

NOTC

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Jeffrey Brown

Electronically Filed
Aug 19 2020 08:41 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

vs.

JEFFREY BROWN, aka
Jeffrey Kent Brown, #3074249 ,

Defendant.

Case No. A-19-793350-W

Dept No. XII

NOTICE OF APPEAL

Notice is hereby given that JEFFREY BROWN, defendant above named, hereby appeals to the Supreme Court of Nevada from the Findings of Facts, Conclusions of Law entered in this action on the 30 th day of July, 2020.

DATED this 13th of August, 2020.

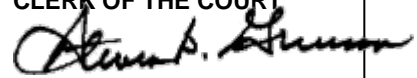
LAW OFFICE OF JEANNIE HUA

By /s/ Jeannie N. Hua
JEANNIE N. HUA, ESQ.
Nevada Bar No. 5672
Attorney for Defendant
Jeffrey Brown

CERTIFICATE OF SERVICE

I, Jeannie Hua hereby affirm that I serviced a copy of the Notice of Appeal via electronic transmission to –

Alexander Chen
Chief Deputy District Attorney
Alexander.chen@clarkcountyda.com



ASTA
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Attorney for Defendant
Jeffrey Brown

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,
Plaintiff,

vs.

JEFFREY BROWN ,
aka JEFFREY KENT BROWN
Defendant.

Case No. A-19-79335--W

Dept. No. XII

CASE APPEAL STATEMENT

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

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

Michelle Leavitt.

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

JEANNIE N. HUA, ESQ.
Painted Mirage Road., Ste. 320
Las Vegas, Nevada 89149

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

STEVEN B. WOLFSON, ESQ.
Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155-2212

///

5. Indicate whether any attorney identified above in response to question 3 or 4 is not

1 licensed to practice law in Nevada and, if so, whether the district court granted that attorney
2 permission to appear under SCR 42 (attach a copy of any district court order granting such
3 permission): **Not applicable.**

4 6. Indicate whether appellant was represented by appointed or retained counsel in the
5 district court: **Appointed counsel.**

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

8 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the
9 date of entry of the district court order granting such leave: **Motion for Appointment of**
10 **Counsel was granted on June 18, 2019.**

11 9. Indicate the date the proceedings commenced in the district court (e.g., date
12 complaint, indictment, information, or petition was filed): **April 11, 2019.**

13 10. Provide a brief description of the nature of the action and result in the district court,
14 including the type of judgment or order being appealed and the relief granted by the district
15 court:

16 **Grand jury indicted Defendant with Aggravated Stalking (Category B felony –**
17 **NRS 200.575 – NOC 50333); two counts of Attempted Murder with Use of a Deadly**
18 **Weapon (Category B Felony – NRS 200.010, 200.030, 193.330, 193 – NOC 50021);**
19 **Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm**
20 **Constituting Domestic Violence (Category B Felony – NRS 200.481; 200.485; 33.018 –**
21 **NOC 57936); Battery with Use of a Deadly Weapon Resulting in Substantial Bodily**
22 **Harm (Category B Felony – NRS 200.481 – NOC 50226); Assault with a Deadly Weapon**
23 **(Category B Felony – NRS 200.481 – NOC 50226); Assault with a Deadly Weapon**
24 **(Category B Felony – NRS 200.471 – NOC 50201); Child Abuse, Neglect, or**
25 **Endangerment with Use of a Deadly Weapon (Category B Felony – NRS 200.508,**
26 **193.165 – NOC 55228); and two counts of Discharge of Firearm from or within a**
27 **Structure or Vehicle (Category B Felony – NRS 202.287 – NOC 51445). Defendant pled**
28 **guilty to one count of Attempt Murder with Use of a Deadly Weapon and one count of**

1 **Assault with a Deadly Weapon on January 17, 2028. Judgment of Conviction was filed**
2 **on July 2, 2018. For Count One, Trial Court sentenced Defendant to a maximum of**
3 **twenty years with a minimum parole eligibility of eight years for Attempt Murder, plus**
4 **a consecutive term of twenty years with a minimum parole eligibility of eight years for**
5 **the Use of a Deadly Weapon; and for Count Two, a maximum of seventy-two months**
6 **with a minimum parole eligibility of sixteen months for Assault with Use of Deadly**
7 **Weapon, concurrent with Count One.**

8 **Defendant filed a Pro Per Petition for Writ of Habeas Corpus on April 11,**
9 **2019. Counsel for Defendant filed a Supplement to Petitioner's Post Conviction Writ**
10 **of Habeas Corpus on October 7, 2019. State filed a response on January 15, 2020.**
11 **Reply was filed on February 10, 2020. Trial Court denied Defendant's Writ. Notice of**
12 **Entry of Findings of Facts and Conclusions of Law and Order was filed on August 3,**
13 **2020.**

14 11. Indicate whether the case has previously been the subject of an appeal to or original
15 writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket
16 number of the prior proceeding: **None.**

17 12. Indicate whether this appeal involves child custody or visitation: **No.**

18 13. If this is a civil case, indicate whether this appeal involves the possibility of
19 settlement: **Not applicable.**

20 DATED this 13th day of August, 2020.

21 Law Office of Jeannie N. Hua

22
23 By /s/ Jeannie N. Hua
24 JEANNIE N. HUA, ESQ.
25 Nevada Bar No. 5672
26 Attorney for Defendant
27 Jeffrey Brown
28

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Chief Deputy District Attorney Alexander Chen
alexander.chen@clarkcountynyda.com

- 4 -

CASE SUMMARY

CASE NO. A-19-793350-W

Jeffrey Brown, Plaintiff(s)

vs.

Isidro Baca, Warden, Defendant(s)

§
§
§
§
§

Location: **Department 12**
 Judicial Officer: **Leavitt, Michelle**
 Filed on: **04/11/2019**
 Cross-Reference Case Number: **A793350**

CASE INFORMATION

Related Cases

C-16-318858-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus****Statistical Closures**

08/10/2020 Other Manner of Disposition

Case Status: **08/10/2020 Closed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-19-793350-W
 Court Department 12
 Date Assigned 04/11/2019
 Judicial Officer Leavitt, Michelle

PARTY INFORMATION

Plaintiff **Brown, Jeffrey***Lead Attorneys***Hua, Jeannie N***Retained*

702-589-7540(W)

Defendant **Isidro Baca, Warden****Wolfson, Steven B***Retained*

702-455-5320(W)


DATE

EVENTS & ORDERS OF THE COURT


INDEX

EVENTS


04/11/2019

 Inmate Filed - Petition for Writ of Habeas Corpus
 Party: Plaintiff Brown, Jeffrey
Post Conviction


04/11/2019

 Motion for Appointment of Attorney
 Filed By: Plaintiff Brown, Jeffrey


04/11/2019

 Application to Proceed in Forma Pauperis
 Filed By: Plaintiff Brown, Jeffrey


04/26/2019

 Order for Petition for Writ of Habeas Corpus
Order for Petition for Writ of Habeas Corpus


05/01/2019

 Motion
 Filed By: Plaintiff Brown, Jeffrey
Motion to Revisit Petitioner's Motion for Transcripts at State's Expense by Consideration of the Supplemental




05/08/2019

 Clerk's Notice of Hearing
Notice of Hearing

CASE SUMMARY
CASE NO. A-19-793350-W

05/10/2019	 Amended Petition Filed By: Plaintiff Brown, Jeffrey <i>Amended Petition for Writ of Habeas Corpus</i>
06/04/2019	 Response Filed by: Defendant Isidro Baca, Warden <i>State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction), Request for Evidentiary Hearing, and Motion for Appointment of Counsel</i>
06/11/2019	 Request Filed by: Plaintiff Brown, Jeffrey <i>Request for Submission of Petitioner's Motion for Appointment of Counsel</i>
10/07/2019	 Supplement <i>Supplement to Petitioner's Post Conviction Writ of Habeas Corpus</i>
01/16/2020	 Response Filed by: Plaintiff Brown, Jeffrey <i>State's Response to Defendant's Supplemental Petition for Writ of Habeas Corpus</i>
02/10/2020	 Reply Filed by: Plaintiff Brown, Jeffrey <i>Reply to State's Response to Petitioner's Supplemental Petition for Writ of Habeas Corpus</i>
07/30/2020	 Findings of Fact, Conclusions of Law and Order Filed By: Plaintiff Brown, Jeffrey
08/03/2020	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Defendant Isidro Baca, Warden <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
08/10/2020	 Order to Statistically Close Case <i>CIVIL ORDER TO STATISTICALLY CLOSE CASE</i>
08/13/2020	 Notice of Appeal (criminal) Party: Plaintiff Brown, Jeffrey <i>Notice of Appeal</i>
08/13/2020	 Case Appeal Statement Filed By: Plaintiff Brown, Jeffrey <i>Case Appeal Statement</i>
<u>HEARINGS</u>	
06/13/2019	Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer: Leavitt, Michelle) 06/13/2019, 06/18/2019, 08/08/2019, 12/12/2019, 02/13/2020 Matter Continued; Matter Continued; Matter Continued; Matter Continued; Matter Continued; Matter Continued; Matter Continued; Matter Continued; Matter Continued; Matter Continued;

CASE SUMMARY
CASE NO. A-19-793350-W

06/13/2019	<p>Motion (8:30 AM) (Judicial Officer: Leavitt, Michelle) 06/13/2019, 06/18/2019, 08/08/2019, 12/12/2019, 02/13/2020 <i>Motion to Revisit Petitioner's Motion for Transcripts at State's Expense by Consideration of the Supplemental</i> Matter Continued; Matter Continued; Matter Continued; Matter Continued; Matter Continued; Matter Continued; Matter Continued; Matter Continued; Matter Continued; Matter Continued; Matter Continued; Matter Continued; Matter Continued; Matter Continued; Matter Continued; Matter Continued; Matter Continued; Matter Continued;</p>
06/13/2019	<p> All Pending Motions (8:30 AM) (Judicial Officer: Leavitt, Michelle) Matter Heard; Journal Entry Details: PETITION FOR WRIT OF HABEAS CORPUS ... MOTION TO REVISIT PETITIONER'S MOTION FOR TRANSCRIPTS AT STATE'S EXPENSE BY CONSIDERATION OF THE SUPPLEMENTAL COURT ORDERED, matter CONTINUED for ruling. CONTINUED TO: 06/18/19 8:30 AM;</p>
06/18/2019	<p> All Pending Motions (8:30 AM) (Judicial Officer: Leavitt, Michelle) Matter Heard; Journal Entry Details: PETITION FOR WRIT OF HABEAS CORPUS ... MOTION TO REVISIT PETITIONER'S MOTION FOR TRANSCRIPTS AT STATE'S EXPENSE BY CONSIDERATION OF THE SUPPLEMENTAL Upon review of the Petition, COURT ORDERED, Post Conviction Counsel APPOINTED; matter SET for Status Check regarding appointment of counsel; pending matters CONTINUED. 08/08/19 8:30 AM STATUS CHECK: CONFIRMATION OF COUNSEL;</p>
08/08/2019	<p>Status Check: Confirmation of Counsel (8:30 AM) (Judicial Officer: Leavitt, Michelle) <i>Status Check: Confirmation of Counsel (post conviction)</i> Counsel Confirmed;</p>
08/08/2019	<p> All Pending Motions (8:30 AM) (Judicial Officer: Leavitt, Michelle) Matter Heard; Journal Entry Details: PETITION FOR WRIT OF HABEAS CORPUS ... MOTION TO REVISIT PETITIONER'S MOTION FOR TRANSCRIPTS AT STATE'S EXPENSE BY CONSIDERATION OF THE SUPPLEMENTAL ... STATUS CHECK: CONFIRMATION OF COUNSEL Defendant not present. Ms. Bolton accepted appointment and requested a briefing schedule. COURT ORDERED, Supplemental due 10/07/19; Reply due 11/06/19; Response due 12/06/19; matters CONTINUED and SET for Hearing. NDC CONTINUED TO: 12/12/19 8:30 AM 12/12/19 8:30 AM HEARING RE: PETITION FOR WRIT ;</p>
12/12/2019	<p>Hearing (8:30 AM) (Judicial Officer: Leavitt, Michelle) 12/12/2019, 02/13/2020 <i>Hearing: Re: Petition for Writ of Habeas Corpus</i> Matter Continued;</p>

CASE SUMMARY

CASE NO. A-19-793350-W

12/12/2019



All Pending Motions (8:30 AM) (Judicial Officer: Leavitt, Michelle)

Matter Continued;

Journal Entry Details:

Defendant not present. Upon Court's inquiry, Ms. Hua advised that she did not receive the State's Opposition. Ms. Lamanna advised that she did not receive the Supplemental Petition. COURT ORDERED, State's Reply due 1/23/20; Response due 2/9/20; All matters CONTINUED. NDC CONTINUED TO: 2/13/19 8:30 AM ;

02/13/2020



All Pending Motions (8:30 AM) (Judicial Officer: Leavitt, Michelle)

Matter Heard;

Journal Entry Details:

HEARING: RE: PETITION FOR WRIT OF HABEAS CORPUS ... PETITION FOR WRIT OF HABEAS CORPUS ... MOTION TO REVISIT PETITIONER'S MOTION FOR TRANSCRIPTS AT STATE'S EXPENSE BY CONSIDERATION OF THE SUPPLEMENTAL Counsel submitted on the briefs. COURT ORDERED, Petition DENIED; Motion to Revisit Motion OFF CALENDAR. Ms. Hua requested the Court sign an Order for Appointment for Appellate Counsel. COURT SO CONFIRMED. NDC;

DISTRICT COURT CIVIL COVER SHEET

A-19-793350-W

Dept. XII

County, Nevada

Case No.

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone): Jeffrey Brown	Defendant(s) (name/address/phone): Isidro Baca, Warden
Attorney (name/address/phone):	Attorney (name/address/phone):

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

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input checked="" type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

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

April 11, 2019

Date

Signature of initiating party or representative

See other side for family-related case filings.

Heather S. Linn

CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHON VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #6528
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,
Plaintiff,

-vs-

JEFFREY BROWN,
#3074249

Defendant.

CASE NO: A-19-793350-W

DEPT NO: XII

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

DATE OF HEARING: FEBRUARY 13, 2020
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable MICHELLE LEAVITT, District Judge, on the 13 day of February, 2020, the Petitioner not being present, represented by Jeannie N. Hua, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through ANDREA ORWOLL, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On October 19, 2016, a grand jury indicted Petitioner with Aggravated Stalking; Attempt Murder with use of a Deadly Weapon; Battery with use of a Deadly Weapon Resulting

1 in Substantial Bodily Harm Constituting Domestic Violence; Battery with use of a Deadly
2 Weapon Resulting in Substantial Bodily Harm; Assault with a Deadly Weapon; Child Abuse,
3 Neglect, or Endangerment with use of a Deadly Weapon; and Discharge of a Firearm from or
4 Within a Structure or Vehicle.

5 On January 17, 2018, Petitioner plead guilty to Attempt Murder with use of a Deadly
6 Weapon and Assault with a Deadly Weapon.

7 On June 21, 2018, Petitioner was sentenced to an aggregate sentence of 8 to 20 years,
8 with a consecutive sentence of 8 to 20 years for the deadly weapon enhancement. The
9 Judgment of Conviction was filed on July 2, 2018.

10 On April 11, 2019, Petitioner filed a Petition for Writ of Habeas Corpus. On May 10,
11 2019, Petitioner filed an Amended Petition. The State filed its response June 4, 2019.

12 ANALYSIS

13 A defendant has the Sixth Amendment right to an effective assistance of counsel in
14 criminal proceedings. See Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063
15 5 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Nevada has
16 adopted the standard outlined in Strickland in determining whether a defendant received
17 effective assistance of counsel. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113
18 (1996); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984). To show that
19 counsel was ineffective, the defendant must prove that he was denied "reasonably effective
20 assistance" of counsel by satisfying a two-pronged test. Strickland, 466 U.S. at 686-687, 104
21 S. Ct. at 2064; see State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this
22 test, the defendant must show that his counsel's representation fell below an objective standard
23 of reasonableness, and that, but for counsel's errors, there is a reasonable probability that the
24 result of the proceedings would have been different. See Strickland, 466 U.S. at 687-688, 694,
25 104 S. Ct. at 2064, 2068.

26 "Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559
27 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). The question is whether an attorney's
28 representations amounted to incompetence under prevailing professional norms, "not whether

1 it deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86,
2 88, 131 S. Ct. 770, 778 (2011). Furthermore, "[e]ffective counsel does not mean errorless
3 counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded
4 of attorneys in criminal cases.'" Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432,
5 537 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441,
6 1449 (1970)).

7 A court begins with a presumption of effectiveness and then must determine whether
8 the defendant has demonstrated by a preponderance of the evidence that counsel was
9 ineffective. Means v. State, 120 Nev. 1001, 1011-12, 103 P.3d 25, 35 (2004). The role of a
10 court in considering allegations of ineffective assistance of counsel is "not to pass upon the
11 merits of the action not taken but to determine whether, under the particular facts and
12 circumstances or' the case, trial counsel failed to render reasonably effective assistance."
13 Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (emphasis added) (citing
14 Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)). In considering whether trial counsel
15 was effective, the court must determine whether counsel made a "sufficient inquiry into the
16 information . . . pertinent to his client's case." Doleman v State, 112 Nev. 843, 846, 921 P.2d
17 278, 280 (1996)(citing Strickland, 466 U.S. at 690-691, 104 S. Ct. at 2066). Once this decision
18 is made, the court will consider whether counsel made "a reasonable strategy decision on how
19 to proceed with his client's case." Doleman, 112 Nev. at 846, 921 P.2d at 280 (citing Strickland,
20 466 U.S. at 690-691, 104 S. Ct. at 2066). Counsel's strategy decision is a "tactical" decision
21 and will be "virtually unchallengeable absent extraordinary circumstances." Id. at 846, 921
22 P.2d at 280; see also Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland,
23 466 U.S. at 691, 104 S. Ct. at 2066.

24 The Strickland analysis does not mean courts should "second guess reasoned choices
25 between trial tactics, nor does it mean that defense counsel, to protect himself against
26 allegations of inadequacy, must make every conceivable motion no matter how remote the
27 possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711 (citing Cooper, 551
28 F.2d at 1166 (9th Cir. 1977)). Therefore, counsel cannot be deemed ineffective for failing to

1 make futile objections, file futile motions, or raise futile arguments. Ennis v. State, 122 Nev.
2 694, 706, 137 P.3d 1095, 1103 (2006).

3 Even if a defendant can show that his counsel's representation fell below an objective
4 standard of reasonableness, he must still demonstrate prejudice and a reasonable probability
5 that, but for counsel's errors, the result of the trial would have been different. McNelson v.
6 State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687). "A
7 reasonable probability is a probability sufficient to undermine confidence in the outcome."
8 Strickland, 466 U.S. at 694, 104 S. Ct. at 2068.

9 Courts must dismiss a petition if a petitioner pled guilty and the petitioner is not alleging
10 "that the plea was involuntarily or unknowingly entered, or that the plea was entered without
11 effective assistance of counsel." NRS 34.810(1)(a). Although a defendant may attack the
12 validity of a guilty plea by showing that he received ineffective assistance of counsel, the
13 defendant maintains the burden of demonstrating "a reasonable probability that, but for
14 counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."
15 See Molinav. State, 120 Nev.185, 190, 87 P.3d 533, 537 (2004); Kirksey v. State, 112 Nev.
16 980, 988, 923 P.2d 1102, 1107 (1996) (quoting Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct.
17 366, 370 (1985)). "A reasonable probability is a probability sufficient to undermine confidence
18 in the outcome." Strickland, 466 U.S. at 694, 104 S. Ct. at 2068. "Bare" or "naked" allegations
19 are not sufficient to show ineffectiveness of counsel. Hargrove v. State, 100 Nev. 498, 502,
20 686 P.2d 222, 225 (1984). A defendant who contends his attorney was ineffective because he
21 did not adequately investigate must show how a better investigation would have rendered a
22 more favorable outcome. Molina, 120 Nev. at 192, 87 P.3d at 538. Ultimately, while it is
23 counsel's duty to candidly advise a defendant regarding a plea offer, the decision of whether
24 or not to accept a plea offer is the defendant's. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 163
25 (2002).

26 //

27 //

28 //

1 **I. TRIAL COUNSEL WAS NOT INEFFECTIVE IN HIS PRETRIAL**
2 **INVESTIGATION OF PETITIONER'S SELF-DEFENSE CLAIM**

3 A defendant who contends his attorney was ineffective because he did not adequately
4 investigate must show how a better investigation would have changed the outcome of trial.
5 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064. Such a defendant must allege with specificity
6 what the investigation would have revealed and how it would have altered the outcome of the
7 trial. See Love, 109 Nev. at 1138, 865 P.2d at 323.

8 Petitioner argues that trial counsel was ineffective because he did not investigate
9 Petitioner's self-defense claim. Supp. Petition at 3. First, Petitioner claims counsel should have
10 consulted ballistics experts to study the trajectory of the bullets as well as the positions of the
11 victim and Petitioner. Supp. Petition at 3. Next, Petitioner claims counsel should have hired
12 an investigator to determine whether witnesses could corroborate Petitioner's self-defense
13 claim. Supp. Petition at 3. Specifically, Petitioner argues that counsel should have interviewed
14 the victims, security guards at the incident. Supp. Petition at 4. However, in pleading guilty,
15 Petitioner waived his ability to raise this claim because it does not allege that Petitioner's plea
16 was involuntary or that counsel was ineffective in the plea process. NRS 34.810(1)(a).

17 Additionally, Petitioner's claims fail under Molina because Petitioner does not explain
18 what better investigation into those areas would have shown. Petitioner does not explain how
19 a ballistics expert's conclusion would have shown that Petitioner acted in self-defense. Next,
20 Petitioner does not allege that there even were witnesses who could corroborate Petitioner's
21 claims. Petitioner also does not explain what information counsel would have received if he
22 had interviewed the security guards and victim.

23 Further, all of Petitioner's claims are belied under Hargrove by the Guilty Plea
24 Agreement. In signing the Guilty Plea, Petitioner confirmed that he had spoken with his
25 attorney about any possible defenses, defense strategies, and circumstances that were in his
26 favor. Guilty Plea Agreement at 5. Petitioner further confirmed that he believed that pleading
27 guilty would be in his best interest. Guilty Plea Agreement at 5. Additionally, Petitioner does
28 not allege that he would not have plead guilty had trial counsel conducted the alleged

1 investigation. Finally, it was Petitioner's decision to enter the guilty plea without this level of
2 investigation and that decision belonged to him and not counsel. Rhyne, 118 Nev. at 8, 38 P.3d
3 at 163. As Petitioner pled guilty in lieu of going to trial, Petitioner fails to explain how any
4 such investigation or interviews would have changed the result of trial.

5 **II. COUNSEL WAS NOT INEFFECTIVE REGARDING INFORMING**
6 **PETITIONER OF HIS RIGHT TO TESTIFY BEFORE THE GRAND JURY**

7 Petitioner claims that trial counsel was ineffective because he did not inform him of his
8 right to testify and present evidence at the grand jury. Supp. Petition at 4. Petitioner argues
9 that had he known of this right, he would have testified that he was defending himself. Marcum
10 notice was served to defense counsel on October 5, 2016. As such, Petitioner cannot show
11 prejudice sufficient for ineffective assistance of counsel purposes because he does not
12 articulate what specific facts or evidence would have impacted the outcome as required under
13 Strickland. Petitioner does not explain how his testimony would have established that he shot
14 two victims, whom he stalked, out of self-defense. Petitioner failed to show a reasonable
15 probability that, but for counsel's errors, he would not have pleaded guilty and would have
16 insisted on going to trial. Molina, 120 Nev. at 190-91, 87 P.3d at 537. Thus, Defendant failed
17 to demonstrate that counsel was ineffective.

18 **III. NO INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO**
19 **PREPARE A SENTENCING MEMORANDUM**

20 Petitioner complains that counsel was ineffective because he did not file a sentencing
21 memorandum and did not address the prejudicial information in the state's sentencing
22 memorandum. Supp. Petition at 5. As a result, Petitioner claims he was sentenced to the
23 maximum sentence. Petitioner's claim fails because the decision to file a sentencing
24 memorandum or offer the information orally at a sentencing hearing is a virtually
25 unchallengeable strategic decision. Doleman, 112 Nev. at 846, 921 P.2d at 280.

26 At sentencing, defense counsel's argument rebutted arguments made by the state in
27 their sentencing memorandum and orally. Specifically, in the State's sentencing
28 memorandum, the State argued that Petitioner should be sentenced to the maximum and

1 regurgitated the facts elicited from the Grand Jury and pointed the court to several calls
2 Petitioner made while in custody where he (1) acknowledged that he was trying to kill one of
3 the victims; (2) asked others to get "dirt" on another victim to use at trial; (3) suborn perjury
4 through his son, a witness to the case; and (4) asked his son to destroy what he believed to be
5 incriminating evidence. Sentencing Memorandum at 2-8. At sentencing, the State highlighted
6 the key facts, trauma suffered by the victims, Petitioner's lack of remorse; and rebutted
7 mitigating factors such as his age, self-defense claim, and lack of criminal history. Recorder's
8 Transcript Re: Sentencing at 2-6. In response, trial counsel argued his theory of the case, and
9 explained that given Petitioner's age, health, and lack of history, they had a valid argument for
10 self-defense. Transcript Re: Sentencing at 6-8.

11 However, the district court disagreed with Petitioner's argument, explaining that per
12 the law in Nevada, a person cannot use deadly force in self-defense unless deadly force is first
13 used against them. Transcript Re: Sentencing at 7. Petitioner fails to explain what other facts
14 would have changed the district court's position because Petitioner is not alleging that deadly
15 force was actually used against Petitioner before he shot two people in the back. As such,
16 Petitioner's claim fails.

17 **ORDER**

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

20 DATED this ____ day of July, 2020.

Dated this 30th day of July, 2020

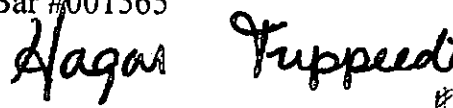


22 MICHELLE LEAVITT

23 STEVEN B. WOLFSON
24 Clark County District Attorney
Nevada Bar #001565

10B 538 1AB1 9DC4
Michelle Leavitt
District Court Judge

25 BY


26 JONATHON VANBOSKERCK
27 Chief Deputy District Attorney
Nevada Bar #6528

28 16F15698X/JB/jb/mlb/dvu

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Jeffrey Brown, Plaintiff(s)

CASE NO: A-19-793350-W

7 vs.

DEPT. NO. Department 12

8 Isidro Baca, Warden,
9 Defendant(s)

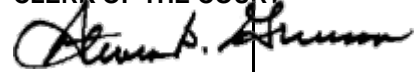
10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Finding of Fact and Conclusions of Law was served via the court's
14 electronic eFile system to all recipients registered for e-Service on the above entitled case as
listed below:

15 Service Date: 7/30/2020

16 JEANNIE HUA, ESQ.

jeanniehua@aol.com



1 NEFF

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4 JEFFREY BROWN,

5
6 Petitioner,

Case No: A-19-793350-W

Dept No: XII

7 vs.

8 ISIDRO BACA, WARDEN,

9 Respondent,

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

10
11 **PLEASE TAKE NOTICE** that on July 30, 2020, the court entered a decision or order in this matter, a
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
15 mailed to you. This notice was mailed on August 3, 2020.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Amanda Hampton

18 Amanda Hampton, Deputy Clerk

19 **CERTIFICATE OF E-SERVICE / MAILING**

20 I hereby certify that on this 3 day of August 2020, I served a copy of this Notice of Entry on the
21 following:

22 ☒ By e-mail:

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

23
24 ☒ The United States mail addressed as follows:

25 Jeffrey Brown # 1200868
P.O. Box 7000
Carson City, NV 89702

Jeannie N. Hua, Esq.
5550 Painted Mirage Road., Ste 320
Las Vegas, NV 89149

26
27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

Heather S. Linn

CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHON VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #6528
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

JEFFREY BROWN,
#3074249

Defendant.

CASE NO: A-19-793350-W

DEPT NO: XII

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

DATE OF HEARING: FEBRUARY 13, 2020
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable MICHELLE LEAVITT, District Judge, on the 13 day of February, 2020, the Petitioner not being present, represented by Jeannie N. Hua, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through ANDREA ORWOLL, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On October 19, 2016, a grand jury indicted Petitioner with Aggravated Stalking; Attempt Murder with use of a Deadly Weapon; Battery with use of a Deadly Weapon Resulting

1 in Substantial Bodily Harm Constituting Domestic Violence; Battery with use of a Deadly
2 Weapon Resulting in Substantial Bodily Harm; Assault with a Deadly Weapon; Child Abuse,
3 Neglect, or Endangerment with use of a Deadly Weapon; and Discharge of a Firearm from or
4 Within a Structure or Vehicle.

5 On January 17, 2018, Petitioner plead guilty to Attempt Murder with use of a Deadly
6 Weapon and Assault with a Deadly Weapon.

7 On June 21, 2018, Petitioner was sentenced to an aggregate sentence of 8 to 20 years,
8 with a consecutive sentence of 8 to 20 years for the deadly weapon enhancement. The
9 Judgment of Conviction was filed on July 2, 2018.

10 On April 11, 2019, Petitioner filed a Petition for Writ of Habeas Corpus. On May 10,
11 2019, Petitioner filed an Amended Petition. The State filed its response June 4, 2019.

12 ANALYSIS

13 A defendant has the Sixth Amendment right to an effective assistance of counsel in
14 criminal proceedings. See Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063
15 5 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Nevada has
16 adopted the standard outlined in Strickland in determining whether a defendant received
17 effective assistance of counsel. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113
18 (1996); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984). To show that
19 counsel was ineffective, the defendant must prove that he was denied "reasonably effective
20 assistance" of counsel by satisfying a two-pronged test. Strickland, 466 U.S. at 686-687, 104
21 S. Ct. at 2064; see State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this
22 test, the defendant must show that his counsel's representation fell below an objective standard
23 of reasonableness, and that, but for counsel's errors, there is a reasonable probability that the
24 result of the proceedings would have been different. See Strickland, 466 U.S. at 687-688, 694,
25 104 S. Ct. at 2064, 2068.

26 "Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559
27 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). The question is whether an attorney's
28 representations amounted to incompetence under prevailing professional norms, "not whether

1 it deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86,
2 88, 131 S. Ct. 770, 778 (2011). Furthermore, "[e]ffective counsel does not mean errorless
3 counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded
4 of attorneys in criminal cases.'" Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432,
5 537 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441,
6 1449 (1970)).

7 A court begins with a presumption of effectiveness and then must determine whether
8 the defendant has demonstrated by a preponderance of the evidence that counsel was
9 ineffective. Means v. State, 120 Nev. 1001, 1011-12, 103 P.3d 25, 35 (2004). The role of a
10 court in considering allegations of ineffective assistance of counsel is "not to pass upon the
11 merits of the action not taken but to determine whether, under the particular facts and
12 circumstances or' the case, trial counsel failed to render reasonably effective assistance."
13 Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (emphasis added) (citing
14 Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)). In considering whether trial counsel
15 was effective, the court must determine whether counsel made a "sufficient inquiry into the
16 information . . . pertinent to his client's case." Doleman v State, 112 Nev. 843, 846, 921 P.2d
17 278, 280 (1996)(citing Strickland, 466 U.S. at 690-691, 104 S. Ct. at 2066). Once this decision
18 is made, the court will consider whether counsel made "a reasonable strategy decision on how
19 to proceed with his client's case." Doleman, 112 Nev. at 846, 921 P.2d at 280 (citing Strickland,
20 466 U.S. at 690-691, 104 S. Ct. at 2066). Counsel's strategy decision is a "tactical" decision
21 and will be "virtually unchallengeable absent extraordinary circumstances." Id. at 846, 921
22 P.2d at 280; see also Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland,
23 466 U.S. at 691, 104 S. Ct. at 2066.

24 The Strickland analysis does not mean courts should "second guess reasoned choices
25 between trial tactics, nor does it mean that defense counsel, to protect himself against
26 allegations of inadequacy, must make every conceivable motion no matter how remote the
27 possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711 (citing Cooper, 551
28 F.2d at 1166 (9th Cir. 1977)). Therefore, counsel cannot be deemed ineffective for failing to

1 make futile objections, file futile motions, or raise futile arguments. Ennis v. State, 122 Nev.
2 694, 706, 137 P.3d 1095, 1103 (2006).

3 Even if a defendant can show that his counsel's representation fell below an objective
4 standard of reasonableness, he must still demonstrate prejudice and a reasonable probability
5 that, but for counsel's errors, the result of the trial would have been different. McNelson v.
6 State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687). "A
7 reasonable probability is a probability sufficient to undermine confidence in the outcome."
8 Strickland, 466 U.S. at 694, 104 S. Ct. at 2068.

9 Courts must dismiss a petition if a petitioner pled guilty and the petitioner is not alleging
10 "that the plea was involuntarily or unknowingly entered, or that the plea was entered without
11 effective assistance of counsel." NRS 34.810(1)(a). Although a defendant may attack the
12 validity of a guilty plea by showing that he received ineffective assistance of counsel, the
13 defendant maintains the burden of demonstrating "a reasonable probability that, but for
14 counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."
15 See Molinav. State, 120 Nev.185, 190, 87 P.3d 533, 537 (2004); Kirksey v. State, 112 Nev.
16 980, 988, 923 P.2d 1102, 1107 (1996) (quoting Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct.
17 366, 370 (1985)). "A reasonable probability is a probability sufficient to undermine confidence
18 in the outcome." Strickland, 466 U.S. at 694, 104 S. Ct. at 2068. "Bare" or "naked" allegations
19 are not sufficient to show ineffectiveness of counsel. Hargrove v. State, 100 Nev. 498, 502,
20 686 P.2d 222, 225 (1984). A defendant who contends his attorney was ineffective because he
21 did not adequately investigate must show how a better investigation would have rendered a
22 more favorable outcome. Molina, 120 Nev. at 192, 87 P.3d at 538. Ultimately, while it is
23 counsel's duty to candidly advise a defendant regarding a plea offer, the decision of whether
24 or not to accept a plea offer is the defendant's. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 163
25 (2002).

26 //

27 //

28 //

1 **I. TRIAL COUNSEL WAS NOT INEFFECTIVE IN HIS PRETRIAL**
2 **INVESTIGATION OF PETITIONER'S SELF-DEFENSE CLAIM**

3 A defendant who contends his attorney was ineffective because he did not adequately
4 investigate must show how a better investigation would have changed the outcome of trial.
5 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064. Such a defendant must allege with specificity
6 what the investigation would have revealed and how it would have altered the outcome of the
7 trial. See Love, 109 Nev. at 1138, 865 P.2d at 323.

8 Petitioner argues that trial counsel was ineffective because he did not investigate
9 Petitioner's self-defense claim. Supp. Petition at 3. First, Petitioner claims counsel should have
10 consulted ballistics experts to study the trajectory of the bullets as well as the positions of the
11 victim and Petitioner. Supp. Petition at 3. Next, Petitioner claims counsel should have hired
12 an investigator to determine whether witnesses could corroborate Petitioner's self-defense
13 claim. Supp. Petition at 3. Specifically, Petitioner argues that counsel should have interviewed
14 the victims, security guards at the incident. Supp. Petition at 4. However, in pleading guilty,
15 Petitioner waived his ability to raise this claim because it does not allege that Petitioner's plea
16 was involuntary or that counsel was ineffective in the plea process. NRS 34.810(1)(a).

17 Additionally, Petitioner's claims fail under Molina because Petitioner does not explain
18 what better investigation into those areas would have shown. Petitioner does not explain how
19 a ballistics expert's conclusion would have shown that Petitioner acted in self-defense. Next,
20 Petitioner does not allege that there even were witnesses who could corroborate Petitioner's
21 claims. Petitioner also does not explain what information counsel would have received if he
22 had interviewed the security guards and victim.

23 Further, all of Petitioner's claims are belied under Hargrove by the Guilty Plea
24 Agreement. In signing the Guilty Plea, Petitioner confirmed that he had spoken with his
25 attorney about any possible defenses, defense strategies, and circumstances that were in his
26 favor. Guilty Plea Agreement at 5. Petitioner further confirmed that he believed that pleading
27 guilty would be in his best interest. Guilty Plea Agreement at 5. Additionally, Petitioner does
28 not allege that he would not have plead guilty had trial counsel conducted the alleged

1 investigation. Finally, it was Petitioner's decision to enter the guilty plea without this level of
2 investigation and that decision belonged to him and not counsel. Rhyne, 118 Nev. at 8, 38 P.3d
3 at 163. As Petitioner pled guilty in lieu of going to trial, Petitioner fails to explain how any
4 such investigation or interviews would have changed the result of trial.

5 **II. COUNSEL WAS NOT INEFFECTIVE REGARDING INFORMING**
6 **PETITIONER OF HIS RIGHT TO TESTIFY BEFORE THE GRAND JURY**

7 Petitioner claims that trial counsel was ineffective because he did not inform him of his
8 right to testify and present evidence at the grand jury. Supp. Petition at 4. Petitioner argues
9 that had he known of this right, he would have testified that he was defending himself. Marcum
10 notice was served to defense counsel on October 5, 2016. As such, Petitioner cannot show
11 prejudice sufficient for ineffective assistance of counsel purposes because he does not
12 articulate what specific facts or evidence would have impacted the outcome as required under
13 Strickland. Petitioner does not explain how his testimony would have established that he shot
14 two victims, whom he stalked, out of self-defense. Petitioner failed to show a reasonable
15 probability that, but for counsel's errors, he would not have pleaded guilty and would have
16 insisted on going to trial. Molina, 120 Nev. at 190-91, 87 P.3d at 537. Thus, Defendant failed
17 to demonstrate that counsel was ineffective.

18 **III. NO INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO**
19 **PREPARE A SENTENCING MEMORANDUM**

20 Petitioner complains that counsel was ineffective because he did not file a sentencing
21 memorandum and did not address the prejudicial information in the state's sentencing
22 memorandum. Supp. Petition at 5. As a result, Petitioner claims he was sentenced to the
23 maximum sentence. Petitioner's claim fails because the decision to file a sentencing
24 memorandum or offer the information orally at a sentencing hearing is a virtually
25 unchallengeable strategic decision. Doleman, 112 Nev. at 846, 921 P.2d at 280.

26 At sentencing, defense counsel's argument rebutted arguments made by the state in
27 their sentencing memorandum and orally. Specifically, in the State's sentencing
28 memorandum, the State argued that Petitioner should be sentenced to the maximum and

1 regurgitated the facts elicited from the Grand Jury and pointed the court to several calls
2 Petitioner made while in custody where he (1) acknowledged that he was trying to kill one of
3 the victims; (2) asked others to get "dirt" on another victim to use at trial; (3) suborn perjury
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5 incriminating evidence. Sentencing Memorandum at 2-8. At sentencing, the State highlighted
6 the key facts, trauma suffered by the victims, Petitioner's lack of remorse; and rebutted
7 mitigating factors such as his age, self-defense claim, and lack of criminal history. Recorder's
8 Transcript Re: Sentencing at 2-6. In response, trial counsel argued his theory of the case, and
9 explained that given Petitioner's age, health, and lack of history, they had a valid argument for
10 self-defense. Transcript Re: Sentencing at 6-8.

11 However, the district court disagreed with Petitioner's argument, explaining that per
12 the law in Nevada, a person cannot use deadly force in self-defense unless deadly force is first
13 used against them. Transcript Re: Sentencing at 7. Petitioner fails to explain what other facts
14 would have changed the district court's position because Petitioner is not alleging that deadly
15 force was actually used against Petitioner before he shot two people in the back. As such,
16 Petitioner's claim fails.

17 **ORDER**

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

20 DATED this ____ day of July, 2020.

Dated this 30th day of July, 2020

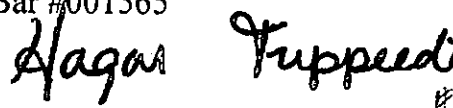


22 MICHELLE LEAVITT

23 STEVEN B. WOLFSON
24 Clark County District Attorney
Nevada Bar #001565

10B 538 1AB1 9DC4
Michelle Leavitt
District Court Judge

25 BY


26 JONATHON VANBOSKERCK
27 Chief Deputy District Attorney
Nevada Bar #6528

28 16F15698X/JB/jb/mlb/dvu

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Jeffrey Brown, Plaintiff(s)

CASE NO: A-19-793350-W

7 vs.

DEPT. NO. Department 12

8 Isidro Baca, Warden,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Finding of Fact and Conclusions of Law was served via the court's
14 electronic eFile system to all recipients registered for e-Service on the above entitled case as
listed below:

15 Service Date: 7/30/2020

16 JEANNIE HUA, ESQ.

jeanniehua@aol.com

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

June 13, 2019

A-19-793350-W Jeffrey Brown, Plaintiff(s)
vs.
Isidro Baca, Warden, Defendant(s)

June 13, 2019 8:30 AM All Pending Motions

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Haly Pannullo

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT: Lamanna, Brianna K. Attorney

JOURNAL ENTRIES

- PETITION FOR WRIT OF HABEAS CORPUS ... MOTION TO REVISIT PETITIONER'S MOTION
FOR TRANSCRIPTS AT STATE'S EXPENSE BY CONSIDERATION OF THE SUPPLEMENTAL

COURT ORDERED, matter CONTINUED for ruling.

CONTINUED TO: 06/18/19 8:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

June 18, 2019

A-19-793350-W Jeffrey Brown, Plaintiff(s)
vs.
Isidro Baca, Warden, Defendant(s)

June 18, 2019 8:30 AM All Pending Motions

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Haly Pannullo

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT: Dunn, Ann Marie Attorney

JOURNAL ENTRIES

- PETITION FOR WRIT OF HABEAS CORPUS ... MOTION TO REVISIT PETITIONER'S MOTION
FOR TRANSCRIPTS AT STATE'S EXPENSE BY CONSIDERATION OF THE SUPPLEMENTAL

Upon review of the Petition, COURT ORDERED, Post Conviction Counsel APPOINTED; matter SET
for Status Check regarding appointment of counsel; pending matters CONTINUED.

08/08/19 8:30 AM STATUS CHECK: CONFIRMATION OF COUNSEL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

August 08, 2019

A-19-793350-W Jeffrey Brown, Plaintiff(s)
vs.
Isidro Baca, Warden, Defendant(s)

August 08, 2019 8:30 AM All Pending Motions

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Haly Pannullo

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT: Bolton, Jennifer Attorney
 Brooks, Parker Attorney

JOURNAL ENTRIES

- PETITION FOR WRIT OF HABEAS CORPUS ... MOTION TO REVISIT PETITIONER'S MOTION FOR TRANSCRIPTS AT STATE'S EXPENSE BY CONSIDERATION OF THE SUPPLEMENTAL ... STATUS CHECK: CONFIRMATION OF COUNSEL

Defendant not present. Ms. Bolton accepted appointment and requested a briefing schedule. COURT ORDERED, Supplemental due 10/07/19; Reply due 11/06/19; Response due 12/06/19; matters CONTINUED and SET for Hearing.

NDC

CONTINUED TO: 12/12/19 8:30 AM

12/12/19 8:30 AM HEARING RE: PETITION FOR WRIT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

December 12, 2019

A-19-793350-W Jeffrey Brown, Plaintiff(s)
vs.
Isidro Baca, Warden, Defendant(s)

December 12, 2019 8:30 AM All Pending Motions

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Haly Pannullo
Carolyn Jackson

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT: Hua, Jeannie N Attorney
Lamanna, Brianna K. Attorney

JOURNAL ENTRIES

- Defendant not present. Upon Court's inquiry, Ms. Hua advised that she did not receive the State's Opposition. Ms. Lamanna advised that she did not receive the Supplemental Petition. COURT ORDERED, State's Reply due 1/23/20; Response due 2/9/20; All matters CONTINUED.

NDC

CONTINUED TO: 2/13/19 8:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

February 13, 2020

A-19-793350-W Jeffrey Brown, Plaintiff(s)
vs.
Isidro Baca, Warden, Defendant(s)

February 13, 2020 8:30 AM All Pending Motions

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Haly Pannullo

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT: Hua, Jeannie N Attorney
Orwoll, Andrea D. Attorney

JOURNAL ENTRIES

- HEARING: RE: PETITION FOR WRIT OF HABEAS CORPUS ... PETITION FOR WRIT OF HABEAS CORPUS ... MOTION TO REVISIT PETITIONER'S MOTION FOR TRANSCRIPTS AT STATE'S EXPENSE BY CONSIDERATION OF THE SUPPLEMENTAL

Counsel submitted on the briefs. COURT ORDERED, Petition DENIED; Motion to Revisit Motion OFF CALENDAR. Ms. Hua requested the Court sign an Order for Appointment for Appellate Counsel. COURT SO CONFIRMED.

NDC

Certification of Copy

State of Nevada }
County of Clark } SS:

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

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

JEFFREY BROWN,

Plaintiff(s),

vs.

ISIDRO BACA, WARDEN, NNCC,

Defendant(s),

Case No: A-19-793350-W

Dept No: XII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 14 day of August 2020.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk