

5/17/2021 2:10 PM

Steven D. Grierson

CLERK OF THE COURT

NOAS

Gary Lewis # 47615
 Lovelock Correctional Center
 1200 Prison Road
 Lovelock, Nevada 89419

Petitioner In Pro Se

Electronically Filed
 May 21 2021 09:50 a.m.
 Elizabeth A. Brown
 Clerk of Supreme Court

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

Gary Lewis,)
)
 Petitioner,)
)
 -vs-)
)
 THE STATE OF NEVADA,)
)
 Respondent.)

Case No. A-21-827377-WDept. No. X11NOTICE OF APPEAL

NOTICE IS GIVEN that Petitioner, Gary Lewis,
 in pro se, hereby appeals to the Nevada Supreme Court the
 Findings of Fact, Conclusions of Law and Order Denying /
 Dismissing Petition for Writ of Habeas Corpus, as filed/entered
 on or about the 8th day of April, 2021, in the above-
 entitled Court.

Dated this 7th day of May, 2021.

Gary D. Lewis
Gary Lewis # 47615
 Lovelock Correctional Center
 1200 Prison Road
 Lovelock, Nevada 89419

Petitioner In Pro Se

CLERK OF THE COURT

MAY 17 2021

RECEIVED

LCCLL FORM 24.064

1
2 CERTIFICATE OF SERVICE

3 I do certify that I mailed a true and correct copy of the
4 foregoing NOTICE OF APPEAL to the below address(es) on this
5 7th day of May, 2021, by placing same in the
6 U.S. Mail via prison law library staff:

7 Steven B. Wolfson
8 Clark County District Attorney
9 200 Lewis Ave.
10 Las Vegas NV 89155

11 Aaron Ford
12 Nevada Attorney General
13 555 E. Washington, Ste. 3900
14 Las Vegas NV 89101
15

16
17 Gary J. Lewis
18 Gary Lewis # 47615
19 Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

20 Petitioner In Pro Se

21
22 AFFIRMATION PURSUANT TO NRS 239B.030

23 The undersigned does hereby affirm that the preceding
24 NOTICE OF APPEAL filed in District Court Case No. A-21-827377-W
25 does not contain the social security number of any person.

26 Dated this 7th day of May, 2021.

27 Gary J. Lewis
28 Gary Lewis

Petitioner In Pro Se



1 ASTA

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3
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5
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**

9 GARY LYNN LEWIS,

10 Plaintiff(s),

11 vs.

12 STATE OF NEVADA,

13 Defendant(s),

Case No: A-21-827377-W

Dept No: XII

14
15
16 **CASE APPEAL STATEMENT**

17
18 1. Appellant(s): Gary Lewis

19 2. Judge: Michelle Leavitt

20 3. Appellant(s): Gary Lewis

21 Counsel:

22 Gary Lewis #47615
23 1200 Prison Rd.
24 Lovelock, NV 89419

25 4. Respondent (s): State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.
Las Vegas, NV 89155-2212

1 5. Appellant(s)'s Attorney Licensed in Nevada: N/A
2 Permission Granted: N/A

3 Respondent(s)'s Attorney Licensed in Nevada: Yes
4 Permission Granted: N/A

5 6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No

6 7. Appellant Represented by Appointed Counsel On Appeal: N/A

7 8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A
8 **Expires 1 year from date filed

9 Appellant Filed Application to Proceed in Forma Pauperis: No
10 Date Application(s) filed: N/A

11 9. Date Commenced in District Court: January 5, 2021

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

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

14 11. Previous Appeal: No

15 Supreme Court Docket Number(s): N/A

16 12. Child Custody or Visitation: N/A

17 13. Possibility of Settlement: Unknown

18 Dated This 18 day of May 2021.

19 Steven D. Grierson, Clerk of the Court

20 /s/ Heather Ungermann

21 Heather Ungermann, Deputy Clerk
22 200 Lewis Ave
23 PO Box 551601
24 Las Vegas, Nevada 89155-1601
25 (702) 671-0512

26 cc: Gary Lewis
27
28

CASE SUMMARY

CASE NO. A-21-827377-W

Gary Lewis, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

§
§
§
§
§

Location: **Department 12**
Judicial Officer: **Leavitt, Michelle**
Filed on: **01/05/2021**
Cross-Reference Case Number: **A827377**

CASE INFORMATION

Related Cases

95C129824 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Statistical Closures

04/08/2021 Other Manner of Disposition

Case Status: **04/08/2021 Closed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-21-827377-W
Court Department 12
Date Assigned 01/05/2021
Judicial Officer Leavitt, Michelle

PARTY INFORMATION

Plaintiff Lewis, Gary

Pro Se







Defendant State of Nevada

DATE

EVENTS & ORDERS OF THE COURT

INDEX

EVENTS

01/05/2021	 Inmate Filed - Petition for Writ of Habeas Corpus Party: Plaintiff Lewis, Gary <i>Post Conviction</i>
03/08/2021	 Request Filed by: Plaintiff Lewis, Gary <i>Status Check</i>
04/08/2021	 Order to Statistically Close Case <i>Civil Order to Statistically Close Case</i>
04/08/2021	 Findings of Fact, Conclusions of Law and Order <i>Findings of Fact, Conclusions of Law, and Order Denying Petition for Determination of Factual Innocence</i>
04/22/2021	 Status Check Filed By: Plaintiff Lewis, Gary <i>Status Check</i>
05/17/2021	 Notice of Appeal <i>Notice of Appeal</i>

CASE SUMMARY

CASE NO. A-21-827377-W

05/18/2021



Notice of Entry of Findings of Fact, Conclusions of Law

Filed By: Plaintiff Lewis, Gary

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

05/18/2021



Case Appeal Statement

Filed By: Plaintiff Lewis, Gary

Case Appeal Statement

HEARINGS

04/06/2021

CANCELED **Petition for Writ of Habeas Corpus** (12:30 PM) (Judicial Officer: Leavitt, Michelle)

Vacated - On In Error

DISTRICT COURT CIVIL COVER SHEET

A-21-827377-W
Dept. 12

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):

Gary Lewis

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**

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

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

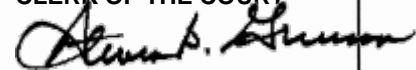
January 5, 2021

Date

PREPARED BY CLERK

Signature of initiating party or representative

See other side for family-related case filings.



FFCO

EIGHTH JUDICIAL DISTRICT
CLARK COUNTY, NEVADA

Gary Lewis,	}	Case No.: A-21-827377-W
Petitioner,		
vs.		DEPT. No.: XII
STATE OF NEVADA,		
Respondent	}	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING
PETITION FOR DETERMINATION OF FACTUAL INNOCENCE**

FINDINGS OF FACT

1. On August 15, 1995, the State of Nevada ("State") charged Gary L. Lewis ("Petitioner") by way of Information with SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE (Felony - NRS 200.364, 200.366).

2. On June 12, 1996, the State filed an Amended Information charging Petitioner with SEXUAL ASSAULT (Felony - NRS 200.364, 200.366) and Petitioner, pursuant to *North Carolina v. Alford*, entered a guilty plea to the charge in the Amended Information.

3. On August 2, 1996, the District Court adjudged Petitioner guilty and sentenced Petitioner to the Nevada Department of Corrections for a term of LIFE WITH THE POSSIBILITY OF PAROLE, to be served CONCURRENTLY with C122079. Petitioner received ZERO credit for time served.

4. On August 14, 1996, the District Court entered the Judgment of Conviction.

5. On February 19, 2009, the Defendant filed a "First Amendment Petition Writ of Habeas Corpus [sic]" (hereinafter "first Petition for Writ of Habeas Corpus (Post-Conviction)").

6. On February 26, 2009, the District Court denied Petitioner's first Petition for Writ of Habeas Corpus (Post-Conviction).

1
2 7. On March 23, 2009, the Petitioner filed a "First Amendment Petition
3 Writ of Habeas Corpus [sic]."

4 8. On May 1, 2009, the District Court ordered that the "First Amended
5 Petition" that was filed on March 23, 2009 was an improper amendment or supplement
6 as the original petition was orally denied by the District Court.

7 9. On May 11, 2009, the Petitioner filed a Notice of Appeal challenging
8 the District Court's decision to deny his first Petition for Writ of Habeas Corpus (Post-
9 Conviction).

10 10. On June 2, 2009, the District Court entered the Notice of Entry of
11 Order Denying Petitioner's first Petition for Writ of Habeas Corpus (Post-Conviction).

12 11. On October 28, 2009, The Supreme Court of Nevada affirmed the
13 District Court's decision to deny Petitioner's first Petition for Writ of Habeas Corpus
14 (Post-Conviction). Remittitur issued November 24, 2009.

15 12. On September 23, 2010, the Petitioner filed his second Petition for Writ
16 of Habeas Corpus (Post-Conviction).

17 13. On January 27, 2011, the District Court denied Petitioner's second
18 Petition for Writ of Habeas Corpus (Post-Conviction). The Notice of Entry of
19 Findings of Fact, Conclusions of Law, and Order were filed on March 17, 2011.

20 14. On March 14, 2011, the Petitioner filed a Notice of Appeal, challenging
21 the District Court's decision to deny his second Petition for Writ of Habeas Corpus
22 (Post-Conviction).

23 15. On September 15, 2011, The Supreme Court of Nevada affirmed the
24 District Court's decision denying the second Petition for Writ of Habeas Corpus (Post-
25 Conviction). Remittitur issued October 12, 2011.

26 16. On November 29, 2011, Petitioner filed a "Motion to Withdraw the
27 *Alford* Plea for [sic] the Entire Proceeding was in Direct Violation of the
28 Constitution." The State filed its Opposition on December 14, 2011.

17. On December 22, 2011, the District Court denied Petitioner's "Motion
to Withdraw the *Alford* Plea for [sic] the Entire Proceeding was in Direct Violation of
the Constitution."

18. On March 11, 2014, Petitioner filed a third Petition for Writ of Habeas
Corpus (Post-Conviction).

19. On March 31, 2014, the District Court denied Petitioner's third Petition for Writ of Habeas Corpus (Post-Conviction). The Findings of Fact, Conclusions of Law, and Order were filed the same day.

20. On April 24, 2014, Petitioner filed a Notice of Appeal challenging the District Court's order denying the third Petition for Writ of Habeas Corpus (Post-Conviction).

21. On September 16, 2014, The Supreme Court of Nevada affirmed the District Court's decision to deny Petitioner's third Petition for Writ of Habeas Corpus (Post-Conviction). Remittitur issued October 15, 2014.

22. On January 5, 2021, Petitioner filed the instant Petition to Establish Factual Innocence Based on Newly Discovered Evidence.

CONCLUSIONS OF LAW

1. NRS 36.940—the statute governing petitions for factual innocence—establishes the procedural and substantive requirements for each petition filed.

2. NRS 36.940(1) reads: "At any time after the expiration of the period during which a motion for a new trial based on newly discovered evidence may be made pursuant to NRS 176.515, a person who has been convicted of a felony may petition the district court in the county in which the person was convicted for a hearing to establish the factual innocence of the person based on newly discovered evidence. A person who files a petition pursuant to this subsection shall serve notice and a copy of the petition upon the district attorney of the county in which the conviction was obtained and the Attorney General."

3. Under 36.940(2) "[a] petition [to establish factual innocence] filed pursuant to subsection 1 must contain an assertion of factual innocence under oath by the petitioner and must aver, with supporting affidavits or other credible documents."

4. When a Petitioner files a Petition to Establish Factual Innocence, said claim, made under the relevant statutes, "is separate from any state habeas claim that alleges a fundamental miscarriage of justice to excuse procedural or time limitations pursuant to NRS 34.726 or 34.810." NRS 34.950.

5. According to NRS 34.920, factual innocence means a defendant did not do the following: (1.) Engage in the conduct for which he or she was convicted; (2.) Engage in conduct constituting a lesser included or inchoate offense of the crime for which he or she was convicted; (3.) Commit any other crime arising out of or reasonably connected to the facts supporting the indictment or information upon which he or she was convicted; and (4.) Commit the conduct charged by the State under any theory of criminal liability alleged in the indictment or information.

6. “Newly discovered evidence” means evidence that was not available to a petitioner at trial or during the resolution by the trial court of any motion to withdraw a guilty plea or motion for new trial and which is material to the determination of the issue of factual innocence[.]” NRS 34.930

7. Here, Petitioner failed to include a proper assertion of factual innocence under NRS 36.940(2). There is no assertion under oath, nor is the Petition supported by “affidavits or other credible documents.”

8. Petitioner failed to comply with the statutory requirements. Instead, only vague references are made to “exculpatory” and “*Brady*” evidence that the State withheld during trial. Such vague references without any supporting documentation do not qualify as “newly discovered evidence.” The instant Petition does not establish that Petitioner did not commit the charged crime and thus, the Petition must be denied.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition to Establish Factual Innocence shall be, and it is, hereby DENIED.

Dated this 8th day of April, 2021

MICHELLE LEAVITT
DISTRICT COURT JUDGE
DEPARTMENT XII
EIGHTH JUDICIAL DISTRICT

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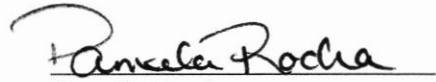
CERTIFICATE OF MAILING

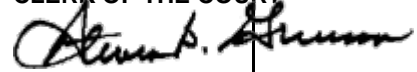
I hereby certify that on the 8th day of February, 2021, I placed a copy of the Findings of Fact, Conclusions of Law, and Order in the U.S. Mail, postage prepaid to:

Gary L. Lewis #47615
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

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

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


Pamela Rocha
Judicial Executive Assistant
Department XII
Eighth Judicial District Court



1 NEFF

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

4 GARY LEWIS,

5
6 Petitioner,

Case No: A-21-827377-W

Dept No: XII

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 April 8, 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 May 18, 2021.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Heather Ungermann

18 Heather Ungermann, Deputy Clerk

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

20 I hereby certify that on this 18 day of May 2021, I served a copy of this Notice of Entry on the following:

21 ☒ By e-mail:

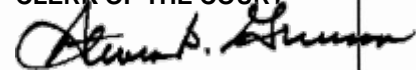
22 Clark County District Attorney's Office
23 Attorney General's Office – Appellate Division-

24 ☒ The United States mail addressed as follows:

25 Gary Lewis # 47615
26 1200 Prison Rd.
27 Lovelock, NV 89419

28 /s/ Heather Ungermann

Heather Ungermann, Deputy Clerk



FFCO

EIGHTH JUDICIAL DISTRICT
CLARK COUNTY, NEVADA

Gary Lewis,	}	Case No.: A-21-827377-W
Petitioner,		
vs.		DEPT. No.: XII
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Respondent	}	

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ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition to Establish Factual Innocence shall be, and it is, hereby DENIED.

Dated this 8th day of April, 2021

MICHELLE LEAVITT
DISTRICT COURT JUDGE
DEPARTMENT XII
EIGHTH JUDICIAL DISTRICT

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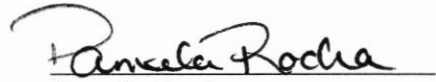
CERTIFICATE OF MAILING

I hereby certify that on the 8th day of February, 2021, I placed a copy of the Findings of Fact, Conclusions of Law, and Order in the U.S. Mail, postage prepaid to:

Gary L. Lewis #47615
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

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

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


Pamela Rocha
Judicial Executive Assistant
Department XII
Eighth Judicial District Court

Certification of Copy

State of Nevada }
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER DENYING PETITION FOR DETERMINATION OF FACTUAL INNOCENCE; NOTICE OF
ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

GARY LYNN LEWIS,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

Case No: A-21-827377-W

Dept No: XII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 18 day of May 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk