

NOA
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ALISHA BURNS

Electronically Filed
Mar 30 2021 10:55 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,)	CASE NO.: 03C191253
)	
Plaintiff,)	DEPT.NO.: X
)	
vs.)	
)	
ALISHA BURNS,)	
Defendant.)	

NOTICE OF APPEAL

ALISHA BURNS, by and through her attorney, TONY L. ABBATANGELO, ESQ.,
hereby appeals to the Supreme Court of Nevada from the Order Denying her Petition for
Habeas Corpus entered on March 10, 2021, a copy of which is attached.

Dated this 22d day of March, 2021

/s/ Tony L. Abbatangelo, Esq.
TONY L. ABBATANGELO, ESQ.
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Attorney for Defendant/Petitioner

CERTIFICATE OF SERVICE

A copy of this Notice of Appeal was electronically served on all parties of record this 22 day of March, 2021.

/s/Tony L. Abbatangelo, Esq
Tony L. Abbatangelo, Esq.

ORDER DENYING PETITION

1 **ORDR**

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

6
7 **THE STATE OF NEVADA,**

8 **Plaintiff,**

9
10 **v.**

11 **ALISHA BURNS #1753792,**

12 **Defendant.**

Case No.: 03C191253

Department: X

13
14
15 **ORDER DENYING DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS**

16 THIS MATTER having come on for hearing on the 18th day of September, 2020; continuing
17 on the 22nd day of January, 2021; and the 28th day of January 2021, the Defendant being present,
18 represented by ANTHONY ABBATANGELO, Esq., the State of Nevada being represented by
19 STEVEN B. WOLFSON, Clark County District Attorney, through CHRISTOPHER HAMNER,
20 Esq., Chief Deputy District Attorney and RONALD EVANS, Esq., Deputy District Attorney, and
21 the Court having considered the information and arguments contained in the pleadings, arguments of
22 counsel, and good cause appearing therefore, DENIES the writ.

23
24 **PROCEDURAL HISTORY**

25 On December 5, 2002, Defendant Alisha Burns (hereinafter "Petitioner") was charged by
26 way of Criminal Complaint with Burglary, Robbery, First Degree Kidnapping, and Murder. On
27 April 1, 2003, after unconditional waiver of preliminary hearing, Petitioner was charged by way of
28 Information with Second Degree Murder. On April 22, 2003, Petitioner was arraigned and pled

1 guilty to Second Degree Murder. Per the guilty plea agreement, the State and the Petitioner
2 stipulated to a life sentence with the possibility of parole after ten (10) years. On June 3, 2003,
3 Petitioner was sentenced to life in the Nevada Department of Corrections with the possibility of
4 parole after one hundred twenty (120) months has been served, with one hundred thirty-one (131)
5 days credit for time served. The Judgment of Conviction was filed June 10, 2003. Petitioner did not
6 file a direct appeal.

7 Petitioner filed a Post-Conviction Petition for Writ of Habeas Corpus on November 21, 2003.
8 Petitioner withdrew the petition in open court on March 8, 2004. Petitioner filed an Application for
9 Appointment for Post-Conviction Relief on March 29, 2019. The State filed its Opposition on April
10 9, 2019. The Court took the application off calendar on April 10, 2019, as there was “no petition
11 pending for which the Court can appoint counsel,” and the Court would not rule on the motion
12 unless counsel decided to proceed.

13 Petitioner filed the instant Petition for Writ of Habeas Corpus on May 14, 2019.

14 15 **CONCLUSIONS OF LAW**

16 **A. The Petition is Untimely**

17 NRS 34.726(1) states:

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

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

24 Petitioner has failed to meet this burden.

25 Here, the Petitioner’s Judgment of Conviction was filed June 10, 2003. She did not file a
26 direct appeal. As such, June 10, 2004 was the deadline for Petitioner to file a timely petition.
27 Petitioner did not file the instant petition until May 14, 2019, which is almost fifteen (15) years past
28

1 the statutory deadlines. Petitioner has not provided a sufficient basis for the Court to determine that
2 the delay was not the fault of the Petitioner. Petitioner filed a Habeas Petition on December 8, 2003
3 and withdrew that Petition on March 8, 2004. There was nothing else filed in the case until March
4 29, 2019 when the Petitioner filed an Application for Appointment for Post-Conviction Relief.
5 Since Petitioner had previously filed a Petition, Defendant was aware of the Petition for Writ of
6 Habeas Corpus remedy and still did not file a subsequent petition for almost fifteen (15) years.
7 Petitioner argues that she withdrew the original writ petition because her counsel, at the time, told
8 her she needed to withdraw the petition to proceed with her emancipation claims. There has been no
9 evidence presented, establishing that a post-conviction writ of habeas corpus and an emancipation
10 case cannot proceed at the exact same time. There has been insufficient evidence presented to
11 overcome the procedural time bar of the filing of the instant petition. As such, the instant Petition is
12 untimely. Since, the Court has determined that the Petition is untimely; there is no need for the
13 Court to reach the issue of Ineffective Assistance of Counsel.

14
15 **B. Actual Innocence Claim**

16 Petitioner makes a claim of actual innocence in the Post – Conviction Petition for Writ of
17 Habeas Corpus that was filed on May 14, 2019. “A habeas petitioner may overcome procedural bars
18 and secure review of the merits of defaulted claims by showing that the failure to consider the
19 petition on its merits would amount to a fundamental miscarriage of justice.” *Berry v. State*, 131
20 Nev. 957 (2015). “This standard is met when the Petitioner makes a colorable showing he is
21 actually innocent of the crime.” *Pelligrini v. State*, 117 Nev. 860 (2001). “This means that “the
22 petitioner must show that it is more likely than not that no reasonable juror would have convicted
23 him in the light of the new evidence.” *Berry* at 966, *quoting Schlup v. Delo*, 513 U.S. 298 (1995).
24 In support of this claim, Petitioner testified and called Dr. Thomas Bennett to testify.

25 *1. Petitioner’s Testimony*

26 In regards to Petitioner’s testimony, the Court finds it insufficient to establish a colorable
27 showing that she is actually innocent of the crime as required by *Pelligrini*. Petitioner argued that
28

1 co-defendant Steven Kaczmarek told her to save them both and that she wasn't going to get much
2 time. This claim is belied by the record. The record consists of letters from Steven Kaczmarek
3 (hereinafter "Kaczmarek") to Petitioner. The letter does not indicate any request, by Kaczmarek for
4 her to confess to anything or to save them both. The letters actually indicate that Kaczmarek was
5 suggesting the opposite, as he specifically told her not to sign anything until they had a chance to
6 meet. According to Petitioner's own testimony, Kaczmarek only told her to take the deal after he
7 was convicted at trial. On March 17, 2003, Kaczmarek was convicted of the murder of Pedro
8 Villarreal, among other charges. On April 16, 2003, the judge signed a Stipulation and Order
9 authorizing a contact visit between Petitioner and Kaczmarek. The visit occurred shortly after the
10 order was signed. On April 22, 2003, Petitioner entered her plea of guilty to Second Degree
11 Murder. This was more than a month after Kaczmarek had been convicted at trial. As such,
12 Petitioner taking a deal couldn't have saved Kaczmarek as he was already convicted at trial.

13 Petitioner also argues that the statements from Corrections Officer Theresa Daka are false,
14 however there was no evidence presented to explain how the corrections officer would have
15 obtained specific factual information regarding the case, from any other source. As such, that claim
16 is also belied by the record.

17 Also, Petitioner admits to choking the victim and assisting with restraining the victim. The
18 Coroner's Report indicates that victim's cause of death was due to asphyxia and Dr. Bennett agrees
19 with the victim's cause of death. Asphyxia is defined by the Merriam-Webster dictionary as "a lack
20 of oxygen or excess of carbon dioxide in the body that results in unconsciousness and often death
21 and is usually caused by interruption of breathing or inadequate oxygen supply." This is specifically
22 what was described by Petitioner as her own actions which caused the injuries to the victim. As
23 such, it is not more likely than not that a reasonable juror would have convicted her in light of the
24 evidence presented.

25 *2. Dr. Thomas Bennett's testimony*

26 Petitioner called Dr. Thomas Bennett as a witness in her case-in-chief. Dr. Bennett testified
27 regarding his opinions as follows: (1) It was unlikely that the victim died on September 25th and
28

1 more likely that he died on September 27th; (2) the underlying cause of death is asphyxia and/or
2 suffocation or strangulation; (3) the victim was intoxicated, with a blood alcohol content (BAC) of
3 .13; and (4) victim was not in the tub under water for 2 days. On cross examination, he testified that
4 he did not review any of the crime scene photographs, the statement of Officer Theresa Daka, the
5 letter written by Petitioner to the Detective, or any CSA reports in preparation of his report. On re-
6 direct examination, he testified that a review of this additional information would not have changed
7 his opinion in his report. Dr. Bennett's testimony is inconsistent with the physical evidence
8 presented. The evidence presented does not support his opinion regarding the time of death, making
9 it possible that a reasonable juror would have convicted Petitioner based on the evidence presented,
10 regarding the time of death. Further, the Petitioner's own testimony establishes that she participated
11 in the asphyxia and/or suffocation or strangulation that Dr. Bennett determined to be the cause of
12 death of the victim. The victim's intoxication level does not prove that Petitioner is actually
13 innocent. Lastly, Dr. Bennett's opinion that the victim was not in the tub under water for two days is
14 not supported by the evidence presented. As such, Dr. Bennett's testimony fails to establish that a
15 reasonable jury would not have found the Petitioner guilty based upon the evidence presented.

16 *3. Fingerprints*

17 Petitioner argues that there were fingerprints found at the scene of the crime that do not
18 match herself or Kaczmarek. However, through Petitioner's own testimony she wiped down the
19 crime scene. This would explain why her own or Kaczmarek's fingerprints would not be at the
20 scene. As such, this evidence does not prove that she was not present, or that someone else
21 committed the murder, failing to establish that a reasonable jury would not have found the Petitioner
22 guilty based upon the evidence presented.

23 *4. Sex Trafficking*

24 Petitioner argues that she was a victim of sex trafficking and that is why she pleaded guilty to the
25 instant crime, per Kaczmarek's request. This claim is belied by the record. To support this
26 assertion, Petitioner testified and called Brironni Alex from the Cupcake Girls Board. However,
27 Petitioner and Ms. Alex's testimony fails to establish that the Petitioner was actually a victim of sex
28

1 trafficking. Further, as the Court has already found, the evidence presented does not suggest that
2 Petitioner's guilty plea was coerced by Kaczmarek. As such, this claim fails.

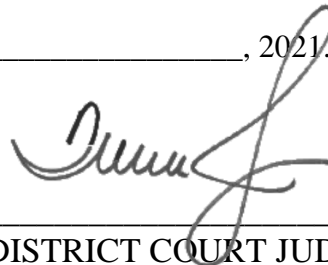
3
4 **CONCLUSION**

5 The Court FINDS that the petition is untimely and good cause has not been shown for the
6 delay. The Court FURTHER FINDS that insufficient evidence has been presented to show that it is
7 more likely than not that no reasonable juror would have convicted Petitioner in light of the new
8 evidence, as required to make a colorable showing that she is actually innocent of the crime.

9 IT IS HEREBY ORDERED that the Defendant's Petition for Writ of Habeas Corpus shall
10 be, and it is, hereby DENIED.

11 Dated this 10th day of March, 2021

12 IT IS SO ORDERED this _____ day of _____, 2021.

13
14 
15 _____

DISTRICT COURT JUDGE

16
17 358 081 D32F 29CD
18 Tierra Jones
19 District Court Judge
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21
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28

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 The State of Nevada vs Alisha
Burns

CASE NO: 03C191253

7 DEPT. NO. Department 10

8
9 **AUTOMATED CERTIFICATE OF SERVICE**

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

13 Service Date: 3/10/2021

14 Stephen Wolfson

Motions@clarkcountyda.com

15 Tony Abbatangelo

Tony@TheVegasLawyers.com

16 Arelice Parra

Arelice@TheVegasLawyers.com

17 Robert Rose

robert.roseinvegas@gmail.com

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY**CASE No. 03C191253****The State of Nevada vs Alisha Burns**

§ Location: **Department 10**
 § Judicial Officer: **Jones, Tierra**
 § Filed on: **04/03/2003**
 § Case Number History:
 § Cross-Reference Case **C191253**
 § Number:
 § Defendant's Scope ID #: **1753792**
 § ITAG Case ID: **1767400**
 § Lower Court Case # Root: **02F21724**
 § Lower Court Case Number: **02F21724X**

CASE INFORMATION

Offense	Statute	Deg	Date	Case Type:	Felony/Gross Misdemeanor
1. SECOND DEGREE MURDER	200.010	F	01/01/1900		

Case Status: **03/10/2021 Closed**

Related Cases

02F21724X (Bind Over Related Case)

Statistical Closures

03/10/2021	Other Manner of Disposition - Criminal
03/09/2004	USJR Reporting Statistical Closure
06/03/2003	USJR Reporting Statistical Closure

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

Case Number	03C191253
Court	Department 10
Date Assigned	05/22/2017
Judicial Officer	Jones, Tierra

PARTY INFORMATION

Defendant	Burns, Alisha	<i>Lead Attorneys</i> Abbatangelo, Anthony L <i>Retained</i> 702-707-7000(W)
Plaintiff	State of Nevada	Wolfson, Steven B 702-671-2700(W)


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

04/03/2003  Information
INFORMATION Fee \$0.00

04/03/2003 Hearing
INITIAL ARRAIGNMENT

04/04/2003  Criminal Bindover
CRIMINAL BINDOVER

04/08/2003 Hearing
ARRAIGNMENT CONTINUED

04/16/2003  Order

CASE SUMMARY

CASE No. 03C191253

	Filed By: Defendant Burns, Alisha <i>STIPULATION AND ORDER FOR A CONTACT VISIT</i>
04/22/2003	Conversion Case Event Type <i>SENTENCING</i>
04/22/2003	 Memorandum <i>GUILTY PLEA MEMORANDUM/AGREEMENT</i>
06/10/2003	Judgment <i>ADMINISTRATION/ASSESSMENT FEE</i>
06/10/2003	Judgment <i>GENETIC TESTING FEE</i>
06/10/2003	 Judgment <i>JUDGMENT OF CONVICTION - PLEA OF GUILTY</i>
07/21/2003	 Reporters Transcript <i>REPORTER'S TRANSCRIPT UNCONDITIONAL WAIVER OF PRELIMINARY HEARING</i>
11/21/2003	 Request Filed by: Defendant Burns, Alisha <i>MOTION TO APPOINT COUNSEL</i>
11/21/2003	 Request Filed by: Defendant Burns, Alisha <i>MOTION TO PROCEED IN FORMA PAUPERIS</i>
11/21/2003	 Affidavit in Support Filed By: Defendant Burns, Alisha <i>AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS</i>
11/21/2003	 Petition Filed by: Defendant Burns, Alisha <i>PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION</i>
11/21/2003	 Petition Filed by: Defendant Burns, Alisha <i>PETITION</i>
12/01/2003	 Order for Petition for Writ of Habeas Corpus <i>ORDER FOR PETITION FOR A WRIT OF HABEAS CORPUS</i>
12/08/2003	Petition <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS</i>
12/08/2003	Hearing <i>STATUS CHECK: SET BRIEFING SCHEDULE FOR WRIT</i>
12/09/2003	Hearing <i>CONFIRMATION OF APPEAL COUNSEL (LONGABAUGH)</i>
12/15/2003	Hearing <i>STATUS CHECK: TRANSCRIPTS OF GPA</i>

CASE SUMMARY

CASE No. 03C191253

12/15/2003	Motion <i>ALL PENDING MOTIONS 12/15/03</i>
12/24/2003	 Order Filed By: Defendant Burns, Alisha <i>ORDER</i>
12/24/2003	 Application Filed By: Defendant Burns, Alisha <i>EX-PARTE APPLICATION FOR TRANSCRIPT ORDER</i>
01/05/2004	 Order Filed By: Defendant Burns, Alisha <i>ORDER APPOINTING COUNSEL</i>
01/26/2004	 Reporters Transcript <i>REPORTER'S TRANSCRIPT SENTENCING</i>
01/26/2004	 Reporters Transcript <i>REPORTER'S TRANSCRIPT SENTENCING</i>
01/27/2004	Motion <i>ALL PENDING MOTIONS 1-27-04</i>
01/27/2004	Hearing <i>HEARING: DEFT'S PETITION FOR WRIT OF HABEAS CORPUS VJ 3/8/04</i>
02/25/2004	 Hearing <i>DEFT'S PTN FOR APPEARANCE/12</i>
02/27/2004	 Application Filed By: Defendant Burns, Alisha <i>EX PARTE APPLICATION FOR ORDER TO PRODUCE INMATE</i>
03/05/2004	 Order Filed By: Defendant Burns, Alisha <i>ORDER FOR PRODUCTION OF INMATE</i>
03/05/2004	 Order Filed By: Defendant Burns, Alisha <i>ORDER FOR PRODUCTION OF INMATE</i>
05/25/2004	 Request Filed by: Defendant Burns, Alisha <i>EX PARTE CLAIM FOR FINAL COMPENSATION AND MOTION FOR EXCESS FEES AND COSTS</i>
06/02/2004	 Order Filed By: Defendant Burns, Alisha <i>ORDER GRANTING EX PARTE CLAIM FOR FINAL COMPENSATION AND MOTION FOR EXCESS FEES AND COSTS FEES AND COSTS</i>
06/18/2004	 Order Filed By: Defendant Burns, Alisha <i>ORDER GRANTING EX PARTE CLAIM FOR FINAL COMPENSATION AND MOTION FOR</i>

CASE SUMMARY

CASE NO. 03C191253

EXCESS FEES AND COSTS FEES AND COSTS

01/27/2005	 Order Filed By: Defendant Burns, Alisha <i>WITHDRAWAL OF ATTORNEY</i>
01/01/2011	Case Reassigned to Department 10 <i>Case reassigned from Judge Wall, David</i>
05/22/2017	Administrative Reassignment - Judicial Officer Change <i>From Judge Jessie Walsh to Judge Tierra Jones</i>
03/29/2019	 Motion Filed By: Defendant Burns, Alisha <i>Application for Appointment for Post Conviction Relief</i>
03/29/2019	 Exhibits Filed By: Defendant Burns, Alisha <i>Exhibits to Application for Appointment for Post Conviction Relief</i>
04/02/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
04/09/2019	 Opposition Filed By: Plaintiff State of Nevada <i>State's Opposition to Defendant's Application for Appointment for Post-Conviction Relief</i>
05/14/2019	 Petition Filed by: Defendant Burns, Alisha <i>Petition for Writ of Habeas Corpus (Post Conviction)</i>
05/27/2019	 Request Filed by: Defendant Burns, Alisha <i>Request for Hearing</i>
05/30/2019	 Clerk's Notice of Hearing <i>Clerk's Notice of Hearing</i>
06/07/2019	 Application Filed By: Defendant Burns, Alisha <i>Renewed Application for Appointment for Post Conviction Relief & Order Appointing Counsel</i>
06/26/2019	 Request Filed by: Defendant Burns, Alisha <i>Request for Hearing</i>
07/01/2019	 Response Filed by: Plaintiff State of Nevada <i>State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction)</i>
07/30/2019	 Order Appointing Counsel Party: Defendant Burns, Alisha <i>Order Appointing Counsel</i>

CASE SUMMARY

CASE NO. 03C191253

11/12/2019	 Motion for Discovery Filed By: Defendant Burns, Alisha <i>Motion for Limited Discovery</i>
11/12/2019	 Exhibits Filed By: Defendant Burns, Alisha <i>Exhibits</i>
01/07/2020	 Reply in Support Filed By: Defendant Burns, Alisha <i>Petitioner's Reply in Support of her Writ of Habeas Corpus</i>
01/07/2020	 Exhibits Filed By: Defendant Burns, Alisha <i>Exhibits</i>
01/09/2020	 Supplemental Exhibits <i>Supplemental Exhibits in Support of Petition for Writ of Habeas Corpus (Post Conviction)</i>
02/04/2020	 Response Filed by: Plaintiff State of Nevada <i>State's Response to Petitioners Motion for Discovery</i>
02/07/2020	 Reply in Support Filed By: Defendant Burns, Alisha <i>Reply in Support of Motion for Limited Discovery</i>
03/10/2020	 Order for Production of Inmate Party: Plaintiff State of Nevada <i>Order for Production of Inmate</i>
04/07/2020	 Motion for Discovery Filed By: Defendant Burns, Alisha <i>Renewed Motion for Limited Discovery</i>
04/08/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
06/22/2020	 Response Filed by: Plaintiff State of Nevada <i>State's Response to Petitioner's Renewed Motion for Discovery</i>
06/25/2020	 Reply in Support Filed By: Defendant Burns, Alisha <i>Reply in Support of Renewed Motion for Limited Discovery</i>
09/10/2020	 Media Request and Order <i>Media Request and Order</i>
09/21/2020	 Receipt of Copy <i>Receipt of File</i>
09/22/2020	 Receipt of Copy

CASE SUMMARY

CASE NO. 03C191253

Receipt of Copy

09/24/2020



Order

Filed By: Plaintiff State of Nevada
Order for Transcript

10/09/2020



Transcript of Proceedings

Party: Plaintiff State of Nevada
Recorder's Transcript of Proceedings re Evidentiary Hearing

03/10/2021



Order

Order Denying Defendant's Petition for Writ of Habeas Corpus

03/19/2021



Notice of Entry of Order

Filed By: Plaintiff State of Nevada
Notice of Entry of Order

03/22/2021



Notice of Appeal (criminal)

Party: Defendant Burns, Alisha
NOTICE OF APPEAL

DISPOSITIONS

01/01/1900

Plea (Judicial Officer: User, Conversion)

1. SECOND DEGREE MURDER.
Guilty
PCN: Sequence:

06/03/2003

Disposition (Judicial Officer: User, Conversion)

1. SECOND DEGREE MURDER
Guilty
PCN: Sequence:

06/03/2003

Disposition (Judicial Officer: User, Conversion)

06/03/2003

Adult Adjudication (Judicial Officer: User, Conversion)

1. SECOND DEGREE MURDER
01/01/1900 (F) 200.010 (200.010)
PCN: Sequence:

Converted Disposition:

Sentence# 0001: LIFE WITH POSSIBILITY OF PAROLE

Converted Disposition:

Sentence# 0002: CREDIT FOR TIME SERVED

Minimum 131 Days to Maximum 131 Days

Converted Disposition:

Sentence# 0003: DNA FEE/GENETIC MARKERS ANALYSIS

Amount: \$150.00

Converted Disposition:

Sentence# 0004: ADMINISTRATION FEE

Amount: \$25.00

HEARINGS

04/08/2003

Initial Arraignment (9:00 AM)

Events: 04/03/2003 Hearing


INITIAL ARRAIGNMENT Court Clerk: ANNETTE DUNCAN Relief Clerk: AMBER

FARLEY/AF Reporter/Recorder: PEGGY ISOM Heard By: John McGroarty

Matter Heard; INITIAL ARRAIGNMENT Court Clerk: ANNETTE DUNCAN Relief Clerk:


CASE SUMMARY

CASE No. 03C191253

	<p>AMBER FARLEY/AF Reporter/Recorder: PEGGY ISOM Heard By: John McGroarty</p> <p>Journal Entry Details:</p> <p><i>Mr. Kohn stated the Defendant is a ward of the juvenile court in Ohio, and she has been trying to get some advice from them before proceeding. COURT ORDERED, matter CONTINUED. CUSTODY 4/22/03 9:00 AM ARRAIGNMENT CONTINUED ;</i></p>
04/22/2003	<p>Arraignment Continued (9:00 AM)</p> <p>Events: 04/08/2003 Hearing</p> <p><i>ARRAIGNMENT CONTINUED Court Clerk: Barbara Karp Relief Clerk: Sharry Frascarelli/SF Reporter/Recorder: Peggy Isom Heard By: John McGroarty</i></p> <p>Matter Heard; ARRAIGNMENT CONTINUED Court Clerk: Barbara Karp Relief Clerk: Sharry Frascarelli/SF Reporter/Recorder: Peggy Isom Heard By: John McGroarty</p> <p>Journal Entry Details:</p> <p><i>NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. BURNS ARRAIGNED AND PLED GUILTY TO SECOND DEGREE MURDER (F). COURT ACCEPTED plea and ORDERED, matter referred to the Division of Parole and Probation (P & P) and set for sentencing. CUSTODY 6/3/03 9:00 AM SENTENCING ;</i></p>
06/03/2003	<p> Sentencing (9:00 AM)</p> <p>Events: 04/22/2003 Conversion Case Event Type</p> <p><i>SENTENCING Court Clerk: Barbara Karp Reporter/Recorder: Peggy Isom Heard By: John McGroarty</i></p> <p>MINUTES</p> <p>Conversion Case Event Type</p> <p><i>SENTENCING</i></p> <p>Granted; SENTENCING Court Clerk: Barbara Karp Reporter/Recorder: Peggy Isom Heard By: John McGroarty</p> <p>Journal Entry Details:</p> <p><i>Officer Combs of Parole and Probation (P & P) present. DEFT. BURNS ADJUDGED GUILTY OF SECOND DEGREE MURDER (F). Statement by Ms. Brown and Mr. Kohn. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee and \$150.00 DNA Analysis fee, Deft. SENTENCED to LIFE with the possibility of PAROLE after ONE HUNDRED AND TWENTY (120) MONTHS; Submit to a blood and/or saliva test to determine genetic markers; with 131 DAYS Credit Time Served. NDC ;</i></p>
12/08/2003	<p>Petition for Writ of Habeas Corpus (9:00 AM)</p> <p><i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS Court Clerk: Barbara Karp Reporter/Recorder: Diann Prock Heard By: McGroarty, John S.</i></p> <p>Matter Continued; DEFT'S PTN FOR WRIT OF HABEAS CORPUS Court Clerk: Barbara Karp Reporter/Recorder: Diann Prock Heard By: McGroarty, John S.</p> <p>Journal Entry Details:</p> <p><i>Daren Richards from the Special Public Defender's Office advised Appellate Counsel would need to be appointed. Ms. Brown advised she would need 45 days to respond. Colloquy between Court and Counsel. COURT ORDERED, matter SET for CONFIRMATION OF APPEAL COUNSEL. Ms. Brown requested a Briefing Schedule be set. COURT ORDERED, matter CONTINUED, Briefing Schedule will be set at next hearing date. FURTHER, Clerk to contact Appeal Counsel to be present. NDC 12/15/03 9:00 AM CONFIRMATION OF APPEAL COUNSEL...STATUS CHECK: SET BRIEFING SCHEDULE CLERK'S NOTE: 12/9/03 Clerk contacted Mr. Longabaugh to be present to confirm as counsel./bjk ;</i></p>
12/15/2003	<p>Petition for Writ of Habeas Corpus (9:00 AM)</p> <p><i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS Heard By: John McGroarty</i></p>
12/15/2003	<p>Status Check (9:00 AM)</p> <p>Events: 12/08/2003 Hearing</p> <p><i>STATUS CHECK: SET BRIEFING SCHEDULE FOR WRIT</i></p>
12/15/2003	<p>Motion for Confirmation of Counsel (9:00 AM)</p> <p>Events: 12/09/2003 Hearing</p> <p><i>CONFIRMATION OF APPEAL COUNSEL (LONGABAUGH) Heard By: John McGroarty</i></p>
12/15/2003	<p>All Pending Motions (9:00 AM)</p>

CASE SUMMARY

CASE No. 03C191253

	<p>ALL PENDING MOTIONS 12/15/03 Court Clerk: Annette Duncan Relief Clerk: Jennifer Lott/jl Reporter/Recorder: Cindy Caldwell Heard By: John McGroarty</p> <p>Matter Heard; ALL PENDING MOTIONS 12/15/03 Court Clerk: Annette Duncan Relief Clerk: Jennifer Lott/jl Reporter/Recorder: Cindy Caldwell Heard By: John McGroarty</p> <p>Journal Entry Details:</p> <p>DEFT'S PETITION FOR WRIT OF HABEAS CORPUS.....STATUS CHECK: SET BRIEFING SCHEDULE FOR WRIT.....CONFIRMATION OF APPEAL COUNSEL (LONGABAUGH) Mr. Longabaugh CONFIRMED as counsel. Mr. Longabaugh requested 45 days after receipt of transcript as counsel is having difficulty getting the transcript. Mr. Longabaugh spoke with Mr. Kohn and counsel is expecting the file. COURT ORDERED, status check and petition CONTINUED; briefing schedule to be SET at next date; matters CONTINUED thirty days. NDC CONTINUED TO: 1-27-04 9:00 AM ;</p>
01/27/2004	<p>Petition for Writ of Habeas Corpus (9:00 AM)</p> <p>DEFT'S PTN FOR WRIT OF HABEAS CORPUS Court Clerk: Barbara Karp</p> <p>Reporter/Recorder: Diann Prock Heard By: John McGroarty</p>
01/27/2004	<p>Status Check (9:00 AM)</p> <p>STATUS CHECK: SET BRIEFING SCHEDULE FOR WRIT</p>
01/27/2004	<p>Status Check (9:00 AM)</p> <p>Events: 12/15/2003 Hearing</p> <p>STATUS CHECK: TRANSCRIPTS OF GPA</p>
01/27/2004	<p>All Pending Motions (9:00 AM)</p> <p>ALL PENDING MOTIONS 1-27-04 Court Clerk: Annette Duncan Reporter/Recorder: Peggy Isom Heard By: SEE MINUTES</p> <p>Matter Heard; ALL PENDING MOTIONS 1-27-04 Court Clerk: Annette Duncan Reporter/Recorder: Peggy Isom Heard By: SEE MINUTES</p> <p>Journal Entry Details:</p> <p>DEFT'S PETITION FOR WRIT OF HABEAS CORPUS...STATUS CHECK: SET BRIEFING SCHEDULE FOR WRIT...STATUS CHECK: TRANSCRIPTS OF GPA Mr. Longabaugh requested a Briefing Schedule be set for the filing of a new Petition for Writ of Habeas Corpus noting as new Counsel of Record he would prefer to re-file the Motion on Deft's behalf. The CLERK SET the following Briefing Schedule: Defense Petition for Writ due 2-24-04; State's Response due 4-20-04; Defense Reply due 5-11-04; with hearing set thereafter. Original Petition, MOOT as Mr. Longabaugh will re-file. Status Check regarding Transcripts continued to hearing date. NDC 5-18-04 9:00 AM HEARING: DEFT'S PETITION FOR WRIT OF HABEAS CORPUS...STATUS CHECK: TRANSCRIPTS OF GPA CLERK'S NOTE: A copy of this Minute Order placed in Mr. Longabaugh's attorney folder as he is requested to set his Petition on the 5-18-04 date/ad. ;</p>
03/08/2004	<p>Hearing (9:00 AM)</p> <p>Events: 02/25/2004 Hearing</p> <p>DEFT'S PTN FOR APPEARANCE/12 Court Clerk: Barbara Karp Reporter/Recorder: Peggy Isom Heard By: John McGroarty</p> <p>Matter Heard; DEFT'S PTN FOR APPEARANCE/12 Court Clerk: Barbara Karp Reporter/Recorder: Peggy Isom Heard By: John McGroarty</p> <p>Journal Entry Details:</p> <p>Mr. Longabaugh requested the Deft. be emancipated and requested to be appointed Counsel to take care of this matter. COURT ORDERED, Mr. Longabaugh appointed counsel and directed Mr. Longabaugh to check with Family Court regarding emancipation. Deft. withdrew her Petition for Writ of Habeas Corpus at this time to take care of the emancipation issue first. COURT SO ORDERED. NDC ;</p>
05/18/2004	<p>Status Check (9:00 AM)</p> <p>STATUS CHECK: TRANSCRIPTS OF GPA</p>
05/18/2004	<p>CANCELED Hearing (9:00 AM)</p> <p>Events: 01/27/2004 Hearing</p> <p>Vacated</p>
04/10/2019	<p> Motion for Relief (8:30 AM) (Judicial Officer: Jones, Tierra)</p>

CASE SUMMARY

CASE No. 03C191253

Defendant's Application for Appointment for Post Conviction Relief
Off Calendar;
Journal Entry Details:

Deft. not present. COURT ORDERED, matter OFF CALENDAR. Upon Court's inquiry, as to whether or not Mr. Abbatangelo advised he's been working with Dan Silverstein and he decided to not want to proceed. Further, counsel advised he would be happy to substituted in, however, deft. would have to file first. Court noted there's no petition pending for which the Court can appoint counsel. Further Court noted it won't rule on this motion right now, and counsel can proceed from there. COURT ORDERED, matter OFF CALENDAR.;

07/15/2019



Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer: Jones, Tierra)
07/15/2019, 01/13/2020, 02/24/2020, 03/02/2020, 03/04/2020

Briefing Schedule Set;
Continued;
Continued;
Briefing Schedule Set;
Continued;
Continued;
Journal Entry Details:

APPEARANCES CONTINUED: Skyler Sullivan present for the State. Deft. not present and in the Nevada Department of Corrections. Court noted the Court was notified by the Da's Office that there's going to be a brief continuance. Mr. Abbatangelo advised he spoke with Mr. Chen and there's a motion for limited discovery. Court so noted and ORDERED, State opposition due by 2-10-20, Defendant's Reply due by 2-18-20, and hearing set on the date given. FURTHER COURT ORDERED, Petition for Writ of Habeas Corpus CONTINUED to that same date given. Mr. Abbatangelo requested Deft. be transported for the hearing as she wants to be here. COURT ORDERED, Request to Transport Deft., DENIED. NDC 02/24/20 8:30 A.M. HEARING: PETITION FOR WRIT OF HABEAS CORPUS...MOTION FOR LIMITED DISCOVERY ;

Briefing Schedule Set;
Continued;
Continued;
Journal Entry Details:

APPEARANCES CONTINUED: Olivia Campbell Esq., present under SCR 49.5. Deft. not present and in the Nevada Department of Corrections. Conference at the bench. Court noted there may be issues with the Writ, and ORDERED, Mr. Abbatangelo APPOINTED. COURT FURTHER ORDERED, briefing schedule set as follows: Deft's Supplemental Writ due by 10-14-19, State's Response due by 12-09-19, Deft's Reply due by 01-07-20, and hearing set on the date given. NDC 01/13/20 8:30 A.M. SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS ;

02/24/2020

Motion for Discovery (8:30 AM) (Judicial Officer: Jones, Tierra)
02/24/2020, 03/02/2020, 03/04/2020

Motion for Limited Discovery
Continued;

02/24/2020



All Pending Motions (8:30 AM) (Judicial Officer: Wiese, Jerry A.)

Matter Heard;
Journal Entry Details:

PETITION FOR WRIT OF HABEAS CORPUS...MOTION FOR LIMITED DISCOVERY Deft. not present and in the Nevada Department of Corrections. Mr. Abbatangelo requested to continue the matter for Judge Jones to hear. Mr. Lexis stated no opposition. COURT ORDERED, matter CONTINUED to the date given. NDC 03/02/20 8:30 A.M. PETITION FOR WRIT OF HABEAS CORPUS...MOTION FOR LIMITED DISCOVERY;

03/02/2020



All Pending Motions (8:30 AM) (Judicial Officer: Jones, Tierra)

Matter Heard;
Journal Entry Details:

PETITION FOR WRIT OF HABEAS CORPUS...MOTION FOR LIMITED DISCOVERY Deft. Burns not present. Court noted this calendar is about to conclude and Mr. Abbatangelo is not present. Further, COURT ORDERED, matters CONTINUED for counsel's presence on the date given. 03/04/20 8:30 A.M. PETITION FOR WRIT OF HABEAS CORPUS...MOTION

CASE SUMMARY

CASE No. 03C191253

FOR LIMITED DISCOVERY Clerk's Note: On 2-3-20, clerk called and left message with Mr. Abbatangelo's receptionist regarding these proceedings. Further, a copy of these minutes emailed to Mr. Abbatangelo at Tony@paulpaddalaw.com /tb ;

03/04/2020



All Pending Motions (8:30 AM) (Judicial Officer: Jones, Tierra)

Matter Heard;

Journal Entry Details:

PETITION FOR WRIT OF HABEAS CORPUS...MOTION FOR LIMITED DISCOVERY Deft. not present and in the Nevada Department of Corrections. COURT ORDERED, Evidentiary Hearing Set on the issue of the time Bars to the Petition, and the Ineffective Assistance of Counsel. Upon Court's inquiry, as to prior counsel, Mr. Abbatangelo advised prior counsel, was Mr. Longabaugh, and Mr. Kohn. Court so noted. State to prepare an order to transport. Further, Court directed counsels to have their witnesses here. NDC 04/10/20 9:00 A.M. EVIDENTIARY HEARING (LIMITED ISSUES);

04/10/2020

CANCELED Hearing (9:00 AM) (Judicial Officer: Jones, Tierra)

Vacated

Limited Issues....Motion for limited Discovery

06/15/2020



Motion (8:30 AM) (Judicial Officer: Jones, Tierra)

06/15/2020, 06/29/2020

Motion for Discovery & Reset Evidentiary Hearing

Pursuant to COVID-19 Emergency Directives

COVID-19 - Pursuant to Admin Order 20-13

Continued;

Denied Without Prejudice;

Journal Entry Details:

APPEARANCES CONTINUED: Mr. Ron Evans, deputized law clerk, present on behalf of the State. Deft. not present and in the Nevada Department of Corrections. Following arguments by counsel, COURT ORDERED, Motion for Discovery & Reset Evidentiary Hearing, DENIED WITHOUT PREJUDICE. FURTHER COURT ORDERED, Matter Set for Evidentiary Hearing on the date given. Court noted this will be a limited issue on the timeliness of the petition, and if the Court finds that there is no good cause for the untimeliness of the petition, the Court is not going to get to the ineffective assistance of counsel. NDC 08/07/20 9:00 A.M.

EVIDENTIARY HEARING - LIMITED ISSUE - TIMELINESS OF THE PETITION;

Pursuant to COVID-19 Emergency Directives

COVID-19 - Pursuant to Admin Order 20-13

Continued;

Denied Without Prejudice;

Journal Entry Details:

APPEARANCES CONTINUED: Mr. Abbatangelo Esq., on behalf of Deft., present Via Blue Jeans technology. Ron Evans Esq., Deputized Law Clerk, present on behalf of the State. Deft. not present and in the Nevada Department of Corrections. Court noted there's no response filed. Further, there's a renewed Motion filed on 4-7-20. There being no opposition, COURT ORDERED, matter CONTINUED to the date given for the State to respond. NDC 06/29/20 8:30 A.M. MOTION FOR DISCOVERY & RESET EVIDENTIARY HEARING;

09/18/2020



Hearing (9:00 AM) (Judicial Officer: Jones, Tierra)

Hearing: Limited Issue

Matter Heard;

Journal Entry Details:

APPEARANCES CONTINUED: Mr. Ron Evans present on behalf of the State. Court noted this is an evidentiary hearing on one limited issue, regarding the procedural time bar. Further, if the Court determines there is a need for follow up, based on the limited issue, then the parties can follow up. Colloquy regarding Berry v. State. HEARING HELD: Exclusionary Rule INVOKED. Testimony and exhibits presented. (See worksheets). Following testimony of Ms. Burns, Court admonished the witness and excused her. COURT ORDERED, hearing CONTINUED to the date given. NIC 10/23/20 9:00 A.M. HEARING - Limited Issue;

01/22/2021

Hearing (10:30 AM) (Judicial Officer: Jones, Tierra)

Hearing Continued;

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE No. 03C191253

01/28/2021	Evidentiary Hearing (10:00 AM) (Judicial Officer: Jones, Tierra) Decision Made;
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DATE

FINANCIAL INFORMATION

Defendant Burns, Alisha

Total Charges

175.00

Total Payments and Credits

175.00

Balance Due as of 3/24/2021

0.00

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

ALISHA BURNS #1753792,

Defendant.

Case No.: 03C191253

Department: X

ORDER DENYING DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

THIS MATTER having come on for hearing on the 18th day of September, 2020; continuing on the 22nd day of January, 2021; and the 28th day of January 2021, the Defendant being present, represented by ANTHONY ABBATANGELO, Esq., the State of Nevada being represented by STEVEN B. WOLFSON, Clark County District Attorney, through CHRISTOPHER HAMNER, Esq., Chief Deputy District Attorney and RONALD EVANS, Esq., Deputy District Attorney, and the Court having considered the information and arguments contained in the pleadings, arguments of counsel, and good cause appearing therefore, DENIES the writ.

PROCEDURAL HISTORY

On December 5, 2002, Defendant Alisha Burns (hereinafter "Petitioner") was charged by way of Criminal Complaint with Burglary, Robbery, First Degree Kidnapping, and Murder. On April 1, 2003, after unconditional waiver of preliminary hearing, Petitioner was charged by way of Information with Second Degree Murder. On April 22, 2003, Petitioner was arraigned and pled

1 guilty to Second Degree Murder. Per the guilty plea agreement, the State and the Petitioner
2 stipulated to a life sentence with the possibility of parole after ten (10) years. On June 3, 2003,
3 Petitioner was sentenced to life in the Nevada Department of Corrections with the possibility of
4 parole after one hundred twenty (120) months has been served, with one hundred thirty-one (131)
5 days credit for time served. The Judgment of Conviction was filed June 10, 2003. Petitioner did not
6 file a direct appeal.

7 Petitioner filed a Post-Conviction Petition for Writ of Habeas Corpus on November 21, 2003.
8 Petitioner withdrew the petition in open court on March 8, 2004. Petitioner filed an Application for
9 Appointment for Post-Conviction Relief on March 29, 2019. The State filed its Opposition on April
10 9, 2019. The Court took the application off calendar on April 10, 2019, as there was “no petition
11 pending for which the Court can appoint counsel,” and the Court would not rule on the motion
12 unless counsel decided to proceed.

13 Petitioner filed the instant Petition for Writ of Habeas Corpus on May 14, 2019.

14 15 **CONCLUSIONS OF LAW**

16 **A. The Petition is Untimely**

17 NRS 34.726(1) states:

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

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

24 Petitioner has failed to meet this burden.

25 Here, the Petitioner’s Judgment of Conviction was filed June 10, 2003. She did not file a
26 direct appeal. As such, June 10, 2004 was the deadline for Petitioner to file a timely petition.
27 Petitioner did not file the instant petition until May 14, 2019, which is almost fifteen (15) years past
28

1 the statutory deadlines. Petitioner has not provided a sufficient basis for the Court to determine that
2 the delay was not the fault of the Petitioner. Petitioner filed a Habeas Petition on December 8, 2003
3 and withdrew that Petition on March 8, 2004. There was nothing else filed in the case until March
4 29, 2019 when the Petitioner filed an Application for Appointment for Post-Conviction Relief.
5 Since Petitioner had previously filed a Petition, Defendant was aware of the Petition for Writ of
6 Habeas Corpus remedy and still did not file a subsequent petition for almost fifteen (15) years.
7 Petitioner argues that she withdrew the original writ petition because her counsel, at the time, told
8 her she needed to withdraw the petition to proceed with her emancipation claims. There has been no
9 evidence presented, establishing that a post-conviction writ of habeas corpus and an emancipation
10 case cannot proceed at the exact same time. There has been insufficient evidence presented to
11 overcome the procedural time bar of the filing of the instant petition. As such, the instant Petition is
12 untimely. Since, the Court has determined that the Petition is untimely; there is no need for the
13 Court to reach the issue of Ineffective Assistance of Counsel.

14
15 **B. Actual Innocence Claim**

16 Petitioner makes a claim of actual innocence in the Post – Conviction Petition for Writ of
17 Habeas Corpus that was filed on May 14, 2019. “A habeas petitioner may overcome procedural bars
18 and secure review of the merits of defaulted claims by showing that the failure to consider the
19 petition on its merits would amount to a fundamental miscarriage of justice.” *Berry v. State*, 131
20 Nev. 957 (2015). “This standard is met when the Petitioner makes a colorable showing he is
21 actually innocent of the crime.” *Pelligrini v. State*, 117 Nev. 860 (2001). “This means that “the
22 petitioner must show that it is more likely than not that no reasonable juror would have convicted
23 him in the light of the new evidence.” *Berry* at 966, *quoting Schlup v. Delo*, 513 U.S. 298 (1995).
24 In support of this claim, Petitioner testified and called Dr. Thomas Bennett to testify.

25 *1. Petitioner’s Testimony*

26 In regards to Petitioner’s testimony, the Court finds it insufficient to establish a colorable
27 showing that she is actually innocent of the crime as required by *Pelligrini*. Petitioner argued that
28

1 co-defendant Steven Kaczmarek told her to save them both and that she wasn't going to get much
2 time. This claim is belied by the record. The record consists of letters from Steven Kaczmarek
3 (hereinafter "Kaczmarek") to Petitioner. The letter does not indicate any request, by Kaczmarek for
4 her to confess to anything or to save them both. The letters actually indicate that Kaczmarek was
5 suggesting the opposite, as he specifically told her not to sign anything until they had a chance to
6 meet. According to Petitioner's own testimony, Kaczmarek only told her to take the deal after he
7 was convicted at trial. On March 17, 2003, Kaczmarek was convicted of the murder of Pedro
8 Villarreal, among other charges. On April 16, 2003, the judge signed a Stipulation and Order
9 authorizing a contact visit between Petitioner and Kaczmarek. The visit occurred shortly after the
10 order was signed. On April 22, 2003, Petitioner entered her plea of guilty to Second Degree
11 Murder. This was more than a month after Kaczmarek had been convicted at trial. As such,
12 Petitioner taking a deal couldn't have saved Kaczmarek as he was already convicted at trial.

13 Petitioner also argues that the statements from Corrections Officer Theresa Daka are false,
14 however there was no evidence presented to explain how the corrections officer would have
15 obtained specific factual information regarding the case, from any other source. As such, that claim
16 is also belied by the record.

17 Also, Petitioner admits to choking the victim and assisting with restraining the victim. The
18 Coroner's Report indicates that victim's cause of death was due to asphyxia and Dr. Bennett agrees
19 with the victim's cause of death. Asphyxia is defined by the Merriam-Webster dictionary as "a lack
20 of oxygen or excess of carbon dioxide in the body that results in unconsciousness and often death
21 and is usually caused by interruption of breathing or inadequate oxygen supply." This is specifically
22 what was described by Petitioner as her own actions which caused the injuries to the victim. As
23 such, it is not more likely than not that a reasonable juror would have convicted her in light of the
24 evidence presented.

25 2. Dr. Thomas Bennett's testimony

26 Petitioner called Dr. Thomas Bennett as a witness in her case-in-chief. Dr. Bennett testified
27 regarding his opinions as follows: (1) It was unlikely that the victim died on September 25th and
28

1 more likely that he died on September 27th; (2) the underlying cause of death is asphyxia and/or
2 suffocation or strangulation; (3) the victim was intoxicated, with a blood alcohol content (BAC) of
3 .13; and (4) victim was not in the tub under water for 2 days. On cross examination, he testified that
4 he did not review any of the crime scene photographs, the statement of Officer Theresa Daka, the
5 letter written by Petitioner to the Detective, or any CSA reports in preparation of his report. On re-
6 direct examination, he testified that a review of this additional information would not have changed
7 his opinion in his report. Dr. Bennett's testimony is inconsistent with the physical evidence
8 presented. The evidence presented does not support his opinion regarding the time of death, making
9 it possible that a reasonable juror would have convicted Petitioner based on the evidence presented,
10 regarding the time of death. Further, the Petitioner's own testimony establishes that she participated
11 in the asphyxia and/or suffocation or strangulation that Dr. Bennett determined to be the cause of
12 death of the victim. The victim's intoxication level does not prove that Petitioner is actually
13 innocent. Lastly, Dr. Bennett's opinion that the victim was not in the tub under water for two days is
14 not supported by the evidence presented. As such, Dr. Bennett's testimony fails to establish that a
15 reasonable jury would not have found the Petitioner guilty based upon the evidence presented.

16 *3. Fingerprints*

17 Petitioner argues that there were fingerprints found at the scene of the crime that do not
18 match herself or Kaczmarek. However, through Petitioner's own testimony she wiped down the
19 crime scene. This would explain why her own or Kaczmarek's fingerprints would not be at the
20 scene. As such, this evidence does not prove that she was not present, or that someone else
21 committed the murder, failing to establish that a reasonable jury would not have found the Petitioner
22 guilty based upon the evidence presented.

23 *4. Sex Trafficking*

24 Petitioner argues that she was a victim of sex trafficking and that is why she pleaded guilty to the
25 instant crime, per Kaczmarek's request. This claim is belied by the record. To support this
26 assertion, Petitioner testified and called Brironni Alex from the Cupcake Girls Board. However,
27 Petitioner and Ms. Alex's testimony fails to establish that the Petitioner was actually a victim of sex
28

1 trafficking. Further, as the Court has already found, the evidence presented does not suggest that
2 Petitioner's guilty plea was coerced by Kaczmarek. As such, this claim fails.

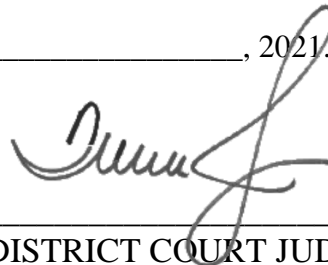
3
4 **CONCLUSION**

5 The Court FINDS that the petition is untimely and good cause has not been shown for the
6 delay. The Court FURTHER FINDS that insufficient evidence has been presented to show that it is
7 more likely than not that no reasonable juror would have convicted Petitioner in light of the new
8 evidence, as required to make a colorable showing that she is actually innocent of the crime.

9 IT IS HEREBY ORDERED that the Defendant's Petition for Writ of Habeas Corpus shall
10 be, and it is, hereby DENIED.

11 Dated this 10th day of March, 2021

12 IT IS SO ORDERED this _____ day of _____, 2021.

13
14 
15 _____

DISTRICT COURT JUDGE

16
17 358 081 D32F 29CD
18 Tierra Jones
19 District Court Judge
20
21
22
23
24
25
26
27
28

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 The State of Nevada vs Alisha
7 Burns

CASE NO: 03C191253

DEPT. NO. Department 10

8
9 **AUTOMATED CERTIFICATE OF SERVICE**

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

13 Service Date: 3/10/2021

14 Stephen Wolfson

Motions@clarkcountyda.com

15 Tony Abbatangelo

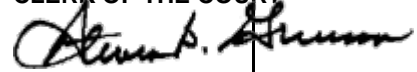
Tony@TheVegasLawyers.com

16 Arelice Parra

Arelice@TheVegasLawyers.com

17 Robert Rose

robert.roseinvegas@gmail.com



NEOJ

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ALISHA BURNS,

Petitioner,

Case No: 03C191253

Dept. No: X

vs.

THE STATE OF NEVADA,

Respondent,

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on March 10, 2021, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on March 19, 2021.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 19 day of March 2021, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

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

☒ The United States mail addressed as follows:

Alisha Burns # 77669
4370 Smiley Rd.
Las Vegas, NV 89115
Last Known Address

Tony Abbatangelo, Esq.
4560 S. Decatur Ste 300
Las Vegas, NV 89103

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

ALISHA BURNS #1753792,

Defendant.

Case No.: 03C191253

Department: X

ORDER DENYING DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

THIS MATTER having come on for hearing on the 18th day of September, 2020; continuing on the 22nd day of January, 2021; and the 28th day of January 2021, the Defendant being present, represented by ANTHONY ABBATANGELO, Esq., the State of Nevada being represented by STEVEN B. WOLFSON, Clark County District Attorney, through CHRISTOPHER HAMNER, Esq., Chief Deputy District Attorney and RONALD EVANS, Esq., Deputy District Attorney, and the Court having considered the information and arguments contained in the pleadings, arguments of counsel, and good cause appearing therefore, DENIES the writ.

PROCEDURAL HISTORY

On December 5, 2002, Defendant Alisha Burns (hereinafter "Petitioner") was charged by way of Criminal Complaint with Burglary, Robbery, First Degree Kidnapping, and Murder. On April 1, 2003, after unconditional waiver of preliminary hearing, Petitioner was charged by way of Information with Second Degree Murder. On April 22, 2003, Petitioner was arraigned and pled

1 guilty to Second Degree Murder. Per the guilty plea agreement, the State and the Petitioner
2 stipulated to a life sentence with the possibility of parole after ten (10) years. On June 3, 2003,
3 Petitioner was sentenced to life in the Nevada Department of Corrections with the possibility of
4 parole after one hundred twenty (120) months has been served, with one hundred thirty-one (131)
5 days credit for time served. The Judgment of Conviction was filed June 10, 2003. Petitioner did not
6 file a direct appeal.

7 Petitioner filed a Post-Conviction Petition for Writ of Habeas Corpus on November 21, 2003.
8 Petitioner withdrew the petition in open court on March 8, 2004. Petitioner filed an Application for
9 Appointment for Post-Conviction Relief on March 29, 2019. The State filed its Opposition on April
10 9, 2019. The Court took the application off calendar on April 10, 2019, as there was “no petition
11 pending for which the Court can appoint counsel,” and the Court would not rule on the motion
12 unless counsel decided to proceed.

13 Petitioner filed the instant Petition for Writ of Habeas Corpus on May 14, 2019.

14 15 **CONCLUSIONS OF LAW**

16 **A. The Petition is Untimely**

17 NRS 34.726(1) states:

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

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

24 Petitioner has failed to meet this burden.

25 Here, the Petitioner’s Judgment of Conviction was filed June 10, 2003. She did not file a
26 direct appeal. As such, June 10, 2004 was the deadline for Petitioner to file a timely petition.
27 Petitioner did not file the instant petition until May 14, 2019, which is almost fifteen (15) years past
28

1 the statutory deadlines. Petitioner has not provided a sufficient basis for the Court to determine that
2 the delay was not the fault of the Petitioner. Petitioner filed a Habeas Petition on December 8, 2003
3 and withdrew that Petition on March 8, 2004. There was nothing else filed in the case until March
4 29, 2019 when the Petitioner filed an Application for Appointment for Post-Conviction Relief.
5 Since Petitioner had previously filed a Petition, Defendant was aware of the Petition for Writ of
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7 Petitioner argues that she withdrew the original writ petition because her counsel, at the time, told
8 her she needed to withdraw the petition to proceed with her emancipation claims. There has been no
9 evidence presented, establishing that a post-conviction writ of habeas corpus and an emancipation
10 case cannot proceed at the exact same time. There has been insufficient evidence presented to
11 overcome the procedural time bar of the filing of the instant petition. As such, the instant Petition is
12 untimely. Since, the Court has determined that the Petition is untimely; there is no need for the
13 Court to reach the issue of Ineffective Assistance of Counsel.

14
15 **B. Actual Innocence Claim**

16 Petitioner makes a claim of actual innocence in the Post – Conviction Petition for Writ of
17 Habeas Corpus that was filed on May 14, 2019. “A habeas petitioner may overcome procedural bars
18 and secure review of the merits of defaulted claims by showing that the failure to consider the
19 petition on its merits would amount to a fundamental miscarriage of justice.” *Berry v. State*, 131
20 Nev. 957 (2015). “This standard is met when the Petitioner makes a colorable showing he is
21 actually innocent of the crime.” *Pelligrini v. State*, 117 Nev. 860 (2001). “This means that “the
22 petitioner must show that it is more likely than not that no reasonable juror would have convicted
23 him in the light of the new evidence.” *Berry* at 966, *quoting Schlup v. Delo*, 513 U.S. 298 (1995).
24 In support of this claim, Petitioner testified and called Dr. Thomas Bennett to testify.

25 *1. Petitioner’s Testimony*

26 In regards to Petitioner’s testimony, the Court finds it insufficient to establish a colorable
27 showing that she is actually innocent of the crime as required by *Pelligrini*. Petitioner argued that
28

1 co-defendant Steven Kaczmarek told her to save them both and that she wasn't going to get much
2 time. This claim is belied by the record. The record consists of letters from Steven Kaczmarek
3 (hereinafter "Kaczmarek") to Petitioner. The letter does not indicate any request, by Kaczmarek for
4 her to confess to anything or to save them both. The letters actually indicate that Kaczmarek was
5 suggesting the opposite, as he specifically told her not to sign anything until they had a chance to
6 meet. According to Petitioner's own testimony, Kaczmarek only told her to take the deal after he
7 was convicted at trial. On March 17, 2003, Kaczmarek was convicted of the murder of Pedro
8 Villarreal, among other charges. On April 16, 2003, the judge signed a Stipulation and Order
9 authorizing a contact visit between Petitioner and Kaczmarek. The visit occurred shortly after the
10 order was signed. On April 22, 2003, Petitioner entered her plea of guilty to Second Degree
11 Murder. This was more than a month after Kaczmarek had been convicted at trial. As such,
12 Petitioner taking a deal couldn't have saved Kaczmarek as he was already convicted at trial.

13 Petitioner also argues that the statements from Corrections Officer Theresa Daka are false,
14 however there was no evidence presented to explain how the corrections officer would have
15 obtained specific factual information regarding the case, from any other source. As such, that claim
16 is also belied by the record.

17 Also, Petitioner admits to choking the victim and assisting with restraining the victim. The
18 Coroner's Report indicates that victim's cause of death was due to asphyxia and Dr. Bennett agrees
19 with the victim's cause of death. Asphyxia is defined by the Merriam-Webster dictionary as "a lack
20 of oxygen or excess of carbon dioxide in the body that results in unconsciousness and often death
21 and is usually caused by interruption of breathing or inadequate oxygen supply." This is specifically
22 what was described by Petitioner as her own actions which caused the injuries to the victim. As
23 such, it is not more likely than not that a reasonable juror would have convicted her in light of the
24 evidence presented.

25 *2. Dr. Thomas Bennett's testimony*

26 Petitioner called Dr. Thomas Bennett as a witness in her case-in-chief. Dr. Bennett testified
27 regarding his opinions as follows: (1) It was unlikely that the victim died on September 25th and
28

1 more likely that he died on September 27th; (2) the underlying cause of death is asphyxia and/or
2 suffocation or strangulation; (3) the victim was intoxicated, with a blood alcohol content (BAC) of
3 .13; and (4) victim was not in the tub under water for 2 days. On cross examination, he testified that
4 he did not review any of the crime scene photographs, the statement of Officer Theresa Daka, the
5 letter written by Petitioner to the Detective, or any CSA reports in preparation of his report. On re-
6 direct examination, he testified that a review of this additional information would not have changed
7 his opinion in his report. Dr. Bennett's testimony is inconsistent with the physical evidence
8 presented. The evidence presented does not support his opinion regarding the time of death, making
9 it possible that a reasonable juror would have convicted Petitioner based on the evidence presented,
10 regarding the time of death. Further, the Petitioner's own testimony establishes that she participated
11 in the asphyxia and/or suffocation or strangulation that Dr. Bennett determined to be the cause of
12 death of the victim. The victim's intoxication level does not prove that Petitioner is actually
13 innocent. Lastly, Dr. Bennett's opinion that the victim was not in the tub under water for two days is
14 not supported by the evidence presented. As such, Dr. Bennett's testimony fails to establish that a
15 reasonable jury would not have found the Petitioner guilty based upon the evidence presented.

16 *3. Fingerprints*

17 Petitioner argues that there were fingerprints found at the scene of the crime that do not
18 match herself or Kaczmarek. However, through Petitioner's own testimony she wiped down the
19 crime scene. This would explain why her own or Kaczmarek's fingerprints would not be at the
20 scene. As such, this evidence does not prove that she was not present, or that someone else
21 committed the murder, failing to establish that a reasonable jury would not have found the Petitioner
22 guilty based upon the evidence presented.

23 *4. Sex Trafficking*

24 Petitioner argues that she was a victim of sex trafficking and that is why she pleaded guilty to the
25 instant crime, per Kaczmarek's request. This claim is belied by the record. To support this
26 assertion, Petitioner testified and called Brironni Alex from the Cupcake Girls Board. However,
27 Petitioner and Ms. Alex's testimony fails to establish that the Petitioner was actually a victim of sex
28

1 trafficking. Further, as the Court has already found, the evidence presented does not suggest that
2 Petitioner's guilty plea was coerced by Kaczmarek. As such, this claim fails.

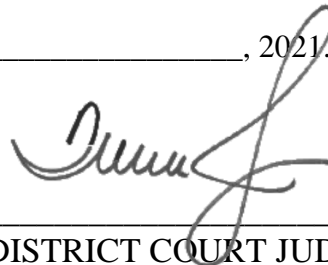
3
4 **CONCLUSION**

5 The Court FINDS that the petition is untimely and good cause has not been shown for the
6 delay. The Court FURTHER FINDS that insufficient evidence has been presented to show that it is
7 more likely than not that no reasonable juror would have convicted Petitioner in light of the new
8 evidence, as required to make a colorable showing that she is actually innocent of the crime.

9 IT IS HEREBY ORDERED that the Defendant's Petition for Writ of Habeas Corpus shall
10 be, and it is, hereby DENIED.

11 Dated this 10th day of March, 2021

12 IT IS SO ORDERED this _____ day of _____, 2021.

13
14 
15 _____

DISTRICT COURT JUDGE

16
17 358 081 D32F 29CD
18 Tierra Jones
19 District Court Judge
20
21
22
23
24
25
26
27
28

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 The State of Nevada vs Alisha
Burns

CASE NO: 03C191253

7 DEPT. NO. Department 10

8
9 **AUTOMATED CERTIFICATE OF SERVICE**

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

13 Service Date: 3/10/2021

14 Stephen Wolfson

Motions@clarkcountyda.com

15 Tony Abbatangelo

Tony@TheVegasLawyers.com

16 Arelice Parra

Arelice@TheVegasLawyers.com

17 Robert Rose

robert.roseinvegas@gmail.com

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

Felony/Gross Misdemeanor**COURT MINUTES****April 08, 2003**

03C191253

The State of Nevada vs Alisha Burns

April 08, 2003**9:00 AM****Initial Arraignment**

**INITIAL
ARRAIGNMENT
Court Clerk:
ANNETTE
DUNCAN Relief
Clerk: AMBER
FARLEY/AF
Reporter/Recorder:
PEGGY ISOM Heard
By: John McGroarty**

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

PRESENT:	Brown, Mary D.	Attorney
	Burns, Alisha	Defendant
	PUBDEF	Attorney

JOURNAL ENTRIES

- Mr. Kohn stated the Defendant is a ward of the juvenile court in Ohio, and she has been trying to get some advice from them before proceeding. COURT ORDERED, matter CONTINUED.
CUSTODY

4/22/03 9:00 AM ARRAIGNMENT CONTINUED

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 22, 2003**

03C191253

The State of Nevada vs Alisha Burns

April 22, 2003**9:00 AM****Arraignment Continued**

**ARRAIGNMENT
CONTINUED Court
Clerk: Barbara Karp
Relief Clerk: Sharry
Frascarelli/SF
Reporter/Recorder:
Peggy Isom Heard
By: John McGroarty**

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

Brown, Mary D.
Burns, Alisha
PUBDEF

Attorney
Defendant
Attorney

JOURNAL ENTRIES

- NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. BURNS ARRAIGNED AND PLED GUILTY TO SECOND DEGREE MURDER (F). COURT ACCEPTED plea and ORDERED, matter referred to the Division of Parole and Probation (P & P) and set for sentencing.

CUSTODY

6/3/03 9:00 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****June 03, 2003**

03C191253

The State of Nevada vs Alisha Burns

June 03, 2003**9:00 AM****Sentencing****SENTENCING****Court Clerk: Barbara
Karp****Reporter/Recorder:****Peggy Isom Heard****By: John McGroarty****HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Brown, Mary D.

Burns, Alisha

PUBDEF

Attorney

Defendant

Attorney

JOURNAL ENTRIES

- Officer Combs of Parole and Probation (P & P) present. DEFT. BURNS ADJUDGED GUILTY OF SECOND DEGREE MURDER (F). Statement by Ms. Brown and Mr. Kohn. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee and \$150.00 DNA Analysis fee, Deft. SENTENCED to LIFE with the possibility of PAROLE after ONE HUNDRED AND TWENTY (120) MONTHS; Submit to a blood and/or saliva test to determine genetic markers; with 131 DAYS Credit Time Served.
NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****December 08, 2003**

03C191253

The State of Nevada vs Alisha Burns

December 08, 2003**9:00 AM****Petition for Writ of Habeas
Corpus****DEFT'S PTN FOR
WRIT OF HABEAS
CORPUS Court
Clerk: Barbara Karp
Reporter/Recorder:
Diann Prock Heard
By: McGroarty, John
S.****HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**Brown, Mary D.
Richards, Daren B.Attorney
Attorney**JOURNAL ENTRIES**

- Daren Richards from the Special Public Defender's Office advised Appellate Counsel would need to be appointed. Ms. Brown advised she would need 45 days to respond. Colloquy between Court and Counsel. COURT ORDERED, matter SET for CONFIRMATION OF APPEAL COUNSEL. Ms. Brown requested a Briefing Schedule be set. COURT ORDERED, matter CONTINUED, Briefing Schedule will be set at next hearing date. FURTHER, Clerk to contact Appeal Counsel to be present.

NDC

12/15/03 9:00 AM CONFIRMATION OF APPEAL COUNSEL...STATUS CHECK: SET BRIEFING SCHEDULE

CLERK'S NOTE: 12/9/03 Clerk contacted Mr. Longabaugh to be present to confirm as counsel./bjk

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 15, 2003

03C191253

The State of Nevada vs Alisha Burns

December 15, 2003

9:00 AM

All Pending Motions

**ALL PENDING
MOTIONS 12/15/03
Court Clerk: Annette
Duncan Relief Clerk:
Jennifer Lott/jl
Reporter/Recorder:
Cindy Caldwell
Heard By: John
McGroarty**

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

Longabaugh, Marvin
Pace, Barter G.

Attorney
Attorney

JOURNAL ENTRIES

- DEFT'S PETITION FOR WRIT OF HABEAS CORPUS.....STATUS CHECK: SET BRIEFING SCHEDULE FOR WRIT.....CONFIRMATION OF APPEAL COUNSEL (LONGABAUGH)
Mr. Longabaugh CONFIRMED as counsel. Mr. Longabaugh requested 45 days after receipt of transcript as counsel is having difficulty getting the transcript. Mr. Longabaugh spoke with Mr. Kohn and counsel is expecting the file. COURT ORDERED, status check and petition CONTINUED; briefing schedule to be SET at next date; matters CONTINUED thirty days.

NDC

CONTINUED TO: 1-27-04 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 27, 2004**

03C191253

The State of Nevada vs Alisha Burns

January 27, 2004**9:00 AM****All Pending Motions**

**ALL PENDING
MOTIONS 1-27-04
Court Clerk: Annette
Duncan
Reporter/Recorder:
Peggy Isom Heard
By: SEE MINUTES**

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

Adams, Danae

Attorney

Longabaugh, Marvin

Attorney

JOURNAL ENTRIES

- DEFT'S PETITION FOR WRIT OF HABEAS CORPUS...STATUS CHECK: SET BRIEFING
SCHEDULE FOR WRIT...STATUS CHECK: TRANSCRIPTS OF GPA

Mr. Longabaugh requested a Briefing Schedule be set for the filing of a new Petition for Writ of Habeas Corpus noting as new Counsel of Record he would prefer to re-file the Motion on Deft's behalf. The CLERK SET the following Briefing Schedule: Defense Petition for Writ due 2-24-04; State's Response due 4-20-04; Defense Reply due 5-11-04; with hearing set thereafter. Original Petition, MOOT as Mr. Longabaugh will re-file. Status Check regarding Transcripts continued to hearing date.

NDC

5-18-04 9:00 AM HEARING: DEFT'S PETITION FOR WRIT OF HABEAS CORPUS...STATUS
CHECK: TRANSCRIPTS OF GPA

PRINT DATE: 03/24/2021

Page 6 of 18

Minutes Date: April 08, 2003

CLERK'S NOTE: A copy of this Minute Order placed in Mr. Longabaugh's attorney folder as he is requested to set his Petition on the 5-18-04 date/ad.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 08, 2004**

03C191253

The State of Nevada vs Alisha Burns

March 08, 2004**9:00 AM****Hearing**

**DEFT'S PTN FOR
APPEARANCE/12
Court Clerk: Barbara
Karp
Reporter/Recorder:
Peggy Isom Heard
By: John McGroarty**

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

Burns, Alisha

Defendant

Longabaugh, Marvin

Attorney

Peterson, Seth W.

Attorney

JOURNAL ENTRIES

- Mr. Longabaugh requested the Deft. be emancipated and requested to be appointed Counsel to take care of this matter. COURT ORDERED, Mr. Longabaugh appointed counsel and directed Mr. Longabaugh to check with Family Court regarding emancipation. Deft. withdrew her Petition for Writ of Habeas Corpus at this time to take care of the emancipation issue first. COURT SO ORDERED.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 10, 2019**

03C191253

The State of Nevada vs Alisha Burns

April 10, 2019**8:30 AM****Motion for Relief****HEARD BY:** Jones, Tierra**COURTROOM:** RJC Courtroom 14B**COURT CLERK:** Teri Berkshire**RECORDER:** Victoria Boyd**REPORTER:****PARTIES****PRESENT:**Merback, William J.
State of NevadaAttorney
Plaintiff**JOURNAL ENTRIES**

- Deft. not present. COURT ORDERED, matter OFF CALENDAR. Upon Court's inquiry, as to whether or not Mr. Abbatangelo advised he's been working with Dan Silverstein and he decided to not want to proceed. Further, counsel advised he would be happy to substituted in, however, deft. would have to file first. Court noted there's no petition pending for which the Court can appoint counsel. Further Court noted it won't rule on this motion right now, and counsel can proceed from there. COURT ORDERED, matter OFF CALENDAR.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****July 15, 2019**

03C191253

The State of Nevada vs Alisha Burns

July 15, 2019**8:30 AM****Petition for Writ of Habeas
Corpus****HEARD BY:** Jones, Tierra**COURTROOM:** RJC Courtroom 14B**COURT CLERK:** Teri Berkshire**RECORDER:** Victoria Boyd**REPORTER:****PARTIES****PRESENT:**Abbatangelo, Anthony L
Lexis, Chad N.
State of NevadaAttorney
Attorney
Plaintiff**JOURNAL ENTRIES**

- APPEARANCES CONTINUED: Olivia Campbell Esq., present under SCR 49.5.

Deft. not present and in the Nevada Department of Corrections. Conference at the bench. Court noted there may be issues with the Writ, and ORDERED, Mr. Abbatangelo APPOINTED. COURT FURTHER ORDERED, briefing schedule set as follows: Deft's Supplemental Writ due by 10-14-19, State's Response due by 12-09-19, Deft's Reply due by 01-07-20, and hearing set on the date given.

NDC

01/13/20 8:30 A.M. SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 13, 2020**

03C191253

The State of Nevada vs Alisha Burns

January 13, 2020**8:30 AM****Petition for Writ of Habeas
Corpus****HEARD BY:** Jones, Tierra**COURTROOM:** RJC Courtroom 14B**COURT CLERK:** Teri Berkshire**RECORDER:** Victoria Boyd**REPORTER:****PARTIES****PRESENT:** Abbatangelo, Anthony L Attorney**JOURNAL ENTRIES**

- APPEARANCES CONTINUED: Skyler Sullivan present for the State.

Deft. not present and in the Nevada Department of Corrections. Court noted the Court was notified by the Da's Office that there's going to be a brief continuance. Mr. Abbatangelo advised he spoke with Mr. Chen and there's a motion for limited discovery. Court so noted and ORDERED, State opposition due by 2-10-20, Defendant's Reply due by 2-18-20, and hearing set on the date given. FURTHER COURT ORDERED, Petition for Writ of Habeas Corpus CONTINUED to that same date given. Mr. Abbatangelo requested Deft. be transported for the hearing as she wants to be here. COURT ORDERED, Request to Transport Deft., DENIED.

NDC

02/24/20 8:30 A.M. HEARING: PETITION FOR WRIT OF HABEAS CORPUS...MOTION FOR
LIMITED DISCOVERY

PRINT DATE: 03/24/2021

Page 11 of 18

Minutes Date: April 08, 2003

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 24, 2020

03C191253

The State of Nevada vs Alisha Burns

February 24, 2020

8:30 AM

All Pending Motions

HEARD BY: Wiese, Jerry A.

COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT:

Abbatangelo, Anthony L

Attorney

Lexis, Chad N.

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- PETITION FOR WRIT OF HABEAS CORPUS...MOTION FOR LIMITED DISCOVERY

Deft. not present and in the Nevada Department of Corrections. Mr. Abbatangelo requested to continue the matter for Judge Jones to hear. Mr. Lexis stated no opposition. COURT ORDERED, matter CONTINUED to the date given.

NDC

03/02/20 8:30 A.M. PETITION FOR WRIT OF HABEAS CORPUS...MOTION FOR LIMITED DISCOVERY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 02, 2020**

03C191253

The State of Nevada vs Alisha Burns

March 02, 2020**8:30 AM****All Pending Motions****HEARD BY:** Jones, Tierra**COURTROOM:** RJC Courtroom 14B**COURT CLERK:** Teri Berkshire**RECORDER:** Victoria Boyd**REPORTER:****PARTIES****PRESENT:**Jones, Jr., John T.
State of NevadaAttorney
Plaintiff**JOURNAL ENTRIES****- PETITION FOR WRIT OF HABEAS CORPUS...MOTION FOR LIMITED DISCOVERY**

Deft. Burns not present. Court noted this calendar is about to conclude and Mr. Abbatangelo is not present. Further, COURT ORDERED, matters CONTINUED for counsel's presence on the date given.

03/04/20 8:30 A.M. PETITION FOR WRIT OF HABEAS CORPUS...MOTION FOR LIMITED DISCOVERY

Clerk's Note: On 2-3-20, clerk called and left message with Mr. Abbatangelo's receptionist regarding these proceedings. Further, a copy of these minutes emailed to Mr. Abbatangelo at Tony@paulpaddalaw.com /tb

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 04, 2020**

03C191253

The State of Nevada vs Alisha Burns

March 04, 2020**8:30 AM****All Pending Motions****HEARD BY:** Jones, Tierra**COURTROOM:** RJC Courtroom 14B**COURT CLERK:** Teri Berkshire**RECORDER:** Victoria Boyd**REPORTER:****PARTIES****PRESENT:**

Abbatangelo, Anthony L

Attorney

State of Nevada

Plaintiff

Wong, Hetty O.

Attorney

JOURNAL ENTRIES

- PETITION FOR WRIT OF HABEAS CORPUS...MOTION FOR LIMITED DISCOVERY

Deft. not present and in the Nevada Department of Corrections. COURT ORDERED, Evidentiary Hearing Set on the issue of the time Bars to the Petition, and the Ineffective Assistance of Counsel. Upon Court's inquiry, as to prior counsel, Mr. Abbatangelo advised prior counsel, was Mr. Longabaugh, and Mr. Kohn. Court so noted. State to prepare an order to transport. Further, Court directed counsels to have their witnesses here.

NDC

04/10/20 9:00 A.M. EVIDENTIARY HEARING (LIMITED ISSUES)

PRINT DATE: 03/24/2021

Page 14 of 18

Minutes Date: April 08, 2003

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****June 15, 2020**

03C191253

The State of Nevada vs Alisha Burns

June 15, 2020**8:30 AM****Motion****HEARD BY:** Jones, Tierra**COURTROOM:** RJC Courtroom 14B**COURT CLERK:** Teri Berkshire**RECORDER:** Victoria Boyd**REPORTER:****PARTIES****PRESENT:**

Abbatangelo, Anthony L

Attorney

Di Giacomo, Marc P.

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Mr. Abbatangelo Esq., on behalf of Deft., present Via Blue Jeans technology. Ron Evans Esq., Deputized Law Clerk, present on behalf of the State.

Deft. not present and in the Nevada Department of Corrections. Court noted there's no response filed. Further, there's a renewed Motion filed on 4-7-20. There being no opposition, COURT ORDERED, matter CONTINUED to the date given for the State to respond.

NDC

06/29/20 8:30 A.M. MOTION FOR DISCOVERY & RESET EVIDENTIARY HEARING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****June 29, 2020**

03C191253

The State of Nevada vs Alisha Burns

June 29, 2020**8:30 AM****Motion****HEARD BY:** Jones, Tierra**COURTROOM:** RJC Courtroom 14B**COURT CLERK:** Teri Berkshire**RECORDER:** Victoria Boyd**REPORTER:****PARTIES****PRESENT:** Abbatangelo, Anthony L Attorney**JOURNAL ENTRIES**

- APPEARANCES CONTINUED: Mr. Ron Evans, deputized law clerk, present on behalf of the State.

Deft. not present and in the Nevada Department of Corrections. Following arguments by counsel, COURT ORDERED, Motion for Discovery & Reset Evidentiary Hearing, DENIED WITHOUT PREJUDICE. FURTHER COURT ORDERED, Matter Set for Evidentiary Hearing on the date given. Court noted this will be a limited issue on the timeliness of the petition, and if the Court finds that there is no good cause for the untimeliness of the petition, the Court is not going to get to the ineffective assistance of counsel.

NDC

08/07/20 9:00 A.M. EVIDENTIARY HEARING - LIMITED ISSUE - TIMELINESS.OF THE PETITION

PRINT DATE: 03/24/2021

Page 16 of 18

Minutes Date: April 08, 2003

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****September 18, 2020**

03C191253

The State of Nevada vs Alisha Burns

September 18, 2020 9:00 AM Hearing**HEARD BY:** Jones, Tierra**COURTROOM:** RJC Courtroom 14B**COURT CLERK:** Teri Berkshire**RECORDER:** Patti Slattery**REPORTER:****PARTIES**

PRESENT:	Abbatangelo, Anthony L	Attorney
	Burns, Alisha	Defendant
	Hamner, Christopher S.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Mr. Ron Evans present on behalf of the State.

Court noted this is an evidentiary hearing on one limited issue, regarding the procedural time bar. Further, if the Court determines there is a need for follow up, based on the limited issue, then the parties can follow up.

Colloquy regarding Berry v. State.

HEARING HELD: Exclusionary Rule INVOKED. Testimony and exhibits presented. (See worksheets). Following testimony of Ms. Burns, Court admonished the witness and excused her. COURT ORDERED, hearing CONTINUED to the date given.

NIC

03C191253

10/23/20 9:00 A.M. HEARING - Limited Issue

States

EXHIBITS

CASE NO. 03C191253

		OFFERED		ADMITTED	
		DATE	OBJ	DATE	
WA	1) CD	2/21	Stip	2/21	
WA	2) 1st Letter	9/18/20	Y N	Y	9/18/20
WA	3) Transcript	9/18/20	Stip		
WA	4) Stip & Order				
WA	5) Transcript				
WA	6) GPA				
WA	7) Transcript Sentencing	↓	↓	↓	
WA	8) Officer Report	9/18/20	Stip		9/18/20
WA	9) Lab Report	↓	↓	↓	
WA	10) Transcript Kaczmarek Testimony	2/21/21	Stip		2/21/21
WA	11) Daka Voluntary Statement	9/18/20	Y N	Y	9/18/20
WA	12) Autopsy Report	↓	Stip		9/18/20
WA	13) Dr. Gary Telgenhoff - Transcript				
WA	14)				
WA	15)				
WA	16)				
WA	17)				
WA	18)				
WA	19)				
WA	20)				
WA	21)	↓	↓		
WA	22) Photo Victim in bathtub	9/18/20	Y N	Y	9/18/20

State's

EXHIBITS

CASE NO. C191253

		OFFERED		ADMITTED	
		DATE	OBJ	DATE	
WA	23) Photo Crime Scene	1/15/20	Stip	1/14/20	
WA	24) ↓	↓	↓	↓	
WA	25) ↓	↓	↓	↓	
WA	26) ↓	↓	↓	↓	
WA	27) ↓	↓	↓	↓	
WA	28) Photo Victim Sick in Mouth	1/15/20	Y N	Y 1/14/20	
WA	29) Photo Crime Scene	↓	Stip	↓	
WA	30) ↓	↓	↓	↓	
WA	31) ↓	↓	↓	↓	
WA	32) ↓	↓	↓	↓	
WA	33) ↓	↓	↓	↓	
WA	34) ↓	↓	↓	↓	
WA	35) ↓	↓	↓	↓	
WA	36) Overview map	↓	↓	↓	
WA	37) Photo Crime Scene	↓	↓	↓	
WA	38) ↓	↓	↓	↓	
WA	39) ↓	↓	↓	↓	
WT	40) Jury Trial Transcript	1/22/21	Stip	1/22/21	
WA	41) Petition For writ Habeas Corpus	1/9/20	Stip	1/14/20	
WT	42) Crim Complaint - Burns	1/22/21	Stip	1/22/21	
WA	43) Letters From Aff (24)	↓	↓	1/22/21	



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

TONY L. ABBATANGLO, ESQ.
4560 S. DECATUR, STE 300
LAS VEGAS, NV 89103

DATE: March 24, 2021
CASE: 03C191253

RE CASE: STATE OF NEVADA vs. ALISHA BURNS aka ALISHA N. BURNS

NOTICE OF APPEAL FILED: March 22, 2021

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:



Case Appeal Statement

- NRAP 3 (a)(1), Form 2



Order



Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

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; DISTRICT COURT DOCKET ENTRIES; ORDER DENYING DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

STATE OF NEVADA,

Plaintiff(s),

vs.

ALISHA BURNS
aka ALISHA N. BURNS,

Defendant(s).

Case No: 03C191253

Dept No: X

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 24 day of March 2021.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk



**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

March 24, 2021

Elizabeth A. Brown
Clerk of the Court
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

RE: STATE OF NEVADA vs. ALISHA BURNS aka ALISHA N. BURNS
D.C. CASE: 03C191253

Dear Ms. Brown:

Please find enclosed a Notice of Appeal packet, filed March 22, 2021. Due to extenuating circumstances minutes from the date(s) listed below have not been included:

January 22, 2021

January 28, 2021

We do not currently have a time frame for when these minutes will be available.

If you have any questions regarding this matter, please contact me at (702) 671-0512.

Sincerely,
STEVEN D. GRIERSON, CLERK OF THE COURT

A handwritten signature in black ink, appearing to read "A Hampton", written over a horizontal line.

Amanda Hampton, Deputy Clerk