

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Sep 15 2020 12:48 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

BENNETT GRIMES,
Appellant(s),

vs.

BRIAN WILLIAMS, WARDEN,
Respondent(s),

Case No: A-20-815590-W

Docket No: 81697

RECORD ON APPEAL

ATTORNEY FOR APPELLANT
BENNETT GRIMES #1098810,
PROPER PERSON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

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

A-20-815590-W

**Bennett Grimes, Plaintiff(s)
vs.
State of Nevada, Defendant(s)**

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	08/24/2020	CASE APPEAL STATEMENT	46 - 47
1	09/15/2020	CERTIFICATION OF COPY AND TRANSMITTAL OF RECORD	
1	07/21/2020	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER	27 - 32
1	08/21/2020	NOTICE OF APPEAL	42 - 45
1	07/23/2020	NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	33 - 39
1	08/10/2020	ORDER TO STATISTICALLY CLOSE CASE	40 - 41
1	05/27/2020	PETITION FOR WRIT OF HABEAS CORPUS (POSTCONVICTION)	1 - 26

FILED

MAY 27 2020

John J. Blum
CLERK OF COURT

Case No. C-11276163-1
Dept. No. X.I.I.

IN THE JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF

BENNET GRIMES

Petitioner,

THE STATE OF NEVADA
BRIAN WILLIAMS SR.
WARDEN

Respondent.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

A-20-815590-W
Dept. 12

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: HIGH DESERT STATE PRISON
2. Name and location of court which entered the judgment of conviction under attack: THE EIGHTH
JUDICIAL DISTRICT COURT CLARK COUNTY, NEVADA, 200 LEWIS AVENUE LAS VEGAS
3. Date of judgment of conviction: FEBRUARY 21, 2013.
4. Case number: C-11276163-1
5. (a) Length of sentence: MINIMUM 21 YEARS TO MAXIMUM 55 YEARS

RECEIVED

MAY - 4 2020

CLERK OF THE COURT

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

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

Yes No ☒

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

7. Nature of offense involved in conviction being challenged: ATTEMPT MURDER / w/ USE;

BURGLARY; BATTERY WITH USE OF A DEADLY WEAPON

8. What was your plea? (check one)

(a) Not guilty ☒

(b) Guilty

(c) Guilty but mentally ill

(d) Nolo contendere

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details: N/A

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

(a) Jury ☒

(b) Judge without a jury

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

12. Did you appeal from the judgment of conviction? Yes ☒ No

13. If you did appeal, answer the following:

(a) Name of court: IN THE SUPREME COURT OF THE STATE OF NEVADA

(b) Case number or citation: 62835 / 67598 / 67741 / 24419

(c) Result: AFFIRMED | AFFIRMED | ORDER | AFFIRMED

(d) Date of result: 03/24/14 | 03/22/16 | 06/12/15 | 04/30/19

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

14. If you did not appeal, explain briefly why you did not: N/A

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

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

(a) (1) Name of court: 8th SUD. DIST. CRT / NEV. SUP. CRT

(2) Nature of proceeding: MOTION FOR A NEW TRIAL; MOTION TO CORRECT AN ILLEGAL SENT. PRO. PER. WRIT OF HABEAS CORPUS FILED 02/20/15. MOTION TO CORRECT AN ILLEGAL SENT. 09/13 AFF. DEN. 02/26/16. THE COURT FAILED TO NOTIFY THE DEFENSE THAT THE JURY

(3) Grounds raised: HAD A QUESTION REGARDING THE LAW ON BURGLARY INSTRUCTION; ILLEGAL SENTENCE

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

(5) Result: NEUTRAL (DENIED) (DENIED)

(6) Date of result: 4/20/12; 10/25/12 AND 11/20/2017

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

NO HEARING. FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER. THE DIST. CRT. DID NOT RESTATE IT OWN FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER AND MAKE ABSOLUTELY ZERO FINDINGS OF FACT FOLLOWING EVID. HE. GAA 1258

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

(1) Name of court: SAME

(2) Nature of proceeding: MOTION HEARINGS

(3) Grounds raised: ILLEGAL SENTENCE

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

(5) Result: ILLEGAL SENT. MOTION (DENIED)

(6) Date of result: 03/31/20

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

PENDING OF MOTION

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

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

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

Citation or date of decision: PENDING

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

Citation or date of decision: N/A

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

Citation or date of decision: N/A

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

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

(a) Which of the grounds is the same: PETITIONER'S SENTENCE AND CONVICTION IS ILLEGAL

(b) The proceedings in which these grounds were raised: MOTION AND HAB. CORP. IN SUP. CRT.

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) FOR THE RECORD THIS PETITIONER IS ALLEGING THAT HIS TRIAL COURT COUNSEL WAS INEFFECTIVE DURING TRIAL COURT PROCEEDINGS AND DURING SENTENCING

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

DISCOVERED; COMPETENT TO PROCEED TO TRIAL, UNDERSTANDING THE ELEMENTS OF
THE CRIME CHARGED; POSSIBLE PENALTIES OR PUNISHMENTS; TOTAL POSSIBLE SENT

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

DISCOVERED

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes ☒ No ☐

If yes, state what court and the case number: 8th JUD. DIST. CRT. / SUP. CRT. / U.S. DIST. CRT.
C-11276163-1 ; 2:19-CV-00663-BUN-ESY

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: TRIAL CRT. ATTY R. ROGER HILLMAN, NANA HOUSTON, APPELLATE ATTY.
DEBORAH AND P. DAVID WESTBROOK; EVD. AND BRIEF'S: WILLIAM H. GAMAGE AND JAMIE J. RESCH

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes ☒ No ☐

If yes, specify where and when it is to be served, if you know: N/A

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

THE PRIVILEGE OF THE HABEAS CORPUS SHALL NOT BE SUSPENDED.

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 1

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my 4th Amendment right to U.S. CONST.

based on these facts:

WHETHER THIS COURT SHOULD ENTIRELY DISREGARD THE ALLEGED FINDINGS OF FACT AND CONCLUSIONS OF LAW ENTERED BELOW WHERE THE TRIAL COURT DECIDED TO MAKE A SERIOUS FINDING FOLLOWING AN EVIDENTIARY HEARING OTHER THAN TO DENY THE PETITION. SEE (PAGE: ii) APPELLANT'S OPENING BRIEF: AS SUPPORT INCORPORATED HEREIN) (THE PRIVILEGE OF HABEAS CORPUS SHOULD NOT BE SUSPENDED)

Argument:

A. THIS COURT SHOULD NOT GIVE THE DISTRICT COURT'S ORDER ANY DEFERENCE BECAUSE THE ORDER WAS PREPARED BY THE STATE WITH NO DIRECTION FROM THE DISTRICT COURT AND WAS SUBMITTED TO THE DISTRICT COURT EX PARTE.

THE DISTRICT COURT DID NOT DRAFT ITS OWN FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER, BUT INSTEAD SIGNED A DOCUMENT THAT WAS SUBMITTED BY THE STATE WITH NO DIRECTION OR GUIDANCE. THE DISTRICT COURT MADE ABSOLUTELY ZERO FINDINGS OF FACT OR FACT FOLLOWING THE EVIDENTIARY HEARING. 6A 1259

Under these circumstances, the findings and conclusions are not entitled to any deference.

"Findings of fact prepared by counsel and adopted by the trial court are subject to greater scrutiny than those authored by the trial judge."

Alcock v. SBA, 50 F.3d 1456, 1459, n. 2 (9th Cir. 1995). Moreover, the district court's wholesale adoption of the State's proposed order, without any identifiable input by the district court, had long been held inappropriate.

See Anderson v. Bessemer City, 470 U.S. 564, 572 (1985) ("We...have criticized courts for their verbatim adoption of findings of fact prepared by prevailing parties, particularly when those findings have taken the form of conclusory statements unsupported by citation to the record."); United States v. Marine Bancorporation, Inc., 418 U.S. 602, 615 at n. 13 (1974); United States v. El Paso Natural Gas Co., 376 U.S. 651, 656-57 at n. 4 (1964).

Although verbatim adoption is not necessarily fatal to appellate review where the record reveals the basis for the court's findings, the practice of "simply decid[ing] the case in favor of the plaintiff or the defendant, hav[ing] him prepare the findings of fact and conclusions of law and

findings of fact and conclusions of law or announced them to the parties with sufficient specificity to provide guidance to the prevailing party in drafting a proposed order”).

There is no question here that the lower court provided no rationale for its ruling, and that the State took it upon itself to write a decision completely favorable to itself with no input from Grimes or the court. This is evident from the fact substantial parts of the “order” are simply cut-and-pasted from the State’s answer and are posed as arguments, not as findings. See, footnotes: 6 AA 1268-1269. In any event, the trial court did not actually make any of the findings presented in the order submitted by the State.

The most basic requirement of due process of law under the State and Federal Constitutions is notice of an intended action and “an opportunity to be heard at a meaningful time and in a meaningful manner.” Kelch v. Director, 107 Nev. 827, 831, 822 P.3d 1094 (1991) (quoting Matthews v. Eldridge, 424 U.S. 319, 333 (1976)). The actions of the State and district court in this case deprived Grimes of any semblance of due

GROUND 2

MY STATE COURT CONVICTION AND OR SENTENCE ARE UNCONSTITUTIONAL, IN VIOLATION OF ALL VI AMENDMENT TO BE INFORMED OF THE NATURE (ASSISTANCE OF COUNSEL) AND CHARGE OF THE ACCUSATION; VIII AMENDMENT THAT CRUEL AND UNUSUAL PUNISHMENT SHALL NOT BE INFLECTED; XIV AMENDMENT ^{§1} NO STATE SHALL (DUE PROCESS) MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS. ARTICLE I §9. 1 & 2. (THE PRIVILEGE OF THE HABEAS CORPUS SHOULD NOT BE SUSPENDED.)

BASED ON THESE FACTS:

APPELLANT DID NOT KNOWINGLY AND INTELLIGENTLY WAIVE HIS RIGHT TO COUNSEL, NOR WAIVE HIS RIGHT TO A SPEEDY TRIAL, EXCEPT BY COERCION TO PROCEED TO TRIAL BECAUSE NEITHER THE JUSTICE COURT NOR THE DISTRICT COURT INFORMED HIM OF THE POTENTIAL PENALTIES HE COULD FACE IF HE WERE ADJUDICATED A HABITUAL CRIMINAL.

ARGUMENT:

- A. THE DISTRICT COURT MUST ENSURE THAT THE DEFENDANT IS COMPETENT TO STAND TRIAL

AND HIS DECISION TO PROCEED TO TRIAL WAS KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY MADE (EMPHASIS ADDED), WATSON V. STATE, 130 NEU. 764, 782, 335 P.3d 157, 170 (2014); HOOKS V. STATE, 124 NEU. 48, 53-54, 176 P.3d 1081, 1084 (2008). A WAIVER IS KNOWING, INTELLIGENT AND VOLUNTARY WHEN THE DEFENDANT IS "MADE AWARE OF THE DANGERS AND DISADVANTAGES OF PROCEEDING TO TRIAL, SO THAT THE RECORD WILL ESTABLISH THAT HE KNOWS WHAT HE IS DOING, AND HIS CHOICE IS MADE WITH EYES OPEN!" (EMPHASIS ADDED) HOOKS 124 NEU. AT 54, 176 P.3d AT 1084 (QUOTING FARETTA V. CALIFORNIA, 422 U.S. 806, 835, 95 S. CT. 2525, 45 L. ED. 2d 562 (1975)). THE DEFENDANT SHOULD UNDERSTAND "THE ELEMENTS OF EACH CRIME" CHARGED, INCLUDING "THE POSSIBLE PENALTIES OR PUNISHMENTS, AND TOTAL POSSIBLE SENTENCE THE DEFENDANT COULD RECEIVE" IF CONVICTED. SCR 253(3)(f), (g); SEE ALSO HOOKS, 124 NEU. AT 54, 176 P.3d AT 1084. BECAUSE THERE IS NO REQUIREMENT FOR A MECHANICAL APPLICATION OF A FARETTA CANVASS, ONE MUST LOOK AT THE RECORD AS A WHOLE TO DETERMINE WHETHER "THE DEFENDANT KNEW HIS RIGHTS AND INSISTED UPON PROCEEDING TO TRIAL!" (EMPHASIS ADDED) HYMON V. STATE, 121 NEU. 200, 212-213, 111 P.3d 1092, 1101 (2005) (INTERNAL QUOTATION MARKS OMITTED).

THE RECORD BEFORE THIS COURT REVEALS THAT GRIMES INVOKED HIS RIGHTS TO A SPEEDY TRIAL DURING HIS INITIAL APPEARANCE IN THE JUSTICE COURT. GRIMES WAS BOUND OVER TO DISTRICT COURT AND AFTER A PLETHORA OF DERELICT AND LACKADYICAL SHOWINGS ON THE PART OF COUNSEL, EVENTUALLY GRIMES INVOKED THE 60 DAY RULE. LET THE RECORD BEFORE THIS COURT ALSO SHOW THAT NEITHER THE JUSTICE COURT NOR THE DISTRICT COURT INFORMED GRIMES OF THE POTENTIAL PENALTIES HE COULD FACE IF HE WERE ADJUDICATED A HABITUAL CRIMINAL. THE COURT DID INFORM GRIMES THAT HE FACED "VERY SERIOUS CHARGES," WHEN THE JUDGE TOOK PART TO INTERVENE IN COUNCILS WITH COUNSEL TO CONVINCE GRIMES TO WAIVE HIS RIGHT TO A SPEEDY TRIAL. EXH. A (MINUTES FROM JUNE 12, 2012.) APPROXIMATELY ONE YEAR LATER, AND THREE MONTHS [AFTER] THE JURY RETURNED ITS VERDICT, (VIOLATION OF NRS. 173.095). POST TRIAL, THE STATE FILED ITS NOTICE OF INTENT TO SEEK PUNISHMENT AS HABITUAL CRIMINAL. THE DISTRICT COURT PROCEEDED TO TRIAL WITHOUT GRIMES BEING INFORMED OF THE POTENTIAL PENALTIES HE COULD FACE IF HE WERE ADJUDICATED A HABITUAL CRIMINAL.

THE RECORD AS A WHOLE DOES NOT DEMONSTRATE THAT GRIMES KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY PROCEEDED TO TRIAL NOR WAIVED HIS RIGHTS TO COUNSEL - PARTICULARLY GIVEN "WE INDULGE IN EVERY REASONABLE PRESUMPTION AGAINST WAIVER OF RIGHT TO COUNSEL." HOOKS, 124 NEU. AT 57, 176 P. 3d AT 1086 (QUOTING BREWER V. WILLIAMS, 430 U.S. 387, 404, 97 S. CT. 1232, 51 L. ED. 2d 424 (1977); SEE ALSO SCOTT V. STATE, 110 NEU. 622, 626, 877 P. 2d 503 (1994) (PROVIDING THAT BECAUSE THE DEFENDANT WAS NOT "INFORMED THAT HE MIGHT BE FACING AN ADDITIONAL CHARGE WITH A GREATER PENALTY" IF FOUND GUILTY AT THE CONCLUSION OF TRIAL, HIS PROCEEDING TO TRIAL AND WAIVER OF THE RIGHT TO COUNSEL [WAS] UNKNOWING AND UNINTELLIGENT, AND THUS INVALID UNDER FARETTA"). BECAUSE HARMLESS ERROR ANALYSIS DOES NOT APPLY TO AN INVALID WAIVER OF THE RIGHT TO COUNSEL, AND PROCEEDING TO TRIAL, THIS COURT MUST REVERSE GRIMES' JUDGMENT OF CONVICTION AND REMAND FOR A NEW TRIAL. HOOKS, 124 NEU. AT 57-58, 176 P-3d AT 1086-87.

GROUND 3

MY STATE COURT CONVICTION AND OR SENTENCE ARE UNCONSTITUTIONAL, IN VIOLATION OF MY VI AMENDMENT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION, ASSISTANCE OF COUNSEL; VIII AMENDMENT THAT CRUEL AND UNUSUAL PUNISHMENT SHALL NOT BE INFLICTED; XII § 1 AMENDMENT NO STATE SHALL MAKE (DUE PROCESS) OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS. ARTICLE 1 § 9. 1 § 8.

(THE PRIVILEGE OF THE HABEAS CORPUS SHOULD NOT BE SUSPENDED.)
BASED ON THESE FACTS:

APPELLANT'S CONVICTION AND SENTENCE FOR ATTEMPTED MURDER WAS IMPROPER BECAUSE IT WAS ERROR TO NOT INSTRUCT THE JURY THAT A SPECIFIC INTENT TO KILL WAS AN ESSENTIAL ELEMENT OF THE CRIME¹. ALSO THAT AN INSTRUCTION ON IMPLIED MALICE IN RELATION TO THE CRIME OF ATTEMPTED MURDER WAS MISLEADING TO THE JURY.

1. PROPOSED JURY INSTRUCTION #5; COURT'S EXHIBIT #10; SPECIFIC INTENT TO KILL (DENIED)
P.199:18-P.200:13 13 P.199:10 - - - - -

ARGUMENT:

B. FURTHER GRIMES' CLAIM OF INSTRUCTIONAL ERROR LIKEWISE WARRANTS REVERSAL AND REMAND FOR A NEW TRIAL.

GRIMES CONTENTS THAT THE DISTRICT COURT ERRED WHEN INSTRUCTING THE JURY ON ATTEMPTED MURDER BECAUSE JURY INSTRUCTION NO. 13 (DEFINING MALICE AFORETHOUGHT SPECIFICALLY RECITED THE STANDARD FOR IMPLIED MALICE WHICH IS INAPPLICABLE TO ATTEMPTED MURDER, THE STATE MAY RESPOND THAT THE JURY WAS PROPERLY INSTRUCTED ON THE RELEVANT STANDARD IN A SEPERATE INSTRUCTION, JURY INSTRUCTION NO. 14 (DEFINING ATTEMPTED MURDER), AND IT WAS NOT ERROR FOR THE DISTRICT COURT TO GIVE THE EXPRESS MALICE AND IMPLIED MALICE ON THE SAME INSTRUCTION NO. 13 AS WELL AS AN INCOMPLETE DEFINITION OF MALICE AFORETHOUGHT INSTRUCTION AS SPECIFICALLY THE IMPLIED MALICE STANDARD. BECAUSE THE DISTRICT COURT DID NOT SPECIFICALLY INSTRUCT THE JURY ON IMPLIED MALICE. EXH B (JURY INS. NO. 13).

IT IS REVERSIBLE ERROR TO INSTRUCT THE JURY THAT ATTEMPTED MURDER CAN BE ACCOMPLISHED WITHOUT SPECIFIC INTENT TO KILL. SEE RANDS V. STATE, 95 NEV. 251, 252-53, 592 P.2d 950, 951 (1979).

"ATTEMPTED MURDER IS THE PERFORMANCE OF AN ACT OR ACTS WHICH TEND, BUT FAIL, TO KILL A HUMAN BEING, WHEN SUCH ACTS ARE DONE WITH EXPRESS MALICE, NAMELY, WITH THE DELIBERATE INTENTION UNLAWFULLY TO KILL" KEYS U. STATE, 104 NEV. 736, 740, 766 P.2d 270, 273 (1988); SEE ALSO NRS 193.330(1); NRS. 200.010. "EXPRESS MALICE IS THAT DELIBERATE INTENTION UNLAWFULLY TO TAKE AWAY THE LIFE OF A FELLOW CREATURE, WHICH IS MANIFESTED BY EXTERNAL CIRCUMSTANCES CAPABLE OF PROOF." NRS. 200.020(1). BY CONTRAST, IMPLIED MALICE OCCURS "WHEN NO CONSIDERABLE PROVOCATION APPEARS, OR WHEN ALL THE CIRCUMSTANCES OF THE KILLING SHOW AN ABANDONED AND MALIGANT HEART." NRS. 200.020(2). "ONE CANNOT BE GUILTY OF ATTEMPTED MURDER BY IMPLIED MALICE BECAUSE IMPLIED MALICE DOES NOT ENCOMPASS THE ESSENTIAL SPECIFIC INTENT TO KILL." KEYS, 104 NEV. AT 740, 766 P.2d AT 273.

HERE JURY INSTRUCTION NO 11 DEFINED ATTEMPTED MURDER AND EXPRESS MALICE AS FOLLOWS: ATTEMPTED MURDER IS THE PERFORMANCE OF AN ACT OR ACTS WHICH TEND, BUT FAIL, TO KILL A HUMAN BEING, WHEN SUCH ACTS ARE DONE WITH EXPRESS MALICE, NAMELY,

WITH THE DELIBERATE INTENTION TO UNLAW-
FULLY KILL. JURY INSTRUCTION NO. 12
INSTRUCTED THE JURY THAT: EXPRESS
MALICE IS THAT DELIBERATE INTENTION
UNLAWFULLY TO TAKE AWAY THE LIFE OF A
HUMAN, WHICH IS MANIFESTED BY EXTERNAL
CIRCUMSTANCES CAPABLE OF PROOF.

MALICE SHALL BE IMPLIED WHEN NO
CONSIDERABLE PROVOCATION APPEARS, OR
WHEN ALL THE CIRCUMSTANCES OF THE
KILLING SHOW AN ABANDONED AND
MALIGNANT HEART. (THIS CONCLUDES NO. 12)

JURY INSTRUCTION NO. 13 INSTRUCTED THE
JURY THAT: MALICE AFORETHOUGHT DOES NOT
IMPLY DELIBERATION OR THE LAPSE OF ANY
CONSIDERABLE TIME BETWEEN THE MALICIOUS
INTENTION, BUT DEVOTES AN UNLAWFUL PURPOSE
AND DESIGN IN CONTRADISTINCTION TO ACCIDENT
AND MISCHANCE. ALTHOUGH THIS INSTRUCTION
TRACKS NRS. 200.020(2)'S DEFINITION OF
IMPLIED MALICE, IT MAKES NO MENTION OF
ATTEMPTED MURDER OR EXPRESS MALICE AND
WAS THUS A MISSTATEMENT OF THE APPLICABLE
LAW AND MISLEADING TO THE JURY. SEE
KEYS, 104 NEV. AT 741, 766 P.2D AT 273
DETERMINING THAT THE DISTRICT COURTS
*REFUSAL TO INSTRUCT THE JURY THAT SPECIFIC
INTENT WAS AN ESSENTIAL ELEMENT OF

* PROPOSED JURY INSTRUCTION #7; COURTS EXHIBIT #10; SPECIFIC INTENT TO KILL. (DENIED)

7.199-10 - P. 200-13.

ATTEMPTED MURDER WAS REVERSIBLE ERROR,
AND THIS ERROR WAS ENHANCED BECAUSE THE
IMPLIED MALICE INSTRUCTION "WAS NECESSARILY
MISLEADING TO THE JURY"². THE DISTRICT'S
COURT'S ERROR [IN REFUSING] TO SEPARATELY
INSTRUCT THE JURY ON EXPRESS MALICE

(FROM IMPLIED MALICE) WAS COMPOUNDED BY THE
SUPPL. INSTRUCTIONS NO. 12

STATE WHEN IT ARGUED IN CLOSING ELEMENTS
FOR IMPLIED MALICE. (YOU DON'T HAVE TO HAVE SPECIFIC
INTENT TO DO ANYTHING) 32:10-11; (WHAT DID THE DEFENDANT
INTEND TO DO) 32:19; (IT'S NOT THAT HE HAD TO HAVE
INTENDED TO KILL HER WHEN HE WALKED IN ITS WITH THE
INTENT TO COMMIT ASSAULT, BATTERY OR A FELONY, SUCH AS
ATTEMPTED MURDER) 30:2-5; (TO DO SOMETHING PHYSICAL
TO COMMIT VIOLENCE) 16:8-9; (IF HE SO MUCH HAD THE
INTENT TO ESCAPE) 24:25.

2. SUPPLEMENTARY INSTRUCTION NO. 13

ON THIS RECORD, THIS COURT CANNOT SAY THAT THE ERROR WAS HARMLESS. SEE CRAWFORD V. STATE, 121 N.E. 2d 746, 756, 121 P.3d 582, 590 (2005) (PROVIDING THAT AN ERROR IS HARMLESS IF THE REVIEWING COURT IS CONVINCED BEYOND A REASONABLE DOUBT THAT THE JURY'S VERDICT WAS NOT ATTRIBUTABLE TO THE ERROR AND THAT THE ERROR WAS HARMLESS UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE.). BECAUSE "IT WAS... NOT WIDE CLEAR TO THE JURY THAT NOTHING LESS THAN A SPECIFIC CRIMINAL INTENT TO KILL MUST BE SHOWN IN ORDER TO ESTABLISH THE CRIME OF ATTEMPTED MURDER," THIS COURT MUST REVERSE GRIMES' JUDGMENT OF CONVICTION AND REMAND FOR A NEW TRIAL. AT KEYS, 104 N.E. 2d 766 P.2d AT 273-74; SEE ALSO PEOPLE V. KRAFT, 133 ILL.

APP. 3d 294, 478 N.E. 2d 1154, 1157, 88
111. DEC. 546 (111. APP. CT. 1985).

THE JURY WAS NOT INSTRUCTED THAT ONE COULD NOT BE CONVICTED OF ATTEMPTED MURDER UNLESS IT WERE PROVEN THAT HE HAD THE "INTENT SPECIFICALLY TO KILL" ANOTHER PERSON. IT WAS ERROR FOR THE TRIAL COURT NOT TO INSTRUCT THE JURY THAT THE SPECIFIC INTENT TO KILL IS AN ESSENTIAL ELEMENT OF THE CRIME OF ATTEMPTED MURDER. SEE RAMOS V. STATE, 95 NEV. 251, 592 P.2d 950 (1979) (REVERSIBLE ERROR TO INSTRUCT JURY THAT DEFENDANT CAN BE FOUND GUILTY OF ATTEMPTED MURDER ABSENT PROOF OF A SPECIFIC INTENT TO KILL). THE ERROR WAS COMPOUNDED BY THE DISTRICT COURT'S INSTRUCTIONS TO THE JURY ON IMPLIED MALICE. IMPLIED MALICE IS MALICE INFERRED IN LAW FROM THE DEFENDANT'S CONDUCT RATHER THAN BY PROOF OF AN ACTUAL INTENTION TO KILL. THE MENS REA ENCOMPASSED BY IMPLIED MALICE HAS NO APPLICATION IN A PROSECUTION IN WHICH A SPECIFIC INTENT TO KILL IS A REQUIRED ELEMENT OF THE ACCUSED OFFENSE. AN INSTRUCTION ON IMPLIED MALICE IN RELATION TO THE CRIME OF ATTEMPTED MURDER IS MISLEADING TO A JURY.

ALL AUTHORITIES AGREE THAT THE CRIME OF ATTEMPT IS A SPECIFIC INTENT CRIME AND "AN INSTRUCTION MUST MAKE IT CLEAR THAT TO

CONVICT FOR ATTEMPTED MURDER NOTHING LESS THAN A CRIMINAL INTENT TO KILL MUST BE SHOWN." (CITATIONS OMITTED.)

GRIMES WAS CHARGED WITH ATTEMPTED MURDER, THAT IS, AN ACT DONE WITH THE INTENT TO COMMIT MURDER, SUCH ACT TENDING BUT FAILING TO ACCOMPLISH THE CRIME OF MURDER. INTENT TO COMMIT MURDER MEANS THE INTENT TO KILL SOMEONE WITH MALICE AFORETHOUGHT.

THE MENS REA REQUIREMENT DENOTED BY THE TERM EXPRESS MALICE IS DIFFERENT FROM THAT OF IMPLIED MALICE. EXPRESS MALICE, CALLED MALICE IN FACT IS THE DELIBERATE INTENTION TO KILL; IMPLIED MALICE, CALLED MALICE IN LAW, DOES NOT RELATE TO A DELIBERATE, INTENTIONAL KILLING, BUT IS RATHER A MENS REA INFERRED IN LAW FROM THE "CIRCUMSTANCES OF THE KILLING." NRS. 200.020.

PROVING EXPRESS MALICE MEANS PROVING A DELIBERATE INTENTION TO KILL; WHILE PROVING IMPLIED MALICE MEANS PROVING ONLY THE COMMISSION OF WRONGFUL ACTS FROM WHICH, ABSENT ANY PROOF OF AN ACTUAL INTENT TO HARM, THE ARCHETYPIC BUT ESSENTIAL "ABANDONED AND MALIGNANT HEART" CAN BE INFERRED IN LAW.

ATTEMPTED MURDER CAN BE COMMITTED ONLY WHEN THE ACCUSED'S ^{ACTS} ARE ACCOMPANIED BY EXPRESS MALICE, MALICE IN FACT. ONE CANNOT ATTEMPT TO

KILL ANOTHER WITH IMPLIED MALICE BECAUSE THERE "IS NO SUCH CRIMINAL OFFENSE AS AN ATTEMPT TO ACHIEVE AN UNINTENDED RESULT." RAMOS, 95 NEU AT 253, 592 P.2d AT 951 (QUOTING PEOPLE V. UISER, 343 N.E. 2d 903, 910 (111. 1975)). AN ATTEMPT, BY NATURE, IS A FAILURE TO ACCOMPLISH WHAT ONE INTENDED TO DO. ATTEMPT MEANS TO TRY; IT MEANS AN EFFORT TO BRING ABOUT A DESIRED RESULT. THUS ONE CANNOT ATTEMPT TO BE NEGLIGENT OR ATTEMPT TO HAVE THE GENERAL MALICIOUS RECKLESSNESS CONTEMPLATED BY THE LEGAL CONCEPT, "IMPLIED MALICE." ONE CANNOT BE GUILTY OF ATTEMPTED MURDER BY IMPLIED MALICE BECAUSE IMPLIED MALICE DOES NOT ENCOMPASS THE ESSENTIAL SPECIFIC INTENT TO KILL.

AN ATTEMPT TO KILL WITH EXPRESS MALICE IS, ON THE OTHER HAND, COMPLETELY CONSISTENT WITH THE SPECIFIC INTENT REQUIREMENT OF THE CRIME OF ATTEMPT. EXPRESS MALICE IS THE "DELIBERATE INTENTION UNLAWFULLY" TO KILL A HUMAN. NEB. 200.02d) ATTEMPTED MURDER, THEN, IS THE ATTEMPT TO KILL A PERSON WITH EXPRESS MALICE, OR MORE COMPLETELY DEFINED: ATTEMPTED MURDER IS THE PERFORMANCE OF AN ACT OR ACTS WHICH TEND, BUT FAIL, TO KILL A HUMAN BEING, WHEN SUCH ACTS ARE DONE WITH EXPRESS MALICE, NAMELY, WITH THE DELIBERATE INTENTION UNLAWFULLY TO KILL. THIS IS ALL THERE IS TO IT.

FURTHER, THE GIVEN INSTRUCTION ON IMPLIED MALICE, PARTICULARLY AS IT RELATES TO UNINTENTIONAL "RECKLESS DISREGARD OF CONSEQUENCES AND SOCIAL DUTY," ALTHOUGH APPLICABLE TO A MURDER CHARGE, WAS NECESSARILY MISLEADING TO THE JURY WHEN IT WAS CONSIDERING BRINES' ATTEMPTED MURDER CHARGE. AS STATED IN THE KRAFT CASE, THE COURT'S INSTRUCTIONS "NEED MAKE IT CLEAR THAT TO CONVICT FOR ATTEMPTED MURDER NOTHING LESS THAN A CRIMINAL INTENT TO KILL MUST BE SHOWN" KRAFT, 428 N.E. 2D AT 1157. GIVEN THE TRIAL COURT'S REFUSAL OF BRINES' PROFFERED INSTRUCTION ON SPECIFIC INTENT AND THE MISLEADING EFFECT OF THE IMPLIED MALICE INSTRUCTIONS GIVEN BY THE COURT, IT WAS CERTAINLY NOT MADE CLEAR TO THE JURY THAT NOTHING LESS THAN A SPECIFIC CRIMINAL INTENT TO KILL MUST BE SHOWN IN ORDER TO ESTABLISH THE CRIME OF ATTEMPTED MURDER.

THEREFORE, AND UNDER THE DIRECT AUTHORITY OF RAMOS, THIS COURT MUST REVERSE THE ATTEMPTED MURDER CONVICTION.

WHEREFORE, BENNETT GRIMES, PRAYS THAT THE COURT
GRANT PETITIONER RELIEF WHICH HE MAY BE ENTITLED
IN THIS PROCEEDING.

EXECUTED AT HIGH DEPT STATE PRISON
ON THE 24 DAY OF APRIL, 2020.

Bennett A. Grimes
SIGNATURE OF PETITIONER

VERIFICATION

UNDER PENALTY OF PERJURY, PURSUANT TO N.R.S.
208.165 ET SEQ., THE UNDERSIGNED DECLARES
THAT HE IS THE PETITIONER NAMED IN THE FOREGOING
PETITION AND KNOWS THE CONTENTS THEREOF; THAT THE
PLEADING IS TRUE AND CORRECT OF HIS OWN PERSONAL
KNOWLEDGE, EXCEPT AS TO THOSE MATTERS BASED ON
INFORMATION AND BELIEF, AND TO THOSE MATTERS,
HE BELIEVES THEM TO BE TRUE

Bennett A. Grimes
SIGNATURE OF PETITIONER.

N/A; PRO PER
ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE BY MAILING

I, BENNETT G. GRIMES, HEREBY CERTIFY, PURSUANT TO NLRCP 5(B),
THAT ON THIS 24 DAY OF APRIL, 2020, I MAILED
A TRUE AND CORRECT COPY OF THE FOLLOING, "PETITION
FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)"
BY DEPOSITING IT IN THE HIGH DESERT STATE PRISON,
LEGAL LIBRARY, FIRST-CLASS POSTAGE, FULLY PREPAID,
ADDRESSED AS FOLLOWS:

STEVEN B. WOLFSON
DISTRICT ATTORNEY
200 LEWIS AVE.
P.O. BOX 552212
LAS VEGAS, NEVADA 89155.

CLERK OF THE COURT
200 LEWIS AVE 3RD FL.
LAS VEGAS, NEVADA
89155-1160.

OFFICE OF ATTORNEY GENERAL
100 NORTH CARSON STREET
CARSON CITY, NEVADA
89201-4717.

CC: FILE

DATED: THIS 24 DAY OF APRIL, 2020.

Bennett G. Grimes
BENNETT G. GRIMES 109820
[IN PROPER REPRESENTATION]
TO BOX 650 [HOSP]
SPRINGFIELD, NEVADA 89070.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Petition

FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

(Title of Document)

filed in District Court Case number 0276163

☒ 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.

Bennett L. Shing
Signature

5/24/2020
Date

TENNETE GRIMES
Print Name

WIRE
Title

Bonnett J. Shines #100880
~~464 BOSTON STATE PRISON~~
P.O. Box 650
INDIAN SPRINGS, NEVADA 89070.

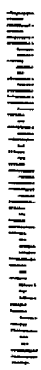
3762

LEGAL
MAIL

STEVEN D. GREER
CLERK OF COURT
Dist. Court.

200 Lewis Avenue 3rd floor
Las Vegas, Nevada 89155-1160

Hastler
04/28/2003
US POSTAGE \$001.80
ZIP 69101
0151255356





1
2 ORDR

3 EIGHTH JUDICIAL DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 BENNETT GRIMES,

6 Petitioner,

7 vs.

8 BRIAN WILLIAMS, WARDEN ,

9 Respondent.

) Case No.: A-20-815590-W

) DEPT. No.: XII
) (Second Petition)

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

12 **FINDINGS OF FACT**

13
14 1. On September 14, 2011, the Petitioner was charged by way of Information as
15 follows: count 1: ATTEMPTED MURDER WITH USE OF A DEADLY
16 WEAPON IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (NRS 200.010,
17 200.030, 193.330, 193.165, 193.166), count 2: BURGLARY WHILE IN POSSESSION OF
18 A DEADLY WEAPON IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER
19 (NRS 205.060, 193.166), and count 3: BATTERY WITH USE OF A DEADLY WEAPON
20 CONSTITUTING DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL BODILY
21 HARM IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (NRS 200.481.2c;
22 193.166).

23 2. On October 15, 2012, Petitioner was found guilty, as to all three counts, by
24 way of jury verdict.

25 3. On February 12, 2013, the court sentenced Petitioner on count 1 to eight (8)
26 to twenty (20) years in the Nevada Department of Corrections, plus a consecutive five (5) to
27 fifteen (15) years for the deadly weapon enhancement; on count 2 to eight (8) to twenty (20)
28 years in the Nevada Department of Corrections to run concurrent with count 1; on count 3 to

MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

1

1
2 eight (8) to twenty (20) years in the Nevada Department of Corrections, to run consecutive
3 to counts 1 and 2.

4 4. The court entered its Judgment of Conviction on February 21, 2013.

5 5. On March 18, 2013, Petitioner filed a Notice of Appeal. On February 27,
6 2014, the Nevada Supreme Court affirmed Petitioner's conviction.

7 6. Remittitur issued on March 24, 2014.

8 7. On February 20, 2015, Petitioner filed his first Petition for Writ of Habeas
9 Corpus (Post-Conviction).

10 8. On October 5, 2017, the Court conducted an evidentiary hearing and denied
11 Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction).

12 9. On November 20, 2017, the Court issued Findings of Facts, Conclusions of
13 Law and Order.

14 10. Petitioner filed a Notice of Appeal on November 2, 2017.

15 11. On May 3, 2019, the Supreme Court of Nevada affirmed the judgment of the
16 District Court denying Petitioner's first Petition for Writ of Habeas Corpus (Post-
17 Conviction).

18 12. On May 27, 2020, Petitioner filed the instant (second) Petition for Writ of
19 Habeas Corpus (Post-Conviction).

20 13. The instant petition is untimely. Absent good cause and prejudice, the
21 petition is procedurally barred, and must be denied.

22 CONCLUSIONS OF LAW

23 1. NRS 34.726(1), governing "Limitations on time to file...", requires that a
24 petition for a writ of habeas corpus "must be filed within 1 year after entry of the judgment
25 of conviction or, if an appeal has been taken from the judgment, within 1 year after the
26 Supreme Court issues its remittitur." Late-filing of a petition may be excused from
27 procedural default if the petitioner can establish good cause for delay in bringing the claim.

1
2 *Id.* Good cause for late-filing consists of a showing that: (1) “delay is not the fault of the
3 petitioner”; and (2) “dismissal of the petition as untimely will unduly prejudice the
4 petitioner.” *Id.* at (1)(a)-(b).

5 2. To avoid dismissal the petitioner must plead and prove specific facts that
6 demonstrate good cause for his failure to present claims before and prejudice. *See State v.*
7 *District Court (Riker)*, 121 Nev. 225, 232, 112 P.3d 1070, 1074 (2005).

8 3. In order to demonstrate good cause, a petitioner must show that an
9 impediment external to the defense prevented him or her from complying with the state
10 procedural default rules. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

11 4. An impediment external to the defense may be demonstrated by a showing
12 “that the factual or legal basis for a claim was not reasonably available to counsel, or that
13 ‘some interference by officials,’ made compliance impracticable.” *Hathaway*, 119 Nev. at
14 252, 71 P.3d at 506 (quoting *Murray v. Carrier*, 477 U.S. 478, 488 (1986)).

15 5. The Court may excuse the failure to show good cause where the prejudice
16 from a failure to consider the claim amounts to a fundamental miscarriage of justice.
17 *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

18 6. NRS 34.810 (2), governing “Additional reasons for dismissal of petition,”
19 requires that “[a] second or successive petition must be dismissed if the judge or justice
20 determines that it fails to allege new or different grounds for relief and that the prior
21 determination was on the merits or, if new and different grounds are alleged, the judge or
22 justice finds that the failure of the petitioner to assert those grounds in a prior petition
23 constituted an abuse of the writ.”

24 7. The petitioner has the burden of pleading and proving specific facts that
25 demonstrate both good cause for failing to present a claim or for presenting a claim again
26 and actual prejudice. NRS 34.810(3); *see also State v. Haberstroh*, 119 Nev. 173, 181, 69
27 P.3d 676, 681 (2003).

1
2 8. A court must dismiss a habeas petition if it presents claims that either were
3 presented in an earlier proceeding or could have been presented in an earlier proceeding,
4 unless the court finds both cause for failing to present the claims earlier or for raising them
5 again and actual prejudice to the petitioner. *Evans v. State*, 117 Nev. 609, 621-622, 28 P.3d
6 498, 507 (2001).

7 9. Unlike initial petitions which certainly require a careful review of the record,
8 successive petitions may be dismissed based solely on the face of the petition. *Ford v.*
9 *Warden*, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

10 10. Application of the statutory procedural default rules to post-conviction
11 habeas petitions is mandatory. *Riker*, 121 Nev. at 231, 112 P.3d at 1074.

12 11. Meritless, successive, and untimely petitions clog the court system and
13 undermine the finality of convictions. *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d 944, 950
14 (1994).

15 12. NRS 34.745 (4), governing "Summary dismissal of successive petitions,"
16 requires that "if the petition is a second or successive petition challenging the validity of a
17 judgment of conviction or sentence and if it plainly appears from the face of the petition or
18 an amended petition and documents and exhibits that are annexed to it, or from records of
19 the court that the petitioner is not entitled to relief based on any of the grounds set forth in
20 subsection 2 of NRS 34.810, the judge or justice shall enter an order for its summary
21 dismissal and cause the petitioner to be notified of the entry of the order." *See* NRS
22 34.745(4).

23 13. Petitioner filed his second petition on May 27, 2020, more than six years after
24 the Nevada Supreme Court issued remittitur on March 24, 2014. Therefore, the instant
25 petition is untimely. NRS 34.726 (1).

26 14. Moreover, the instant petition is a successive petition and may constitute an
27 abuse of the writ. NRS 34.810 (1)(b)(2). Therefore, the instant petition is also subject to
28 dismissal pursuant to NRS 34.745 (4); *Evans*, 117 Nev. at 621-22, 28 P.3d at 507. Absent

1 good cause for the failure to present the claim in a prior petition or for presenting the claim
2 again, and actual prejudice, the petition must be dismissed.

3 15. Petitioner failed to address the issue of good cause or allege any impediment
4 external to the defense prevented him from filing a timely petition.

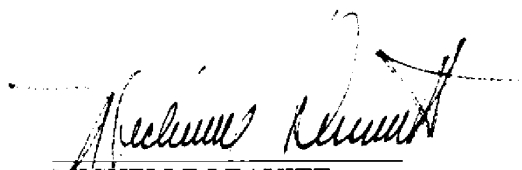
5 16. Petitioner failed to demonstrate prejudice which would amount to a
6 fundamental miscarriage of justice. *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537.

7 17. Accordingly, the petition is time barred. The petition is also a successive
8 petition constituting an abuse of the writ.
9

10 **ORDER**

11
12 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas
13 Corpus (post-conviction) shall be, and it is, hereby DENIED.
14

15 Dated this 21 day of July, 2020.

16
17
18 
19 MICHELLE LEAVITT
20 DISTRICT COURT JUDGE
21 DEPARTMENT XII
22 EIGHTH JUDICIAL DISTRICT COURT
23
24
25
26
27
28

MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

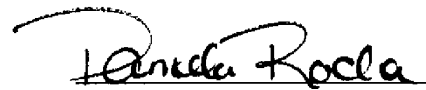
CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of July, 2020, I placed a copy of the Findings of Fact, Conclusions of Law, and Order in the U.S. Mail, postage prepaid to:

Bennett Grimes #1098810
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

Steven B. Wolfson
Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155

Aaron Ford
Nevada Attorney General
555 E. Washington, Suite 3900
Las Vegas, NV 89101-1068


Pamela Rocha
Judicial Executive Assistant
Department XII
Eighth Judicial District Court

A-20-815590-W
C-11-276163-1
Bennett Grimes
v.
State of Nevada.



1 NEFF

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 BENNETT GRIMES,

5
6 Petitioner,

7 vs.

8 STATE OF NEVADA; ET.AL.,

9 Respondent,

Case No: A-20-815590-W

Dept No: XII

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

10
11 PLEASE TAKE NOTICE that on July 21, 2020, the court entered a decision or order in this matter, a
true and correct copy of which is attached to this notice.

12 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
13 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
14 mailed to you. This notice was mailed on July 23, 2020.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

17
18
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 23 day of July 2020, I served a copy of this Notice of Entry on the following:

21 ☒ By e-mail:

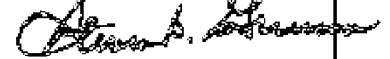
22 Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

23 ☒ The United States mail addressed as follows:

24 Bennett Grimes # 1098810
25 P.O. Box 650
Indian Springs, NV 89070

26
27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk



1
2 ORDR

3 EIGHTH JUDICIAL DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 BENNETT GRIMES,

6 Petitioner,

7 vs.

8 BRIAN WILLIAMS, WARDEN ,

9 Respondent.

) Case No.: A-20-815590-W

) DEPT. No.: XII
) (Second Petition)

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

12 **FINDINGS OF FACT**

13
14 1. On September 14, 2011, the Petitioner was charged by way of Information as
15 follows: count 1: ATTEMPTED MURDER WITH USE OF A DEADLY
16 WEAPON IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (NRS 200.010,
17 200.030, 193.330, 193.165, 193.166), count 2: BURGLARY WHILE IN POSSESSION OF
18 A DEADLY WEAPON IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER
19 (NRS 205.060, 193.166), and count 3: BATTERY WITH USE OF A DEADLY WEAPON
20 CONSTITUTING DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL BODILY
21 HARM IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (NRS 200.481.2c;
22 193.166).

23 2. On October 15, 2012, Petitioner was found guilty, as to all three counts, by
24 way of jury verdict.

25 3. On February 12, 2013, the court sentenced Petitioner on count 1 to eight (8)
26 to twenty (20) years in the Nevada Department of Corrections, plus a consecutive five (5) to
27 fifteen (15) years for the deadly weapon enhancement; on count 2 to eight (8) to twenty (20)
28 years in the Nevada Department of Corrections to run concurrent with count 1; on count 3 to

MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

1

1
2 eight (8) to twenty (20) years in the Nevada Department of Corrections, to run consecutive
3 to counts 1 and 2.

4 4. The court entered its Judgment of Conviction on February 21, 2013.

5 5. On March 18, 2013, Petitioner filed a Notice of Appeal. On February 27,
6 2014, the Nevada Supreme Court affirmed Petitioner's conviction.

7 6. Remittitur issued on March 24, 2014.

8 7. On February 20, 2015, Petitioner filed his first Petition for Writ of Habeas
9 Corpus (Post-Conviction).

10 8. On October 5, 2017, the Court conducted an evidentiary hearing and denied
11 Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction).

12 9. On November 20, 2017, the Court issued Findings of Facts, Conclusions of
13 Law and Order.

14 10. Petitioner filed a Notice of Appeal on November 2, 2017.

15 11. On May 3, 2019, the Supreme Court of Nevada affirmed the judgment of the
16 District Court denying Petitioner's first Petition for Writ of Habeas Corpus (Post-
17 Conviction).

18 12. On May 27, 2020, Petitioner filed the instant (second) Petition for Writ of
19 Habeas Corpus (Post-Conviction).

20 13. The instant petition is untimely. Absent good cause and prejudice, the
21 petition is procedurally barred, and must be denied.

22 CONCLUSIONS OF LAW

23 1. NRS 34.726(1), governing "Limitations on time to file...", requires that a
24 petition for a writ of habeas corpus "must be filed within 1 year after entry of the judgment
25 of conviction or, if an appeal has been taken from the judgment, within 1 year after the
26 Supreme Court issues its remittitur." Late-filing of a petition may be excused from
27 procedural default if the petitioner can establish good cause for delay in bringing the claim.

1
2 *Id.* Good cause for late-filing consists of a showing that: (1) “delay is not the fault of the
3 petitioner”; and (2) “dismissal of the petition as untimely will unduly prejudice the
4 petitioner.” *Id.* at (1)(a)-(b).

5 2. To avoid dismissal the petitioner must plead and prove specific facts that
6 demonstrate good cause for his failure to present claims before and prejudice. *See State v.*
7 *District Court (Riker)*, 121 Nev. 225, 232, 112 P.3d 1070, 1074 (2005).

8 3. In order to demonstrate good cause, a petitioner must show that an
9 impediment external to the defense prevented him or her from complying with the state
10 procedural default rules. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

11 4. An impediment external to the defense may be demonstrated by a showing
12 “that the factual or legal basis for a claim was not reasonably available to counsel, or that
13 ‘some interference by officials,’ made compliance impracticable.” *Hathaway*, 119 Nev. at
14 252, 71 P.3d at 506 (quoting *Murray v. Carrier*, 477 U.S. 478, 488 (1986)).

15 5. The Court may excuse the failure to show good cause where the prejudice
16 from a failure to consider the claim amounts to a fundamental miscarriage of justice.
17 *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

18 6. NRS 34.810 (2), governing “Additional reasons for dismissal of petition,”
19 requires that “[a] second or successive petition must be dismissed if the judge or justice
20 determines that it fails to allege new or different grounds for relief and that the prior
21 determination was on the merits or, if new and different grounds are alleged, the judge or
22 justice finds that the failure of the petitioner to assert those grounds in a prior petition
23 constituted an abuse of the writ.”

24 7. The petitioner has the burden of pleading and proving specific facts that
25 demonstrate both good cause for failing to present a claim or for presenting a claim again
26 and actual prejudice. NRS 34.810(3); *see also State v. Haberstroh*, 119 Nev. 173, 181, 69
27 P.3d 676, 681 (2003).

1
2 8. A court must dismiss a habeas petition if it presents claims that either were
3 presented in an earlier proceeding or could have been presented in an earlier proceeding,
4 unless the court finds both cause for failing to present the claims earlier or for raising them
5 again and actual prejudice to the petitioner. *Evans v. State*, 117 Nev. 609, 621-622, 28 P.3d
6 498, 507 (2001).

7 9. Unlike initial petitions which certainly require a careful review of the record,
8 successive petitions may be dismissed based solely on the face of the petition. *Ford v.*
9 *Warden*, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

10 10. Application of the statutory procedural default rules to post-conviction
11 habeas petitions is mandatory. *Riker*, 121 Nev. at 231, 112 P.3d at 1074.

12 11. Meritless, successive, and untimely petitions clog the court system and
13 undermine the finality of convictions. *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d 944, 950
14 (1994).

15 12. NRS 34.745 (4), governing "Summary dismissal of successive petitions,"
16 requires that "if the petition is a second or successive petition challenging the validity of a
17 judgment of conviction or sentence and if it plainly appears from the face of the petition or
18 an amended petition and documents and exhibits that are annexed to it, or from records of
19 the court that the petitioner is not entitled to relief based on any of the grounds set forth in
20 subsection 2 of NRS 34.810, the judge or justice shall enter an order for its summary
21 dismissal and cause the petitioner to be notified of the entry of the order." *See* NRS
22 34.745(4).

23 13. Petitioner filed his second petition on May 27, 2020, more than six years after
24 the Nevada Supreme Court issued remittitur on March 24, 2014. Therefore, the instant
25 petition is untimely. NRS 34.726 (1).

26 14. Moreover, the instant petition is a successive petition and may constitute an
27 abuse of the writ. NRS 34.810 (1)(b)(2). Therefore, the instant petition is also subject to
28 dismissal pursuant to NRS 34.745 (4); *Evans*, 117 Nev. at 621-22, 28 P.3d at 507. Absent

1 good cause for the failure to present the claim in a prior petition or for presenting the claim
2 again, and actual prejudice, the petition must be dismissed.

3 15. Petitioner failed to address the issue of good cause or allege any impediment
4 external to the defense prevented him from filing a timely petition.

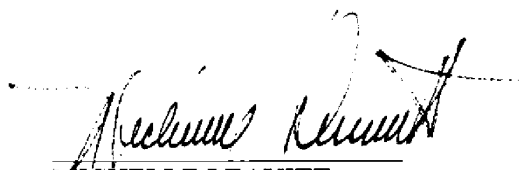
5 16. Petitioner failed to demonstrate prejudice which would amount to a
6 fundamental miscarriage of justice. *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537.

7 17. Accordingly, the petition is time barred. The petition is also a successive
8 petition constituting an abuse of the writ.

9
10 **ORDER**

11
12 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas
13 Corpus (post-conviction) shall be, and it is, hereby DENIED.

14
15 Dated this 21 day of July, 2020.

16
17 
18 MICHELLE LEAVITT
19 DISTRICT COURT JUDGE
20 DEPARTMENT XII
21 EIGHTH JUDICIAL DISTRICT COURT
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

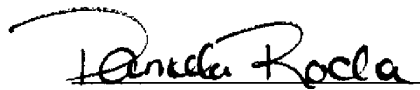
CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of July, 2020, I placed a copy of the Findings of Fact, Conclusions of Law, and Order in the U.S. Mail, postage prepaid to:

Bennett Grimes #1098810
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

Steven B. Wolfson
Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155

Aaron Ford
Nevada Attorney General
555 E. Washington, Suite 3900
Las Vegas, NV 89101-1068


Pamela Rocha
Judicial Executive Assistant
Department XII
Eighth Judicial District Court

A-20-815590-W
C-11-276163-1
Bennett Grimes
v.
State of Nevada.

OSCC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

BENNETT GRIMES, PLAINTIFF(S)	CASE NO.: A-20-815590-W
VS.	
STATE OF NEVADA, DEFENDANT(S)	DEPARTMENT 12

CIVIL ORDER TO STATISTICALLY CLOSE CASE

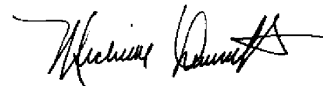
Upon review of this matter and good cause appearing,
IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
statistically close this case for the following reason:

DISPOSITIONS:

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

DATED this day of August, 2020.

Dated this 10th day of August, 2020



EEA 8DF 35EA EE8B
Michelle Leavitt
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Bennett Grimes, Plaintiff(s) CASE NO: A-20-815590-W
7 vs. DEPT. NO. Department 12
8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's
12 electronic filing system, but there were no registered users on the case.

13
14 If indicated below, a copy of the above mentioned filings were also served by mail
15 via United States Postal Service, postage prepaid, to the parties listed below at their last
16 known addresses on 8/11/2020

16 Bennett Grimes HDSP
17 P.O. Box 650
18 Indian Springs, NV, 89070
19
20
21
22
23
24
25
26
27
28

Electronically Filed
8/21/2020 2:23 PM
Steven D. Grierson
CLERK OF THE COURT

Albert B. Hanson

BENNETT G. GRIMES,
PETTLINGER,

CASE NO. A-20-815590-W

DEPT. NO. X11

V.

THE STATE OF NEVADA,
RESPONDENT.

Notice of Special

THIS APPEAL IS MADE IN GOOD FAITH.

DATED: THIS 10TH DAY OF AUGUST, 2020.

~~Respectfully Submitted:~~
Kathleen Jones

BENNETT & BARNES # 1098018
HIGH DESERT STATE PRISON
P.O. Box 650

IR PROPER PERSON / INDIAN SPRINGS, NEVADA 89670.

RECEIVED
AUG 17 2020
CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAILING

I, BENNETT G. GRIMES, HEREBY CERTIFY,
PURSUANT TO NRS 5(B), THAT ON THIS
10TH DAY OF AUGUST, 2020, I MAILED A
TRUE AND CORRECT COPY OF THE FOREGOING,
"NOTICE OF APPEAL" IN CASE NO. A-20-815590-W.
BY DEPOSITING IT IN THE HIGH DESERT STATE
PRISON, LEGAL LIBRARY, FIRST CLASS POSTAGE,
FULLY PREPAID, ADDRESSED AS FOLLOWS:

STEVEN D. GRIERSON
DISTRICT COURT CLERK

200 LEWIS AVENUE 3RD FLOOR
LAS VEGAS, NEVADA 89155-1160.

NEVADA SUPREME COURT

201 SOUTH CARSON ST. #201
CARSON CITY, NEVADA 89701-4702

STEVEN B. WOLFSON

DISTRICT ATTORNEY

200 LEWIS AVENUE
LAS VEGAS, NEVADA 89155.

NEVADA ATTORNEY GENERAL'S OFFICE

100 NORTH CARSON ST.

CARSON CITY, NEVADA 89701.

CC: FILE

DATED: THIS 10TH DAY OF AUGUST, 2020.

RESPECTFULLY SUBMITTED:

Bennett G. Grimes
BENNETT G. GRIMES #1048810

HIGH DESERT STATE PRISON

P.O. BOX 650

INDIAN SPRINGS, NEVADA 89070.

/H PROPER PERSON

AFFIRMATION

PURSUANT TO NRS. 239 B.030

THE UNDERSIGNED DOES HEREBY AFFIRM
THAT THE PRECEDING "NOTICE OF APPEAL", FILED
IN DISTRICT COURT CASE NO. A-20-815590-W

☒ DOES NOT CONTAIN THE SOCIAL SECURITY
NUMBER OF ANY PERSON.

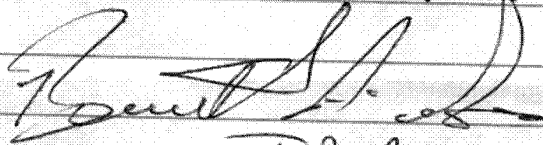
OR

☐ CONTAINS THE SOCIAL SECURITY NUMBER OF
A PERSON AS REQUIRED BY:

A. A SPECIFIC STATE OR FEDERAL LAW,
TO WIT:

OR

B. FOR THE ADMINISTRATION OF A PUBLIC
PROGRAM OR FOR AN APPLICATION FOR A
FEDERAL OR STATE GRANT.



KENNETH L. GRIMES

/ IN PROPER PERSON 08/10/2020.

BRUNETT F. BRUNETT #1098810
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89170.

LAS VEGAS
NOV 2020
12 AUG 20
PM 3 L

Hasler
08/12/2020
FIRST-CLASS MAIL
US POSTAGE \$000.50

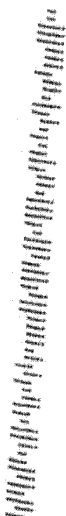


ZIP 89101
01E12650516

Cell
Mail
3762

89101-630000

STEVEN D. SPIERSON
DISTRICT COURT CLERK
200 LEWIS AVENUE 3rd Floor
LAS VEGAS, NEVADA 89155-1160



HIGH DESERT STATE PRISON
AUG 14 2020
UNIT 7 C/D



1 ASTA

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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

BENNETT GRIMES,

Plaintiff(s),

vs.

STATE OF NEVADA; BRIAN WILLIAMS SP
WARDEN,

Defendant(s),

Case No: A-20-815590-W

Dept No: XII

CASE APPEAL STATEMENT

1. Appellant(s): Bennett G. Grimes

2. Judge: Michelle Leavitt

3. Appellant(s): Bennett G. Grimes

Counsel:

Bennett G. Grimes 31098810
P.O. Box 650
Indian Springs, NV 89070

4. Respondent (s): State of Nevada; Brian Williams SP Warden

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.

Las Vegas, NV 89155-2212

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: May 27, 2020

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 24 day of August 2020.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann

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

cc: Bennett G. Grimes

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated September 9, 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 47.

BENNETT GRIMES,

Plaintiff(s),

vs.

STATE OF NEVADA; BRIAN WILLIAMS SP
WARDEN,

Defendant(s),

Case No: A-20-815590-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 15 day of September 2020.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk