PETITION FOR POST CONVICTION RELIEF

02/11/1992 Petition for Post Conviction Relief ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

PETITION FOR POST CONVICTION RELIEF Court Clerk: ALONA CANDITO Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL, JEFFREY

Parties Present ▲

Plaintiff

Attorney: Monroe, Vicki J.

02/14/1992 Hearing ▼

Comment

STATUS CHECK EVIDENTIARY HEARING

02/14/1992 Stipulation ▼

Comment

STIPULATION VACATING PETITIONERS AMENDED PETITION FOR POST CONVICTION RELIEF SET FOR 2-11-92 FOR 2-11-92

02/25/1992 Order ▼

Comment

ORDER VACATING PETITIONERS AMENDED PETITION FOR POST CONVICTION RELIEF

03/12/1992 Status Check ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

STATUS CHECK EVIDENTIARY HEARING Court Clerk: ALONA  
CANDITO Relief Clerk: LEONE DUMIRE Reporter/Recorder: DEBRA  
WINN Heard By: SOBEL, JEFFREY

Parties Present ▲

Plaintiff

Attorney: Barker, David B.

03/19/1992 Status Check ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

STATUS CHECK EVIDENTIARY HEARING Court Clerk: ALONA  
CANDITO Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By:  
SOBEL, JEFFREY

Parties Present ▲

Plaintiff

Attorney: Monroe, Vicki J.

04/17/1992 Response ▼

Comment

RESPONSE TO MOTION TO DISMISS AMENDED PETITION FOR  
POST CONVICTION RELIEF

04/21/1992 Motion ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL  
WARRANT OF EXECUTION Heard By: Jeffrey Sobel

04/21/1992 Petition for Post Conviction Relief ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

PETITION FOR POST CONVICTION RELIEF Heard By: Jeffrey Sobel

04/21/1992 Status Check ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

STATUS CHECK EVIDENTIARY HEARING Heard By: Jeffrey Sobel

04/21/1992 All Pending Motions ▼

Hearing Time

9:00 AM

Result

Matter Heard

Comment

ALL PENDING MOTIONS 4/21/92 Court Clerk: ALONA CANDITO  
Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: Jeffrey  
Sobel

Parties Present ▲

Plaintiff

Attorney: Noxon, Arthur G.

04/21/1992 Motion ▼

Comment

ALL PENDING MOTIONS 4/21/92

04/28/1992 Motion ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL  
WARRANT OF EXECUTION Heard By: Jeffrey Sobel

04/28/1992 Petition for Post Conviction Relief ▼

Hearing Time

9:00 AM

Result  
Matter Continued

Comment  
PETITION FOR POST CONVICTION RELIEF Heard By: Jeffrey Sobel

04/28/1992 Status Check ▼

Hearing Time  
9:00 AM

Result  
Matter Continued

Comment  
STATUS CHECK EVIDENTIARY HEARING Heard By: Jeffrey Sobel

04/28/1992 All Pending Motions ▼

Hearing Time  
9:00 AM

Result  
Matter Heard

Comment  
ALL PENDING MOTIONS 4-28-92 Court Clerk: ALONA CANDITO Relief  
Clerk: SHARON PHELPS Reporter/Recorder: SHIRLEE  
CHRISTOFFERSON Heard By: Jeffrey Sobel

Parties Present ▲  
Plaintiff

Attorney: Monroe, Vicki J.

04/28/1992 Motion ▼

Comment  
ALL PENDING MOTIONS 4-28-92

05/19/1992 Motion ▼

Hearing Time  
9:00 AM

Result  
Matter Continued

Comment  
MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL  
WARRANT OF EXECUTION Heard By: Jeffrey Sobel

05/19/1992 Petition for Post Conviction Relief ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

PETITION FOR POST CONVICTION RELIEF Heard By: Jeffrey Sobel

05/19/1992 Status Check ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

STATUS CHECK EVIDENTIARY HEARING Heard By: Jeffrey Sobel

05/27/1992 Order ▼

Comment

ORDER APPOINTING COUNSEL

06/09/1992 Motion ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL  
WARRANT OF EXECUTION Heard By: Jeffrey Sobel

06/09/1992 Petition for Post Conviction Relief ▼

Hearing Time

9:00 AM

Result

Denied

Comment

PETITION FOR POST CONVICTION RELIEF Court Clerk: ALONA  
CANDITO Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By:  
Jeffrey Sobel

06/09/1992 Status Check ▼

Hearing Time

9:00 AM

Result

Denied

Comment

STATUS CHECK EVIDENTIARY HEARING Court Clerk: ALONA CANDITO Relief Clerk: LEONE DUMIRE Reporter/Recorder: DEBRA WINN Heard By: Jeffrey Sobel

06/09/1992 All Pending Motions ▼

Hearing Time

9:00 AM

Result

Matter Heard

Comment

ALL PENDING MOTIONS 6/9/92 Court Clerk: ALONA CANDITO Reporter/Recorder: ARLENE BLAZI Heard By: Jeffrey Sobel

Parties Present ▲

Plaintiff

Attorney: Noxon, Arthur G.

Attorney: Owens, Steven S.

06/09/1992 Motion ▼

Comment

ALL PENDING MOTIONS 6/9/92

06/23/1992 Motion ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION Court Clerk: ALONA CANDITO Relief Clerk: PATRICIA CAMAROTE Reporter/Recorder: ARLENE BLAZI Heard By: SOBEL, JEFFREY

Parties Present ▲

Plaintiff

Attorney: Barker, David B.

07/07/1992 Motion ▼

Hearing Time

9:00 AM



Result

Matter Continued

Comment

MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL  
WARRANT OF EXECUTION Court Clerk: ALONA CANDITO Relief Clerk:  
PATRICIA CAMAROTE Reporter/Recorder: SHIRLEE  
CHRISTOFFERSON Heard By: Jeffrey Sobel

Parties Present ▲

Plaintiff

Attorney: Bloxham, Ronald C.

07/07/1992 Order ▼

Comment

ORDER OF EXECUTION

07/07/1992 Warrant ▼

Comment

WARRANT OF EXECUTION

07/07/1992 Order ▼

Comment

ORDER DENYING AMENDED PETITION FOR POST CONVICTION  
RELIEF

07/14/1992 Notice ▼

Comment

NOTICE OF APPEAL

07/22/1992 Notice of Appeal ▼

Comment

DESIGNATION OF RECORD ON APPEAL

07/29/1992 Order ▼

Comment

ORDER RE; TRANSCRIPTS

08/12/1992 Motion ▼

Comment

MOTION FOR EXTRAORDINARY FEES

08/17/1992 Receipt of Copy ▼

Comment

RECEIPT OF COPY

08/25/1992 Motion ▼

Hearing Time  
9:00 AM

Result  
Granted

Comment  
MOTION FOR EXTRAORDINARY FEES Court Clerk: ALONA CANDITO  
Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: Jeffrey  
Sobel

Parties Present ▲  
Plaintiff

Attorney: Paine, Charles A.

08/26/1992 Order ▼

Comment  
ORDER GRANTING MOTION FOR EXTRAORDINARY FEES

04/19/1993 Ex Parte ▼

Comment  
EX PARTE MOTION FOR ENTRY OF ORDER NUNC PRO TUNC  
FOR APPOINTMENT OF COUNSEL

04/26/1993 Order ▼

Comment  
ORDER GRANTING EX PARTE MOTION FOR ENTRY OF ORDER  
NUNC PRO TUNC FOR APPOINTMENT OF COUNSEL OF  
COUNSEL

11/18/1993 NV Supreme Court Clerks Certificate/Judgment - Dismissed ▼

Comment  
NEVADA SUPREME COURT JUDGMENT / ORDERED APPEAL  
DISMISSED

01/04/1994 Ex Parte ▼

Comment  
EX PARTE MOTION FOR EXTRAORDINARY FEES

01/04/1994 Statement ▼

Comment  
STATEMENT OF FEES AND COSTS

01/19/1994 Order ▼

Comment  
STIPULATION AND ORDER FOR EXTRA-ORDINARY FEES

12/20/2002 Petition ▼

Comment  
DEFT'S PTN FOR WRIT OF HABEAS CORPUS /9

12/31/2002 Motion ▼

Comment  
DEFT'S PRO PER MTN TO APPOINT EFFECTIVE POST-  
CONVICTION/10

01/09/2003 Petition for Writ of Habeas Corpus ▼

Hearing Time  
9:00 AM

Result  
Matter Continued

Comment  
DEFT'S PTN FOR WRIT OF HABEAS CORPUS /9 Court Clerk: Billie Jo  
Craig Reporter/Recorder: Shirley Parawalsky Heard By: Glass, Jackie

Parties Present ▲  
Plaintiff

Attorney: Peterson, Clark A.

01/13/2003 Opposition ▼

Comment  
STATES OPPOSITION TO DEFENDANTS MOTION FOR  
APPOINTMENT OF POST CONVICTION COUNSEL COUNSEL

01/14/2003 Petition for Writ of Habeas Corpus ▼

Hearing Time  
9:00 AM

Result  
Matter Continued

Comment  
DEFT'S PTN FOR WRIT OF HABEAS CORPUS /9

01/14/2003 Motion ▼

Hearing Time  
9:00 AM

Result

Denied

Comment

DEFT'S PRO PER MTN TO APPOINT EFFECTIVE POST-  
CONVICTION/10 Heard By: Jackie Glass

01/14/2003 All Pending Motions ▼

Hearing Time

9:00 AM

Result

Matter Heard

Comment

ALL PENDING MOTIONS FOR 1/14/03 Court Clerk: Billie Jo Craig  
Reporter/Recorder: Shirlee Parawalsky Heard By: Jackie Glass

Parties Present ▲

Plaintiff

Attorney: Tufeland, James N.

01/14/2003 Motion ▼

Comment

ALL PENDING MOTIONS FOR 1/14/03

01/17/2003 Notice ▼

Comment

NOTICE OF APPEARANCE AS PRO BONO COUNSEL

02/19/2003 Substitution of Attorney ▼

Comment

SUBSTITUTION OF ATTORNEY

03/04/2003 Motion ▼

Comment

STATE'S MTN TO DISMISS PTN FOR WRIT HABEAS CORPUS/12

03/18/2003 Petition for Writ of Habeas Corpus ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

DEFT'S PTN FOR WRIT OF HABEAS CORPUS /9

03/18/2003 Motion to Dismiss ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

STATE'S MTN TO DISMISS PTN FOR WRIT HABEAS CORPUS/12

03/18/2003 All Pending Motions ▼

Hearing Time

9:00 AM

Result

Matter Heard

Comment

ALL PENDING MOTIONS FOR 3/18/03 Court Clerk: Billie Jo Craig  
Reporter/Recorder: Shirlee Prawalsky Heard By: Jackie Glass

Parties Present ▲

Plaintiff

Attorney: Peterson, Clark A.

03/18/2003 Motion ▼

Comment

ALL PENDING MOTIONS FOR 3/18/03

03/20/2003 Petition for Writ of Habeas Corpus ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

DEFT'S PTN FOR WRIT OF HABEAS CORPUS /9

03/20/2003 Motion to Dismiss ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

STATE'S MTN TO DISMISS PTN FOR WRIT HABEAS CORPUS/12

03/20/2003 All Pending Motions ▼

Hearing Time

9:00 AM

Result

Matter Heard

Comment

ALL PENDING MOTIONS FOR 3/20/03 Court Clerk: Billie Jo Craig  
Reporter/Recorder: Shirlee Prawalsky Heard By: Jackie Glass

Parties Present ▲

Plaintiff

Attorney: Peterson, Clark A.

03/20/2003 Hearing ▼

Comment

STATUS CHECK: VERIFICATION OF PETITION VJ 06/03/03

03/20/2003 Motion ▼

Comment

ALL PENDING MOTIONS FOR 3/20/03

03/28/2003 Reporters Transcript ▼

Comment

REPORTER'S TRANSCRIPT DEFENDANTS PRO PER PETITION  
FOR WRIT OF HABEAS CORPUS STATES MOTION TO DISMISS  
DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS  
STATES MOTION TO DISMISS DEFENDANTS PETITION FOR  
WRIT OF HABEAS CORPUS

04/03/2003 Petition for Writ of Habeas Corpus ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

DEFT'S PTN FOR WRIT OF HABEAS CORPUS /9

04/03/2003 Motion to Dismiss ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

STATE'S MTN TO DISMISS PTN FOR WRIT HABEAS CORPUS/12

04/03/2003 Status Check ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

STATUS CHECK: VERIFICATION OF PETITION VJ 06/03/03

04/03/2003 All Pending Motions ▼

Hearing Time

9:00 AM

Result

Matter Heard

Comment

ALL PENDING MOTIONS 04/03/03 Court Clerk: Georgette Byrd  
Reporter/Recorder: Shirlee Prawalsky Heard By: Joseph Pavlikowski

Parties Present ▲

Plaintiff

Attorney: Peterson, Clark A.

04/03/2003 Conversion Case Event Type ▼

Comment

ARGUMENT AND DECISION: DEFT'S PETITION/ STATE'S MTN  
TO DISMISS/STATUS CHECK: PET

04/03/2003 Motion ▼

Comment

ALL PENDING MOTIONS 04/03/03

04/03/2003 Verification ▼

Comment

VERIFICATION OF PETITIONER

04/03/2003 Receipt of Copy ▼

Comment

RECEIPT OF COPY

05/21/2003 Motion ▼

Comment

DEFT'S MOTION TO EXTEND TIME TO FILE AN OPPOSITION TO  
STATE'S MTN TO DISMISS/18

06/03/2003 Motion ▼

Hearing Time

9:00 AM

Result

Granted

Comment

DEFT'S MOTION TO EXTEND TIME TO FILE AN OPPOSITION TO  
STATE'S MTN TO DISMISS/18 Court Clerk: Georgette Byrd  
Reporter/Recorder: Shirlee Prawalsky Heard By: Jackie Glass

Parties Present ▲

Plaintiff

Attorney: Peterson, Clark A.

06/03/2003 Motion ▼

Comment

HEARING RE: PETITION FOR WRIT OF HABEAS CORPUS

06/12/2003 Petition for Writ of Habeas Corpus ▼

Hearing Time

9:00 AM

Result

Vacate

Comment

DEFT'S PTN FOR WRIT OF HABEAS CORPUS /9 Court Clerk: Billie Jo  
Craig Reporter/Recorder: Shirley Parawalsky

06/12/2003 Motion to Dismiss ▼

Hearing Time

9:00 AM

Result

Vacate

Comment

STATE'S MTN TO DISMISS PTN FOR WRIT HABEAS CORPUS/12

06/12/2003 Status Check ▼

Hearing Time

9:00 AM



Result

**Vacate**

Comment

STATUS CHECK: VERIFICATION OF PETITION VJ 06/03/03

06/12/2003 Hearing ▼

Hearing Time

9:00 AM

Cancel Reason

**Vacated**

Result

**Vacate**

08/18/2003 Application ▼

Comment

EX PARTE APPLICATION TO EXTEND TIME TO FILE REPLY TO STATES RESPONSE TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) AMENDED PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)

08/20/2003 Petition ▼

Comment

AMENDED PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)(DEATH PENALTY)

08/20/2003 Opposition ▼

Comment

PETITIONER HOWARDS OPPOSITION TO STATES MOTION TO DISMISS PETITION

08/20/2003 Receipt of Copy ▼

Comment

RECEIPT OF COPY

08/21/2003 Show Cause Hearing ▼

Hearing Time

9:00 AM

Result

**Matter Heard**

Comment

HEARING RE: PETITION FOR WRIT OF HABEAS CORPUS Court Clerk: Georgette Byrd Reporter/Recorder: Shirlee Prawalsky Heard By: Jackie Glass

Parties Present ▲

Plaintiff

Attorney: Peterson, Clark A.

08/21/2003 Conversion Case Event Type ▼

Comment

ARGUMENT/DECISION: DEFT'S WRIT FOR HABEAS CORPUS

08/21/2003 Receipt of Copy ▼

Comment

RECEIPT OF COPY

08/21/2003 Exhibits ▼

Comment

EXHIBITS TO PETITIONER HOWARDS OPPOSITION TO STATES  
MOTION TO DISMISS VOL II VOL II

08/21/2003 Exhibits ▼

Comment

EXHIBITS TO PETITIONER HOWARDS OPPOSITION TO STATES  
MOTION TO DISMISS

08/25/2003 Notice ▼

Comment

NOTICE OF EXHIBITS TO EXHIBITS TO PETITIONER HOWARD'S  
OPPOSITION TO STATE'S MOTION TO DISMISS IN THE VAULT  
STATE'S MOTION TO DISMISS IN THE VAULT

09/24/2003 Reply ▼

Comment

STATES REPLY TO DEFENDANTS OPPOSITION TO STATES  
MOTION TO DISMISS DEFENDANTS PETITION FOR WRIT OF  
HABEAS CORPUS POST-CONVICTION DEFENDANTS PETITION  
FOR WRIT OF HABEAS CORPUS POST-CONVICTION

10/02/2003 Hearing ▼

Hearing Time

9:00 AM

Result

Denied

Comment

ARGUMENT/DECISION: DEFT'S WRIT FOR HABEAS CORPUS Court  
Clerk: Georgette Byrd Reporter/Recorder: Shirlee Prawalsky Heard By:  
Jackie Glass

Parties Present ▲

Plaintiff

Attorney: Peterson, Clark A.

10/08/2003 Reporters Transcript ▼

Comment

REPORTER'S TRANSCRIPT ARGUMENT/DECISION: PETITION FOR WRIT FOR HABEAS CORPUS

10/08/2003 Reporters Transcript ▼

Comment

REPORTER'S TRANSCRIPT STATES MOTION TO DISMISS DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS OF HABEAS CORPUS (POST-CONVICTION) DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS

10/08/2003 Reporters Transcript ▼

Comment

REPORTER'S TRANSCRIPT DEFENDANTS PRO PER MOTION FOR APPOINTMENT OF EFFECTIVE POST-CONVICTION COUNSEL DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION COUNSEL DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS

10/08/2003 Reporters Transcript ▼

Comment

REPORTER'S TRANSCRIPT STATES MOTION TO DISMISS DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) STATUS CHECK: VERIFICATION OF PETITION OF HABEAS CORPUS (POST CONVICTION) DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) STATUS CHECK: VERIFICATION OF PETITION

10/08/2003 Reporters Transcript ▼

Comment

REPORTER'S TRANSCRIPT DEFENDANTS MOTION TO EXTEND TIME TO FILE AN OPPOSITION TO STATES MOTION TO DISMISS TO STATES MOTION TO DISMISS

10/08/2003 Reporters Transcript ▼

Comment

REPORTER'S TRANSCRIPT HEARING: WRIT OF HABEAS CORPUS (POST CONVICTION)

10/13/2003 Order ▼

Comment

ORDER FOR TRANSCRIPT

10/23/2003 Judgment ▼

Comment

FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER

10/28/2003 Notice of Entry of Decision and Order ▼

Comment

NOTICE OF ENTRY OF DECISION AND ORDER

11/25/2003 Notice of Appeal ▼

Comment

NOTICE OF APPEAL

12/30/2003 Statement ▼

Comment

CASE APPEAL STATEMENT

01/03/2005 Judgment ▼

Comment

CLERK'S CERTIFICATE/JUDGMENT AFFIRMED

10/25/2007 Motion ▼

Comment

PETITIONER'S MTN FOR APPOINTMENT OF COUNSEL/21

10/25/2007 Motion ▼

Comment

PETITIONER'S TO PROCEED IN FORMA PAUPERIS /22

10/25/2007 Petition ▼

Comment

PTN FOR WRIT OF HABEAS CORPUS

10/25/2007 Exhibits ▼

Comment

PETITIONERS EXHIBIT IN SUPPORT OF PTN FOR WRIT OF  
HABEAS CORPUS

10/25/2007 Exhibits ▼

Comment

PETITIONERS EXHIBITS IN SUPPORT OF PETITION FOR WRIT  
OF HABEAS CORPUS VOLUME FOUR OF FOUR VOLUME FOUR  
OF FOUR

10/25/2007 Exhibits ▼

Comment

PETITIONERS EXHIBITS IN SUPPORT OF PETITION FOR WRIT  
OF HABEAS CORPUS VOLUME THREE OF FOUR VOLUME  
THREE OF FOUR

10/25/2007 Receipt of Copy ▼

Comment

RECEIPT OF COPY

10/25/2007 Exhibits ▼

Comment

PETITIONERS EXHIBITS IN SUPPORT OF PETITION FOR WRIT  
OF HABEAS CORPUS VOLUME TWO OF FOUR VOLUME TWO  
OF FOUR

10/25/2007 Affidavit in Support ▼

Comment

AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA  
PAUPERIS

11/06/2007 Motion for Appointment ▼

Hearing Time

8:30 AM

Result

Granted

Comment

PETITIONER'S MTN FOR APPOINTMENT OF COUNSEL/21 Heard By:  
Jackie Glass

11/06/2007 Petition to Proceed in Forma Pauperis ▼

Hearing Time

8:30 AM

Result

Granted

Comment

PETITIONER'S TO PROCEED IN FORMA PAUPERIS /22 Heard By:  
Jackie Glass

11/06/2007 All Pending Motions ▼

Hearing Time

8:30 AM

Result

Matter Heard

Comment

ALL PENDING MOTIONS 11/6/07 Court Clerk: Sandra Jeter/sj Relief  
Clerk: Denise Trujillo Reporter/Recorder: Rachelle Hamilton Heard By:  
Jackie Glass

Parties Present ▲

Plaintiff

Attorney: Becker, Nancy A.

11/06/2007 Motion ▼

Comment

ALL PENDING MOTIONS 11/6/07

11/06/2007 Motion ▼

Comment

STATE'S MOTION TO DISMISS

12/13/2007 Petition for Writ of Habeas Corpus ▼

Hearing Time

8:30 AM

Result

Matter Continued

Comment

PTN FOR WRIT OF HABEAS CORPUS Heard By: Jackie Glass

03/12/2008 Order ▼

Comment

STIPULATION AND ORDER EXTENDING BRIEF SCHEDULE AND  
VACATING HEARING DATE

04/03/2008 Petition for Writ of Habeas Corpus ▼

Hearing Time

8:30 AM

Result  
**Matter Continued**

Comment  
PTN FOR WRIT OF HABEAS CORPUS Heard By: Jackie Glass

04/03/2008 Motion ▼

Hearing Time  
**8:30 AM**

Result  
**Matter Continued**

Comment  
STATE'S MOTION TO DISMISS Heard By: Jackie Glass

04/08/2008 Notice ▼

Comment  
STATES NOTICE OF MOTION AND MOTION TO DISMISS  
DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS  
(POST CONVICTION) HABEAS CORPUS (POST CONVICTION)

05/13/2008 Order ▼

Comment  
STIPULATION AND ORDER

06/05/2008 Petition for Writ of Habeas Corpus ▼

Hearing Time  
**8:30 AM**

Result  
**Matter Continued**

Comment  
PTN FOR WRIT OF HABEAS CORPUS Heard By: Jackie Glass

06/05/2008 Motion ▼

Hearing Time  
**8:30 AM**

Result  
**Matter Continued**

Comment  
STATE'S MOTION TO DISMISS Heard By: Jackie Glass

07/09/2008 Order ▼

Comment  
STIPULATION AND ORDER

08/26/2008 Petition for Writ of Habeas Corpus ▼

Hearing Time

8:30 AM

Result

Matter Continued

Comment

PTN FOR WRIT OF HABEAS CORPUS Heard By: Jackie Glass

08/26/2008 Motion ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

STATE'S MOTION TO DISMISS Heard By: Jackie Glass

09/17/2008 Order ▼

Comment

STIPULATION AND ORDER

10/27/2008 Motion ▼

Hearing Time

8:30 AM

Result

Matter Continued

Comment

STATE'S MOTION TO DISMISS Heard By: Jackie Glass

10/28/2008 Motion ▼

Hearing Time

8:30 AM

Result

Matter Continued

Comment

STATE'S MOTION TO DISMISS Heard By: Jackie Glass

10/28/2008 Petition for Writ of Habeas Corpus ▼



Hearing Time

9:00 AM

Result

Matter Continued

Comment

PTN FOR WRIT OF HABEAS CORPUS Heard By: Jackie Glass

12/10/2008 Order ▼

Comment

STIPULATION AND ORDER

02/09/2009 Petition for Writ of Habeas Corpus ▼

Hearing Time

8:00 AM

Result

Matter Continued

Comment

PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Villani

02/09/2009 Motion ▼

Hearing Time

8:30 AM

Result

Matter Continued

Comment

STATE'S MOTION TO DISMISS Heard By: Jackie Glass

02/19/2009 Petition for Writ of Habeas Corpus ▼

Hearing Time

8:00 AM

Result

Matter Continued

Comment

PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Villani

02/19/2009 Motion ▼

Hearing Time

8:00 AM

Result

Matter Continued

Comment  
STATE'S MOTION TO DISMISS Heard By: Michael Villani

02/19/2009 All Pending Motions ▼

Hearing Time  
8:00 AM

Result  
Matter Heard

Comment  
ALL PENDING MOTIONS 2-19-09 Court Clerk: Kristen Brown  
Reporter/Recorder: Michelle Ramsey Heard By: JOSEPH  
BONAVENTURE

Parties Present ▲  
Plaintiff

Attorney: Radovic, Michael

02/19/2009 Motion ▼

Comment  
ALL PENDING MOTIONS 2-19-09

02/24/2009 Exhibits ▼

Comment  
PETITIONERS EXHIBITS IN SUPPORT OF AMENDED PETITION  
FOR WRIT OF HABEAS CORPUS POST CONVICTION - VOLUME  
TWO OF FOUR CORPUS POST CONVICTION - VOLUME TWO OF  
FOUR

02/24/2009 Exhibits ▼

Comment  
PETITIONERS EXHIBITS IN SUPPORT OF AMENDED PETITION  
FOR WRIT OF HABEAS CORPUS POST CONVICTION - VOLUME  
FOUR OF FOUR CORPUS POST CONVICTION - VOLUME FOUR  
OF FOUR

02/24/2009 Exhibits ▼

Comment  
PETITIONERS EXHIBITS IN SUPPORT OF AMENDED PETITION  
FOR WRIT OF HABEAS CORPUS POST CONVICTION - VOLUME  
THREE OF FOUR CORPUS POST CONVICTION - VOLUME  
THREE OF FOUR

02/24/2009 Exhibits ▼

Comment  
PETITIONERS EXHIBITS IN SUPPORT OF AMENDED PETITION  
FOR WRIT OF HABEAS CORPUS POST CONVICTION CORPUS

POST CONVICTION

02/24/2009 Opposition ▼

Comment

PETITIONERS OPPOSITION TO MTN TO DISMISS

02/24/2009 Order ▼

Comment

STIPULATION AND ORDER

02/24/2009 Petition ▼

Comment

AMENDED PETITION FOR WRIT OF HABEAS CORPUS - POST  
CONVICTION

05/06/2009 Petition ▼

Comment

PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION

06/05/2009 Exhibits ▼

Comment

SUBMISSION OF EXHIBITS IN SUPPORT OF PETITIONERS  
PETITION FOR WRIT OF HABEAS CORPUS CORPUS

06/11/2009 Petition for Writ of Habeas Corpus ▼

Hearing Time

8:00 AM

Result

Matter Continued

Comment

PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Villani

06/11/2009 Motion ▼

Hearing Time

8:00 AM

Result

Matter Continued

Comment

STATE'S MOTION TO DISMISS Heard By: Michael Villani

06/11/2009 Notice ▼

Comment

**NOTICE TO THE COURT REGARDING THE SERVICE OF THE  
PETITION FOR WRIT OF HABEAS CORPUS HABEAS CORPUS**

06/18/2009 Petition for Writ of Habeas Corpus ▼

Hearing Time

8:00 AM

Result

**Matter Continued**

Comment

PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Villani

06/18/2009 Motion ▼

Hearing Time

8:00 AM

Result

**Matter Continued**

Comment

STATE'S MOTION TO DISMISS Court Clerk: Kristen Brown Relief Clerk:  
Michele Tucker/mlt Reporter/Recorder: Michelle Ramsey Heard By: Villani,  
Michael

06/29/2009 Order ▼

Comment

**STIPULATION AND ORDER EXTENDING BRIEFING SCHEDULE  
AND VACATING HEARING DATE**

08/20/2009 Order ▼

Comment

**STIPULATION AND ORDER EXTENDING BRIEFING SCHEDULE  
AND VACATING HEARING DATE**

08/27/2009 Petition for Writ of Habeas Corpus ▼

Hearing Time

8:00 AM

Result

**Matter Continued**

Comment

PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Villani

08/27/2009 Motion ▼

Hearing Time

8:00 AM

Result

Matter Continued

Comment

STATE'S MOTION TO DISMISS Heard By: Michael Villani

10/29/2009 All Pending Motions ▼

Hearing Time

8:00 AM

Result

Matter Heard

Comment

ALL PENDING MOTIONS 10-29-09 Court Clerk: Kristen Brown  
Reporter/Recorder: Michelle Ramsey Heard By: Michael Villani

10/29/2009 Petition for Writ of Habeas Corpus ▼

Hearing Time

8:15 AM

Result

Matter Continued

Comment

PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Villani

10/29/2009 Motion ▼

Hearing Time

8:15 AM

Result

Matter Continued

Comment

STATE'S MOTION TO DISMISS Heard By: Michael Villani

10/29/2009 Motion ▼

Comment

ALL PENDING MOTIONS 10-29-09

11/06/2009 Order ▼

Comment

STIPULATION AND ORDER EXTENDING BRIEFING SCHEDULE  
AND VACATING HEARING DATE

11/12/2009 Petition for Writ of Habeas Corpus ▼

Hearing Time

8:15 AM

Result

Matter Continued

Comment

PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Villani

11/12/2009 Motion ▼

Hearing Time

8:15 AM

Result

Matter Continued

Comment

STATE'S MOTION TO DISMISS Court Clerk: Kristen Brown  
Reporter/Recorder: Michelle Ramsey Heard By: Villani, Michael

Parties Present ▲

Plaintiff

Attorney: Thomas, Michelle L.

12/08/2009 Order ▼

Comment

STIPULATION AND ORDER

12/18/2009 Response ▼

Comment

RESPONSE TO MOTION TO DISMISS

01/05/2010 Supplement ▼

Comment

NOTICE OF SUPPLEMENTAL AUTHORITY

01/25/2010 Order ▼

Comment

STIPULATION AND ORDER

01/28/2010 Motion ▼

Hearing Time

8:15 AM

Result

Matter Continued

Comment

STATE'S MOTION TO DISMISS Relief Clerk: Tia Everett/te  
Reporter/Recorder: Michelle Ramsey Heard By: Villani, Michael

Parties Present ▲

Plaintiff

Attorney: Jeanney, Jacqueline

01/28/2010 Petition for Writ of Habeas Corpus ▼

Hearing Time

9:00 AM

Result

Matter Continued

Comment

PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Villani

02/04/2010 Motion ▼

Hearing Time

8:15 AM

Result

Matter Heard

Comment

STATE'S MOTION TO DISMISS Heard By: Jackie Glass

02/04/2010 All Pending Motions ▼

Hearing Time

8:15 AM

Result

Matter Heard

Comment

ALL PENDING MOTIONS (02-04-10) Court Clerk: Carol Donahoo Heard  
By: Michael Villani

02/04/2010 Petition for Writ of Habeas Corpus ▼

Hearing Time

9:00 AM

Result

Matter Heard

Comment

PTN FOR WRIT OF HABEAS CORPUS Heard By: Jackie Glass

02/04/2010 Errata ▼

Comment  
NOTICE OF ERRATA

03/15/2010 Reporters Transcript ▼

Comment  
REPORTER'S TRANSCRIPT OF PROCEEDINGS - DEFTS PRO  
PER PETITION FOR WRIT OF HABEAS CORPUS - STATES MTN  
TO DISMISS - HEARD 02-04-10 HABEAS CORPUS - STATES MTN  
TO DISMISS - HEARD 02-04-10

05/11/2010 Request ▼

Comment  
STATES NOTICE OF MOTION AND MOTION TO DISMISS  
DEFENDANTS AMENDED PETITION FOR WRIT OF HABEAS  
CORPUS - POST CONVICTION AND REPLY TO OPPOSITION  
PETITION FOR WRIT OF HABEAS CORPUS - POST CONVICTION  
AND REPLY TO OPPOSITION

05/13/2010 Motion ▼

Comment  
ALL PENDING MOTIONS (02-04-10)

11/06/2010 Findings of Fact, Conclusions of Law and Order

12/06/2010 Notice of Entry of Decision and Order

12/21/2010 Notice of Appeal (criminal) ▼

Comment  
Notice of Appeal

12/21/2010 Case Appeal Statement ▼

Comment  
Case Appeal Statement

10/24/2014 NV Supreme Court Clerks Certificate/Judgment - Affirmed ▼

Comment  
Nevada Supreme Court Clerk's Certificate Judgment - Affirmed;  
Rehearing Denied

10/27/2014 Criminal Order to Statistically Close Case ▼

Comment  
Criminal Order to Statistically Close Case

09/29/2016 Notice ▼



Comment  
Notice of Appearance

10/03/2016 Motion to Associate Counsel ▼

Comment  
Petitioner Samuel Howard's Motion to Associate Counsel

10/04/2016 Certificate of Service ▼

Comment  
Certificate of Service

10/04/2016 Application ▼

Comment  
Application for Order Waiving Fees Pursuant to Nevada Supreme Court Rule 42(3)(E) and Renewal of Application Fees Under Rule 42(9)

10/05/2016 Petition ▼

Comment  
Petition for Writ of Habeas Corpus (Post-Conviction)

10/06/2016 Certificate of Service ▼

Comment  
Certificate of Service

10/17/2016 Motion to Associate Counsel ▼

Comment  
Petitioner Samuel Howard's Motion to Associate Counsel

10/18/2016 Motion ▼

Judicial Officer  
Villani, Michael

Hearing Time  
8:30 AM

Result  
Motion Granted

Comment  
Defendant's Motion to Associate Counsel - Jonah J. Horwitz

Parties Present ▲  
Plaintiff: State of Nevada

Attorney: Vanboskerck, Jonathan

Attorney: Vanboskerck, Jonathan

10/18/2016 Errata ▼

Comment

Errata to Petitioner Samuel Howard's Motion to Associate Counsel

10/18/2016 Application ▼

Comment

Application for Order Waiving Fees

10/24/2016 Order Admitting to Practice ▼

Comment

Order Admitting to Practice Attorneys Deborah Anne Czuba, Esq.,  
and Jonah J. Horwitz, Esq.

10/24/2016 Notice of Entry of Order ▼

Comment

Notice of Entry of Order

11/02/2016 Opposition ▼

Comment

Opposition and Motion to Dismiss Fifth Petition for Writ of Habeas  
Corpus (Post-Conviction).

11/04/2016 Order Granting ▼

Comment

Order Granting Waiver of Original Fees and Annual Renewal Fee  
Pursuant to Nevada Supreme Court Rule 42, Subsection 3(e) and 9

11/07/2016 Notice of Entry of Order ▼

Comment

Notice of Entry of Order

12/09/2016 Stipulation and Order ▼

Comment

Stipulation and Order

12/12/2016 Motion to Strike ▼

Comment

Motion to Strike Amended Fifth Petition for Writ of Habeas Corpus  
(Post-Conviction)

02/03/2017 Opposition ▼

Comment  
Opposition to Motion to Strike

02/06/2017 Reply to Opposition ▼

Comment  
Reply to Opposition to Motion to Strike Amended Fifth Petition for  
Writ of Habeas Corpus (Post-Conviction).

03/17/2017 Petition for Writ of Habeas Corpus ▼

Judicial Officer  
Villani, Michael

Hearing Time  
9:30 AM

Result  
Matter Continued

03/17/2017 Motion to Strike ▼

Judicial Officer  
Villani, Michael

Hearing Time  
9:30 AM

Result  
Granted

Comment  
State's Motion to Strike Amended Fifth Petition for Writ of Habeas Corpus  
(Post-Conviction)

03/17/2017 All Pending Motions ▼

Judicial Officer  
Villani, Michael

Hearing Time  
9:30 AM

Result  
Matter Heard

Parties Present ▲  
Plaintiff: State of Nevada  
  
Attorney: Van Boskerck, Jonathan  
  
Attorney: Van Boskerck, Jonathan

03/27/2017 Reply ▼

Comment

Reply in Support of Petition for Writ of Habeas Corpus and Response to Motion to Dismiss

04/04/2017 Reply to Opposition ▼

Comment

Reply to Opposition to Motion to Dismiss Fifth Petition for Writ of Habeas Corpus (Post-Conviction)

04/05/2017 Recorders Transcript of Hearing ▼

Comment

Transcript of Proceedings Defendant's Petition for Writ of Habeas Corpus (Post Conviction) State's Motion to Strike Amended Fifth Petition for Writ of Habeas Corpus (Post Conviction) 03/17/2017

04/06/2017 Motion ▼

Comment

Motion to Amend or Supplement

04/07/2017 Order ▼

Comment

Order Striking Amended Fifth Petition.

04/12/2017 Opposition to Motion ▼

Comment

Opposition to Motion to Amend And Or Supplement Fifth Petition for Writ of Habeas Corpus (Post-Conviction).

04/17/2017 Reply ▼

Comment

Reply in Support of Motion to Amend or Supplement

04/19/2017 Petition for Writ of Habeas Corpus ▼

Judicial Officer

Villani, Michael

Hearing Time

3:00 AM

Result

Minute Order - No Hearing Held

Comment

Defendant's Petition for Writ of habeas Corpus

05/15/2017 Findings of Fact, Conclusions of Law and Order ▼

Comment

Findings of fact, Conclusions of Law and Order Denying Motion to Amend and or Supplement Fifth Petition for Writ of Habeas Corpus (Post-Conviction) and Opposition to Motion to Amend and or Supplement Fifth Petition for Writ of Habeas Corpus (Post-Conviction) and Imposing Sanctions on Petitioner's Counsel.

05/23/2017 Notice of Entry ▼

Comment

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

06/01/2017 Notice of Appeal (criminal) ▼

Comment

Notice of Appeal

06/01/2017 Case Appeal Statement ▼

Comment

Case Appeal Statement

07/13/2017 Notice ▼

Comment

Notice of Mandamus Petition

08/31/2018 Motion to Associate Counsel ▼

Comment

Motion to Associate Counsel Jonah J. Horwitz

08/31/2018 Application ▼

Comment

Application for Order Waiving Fees Pursuant to Nevada Supreme Court Rule 42 (3)(E) and Renewal of Application Fees Under Rule 42(9); Exhibit A

08/31/2018 Motion to Associate Counsel ▼

Comment

Motion to Associate Counsel Deborah a. Czuba

08/31/2018 Application ▼

Comment

Application for Debora A. Czuba

09/04/2018 Petition for Writ of Habeas Corpus ▼

Comment

Petition for Writ of Habeas Corpus (Post-Conviction)

09/11/2018 Motion to Associate Counsel ▼

Judicial Officer  
Hardcastle, Kathy

Hearing Time  
8:30 AM

Result  
Granted

Comment  
Defendant's Motion to Associate Counsel Jonah J. Horwitz

09/11/2018 Motion to Associate Counsel ▼

Judicial Officer  
Hardcastle, Kathy

Hearing Time  
8:30 AM

Result  
Granted

Comment  
Defendant's Motion to Associate Counsel Deborah A. Czuba

09/11/2018 All Pending Motions ▼

Judicial Officer  
Hardcastle, Kathy

Hearing Time  
8:30 AM

Result  
Matter Heard

Parties Present ▲  
Plaintiff: State of Nevada  
  
Attorney: Vanboskerck, Jonathan  
  
Attorney: Vanboskerck, Jonathan  
  
Defendant  
  
Attorney: Sisolak, Ashley L.

01/17/2019 Recorders Transcript of Hearing ▼

Comment  
Recorder's Transcript of Hearing: Defendant's Motion to Associate Counsel - Jonah J. Horwitz Heard on October 18, 2016

01/17/2019 Recorders Transcript of Hearing ▼

Comment

Recorder's Transcript of Hearing: Defendant's Motion to Associate Counsel, Deborah A. Czuba Defendant's Motion to Associate Counsel, Jonah J. Horwitz Heard on September 11, 2018

10/18/2019 NV Supreme Court Clerks Certificate/Judgment - Affirmed ▼

Comment

Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed

12/02/2019 Reply ▼

Comment

Reply in Support of Petition and Response to Motion to Dismiss

12/19/2019 Reply ▼

Comment

Reply to Response to Motion to Dismiss Sixth Petition for Writ of Habeas Corpus (Post-Conviction)

05/18/2020 Findings of Fact, Conclusions of Law and Order ▼

Comment

Findings of Fact, Conclusions of Law and Order Denying Sixth Petition for Writ of Habeas Corpus (Post-Conviction)

05/21/2020 Notice of Entry ▼

Comment

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

## Financial

Howard, Samuel

Total Financial Assessment	\$38.00
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Total Payments and Credits	\$38.00
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5/18/1994	Transaction	\$38.00
	Assessment	

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5/18/1994	Conversion Payment	Receipt #	(\$38.00)
		00091065	

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**CASE SUMMARY****CASE No. 81C053867****The State of Nevada vs Samuel Howard**§  
§  
§  
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§  
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§  
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§

Location: **Department 17**  
 Judicial Officer: **Villani, Michael**  
 Filed on: **05/21/1981**  
 Case Number History:  
 Cross-Reference Case Number: **C053867**  
 Defendant's Scope ID #: **624173**  
 Lower Court Case Number: **80G00127**  
 Supreme Court No.: **57469**  
**73223**

**CASE INFORMATION**

Offense	Statute	Deg	Date	Case Type:	Felony/Gross Misdemeanor
1. ROBBERY WITH USE OF A DEADLY WEAPON	200.380	F	01/01/1900	Case Status:	<b>10/27/2014 Closed</b>
2. ROBBERY WITH USE OF A DEADLY WEAPON	200.380	F	01/01/1900		
3. FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON	200.030.1	F	01/01/1900		

**Related Cases**

A-18-780434-W (Writ Related Case)

**Statistical Closures**

10/27/2014 Jury Trial - Conviction - Criminal  
 10/24/2007 USJR Reporting Statistical Closure


**DATE****CASE ASSIGNMENT****Current Case Assignment**

Case Number 81C053867  
 Court Department 17  
 Date Assigned 12/28/2008  
 Judicial Officer Villani, Michael

**PARTY INFORMATION**

		Lead Attorneys
<b>Defendant</b>	<b>Howard, Samuel</b>	<b>Public Defender</b> Retained 702-455-4685(W)
<b>Plaintiff</b>	<b>State of Nevada</b>	<b>Wolfson, Steven B</b> 702-671-2700(W)

**DATE****EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

05/21/1981	Conversion Case Event Type <i>CRIMINAL COMPLAINT</i>
05/21/1981	 Indictment <i>(GRAND JURY) INDICTMENT</i>
02/13/1991	Motion <i>MOTION FOR FEES IN EXCESS OF STATUTORY GUIDELINES</i>
02/15/1991	Receipt of Copy

# CASE SUMMARY


CASE No. 81C053867

	Filed by: Defendant Howard, Samuel <i>RECEIPT OF COPY OF REQUEST TO PLACE ON CALENDAR AND SUPPLEMENTAL BILLING BY CIVIL DISTRICT ATTORNEYS OFFICE CIVIL DISTRICT ATTORNEYS OFFICE</i>
02/19/1991	Response <i>RESPONSE TO DEFENDANTS MOTION FOR FEES IN EXCESS OF STATUTORY MAXIMUM</i>
02/26/1991	Certificate Filed By: Defendant Howard, Samuel <i>CERTIFICATE OF MAILING TO ATTORNEY GENERAL OF REQUEST TO PLACE ON CALENDAR</i>
03/12/1991	Motion <i>MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION</i>
03/25/1991	Order Filed By: Defendant Howard, Samuel <i>ORDER GRANTING MOTION FOR FEES IN EXCESS OF STATUTORY GUIDELINES</i>
12/16/1991	Petition <i>PETITION FOR POST CONVICTION RELIEF</i>
12/16/1991	Notice Filed By: Defendant Howard, Samuel <i>NOTICE OF PETITION</i>
02/10/1992	Request <i>MOTION TO DISMISS AMENDED PETITION FOR POST CONVICTION RELIEF</i>
02/14/1992	Hearing <i>STATUS CHECK EVIDENTIARY HEARING</i>
02/14/1992	Stipulation Filed by: Defendant Howard, Samuel <i>STIPULATION VACATING PETITIONERS AMENDED PETITION FOR POST CONVICTION RELIEF SET FOR 2-11-92 FOR 2-11-92</i>
02/25/1992	Order Filed By: Defendant Howard, Samuel <i>ORDER VACATING PETITIONERS AMENDED PETITION FOR POST CONVICTION RELIEF</i>
04/17/1992	Response Filed by: Defendant Howard, Samuel <i>RESPONSE TO MOTION TO DISMISS AMENDED PETITION FOR POST CONVICTION RELIEF</i>
04/21/1992	Motion <i>ALL PENDING MOTIONS 4/21/92</i>
04/28/1992	Motion <i>ALL PENDING MOTIONS 4-28-92</i>
05/27/1992	Order Filed By: Defendant Howard, Samuel <i>ORDER APPOINTING COUNSEL</i>
06/09/1992	Motion

# CASE SUMMARY






CASE No. 81C053867

ALL PENDING MOTIONS 6/9/92

07/07/1992	Order <i>ORDER OF EXECUTION</i>
07/07/1992	Warrant <i>WARRANT OF EXECUTION</i>
07/07/1992	Order Filed By: Defendant Howard, Samuel <i>ORDER DENYING AMENDED PETITION FOR POST CONVICTION RELIEF</i>
07/14/1992	Notice Filed By: Defendant Howard, Samuel <i>NOTICE OF APPEAL</i>
07/22/1992	Notice of Appeal Filed By: Defendant Howard, Samuel <i>DESIGNATION OF RECORD ON APPEAL</i>
07/29/1992	Order <i>ORDER RE; TRANSCRIPTS</i>
08/12/1992	Motion <i>MOTION FOR EXTRAORDINARY FEES</i>
08/17/1992	Receipt of Copy Filed by: Defendant Howard, Samuel <i>RECEIPT OF COPY</i>
08/26/1992	Order <i>ORDER GRANTING MOTION FOR EXTRAORDINARY FEES</i>
04/19/1993	Ex Parte Filed By: Defendant Howard, Samuel <i>EX PARTE MOTION FOR ENTRY OF ORDER NUNC PRO TUNC FOR APPOINTMENT OF COUNSEL</i>
04/26/1993	Order Filed By: Defendant Howard, Samuel <i>ORDER GRANTING EX PARTE MOTION FOR ENTRY OF ORDER NUNC PRO TUNC FOR APPOINTMENT OF COUNSEL OF COUNSEL</i>
11/18/1993	NV Supreme Court Clerks Certificate/Judgment - Dismissed <i>NEVADA SUPREME COURT JUDGMENT / ORDERED APPEAL DISMISSED</i>
01/04/1994	Ex Parte Filed By: Defendant Howard, Samuel <i>EX PARTE MOTION FOR EXTRAORDINARY FEES</i>
01/04/1994	Statement Filed by: Defendant Howard, Samuel <i>STATEMENT OF FEES AND COSTS</i>
01/19/1994	Order Filed By: Defendant Howard, Samuel <i>STIPULATION AND ORDER FOR EXTRA-ORDINARY FEES</i>
12/20/2002	 Petition <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS /9</i>

# CASE SUMMARY

CASE No. 81C053867

12/31/2002	 Motion <i>DEFT'S PRO PER MTN TO APPOINT EFFECTIVE POST-CONVICTION/10</i>
01/13/2003	 Opposition <i>STATES OPPOSITION TO DEFENDANTS MOTION FOR APPOINTMENT OF POST CONVICTION COUNSEL COUNSEL</i>
01/14/2003	Motion <i>ALL PENDING MOTIONS FOR 1/14/03</i>
01/17/2003	 Notice Filed By: Defendant Howard, Samuel <i>NOTICE OF APPEARANCE AS PRO BONO COUNSEL</i>
02/19/2003	 Substitution of Attorney Filed by: Defendant Howard, Samuel <i>SUBSTITUTION OF ATTORNEY</i>
03/04/2003	 Motion <i>STATE'S MTN TO DISMISS PTN FOR WRIT HABEAS CORPUS/12</i>
03/18/2003	Motion <i>ALL PENDING MOTIONS FOR 3/18/03</i>
03/20/2003	Hearing <i>STATUS CHECK: VERIFICATION OF PETITION VJ 06/03/03</i>
03/20/2003	Motion <i>ALL PENDING MOTIONS FOR 3/20/03</i>
03/28/2003	 Reporters Transcript <i>REPORTER'S TRANSCRIPT DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS STATES MOTION TO DISMISS DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS STATES MOTION TO DISMISS DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS</i>
04/03/2003	Conversion Case Event Type <i>ARGUMENT AND DECISION: DEFT'S PETITION/ STATE'S MTN TO DISMISS/STATUS CHECK: PET</i>
04/03/2003	Motion <i>ALL PENDING MOTIONS 04/03/03</i>
04/03/2003	 Verification Filed by: Defendant Howard, Samuel <i>VERIFICATION OF PETITIONER</i>
04/03/2003	 Receipt of Copy Filed by: Defendant Howard, Samuel <i>RECEIPT OF COPY</i>
05/21/2003	 Motion <i>DEFT'S MOTION TO EXTEND TIME TO FILE AN OPPOSITION TO STATE'S MTN TO DISMISS/18</i>

# CASE SUMMARY















CASE No. 81C053867

06/03/2003	Motion <i>HEARING RE: PETITION FOR WRIT OF HABEAS CORPUS</i>
08/18/2003	 Application Filed By: Defendant Howard, Samuel <i>EX PARTE APPLICATION TO EXTEND TIME TO FILE REPLY TO STATES RESPONSE TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)</i> <i>AMENDED PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)</i>
08/20/2003	 Petition Filed by: Defendant Howard, Samuel <i>AMENDED PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)(DEATH PENALTY)</i>
08/20/2003	 Opposition Filed By: Defendant Howard, Samuel <i>PETITIONER HOWARDS OPPOSITION TO STATES MOTION TO DISMISS PETITION</i>
08/20/2003	 Receipt of Copy Filed by: Defendant Howard, Samuel <i>RECEIPT OF COPY</i>
08/21/2003	Conversion Case Event Type <i>ARGUMENT/DECISION: DEFT'S WRIT FOR HABEAS CORPUS</i>
08/21/2003	 Receipt of Copy Filed by: Defendant Howard, Samuel <i>RECEIPT OF COPY</i>
08/21/2003	 Exhibits Filed By: Defendant Howard, Samuel <i>EXHIBITS TO PETITIONER HOWARDS OPPOSITION TO STATES MOTION TO DISMISS VOL II VOL II</i>
08/21/2003	 Exhibits Filed By: Defendant Howard, Samuel <i>EXHIBITS TO PETITIONER HOWARDS OPPOSITION TO STATES MOTION TO DISMISS</i>
08/25/2003	 Notice <i>NOTICE OF EXHIBITS TO EXHIBITS TO PETITIONER HOWARD'S OPPOSITION TO STATE'S MOTION TO DISMISS IN THE VAULT STATE'S MOTION TO DISMISS IN THE VAULT</i>
09/24/2003	 Reply <i>STATES REPLY TO DEFENDANTS OPPOSITION TO STATES MOTION TO DISMISS DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION</i> <i>DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION</i>
10/08/2003	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ARGUMENT/DECISION: PETITION FOR WRIT FOR HABEAS CORPUS</i>
10/08/2003	 Reporters Transcript <i>REPORTER'S TRANSCRIPT STATES MOTION TO DISMISS DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS OF HABEAS CORPUS (POST-CONVICTION)</i>

# CASE SUMMARY


CASE No. 81C053867

## DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS

10/08/2003	 Reporters Transcript <i>REPORTER'S TRANSCRIPT DEFENDANTS PRO PER MOTION FOR APPOINTMENT OF EFFECTIVE POST-CONVICTION COUNSEL DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION COUNSEL DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS</i>
10/08/2003	 Reporters Transcript <i>REPORTER'S TRANSCRIPT STATES MOTION TO DISMISS DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) STATUS CHECK: VERIFICATION OF PETITION OF HABEAS CORPUS (POST CONVICTION) DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) STATUS CHECK: VERIFICATION OF PETITION</i>
10/08/2003	 Reporters Transcript <i>REPORTER'S TRANSCRIPT DEFENDANTS MOTION TO EXTEND TIME TO FILE AN OPPOSITION TO STATES MOTION TO DISMISS TO STATES MOTION TO DISMISS</i>
10/08/2003	 Reporters Transcript <i>REPORTER'S TRANSCRIPT HEARING: WRIT OF HABEAS CORPUS (POST CONVICTION)</i>
10/13/2003	 Order <i>ORDER FOR TRANSCRIPT</i>
10/23/2003	 Judgment <i>FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER</i>
10/28/2003	 Notice of Entry of Decision and Order <i>NOTICE OF ENTRY OF DECISION AND ORDER</i>
11/25/2003	 Notice of Appeal Filed By: Defendant Howard, Samuel <i>NOTICE OF APPEAL</i>
12/30/2003	 Statement Filed by: Defendant Howard, Samuel <i>CASE APPEAL STATEMENT</i>
01/03/2005	 Judgment <i>CLERK'S CERTIFICATE/JUDGMENT AFFIRMED</i>
10/25/2007	 Motion <i>PETITIONER'S MTN FOR APPOINTMENT OF COUNSEL/21</i>
10/25/2007	 Motion <i>PETITIONER'S TO PROCEED IN FORMA PAUPERIS /22</i>
10/25/2007	 Petition <i>PTN FOR WRIT OF HABEAS CORPUS</i>
10/25/2007	 Exhibits <i>PETITIONERS EXHIBIT IN SUPPORT OF PTN FOR WRIT OF HABEAS CORPUS</i>

**CASE SUMMARY**

**CASE No. 81C053867**

10/25/2007	 Exhibits <i>PETITIONERS EXHIBITS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS VOLUME FOUR OF FOUR VOLUME FOUR OF FOUR</i>
10/25/2007	 Exhibits <i>PETITIONERS EXHIBITS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS VOLUME THREE OF FOUR VOLUME THREE OF FOUR</i>
10/25/2007	 Receipt of Copy <i>RECEIPT OF COPY</i>
10/25/2007	 Exhibits <i>PETITIONERS EXHIBITS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS VOLUME TWO OF FOUR VOLUME TWO OF FOUR</i>
10/25/2007	 Affidavit in Support Filed By: Defendant Howard, Samuel <i>AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS</i>
11/06/2007	Motion <i>ALL PENDING MOTIONS 11/6/07</i>
11/06/2007	Motion <i>STATE'S MOTION TO DISMISS</i>
03/12/2008	 Order <i>STIPULATION AND ORDER EXTENDING BRIEF SCHEDULE AND VACATING HEARING DATE</i>
04/08/2008	 Notice <i>STATES NOTICE OF MOTION AND MOTION TO DISMISS DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) HABEAS CORPUS (POST CONVICTION)</i>
05/13/2008	 Order <i>STIPULATION AND ORDER</i>
07/09/2008	 Order Filed By: Defendant Howard, Samuel <i>STIPULATION AND ORDER</i>
09/17/2008	 Order Filed By: Defendant Howard, Samuel <i>STIPULATION AND ORDER</i>
12/10/2008	 Order Filed By: Defendant Howard, Samuel <i>STIPULATION AND ORDER</i>
02/19/2009	Motion <i>ALL PENDING MOTIONS 2-19-09</i>
02/24/2009	 Exhibits Filed By: Defendant Howard, Samuel

# CASE SUMMARY

CASE No. 81C053867

*PETITIONERS EXHIBITS IN SUPPORT OF AMENDED PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION - VOLUME TWO OF FOUR CORPUS POST CONVICTION - VOLUME TWO OF FOUR*

02/24/2009



Exhibits

Filed By: Defendant Howard, Samuel

*PETITIONERS EXHIBITS IN SUPPORT OF AMENDED PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION - VOLUME FOUR OF FOUR CORPUS POST CONVICTION - VOLUME FOUR OF FOUR*

02/24/2009



Exhibits

Filed By: Defendant Howard, Samuel

*PETITIONERS EXHIBITS IN SUPPORT OF AMENDED PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION - VOLUME THREE OF FOUR CORPUS POST CONVICTION - VOLUME THREE OF FOUR*

02/24/2009



Exhibits

Filed By: Defendant Howard, Samuel

*PETITIONERS EXHIBITS IN SUPPORT OF AMENDED PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION CORPUS POST CONVICTION*

02/24/2009



Opposition

Filed By: Defendant Howard, Samuel

*PETITIONERS OPPOSITION TO MTN TO DISMISS*

02/24/2009



Order

Filed By: Defendant Howard, Samuel

*STIPULATION AND ORDER*

02/24/2009



Petition

Filed by: Defendant Howard, Samuel

*AMENDED PETITION FOR WRIT OF HABEAS CORPUS - POST CONVICTION*

05/06/2009



Petition

Filed by: Defendant Howard, Samuel

*PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION*

06/05/2009



Exhibits

Filed By: Defendant Howard, Samuel

*SUBMISSION OF EXHIBITS IN SUPPORT OF PETITIONERS PETITION FOR WRIT OF HABEAS CORPUS CORPUS*

06/11/2009



Notice

Filed By: Defendant Howard, Samuel

*NOTICE TO THE COURT REGARDING THE SERVICE OF THE PETITION FOR WRIT OF HABEAS CORPUS HABEAS CORPUS*

06/29/2009



Order

*STIPULATION AND ORDER EXTENDING BRIEFING SCHEDULE AND VACATING HEARING DATE*

08/20/2009



Order

*STIPULATION AND ORDER EXTENDING BRIEFING SCHEDULE AND VACATING HEARING DATE*

10/29/2009















Motion



# CASE SUMMARY

CASE No. 81C053867

ALL PENDING MOTIONS 10-29-09

11/06/2009	 Order <i>STIPULATION AND ORDER EXTENDING BRIEFING SCHEDULE AND VACATING HEARING DATE</i>
12/08/2009	 Order Filed By: Defendant Howard, Samuel <i>STIPULATION AND ORDER</i>
12/18/2009	 Response Filed by: Defendant Howard, Samuel <i>RESPONSE TO MOTION TO DISMISS</i>
01/05/2010	 Supplement Filed by: Defendant Howard, Samuel <i>NOTICE OF SUPPLEMENTAL AUTHORITY</i>
01/25/2010	 Order Filed By: Defendant Howard, Samuel <i>STIPULATION AND ORDER</i>
02/04/2010	 Errata <i>NOTICE OF ERRATA</i>
03/15/2010	 Reporters Transcript <i>REPORTER'S TRANSCRIPT OF PROCEEDINGS - DEFTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS - STATES MTN TO DISMISS - HEARD 02-04-10 HABEAS CORPUS - STATES MTN TO DISMISS - HEARD 02-04-10</i>
05/11/2010	 Request <i>STATES NOTICE OF MOTION AND MOTION TO DISMISS DEFENDANTS AMENDED PETITION FOR WRIT OF HABEAS CORPUS - POST CONVICTION AND REPLY TO OPPOSITION PETITION FOR WRIT OF HABEAS CORPUS - POST CONVICTION AND REPLY TO OPPOSITION</i>
05/13/2010	Motion <i>ALL PENDING MOTIONS (02-04-10)</i>
11/06/2010	 Findings of Fact, Conclusions of Law and Order Filed By: Plaintiff State of Nevada
12/06/2010	 Notice of Entry of Decision and Order
12/21/2010	 Notice of Appeal (criminal) <i>Notice of Appeal</i>
12/21/2010	 Case Appeal Statement <i>Case Appeal Statement</i>
10/24/2014	 NV Supreme Court Clerks Certificate/Judgment - Affirmed <i>Nevada Supreme Court Clerk's Certificate Judgment - Affirmed; Rehearing Denied</i>
10/27/2014	 Criminal Order to Statistically Close Case

# CASE SUMMARY

CASE NO. 81C053867

*Criminal Order to Statistically Close Case*

09/29/2016



Notice

Filed By: Defendant Howard, Samuel

*Notice of Appearance*

10/03/2016



Motion to Associate Counsel

Filed By: Defendant Howard, Samuel

*Petitioner Samuel Howard's Motion to Associate Counsel*

10/04/2016



Application

Filed By: Defendant Howard, Samuel

*Application for Order Waiving Fees Pursuant to Nevada Supreme Court Rule 42(3)(E) and Renewal of Application Fees Under Rule 42(9)*

10/04/2016



Certificate of Service

*Certificate of Service*

10/05/2016



Petition

Filed by: Defendant Howard, Samuel

*Petition for Writ of Habeas Corpus (Post-Conviction)*

10/06/2016



Certificate of Service

Filed by: Defendant Howard, Samuel

*Certificate of Service*

10/17/2016



Motion to Associate Counsel

Filed By: Defendant Howard, Samuel

*Petitioner Samuel Howard's Motion to Associate Counsel*

10/18/2016



Application

Filed By: Defendant Howard, Samuel

*Application for Order Waiving Fees*

10/18/2016



Errata

Filed By: Defendant Howard, Samuel

*Errata to Petitioner Samuel Howard's Motion to Associate Counsel*

10/24/2016



Order Admitting to Practice

Filed By: Defendant Howard, Samuel

*Order Admitting to Practice Attorneys Deborah Anne Czuba, Esq., and Jonah J. Horwitz, Esq.*

10/24/2016



Notice of Entry of Order

Filed By: Defendant Howard, Samuel

*Notice of Entry of Order*

11/02/2016



Opposition

Filed By: Defendant Howard, Samuel

*Opposition and Motion to Dismiss Fifth Petition for Writ of Habeas Corpus (Post-Conviction).*

11/04/2016




Order Granting

Filed By: Defendant Howard, Samuel

*Order Granting Waiver of Original Fees and Annual Renewal Fee Pursuant to Nevada Supreme Court Rule 42, Subsection 3(e) and 9*













# CASE SUMMARY

CASE NO. 81C053867

11/07/2016	 Notice of Entry of Order Filed By: Defendant Howard, Samuel <i>Notice of Entry of Order</i>
12/09/2016	 Stipulation and Order Filed by: Defendant Howard, Samuel <i>Stipulation and Order</i>
12/12/2016	 Motion to Strike Filed By: Plaintiff State of Nevada <i>Motion to Strike Amended Fifth Petition for Writ of Habeas Corpus (Post-Conviction)</i>
02/03/2017	 Opposition Filed By: Defendant Howard, Samuel <i>Opposition to Motion to Strike</i>
02/06/2017	 Reply to Opposition Filed by: Defendant Howard, Samuel <i>Reply to Opposition to Motion to Strike Amended Fifth Petition for Writ of Habeas Corpus (Post-Conviction).</i>
03/27/2017	 Reply Filed by: Defendant Howard, Samuel <i>Reply in Support of Petition for Writ of Habeas Corpus and Response to Motion to Dismiss</i>
04/04/2017	 Reply to Opposition Filed by: Plaintiff State of Nevada <i>Reply to Opposition to Motion to Dismiss Fifth Petition for Writ of Habeas Corpus (Post-Conviction)</i>
04/05/2017	 Recorders Transcript of Hearing <i>Transcript of Proceedings Defendant's Petition for Writ of Habeas Corpus (Post Conviction) State's Motion to Strike Amended Fifth Petition for Writ of Habeas Corpus (Post Conviction) 03/17/2017</i>
04/06/2017	 Motion Filed By: Defendant Howard, Samuel <i>Motion to Amend or Supplement</i>
04/07/2017	 Order Filed By: Plaintiff State of Nevada <i>Order Striking Amended Fifth Petition.</i>
04/12/2017	 Opposition to Motion Filed By: Defendant Howard, Samuel <i>Opposition to Motion to Amend And Or Supplement Fifth Petition for Writ of Habeas Corpus (Post-Conviction).</i>
04/17/2017	 Reply Filed by: Defendant Howard, Samuel <i>Reply in Support of Motion to Amend or Supplement</i>
05/15/2017	 Findings of Fact, Conclusions of Law and Order






# CASE SUMMARY

CASE NO. 81C053867

	<p>Filed By: Plaintiff State of Nevada</p> <p><i>Findings of fact, Conclusions of Law and Order Denying Motion to Amend and or Supplement Fifth Petition for Writ of Habeas Corpus (Post-Conviction) and Opposition to Motion to Amend and or Supplement Fifth Petition for Writ of Habeas Corpus (Post-Conviction) and Imposing Sanctions on Petitioner's Counsel.</i></p>
05/23/2017	<p> Notice of Entry</p> <p><i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i></p>
06/01/2017	<p> Notice of Appeal (criminal)</p> <p>Party: Defendant Howard, Samuel</p> <p><i>Notice of Appeal</i></p>
06/01/2017	<p> Case Appeal Statement</p> <p>Filed By: Defendant Howard, Samuel</p> <p><i>Case Appeal Statement</i></p>
07/13/2017	<p> Notice</p> <p>Filed By: Defendant Howard, Samuel</p> <p><i>Notice of Mandamus Petition</i></p>
08/31/2018	<p> Motion to Associate Counsel</p> <p>Filed By: Defendant Howard, Samuel</p> <p><i>Motion to Associate Counsel Jonah J. Horwitz</i></p>
08/31/2018	<p> Application</p> <p><i>Application for Order Waiving Fees Pursuant to Nevada Supreme Court Rule 42 (3)(E) and Renewal of Application Fees Under Rule 42(9); Exhibit A</i></p>
08/31/2018	<p> Motion to Associate Counsel</p> <p>Filed By: Defendant Howard, Samuel</p> <p><i>Motion to Associate Counsel Deborah a. Czuba</i></p>
08/31/2018	<p> Application</p> <p>Filed By: Defendant Howard, Samuel</p> <p><i>Application for Debora A. Czuba</i></p>
09/04/2018	<p> Petition for Writ of Habeas Corpus</p> <p><i>Petition for Writ of Habeas Corpus (Post-Conviction)</i></p>
01/17/2019	<p> Recorders Transcript of Hearing</p> <p><i>Recorder's Transcript of Hearing: Defendant's Motion to Associate Counsel - Jonah J. Horwitz Heard on October 18, 2016</i></p>
01/17/2019	<p> Recorders Transcript of Hearing</p> <p><i>Recorder's Transcript of Hearing: Defendant's Motion to Associate Counsel, Deborah A. Czuba Defendant's Motion to Associate Counsel, Jonah J. Horwitz Heard on September 11, 2018</i></p>
10/18/2019	<p> NV Supreme Court Clerks Certificate/Judgment - Affirmed</p> <p><i>Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed</i></p>
12/02/2019	<p> Reply</p> <p>Filed by: Defendant Howard, Samuel</p> <p><i>Reply in Support of Petition and Response to Motion to Dismiss</i></p>

# CASE SUMMARY

CASE NO. 81C053867

12/19/2019	 Reply Filed by: Plaintiff State of Nevada <i>Reply to Response to Motion to Dismiss Sixth Petition for Writ of Habeas Corpus (Post-Conviction)</i>
05/18/2020	 Findings of Fact, Conclusions of Law and Order <i>Findings of Fact, Conclusions of Law and Order Denying Sixth Petition for Writ of Habeas Corpus (Post-Conviction)</i>
05/21/2020	 Notice of Entry Filed By: Plaintiff State of Nevada <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
05/29/2020	 Notice of Appeal (criminal) Party: Defendant Howard, Samuel <i>Notice of Appeal</i>
05/29/2020	 Case Appeal Statement Filed By: Defendant Howard, Samuel <i>Case Appeal Statement</i>

## **DISPOSITIONS**

01/01/1900	<b>Plea</b> (Judicial Officer: User, Conversion) 1. ROBBERY WITH USE OF A DEADLY WEAPON Not Guilty PCN: Sequence:
01/01/1900	<b>Plea</b> (Judicial Officer: User, Conversion) 2. ROBBERY WITH USE OF A DEADLY WEAPON Not Guilty PCN: Sequence:
01/01/1900	<b>Plea</b> (Judicial Officer: User, Conversion) 3. FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON Not Guilty PCN: Sequence:
04/22/1983	<b>Disposition</b> (Judicial Officer: User, Conversion) 1. ROBBERY WITH USE OF A DEADLY WEAPON Guilty PCN: Sequence:
04/22/1983	<b>Disposition</b> (Judicial Officer: User, Conversion)
04/22/1983	<b>Disposition</b> (Judicial Officer: User, Conversion) 2. ROBBERY WITH USE OF A DEADLY WEAPON Guilty PCN: Sequence:
04/22/1983	<b>Disposition</b> (Judicial Officer: User, Conversion)
04/22/1983	<b>Disposition</b> (Judicial Officer: User, Conversion) 3. FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON

# CASE SUMMARY

CASE No. 81C053867

Guilty  
PCN: Sequence:

04/22/1983 **Disposition** (Judicial Officer: User, Conversion)

04/22/1983 **Adult Adjudication** (Judicial Officer: User, Conversion)  
1. ROBBERY WITH USE OF A DEADLY WEAPON  
01/01/1900 (F) 200.380 (DC50138)  
PCN: Sequence:

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Converted Disposition:  
Sentence# 0001:  
Minimum 15 Years to Maximum 15 Years  
Placement: NSP  
Cons/Conc: Consecutive  
w/Charge Item: 0003  
and Sentence#: 0001  
Converted Disposition:  
Sentence# 0002:  
Minimum 15 Years to Maximum 15 Years  
Placement: NSP  
Cons/Conc: Consecutive  
w/Charge Item: 0001  
and Sentence#: 0001  
Converted Disposition:  
Sentence# 0003: CREDIT FOR TIME SERVED  
Minimum 230 Days to Maximum 230 Days

04/22/1983 **Adult Adjudication** (Judicial Officer: User, Conversion)  
2. ROBBERY WITH USE OF A DEADLY WEAPON  
01/01/1900 (F) 200.380 (DC50138)  
PCN: Sequence:

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Converted Disposition:  
Sentence# 0001:  
Minimum 15 Years to Maximum 15 Years  
Placement: NSP  
Cons/Conc: Consecutive  
w/Charge Item: 0001  
and Sentence#: 0001  
Converted Disposition:  
Sentence# 0002:  
Minimum 15 Years to Maximum 15 Years  
Placement: NSP  
Cons/Conc: Consecutive  
w/Charge Item: 0002  
and Sentence#: 0001

04/22/1983 **Adult Adjudication** (Judicial Officer: User, Conversion)  
3. FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON  
01/01/1900 (F) 200.030.1 (DC50006)  
PCN: Sequence:

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Converted Disposition:  
Sentence# 0001: DEATH PENALTY

## HEARINGS

02/26/1991 **Motion** (9:00 AM)  
Events: 02/13/1991 Motion  
*MOTION FOR FEES IN EXCESS OF STATUTORY GUIDELINES Court Clerk: ALONA FUJII Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL, JEFFREY*  
Matter Continued; MOTION FOR FEES IN EXCESS OF STATUTORY GUIDELINES Court

# CASE SUMMARY

CASE No. 81C053867

Clerk: ALONA FUJII Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL, JEFFREY

Journal Entry Details:

*State represented by Ronald Bloxham, DDA. Defendant Howard not present, in custody, represented by David Schieck. Court advised Mr. Schieck that the state should be represented by the Attorney General's office and not the District Attorney's office. COURT ORDERED, matter continued. 3/7/91 @ 9 a.m. ;*

03/07/1991

**Motion (9:00 AM)**

*MOTION FOR FEES IN EXCESS OF STATUTORY GUIDELINES Court Clerk: ALONA FUJII Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: Jeffrey Sobel*

Matter Continued; MOTION FOR FEES IN EXCESS OF STATUTORY GUIDELINES Court Clerk: ALONA FUJII Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: Jeffrey Sobel

Journal Entry Details:

*Mr. Schieck advised court that the State has no opposition. COURT ORDERED, motion GRANTED, Mr. Schieck to prepare order. LATER: Stephanie Tucker and Keith Marcher, DAGs appeared and advised court that the Attorney General's office was not aware of date, and will notify court if there is opposition. ;*

03/26/1991

**Motion (9:00 AM)**

Events: 03/12/1991 Motion

*MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION Court Clerk: ALONA FUJII Relief Clerk: SANDRA SMITH Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL, JEFFREY*

Matter Continued; MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION Court Clerk: ALONA FUJII Relief Clerk: SANDRA SMITH Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL, JEFFREY

Journal Entry Details:

*There being no parties present, COURT ORDERED: Matter continued for one week. CUSTODY (NSP) ;*

04/02/1991

**Motion (9:00 AM)**

*MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION Court Clerk: ALONA FUJII Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL, JEFFREY*

Matter Continued; MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION Court Clerk: ALONA FUJII Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL, JEFFREY

Journal Entry Details:

*Statements by counsel. Ms. Monroe advised court that this is Mr. Seaton's case. Mr. Schieck advised court that he just received a copy of warrant from Ms. Monroe today in court and there are a few errors. Court advised counsel that it is reluctant to sign a warrant of execution which is not letter perfect. COURT ORDERED, matter continued. CUSTODY - NSP APRIL 9, 1991 @ 9 A.M. -- STATE'S MTN CONTINUED ;*

04/09/1991

**Motion (9:00 AM)**

*MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION Court Clerk: ALONA FUJII Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL, JEFFREY*

Matter Continued; MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION Court Clerk: ALONA FUJII Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL, JEFFREY

Journal Entry Details:

*Mr. Schieck requested to review warrant of execution. COURT ORDERED, matter trailed. LATER: Mr. Schieck advised court that he has reviewed warrant and has no opposition. Third supplemental Warrant and Order of execution signed and filed in open court. COURT ORDERED, the Director of the department of Prisons shall during the week beginning Monday, the 6th day of May 1991, carry out said judgment and sentence by executing said Samuel Howard by the administration to him, said Defendant Samuel Howard, an injection of a lethal drug in the manner as required by law and pursuant to the Third Supplemental Warrant of Execution. CUSTODY - NSP ;*

02/04/1992

**Petition for Post Conviction Relief (9:00 AM)**

# CASE SUMMARY

CASE No. 81C053867

Events: 12/16/1991 Petition

*PETITION FOR POST CONVICTION RELIEF Court Clerk: ALONA CANDITO*

*Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL, JEFFREY*

Matter Continued; PETITION FOR POST CONVICTION RELIEF Court Clerk: ALONA CANDITO Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL, JEFFREY

Journal Entry Details:

*Mr. Harmon requested this matter be continued for one week. COURT ORDERED, MATTER CONTINUED. CUSTODY - SNP //Clerk telephoned Mr. Potter's office and advised continuance date. (Michelle 2/5/92 @2:43 p.m. ac) ;*

02/11/1992

## Petition for Post Conviction Relief (9:00 AM)

*PETITION FOR POST CONVICTION RELIEF Court Clerk: ALONA CANDITO*

*Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL, JEFFREY*

Matter Continued; PETITION FOR POST CONVICTION RELIEF Court Clerk: ALONA CANDITO Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL, JEFFREY

Journal Entry Details:

*Ms. Monroe advised Court that Mr. Harmon was present earlier and he spoke with Mr. Schieck, who requested this matter be continued. Ms. Monroe submitted a copy of the State's response to the Court. COURT ORDERED, MATTER CONTINUED FOR ONE MONTH. Court advised Ms. Monroe for the State to contact Mr. Schieck and advise continuance date. All courtesy copies should be filed and submitted to the Court one full week prior to hearing date. Mr. Schieck to advised Court whether the Defendant is entitled to an Evidentiary Hearing, or if one is necessary. 3/12/92 @ 9 A.M. -- STATUS CHECK: EVIDENTIARY HEARING CUSTODY - NSP ;*

03/12/1992

## Status Check (9:00 AM)

Events: 02/14/1992 Hearing

*STATUS CHECK EVIDENTIARY HEARING Court Clerk: ALONA CANDITO Relief Clerk:*

*LEONE DUMIRE Reporter/Recorder: DEBRA WINN Heard By: SOBEL, JEFFREY*

Matter Continued; STATUS CHECK EVIDENTIARY HEARING Court Clerk: ALONA CANDITO Relief Clerk: LEONE DUMIRE Reporter/Recorder: DEBRA WINN Heard By: SOBEL, JEFFREY

Journal Entry Details:

*MR. BARKER STATED THERE WAS A STIPULATION IN HIS FILE THAT HAD NOT BEEN SIGNED BY MR. HARMON, DATED 2/12/92 TO CONTINUE THIS HEARING DATE, HOWEVER, BEYOND THAT, HE DID NOT KNOW WHAT TO TELL THE COURT. COURT ORDERED: THIS MATTER IS PASSED FOR ONE WEEK AND THE COURT CLERK WILL NOTIFY MR. WETHERALL AND MR. SCHIECK OF NEW COURT DATE AND TO HAVE THEM PRESENT TO DETERMINE THE STATUS OF THIS MATTER AND IF AN EVIDENTIARY HEARING IS NECESSARY. CUSTODY 3/19/92 @ 9 AM - STATUS CHECK: EVIDENTIARY HEARING ON 3/12/92 THE CT. CLERK CALLED MR. WETHERALL'S OFFICE AND INFORMED HIS SECRETARY OF NEW DATE, AS WELL AS MR. SCHIECK'S OFFICE. MR. WETHERALL'S SECRETARY APOLOGIZED FOR MR. WETHERALL NOT BEING PRESENT AND FOR THE MIX UP AND STATED THERE WAS A FILE STAMPED COPY OF THE STIPULATION AND ORDER SIGNED BY THE COURT TO CONTINUE THE MATTER TO 4/21/92, HOWEVER, WOULD HAVE MR. WETHERALL PRESENT AT NEXT HEARING DATE. ;*

03/19/1992

## Status Check (9:00 AM)

*STATUS CHECK EVIDENTIARY HEARING Court Clerk: ALONA CANDITO*

*Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL, JEFFREY*

Matter Continued; STATUS CHECK EVIDENTIARY HEARING Court Clerk: ALONA CANDITO Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: SOBEL, JEFFREY

Journal Entry Details:

*Defendant represented by Peter Wetherall. Court inquired whether Counsel are ready in terms of the petition. Ms. Monroe advised Court that the State filed a motion to dismiss which has not been answered. Mr. Wetherall advised Court that he will be answering the motion to dismiss. COURT ORDERED, THIS MATTER CONTINUED, COUNSEL TO SUBMIT COURTESY COPIES TO THE COURT. FURTHER ORDERED, THE 4/9/92 MOTION TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION IS ALSO CONTINUED TO NEXT HEARING DATE. CUSTODY - NSP ;*



# CASE SUMMARY

CASE No. 81C053867

04/21/1992	<p><b>Motion (9:00 AM)</b>  <i>MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION</i> Heard By: Jeffrey Sobel</p>
04/21/1992	<p><b>Petition for Post Conviction Relief (9:00 AM)</b>  <i>PETITION FOR POST CONVICTION RELIEF</i> Heard By: Jeffrey Sobel</p>
04/21/1992	<p><b>Status Check (9:00 AM)</b>  <i>STATUS CHECK EVIDENTIARY HEARING</i> Heard By: Jeffrey Sobel</p>
04/21/1992	<p><b>All Pending Motions (9:00 AM)</b>  <i>ALL PENDING MOTIONS 4/21/92 Court Clerk: ALONA CANDITO Reporter/Recorder: SHIRLEE CHRISTOFFERSON</i> Heard By: Jeffrey Sobel  Matter Heard; <i>ALL PENDING MOTIONS 4/21/92 Court Clerk: ALONA CANDITO Reporter/Recorder: SHIRLEE CHRISTOFFERSON</i> Heard By: Jeffrey Sobel  Journal Entry Details:  <i>DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF STATE'S MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION STATUS CHECK: EVIDENTIARY HEARING</i> Defendant represented by Peter Wetherall, who advised Court that he has answered the motion. Court advised Counsel that it has not seen the answer as it did not receive a courtesy copy. Mr. Noxon advised Court that this is Mr. Harmon's case. <i>COURT ORDERED, MATTER CONTINUED.</i> Mr. Wetherall advised Court that he was appointed in the Federal Court matter and does not believe that the motion for appointment of counsel was ever filed. <i>COURT ORDERED, MR. WETHERALL TO PUT IN WRITING AND COURT WILL TAKE UP NEXT WEEK. CUSTODY - NSP 4/28/92 - ALL PENDING MOTIONS ;</i></p>
04/28/1992	<p><b>Motion (9:00 AM)</b>  <i>MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION</i> Heard By: Jeffrey Sobel</p>
04/28/1992	<p><b>Petition for Post Conviction Relief (9:00 AM)</b>  <i>PETITION FOR POST CONVICTION RELIEF</i> Heard By: Jeffrey Sobel</p>
04/28/1992	<p><b>Status Check (9:00 AM)</b>  <i>STATUS CHECK EVIDENTIARY HEARING</i> Heard By: Jeffrey Sobel</p>
04/28/1992	<p><b>All Pending Motions (9:00 AM)</b>  <i>ALL PENDING MOTIONS 4-28-92 Court Clerk: ALONA CANDITO Relief Clerk: SHARON PHELPS Reporter/Recorder: SHIRLEE CHRISTOFFERSON</i> Heard By: Jeffrey Sobel  Matter Heard; <i>ALL PENDING MOTIONS 4-28-92 Court Clerk: ALONA CANDITO Relief Clerk: SHARON PHELPS Reporter/Recorder: SHIRLEE CHRISTOFFERSON</i> Heard By: Jeffrey Sobel  Journal Entry Details:  <i>DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF/STATE'S MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION/STATUS CHECK: EVIDENTIARY HEARING</i> Peter Wetherall present for the defendant. Court <i>ORDERED</i> Mr. Wetherall officially appointed to represent the deft. on the Petition for Post Conviction Relief. Court advised it needs to review the "A" and "B" files on this case, and <i>ORDERED, matters continued. CUSTODY (NSP)...5-19-92 @ 9:00 A.M. DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF/STATE'S MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION/STATUS CHECK: EVIDENTIARY HEARING ;</i></p>
05/19/1992	<p><b>Motion (9:00 AM)</b>  <i>MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION</i> Heard By: Jeffrey Sobel</p>
05/19/1992	<p><b>Petition for Post Conviction Relief (9:00 AM)</b>  <i>PETITION FOR POST CONVICTION RELIEF</i> Heard By: Jeffrey Sobel</p>
05/19/1992	<p><b>Status Check (9:00 AM)</b>  <i>STATUS CHECK EVIDENTIARY HEARING</i> Heard By: Jeffrey Sobel</p>

# CASE SUMMARY

CASE No. 81C053867

06/09/1992	<p><b>Motion (9:00 AM)</b>  <i>MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION</i> Heard By: Jeffrey Sobel</p>
06/09/1992	<p><b>Petition for Post Conviction Relief (9:00 AM)</b>  <i>PETITION FOR POST CONVICTION RELIEF</i> Court Clerk: ALONA CANDITO  Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: Jeffrey Sobel</p>
06/09/1992	<p><b>Status Check (9:00 AM)</b>  <i>STATUS CHECK EVIDENTIARY HEARING</i> Court Clerk: ALONA CANDITO Relief Clerk: LEONE DUMIRE  Reporter/Recorder: DEBRA WINN Heard By: Jeffrey Sobel</p>
06/09/1992	<p><b>All Pending Motions (9:00 AM)</b>  <i>ALL PENDING MOTIONS 6/9/92</i> Court Clerk: ALONA CANDITO Reporter/Recorder: ARLENE BLAZI Heard By: Jeffrey Sobel  Matter Heard; ALL PENDING MOTIONS 6/9/92 Court Clerk: ALONA CANDITO  Reporter/Recorder: ARLENE BLAZI Heard By: Jeffrey Sobel  Journal Entry Details:  <i>DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF STATE'S MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION STATUS CHECK: EVIDENTIARY HEARING</i> Defendant also represented by Peter Wetherall. Court advised counsel that it has reviewed the "A" and "B" files. <i>COURT ORDERED, PETITION FOR POST CONVICTION RELIEF IS DENIED.</i> Court inquired about the supplemental warrant of execution. State advised court that it does not have the warrant prepared. <i>COURT ORDERED, MOTION FOR THIRD SUPPLEMENTAL WARRANT CONTINUED.</i> CUSTODY - NSP 6/23/92 -- <i>STATE'S MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION ;</i></p>
06/23/1992	<p><b>Motion (9:00 AM)</b>  <i>MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION</i> Court Clerk: ALONA CANDITO Relief Clerk: PATRICIA CAMAROTE  Reporter/Recorder: ARLENE BLAZI Heard By: SOBEL, JEFFREY  Matter Continued; <i>MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION</i> Court Clerk: ALONA CANDITO Relief Clerk: PATRICIA CAMAROTE  Reporter/Recorder: ARLENE BLAZI Heard By: SOBEL, JEFFREY  Journal Entry Details:  <i>Mr. Potter objected to the findings of facts not being prepared in this case. Mr. Barker advised Court that what routinely happens is a very expensive execution is put on, and then a stay is received from Judge Reed. Mr. Barker requested a continuance for Mr. Harmon to appear as the findings have not been filed. COURT ORDERED, MATTER CONTINUED. Mr. Potter advised Court that he needs the findings for Federal Court. CUSTODY - NSP 7/7/92 -- 9 AM - - STATE'S MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION ;</i></p>
07/07/1992	<p><b>Motion (9:00 AM)</b>  <i>MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION</i> Court Clerk: ALONA CANDITO Relief Clerk: PATRICIA CAMAROTE  Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: Jeffrey Sobel  Matter Continued; <i>MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION</i> Court Clerk: ALONA CANDITO Relief Clerk: PATRICIA CAMAROTE  Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: Jeffrey Sobel  Journal Entry Details:  <i>Peter Wetherall present on behalf of defendant. Court stated it received the Findings of Facts last evening, has read them and further stated they do comply. Court signed the Order Denying Amended Petition, Order for Execution and the Warrant of Execution in open Court and returned them to the State for filing in open Court and Service. Mr. Wetherall stated an indication that Mr. Harmon wants to wait and further stated that, once this matter is resolved here, it will go back to Federal Court, due to the fact that Federal Court wants to take over this case after the State's claims are exhausted. Mr. Bloxham objected. Court stated that the State is entitled to the Warrant. COURT ORDERED, MOTION GRANTED. CUSTODY (NSP) ;</i></p>
08/25/1992	<p><b>Motion (9:00 AM)</b></p>

# CASE SUMMARY

CASE No. 81C053867

	<p>Events: 08/12/1992 Motion</p> <p><i>MOTION FOR EXTRAORDINARY FEES Court Clerk: ALONA CANDITO</i></p> <p><i>Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: Jeffrey Sobel</i></p> <p>Granted; <i>MOTION FOR EXTRAORDINARY FEES Court Clerk: ALONA CANDITO</i></p> <p><i>Reporter/Recorder: SHIRLEE CHRISTOFFERSON Heard By: Jeffrey Sobel</i></p> <p>Journal Entry Details:</p> <p><i>Mr. Paine advised court that the state has no objection. COURT ORDERED, MOTION GRANTED. CUSTODY - NSP ;</i></p>
01/09/2003	<p><b>Petition for Writ of Habeas Corpus (9:00 AM)</b></p> <p>Events: 12/20/2002 Petition</p> <p><i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS /9 Court Clerk: Billie Jo Craig</i></p> <p><i>Reporter/Recorder: Shirley Parawalsky Heard By: Glass, Jackie</i></p> <p>Matter Continued; <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS /9 Court Clerk: Billie Jo Craig</i></p> <p><i>Reporter/Recorder: Shirley Parawalsky Heard By: Glass, Jackie</i></p> <p>Journal Entry Details:</p> <p><i>Mr. Peterson advised this was a Pro Per Motion and objected to Ms. Erickson being present and speaking. She has not been appointed and the hearing is next week to appoint counsel and defendant has no right to an attorney. There was a briefing schedule set and a hearing was supposed to be today. However, there was a subsequent petition filed in December that the State wishes to respond to in 60 days. He requested the time to respond be extended. Ms. Erickson represented she has been representing defendant for 6-1/2 years in his federal case and Judge Hicks ordered her to represent defendant and amend the petition. COURT ORDERED, this matter CONTINUED to the same date as Defendant's Pro Per Motion for Appointment of Effective Post-Conviction Counsel. Court directed Ms. Erickson to provide Mr. Peterson and the Court with a copy of the documentation where Judge Hicks ordered her to represent defendant in his federal case and to amend the petition. NDC ;</i></p>
01/14/2003	<p><b>Petition for Writ of Habeas Corpus (9:00 AM)</b></p> <p><i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS /9</i></p>
01/14/2003	<p><b>Motion (9:00 AM)</b></p> <p>Events: 12/31/2002 Motion</p> <p><i>DEFT'S PRO PER MTN TO APPOINT EFFECTIVE POST-CONVICTION/10 Heard By: Jackie Glass</i></p>
01/14/2003	<p><b>All Pending Motions (9:00 AM)</b></p> <p><i>ALL PENDING MOTIONS FOR 1/14/03 Court Clerk: Billie Jo Craig Reporter/Recorder: Shirlee Parawalsky Heard By: Jackie Glass</i></p> <p>Matter Heard; <i>ALL PENDING MOTIONS FOR 1/14/03 Court Clerk: Billie Jo Craig</i></p> <p><i>Reporter/Recorder: Shirlee Parawalsky Heard By: Jackie Glass</i></p> <p>Journal Entry Details:</p> <p><i>DEFENDANT'S PRO PER MOTION FOR APPOINTMENT OF EFFECTIVE POST-CONVICTION COUNSEL...DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) Mr. Tufeland advised defendant has a federal petition with constitutional claims which are not exhausted. The Pro Per Petition was actually prepared by Ms. Erickson and is not verified. He intends to file a Motion to Dismiss as defendant not entitled to counsel. COURT ORDERED, Defendant's Pro Per Motion for Appointment of Effective Post-Conviction Counsel is DENIED. As the State previously requested time to respond to the Petition, COURT ORDERED, the State's request to respond is GRANTED and matter CONTINUED. Court directed Ms. Erickson to file a written Motion to be appointed as Counsel in this case. NDC CONTINUED TO: 3/18/03 9:00 AM DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) ;</i></p>
03/18/2003	<p><b>Petition for Writ of Habeas Corpus (9:00 AM)</b></p> <p><i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS /9</i></p>
03/18/2003	<p><b>Motion to Dismiss (9:00 AM)</b></p> <p>Events: 03/04/2003 Motion</p> <p><i>STATE'S MTN TO DISMISS PTN FOR WRIT HABEAS CORPUS/12</i></p>
03/18/2003	<p><b>All Pending Motions (9:00 AM)</b></p> <p><i>ALL PENDING MOTIONS FOR 3/18/03 Court Clerk: Billie Jo Craig Reporter/Recorder: Shirlee Prawalsky Heard By: Jackie Glass</i></p>

# CASE SUMMARY

CASE No. 81C053867

Matter Heard; ALL PENDING MOTIONS FOR 3/18/03 Court Clerk: Billie Jo Craig  
Reporter/Recorder: Shirlee Prawalsky Heard By: Jackie Glass

Journal Entry Details:

*DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)...  
STATE'S MOTION TO DISMISS DEFENDANT'S PETITION FOR WRIT OF HABEAS  
CORPUS (POST-CONVICTION) Mr. Peterson advised he was out of the office for three days  
and had a Motion to Dismiss ready if the Petition was verified. If not verified, the Petition  
should be dismissed as if it was not filed. Colloquy regarding who defendant's attorney was  
and whether his attorney was working pro bono. Mr. Peterson advised there was no reason to  
appoint an attorney and Ms. Erickson could work pro bono. However, there was a difference if  
the Court appointed an attorney pro bono or not. Mr. Peterson advised it was not appropriate  
for Ms. Erickson to substitute in as attorney of record as she would need permission of the  
Court. Court noted it did not know if the Petition was verified or not as it only had the "D" file,  
and ORDERED, matter CONTINUED. NDC CONTINUED TO: 3/20/03 9:00 AM SAME  
MOTIONS ;*

03/20/2003

**Petition for Writ of Habeas Corpus (9:00 AM)**

*DEFT'S PTN FOR WRIT OF HABEAS CORPUS /9*

03/20/2003

**Motion to Dismiss (9:00 AM)**

*STATE'S MTN TO DISMISS PTN FOR WRIT HABEAS CORPUS/12*

03/20/2003

**All Pending Motions (9:00 AM)**

*ALL PENDING MOTIONS FOR 3/20/03 Court Clerk: Billie Jo Craig Reporter/Recorder:  
Shirlee Prawalsky Heard By: Jackie Glass*

Matter Heard; ALL PENDING MOTIONS FOR 3/20/03 Court Clerk: Billie Jo Craig  
Reporter/Recorder: Shirlee Prawalsky Heard By: Jackie Glass

Journal Entry Details:

*DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)...  
STATE'S MOTION TO DISMISS DEFENDANT'S PETITION FOR WRIT OF HABEAS  
CORPUS (POST-CONVICTION) Ms. Erickson advised matter not resolved. Court noted Ms.  
Erickson is defendant's counsel but was not appointed by the Court. Court noted Ms. Erickson  
not appointed pro bono and she is donating her time with no compensation. As to verification,  
Court noted it does not comply with statute. Mr. Erickson advised she was not informed as to  
that issue and was not prepared to respond. Court directed Ms. Erickson to take care of the  
verification today and the State to response in 30 days. COURT ORDERED, matter SET for  
Status Check: Verification of Petition. The two matters on Calendar today to be CONTINUED  
to the Status Check date with a date to be heard set at that time. NDC CONTINUED: 4/3/03  
9:00 AM SAME MATTERS...STATUS CHECK: VERIFICATION OF PETITION ;*

04/03/2003

**Petition for Writ of Habeas Corpus (9:00 AM)**

*DEFT'S PTN FOR WRIT OF HABEAS CORPUS /9*

04/03/2003

**Motion to Dismiss (9:00 AM)**

*STATE'S MTN TO DISMISS PTN FOR WRIT HABEAS CORPUS/12*

04/03/2003

**Status Check (9:00 AM)**

Events: 03/20/2003 Hearing

*STATUS CHECK: VERIFICATION OF PETITION VJ 06/03/03*

04/03/2003

**All Pending Motions (9:00 AM)**

*ALL PENDING MOTIONS 04/03/03 Court Clerk: Georgette Byrd Reporter/Recorder: Shirlee  
Prawalsky Heard By: Joseph Pavlikowski*

Matter Heard; ALL PENDING MOTIONS 04/03/03 Court Clerk: Georgette Byrd  
Reporter/Recorder: Shirlee Prawalsky Heard By: Joseph Pavlikowski

Journal Entry Details:

*STATUS CHECK: VERIFICATION OF PETITION..DEFT'S PRO PER PETITION FOR WRIT  
OF HABEAS CORPUS (POST-CONVICTION)..STATE'S MOTION TO DISMISS  
DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) Ms.  
Erickson stated she filed Defendants petition yesterday and requested a date to respond by to  
State's Motion to Dismiss. COURT ORDERED, Defendant to respond by June 5, 2003; State  
advised it does not need a reply date. NDC 06/12/03 9:00 AM ARGUMENT/DECISION:  
DEFT PETITION/STATE'S MOTION/STATUS CHECK ;*

# CASE SUMMARY

CASE No. 81C053867

06/03/2003	<p><b>Motion (9:00 AM)</b>  Events: 05/21/2003 Motion  <i>DEFT'S MOTION TO EXTEND TIME TO FILE AN OPPOSITION TO STATE'S MTN TO DISMISS/18 Court Clerk: Georgette Byrd Reporter/Recorder: Shirlee Prawalsky Heard By: Jackie Glass</i>  Granted; DEFT'S MOTION TO EXTEND TIME TO FILE AN OPPOSITION TO STATE'S MTN TO DISMISS/18 Court Clerk: Georgette Byrd Reporter/Recorder: Shirlee Prawalsky Heard By: Jackie Glass  Journal Entry Details:  <i>Ms. Erickson requested an extension. Mr. Peterson argued this is defendants third successive petition for writ which the Stated urged the Court to appoint counsel. The State has written their opposition and object to a continuance to August. Ms. Erickson stated she must find a reason why this Court should not deny defendants petition. Further Ms. Erickson stated she has broken her arm and should not be working at this point per doctors orders. COURT ORDERED, Ms. Erickson will be granted additional time to work on her opposition, however if the opposition is not submitted by August 18, 2003 the case will be dismissed. NDC 08/21/03 9:00 AM HEARING: DEFT'S WRIT FOR HABEAS CORPUS ;</i></p>
06/12/2003	<p><b>Petition for Writ of Habeas Corpus (9:00 AM)</b>  <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS /9 Court Clerk: Billie Jo Craig Reporter/Recorder: Shirley Parawalsky</i></p>
06/12/2003	<p><b>Motion to Dismiss (9:00 AM)</b>  <i>STATE'S MTN TO DISMISS PTN FOR WRIT HABEAS CORPUS/12</i></p>
06/12/2003	<p><b>Status Check (9:00 AM)</b>  <i>STATUS CHECK: VERIFICATION OF PETITION VJ 06/03/03</i></p>
06/12/2003	<p><b>CANCELED Hearing (9:00 AM)</b>  Events: 04/03/2003 Conversion Case Event Type  <i>Vacated</i></p>
08/21/2003	<p><b>Show Cause Hearing (9:00 AM)</b>  Events: 06/03/2003 Motion  <i>HEARING RE: PETITION FOR WRIT OF HABEAS CORPUS Court Clerk: Georgette Byrd Reporter/Recorder: Shirlee Prawalsky Heard By: Jackie Glass</i>  Matter Heard; HEARING RE: PETITION FOR WRIT OF HABEAS CORPUS Court Clerk: Georgette Byrd Reporter/Recorder: Shirlee Prawalsky Heard By: Jackie Glass  Journal Entry Details:  <i>Ms. Erickson filed Exhibit To Petition Howard/Opposition To State's Motion To Dismiss. Court noted it gave Ms. Erickson until 8/18 to file her opposition. Ms. Erickson stated she filed an Ex Parte Motion for a two day extention and provided a copy to Court and counsel. Arguments by Mr. Peterson. COURT ORDERED, State has until 9/25/03 to file their reply and matter is continued. NDC 10/02/03 9:00 AM ARGUMENTS/DECISION: PETITION FOR WRIT OF HABEAS CORPUS ;</i></p>
10/02/2003	<p><b>Hearing (9:00 AM)</b>  Events: 08/21/2003 Conversion Case Event Type  <i>ARGUMENT/DECISION: DEFT'S WRIT FOR HABEAS CORPUS Court Clerk: Georgette Byrd Reporter/Recorder: Shirlee Prawalsky Heard By: Jackie Glass</i>  Denied; ARGUMENT/DECISION: DEFT'S WRIT FOR HABEAS CORPUS Court Clerk: Georgette Byrd Reporter/Recorder: Shirlee Prawalsky Heard By: Jackie Glass  Journal Entry Details:  <i>Ms. Erickson requested an evidentiary hearing on all counts and submitted on her pleadings. Mr. Peterson stated Deft's Writ is time barred and twice his writ has been denied. Mr. Peterson requested Court to grant State's Motion to Dismiss. COURT ORDERED, Deft's Petition for Writ for Habeas Corpus is DENIED; States's Motion to Dismiss is GRANTED. NDC ;</i></p>
11/06/2007	<p><b>Motion for Appointment (8:30 AM)</b>  Events: 10/25/2007 Motion  <i>PETITIONER'S MTN FOR APPOINTMENT OF COUNSEL/21 Heard By: Jackie Glass</i></p>

# CASE SUMMARY

CASE No. 81C053867

11/06/2007	<b>Petition to Proceed in Forma Pauperis (8:30 AM)</b> Events: 10/25/2007 Motion <i>PETITIONER'S TO PROCEED IN FORMA PAUPERIS /22 Heard By: Jackie Glass</i>
11/06/2007	<b>All Pending Motions (8:30 AM)</b> <i>ALL PENDING MOTIONS 11/6/07 Court Clerk: Sandra Jeter/sj Relief Clerk: Denise Trujillo Reporter/Recorder: Rachelle Hamilton Heard By: Jackie Glass</i> Matter Heard; ALL PENDING MOTIONS 11/6/07 Court Clerk: Sandra Jeter/sj Relief Clerk: Denise Trujillo Reporter/Recorder: Rachelle Hamilton Heard By: Jackie Glass Journal Entry Details: <i>Deft. not present and in custody at the Nevada Department of Corrections. DEFT.'S MOTION FOR APPOINTMENT OF COUNSEL: Ms. Becker advised the Federal Public Defender was previously appointed. COURT ORDERED, deft.'s motion GRANTED; FEDERAL PUBLIC DEFENDER APPOINTED. DEFT.'S MOTION TO PROCEED IN FORMA PAUPERIS: COURT ORDERED, motion GRANTED. Court NOTED this was already dismissed in 2003. Ms. Becker requested a Briefing Schedule set on the State's Motion to Dismiss stating this matter went to Federal Court and now deft. is exhausting his remedies. COURT ORDERED, briefing schedule SET as follows: State to file its motion by 2/8/08; deft.'s Response due by 3/7/08 and matter SET for HEARING. NDC 4/3/08 8:30 AM STATE'S MOTION TO DISMISS ... DEFT.'S PETITION FOR WRIT OF HABEAS CORPUS ;</i>
12/13/2007	<b>Petition for Writ of Habeas Corpus (8:30 AM)</b> Events: 10/25/2007 Petition <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Jackie Glass</i>
04/03/2008	<b>Petition for Writ of Habeas Corpus (8:30 AM)</b> <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Jackie Glass</i>
04/03/2008	<b>Motion (8:30 AM)</b> Events: 11/06/2007 Motion <i>STATE'S MOTION TO DISMISS Heard By: Jackie Glass</i>
06/05/2008	<b>Petition for Writ of Habeas Corpus (8:30 AM)</b> <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Jackie Glass</i>
06/05/2008	<b>Motion (8:30 AM)</b> <i>STATE'S MOTION TO DISMISS Heard By: Jackie Glass</i>
08/26/2008	<b>Petition for Writ of Habeas Corpus (8:30 AM)</b> <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Jackie Glass</i>
08/26/2008	<b>Motion (9:00 AM)</b> <i>STATE'S MOTION TO DISMISS Heard By: Jackie Glass</i>
10/27/2008	<b>Motion (8:30 AM)</b> <i>STATE'S MOTION TO DISMISS Heard By: Jackie Glass</i>
10/28/2008	<b>Motion (8:30 AM)</b> <i>STATE'S MOTION TO DISMISS Heard By: Jackie Glass</i>
10/28/2008	<b>Petition for Writ of Habeas Corpus (9:00 AM)</b> <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Jackie Glass</i>
02/09/2009	<b>Petition for Writ of Habeas Corpus (8:00 AM)</b> <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Villani</i>
02/09/2009	<b>Motion (8:30 AM)</b> <i>STATE'S MOTION TO DISMISS Heard By: Jackie Glass</i>
02/19/2009	<b>Petition for Writ of Habeas Corpus (8:00 AM)</b> <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Villani</i>

# CASE SUMMARY

CASE No. 81C053867

02/19/2009	<b>Motion (8:00 AM)</b> <i>STATE'S MOTION TO DISMISS Heard By: Michael Villani</i>
02/19/2009	<b>All Pending Motions (8:00 AM)</b> <i>ALL PENDING MOTIONS 2-19-09 Court Clerk: Kristen Brown Reporter/Recorder: Michelle Ramsey Heard By: JOSEPH BONAVENTURE</i> Matter Heard; ALL PENDING MOTIONS 2-19-09 Court Clerk: Kristen Brown Reporter/Recorder: Michelle Ramsey Heard By: JOSEPH BONAVENTURE Journal Entry Details: <i>STATE'S MOTION TO DISMISS...PETITION FOR WRIT OF HABEAS CORPUS COURT ORDERED, Motions OFF CALENDAR. NDC ;</i>
06/11/2009	<b>Petition for Writ of Habeas Corpus (8:00 AM)</b> <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Villani</i>
06/11/2009	<b>Motion (8:00 AM)</b> <i>STATE'S MOTION TO DISMISS Heard By: Michael Villani</i>
06/18/2009	<b>Petition for Writ of Habeas Corpus (8:00 AM)</b> <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Villani</i>
06/18/2009	<b>Motion (8:00 AM)</b> <i>STATE'S MOTION TO DISMISS Court Clerk: Kristen Brown Relief Clerk: Michele Tucker/mlt Reporter/Recorder: Michelle Ramsey Heard By: Villani, Michael</i> Matter Continued; STATE'S MOTION TO DISMISS Court Clerk: Kristen Brown Relief Clerk: Michele Tucker/mlt Reporter/Recorder: Michelle Ramsey Heard By: Villani, Michael Journal Entry Details: <i>COURT ORDERED, matter OFF CALENDAR. NDC ;</i>
08/27/2009	<b>Petition for Writ of Habeas Corpus (8:00 AM)</b> <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Villani</i>
08/27/2009	<b>Motion (8:00 AM)</b> <i>STATE'S MOTION TO DISMISS Heard By: Michael Villani</i>
10/29/2009	<b>All Pending Motions (8:00 AM)</b> <i>ALL PENDING MOTIONS 10-29-09 Court Clerk: Kristen Brown Reporter/Recorder: Michelle Ramsey Heard By: Michael Villani</i> Matter Heard; ALL PENDING MOTIONS 10-29-09 Court Clerk: Kristen Brown Reporter/Recorder: Michelle Ramsey Heard By: Michael Villani Journal Entry Details: <i>STATE'S MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS...DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS Pursuant to a stipulation by counsel, COURT ORDERED, Motions CONTINUED. NDC CONTINUED TO: 11/12/09 8:15 AM ;</i>
10/29/2009	<b>Petition for Writ of Habeas Corpus (8:15 AM)</b> <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Villani</i>
10/29/2009	<b>Motion (8:15 AM)</b> <i>STATE'S MOTION TO DISMISS Heard By: Michael Villani</i>
11/12/2009	<b>Petition for Writ of Habeas Corpus (8:15 AM)</b> <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Villani</i>
11/12/2009	<b>Motion (8:15 AM)</b> <i>STATE'S MOTION TO DISMISS Court Clerk: Kristen Brown Reporter/Recorder: Michelle Ramsey Heard By: Villani, Michael</i> Matter Continued; STATE'S MOTION TO DISMISS Court Clerk: Kristen Brown Reporter/Recorder: Michelle Ramsey Heard By: Villani, Michael Journal Entry Details: <i>COURT ORDERED, matter CONTINUED to coincide with State's Motion to Dismiss. NDC ;</i>

# CASE SUMMARY

CASE No. 81C053867

01/28/2010	<p><b>Motion (8:15 AM)</b>  <i>STATE'S MOTION TO DISMISS Relief Clerk: Tia Everett/te Reporter/Recorder: Michelle Ramsey Heard By: Villani, Michael</i>  Matter Continued; STATE'S MOTION TO DISMISS Relief Clerk: Tia Everett/te Reporter/Recorder: Michelle Ramsey Heard By: Villani, Michael  Journal Entry Details:  <i>Court stated he received a note parties stipulate to continue this matter to 2/4/10. COURT SO ORDERED. NDC ;</i></p>
01/28/2010	<p><b>Petition for Writ of Habeas Corpus (9:00 AM)</b>  <i>PTN FOR WRIT OF HABEAS CORPUS Heard By: Michael Villani</i></p>
02/04/2010	<p><b>Motion (8:15 AM)</b>  <i>STATE'S MOTION TO DISMISS Heard By: Jackie Glass</i></p>
02/04/2010	<p><b>All Pending Motions (8:15 AM)</b>  <i>ALL PENDING MOTIONS (02-04-10) Court Clerk: Carol Donahoo Heard By: Michael Villani</i>  Matter Heard; ALL PENDING MOTIONS (02-04-10) Court Clerk: Carol Donahoo Heard By: Michael Villani  Journal Entry Details:  <i>DEFT.'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) ... STATE'S MOTION TO DISMISS Pending before the Court is Defendant s Fourth State Post- Conviction Petition. In 1982, Defendant was convicted of Murder and sentenced to death. His conviction and death sentence was affirmed by the Nevada Supreme Court in 1986. On or about October 28, 1987 Defendant s First State PCR Petition was filed and ultimately denied on February 14, 1989. In 1990 the denial was affirmed by the Nevada Supreme court. On December 16, 1991, Defendant s second PCR Petition was filed and denied on July 7, 1992. An Appeal of said denial was dismissed by the Nevada Supreme Court on March 19, 1993. Then on December 20, 2002, Defendant filed his Third PCR Petition which was dismissed on October 23, 2003 as it was procedurally barred. The Dismissal was affirmed by the Nevada Supreme Court in 2004. The pending Fourth Petition was filed on October 27, 2007, twenty five years after Defendants conviction. The State has filed a motion to dismiss the present petition based upon procedural bars. NRS 34.810 bars successive Petitions by a Defendant which raise grounds that have previously been denied on the merits or Petitions that raise new or additional grounds. Defendant s Fourth Petition contains issues that were previously addressed and/or issues that should have been brought up over the last twenty five years. Accordingly, Defendant s Fourth Petition is procedurally barred. See NRS 34.726(1) and NRS 34.810. The procedural time bar is to be strictly construed as this Court is doing in this case. To overcome the procedural time bar (by establishing good cause), Defendant must show an impediment external to the defense prevented him from complying with the procedural rules. Defendant has not shown good cause for the numerous delays in this case. Further, Defendant has failed to establish that, but for the alleged errors in this case, no reasonable juror would have convicted him or imposed the death penalty. Additionally, actual innocence has not been sufficiently established. In McConnell v. State, 120 Nev. 1043, 102 P.3d 606 (2004), the Court ruled that a felony (robbery) can not be used as grounds for a first degree murder charge as well as an aggravator. Although, the Supreme Court did not make McConnell retroactive until 2006, nothing prevented the Defendant from raising the retroactivity issue prior to his most recent Petition. For this reason he is time barred from raising this issue. See NRS 34.726. Even if Defendant is not time barred from presenting this issue until one year subsequent the decision in Bejarno v. State, 122 Nev. 1066, 146 P.3d 265 (2006), this Court finds that a jury would find beyond a reasonable doubt the striking of the robbery aggravator would still have lead to a conclusion that the aggravators outweighed the mitigating factors. The State in opposing the Fourth Petition has alleged Laches for a conviction that occurred over 20 years ago. A Petition filed more than five years from the JOC creates a rebuttable presumption of prejudice to the State. Legal issues in this case are intertwined with factual matters which do create a legitimate prejudice to the State if they had to try to locate witnesses from the 1980 s. Defendant has not submitted sufficient facts or argument to rebut said prejudice. See, NRS 34.800. Based upon the above, Defendant s Fourth Petition is procedurally barred and is dismissed. State to prepare Finding of Fact and Conclusions of Law consistent with the court s decision. CLERK'S NOTE: A copy of this minute order to be placed in the attorney folder of the District Attorney and FAXED to Michael Charlton, Asst Fed PD, and Megan Hoffman, Asst Fed PD. ;</i></p>
02/04/2010	<p><b>Petition for Writ of Habeas Corpus (9:00 AM)</b></p>



# CASE SUMMARY

CASE No. 81C053867

PTN FOR WRIT OF HABEAS CORPUS Heard By: Jackie Glass

10/18/2016



**Motion** (8:30 AM) (Judicial Officer: Villani, Michael)

*Defendant's's Motion to Associate Counsel - Jonah J. Horwitz*

Motion Granted;

Journal Entry Details:

*Jonah Horowitz, Esq. and Deborah Czuba, Esq., present via telephonic conference. Deft. not present. Mr. Vanboskerck advised he did not oppose the motion. COURT ORDERED, motion GRANTED. COURT FURTHER ORDERED, State's response due November 22nd, Hearing SET for December 14th. Court noted if a reply brief is filed, to file it with enough time for counsel and Court's review. NDC 12/14/16 9:30 AM PETITION FOR WRIT OF HABEAS CORPUS ;*

03/17/2017

**Petition for Writ of Habeas Corpus** (9:30 AM) (Judicial Officer: Villani, Michael)

Matter Continued;

03/17/2017

**Motion to Strike** (9:30 AM) (Judicial Officer: Villani, Michael)

*State's Motion to Strike Amended Fifth Petition for Writ of Habeas Corpus (Post-Conviction) Granted;*

03/17/2017



**All Pending Motions** (9:30 AM) (Judicial Officer: Villani, Michael)

Matter Heard;

Journal Entry Details:

*Jonah Horwitz, Esq. appearing on behalf of Defendant and Deborah Chuba, Esq. appearing telephonically on behalf of Defendant DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)...STATE'S MOTION TO STRIKE AMENDED FIFTH PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) Defendant not present. Arguments by counsel regarding the merits of the Motion. Court stated its findings and ORDERED, Motion GRANTED. As to Defendant's Petition for Writ of Habeas Corpus (Post Conviction) arguments by counsel regarding the merits of the petition. Mr. Horwitz requested to file a formal opposition to the State's Motion to Dismiss. Upon Court's inquiry, Mr. Van Boskerck advised he believed the Court was in a position to rule today; however, Mr. Van Boskerck submitted to the Court. Court stated it would give Defendant an opportunity to reply to the State's opposition to the Writ. COURT ORDERED, Briefing Schedule SET as follows: Defendant due by 03/27/2017; State's reply due by 04/07/17 and matter SET for Chambers Calendar. NDC 04/19/17- DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) (CHAMBERS);*

04/19/2017



**Petition for Writ of Habeas Corpus** (3:00 AM) (Judicial Officer: Villani, Michael)

*Defendant's Petition for Writ of habeas Corpus*

Minute Order - No Hearing Held;

Journal Entry Details:

*CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of the District Attorney and Public Defender.//ob/05/02/17.;*

09/11/2018

**Motion to Associate Counsel** (8:30 AM) (Judicial Officer: Hardcastle, Kathy)

*Defendant's Motion to Associate Counsel Jonah J. Horwitz*

Granted;

09/11/2018

**Motion to Associate Counsel** (8:30 AM) (Judicial Officer: Hardcastle, Kathy)

*Defendant's Motion to Associate Counsel Deborah A. Czuba*

Granted;

09/11/2018



**All Pending Motions** (8:30 AM) (Judicial Officer: Hardcastle, Kathy)

Matter Heard;

Journal Entry Details:

*DEFT NOT PRESENT. DEFENDANT'S MOTION TO ASSOCIATE COUNSEL DEBORAH A. CZUBA....DEFENDANT'S MOTION TO ASSOCIATE COUNSEL JONAH J. HORWITZ Mr. Vanboskerck informed the Court these are two Motions to associate the Federal Public Defender who has already filed a sixth Habeas Petition. Mr. Vanboskerck stated he has no objection to associate the Federal Public Defender and allow them to litigate those issues.*

**CASE SUMMARY**

**CASE No. 81C053867**

*COURT ORDERED, MOTIONS GRANTED. The Court directed both parties to contact all other counsel and inform them the Motions have been granted. NDC;*

DATE

FINANCIAL INFORMATION

**Defendant** Howard, Samuel

Total Charges

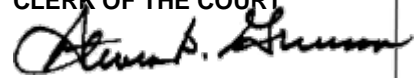
38.00

Total Payments and Credits

38.00

**Balance Due as of 6/2/2020**

**0.00**



**FFCO**  
STEVEN WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
JONATHAN E. VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #006528  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

SAMUEL HOWARD,	)	
Petitioner,	)	CASE NO: A-18-780434-W /
-vs-	)	81C053867
THE STATE OF NEVADA,	)	DEPT NO: XVII
Respondent.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING SIXTH  
PETITION FOR WRIT OF HABES CORPUS (POST-CONVICTION)

DATE OF HEARING: May 4, 2020  
TIME OF HEARING: 3:00 a.m.

THIS CAUSE having come on for hearing before the Honorable MICHAEL VILLANI, District Judge, on the 4<sup>th</sup> day of May, 2019, SAMUEL HOWARD (hereinafter "Petitioner" or "Howard") not present, represented by Assistant Federal Public Defender Deborah A. Czuba, Esq. and Assistant Federal Public Defender Jonah J. Horwitz, Esq., the Respondent being represented by STEVEN B. WOLFSON, District Attorney, by and through JONATHAN E. VANBOSKERCK, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, testimony of witnesses, arguments of counsel, and/or documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

///

///

## FACTUAL BACKGROUND

This Court summarized the facts of this case in the Findings of Fact, Conclusions of Law and Order denying Petitioner's fifth demand for habeas relief:

On March 26, 1980, around noon, a Sears' security officer, Keith Kinsey, observed Howard take a sander from a shelf, remove the packing and then claim a fraudulent refund slip from a cashier. Kinsey approached Howard and asked him to accompany Kinsey to a security office. Kinsey enlisted the aid of two other store employees. Howard was cooperative, alert and indicated there must be some mistake. In the security office, Kinsey observed Howard had a gun under his jacket and attempted to handcuff Howard for safety reasons. A struggle broke out and Howard drew a .357 revolver and pointed it at the three men. Howard had the men lay face down on the floor and took Kinsey's security badge, ID and a portable radio (walkie-talkie). Howard threatened to kill the three men if they followed him and he fled to his car in the parking lot. A yellow gold jewelry ID bracelet was found at the scene and impounded. It was later identified as Howard's. The Sears in question was located at the corner of Desert Inn Road and Maryland Parkway at the Boulevard Mall in Las Vegas, Nevada.

Dawana Thomas, Howard's girlfriend, was waiting for him in the car. Howard had told her to wait for him and she was unaware of his intentions to obtain money through a false refund transaction. Fleeing from the robbery, Howard hopped into the car, a 1980 black Oldsmobile Cutlass with New York plates 614 ZHQ and sped away from the mall. While escaping, Howard rear-ended a white corvette driven by Stephen Houchin. Houchin followed Howard when Howard left the scene of the accident. Howard pointed the .357 revolver out the window of the Olds and at Houchin's face, telling Houchin to mind his own business.

Howard drove to the Castaways Motel on Las Vegas Boulevard South and parked the car for a few hours. Thomas and Howard walked about and Howard made some phone calls. Later that evening Howard left for a couple of hours. When he returned he told Thomas that he had met up with a pimp, but the pimps' girls were with him so he couldn't rob him. Howard indicated he had arranged to meet with the "pimp" the next morning and would rob him then.

Howard and Thomas drove to the Western Six motel located on the Boulder Highway near the intersection of Desert Inn Road. The couple had stayed at this motel before and Howard instructed Thomas to register under an assumed name, Barbara Jackson. The motel registration card under that name was admitted into evidence and a documents' examiner compared handwriting on the card with Thomas' and indicated they matched.

Around 6:00 a.m. on March 27, 1980, Thomas and Howard left the motel and went to breakfast. After breakfast, Thomas dropped Howard off in the alley behind Dr. George Monahan's office. This was at approximately 7:00 a.m. Thomas went back to the motel room. Approximately an hour later, Howard returned to the motel. Howard had a CB radio with him that had loose wires and a gold watch she had never seen before. Howard told Thompson that he was tired of Las Vegas and to pack up their things as they were leaving for California.

Dr. Monahan was a dentist with a practice located on Desert Inn Road within walking distance of the Boulevard Mall. He was attempting to sell a uniquely painted van and would park the van in the parking lot of the mall, at the Desert Inn and Maryland intersection and near the Sears store, then walk to

1 his office. The van had a sign in it listing Dr. Monahan's home and business  
2 phone numbers and the business address.

3 About 4:00 p.m. on March 26, 1980, the afternoon of the Sears robbery,  
4 Dr. Monahan's wife, Mary Lou Monahan, received a phone call at her home  
5 inquiring about the van. The caller was a male who identified himself as  
6 "Keith" and stated he was a security guard at Caesar's Palace. He indicated he  
7 was interested in purchasing the van and wanted to know if someone could  
8 meet him at Caesar's during his break time at 8:00 p.m. Mrs. Monahan  
9 indicated the caller would have to talk to her husband who was expected home  
10 shortly. A second call was made around 4:30 p.m. and Dr. Monahan made  
11 arrangements to meet "Keith" at Caesar's later that night.

12 The Monahans and two relatives, Barbara Zemen and Mary Catherine  
13 Monahan, met "Keith" that evening at the appointed time and place. Howard  
14 was identified as the man who called himself "Keith". Howard was carrying a  
15 walkie-talkie radio at the time. Howard talked to Dr. Monahan for about ten  
16 minutes about purchasing the van and looked inside the van but did not touch  
17 the door handle while doing so. Howard arranged to meet Dr. Monahan the  
18 next morning to take a test drive. The Monahan's left Caesar's and parked the  
19 van at Dr. Monahan's office before returning home in another vehicle.

20 The next day, March 27, 1980, Dr. Monahan left his home at about 6:50  
21 a.m. He took with him his wallet, a gold Seiko watch, daily receipts and the  
22 van title. When Mrs. Monahan arrived at the office at about 8:00 a.m. Dr.  
23 Monahan was not there and a patient was waiting for him. Dr. Monahan's  
24 truck was in the parking lot to the rear of the office. Dr. Monahan had not  
25 entered the office. A black man wearing a radio or walkie-talkie on his belt  
26 came into the office at about 7:00 a.m. that morning looking for Dr. Monahan  
27 and stating that he had an appointment with the doctor.

28 Mrs. Monahan called Caesar's Palace and learned no "Keith" fitting the  
description she gave worked security. After obtaining this information, Mrs.  
Monahan called the police to report her husband as a missing person. This  
occurred at about 9:00 a.m.

Charles Marino owned the Dew Drop Inn located near the corner of  
Desert Inn and Boulder Highway, just a few blocks from Dr. Monahan's office  
and almost across the road from the Western Six motel. Early on the morning  
of March 27, 1980, as he approached his business, he observed the Monahan  
van backing into the rear of the bar. When he arrived at the Inn, he looked in  
the driver's side and saw no one. He asked patrons if they knew anything  
about the van and no one spoke up. Marino remained at the business until the  
early afternoon. The van was still there and had not been moved. Later that  
day, at around 7:00 p.m. he received a call to return to the bar as a dead body  
had been found in the van.

In response to television coverage, the police learned the Monahan van  
was behind the Dew Drop Inn around 6:45 p.m. Dr. Monahan's body was  
found in the van under an overturned table and some coverings. He had been  
shot once in the head. The bullet went through Dr. Monahan's head and a  
projectile was recovered on the floor of the van. The projectile was compared  
to Howard's .357 revolver. Because the bullet was so badly damaged; forensic  
analysis could not establish an exact match. It was determined that the bullet  
could have come from certain makes and models of revolvers, Howard's  
included. The van's CB radio and a tape deck had been removed. Dr.  
Monahan's watch and wallet were missing. A fingerprint recovered from one  
of the van's doors matched Howard's.

Homicide detectives were aware of the Sears robbery that had occurred  
on March 26<sup>th</sup>. The description of the Sears suspect matched that given by  
Mrs. Monahan of the man calling himself Keith at Caesar's Palace. Based  
upon that, the use of the name Keith, the walkie-talkie in possession of the

1 suspect, the close proximity of the dental office to the Sears and the fact that  
2 the van had been parked in the Sears' parking lot, the police issued a bulletin to  
state and out-of-state law enforcement agencies describing the suspect and the  
car used in the Sears' robbery.

3 On March 27, 1980, while the police were searching for Dr. Monahan,  
Howard and Thompson drove to California. They left the motel between 8:00  
4 a.m. and 9:00 a.m. and on the way they stopped for gas. At that time Howard  
had a brown or black wallet that had credit cards and photos in it. Howard  
5 went to the gas station rest room and when he returned he no longer had the  
wallet.

6 On March 28, 1980, Howard and Thompson went to a Sears in San  
Bernadino, California. Once again Howard left Thompson in the car while he  
7 entered the Sears, picked up merchandize and tried to obtain a refund on it.  
This time he used the stolen Kinsey Sears security badge in the attempt. The  
8 Sears personal were suspicious and left Howard at the register while they  
called Las Vegas. When they returned Howard had left. Howard had returned  
9 to the car and Thompson and Howard ducked down when the people from  
Sears stepped outside to view the parking lot.

10 On or about April 1, 1980, at around noon, Howard went to the  
Stonewood Shopping Center in Downey, California. He entered a jewelry  
11 store and talked to a security agent, Manny Velasquez. Another agent in the  
store, Robert Slater, who also worked as a police officer in Downey, saw  
Howard and noticed the grip of a gun under Howard's jacket. Slater talked to  
12 Velasquez and decided to call the Downey Police. Howard left the jewelry  
store went to the west end of the mall near a Thrifty drugstore. Downey Police  
13 officers observed Howard walking up and down the aisles of the drugstore,  
picking items up and replacing them on shelves. Howard was stopped on  
14 suspicion of carrying a concealed weapon. No gun was found on him nor was  
he carrying the walkie-talkie. A search of the aisles he had been in revealed a  
15 .357 magnum revolver and the walkie-talkie and Sears' security badge stolen  
from Kinsey.

16 Howard was arrested for carrying a concealed weapon and then  
identified and booked for a San Bernadino robbery. Howard was given his  
17 Miranda rights by Downey Police officers. Disputed evidence was presented  
regarding his response and whether he invoked his right to silence. Based on  
18 information in the all-points bulletin, the California authorities contacted the  
Las Vegas Metropolitan Police Department about Howard. On April 2, 1980,  
19 LVMPD Detective Alfred Leavitt went to California and, after reading  
Howard his Miranda rights, which Howard indicated he understood,  
20 interviewed Howard regarding the Sears robbery and Dr. Monahan's murder.  
Howard did not invoke his right to remain silent or to counsel at this time.

21 Howard told Detective Leavitt he recalled being at the Sears department  
store but no details about what happened and that he did not remember  
22 anything about March 27, 1980. He stated he could have killed Dr. Monahan  
but he didn't know.

23 Ed Schwartz was working as a car salesman in New York on October 5,  
1979. When he arrived at work at approximately 9:00 a.m. Howard entered  
24 the agency and was looking at an Oldsmobile car. Howard showed Schwartz a  
New York driver's license and checkbook and told Schwartz that he worked  
25 for a security firm in New York. Howard asked if they could take a  
demonstration ride and Schwartz drove the car for a few blocks while Howard  
26 was the passenger. Howard asked if he could drive the car and the men  
switched seats. After driving for a short time, Howard pulled over and pointed  
27 an automatic pistol at Schwartz. Schwartz was told to get down on the floor of  
the car and remove his shoes and pants. Schwartz complied and Howard took  
28 Schwartz' watch, ring and wallet. Schwartz got out of the car when ordered to

do so and Howard drove off. The car was later found abandoned.<sup>1</sup>

Howard called witnesses who testified they saw the Monahan van being driven by a black man who did not match Howard's description, in particular the man had a large afro and Howard had short hair. John McBride state that he saw the van around 8:30 to 8:45 a.m. in his apartment complex which is located about five miles from Desert Inn and Boulder Highway. Lora Mallek was employed at a Mobile gas station at the corner of DI and Boulder Highway and she stated serviced the van when it pulled into the station between 3:00 p.m. and 4:00 p.m. Mallek testified that a black man with a large afro was driving, a black woman who did not match Thomas' description was in the passenger seat and a white man was sitting in the back.

Howard testified over the objection of counsel. He indicated he did not recall much about March 26, 1980. He remembered being in Las Vegas in general on and off and that at one point Dwana Thomas' brother, who was about Howard's height, age and weight, and had a large afro, visited them. Howard said he remembers incidents, not dates and Kinsey could have been telling the truth about the Sears store. Howard indicated he wasn't sure because when the Sears people gathered around him, it reminded him of Vietnam and he kind of had a flashback. Howard said he thinks he left Las Vegas immediately after the Sears incident. Howard also stated that he did not meet Dr. Monahan, rob or kill him as he couldn't be that callous.

On cross-examination, Howard admitted he left New York in the middle of his robbery trial and was asked about statements he made to Detective Leavitt. Howard also acknowledged he has used a number of aliases including Harold Stanback. Howard indicated he was taking the blame for Dawana and her brother Lonnie.

Dawana Thomas was called in rebuttal and indicated her brother Lonnie had not been in Las Vegas in March of 1980.

In the penalty phase, the State presented evidence on the details of Howard's 1979 New York conviction for robbery. A college nurse who knew Howard, Dorothy Weisband, testified that Howard robbed her at gunpoint taking her wallet and car. He forced her into a closet and demanded she removed her clothes. She refused and he left. After the robbery, Howard called Weisband trying to get more cash from her in return for her car and threatened her.

Howard testified regarding his military, family and mental health histories. Howard discussed his military service and stated he had suffered a concussion and received a purple heart.<sup>2</sup> Howard also stated he was on veteran's disability in New York.<sup>3</sup> He said he was in various mental health facilities in California including being housed in the same facility as Charlie Manson. He testified he had been diagnosed as a schizophrenic, but that some of the doctors thought he was malingering. When asked about his childhood, Howard became upset. He indicated he didn't want to talk about the death of his mother and sister. Howard indicated he was not mentally ill and knew what he was doing at all times.

(Findings of Fact, Conclusions of Law and Order, filed May 15, 2017, p. 2-8 (footnotes in

<sup>1</sup> This evidence was admitted to show identity and motive for the Monahan murder.

<sup>2</sup> The military records attached to the current Fourth Petition do not reflect any such injury or award.

<sup>3</sup> Howard's military records do not support this and there is nothing in the record substantiating any admission to a veteran's hospital. The record reflects Howard was never actually admitted to a hospital in New York because it required identification and he could not identify himself due to existing warrants for his arrest.

original)).

## **PROCEDURAL HISTORY**

This Court set forth the procedural history of this case in the Findings of Fact, Conclusions of Law and Order denying Petitioner's fifth habeas petition:

On May 20, 1981 Howard was indicted on one count of robbery with use of a deadly weapon involving a Sears security officer named Keith Kinsey on March 26, 1980; one count of robbery with use of a deadly weapon involving Dr. George Monahan and one count of murder with use of a deadly weapon involving Dr. Monahan, both committed on March 27, 1980. With respect to the murder count, the State alleged two theories: willful, premeditated and deliberate murder or murder in the commission of a robbery.

Howard was arrested in California where he was serving time for a robbery committed on or about April 1, 1980. He was extradited in November of 1982 and an initial appearance was set for November 23, 1982. At that time the matter was continued for appointment of counsel, the Clark County Public Defender's Office.

On November 30, 1982, Terry Jackson of the Public Defender's Office represented to the district court that Howard qualified for the Public Defender's services; however, Mr. Jackson indicated he had a personal conflict as he was a friend of the victim. The district judge determined that the relationship did not create a conflict for the Public Defender's Office, barred Mr. Jackson from involvement with the case and appointed another deputy public defender to Howard's case.

Howard's counsel requested a one-week continuance to consult with Howard about the case. Howard objected, insisted on being arraigned and demanded a speedy trial. After discussion, the district court accepted a plea of not guilty and set a trial date of January 10, 1983.

Howard filed a motion in late in December asking for his counsel to be removed and substitute counsel appointed. Counsel filed a response addressing issues raised in the motion. After a hearing, the district court determined there were no grounds for removing the Clark County Public Defender's Office.

A motion for a psychiatric expert was filed. At a hearing, the district court inquired if this was for competency and Howard's counsel indicated it was not, but it was to help evaluate Howard's mental status at the time of the events. The district court granted the motion and appointed Dr. O'Gorman to assist the defense.

At a status check on January 4, 1983, defense counsel indicated the defense could not be ready for the January 10<sup>th</sup> trial date due to the need to conduct additional investigation and discovery. In addition, counsel noted Howard was refusing to cooperate with counsel. Howard objected to any continuance with knowledge that his attorneys' could not complete the investigations by that date. Given Howard's objections, the district court stated the trial would go forward as scheduled.

On the day of trial, defense counsel moved to withdraw stating that Mr. Jackson's conflict created mistrust in Howard and he therefore refused to cooperate. This motion was denied. Defense counsel then moved for a continuance as they did not feel comfortable proceeding to trial in this case, given the issues involved, with only six weeks to prepare. After extensive argument and a recess so that counsel could discuss the issue with Howard, the district court granted the continuance over Howard's objections.



1 The guilt phase of the trial began on April 11, 1983 and concluded on  
2 April 22, 1983. The jury returned a verdict of guilty on all three counts. The  
3 penalty phase was set to begin on May 2, 1983. In the interim, one of the  
4 jurors tried to contact the trial judge about a scheduling problem. Because the  
5 district judge was on vacation, someone referred the juror to the District  
6 Attorney's Office. That Office referred the juror to the jury commissioner.  
7 Howard moved for a mistrial or elimination of the death penalty as a  
8 sentencing option based upon this contact. After conducting an evidentiary  
9 hearing, the district court denied Howard's motions.

10 Defense counsel made an oral motion to withdraw indicating they had  
11 irreconcilable differences with Howard over the conduct of the penalty phase.  
12 Counsel indicated they had documents and witnesses in mitigation, but that  
13 Howard had instructed them not to present any mitigation evidence. Howard  
14 also instructed them not to argue mitigation and they would not follow that  
15 directive, but would argue mitigation. Counsel also indicated that Howard told  
16 them he wished to testify, but would not tell them the substance of his  
17 testimony. Finally, counsel indicated they had attempted to get military and  
18 mental health records but were unsuccessful because the agencies possessing  
19 the records would not send copies without a release signed by Howard and  
20 Howard refused to sign the releases. The district court canvassed Howard if  
21 this was correct and Howard confirmed it was true and that he did not want  
22 any mitigation presented. The district court found Howard understood the  
23 consequences of his decision and denied the motion to withdraw concluding  
24 defense counsel's disagreement with Howard's decision was not a valid basis  
25 to withdraw.

26 The penalty phase began on May 2, 1983 and concluded on May 4,  
27 1983. The State originally alleged three aggravating circumstances: 1) the  
28 murder was committed by a person who had previously been convicted of a  
felony involving the use of violence - namely robbery with use of a deadly  
weapon in California, 2) prior violent felony - a 1978 New York conviction in  
absentia for robbery with use of a deadly weapon; and 3) the murder occurred  
in the commission of a robbery. Howard moved to strike the California  
conviction because the conviction occurred after the Monahan murder and the  
New York conviction because it was not supported by a judgment of  
conviction. The district court struck the California conviction but denied the  
motion as to the New York conviction, noting that the records reflected a jury  
had convicted Howard and the lack of a formal judgment was the result of  
Howard's absconding in the middle of trial.

29 The State presented evidence of the aggravating circumstances and  
30 Howard took the stand and related information on his background. During a  
31 break in the testimony, Howard suddenly stated he did not understand what  
32 mitigation meant and that he would leave it up to his attorneys to decide what  
33 to do. The district court asked Howard if he was now instructing his attorneys  
34 to present mitigation and he refused to answer the question. Howard did  
35 indicate that he wanted his attorney's to argue mitigation and defense counsel  
36 asked for time to prepare which was granted. The jury found both aggravating  
37 circumstances existed and that no mitigating circumstances outweighed the  
38 aggravating circumstances. The jury returned a sentence of death.

39 Howard appealed to the Nevada Supreme Court. Elizabeth Hatcher  
40 represented Howard on Direct Appeal. Howard raised the following issues on  
41 direct appeal: 1) ineffective assistance of counsel based on actual conflict  
42 arising out of Jackson's relationship with Dr. Monahan; 2) denial of a motion  
43 to sever the Sears' count from the Monahan counts; 3) denial of an evidentiary  
44 hearing on a motion to suppress Howard's statements and evidence derived  
45 therefrom; 4) refusal to instruct the jury that accomplice testimony should be  
46 viewed with mistrust; 5) refusal to instruct the jury that Dawana Thomas was

1 an accomplice as a matter of law; 6) denial of a motion to strike the felony  
2 robbery and New York prior violent felony aggravators; and 7) the giving of a  
anti-sympathy instruction and refusal to instruct the jury that sympathy and  
mercy were appropriate considerations.

3 The Nevada Supreme Court affirmed Howard's conviction and  
4 sentence. Howard v. State, 102 Nev. 572, 729 P.2d 1341 (1986) (hereinafter  
5 "Howard I"). The Supreme Court held that the relationship of two members of  
6 the Public Defender's Office with Monahan did not objectively justify  
7 Howard's distrust and there was no evidence that those attorneys had any  
8 involvement in his case. Therefore no actual conflict existed and the claim of  
9 ineffective assistance of counsel on this basis had no merit. The Court further  
10 concluded the district court did not abuse its discretion by refusing to sever the  
11 counts and by not granting an evidentiary hearing on the suppression motion.  
12 The Court noted that the record reflected proper Miranda warnings were given  
13 and the statements were admitted as rebuttal and impeachment after Howard  
testified. The Court also found that the district court did not error in rejecting  
the two accomplice instructions; the anti-sympathy language in one of the  
instructions was not err in light of the totality of the instructions and the record  
supported the district court's refusal to instruct on certain mitigating  
circumstances for lack of evidence. The Court concluded by stating it had  
considered Howard's other claims of error and found them to be without merit.  
Howard filed a petition for rehearing which was denied on March 24, 1987.  
Remittitur was stayed pending the filing of a petition for Writ of Certiorari to  
the United States Supreme Court on the anti-sympathy issues. John Graves, Jr.  
was appointed to represent Howard on the writ petition. The petition was  
denied on October 5, 1987 and remittitur issued on February 12, 1988.

14 On October 28, 1987, Howard filed his first State petition for post-  
15 conviction relief. John Graves Jr. and Carmine Colucci originally represented  
16 Howard on the petition. They withdrew and David Schieck was appointed.  
17 The petition raised the following claims for relief: 1) ineffective assistance of  
18 trial counsel – guilt phase - failure to present an insanity defense and Howard's  
19 history of mental illness and commitments; 2) ineffective assistance of trial  
20 counsel – penalty phase – failure to present mental health history and  
21 documents; failure to present expert psychiatric evidence that Howard was not  
22 a danger to jail population; failure to rebut future dangerousness evidence with  
jail records and personnel; failure to object to improper prosecutorial  
arguments involving statistics regarding deterrence, predictions of future  
victims, Howard's lack of rehabilitation, aligning the jury with "future  
victims," comparing victim's life with Howard's life, diluting jury's  
responsibility by suggesting it was shared with other entities, voicing personal  
opinions in support of the death penalty and its application to Howard,  
references to Charles Manson, voice of society arguments and referring to  
Howard as an animal; 3) ineffective assistance of appellate counsel – failure to  
raise prosecutorial misconduct issues.

23 An evidentiary hearing was held on August 25, 1988. George Franzen,  
24 Lizzie Hatcher, John Graves and Howard testified. Supplemental points and  
25 authorities were filed on October 3, 1988. The district court entered an oral  
26 decision denying the petition on February 14, 1989. The district court  
27 concluded that trial counsel performed admirably under difficult circumstances  
28 created by Howard himself. As to the failure to present an insanity defense  
and present mental health records, the court found that Howard was canvassed  
throughout the proceedings about his refusal to cooperate in obtaining those  
records, particularly his refusal to sign releases. Howard knew what was going  
on, was competent and was trying to manipulate the proceedings and that there  
was no evidence to support an insanity defense, therefore counsel were not  
ineffective in this regard.

1 On the issue of failure to object to prosecutorial misconduct, the district  
2 court found that defense counsel did object where appropriate and the  
3 arguments that were not objected to did not amount to misconduct and were a  
4 fair comment on the evidence. Even if some of the comments were improper,  
5 the district court concluded that they would not have succeeded on appeal as  
6 they were harmless beyond a reasonable doubt. Formal findings of fact and  
7 conclusions of law were filed on July 5, 1989.<sup>4</sup>

8 The Nevada Supreme Court affirmed the district court's denial of  
9 Howard's first State petition for post-conviction relief. Howard v. State, 106  
10 Nev. 713, 800 P.2d 175 (1990) (hereinafter "Howard II"). David Schieck  
11 represented Howard in that appeal. On appeal Howard raised ineffective  
12 assistance of trial and appellate counsel regarding the prosecutorial misconduct  
13 issues. The Supreme Court found three comments to be improper under  
14 Collier v. State, 101 Nev. 473, 705 P.2d 1126 (1985)<sup>5</sup>: 1) a personal opinion  
15 that Howard merited the death penalty, 2) a golden rule argument – asking the  
16 jury to put themselves in the shoes of a future victims and 3) an argument  
17 without support from evidence that Howard might escape. The Court found  
18 that counsel were ineffective for failing to object to these arguments but  
19 concluded there was no reasonable probability of a contrary result absent these  
20 remarks and therefore no prejudice. The Court rejected Howard's other  
21 contentions of improper argument.

22 With respect the mitigation evidence issues, the Nevada Supreme Court  
23 upheld the district court's findings that this was a result of Howard's own  
24 conduct and not ineffective assistance of counsel.<sup>6</sup>

25 Howard proceeded to file a second Federal habeas corpus petition on  
26 May 1, 1991. This proceeding was stayed for Howard to exhaust his state  
27 remedies on October 16, 1991. Howard then filed a second State petition for  
28 post-conviction relief on December 16, 1991. Cal J. Potter, III and Fred  
Atcheson represented Howard in the second State petition. In that petition,  
Howard alleged denial of a fair trial based on prosecutorial misconduct,  
namely: 1) jury tampering based on the prosecutor's contact with the juror  
between the guilt and penalty phases; 2) expressions of personal belief and a  
personal endorsement of the death penalty; 3) reference to the improbability of  
rehabilitation, escape, future killings; 3) comparing Howard's life with Dr.  
Monahan's and 4) a statement that the community would benefit from  
Howard's death. The petition also asserted an ineffective assistance of trial  
counsel claim for failing to explain to Howard the nature of mitigating  
circumstances and their importance. Finally the petition raised a speedy trial  
violation and cumulative error.

The State moved to dismiss the second State petition as procedurally  
barred or governed by the law of the case on February 10, 1992. In his reply,  
Howard dropped his speedy trial claim as unsubstantiated and indicated if the  
other claims were barred, then they had been exhausted and Howard could  
proceed in Federal court.

The district court denied the petition on July 7, 1992. The district court  
found that the claims of prosecutorial misconduct and ineffective assistance of  
counsel relating thereto as well as the claims relating to mitigation evidence

<sup>4</sup>During the pendency of the first State petition for post-conviction relief, Howard filed his first Federal petition for habeas relief. That petition was dismissed without prejudice on June 23, 1988.

<sup>5</sup> Collier was decided two years after Howard's trial.

<sup>6</sup> The State filed a petition for rehearing with respect to sanctions imposed on the prosecutor because his remarks violated Collier. The State noted that Howard's trial occurred before Collier therefore the Court should not sanction counsel for conduct that occurred before the Court issued the Collier opinion. Rehearing was denied February 7, 1991.

1 had been heard and found to be without merit or failed to demonstrate  
2 prejudice. Such claims were therefore barred by the law of the case. The  
3 district court further concluded that any claim of cumulative error and any  
4 issues not raised in previous proceedings were procedurally barred. Finally,  
5 the district court found the speedy trial violation was a naked allegation,  
6 frivolous and procedurally barred.

7 Howard appealed the denial of his second State petition to the Nevada  
8 Supreme Court, which dismissed his appeal on March 19, 1993. The Order  
9 Dismissing Appeal found that Howard's second State petition was so lacking  
10 in merit that briefing and oral argument was not warranted. Howard filed a  
11 petition for Writ of Certiorari challenging the summary affirmance and the  
12 United States Supreme Court denied the request on October 4, 1993.

13 On December 8, 1993, Howard returned to federal court and filed a new  
14 pro se habeas petition rather than lifting the stay in the previous petition. After  
15 almost three years, on September 2, 1996, the federal district court dismissed  
16 the petition as inadequate and ordered Howard to file a second amended  
17 federal petition that contained more than conclusory allegations. Thereafter  
18 Howard, now represented by Patricia Erickson, filed a Second Amended  
19 Petition for Writ of Habeas Corpus on January 27, 1997. After almost five  
20 years, on September 23, 2002, the Second Amended Federal petition was  
21 stayed for Howard to again exhaust his federal claims in state court.

22 Howard filed his third State petition for post-conviction relief on  
23 December 20, 2002. Patricia Erickson represented him on this petition. The  
24 petition asserted the following claims, phrased generally as denial of a  
25 fundamentally fair trial or assistance of counsel under the Fifth, Sixth and  
26 Fourteenth Amendments of the United States Constitution or as cruel and  
27 unusual punishment under the Eighth Amendment: 1) failure to sever Sears  
28 robbery count from Monahan robbery/murder counts; 2) failure to suppress  
Howard's statements to LVMPD and physical evidence derived therefrom; 3)  
speedy trial violation; 4) trial counsel actual conflict of interest – Jackson  
issue; 5) failure to give accomplice as a matter of law and accomplice  
testimony should be viewed with distrust instructions – Dwana Thomas; 6)  
improper jury instructions – diluting standard of proof - reasonable doubt,  
second degree murder as lesser included of first degree murder, premeditation,  
intent and malice instructions; 7) improper jury instructions – failure to clearly  
define first degree murder as specific intent crime requiring malice and  
premeditation; 8) improper premeditation instruction blurred distinction  
between first and second degree murder; 9) improper malice instruction; 10)  
improper anti-sympathy instruction; 11) failure to give influence of extreme  
mental or emotional disturbance mitigator instruction; 12) improper limitation  
of mitigation by giving only "any other mitigating circumstance" instruction;  
13) failure to instruct that mitigating circumstances findings need not be  
unanimous; 14) prosecutorial misconduct – jury tampering, stating personal  
beliefs, personal endorsement of death penalty, improper argument regarding  
rehabilitation, escape and future killings; comparing Howard and victim's  
lives, comparing Howard to notorious murder (Charles Manson) and improper  
community benefit argument; 15) use of felony robbery as aggravator and  
basis for first degree murder; 16) improper reasonable doubt instruction; 17)  
ineffective assistance of trial counsel – inadequate contact, conflict of interest,  
failure to contact California counsel to obtain records, failure to obtain Patton  
and Atescadero hospital records, failure to obtain California trial transcripts,  
failure to review Clark County Detention Center medical records, failure to  
challenge competency to stand trial, failure to obtain suppression hearing,  
failure to present legal insanity, failure to object to reasonable doubt  
instruction, failure to view visiting records and call witnesses based upon  
same, failure to call Pinkie Williams and Carol Walker in penalty phase,

1 failure to investigate and call Benjamin Evans in penalty phase, failure to  
2 obtain San Bernardino medical records regarding suicide attempt, failure to  
3 obtain military records, failure to adequately explain concept of mitigation  
4 evidence, failure to object to prosecutorial misconduct in closing arguments,  
5 failure to refute future dangerousness argument, failure to object to trial court's  
6 limitation of mitigating circumstances and failure to object to instructions  
7 which allegedly required unanimous finding of mitigating circumstances; 18)  
8 ineffective assistance of appellate counsel – failed to raise claims 3, 4, 6-9, 12,  
9 13, 15, 16, 20 and 21 on appeal; 19) ineffective assistance of post-conviction  
10 counsel – failure to adequately investigate and develop all trial and appeal  
11 claims; 20) cumulative error; 21) Nevada's death penalty is administered in an  
12 arbitrary, irrational and capricious fashion; 22) lethal injection constitutes cruel  
13 and unusual punishment and 23) the death penalty violates evolving standards  
14 of decency.

15 The State filed a motion to dismiss Howard's third State petition on  
16 March 4, 2001. The State argued that the entire petition was procedurally  
17 barred under NRS 34.726(1) (one-year limit) and NRS 34.800 (five-year  
18 laches) and that Howard had not shown good cause for delay in raising the  
19 claims to overcome the procedural bars. The State also analyzed each claim  
20 and noted what issues had already been raised and decided adversely to  
21 Howard or should have been raised and were waived under NRS 34.810.

22 Howard filed an amended third State petition. The amended petition  
23 expanded the factual matters under Claim 17 regarding Howard's family  
24 background that Howard asserted should have been presented in mitigation.

25 On August 20, 2003, Howard filed his opposition to the State's motion  
26 to dismiss his third State petition. As good cause for delay, Howard alleged  
27 Nevada's successive petition and waiver bar (NRS 34.810) is inconsistently  
28 applied and Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001) is not  
controlling. Howard contended NRS 34.726 did not apply because any delay  
was the fault of counsel not Howard and NRS 34.726 is unconstitutional and  
cannot be applied to successive petitions Pellegrini notwithstanding. Howard  
argued the Due process and Equal Protection clauses of the Federal  
Constitution bar application of NRS 34.726, NRS 34.800 and NRS 34.810 to  
Howard. In addition, Howard asserted NRS 34.800 did not apply because the  
State had not shown prejudice and the presumption of prejudice was overcome  
by the allegations in the petition.

The State filed a reply to the opposition on September 24, 2003. The  
district court issued an oral decision on October 2, 2003 dismissing the third  
State petition as procedurally barred under NRS 34.726 and finding Howard  
had failed to overcome the bar by showing good cause for delay. The district  
court also independently dismissed the claims under NRS 34.810. Written  
findings were entered on October 23, 2003.

Howard appealed the dismissal to the Nevada Supreme Court, which  
affirmed the district court's dismissal of the third State petition on December  
4, 2004. The High Court addressed Howard's assertions that he had either  
overcome the procedural bars or they could not constitutionally be applied to  
him and rejected them. Among its conclusions, the Court noted that the record  
reflected Howard was aware that all his claims challenging the conviction or  
imposition of sentence must be joined in a single petition and that Howard had  
no right to post-conviction counsel at the time of the filing of his first and  
second State petitions for post-conviction relief and hence ineffectiveness of  
post-conviction counsel could not be good cause for delay.<sup>7</sup>

Howard then returned to Federal district court where he filed his Third

<sup>7</sup> See 1987 Nev. Stat., ch. 539, § 42 at 1230 (providing that appointment of counsel was discretionary not mandatory).

1 Amended Petition for Writ of Habeas Corpus on October 23, 2005.  
2 Subsequently, without seeking approval from the Federal Court, the Federal  
3 Public Defender's Office filed, on Howard's behalf, the current Fourth State  
4 Post-Conviction Petition on October 27, 2007. The State filed a motion to  
5 dismiss the Fourth State Petition on April 8, 2008. The parties agreed to stay  
6 this case for several months while Howard sought permission from the Federal  
7 District Court to hold his federal petition for post-conviction habeas corpus in  
8 abeyance pending exhaustion of the claims already filed in the Fourth State  
9 Petition and of new claims he wished to file in State court as a result of the  
10 Ninth Circuit's decision in Polk v. Sandoval, 503 F.3d 903, 910 (9<sup>th</sup> Cir. 2007).

11 The United States District Court denied Howard's motion for stay and  
12 abeyance on January 9, 2009. Thereafter, Howard filed an Opposition to the  
13 State's original motion to dismiss and an Amended Petition on February 24,  
14 2009. The State responded to Howard's opposition to the original motion to  
15 dismiss and additionally moved to dismiss the Amended Fourth Petition on  
16 October 7, 2009.<sup>8</sup> Howard filed an Opposition to the Amended Motion to  
17 Dismiss on December 18, 2009. Howard filed supplemental authorities on  
18 January 5, 2010.

19 Argument on the State's motion to dismiss was heard on February 4,  
20 2010. The matter was taken under advisement so the district court could  
21 review the extensive record. A Minute Order Decision was issued on May 13,  
22 2010, dismissing the Fourth State Petition as procedurally barred. A written  
23 Findings of Fact and Conclusions of Law was filed on November 6, 2010.

24 Petitioner challenged this Court's decision before the Nevada Supreme  
25 Court. Prior to ruling on this Court's fourth denial of habeas relief, the Nevada  
26 Supreme Court issued an opinion in Howard v. State, 128 Nev. 736, 291 P.3d  
27 137 (2012), addressing the sealing of documents. The Federal Public Defender  
28 (FPD) filed a motion in the Supreme Court to substitute counsel that included  
information that was potentially embarrassing to one or more current or former  
FPD attorneys as well as a prior private attorney who had represented Howard.  
Id. at 747, 291 P.3d at 144. A cover sheet indicated that the motion was sealed  
but the FPD failed to file a separate motion to seal the pleading. Id. at 739,  
291 P.3d at 139. The Court concluded that the FPD had not properly moved to  
seal and that sealing was unjustified. Id. at 748, 291 P.3d at 145. Ultimately,  
the Court affirmed this Court's denial of habeas relief. (Order of Affirmance,  
filed July 30, 2014, attached to Clerk's Certificate, filed October 24, 2014).  
The United States Supreme Court denied certiorari. Howard v. Nevada, —  
U.S. —, 135 S.Ct. 1898 (2015).

— Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction)  
(Fifth Petition) on October 5, 2016. Respondent filed an opposition and  
motion to dismiss on November 2, 2016. On March 27, 2017, Petitioner filed  
an opposition to the State's request to dismiss the Fifth Petition. Respondent's  
reply to Petitioner's opposition was filed on April 4, 2017.

On December 1, 2016, Petitioner filed an Amended Fifth Petition. The  
State moved to strike the Amended Fifth Petition for failing to comply with  
NRS 34.750(5). Petitioner opposed this request. This Court held a hearing on  
March 17, 2017, and after entertaining argument, struck the Amended Fifth  
Petition pursuant to NRS 34.750(5) and Barnhart v. State, 122 Nev. 301, 130  
P.3d 650 (2006). An order memorializing this decision was filed on April 7,

<sup>8</sup> Although both defense counsel and this Court received a copy of the Opposition and Amended Motion to Dismiss, for some reason it was not filed. This Court authorized the District Attorney's Office to file a Notice of Errata and attach a copy of the previously distributed Opposition and Amended Motion to Dismiss. This was filed on February 4, 2010. Subsequently, the missing document was located and the original Amended Motion to Dismiss was officially filed on May 11, 2010.

2017.

On April 6, 2017, Petitioner filed a Motion to Amend or Supplement that requested reconsideration of this Court's decision to strike his Amended Fifth Petition without requesting leave to do so in advance. Respondent filed an opposition on April 12, 2017, and Petitioner replied on April 17, 2017.

Howard's Fifth Petition and Motion to Amend or Supplement came before this Court on the April 19, 2017, Chamber Calendar. On May 2, 2017, this Court issued a minute order denying the Fifth Petition and the Motion to Amend or Supplement and imposing a \$250.00 sanction upon Howard's counsel for causing the State to respond to a the Motion to Amend when the Court had already decided the issue in the context of striking the Amended Fifth Petition and/or for failing to seek leave of court prior to requesting reconsideration.

(Findings of Fact, Conclusions of Law and Order, filed May 15, 2017, p. 8-20 (footnotes in original)) Notice of Entry of Order was filed on May 23, 2017. (Notice of Entry of Order, filed May 23, 2017).

Petitioner filed a Notice of Appeal on June 1, 2017. (Notice of Appeal, filed June 1, 2017). Additionally, Petitioner successfully sought extraordinary review of the sanction order. (Armeni v. Dist. Ct., Nevada Supreme Court Case Number 73462, Order Granting Petition in Part and Denying Petition in Part, filed April 25, 2018).

On September 4, 2018, Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction) (Sixth Petition). (Petition for Writ of Habeas Corpus (Post-Conviction), filed September 4, 2018). The State moved to strike on September 7, 2018. (Motion to Strike Sixth Petition for Writ of Habeas Corpus (Post-Conviction), filed September 7, 2018). Petitioner opposed on September 14, 2018. (Opposition to Motion to Strike, filed September 14, 2018). The State replied on September 20, 2018. (Reply to Opposition to Motion to Strike Sixth Petition for Writ of Habeas Corpus (Post-Conviction), filed September 20, 2018). This Court stayed the Sixth Petition pending the outcome on appeal of the denial of the Fifth Petition since both challenged the validity of the sentencing. (Recorder's Transcript of October 23, 2018, Hearing, p. 4-5, filed November 16, 2018).

On September 7, 2018, the State moved to transfer the Sixth Petition back to the criminal case. (Motion to Transfer Petition to Criminal Case, filed September 7, 2018). Petitioner opposed on September 12, 2018. (Opposition to Motion to Transfer, filed September 12, 2018). The State replied on September 13, 2018. (Reply to Opposition to

1 Motion to Transfer Petition to Criminal Case, filed September 13, 2018). Eventually the  
2 parties stipulated to transferring the habeas proceeding back into the criminal case.  
3 (Stipulation, filed November 6, 2019). An order transferring the case was filed on  
4 November 7, 2019. (Order Granting Motion to Transfer Petition to Criminal Case, filed  
5 November 7, 2019).

6 On September 27, 2019, Petitioner moved to lift the stay on the Sixth Petition because  
7 the Nevada Supreme Court issued an Order of Affirmance upholding the denial of the Fifth  
8 Petition on September 20, 2019. (Motion to Lift Stay, filed September 27, 2019). The State  
9 did not oppose this request. An order lifting the stay was filed on November 19, 2019.  
10 (Order Granting Petitioner's Motion to Lift Stay, filed November 19, 2019).

11 Ultimately, due to the COVID-19 pandemic the Court decided this matter without  
12 oral argument on May 4, 2020. (Odyssey Register of Actions, May 4, 2020, Court Minutes).  
13 The Court directed Respondent to prepare findings of fact and conclusions of law consistent  
14 with the court minutes. Id.

### 15 ANALYSIS

16 Petitioner's collateral attack on the remaining aggravating circumstance is decades  
17 too tardy. Habeas relief at this late date would be overly prejudicial to the State. Ultimately,  
18 the mere fact that the conviction underlying the prior violent felony aggravating  
19 circumstance was vacated on grounds irrelevant to the facts of that case is insufficient to  
20 justify ignoring Petitioner's procedural defaults.

#### 21 I. The Fifth Petition is Procedurally Barred

##### 22 A. Application of Procedural Bars is Mandatory

23 The one-year time bar of NRS 34.726 is strictly construed. Gonzales v. State, 118  
24 Nev. 590, 593-596, 53 P.3d 901, 902-904 (rejected post-conviction petition filed two days  
25 late pursuant to the "clear and unambiguous" provisions of NRS 34.726(1)). Further, the  
26 district courts have a *duty* to consider whether post-conviction claims are procedurally  
27 barred. State v. Eighth Judicial District Court (Riker), 121 Nev. 225, 234, 112 P.3d 1070,  
28



1 1076 (2005). The Nevada Supreme Court has found that “[a]pplication of the statutory  
2 procedural default rules to post-conviction habeas petitions is mandatory,” noting:

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

6 Id., at 231, 112 P.3d at 1074. Additionally, the Court held that procedural bars “cannot be  
7 ignored when properly raised by the State.” Id., at 233, 112 P.3d at 1075. The Nevada  
8 Supreme Court has granted no discretion to the district courts regarding whether to apply the  
9 statutory procedural bars.

10 B. NRS 34.726(1)

11 NRS 34.726(1) states that “unless there is good cause shown for delay, a petition that  
12 challenges the validity of a judgment or sentence must be filed within 1 year after entry of  
13 the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year  
14 after the Supreme Court issues its remittitur.” The one-year time bar is strictly construed and  
15 enforced. Gonzales, 118 Nev. 590, 53 P.3d 901. The Nevada Supreme Court has held that  
16 the “clear and unambiguous” provisions of NRS 34.726(1) demonstrate an “intolerance  
17 toward perpetual filing of petitions for relief, which clogs the court system and undermines  
18 the finality of convictions.” Pellegrini v. State, 117 Nev. 860, 875, 34 P.3d 519, 529 (2001).  
19 For cases that arose before NRS 34.726 took effect on January 1, 1993, the deadline for  
20 filing a petition extended to January 1, 1994. Id. at 869, 34 P.3d at 525.

21 Remittitur issued from Petitioner’s direct appeal on February 12, 1988. (Findings of  
22 Fact, Conclusions of Law and Order, filed May 15, 2017, p. 12). Therefore, Petitioner had  
23 until January 1, 1994, to file a timely habeas petition. Petitioner filed the Sixth Petition on  
24 September 4, 2018. (Petition for Writ of Habeas Corpus (Post-Conviction), filed September  
25 4, 2018). As such, the Sixth Petition is time barred.

26 C. NRS 34.800

27 NRS 34.800 recognizes that a post-conviction petition should be dismissed when  
28 delay in presenting issues would prejudice the State in responding to the petition or in retrial.

1 NRS 34.800(1). NRS 34.800(2) creates a rebuttable presumption of prejudice to the State if  
2 “[a] period of five years [elapses] between the filing of a judgment of conviction, an order  
3 imposing sentence of imprisonment or a decision on direct appeal of a judgment of  
4 conviction and the filing of a petition challenging the validity of a judgment of conviction.”  
5 See also, Groesbeck v. Warden, 100 Nev. 259, 260, 679 P.2d 1268, 1269 (1984), superseded  
6 by statute as recognized by, Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000) (“petitions that  
7 are filed many years after conviction are an unreasonable burden on the criminal justice  
8 system. The necessity for a workable system dictates that there must exist a time when a  
9 criminal conviction is final.”).

10 To invoke the presumption, the statute requires that the State specifically plead  
11 presumptive prejudice. NRS 34.800(2). More than five years has passed since remittitur  
12 issued from Petitioner’s direct appeal on February 12, 1988. (Findings of Fact, Conclusions  
13 of Law and Order, filed May 15, 2017, p. 12). Indeed, over thirty years have passed since  
14 Petitioner’s direct appeal was final. As such, the State pled statutory laches under NRS  
15 34.800(2) and prejudice under NRS 34.800(1) against the Sixth Petition. After such a  
16 passage of time, the State is prejudiced in its ability to answer the Sixth Petition and retry the  
17 penalty-phase. If Petitioner’s sixth go around on state post-conviction review is not  
18 dismissed or denied on the procedural bars, the State will be forced to track down witnesses  
19 who may have died or retired in order to prove a case that is several decades old. Assuming  
20 witnesses are available, their memories have certainly faded and they will not present to a  
21 jury the same way they did in 1983.

22 D. NRS 34.810

23 Petitioner’s sixth attempt at state habeas relief must be dismissed on waiver grounds  
24 and as an abuse of the writ.

25 Claims that could have been raised on direct appeal or in a prior petition are barred  
26 under NRS 34.810(1)(b):

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

28 ...

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

2 (1) Presented to the trial court;

3 (2) *Raised in a direct appeal or a prior petition for a writ of habeas  
corpus or post-conviction relief, unless the court finds both cause for  
the failure to present the grounds and actual prejudice to the petitioner.*

4 (Emphasis added). The failure to raise grounds for relief at the first opportunity is an abuse  
5 of the writ. NRS 34.810(2).

6 Nevada law dictates that all claims appropriate for direct appeal must be pursued on  
7 direct appeal or they will be "considered waived in subsequent proceedings." Franklin v.  
8 State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), disapproved on other grounds,  
9 Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). The Nevada Supreme Court has  
10 emphasized that: "[a] court *must* dismiss a habeas petition if it presents claims that either  
11 were or could have been presented in an earlier proceeding, unless the court finds both cause  
12 for failing to present the claims earlier or for raising them again and actual prejudice to the  
13 petitioner." Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001) (emphasis  
14 added). Where a claim arises after direct appeal, a petitioner has one year in which to file a  
15 petition alleging the claim or it too is barred. Rippo v. State, 134 Nev. 411, 412, 423 P.3d  
16 1084, 1090 (2018) ("[A] petition ... has been filed within a reasonable time after the ...  
17 claim became available so long as it is filed within one year after entry of the district court's  
18 order disposing of the prior petition or, if a timely appeal was taken from the district court's  
19 order, within one year after this court issues its remittitur.").

20 Petitioner's challenge to the prior violent felony aggravating circumstance is barred  
21 by NRS 34.810(1)(b)(2) as waived and by NRS 34.810(2) as an abuse of the writ. Petitioner  
22 has been aware for years that he was not sentenced in his New York robbery case. Petitioner  
23 should have raised that issue with the New York courts decades ago. To wait decades in  
24 order to secure a favorable result in a New York collateral proceeding in order to raise a  
25 challenge to his death sentence 30 years after the fact is an abuse of the writ.

26 II. Petitioner Fails to Justify Ignoring the Procedural Bars

27 This Court cannot disregard the procedural bars because Petitioner has failed to prove  
28 good cause, prejudice and/or actual innocence.

1 To overcome the procedural bars, a petitioner must demonstrate: (1) good cause for  
2 delay in filing his petition or for bringing new claims or repeating claims in a successive  
3 petition; and (2) undue or actual prejudice. NRS 34.726(1); NRS 34.800(1); NRS 34.810(3).  
4 To establish prejudice “a petitioner must show that errors in the proceedings underlying the  
5 judgment worked to the petitioner’s actual and substantial disadvantage.” State v. Huebler,  
6 128 Nev. \_\_, \_\_, 275 P.3d 91, 94-95 (2012), cert. denied, \_\_ U.S. \_\_, 133 S.Ct. 988 (2013).

7 “To establish good cause, petitioners must show that an impediment external to the  
8 defense prevented their compliance with the applicable procedural rule. A qualifying  
9 impediment might be shown where the factual or legal basis for a claim was not reasonably  
10 available at the time of default.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003),  
11 rehearing denied, 120 Nev. 307, 91 P.3d 35 cert. denied, 543 U.S. 947, 125 S.Ct. 358 (2004);  
12 see also, Hathaway v. State, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003) (“In order to  
13 demonstrate good cause, a petitioner must show that an impediment external to the defense  
14 prevented him or her from complying with the state procedural default rules”); Pellegrini,  
15 117 Nev. at 887, 34 P.3d at 537 (neither ineffective assistance of counsel, nor a physician’s  
16 declaration in support of a habeas petition were sufficient “good cause” to overcome a  
17 procedural default, whereas a finding by Supreme Court that a defendant was suffering from  
18 Multiple Personality Disorder was). An external impediment could be “that the factual or  
19 legal basis for a claim was not reasonably available to counsel, or that ‘some interference by  
20 officials’ made compliance impracticable.” Id. (quoting, Murray v. Carrier, 477 U.S. 478,  
21 488, 106 S.Ct. 2639, 2645 (1986)); see also, Gonzalez, 118 Nev. at 595, 53 P.3d at 904  
22 (citing Harris v. Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)).

23 The Nevada Supreme Court has held that, “appellants cannot attempt to manufacture  
24 good cause[.]” Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there must be a  
25 “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251, 71 P.3d at  
26 506; (quoting, Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989), superseded  
27 by statute as recognized by, Huebler, 128 Nev. at \_\_, 275 P.3d at 95, footnote 2). Excuses  
28 such as the lack of assistance of counsel when preparing a petition as well as the failure of

1 trial counsel to forward a copy of the file to a petitioner have been found not to constitute  
2 good cause. Phelps v. Dir. Nev. Dep't of Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306  
3 (1988), superseded by statute as recognized by, Nika v. State, 120 Nev. 600, 607, 97 P.3d  
4 1140, 1145 (2004); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

5 Even when a petitioner cannot show good cause sufficient to overcome the procedural  
6 bars, habeas relief may still be granted if he can demonstrate a fundamental miscarriage of  
7 justice. Pellegrini, 117 Nev. at 887, 34 P.3d at 537. In order to prove a fundamental  
8 miscarriage of justice, a petitioner must make “a colorable showing he is actually innocent of  
9 the crime or is ineligible for the death penalty.” Id. (citation omitted). Actual innocence  
10 means factual innocence not mere legal insufficiency. Bousley v. United States, 523 U.S.  
11 614, 623, 118 S.Ct. 1604, 1611 (1998); Sawyer v. Whitley, 505 U.S. 333, 338-39, 112 S.Ct.  
12 2514, 2518-19 (1992). To establish actual innocence of a crime, a petitioner “must show  
13 that it is more likely than not that no reasonable juror would have convicted him absent a  
14 constitutional violation.” Pellegrini, 117 Nev. at 887, 34 P.3d at 537. However, “[w]ithout  
15 any new evidence of innocence, even the existence of a concededly meritorious  
16 constitutional violation is not itself sufficient to establish a miscarriage of justice that would  
17 allow a habeas court to reach the merits of the barred claim.” Schlup v. Delo, 513 U.S. 298,  
18 316, 115 S. Ct. 851, 861 (1995) (emphasis added).

19 Actual innocence is a stringent standard designed to be applied only in the most  
20 extraordinary situations. Id.; Pellegrini, 117 Nev. at 876, 34 P.3d at 530. The Eighth Circuit  
21 Court of Appeals has “rejected free-standing claims of actual innocence as a basis for habeas  
22 review stating, ‘[c]laims of actual innocence based on newly discovered evidence have never  
23 been held to state a ground for federal habeas relief absent an independent constitutional  
24 violation occurring in the underlying state criminal proceeding.’” Meadows v. Delo, 99 F.3d  
25 280, 283 (8<sup>th</sup> Cir. 1996) (citing Herrera v. Collins, 506 U.S. 390, 400, 113 S. Ct. 853, 860  
26 (1993)). A defendant claiming actual innocence must demonstrate that it is more likely than  
27 not that *no reasonable juror* would have convicted him absent a constitutional violation.  
28 Pellegrini, 117 Nev. at 887, 34 P.3d at 537. Once a defendant has made such a showing, he

1 may then use the claim of actual innocence as a “gateway” to present his constitutional  
2 challenges to the court and require the court to decide them on the merits. Schlup, 513 U.S.  
3 at 315, 115 S. Ct. at 861. Furthermore, the newly discovered evidence suggesting the  
4 defendant’s innocence must be “so strong that a court cannot have confidence in the outcome  
5 of the trial.” Id. at 316, 115 S.Ct. at 861.

6 “Where the petitioner has argued that the procedural default should be ignored  
7 because he is actually ineligible for the death penalty, he must show by clear and convincing  
8 evidence that, but for a constitutional error, no reasonable juror would have found him death  
9 eligible.” Pellegrini, 117 Nev. at 887, 34 P.3d at 537. To establish innocence of capital  
10 punishment sufficient to waive a procedural default, a petitioner must eliminate every  
11 aggravating circumstance. Sawyer v. Whitley, 505 U.S. 333, 347, 112 S.Ct. 1514, 2523  
12 (1992). In addition, any new evidence regarding mitigating factors is not considered in an  
13 “actual innocence” death eligibility determination. Sawyer, 505 U.S. at 345-346, 112 S.Ct.  
14 at 2522. Notably, the “actual innocence” requirement focuses exclusively on those elements  
15 that render a defendant eligible for the death penalty; any additional mitigating evidence that  
16 was not presented at trial – even if it was the result of alleged constitutional errors – is  
17 irrelevant and will not be considered in an actual innocence determination. Id. at 347-48, at  
18 2523-24.

19 That Petitioner has finally gotten around to challenging his New York conviction after  
20 30 years does not amount to good cause to ignore NRS 34.726, NRS 34.800 and NRS  
21 34.810. Petitioner’s reliance upon Johnson v. Mississippi, 486 U.S. 578, 108 S.Ct. 1981  
22 (1988), is misplaced. Johnson does not justify ignoring Petitioner’s procedural defaults. The  
23 United States Supreme Court held that it could reach the merits of Johnson’s claim because  
24 “we cannot conclude that the procedural bar relied on by the Mississippi Supreme Court in  
25 this case has been consistently or regularly applied. Consequently, under federal law it is not  
26 an adequate and independent state ground[.]” Id. at 588-89, 108 S.Ct. at 1988. Petitioner  
27 does not even contend that Nevada’s procedural bars are not consistently applied. His  
28 failure to do so is an admission that he cannot make such a showing. See, Polk v. State, 126

1 Nev. \_\_\_, \_\_\_, 233 P.3d 357, 360-61 (2010). Nor can he, even the Ninth Circuit Court of  
2 Appeals admits that Nevada strictly enforces NRS 34.726(1). Loveland v. Hatcher, 231 F.3d  
3 640, 642-43 (9<sup>th</sup> Cir. 2000). Indeed, the Federal District Court for Nevada has ruled in  
4 Petitioner's federal habeas litigation arising from this case that Nevada consistently enforces  
5 NRS 34.726(1). Howard v. McDaniel, 2008 U.S. Dist. LEXIS 5191, p. 8-22 (D. Nev. 2008).  
6 Regardless, the Nevada Supreme Court steadfastly maintains that it consistently enforces  
7 Nevada's procedural default rules. Riker, 121 Nev. at 235-42, 112 P.3d at 1077-82.

8 Thus, Johnson is irrelevant unless Petitioner can evade NRS 34.726(1), NRS 34.800  
9 and NRS 34.810. To ignore the procedural bars Petitioner must establish "that the factual or  
10 legal basis for a claim was not reasonably available to counsel, or that 'some interference by  
11 officials' made compliance impracticable." Pellegrini, 117 Nev. at 887, 34 P.3d at 537  
12 (quoting, Murray v. Carrier, 477 U.S. 478, 488, 106 S.Ct. 2639, 2645 (1986)). Petitioner  
13 cannot make this showing because he has been aware of the defective nature of his New  
14 York conviction for decades and did nothing about it. Petitioner knew from the time of trial  
15 that he absconded from New York after his trial had started. (Exhibit A attached to State's  
16 Opposition and Motion to Dismiss Sixth Petition for Writ of Habeas Corpus (Post-  
17 Conviction, filed October 3, 2019, Reporter's Transcript of Jury Trial, Thursday, April 21,  
18 1983, 10:00 A.M., filed March 14, 1984, p. 1244). Petitioner challenged the prior violent  
19 felony aggravating circumstance based on the lack of a sentence in his New York case in  
20 2007 during the litigation of his fourth petition. (Petition for Writ of Habeas Corpus (Post-  
21 Conviction), filed October 25, 2007, p. 45-49). This Court found the claim barred pursuant  
22 to NRS 34.726(1), NRS 34.800 and NRS 34.810. (Findings of Fact, Conclusions of Law  
23 and Order, filed November 6, 2010, p. 19-21). This Court ruled that Petitioner could not  
24 justify ignoring his procedural defaults. Id. at 27-33. On appeal from denial of habeas relief,  
25 the Nevada Supreme Court agreed that the petition was procedurally barred and that  
26 Petitioner could not overcome his defaults. (Order of Affirmance, filed July 30, 2014, p. 2-  
27 3, 10-12).

28 Petitioner could have challenged the infirmity of his New York conviction at any time

1 since trial. The very purpose of the procedural bars is to compel habeas petitioners to pursue  
2 their claims expeditiously. According to the United States Supreme Court, “the purpose of  
3 the fault component of “failed” is to ensure the prisoner undertakes his own diligent search  
4 for evidence. Diligence ... depends upon whether the prisoner made a reasonable attempt, in  
5 light of the information available at the time, to investigate and pursue claims[.]” Williams  
6 v. Taylor, 529 U.S. 420, 434-435, 120 S.Ct. 1479, 1490 (2000). Indeed, the High Court has  
7 explicitly stated “that ‘cause’ under the cause and prejudice test must be something *external*  
8 to the petitioner, **something that cannot be fairly attributed to him.**” Coleman v.  
9 Thompson, 501 U.S. 722, 753, 111 S.Ct. 2546, 2566 (1991) (italics in original, bolding  
10 added). Similar to the procedural bars at issue in Williams and Coleman, Nevada also  
11 requires a habeas petitioner to demonstrate a lack of fault. NRS 34.726(1)(a) (“good cause  
12 for delay exists if the petitioner demonstrates ... [t]hat the delay was not the fault of the  
13 petitioner”); NRS 34.800(1)(a) (“A petition may be dismissed ... unless the petitioner shows  
14 that the petition is based upon grounds of which the petitioner could not have had knowledge  
15 by the exercise of reasonable diligence”). Here, Petitioner did not pursue his claim regarding  
16 his New York conviction for three decades. This is an obvious failure of diligence that  
17 squarely places fault on Petitioner’s shoulders.

18 Petitioner’s failure to demonstrate due diligence in challenging his New York  
19 conviction bars habeas relief. In Witter v. State, 135 Nev. \_\_\_, \_\_\_, 452 P.3d 406, 408 (2019),  
20 the Nevada Supreme Court addressed an Appellant contending that “because of the  
21 indeterminate restitution provision in the 1995 judgment, his conviction was not final until  
22 entry of the third amended judgment of conviction in 2017” and that as a consequence, “the  
23 direct appeal decided in 1996 and the subsequent postconviction proceedings were null and  
24 void for lack of jurisdiction and therefore he should be allowed to raise any issues stemming  
25 from the 1995 trial [.]” The Court rejected this view and concluded that Witter’s appeal was  
26 “limited in scope to issues stemming from the amendment.” Id. at \_\_\_. 452 P.3d at 407. The  
27 Court gave two reasons for this holding. Id. The Court noted that the more important of  
28 those was that “Witter treated the 1995 judgment of conviction as final for more than two



1 decades, litigating a direct appeal and various postconviction proceedings in state and federal  
2 court.” Id.

3 In distinguishing its precedents overturning judgments of conviction containing  
4 indeterminate restitution amounts from Witter’s situation, the Court noted that the  
5 defendants in those cases “raised the error regarding the indeterminate restitution provision  
6 during the first proceeding in which they challenged the validity of their judgments of  
7 conviction[.]” Id. at \_\_\_, 453 P.3d at 409. Witter’s failure to do the same implicated the  
8 compelling consideration of finality. Id. The Court pointed out that “[a] challenge to a  
9 conviction made years after the conviction is a burden on the parties and the courts because  
10 ‘[m]emories of the crime may diminish and become attenuated,’ and the record may not be  
11 sufficiently preserved.” Id. (quoting, Groesbeck v. Warden, 100 Nev. 259, 260, 679 P.2d  
12 1268, 1269 (1984)). Ultimately, “Witter treated the judgment of conviction as a final  
13 judgment. He is estopped from now arguing that the judgment was not final and that the  
14 subsequent proceedings were null and void for lack of jurisdiction.” Id. at \_\_\_, 453 P.3d at  
15 410 (footnote omitted).

16 Witter’s failure to exercise due diligence in challenging his judgment of conviction is  
17 indistinguishable from Petitioner’s failure of diligence in attacking his New York conviction.  
18 Petitioner treated his New York conviction as final for nearly four decades. He filed petition  
19 after petition and appeal after appeal all treating his New York conviction as final. Just as in  
20 Witter, Petitioner should be estopped from only now alleging that his New York conviction  
21 is null and void.

22 The requirement of due diligence is fundamental in Nevada habeas law. Nevada’s  
23 statutory laches provision requires a petitioner to demonstrate reasonable diligence in order  
24 to avoid a dismissal. NRS 34.800(1)(a) (“A petition may be dismissed if delay in the filing  
25 of the petition ... [p]rejudices the respondent ... in responding to the petition, unless the  
26 petitioner shows that the petition is based upon grounds of which the petitioner could not  
27 have had knowledge by the exercise of reasonable diligence before the circumstances  
28 prejudicial to the State occurred”). The time bar of NRS 34.726 may only be waived if a

petitioner demonstrates that “the delay is not the fault of the petitioner[.]” NRS 34.726(1)(a). The bar against successive and abusive petitions may be waived upon a showing of “[g]ood cause for the failure to present the claim or for presenting the claim again[.]” NRS 34.810(3)(a). Notably, *the Nevada Legislature just last session extended the necessity of demonstrating due diligence to claims of factual innocence*. NRS 34.960(3)(a) (“... the evidence could not have been discovered by the petitioner or the petitioner’s counsel through the exercise of reasonable diligence”).<sup>9</sup>

Nor can Petitioner escape the procedural bars by claiming that he is actually innocent of the death penalty. “Where ... a petitioner cannot demonstrate cause and prejudice, the district court may nevertheless excuse a procedural bar if the petitioner demonstrates that failing to consider the merits of any constitutional claim would result in a fundamental miscarriage of justice.” Rippo, 134 Nev. at 444, 423 P.3d at 1112 (citing, Pellegrini, 117 Nev. at 887, 34 P.3d at 537). Specifically, where a petitioner alleges ineligibility for the death penalty he must show “by clear and convincing evidence that, but for a constitutional error, no reasonable juror would have found him death eligible.” Pellegrini, 117 Nev. at 887, 34 P.3d at 537.

Initially, Petitioner’s claims of actual innocence should be summarily denied since, even if this Court assumes that factual innocence has been established based on the

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<sup>9</sup> Federal law appears to diverge from Nevada law on this point. Federal law does not preclude a claim of actual innocence for failing to exercise due diligence; instead, “[u]nexplained delay in presenting new evidence bears on the determination whether the petitioner has made the requisite showing” and on the credibility of a claim. McQuiggin v. Perkins, 569 U.S. 383, 399, 133 S. Ct. 1924, 1935, 185 L. Ed. 2d 1019 (2013). However, McQuiggin is limited to federal post-conviction relief and does not apply to state habeas proceedings. Com. v. Brown, 2016 PA Super 148, 143 A.3d 418, 420–21 (2016) (“While McQuiggin represents a further development in federal habeas corpus law, as was the case in Saunders, this change in federal law is irrelevant to the time restrictions of our PCRA”); State v. Edwards, 164 So.3d 823, 823-24 (La. 2015) (“McQuiggin does not purport to govern state post-conviction proceedings conducted under state law”); Wayne v. State, 866 N.W.2d 917, 919 (Minn. 2015) (“McQuiggin’s holding specifically applies to federal habeas petitions and ... does not apply to a postconviction motion that is a creature of state statute ... and is governed by its own statutory time bar”); Ex parte Smith, No. 03-17-00628-CR, 2018 WL 2347012, at \*3 (Tex. App. May 24, 2018), petition for discretionary review refused (July 25, 2018) (“Smith relies on ... McQuiggin ... [but] failed to show that the law on federal habeas claims applies to his habeas claim under Texas law”). Further, the Nevada Supreme Court has declined to import other similar equitable remedies from federal habeas law. Brown v. McDaniel, 130 Nev. 565, 569-76, 331 P.3d 867, 870-75 (2014). Regardless, even if applicable McQuiggin would not assist Petitioner since it was published decades after Petitioner’s conviction and there is no indication that the case applies retroactively. See, Teague v. Lane, 489 U.S. 288, 109 S. Ct. 1060 (1989); Colwell v. State, 118 Nev. 807, 59 P.3d 463 (2002).

1 invalidation of his New York conviction, he still has not identified a constitutional violation  
2 related to the New York conviction. Schlup, 513 U.S. at 315, 115 S. Ct. at 861. Indeed,  
3 Petitioner's New York conviction was valid at the time of his sentence and thus he cannot  
4 establish that a constitutional violation existed to the time of sentencing. See, Clem v. State,  
5 119 Nev. 615, 621-26, 81 P.3d 521, 526-29 (2003) (judicial interpretation of a statute after  
6 conviction such that Petitioner could not have been guilty of the deadly weapon  
7 enhancement does not amount to a constitutional violation for purposes of actual innocence  
8 since Petitioner was guilty under the law as it existed to the time of conviction).

9 Summary denial of Petitioner's actual innocence claim is additionally warranted by  
10 his failure to establish factual innocence as opposed to a legal defect in his New York  
11 conviction. Actual innocence means factual innocence not mere legal insufficiency.  
12 Bousley, 523 U.S. at 623, 118 S.Ct. at 1611; Sawyer, 505 U.S. at 338-39, 112 S.Ct. at 2518-  
13 19. As such, Petitioner's actual innocence claim must fail since he secured reversal of his  
14 New York conviction on an issue of legal sufficiency and not factual innocence.

15 Regardless, Petitioner cannot demonstrate "by clear and convincing evidence that, but  
16 for a constitutional error, no reasonable juror would have found him death eligible."  
17 Pellegrini, 117 Nev. at 887, 34 P.3d at 537. He cannot meet this standard because his jury  
18 found the prior violent felony aggravating circumstance based on the testimony of the victim  
19 from that prior violent crime and not purely on New York documentation of that conviction.  
20 It is important to note that in the only authority proffered by Petitioner, the United States  
21 Supreme Court premised its holding upon the fact that:

22 The sole evidence supporting the aggravating circumstance that petitioner had  
23 been "previously convicted of a felony involving the use or threat of violence  
24 to the person of another" consisted of an authenticated copy of petitioner's  
25 commitment to Elmira Reception Center in 1963 following his conviction in  
Monroe County, New York, for the crime of second-degree assault with intent  
to commit first-degree rape.

26 Johnson, 486 U.S. at 581, 108 S.Ct. at 1984. Johnson is factually distinguishable from this  
27 case because the victim from Petitioner's prior violent felony testified at the penalty hearing  
28 about her victimization by Petitioner. (Exhibit B attached to State's Opposition and Motion

1 to Dismiss Sixth Petition for Writ of Habeas Corpus (Post-Conviction, filed October 3, 2019,  
2 Reporter's Transcript of May 2, 1983, Penalty Hearing, p. 1464-81). Additionally, a New  
3 York detective testified regarding his investigation of the prior violent felony. Id. at 1481-  
4 92.

5 This is significant because the presentation of the underlying facts from those who  
6 experienced them allowed the jury to make an independent judgment about whether  
7 Petitioner committed a prior violent felony instead of merely relying upon court records.  
8 This distinction was key in Gardner v. State, 297 Ark. 541, 764 S.W.2d 416 (Ark. 1989).  
9 The Supreme Court of Arkansas faced a habeas petitioner complaining "that the aggravating  
10 circumstance found to exist by the jury in the sentencing phase ... has since been invalidated  
11 ... because a conviction for a prior violent felony which formed the basis for the jury's  
12 finding of an aggravating circumstance ... has since been reversed on appeal." Id. at 542,  
13 764 S.W.2d at 417. Just as Petitioner does here, Gardner argued that Johnson required the  
14 invalidation of his death sentence. Id. at 543-44, 764 S.W.2d at 418. The Supreme Court of  
15 Arkansas rejected this claim:

16 In Johnson, the jury found the existence of three aggravating circumstances,  
17 one of which was that Johnson had been previously convicted of a felony  
18 involving the use or threat of violence to another person. The sole evidence of  
19 the prior felony was a document reflecting a conviction for assault to commit  
20 rape. The assault conviction was overturned on appeal after trial, and the  
21 United States Supreme Court concluded that since the assault conviction was  
22 invalid and the prosecutor had presented no evidence of the conduct  
23 underlying it, Johnson was entitled to be resentenced. Johnson is not  
24 applicable to petitioner's case because at petitioner's trial the jury heard  
25 detailed direct testimony by the victims of the prior violent felony and other  
26 evidence which established the nature of petitioner's conduct. In addition to  
27 their testimony, there was further evidence of the crimes against them  
28 introduced in the sentencing phase of petitioner's trial. The aggravating  
circumstance was thus proved by evidence adduced at trial of the commission  
of violent acts rather than by proof of a conviction, a practice which this court  
has upheld. See, Miller v. State, 280 Ark. 551, 660 S.W.2d 163 (1983).

25 Gardner, 297 Ark. At 544, 764 S.W.2d at 418.

26 Similarly, in Gibbs v. Johnson, 154 F.3d 253, 258 (5<sup>th</sup> Cir. 1998), cert. denied, 526  
27 U.S. 1089, 119 S.Ct. 1501 (1999), the Fifth Circuit Court of Appeals faced a habeas  
28 petitioner contending that his death sentence was invalid under Johnson because "the state

1 relied upon inaccurate evidence of a prior offense[.]” Gibbs premised his Johnson claim on  
2 an alleged Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963), violation. Gibbs, 154  
3 F.3d at 255-58. Specifically, the State presented evidence that Gibbs attacked another  
4 inmate but failed to disclose a jail report indicating that the incident was dismissed on self-  
5 defense grounds. Id. at 256. The Fifth Circuit denied habeas relief:

6 We are not persuaded. In Johnson the invalidated conviction was the sole  
7 evidence of the prior conduct. The court in Johnson emphasized that because  
8 the prosecutor relied upon a judgment of conviction to prove the prior acts, the  
reversal took away the prosecutor's evidence. The evidence of Gibbs's prior  
acts was the testimony at trial of the victim.

9 Gibbs, 154 F.3d at 258.

10 The Eleventh Circuit has reached a similar conclusion. In Spivey v. Head, 207 F.3d  
11 1263, 1269 (11<sup>th</sup> Cir. 2000), cert. denied, 531 U.S. 1053, 121 S.Ct. 660 (2000), a habeas  
12 petitioner argued that “his prior vacated conviction was relied on in sentencing thus violating  
13 his Eighth Amendment rights under Johnson[.]” The Eleventh Circuit recognized that in  
14 Johnson “[t]he prosecution introduced no evidence about the conduct underlying the prior  
15 conviction, but relied instead on a single authenticated copy of a document indicating the  
16 conviction[.]” Id. at 1281. Based on that, the Court rejected the petitioner’s claim because  
17 “[i]n contrast to Johnson, here there is extensive evidence of the conduct underlying the Bibb  
18 County conviction[.]” Id.

19 Johnson is inapplicable to Petitioner since the jury heard direct evidence of his prior  
20 violent crime. At the time of trial, the State argued that the jury needed to make its own  
21 independent judgment regarding the existence of the prior violent felony aggravating  
22 circumstance:

23 Mr. Seaton: We are going to bring forward eye-witness testimony or  
24 testimony of these people who were down in San Bernardino and are familiar  
25 with the crime and can tell the jury a little more about the factual  
circumstances underlying

26 The reason for that, and I’ll just briefly elude to it here because it is  
27 counsel’s argument at this time, but our reason for that is because the statute  
175.554 causes the state to have the burden of proving these aggravating  
28 circumstances beyond a reasonable doubt. And in addition to that, that  
particular aggravating circumstance has to do with the use of force or violence.  
And the mere recitation of what the conviction was for is not, in the state’s

1 mind, adequate to comply with that burden of proof.

2 ...

3 Mr. Seaton: The other act that we intend to bring forth has also been put into  
4 evidence and again by the Defendant's own admission, and that is the  
conviction in absente. In view of the robbery with a weapon of a nurse in  
Queens, New York, in 1978. ...

5 ...

6 Mr. Seaton: We have witnesses. We have the nurse here and the detective  
7 who worked the case. We would want to put them on as opposed to any  
documentation for the same reason, that is to show the jury beyond a  
8 reasonable doubt that the use of force and/or violence was used in the  
commission of that particular robbery.

9 ...

10 And it's important that the State be able to show the jury the facts, and maybe  
11 that's the important thing here. The jury isn't deciding as much the fact of the  
conviction as they are what's the underlying facts of that conviction. What  
12 was it that the jury was able to consider in order for that jury to determine that  
there was a use or threat of violence? And those are the things that we wish to  
13 bring before the jury at this particular time.

14 (Exhibit B, attached to State's Opposition and Motion to Dismiss Sixth Petition for Writ of  
15 Habeas Corpus (Post-Conviction, filed October 3, 2019, Reporter's Transcript of May 2,  
16 1983, Penalty Hearing, p. 1453-54, 1457).

17 Consistent with this position, the State presented testimony from the victim and the  
18 police detective who investigated the New York robbery. *Id.* at 1464-92. The State's  
19 argument to the jury on the prior violent felony aggravating circumstance was also consistent  
20 with this position. The State read out the instruction defining the prior violent felony  
21 aggravating circumstance and then extensively discussed the *testimony* related to the New  
22 York crime. *Id.* at 1572-74. Indeed, the State never presented the jury with a judgment of  
23 conviction in the New York case. Instead, jurors were only given court minutes from the  
24 New York case. *Id.* at 1489-90. Furthermore, the mere fact of the adjudication was not at  
25 issue since Petitioner admitted the New York conviction. (Exhibit A attached to State's  
26 Opposition and Motion to Dismiss Sixth Petition for Writ of Habeas Corpus (Post-  
27 Conviction, filed October 3, 2019, Reporter's Transcript of April 12, 1983, Jury Trial, p.  
28 1243, 1244).

Petitioner has failed to establish good cause or actual innocence. The New York conviction was invalidated because “[s]ince 1980, the New York State authorities had actual knowledge that the defendant was arrested and in continued custody by both California and Nevada” and “[i]n 37 years, the People have not attempted to extradite the defendant to New York or make any other reasonable effort to produce the defendant for sentencing.” (New York v. Howard, Queens County Supreme Court Case Number 1227178, dated May 22, 2018, p. 2-3, attached as Exhibit 2 to Petition for Writ of Habeas Corpus (Post-Conviction), filed September 4, 2018). The very words of the New York Court apply equally to Petitioner. Just like New York, Petitioner did nothing to enforce or protect his interests for over 30 years. Just like New York, Petitioner should not profit from his lack of due diligence. Thus, Petitioner cannot establish good cause. As for actual innocence, Petitioner’s jury found the prior violent felony aggravating circumstance because it heard the facts of the New York case. That Petitioner’s New York conviction was invalidated on a technicality after more than 30 years does nothing to undermine the factual truth of what he did to the victim in the New York case.

## ORDER

It is HEREBY ORDERED that the Sixth Petition is denied as procedurally barred without a sufficient showing of good cause and prejudice to ignore Petitioner's procedural defaults.

DATED this 18 day of May 2020.

MICHAEL VILLANI  
DISTRICT JUDGE

BS

STEVEN B. WOLFSON  
DISTRICT ATTORNEY  
Nevada Bar #001565

BY */s/ Jonathan E. VanBoskerck*  
JONATHAN E. VANBOSKERCK  
 Chief Deputy District Attorney  
 Nevada Bar #006528

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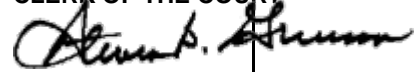
## Eileen Davis

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**From:** Eileen Davis  
**Sent:** Monday, May 11, 2020 2:18 PM  
**To:** jonah\_horwitz@fd.org; deborah\_a\_czuba@fd.org; lance@ghlawnv.com  
**Cc:** Jonathan VanBoskerck; Eileen Davis  
**Subject:** Samuel Howard, A-18-780434-W.  
**Attachments:** Howard, Samuel, 81C053867- FOF COL denying Sixth Petition PWHC.pdf

Hello,  
The attached Findings will be submitted to the Judge on May 18, 2020.  
Stay healthy and safe.

**Eileen Davis**  
*Paralegal*  
Clark County District Attorney's Office  
Appellate Division  
**T:** (702) 671-2750  
**E:** [eileen.davis@clarkcountyda.com](mailto:eileen.davis@clarkcountyda.com)



NEO

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

SAMUEL HOWARD,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: 81C053867

Dept No: XVII

**Death Penalty**

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

**PLEASE TAKE NOTICE** that on May 18, 2020, 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 May 21, 2020.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

**CERTIFICATE OF E-SERVICE / MAILING**

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

☒ By e-mail:

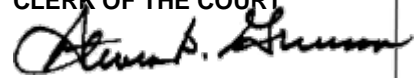
Clark County District Attorney's Office  
Attorney General's Office – Appellate Division-  
Public Defender's Office

☒ The United States mail addressed as follows:

Samuel Howard # 18329  
P.O. Box 650  
Indian Springs, NV 89070

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk



**FFCO**  
STEVEN WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
JONATHAN E. VANBOSKERCK  
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Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

SAMUEL HOWARD,	)	
Petitioner,	)	CASE NO: A-18-780434-W /
-vs-	)	81C053867
THE STATE OF NEVADA,	)	DEPT NO: XVII
Respondent.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING SIXTH  
PETITION FOR WRIT OF HABES CORPUS (POST-CONVICTION)

DATE OF HEARING: May 4, 2020  
TIME OF HEARING: 3:00 a.m.

THIS CAUSE having come on for hearing before the Honorable MICHAEL VILLANI, District Judge, on the 4<sup>th</sup> day of May, 2019, SAMUEL HOWARD (hereinafter "Petitioner" or "Howard") not present, represented by Assistant Federal Public Defender Deborah A. Czuba, Esq. and Assistant Federal Public Defender Jonah J. Horwitz, Esq., the Respondent being represented by STEVEN B. WOLFSON, District Attorney, by and through JONATHAN E. VANBOSKERCK, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, testimony of witnesses, arguments of counsel, and/or documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

///

///

## FACTUAL BACKGROUND

This Court summarized the facts of this case in the Findings of Fact, Conclusions of Law and Order denying Petitioner's fifth demand for habeas relief:

On March 26, 1980, around noon, a Sears' security officer, Keith Kinsey, observed Howard take a sander from a shelf, remove the packing and then claim a fraudulent refund slip from a cashier. Kinsey approached Howard and asked him to accompany Kinsey to a security office. Kinsey enlisted the aid of two other store employees. Howard was cooperative, alert and indicated there must be some mistake. In the security office, Kinsey observed Howard had a gun under his jacket and attempted to handcuff Howard for safety reasons. A struggle broke out and Howard drew a .357 revolver and pointed it at the three men. Howard had the men lay face down on the floor and took Kinsey's security badge, ID and a portable radio (walkie-talkie). Howard threatened to kill the three men if they followed him and he fled to his car in the parking lot. A yellow gold jewelry ID bracelet was found at the scene and impounded. It was later identified as Howard's. The Sears in question was located at the corner of Desert Inn Road and Maryland Parkway at the Boulevard Mall in Las Vegas, Nevada.

Dawana Thomas, Howard's girlfriend, was waiting for him in the car. Howard had told her to wait for him and she was unaware of his intentions to obtain money through a false refund transaction. Fleeing from the robbery, Howard hopped into the car, a 1980 black Oldsmobile Cutlass with New York plates 614 ZHQ and sped away from the mall. While escaping, Howard rear-ended a white corvette driven by Stephen Houchin. Houchin followed Howard when Howard left the scene of the accident. Howard pointed the .357 revolver out the window of the Olds and at Houchin's face, telling Houchin to mind his own business.

Howard drove to the Castaways Motel on Las Vegas Boulevard South and parked the car for a few hours. Thomas and Howard walked about and Howard made some phone calls. Later that evening Howard left for a couple of hours. When he returned he told Thomas that he had met up with a pimp, but the pimps' girls were with him so he couldn't rob him. Howard indicated he had arranged to meet with the "pimp" the next morning and would rob him then.

Howard and Thomas drove to the Western Six motel located on the Boulder Highway near the intersection of Desert Inn Road. The couple had stayed at this motel before and Howard instructed Thomas to register under an assumed name, Barbara Jackson. The motel registration card under that name was admitted into evidence and a documents' examiner compared handwriting on the card with Thomas' and indicated they matched.

Around 6:00 a.m. on March 27, 1980, Thomas and Howard left the motel and went to breakfast. After breakfast, Thomas dropped Howard off in the alley behind Dr. George Monahan's office. This was at approximately 7:00 a.m. Thomas went back to the motel room. Approximately an hour later, Howard returned to the motel. Howard had a CB radio with him that had loose wires and a gold watch she had never seen before. Howard told Thompson that he was tired of Las Vegas and to pack up their things as they were leaving for California.

Dr. Monahan was a dentist with a practice located on Desert Inn Road within walking distance of the Boulevard Mall. He was attempting to sell a uniquely painted van and would park the van in the parking lot of the mall, at the Desert Inn and Maryland intersection and near the Sears store, then walk to

1 his office. The van had a sign in it listing Dr. Monahan's home and business  
2 phone numbers and the business address.

3 About 4:00 p.m. on March 26, 1980, the afternoon of the Sears robbery,  
4 Dr. Monahan's wife, Mary Lou Monahan, received a phone call at her home  
5 inquiring about the van. The caller was a male who identified himself as  
6 "Keith" and stated he was a security guard at Caesar's Palace. He indicated he  
7 was interested in purchasing the van and wanted to know if someone could  
8 meet him at Caesar's during his break time at 8:00 p.m. Mrs. Monahan  
9 indicated the caller would have to talk to her husband who was expected home  
10 shortly. A second call was made around 4:30 p.m. and Dr. Monahan made  
11 arrangements to meet "Keith" at Caesar's later that night.

12 The Monahans and two relatives, Barbara Zemen and Mary Catherine  
13 Monahan, met "Keith" that evening at the appointed time and place. Howard  
14 was identified as the man who called himself "Keith". Howard was carrying a  
15 walkie-talkie radio at the time. Howard talked to Dr. Monahan for about ten  
16 minutes about purchasing the van and looked inside the van but did not touch  
17 the door handle while doing so. Howard arranged to meet Dr. Monahan the  
18 next morning to take a test drive. The Monahan's left Caesar's and parked the  
19 van at Dr. Monahan's office before returning home in another vehicle.

20 The next day, March 27, 1980, Dr. Monahan left his home at about 6:50  
21 a.m. He took with him his wallet, a gold Seiko watch, daily receipts and the  
22 van title. When Mrs. Monahan arrived at the office at about 8:00 a.m. Dr.  
23 Monahan was not there and a patient was waiting for him. Dr. Monahan's  
24 truck was in the parking lot to the rear of the office. Dr. Monahan had not  
25 entered the office. A black man wearing a radio or walkie-talkie on his belt  
26 came into the office at about 7:00 a.m. that morning looking for Dr. Monahan  
27 and stating that he had an appointment with the doctor.

28 Mrs. Monahan called Caesar's Palace and learned no "Keith" fitting the  
description she gave worked security. After obtaining this information, Mrs.  
Monahan called the police to report her husband as a missing person. This  
occurred at about 9:00 a.m.

Charles Marino owned the Dew Drop Inn located near the corner of  
Desert Inn and Boulder Highway, just a few blocks from Dr. Monahan's office  
and almost across the road from the Western Six motel. Early on the morning  
of March 27, 1980, as he approached his business, he observed the Monahan  
van backing into the rear of the bar. When he arrived at the Inn, he looked in  
the driver's side and saw no one. He asked patrons if they knew anything  
about the van and no one spoke up. Marino remained at the business until the  
early afternoon. The van was still there and had not been moved. Later that  
day, at around 7:00 p.m. he received a call to return to the bar as a dead body  
had been found in the van.

In response to television coverage, the police learned the Monahan van  
was behind the Dew Drop Inn around 6:45 p.m. Dr. Monahan's body was  
found in the van under an overturned table and some coverings. He had been  
shot once in the head. The bullet went through Dr. Monahan's head and a  
projectile was recovered on the floor of the van. The projectile was compared  
to Howard's .357 revolver. Because the bullet was so badly damaged; forensic  
analysis could not establish an exact match. It was determined that the bullet  
could have come from certain makes and models of revolvers, Howard's  
included. The van's CB radio and a tape deck had been removed. Dr.  
Monahan's watch and wallet were missing. A fingerprint recovered from one  
of the van's doors matched Howard's.

Homicide detectives were aware of the Sears robbery that had occurred  
on March 26<sup>th</sup>. The description of the Sears suspect matched that given by  
Mrs. Monahan of the man calling himself Keith at Caesar's Palace. Based  
upon that, the use of the name Keith, the walkie-talkie in possession of the

1 suspect, the close proximity of the dental office to the Sears and the fact that  
2 the van had been parked in the Sears' parking lot, the police issued a bulletin to  
3 state and out-of-state law enforcement agencies describing the suspect and the  
4 car used in the Sears' robbery.

5 On March 27, 1980, while the police were searching for Dr. Monahan,  
6 Howard and Thompson drove to California. They left the motel between 8:00  
7 a.m. and 9:00 a.m. and on the way they stopped for gas. At that time Howard  
8 had a brown or black wallet that had credit cards and photos in it. Howard  
9 went to the gas station rest room and when he returned he no longer had the  
10 wallet.

11 On March 28, 1980, Howard and Thompson went to a Sears in San  
12 Bernadino, California. Once again Howard left Thompson in the car while he  
13 entered the Sears, picked up merchandize and tried to obtain a refund on it.  
14 This time he used the stolen Kinsey Sears security badge in the attempt. The  
15 Sears personal were suspicious and left Howard at the register while they  
16 called Las Vegas. When they returned Howard had left. Howard had returned  
17 to the car and Thompson and Howard ducked down when the people from  
18 Sears stepped outside to view the parking lot.

19 On or about April 1, 1980, at around noon, Howard went to the  
20 Stonewood Shopping Center in Downey, California. He entered a jewelry  
21 store and talked to a security agent, Manny Velasquez. Another agent in the  
22 store, Robert Slater, who also worked as a police officer in Downey, saw  
23 Howard and noticed the grip of a gun under Howard's jacket. Slater talked to  
24 Velasquez and decided to call the Downey Police. Howard left the jewelry  
25 store went to the west end of the mall near a Thrifty drugstore. Downey Police  
26 officers observed Howard walking up and down the aisles of the drugstore,  
27 picking items up and replacing them on shelves. Howard was stopped on  
28 suspicion of carrying a concealed weapon. No gun was found on him nor was  
he carrying the walkie-talkie. A search of the aisles he had been in revealed a  
.357 magnum revolver and the walkie-talkie and Sears' security badge stolen  
from Kinsey.

Howard was arrested for carrying a concealed weapon and then  
identified and booked for a San Bernadino robbery. Howard was given his  
Miranda rights by Downey Police officers. Disputed evidence was presented  
regarding his response and whether he invoked his right to silence. Based on  
information in the all-points bulletin, the California authorities contacted the  
Las Vegas Metropolitan Police Department about Howard. On April 2, 1980,  
LVMPD Detective Alfred Leavitt went to California and, after reading  
Howard his Miranda rights, which Howard indicated he understood,  
interviewed Howard regarding the Sears robbery and Dr. Monahan's murder.  
Howard did not invoke his right to remain silent or to counsel at this time.

Howard told Detective Leavitt he recalled being at the Sears department  
store but no details about what happened and that he did not remember  
anything about March 27, 1980. He stated he could have killed Dr. Monahan  
but he didn't know.

Ed Schwartz was working as a car salesman in New York on October 5,  
1979. When he arrived at work at approximately 9:00 a.m. Howard entered  
the agency and was looking at an Oldsmobile car. Howard showed Schwartz a  
New York driver's license and checkbook and told Schwartz that he worked  
for a security firm in New York. Howard asked if they could take a  
demonstration ride and Schwartz drove the car for a few blocks while Howard  
was the passenger. Howard asked if he could drive the car and the men  
switched seats. After driving for a short time, Howard pulled over and pointed  
an automatic pistol at Schwartz. Schwartz was told to get down on the floor of  
the car and remove his shoes and pants. Schwartz complied and Howard took  
Schwartz' watch, ring and wallet. Schwartz got out of the car when ordered to

do so and Howard drove off. The car was later found abandoned.<sup>1</sup>

Howard called witnesses who testified they saw the Monahan van being driven by a black man who did not match Howard's description, in particular the man had a large afro and Howard had short hair. John McBride state that he saw the van around 8:30 to 8:45 a.m. in his apartment complex which is located about five miles from Desert Inn and Boulder Highway. Lora Mallek was employed at a Mobile gas station at the corner of DI and Boulder Highway and she stated serviced the van when it pulled into the station between 3:00 p.m. and 4:00 p.m. Mallek testified that a black man with a large afro was driving, a black woman who did not match Thomas' description was in the passenger seat and a white man was sitting in the back.

Howard testified over the objection of counsel. He indicated he did not recall much about March 26, 1980. He remembered being in Las Vegas in general on and off and that at one point Dwana Thomas' brother, who was about Howard's height, age and weight, and had a large afro, visited them. Howard said he remembers incidents, not dates and Kinsey could have been telling the truth about the Sears store. Howard indicated he wasn't sure because when the Sears people gathered around him, it reminded him of Vietnam and he kind of had a flashback. Howard said he thinks he left Las Vegas immediately after the Sears incident. Howard also stated that he did not meet Dr. Monahan, rob or kill him as he couldn't be that callous.

On cross-examination, Howard admitted he left New York in the middle of his robbery trial and was asked about statements he made to Detective Leavitt. Howard also acknowledged he has used a number of aliases including Harold Stanback. Howard indicated he was taking the blame for Dawana and her brother Lonnie.

Dawana Thomas was called in rebuttal and indicated her brother Lonnie had not been in Las Vegas in March of 1980.

In the penalty phase, the State presented evidence on the details of Howard's 1979 New York conviction for robbery. A college nurse who knew Howard, Dorothy Weisband, testified that Howard robbed her at gunpoint taking her wallet and car. He forced her into a closet and demanded she removed her clothes. She refused and he left. After the robbery, Howard called Weisband trying to get more cash from her in return for her car and threatened her.

Howard testified regarding his military, family and mental health histories. Howard discussed his military service and stated he had suffered a concussion and received a purple heart.<sup>2</sup> Howard also stated he was on veteran's disability in New York.<sup>3</sup> He said he was in various mental health facilities in California including being housed in the same facility as Charlie Manson. He testified he had been diagnosed as a schizophrenic, but that some of the doctors thought he was malingering. When asked about his childhood, Howard became upset. He indicated he didn't want to talk about the death of his mother and sister. Howard indicated he was not mentally ill and knew what he was doing at all times.

(Findings of Fact, Conclusions of Law and Order, filed May 15, 2017, p. 2-8 (footnotes in

<sup>1</sup> This evidence was admitted to show identity and motive for the Monahan murder.

<sup>2</sup> The military records attached to the current Fourth Petition do not reflect any such injury or award.

<sup>3</sup> Howard's military records do not support this and there is nothing in the record substantiating any admission to a veteran's hospital. The record reflects Howard was never actually admitted to a hospital in New York because it required identification and he could not identify himself due to existing warrants for his arrest.

original)).

## **PROCEDURAL HISTORY**

This Court set forth the procedural history of this case in the Findings of Fact, Conclusions of Law and Order denying Petitioner's fifth habeas petition:

On May 20, 1981 Howard was indicted on one count of robbery with use of a deadly weapon involving a Sears security officer named Keith Kinsey on March 26, 1980; one count of robbery with use of a deadly weapon involving Dr. George Monahan and one count of murder with use of a deadly weapon involving Dr. Monahan, both committed on March 27, 1980. With respect to the murder count, the State alleged two theories: willful, premeditated and deliberate murder or murder in the commission of a robbery.

Howard was arrested in California where he was serving time for a robbery committed on or about April 1, 1980. He was extradited in November of 1982 and an initial appearance was set for November 23, 1982. At that time the matter was continued for appointment of counsel, the Clark County Public Defender's Office.

On November 30, 1982, Terry Jackson of the Public Defender's Office represented to the district court that Howard qualified for the Public Defender's services; however, Mr. Jackson indicated he had a personal conflict as he was a friend of the victim. The district judge determined that the relationship did not create a conflict for the Public Defender's Office, barred Mr. Jackson from involvement with the case and appointed another deputy public defender to Howard's case.

Howard's counsel requested a one-week continuance to consult with Howard about the case. Howard objected, insisted on being arraigned and demanded a speedy trial. After discussion, the district court accepted a plea of not guilty and set a trial date of January 10, 1983.

Howard filed a motion in late in December asking for his counsel to be removed and substitute counsel appointed. Counsel filed a response addressing issues raised in the motion. After a hearing, the district court determined there were no grounds for removing the Clark County Public Defender's Office.

A motion for a psychiatric expert was filed. At a hearing, the district court inquired if this was for competency and Howard's counsel indicated it was not, but it was to help evaluate Howard's mental status at the time of the events. The district court granted the motion and appointed Dr. O'Gorman to assist the defense.

At a status check on January 4, 1983, defense counsel indicated the defense could not be ready for the January 10<sup>th</sup> trial date due to the need to conduct additional investigation and discovery. In addition, counsel noted Howard was refusing to cooperate with counsel. Howard objected to any continuance with knowledge that his attorneys' could not complete the investigations by that date. Given Howard's objections, the district court stated the trial would go forward as scheduled.

On the day of trial, defense counsel moved to withdraw stating that Mr. Jackson's conflict created mistrust in Howard and he therefore refused to cooperate. This motion was denied. Defense counsel then moved for a continuance as they did not feel comfortable proceeding to trial in this case, given the issues involved, with only six weeks to prepare. After extensive argument and a recess so that counsel could discuss the issue with Howard, the district court granted the continuance over Howard's objections.



1 The guilt phase of the trial began on April 11, 1983 and concluded on  
2 April 22, 1983. The jury returned a verdict of guilty on all three counts. The  
3 penalty phase was set to begin on May 2, 1983. In the interim, one of the  
4 jurors tried to contact the trial judge about a scheduling problem. Because the  
5 district judge was on vacation, someone referred the juror to the District  
6 Attorney's Office. That Office referred the juror to the jury commissioner.  
7 Howard moved for a mistrial or elimination of the death penalty as a  
8 sentencing option based upon this contact. After conducting an evidentiary  
9 hearing, the district court denied Howard's motions.

10 Defense counsel made an oral motion to withdraw indicating they had  
11 irreconcilable differences with Howard over the conduct of the penalty phase.  
12 Counsel indicated they had documents and witnesses in mitigation, but that  
13 Howard had instructed them not to present any mitigation evidence. Howard  
14 also instructed them not to argue mitigation and they would not follow that  
15 directive, but would argue mitigation. Counsel also indicated that Howard told  
16 them he wished to testify, but would not tell them the substance of his  
17 testimony. Finally, counsel indicated they had attempted to get military and  
18 mental health records but were unsuccessful because the agencies possessing  
19 the records would not send copies without a release signed by Howard and  
20 Howard refused to sign the releases. The district court canvassed Howard if  
21 this was correct and Howard confirmed it was true and that he did not want  
22 any mitigation presented. The district court found Howard understood the  
23 consequences of his decision and denied the motion to withdraw concluding  
24 defense counsel's disagreement with Howard's decision was not a valid basis  
25 to withdraw.

26 The penalty phase began on May 2, 1983 and concluded on May 4,  
27 1983. The State originally alleged three aggravating circumstances: 1) the  
28 murder was committed by a person who had previously been convicted of a  
felony involving the use of violence - namely robbery with use of a deadly  
weapon in California, 2) prior violent felony - a 1978 New York conviction in  
absentia for robbery with use of a deadly weapon; and 3) the murder occurred  
in the commission of a robbery. Howard moved to strike the California  
conviction because the conviction occurred after the Monahan murder and the  
New York conviction because it was not supported by a judgment of  
conviction. The district court struck the California conviction but denied the  
motion as to the New York conviction, noting that the records reflected a jury  
had convicted Howard and the lack of a formal judgment was the result of  
Howard's absconding in the middle of trial.

29 The State presented evidence of the aggravating circumstances and  
30 Howard took the stand and related information on his background. During a  
31 break in the testimony, Howard suddenly stated he did not understand what  
32 mitigation meant and that he would leave it up to his attorneys to decide what  
33 to do. The district court asked Howard if he was now instructing his attorneys  
34 to present mitigation and he refused to answer the question. Howard did  
35 indicate that he wanted his attorney's to argue mitigation and defense counsel  
36 asked for time to prepare which was granted. The jury found both aggravating  
37 circumstances existed and that no mitigating circumstances outweighed the  
38 aggravating circumstances. The jury returned a sentence of death.

39 Howard appealed to the Nevada Supreme Court. Elizabeth Hatcher  
40 represented Howard on Direct Appeal. Howard raised the following issues on  
41 direct appeal: 1) ineffective assistance of counsel based on actual conflict  
42 arising out of Jackson's relationship with Dr. Monahan; 2) denial of a motion  
43 to sever the Sears' count from the Monahan counts; 3) denial of an evidentiary  
44 hearing on a motion to suppress Howard's statements and evidence derived  
45 therefrom; 4) refusal to instruct the jury that accomplice testimony should be  
46 viewed with mistrust; 5) refusal to instruct the jury that Dawana Thomas was

1 an accomplice as a matter of law; 6) denial of a motion to strike the felony  
2 robbery and New York prior violent felony aggravators; and 7) the giving of a  
anti-sympathy instruction and refusal to instruct the jury that sympathy and  
mercy were appropriate considerations.

3 The Nevada Supreme Court affirmed Howard's conviction and  
4 sentence. Howard v. State, 102 Nev. 572, 729 P.2d 1341 (1986) (hereinafter  
5 "Howard I"). The Supreme Court held that the relationship of two members of  
6 the Public Defender's Office with Monahan did not objectively justify  
7 Howard's distrust and there was no evidence that those attorneys had any  
8 involvement in his case. Therefore no actual conflict existed and the claim of  
9 ineffective assistance of counsel on this basis had no merit. The Court further  
10 concluded the district court did not abuse its discretion by refusing to sever the  
11 counts and by not granting an evidentiary hearing on the suppression motion.  
12 The Court noted that the record reflected proper Miranda warnings were given  
13 and the statements were admitted as rebuttal and impeachment after Howard  
testified. The Court also found that the district court did not error in rejecting  
the two accomplice instructions; the anti-sympathy language in one of the  
instructions was not err in light of the totality of the instructions and the record  
supported the district court's refusal to instruct on certain mitigating  
circumstances for lack of evidence. The Court concluded by stating it had  
considered Howard's other claims of error and found them to be without merit.  
Howard filed a petition for rehearing which was denied on March 24, 1987.  
Remittitur was stayed pending the filing of a petition for Writ of Certiorari to  
the United States Supreme Court on the anti-sympathy issues. John Graves, Jr.  
was appointed to represent Howard on the writ petition. The petition was  
denied on October 5, 1987 and remittitur issued on February 12, 1988.

14 On October 28, 1987, Howard filed his first State petition for post-  
15 conviction relief. John Graves Jr. and Carmine Colucci originally represented  
16 Howard on the petition. They withdrew and David Schieck was appointed.  
17 The petition raised the following claims for relief: 1) ineffective assistance of  
18 trial counsel – guilt phase - failure to present an insanity defense and Howard's  
19 history of mental illness and commitments; 2) ineffective assistance of trial  
20 counsel – penalty phase – failure to present mental health history and  
21 documents; failure to present expert psychiatric evidence that Howard was not  
22 a danger to jail population; failure to rebut future dangerousness evidence with  
jail records and personnel; failure to object to improper prosecutorial  
arguments involving statistics regarding deterrence, predictions of future  
victims, Howard's lack of rehabilitation, aligning the jury with "future  
victims," comparing victim's life with Howard's life, diluting jury's  
responsibility by suggesting it was shared with other entities, voicing personal  
opinions in support of the death penalty and its application to Howard,  
references to Charles Manson, voice of society arguments and referring to  
Howard as an animal; 3) ineffective assistance of appellate counsel – failure to  
raise prosecutorial misconduct issues.

23 An evidentiary hearing was held on August 25, 1988. George Franzen,  
24 Lizzie Hatcher, John Graves and Howard testified. Supplemental points and  
25 authorities were filed on October 3, 1988. The district court entered an oral  
26 decision denying the petition on February 14, 1989. The district court  
27 concluded that trial counsel performed admirably under difficult circumstances  
28 created by Howard himself. As to the failure to present an insanity defense  
and present mental health records, the court found that Howard was canvassed  
throughout the proceedings about his refusal to cooperate in obtaining those  
records, particularly his refusal to sign releases. Howard knew what was going  
on, was competent and was trying to manipulate the proceedings and that there  
was no evidence to support an insanity defense, therefore counsel were not  
ineffective in this regard.

1 On the issue of failure to object to prosecutorial misconduct, the district  
2 court found that defense counsel did object where appropriate and the  
3 arguments that were not objected to did not amount to misconduct and were a  
4 fair comment on the evidence. Even if some of the comments were improper,  
5 the district court concluded that they would not have succeeded on appeal as  
6 they were harmless beyond a reasonable doubt. Formal findings of fact and  
7 conclusions of law were filed on July 5, 1989.<sup>4</sup>

8 The Nevada Supreme Court affirmed the district court's denial of  
9 Howard's first State petition for post-conviction relief. Howard v. State, 106  
10 Nev. 713, 800 P.2d 175 (1990) (hereinafter "Howard II"). David Schieck  
11 represented Howard in that appeal. On appeal Howard raised ineffective  
12 assistance of trial and appellate counsel regarding the prosecutorial misconduct  
13 issues. The Supreme Court found three comments to be improper under  
14 Collier v. State, 101 Nev. 473, 705 P.2d 1126 (1985)<sup>5</sup>: 1) a personal opinion  
15 that Howard merited the death penalty, 2) a golden rule argument – asking the  
16 jury to put themselves in the shoes of a future victims and 3) an argument  
17 without support from evidence that Howard might escape. The Court found  
18 that counsel were ineffective for failing to object to these arguments but  
19 concluded there was no reasonable probability of a contrary result absent these  
20 remarks and therefore no prejudice. The Court rejected Howard's other  
21 contentions of improper argument.

22 With respect the mitigation evidence issues, the Nevada Supreme Court  
23 upheld the district court's findings that this was a result of Howard's own  
24 conduct and not ineffective assistance of counsel.<sup>6</sup>

25 Howard proceeded to file a second Federal habeas corpus petition on  
26 May 1, 1991. This proceeding was stayed for Howard to exhaust his state  
27 remedies on October 16, 1991. Howard then filed a second State petition for  
28 post-conviction relief on December 16, 1991. Cal J. Potter, III and Fred  
Atcheson represented Howard in the second State petition. In that petition,  
Howard alleged denial of a fair trial based on prosecutorial misconduct,  
namely: 1) jury tampering based on the prosecutor's contact with the juror  
between the guilt and penalty phases; 2) expressions of personal belief and a  
personal endorsement of the death penalty; 3) reference to the improbability of  
rehabilitation, escape, future killings; 3) comparing Howard's life with Dr.  
Monahan's and 4) a statement that the community would benefit from  
Howard's death. The petition also asserted an ineffective assistance of trial  
counsel claim for failing to explain to Howard the nature of mitigating  
circumstances and their importance. Finally the petition raised a speedy trial  
violation and cumulative error.

The State moved to dismiss the second State petition as procedurally  
barred or governed by the law of the case on February 10, 1992. In his reply,  
Howard dropped his speedy trial claim as unsubstantiated and indicated if the  
other claims were barred, then they had been exhausted and Howard could  
proceed in Federal court.

The district court denied the petition on July 7, 1992. The district court  
found that the claims of prosecutorial misconduct and ineffective assistance of  
counsel relating thereto as well as the claims relating to mitigation evidence

<sup>4</sup>During the pendency of the first State petition for post-conviction relief, Howard filed his first Federal petition for habeas relief. That petition was dismissed without prejudice on June 23, 1988.

<sup>5</sup> Collier was decided two years after Howard's trial.

<sup>6</sup> The State filed a petition for rehearing with respect to sanctions imposed on the prosecutor because his remarks violated Collier. The State noted that Howard's trial occurred before Collier therefore the Court should not sanction counsel for conduct that occurred before the Court issued the Collier opinion. Rehearing was denied February 7, 1991.

1 had been heard and found to be without merit or failed to demonstrate  
2 prejudice. Such claims were therefore barred by the law of the case. The  
3 district court further concluded that any claim of cumulative error and any  
4 issues not raised in previous proceedings were procedurally barred. Finally,  
5 the district court found the speedy trial violation was a naked allegation,  
6 frivolous and procedurally barred.

7 Howard appealed the denial of his second State petition to the Nevada  
8 Supreme Court, which dismissed his appeal on March 19, 1993. The Order  
9 Dismissing Appeal found that Howard's second State petition was so lacking  
10 in merit that briefing and oral argument was not warranted. Howard filed a  
11 petition for Writ of Certiorari challenging the summary affirmance and the  
12 United States Supreme Court denied the request on October 4, 1993.

13 On December 8, 1993, Howard returned to federal court and filed a new  
14 pro se habeas petition rather than lifting the stay in the previous petition. After  
15 almost three years, on September 2, 1996, the federal district court dismissed  
16 the petition as inadequate and ordered Howard to file a second amended  
17 federal petition that contained more than conclusory allegations. Thereafter  
18 Howard, now represented by Patricia Erickson, filed a Second Amended  
19 Petition for Writ of Habeas Corpus on January 27, 1997. After almost five  
20 years, on September 23, 2002, the Second Amended Federal petition was  
21 stayed for Howard to again exhaust his federal claims in state court.

22 Howard filed his third State petition for post-conviction relief on  
23 December 20, 2002. Patricia Erickson represented him on this petition. The  
24 petition asserted the following claims, phrased generally as denial of a  
25 fundamentally fair trial or assistance of counsel under the Fifth, Sixth and  
26 Fourteenth Amendments of the United States Constitution or as cruel and  
27 unusual punishment under the Eighth Amendment: 1) failure to sever Sears  
28 robbery count from Monahan robbery/murder counts; 2) failure to suppress  
Howard's statements to LVMPD and physical evidence derived therefrom; 3)  
speedy trial violation; 4) trial counsel actual conflict of interest – Jackson  
issue; 5) failure to give accomplice as a matter of law and accomplice  
testimony should be viewed with distrust instructions – Dwana Thomas; 6)  
improper jury instructions – diluting standard of proof - reasonable doubt,  
second degree murder as lesser included of first degree murder, premeditation,  
intent and malice instructions; 7) improper jury instructions – failure to clearly  
define first degree murder as specific intent crime requiring malice and  
premeditation; 8) improper premeditation instruction blurred distinction  
between first and second degree murder; 9) improper malice instruction; 10)  
improper anti-sympathy instruction; 11) failure to give influence of extreme  
mental or emotional disturbance mitigator instruction; 12) improper limitation  
of mitigation by giving only "any other mitigating circumstance" instruction;  
13) failure to instruct that mitigating circumstances findings need not be  
unanimous; 14) prosecutorial misconduct – jury tampering, stating personal  
beliefs, personal endorsement of death penalty, improper argument regarding  
rehabilitation, escape and future killings; comparing Howard and victim's  
lives, comparing Howard to notorious murder (Charles Manson) and improper  
community benefit argument; 15) use of felony robbery as aggravator and  
basis for first degree murder; 16) improper reasonable doubt instruction; 17)  
ineffective assistance of trial counsel – inadequate contact, conflict of interest,  
failure to contact California counsel to obtain records, failure to obtain Patton  
and Atescadero hospital records, failure to obtain California trial transcripts,  
failure to review Clark County Detention Center medical records, failure to  
challenge competency to stand trial, failure to obtain suppression hearing,  
failure to present legal insanity, failure to object to reasonable doubt  
instruction, failure to view visiting records and call witnesses based upon  
same, failure to call Pinkie Williams and Carol Walker in penalty phase,

1 failure to investigate and call Benjamin Evans in penalty phase, failure to  
2 obtain San Bernardino medical records regarding suicide attempt, failure to  
3 obtain military records, failure to adequately explain concept of mitigation  
4 evidence, failure to object to prosecutorial misconduct in closing arguments,  
5 failure to refute future dangerousness argument, failure to object to trial court's  
6 limitation of mitigating circumstances and failure to object to instructions  
7 which allegedly required unanimous finding of mitigating circumstances; 18)  
8 ineffective assistance of appellate counsel – failed to raise claims 3, 4, 6-9, 12,  
9 13, 15, 16, 20 and 21 on appeal; 19) ineffective assistance of post-conviction  
10 counsel – failure to adequately investigate and develop all trial and appeal  
11 claims; 20) cumulative error; 21) Nevada's death penalty is administered in an  
12 arbitrary, irrational and capricious fashion; 22) lethal injection constitutes cruel  
13 and unusual punishment and 23) the death penalty violates evolving standards  
14 of decency.

15 The State filed a motion to dismiss Howard's third State petition on  
16 March 4, 2001. The State argued that the entire petition was procedurally  
17 barred under NRS 34.726(1) (one-year limit) and NRS 34.800 (five-year  
18 laches) and that Howard had not shown good cause for delay in raising the  
19 claims to overcome the procedural bars. The State also analyzed each claim  
20 and noted what issues had already been raised and decided adversely to  
21 Howard or should have been raised and were waived under NRS 34.810.

22 Howard filed an amended third State petition. The amended petition  
23 expanded the factual matters under Claim 17 regarding Howard's family  
24 background that Howard asserted should have been presented in mitigation.

25 On August 20, 2003, Howard filed his opposition to the State's motion  
26 to dismiss his third State petition. As good cause for delay, Howard alleged  
27 Nevada's successive petition and waiver bar (NRS 34.810) is inconsistently  
28 applied and Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001) is not  
controlling. Howard contended NRS 34.726 did not apply because any delay  
was the fault of counsel not Howard and NRS 34.726 is unconstitutional and  
cannot be applied to successive petitions Pellegrini notwithstanding. Howard  
argued the Due process and Equal Protection clauses of the Federal  
Constitution bar application of NRS 34.726, NRS 34.800 and NRS 34.810 to  
Howard. In addition, Howard asserted NRS 34.800 did not apply because the  
State had not shown prejudice and the presumption of prejudice was overcome  
by the allegations in the petition.

29 The State filed a reply to the opposition on September 24, 2003. The  
30 district court issued an oral decision on October 2, 2003 dismissing the third  
31 State petition as procedurally barred under NRS 34.726 and finding Howard  
32 had failed to overcome the bar by showing good cause for delay. The district  
33 court also independently dismissed the claims under NRS 34.810. Written  
34 findings were entered on October 23, 2003.

35 Howard appealed the dismissal to the Nevada Supreme Court, which  
36 affirmed the district court's dismissal of the third State petition on December  
37 4, 2004. The High Court addressed Howard's assertions that he had either  
38 overcome the procedural bars or they could not constitutionally be applied to  
him and rejected them. Among its conclusions, the Court noted that the record  
reflected Howard was aware that all his claims challenging the conviction or  
imposition of sentence must be joined in a single petition and that Howard had  
no right to post-conviction counsel at the time of the filing of his first and  
second State petitions for post-conviction relief and hence ineffectiveness of  
post-conviction counsel could not be good cause for delay.<sup>7</sup>

Howard then returned to Federal district court where he filed his Third

<sup>7</sup> See 1987 Nev. Stat., ch. 539, § 42 at 1230 (providing that appointment of counsel was discretionary not mandatory).

1 Amended Petition for Writ of Habeas Corpus on October 23, 2005.  
2 Subsequently, without seeking approval from the Federal Court, the Federal  
3 Public Defender's Office filed, on Howard's behalf, the current Fourth State  
4 Post-Conviction Petition on October 27, 2007. The State filed a motion to  
5 dismiss the Fourth State Petition on April 8, 2008. The parties agreed to stay  
6 this case for several months while Howard sought permission from the Federal  
7 District Court to hold his federal petition for post-conviction habeas corpus in  
8 abeyance pending exhaustion of the claims already filed in the Fourth State  
9 Petition and of new claims he wished to file in State court as a result of the  
10 Ninth Circuit's decision in Polk v. Sandoval, 503 F.3d 903, 910 (9<sup>th</sup> Cir. 2007).

11 The United States District Court denied Howard's motion for stay and  
12 abeyance on January 9, 2009. Thereafter, Howard filed an Opposition to the  
13 State's original motion to dismiss and an Amended Petition on February 24,  
14 2009. The State responded to Howard's opposition to the original motion to  
15 dismiss and additionally moved to dismiss the Amended Fourth Petition on  
16 October 7, 2009.<sup>8</sup> Howard filed an Opposition to the Amended Motion to  
17 Dismiss on December 18, 2009. Howard filed supplemental authorities on  
18 January 5, 2010.

19 Argument on the State's motion to dismiss was heard on February 4,  
20 2010. The matter was taken under advisement so the district court could  
21 review the extensive record. A Minute Order Decision was issued on May 13,  
22 2010, dismissing the Fourth State Petition as procedurally barred. A written  
23 Findings of Fact and Conclusions of Law was filed on November 6, 2010.

24 Petitioner challenged this Court's decision before the Nevada Supreme  
25 Court. Prior to ruling on this Court's fourth denial of habeas relief, the Nevada  
26 Supreme Court issued an opinion in Howard v. State, 128 Nev. 736, 291 P.3d  
27 137 (2012), addressing the sealing of documents. The Federal Public Defender  
28 (FPD) filed a motion in the Supreme Court to substitute counsel that included  
information that was potentially embarrassing to one or more current or former  
FPD attorneys as well as a prior private attorney who had represented Howard.  
Id. at 747, 291 P.3d at 144. A cover sheet indicated that the motion was sealed  
but the FPD failed to file a separate motion to seal the pleading. Id. at 739,  
291 P.3d at 139. The Court concluded that the FPD had not properly moved to  
seal and that sealing was unjustified. Id. at 748, 291 P.3d at 145. Ultimately,  
the Court affirmed this Court's denial of habeas relief. (Order of Affirmance,  
filed July 30, 2014, attached to Clerk's Certificate, filed October 24, 2014).  
The United States Supreme Court denied certiorari. Howard v. Nevada, —  
U.S. —, 135 S.Ct. 1898 (2015).

— Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction)  
(Fifth Petition) on October 5, 2016. Respondent filed an opposition and  
motion to dismiss on November 2, 2016. On March 27, 2017, Petitioner filed  
an opposition to the State's request to dismiss the Fifth Petition. Respondent's  
reply to Petitioner's opposition was filed on April 4, 2017.

On December 1, 2016, Petitioner filed an Amended Fifth Petition. The  
State moved to strike the Amended Fifth Petition for failing to comply with  
NRS 34.750(5). Petitioner opposed this request. This Court held a hearing on  
March 17, 2017, and after entertaining argument, struck the Amended Fifth  
Petition pursuant to NRS 34.750(5) and Barnhart v. State, 122 Nev. 301, 130  
P.3d 650 (2006). An order memorializing this decision was filed on April 7,

<sup>8</sup> Although both defense counsel and this Court received a copy of the Opposition and Amended Motion to Dismiss, for some reason it was not filed. This Court authorized the District Attorney's Office to file a Notice of Errata and attach a copy of the previously distributed Opposition and Amended Motion to Dismiss. This was filed on February 4, 2010. Subsequently, the missing document was located and the original Amended Motion to Dismiss was officially filed on May 11, 2010.

2017.

On April 6, 2017, Petitioner filed a Motion to Amend or Supplement that requested reconsideration of this Court's decision to strike his Amended Fifth Petition without requesting leave to do so in advance. Respondent filed an opposition on April 12, 2017, and Petitioner replied on April 17, 2017.

Howard's Fifth Petition and Motion to Amend or Supplement came before this Court on the April 19, 2017, Chamber Calendar. On May 2, 2017, this Court issued a minute order denying the Fifth Petition and the Motion to Amend or Supplement and imposing a \$250.00 sanction upon Howard's counsel for causing the State to respond to a the Motion to Amend when the Court had already decided the issue in the context of striking the Amended Fifth Petition and/or for failing to seek leave of court prior to requesting reconsideration.

(Findings of Fact, Conclusions of Law and Order, filed May 15, 2017, p. 8-20 (footnotes in original)) Notice of Entry of Order was filed on May 23, 2017. (Notice of Entry of Order, filed May 23, 2017).

Petitioner filed a Notice of Appeal on June 1, 2017. (Notice of Appeal, filed June 1, 2017). Additionally, Petitioner successfully sought extraordinary review of the sanction order. (Armeni v. Dist. Ct., Nevada Supreme Court Case Number 73462, Order Granting Petition in Part and Denying Petition in Part, filed April 25, 2018).

On September 4, 2018, Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction) (Sixth Petition). (Petition for Writ of Habeas Corpus (Post-Conviction), filed September 4, 2018). The State moved to strike on September 7, 2018. (Motion to Strike Sixth Petition for Writ of Habeas Corpus (Post-Conviction), filed September 7, 2018). Petitioner opposed on September 14, 2018. (Opposition to Motion to Strike, filed September 14, 2018). The State replied on September 20, 2018. (Reply to Opposition to Motion to Strike Sixth Petition for Writ of Habeas Corpus (Post-Conviction), filed September 20, 2018). This Court stayed the Sixth Petition pending the outcome on appeal of the denial of the Fifth Petition since both challenged the validity of the sentencing. (Recorder's Transcript of October 23, 2018, Hearing, p. 4-5, filed November 16, 2018).

On September 7, 2018, the State moved to transfer the Sixth Petition back to the criminal case. (Motion to Transfer Petition to Criminal Case, filed September 7, 2018). Petitioner opposed on September 12, 2018. (Opposition to Motion to Transfer, filed September 12, 2018). The State replied on September 13, 2018. (Reply to Opposition to

1 Motion to Transfer Petition to Criminal Case, filed September 13, 2018). Eventually the  
2 parties stipulated to transferring the habeas proceeding back into the criminal case.  
3 (Stipulation, filed November 6, 2019). An order transferring the case was filed on  
4 November 7, 2019. (Order Granting Motion to Transfer Petition to Criminal Case, filed  
5 November 7, 2019).

6 On September 27, 2019, Petitioner moved to lift the stay on the Sixth Petition because  
7 the Nevada Supreme Court issued an Order of Affirmance upholding the denial of the Fifth  
8 Petition on September 20, 2019. (Motion to Lift Stay, filed September 27, 2019). The State  
9 did not oppose this request. An order lifting the stay was filed on November 19, 2019.  
10 (Order Granting Petitioner's Motion to Lift Stay, filed November 19, 2019).

11 Ultimately, due to the COVID-19 pandemic the Court decided this matter without  
12 oral argument on May 4, 2020. (Odyssey Register of Actions, May 4, 2020, Court Minutes).  
13 The Court directed Respondent to prepare findings of fact and conclusions of law consistent  
14 with the court minutes. Id.

### 15 ANALYSIS

16 Petitioner's collateral attack on the remaining aggravating circumstance is decades  
17 too tardy. Habeas relief at this late date would be overly prejudicial to the State. Ultimately,  
18 the mere fact that the conviction underlying the prior violent felony aggravating  
19 circumstance was vacated on grounds irrelevant to the facts of that case is insufficient to  
20 justify ignoring Petitioner's procedural defaults.

#### 21 I. The Fifth Petition is Procedurally Barred

##### 22 A. Application of Procedural Bars is Mandatory

23 The one-year time bar of NRS 34.726 is strictly construed. Gonzales v. State, 118  
24 Nev. 590, 593-596, 53 P.3d 901, 902-904 (rejected post-conviction petition filed two days  
25 late pursuant to the "clear and unambiguous" provisions of NRS 34.726(1)). Further, the  
26 district courts have a *duty* to consider whether post-conviction claims are procedurally  
27 barred. State v. Eighth Judicial District Court (Riker), 121 Nev. 225, 234, 112 P.3d 1070,  
28



1 1076 (2005). The Nevada Supreme Court has found that “[a]pplication of the statutory  
2 procedural default rules to post-conviction habeas petitions is mandatory,” noting:

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

6 Id., at 231, 112 P.3d at 1074. Additionally, the Court held that procedural bars “cannot be  
7 ignored when properly raised by the State.” Id., at 233, 112 P.3d at 1075. The Nevada  
8 Supreme Court has granted no discretion to the district courts regarding whether to apply the  
9 statutory procedural bars.

10 B. NRS 34.726(1)

11 NRS 34.726(1) states that “unless there is good cause shown for delay, a petition that  
12 challenges the validity of a judgment or sentence must be filed within 1 year after entry of  
13 the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year  
14 after the Supreme Court issues its remittitur.” The one-year time bar is strictly construed and  
15 enforced. Gonzales, 118 Nev. 590, 53 P.3d 901. The Nevada Supreme Court has held that  
16 the “clear and unambiguous” provisions of NRS 34.726(1) demonstrate an “intolerance  
17 toward perpetual filing of petitions for relief, which clogs the court system and undermines  
18 the finality of convictions.” Pellegrini v. State, 117 Nev. 860, 875, 34 P.3d 519, 529 (2001).  
19 For cases that arose before NRS 34.726 took effect on January 1, 1993, the deadline for  
20 filing a petition extended to January 1, 1994. Id. at 869, 34 P.3d at 525.

21 Remittitur issued from Petitioner’s direct appeal on February 12, 1988. (Findings of  
22 Fact, Conclusions of Law and Order, filed May 15, 2017, p. 12). Therefore, Petitioner had  
23 until January 1, 1994, to file a timely habeas petition. Petitioner filed the Sixth Petition on  
24 September 4, 2018. (Petition for Writ of Habeas Corpus (Post-Conviction), filed September  
25 4, 2018). As such, the Sixth Petition is time barred.

26 C. NRS 34.800

27 NRS 34.800 recognizes that a post-conviction petition should be dismissed when  
28 delay in presenting issues would prejudice the State in responding to the petition or in retrial.

1 NRS 34.800(1). NRS 34.800(2) creates a rebuttable presumption of prejudice to the State if  
2 “[a] period of five years [elapses] between the filing of a judgment of conviction, an order  
3 imposing sentence of imprisonment or a decision on direct appeal of a judgment of  
4 conviction and the filing of a petition challenging the validity of a judgment of conviction.”  
5 See also, Groesbeck v. Warden, 100 Nev. 259, 260, 679 P.2d 1268, 1269 (1984), superseded  
6 by statute as recognized by, Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000) (“petitions that  
7 are filed many years after conviction are an unreasonable burden on the criminal justice  
8 system. The necessity for a workable system dictates that there must exist a time when a  
9 criminal conviction is final.”).

10 To invoke the presumption, the statute requires that the State specifically plead  
11 presumptive prejudice. NRS 34.800(2). More than five years has passed since remittitur  
12 issued from Petitioner’s direct appeal on February 12, 1988. (Findings of Fact, Conclusions  
13 of Law and Order, filed May 15, 2017, p. 12). Indeed, over thirty years have passed since  
14 Petitioner’s direct appeal was final. As such, the State pled statutory laches under NRS  
15 34.800(2) and prejudice under NRS 34.800(1) against the Sixth Petition. After such a  
16 passage of time, the State is prejudiced in its ability to answer the Sixth Petition and retry the  
17 penalty-phase. If Petitioner’s sixth go around on state post-conviction review is not  
18 dismissed or denied on the procedural bars, the State will be forced to track down witnesses  
19 who may have died or retired in order to prove a case that is several decades old. Assuming  
20 witnesses are available, their memories have certainly faded and they will not present to a  
21 jury the same way they did in 1983.

22 D. NRS 34.810

23 Petitioner’s sixth attempt at state habeas relief must be dismissed on waiver grounds  
24 and as an abuse of the writ.

25 Claims that could have been raised on direct appeal or in a prior petition are barred  
26 under NRS 34.810(1)(b):

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

28 ...

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

2 (1) Presented to the trial court;

3 (2) *Raised in a direct appeal or a prior petition for a writ of habeas  
corpus or post-conviction relief, unless the court finds both cause for  
the failure to present the grounds and actual prejudice to the petitioner.*

4 (Emphasis added). The failure to raise grounds for relief at the first opportunity is an abuse  
5 of the writ. NRS 34.810(2).

6 Nevada law dictates that all claims appropriate for direct appeal must be pursued on  
7 direct appeal or they will be "considered waived in subsequent proceedings." Franklin v.  
8 State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), disapproved on other grounds,  
9 Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). The Nevada Supreme Court has  
10 emphasized that: "[a] court *must* dismiss a habeas petition if it presents claims that either  
11 were or could have been presented in an earlier proceeding, unless the court finds both cause  
12 for failing to present the claims earlier or for raising them again and actual prejudice to the  
13 petitioner." Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001) (emphasis  
14 added). Where a claim arises after direct appeal, a petitioner has one year in which to file a  
15 petition alleging the claim or it too is barred. Rippo v. State, 134 Nev. 411, 412, 423 P.3d  
16 1084, 1090 (2018) ("[A] petition ... has been filed within a reasonable time after the ...  
17 claim became available so long as it is filed within one year after entry of the district court's  
18 order disposing of the prior petition or, if a timely appeal was taken from the district court's  
19 order, within one year after this court issues its remittitur.").

20 Petitioner's challenge to the prior violent felony aggravating circumstance is barred  
21 by NRS 34.810(1)(b)(2) as waived and by NRS 34.810(2) as an abuse of the writ. Petitioner  
22 has been aware for years that he was not sentenced in his New York robbery case. Petitioner  
23 should have raised that issue with the New York courts decades ago. To wait decades in  
24 order to secure a favorable result in a New York collateral proceeding in order to raise a  
25 challenge to his death sentence 30 years after the fact is an abuse of the writ.

26 II. Petitioner Fails to Justify Ignoring the Procedural Bars

27 This Court cannot disregard the procedural bars because Petitioner has failed to prove  
28 good cause, prejudice and/or actual innocence.

1 To overcome the procedural bars, a petitioner must demonstrate: (1) good cause for  
2 delay in filing his petition or for bringing new claims or repeating claims in a successive  
3 petition; and (2) undue or actual prejudice. NRS 34.726(1); NRS 34.800(1); NRS 34.810(3).  
4 To establish prejudice “a petitioner must show that errors in the proceedings underlying the  
5 judgment worked to the petitioner’s actual and substantial disadvantage.” State v. Huebler,  
6 128 Nev. \_\_\_, \_\_\_, 275 P.3d 91, 94-95 (2012), cert. denied, \_\_\_ U.S. \_\_\_, 133 S.Ct. 988 (2013).

7 “To establish good cause, petitioners must show that an impediment external to the  
8 defense prevented their compliance with the applicable procedural rule. A qualifying  
9 impediment might be shown where the factual or legal basis for a claim was not reasonably  
10 available at the time of default.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003),  
11 rehearing denied, 120 Nev. 307, 91 P.3d 35 cert. denied, 543 U.S. 947, 125 S.Ct. 358 (2004);  
12 see also, Hathaway v. State, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003) (“In order to  
13 demonstrate good cause, a petitioner must show that an impediment external to the defense  
14 prevented him or her from complying with the state procedural default rules”); Pellegrini,  
15 117 Nev. at 887, 34 P.3d at 537 (neither ineffective assistance of counsel, nor a physician’s  
16 declaration in support of a habeas petition were sufficient “good cause” to overcome a  
17 procedural default, whereas a finding by Supreme Court that a defendant was suffering from  
18 Multiple Personality Disorder was). An external impediment could be “that the factual or  
19 legal basis for a claim was not reasonably available to counsel, or that ‘some interference by  
20 officials’ made compliance impracticable.” Id. (quoting, Murray v. Carrier, 477 U.S. 478,  
21 488, 106 S.Ct. 2639, 2645 (1986)); see also, Gonzalez, 118 Nev. at 595, 53 P.3d at 904  
22 (citing Harris v. Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)).

23 The Nevada Supreme Court has held that, “appellants cannot attempt to manufacture  
24 good cause[.]” Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there must be a  
25 “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251, 71 P.3d at  
26 506; (quoting, Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989), superseded  
27 by statute as recognized by, Huebler, 128 Nev. at \_\_\_, 275 P.3d at 95, footnote 2). Excuses  
28 such as the lack of assistance of counsel when preparing a petition as well as the failure of

1 trial counsel to forward a copy of the file to a petitioner have been found not to constitute  
2 good cause. Phelps v. Dir. Nev. Dep't of Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306  
3 (1988), superseded by statute as recognized by, Nika v. State, 120 Nev. 600, 607, 97 P.3d  
4 1140, 1145 (2004); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

5 Even when a petitioner cannot show good cause sufficient to overcome the procedural  
6 bars, habeas relief may still be granted if he can demonstrate a fundamental miscarriage of  
7 justice. Pellegrini, 117 Nev. at 887, 34 P.3d at 537. In order to prove a fundamental  
8 miscarriage of justice, a petitioner must make “a colorable showing he is actually innocent of  
9 the crime or is ineligible for the death penalty.” Id. (citation omitted). Actual innocence  
10 means factual innocence not mere legal insufficiency. Bousley v. United States, 523 U.S.  
11 614, 623, 118 S.Ct. 1604, 1611 (1998); Sawyer v. Whitley, 505 U.S. 333, 338-39, 112 S.Ct.  
12 2514, 2518-19 (1992). To establish actual innocence of a crime, a petitioner “must show  
13 that it is more likely than not that no reasonable juror would have convicted him absent a  
14 constitutional violation.” Pellegrini, 117 Nev. at 887, 34 P.3d at 537. However, “[w]ithout  
15 any new evidence of innocence, even the existence of a concededly meritorious  
16 constitutional violation is not itself sufficient to establish a miscarriage of justice that would  
17 allow a habeas court to reach the merits of the barred claim.” Schlup v. Delo, 513 U.S. 298,  
18 316, 115 S. Ct. 851, 861 (1995) (emphasis added).

19 Actual innocence is a stringent standard designed to be applied only in the most  
20 extraordinary situations. Id.; Pellegrini, 117 Nev. at 876, 34 P.3d at 530. The Eighth Circuit  
21 Court of Appeals has “rejected free-standing claims of actual innocence as a basis for habeas  
22 review stating, ‘[c]laims of actual innocence based on newly discovered evidence have never  
23 been held to state a ground for federal habeas relief absent an independent constitutional  
24 violation occurring in the underlying state criminal proceeding.’” Meadows v. Delo, 99 F.3d  
25 280, 283 (8<sup>th</sup> Cir. 1996) (citing Herrera v. Collins, 506 U.S. 390, 400, 113 S. Ct. 853, 860  
26 (1993)). A defendant claiming actual innocence must demonstrate that it is more likely than  
27 not that *no reasonable juror* would have convicted him absent a constitutional violation.  
28 Pellegrini, 117 Nev. at 887, 34 P.3d at 537. Once a defendant has made such a showing, he

1 may then use the claim of actual innocence as a “gateway” to present his constitutional  
2 challenges to the court and require the court to decide them on the merits. Schlup, 513 U.S.  
3 at 315, 115 S. Ct. at 861. Furthermore, the newly discovered evidence suggesting the  
4 defendant’s innocence must be “so strong that a court cannot have confidence in the outcome  
5 of the trial.” Id. at 316, 115 S.Ct. at 861.

6 “Where the petitioner has argued that the procedural default should be ignored  
7 because he is actually ineligible for the death penalty, he must show by clear and convincing  
8 evidence that, but for a constitutional error, no reasonable juror would have found him death  
9 eligible.” Pellegrini, 117 Nev. at 887, 34 P.3d at 537. To establish innocence of capital  
10 punishment sufficient to waive a procedural default, a petitioner must eliminate every  
11 aggravating circumstance. Sawyer v. Whitley, 505 U.S. 333, 347, 112 S.Ct. 1514, 2523  
12 (1992). In addition, any new evidence regarding mitigating factors is not considered in an  
13 “actual innocence” death eligibility determination. Sawyer, 505 U.S. at 345-346, 112 S.Ct.  
14 at 2522. Notably, the “actual innocence” requirement focuses exclusively on those elements  
15 that render a defendant eligible for the death penalty; any additional mitigating evidence that  
16 was not presented at trial – even if it was the result of alleged constitutional errors – is  
17 irrelevant and will not be considered in an actual innocence determination. Id. at 347-48, at  
18 2523-24.

19 That Petitioner has finally gotten around to challenging his New York conviction after  
20 30 years does not amount to good cause to ignore NRS 34.726, NRS 34.800 and NRS  
21 34.810. Petitioner’s reliance upon Johnson v. Mississippi, 486 U.S. 578, 108 S.Ct. 1981  
22 (1988), is misplaced. Johnson does not justify ignoring Petitioner’s procedural defaults. The  
23 United States Supreme Court held that it could reach the merits of Johnson’s claim because  
24 “we cannot conclude that the procedural bar relied on by the Mississippi Supreme Court in  
25 this case has been consistently or regularly applied. Consequently, under federal law it is not  
26 an adequate and independent state ground[.]” Id. at 588-89, 108 S.Ct. at 1988. Petitioner  
27 does not even contend that Nevada’s procedural bars are not consistently applied. His  
28 failure to do so is an admission that he cannot make such a showing. See, Polk v. State, 126

1 Nev. \_\_\_, \_\_\_, 233 P.3d 357, 360-61 (2010). Nor can he, even the Ninth Circuit Court of  
2 Appeals admits that Nevada strictly enforces NRS 34.726(1). Loveland v. Hatcher, 231 F.3d  
3 640, 642-43 (9<sup>th</sup> Cir. 2000). Indeed, the Federal District Court for Nevada has ruled in  
4 Petitioner's federal habeas litigation arising from this case that Nevada consistently enforces  
5 NRS 34.726(1). Howard v. McDaniel, 2008 U.S. Dist. LEXIS 5191, p. 8-22 (D. Nev. 2008).  
6 Regardless, the Nevada Supreme Court steadfastly maintains that it consistently enforces  
7 Nevada's procedural default rules. Riker, 121 Nev. at 235-42, 112 P.3d at 1077-82.

8 Thus, Johnson is irrelevant unless Petitioner can evade NRS 34.726(1), NRS 34.800  
9 and NRS 34.810. To ignore the procedural bars Petitioner must establish "that the factual or  
10 legal basis for a claim was not reasonably available to counsel, or that 'some interference by  
11 officials' made compliance impracticable." Pellegrini, 117 Nev. at 887, 34 P.3d at 537  
12 (quoting, Murray v. Carrier, 477 U.S. 478, 488, 106 S.Ct. 2639, 2645 (1986)). Petitioner  
13 cannot make this showing because he has been aware of the defective nature of his New  
14 York conviction for decades and did nothing about it. Petitioner knew from the time of trial  
15 that he absconded from New York after his trial had started. (Exhibit A attached to State's  
16 Opposition and Motion to Dismiss Sixth Petition for Writ of Habeas Corpus (Post-  
17 Conviction, filed October 3, 2019, Reporter's Transcript of Jury Trial, Thursday, April 21,  
18 1983, 10:00 A.M., filed March 14, 1984, p. 1244). Petitioner challenged the prior violent  
19 felony aggravating circumstance based on the lack of a sentence in his New York case in  
20 2007 during the litigation of his fourth petition. (Petition for Writ of Habeas Corpus (Post-  
21 Conviction), filed October 25, 2007, p. 45-49). This Court found the claim barred pursuant  
22 to NRS 34.726(1), NRS 34.800 and NRS 34.810. (Findings of Fact, Conclusions of Law  
23 and Order, filed November 6, 2010, p. 19-21). This Court ruled that Petitioner could not  
24 justify ignoring his procedural defaults. Id. at 27-33. On appeal from denial of habeas relief,  
25 the Nevada Supreme Court agreed that the petition was procedurally barred and that  
26 Petitioner could not overcome his defaults. (Order of Affirmance, filed July 30, 2014, p. 2-  
27 3, 10-12).

28 Petitioner could have challenged the infirmity of his New York conviction at any time

1 since trial. The very purpose of the procedural bars is to compel habeas petitioners to pursue  
2 their claims expeditiously. According to the United States Supreme Court, “the purpose of  
3 the fault component of “failed” is to ensure the prisoner undertakes his own diligent search  
4 for evidence. Diligence ... depends upon whether the prisoner made a reasonable attempt, in  
5 light of the information available at the time, to investigate and pursue claims[.]” Williams  
6 v. Taylor, 529 U.S. 420, 434-435, 120 S.Ct. 1479, 1490 (2000). Indeed, the High Court has  
7 explicitly stated “that ‘cause’ under the cause and prejudice test must be something *external*  
8 to the petitioner, **something that cannot be fairly attributed to him.**” Coleman v.  
9 Thompson, 501 U.S. 722, 753, 111 S.Ct. 2546, 2566 (1991) (italics in original, bolding  
10 added). Similar to the procedural bars at issue in Williams and Coleman, Nevada also  
11 requires a habeas petitioner to demonstrate a lack of fault. NRS 34.726(1)(a) (“good cause  
12 for delay exists if the petitioner demonstrates ... [t]hat the delay was not the fault of the  
13 petitioner”); NRS 34.800(1)(a) (“A petition may be dismissed ... unless the petitioner shows  
14 that the petition is based upon grounds of which the petitioner could not have had knowledge  
15 by the exercise of reasonable diligence”). Here, Petitioner did not pursue his claim regarding  
16 his New York conviction for three decades. This is an obvious failure of diligence that  
17 squarely places fault on Petitioner’s shoulders.

18 Petitioner’s failure to demonstrate due diligence in challenging his New York  
19 conviction bars habeas relief. In Witter v. State, 135 Nev. \_\_\_, \_\_\_, 452 P.3d 406, 408 (2019),  
20 the Nevada Supreme Court addressed an Appellant contending that “because of the  
21 indeterminate restitution provision in the 1995 judgment, his conviction was not final until  
22 entry of the third amended judgment of conviction in 2017” and that as a consequence, “the  
23 direct appeal decided in 1996 and the subsequent postconviction proceedings were null and  
24 void for lack of jurisdiction and therefore he should be allowed to raise any issues stemming  
25 from the 1995 trial [.]” The Court rejected this view and concluded that Witter’s appeal was  
26 “limited in scope to issues stemming from the amendment.” Id. at \_\_\_. 452 P.3d at 407. The  
27 Court gave two reasons for this holding. Id. The Court noted that the more important of  
28 those was that “Witter treated the 1995 judgment of conviction as final for more than two



1 decades, litigating a direct appeal and various postconviction proceedings in state and federal  
2 court.” Id.

3 In distinguishing its precedents overturning judgments of conviction containing  
4 indeterminate restitution amounts from Witter’s situation, the Court noted that the  
5 defendants in those cases “raised the error regarding the indeterminate restitution provision  
6 during the first proceeding in which they challenged the validity of their judgments of  
7 conviction[.]” Id. at \_\_\_, 453 P.3d at 409. Witter’s failure to do the same implicated the  
8 compelling consideration of finality. Id. The Court pointed out that “[a] challenge to a  
9 conviction made years after the conviction is a burden on the parties and the courts because  
10 ‘[m]emories of the crime may diminish and become attenuated,’ and the record may not be  
11 sufficiently preserved.” Id. (quoting, Groesbeck v. Warden, 100 Nev. 259, 260, 679 P.2d  
12 1268, 1269 (1984)). Ultimately, “Witter treated the judgment of conviction as a final  
13 judgment. He is estopped from now arguing that the judgment was not final and that the  
14 subsequent proceedings were null and void for lack of jurisdiction.” Id. at \_\_\_, 453 P.3d at  
15 410 (footnote omitted).

16 Witter’s failure to exercise due diligence in challenging his judgment of conviction is  
17 indistinguishable from Petitioner’s failure of diligence in attacking his New York conviction.  
18 Petitioner treated his New York conviction as final for nearly four decades. He filed petition  
19 after petition and appeal after appeal all treating his New York conviction as final. Just as in  
20 Witter, Petitioner should be estopped from only now alleging that his New York conviction  
21 is null and void.

22 The requirement of due diligence is fundamental in Nevada habeas law. Nevada’s  
23 statutory laches provision requires a petitioner to demonstrate reasonable diligence in order  
24 to avoid a dismissal. NRS 34.800(1)(a) (“A petition may be dismissed if delay in the filing  
25 of the petition ... [p]rejudices the respondent ... in responding to the petition, unless the  
26 petitioner shows that the petition is based upon grounds of which the petitioner could not  
27 have had knowledge by the exercise of reasonable diligence before the circumstances  
28 prejudicial to the State occurred”). The time bar of NRS 34.726 may only be waived if a

petitioner demonstrates that “the delay is not the fault of the petitioner[.]” NRS 34.726(1)(a). The bar against successive and abusive petitions may be waived upon a showing of “[g]ood cause for the failure to present the claim or for presenting the claim again[.]” NRS 34.810(3)(a). Notably, *the Nevada Legislature just last session extended the necessity of demonstrating due diligence to claims of factual innocence*. NRS 34.960(3)(a) (“... the evidence could not have been discovered by the petitioner or the petitioner’s counsel through the exercise of reasonable diligence”).<sup>9</sup>

Nor can Petitioner escape the procedural bars by claiming that he is actually innocent of the death penalty. “Where ... a petitioner cannot demonstrate cause and prejudice, the district court may nevertheless excuse a procedural bar if the petitioner demonstrates that failing to consider the merits of any constitutional claim would result in a fundamental miscarriage of justice.” Rippo, 134 Nev. at 444, 423 P.3d at 1112 (citing, Pellegrini, 117 Nev. at 887, 34 P.3d at 537). Specifically, where a petitioner alleges ineligibility for the death penalty he must show “by clear and convincing evidence that, but for a constitutional error, no reasonable juror would have found him death eligible.” Pellegrini, 117 Nev. at 887, 34 P.3d at 537.

Initially, Petitioner’s claims of actual innocence should be summarily denied since, even if this Court assumes that factual innocence has been established based on the

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<sup>9</sup> Federal law appears to diverge from Nevada law on this point. Federal law does not preclude a claim of actual innocence for failing to exercise due diligence; instead, “[u]nexplained delay in presenting new evidence bears on the determination whether the petitioner has made the requisite showing” and on the credibility of a claim. McQuiggin v. Perkins, 569 U.S. 383, 399, 133 S. Ct. 1924, 1935, 185 L. Ed. 2d 1019 (2013). However, McQuiggin is limited to federal post-conviction relief and does not apply to state habeas proceedings. Com. v. Brown, 2016 PA Super 148, 143 A.3d 418, 420–21 (2016) (“While McQuiggin represents a further development in federal habeas corpus law, as was the case in Saunders, this change in federal law is irrelevant to the time restrictions of our PCRA”); State v. Edwards, 164 So.3d 823, 823-24 (La. 2015) (“McQuiggin does not purport to govern state post-conviction proceedings conducted under state law”); Wayne v. State, 866 N.W.2d 917, 919 (Minn. 2015) (“McQuiggin's holding specifically applies to federal habeas petitions and ... does not apply to a postconviction motion that is a creature of state statute ... and is governed by its own statutory time bar”); Ex parte Smith, No. 03-17-00628-CR, 2018 WL 2347012, at \*3 (Tex. App. May 24, 2018), petition for discretionary review refused (July 25, 2018) (“Smith relies on ... McQuiggin ... [but] failed to show that the law on federal habeas claims applies to his habeas claim under Texas law”). Further, the Nevada Supreme Court has declined to import other similar equitable remedies from federal habeas law. Brown v. McDaniel, 130 Nev. 565, 569-76, 331 P.3d 867, 870-75 (2014). Regardless, even if applicable McQuiggin would not assist Petitioner since it was published decades after Petitioner’s conviction and there is no indication that the case applies retroactively. See, Teague v. Lane, 489 U.S. 288, 109 S. Ct. 1060 (1989); Colwell v. State, 118 Nev. 807, 59 P.3d 463 (2002).

1 invalidation of his New York conviction, he still has not identified a constitutional violation  
2 related to the New York conviction. Schlup, 513 U.S. at 315, 115 S. Ct. at 861. Indeed,  
3 Petitioner's New York conviction was valid at the time of his sentence and thus he cannot  
4 establish that a constitutional violation existed to the time of sentencing. See, Clem v. State,  
5 119 Nev. 615, 621-26, 81 P.3d 521, 526-29 (2003) (judicial interpretation of a statute after  
6 conviction such that Petitioner could not have been guilty of the deadly weapon  
7 enhancement does not amount to a constitutional violation for purposes of actual innocence  
8 since Petitioner was guilty under the law as it existed to the time of conviction).

9 Summary denial of Petitioner's actual innocence claim is additionally warranted by  
10 his failure to establish factual innocence as opposed to a legal defect in his New York  
11 conviction. Actual innocence means factual innocence not mere legal insufficiency.  
12 Bousley, 523 U.S. at 623, 118 S.Ct. at 1611; Sawyer, 505 U.S. at 338-39, 112 S.Ct. at 2518-  
13 19. As such, Petitioner's actual innocence claim must fail since he secured reversal of his  
14 New York conviction on an issue of legal sufficiency and not factual innocence.

15 Regardless, Petitioner cannot demonstrate "by clear and convincing evidence that, but  
16 for a constitutional error, no reasonable juror would have found him death eligible."  
17 Pellegrini, 117 Nev. at 887, 34 P.3d at 537. He cannot meet this standard because his jury  
18 found the prior violent felony aggravating circumstance based on the testimony of the victim  
19 from that prior violent crime and not purely on New York documentation of that conviction.  
20 It is important to note that in the only authority proffered by Petitioner, the United States  
21 Supreme Court premised its holding upon the fact that:

22 The sole evidence supporting the aggravating circumstance that petitioner had  
23 been "previously convicted of a felony involving the use or threat of violence  
24 to the person of another" consisted of an authenticated copy of petitioner's  
25 commitment to Elmira Reception Center in 1963 following his conviction in  
Monroe County, New York, for the crime of second-degree assault with intent  
to commit first-degree rape.

26 Johnson, 486 U.S. at 581, 108 S.Ct. at 1984. Johnson is factually distinguishable from this  
27 case because the victim from Petitioner's prior violent felony testified at the penalty hearing  
28 about her victimization by Petitioner. (Exhibit B attached to State's Opposition and Motion

1 to Dismiss Sixth Petition for Writ of Habeas Corpus (Post-Conviction, filed October 3, 2019,  
2 Reporter's Transcript of May 2, 1983, Penalty Hearing, p. 1464-81). Additionally, a New  
3 York detective testified regarding his investigation of the prior violent felony. Id. at 1481-  
4 92.

5 This is significant because the presentation of the underlying facts from those who  
6 experienced them allowed the jury to make an independent judgment about whether  
7 Petitioner committed a prior violent felony instead of merely relying upon court records.  
8 This distinction was key in Gardner v. State, 297 Ark. 541, 764 S.W.2d 416 (Ark. 1989).  
9 The Supreme Court of Arkansas faced a habeas petitioner complaining "that the aggravating  
10 circumstance found to exist by the jury in the sentencing phase ... has since been invalidated  
11 ... because a conviction for a prior violent felony which formed the basis for the jury's  
12 finding of an aggravating circumstance ... has since been reversed on appeal." Id. at 542,  
13 764 S.W.2d at 417. Just as Petitioner does here, Gardner argued that Johnson required the  
14 invalidation of his death sentence. Id. at 543-44, 764 S.W.2d at 418. The Supreme Court of  
15 Arkansas rejected this claim:

16 In Johnson, the jury found the existence of three aggravating circumstances,  
17 one of which was that Johnson had been previously convicted of a felony  
18 involving the use or threat of violence to another person. The sole evidence of  
19 the prior felony was a document reflecting a conviction for assault to commit  
20 rape. The assault conviction was overturned on appeal after trial, and the  
21 United States Supreme Court concluded that since the assault conviction was  
22 invalid and the prosecutor had presented no evidence of the conduct  
23 underlying it, Johnson was entitled to be resentenced. Johnson is not  
24 applicable to petitioner's case because at petitioner's trial the jury heard  
25 detailed direct testimony by the victims of the prior violent felony and other  
26 evidence which established the nature of petitioner's conduct. In addition to  
27 their testimony, there was further evidence of the crimes against them  
28 introduced in the sentencing phase of petitioner's trial. The aggravating  
circumstance was thus proved by evidence adduced at trial of the commission  
of violent acts rather than by proof of a conviction, a practice which this court  
has upheld. See, Miller v. State, 280 Ark. 551, 660 S.W.2d 163 (1983).

25 Gardner, 297 Ark. At 544, 764 S.W.2d at 418.

26 Similarly, in Gibbs v. Johnson, 154 F.3d 253, 258 (5<sup>th</sup> Cir. 1998), cert. denied, 526  
27 U.S. 1089, 119 S.Ct. 1501 (1999), the Fifth Circuit Court of Appeals faced a habeas  
28 petitioner contending that his death sentence was invalid under Johnson because "the state

1 relied upon inaccurate evidence of a prior offense[.]” Gibbs premised his Johnson claim on  
2 an alleged Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963), violation. Gibbs, 154  
3 F.3d at 255-58. Specifically, the State presented evidence that Gibbs attacked another  
4 inmate but failed to disclose a jail report indicating that the incident was dismissed on self-  
5 defense grounds. Id. at 256. The Fifth Circuit denied habeas relief:

6 We are not persuaded. In Johnson the invalidated conviction was the sole  
7 evidence of the prior conduct. The court in Johnson emphasized that because  
8 the prosecutor relied upon a judgment of conviction to prove the prior acts, the  
reversal took away the prosecutor's evidence. The evidence of Gibbs's prior  
acts was the testimony at trial of the victim.

9 Gibbs, 154 F.3d at 258.

10 The Eleventh Circuit has reached a similar conclusion. In Spivey v. Head, 207 F.3d  
11 1263, 1269 (11<sup>th</sup> Cir. 2000), cert. denied, 531 U.S. 1053, 121 S.Ct. 660 (2000), a habeas  
12 petitioner argued that “his prior vacated conviction was relied on in sentencing thus violating  
13 his Eighth Amendment rights under Johnson[.]” The Eleventh Circuit recognized that in  
14 Johnson “[t]he prosecution introduced no evidence about the conduct underlying the prior  
15 conviction, but relied instead on a single authenticated copy of a document indicating the  
16 conviction[.]” Id. at 1281. Based on that, the Court rejected the petitioner’s claim because  
17 “[i]n contrast to Johnson, here there is extensive evidence of the conduct underlying the Bibb  
18 County conviction[.]” Id.

19 Johnson is inapplicable to Petitioner since the jury heard direct evidence of his prior  
20 violent crime. At the time of trial, the State argued that the jury needed to make its own  
21 independent judgment regarding the existence of the prior violent felony aggravating  
22 circumstance:

23 Mr. Seaton: We are going to bring forward eye-witness testimony or  
24 testimony of these people who were down in San Bernardino and are familiar  
25 with the crime and can tell the jury a little more about the factual  
circumstances underlying

26 The reason for that, and I’ll just briefly elude to it here because it is  
27 counsel’s argument at this time, but our reason for that is because the statute  
175.554 causes the state to have the burden of proving these aggravating  
28 circumstances beyond a reasonable doubt. And in addition to that, that  
particular aggravating circumstance has to do with the use of force or violence.  
And the mere recitation of what the conviction was for is not, in the state’s

1 mind, adequate to comply with that burden of proof.

2 ...

3 Mr. Seaton: The other act that we intend to bring forth has also been put into  
4 evidence and again by the Defendant's own admission, and that is the  
conviction in absente. In view of the robbery with a weapon of a nurse in  
Queens, New York, in 1978. ...

5 ...

6 Mr. Seaton: We have witnesses. We have the nurse here and the detective  
7 who worked the case. We would want to put them on as opposed to any  
documentation for the same reason, that is to show the jury beyond a  
8 reasonable doubt that the use of force and/or violence was used in the  
commission of that particular robbery.

9 ...

10 And it's important that the State be able to show the jury the facts, and maybe  
11 that's the important thing here. The jury isn't deciding as much the fact of the  
conviction as they are what's the underlying facts of that conviction. What  
12 was it that the jury was able to consider in order for that jury to determine that  
there was a use or threat of violence? And those are the things that we wish to  
13 bring before the jury at this particular time.

14 (Exhibit B, attached to State's Opposition and Motion to Dismiss Sixth Petition for Writ of  
15 Habeas Corpus (Post-Conviction, filed October 3, 2019, Reporter's Transcript of May 2,  
16 1983, Penalty Hearing, p. 1453-54, 1457).

17 Consistent with this position, the State presented testimony from the victim and the  
18 police detective who investigated the New York robbery. *Id.* at 1464-92. The State's  
19 argument to the jury on the prior violent felony aggravating circumstance was also consistent  
20 with this position. The State read out the instruction defining the prior violent felony  
21 aggravating circumstance and then extensively discussed the *testimony* related to the New  
22 York crime. *Id.* at 1572-74. Indeed, the State never presented the jury with a judgment of  
23 conviction in the New York case. Instead, jurors were only given court minutes from the  
24 New York case. *Id.* at 1489-90. Furthermore, the mere fact of the adjudication was not at  
25 issue since Petitioner admitted the New York conviction. (Exhibit A attached to State's  
26 Opposition and Motion to Dismiss Sixth Petition for Writ of Habeas Corpus (Post-  
27 Conviction, filed October 3, 2019, Reporter's Transcript of April 12, 1983, Jury Trial, p.  
28 1243, 1244).

Petitioner has failed to establish good cause or actual innocence. The New York conviction was invalidated because “[s]ince 1980, the New York State authorities had actual knowledge that the defendant was arrested and in continued custody by both California and Nevada” and “[i]n 37 years, the People have not attempted to extradite the defendant to New York or make any other reasonable effort to produce the defendant for sentencing.” (New York v. Howard, Queens County Supreme Court Case Number 1227178, dated May 22, 2018, p. 2-3, attached as Exhibit 2 to Petition for Writ of Habeas Corpus (Post-Conviction), filed September 4, 2018). The very words of the New York Court apply equally to Petitioner. Just like New York, Petitioner did nothing to enforce or protect his interests for over 30 years. Just like New York, Petitioner should not profit from his lack of due diligence. Thus, Petitioner cannot establish good cause. As for actual innocence, Petitioner’s jury found the prior violent felony aggravating circumstance because it heard the facts of the New York case. That Petitioner’s New York conviction was invalidated on a technicality after more than 30 years does nothing to undermine the factual truth of what he did to the victim in the New York case.

## ORDER

It is HEREBY ORDERED that the Sixth Petition is denied as procedurally barred without a sufficient showing of good cause and prejudice to ignore Petitioner's procedural defaults.

DATED this 18 day of May 2020.

MICHAEL VILLANI  
DISTRICT JUDGE

BS

STEVEN B. WOLFSON  
DISTRICT ATTORNEY  
Nevada Bar #001565

BY */s/ Jonathan E. VanBoskerck*  
JONATHAN E. VANBOSKERCK  
 Chief Deputy District Attorney  
 Nevada Bar #006528

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## Eileen Davis

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**From:** Eileen Davis  
**Sent:** Monday, May 11, 2020 2:18 PM  
**To:** jonah\_horwitz@fd.org; deborah\_a\_czuba@fd.org; lance@ghlawnv.com  
**Cc:** Jonathan VanBoskerck; Eileen Davis  
**Subject:** Samuel Howard, A-18-780434-W.  
**Attachments:** Howard, Samuel, 81C053867- FOF COL denying Sixth Petition PWHC.pdf

Hello,  
The attached Findings will be submitted to the Judge on May 18, 2020.  
Stay healthy and safe.

**Eileen Davis**  
*Paralegal*  
Clark County District Attorney's Office  
Appellate Division  
**T:** (702) 671-2750  
**E:** [eileen.davis@clarkcountyda.com](mailto:eileen.davis@clarkcountyda.com)

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

## APPEARANCES — HEARING

## CONTINUED TO:

5-21-81 DEPT. XII JUDGE LEGAKES  R. Child & A. Jung, Clerks L. Reid, Rptr.	At the hour of 11:32 AM this date, Court convened in this matter. State represented by DDA, Thomas Green. Valene Scoble, Deputy Foreman of the Grand Jury, stated to the Court that at least twelve members had concurred in the return of the true bill in this matter; but others had been excused for the presentation to the Court. Mr. Jeffers presented Grand Jury Case No.	
	80G0127X to the Court and argued in support thereof. BY THE COURT ORDERED, the Indictment may be filed and is assigned District Court Case No. C53867; and is assigned to Docket H, Department 9; to return June 9, 1981 for Initial Arraignment. Mr. Jeffers deposited evidence with the Clerk of the Court and moved for issuance of a bench warrant, stating the Defendant is in custody	
	in California; and requested warrant be issued with Defendant to be held without bail. COURT ORDERED, Bench Warrant will issue, without Bail.  (B.W.-CUSTODY)	DEPT. NINE 6-9-81 - 9 AM  INITIAL ARRAIGNMENT
6-9-81 STEPHEN L. HUFFAKER DEPT. NINE  B. STUCKI CLERK M. SIMON REPORTER	INITIAL ARRAIGNMENT STATE REPRESENTED BY DONALD J. CAMPBELL, DDA. DEFT. HOWARD aka KEITH NEITHER PRESENT NOR REPRESENTED BY COUNSEL. COURT SERVICES OFFICER REPRESENTED TO COURT THEY HAD NOT BEEN ABLE TO LOCATE DEFT. HOWARD. COURT ORDERED, THIS MATTER CONTINUED. CLERK IS TO NOTIFY PUBLIC DEFENDER.  CUSTODY (BW)	6-16-81 @ 9:00 AM  CONTINUED INITIAL ARRAIGNMENT
6-16-81 STEPHEN L. HUFFAKER DEPT. NINE  B. STUCKI CLERK M. SIMON REPORTER	CONTINUED INITIAL ARRAIGNMENT STATE REPRESENTED BY RAY D. JEFFERS, DEPUTY DISTRICT ATTORNEY. DEFENDANT NEITHER PRESENT NOR REPRESENTED BY COUNSEL. MR. JEFFERS ADVISED COURT THAT A GOVERNOR'S WARRANT HAS BEEN ISSUED BUT DEFT. HAS NOT BEEN RETURNED YET. COURT ORDERED, THIS MATTER OFF CALENDAR UNTIL DEFENDANT IS RETURNED FROM CALIFORNIA. CUSTODY BW	11-30-82 - 9:00A.M.  CONFIRMATION OF COUNSEL AND CONT. INITIAL ARRAIGN- MENT
11-23-82 JUDGE GUY DEPT. XI FOR V  T. ALMSTEAD AND R. SNAPE, CLERKS  H. ST. THOMAS, REPORTER	BENCH WARRANT RETURN State represented by Melvin Bowers, Deputy District Attorney. Defendant Howard present without Counsel. COURT ORDERED, Public Defender is to investigate to determine if Defendant qualified for their services. FURTHER ORDERED, continued to November 30, 1982 at 9:00 A.M. for Arraignment and Confirmation of Counsel.  CUSTODY	

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

## APPEARANCES — HEARING

CONTINUED TO:

1-30-82 JOHN F. MENDOZA DEPT. FIVE  R. SNAPE, CLERK  R. SILVAGGIO, REPORTER	<p><u>CONFIRMATION OF COUNSEL</u> <u>CONTINUED ARRAIGNMENT</u> State represented by Michael Amador, Deputy District Attorney. Defendant Howard present with Michael Peters and Terrence Jackson, Deputy Public Defenders. Mr. Jackson informed the Court that the Defendant qualified for their services, but that the victim in this matter was his dentist so he personally would not be able to have anything to do with this case, and by the COURT SO ORDERED. Mr. Peters requested a continuance of the arraignment as he was not familiar with this case. Defendant objected to any continuance and requested a speedy Trial. Defendant was arraigned and entered a Plea of Not Guilty. <del>COURT ORDERED, this matter is set for Trial</del> January 10, 1983 at 10:00 A.M. and Calendar Call will be January 6, 1983 at 9:00 A.M. Mr. Peters requested that the 21 days in which to file a Writ be computed from this date. Court stated Counsel to expedite the filing of a Writ and if it appeared that he needed more time, he could bring this matter back before the Court. Mr. Peters received copy of CUSTODY Grand Jury Transcript.</p>	<p>1-10-83 - 10:00 A.M.  JURY TRIAL ----- 1-6-83 - 9:00 A.M. CALENDAR CALL</p>
12-28-82 JOHN F. MENDOZA DEPT. FIVE  R. SNAPE, CLERK  R. SILVAGGIO, REPORTER	<p><u>DEFENDANT'S MOTION FOR APPOINTMENT OF PSYCHIATRIST</u> State represented by Dan Seaton, Deputy District Attorney. Defendant Howard present with Michael Peters, Deputy Public Defender. Mr. Seaton filed State's Response in Open Court. Mr. Peters moved for a continuance in this matter. <del>COURT ORDERED, this matter is continued to</del> December 30, 1982 at 9:00 A.M. Defendant stated he had a Motion for the Court in regard to substitution of attorneys, and Court stated he could make that request on December 30, 1982.  CUSTODY</p>	<p>12-30-82 - 9:00 A.M.  DEFENDANT'S MOTION FOR APPOINTMENT OF PSYCHIATRIST</p>

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
12-30-82 JOHN F. MENDOZA DEPT. V LOIS BAZAR (CLERK) R. SILVAGGIO (REPORTER)	DEFENDANT'S MOTION FOR APPOINTMENT OF PSYCHIATRIST State represented by Dan Seaton, D.D.A. Defendant Howard present with Michael Peters and Marcus Cooper, D.P.D's. Mr. Peters requested permission to argue Defendant's Motion for Substitution and Removal of Attorney of Record. Mr. Seaton filed Opposition to Motion in open court. COURT ORDERED, this matter is continued to this afternoon at 1:45 P.M.	
	CUSTODY	
12/30/82 JOHN F. MENDOZA DEPT. V M. HARMON, DDA M. PETERS, DPD. L. OLSEN, CLRK R. SILVAGGIO, RPTR	1:45 P.M. DEFENDANT'S MOTION FOR APPOINTMENT OF PSYCHIATRIST DEFENDANT'S MOTION FOR SUBSTITUTION AND REMOVAL OF ATTORNEY OF RECORD Defendant Howard present. Statement by the deft. and Mr. Peters. Opposition by the State. COURT ORDERED, motion for substitution and removal of attorney is denied; Mr. Peters is to remain on the case and prepare for trial. Counsel advised they may request trial date be continued. Counsel requested Psychiatrist be appointed to see if defendant can assist in own defense. COURT ORDERED, motion is granted, Dr. Gorman is appointed as psychiatrist to examine the deft. Counsel are to try and obtain report by Tuesday if not, report back on the 10th.	1/4/83 09 AM STATUS CHECK  1/10/83 09 AM EVALUATION OF PSYCHIATRIC REPORT
	CUSTODY	
1-4-83 JOHN F. MENDOZA DEPT. FIVE  R. SNAPE, CLERK  B. DONNELLY, REPORTER	STATUS CHECK State represented by Melvin T. Harmon, Deputy District Attorney. Defendant Howard present with Marcus Cooper, Deputy Public Defender. Mr. Cooper informed the Court this matter was on to determine if the Court would grant a continuance of the Trial of this matter. Defendant Howard objection to having the Trial Date continued, stating he wanted to go to Trial in this matter. COURT ORDERED, Motion to Continue Trial Date is denied and this matter will go to Trial on January 10, 1983 at 10:00 A.M. FURTHER ORDERED, Calendar Call of January 6, 1983 is vacated.	1-10-83 - 10:00 A.M.  JURY TRIAL
	CUSTODY	

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

1-10-83

JOHN F. MENDOZA  
DEPT. FIVE

R. SNAPE, CLERK

R. SILVAGGIO,  
REPORTER

HEARING ON PSYCHIATRIC REPORT

DEFENDANT'S MOTION TO SEVER AND MOTION IN  
LIMINE AND MOTION TO SUPPRESSState represented by Melvin T. Harmon and  
Daniel Seaton, Deputy District Attorneys.  
Defendant Howard present with Marcus Cooper  
and George Franzen, Deputy Public Defenders.  
Mr. Cooper moved to withdraw as Counsel of  
record, stating Mr. Jackson, the team chief,was a patient of Dr. Monohan's, the victim in  
this matter, and other members of the staff  
had been acquainted with the victim.  
Mr. Cooper stated further the Defendant refused  
to talk to the attorneys and they were not  
prepared to go to Trial this date.  
COURT ORDERED, Motion to withdraw is denied.  
Mr. Cooper moved Court to continue this Trial.  
Court stated the Defendant requested that this  
matter proceed to Trial this date.Mr. Harmon stated they were ready for Trial and  
had relied on the fact the Defendant requested  
they go to Trial this date.  
Mr. Harmon stated they had several out-of-state  
witnesses that they would not be able to call  
off at this late date, and argued in opposition  
to a continuance.  
Court examined Mr. Cooper in regard to why the  
Defendant had just been examined by Dr. O'Gorman  
yesterday.Mr. Franzen requested a continuance to 1:45  
P.M. in this matter to discuss the matter with  
the Defendant.  
State filed an Answer in Opposition to Motion to  
Sever Offenses in Open Court.  
COURT ORDERED, continued to 1:45 P.M. this date.---  
Court reconvened in this matter with all present  
as of the previous session.Mr. Cooper filed Motion for Discovery, Motion  
for Individual Examination of Jurors and Motion  
for Additional Peremptory Challenges in Open  
Court.Mr. Franzen stated the Defendant wanted to go  
to Trial this week but they wanted the Court  
to continue this Trial over the objections of  
the Defendant.Argument in opposition by Mr. Harmon.  
Court stated it would grant this Motion to  
Continue but set specific conditions.COURT ORDERED, Marcus Cooper and George Franzen  
are to try this case and will not be released  
without an Order from this Court. FURTHER  
ORDERED, the Public Defenders are to make adjust-  
ments in their schedules to try this case on April 11,  
1983. FURTHER ORDERED, neither Mr. Harris nor  
Mr. Jackson are to become directly involved in  
this case without the approval of Mr. Cooper and  
Mr. Franzen.Court stated it would discuss this matter with  
Mr. Harris about the inadequacy of the representation  
of this Defendant.MINUTES — CRIMINAL

(over)

CASE NO. C53867

TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD AKA KEITH

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES -- HEARING

CONTINUED TO:

1-10-83

(CONTINUED  
FROM  
PREVIOUS  
PAGE)

FURTHER ORDERED, Motion to Sever Counts is denied. FURTHER ORDERED, Motion to Discover Aggravating Circumstances is granted. FURTHER ORDERED, Motion for Additional Peremptory Challenges is denied. FURTHER ORDERED, Motion for Individual Examination of Jurors is denied. FURTHER ORDERED, Motion in Limine and Motion for Lineup are continued to January 25, 1983 at 9:00 A.M. FURTHER ORDERED, Trial is continued to April 11, 1983 at 10:00 A.M. and Calendar Call will be April 7, 1983 at 9:00 A.M.

4-11-83 - 10:00 A.M.

JURY TRIAL

4-7-83 - 9:00 A.M.

CALENDAR CALL

CUSTODY

1-25-83 - 9:00 A.M.

DEFT'S MOTION IN  
LIMINEDEFT'S MOTION FOR  
LINEUP

1-25-83

JOHN F. MENDOZA  
DEPT. FIVE

R. SNAPE, CLERK

R. SILVAGGIO,  
REPORTER

DEFENDANT'S MOTION IN LIMINE  
DEFENDANT'S MOTION FOR LINEUP

State represented by Daniel Seaton, Deputy District Attorney.

Defendant Howard present with Marcus Cooper, Deputy Public Defender.

Mr. Cooper requested a continuance in this matter to file points and authorities, and COURT ORDERED, this matter is continued to February 3, 1983 at 9:00 A.M. and the Public Defender is to file points and authorities by Thursday, January 27, 1983 and the District Attorney has until January 31, 1983 to respond.

2-1-83 - 9:00 A.M.

DEFT'S MOTION IN  
LIMINEDEFT'S MOTION FOR  
LINEUP

CUSTODY

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

## APPEARANCES — HEARING

## CONTINUED TO:

1-27-83 JOHN F. MENDOZA DEPT. FIVE  R. SNAPE, CLERK  S. NIEMER, REPORTER	<u>PLAINTIFF'S MOTION FOR FINGERPRINT EXEMPLAR</u> State represented by Melvyn T. Harmon, Deputy District Attorney. Defendant Howard present with George Franzen, Deputy Public Defender. Court heard arguments of Counsel. Court stated its findings. COURT ORDERED, Motion for Exemplar is granted.  CUSTODY	
2/1/83 JOHN F. MENDOZA DEPT. V  S. Nicholson, Clerk S. Wiener, Reporter	<u>DEFENDANT'S MOTION IN LIMINE: MOTION FOR LINE-UP</u> <u>STATE'S MOTION FOR FINGERPRINT EXEMPLAR</u> State represented by Melvyn T. Harmon, DDA. Deft. Howard present, in custody, with Marcus Cooper, DPD. Mr. Cooper advised that Deft's Motion in Limine may be involved and Court stated it wanted to hear arguments. COURT ORDERED, Motion for lineup is denied and date is set for Evidentiary Hearing on Motion in Limine. (FURTHER ORDERED, a gag is to be made available to be used on the Deft., if necessary, the next time he enters the Courtroom and sanctions may be taken if Deft's. behavior continues.) State's Motion for Fingerprint Exemplar, having previously been signed, is taken off calendar.  CUSTODY	4/8/83 10 A.M. EVIDENTIARY HRNG. ON DEFT'S MOTION IN LIMINE
4-7-83 JOHN F. MENDOZA DEPT. FIVE  R. SNAPE, CLERK  R. SILVAGGIO, REPORTER	<u>CALENDAR CALL</u> State represented by C. Dan Bowman, Deputy District Attorney. Defendant Howard present with Marcus Cooper, Deputy Public Defender. Counsel stated this matter was ready for Trial, and would take from one week to one and one-half weeks to try. COURT ORDERED, this Trial will be heard in Department Five on April 11, 1983 at 10:00 A.M. ----- Court reconvened in this matter. State represented by Daniel Seaton, Deputy District Attorney. Defendant Howard represented by George Franzen and Marcus Cooper, Deputy Public Defenders. Counsel stipulated to continue Motions until the time of Trial, and that the exhibits could be marked outside the presence of the Court. COURT ORDERED, Counsel to meet with the Clerk on April 8, 1983 to mark the exhibits. FURTHER ORDERED, the hearing previously set for April 8, 1983 is hereby vacated.  CUSTODY	4-11-83 - 10:00 A.M.  JURY TRIAL DEPT. FIVE

CASE NO. C53867

TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD AKA KEITH

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES -- HEARING	CONTINUED TO:
4-11-12-13-14- 18-19-20-21-22- JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK R. SILVAGGIO, REPORTER	<u>JURY TRIAL</u> State represented by Melvyn T. Harmon and Daniel Seaton, Deputy District Attorneys. Defendant Howard present with Marcus Cooper and George Franzen, Deputy Public Defenders. Counsel stated they were ready to proceed to Trial. Mr. Franzen stated there was a breakdown in communication between Defendant and Counsel.	✓
	Jurors were brought into the Courtroom and panel was selected and sworn. Mr. Franzen stated they objected to selection of Jury as some panel members were not present. Mr. Harmon stated the Jury Commissioner had the right to excuse jurors. Court stated the Jury Commissioner had the right to excuse Jurors, and Court stated they assumed they were properly excused. Mr. Cooper filed an Original Letter from the Defendant in Open Court.	
	Mr. Cooper stated the Defendant was not satisfied with their representation of him. Mr. Cooper stated further that the Defendant refused to communicate with them and assist them in his defense. Court stated these matters had been litigated previously. Court inquired if the Public Defenders Cooper and Franzen had had any other communication	
	with other members of the Public Defenders Office that were familiar with the victim in this case, and Counsel replied in the negative. Mr. Cooper stated they had prepared this case to the best of their ability. Mr. Franzen informed the Court some of the jurors had inquired about his injured hand, and requested that the Court advise the Jurors that the attorneys could not communicate with them.	
	<del>Jurors were brought into the Courtroom and Court</del> advised the panel that the attorneys were not allowed to discuss matters with the jurors, and the jurors must not attempt to converse with the attorneys. On April 12, 1983, outside the presence of the Jury, Court reconvened in this matter. Court stated Defendant had filed Proper Person Motions and inquired of Counsel if there was any validity to these Motions, stating if so, Counsel could present them to the Court.	
	Jury was brought into the Courtroom. Court advised Jurors in regard to how this matter would proceed to Trial. Opening statement by Mr. Harmon. Defendant's Counsel reserved the right to make their Opening Statement at the beginning of their case. Mr. Cooper moved Court to invoke the rule of exclusion of witnesses and by the COURT SO ORDERED.	

(CONTINUED)

MINUTES -- CRIMINAL



CASE NO. C53867 TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD AKA KEITH

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

C O N T I N U E D	Court heard testimony of witnesses and admitted exhibits. On April 19, 1983, Court heard arguments of Counsel in regard to Defendant being married to Dwana Thomas, possible witness in this matter. SAMUEL HOWARD was sworn and testified in regard to that matter. On April 20, 1983, Mr. Cooper stated they contacted authorities in New York and were unable	5-2-83---10:00 A.M.  PENALTY HEARING
	to locate any record or documents in regard to the Defendant having been married to Dwana Thomas. Court stated if Ms. Thomas was married to someone else, she could not have been married to Defendant at the same time. Mr. Cooper filed Motion to Suppress in Open Court. Court heard arguments of Counsel. Court stated its findings. <del>COURT ORDERED, Motion to Suppress denied.</del>	
	On April 21, 1983, Marriage Certificate of Dwana and Lenon Thomas was presented to the Court and Divorce Decree of Dwana and Lenon Thomas was also presented. COURT ORDERED, they will be marked as Court's Exhibits, and placed in the file. Court heard further testimony of witnesses and admitted exhibits. Court read Instructions to the Jury. <del>Opening argument by Mr. Seaton.</del> Answering argument by Mr. Cooper. Closing argument by Mr. Harmon. On April 22, 1983, Court reconvened in this matter. Juror #12, Leo Zachary Gates, is Foreman. Jury returned the following Verdicts:	
	COUNT ONE - ROBBERY WITH USE OF A DEADLY WEAPON - GUILTY	
	COUNT TWO - ROBBERY WITH USE OF A DEADLY WEAPON - GUILTY  COUNT THREE - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON - GUILTY  COURT ORDERED, this matter is continued to May 2, 1983 at 10:00 A.M. for the Penalty phase of this Trial. FURTHER ORDERED, Defendant is remanded to custody.	
	CUSTODY	

MINUTES — CRIMINAL

CASE NO. C53867TITLE STATE OF NEVADA VS. SAMUEL HOWARD aka KEITHDATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

5-3-83  
JOHN F. MENDOZA  
DEPT. VN. SKURSKI,  
CLERK  
R. SILVAGGIO,  
REPORTERDEFENDANT'S MOTION TO PROHIBIT THE USE OF  
ALLEGED AGGRAVATING CIRCUMSTANCES &  
PENALTY HEARING

Motion:

State represented by DDA's Mel Harmon and Dan  
Seaton. Deft. Howard present with DPD's Marcus  
Cooper and George Franzen, who presented oral  
motion to the Court to withdraw as counsel.  
Argument by counsel. COURT ORDERED, Motion

Denied.

Court advised one of the jurors in this case  
had been in contact with the DA's the DA's office  
and the Jury Commissioner, which is a breach  
of the Admonition; said Juror and Jury  
Commissioner are available for questioning.  
Statement of Lynn Kennington, Jury Commissioner  
marked and admitted as Court's Exhibit #5.Mrs. Kennington sworn and testified. Juror  
was called into courtroom and questioned, then  
excused to hallway. State filed documententitled "Regarding Potential Juror Difficulties  
in Deliberating in the Penalty Phase" in Open  
Court. Argument by counsel. Court stated the  
facts did not bear out excusing of the Juror.  
Mr. Franzen presented oral motion for State  
to be barred from asking for the Death Penalty.  
Argument by counsel. COURT ORDERED, Motion

Denied.

State filed "Answer in Opposition to Motion to  
Prohibit the Use of Alleged Aggravating  
Circumstances" in Open Court. Argument by  
Counsel. COURT ORDERED, Motion Denied.

Penalty Hearing:

All present as above. Counsel stipulated to  
presence of Jury. Opening statement by Mr.  
Harmon. Exhibits marked and admitted and  
witnesses sworn and testified as per attached  
lists.Court thanked and dismissed Alternate Jurors.  
COURT ORDERED, hearing continued.

CUSTODY

5-3-83 - 10 AM

PENALTY HEARING  
CONTINUED.

CASE NO. C53867

TITLE STATE OF NEVADA VS. SAMUEL HOWARD aka Keith

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

5-3-83  
JOHN F. MENDOZA  
DEPT. VT. DUNCAN  
CLERK  
R. SILVAGGIO  
REPORTER

## CONTINUED PENALTY HEARING

State represented by Dan Seaton and Mel Harmon,  
DDA's. Deft. Howard present with DPD's George  
Franzen and Marcus Cooper. Jury not present.  
10:45 A.M. State moved to bring additional  
witness. Arguments of counsel. COURT ORDERED,  
motion denied.

Defense moved to bar State from seeking the  
Death Penalty. COURT ORDERED, motion denied.

Jury present - State rested.

Defendant sworn and testified.

Outside presence of jury - Defense moved for  
continuance as Defendant now wished counsel  
to present closing arguments. COURT ORDERED,  
granted.

Jury present - Court instructed jury.

Jury excused until 5-4-83 at 10:00 A.M.

Outside presence of jury - State had no  
objections to jury instructions. Defense

objected to instructions #5, 9, & 12.

COURT ORDERED, matter continued to 5-4-83 at  
10:00 A.M.

5-4-83

10:10 A.M. - Outside presence of jury -

All present as above. Defense moved to  
introduce additional evidence. Arguments  
of counsel, COURT ORDERED, motion denied.  
Closing arguments of counsel. Rebuttal by  
State. Jury retired to deliberate.

AT THE HOUR OF 4:05 P.M. Jury returned with

Special Verdict establishing that: The  
murder was committed by a defendant who was  
previously convicted of a felony involving the  
use of or threat of violence to the person of  
another.

The murder was committed while the defendant  
was engaged in the commission of any robbery.

Verdict: Jury having previously found the  
Defendant, Samuel Howard, guilty of Murder in  
the First Degree, impose a sentence of death.

Court thanked and excused the jury.  
COURT ORDERED, matter continued to 6-1-83 for  
sentencing re: Robbery counts. FURTHER  
ORDERED, continued to 5-6-83 to Set Time  
Certain: Execution Date. PSI Report ordered.

CUSTODY ✓✓

6-1-83 1:45 P.M.

SENTENCING RE:  
ROBBERY COUNTS

5-6-83 10:00 A.M.

SET TIME CERTAIN:  
EXECUTION DATE

CASE NO. C53867

TITLE STATE OF NEVADA VS. SAMUEL HOWARD aka KEITH

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

ES-6-83  
JOHN F. MENDOZA  
DEPT. V  
T. DUNCAN  
CLERK  
R. SILVAGGIO  
REPORTER

SET TIME CERTAIN: EXECUTION DATE  
State represented by Mel Harmon and Dan Seaton  
DDA's. Deft. Howard present in custody with  
George Franzen and Marcus Cooper, DPD's.  
The Court stated that by virtue of Verdict entered  
in these proceedings on April 22, 1983 and by  
virtue of Verdicts entered on May 4, 1983,  
and there being no legal reason why he should  
not be executed; the COURT ORDERED and signed the  
Judgment of Conviction, Warrant of Execution and  
Order of Execution in Open Court, and read same  
into the Record.  
FURTHER ORDERED, Clerk is directed to make the  
appropriate entry and to forward the certified  
copies to the appropriate authorities.  
Defendant is remanded to the custody of the  
Sheriff for transportation to the Nevada State  
Prison for the purpose of carrying out the  
aforesaid Judgment of Death, commencing the  
week of July 18, 1983.

CUSTODY (NSP)

MINUTES — CRIMINAL

CASE NO. C53867

TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD AKA KEITH

DATE JUDGE  
OFFICERS OF  
COURT PRESENT

## APPEARANCES - HEARING

CONTINUED TO:

6-16-83  
JOHN E. BRANDOZA  
DEPT. CLERK  
MS. SNAPP, CLERKPAULA VOYLES,  
REPORTERDEFENDANT'S MOTION TO STAY EXECUTION OF DEATH  
SENTENCE

## SENTENCING - COUNTS ONE AND TWO

State represented by Melvyn T. Harmon, Deputy  
District Attorney.Defendant Howard not present, being in custody  
NSP, represented by Marcus Cooper and George  
Franzen, Deputy Public Defenders.Court stated the Defendant had been transported  
to Nevada State Prison and would have to be  
returned for Sentencing.Court advised Mr. Cooper and Mr. Franzen to  
file a Notice of Appeal with the State Supreme  
Court and they would Stay the Execution of the  
Death Sentence.COURT ORDERED, this matter is continued to June  
16, 1983 at 9:00 A.M. for Sentencing.

CUSTODY (NSP)

6-16-83 - 9:00 A.M.

SENTENCING -  
COUNTS ONE AND  
TWO

MINUTES - CRIMINAL

CASE NO. C53867 TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD AKA KEITH

DATE/JUDGE CLERKS OF COURT/PRESENT	APPEARANCES - HEARING	CONTINUED TO
5-16-83 JOHN F. MENDOZA DEPT. FIVE J. SHAFER, CLERK R. SILVAGGIO, REPORTER	DEFENDANT'S MOTION TO STAY EXECUTION OF DEATH SENTENCE SENTENCING - COUNTS ONE AND TWO State represented by Melvyn T. Harmon, Deputy District Attorney. Defendant Howard present with Marcus Cooper and George Franzen, Deputy Public Defenders. Norma Price, Probation Officer, also present. Court heard statements by Counsel and the Defendant. Mr. Cooper stated the Defendant had not received a copy of the Pre-Sentence Report in this matter. Defendant stated he did not wish to read the Report, and that he wanted to proceed with the sentencing. Court stated its findings. COURT ORDERED, Defendant is adjudged Guilty and sentenced to Fifteen Years for Robbery and Fifteen Years for Use of Deadly Weapon in Com- mission of a Crime, Count One, sentence for Use of Deadly Weapon to run consecutive to Robbery sentence; and Fifteen Years for Robbery and Fifteen Years for Use of a Deadly Weapon on Count Two, sentence for Use of Deadly Weapon to run consecutive to the Robbery sentence, and Sentence on Count Two to run consecutive to sentence imposed in Count One, and sentences in Count One and Two to run consecutive to sentence in Count One, if that sentence should be commuted. Defendant filed Proper Person Motion in Open Court. COURT ORDERED, Pro Per Motion will be heard June 21, 1983 at 1:30 P.M. and Defendant is to be held in Clark County Jail until that date. FURTHER ORDERED, Defendant's Motion to Stay Execution of Sented is granted.	6-21-83 - 1:30 P.M. PROPER PERSON MOTION
6-16-83 1:45 P.M. JOHN F. MENDOZA DEPT. FIVE J. SHAFER, CLERK R. SILVAGGIO, REPORTER	PROPER PERSON MOTION TO REMOVE PUBLIC DEFENDER FOR APPEAL State represented by Melvyn T. Harmon, Deputy District Attorney. Defendant Howard present with Marcus Cooper and George Franzen, Deputy Public Defenders. Court heard arguments of Counsel. Defendant presented Motion to the Court. COURT ORDERED, Motion denied and Defendant may be transported to Nevada State Prison. FURTHER ORDERED, Hearing set for June 21, 1983 at 1:30 P.M. is vacated.	CUSTODY

CASE NO. C53867

TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD AKA KEITH

DATE JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

1-17-84

CHARLES

THOMPSON

DEPT. ONE FOR

DEPT. FIVE

TAYLOR AND

HUSNAPE, CLERKS

LILSTON,

RECORDER

PRO PER MOTION FOR RELEASE OF PERSONAL PROPERTY

State represented by William Koot, Deputy  
District Attorney.Defendant Howard not present, being in custody  
NSP, represented by George Franzen, Deputy  
Public Defender.Mr. Koot stated he had discussed this matter  
with Deputy District Attorney Seaton, and he  
indicated there was no objection to this Motion.Mr. Koot indicated, however, there was a request  
for return of \$6,000.00 Cash and requested a  
continuance to investigate that matter.  
COURT ORDERED, this matter is continued to  
January 19, 1984 at 9:00 A.M.

CUSTODY (NSP)

1-19-84 - 9:00 A.M.

PRO PER MOTION FOR  
RELEASE OF  
PERSONAL PROPERTY

MINUTES — CRIMINAL

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

1-22-85 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK C. JONES, RECORDER	<u>CONFIRMATION OF COUNSEL</u> <u>DETERMINATION OF INDIGENCE</u> State represented by Melvyn T. Harmon, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by George Franzen, Deputy Public Defender and Lizzie Hatcher. Ms. Hatcher stated it appeared the Defendant was indigent and was eligible for Court-appointed Counsel. COURT ORDERED, Defendant is declared to be indigent and Lizzie Hatcher is appointed to represent the Defendant. CUSTODY (NSP)	
4-14-87 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK S. CHRISTOFFERSON RECORDER	<u>STATE'S MOTION FOR ISSUANCE OF SUPPLEMENTAL WARRANT OF EXECUTION</u> State represented by Melvyn T. Harmon, Deputy District Attorney. Defendant Howard not present, being in custody NSP, nor represented. COURT ORDERED, this matter is continued to April 16, 1987 at 9:00 A.M. to allow Ms. Hatcher to be present. CUSTODY (NSP)	4-16-87 - 9:00 A.M.  SET EXECUTION DATE
4-16-87 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK S. CHRISTOFFERSON RECORDER	<u>STATE'S MOTION FOR ISSUANCE OF SUPPLEMENTAL WARRANT OF EXECUTION</u> State represented by Daniel Seaton, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by Lizzie Hatcher. Ms. Hatcher stated an Appeal would be filed in this matter. COURT ORDERED, Execution Date is set in this matter for May 15, 1987. CUSTODY (NSP)	
2-16-88 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK S. CHRISTOFFERSON RECORDER	<u>DEFENDANT'S MOTION FOR EXTENSION OF TIME RE: POST CONVICTION RELIEF AND STAY OF EXECUTION</u> State represented by John Lukens, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by Don Beury. Mr. Beury requested a continuance to read the file in this case. Mr. Beury requested that the Court set a briefing schedule. No objection by Mr. Lukens. Mr. Beury requested that the Court sign an Order appointing him as Counsel in this matter. Court examined <u>MINUTES — CRIMINAL</u> Mr. Beury in regard to this matter. COURT ORDERED, this matter is continued to February 25, 1988 at 9:00 A.M. and Mr. Beury to discuss this matter with Mr. Graves.	



CASE NO. C53867 TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD AKA KEITH

DATE JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
1-19-84 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK C. JONES, RECORDER	PRO PER MOTION FOR RELEASE OF PERSONAL PROPERTY State represented by Daniel Seaton, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by Marcus Cooper, Deputy Public Defender. Mr. Seaton stated the only items requested that he was familiar with were the pre-recorded tapes. <del>Mr. Seaton stated further that their investi-</del> gator was to determine if these items are in existence. COURT ORDERED, continued to February 2, 1984 at 9:00 A.M.  CUSTODY (NSP)	2-2-84-9:00 A.M.  PRO PER MOTION FOR RELEASE OF PERSONAL PROPERTY
2-2-84 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK C. JONES, RECORDER	PRO PER MOTION FOR RELEASE OF PERSONAL PROPERTY State represented by Robert Teuton, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by George Franzen, Deputy Public Defender. Mr. Teuton stated the property Defendant was requesting to be released had not been impounded by the Police Department. COURT ORDERED, Motion is denied.  CUSTODY (NSP)	
1-19-85 JOHN F. MENDOZA DEPT. FIVE R. SNAPE, CLERK C. JONES, RECORDER	FURTHER PROCEEDINGS State represented by Robert O'Neale, Deputy District Attorney. Defendant Howard not present, being in custody NSP, nor represented by Counsel. Lizzie Hatcher present in Court. COURT ORDERED, this matter is continued to January 22, 1985 at 9:00 A.M. and Ms. Hatcher is to make inquiry in regard to the indigence of the Defendant.  CUSTODY (NSP)	1-22-85 - 9:00 A.M.  CONFIRMATION OF COUNSEL AND DETERMINATION OF INDIGENCY

CASE NO. C53867 TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD AKA KEITH

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
JOHN P. MENDOZA DEPT. FIVE SNAPE, CLERK CHRISTOFFERSON RECORDER	<p>DEFENDANT'S MOTION FOR EXTENSION OF TIME RE: POST CONVICTION RELIEF AND STAY OF EXECUTION DONALD BEURY'S MOTION TO BE APPOINTED TO REPRESENT DEFENDANT OR MOTION TO WITHDRAW</p> <p>State represented by Ronald Bloxham, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by Barbara Schubel and Carmine Colucci.</p> <p>Mr. Colucci stated he had assisted John Graves in this case. Ms. Schubel stated Mr. Graves had contacted Mr. Beury, stating he did not have time for this case and requesting that Mr. Beury substitute in as Counsel. Mr. Colucci moved Court to allow Mr. Graves and him to withdraw as Counsel. Ms. Schubel presented Mr. Beury's Motion to the Court and argued in support thereof. COURT ORDERED, Mr. Beury's Motion to Withdraw is granted. FURTHER ORDERED, this matter is continued to March 1, 1988 at 9:00 A.M. and if Mr. Graves and Mr. Colucci wish to withdraw, they should file Motion to do so.</p> <p style="text-align: right;">CUSTODY (NSP)</p>	3-1-88 - 9:00 A.M. FURTHER PROCEEDING
3-1-88 JOHN P. MENDOZA DEPT. FIVE SNAPE, CLERK CHRISTOFFERSON RECORDER	<p>DEFENDANT'S MOTION FOR EXTENSION OF TIME RE: POST CONVICTION RELIEF AND STAY OF EXECUTION</p> <p>State represented by Douglas Smith, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by John Graves and Carmine Colucci.</p> <p>Mr. Graves presented Motion to Withdraw for both Counsel and argued in support thereof. Mr. Graves informed the Court they had filed Petition for Post Conviction Relief. Mr. Smith submitted matter on the written response filed by Mr. Seaton. Counsel stated the Motion for Extension of Time would be moot as Petition had been filed. COURT ORDERED, Mr. Graves and Mr. Colucci are allowed to withdraw as Counsel in this matter.</p> <p style="text-align: right;">CUSTODY (NSP)</p>	

CASE NO. C53867 TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD AKA KEITH

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES - HEARING	CONTINUED TO:
4-31-88 JOHN P. MENDOZA DEPT. FIVE SHANE, CLERK CHRISTOFFERSON RECORDER	STATE'S MOTION FOR THE COURT TO ISSUE SECOND SUPPLEMENTAL WARRANT OF EXECUTION State represented by Ronald Bloxham, Deputy District Attorney. Defendant Howard not present, being in custody NSP, nor represented by Counsel. COURT ORDERED, Execution Date for the Defendant is set for April 29, 1988. CUSTODY (NSP)	
4-31-88 JOHN P. MENDOZA DEPT. FIVE SHANE, CLERK	COURT ORDERED, this matter is continued to April 1, 1988 at 9:00 A.M. CUSTODY (NSP)	4-1-88 - 9:00 A.M.
4-28-88 John P. Mendoza Dept. Five Shane, Clerk Christofferson Recorder	State's motion for the Court to issue second supplemental Warrant of Execution State represented by Douglas Smith, Deputy District Attorney. Defendant Howard not present, being in custody NSP nor represented by Counsel. Court stated the State had presented motion to the Court yesterday. Court stated previous Counsel for Defendant had withdrawn. Court stated further it did not appear that Defendant had been notified of this motion as he should have been, as he does represent himself. Court ordered previous order to issue second supplemental Warrant of Execution is set aside and this matter continued to April 29, 1988 at 9:00 A.M. Further ordered, District Attorney to notify Defendant. Custody (NSP)	4-28-88 - 9:00 A.M. Stated motion for Court to issue second supplemental Warrant of Execution

CASE NO. C53867

TITLE STATE OF NEVADA VS SAMUEL HOWARD

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES - HEARING	CONTINUED TO:
6-26-88 JOHN F. MENDOZA DEPT. V CLERK S. COPE, RECORDER	<u>STATE'S MOTION FOR COURT TO ISSUE SECOND SUPPLEMENTAL WARRANT OF EXECUTION</u> State represented by Eric Jorgenson, DDA. Deft Howard neither present nor represented by counsel. Mr. Jorgenson moved to file the SECOND SUPPLEMENTAL ORDER AND WARRANT OF EXECUTION in open court based on the fact that the U.S. Supreme Court denied deft's writ; also advised that notice of this motion was mailed to the deft at the prison on March 25th. COURT ORDERED, the Director of the Department of Prisons shall, on MAY 27, 1988, carry out said Judgment and Sentence by lethal injection pursuant to the Second Supplemental Warrant of Execution issued herein. COURT FURTHER ORDERED, Clerk directed to make the appropriate entry in the minutes of the Court and forward the certified copies to the appropriate authorities. Court signed the Second Supplemental Order of Execution and Second Supplemental Warrant of Execution in open court.	
6-27-88 JOHN F. MENDOZA DEPT. FIVE MR. SNAPE, CLERK S. CHRISTOFFERSON RECORDER	<u>AT REQUEST OF COURT</u> State represented by Daniel Seaton, Deputy District Attorney. Defendant Howard not present, represented by David Schieck. Court stated it had contacted Mr. Schieck in regard to appointment to represent the Defendant. Court stated it had been advised by the District Attorney that there was further action pending in this case. Mr. Seaton advised Court and Mr. Schieck of the status of this case. COURT ORDERED, David Schieck is appointed to represent Defendant. FURTHER ORDERED, Execution is stayed until after disposition of Petition for Post-Conviction Relief. FURTHER ORDERED, this matter is continued to June 9, 1988 at 9:00 A.M. for Status Check. CUSTODY (NSP)	6-9-88 - 9:00 A.M. STATUS CHECK
6-9-88 JOHN F. MENDOZA DEPT. FIVE MR. SNAPE, CLERK S. CHRISTOFFERSON RECORDER	<u>STATUS CHECK</u> State represented by George Assad, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by David Schieck. Mr. Schieck stated he was going to pick up file from Mr. Beury. Mr. Schieck stated further that he had reviewed Petition for Post Conviction Relief and requested an Evidentiary Hearing. COURT ORDERED, this matter is continued for July 7, 1988 at 10:00 A.M. for Evidentiary Hearing on Petition for Post Conviction Relief. CUSTODY (NSP)	7-7-88 - 9:00 A.M. EVIDENTIARY HEARING - PETITION FOR POST CONVICTION RELIEF

CASE NO. C53867

TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD

DATE JUDGE  
OFFICERS OF  
COURT PRESENT

## APPEARANCES -- HEARING

CONTINUED TO:

8-25-88 JOHN P. MENDOZA DEPT. PIVE SHARPE, CLERK CHRISTOPPERSON RECORDER	AT REQUEST OF COURT State represented by Daniel Seaton, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by David Schieck. Conference between Court and Counsel. Mr. Schieck moved the Court for additional time as files in this case were voluminous. No objection by Mr. Seaton. Mr. Seaton requested that any documents since the Trial be provided to them and Mr. Schieck stated they would do so. COURT ORDERED, the July 7, 1988 hearing date is vacated and this matter is continued to August 25, 1988 at 10:00 A.M. FURTHER ORDERED, Mr. Schieck has until July 18 to file supplemental points and authorities, State has until August 8 to respond, and Mr. Schieck has until August 15 to reply.	8-25-88 - 10:00 A.M. PETITION FOR POST-CONVICTION RELIEF
JOHN P. MENDOZA DEPT. PIVE SHARPE, CLERK CHRISTOPPERSON RECORDER	DEFENDANT'S MOTION FOR ORDER TO TRANSPORT State represented by Ronald Bloxham, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by David Schieck. Mr. Schieck presented Motion to Transport Defendant to the Court and argued in support thereof. No objection by Mr. Bloxham. COURT ORDERED, Motion granted.	CUSTODY (NSP)
8-25-88 JOHN P. MENDOZA DEPT. PIVE SHARPE, CLERK CHRISTOPPERSON RECORDER	DEFENDANT'S MOTION TO CONTINUE POST-CONVICTION HEARING State represented by Daniel Seaton, Deputy District Attorney. Defendant Howard present with David Schieck. Mr. Schieck moved Court to withdraw the Motion to Continue as Defendant is presently here. COURT ORDERED, Motion to Continue is withdrawn.	CUSTODY (NSP)

CASE NO. C53867 TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD

DATE JUDGE OFFICERS OF COURT PRESENT	APPEARANCES - HEARING	CONTINUED TO:
10-25-88 JOHN F. MENDOZA DEPT. FIVE CLERK CHRISTOPHERSON REORDER	<u>PETITION FOR POST-CONVICTION RELIEF</u> State represented by Daniel Seaton, Deputy District Attorney. Defendant Howard present with David Schieck. Court heard testimony of witnesses. Court examined Counsel in regard to briefing schedule. COURT ORDERED, this matter is continued to October 27, 1988 at 9:00 A.M. and Defendant may be returned to NSP. CUSTODY (NSP)	10-27-88 - 9:00 A.M. ARGUMENT
10-27-88 JOHN F. MENDOZA DEPT. FIVE CLERK CHRISTOPHERSON REORDER	<u>ARGUMENT - PETITION FOR POST-CONVICTION RELIEF</u> State represented by Melvin Harmon, Deputy District Attorney. Defendant Howard not present, being in custody NSP, nor represented by Counsel. Mr. Harmon stated Counsel had signed a Stipulation to continue this matter and requested an extension to brief matter. COURT ORDERED, State has until November 18, 1988 to file brief and reply to be followed by December 5, 1988. FURTHER ORDERED, this matter is set for hearing December 7, 1988 at 9:00 A.M.  CUSTODY (NSP)	12-7-88 - 9:00 A.M. ARGUMENT
1-5-89 JOHN F. MENDOZA DEPT. FIVE CLERK CHRISTOPHERSON REORDER	<u>PETITION FOR POST-CONVICTION RELIEF</u> State represented by William Henry, Deputy District Attorney. Defendant Howard not present not represented. Mr. Henry moved Court to continue this matter, stating Mr. Seaton was involved in a murder trial. COURT ORDERED, this matter is continued to 11:00 A.M. this date and Clerk to notify Mr. Schieck to be present at that time.	1-5-89 - 10:00 A.M. PETITION FOR POST-CONVICTION RELIEF ARGUMENT
	Court reconvened in this matter. State represented by William Henry, Deputy District Attorney. Defendant Howard not present, represented by David Schieck. Mr. Schieck apologized to the Court, stating he did not have this calendered. Mr. Schieck stated they had filed a Stipulation to continue this matter. COURT ORDERED, this matter is continued to January 5, 1989 at 10:00 A.M. for Argument.  CUSTODY (NSP)	

MINUTES - CRIMINAL

CASE NO. C53867 TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES -- HEARING	CONTINUED TO:
1-6-89 JOHN F. MENDOZA DEPT. FIVE SNAPE, CLERK CHRISTOFFERSON RECORDER	ARGUMENT; PETITION FOR POST CONVICTION RELIEF State represented by Ronald Bloxham, Deputy District Attorney. Defendant Howard not present, represented by David Schieck. Mr. Schieck stated Mr. Seaton had called him and stated he would not be able to argue this matter today. COURT ORDERED, continued to January 6, 1989 at 9:00 A.M.	1-6-89 - 9:00 A.M. ARGUMENT - PETITION FOR POST CONVICTION RELIEF
	CUSTODY (NSP)	
1-6-89 JOHN F. MENDOZA DEPT. FIVE SNAPE, CLERK CHRISTOFFERSON RECORDER	ARGUMENT: DEFENDANT'S MOTION FOR POST-CONVICTION RELIEF State represented by Daniel Seaton, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by David Schieck. Court heard arguments of Counsel. Court examined Counsel. COURT ORDERED, this matter continued to February 3, 1989 at 9:00 A.M. for Decision.	2-3-89 - 9:00 A.M. DECISION
	CUSTODY (NSP)	
2-3-89 CHARLES THOMPSON DEPT. ONE FOR DEPT. FIVE SNAPE, CLERK MINN, RECORDER	DECISION State represented by Bradford Jerbic, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by David Schieck. COURT ORDERED, this matter continued to February 10, 1989 at 9:00 A.M.	2-10-89 - 9:00 A.M. DECISION - PETN. FOR POST CONVICTION RELIEF
2-10-89 JOHN F. MENDOZA DEPT. FIVE SNAPE, CLERK CHRISTOFFERSON RECORDER	DECISION State represented by Frank Ponticello, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by David Schieck. Conference between Court and Counsel. COURT ORDERED, continued to February 14, 1989 at 10:15 A.M. for Decision.	2-14-89 - 10:15 A.M. DECISION - PETN. FOR POST CONVICTION RELIEF
	CUSTODY (NSP)	

MINUTES -- CRIMINAL

CASE NO. C53867 TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES - HEARING	CONTINUED TO:
2-14-89 JOHN P. MENDOZA DEPT. FIVE R. SHAPIRO, CLERK D. WINN RECORDER	<u>DECISION: PETITION FOR POST CONVICTION RELIEF</u> State represented by Frank Ponticello, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by David Schieck. Conference between Court and Counsel. Court stated it did not have this in final written form as yet but stated he would advise Counsel of its Order in this matter. <del>Court stated its findings.</del>	
	COURT ORDERED, Petition for Post Conviction Relief denied. FURTHER ORDERED, Counsel to confer with the Court Recorder to determine when transcripts would be available and Counsel to prepare Findings of Fact in this matter.  CUSTODY (NSP)	
2-16-89 JOHN P. MENDOZA DEPT. FIVE R. SHAPIRO, CLERK S. CHRISTOFFERSON RECORDER	<u>DAVID M. SCHIECK'S MOTION TO ALLOW APPOINTMENT OF APPELLANT COUNSEL</u> <u>DEFENDANT'S MOTION FOR RETURN OF PROPERTY</u> State represented by Daniel Seaton, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by David Schieck. Mr. Seaton stated he had no objection to Motion for Return of Property. COURT ORDERED, Counsel to get together and make a list in regard to property of Defendant to be released and present it to the Court. FURTHER ORDERED, Findings of Fact, Conclusions of Law and Decision has been filed and the word "Proposed" has been stricken from the title.	
	CUSTODY (NSP)	
2-25-89 JOHN P. MENDOZA DEPT. FIVE R. SHAPIRO, CLERK S. CHRISTOFFERSON RECORDER	<u>DAVID M. SCHIECK'S MOTION FOR FEES IN EXCESS OF STATUTORY ALLOWANCE</u> State represented by Frank Ponticello, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by David Schieck. Mr. Schieck stated there was an error in the billing. COURT ORDERED, this matter is taken under submission and Mr. Schieck to provide the Court with a letter in regard to error.	
	CUSTODY (NSP)	



CASE NO. C53867 TITLE THE STATE OF NEVADA VS. SAMUEL HOWARD AKA KEITH

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

11-29-90 JOHN F. MENDOZA DEPT. FIVE J. SNAPE, CLERK ALICE EASTGATE RECORDER	DAVID M. SCHIECK'S MOTION FOR FEES IN EXCESS OF STATUTORY GUIDELINES State represented by Gary Booker, Deputy District Attorney. Defendant Howard not present, being in custody NSP, represented by Shirley Derke. Ms. Derke moved to take this matter off calendar and by the COURT SO ORDERED. CUSTODY (NSP)	

**DISTRICT COURT  
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****February 26, 1991**

81C053867

The State of Nevada vs Samuel Howard

**February 26, 1991****9:00 AM****Motion****MOTION FOR FEES  
IN EXCESS OF  
STATUTORY  
GUIDELINES Court  
Clerk: ALONA FUJII  
Reporter/Recorder:  
SHIRLEE  
CHRISTOFFERSON  
Heard By: SOBEL,  
JEFFREY****HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Schieck, David M.

Attorney

**JOURNAL ENTRIES**

- State represented by Ronald Bloxham, DDA. Defendant Howard not present, in custody, represented by David Schieck. Court advised Mr. Schieck that the state should be represented by the Attorney General's office and not the District Attorney's office. COURT ORDERED, matter continued.

3/7/91 @ 9 a.m.

**DISTRICT COURT  
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****March 07, 1991**

81C053867

The State of Nevada vs Samuel Howard

**March 07, 1991****9:00 AM****Motion****MOTION FOR FEES  
IN EXCESS OF  
STATUTORY  
GUIDELINES Court  
Clerk: ALONA FUJII  
Reporter/Recorder:  
SHIRLEE  
CHRISTOFFERSON  
Heard By: Jeffrey  
Sobel****HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Schieck, David M.

Attorney

**JOURNAL ENTRIES**

- Mr. Schieck advised court that the State has no opposition. COURT ORDERED, motion GRANTED, Mr. Schieck to prepare order.

LATER: Stephanie Tucker and Keith Marcher, DAGs appeared and advised court that the Attorney General's office was not aware of date, and will notify court if there is opposition.

**DISTRICT COURT  
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****March 26, 1991**

81C053867

The State of Nevada vs Samuel Howard

**March 26, 1991****9:00 AM****Motion****MOTION FOR THE  
COURT TO ISSUE  
THIRD  
SUPPLEMENTAL  
WARRANT OF  
EXECUTION Court  
Clerk: ALONA FUJII  
Relief Clerk:  
SANDRA SMITH  
Reporter/Recorder:  
SHIRLEE  
CHRISTOFFERSON  
Heard By: SOBEL,  
JEFFREY****HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES  
PRESENT:****JOURNAL ENTRIES**

- There being no parties present, COURT ORDERED: Matter continued for one week.

CUSTODY (NSP)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****April 02, 1991**

81C053867

The State of Nevada vs Samuel Howard

**April 02, 1991****9:00 AM****Motion**

**MOTION FOR THE  
COURT TO ISSUE  
THIRD  
SUPPLEMENTAL  
WARRANT OF  
EXECUTION Court  
Clerk: ALONA FUJII  
Reporter/Recorder:  
SHIRLEE  
CHRISTOFFERSON  
Heard By: SOBEL,  
JEFFREY**

**HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Monroe, Vicki J.

Attorney

Schieck, David M.

Attorney

**JOURNAL ENTRIES**

- Statements by counsel. Ms. Monroe advised court that this is Mr. Seaton's case. Mr. Schieck advised court that he just received a copy of warrant from Ms. Monroe today in court and there are a few errors. Court advised counsel that it is reluctant to sign a warrant of execution which is not letter perfect. COURT ORDERED, matter continued.

CUSTODY - NSP

APRIL 9, 1991 @ 9 A.M. -- STATE'S MTN CONTINUED

**DISTRICT COURT  
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****April 09, 1991**

81C053867

The State of Nevada vs Samuel Howard

**April 09, 1991****9:00 AM****Motion****MOTION FOR THE  
COURT TO ISSUE  
THIRD  
SUPPLEMENTAL  
WARRANT OF  
EXECUTION Court  
Clerk: ALONA FUJII  
Reporter/Recorder:  
SHIRLEE  
CHRISTOFFERSON  
Heard By: SOBEL,  
JEFFREY****HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**Schieck, David M.  
Smith, Ulrich W.Attorney  
Attorney**JOURNAL ENTRIES**

- Mr. Schieck requested to review warrant of execution. COURT ORDERED, matter trailed.  
LATER: Mr. Schieck advised court that he has reviewed warrant and has no opposition. Third supplemental Warrant and Order of execution signed and filed in open court. COURT ORDERED, the Director of the department of Prisons shall during the week beginning Monday, the 6th day of May 1991, carry out said judgment and sentence by executing said Samuel Howard by the administration to him, said Defendant Samuel Howard, an injection of a lethal drug in the manner as required by law and pursuant to the Third Supplemental Warrant of Execution.  
CUSTODY - NSP



**DISTRICT COURT  
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****February 04, 1992**

81C053867

The State of Nevada vs Samuel Howard

**February 04, 1992****9:00 AM****Petition for Post Conviction  
Relief****PETITION FOR  
POST CONVICTION  
RELIEF Court Clerk:  
ALONA CANDITO  
Reporter/Recorder:  
SHIRLEE  
CHRISTOFFERSON  
Heard By: SOBEL,  
JEFFREY****HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Harmon, Melvyn T.

Attorney

**JOURNAL ENTRIES**

- Mr. Harmon requested this matter be continued for one week. COURT ORDERED, MATTER CONTINUED.

CUSTODY - SNP

//Clerk telephoned Mr. Potter's office and advised continuance date. (Michelle 2/5/92 @2:43 p.m. ac)



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 11, 1992

81C053867

The State of Nevada vs Samuel Howard

February 11, 1992

9:00 AM

Petition for Post Conviction  
Relief

**PETITION FOR  
POST CONVICTION  
RELIEF Court Clerk:  
ALONA CANDITO  
Reporter/Recorder:  
SHIRLEE  
CHRISTOFFERSON  
Heard By: SOBEL,  
JEFFREY**

HEARD BY:

COURTROOM: No Location

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Monroe, Vicki J.

Attorney

**JOURNAL ENTRIES**

- Ms. Monroe advised Court that Mr. Harmon was present earlier and he spoke with Mr. Schieck, who requested this matter be continued. Ms. Monroe submitted a copy of the State's response to the Court. COURT ORDERED, MATTER CONTINUED FOR ONE MONTH. Court advised Ms. Monroe for the State to contact Mr. Schieck and advise continuance date. All courtesy copies should be filed and submitted to the Court one full week prior to hearing date. Mr. Schieck to advised Court whether the Defendant is entitled to an Evidentiary Hearing, or if one is necessary.

3/12/92 @ 9 A.M. -- STATUS CHECK: EVIDENTIARY HEARING

CUSTODY - NSP

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****March 12, 1992**

81C053867

The State of Nevada vs Samuel Howard

**March 12, 1992****9:00 AM****Status Check**

**STATUS CHECK  
EVIDENTIARY  
HEARING Court  
Clerk: ALONA  
CANDITO Relief  
Clerk: LEONE  
DUMIRE  
Reporter/Recorder:  
DEBRA WINN  
Heard By: SOBEL,  
JEFFREY**

**HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Barker, David B.

Attorney

**JOURNAL ENTRIES**

- MR. BARKER STATED THERE WAS A STIPULATION IN HIS FILE THAT HAD NOT BEEN SIGNED BY MR. HARMON, DATED 2/12/92 TO CONTINUE THIS HEARING DATE, HOWEVER, BEYOND THAT, HE DID NOT KNOW WHAT TO TELL THE COURT.

COURT ORDERED: THIS MATTER IS PASSED FOR ONE WEEK AND THE COURT CLERK WILL NOTIFY MR. WETHERALL AND MR. SCHIECK OF NEW COURT DATE AND TO HAVE THEM PRESENT TO DETERMINE THE STATUS OF THIS MATTER AND IF AN EVIDENTIARY HEARING IS NECESSARY.

CUSTODY

3/19/92 @ 9 AM - STATUS CHECK: EVIDENTIARY HEAIRNG

ON 3/12/92 THE CT. CLERK CALLED MR. WETHERALL'S OFFICE AND INFORMED HIS

SECRETARY OF NEW DATE, AS WELL AS MR. SCHIECK'S OFFICE.

MR. WETHERALL'S SECRETARY APPOLOGIZED FOR MR. WETHERALL NOT BEING PRESENT AND FOR THE MIX UP AND STATED THERE WAS A FILE STAMPED COPY OF THE STIPULATION AND ORDER SIGNED BY THE COURT TO CONTINUE THE MATTER TO 4/21/92, HOWEVER, WOULD HAVE MR. WETHERALL PRESENT AT NEXT HEARING DATE.

**DISTRICT COURT  
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****March 19, 1992**

81C053867

The State of Nevada vs Samuel Howard

**March 19, 1992****9:00 AM****Status Check****STATUS CHECK  
EVIDENTIARY  
HEARING Court  
Clerk: ALONA  
CANDITO  
Reporter/Recorder:  
SHIRLEE  
CHRISTOFFERSON  
Heard By: SOBEL,  
JEFFREY****HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Monroe, Vicki J.

Attorney

**JOURNAL ENTRIES**

- Defendant represented by Peter Wetherall. Court inquired whether Counsel are ready in terms of the petition. Ms. Monroe advised Court that the State filed a motion to dismiss which has not been answered. Mr. Wetherall advised Court that he will be answering the motion to dismiss. COURT ORDERED, THIS MATTER CONTINUED, COUNSEL TO SUBMIT COURTESY COPIES TO THE COURT. FURTHER ORDERED, THE 4/9/92 MOTION TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION IS ALSO CONTINUED TO NEXT HEARING DATE.  
CUSTODY - NSP

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****April 21, 1992**

81C053867

The State of Nevada vs Samuel Howard

**April 21, 1992****9:00 AM****All Pending Motions**

**ALL PENDING  
MOTIONS 4/21/92  
Court Clerk: ALONA  
CANDITO  
Reporter/Recorder:  
SHIRLEE  
CHRISTOFFERSON  
Heard By: Jeffrey  
Sobel**

**HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Noxon, Arthur G.

Attorney

**JOURNAL ENTRIES**

- DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF  
STATE'S MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF  
EXECUTION

STATUS CHECK: EVIDENTIARY HEARING

Defendant represented by Peter Wetherall, who advised Court that he has answered the motion.  
Court advised Counsel that it has not seen the answer as it did not receive a courtesy copy. Mr.  
Noxon advised Court that this is Mr. Harmon's case. COURT ORDERED, MATTER CONTINUED.  
Mr. Wetherall advised Court that he was appointed in the Federal Court matter and does not believe  
that the motion for appointment of counsel was ever filed. COURT ORDERED, MR. WETHERALL  
TO PUT IN WRITING AND COURT WILL TAKE UP NEXT WEEK.

CUSTODY - NSP

4/28/92 - ALL PENDING MOTIONS



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****April 28, 1992**

81C053867

The State of Nevada vs Samuel Howard

**April 28, 1992****9:00 AM****All Pending Motions**

**ALL PENDING  
MOTIONS 4-28-92  
Court Clerk: ALONA  
CANDITO Relief  
Clerk: SHARON  
PHELPS  
Reporter/Recorder:  
SHIRLEE  
CHRISTOFFERSON  
Heard By: Jeffrey  
Sobel**

**HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Monroe, Vicki J.

Attorney

**JOURNAL ENTRIES**

- DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF/STATE'S MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION/STATUS CHECK: EVIDENTIARY HEARING

Peter Wetherall present for the defendant. Court ORDERED Mr. Wetherall officially appointed to represent the deft. on the Petition for Post Conviction Relief. Court advised it needs to review the "A" and "B" files on this case, and ORDERED, matters continued.

CUSTODY (NSP)...5-19-92 @ 9:00 A.M. DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF/STATE'S MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF EXECUTION/STATUS CHECK: EVIDENTIARY HEARING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****June 09, 1992**

81C053867

The State of Nevada vs Samuel Howard

**June 09, 1992****9:00 AM****All Pending Motions**

**ALL PENDING  
MOTIONS 6/9/92  
Court Clerk: ALONA  
CANDITO  
Reporter/Recorder:  
ARLENE BLAZI  
Heard By: Jeffrey  
Sobel**

**HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Noxon, Arthur G.

Attorney

Owens, Steven S.

Attorney

Schieck, David M.

Attorney

**JOURNAL ENTRIES**

- DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF  
STATE'S MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT OF  
EXECUTION

STATUS CHECK: EVIDENTIARY HEARING

Defendant also represented by Peter Wetherall. Court advised counsel that it has reviewed the "A" and "B" files. COURT ORDERED, PETITION FOR POST CONVICTION RELIEF IS DENIED. Court inquired about the supplemental warrant of execution. State advised court that it does not have the warrant prepared. COURT ORDERED, MOTION FOR THIRD SUPPLEMENTAL WARRANT CONTINUED.

CUSTODY - NSP

6/23/92 -- STATE'S MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL WARRANT



**81C053867**

OF EXECUTION

**DISTRICT COURT  
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****June 23, 1992**

81C053867

The State of Nevada vs Samuel Howard

**June 23, 1992****9:00 AM****Motion****MOTION FOR THE  
COURT TO ISSUE  
THIRD  
SUPPLEMENTAL  
WARRANT OF  
EXECUTION Court  
Clerk: ALONA  
CANDITO Relief  
Clerk: PATRICIA  
CAMAROTE  
Reporter/Recorder:  
ARLENE BLAZI  
Heard By: SOBEL,  
JEFFREY****HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**Barker, David B.  
Potter, III, Cal J.Attorney  
Attorney**JOURNAL ENTRIES**

- Mr. Potter objected to the findings of facts not being prepared in this case. Mr. Barker advised Court that what routinely happens is a very expensive execution is put on, and then a stay is received from Judge Reed. Mr. Barker requested a continuance for Mr. Harmon to appear as the findings have not been filed. COURT ORDERED, MATTER CONTINUED. Mr. Potter advised Court that he needs the findings for Federal Court.

CUSTODY - NSP

PRINT DATE: 06/02/2020

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Minutes Date: February 26, 1991

**81C053867**

7/7/92 -- 9 AM -- STATE'S MOTION FOR THE COURT TO ISSUE THIRD SUPPLEMENTAL  
WARRANT OF EXECUTION

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****July 07, 1992**

81C053867

The State of Nevada vs Samuel Howard

**July 07, 1992****9:00 AM****Motion**

**MOTION FOR THE  
COURT TO ISSUE  
THIRD  
SUPPLEMENTAL  
WARRANT OF  
EXECUTION Court  
Clerk: ALONA  
CANDITO Relief  
Clerk: PATRICIA  
CAMAROTE  
Reporter/Recorder:  
SHIRLEE  
CHRISTOFFERSON  
Heard By: Jeffrey  
Sobel**

**HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

**PRESENT:** Bloxham, Ronald C. Attorney

**JOURNAL ENTRIES**

- Peter Wetherall present on behalf of defendant. Court stated it received the Findings of Facts last evening, has read them and further stated they do comply. Court signed the Order Denying Amended Petition, Order for Execution and the Warrant of Execution in open Court and returned them to the State for filing in open Court and Service. Mr. Wetherall stated an indication that Mr. Harmon wants to wait and further stated that, once this matter is resolved here, it will go back to Federal Court, due to the fact that Federal Court wants to take over this case after the State's claims are exhausted. Mr. Bloxham objected. Court stated that the State is entitled to the Warrant. COURT

PRINT DATE: 06/02/2020

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Minutes Date: February 26, 1991

**81C053867**

ORDERED, MOTION GRANTED.  
CUSTODY (NSP)

**DISTRICT COURT  
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****August 25, 1992**

81C053867

The State of Nevada vs Samuel Howard

**August 25, 1992****9:00 AM****Motion****MOTION FOR  
EXTRAORDINARY  
FEES Court Clerk:  
ALONA CANDITO  
Reporter/Recorder:  
SHIRLEE  
CHRISTOFFERSON  
Heard By: Jeffrey  
Sobel****HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**Paine, Charles A.  
Potter, III, Cal J.Attorney  
Attorney**JOURNAL ENTRIES**

- Mr. Paine advised court that the state has no objection. COURT ORDERED, MOTION GRANTED.  
CUSTODY - NSP

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 09, 2003

81C053867

The State of Nevada vs Samuel Howard

January 09, 2003

9:00 AM

Petition for Writ of Habeas  
Corpus

DEFT'S PTN FOR  
WRIT OF HABEAS  
CORPUS/9 Court  
Clerk: Billie Jo Craig  
Reporter/Recorder:  
Shirley Parawalsky  
Heard By: Glass,  
Jackie

HEARD BY:

COURTROOM: No Location

COURT CLERK:

RECORDER:

REPORTER:

**PARTIES****PRESENT:**

Erickson, Patricia M.  
Peterson, Clark A.  
Roger, David J.

Attorney  
Attorney  
Attorney

**JOURNAL ENTRIES**

- Mr. Peterson advised this was a Pro Per Motion and objected to Ms. Erickson being present and speaking. She has not been appointed and the hearing is next week to appoint counsel and defendant has no right to an attorney. There was a briefing schedule set and a hearing was supposed to be today. However, there was a subsequent petition filed in December that the State wishes to respond to in 60 days. He requested the time to respond be extended. Ms. Erickson represented she has been representing defendant for 6-1/2 years in his federal case and Judge Hicks ordered her to represent defendant and amend the petition. COURT ORDERED, this matter CONTINUED to the same date as Defendant's Pro Per Motion for Appointment of Effective Post-Conviction Counsel. Court directed Ms. Erickson to provide Mr. Peterson and the Court with a copy of the documentation where Judge Hicks ordered her to represent defendant in his federal case and to amend the petition.

NDC





**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 14, 2003

81C053867

The State of Nevada vs Samuel Howard

January 14, 2003

9:00 AM

All Pending Motions

**ALL PENDING  
MOTIONS FOR  
1/14/03 Court Clerk:  
Billie Jo Craig  
Reporter/Recorder:  
Shirlee Parawalsky  
Heard By: Jackie  
Glass**

HEARD BY:

COURTROOM: No Location

COURT CLERK:

RECORDER:

REPORTER:

**PARTIES****PRESENT:**

Erickson, Patricia M.  
Roger, David J.  
Tufteland, James N.

Attorney  
Attorney  
Attorney

**JOURNAL ENTRIES**

- DEFENDANT'S PRO PER MOTION FOR APPOINTMENT OF EFFECTIVE POST-CONVICTION COUNSEL...DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

Mr. Tufteland advised defendant has a federal petition with constitutional claims which are not exhausted. The Pro Per Petition was actually prepared by Ms. Erickson and is not verified. He intends to file a Motion to Dismiss as defendant not entitled to counsel. COURT ORDERED, Defendant's Pro Per Motion for Appointment of Effective Post-Conviction Counsel is DENIED. As the State previously requested time to respond to the Petition, COURT ORDERED, the State's request to respond is GRANTED and matter CONTINUED. Court directed Ms. Erickson to file a written Motion to be appointed as Counsel in this case.

NDC

CONTINUED TO: 3/18/03 9:00 AM DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS  
(POST-CONVICTION)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 18, 2003

81C053867

The State of Nevada vs Samuel Howard

March 18, 2003

9:00 AM

All Pending Motions

**ALL PENDING  
MOTIONS FOR  
3/18/03 Court Clerk:  
Billie Jo Craig  
Reporter/Recorder:  
Shirlee Prawalsky  
Heard By: Jackie  
Glass**

HEARD BY:

COURTROOM: No Location

COURT CLERK:

RECORDER:

REPORTER:

**PARTIES****PRESENT:**

Peterson, Clark A.  
Roger, David J.

Attorney  
Attorney

**JOURNAL ENTRIES**

- DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)... STATE'S MOTION TO DISMISS DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

Mr. Peterson advised he was out of the office for three days and had a Motion to Dismiss ready if the Petition was verified. If not verified, the Petition should be dismissed as if it was not filed. Colloquy regarding who defendant's attorney was and whether his attorney was working pro bono. Mr. Peterson advised there was no reason to appoint an attorney and Ms. Erickson could work pro bono. However, there was a difference if the Court appointed an attorney pro bono or not. Mr. Peterson advised it was not appropriate for Ms. Erickson to substitute in as attorney of record as she would need permission of the Court. Court noted it did not know if the Petition was verified or not as it only had the "D" file, and ORDERED, matter CONTINUED.

NDC

**81C053867**

CONTINUED TO: 3/20/03 9:00 AM SAME MOTIONS

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****March 20, 2003**

81C053867

The State of Nevada vs Samuel Howard

**March 20, 2003****9:00 AM****All Pending Motions**

**ALL PENDING  
MOTIONS FOR  
3/20/03 Court Clerk:  
Billie Jo Craig  
Reporter/Recorder:  
Shirlee Prawalsky  
Heard By: Jackie  
Glass**

**HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Erickson, Patricia M.

Attorney

Peterson, Clark A.

Attorney

Roger, David J.

Attorney

**JOURNAL ENTRIES**

- DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)... STATE'S MOTION TO DISMISS DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

Ms. Erickson advised matter not resolved. Court noted Ms. Erickson is defendant's counsel but was not appointed by the Court. Court noted Ms. Erickson not appointed pro bono and she is donating her time with no compensation. As to verification, Court noted it does not comply with statute. Mr. Erickson advised she was not informed as to that issue and was not prepared to respond. Court directed Ms. Erickson to take care of the verification today and the State to response in 30 days. COURT ORDERED, matter SET for Status Check: Verification of Petition. The two matters on Calendar today to be CONTINUED to the Status Check date with a date to be heard set at that time.  
NDC

**81C053867**

CONTINUED: 4/3/03 9:00 AM SAME MATTERS...STATUS CHECK: VERIFICATION OF  
PETITION

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****April 03, 2003**

81C053867

The State of Nevada vs Samuel Howard

**April 03, 2003****9:00 AM****All Pending Motions****ALL PENDING  
MOTIONS 04/03/03****Court Clerk:****Georgette Byrd****Reporter/Recorder:****Shirlee Prawalsky****Heard By: Joseph****Pavlikowski****HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Erickson, Patricia M.

Attorney

Peterson, Clark A.

Attorney

**JOURNAL ENTRIES**

- STATUS CHECK: VERIFICATION OF PETITION..DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)..STATE'S MOTION TO DISMISS DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

Ms. Erickson stated she filed Defendants petition yesterday and requested a date to respond by to State's Motion to Dismiss. COURT ORDERED, Defendant to respond by June 5, 2003; State advised it does not need a reply date.

NDC

06/12/03 9:00 AM ARGUMENT/DECISION: DEFT PETITION/STATE'S MOTION/STATUS CHECK

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****June 03, 2003**

81C053867

The State of Nevada vs Samuel Howard

**June 03, 2003****9:00 AM****Motion**

**DEFT'S MOTION  
TO EXTEND TIME  
TO FILE AN  
OPPOSITION TO  
STATE'S MTN TO  
DISMISS/18 Court  
Clerk: Georgette  
Byrd  
Reporter/Recorder:  
Shirlee Prawalsky  
Heard By: Jackie  
Glass**

**HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Erickson, Patricia M.

Attorney

Peterson, Clark A.

Attorney

**JOURNAL ENTRIES**

- Ms. Erickson requested an extension. Mr. Peterson argued this is defendants third successive petition for writ which the Stated urged the Court to appoint counsel. The State has written their opposition and object to a continuance to August. Ms. Erickson stated she must find a reason why this Court should not deny defendants petition. Further Ms. Erickson stated she has broken her arm and should not be working at this point per doctors orders. COURT ORDERED, Ms. Erickson will be granted additional time to work on her opposition, however if the opposition is not submitted by August 18, 2003 the case will be dismissed.

NDC



**81C053867**

08/21/03 9:00 AM HEARING: DEFT'S WRIT FOR HABEAS CORPUS

**DISTRICT COURT  
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****August 21, 2003**

81C053867

The State of Nevada vs Samuel Howard

**August 21, 2003****9:00 AM****Show Cause Hearing****HEARING RE:  
PETITION FOR  
WRIT OF HABEAS  
CORPUS Court  
Clerk: Georgette  
Byrd  
Reporter/Recorder:  
Shirlee Prawalsky  
Heard By: Jackie  
Glass****HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**Erickson, Patricia M.  
Peterson, Clark A.Attorney  
Attorney**JOURNAL ENTRIES**

- Ms. Erickson filed Exhibit To Petition Howard/Opposition To State's Motion To Dismiss. Court noted it gave Ms. Erickson until 8/18 to file her opposition. Ms. Erickson stated she filed an Ex Parte Motion for a two day extention and provided a copy to Court and counsel. Arguments by Mr. Peterson. COURT ORDERED, State has until 9/25/03 to file their reply and matter is continued.  
NDC

10/02/03 9:00 AM ARGUMENTS/DECISION: PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT  
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****October 02, 2003**

81C053867

The State of Nevada vs Samuel Howard

**October 02, 2003****9:00 AM****Hearing****ARGUMENT/DECISION: DEFT'S WRIT  
FOR HABEAS  
CORPUS Court  
Clerk: Georgette  
Byrd  
Reporter/Recorder:  
Shirlee Prawalsky  
Heard By: Jackie  
Glass****HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**Erickson, Patricia M.  
Peterson, Clark A.Attorney  
Attorney**JOURNAL ENTRIES**

- Ms. Erickson requested an evidentiary hearing on all counts and submitted on her pleadings. Mr. Peterson stated Deft's Writ is time barred and twice his writ has been denied. Mr. Peterson requested Court to grant State's Motion to Dismiss. COURT ORDERED, Deft's Petition for Writ for Habeas Corpus is DENIED; States's Motion to Dismiss is GRANTED.  
NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****November 06, 2007**

81C053867

The State of Nevada vs Samuel Howard

**November 06, 2007****8:30 AM****All Pending Motions**

**ALL PENDING  
MOTIONS 11/6/07  
Court Clerk: Sandra  
Jeter/sj Relief Clerk:  
Denise Trujillo  
Reporter/Recorder:  
Rachelle Hamilton  
Heard By: Jackie  
Glass**

**HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Becker, Nancy A.

Attorney

**JOURNAL ENTRIES**

- Deft. not present and in custody at the Nevada Department of Corrections.

DEFT.'S MOTION FOR APPOINTMENT OF COUNSEL: Ms. Becker advised the Federal Public Defender was previously appointed. COURT ORDERED, deft.'s motion GRANTED; FEDERAL PUBLIC DEFENDER APPOINTED.

DEFT.'S MOTION TO PROCEED IN FORMA PAUPERIS: COURT ORDERED, motion GRANTED. Court NOTED this was already dismissed in 2003. Ms. Becker requested a Briefing Schedule set on the State's Motion to Dismiss stating this matter went to Federal Court and now deft. is exhausting his remedies. COURT ORDERED, briefing schedule SET as follows: State to file its motion by 2/8/08; deft.'s Response due by 3/7/08 and matter SET for HEARING.

NDC

4/3/08 8:30 AM STATE'S MOTION TO DISMISS ... DEFT.'S PETITION FOR WRIT OF HABEAS CORPUS



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****February 19, 2009**

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81C053867

The State of Nevada vs Samuel Howard

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**February 19, 2009****8:00 AM****All Pending Motions**

**ALL PENDING  
MOTIONS 2-19-09  
Court Clerk: Kristen  
Brown  
Reporter/Recorder:  
Michelle Ramsey  
Heard By: JOSEPH  
BONAVENTURE**

**HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Radovic, Michael

Attorney

**JOURNAL ENTRIES**

- STATE'S MOTION TO DISMISS...PETITION FOR WRIT OF HABEAS CORPUS  
COURT ORDERED, Motions OFF CALENDAR.  
NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****June 18, 2009**

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81C053867

The State of Nevada vs Samuel Howard

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**June 18, 2009****8:00 AM****Motion**

**STATE'S MOTION  
TO DISMISS Court  
Clerk: Kristen Brown  
Relief Clerk: Michele  
Tucker/mlt  
Reporter/Recorder:  
Michelle Ramsey  
Heard By: Villani,  
Michael**

**HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- COURT ORDERED, matter OFF CALENDAR.  
NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****October 29, 2009**

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81C053867

The State of Nevada vs Samuel Howard

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**October 29, 2009****8:00 AM****All Pending Motions**

**ALL PENDING  
MOTIONS 10-29-09  
Court Clerk: Kristen  
Brown  
Reporter/Recorder:  
Michelle Ramsey  
Heard By: Michael  
Villani**

**HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

**JOURNAL ENTRIES**

- STATE'S MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS...DEFT'S PRO PER  
PETITION FOR WRIT OF HABEAS CORPUS

Pursuant to a stipulation by counsel, COURT ORDERED, Motions CONTINUED.

NDC

CONTINUED TO: 11/12/09 8:15 AM



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****November 12, 2009**

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81C053867

The State of Nevada vs Samuel Howard

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**November 12, 2009****8:15 AM****Motion**

**STATE'S MOTION  
TO DISMISS Court  
Clerk: Kristen Brown  
Reporter/Recorder:  
Michelle Ramsey  
Heard By: Villani,  
Michael**

**HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Thomas, Michelle L.

Attorney

**JOURNAL ENTRIES**

- COURT ORDERED, matter CONTINUED to coincide with State's Motion to Dismiss.  
NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****January 28, 2010**

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81C053867

The State of Nevada vs Samuel Howard

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**January 28, 2010****8:15 AM****Motion**

**STATE'S MOTION  
TO DISMISS Relief  
Clerk: Tia Everett/te  
Reporter/Recorder:  
Michelle Ramsey  
Heard By: Villani,  
Michael**

**HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Jeanney, Jacqueline

Attorney

**JOURNAL ENTRIES**

- Court stated he received a note parties stipulate to continue this matter to 2/4/10. COURT SO ORDERED.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****February 04, 2010**

81C053867

The State of Nevada vs Samuel Howard

**February 04, 2010****8:15 AM****All Pending Motions****ALL PENDING  
MOTIONS (02-04-10)  
Court Clerk: Carol  
Donahoo Heard By:  
Michael Villani****HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES  
PRESENT:****JOURNAL ENTRIES**

- DEFT.'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) ... STATE'S MOTION TO DISMISS

Pending before the Court is Defendant s Fourth State Post- Conviction Petition. In 1982, Defendant was convicted of Murder and sentenced to death. His conviction and death sentence was affirmed by the Nevada Supreme Court in 1986. On or about October 28, 1987 Defendant s First State PCR Petition was filed and ultimately denied on February 14, 1989. In 1990 the denial was affirmed by the Nevada Supreme court.

On December 16, 1991, Defendant s second PCR Petition was filed and denied on July 7, 1992. An Appeal of said denial was dismissed by the Nevada Supreme Court on March 19, 1993. Then on December 20, 2002, Defendant filed his Third PCR Petition which was dismissed on October 23, 2003 as it was procedurally barred. The Dismissal was affirmed by the Nevada Supreme Court in 2004. The pending Fourth Petition was filed on October 27, 2007, twenty five years after Defendants conviction. The State has filed a motion to dismiss the present petition based upon procedural bars. NRS 34.810 bars successive Petitions by a Defendant which raise grounds that have previously been denied on the merits or Petitions that raise new or additional grounds. Defendant s Fourth Petition contains issues that were previously addressed and/or issues that should have been brought up over

the last twenty five years. Accordingly, Defendant's Fourth Petition is procedurally barred. See NRS 34.726(1) and NRS 34.810.

The procedural time bar is to be strictly construed as this Court is doing in this case. To overcome the procedural time bar (by establishing good cause), Defendant must show an impediment external to the defense prevented him from complying with the procedural rules. Defendant has not shown good cause for the numerous delays in this case. Further, Defendant has failed to establish that, but for the alleged errors in this case, no reasonable juror would have convicted him or imposed the death penalty. Additionally, actual innocence has not been sufficiently established.

In *McConnell v. State*, 120 Nev. 1043, 102 P.3d 606 (2004), the Court ruled that a felony (robbery) can not be used as grounds for a first degree murder charge as well as an aggravator. Although, the Supreme Court did not make *McConnell* retroactive until 2006, nothing prevented the Defendant from raising the retroactivity issue prior to his most recent Petition. For this reason he is time barred from raising this issue. See NRS 34.726. Even if Defendant is not time barred from presenting this issue until one year subsequent the decision in *Bejarno v. State*, 122 Nev. 1066, 146 P.3d 265 (2006), this Court finds that a jury would find beyond a reasonable doubt the striking of the robbery aggravator would still have lead to a conclusion that the aggravators outweighed the mitigating factors.

The State in opposing the Fourth Petition has alleged Laches for a conviction that occurred over 20 years ago. A Petition filed more than five years from the JOC creates a rebuttable presumption of prejudice to the State. Legal issues in this case are intertwined with factual matters which do create a legitimate prejudice to the State if they had to try to locate witnesses from the 1980 s. Defendant has not submitted sufficient facts or argument to rebut said prejudice. See, NRS 34.800.

Based upon the above, Defendant's Fourth Petition is procedurally barred and is dismissed.

State to prepare Finding of Fact and Conclusions of Law consistent with the court's decision.

CLERK'S NOTE: A copy of this minute order to be placed in the attorney folder of the District Attorney and FAXED to Michael Charlton, Asst Fed PD, and Megan Hoffman, Asst Fed PD.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****October 18, 2016**

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81C053867

The State of Nevada vs Samuel Howard

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**October 18, 2016****8:30 AM****Motion****HEARD BY:** Villani, Michael**COURTROOM:** RJC Courtroom 11A**COURT CLERK:** Natalie Ortega**RECORDER:** Michelle Ramsey**REPORTER:****PARTIES****PRESENT:**

Armeni, Paola M.

Attorney

State of Nevada

Plaintiff

Vanboskerck, Jonathan

Attorney

**JOURNAL ENTRIES**

- Jonah Horowitz, Esq. and Deborah Czuba, Esq., present via telephonic conference.

Deft. not present. Mr. Vanboskerck advised he did not oppose the motion. COURT ORDERED, motion GRANTED. COURT FURTHER ORDERED, State's response due November 22nd, Hearing SET for December 14th. Court noted if a reply brief is filed, to file it with enough time for counsel and Court's review.

NDC

12/14/16 9:30 AM PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****March 17, 2017**

81C053867

The State of Nevada vs Samuel Howard

**March 17, 2017****9:30 AM****All Pending Motions****HEARD BY:** Villani, Michael**COURTROOM:** RJC Courtroom 11A**COURT CLERK:** Olivia Black**RECORDER:** Cynthia Georgilas**REPORTER:****PARTIES****PRESENT:**

Armeni, Paola M.

State of Nevada

Van Boskerck, Jonathan

Plaintiff

Attorney

**JOURNAL ENTRIES**

- Jonah Horwitz, Esq. appearing on behalf of Defendant and Deborah Chuba, Esq. appearing telephonically on behalf of Defendant

DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)...STATE'S MOTION TO STRIKE AMENDED FIFTH PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)

Defendant not present. Arguments by counsel regarding the merits of the Motion. Court stated its findings and ORDERED, Motion GRANTED.

As to Defendant's Petition for Writ of Habeas Corpus (Post Conviction) arguments by counsel regarding the merits of the petition. Mr. Horwitz requested to file a formal opposition to the State's Motion to Dismiss. Upon Court's inquiry, Mr. Van Boskerck advised he believed the Court was in a position to rule today; however, Mr. Van Boskerck submitted to the Court. Court stated it would give Defendant an opportunity to reply to the State's opposition to the Writ. COURT ORDERED, Briefing Schedule SET as follows: Defendant due by 03/27/2017; State's reply due by 04/07/17 and matter SET for Chambers Calendar.

**81C053867**

NDC

04/19/17- DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)  
(CHAMBERS)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****April 19, 2017**

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81C053867

The State of Nevada vs Samuel Howard

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**April 19, 2017****3:00 AM****Petition for Writ of Habeas  
Corpus****HEARD BY:** Villani, Michael**COURTROOM:** RJC Courtroom 11A**COURT CLERK:** Olivia Black**RECORDER:****REPORTER:****PARTIES****PRESENT:**

**JOURNAL ENTRIES**

-

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of the District Attorney and Public Defender.//ob/05/02/17.



**DISTRICT COURT  
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****September 11, 2018**

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81C053867

The State of Nevada vs Samuel Howard

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**September 11, 2018 8:30 AM****All Pending Motions****HEARD BY:** Hardcastle, Kathy**COURTROOM:** RJC Courtroom 11A**COURT CLERK:** Phyllis Irby**RECORDER:** Cynthia Georgilas**REPORTER:****PARTIES****PRESENT:**

Sisolak, Ashley L.

Attorney

State of Nevada

Plaintiff

Vanboskerck, Jonathan

Attorney

**JOURNAL ENTRIES**

- DEFT NOT PRESENT.

DEFENDANT'S MOTION TO ASSOCIATE COUNSEL DEBORAH A. CZUBA....DEFENDANT'S  
MOTION TO ASSOCIATE COUNSEL JONAH J. HORWITZ

Mr. Vanboskerck informed the Court these are two Motions to associate the Federal Public Defender who has already filed a sixth Habeas Petition. Mr. Vanboskerck stated he has no objection to associate the Federal Public Defender and allow them to litigate those issues. COURT ORDERED, MOTIONS GRANTED. The Court directed both parties to contact all other counsel and inform them the Motions have been granted.

NDC

INDICTMENTS RETURNED IN OPEN COURT 5/21/81  
(From Session held Wednesday, 5/20/81)

C53867 H

*Legsner*  
*6-9-81* *7th Dist*  
*B-7C*

SAMUEL HOWARD aka Keith  
80G0127X

Robbery; Murder; and Use of a Deadly Weapon in Commission of a Crime

Justice Court #80F1297X; Warrant activated on that case

- Exhibits:
1. Photo of side of head of Monahan
  2. Photo of black van
  3. Manila envelope addressed to Al Leavitt containing fingerprint cards
  4. LVMPD evidence envelope containing photos of black males
  5. LVMPD evidence envelope containing holster
    - 5A. Holster
    - 5B. Cloth bag
  6. LVMPD evidence envelope containing revolver
    - 6A. Evidence bag containing .357 magnum
    - 6B. Revolver
    - 6C. Envelope
  7. LVMPD evidence envelope containing 7A & 7B
    - 7A. Walkie/talkie
    - 7B. Wallet
  8. Photo of inside van
  9. Photo of inside van and hand
  10. Photo of van and blood on street
-

## PLAINTIFF'S EXHIBITS

CASE NO. C 53867

## OFFERED ADMITTED

1.	Photograph	<input checked="" type="checkbox"/> 4-14 no obj.	<input checked="" type="checkbox"/> 4-14
2.	Photograph	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3.	Photograph	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4.	Photograph	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
5.	Photograph	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
6.	Photograph	<input checked="" type="checkbox"/> 4-14 obj.	<input checked="" type="checkbox"/> 4-14
7.	Photograph	<input checked="" type="checkbox"/> 4-14 obj.	<input type="checkbox"/>
8.	Photograph	<input checked="" type="checkbox"/> 4-14 no obj.	<input checked="" type="checkbox"/> 4-14
9.	Photograph	<input checked="" type="checkbox"/> 4-14 obj.	<input type="checkbox"/>
10.	Photograph	<input checked="" type="checkbox"/> 4-14 no obj.	<input checked="" type="checkbox"/> 4-14
11.	Photograph	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
12.	Photograph	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
13.	Photograph	<input checked="" type="checkbox"/> no obj. 4-18 obj. 4-14	<input checked="" type="checkbox"/> 4-18
14.	Photograph	<input checked="" type="checkbox"/> 4-14 no obj.	<input checked="" type="checkbox"/> 4-14
15.	Photograph	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
16.	Photograph	<input checked="" type="checkbox"/> obj.	<input type="checkbox"/>
17.	Photograph	<input checked="" type="checkbox"/> 4-18 no obj.	<input checked="" type="checkbox"/> 4-18
18.	Photograph	<input checked="" type="checkbox"/> w/d	<input type="checkbox"/>
19.	Photograph	<input checked="" type="checkbox"/> w/d	<input type="checkbox"/>
20.	Photograph	<input checked="" type="checkbox"/> 4-18 no obj.	<input checked="" type="checkbox"/> 4-18
21.	Photograph	<input checked="" type="checkbox"/> 4-18 no obj.	<input checked="" type="checkbox"/> 4-18
22.	Photograph	<input checked="" type="checkbox"/> 4-18 no obj.	<input checked="" type="checkbox"/> 4-18
23.	Photograph	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
24.	Evidence Envelope <u>Badge #24A</u> <u>Radio #24B</u>	<input checked="" type="checkbox"/> 24 24A 24B 24C 24D 24E 24F 24G 24H 24I 24J 24K 24L 24M 24N 24O 24P 24Q 24R 24S 24T 24U 24V 24W 24X 24Y 24Z	<input checked="" type="checkbox"/> 24 24A 24B 24C 24D 24E 24F 24G 24H 24I 24J 24K 24L 24M 24N 24O 24P 24Q 24R 24S 24T 24U 24V 24W 24X 24Y 24Z
25.	Evidence Envelope <u>Notar #25A</u> <u>Chth. #25B</u>	<input checked="" type="checkbox"/> 25 25A 25B 25C 25D 25E 25F 25G 25H 25I 25J 25K 25L 25M 25N 25O 25P 25Q 25R 25S 25T 25U 25V 25W 25X 25Y 25Z	<input checked="" type="checkbox"/> 25 25A 25B 25C 25D 25E 25F 25G 25H 25I 25J 25K 25L 25M 25N 25O 25P 25Q 25R 25S 25T 25U 25V 25W 25X 25Y 25Z

## PLAINTIFF'S EXHIBITS

SE NO. C53867

OFFERED ADMITTED

26. Evidence Envelope <sup>26A-21</sup> - Lineup Photos ☒ <sup>26</sup> no obj ☒ 4-20
27. Latent prints from Van <sup>do not have</sup> ☐ ☐
28. Latent prints from Olds Cutlass <sup>28A</sup> ☒ <sup>28</sup> no obj ☒ <sup>28</sup> 4-20
29. Exemplar Prints obtained by Block ☒ <sup>4-21</sup> no obj ☒ 4-21
30. 3 Exemplars obtained by Trussowski <sup>do not have</sup> ☐ ☐
31. Evidence Bag <sup>31A Small Evidence Bag</sup> ☒ <sup>31-B</sup> no obj ☒ <sup>31-B</sup> 4-21
32. Evidence Envelope <sup>32A Vial + Projectile</sup> ☒ <sup>32</sup> no obj ☒ <sup>32</sup> 4-18
33. Evidence Envelope <sup>33A Vial & Contents</sup> ☐ ☐
34. Evidence Envelope <sup>34A Bullets</sup> ☒ <sup>34</sup> no obj ☒ <sup>34</sup> 4-21
35. Evidence Envelope & Contents <sup>35A</sup> ☒ <sup>35B</sup> no obj ☒ <sup>35</sup> 4-18
36. Impound Report <sup>37A Analysis Kit</sup> ☒ ☒ 4-18
37. Evidence Envelope ☐ ☐
38. Sears, Roebuck Credit Check ☒ <sup>obj</sup> ☒ 4-13
39. Motel Receipts ☐ ☐
40. Evidence Envelope <sup>40A Bracelet</sup> ☒ <sup>4-13</sup> no obj ☒ 4-13
41. Evidence Bag and Contents <sup>41A</sup> ☒ <sup>41B</sup> no obj ☒ <sup>41A</sup> 4-13
42. Evidence Envelope & Contents ☐ ☐
43. Evidence Envelope <sup>43A Consent Form</sup> ☐ ☐
44. Evidence Bag & Contents <sup>44A Jacket</sup> ☒ <sup>44B</sup> no obj ☒ <sup>44A</sup> 4-13
45. Evidence Envelope <sup>45A</sup> ☒ <sup>45B</sup> no obj ☒ <sup>45A</sup> 4-13
46. Evidence Bag & Contents ☐ ☐
47. Drawing by Mr. Kimsey ☒ <sup>4-21</sup> no obj ☒ 4-21
48. Drawing by Mr. Kimsey ☒ ☒ 4-1
49. N.C. I.C. Report <sup>no to be heard in hearing outside presence of jury</sup> ☒ <sup>4-13</sup> no obj ☒ 4-1
50. P. Turc - Van ☒ <sup>4-18</sup> no obj ☒ 4-1

PLAINTIFF'S EXHIBITS

ASE NO. C53867

OFFERED ADMITTED

51.	<u>Pictures</u>	<input checked="" type="checkbox"/>	4-18 Moby	<input checked="" type="checkbox"/>	4-18
52.	<u>Picture</u>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
53.	<u>Picture</u>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
54.	<u>Picture</u>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
55.	<u>drawing by Mr Morahan</u>	<input checked="" type="checkbox"/>	4-21	<input checked="" type="checkbox"/>	4-21
56.	<u>Inventory - Coroner</u>	<input checked="" type="checkbox"/>	4-14 moby	<input checked="" type="checkbox"/>	4-14
57.	<u>Latent fingerprint Card</u>	<input checked="" type="checkbox"/>	4-21 moby	<input checked="" type="checkbox"/>	4-21
58.	<u>Fingerprint exemplars</u>	<input checked="" type="checkbox"/>	4-21 moby	<input checked="" type="checkbox"/>	4-21
59.	<u>Security activity Log</u>	<input checked="" type="checkbox"/>	4-18 obj	<input type="checkbox"/>	
60.	<u>Picture</u>	<input checked="" type="checkbox"/>	4-19 moby	<input checked="" type="checkbox"/>	4-19
61.	<u>Picture</u>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
62.	<u>Picture</u>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
63.	<u>Picture</u>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
64.	<u>Latent Print</u>	<input checked="" type="checkbox"/>	4-21 moby	<input checked="" type="checkbox"/>	4-21
65.	<u>Photo Line Up</u>	<input checked="" type="checkbox"/>	4-21 moby	<input checked="" type="checkbox"/>	4-21
66.	<u>Pictures</u>	<input type="checkbox"/>		<input type="checkbox"/>	
67.	<u>Handwriting sample</u>	<input checked="" type="checkbox"/>	4-22 moby	<input checked="" type="checkbox"/>	4-22
68.	<u>Receipts</u>	<input checked="" type="checkbox"/>	4-22 moby	<input checked="" type="checkbox"/>	4-22
69.	<u>Certified Copy of Minutes</u>	<input checked="" type="checkbox"/>	5-2 obj	<input checked="" type="checkbox"/>	5-2
70.	<u>Certified Copy of Fingerprint Photograph</u>	<input type="checkbox"/>		<input type="checkbox"/>	
71.		<input type="checkbox"/>		<input type="checkbox"/>	
72.		<input type="checkbox"/>		<input type="checkbox"/>	
73.		<input type="checkbox"/>		<input type="checkbox"/>	
74.		<input type="checkbox"/>		<input type="checkbox"/>	
75.		<input type="checkbox"/>		<input type="checkbox"/>	

**DEFENDANT'S EXHIBITS:**

CASE NO. 254867

	OFFERED	ADMITTED
D. <u>Letter (bearing mother's name) dated 10/10/60</u>	<input checked="" type="checkbox"/> 10-19	<input checked="" type="checkbox"/> 10-19
E. <u>Letter (bearing mother's name) dated 10/10/60</u>	<input checked="" type="checkbox"/> 10-19	<input checked="" type="checkbox"/> 10-19
F. <u>Registration Card</u>	<input checked="" type="checkbox"/> 10-21	<input checked="" type="checkbox"/> 10-21
G. <u>4 Copies of Proof regarding Deft's father Marbury</u>	<input type="checkbox"/> 10-21	<input type="checkbox"/> 10-21
H. <u>his mother + date</u>	<input type="checkbox"/> 10-21	<input type="checkbox"/> 10-21
I. _____	<input type="checkbox"/>	<input type="checkbox"/>
J. _____	<input type="checkbox"/>	<input type="checkbox"/>
K. _____	<input type="checkbox"/>	<input type="checkbox"/>
L. _____	<input type="checkbox"/>	<input type="checkbox"/>
M. _____	<input type="checkbox"/>	<input type="checkbox"/>
N. _____	<input type="checkbox"/>	<input type="checkbox"/>
O. _____	<input type="checkbox"/>	<input type="checkbox"/>
P. _____	<input type="checkbox"/>	<input type="checkbox"/>
Q. _____	<input type="checkbox"/>	<input type="checkbox"/>
R. _____	<input type="checkbox"/>	<input type="checkbox"/>
S. _____	<input type="checkbox"/>	<input type="checkbox"/>
T. _____	<input type="checkbox"/>	<input type="checkbox"/>
U. _____	<input type="checkbox"/>	<input type="checkbox"/>
V. _____	<input type="checkbox"/>	<input type="checkbox"/>
W. _____	<input type="checkbox"/>	<input type="checkbox"/>
X. _____	<input type="checkbox"/>	<input type="checkbox"/>
Y. _____	<input type="checkbox"/>	<input type="checkbox"/>
Z. _____	<input type="checkbox"/>	<input type="checkbox"/>

*Courts*  
**PLAINTIFF'S EXHIBITS**

*not to go to J. J.*

CASE NO. 053867

**OFFERED ADMITTED**

- |  |                                     |             |                                     |             |
|--|-------------------------------------|-------------|-------------------------------------|-------------|
| 1. <u>Letter from Defendant dated April 17, 1983</u> | <input checked="" type="checkbox"/> | <u>4-18</u> | <input checked="" type="checkbox"/> | <u>4-18</u> |
| 2. <u>Form - Teletype in re marriage and divorce</u> | <input checked="" type="checkbox"/> | <u>4-19</u> | <input checked="" type="checkbox"/> | <u>4-20</u> |
| 3. <u>Marriage Certificate</u>                       | <input checked="" type="checkbox"/> | <u>4-21</u> | <input checked="" type="checkbox"/> | <u>4-21</u> |
| 4. <u>Divorce Decree</u>                             | <input checked="" type="checkbox"/> | <u>1</u>    | <input checked="" type="checkbox"/> | <u>4-21</u> |
| 5. <u>Statement.</u>                                 | <input checked="" type="checkbox"/> | <u>5/2</u>  | <input checked="" type="checkbox"/> | <u>5/2</u>  |
| 6. <u>Copy of Penal Law 160.10</u>                   | <input checked="" type="checkbox"/> | <u>5/3</u>  | <input checked="" type="checkbox"/> | <u>5/3</u>  |
| 7. _____   | <input type="checkbox"/>            |             | <input type="checkbox"/>            |             |
| 8. _____   | <input type="checkbox"/>            |             | <input type="checkbox"/>            |             |
| 9. _____   | <input type="checkbox"/>            |             | <input type="checkbox"/>            |             |
| 10. _____  | <input type="checkbox"/>            |             | <input type="checkbox"/>            |             |
| 11. _____  | <input type="checkbox"/>            |             | <input type="checkbox"/>            |             |
| 12. _____  | <input type="checkbox"/>            |             | <input type="checkbox"/>            |             |
| 13. _____  | <input type="checkbox"/>            |             | <input type="checkbox"/>            |             |
| 14. _____  | <input type="checkbox"/>            |             | <input type="checkbox"/>            |             |
| 15. _____  | <input type="checkbox"/>            |             | <input type="checkbox"/>            |             |
| 16. _____  | <input type="checkbox"/>            |             | <input type="checkbox"/>            |             |
| 17. _____  | <input type="checkbox"/>            |             | <input type="checkbox"/>            |             |
| 18. _____  | <input type="checkbox"/>            |             | <input type="checkbox"/>            |             |
| 19. _____  | <input type="checkbox"/>            |             | <input type="checkbox"/>            |             |
| 20. _____  | <input type="checkbox"/>            |             | <input type="checkbox"/>            |             |
| 21. _____  | <input type="checkbox"/>            |             | <input type="checkbox"/>            |             |
| 22. _____  | <input type="checkbox"/>            |             | <input type="checkbox"/>            |             |
| 23. _____  | <input type="checkbox"/>            |             | <input type="checkbox"/>            |             |
| 24. _____  | <input type="checkbox"/>            |             | <input type="checkbox"/>            |             |
| 25. _____  | <input type="checkbox"/>            |             | <input type="checkbox"/>            |             |

MISSING EVIDENCE VERIFICATION SHEET

Case Number: C53867 Case Name: Howard

Missing Exhibits: # 64 Latent prints  
# 69 certified copy of minutes  
# 70 certified copy of memorandum  
# 64 is a sm chart  
# 70 had a note saying it hadn't been proposed list is  
consistent w/that  
# 69 appears to be there but may have been prop 1 sticker  
is missing on item.

Date of Verification: DEC 10 2004

Verified By: MELINDA OETTINGER

Signature: M Oettinger

Research Completion Date: 4/30/07

Research Completed By: Jessica Coleman

☐ Review of computer programs

☐ Review of File/Film/Transcript

☒ Other: Looked at items during viewing uppt.

SHEET TO REMAIN WITH EVIDENCE



MISSING EVIDENCE VERIFICATION SHEET

Case Number: C53867 Case Name: Howard

Missing Exhibits: # 64 Latent prints  
# 69 certified copy of minutes  
# 70 certified copy of monument

Date of Verification: DEC 10 2004

MELINDA OETTINGER

Verified By: \_\_\_\_\_

Signature: M Oettinger

Research Completion Date: \_\_\_\_\_

Research Completed By: \_\_\_\_\_

☐ Review of computer programs

☐ Review of File/Film/Transcript

☐ Other: \_\_\_\_\_

SHEET TO REMAIN WITH EVIDENCE

# 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; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING  
SIXTH PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION); NOTICE OF ENTRY  
OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT MINUTES;  
EXHIBITS LIST

STATE OF NEVADA,

Plaintiff(s),

vs.

SAMUEL HOWARD aka KEITH,

Defendant(s).

Case No: 81C053867

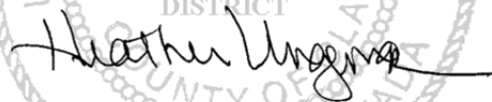
Dept No: XVII

**Death Penalty**

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 2 day of June 2020.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk