

FILED

MAR 18 2021

*Elizabeth A. Brown*  
CLERK OF COURT

Electronically Filed  
Apr 08 2021 08:19 a.m.  
Elizabeth A. Brown

Hayes, James H #1175077  
In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018

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

State of Nevada

Plaintiff,

vs.

JAMES H. HAYES

Defendant.

HEARING REQUESTED

Case No. A-19-793315-W

Dept. No. 3

Docket \_\_\_\_\_

**NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN, That the Petitioner/Defendant,  
JAMES H. HAYES, in and through his proper person, hereby  
appeals to the Supreme Court of Nevada from the ORDER denying and/or  
dismissing the

Petition (Amended) for Writ of Habeas Corpus

ruled on the 1 day of February, 2021.

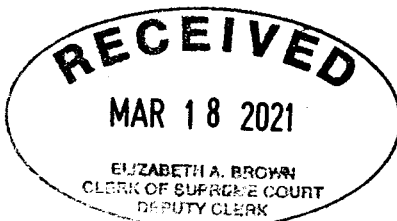
Dated this 8th day of March, 2021.

A-19-793315-W  
NOASC  
Notice of Appeal (criminal)  
4950062



Respectfully Submitted.

James H. Hayes



RECEIVED  
APPEALS

APR - 6 2021

CLERK OF THE COURT

Docket 82734 Document 2021-10084

5

**CERTIFICATE OF SERVICE BY MAILING**

I, JAMES H. HAYS, hereby certify, pursuant to NRCP 5(b), that on this 8<sup>th</sup>  
day of MARCH, 2021, I mailed a true and correct copy of the foregoing, "Notice  
of Appeal" Amended Petition for writ of HABEAS CORPUS,"  
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

CLERK OF THE COURT  
CLERK COUNTY DIST CT  
200 LAUREL AVE. 315 91  
LAS VEGAS, NV  
89155-1160

CLERK COUNTY DIST. APPLS  
200 LAUREL AVE  
LAS VEGAS, NV  
89155-2212

ATTORNEY GENERAL of NEV.  
100 N. GILSON ST  
CARSON CITY, NV  
89701

SUPREME COURT of NEVADA  
201 SOUTH GILSON ST. STE 201  
CARSON CITY, NV  
89701

CC:FILE

DATED: this 8<sup>th</sup> day of MARCH, 2021.

James H. Hays  
James H. Hays #1175277  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
**IN FORMA PAUPERIS:**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**February 01, 2021**

---

A-19-793315-W      James Hayes, Plaintiff(s)  
                                 vs.  
                                 Nevada State of, Defendant(s)

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**February 01, 2021      8:30 AM      Motion to Compel**

**HEARD BY:** Trujillo, Monica      **COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Grecia Snow

**RECORDER:** Rebeca Gomez

**PARTIES**

**PRESENT:**      Waters, Steven L      Attorney

**JOURNAL ENTRIES**

- COURT ORDERED, Motion to Compel DENIED for the reasons stated in the State's response. State to prepare the order. Court noted as to the prior Amended Petition for Writ no order had been filed. COURT FURTHER ORDERED, Amended Petition for Writ DENIED. State to prepare the order as to findings of fact and conclusion of law consistent with the State's response.

NDC

CLERK'S NOTE: The above minute order has been distributed to: James Hayes #1175077, P.O. BOX 208, Indian Springs, Nevada 89070. /// 2/16/21 gs

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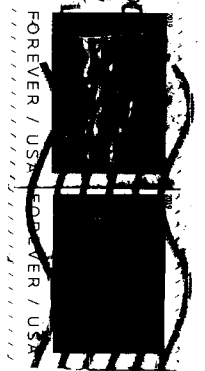
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Tulsa, OK 74103  
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LAS VEGAS NV 890  
16 MAR 2021 PM 4



Supreme Court of Nevada  
"Office of the Clerk"

201 South Carson Street, Suite 201

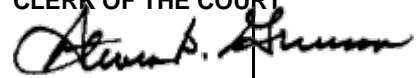
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CORRECTIONAL CENTER



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

9 JAMES H. HAYES,

10 Plaintiff(s),

11 vs.

12  
13 STATE OF NEVADA; WARDEN JERRY  
14 HOWELL,

15 Defendant(s),

Case No: A-19-793315-W

Dept No: III

16  
17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): James H. Hayes

19 2. Judge: Monica Trujillo

20 3. Appellant(s): James H. Hayes

21 Counsel:

22 James H. Hayes #1175077  
23 P.O. Box 208  
24 Indian Springs, NV 89070

25 4. Respondent (s): State of Nevada; Warden Jerry Howell

26 Counsel:

27 Steven B. Wolfson, District Attorney  
28 200 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: Yes,  
Date Application(s) filed: June 4, 2020

9. Date Commenced in District Court: April 15, 2019

10. Brief Description of the Nature of the Action: Civil Writ

Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 6 day of April 2021.

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: James H. Hayes

Hayes, James H. 1175077  
Petitioner/In Propria Persona  
Post Office Box 208, SDCC  
Indian Springs, Nevada 89070-0208

FILED

MAR 18 2021

Thomas A. Blinn  
CLERK OF COURT

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

State of Nevada  
Plaintiff,

vs.

JAMES H. HAYES  
Defendant.

CASE No. A-19-793315-W  
DEPT. No. 3

DESIGNATION OF RECORD ON APPEAL

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_

A-19-793315-W  
DROA  
Designation of Record on Appeal  
4950063



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

DATED this 8th day of March, 2021.

RESPECTFULLY SUBMITTED BY:

James H. Hayes  
JAMES H. HAYES # 1175077  
Plaintiff/In Propria Persona

RECEIVED  
APPEALS

APR - 6 2021

CLERK OF THE COURT



# CASE SUMMARY

## CASE NO. A-19-793315-W

James Hayes, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

§  
§  
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§

Location: Department 3  
Judicial Officer: Trujillo, Monica  
Filed on: 04/15/2019  
Case Number History:  
Cross-Reference Case Number: A793315

### CASE INFORMATION

**Related Cases**  
C-16-315718-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Case Status: **04/15/2019 Open**

### DATE

### CASE ASSIGNMENT

#### Current Case Assignment

Case Number A-19-793315-W  
Court Department 3  
Date Assigned 01/04/2021  
Judicial Officer Trujillo, Monica

### PARTY INFORMATION

**Plaintiff** Hayes, James H

*Lead Attorneys*

**Pro Se**

**Defendant** Nevada State of


**Wolfson, Steven B**  
*Retained*  
702-455-5320(W)


### DATE


### EVENTS & ORDERS OF THE COURT


### INDEX


#### EVENTS


04/15/2019  Inmate Filed - Petition for Writ of Habeas Corpus  
Party: Plaintiff Hayes, James H  
*Petition for Writ of Habeas Corpus*

05/02/2019  Order for Petition for Writ of Habeas Corpus  
*Order for Petition for Writ of Habeas Corpus*

05/07/2019  Addendum  
Filed By: Plaintiff Hayes, James H  
*Petition for Writ of Habeas Corpus (Post Conviction) "Addendum"*

05/09/2019  Addendum  
Filed By: Plaintiff Hayes, James H  
*Petition for Writ of Habeas Corpus (Post Conviction) Addendum II (Two)*

05/20/2019  Motion  
Filed By: Plaintiff Hayes, James H  
*Motion of Notice*














06/26/2019  Response  
Filed by: Defendant Nevada State of

**CASE SUMMARY**  
**CASE NO. A-19-793315-W**

*State's Response to Defendant's Petition for Writ of Habeas Corpus (Post Conviction)*















07/05/2019	 Motion for Default Judgment Filed By: Plaintiff Hayes, James H <i>Motion for "Judgment of Default" Against the Respondents and Enforce Procedural Default</i>
07/05/2019	 Notice of Motion Filed By: Plaintiff Hayes, James H <i>Notice of Motion</i>
07/05/2019	 Reply Filed by: Plaintiff Hayes, James H <i>Reply to State's Response</i>
07/12/2019	 Affidavit Filed By: Plaintiff Hayes, James H <i>Affidavit of Issuance of Writ of Habeas Corpus</i>
07/24/2019	 Notice of Change of Address Filed By: Plaintiff Hayes, James H <i>Notice of Change of Address</i>
07/30/2019	 Amended Notice <i>Amended Notice of Hearing for Petition of Writ of Habeas Corpus</i>
08/09/2019	 Affidavit Filed By: Plaintiff Hayes, James H <i>Affidavit of Facial Legality</i>
10/10/2019	 Response Filed by: Defendant Nevada State of <i>State's Response to Defendant's First and Second Addendum to Petition for Writ of Habeas Corpus (Post-Conviction)</i>
11/04/2019	 Reply Filed by: Plaintiff Hayes, James H <i>Petitioner's Reply</i>
12/04/2019	 Notice of Change of Address Filed By: Plaintiff Hayes, James H <i>Notice of Change of Address</i>
12/20/2019	 Reply Filed by: Plaintiff Hayes, James H <i>Petitioner's Reply Addendum</i>
02/12/2020	 Petition for Writ of Habeas Corpus Filed by: Plaintiff Hayes, James H <i>Amended Petition for Writ of Habeas Corpus</i>
03/04/2020	 Order for Petition for Writ of Habeas Corpus <i>Order for Petition for Writ of Habeas Corpus</i>
03/06/2020	

**CASE SUMMARY**  
**CASE NO. A-19-793315-W**

	 Petition Filed by: Plaintiff Hayes, James H <i>Petition: Expeditious Judicial Examination NRS 34.360- 34.830</i>
04/17/2020	 Response Filed by: Defendant Nevada State of <i>State's Response to Petitioner's Amended Petition for Writ of Habeas Corpus and Petition: Expeditious Judicial Examination NRS 34.360-34.830</i>
04/30/2020	 Notice of Rescheduling of Hearing <i>Notice of Rescheduling of Hearing</i>
05/15/2020	 Affidavit Filed By: Plaintiff Hayes, James H <i>Affidavit of Actual Innocence not Mere Legal Insufficiency but "Factual Innocence" Amended Petition for Writ of Habeas Corpus</i>
05/15/2020	 Petition for Writ of Habeas Corpus Filed by: Plaintiff Hayes, James H <i>Petition for Writ of Habeas Corpus (Post Conviction) - ( 2nd page Title) Reply to State's Response to Petitioner's Amended Petition for Writ of Habeas Corpus and Expeditious Judicial Examination</i>
05/27/2020	 Petition for Writ of Habeas Corpus Filed by: Plaintiff Hayes, James H <i>Supplemental Petition</i>
06/04/2020	 Application to Proceed in Forma Pauperis Filed By: Plaintiff Hayes, James H <i>Application to Proceed in Forma Pauperis</i>
06/04/2020	 Motion Filed By: Plaintiff Hayes, James H <i>Motion for Peremptory Challenge of Judge and to Disqualify Judge William Bill Kephart</i>
06/04/2020	 Notice of Motion Filed By: Plaintiff Hayes, James H <i>Notice of Motion</i>
06/05/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
06/10/2020	 Response Filed by: Defendant Nevada State of <i>State's Response and Motion to Strike Petitioner's Affidavit of Actual Innocence Not Mere Legal Insufficiency But "Factual Innocence"</i>
06/10/2020	 Response Filed by: Defendant Nevada State of <i>State's Response to Petitioner's Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)</i>
06/29/2020	 Reply to Motion Filed By: Plaintiff Hayes, James H <i>Reply to State's Motion to Strike Petitioner's Affidavit of Actual Innocence not mere Legal</i>

**CASE SUMMARY**  
**CASE NO. A-19-793315-W**

*Insufficiency but Factual Innocence.*

07/02/2020	 Affidavit <i>Affidavit in Response to Defendant James Howard Hayes' Motion for "Peremptory Challenge of Judge" and to Disqualify Judge William "Bill" Kephart</i>
07/08/2020	 Decision and Order <i>Decision and Order</i>
07/23/2020	 Motion Filed By: Plaintiff Hayes, James H <i>Motion for Ruling For Rule 60b Motion for Relief ; Motion to Vacate; Amend Petition for Writ of Habeas Corpus</i>
07/23/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
07/23/2020	 Reply Filed by: Plaintiff Hayes, James H <i>Reply to State's Response "Supplemental Petition for Writ of Habeas"</i>
08/26/2020	 Notice of Change of Hearing <i>Notice of Change of Hearing</i>
09/02/2020	 Response Filed by: Defendant Nevada State of <i>State's Response to Petitioner's Motion for Ruling</i>
09/25/2020	 Motion Filed By: Plaintiff Hayes, James H <i>Motion for Expeditious Ruling for "Amended Petition for Writ of Habeas Corpus " 3 rd Request</i>
09/25/2020	 Notice of Motion Filed By: Plaintiff Hayes, James H <i>Notice of Motion</i>
09/25/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
10/07/2020	 Motion Filed By: Plaintiff Hayes, James H <i>Motion to Set Evidentiary Hearing and Issue Transport Order...</i>
10/07/2020	 Notice of Motion Filed By: Plaintiff Hayes, James H <i>Notice of Motion</i>
10/07/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
10/14/2020	 Motion to Reconsider Filed By: Plaintiff Hayes, James H <i>Motion to Reconsider Order Denying Motion for Ruling for Rule 60 (b) Motion for Relief;</i>

**CASE SUMMARY**  
**CASE NO. A-19-793315-W**

*Motion to Vacate; Amended Petition for Writ of Habeas Corpus*

10/14/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
10/14/2020	 Notice of Motion Filed By: Plaintiff Hayes, James H <i>Notice of Motion</i>
11/03/2020	 Notice of Change of Hearing <i>Notice of Change of Hearings</i>
11/10/2020	 Opposition Filed By: Defendant Nevada State of <i>State's Opposition to Petitioner's Motion to Reconsider Order Denying Motion; for Ruling for Rule 60B Motion for Relief; Motion to Vacate; Amended Petition for Writ of Habeas Corpus</i>
11/10/2020	 Opposition Filed By: Defendant Nevada State of <i>States Opposition to Petitioner's Motion to Set Evidentiary Hearing and Issue Transport Order</i>
11/10/2020	 Response Filed by: Defendant Nevada State of <i>State's Response to Petitioner's Motion for Expeditious Ruling for Amended Petition for Writ of Habeas Corpus - 3rd Request</i>
11/21/2020	 Order Denying Motion Filed By: Plaintiff Hayes, James H <i>Order Denying Plaintiff's Motion for Expeditious Ruling for Amended Petition for Writ of Habeas Corpus- 3rd Request, Plaintiff's Motion to Set Evidentiary Hearing and Issue Transport Order, and Plaintiff's Motion to Reconsider Order Denying Motion for Ruling for Rule 60(B) Motion for Relief; Motion to Vacate; Amended Petition for Writ of Habeas Corpus</i>
12/22/2020	 Motion to Compel Filed By: Plaintiff Hayes, James H <i>Motion to Compel Judgment Pursuant to Nevada Revised Statutes Chapter 34 FRCP Rule 12 (c) for Amended Petition for Writ of Habeas Corpus</i>
12/22/2020	 Notice of Motion Filed By: Plaintiff Hayes, James H <i>Notice of Motion</i>
12/22/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
01/04/2021	Case Reassigned to Department 1 <i>Judicial Reassignment to Judge Bita Yeager</i>
01/04/2021	Case Reassigned to Department 3 <i>Judicial Reassignment to Judge Monica Trujillo</i>
01/15/2021	 Notice of Department Reassignment <i>Notice of Department Reassignment</i>
01/27/2021	 Response

**CASE SUMMARY**  
**CASE NO. A-19-793315-W**

Filed by: Defendant Nevada State of  
*State's Response to Petitioner's Motion to Compel Judgment Pursuant to Nevada Revised Statutes Chapter 34 FRCP Rule 12 (C) for Amended Petition for Writ of Habeas Corpus*

02/02/2021



Motion to Compel

Filed By: Plaintiff Hayes, James H

*Reply Motion to Compel Judgment Pursuant to Nevada Revised Statutes Chapter 34... FRCP Rule 12( c) for Amended Petition for Writ of Habeas Corpus*

02/02/2021



Clerk's Notice of Hearing

*Notice of Hearing*

02/18/2021



Opposition

*Opposition to State's Response to Petitioner's Motion to Compel Judgment pursuant to Nevada Revised Statutes Chapter 34; JRCP Rule 12(c) for Amended Petition for Writ of Habeas Corpus*

03/09/2021



Findings of Fact, Conclusions of Law and Order

Filed By: Defendant Nevada State of

*Findings of Fact, Conclusions of Law, and Order*

03/10/2021



Notice of Entry of Findings of Fact, Conclusions of Law

Filed By: Defendant Nevada State of

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

03/11/2021



Motion

Filed By: Plaintiff Hayes, James H

*Petition to Reconsider 'Findings of Fact Conclusion of Law " Addendum*

03/11/2021



Clerk's Notice of Hearing

*Notice of Hearing*

03/17/2021



Motion

Filed By: Plaintiff Hayes, James H

*Petition for Reconsider Findings of "Fact and Conclusion of Law"*

03/17/2021



Notice of Motion

Filed By: Plaintiff Hayes, James H

*Notice of Motion*

03/17/2021



Clerk's Notice of Hearing

*Notice of Hearing*

03/17/2021



Findings of Fact, Conclusions of Law and Order

*Findings of Fact, Conclusions of Law, and Order*

03/18/2021



Notice of Appeal (criminal)

*Notice of Appeal; Hearing Requested*

03/18/2021



Designation of Record on Appeal

03/19/2021










Notice of Entry of Findings of Fact, Conclusions of Law

Filed By: Defendant Nevada State of

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



# CASE SUMMARY

## CASE NO. A-19-793315-W

03/30/2021	 <b>Motion</b> Filed By: Plaintiff Hayes, James H <i>Motion and Order for Transportation of Inmate for Court Appearance or in the Alternative for Appearance by Telephone or Video Conference</i>
04/06/2021	 <b>Case Appeal Statement</b> Filed By: Plaintiff Hayes, James H <i>Case Appeal Statement</i>
<b>HEARINGS</b>	
08/19/2019	 <b>Petition for Writ of Habeas Corpus (8:30 AM)</b> (Judicial Officer: Kephart, William D.) <b>08/19/2019, 11/18/2019</b> Matter Continued; Off Calendar; Journal Entry Details: <i>Court noted Defendant not present and in custody with the Nevada Department of Corrections. Court stated the matter has been fully briefed; however, this matter is still pending appeal with the Supreme Court and COURT ORDERED, matter OFF CALENDAR as the Court lacks jurisdiction at this time. NDC;</i> Matter Continued; Off Calendar; Journal Entry Details: <i>Court noted Defendant not present and in custody with the Nevada Department of Corrections. Further, Court noted State filed a response to Defendant's petition; however, Defendant has filed two addendums and ORDERED, matter CONTINUED for the State to file a response to the addendums. FURTHER ORDERED, State's response shall be due on or before 10/21/2019 and Defendant's reply shall be due on or before 11/04/2019. NDC CONTINUED TO: 11/18/2019 8:30 AM;</i>
06/15/2020	 <b>Petition for Writ of Habeas Corpus (10:15 AM)</b> (Judicial Officer: Kephart, William D.) Off Calendar; Journal Entry Details: <i>Court noted Defendant not present and in custody with the Nevada Department of Corrections. Further, Court stated Defendant has filed a motion to disqualify him from the matter; therefore, COURT ORDERED, matter OFF CALENDAR pending decision. NDC;</i>
07/07/2020	 <b>Motion (11:00 AM)</b> (Judicial Officer: Bell, Linda Marie) <i>Plaintiff's Motion for Peremptory Challenge of Judge and to Disqualify Judge William "Bill" Kephart</i> Denied; Journal Entry Details: <i>No parties present. COURT FINDS, there is no evidence to support Mr. Hayes's allegations. The Judgement of Conviction was affirmed on appeal and Judge Kephart denied having any bias or prejudice. Therefore, COURT ORDERED, motion DENIED. Court to prepare the order.;</i>
09/09/2020	 <b>Motion (10:15 AM)</b> (Judicial Officer: Kephart, William D.) <i>Plaintiff's Motion for Ruling For Rule 60b Motion for Relief ; Motion to Vacate; Amend Petition for Writ of Habeas Corpus</i> Denied; Journal Entry Details: <i>Court noted Defendant not present and in custody with the Nevada Department of Corrections. COURT ORDERED, Motion DENIED pursuant to EDCR 2.20. NDC;</i>
11/16/2020	 <b>All Pending Motions (8:30 AM)</b> (Judicial Officer: Kephart, William D.) Matter Heard; Journal Entry Details: <i>PLAINTIFF'S MOTION FOR EXPEDITIOUS RULING FOR "AMENDED PETITION FOR WRIT OF HABEAS CORPUS" 3RD REQUEST: Court noted Defendant not present and in</i>

# CASE SUMMARY

CASE NO. A-19-793315-W

	<i>custody with the Nevada Department of Corrections. COURT ORDERED, Motion DENIED. PLAINTIFF'S MOTION TO SET EVIDENTIARY HEARING AND ISSUE TRANSPORT ORDER: COURT ORDERED, Motion DENIED. PLAINTIFF'S MOTION TO RECONSIDER ORDER DENYING MOTION FOR RULING FOR RULE 60 (B) MOTION FOR RELIEF; MOTION TO VACATE; AMENDED PETITION FOR WRIT OF HABEAS CORPUS: COURT ORDERED, Motion DENIED as a reconsideration is not warranted. NDC ;</i>
11/16/2020	<b>Motion</b> (10:15 AM) (Judicial Officer: Kephart, William D.) <i>Plaintiff's Motion for Expeditious Ruling for "Amended Petition for Writ of Habeas Corpus" 3rd Request</i> Denied;
11/16/2020	<b>Motion</b> (10:15 AM) (Judicial Officer: Kephart, William D.) <i>Plaintiff's Motion to Set Evidentiary Hearing and Issue Transport Order</i> Denied;
11/16/2020	<b>Motion to Reconsider</b> (10:15 AM) (Judicial Officer: Kephart, William D.) <i>Plaintiff's Motion to Reconsider Order Denying Motion for Ruling for Rule 60 (b) Motion for Relief; Motion to Vacate; Amended Petition for Writ of Habeas Corpus</i> Denied;
02/01/2021	 <b>Motion to Compel</b> (8:30 AM) (Judicial Officer: Trujillo, Monica) <i>Plaintiff's - Motion to Compel Judgment Pursuant to Nevada Revised Statutes Chapter 34 FRCP Rule 12(c) for Amended Petition for Writ of Habeas Corpus</i> Denied; Journal Entry Details: <i>COURT ORDERED, Motion to Compel DENIED for the reasons stated in the State's response. State to prepare the order. Court noted as to the prior Amended Petition for Writ no order had been filed. COURT FURTHER ORDERED, Amended Petition for Writ DENIED. State to prepare the order as to findings of fact and conclusion of law consistent with the State's response. NDC CLERK'S NOTE: The above minute order has been distributed to: James Hayes #1175077, P.O. BOX 208, Indian Springs, Nevada 89070. /// 2/16/21 gs ;</i>
03/08/2021	 <b>Motion to Compel</b> (8:30 AM) (Judicial Officer: Trujillo, Monica)  <b>MINUTES</b> Briefing Schedule Set; Journal Entry Details: <i>After reviewing petition, Court determined Defendant needs to supplement his petition with specificity. Further, Court directed State to respond to Defendant's petition. Supplemental briefing schedule set and matter continued for decision. Defendant has until April 4, 2020 to supplement his petition; State has until May 5, 2020 to file a response. 5/10/21 8:30 a.m. Decision;</i>  <b>SCHEDULED HEARINGS</b> <b>Decision</b> (05/10/2021 at 8:30 AM) (Judicial Officer: Trujillo, Monica) <i>Decision - Defendant's "Reply" Motion to Compel Judgment Pursuant to Nevada Revised Statutes Chapter 34... FRCP Rule 12(c) for "Amended Petition for Writ of Habeas Corpus"</i>
04/12/2021	<b>Motion to Reconsider</b> (8:30 AM) (Judicial Officer: Trujillo, Monica) <i>Petition to Reconsider 'Findings of Fact Conclusion of Law " Addendum</i>
04/29/2021	<b>Motion</b> (3:00 AM) (Judicial Officer: Trujillo, Monica) <i>Plaintiff's - Petition for Reconsider Findings of "Fact and Conclusion of Law"</i>
05/10/2021	<b>Decision</b> (8:30 AM) (Judicial Officer: Trujillo, Monica) <i>Decision - Defendant's "Reply" Motion to Compel Judgment Pursuant to Nevada Revised Statutes Chapter 34... FRCP Rule 12(c) for "Amended Petition for Writ of Habeas Corpus"</i>



## DISTRICT COURT CIVIL COVER SHEET

A-19-793315-W

Dept: XIX

County, Nevada

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone): James H. Hayes # 1175077 P.O. Box 650 Indian Springs, NV 89070	Defendant(s) (name/address/phone): State of Nevada
Attorney (name/address/phone):	Attorney (name/address/phone):

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

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

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

4/15/2019

Date

Signature of initiating party or representative

See other side for family-related case filings.

 A-19-793315-W  
 CCS  
 Civil Cover Sheet  
 4830704


*Heaven S. Smith*

CLERK OF THE COURT

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

DISTRICT COURT  
CLARK COUNTY, NEVADA

JAMES HOWARD HAYES,  
aka James Howard Hayes Jr.,  
#2796708

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-19-793315-W

C-16-315718-1

DEPT NO: III

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

DATE OF HEARING: FEBRUARY 1, 2021  
TIME OF HEARING: 8:30 AM

THIS CAUSE having come before the Honorable MONICA TRUJILLO, District Court Judge, on the 1st day of February, 2021, the Petitioner not being present, not being represented by counsel, and the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, through STEVEN L. WATERS, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT, CONCLUSIONS OF LAW**

**STATEMENT OF THE CASE**

On or about July 23, 2013, James H. Hayes (hereinafter, "Petitioner") was charged by way of Criminal Complaint with one count of BURGLARY (Category B Felony – NRS

1 205.060) and one count of ATTEMPT GRAND LARCENY (Category D Felony/Gross  
2 Misdemeanor – NRS 205.220.1, 205.222.2, 193.330). Following a Preliminary Hearing in  
3 Justice Court, Las Vegas Township on June 14, 2016, the charge of BURGLARY was bound  
4 over to District Court, and the charge of ATTEMPT GRAND LARCENY was dismissed.

5 On June 17, 2016, the State filed an Information with the District Court, charging  
6 Petitioner with one count of BURGLARY. On August 29, 2017, the State filed an Amended  
7 Notice of Intent to Seek Punishment as a Habitual Criminal. On November 7, 2018, pursuant  
8 to a Guilty Plea Agreement (“GPA”), Petitioner entered a plea of Guilty pursuant to North  
9 Carolina v. Alford, 400 U.S. 25 (1970) to one count of ATTEMPT GRAND LARCENY. The  
10 terms of the GPA are as follows:

11 The State has agreed to make no recommendation at the time of sentencing. The  
12 State has no opposition to probation with the only condition being thirty (30)  
13 days in the Clark County Detention Center (CCDC), with thirty (30) days credit  
for time served.

14 GPA at 1:22-24. The GPA further includes, in pertinent part, the following acknowledgement:

15 I understand and agree that, if...an independent magistrate, by affidavit review,  
16 confirms probable cause against me for new criminal charges including reckless  
17 driving or DUI, but excluding minor traffic violations, the State will have the  
unqualified right to argue for any legal sentence and term of confinement  
18 allowable for the crime(s) to which I am pleading guilty, including the use of  
any prior convictions I may have to increase my sentence as a habitual criminal  
19 to five (5) to twenty (20) years, Life without the possibility of parole, Life with  
the possibility of parole after ten (10) years, or a definite twenty-five (25) year  
20 term with the possibility of parole after ten (10) years.

21 GPA at 2: 1-9. An Amended Information reflecting the new charge of ATTEMPT GRAND  
22 LARCENY was filed in conjunction with the GPA. Petitioner was adjudged Guilty pursuant  
23 to Alford that same day, and the sentencing hearing was scheduled for March 6, 2019.

24 On January 31, 2019, the State filed a State’s Notice of Motion and Motion to Revoke  
25 Bail, asserting that in Las Vegas Justice Court case number 19F01534X, a Justice of the Peace  
26 had found probable cause to charge Petitioner with Burglary for acts committed on or around  
27 January 26, 2019. The State’s Motion to Revoke Bail was granted after a hearing on February  
28 4, 2019.

1 At the sentencing hearing on March 6, 2019, the State argued that it had regained the  
2 right to argue pursuant to the terms of the GPA. The Court agreed, and the State argued that  
3 Petitioner should be punished under NRS 207.010 (the “Small Habitual Statute”). The Court  
4 agreed, and Petitioner was sentenced to sixty (60) to one hundred seventy-four (174) months  
5 in the Nevada Department of Corrections (NDOC), consecutive to Petitioner’s sentence in  
6 another case (C315125). The Court also awarded Petitioner ten (10) days credit for time  
7 served. The Judgment of Conviction in this case was filed on March 12, 2019.

8 Petitioner filed a Notice of Appeal on March 28, 2019. Petitioner’s Case Appeal  
9 Statement was filed on August 9, 2019 (SCN 78590).

10 On April 15, 2019, Petitioner filed a Petition for Writ of Habeas Corpus (“Petition”).  
11 Pursuant to Court order, the State filed its Response on June 26, 2019. At the hearing on the  
12 Petition on August 19, 2019, the Court noted that Petitioner filed two Addenda to his original  
13 Petition (the first on May 7, 2019, and the second on May 9, 2019). Pursuant to the Court’s  
14 order, the State filed a Response to the Addenda on October 10, 2019. Petitioner filed a Reply  
15 to the State’s Response on November 4, 2019. On November 18, 2019, Petitioner’s Petition  
16 came before the Court, at which time the Court took the matter OFF CALENDAR due to  
17 Petitioner’s pending appeal.

18 On November 19, 2019, Petitioner filed another Notice of Appeal, appealing the denial  
19 of his Coram Nobis motion. His Case Appeal Statement was filed on December 11, 2019 (SCN  
20 80222). On August 31, 2020, the Nevada Court of Appeals affirmed the Court’s denial of  
21 Petitioner’s Coram Nobis motion. Remittitur issued on October 12, 2020.

22 On January 14, 2020, the Nevada Supreme Court AFFIRMED Petitioner’s Judgment  
23 of Conviction in SCN 78590. Remittitur issued on February 25, 2020.

24 On February 12, 2020, Petitioner filed an “Amended Petition for Writ of Habeas  
25 Corpus” (his “Amended Petition”). This Court ordered a Response to that Amended Petition  
26 on March 4, 2020. The State filed its Response to Petitioner’s Amended Petition on April 17,  
27 2020. Petitioner replied to the State’s Response on May 15, 2020.

28 //

1 On May 15, 2020, Petitioner also filed an "Affidavit of Actual Innocence not Mere  
2 Legal Insufficiency but 'Factual Innocence.'" On May 27, 2020, Petitioner filed a  
3 Supplemental Petition. While Petitioner's numerous pleadings were pending, Petitioner filed  
4 a Motion for Peremptory Challenge of Judge and to Disqualify Judge William Bill Kephart.  
5 Thereafter, the State filed its Responses to Petitioner's Affidavit of Actual Innocence and  
6 Petitioner's Supplemental Petition on June 10, 2020. As a result of Petitioner's Peremptory  
7 Challenge, Petitioner's pending matters were taken off calendar on June 15, 2020. On June  
8 29, 2020, Petitioner filed his Reply to the State's Response to Petitioner's Affidavit of Actual  
9 Innocence.

10 On July 7, 2020, Chief Judge Linda Bell considered, and denied, Petitioner's Motion  
11 for Peremptory Challenge of Judge Kephart. Chief Judge Bell's Decision and Order was filed  
12 on July 8, 2020.

13 On July 23, 2020, Petitioner filed his Reply to the State's Response to Petitioner's  
14 Supplemental Petition. Petitioner, that same day, filed a Motion for Ruling for Rule 60b  
15 Motion for Relief; Motion to Vacate; Amended Petition for Writ of Habeas Corpus. The State  
16 filed its Response to Petitioner's Motion for Ruling on September 2, 2020. Petitioner's Motion  
17 for Ruling was denied on September 9, 2020.

18 On September 25, 2020, Petitioner filed a Motion for Expeditious Ruling for "Amended  
19 Petition for Writ of Habeas Corpus" 3rd Request. On October 7, 2020, he filed a Motion to  
20 Set Evidentiary Hearing and Issue Transport Order. On October 14, 2020, Petitioner filed a  
21 Motion to Reconsider Order Denying Motion for Ruling for Rule 60b Motion for Relief;  
22 Motion to Vacate; Amended Petition for Writ of Habeas Corpus. The State filed responsive  
23 pleadings to each of Petitioner's respective filings on November 10, 2020. On November 16,  
24 2020, the Court considered, and denied, Petitioner's three Motions. The Court's Order was  
25 filed on November 21, 2020.

26 On December 22, 2020, Petitioner filed a "Motion to Compel Judgment Pursuant to  
27 Nevada Revised Statutes Chapter 34 FRCP Rule 12(c) for Amended Petition for Writ of  
28 Habeas Corpus." The State filed its Response to the instant Motion to Compel on January 27,

2021. Contemporaneous with its ruling on the instant Amended Petition, the Court denied Petitioner's Motion to Compel on February 1, 2021.

On February 1, 2021, this matter came on for hearing before this Court. This Court did not accept argument at the time of hearing, but made the following findings and conclusions:

## ANALYSIS

### I. PETITIONER'S AMENDED PETITION IS BARRED AS SUCCESSIVE

NRS 34.750(3) allows *appointed counsel* to file certain supplemental pleadings within 30 days. However, "[n]o further pleadings may be filed except as ordered by the court." NRS 34.750(5). Additionally, NRS 34.810(2) reads:

A second or successive petition *must be dismissed* if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are alleged, the judge or justice finds that *the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ*.

(Emphasis added). It is strictly the petitioner's burden to demonstrate good cause and prejudice to survive the court's analysis. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994); see also, Hart v. State, 116 Nev. 558, 563-64, 1 P.3d 969 972 (2000) (holding, "where a defendant previously has sought relief from the judgment, the defendant's failure to identify all grounds for relief in the first instance should weigh against consideration of the successive motion.")

The Nevada Supreme Court has stated: "Without such limitations on the availability of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-conviction remedies. In addition, meritless, successive and untimely petitions clog the court system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950. The Nevada Supreme Court recognizes, "[u]nlike initial petitions which certainly require a careful review of the record, successive petitions *may be dismissed based solely on the fact of the petition*." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995) (emphasis added). In other words, if the claim or allegation was previously available with reasonable diligence, it is an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467,

1 497-98 (1991). Application of NRS 34.810(2) is *mandatory*. State v. Eighth Judicial Dist.  
2 Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (noting, “[h]abeas corpus  
3 petitions that are filed many years after conviction are an unreasonable burden on the criminal  
4 justice system.”) The Riker Court further determined that district courts have no discretion  
5 regarding application of statutory procedural bars, and such bars “cannot be ignored [by the  
6 district court] when properly raised by the State.” Id. at 233.

7 This Court finds that, in the instant case, Petitioner continues to file supplemental  
8 pleadings in the form of multiple addenda as well as the instant “Amended Petition.” However,  
9 under NRS 34.750, the right to file supplements lies exclusively with appointed counsel.  
10 Furthermore, this Court finds that the factual bases for Petitioner’s claims existed at the time  
11 Petitioner filed his first Petition. Therefore, this Court concludes that Petitioner’s pleadings  
12 are successive and subject to dismissal absent a showing of good cause and prejudice. NRS  
13 34.810(2). Petitioner does not argue good cause nor prejudice. See generally, Amended  
14 Petition. Thus, this Court further concludes that Petitioner’s Amended Petition does not entitle  
15 Petitioner to relief.

## 16 **II. PETITIONER’S AMENDED PETITION DOES NOT ENTITLE HIM TO** 17 **RELIEF**

18 The Nevada Supreme Court has explained:

19 “[A] guilty plea represents a break in the chain of events which has preceded it  
20 in the criminal process. When a criminal defendant has solemnly admitted in  
21 open court that he is in fact guilty of the offense with which he is charged, he  
22 may not thereafter raise independent claims relating to the deprivation of  
constitutional rights that occurred prior to the entry of the guilty plea.”

23 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollett v. Henderson, 411  
24 U.S. 258, 267, 93 S.Ct. 1602, 1608 (1973)). An entry of a guilty plea “waive[s] all  
25 constitutional claims based on events occurring prior to the entry of the plea[], except those  
26 involving voluntariness of the plea[] [itself].” Warden, Nevada State Prison v. Lyons, 100  
27 Nev. 430, 431, 683 P.2d 505 (1984); see also Kirksey v. State, 112 Nev. 980, 999, 923 P.2d  
28 1102, 1114 (1996) (“Where the defendant has pleaded guilty, the only claims that may be

1 raised thereafter are those involving the voluntariness of the plea itself and the effectiveness  
2 of counsel.”). Under NRS 34.810,

3 I. The court *shall* dismiss a petition if the court determines that:

4 (a) The petitioner’s conviction was upon a plea of guilty or guilty but  
5 mentally ill and the petition is not based upon an allegation that the plea was  
6 involuntarily or unknowingly entered or that the plea was entered without  
effective assistance of counsel.

7 ...  
8 unless the court finds both cause for the failure to present the grounds and actual  
prejudice to the petitioner.

9 (emphasis added). Furthermore, the Nevada Supreme Court has held that “challenges to the  
10 validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must  
11 first be pursued in post-conviction proceedings.... [A]ll other claims that are appropriate for a  
12 direct appeal must be pursued on direct appeal, or they will be *considered waived in*  
13 *subsequent proceedings.*” Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994)  
14 (emphasis added) (disapproved of on other grounds by Thomas v. State, 115 Nev. 148, 979  
15 P.2d 222 (1999)). “A court must dismiss a habeas petition if it presents claims that either were  
16 or could have been presented in an earlier proceeding, unless the court finds both cause for  
17 failing to present the claims earlier or for raising them again and actual prejudice to the  
18 petitioner.” Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001), overruled on other  
19 grounds by Lisle v. State, 131 Nev. 356, 351 P.3d 725 (2015). Additionally, substantive claims  
20 are beyond the scope of habeas and waived. NRS 34.724(2)(a); see also Evans, 117 Nev. at  
21 646-47, 29 P.3d 498 at 523; Franklin, 110 Nev. at 752, 877 P.2d 1058 at 1059.

22 A proper petition for post-conviction relief must set forth specific factual allegations  
23 that would entitle the petitioner to relief. NRS 34.735(6) states, in pertinent part, “[Petitioner]  
24 must allege specific facts supporting the claims in the petition [he] file[s] seeking relief from  
25 any conviction or sentence. Failure to raise specific facts rather than just conclusions may  
26 cause the petition to be dismissed.” “Bare” and “naked” allegations are not sufficient to  
27 warrant post-conviction relief, nor are those belied and repelled by the record. Hargrove v.  
28 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “A claim is ‘belied’ when it is contradicted



1 or proven to be false by the record as it existed at the time the claim was made.” Mann v. State,  
2 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

3 **A. Petitioner’s Claims of Ineffective Assistance of Counsel are Belied by the Record**

4 Petitioner first claims that his counsel, Mr. Michael Sanft, Esq. (“Mr. Sanft”) was  
5 ineffective for 1) failing to appropriately investigate; 2) failing to ensure Petitioner fully  
6 understood the conditions of the GPA; 3) failing to file a Motion to Withdraw Guilty Plea; and  
7 4) failing to file a Notice of Appeal and/or informing Petitioner of his right to appeal. However,  
8 this Court finds that Petitioner’s claims are belied by the record.

9 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal  
10 prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his  
11 defense.” The United States Supreme Court has long recognized that “the right to counsel is  
12 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,  
13 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323  
14 (1993).

15 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove  
16 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of  
17 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865  
18 P.2d at 323. Under Strickland, a defendant must show first that his counsel's representation  
19 fell below an objective standard of reasonableness, and second, that but for counsel's errors,  
20 there is a reasonable probability that the result of the proceedings would have been different.  
21 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100  
22 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). “[T]here is  
23 no reason for a court deciding an ineffective assistance claim to approach the inquiry in the  
24 same order or even to address both components of the inquiry if the defendant makes an  
25 insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

26 The Court begins with the presumption of effectiveness and then must determine  
27 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
28 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel

1 does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of  
2 competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432,  
3 537 P.2d 473, 474 (1975).

4 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
5 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the  
6 "immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
7 any, to call, and what defenses to develop." Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
8 (2002). Further, a defendant who contends his attorney was ineffective because he did not  
9 adequately investigate must show how a better investigation would have rendered a more  
10 favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

11 Based on the above law, the role of a court in considering allegations of ineffective  
12 assistance of counsel is "not to pass upon the merits of the action not taken but to determine  
13 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
14 reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
15 (1978). This analysis does not mean that the court should "second guess reasoned choices  
16 between trial tactics nor does it mean that defense counsel, to protect himself against  
17 allegations of inadequacy, must make every conceivable motion no matter how remote the  
18 possibilities are of success." Id. To be effective, the constitution "does not require that counsel  
19 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel  
20 cannot create one and may disserve the interests of his client by attempting a useless charade."  
21 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

22 "There are countless ways to provide effective assistance in any given case. Even the  
23 best criminal defense attorneys would not defend a particular client in the same way."  
24 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. "Strategic choices made by counsel after  
25 thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State,  
26 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
27 P.2d 951, 953 (1989). In essence, the court must "judge the reasonableness of counsel's

28 //

1 challenged conduct on the facts of the particular case, viewed as of the time of counsel's  
2 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

3 Even if a defendant can demonstrate that his counsel’s representation fell below an  
4 objective standard of reasonableness, she must still demonstrate prejudice and show a  
5 reasonable probability that, but for counsel’s errors, the result of the trial would have been  
6 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
7 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability  
8 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-  
9 89, 694, 104 S. Ct. at 2064-65, 2068). This portion of the test is slightly modified when the  
10 convictions occurs due to a guilty plea. Hill v. Lockhart, 474 U.S. 52, 59 (1985); Kirksey v.  
11 State, 112 Nev. 980, 988 (1996). For a guilty plea, a defendant “must show that there is a  
12 reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and  
13 would have insisted on going to trial.” Kirksey, 112 Nev. at 998 (quoting Hill, 474 U.S. at 59).

14 The text of the GPA includes the following (labeled “VOLUNTARINESS OF PLEA”),  
15 in pertinent part:

16 I have discussed the elements of all of the original charge(s) against me with  
17 my attorney and I understand the nature of the charge(s) against me.

18 ...

19 I have discussed with my attorney any possible defenses, defense strategies  
20 and circumstances which might be in my favor.

21 All of the foregoing elements, consequences, rights, and waiver of rights  
22 have been thoroughly explained to me by my attorney.

23 ...

24 I am signing this agreement voluntarily, after consultation with my  
25 attorney...

26 ...

27 My attorney has answered all my questions regarding this guilty plea  
28 agreement and its consequences to my satisfaction and I am satisfied with the  
services provided by my attorney.

26 GPA at 5-6. Petitioner affirmed that he had read the GPA. Recorder’s Transcript of Hearing:  
27 November 7, 2018 (“Transcript”) at 2:24-25, 3:21-22. Petitioner affirmed that Mr. Sanft  
28 answered any questions regarding the GPA. Transcript at 3:1-3, 3:23-4:6. Petitioner affirmed

1 that he understood the charge in the Amended Information. Id. at 3:4-6, 4:7-9. Petitioner  
2 affirmed that he signed the GPA. Id. at 3:16-20. Contrary to Petitioner's assertion that he was  
3 told he was agreeing to a gross misdemeanor, when asked by the Court about his  
4 understanding, Petitioner acknowledged two possible sentencing outcomes:

5 THE COURT: Okay. Can you tell me what your understanding is that you're  
6 facing as a form of punishment for the charge of attempt grand larceny here in  
7 the State of Nevada?

8 THE DEFENDANT: One to four in the Nevada Department of Corrections.

9 THE COURT: Okay.

10 THE DEFENDANT: Or a gross misdemeanor of 364 days.

11 THE COURT: Okay. You can also be fined up to \$5,000 if I treat it as a felony.

12 And you could be fined up to \$2,000 if I treat it as a gross misdemeanor?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You understand that?

15 THE DEFENDANT: Yes, sir.

16 Id. at 4:16-5:3. Therefore, this Court finds that Petitioner affirmed, both verbally to the court  
17 and by signing the GPA, that he knew the terms of the GPA, the potential outcomes of his  
18 plea, and that Mr. Sanft answered all the questions Petitioner had to Petitioner's satisfaction.

19 This Court further finds that a review of the record belies Petitioner's claim regarding  
20 his appeal. Petitioner timely filed a notice of appeal on March 12, 2019. Therefore, this Court  
21 concludes that Petitioner cannot demonstrate prejudice sufficient to satisfy Strickland, as his  
22 appellate rights were not infringed upon.

23 Furthermore, to the extent that Petitioner argues Mr. Sanft was ineffective in his  
24 investigation, this Court finds that Petitioner fails to allege, much less show, what a proper  
25 investigation would have uncovered, much less how that information would have led  
26 Petitioner to reject guilty plea negotiations and proceed to trial. See, Amended Petition at 10-  
27 11. Instead, Petitioner relies upon the vague allegation that Mr. Sanft "failed to do appropriate  
28 investigation of potentially meritorious claims." Id. at 10. Such vague allegations are  
insufficient to warrant relief under Molina. 120 Nev. at 192, 87 P.3d at 538. Furthermore,  
Petitioner's lack of specific factual support for his claim leaves the same bare and naked under  
Hargrove. 100 Nev. at 502, 686 P.2d at 225.

1 This Court concludes, therefore, that because each of Petitioner's arguments in support  
2 of his claim of ineffective assistance of counsel is belied by the record, Petitioner is not entitled  
3 to relief on this claim.

4 **B. Petitioner's Claim Against his Breach of the Guilty Plea Agreement is Belied by**  
5 **the Record**

6 Petitioner goes on to claim that the State violated his right to Due Process in arguing  
7 that Petitioner had surrendered the stipulated sentence in the GPA. Amended Petition at 13.  
8 This claim is likewise belied by the record.

9 In the GPA, Petitioner expressly agreed to the clause:

10 I understand and agree that, if I fail to interview with the Department of Parole  
11 and Probation (P&P), fail to appear at any subsequent hearings in this case, or  
12 an independent magistrate, by affidavit review, confirms *probable cause* against  
13 me for new criminal charges including reckless driving or DUI, but excluding  
14 minor traffic violations, the State will have *the unqualified right to argue for any*  
15 *legal sentence* and term of confinement allowable for the crime(s) to which I am  
16 pleading guilty, including the use of any prior convictions I may have to increase  
17 my sentence as an habitual criminal to five (5) to twenty (20) years, Life without  
the possibility of parole, Life with the possibility of parole after ten (10) years,  
or a definite twenty-five (25) year term with the possibility of parole after ten  
(10) years.

18 GPA at 2 (emphasis added). Later in the GPA, Petitioner also expressly agreed: "the  
19 sentencing judge has the discretion to order the sentences served concurrently or  
20 consecutively." Id. at 3.

21 As stated *supra*, a Justice of the Peace found *probable cause* to charge Petitioner with  
22 Burglary in Las Vegas Justice Court case 19F01534X. Therefore, pursuant to the express  
23 language of the GPA, this Court agrees that the State regained the *unqualified* right to argue  
24 for any legal sentence. GPA at 2.

25 Furthermore, this Court finds that Petitioner's representations that the probable cause  
26 in the other case had been erroneously found are also belied by the record. In District Court  
27 case C338412, in which the Information was filed after probable cause had been found, there

28 //

1 was no dismissal or other acquittal of Petitioner. In fact, Petitioner *pled guilty* in that case to  
2 reduced charges.

3 Because Petitioner's claim consists of arguments that are belied by the record,  
4 Petitioner is not entitled to relief.

5 **C. Petitioner's Conviction Does Not Implicate Double Jeopardy**

6 Petitioner's third ground for relief alleges that his conviction is invalid because it  
7 violates statutory prohibitions against "Double Jeopardy." See, Amended Petition at 17-19.  
8 However, this Court concludes that this claim is not cognizable in a Petition for Writ of Habeas  
9 Corpus and was waived by Petitioner's failure to raise it on direct appeal.

10 The Nevada Supreme Court has explained:

11 "[A] guilty plea represents a break in the chain of events which has preceded it  
12 in the criminal process. When a criminal defendant has solemnly admitted in  
13 open court that he is in fact guilty of the offense with which he is charged, he  
14 may not thereafter raise independent claims relating to the deprivation of  
constitutional rights that occurred prior to the entry of the guilty plea."

15 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollett v. Henderson, 411  
16 U.S. 258, 267, 93 S.Ct. 1602, 1608 (1973)). An entry of a guilty plea "waive[s] all  
17 constitutional claims based on events occurring prior to the entry of the plea[], except those  
18 involving voluntariness of the plea[] [itself]." Warden, Nevada State Prison v. Lyons, 100  
19 Nev. 430, 431, 683 P.2d 505 (1984); see also Kirksey v. State, 112 Nev. 980, 999, 923 P.2d  
20 1102, 1114 (1996) ("Where the defendant has pleaded guilty, the only claims that may be  
21 raised thereafter are those involving the voluntariness of the plea itself and the effectiveness  
22 of counsel."). Under NRS 34.810,

23 I. The court *shall* dismiss a petition if the court determines that:

24 (a) The petitioner's conviction was upon a plea of guilty or guilty but  
25 mentally ill and the petition is not based upon an allegation that the plea was  
26 involuntarily or unknowingly entered or that the plea was entered without  
effective assistance of counsel.

27 ...

28 unless the court finds both cause for the failure to present the grounds and actual  
prejudice to the petitioner.

(emphasis added). Furthermore, the Nevada Supreme Court has held that “challenges to the validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must first be pursued in post-conviction proceedings.... [A]ll other claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be *considered waived in subsequent proceedings*.” Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved of on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). “A court must dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001), overruled on other grounds by Lisle v. State, 131 Nev. 356, 351 P.3d 725 (2015). Additionally, substantive claims are beyond the scope of habeas and waived. NRS 34.724(2)(a); see also Evans, 117 Nev. at 646-47, 29 P.3d 498 at 523; Franklin, 110 Nev. at 752, 877 P.2d 1058 at 1059.

This Court finds that this claim does not challenge the voluntariness of Petitioner’s guilty plea, nor does it allege ineffective assistance of counsel. Therefore, this claim should have been pursued on direct appeal, rather than for the first time in a petition. NRS 34.810(1); Franklin, 110 Nev. at 752, 977 P.2d at 1059. Petitioner does not attempt to argue good cause or prejudice for raising this claim for the first time in the instant proceedings. This Court further finds that such an argument would be meritless, as Petitioner specifically and unconditionally waived his right to a direct appeal on this issue. GPA at 5. Furthermore, Petitioner waived any potential constitutional defect by entering his guilty plea. Lyons, 100 Nev. at 431, 683 P.2d at 505.

Therefore, because Petitioner waived all constitutional issues prior to the entry of his plea, and because his claim does not challenge the voluntariness of Petitioner’s plea, this Court concludes that this claim must be denied.

#### **D. Petitioner’s Claim Regarding his PSI Does Not Warrant Relief**

Petitioner then claims that his sentence was based on multiple mistakes regarding his criminal history in his PSI. Amended Petition at 20. However, this Court finds that Petitioner

1 fails to demonstrate that he properly raised this claim before the Court at sentencing. This  
2 Court further finds that Petitioner's assertions are belied by a reading of the controlling  
3 authority regarding his sentence.

4 When imposing a sentence on a defendant, the district court must base its sentence on  
5 accurate information contained in a PSI. Stockmeier v. Bd. of Parole Comm'rs, 127 Nev. 243,  
6 247, 255 P.3d 209, 212 (2011). "[I]t is important for a defendant to object to his PSI at the  
7 time of sentencing because 'Nevada law does not provide any administrative or judicial  
8 scheme for amending a PSI after the defendant is sentenced.'" Sasser v. State, 130 Nev. 387,  
9 390, 324 P.3d 1221, 1223 (2014) (quoting Stockmeier, 127 Nev. at 249, 255 P.3d at 213).  
10 Furthermore, "if not resolved in the defendant's favor, the objections [to the PSI] *must be*  
11 *raised on direct appeal*." Stockmeier, 127 Nev. at 250, 255 P.3d at 213 (emphasis added).

12 Pursuant to Stockmeier, Petitioner should have raised his claims regarding the  
13 misinformation in his PSI to the Court at sentencing, then upon direct appeal. 127 Nev. at 250,  
14 255 P.3d at 213. This Court finds that Petitioner did neither. Therefore, pursuant to Franklin,  
15 this Court finds that Petitioner waived these claims. 110 Nev. at 752, 877 P.2d at 1059.  
16 Petitioner does not argue good cause or prejudice to overcome the procedural bars, and could  
17 not successfully do so, as these alleged incorrections were available at the time Petitioner  
18 pursued his direct appeal.

19 This Court further finds that, to the extent Petitioner claims that the timing of his  
20 separate claims was misinterpreted by the sentencing court, his claim is belied by the statute  
21 governing treatment as a habitual criminal. Pursuant to NRS 207.010, the analysis of prior  
22 convictions occurs at the time of *conviction, not at the time the crime was alleged*. See NRS  
23 207.010(1). At the time of sentencing, the State argued in support of habitual criminal  
24 treatment, and the Court determined that the State had met its burden pursuant to statute.

25 This Court concludes that, because Petitioner waived this claim, and because this Court  
26 has found that it is further belied by the record and by applicable laws, this claim must be  
27 summarily denied.

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CERTIFICATE OF SERVICE

I hereby certify that service of the State's Findings of Fact, Conclusions of Law, and Order was made this 26th day of February, 2021, by mail to:

JAMES HAYES, #1175077  
SOUTHERN DESERT CORRECTIONAL CENTER  
P.O. BOX 208  
INDIAN SPRINGS, NV 89070

BY: /s/ E. GOMEZ  
Employee of the District Attorney's Office

13F10723X/JVB/jj/L1

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 James Hayes, Plaintiff(s)

CASE NO: A-19-793315-W

7 vs.

DEPT. NO. Department 3

8 Nevada State of, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 3/9/2021

15 Melissa Boudreaux

mezama@clarkcountynv.gov



1 NEFF

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

4 JAMES HAYES,

5  
6 Petitioner,

Case No: A-19-793315-W

Dept No: III

7 vs.

8 STATE OF NEVADA,

9 Respondent,

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

10  
11 **PLEASE TAKE NOTICE** that on March 9, 2021, the court entered a decision or order in this matter, a  
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you  
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is  
15 mailed to you. This notice was mailed on March 10, 2021.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Amanda Hampton

18 Amanda Hampton, Deputy Clerk

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

20 I hereby certify that on this 10 day of March 2021, I served a copy of this Notice of Entry on the  
21 following:

22 ☒ By e-mail:

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

23  
24 ☒ The United States mail addressed as follows:

James Hayes # 1175077  
P.O. Box 208  
Indian Springs, NV 89070

25  
26  
27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

*Heaven S. Smith*

CLERK OF THE COURT

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

DISTRICT COURT  
CLARK COUNTY, NEVADA

JAMES HOWARD HAYES,  
aka James Howard Hayes Jr.,  
#2796708

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-19-793315-W

C-16-315718-1

DEPT NO: III

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

DATE OF HEARING: FEBRUARY 1, 2021  
TIME OF HEARING: 8:30 AM

THIS CAUSE having come before the Honorable MONICA TRUJILLO, District Court Judge, on the 1st day of February, 2021, the Petitioner not being present, not being represented by counsel, and the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, through STEVEN L. WATERS, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT, CONCLUSIONS OF LAW**

**STATEMENT OF THE CASE**

On or about July 23, 2013, James H. Hayes (hereinafter, "Petitioner") was charged by way of Criminal Complaint with one count of BURGLARY (Category B Felony – NRS

1 205.060) and one count of ATTEMPT GRAND LARCENY (Category D Felony/Gross  
2 Misdemeanor – NRS 205.220.1, 205.222.2, 193.330). Following a Preliminary Hearing in  
3 Justice Court, Las Vegas Township on June 14, 2016, the charge of BURGLARY was bound  
4 over to District Court, and the charge of ATTEMPT GRAND LARCENY was dismissed.

5 On June 17, 2016, the State filed an Information with the District Court, charging  
6 Petitioner with one count of BURGLARY. On August 29, 2017, the State filed an Amended  
7 Notice of Intent to Seek Punishment as a Habitual Criminal. On November 7, 2018, pursuant  
8 to a Guilty Plea Agreement (“GPA”), Petitioner entered a plea of Guilty pursuant to North  
9 Carolina v. Alford, 400 U.S. 25 (1970) to one count of ATTEMPT GRAND LARCENY. The  
10 terms of the GPA are as follows:

11 The State has agreed to make no recommendation at the time of sentencing. The  
12 State has no opposition to probation with the only condition being thirty (30)  
13 days in the Clark County Detention Center (CCDC), with thirty (30) days credit  
for time served.

14 GPA at 1:22-24. The GPA further includes, in pertinent part, the following acknowledgement:

15 I understand and agree that, if...an independent magistrate, by affidavit review,  
16 confirms probable cause against me for new criminal charges including reckless  
17 driving or DUI, but excluding minor traffic violations, the State will have the  
unqualified right to argue for any legal sentence and term of confinement  
18 allowable for the crime(s) to which I am pleading guilty, including the use of  
any prior convictions I may have to increase my sentence as a habitual criminal  
19 to five (5) to twenty (20) years, Life without the possibility of parole, Life with  
the possibility of parole after ten (10) years, or a definite twenty-five (25) year  
20 term with the possibility of parole after ten (10) years.

21 GPA at 2: 1-9. An Amended Information reflecting the new charge of ATTEMPT GRAND  
22 LARCENY was filed in conjunction with the GPA. Petitioner was adjudged Guilty pursuant  
23 to Alford that same day, and the sentencing hearing was scheduled for March 6, 2019.

24 On January 31, 2019, the State filed a State’s Notice of Motion and Motion to Revoke  
25 Bail, asserting that in Las Vegas Justice Court case number 19F01534X, a Justice of the Peace  
26 had found probable cause to charge Petitioner with Burglary for acts committed on or around  
27 January 26, 2019. The State’s Motion to Revoke Bail was granted after a hearing on February  
28 4, 2019.

1 At the sentencing hearing on March 6, 2019, the State argued that it had regained the  
2 right to argue pursuant to the terms of the GPA. The Court agreed, and the State argued that  
3 Petitioner should be punished under NRS 207.010 (the “Small Habitual Statute”). The Court  
4 agreed, and Petitioner was sentenced to sixty (60) to one hundred seventy-four (174) months  
5 in the Nevada Department of Corrections (NDOC), consecutive to Petitioner’s sentence in  
6 another case (C315125). The Court also awarded Petitioner ten (10) days credit for time  
7 served. The Judgment of Conviction in this case was filed on March 12, 2019.

8 Petitioner filed a Notice of Appeal on March 28, 2019. Petitioner’s Case Appeal  
9 Statement was filed on August 9, 2019 (SCN 78590).

10 On April 15, 2019, Petitioner filed a Petition for Writ of Habeas Corpus (“Petition”).  
11 Pursuant to Court order, the State filed its Response on June 26, 2019. At the hearing on the  
12 Petition on August 19, 2019, the Court noted that Petitioner filed two Addenda to his original  
13 Petition (the first on May 7, 2019, and the second on May 9, 2019). Pursuant to the Court’s  
14 order, the State filed a Response to the Addenda on October 10, 2019. Petitioner filed a Reply  
15 to the State’s Response on November 4, 2019. On November 18, 2019, Petitioner’s Petition  
16 came before the Court, at which time the Court took the matter OFF CALENDAR due to  
17 Petitioner’s pending appeal.

18 On November 19, 2019, Petitioner filed another Notice of Appeal, appealing the denial  
19 of his Coram Nobis motion. His Case Appeal Statement was filed on December 11, 2019 (SCN  
20 80222). On August 31, 2020, the Nevada Court of Appeals affirmed the Court’s denial of  
21 Petitioner’s Coram Nobis motion. Remittitur issued on October 12, 2020.

22 On January 14, 2020, the Nevada Supreme Court AFFIRMED Petitioner’s Judgment  
23 of Conviction in SCN 78590. Remittitur issued on February 25, 2020.

24 On February 12, 2020, Petitioner filed an “Amended Petition for Writ of Habeas  
25 Corpus” (his “Amended Petition”). This Court ordered a Response to that Amended Petition  
26 on March 4, 2020. The State filed its Response to Petitioner’s Amended Petition on April 17,  
27 2020. Petitioner replied to the State’s Response on May 15, 2020.

28 //

1 On May 15, 2020, Petitioner also filed an "Affidavit of Actual Innocence not Mere  
2 Legal Insufficiency but 'Factual Innocence.'" On May 27, 2020, Petitioner filed a  
3 Supplemental Petition. While Petitioner's numerous pleadings were pending, Petitioner filed  
4 a Motion for Peremptory Challenge of Judge and to Disqualify Judge William Bill Kephart.  
5 Thereafter, the State filed its Responses to Petitioner's Affidavit of Actual Innocence and  
6 Petitioner's Supplemental Petition on June 10, 2020. As a result of Petitioner's Peremptory  
7 Challenge, Petitioner's pending matters were taken off calendar on June 15, 2020. On June  
8 29, 2020, Petitioner filed his Reply to the State's Response to Petitioner's Affidavit of Actual  
9 Innocence.

10 On July 7, 2020, Chief Judge Linda Bell considered, and denied, Petitioner's Motion  
11 for Peremptory Challenge of Judge Kephart. Chief Judge Bell's Decision and Order was filed  
12 on July 8, 2020.

13 On July 23, 2020, Petitioner filed his Reply to the State's Response to Petitioner's  
14 Supplemental Petition. Petitioner, that same day, filed a Motion for Ruling for Rule 60b  
15 Motion for Relief; Motion to Vacate; Amended Petition for Writ of Habeas Corpus. The State  
16 filed its Response to Petitioner's Motion for Ruling on September 2, 2020. Petitioner's Motion  
17 for Ruling was denied on September 9, 2020.

18 On September 25, 2020, Petitioner filed a Motion for Expeditious Ruling for "Amended  
19 Petition for Writ of Habeas Corpus" 3rd Request. On October 7, 2020, he filed a Motion to  
20 Set Evidentiary Hearing and Issue Transport Order. On October 14, 2020, Petitioner filed a  
21 Motion to Reconsider Order Denying Motion for Ruling for Rule 60b Motion for Relief;  
22 Motion to Vacate; Amended Petition for Writ of Habeas Corpus. The State filed responsive  
23 pleadings to each of Petitioner's respective filings on November 10, 2020. On November 16,  
24 2020, the Court considered, and denied, Petitioner's three Motions. The Court's Order was  
25 filed on November 21, 2020.

26 On December 22, 2020, Petitioner filed a "Motion to Compel Judgment Pursuant to  
27 Nevada Revised Statutes Chapter 34 FRCP Rule 12(c) for Amended Petition for Writ of  
28 Habeas Corpus." The State filed its Response to the instant Motion to Compel on January 27,



2021. Contemporaneous with its ruling on the instant Amended Petition, the Court denied Petitioner's Motion to Compel on February 1, 2021.

On February 1, 2021, this matter came on for hearing before this Court. This Court did not accept argument at the time of hearing, but made the following findings and conclusions:

## ANALYSIS

### I. PETITIONER'S AMENDED PETITION IS BARRED AS SUCCESSIVE

NRS 34.750(3) allows *appointed counsel* to file certain supplemental pleadings within 30 days. However, "[n]o further pleadings may be filed except as ordered by the court." NRS 34.750(5). Additionally, NRS 34.810(2) reads:

A second or successive petition *must be dismissed* if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are alleged, the judge or justice finds that *the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.*

(Emphasis added). It is strictly the petitioner's burden to demonstrate good cause and prejudice to survive the court's analysis. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994); see also, Hart v. State, 116 Nev. 558, 563-64, 1 P.3d 969 972 (2000) (holding, "where a defendant previously has sought relief from the judgment, the defendant's failure to identify all grounds for relief in the first instance should weigh against consideration of the successive motion.")

The Nevada Supreme Court has stated: "Without such limitations on the availability of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-conviction remedies. In addition, meritless, successive and untimely petitions clog the court system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950. The Nevada Supreme Court recognizes, "[u]nlike initial petitions which certainly require a careful review of the record, successive petitions *may be dismissed based solely on the fact of the petition.*" Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995) (emphasis added). In other words, if the claim or allegation was previously available with reasonable diligence, it is an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467,

1 497-98 (1991). Application of NRS 34.810(2) is *mandatory*. State v. Eighth Judicial Dist.  
2 Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (noting, “[h]abeas corpus  
3 petitions that are filed many years after conviction are an unreasonable burden on the criminal  
4 justice system.”) The Riker Court further determined that district courts have no discretion  
5 regarding application of statutory procedural bars, and such bars “cannot be ignored [by the  
6 district court] when properly raised by the State.” Id. at 233.

7 This Court finds that, in the instant case, Petitioner continues to file supplemental  
8 pleadings in the form of multiple addenda as well as the instant “Amended Petition.” However,  
9 under NRS 34.750, the right to file supplements lies exclusively with appointed counsel.  
10 Furthermore, this Court finds that the factual bases for Petitioner’s claims existed at the time  
11 Petitioner filed his first Petition. Therefore, this Court concludes that Petitioner’s pleadings  
12 are successive and subject to dismissal absent a showing of good cause and prejudice. NRS  
13 34.810(2). Petitioner does not argue good cause nor prejudice. See generally, Amended  
14 Petition. Thus, this Court further concludes that Petitioner’s Amended Petition does not entitle  
15 Petitioner to relief.

## 16 **II. PETITIONER’S AMENDED PETITION DOES NOT ENTITLE HIM TO** 17 **RELIEF**

18 The Nevada Supreme Court has explained:

19 “[A] guilty plea represents a break in the chain of events which has preceded it  
20 in the criminal process. When a criminal defendant has solemnly admitted in  
21 open court that he is in fact guilty of the offense with which he is charged, he  
22 may not thereafter raise independent claims relating to the deprivation of  
constitutional rights that occurred prior to the entry of the guilty plea.”

23 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollett v. Henderson, 411  
24 U.S. 258, 267, 93 S.Ct. 1602, 1608 (1973)). An entry of a guilty plea “waive[s] all  
25 constitutional claims based on events occurring prior to the entry of the plea[], except those  
26 involving voluntariness of the plea[] [itself].” Warden, Nevada State Prison v. Lyons, 100  
27 Nev. 430, 431, 683 P.2d 505 (1984); see also Kirksey v. State, 112 Nev. 980, 999, 923 P.2d  
28 1102, 1114 (1996) (“Where the defendant has pleaded guilty, the only claims that may be

1 raised thereafter are those involving the voluntariness of the plea itself and the effectiveness  
2 of counsel.”). Under NRS 34.810,

3 I. The court *shall* dismiss a petition if the court determines that:

4 (a) The petitioner’s conviction was upon a plea of guilty or guilty but  
5 mentally ill and the petition is not based upon an allegation that the plea was  
6 involuntarily or unknowingly entered or that the plea was entered without  
effective assistance of counsel.

7 ...  
8 unless the court finds both cause for the failure to present the grounds and actual  
prejudice to the petitioner.

9 (emphasis added). Furthermore, the Nevada Supreme Court has held that “challenges to the  
10 validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must  
11 first be pursued in post-conviction proceedings.... [A]ll other claims that are appropriate for a  
12 direct appeal must be pursued on direct appeal, or they will be *considered waived in*  
13 *subsequent proceedings.*” Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994)  
14 (emphasis added) (disapproved of on other grounds by Thomas v. State, 115 Nev. 148, 979  
15 P.2d 222 (1999)). “A court must dismiss a habeas petition if it presents claims that either were  
16 or could have been presented in an earlier proceeding, unless the court finds both cause for  
17 failing to present the claims earlier or for raising them again and actual prejudice to the  
18 petitioner.” Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001), overruled on other  
19 grounds by Lisle v. State, 131 Nev. 356, 351 P.3d 725 (2015). Additionally, substantive claims  
20 are beyond the scope of habeas and waived. NRS 34.724(2)(a); see also Evans, 117 Nev. at  
21 646-47, 29 P.3d 498 at 523; Franklin, 110 Nev. at 752, 877 P.2d 1058 at 1059.

22 A proper petition for post-conviction relief must set forth specific factual allegations  
23 that would entitle the petitioner to relief. NRS 34.735(6) states, in pertinent part, “[Petitioner]  
24 must allege specific facts supporting the claims in the petition [he] file[s] seeking relief from  
25 any conviction or sentence. Failure to raise specific facts rather than just conclusions may  
26 cause the petition to be dismissed.” “Bare” and “naked” allegations are not sufficient to  
27 warrant post-conviction relief, nor are those belied and repelled by the record. Hargrove v.  
28 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “A claim is ‘belied’ when it is contradicted

1 or proven to be false by the record as it existed at the time the claim was made.” Mann v. State,  
2 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

3 **A. Petitioner’s Claims of Ineffective Assistance of Counsel are Belied by the Record**

4 Petitioner first claims that his counsel, Mr. Michael Sanft, Esq. (“Mr. Sanft”) was  
5 ineffective for 1) failing to appropriately investigate; 2) failing to ensure Petitioner fully  
6 understood the conditions of the GPA; 3) failing to file a Motion to Withdraw Guilty Plea; and  
7 4) failing to file a Notice of Appeal and/or informing Petitioner of his right to appeal. However,  
8 this Court finds that Petitioner’s claims are belied by the record.

9 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal  
10 prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his  
11 defense.” The United States Supreme Court has long recognized that “the right to counsel is  
12 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,  
13 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323  
14 (1993).

15 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove  
16 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of  
17 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865  
18 P.2d at 323. Under Strickland, a defendant must show first that his counsel's representation  
19 fell below an objective standard of reasonableness, and second, that but for counsel's errors,  
20 there is a reasonable probability that the result of the proceedings would have been different.  
21 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100  
22 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). “[T]here is  
23 no reason for a court deciding an ineffective assistance claim to approach the inquiry in the  
24 same order or even to address both components of the inquiry if the defendant makes an  
25 insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

26 The Court begins with the presumption of effectiveness and then must determine  
27 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
28 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel

1 does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of  
2 competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432,  
3 537 P.2d 473, 474 (1975).

4 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
5 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the  
6 "immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
7 any, to call, and what defenses to develop." Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
8 (2002). Further, a defendant who contends his attorney was ineffective because he did not  
9 adequately investigate must show how a better investigation would have rendered a more  
10 favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

11 Based on the above law, the role of a court in considering allegations of ineffective  
12 assistance of counsel is "not to pass upon the merits of the action not taken but to determine  
13 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
14 reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
15 (1978). This analysis does not mean that the court should "second guess reasoned choices  
16 between trial tactics nor does it mean that defense counsel, to protect himself against  
17 allegations of inadequacy, must make every conceivable motion no matter how remote the  
18 possibilities are of success." Id. To be effective, the constitution "does not require that counsel  
19 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel  
20 cannot create one and may disserve the interests of his client by attempting a useless charade."  
21 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

22 "There are countless ways to provide effective assistance in any given case. Even the  
23 best criminal defense attorneys would not defend a particular client in the same way."  
24 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. "Strategic choices made by counsel after  
25 thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State,  
26 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
27 P.2d 951, 953 (1989). In essence, the court must "judge the reasonableness of counsel's

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1 challenged conduct on the facts of the particular case, viewed as of the time of counsel's  
2 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

3 Even if a defendant can demonstrate that his counsel’s representation fell below an  
4 objective standard of reasonableness, she must still demonstrate prejudice and show a  
5 reasonable probability that, but for counsel’s errors, the result of the trial would have been  
6 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
7 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability  
8 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-  
9 89, 694, 104 S. Ct. at 2064-65, 2068). This portion of the test is slightly modified when the  
10 convictions occurs due to a guilty plea. Hill v. Lockhart, 474 U.S. 52, 59 (1985); Kirksey v.  
11 State, 112 Nev. 980, 988 (1996). For a guilty plea, a defendant “must show that there is a  
12 reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and  
13 would have insisted on going to trial.” Kirksey, 112 Nev. at 998 (quoting Hill, 474 U.S. at 59).

14 The text of the GPA includes the following (labeled “VOLUNTARINESS OF PLEA”),  
15 in pertinent part:

16 I have discussed the elements of all of the original charge(s) against me with  
17 my attorney and I understand the nature of the charge(s) against me.

18 ...

19 I have discussed with my attorney any possible defenses, defense strategies  
20 and circumstances which might be in my favor.

21 All of the foregoing elements, consequences, rights, and waiver of rights  
22 have been thoroughly explained to me by my attorney.

23 ...

24 I am signing this agreement voluntarily, after consultation with my  
25 attorney...

26 ...

27 My attorney has answered all my questions regarding this guilty plea  
28 agreement and its consequences to my satisfaction and I am satisfied with the  
services provided by my attorney.

26 GPA at 5-6. Petitioner affirmed that he had read the GPA. Recorder’s Transcript of Hearing:  
27 November 7, 2018 (“Transcript”) at 2:24-25, 3:21-22. Petitioner affirmed that Mr. Sanft  
28 answered any questions regarding the GPA. Transcript at 3:1-3, 3:23-4:6. Petitioner affirmed

1 that he understood the charge in the Amended Information. Id. at 3:4-6, 4:7-9. Petitioner  
2 affirmed that he signed the GPA. Id. at 3:16-20. Contrary to Petitioner's assertion that he was  
3 told he was agreeing to a gross misdemeanor, when asked by the Court about his  
4 understanding, Petitioner acknowledged two possible sentencing outcomes:

5 THE COURT: Okay. Can you tell me what your understanding is that you're  
6 facing as a form of punishment for the charge of attempt grand larceny here in  
7 the State of Nevada?

8 THE DEFENDANT: One to four in the Nevada Department of Corrections.

9 THE COURT: Okay.

10 THE DEFENDANT: Or a gross misdemeanor of 364 days.

11 THE COURT: Okay. You can also be fined up to \$5,000 if I treat it as a felony.  
12 And you could be fined up to \$2,000 if I treat it as a gross misdemeanor?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You understand that?

15 THE DEFENDANT: Yes, sir.

16 Id. at 4:16-5:3. Therefore, this Court finds that Petitioner affirmed, both verbally to the court  
17 and by signing the GPA, that he knew the terms of the GPA, the potential outcomes of his  
18 plea, and that Mr. Sanft answered all the questions Petitioner had to Petitioner's satisfaction.

19 This Court further finds that a review of the record belies Petitioner's claim regarding  
20 his appeal. Petitioner timely filed a notice of appeal on March 12, 2019. Therefore, this Court  
21 concludes that Petitioner cannot demonstrate prejudice sufficient to satisfy Strickland, as his  
22 appellate rights were not infringed upon.

23 Furthermore, to the extent that Petitioner argues Mr. Sanft was ineffective in his  
24 investigation, this Court finds that Petitioner fails to allege, much less show, what a proper  
25 investigation would have uncovered, much less how that information would have led  
26 Petitioner to reject guilty plea negotiations and proceed to trial. See, Amended Petition at 10-  
27 11. Instead, Petitioner relies upon the vague allegation that Mr. Sanft "failed to do appropriate  
28 investigation of potentially meritorious claims." Id. at 10. Such vague allegations are  
insufficient to warrant relief under Molina. 120 Nev. at 192, 87 P.3d at 538. Furthermore,  
Petitioner's lack of specific factual support for his claim leaves the same bare and naked under  
Hargrove. 100 Nev. at 502, 686 P.2d at 225.

1 This Court concludes, therefore, that because each of Petitioner's arguments in support  
2 of his claim of ineffective assistance of counsel is belied by the record, Petitioner is not entitled  
3 to relief on this claim.

4 **B. Petitioner's Claim Against his Breach of the Guilty Plea Agreement is Belied by**  
5 **the Record**

6 Petitioner goes on to claim that the State violated his right to Due Process in arguing  
7 that Petitioner had surrendered the stipulated sentence in the GPA. Amended Petition at 13.  
8 This claim is likewise belied by the record.

9 In the GPA, Petitioner expressly agreed to the clause:

10 I understand and agree that, if I fail to interview with the Department of Parole  
11 and Probation (P&P), fail to appear at any subsequent hearings in this case, or  
12 an independent magistrate, by affidavit review, confirms *probable cause* against  
13 me for new criminal charges including reckless driving or DUI, but excluding  
14 minor traffic violations, the State will have *the unqualified right to argue for any*  
15 *legal sentence* and term of confinement allowable for the crime(s) to which I am  
16 pleading guilty, including the use of any prior convictions I may have to increase  
17 my sentence as an habitual criminal to five (5) to twenty (20) years, Life without  
the possibility of parole, Life with the possibility of parole after ten (10) years,  
or a definite twenty-five (25) year term with the possibility of parole after ten  
(10) years.

18 GPA at 2 (emphasis added). Later in the GPA, Petitioner also expressly agreed: "the  
19 sentencing judge has the discretion to order the sentences served concurrently or  
20 consecutively." Id. at 3.

21 As stated *supra*, a Justice of the Peace found *probable cause* to charge Petitioner with  
22 Burglary in Las Vegas Justice Court case 19F01534X. Therefore, pursuant to the express  
23 language of the GPA, this Court agrees that the State regained the *unqualified* right to argue  
24 for any legal sentence. GPA at 2.

25 Furthermore, this Court finds that Petitioner's representations that the probable cause  
26 in the other case had been erroneously found are also belied by the record. In District Court  
27 case C338412, in which the Information was filed after probable cause had been found, there

28 //



1 was no dismissal or other acquittal of Petitioner. In fact, Petitioner *pled guilty* in that case to  
2 reduced charges.

3 Because Petitioner's claim consists of arguments that are belied by the record,  
4 Petitioner is not entitled to relief.

### 5 **C. Petitioner's Conviction Does Not Implicate Double Jeopardy**

6 Petitioner's third ground for relief alleges that his conviction is invalid because it  
7 violates statutory prohibitions against "Double Jeopardy." See, Amended Petition at 17-19.  
8 However, this Court concludes that this claim is not cognizable in a Petition for Writ of Habeas  
9 Corpus and was waived by Petitioner's failure to raise it on direct appeal.

10 The Nevada Supreme Court has explained:

11 "[A] guilty plea represents a break in the chain of events which has preceded it  
12 in the criminal process. When a criminal defendant has solemnly admitted in  
13 open court that he is in fact guilty of the offense with which he is charged, he  
14 may not thereafter raise independent claims relating to the deprivation of  
constitutional rights that occurred prior to the entry of the guilty plea."

15 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollett v. Henderson, 411  
16 U.S. 258, 267, 93 S.Ct. 1602, 1608 (1973)). An entry of a guilty plea "waive[s] all  
17 constitutional claims based on events occurring prior to the entry of the plea[], except those  
18 involving voluntariness of the plea[] [itself]." Warden, Nevada State Prison v. Lyons, 100  
19 Nev. 430, 431, 683 P.2d 505 (1984); see also Kirksey v. State, 112 Nev. 980, 999, 923 P.2d  
20 1102, 1114 (1996) ("Where the defendant has pleaded guilty, the only claims that may be  
21 raised thereafter are those involving the voluntariness of the plea itself and the effectiveness  
22 of counsel."). Under NRS 34.810,

23 I. The court *shall* dismiss a petition if the court determines that:

24 (a) The petitioner's conviction was upon a plea of guilty or guilty but  
25 mentally ill and the petition is not based upon an allegation that the plea was  
26 involuntarily or unknowingly entered or that the plea was entered without  
effective assistance of counsel.

27 ...

28 unless the court finds both cause for the failure to present the grounds and actual  
prejudice to the petitioner.

(emphasis added). Furthermore, the Nevada Supreme Court has held that “challenges to the validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must first be pursued in post-conviction proceedings.... [A]ll other claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be *considered waived in subsequent proceedings*.” Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved of on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). “A court must dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001), overruled on other grounds by Lisle v. State, 131 Nev. 356, 351 P.3d 725 (2015). Additionally, substantive claims are beyond the scope of habeas and waived. NRS 34.724(2)(a); see also Evans, 117 Nev. at 646-47, 29 P.3d 498 at 523; Franklin, 110 Nev. at 752, 877 P.2d 1058 at 1059.

This Court finds that this claim does not challenge the voluntariness of Petitioner’s guilty plea, nor does it allege ineffective assistance of counsel. Therefore, this claim should have been pursued on direct appeal, rather than for the first time in a petition. NRS 34.810(1); Franklin, 110 Nev. at 752, 977 P.2d at 1059. Petitioner does not attempt to argue good cause or prejudice for raising this claim for the first time in the instant proceedings. This Court further finds that such an argument would be meritless, as Petitioner specifically and unconditionally waived his right to a direct appeal on this issue. GPA at 5. Furthermore, Petitioner waived any potential constitutional defect by entering his guilty plea. Lyons, 100 Nev. at 431, 683 P.2d at 505.

Therefore, because Petitioner waived all constitutional issues prior to the entry of his plea, and because his claim does not challenge the voluntariness of Petitioner’s plea, this Court concludes that this claim must be denied.

#### **D. Petitioner’s Claim Regarding his PSI Does Not Warrant Relief**

Petitioner then claims that his sentence was based on multiple mistakes regarding his criminal history in his PSI. Amended Petition at 20. However, this Court finds that Petitioner

1 fails to demonstrate that he properly raised this claim before the Court at sentencing. This  
2 Court further finds that Petitioner's assertions are belied by a reading of the controlling  
3 authority regarding his sentence.

4 When imposing a sentence on a defendant, the district court must base its sentence on  
5 accurate information contained in a PSI. Stockmeier v. Bd. of Parole Comm'rs, 127 Nev. 243,  
6 247, 255 P.3d 209, 212 (2011). "[I]t is important for a defendant to object to his PSI at the  
7 time of sentencing because 'Nevada law does not provide any administrative or judicial  
8 scheme for amending a PSI after the defendant is sentenced.'" Sasser v. State, 130 Nev. 387,  
9 390, 324 P.3d 1221, 1223 (2014) (quoting Stockmeier, 127 Nev. at 249, 255 P.3d at 213).  
10 Furthermore, "if not resolved in the defendant's favor, the objections [to the PSI] *must be*  
11 *raised on direct appeal*." Stockmeier, 127 Nev. at 250, 255 P.3d at 213 (emphasis added).

12 Pursuant to Stockmeier, Petitioner should have raised his claims regarding the  
13 misinformation in his PSI to the Court at sentencing, then upon direct appeal. 127 Nev. at 250,  
14 255 P.3d at 213. This Court finds that Petitioner did neither. Therefore, pursuant to Franklin,  
15 this Court finds that Petitioner waived these claims. 110 Nev. at 752, 877 P.2d at 1059.  
16 Petitioner does not argue good cause or prejudice to overcome the procedural bars, and could  
17 not successfully do so, as these alleged incorrections were available at the time Petitioner  
18 pursued his direct appeal.

19 This Court further finds that, to the extent Petitioner claims that the timing of his  
20 separate claims was misinterpreted by the sentencing court, his claim is belied by the statute  
21 governing treatment as a habitual criminal. Pursuant to NRS 207.010, the analysis of prior  
22 convictions occurs at the time of *conviction, not at the time the crime was alleged*. See NRS  
23 207.010(1). At the time of sentencing, the State argued in support of habitual criminal  
24 treatment, and the Court determined that the State had met its burden pursuant to statute.

25 This Court concludes that, because Petitioner waived this claim, and because this Court  
26 has found that it is further belied by the record and by applicable laws, this claim must be  
27 summarily denied.

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CERTIFICATE OF SERVICE

I hereby certify that service of the State's Findings of Fact, Conclusions of Law, and Order was made this 26th day of February, 2021, by mail to:

JAMES HAYES, #1175077  
SOUTHERN DESERT CORRECTIONAL CENTER  
P.O. BOX 208  
INDIAN SPRINGS, NV 89070

BY: /s/ E. GOMEZ  
Employee of the District Attorney's Office

13F10723X/JVB/jj/L1

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 James Hayes, Plaintiff(s)

CASE NO: A-19-793315-W

7 vs.

DEPT. NO. Department 3

8 Nevada State of, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 3/9/2021

15 Melissa Boudreaux

mezama@clarkcountynv.gov

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**August 19, 2019**

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A-19-793315-W      James Hayes, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

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**August 19, 2019      8:30 AM      Petition for Writ of Habeas  
Corpus**

**HEARD BY:** Kephart, William D.      **COURTROOM:** RJC Courtroom 16B

**COURT CLERK:** Tia Everett

**RECORDER:** Christine Erickson

**REPORTER:**

**PARTIES**

**PRESENT:**      Zadrowski, Bernard B.      Attorney

**JOURNAL ENTRIES**

- Court noted Defendant not present and in custody with the Nevada Department of Corrections. Further, Court noted State filed a response to Defendant's petition; however, Defendant has filed two addendums and ORDERED, matter CONTINUED for the State to file a response to the addendums. FURTHER ORDERED, State's response shall be due on or before 10/21/2019 and Defendant's reply shall be due on or before 11/04/2019.

NDC

CONTINUED TO: 11/18/2019 8:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**November 18, 2019**

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A-19-793315-W      James Hayes, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

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**November 18, 2019      8:30 AM      Petition for Writ of Habeas  
Corpus**

**HEARD BY:** Kephart, William D.      **COURTROOM:** RJC Courtroom 16B

**COURT CLERK:** Tia Everett

**RECORDER:** Christine Erickson

**REPORTER:**

**PARTIES**

**PRESENT:**      Marland, Melanie H.      Attorney

**JOURNAL ENTRIES**

- Court noted Defendant not present and in custody with the Nevada Department of Corrections. Court stated the matter has been fully briefed; however, this matter is still pending appeal with the Supreme Court and COURT ORDERED, matter OFF CALENDAR as the Court lacks jurisdiction at this time.

NDC



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**June 15, 2020**

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A-19-793315-W      James Hayes, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

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**June 15, 2020      10:15 AM      Petition for Writ of Habeas  
Corpus**

**HEARD BY:** Kephart, William D.      **COURTROOM:** RJC Courtroom 16B

**COURT CLERK:** Tia Everett

**RECORDER:** Christine Erickson

**REPORTER:**

**PARTIES**

**PRESENT:**      Waters, Steven L      Attorney

**JOURNAL ENTRIES**

- Court noted Defendant not present and in custody with the Nevada Department of Corrections. Further, Court stated Defendant has filed a motion to disqualify him from the matter; therefore, COURT ORDERED, matter OFF CALENDAR pending decision.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**July 07, 2020**

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A-19-793315-W      James Hayes, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

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**July 07, 2020      11:00 AM      Motion**

**HEARD BY:** Bell, Linda Marie      **COURTROOM:** RJC Courtroom 10C

**COURT CLERK:** Kimberly Estala

**RECORDER:** Renee Vincent

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- No parties present.

COURT FINDS, there is no evidence to support Mr. Hayes's allegations. The Judgement of Conviction was affirmed on appeal and Judge Kephart denied having any bias or prejudice. Therefore, COURT ORDERED, motion DENIED. Court to prepare the order.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**September 09, 2020**

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A-19-793315-W      James Hayes, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

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**September 09, 2020    10:15 AM      Motion**

**HEARD BY:**   Kephart, William D.

**COURTROOM:**   RJC Courtroom 16B

**COURT CLERK:**   Tia Everett

**RECORDER:**   Christine Erickson

**REPORTER:**

**PARTIES**

**PRESENT:**      Marland, Melanie H.      Attorney

**JOURNAL ENTRIES**

- Court noted Defendant not present and in custody with the Nevada Department of Corrections.  
COURT ORDERED, Motion DENIED pursuant to EDCR 2.20.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**November 16, 2020**

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A-19-793315-W      James Hayes, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

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**November 16, 2020      8:30 AM      All Pending Motions**

**HEARD BY:** Kephart, William D.      **COURTROOM:** RJC Courtroom 16B

**COURT CLERK:** Tia Everett

**RECORDER:** Christine Erickson

**REPORTER:**

**PARTIES**

**PRESENT:**      Iscan, Ercan E      Attorney

**JOURNAL ENTRIES**

- PLAINTIFF'S MOTION FOR EXPEDITIOUS RULING FOR "AMENDED PETITION FOR WRIT OF HABEAS CORPUS" 3RD REQUEST:

Court noted Defendant not present and in custody with the Nevada Department of Corrections.  
COURT ORDERED, Motion DENIED.

PLAINTIFF'S MOTION TO SET EVIDENTIARY HEARING AND ISSUE TRANSPORT ORDER:

COURT ORDERED, Motion DENIED.

PLAINTIFF'S MOTION TO RECONSIDER ORDER DENYING MOTION FOR RULING FOR RULE

60 (B) MOTION FOR RELIEF; MOTION TO VACATE; AMENDED PETITION FOR WRIT OF HABEAS CORPUS:

COURT ORDERED, Motion DENIED as a reconsideration is not warranted.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**February 01, 2021**

---

A-19-793315-W      James Hayes, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

---

**February 01, 2021      8:30 AM      Motion to Compel**

**HEARD BY:** Trujillo, Monica      **COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Grecia Snow

**RECORDER:** Rebeca Gomez

**REPORTER:**

**PARTIES**

**PRESENT:**      Waters, Steven L      Attorney

**JOURNAL ENTRIES**

- COURT ORDERED, Motion to Compel DENIED for the reasons stated in the State's response. State to prepare the order. Court noted as to the prior Amended Petition for Writ no order had been filed. COURT FURTHER ORDERED, Amended Petition for Writ DENIED. State to prepare the order as to findings of fact and conclusion of law consistent with the State's response.

NDC

CLERK'S NOTE: The above minute order has been distributed to: James Hayes #1175077, P.O. BOX 208, Indian Springs, Nevada 89070. /// 2/16/21 gs

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**March 08, 2021**

---

A-19-793315-W      James Hayes, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

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**March 08, 2021      8:30 AM      Motion to Compel**

**HEARD BY:** Trujillo, Monica      **COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Alan Castle

**RECORDER:** Rebeca Gomez

**REPORTER:**

**PARTIES**

**PRESENT:**      Iscan, Ercan E      Attorney  
Nevada State of      Defendant

**JOURNAL ENTRIES**

- After reviewing petition, Court determined Defendant needs to supplement his petition with specificity. Further, Court directed State to respond to Defendant's petition. Supplemental briefing schedule set and matter continued for decision. Defendant has until April 4, 2020 to supplement his petition; State has until May 5, 2020 to file a response.

5/10/21 8:30 a.m. Decision

# 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, HEARING REQUESTED; CASE APPEAL STATEMENT; DESIGNATION OF RECORD ON APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT MINUTES

JAMES H. HAYES,

Plaintiff(s),

vs.

STATE OF NEVADA; WARDEN JERRY  
HOWELL,

Defendant(s),

Case No: A-19-793315-W

Dept No: III

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 6 day of April 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk