

# IN THE SUPREME COURT OF THE STATE OF NEVADA

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

WILLIE TERRY CARTER,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Case No: A-19-804110-W

Docket No: 80631  
*Consolidated with 80630*

# RECORD ON APPEAL

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

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

A-19-804110-W

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

I N D E X

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

FILED

OCT 17 2019

*Alma Johnson*  
CLERK OF COURT

District Court  
Clark County, Nevada

A-19-804110-W  
Dept. XVIII

7 Willie Terry Carter #1114323  
8 Petitioner/Plaintiff

9 vs =

10

11 The State of Nevada  
12 Respondant/Defendant

13

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

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

22

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

28

29

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CLERK OF THE COURT

Respectfully submitted  
X Willie Carter

(pg 1)

# Statement of Facts

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

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

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(Pg 2)

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5 Points And Authorities

6 Legal Argument

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

11  
12 Petitioner/Plaintiff Willie Terry Carter claims  
13 that The State of Nevada illegally applied a  
14 Weapons Enhancement NRS 193.165 to his sentence.  
15 NRS.193.165(4) clearly states the following:  
16 (NRS 193.165(4) The provisions of subsections  
17 1, 2 and 3 do not apply where the use of a  
18 firearm or other deadly weapon or tear gas  
19 "is a necessary element of such crime.") Based  
20 on NRS 193.165(4) Willie Terry Carter was clearly  
21 a victim of an error made by The State of  
22 Nevada, which ultimately led to him being  
23 illegally sentenced and forced to endure a  
24 harsh penalty that goes against the plain  
25 language of NRS 193.165(4).

26 Petitioner/Plaintiff Willie Terry Carter was  
27 found guilty of Robbery with the use of a  
28 Deadly Weapon (Category B Felony) NRS 200.080,  
(pg 3)

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

17 //

18 //

19 II. Conclusion

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

25 "Dated this 13<sup>th</sup> day of October 2019"

26 Respectfully Submitted

27 Willie Carter = Willie Terry Carter

28 Petitioner/Plaintiff

(pg 4)

1 Certificate of Service by Mailing

2

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

10

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

14

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

18

19 "CC: File

20

21 Dated this 13<sup>th</sup> Day of October, 2019

22

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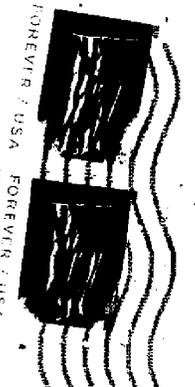
Willie Carter  
Willie Terry Carter #1114323  
Plaintiff / In Propria Personam  
Post Office Box 208 (SDCC)  
Indian Springs, NV 89070  
IN FORMA PAUPERIS

(pg 5)

WILLIE CARTER #1114323  
SDCC  
PO Box 208  
Indians Springs, NV  
89070

LAS VEGAS NV 890

15 OCT 2019 PM 5 L



Clerk of the Court  
200 LEWIS AVE.  
Las Vegas, NV 89115

99101-690000



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**FILED**

OCT 29 2019

*Alma Williams*  
CLERK OF COURT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Willie Terry Carter,  
Petitioner,  
vs.  
State of Nevada,  
Respondent,

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

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

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on October 17, 2019. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore.

**IT IS HEREBY ORDERED** that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

**IT IS HEREBY FURTHER ORDERED** that this matter shall be placed on this Court's Calendar on the 19 day of December, 2019, at the hour of 9:00 o'clock for further proceedings.

*Mary Kay Hattus*  
District Court Judge *re*

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



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OCT 29 2019

CLERK OF THE COURT



1 **OPPM**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JOHN NIMAN  
6 Deputy District Attorney  
7 Nevada Bar #14408  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10  
11 Plaintiff,  
12  
13 -vs-  
14 WILLIE TERRY CARTER  
#5181937  
15 Defendant.

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

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

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

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

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

25 //  
26 //  
27 //  
28 //

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

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

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

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

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

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

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

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

### 12 STATEMENT OF THE FACTS

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

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

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

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

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

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

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

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

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

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

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

## 22 ARGUMENT

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

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

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

The one-year limit for preparing petitions for post-conviction relief under NRS 34.726  
is strictly applied. In Gonzalez v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002), the  
Nevada Supreme Court rejected a habeas petition that was filed two days late despite evidence

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

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

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

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

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

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

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

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

## 11 II. DEFENDANT’S SENTENCE IS NOT ILLEGAL

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

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

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

27 //

28 //

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

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

10 NRS 193.165(4) provides:

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

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

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

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

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

27 //

28 //

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

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

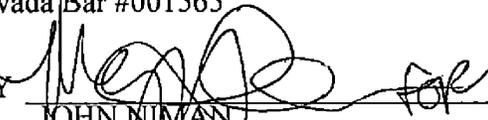
6 **CONCLUSION**

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

9 DATED this 3 day of December, 2019.

10 Respectfully submitted,

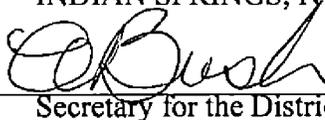
11 STEVEN B. WOLFSON  
12 Clark County District Attorney  
13 Nevada Bar #001565

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

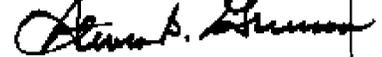
18 **CERTIFICATE OF MAILING**

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

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

25 BY   
26 Secretary for the District Attorney's Office

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



1 FCL  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JOHN NIMAN  
6 Deputy District Attorney  
7 Nevada Bar #14408  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 WILLIE TERRY CARTER  
13 #1114323  
14 Defendant.

CASE NO: A-19-804110-W

C-13-292507-2

DEPT NO: XVIII

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

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

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

25 //  
26 //  
27 //  
28 //

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

2 **STATEMENT OF THE CASE**

3 On September 11, 2013, Willie Terry Carter (hereinafter "Defendant") was indicted by  
4 the Grand Jury with the crimes of: one count Conspiracy To Commit Robbery (Category B  
5 Felony- NRS 199.480, 200.380); one count Robbery With Use of a Deadly Weapon (Category  
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9 that a response would assist the Court in determining whether Petitioner is illegally  
10 imprisoned. The Court ordered the State respond to Defendant's Petition. The State's response  
11 now follows.

#### 12 STATEMENT OF THE FACTS

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

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

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

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

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

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

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

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

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

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

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

19 **AUTHORITY**

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

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

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

The one-year limit for preparing petitions for post-conviction relief under NRS 34.726  
is strictly applied. In Gonzalez v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002), the  
Nevada Supreme Court rejected a habeas petition that was filed two days late despite evidence

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

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

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

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

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

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

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

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

## 11 II. DEFENDANT’S SENTENCE IS NOT ILLEGAL

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

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

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

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

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

9 NRS 193.165(4) provides:

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

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

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

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

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

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

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

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

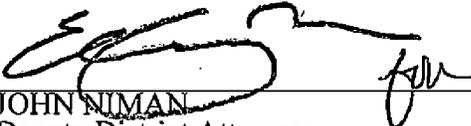
3 **ORDER**

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

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

8   
9 DISTRICT JUDGE

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

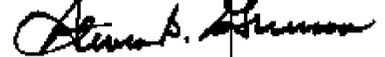
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17 **CERTIFICATE OF MAILING**

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

24 BY   
25 E. DEL PADRE  
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NEO

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

WILLIE CARTER,

Petitioner,

vs.

STATE OF NEVADA,

Respondent,

Case No: A-19-804110-W

Dept No: XVIII

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

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

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 January 15, 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 15 day of January 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-

The United States mail addressed as follows:  
Willie Carter # 1114323  
P.O. Box 208  
Indian Springs, NV 89070

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk



1 FCL  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
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CASE NO: A-19-804110-W

C-13-292507-2

DEPT NO: XVIII

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

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

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

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

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

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

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

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

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

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

#### 19 AUTHORITY

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

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

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

The one-year limit for preparing petitions for post-conviction relief under NRS 34.726  
is strictly applied. In Gonzalez v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002), the  
Nevada Supreme Court rejected a habeas petition that was filed two days late despite evidence

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

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

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

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

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

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

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

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

## 11 II. DEFENDANT’S SENTENCE IS NOT ILLEGAL

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

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

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

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

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

9 NRS 193.165(4) provides:

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

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

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

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

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

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

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

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

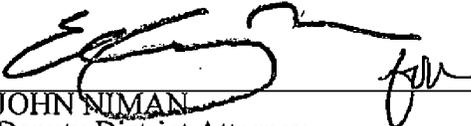
3 **ORDER**

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

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

8   
9 \_\_\_\_\_  
DISTRICT JUDGE

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

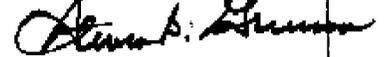
13 BY   
14 JOHN NIMAN  
15 Deputy District Attorney  
16 Nevada Bar #14408

17 **CERTIFICATE OF MAILING**

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

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

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



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

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,  
11 Plaintiff,

12 -vs-

13 WILLIE TERRY CARTER,  
14 #5181937

15 Defendant.

CASE NO: A-19-804110-W

DEPT NO: XVIII

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

18 DATE OF HEARING: January 09, 2020  
19 TIME OF HEARING: 09:00 A.M.

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

24 ///

25 ///

26 ///

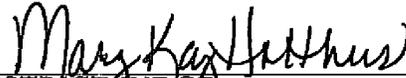
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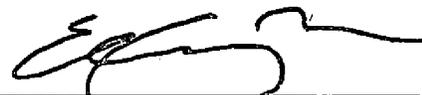
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1 IT IS HEREBY ORDERED that the Defendant's Motion to Correct Illegal Sentence,  
2 shall be, and it is DENIED. The Motion had already been ruled upon and denied for the same  
3 reason.

4 DATED this 30 day of January, 2020.

5   
6 DISTRICT JUDGE *MD*

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

10 BY   
11 WILLIAM L. MERBACK  
12 Chief Deputy District Attorney  
13 Nevada Bar #009126

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28 13F13793B/jh/GCU

*Steven D. Grierson*

1 Willie Carter #1114323  
2 In Propria Personam  
3 Post Office Box 208, S.D.C.C.  
4 Indian Springs, Nevada 89018

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

9 Willie Carter  
10 Plaintiff,  
11 vs.  
12 the State of Nevada  
13 Defendant.

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

16 **NOTICE OF APPEAL**

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

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

24 \_\_\_\_\_  
25 Dated this 11th day of February, 2020

26 Respectfully Submitted,  
27 Willie Carter, Willie Carter  
28 \_\_\_\_\_

RECEIVED  
FEB 18 2020

CLERK OF THE COURT

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**CERTIFICATE OF SERVICE BY MAILING**

I, Willie Carter, hereby certify, pursuant to NRCP 5(b), that on this 11  
day of February, 2020, I mailed a true and correct copy of the foregoing, "Notice  
of Appeal for Habeas Corpus"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

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

\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_

CC:FILE

DATED: this 11 day of February, 2020.

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

**AFFIRMATION**  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

Habeas Corpus!  
(Title of Document)

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

Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-OR-

B. For the administration of a public program or for an application for a federal or state grant.

Willie Carter  
Signature

2/11/20  
Date

Willie Carter  
Print Name

\_\_\_\_\_  
Title

## I. Defendant Was Subject Of Ineffective Counsel

1  
2 Defendant filed petition of Habeas Corpus to make the  
3 court aware of the illegal application of a weapons  
4 enhancement to his sentence. Defendant did not file  
5 petition of Habeas Corpus to prove innocence for the  
6 crimes he was convicted of. Ineffective Counsel was  
7 a major factor in the defendant being illegally  
8 sentenced as his court appointed attorney never  
9 argued NRS193.165. Indeed, defendant is procedurally  
10 time barred from filing a Habeas Corpus, but he  
11 failed to file because of ineffective counsel on  
12 part of his court appointed Attorney Anthony  
13 Goldstein. Defendants attorney seemed oblivious  
14 to the nuances of NRS193.165, because he never  
15 argued about the illegal application of the  
16 weapons enhancement being applied to the sentence  
17 of the defendant. Based on the existence of  
18 ineffective counsel this petition for Habeas Corpus  
19 should prove worthy of being dissected in court  
20 regardless of procedural time bar.

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## II. Defendant Was Illegally Sentenced

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

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

10 Furthermore NRS 193.165(5) states:

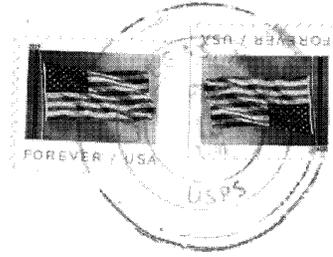
11 The court shall not grant probation to or suspend the  
12 sentence of any person who is convicted of using a  
13 firearm, other deadly weapon or tear gas in the  
14 commission of any of the following crimes:

- 15 (a) murder
- 16 (b) kidnapping in first degree
- 17 (c) sexual assault or
- 18 (d) robbery

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

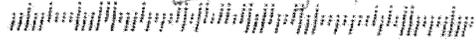
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Willie Carter #1114323  
SDCC  
PO Box 208  
Indian Springs, NV  
89070



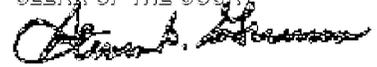
Clerk of the Court  
200 Lewis Ave  
Las Vegas, NV 89155

8910186300 0075



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

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



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

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

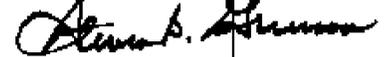
A-19-804110-W  
CASE No. C-13-292507-2  
DEPT.No. XVIII

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

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

DATED this 11 day of February, 2020.

RESPECTFULLY SUBMITTED BY:  
Willie Carter  
Willie Carter # 1114323  
Plaintiff/In Propria Persona



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**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF CLARK**

7

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9

WILLIE TERRY CARTER,

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Plaintiff(s),

11

12

vs.

13

THE STATE OF NEVADA,

14

Defendant(s),

15

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17

**CASE APPEAL STATEMENT**

18

1. Appellant(s): Willie Carter

19

2. Judge: Mary Kay Holthus

20

3. Appellant(s): Willie Carter

21

Counsel:

22

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

23

24

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4. Respondent (s): The State of Nevada

26

Counsel:

27

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

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- 5. Appellant(s)'s Attorney Licensed in Nevada: N/A  
Permission Granted: N/A
- Respondent(s)'s Attorney Licensed in Nevada: Yes  
Permission Granted: N/A
- 6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No
- 7. Appellant Represented by Appointed Counsel On Appeal: N/A
- 8. Appellant Granted Leave to Proceed in Forma Pauperis\*\*: N/A  
*\*\*Expires 1 year from date filed*  
Appellant Filed Application to Proceed in Forma Pauperis: No  
Date Application(s) filed: N/A
- 9. Date Commenced in District Court: October 17, 2019
- 10. Brief Description of the Nature of the Action: Civil Writ  
Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus
- 11. Previous Appeal: No  
Supreme Court Docket Number(s): N/A
- 12. Child Custody or Visitation: N/A
- 13. Possibility of Settlement: Unknown

Dated This 19 day of February 2020.

Steven D. Grierson, Clerk of the Court

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

cc: Willie Carter

DISTRICT COURT  
CLARK COUNTY, NEVADA

**Writ of Habeas Corpus**

**COURT MINUTES**

**December 19, 2019**

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

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

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

**COURT CLERK:** Dara Yorke

**RECORDER:** Yvette G. Sison

**REPORTER:**

**PARTIES**

**PRESENT:** Thomson, Megan      Attorney

**JOURNAL ENTRIES**

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

# Certification of Copy and Transmittal of Record

State of Nevada }  
County of Clark } SS:

Pursuant to the Supreme Court order dated March 13, 2020, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 48.

WILLIE TERRY CARTER,

Plaintiff(s),

vs.

THE STATE OF NEVADA,

Defendant(s),

Case No: A-19-804110-W

Dept. No: XVIII

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 18 day of March 2020.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk

