

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN ODELL LANGFORD,
Appellant(s),

vs.

RENEE BAKER, WARDEN,
Respondent(s),

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Case No: A-18-784811-W

Docket No: 83032

RECORD ON APPEAL VOLUME 3

ATTORNEY FOR APPELLANT
JUSTIN LANGFORD #1159546,
PROPER PERSON
1200 PRISON RD.
LOVELOCK, NV 89419

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

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1 that lawfully belong to the Secretary of the State
2 of Nevada. Nev. Const. Art. 5 § 20

3 (3) What is void? The NRS of 1955, The NRS Publication
4 of the 48TH Session of the Nevada Legislature
5 Adopting ~~the NRS publications~~ Nevada Revised
6 Statutes of 1957, and the NRS publications thereafter,
7 for all of the reasons set forth herein and as set
8 forth above.

9 The Constitution is the supreme and paramount law. The mode by which
10 amendments etc. are to be made under it, is clearly defined. It has been
11 said that certain acts to be done, certain requisition are to be
12 observed, before a change can be effected. State Ex rel. Stevenson v.
13 Tully, 19 Nev. 391, 393-94, 95, 12 P. 835, 837 (1887).

14 Second, NRS publication 220.110, which sets forth the required
15 contents of the Nevada Revised Statutes (is vague), which does not mandate
16 that the enacting clauses be published, or republished in the Nevada Revised
17 Statutes publication is:

18 (1) Not the "supreme, paramount law of the State of Nevada,
19 which 'supreme and paramount law is the Nev. Const., and
20 pursuant to the supreme and paramount law the Nev.
21 Const. Art. 4 § 23', the enacting clause of 'every law shall be
22 as follows,' mandates the enacting clause(s) is to appear
23 on 'every law'."

24 (2) Should the NRS publication 220.110 be construed to "not
25 mandate, require that the enacting clauses not be
26 published/republished on 'every law', in the NRS publication
27 then, NRS publication 220.110 is in conflict with the supreme
28

1 and Paramount Law of the State of Nevada. Nev.

2 Const. Art. 4§23 Caine 131 P.2d at 518.

3 The constitution is the supreme and paramount law. Where there is conflict
4 between an act of legislature and the constitution of the State, the statute
5 must yield to the extent of the repugnancy. State Ex rel. Moon v. State
6 Bd of Examiners, 104 Idaho 640, 648, 662 P.2d 221, 229 (Idaho 1983).

7 And our own Sup. Ct. has held

8 "When the Constitution says no law shall be amended, save in
9 a specified manner, can the legislature say a law may be and shall be
10 amended in a different manner? The case is, to our minds, a plain
11 one of irreconcilable conflict between the paramount law of the
12 constitution and the enactment of the legislature. When such a
13 conflict is clearly presented to the judicial mind, the
14 constitution must prevail."

15 State v. Roger, 10 Nev. at 255, quoting Walker, C.J. see also Weaver v. Lapsley, 43
16 Pl. 224 (Emphasis added).

17 "This Court must recognize that the NRS publication 220.110, must yield
18 to the Nev. Const. Art. 4§23, which mandates an enacting clause to be on
19 every law." And thus conclude that "Notwithstanding, as... (Jodges), we cannot
20 ignore our obligation to protect and defend the paramount law of the
21 nation and of this state." Stumpf v. Lou, 168 Nev. 826, 844, 839 P.2d 120, 131 (Nev.
22 1992).

23 Wherefore, it is alleged that the legis. of Nev. of 1955, had usurped
24 their authority, in creating said commission/Stat. Rev. Com. That, the Stat.
25 Rev. Com. were illegally, and unlawfully exercising the powers of and
26 functions of the legis. of Nev.

27 That, the NRS publication as revised and compiled without the enacting
28

1. clause(s) appearing upon their face Caine, supra, be adjudged void. That, the
2 acts, duties and functions exercised by the Stat. Rev. Com. as the, and/or for the
3 Legis. of Nev. be declared an usurpation, and that the Legislative Counsel
4 Bureau be perpetually enjoined from exercising said acts, duties and
5 functions of the Legis. of Nev.

6 The Nev. Const. did not permit the Legis. of Nev. to appoint sitting
7 Justice's of the Appellate Court, to a legislative commission, to perform acts,
8 duties, and functions of the Legis. of Nev., especially without the
9 approval and consent, will or vote of the people/citizen's of the State of
10 Nevada, especially where the NRS publication would omit the mandated
11 enacting clause of the Nev. Const. Art. 4323

12 That, this Court must follow the construction of the Constitution of
13 this State (the will of the people), and adhere to those sound decisions of the
14 State Appellate Court relative to the issues, arguments and case law cited
15 herein, due to the fact that there isn't any conflict with those decisions;
16 holdings; opinions; or rulings etc. cited by the Petitioner herein, relative to
17 the mandate of the Articles of the Nev. Const., specifically Art. 4317 and Art. 4323,

18 That, the act of the Legis. of Nev. in creating the commission, later known as
19 the Stat. Rev. Com., then the legislative counsel of the State of Nevada, now
20 believed to be the Legislative Counsel Bureau, was not acting to protect the
21 people/citizen's of the State of Nevada, nor for the security and benefit of
22 the people/citizen's of the State of Nevada, and obviously not for the public
23 good. Nev. Const. Art. 132. Especially in allowing the NRS publication to
24 be held out to be laws " " of the State of Nevada, when the NRS publications
25 do not contain the mandatory enacting clause as delineated in the Nev.
26 Const. Art. 4323.

27 The act of the Legis. of Nev. in utilizing said commission, was to simplify
28

1 the statutes of Nevada publication, for the purpose of ~~convenience~~
2 "convenience". However, the commission sought enactment of the NRS
3 publication, to be published/republished without the required enacting
4 clause(s), and/or other prerequisites of the people/citizens, as more
5 fully prescribed, mandated, and commanded in the paramount law of the State
6 of Nevada, the Nev. Const.

7 It is further alleged that the commissions underlying motive was for the
8 purpose of self dealing, deals in the sales and publication of the illegally
9 copyrighted "public government documents belonging to the people/citizens of Nevada.

10 It is most true that this court will not take jurisdiction if it should not; but it
11 is equally true that it must take jurisdiction if it should. The judiciary cannot, as
12 the legislature may, avoid a measure because it approaches the confines of the
13 constitution. We cannot pass it by because it is doubtful. With whatever doubts, with
14 whatever difficulties, a case may be attended, we must decide it if it be brought
15 before us. We have no more right to decline the exercise of jurisdiction
16 which is given, than to usurp that which is not given. The one or the other would
17 be treason to the constitution. Question may occur which we would gladly
18 avoid, but we cannot avoid them. All we can do, is to exercise our "best
19 judgment," and conscientiously to perform our duty. In doing this, on the present
20 occasion, we find this tribunal invested with... jurisdiction in all cases
21 arising under the constitution and laws of the ...". *Cohens v. Virginia*, 6
22 Wheat (19 U.S.) 264, 404 (1921).

23 This Court has jurisdiction to determine whether the Nev. Const., the
24 will of the people/citizen's mandated that "every law" published, republished in the
25 State of Nevada must contain the enacting clause, as iterated in the Nev. Const,
26 Art. 4323. The Nev. Const. Art. 4323, and the clearly delineated, well established
27 cases cited herein, and especially those of the Nev. Sup. Ct. indicate that this Court

28

1 must answer affirmative.

2 There may be issues, questions which this Court would gladly avoid, yet
3 the issues, questions herein this Court should, must not avoid them. This Court
4 must exercise and perform its duty, because of whatever difficulties the
5 issues herein present, judges are not to consider the political or economic impact
6 that might ensue from upholding the Constitution of Nevada as written. (Nev.
7 Const. Art. 4§23). They are to uphold it no matter what may result, as that
8 ancient maxim of law states: "Though the heavens may fall, let "Justice" be
9 done"

10 It may be that it is obnoxious thing in its mildest and least repulsive form;
11 but illegitimate and unconstitutional practices get their first footing in that way,
12 namely, by silent approaches and ~~slight~~ slight deviations from legal modes of
13 procedure. This can ~~of~~ only be obviated by adhering to the rule that
14 constitutional provisions for the security of person... should be liberally
15 construed. A close and literal construction deprives them of half their efficacy,
16 and leads to gradual depreciation of the right, as if it consisted more in
17 sound than in substance. It is the duty of courts to be watchful for the
18 constitutional rights of the citizen, and to guard against any stealthy
19 encroachments thereon. *Codridge v. New Hampshire*, 403 U.S. 443, 454 (1971).

20 The Petitioner respectfully request that this Court be watchful for the
21 Petitioners State and Federal Constitutional rights. It should be relatively
22 easy to determine that (1) the Statutes for the years of 2007 to 2014, do
23 not contain the constitutionally mandated enacting clause upon their face,
24 Nev. Const, Art. 4§23; that the NRS publications listed on the complaint,
25 information or indictment do not contain the Constitutionally mandated
26 enacting clause(s); (2) that the Nev. Const, Art. 4§23 mandates enacting
27 clause(s) on "every law." That, the NRS publications are laws of the State of Nev.,
28

1 therefore are required, mandated to contain the enacting clause(s). Nev. Const.
2 Art. 4 § 23; State v. Rogers, 10 Nev. at 261.

3 clearly NRS publication 220.110 being construed to not require an
4 enacting clause, would clearly contravene provisions of the Nev. Const. Carine, 131
5 P.2d at 518 (And conflicts with paramount law).

6 Their position is that a legislative Act, although unconstitutional, may in terms
7 create an office, and nothing further than its apparent existence is necessary to give
8 validity to the acts of its assumed incumbent. That position, although not stated in
9 this broad form, amounts to nothing else. It is difficult to meet it by any argument
10 beyond this statement. An unconstitutional act is not a law; it confers no rights;
11 it imposes no duties; it affords no protection; it ~~confers~~ creates no office; it is, in
12 legal contemplation, as inoperative as though it had never been passed. Norton v.
13 Shelby County, 118 US 425, 442 (1886).

14 No act of the legislature can contravene the mandate of the Nev. Const.,
15 it is the Nev. Const. from which laws of the State of Nevada derived their power.
16 State v. Rogers, supra. It is the province of an instrument of this solemn and
17 ~~permanent~~ permanent character to establish those fundamental maxims, and fix those
18 unvarying rules, by which all departments of the government must at all times
19 shape their conduct. Id.

20 Our Constitution expressly provides that the enacting clause of every
21 law shall be "The people of the State of Nevada, ..." This language is
22 susceptible of but one interpretation. It is, in our judgment, an imperative
23 mandate of the people in their sovereign capacity to the legislature, requiring
24 that all laws to be binding upon them shall, upon their face, express the
25 authority by which they were enacted. Id. at 261.

26 The NRS publication, as published comes before the people/citizens of the State
27 of Nevada, and The Petitioner containing no enacting clause, therefore, the NRS
28

1 publication are not laws.

2
3 VIII) SENATE BILL No. 2 1957 WRITTEN IN VIOLATION OF
4 SEPERATION OF POWERS
5

6 The Const. of Nev. Art. 3§1, is unambiguous, and very plain in its meaning
7 and wording. Three seperate departments; Separation of powers. The powers of
8 the Government of the State of Nevada shall be divided into three
9 seperate departments, -the Legislative, -the Executive. and the Judicial; and no
10 persons "charged with the exercise of powers properly belonging to one of
11 these departments shall exercise any functions, appertaining to either of the
12 others", ... Ex parte Blanchard, 9 Nev. 101 (1874), Sawyer v. Dooley, 21 Nev. 390,
13 32 Pac. 437 (1893), cited Ormsby County v Kearney, 37 Nev. 314, 341, 142 Pac. 803 (1914).
14 see also Legislature is not permitted to abdicate or to transfer to other
15 essential legislative functions with which it is vested. AGO 185 (8-28-1935).

16 BLACK'S LAW DICTIONARY ABRIDGED NINTH EDITION, BRYON A. GARNER, EDITOR
17 IN CHIEF at page 774 reads in part as follows: "A legislative body may delegate a
18 portion of its law making authority to agencies within the executive branch for
19 purposes of rulemaking and regulation. But a legislative body may not delegate
20 its authority to the "judicial branch, and the judicial branch may not encroach
21 on legislative duties."

22 It is without question that Milton B. Badt (Badt), Edgar Eather (Eather), and
23 Charles M. Merrill (Merrill), were justices of the Nev. Sup. Ct., Charged under Art.
24 634, of the Const. of Nev. to perform appellate judicial duties and functions.

25 That, in 1955, when Badt, Eather, and Merrill were appointed to the statute
26 revision commission (commission), as members of that commission they were charged,
27 given authority to perform duties and functions of the Legis. of Nev. The Legis.
28

1 of Nev, being charged with duties and functions of the Const. of Nev.
2 Art. 4§1.

3 wherefore, Badt, Eather, and Merrill being members of the commission
4 (Exhibit), being charged as the commission to commence the preparation of
5 a complete revision and compilation of the laws of the State of Nevada to
6 be known as Nevada Revised Statutes, and ~~the~~ authorized as a
7 commission to undertake, for the first time in the State's history, a
8 comprehensive revision of the laws of the State of Nevada of general
9 application; lastly as the work progressed, Mr. McDonald submitted drafts
10 of chapter after chapter as recompiled and revised, and the members of the
11 commission (Badt, Eather, and Merrill), individually and in conference
12 meticulously checked all revisions.... (Exhibit Foreword), were
13 performing functions, duties etc. essential legislative functions with
14 which the Legis. of Nev. is vested.

15 Wherefore, the NRS as created, enacted, approved in 1957, on Jan. 25,
16 1957, are invalid laws, illegal, unconstitutional, unlawful, having been created
17 contrary to Const. of Nev. Art. 3§1, separate departments; separation of
18 powers. See AGO 257(5-26-1938), 188(8-28-1935); See also King v. Board of
19 Regents, 65 Nev. 533, 556, 200 P.2d 221, 232 (1948); Ex parte Blanchard, 9 Nev. 101 (1872);
20 Sawyer v. Dooley, 21 Nev. 310, 32 Pac. 437 (1893), cited Ormsby County v. Kearney,
21 37 Nev. 314, 341, 142 Pac. 803 (1914).

22
23 **IX) WHY THE PETITIONER IS ENTITLED TO HIS IMMEDIATE**
24 **RELEASE FROM INCARCERATION, "THE SMOKING GUN!"**

25
26 First, and Foremost, let it be acknowledged that The Petitioner has set forth
27 that, Badt, Eather, and Merrill, were Justices of the Nev. Sup. Ct. during what
28

1 will be termed "critical operative years", the years of 1955, and 1957, at which
2 time they were charged under the Const. of Nev. Art. 634 to perform "appellate
3 judicial duties and functions of the Nev. Sup. Ct."

4 Second, that, The Petitioner has set forth that Badt, Eather, and Merrill,
5 were also appointed to, members of the statute revision commission during the
6 "critical operative years", of 1955 and 1957.

7 That, Badt, Eather, and Merrill, the commission was given authority, charged
8 with power to perform essential duties, and functions of the Legis. of Nev.
9 clothed under Art. 432 of the Const. of Nev. to perform these duties and
10 functions, again, during the "critical operative years of 1955, and 1957, again 'while
11 Justice's of the Nev. Sup. Ct."

12 Third, that the appointment, allowing, Etc., Badt, Eather, and Merrill, to be
13 members on said commission, and authorizing, charging, giving them authority,
14 power to perform essential duties and functions vested in the Legis. of Nev.
15 was and remains a clear violation of the Nev. Const. of Nev. Art. 331, ~~separ~~
16 separate departments, separation of powers,

17 Wherefore, the following is "irrefutable!!" What cannot be refuted;

18 1.) Badt, Eather, and Merrill, were Justice's of the Nev. Sup Ct, in the years
19 1955, and 1957, charged with authority, power Etc. under Art. 634 of the Const.
20 of Nev., performing appellate judicial duties.

21 2.) That, Badt, Eather, and Merrill, as appellate Justice's of the Nev. Sup. Ct.,
22 during the years 1955, 1957, clothed with authority, to perform appellate judicial
23 duties and functions, were appointed, set a part, allowed to be on said
24 commission; charged, given authority, power to perform essential duties and
25 functions of the Legis. of Nev.

26 3.) That, the Legis. of Nev. pursuant to Art. 432, of the Const. of Nev., is charged,
27 given authority, power to Annotate laws; classify laws; compile laws; Amend
28

1 laws; Make laws; Draft laws; Revise laws; Modify laws; Redraft laws; codify
2 laws etc.

3 4.) That, the three aforementioned Justice's of the Nev. Sup. Ct., were
4 clothed with the exact same authority, power, charged etc., of the Legis. of Nev.,
5 thus, a clear undisputed, unequivocal violation of the unambiguous language of
6 Art. 331, of the Const. of Nev., when again the aforementioned three Justice's
7 performed essential duties and/or functions; of the Legis. of Nev. i.e.
8 Amending laws; Annotating laws; Classifying laws; Codifying laws; Compiling
9 laws; Drafting laws; Making laws; Modifying laws; Redrafting laws; Revising
10 laws etc.

11 That, anything done by the commission relative to, relating to the
12 essential duties and functions, of the Legis. of Nev., was, is a violation
13 of Art. 331, of the Const. of Nev.

14 Additionally, "A Constitution being the paramount law of a state,
15 designed to separate the powers of government and to define their extent and
16 limit their exercise by the several departments, as well as to secure and
17 protect private rights, no other instrument is of equal significance. 'It has
18 been very properly defined' to be a 'legislative act of the people themselves' in
19 their 'sovereign capacity', and when the people have declared by it that certain
20 powers shall be possessed and duties performed by a particular officer or
21 department, their exercise and discharge by any other officer or
22 department are forbidden by a necessary and unavoidable implication.
23 'Every positive delegation of power to one officer or department implies a
24 negation of its exercise by any other officer, department, or person. If it
25 did not, the whole constitutional fabric might be undermined and destroyed.
26 This result could be as effectually accomplished by the creation of new
27 officers and departments exercising the same power and jurisdiction as by
28

1 the direct and informal abrogation of those now existing, ... "King, 65
2 Nev. at 556-57, 200 P2d at 232, Justice "Badt" delivered the Opinion of the
3 Court.

4 Its readily discernable to determine that this opinion by Justice Badt
5 germinated, the sowing of the seeds of their own destruction, to formulate
6 the "statute revision commission", Badt, Eather, and Merrill. As Badt,
7 Eather, and Merrill did effectually accomplish by the "creation" of a new
8 department the "Statute revision commission", exercising the "same power
9 and jurisdiction as by the direct and formal abrogation of those now existing",
10 i.e. the Legis. of Nev. (King, 65 Nev. at 557, 200 P2d at 232).

11 Thus, Badt, Eather, and Merrill, were able to persuade unknown
12 member's of the 1955, and 1957, Legis. of Nev. to agree to the creation of the "statute
13 revision commission."

14 Now, these unknown Assembly and Senate Legislature's of 1955 and 1957, looked
15 upon the constitutional provision(s) of Art. 331 of the Const. of Nev. as being
16 directory, and thus treated Art. 331, of the Const. of Nev. as though it were
17 devoid of moral obligation, and to be therefore habitually disregarded by
18 creating the "statute revision commission", allowing said Justice's of the Nev.
19 Sup. Ctr. to be a part of the commission, performing, exercising the "same
20 power, jurisdiction, duties, and functions of the Legis. of Nev."

21 To allow the provision of Art. 331, of the Const. of Nev. to seem directory,
22 as did Badt, Eather, and Merrill, as well as McDonald, and the unknown
23 member's of the Legis. of Nev., is the equivalent to saying that it is not "law"
24 at all.

25 This ought not to be so then, or now as its brought to light, exposed, and
26 must be conceded; that it is so we have abundant reason and good
27 authority for saying, should, therefore, a constitutional provision is to be
28

1 enforced at all, it must be treated as mandatory. And, should the
2 legislature habitually disregard it, it seems to us that there are few evils
3 which can be inflicted by a strict adherence to the law so great as that
4 which is done by the habitual disregard by any department of the
5 government, of a plain requirement of that instrument from which it "derives
6 its authority, and which ought therefore to be scrupulously observed
7 and obeyed. (emphasis added) Stevenson v. Tofty, 19 Nev. 391, 393-44, 12 P. 835, 837
8 (1887). (Cooley Const. Lim. 183).

9 Wherefore, The Petitioner turns to and iterates from Judge Cooley as
10 follows: That, by the Const. of Nev., the people of the State of Nevada have
11 delegated by the exercise of their sovereign powers to the several departments,
12 and the people of the State of Nevada have not thereby divested themselves of
13 their sovereignty. They, the people of the State of Nevada, retain in their
14 own hands, so far as they have thought it needful to do so, a power ~~to~~ to
15 control the governments "they create", and the three departments are
16 responsible to, and subject to be ordered, directed, charged, or abolished by
17 them. Stevenson, 19 Nev. at 395, 12 P at 835.

18 Wherefore, the unequivocal, violation of Art. 351, of the Const. of Nev.,
19 as iterated above, which cannot be refuted, must be resisted and
20 repressed by the Officer of this Court; by enforcing, upholding Art. 351,
21 representing legitimate government.

22
23 X) SENATE BILLS 182 (1951), 188 (1953), 218 (1955), 2 (1957) VALIDATE
24 ALL CLAIMS ABOVE AND IN PETITION

25
26 Section 1 of Senate Bill No. 182 (1951) (Exhibit 2) "There is hereby
27 created a commission of the State of Nevada, to be known as the

1 "Commission for revision and compilation of Nevada laws," hereinafter
2 referred to as the commission, "such commission shall be composed of three
3 members, and said members shall be the three justices of the supreme
4 court. . . ."

5 section 2 of senate Bill No. 182 (1951) (Exhibit 2) " . . . Such
6 compilation when completed shall be known as 'Revised Laws of Nevada,
7', and the year of first publication shall be filled in the blank space of
8 such title for brevity such title may be cited as 'Rev. Laws. . . . ' "

9 section 1. of senate Bill No. 188 (1953) (Exhibit 3) "The title of the
10 above-entitled act, being chapter 304, Statutes of Nevada 1951, is hereby
11 amended to read as follows: An act establishing a permanent commission for
12 the revision, compilation, annotation and publication of the laws of the
13 State of Nevada;"

14 section 2 of senate Bill No. 188 (1953) (Exhibit 3) "Section 1 of the
15 above-entitled act, being chapter 304, Statutes of Nevada 1951, is hereby
16 amended to read as follows: Section 1. There is hereby created a
17 commission of the State of Nevada, to be known as the 'statute revision
18 commission,' hereinafter referred to as the commission. Such commission shall
19 be ~~the three justices composed of three members~~, and said members shall be
20 the three justices of the supreme court. . . ."

21 section 3 of senate Bill No. 188 (1953) (Exhibit 3) "Section 2 of the
22 above-entitled act, being chapter 304, Statutes of Nevada 1951, is hereby
23 amended to read as follows: Section 2. As soon as practicable after the
24 effective date hereof the commission shall commence the preparation of
25 a complete revision and compilation of the laws of the State of Nevada of
26 general application, and a compilation of the constitution of the State of
27 Nevada, together Such revision when completed shall be known as
28

1 Nevada Revised Statutes,..... For brevity such title may be cited as
2 NRS....."

3 Senate Bill No. 218(1955)(Exhibit 4)shows and establishes the fact that
4 all three justice's of the Supreme Court were paid an extra salary for being
5 on the commission.

6 Senate Bill No. 2(1957)(Exhibit) "AN ACT to revise the laws and
7 statutes of the State of Nevada of a general or public nature; to adopt and
8 enact such revised laws and statutes, to be known as the Nevada Revised
9 Statutes, as the law of the State of Nevada; to repeal all prior laws and
10 statutes of a general, public and permanent nature; providing
11 penalties; and other matters relating thereto."; "Section 1. Enactment of
12 Nevada Revised Statutes." The Nevada Revised Statutes, being the statute
13 laws set forth after section 9 of this act, are hereby adopted and enacted
14 as law of the State of Nevada."

15
16 There can be no other law in Nevada as established supra, by
17 Senate bills No's 182(1951), 188(1955), 2(1957) that the Nevada Revised
18 Statutes will be the law and all other laws repealed. So if any bill
19 is being listed as "statute of Nevada" it is a null and void law/bill,
20 as of S.B. 2(revision bill)(1957) the "statutes of Nevada" have been
21 repealed and all NRS's must have the Enacting clause upon there
22 their face as required by Nev. Const. Art. 4§23.

23 Anything published in the Advanced sheets of Nevada Statutes
24 (statutes of Nevada) are fraudulent documents as the "Statutes of
25 Nevada" were repealed in 1957 by the Revision Bill, so no one can
26 portray them as law, nor can they claim that the NRS are prima facie
27 evidence of the law when the Senate bill that created them says

28

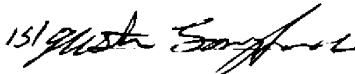
(50)

1 they're the law.

2
3 VERIFICATION

4
5 I, Declare and Verify, that the foregoing document is true and
6 correct to the best of my knowledge and belief under the pains and
7 penalties of perjury. Pursuant to 28 U.S.C. 31746.

8 DATE: 4/12/21

9 
10 Petitioner, 1159546

11
12 CERTIFICATE OF SERVICE

13
14 I, certify, that I have attached a true and correct copy of the
15 foregoing document, with special instructions to the clerk of the Court for
16 E-file and E-service to all of my opponents pursuant to W.E.F.C.R. 5(K),
17 9 Et seq. (A-E) Etc., to the following:

18 Warden Tim Garrett at LCC

19 Aaron Ford, Atty. Gen. for Nev.

20 Steven Wolfson, Clark County D.A.

EXHIBIT 1

Foreward Statute Revision Commission, pgs xi; xiii; xiv; xv

EXHIBIT 1

#001

LCC

FOREWORD

By the provisions of chapter 304, Statutes of Nevada 1951, amended by chapter 280, Statutes of Nevada 1953, and chapter 248, Statutes of Nevada 1955, the legislature of the State of Nevada created the statute revision commission comprised of the three justices of the supreme court, authorized such commission to appoint a reviser of statutes to be known as the director of the statute revision commission, and charged the commission to commence the preparation of a complete revision and compilation of the laws of the State of Nevada to be known as Nevada Revised Statutes. Reference is made to chapter 220 of Nevada Revised Statutes for the further duties and authority of the statute revision commission relating to the preparation of Nevada Revised Statutes, the numbering of sections, binding, printing, classification, revision and sale thereof.

The commission employed as director Russell W. McDonald, a member of the State Bar of Nevada, who, with his staff, undertook and performed this monumental task with such methods, care, precision, completeness, accuracy and safeguards against error as to evoke the highest praise of the commission and the commendation of the bench and bar of the state.

As the work progressed, Mr. McDonald submitted drafts of chapter after chapter as recompiled and revised, and the members of the commission individually and in conference meticulously checked all revisions. In the vast majority of cases these revisions were promptly approved. Many required further conferences with the director. Some were modified and redrafted. As the several chapters were returned with approval to the director, they were in turn delivered to the superintendent of state printing for printing, to the end that upon the convening of the 1957 legislature Nevada Revised Statutes was ready to present for approval. By the provisions of chapter 2, Statutes of Nevada 1957, Nevada Revised Statutes, consisting of NRS 1.010 to 710.590, inclusive, was "adopted and enacted as law of the State of Nevada."

STATUTE REVISION COMMISSION

MILTON E. HADY
EDGAR BATHUR
CHARLES M. MERRILL

LEGISLATIVE COUNSEL'S PREFACE

History and Objectives of the Revision

Nevada Revised Statutes is the result of the enactment, by the 45th session of the legislature of the State of Nevada, of chapter 304, Statutes of Nevada 1951 (subsequently amended by chapter 280, Statutes of Nevada 1953, and chapter 248, Statutes of Nevada 1955), which created the statute revision commission and authorized the commission to undertake, for the first time in the state's history, a comprehensive revision of the laws of the State of Nevada of general application. Although revision was not commenced until 1951, the need for statutory revision had been recognized as early as 1865 when an editorial published in the *Douglas County Banner* stated:

One subject which ought to engage the early, and serious consideration of the Legislature, about to convene, and one which should be acted upon without delay, is the revision and codification of the laws of Nevada. Amendment has been added to amendment, in such manner as to leave, in many instances, the meaning of the Legislature, that last resort of the jurist, in determining the application of the law, more than doubtful * * *. The most serviceable members of the Legislature will be those gentlemen who will do something toward reducing to order our amendment-ridden, imperfectly framed and jumbled up statutes at large.

From 1861 to 1951 the legislature made no provisions for statutory revision, although during that period 8,423 acts were passed by the legislature and approved by the governor. During the period from 1873 to 1949 eight compilations of Nevada statutes were published. "Compiling" must be distinguished from "revising." Ordinarily, the "compiling" of statutes involves the following steps: Removing from the last compilation the sections that have been specifically repealed since its publication; substituting the amended text for the original text in the case of amended sections; inserting newly enacted sections; rearranging, to a limited extent, the order of sections; and bringing the index up to date.

"Revising" the statutes, on the other hand, involves these additional and distinguishing operations: (1) The collection into chapters of all the sections and parts of sections that relate to the same subject and the orderly arrangement into sections of the material assembled in each chapter. (2) The elimination of inoperative or obsolete, duplicated, impliedly repealed and unconstitutional (as declared by the Supreme Court of the State of Nevada) sections and parts of sections. (3) The elimination of unnecessary words and the improvement of the grammatical structure and physical form of sections.

The revision, instead of the recompilation, of the statutes was undertaken, therefore, first, to eliminate sections or parts of sections which, though not specifically repealed, were nevertheless ineffective and, second, to clarify, simplify, classify and generally make more accessible, understandable and usable the remaining effective sections or parts of sections.

With respect to the accomplishment of the second purpose of revision specified above, the following revisions, in addition to those mentioned elsewhere in this preface, were made:

LEGISLATIVE COUNSEL'S PREFACE

1. Long sections were divided into shorter sections. The division of long sections facilitates indexing and reduces the complications and expense incident to future amendment of the statutes.
2. Whole sections or parts of sections relating to the same subject were sometimes combined.
3. Sentences within a section, and words within a sentence, were rearranged, and tabulations were employed where indicated.
4. Such words and phrases as "on and after the effective date of this act," "heretofore," "hereinafter," "now," and "this act" were replaced by more explicit words when possible.
5. The correct names of officers, agencies or funds were substituted for incorrect designations.

The general types of revisions to be made by the reviser, as well as the broad policies governing the work of revision, were determined by the statute revision commission at frequent meetings. Precautions were taken to ensure the accomplishment of the objectives of the program without changing the meaning or substance of the statutes.

Upon completion of the revision of the text of the statutes in December 1956, the commission turned to the solution of a vital problem: Would it recommend the enactment of the revised statutes or would it request the legislature merely to adopt the revised statutes as evidence of the law? The commission concluded that the enactment of the revised statutes as law, rather than the mere adoption thereof as evidence of the law, would be the more desirable course of action. Accordingly, Nevada Revised Statutes in typewritten form was submitted to the 48th session of the legislature in the form of a bill providing for its enactment as law of the State of Nevada. This bill, Senate Bill No. 2 (hereafter referred to in this preface as "the revision bill"), was passed without amendment or dissenting vote, and on January 25, 1957, was approved by Governor Charles H. Russell.

On July 1, 1963, pursuant to the provisions of chapter 403, Statutes of Nevada 1963, the statute revision commission was abolished, and its powers, duties and functions were transferred to the legislative counsel of the State of Nevada.

SCOPE AND EFFECT OF NEVADA REVISED STATUTES

Nevada Revised Statutes, including the supplementary and replacement pages, constitutes all of the statute laws of Nevada of a general nature enacted by the legislature. All statutes of a general nature enacted before the regular legislative session of 1957 have been repealed. See section 3 of chapter 2, Statutes of Nevada 1957, immediately following this preface.

The revised statutes were the result of 7 years of labor by the statute revision commission and its editorial staff addressed to the problem of eliminating from the accumulation of 95 years of legislation those provisions no longer in force and restating and compiling the remainder in an understandable form. This involved elimination of duplicating, conflicting, obsolete and unconstitutional provisions, and those provisions that had been repealed by implication. It involved a complete reclassification, bringing together those laws and parts of laws which, because of similarity of subject matter, properly belonged together, and an arrangement of the laws within each class in a logical order. It involved the elimination of thousands of needless words and redundant expressions. It was a labor involving almost infinite detail, as well as the problems of classification and the general plan of arrangement.

XIV

(2001)

LEGISLATIVE COUNSEL'S PREFACE

Nevada Revised Statutes is the law of Nevada. The revised statutes speak for themselves; and all sections of the *Nevada Revised Statutes* are considered to speak as of the same date, except that in cases of conflict between two or more sections or of any ambiguity in a section, reference may be had to the acts from which the sections are derived, for the purpose of applying the rules of construction relating to repeal or amendment by implication or for the purpose of resolving the ambiguity. See sections 4 and 5 of chapter 2, Statutes of Nevada 1957.

METHOD AND FORM OF PUBLICATION

As required by NRS 220.120, all volumes are "bound in loose-leaf binders of good, and so far as possible, permanent quality." The use of the loose-leaf method makes it possible to keep *Nevada Revised Statutes* up to date, without using pocket parts or supplements or completely reprinting and rebinding each volume, simply by the insertion of new pages. As required by NRS 220.160, replacement and supplementary pages to the statute text made necessary by the session of the legislature are prepared as soon as possible after each session. Complete reprintings of *Nevada Revised Statutes* were made in 1967, 1973 and 1979, and after each regular session beginning in 1985.

Replacement pages are additionally provided periodically between legislative sessions as necessary to update the annotations to NRS, including federal and state case law. Occasionally these replacement pages will contain material inadvertently omitted in the codification of NRS and the correction of manifest clerical errors, as well as sections or chapters of NRS which have been recodified pursuant to chapter 220 of NRS for clarification or to alleviate overcrowding.

The outside bottom corner of each page of NRS contains a designation which indicates the reprint or group of replacement pages with which the page was issued. A designation consisting of four numerals contained in parentheses means that the page was issued as part of a reprint of NRS immediately following the legislative session held in the year indicated by the four numerals. For example, the designation "(1999)" means that the page was issued as part of the reprint of NRS immediately following the 70th legislative session which was held in 1999. A designation consisting of four numerals contained in parentheses immediately followed by the capitalized letter "R" and a numeral means that the page was issued as part of a group of replacement pages in the year indicated by the four numerals in parentheses. The numeral following the "R" indicates the number of the group of replacement pages. The groups begin with the number one and increase sequentially by one number so that the later group will always have a higher number. For example, the designation "(2000) R1" means that the page was part of the first group of replacement pages issued in 2000. Similarly, the designation "(2000) R4" means that the page was part of the fourth group of replacement pages issued in 2000.

Each user of *Nevada Revised Statutes* is urged to make arrangements for the retention of obsolete pages for reference.

CLASSIFICATION AND ARRANGEMENT

One of the first and most fundamental tasks in the revision was the adoption of a sound system of classification. Proper classification, by which the laws or parts of laws are brought together in logical consecutive units, is vital for a number of reasons: It makes the law more accessible and understandable; only through it can all

66 2 79

⑤ 84

EXHIBIT 2

Senate Bill No. 182 (1957)

EXHIBIT 2

#001

LCC

Senate Bill No. 182—Committee on Finance

CHAPTER 304

AN ACT establishing a permanent commission for the revision, compilation, annotation, and publishing of the laws of the State of Nevada and certain laws of the United States; prescribing certain duties of a temporary nature; prescribing certain duties of a permanent nature; making an appropriation therefor, and other matters properly connected therewith.

[Approved March 22, 1951]

*The People of the State of Nevada, represented in Senate and Assembly,
do enact as follows:*

SECTION 1. There is hereby created a commission of the State of Nevada, to be known as the "commission for revision and compilation of Nevada laws," hereinafter referred to as the commission. Such commission shall be composed of three members, and said members shall be the three justices of the supreme court. The members of such commission shall have the powers and duties prescribed by this act, and shall each receive such salary for their services as shall be prescribed by this act, and subsequent enactments.

SEC. 2. As soon as practicable after the effective date hereof the commission shall commence the preparation of a complete revision and compilation of the constitution and the laws of the State of Nevada of general application, together with brief annotations and marginal notes to sections thereof. Such compilation when completed shall be known as "Revised Laws of Nevada," and the year of first publication shall be filled in the blank space of such title, for brevity such title may be cited as "Rev. Laws."

SEC. 3. In preparing such compilation the commission is hereby authorized to adopt such system of numbering as it deems practical, to cause said compilation to be published in such number of volumes, but such volumes shall not exceed 750 pages, as shall be deemed convenient, and to cause such volumes to be bound in loose-leaf binders of good, and so far as possible, permanent quality. The pages of such compilation shall conform in size and printing style to the pages of the Statutes of Nevada, except that if necessary for marginal notes, the same may be of greater width, and roman style type only, shall

EXHIBIT 3

Senate Bill No. 188 (1953)

EXHIBIT 3

#001

LCC

Statutes of Nevada 1953

Senate Bill No. 188—Committee on Judiciary.

CHAPTER 280

AN ACT to amend the title of and to amend an act entitled, "An act establishing a permanent commission for the revision, compilation, annotation, and publishing of the laws of the State of Nevada and certain laws of the United States; prescribing certain duties of a temporary nature; prescribing certain duties of a permanent nature; making an appropriation therefor, and other matters properly connected therewith," approved March 22, 1951.

[Approved March 27, 1953]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. The title of the above-entitled act, being chapter 304, Statutes of Nevada 1951, is hereby amended to read as follows:

An act establishing a permanent commission for the revision, compilation, annotation and *publication* of the laws of the State of Nevada; prescribing certain duties of a temporary *and permanent* nature; making an appropriation therefor, and other matters properly connected therewith.

SEC. 2. Section 1 of the above-entitled act, being chapter 304, Statutes of Nevada 1951, is hereby amended to read as follows:

Section 1. There is hereby created a commission of the State of Nevada, to be known as the "*statute revision commission*," hereinafter referred to as the commission. Such commission shall be composed of three members, and said members shall be the three justices of the supreme court. The members of such commission shall have the powers and duties prescribed by this act, and shall each receive such salary for their services as shall be prescribed by this act, and subsequent enactments.

SEC. 3. Section 2 of the above-entitled act, being chapter 304, Statutes of Nevada 1951, is hereby amended to read as follows:

Section 2. As soon as practicable after the effective date hereof the commission shall commence the preparation of a complete revision and compilation of the laws of the State of Nevada of general application, *and a compilation of the constitution of the State of Nevada*, together with brief annotations to sections thereof. Such *revision* when completed shall be known as *Nevada Revised Statutes*,....., and the year of first publication shall be filled in the blank space of such title. For brevity such title may be cited as *NRS*.....

The revision shall contain:

1. *The constitution of the United States;*

2. The constitution of the State of Nevada;
3. The laws of this state of general application;
4. Citations to decisions of the Nevada supreme court and federal courts construing each statute and constitutional provision;
5. A digest of cases decided by the Nevada supreme court;
6. A full and accurate index of the statute laws; and
7. Such annotations, historical notes, supreme court and district court rules and other information as the commission deems appropriate to include.

SEC. 4. Section 3 of the above-entitled act, being chapter 304, Statutes of Nevada 1951, is hereby amended to read as follows:

Section 3. In preparing such revision the commission is hereby authorized to adopt such system of numbering as it deems practical, to cause said revision to be published in such number of volumes as shall be deemed convenient, and to cause such volumes to be bound in loose-leaf binders of good, and so far as possible, permanent quality. The pages of such revision shall conform in size and printing style to the pages of the Statutes of Nevada, and roman style type only shall be used. The commission shall classify and arrange the entire body of statute laws in logical order throughout the volumes, the arrangement to be such as will enable subjects of a kindred nature to be placed under one general head, with necessary cross-references. Notes of decisions of the supreme court, historical references and other material shall be arranged in such manner as the commission finds will promote the usefulness thereof.

The commission, in preparing Nevada Revised Statutes shall not alter the sense, meaning or effect of any legislative act, but may renumber sections and parts of sections thereof, change the wording of headnotes, rearrange sections, change reference numbers or words to agree with renumbered chapters or sections, substitute the word "chapter" for "article" and the like, substitute figures for written words and vice versa, change capitalization for the purpose of uniformity, and correct manifest clerical or typographical errors.

SEC. 5. Section 4 of the above-entitled act, being chapter 304, Statutes of Nevada 1951, is hereby amended to read as follows:

Section 4. Upon completion of the Nevada Revised Statutes, the commission is authorized and directed to have the same printed, litho-printed or reproduced by any other process at the state printing office, and upon completion of the final printing or other reproduction the separate volumes shall be bound as heretofore required and forwarded to the secretary of state for safekeeping and disposition as set forth hereinafter. Sufficient copies of each page shall be printed or reproduced so that there shall be bound 2,500 copies of each volume of said Nevada Revised Statutes. A master copy of said Nevada Revised Statutes, shall be kept in the office of the commission, and such master copy shall not be removed from said office except in the custody of a member of the commission or the director thereof.

SEC. 6. Section 5 of the above-entitled act, being chapter 304, Statutes of Nevada 1951, is hereby amended to read as follows:

EXHIBIT 4

Senate Bill No. 218 (1955)

EXHIBIT 4

#001

LCC

Statutes of Nevada 1955

FORTY-SEVENTH SESSION

405

Senate Bill No. 218—Committee on Finance

CHAPTER 248

AN ACT to amend an act entitled "An Act establishing a permanent commission for the revision, compilation, annotation and publication of the laws of the State of Nevada; prescribing certain duties of a temporary and permanent nature; making an appropriation therefor, and other matters properly connected therewith," approved March 22, 1951.

[Approved March 20, 1955]

*The People of the State of Nevada, represented in Senate and Assembly,
do enact as follows:*

SECTION 1. The above-entitled act, being chapter 304, Statutes of Nevada 1951, at page 470, is hereby amended by adding thereto a new section to be designated as section 4.5, which shall immediately follow section 4 and shall read as follows:

Section 4.5. Notwithstanding any of the provisions of chapter 294, Statutes of Nevada 1953, at page 460, any unexpended balance of the appropriation made to the statute revision commission by section 41 of chapter 294, Statutes of Nevada 1953, at page 463, shall not revert to the general fund on July 1, 1955, but shall be placed to the credit of the statute revision commission in the state treasury in a fund hereby created and designated as the statute revision commission printing and binding fund, which fund shall be used only for the

printing and binding of the Nevada Revised Statutes in the manner provided by this act.

SEC. 2. Section 15 of the above-entitled act, being chapter 304, Statutes of Nevada 1951, at page 472, as amended by chapter 280, Statutes of Nevada 1953, at page 390, is hereby amended to read as follows:

Section 15. *The member of the commission who is chief justice of the supreme court for the period from the effective date of this act to January 1, 1957, shall receive an annual salary of \$8,500. The member of the commission who is chief justice of the supreme court for the period from January 1, 1957, to July 1, 1957, shall receive an annual salary of \$6,500. The member of the commission who is senior justice of the supreme court for the period from the effective date of this act to January 1, 1957, shall receive an annual salary of \$6,500. The member of the commission who is senior justice of the supreme court for the period from January 1, 1957, to July 1, 1957, shall receive an annual salary of \$1,500. The member of the commission who is junior justice of the supreme court for the period from the effective date of this act to January 1, 1957, shall receive an annual salary of \$1,500. The member of the commission who is junior justice of the supreme court for the period January 1, 1957, to July 1, 1957, shall receive an annual salary of \$1,500. The salaries herein provided for shall be paid out of any appropriation heretofore or hereafter made by direct legislative appropriation from the general fund.*

SEC. 3. *This act shall become effective upon passage and approval.*

EXHIBIT 5

Senate Bill No. 2 (1957)

EXHIBIT 5

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32 2000
copy

ACT OF THE 48TH SESSION OF THE NEVADA LEGISLATURE
ADOPTING AND ENACTING NEVADA REVISED STATUTES

Chapter 2, Statutes of Nevada 1957, page 2

- Section 1. Enactment of Nevada Revised Statutes.
Sec. 2. Designation and citation.
Sec. 3. Repeal of prior laws.
Sec. 4. Construction of act.
Sec. 5. Effect of enactment of NRS and repealing clause.
Sec. 6. Severability of provisions.
Sec. 7. Effective date.
Sec. 8. Omission from session laws.
Sec. 9. Content of Nevada Revised Statutes.

AN ACT to revise the laws and statutes of the State of Nevada of a general or public nature; to adopt and enact such revised laws and statutes, to be known as the Nevada Revised Statutes, as the law of the State of Nevada; to repeal all prior laws and statutes of a general, public and permanent nature; providing penalties; and other matters relating thereto.

[Approved January 25, 1957] *The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:*

Section 1. Enactment of Nevada Revised Statutes.

The Nevada Revised Statutes, being the statute laws set forth after section 9 of this act, are hereby adopted and enacted as law of the State of Nevada.

NV CODE

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EXHIBIT "3"

Sec. 2. Designation and citation.

The Nevada Revised Statutes adopted and enacted into law by this act, and as hereafter amended and supplemented and printed and published pursuant to law, shall be known as Nevada Revised Statutes and may be cited as "NRS" followed by the number of the Title, chapter or section, as appropriate.

Sec. 3. Repeal of prior laws.

Except as provided in section 5 of this act and unless expressly continued by specific provisions of Nevada Revised Statutes, all laws and statutes of the State of Nevada of a general, public and permanent nature enacted prior to January 21, 1957, hereby are repealed.

Sec. 4. Construction of act.

1. The Nevada Revised Statutes, as enacted by this act, are intended to speak for themselves; and all sections of the Nevada Revised Statutes as so enacted shall be considered to speak as of the same date, except that in cases of conflict between two or more sections or of any ambiguity in a section, references may be had to the acts from which the sections are derived, for the purpose of applying the rules of construction relating to repeal or amendment by implication or for the purpose of resolving the ambiguity.

2. The provisions of Nevada Revised Statutes as enacted by this act shall be considered as substituted in a continuing way for the provisions of the prior laws and statutes repealed by section 3 of this act.

3. The incorporation of initiated and referred measures is not to be deemed a legislative reenactment or amendment thereof, but only a mechanical inclusion thereof into the Nevada Revised Statutes.

4. The various analyses set out in Nevada Revised Statutes, constituting enumerations or lists of the Titles, chapters and sections of Nevada Revised Statutes, and the descriptive headings or catchlines immediately preceding or within the texts of individual sections, except the section numbers included in the headings or catchlines immediately preceding the texts of such sections, do not constitute part of the law. All derivation and other notes set out in Nevada Revised Statutes are given for the purpose of convenient reference, and do not constitute part of the law.

5. Whenever any reference is made to any portion of Nevada Revised Statutes or of any other

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11311

law of this state or of the United States, such reference shall apply to all amendments and additions thereto now or hereafter made.

Sec. 5. Effect of enactment of NRS and repealing clause.

1. The adoption and enactment of Nevada Revised Statutes shall not be construed to repeal or in any way affect or modify:

- (a) Any special, local or temporary laws.
- (b) Any law making an appropriation.
- (c) Any law affecting any bond issue or by which any bond issue may have been authorized.
- (d) The running of the statutes of limitations in force at the time this act becomes effective.
- (e) The continued existence and operation of any department, agency or office heretofore legally established or held.
- (f) Any bond of any public officer.
- (g) Any taxes, fees, assessments or other charges incurred or imposed.
- (h) Any statutes authorizing, ratifying, confirming, approving or accepting any compact or contract with any other state or with the United States or any agency or instrumentality thereof.

2. All laws, rights and obligations set forth in subsection 1 of this section shall continue and exist in all respects as if Nevada Revised Statutes had not been adopted and enacted.

3. The repeal of prior laws and statutes provided in section 3 of this act shall not affect any act done, or any cause of action accrued or established, nor any plea, defense, bar or matter subsisting before the time when such repeal shall take effect; but the proceedings in every case shall conform with the provisions of Nevada Revised Statutes.

4. All the provisions of laws and statutes repealed by section 3 of this act shall be deemed to have remained in force from the time when they began to take effect, so far as they may apply to any department, agency, office, or trust, or any transaction, or event, or any limitation, or any right, or obligation, or the construction of any contract already affected by such laws, notwithstanding the repeal of such provisions.

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"3"

5. No fine, forfeiture or penalty incurred under laws or statutes existing prior to the time Nevada Revised Statutes take effect shall be affected by repeal of such existing laws or statutes, but the recovery of such fines and forfeitures and the enforcement of such penalties shall be effected as if the law or statute repealed had still remained in effect.

6. When an offense is committed prior to the time Nevada Revised Statutes take effect, the offender shall be punished under the law or statute in effect when the offense was committed.

7. No law or statute which heretofore has been repealed shall be revived by the repeal provided in section 3 of this act.

8. The repeal by section 3 of this act of a law or statute validating previous acts, contracts or transactions shall not affect the validity of such acts, contracts or transactions, but the same shall remain as valid as if there had been no such repeal.

9. If any provision of the Nevada Revised Statutes as enacted by this act, derived from an act that amended or repealed a preexisting statute, is held unconstitutional, the provisions of section 3 of this act shall not prevent the preexisting statute from being law if that appears to have been the intent of the legislature or the people.

Sec. 6. Severability of provisions.

If any provision of the Nevada Revised Statutes or amendments thereto, or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions or application of the Nevada Revised Statutes or such amendments that can be given effect without the invalid provision or application, and to this end the provisions of Nevada Revised Statutes and such amendments are declared to be severable.

Sec. 7. Effective date.

This act, and each and all of the laws and statutes herein contained and hereby enacted as the Nevada Revised Statutes, shall take effect upon passage and approval.

Sec. 8. Omission from session laws.

The provisions of NRS 1.010 to 710.590, inclusive, appearing following section 9 of this act shall not be printed or included in the Statutes of Nevada as provided by NRS 218.500 and NRS 218.510; but there shall be inserted immediately following section 9 of this act the words: "(Here followed NRS 1.010 to 710.590, inclusive.)"

NVCODE

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"3"

Sec. 9. Content of Nevada Revised Statutes.

The following laws and statutes attached hereto, consisting of NRS sections 1.010 to 710.590, inclusive, constitute the Nevada Revised Statutes:

(Here followed NRS 1.010 to 710.590, inclusive.)

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"3"

EXHIBIT

6

Pg 16 & 17

From Motion to Dismiss
in Case

27CV-0TH-2020-0057

Filed By

Laura M. Ginn, Bar No. 8085 (lginn@ag.nv.gov)
Deputy Attorney General
contact At For Full
copy of motion

EXHIBIT

6

#001

LCC

1 **E. Motion to Dismiss**

2 **1. Langford Claims Nevada State Law is Unconstitutional**

3 Langford alleges that Nevada State Law and the United States Code are
4 Unconstitutional. Langford's argument is that "State laws are unconstitutional, and as for
5 Federal Law ... [the] United States Code . . . has the same issue [unconstitutional] . . ."
6 Motion at 2-21:1-2. Langford's paradoxical position is that Nevada law is invalid despite
7 Langford's attempts to seek relief from a Court that is governed by Nevada Law.

8 Langford's arguments can be summarized as:

9 **Nevada Law does not exist.**

10 **This Court's Jurisdiction is established by Nevada Law.³**

11 **Therefore, this Court's Jurisdiction does not exist over Langford's**
12 **claims.**

13 Thus, Langford eliminated this Court's Jurisdiction of this case. Therefore, this Court
14 should dismiss this lawsuit pursuant to NRCP 12(b)(1)(lack of subject matter jurisdiction)
15 because Langford states that no jurisdiction exists for his claims.

16 Additionally, the Court should subject Langford to forfeiture of his statutory time
17 credits under NRS 209.451(1)(d).⁴ Under NRS 209.451(1)(d), in a civil action is found by the
18 Court to have presented a written motion which contains a claim, defense or other argument
19 which is not warranted by existing law. . . the offender forfeits all deductions of time
20 earned by the offender before the commission of that offense or act, or forfeits such part of
21 those deductions as the Director considers just. Langford presented this Court his written

22
23 ³ Nevada Revised Statute (NRS) 1.010(3) establishes this Court as a Court of Justice in
24 Nevada. NRS 1.020(3) establishes this Court as a Court of Record. NRS 4.370 gives this Court
25 Jurisdiction over cases above \$15,000, as it limits the Justice Court to cases below that amount.

26 ⁴ NRS 209.451(1)(d) Forfeiture and restoration of credits. If an offender: In a civil action,
27 in state or federal court, is found by the court to have presented a pleading, written motion or
28 other document in writing to the court which:

 (2) Contains a claim, defense or other argument which is not warranted by existing
 law or by a reasonable argument for a change in existing law or a change in the
 interpretation of existing law . . . the offender forfeits all deductions of time earned
 by the offender before the commission of that offense or act, or forfeits such part of
 those deductions as the Director considers just.

1 Plaintiff's grievance, which was produced in Set 1, No. 1. All documents
2 associated with this grievance have been produced; (B) Plaintiff's grievance
3 was produced in Set 1, No. 1; (C) LCC does not keep a "Law Library e-file
Log for each inmate," and there is no document that lists people who have
access to e-file, therefore, no document can be produced.

4 Langford failed to show how this response is incorrect or improper.

5 **10. Request for Production Set Four – Item Eight**

6 Complete copy of all Defendants Employee records to include staff misconduct
7 complaint.

8 The Defendants objected to this request for the following reasons. This request is
9 improper as it was served on "Defendants" and not served on any particular Defendant,
10 which is improper. This request calls for confidential and privileged information related to
11 the employment files of the Defendants. To the extent Plaintiff requests information related
12 to employment/personnel records, this information is protected by privileges and
13 confidentiality provided for under the law including but not limited to NDOC
14 Administrative Regulation 308, Nevada Revised Statute Chapter 284, Nevada
15 Administrative Code Chapter 284, and the official information privilege under federal law.
16 This discovery request has, in substance, been previously propounded. See Request No. 6,
17 set 3. Continuous discovery into the same matter constitutes oppression, and Defendants
18 further object on that ground. Notwithstanding these objections and without waiving them,
19 Defendants state: Pursuant to Administrative Regulation 308, Nevada Revised Statute
20 Chapter 284, Nevada Administrative Code Chapter 284, the documents Plaintiff is
21 requesting will not be produced. Additionally, Langford's request is not relevant because he
22 requests employee records that have nothing to do with this case.

23 **D. Sanctions are not Permissible**

24 Langford does not cite to any part of NRCP 37 that would allow sanctions merely
25 because he wants more discovery. Nor has Langford undertaken any of the safe harbor
26 provisions that must preface sanction motion practice.

27 ///

28 ///

1 Motion, containing a lengthy arguments why Nevada State Law does not exist. Because
2 Nevada State Law provides Langford with his statutory time credits, this Court should
3 forfeit Langford's statutory time credits.

4 Thus, this Court should dismiss this case and order his statutory time forfeited.

5 **2. Langford Failed to File the Joint Case Conference Report NRCP 16.1**

6 This Court should dismiss this case under NRCP 16.1(e)(2) for failing to file a Case
7 Conference Report. NRCP 16.1(e)(2) states, "[i]f the plaintiff does not file a case conference
8 report within 240 days after service of an answer by a defendant, the court, on motion or on
9 its own, may dismiss the case as to that defendant"⁵ (emphasis added). Langford failed to
10 file a Joint Case Conference Report to date. NDOC filed its Answer on July 31, 2020. The
11 240-day deadline expired on Monday, March 29, 2021.

12 Thus, the Court should dismiss this case.

13 **III. CONCLUSION**

14 This Court should dismiss this lawsuit because Langford divested this Court of
15 Jurisdiction as Langford claims all Nevada State Law is Unconstitutional. This Court
16 should dismiss this lawsuit because Langford failed to file a required Joint Pretrial
17 Conference Report within the 240-day deadline. Langford cannot cure his failure as the
18 deadline expired back on March 29, 2021.

19 This Court should deny Langford's Motion as procedurally deficient. NDOC produced
20 discovery in good faith. NRCP 11 is an extraordinary remedy and is not warranted when
21 NDOC complied with discovery requests. Langford's request and motion should be denied.

22 **IV. EXHIBITS**

23 1. Grievance 2006-30-83244

24 2. Defendant's Response to Plaintiff's Request for Production of Documents (Set
25 Two)

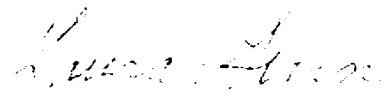
26
27 ⁵ NRCP 16.1(e)(2) Failure or Refusal to Participate in Pretrial Discovery; Sanctions states,
28 "If the plaintiff does not file a case conference report within 240 days after service of an answer by
a defendant, the court, on motion or on its own, may dismiss the case as to that defendant,
without prejudice."

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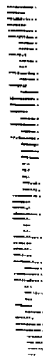
3. Defendant's Response to Plaintiff's Request for Production of Documents (Set
Three)

DATED this 5th day of April, 2021.

AARON D. FORD
Attorney General

By: 
LAURA M. GINN, Bar No. 8085
Deputy Attorney General
100 N. Carson Street
Carson City, NV 89701-4717
(775) 684-1120
lginn@ag.nv.gov
Attorneys for Defendants

stin Langford-1189546
c, 1700 Prison Rd.
velock, Nev. 89419



Lovelock Correctional Center



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DISTRICT COURT
CLARK COUNTY, NEVADA

JUSTIN LANGFORD, PLAINTIFF(S) VS. WARDEN RENEE BAKER, DEFENDANT(S)	CASE NO: A-18-784811-W DEPARTMENT 23
---	---

NOTICE OF RESCHEDULING OF HEARING

Please be advised that the date and time of a hearing set before the **Honorable Jasmin Lilly-Spells** has been changed. The **Petition for Writ of Habeas Corpus** has been **rescheduled** to the **19th day of May, 2021, at 11:00 a.m.** The Bluejeans **Link is:** <https://bluejeans.com/734863144>.

By: Deborah A. Boyer
Deborah Boyer
Judicial Executive Assistant
to Judge Jasmin Lilly-Spells
Department 23

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CERTIFICATE OF SERVICE

I hereby certify that on or about the date e-filed, I served a copy of the foregoing document.

Justin Langford
#1159546
1200 Prison Road
Lovelock, NV 89419

Steven B Wolfson
Juvenile Division - District Attorney's Office
601 N Pecos Road
Las Vegas, NV 89101

Deborah A. Boyer
Deborah Boyer,
Judicial Executive Assistant

Steven D. Grierson

Justin Odell Langford-1159546
LCC, 1200 Prison Rd
Lovelock, Nev. 89419

DISTRICT COURT
CLARK COUNTY, NEVADA

Justin Odell Langford,

Petitioner,

CASE No. A-18-784811-W

vs-

DEPT No. 23

Warden Tim Garrett,

Respondent.

NOTICE OF APPEAL

I can ONLY speculate as to this matter as the Court Clerk refuses to send me minutes for hearings or orders that are filed.

I assume my writ of Habeas was denied on 5/19/21 by Judge Jasmine Lilly-spells and this is my notice challenging said order of denial.

Judge Jasmine Lilly-spells entered an order on 4/30/21 in which I never recieved, Also failed to make sure I was in court for said hearing as mandate by WRS 34.440.

Respectfully Submitted
Justin Odell Langford
Justin Odell Langford
5/27/21

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JUN - 3 2021

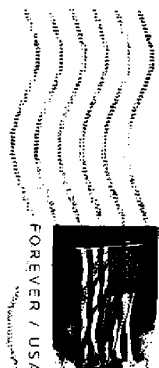
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Clerk of the Court
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Las Vegas, Nev 89155

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

JUSTIN ODELL LANGFORD,

Plaintiff(s),

vs.

WARDEN RENEE BAKER,

Defendant(s),

Case No: A-18-784811-W

Dept No: XXIII

CASE APPEAL STATEMENT

1. Appellant(s): Justin Odell Langford

2. Judge: Jasmin Lily-Spells

3. Appellant(s): Justin Odell Langford

Counsel:

Justin Odell Langford #1159546
1200 Prison Rd.
Lovelock, NV 89419

4. Respondent (s): Warden Renee Baker

Counsel:

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

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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**: Yes, February 11, 2021
***Expires 1 year from date filed*
Appellant Filed Application to Proceed in Forma Pauperis: N/A
Date Application(s) filed: N/A
9. Date Commenced in District Court: November 19, 2018
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: Yes
Supreme Court Docket Number(s): 78144
12. Child Custody or Visitation: N/A
13. Possibility of Settlement: Unknown

Dated This 8 day of June 2021.

Steven D. Grierson, Clerk of the Court

/s/ Amanda Hampton
Amanda Hampton, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: Justin Odell Langford

Heather S. Hemin
CLERK OF THE COURT

1 Justin Odell Langford-11595546

2 LCC, 1200 Prison Rd

3 Lovelock, Nev. 89419

4

5

DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

Justin Odell Langford,

CASE No. 'A-18-784811-W

8

Petitioner,

DATE ;

9

vs.

TIME ;

10

Warden Tim Garrett,

DEPT No. 23

11

Respondent.

(HEARING REQUESTED/REQUIRED)

12

13 Motion For Request in Status Check And Copy of Court Docket
14 Sheet

15

16 Petitioner, Justin Odell Langford, Respectfully request of this Court a
17 Status Check and a copy of the Docket Sheet, as Petitioner has
18 recieved no orders from the Judge in this Action since itborder on
19 Feb. 15, 2021 directing a response within 45 days and setting 2
20 hearings for May 4TH, 2021. Since Feb. 15, 2021 Petitioner has filed
21 numerous items and a response has been file, but nothing by the
22 Court has been done.

23

Submitted this 1ST day of June 2021

24

Justin Odell Langford
Petitioner

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JUN - 7 2021

CLERK OF THE COURT

(1)

Justin Odell Langford-1154546
LCC, 1200 Prison Rd.
Lovelock, Nev. 89419

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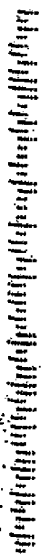
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**DISTRICT COURT
CLARK COUNTY, NEVADA

Justin Langford, Plaintiff(s)

vs.

Warden Renee Baker, Defendant(s)

Case No.: A-18-784811-W

Department 23

NOTICE OF HEARING

Please be advised that the Plaintiff's Motion for Request in Status Check and Copy of Court Docket Sheet in the above-entitled matter is set for hearing as follows:

Date: July 19, 2021

Time: 11:00 AM

Location: RJC Courtroom 12D
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Michelle McCarthy
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Michelle McCarthy
Deputy Clerk of the Court

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #010539
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Respondent

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JUSTIN LANGFORD,
#2748452,

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: **A-18-784811-W**
C-14-296556-1

DEPT NO: **XXIII**

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: **MAY 19, 2021**
TIME OF HEARING: **11:00 AM**

THIS CAUSE having presented before the Honorable JASMIN LILLY-SPELLS, District Judge, on the 19th day of May, 2021; Petitioner not present, proceeding IN PROPER PERSON; Respondent represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through JAY RAMAN, Chief Deputy District Attorney; and having considered the matter, including briefs, transcripts, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

//

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1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **STATEMENT OF THE CASE**

3 On March 14, 2014, JUSTIN ODELL LANGFORD (hereinafter "Petitioner") was
4 charged by way of Information with the following: COUNTS 1, 2, 6, 7, 8, 10, 11, and 12 –
5 Lewdness With A Child Under The Age Of 14 (Category A Felony - NRS 201.230);
6 COUNTS 3, 4, and 5 – Sexual Assault With A Minor Under Fourteen Years Of Age
7 (Category A Felony - NRS 200.364, 200.366); and COUNT 9 – Child Abuse, Neglect, or
8 Endangerment (Category B Felony - NRS 200.508(1)).

9 On March 7, 2016, a jury trial convened and lasted nine days. On March 17, 2016, the
10 jury returned a guilty verdict as to COUNT 2, and not guilty as to all other Counts.

11 On May 10, 2016, Petitioner was sentenced to Life with a possibility of parole after a
12 term of 10 years have been served in the Nevada Department of Corrections ("NDOC").
13 Petitioner received eight hundred forty-one (841) days credit for time served. The Judgment
14 of Conviction was filed on May 17, 2016.

15 On June 1, 2016, Petitioner filed a Notice of Appeal from his conviction. On June 27,
16 2017, the Nevada Supreme Court affirmed the Judgment of Conviction. Remittitur issued
17 July 28, 2017.

18 On July 19, 2017, Petitioner filed a Motion to Modify And/Or Correct Sentence
19 ("Motion to Modify"), Motion for Sentence Reduction ("Motion for Reduction"), Motion for
20 Production of Documents, Papers, Pleadings, and Tangible Property of Petitioner, a Motion
21 for Transcripts at the State's Expense and Memorandum of Point and Authorities in Support
22 of Request for Transcripts at State's Expense, a Motion to Obtain a Copy of a Sealed Record,
23 and a Motion to Withdraw Counsel. The State filed its Response to Petitioner's Motion to
24 Modify and/or Correct Sentence and Motion for Sentence Reduction on August 2, 2017.

25 On August 10, 2017, the Court denied Petitioner's Motion for Sentence Reduction,
26 granted Petitioner's Motion for Production of Documents, Papers, Pleadings, and Tangible
27 Property of Petitioner, denied Petitioner's Motion for Transcripts at State's Expense, granted
28 Petitioner's Motion to withdraw Counsel, granted Petitioner's Motion to Obtain Copy of a

1 Sealed Record, and denied Petitioner's Motion to Modify/Correct Illegal Sentence.

2 On October 10, 2017, Petitioner filed a Motion to Claim and Exercise Rights
3 Guaranteed by the Constitution for the United States of America and Require the Presiding
4 Judge to Rule upon this Motion, and All Public Officers of this Court to Uphold Said Rights
5 and an affidavit in support of that Motion. He also filed a Motion to Reconsider Transcripts
6 at State's Expense, a Motion to Compel Court Orders, and a Motion to Reconsider Motions
7 for Correction of Illegal Sentence and Sentence Reduction. The State responded to the
8 Motion to Reconsider Motions for Correction of Illegal Sentence and Sentence Reduction on
9 October 30, 2017. On October 31, 2017, the Court denied all of Petitioner's Motions, and the
10 order was filed on November 7, 2017.

11 On November 27, 2017, Petitioner filed a Motion for Ancillary Services and a Motion
12 for Transcripts and Other Court Documents and State's Expense. The State filed its
13 Opposition to Petitioner's Motion for Ancillary Services on December 13, 2017. The Court
14 denied Petitioner's Motions on December 19, 2017, and the order was filed on December 29,
15 2017.

16 On December 29, 2017, Petitioner filed a "Notice of Understanding of Intent and
17 Claim of Right as well as a Notice of Denial of Consent." He additionally filed a Petition for
18 Writ of Habeas Corpus (Post-Conviction), Memorandum in Support of Petition, Motion for
19 Appointment of Counsel, and Request for Evidentiary Hearing. The State responded to
20 Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction), Memo in Support, Motion
21 to Appoint Counsel, and Motion for Evidentiary Hearing on February 20, 2018.

22 On March 7, 2018, Petitioner filed a Motion for Summary Judgment on Petition for
23 Writ of Habeas Corpus (Post-Conviction) Due to Respondent's Silence, and on March 15,
24 2018, he filed a Motion to Strike State's Response [to Petitioner's Petition]. In both of those,
25 he alleged that since the State did not respond by February 19, 2018 (45 days from the order
26 to respond), its Response should be disregarded. Pursuant to Eighth Judicial District Court
27 Rule 1.14(b), "If any day on which an act required to be done by any one of these rules falls
28 on a Saturday, Sunday or legal holiday, the act may be performed on the next succeeding

1 judicial day.” February 19, 2018 was a legal holiday; thus, the State properly filed its
2 Response on the next succeeding judicial day, February 20, 2018.

3 On March 15, 2018, Petitioner filed a Motion for Stay of Sentence. The State
4 responded on April 2, 2018. That motion was denied on April 5, 2018. On March 30, 2018,
5 Petitioner filed a Motion to Modify and/or Correct Illegal Sentence and “Judicial Notice of
6 Lack of Jurisdiction” claiming that the District Court lacked subject matter jurisdiction to
7 sentence him.

8 On April 24, 2018, Petitioner filed a Pro Per Petition for Writ of Habeas Corpus. On
9 March 7, 2018, Petitioner filed a Motion for Summary Judgment on Writ of Habeas Corpus
10 (Post-Conviction). On May 1, 2018 the court issued an Order denying Petitioner’s Motion.

11 On June 1, 2018, the court entered and order denying Petitioner’s Motion to Modify
12 and/or Correct Illegal Sentence and “Judicial Notice of Lack of Jurisdiction. The court also
13 entered its Findings of Fact, Conclusions of Law, and Order. On July 2, 2018 this case was
14 reassigned to Department 15.

15 On August 28, 2018 Petitioner filed a Motion to Recuse and Application for Bail. The
16 State filed its Response on October 8, 2018. On August 31, 2018, Petitioner filed a Post-
17 Conviction Petition Requesting a Genetic Marker Analysis. The State filed its Opposition on
18 September 17, 2018. The court denied Petitioner’s Motions on October 9, 2018 and filed its
19 Order on November 6, 2018.

20 On November 19, 2018, Petitioner filed a Petition for Writ of Habeas Corpus. The
21 State filed its Response on January 17, 2019. The court denied Petitioner’s Petition and filed
22 its Findings of Fact, Conclusions of Law and Order on March 11, 2019.

23 On March 28, 2019, Petitioner filed a Motion to Compel Production of Documents
24 Pursuant to 5 U.S.C.S. 552-Freedom of Information Act. The court denied Petitioner’s
25 Motion on April 25, 2019. The court filed its Order on May 17, 2019.

26 On August 28, 2019, Petitioner filed a Motion to Amend Judgment. The court granted
27 the Motion on September 19, 2019, directing the Clerk’s Office to file an Amended
28 Judgment of Conviction with no change to the language, but amending the nature of the

1 closure of the case to reflect that the case was closed after a jury-trial conviction. The
2 Amended Judgment of Conviction was filed on September 23, 2019.

3 On September 25, 2019, Petitioner filed a Motion to Amend Judgment of Conviction
4 to Include All Jail Time Credits. The State filed its Opposition on October 16, 2019. The
5 court granted the Motion on October 17, 2019, finding that Petitioner was entitled to eight
6 hundred fifty-nine (859) days credit for time served. The Second Amended Judgment of
7 Conviction was filed on October 23, 2019.

8 On November 19, 2019, Petitioner filed a Petition for Writ of Habeas Corpus and
9 Motion to Compel Production of Transcripts. Petitioner filed an Addendum to Motion to
10 Compel Production of Transcripts on December 2, 2019.

11 On December 5, 2019, Petitioner filed a Motion to Hold Monique McNeill, Esq.,
12 Attorney of Record in Contempt for Failing to Forward Copy of Case File. On December 6,
13 2019, Petitioner filed a Petition for Writ of Habeas Corpus Ad Testificandum/Alternatively a
14 Telephone Hearing. On December 10, 2019, the court granted the Motion to Compel
15 Production of Transcripts and denied Petitioner's Petition as moot. The Findings of Fact,
16 Conclusions of Law, and Order was filed on December 23, 2019.

17 On January 7, 2020, the court held a hearing on Petitioner's Motion to Hold Monique
18 McNeill, Esq., Attorney of Record in Contempt for Failing to Forward Copy of Case File.
19 The court continued the matter to allow Ms. McNeill to file an Opposition and appear at the
20 hearing. The court issued a Notice of Hearing for the Motion and continued the hearing to
21 January 30, 2020.

22 On January 30, 2020, Ms. McNeill did not appear at the hearing, and the court
23 ordered an Order to Show Cause as to why Ms. McNeill should not be held in contempt for
24 failure to provide Petitioner with the file and for her failure to appear for the hearing.

25 On February 18, 2020, Ms. McNeill appeared at the Show Cause hearing and told the
26 court she had provided Petitioner with his file on four (4) different occasions. The court held
27 that cause had been shown, and Ms. McNeill would not be held in contempt of court. The
28

1 court also denied Petitioner's Motion to Hold Monique McNeill, Esq., Attorney of Record in
2 Contempt for Failing to Forward Copy of Case File.

3 On February 25, 2020, Petitioner filed a Petition for Writ of Habeas Corpus Ad
4 Testificandum. The same day, Petitioner also filed a Motion to Correct Illegal Sentence. The
5 State filed its Opposition to Petitioner's Motion to Correct Illegal Sentence on March 10,
6 2020. On March 16, 2020, Petitioner filed a Memorandum of Law. On March 17, 2020, the
7 district court denied Petitioner's Motion. The Order was filed on March 26, 2020.

8 On March 30, 2020, Petitioner filed a Notice of Appeal, appealing the denial of
9 Petitioner's Motion to Correct Illegal Sentence. On April 24, 2020, the Nevada Supreme
10 Court dismissed Petitioner's appeal because Petitioner had no right to appeal the district
11 court's decision. Remittitur issued on May 21, 2020.

12 On May 29, 2020, Petitioner filed another Motion to Compel Production of Court
13 Documents by Clerk of the Court. The district court denied Petitioner's Motion on July 2,
14 2020.

15 On February 9, 2021, Petitioner filed the instant Petition for Writ of Habeas Corpus
16 (Post-Conviction) (hereinafter "Petition"), Motion for Appointment of Attorney, and Request
17 for Evidentiary Hearing. Petitioner filed an Addendum to Petition for Writ of Habeas Corpus
18 Pursuant to the all Writs Act on February 25, 2021. On March 8, 2021, Petitioner filed an
19 additional Motion for Appointment of Attorney. The same day, Petitioner also filed an Ex
20 Parte Motion to Shorten Time Pursuant to EDCR 5.513 and a Motion to Continue. On March
21 17, 2021, Petitioner filed a Request for Judicial Notice and Judicial Action to be Taken,
22 Motion for an Order to Produce Prisoner, and Motion for Discovery/Motion for Order to
23 Show Cause. The State filed its Response on April 5, 2021. Following a hearing on May 19,
24 2021, this Court finds and concludes as follows:

25 **STATEMENT OF THE FACTS**

26 On June 21, 2014, the minor victim H.H. (DOB: 06/22/2001) disclosed that she had
27 been sexually abused by her stepfather, Petitioner. The abuse began when she was eight (8)
28 years old. While at Petitioner's residence in Searchlight, Nevada, Petitioner would call H.H.

1 into his bedroom and have H.H. take off her clothes. Petitioner would make H.H. lie on the
2 bed and he would rub baby oil on H.H.'s legs. Petitioner then placed his private parts in
3 between her legs and rubbed himself back and forth until he ejaculated. H.H. stated that
4 Petitioner placed a white hand towel on the bed and had the victim lie on the towel during
5 the molestation incidents. He would then use the towel to clean up the baby oil. The abuse
6 continued until the victim reported the abuse in January 2014.

7 H.H. testified of several instances of sexual abuse committed by Petitioner. H.H.
8 described instances including Petitioner sucking on her breasts, putting his penis in her anus,
9 putting his penis into her mouth more than once, touching her genital area with his hands and
10 his penis, and fondling her buttocks and/or anal area with his penis.

11 On January 21, 2014, the Las Vegas Metropolitan Police Department served a search
12 warrant on Petitioner's residence in Searchlight. Officers recovered a white hand towel that
13 matched the description given by H.H. in the exact location H.H. described. The police also
14 recovered a bottle of baby oil found in the same drawer as the hand towel and bedding.
15 These items were tested for DNA. Several stains on the white towel came back consistent
16 with a mixture of two individuals. The partial major DNA profile contributor was consistent
17 with Petitioner. The partial minor DNA profile was consistent with victim H.H. The
18 statistical significance of both partial profiles was at least one in 700 billion.

19 **AUTHORITY**

20 **I. THIS PETITION IS TIME-BARRED AND SUCCESSIVE.**

21 Petitioner's instant Petition for Writ of Habeas Corpus was not filed within one year
22 of the filing of the Judgment of Conviction. Thus, the Petition is time-barred. Pursuant to
23 NRS 34.726(1):

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

28 (a) That the delay is not the fault of the petitioner; and

1
2 (b) That dismissal of the petition as untimely will
unduly prejudice the petitioner.

3
4 The Nevada Supreme Court has held that NRS 34.726 should be construed by its
5 plain meaning. Pellegrini v. State, 117 Nev. 860, 873–74, 34 P.3d 519, 528 (2001). As per
6 the language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run
7 from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is
8 filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998).

9 The one-year time limit for preparing petitions for post-conviction relief under NRS
10 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
11 the Nevada Supreme Court rejected a habeas petition that was filed two (2) days late despite
12 evidence presented by the defendant that he purchased postage through the prison and mailed
13 the petition within the one-year time limit.

14 Additionally, NRS 34.810(2) reads:

15 A second or successive petition *must be dismissed* if the judge or
16 justice determines that it fails to allege new or different grounds for
17 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.

18 (emphasis added).

19 Second or successive petitions are petitions that either fail to allege new or different
20 grounds for relief and the grounds have already been decided on the merits or that allege new
21 or different grounds but a judge or justice finds that the petitioner’s failure to assert those
22 grounds in a prior petition would constitute an abuse of the writ. Second or successive
23 petitions will only be decided on the merits if the petitioner can show good cause and
24 prejudice. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994);
25 see also Hart v. State, 116 Nev. 558, 563–64, 1 P.3d 969, 972 (2000) (holding that “where a
26 defendant previously has sought relief from the judgment, the defendant’s failure to identify
27 all grounds for relief in the first instance should weigh against consideration of the
28 successive motion.”)

1 The Nevada Supreme Court has stated: “Without such limitations on the availability
2 of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse
3 post-conviction remedies. In addition, meritless, successive and untimely petitions clog the
4 court system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d
5 at 950. The Nevada Supreme Court recognizes that “[u]nlike initial petitions which certainly
6 require a careful review of the record, successive petitions may be dismissed based solely on
7 the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In
8 other words, if the claim or allegation was previously available with reasonable diligence, it
9 is an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467,
10 497–98 (1991). Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112
11 P.3d at 1074.

12 In the instant case, Remittitur from Petitioner’s direct appeal issued on July 28, 2017.
13 Petitioner filed the instant Petition on February 9, 2021 – four years since the Remittitur.
14 Thus, the instant Petition is time-barred. This Petition is also successive as Petitioner
15 previously filed multiple post-conviction Petitions with the district court. Absent a showing
16 of good cause to excuse this delay, the instant Petition is dismissed.

17 **II. APPLICATION OF THE PROCEDURAL BARS IS MANDATORY**

18 The Nevada Supreme Court has held that the district court has a *duty* to consider
19 whether a defendant’s post-conviction petition claims are procedurally barred. State v.
20 Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The
21 Riker Court found that “[a]pplication of the statutory procedural default rules to post-
22 conviction habeas petitions is mandatory,” noting:

23 Habeas corpus petitions that are filed many years after conviction
24 are an unreasonable burden on the criminal justice system. The
25 necessity for a workable system dictates that there must exist a time
when a criminal conviction is final.

26 Id. Additionally, the Court noted that procedural bars “cannot be ignored [by the district
27 court] when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme
28

1 Court has granted no discretion to the district courts regarding whether to apply the statutory
2 procedural bars; the rules *must* be applied.

3 This position was reaffirmed in State v. Greene, 129 Nev. 559, 307 P.3d 322 (2013).
4 There the Court ruled that the defendant's petition was "untimely, successive, and an abuse
5 of the writ" and that the defendant failed to show good cause and actual prejudice. Id. at 324,
6 307 P.3d at 326. Accordingly, the Court reversed the district court and ordered the
7 defendant's petition dismissed pursuant to the procedural bars. Id. at 324, 307 P.3d at 322–
8 23. The procedural bars are so fundamental to the post-conviction process that they must be
9 applied by this Court even if not raised by the State. See Riker, 121 Nev. at 231, 112 P.3d at
10 1074. Therefore, application of the procedural bars is mandatory.

11 **III. PETITIONER CANNOT ESTABLISH GOOD CAUSE**

12 A showing of good cause and prejudice may overcome procedural bars. However,
13 Petitioner cannot demonstrate good cause to explain why his Petition was untimely.

14 "To establish good cause, appellants must show that an impediment external to the
15 defense prevented their compliance with the applicable procedural rule. A qualifying
16 impediment might be shown where the factual or legal basis for a claim *was not reasonably*
17 *available at the time of default.*" Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003)
18 (emphasis added). The Court continued, "appellants cannot attempt to manufacture good
19 cause[.]" Id. at 621, 81 P.3d at 526. Rather, to find good cause, there must be a "substantial
20 reason; one that affords a legal excuse." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503,
21 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Any
22 delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

23 A petitioner raising good cause to excuse procedural bars must do so within a
24 reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34
25 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see
26 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably
27 available to the petitioner during the statutory time period did not constitute good cause to
28 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good

1 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S.
2 446, 453 120 S. Ct. 1587, 1592 (2000).

3 Further, to establish prejudice, the defendant must show “not merely that the errors
4 of [the proceedings] created possibility of prejudice, but that they worked to his actual and
5 substantial disadvantage, in affecting the state proceedings with error of constitutional
6 dimensions.” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting
7 United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)).

8 In the instant case, Petitioner cannot demonstrate good cause to overcome the
9 mandatory procedural bars because he cannot demonstrate that this claim was not reasonably
10 available at the time of default. Clem, 119 Nev. at 621, 81 P.3d at 525. Petitioner fails to
11 address good cause and does not explain why he is now raising this issue four years later.
12 Petitioner fails to state any claims in his Petition and simply makes incoherent and vague
13 arguments about treason and the Constitution. Because Petitioner cannot establish good
14 cause to explain why his Petition was untimely, the Petition is denied as time barred.

15 **IV. PETITIONER IS NOT ENTITLED TO POST-CONVICTION COUNSEL**

16 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in
17 post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546 (1991).
18 In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada Supreme
19 Court similarly observed that “[t]he Nevada Constitution ... does not guarantee a right to
20 counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right to
21 counsel provision as being coextensive with the Sixth Amendment to the United States
22 Constitution.” McKague specifically held that with the exception of NRS 34.820(1)(a)
23 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
24 “[a]ny constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at
25 164, 912 P.2d at 258.

26 The Nevada Legislature has, however, given courts the discretion to appoint post-
27 conviction counsel so long as “the court is satisfied that the allegation of indigency is true
28 and the petition is not dismissed summarily.” NRS 34.750. NRS 34.750(1) reads:

1 [a] petition may allege that the Defendant is unable to pay the costs
2 of the proceedings or employ counsel. If the court is satisfied that the
3 allegation of indigency is true and the petition *is not dismissed*
4 *summarily*, the court may appoint counsel at the time the court
5 orders the filing of an answer and a return. In making its
6 determination, the court may consider whether:

7 (a) The issues are difficult;

8 (b) The Defendant is unable to comprehend the proceedings;

9 or

10 (c) Counsel is necessary to proceed with discovery.

11 (emphasis added). Accordingly, under NRS 34.750, it is clear that the Court has discretion in
12 determining whether to appoint counsel.

13 More recently, the Nevada Supreme Court examined whether a district court
14 appropriately denied a defendant's request for appointment of counsel based upon the factors
15 listed in NRS 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In
16 Renteria-Novoa, the petitioner had been serving a prison term of eighty-five (85) years to
17 life. Id. at 75, 391 P.3d at 760. After his judgment of conviction was affirmed on direct
18 appeal, the defendant filed a pro se postconviction petition for writ of habeas corpus and
19 requested counsel be appointed. Id. The district court ultimately denied the petitioner's
20 petition and his appointment of counsel request. Id. In reviewing the district court's decision,
21 the Nevada Supreme Court examined the statutory factors listed under NRS 34.750 and
22 concluded that the district court's decision should be reversed and remanded. Id. The Court
23 explained that the petitioner was indigent, his petition could not be summarily dismissed, and
24 he had in fact satisfied the statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor,
25 the Court concluded that because petitioner had represented he had issues with understanding
26 the English language which was corroborated by his use of an interpreter at his trial, that was
27 enough to indicate that the petitioner could not comprehend the proceedings. Id. Moreover,
28 the petitioner had demonstrated that the consequences he faced—a minimum eighty-five (85)
year sentence—were severe and his petition may have been the only vehicle for which he
could raise his claims. Id. at 76-77, 391 P.3d at 761-62. Finally, his ineffective assistance of

1 counsel claims may have required additional discovery and investigation beyond the record.
2 Id.

3 Pursuant to NRS 34.750, Petitioner has not demonstrated that counsel should be
4 appointed. Petitioner's request is suitable only for summary denial as he has failed to provide
5 any specific facts to support his bare and naked request. Hargrove, at 502, 686 P.2d at 225.
6 Similarly, unlike in Renteria-Novoa, Petitioner's Petition is summarily dismissed for several
7 reasons, including, but not limited to, his Petition is time-barred, successive, and his claim is
8 waived as meritless.

9 Petitioner fails to address what he specifically needs counsel for in his untimely post-
10 conviction Petition. As discussed supra, Section IV., aside from being barred, Petitioner's
11 allegations are bare and naked allegation without support from the record and have already
12 been denied multiple times by the district courts. Therefore, this Court declines to appoint
13 counsel because nothing raised in his post-conviction Petition warrants appointing an
14 attorney and there is no constitutional right to counsel in post-conviction proceedings.
15 Coleman, 501 U.S. 722, 111 S. Ct. 2546.

16 **VI. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

17 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It
18 reads:

19 1. The judge or justice, upon review of the return, answer and all
20 supporting documents which are filed, shall determine whether an
21 evidentiary hearing is required. A petitioner must not be discharged
or committed to the custody of a person other than the respondent
unless an evidentiary hearing is held.

22 2. If the judge or justice determines that the petitioner is not entitled
23 to relief and an evidentiary hearing is not required, he shall dismiss
the petition without a hearing.

24 3. If the judge or justice determines that an evidentiary hearing is
25 required, he shall grant the writ and shall set a date for the hearing.

26 The Nevada Supreme Court has held that if a petition can be resolved without
27 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
28 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A

1 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual
2 allegations, which, if true, would entitle him to relief unless the factual allegations are
3 repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove, 100
4 Nev. at 503, 686 P.2d at 225 (holding that “[a] defendant seeking post-conviction relief is not
5 entitled to an evidentiary hearing on factual allegations belied or repelled by the record”). “A
6 claim is ‘belied’ when it is contradicted or proven to be false by the record as it existed at the
7 time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is improper to
8 hold an evidentiary hearing simply to make a complete record. See State v. Eighth Judicial
9 Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court considered
10 itself the ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as complete a
11 record as possible.’ This is an incorrect basis for an evidentiary hearing.”).

12 Further, the United States Supreme Court has held that an evidentiary hearing is not
13 required simply because counsel’s actions are challenged as being unreasonable strategic
14 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not
15 indulge post hoc rationalization for counsel’s decision making that contradicts the available
16 evidence of counsel’s actions, neither may they insist counsel confirm every aspect of the
17 strategic basis for his or her actions. Id. There is a “strong presumption” that counsel’s
18 attention to certain issues to the exclusion of others reflects trial tactics rather than “sheer
19 neglect.” Id. (citing Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls
20 for an inquiry in the *objective* reasonableness of counsel’s performance, not counsel’s
21 *subjective* state of mind. 466 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994) (emphasis added).

22 Here, there is no reason to expand the record because Petitioner fails to present
23 specific factual allegations that would entitle him to relief. Marshall, 110 Nev. at 1331, 885
24 P.2d at 605. There is nothing else for an evidentiary hearing to determine. Petitioner’s claims
25 are barred and bare and naked. There is no need to expand the record because Petitioner’s
26 claims are meritless and can be disposed of on the existing record. Therefore, an evidentiary
27 hearing is not warranted.

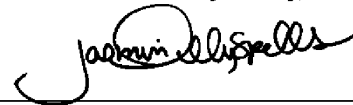
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ORDER

THEREFORE, **IT IS HEREBY ORDERED** that the Petition for Post-Conviction Relief shall be, and is DENIED.

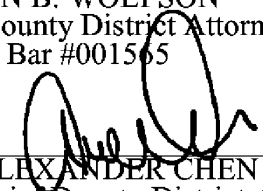
Dated this 22nd day of July, 2021



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

C0A 3D8 E20E 1DC2
Jasmin Lilly-Spells
District Court Judge

BY



ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #010539

hjc/SVU

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Justin Langford, Plaintiff(s) | CASE NO: A-18-784811-W
7 vs. | DEPT. NO. Department 23
8 Warden Renee Baker,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

16 Service Date: 7/22/2021

17 maria case-bateson maria.case-bateson@clarkcountyda.com

18 If indicated below, a copy of the above mentioned filings were also served by mail
19 via United States Postal Service, postage prepaid, to the parties listed below at their last
20 known addresses on 7/23/2021

21 Justin Langford #1159546
22 1200 Prison Road
23 Lovelock, NV, 89419

24 Steven Wolfson Juvenile Division - District Attorney's Office
25 601 N Pecos Road
26 Las Vegas, NV, 89101
27
28



1 NEFF

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 JUSTIN LANGFORD,

6 Petitioner,

Case No: A-18-784811-W

Dept No: XXIII

7 vs.

8 WARDEN RENEE BAKER; ET.AL.,

9 Respondent,

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

11 PLEASE TAKE NOTICE that on July 22, 2021, the court entered a decision or order in this matter, a true
12 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 mailed
to you. This notice was mailed on July 26, 2021.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

18
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 26 day of July 2021, I served a copy of this Notice of Entry on the following:

21 ☒ By e-mail:

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

23
24 ☒ The United States mail addressed as follows:

25 Justin Langford # 1159546
1200 Prison Rd.
26 Lovelock, NV 89419

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #010539
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Respondent

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JUSTIN LANGFORD,
#2748452,

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: **A-18-784811-W**
C-14-296556-1

DEPT NO: **XXIII**

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: **MAY 19, 2021**
TIME OF HEARING: **11:00 AM**

THIS CAUSE having presented before the Honorable JASMIN LILLY-SPELLS, District Judge, on the 19th day of May, 2021; Petitioner not present, proceeding IN PROPER PERSON; Respondent represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through JAY RAMAN, Chief Deputy District Attorney; and having considered the matter, including briefs, transcripts, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

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1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **STATEMENT OF THE CASE**

3 On March 14, 2014, JUSTIN ODELL LANGFORD (hereinafter “Petitioner”) was
4 charged by way of Information with the following: COUNTS 1, 2, 6, 7, 8, 10, 11, and 12 –
5 Lewdness With A Child Under The Age Of 14 (Category A Felony - NRS 201.230);
6 COUNTS 3, 4, and 5 – Sexual Assault With A Minor Under Fourteen Years Of Age
7 (Category A Felony - NRS 200.364, 200.366); and COUNT 9 – Child Abuse, Neglect, or
8 Endangerment (Category B Felony - NRS 200.508(1)).

9 On March 7, 2016, a jury trial convened and lasted nine days. On March 17, 2016, the
10 jury returned a guilty verdict as to COUNT 2, and not guilty as to all other Counts.

11 On May 10, 2016, Petitioner was sentenced to Life with a possibility of parole after a
12 term of 10 years have been served in the Nevada Department of Corrections (“NDOC”).
13 Petitioner received eight hundred forty-one (841) days credit for time served. The Judgment
14 of Conviction was filed on May 17, 2016.

15 On June 1, 2016, Petitioner filed a Notice of Appeal from his conviction. On June 27,
16 2017, the Nevada Supreme Court affirmed the Judgment of Conviction. Remittitur issued
17 July 28, 2017.

18 On July 19, 2017, Petitioner filed a Motion to Modify And/Or Correct Sentence
19 (“Motion to Modify”), Motion for Sentence Reduction (“Motion for Reduction”), Motion for
20 Production of Documents, Papers, Pleadings, and Tangible Property of Petitioner, a Motion
21 for Transcripts at the State’s Expense and Memorandum of Point and Authorities in Support
22 of Request for Transcripts at State’s Expense, a Motion to Obtain a Copy of a Sealed Record,
23 and a Motion to Withdraw Counsel. The State filed its Response to Petitioner’s Motion to
24 Modify and/or Correct Sentence and Motion for Sentence Reduction on August 2, 2017.

25 On August 10, 2017, the Court denied Petitioner’s Motion for Sentence Reduction,
26 granted Petitioner’s Motion for Production of Documents, Papers, Pleadings, and Tangible
27 Property of Petitioner, denied Petitioner’s Motion for Transcripts at State’s Expense, granted
28 Petitioner’s Motion to withdraw Counsel, granted Petitioner’s Motion to Obtain Copy of a

1 Sealed Record, and denied Petitioner's Motion to Modify/Correct Illegal Sentence.

2 On October 10, 2017, Petitioner filed a Motion to Claim and Exercise Rights
3 Guaranteed by the Constitution for the United States of America and Require the Presiding
4 Judge to Rule upon this Motion, and All Public Officers of this Court to Uphold Said Rights
5 and an affidavit in support of that Motion. He also filed a Motion to Reconsider Transcripts
6 at State's Expense, a Motion to Compel Court Orders, and a Motion to Reconsider Motions
7 for Correction of Illegal Sentence and Sentence Reduction. The State responded to the
8 Motion to Reconsider Motions for Correction of Illegal Sentence and Sentence Reduction on
9 October 30, 2017. On October 31, 2017, the Court denied all of Petitioner's Motions, and the
10 order was filed on November 7, 2017.

11 On November 27, 2017, Petitioner filed a Motion for Ancillary Services and a Motion
12 for Transcripts and Other Court Documents and State's Expense. The State filed its
13 Opposition to Petitioner's Motion for Ancillary Services on December 13, 2017. The Court
14 denied Petitioner's Motions on December 19, 2017, and the order was filed on December 29,
15 2017.

16 On December 29, 2017, Petitioner filed a "Notice of Understanding of Intent and
17 Claim of Right as well as a Notice of Denial of Consent." He additionally filed a Petition for
18 Writ of Habeas Corpus (Post-Conviction), Memorandum in Support of Petition, Motion for
19 Appointment of Counsel, and Request for Evidentiary Hearing. The State responded to
20 Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction), Memo in Support, Motion
21 to Appoint Counsel, and Motion for Evidentiary Hearing on February 20, 2018.

22 On March 7, 2018, Petitioner filed a Motion for Summary Judgment on Petition for
23 Writ of Habeas Corpus (Post-Conviction) Due to Respondent's Silence, and on March 15,
24 2018, he filed a Motion to Strike State's Response [to Petitioner's Petition]. In both of those,
25 he alleged that since the State did not respond by February 19, 2018 (45 days from the order
26 to respond), its Response should be disregarded. Pursuant to Eighth Judicial District Court
27 Rule 1.14(b), "If any day on which an act required to be done by any one of these rules falls
28 on a Saturday, Sunday or legal holiday, the act may be performed on the next succeeding

1 judicial day.” February 19, 2018 was a legal holiday; thus, the State properly filed its
2 Response on the next succeeding judicial day, February 20, 2018.

3 On March 15, 2018, Petitioner filed a Motion for Stay of Sentence. The State
4 responded on April 2, 2018. That motion was denied on April 5, 2018. On March 30, 2018,
5 Petitioner filed a Motion to Modify and/or Correct Illegal Sentence and “Judicial Notice of
6 Lack of Jurisdiction” claiming that the District Court lacked subject matter jurisdiction to
7 sentence him.

8 On April 24, 2018, Petitioner filed a Pro Per Petition for Writ of Habeas Corpus. On
9 March 7, 2018, Petitioner filed a Motion for Summary Judgment on Writ of Habeas Corpus
10 (Post-Conviction). On May 1, 2018 the court issued an Order denying Petitioner’s Motion.

11 On June 1, 2018, the court entered and order denying Petitioner’s Motion to Modify
12 and/or Correct Illegal Sentence and “Judicial Notice of Lack of Jurisdiction. The court also
13 entered its Findings of Fact, Conclusions of Law, and Order. On July 2, 2018 this case was
14 reassigned to Department 15.

15 On August 28, 2018 Petitioner filed a Motion to Recuse and Application for Bail. The
16 State filed its Response on October 8, 2018. On August 31, 2018, Petitioner filed a Post-
17 Conviction Petition Requesting a Genetic Marker Analysis. The State filed its Opposition on
18 September 17, 2018. The court denied Petitioner’s Motions on October 9, 2018 and filed its
19 Order on November 6, 2018.

20 On November 19, 2018, Petitioner filed a Petition for Writ of Habeas Corpus. The
21 State filed its Response on January 17, 2019. The court denied Petitioner’s Petition and filed
22 its Findings of Fact, Conclusions of Law and Order on March 11, 2019.

23 On March 28, 2019, Petitioner filed a Motion to Compel Production of Documents
24 Pursuant to 5 U.S.C.S. 552-Freedom of Information Act. The court denied Petitioner’s
25 Motion on April 25, 2019. The court filed its Order on May 17, 2019.

26 On August 28, 2019, Petitioner filed a Motion to Amend Judgment. The court granted
27 the Motion on September 19, 2019, directing the Clerk’s Office to file an Amended
28 Judgment of Conviction with no change to the language, but amending the nature of the

1 closure of the case to reflect that the case was closed after a jury-trial conviction. The
2 Amended Judgment of Conviction was filed on September 23, 2019.

3 On September 25, 2019, Petitioner filed a Motion to Amend Judgment of Conviction
4 to Include All Jail Time Credits. The State filed its Opposition on October 16, 2019. The
5 court granted the Motion on October 17, 2019, finding that Petitioner was entitled to eight
6 hundred fifty-nine (859) days credit for time served. The Second Amended Judgment of
7 Conviction was filed on October 23, 2019.

8 On November 19, 2019, Petitioner filed a Petition for Writ of Habeas Corpus and
9 Motion to Compel Production of Transcripts. Petitioner filed an Addendum to Motion to
10 Compel Production of Transcripts on December 2, 2019.

11 On December 5, 2019, Petitioner filed a Motion to Hold Monique McNeill, Esq.,
12 Attorney of Record in Contempt for Failing to Forward Copy of Case File. On December 6,
13 2019, Petitioner filed a Petition for Writ of Habeas Corpus Ad Testificandum/Alternatively a
14 Telephone Hearing. On December 10, 2019, the court granted the Motion to Compel
15 Production of Transcripts and denied Petitioner's Petition as moot. The Findings of Fact,
16 Conclusions of Law, and Order was filed on December 23, 2019.

17 On January 7, 2020, the court held a hearing on Petitioner's Motion to Hold Monique
18 McNeill, Esq., Attorney of Record in Contempt for Failing to Forward Copy of Case File.
19 The court continued the matter to allow Ms. McNeill to file an Opposition and appear at the
20 hearing. The court issued a Notice of Hearing for the Motion and continued the hearing to
21 January 30, 2020.

22 On January 30, 2020, Ms. McNeill did not appear at the hearing, and the court
23 ordered an Order to Show Cause as to why Ms. McNeill should not be held in contempt for
24 failure to provide Petitioner with the file and for her failure to appear for the hearing.

25 On February 18, 2020, Ms. McNeill appeared at the Show Cause hearing and told the
26 court she had provided Petitioner with his file on four (4) different occasions. The court held
27 that cause had been shown, and Ms. McNeill would not be held in contempt of court. The
28

1 court also denied Petitioner's Motion to Hold Monique McNeill, Esq., Attorney of Record in
2 Contempt for Failing to Forward Copy of Case File.

3 On February 25, 2020, Petitioner filed a Petition for Writ of Habeas Corpus Ad
4 Testificandum. The same day, Petitioner also filed a Motion to Correct Illegal Sentence. The
5 State filed its Opposition to Petitioner's Motion to Correct Illegal Sentence on March 10,
6 2020. On March 16, 2020, Petitioner filed a Memorandum of Law. On March 17, 2020, the
7 district court denied Petitioner's Motion. The Order was filed on March 26, 2020.

8 On March 30, 2020, Petitioner filed a Notice of Appeal, appealing the denial of
9 Petitioner's Motion to Correct Illegal Sentence. On April 24, 2020, the Nevada Supreme
10 Court dismissed Petitioner's appeal because Petitioner had no right to appeal the district
11 court's decision. Remittitur issued on May 21, 2020.

12 On May 29, 2020, Petitioner filed another Motion to Compel Production of Court
13 Documents by Clerk of the Court. The district court denied Petitioner's Motion on July 2,
14 2020.

15 On February 9, 2021, Petitioner filed the instant Petition for Writ of Habeas Corpus
16 (Post-Conviction) (hereinafter "Petition"), Motion for Appointment of Attorney, and Request
17 for Evidentiary Hearing. Petitioner filed an Addendum to Petition for Writ of Habeas Corpus
18 Pursuant to the all Writs Act on February 25, 2021. On March 8, 2021, Petitioner filed an
19 additional Motion for Appointment of Attorney. The same day, Petitioner also filed an Ex
20 Parte Motion to Shorten Time Pursuant to EDCR 5.513 and a Motion to Continue. On March
21 17, 2021, Petitioner filed a Request for Judicial Notice and Judicial Action to be Taken,
22 Motion for an Order to Produce Prisoner, and Motion for Discovery/Motion for Order to
23 Show Cause. The State filed its Response on April 5, 2021. Following a hearing on May 19,
24 2021, this Court finds and concludes as follows:

25 **STATEMENT OF THE FACTS**

26 On June 21, 2014, the minor victim H.H. (DOB: 06/22/2001) disclosed that she had
27 been sexually abused by her stepfather, Petitioner. The abuse began when she was eight (8)
28 years old. While at Petitioner's residence in Searchlight, Nevada, Petitioner would call H.H.

1 into his bedroom and have H.H. take off her clothes. Petitioner would make H.H. lie on the
2 bed and he would rub baby oil on H.H.'s legs. Petitioner then placed his private parts in
3 between her legs and rubbed himself back and forth until he ejaculated. H.H. stated that
4 Petitioner placed a white hand towel on the bed and had the victim lie on the towel during
5 the molestation incidents. He would then use the towel to clean up the baby oil. The abuse
6 continued until the victim reported the abuse in January 2014.

7 H.H. testified of several instances of sexual abuse committed by Petitioner. H.H.
8 described instances including Petitioner sucking on her breasts, putting his penis in her anus,
9 putting his penis into her mouth more than once, touching her genital area with his hands and
10 his penis, and fondling her buttocks and/or anal area with his penis.

11 On January 21, 2014, the Las Vegas Metropolitan Police Department served a search
12 warrant on Petitioner's residence in Searchlight. Officers recovered a white hand towel that
13 matched the description given by H.H. in the exact location H.H. described. The police also
14 recovered a bottle of baby oil found in the same drawer as the hand towel and bedding.
15 These items were tested for DNA. Several stains on the white towel came back consistent
16 with a mixture of two individuals. The partial major DNA profile contributor was consistent
17 with Petitioner. The partial minor DNA profile was consistent with victim H.H. The
18 statistical significance of both partial profiles was at least one in 700 billion.

19 AUTHORITY

20 **I. THIS PETITION IS TIME-BARRED AND SUCCESSIVE.**

21 Petitioner's instant Petition for Writ of Habeas Corpus was not filed within one year
22 of the filing of the Judgment of Conviction. Thus, the Petition is time-barred. Pursuant to
23 NRS 34.726(1):

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

28 (a) That the delay is not the fault of the petitioner; and

1
2 (b) That dismissal of the petition as untimely will
unduly prejudice the petitioner.

3
4 The Nevada Supreme Court has held that NRS 34.726 should be construed by its
5 plain meaning. Pellegrini v. State, 117 Nev. 860, 873–74, 34 P.3d 519, 528 (2001). As per
6 the language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run
7 from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is
8 filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998).

9 The one-year time limit for preparing petitions for post-conviction relief under NRS
10 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
11 the Nevada Supreme Court rejected a habeas petition that was filed two (2) days late despite
12 evidence presented by the defendant that he purchased postage through the prison and mailed
13 the petition within the one-year time limit.

14 Additionally, NRS 34.810(2) reads:

15 A second or successive petition *must be dismissed* if the judge or
16 justice determines that it fails to allege new or different grounds for
17 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.

18 (emphasis added).

19 Second or successive petitions are petitions that either fail to allege new or different
20 grounds for relief and the grounds have already been decided on the merits or that allege new
21 or different grounds but a judge or justice finds that the petitioner’s failure to assert those
22 grounds in a prior petition would constitute an abuse of the writ. Second or successive
23 petitions will only be decided on the merits if the petitioner can show good cause and
24 prejudice. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994);
25 see also Hart v. State, 116 Nev. 558, 563–64, 1 P.3d 969, 972 (2000) (holding that “where a
26 defendant previously has sought relief from the judgment, the defendant’s failure to identify
27 all grounds for relief in the first instance should weigh against consideration of the
28 successive motion.”)

1 The Nevada Supreme Court has stated: “Without such limitations on the availability
2 of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse
3 post-conviction remedies. In addition, meritless, successive and untimely petitions clog the
4 court system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d
5 at 950. The Nevada Supreme Court recognizes that “[u]nlike initial petitions which certainly
6 require a careful review of the record, successive petitions may be dismissed based solely on
7 the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In
8 other words, if the claim or allegation was previously available with reasonable diligence, it
9 is an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467,
10 497–98 (1991). Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112
11 P.3d at 1074.

12 In the instant case, Remittitur from Petitioner’s direct appeal issued on July 28, 2017.
13 Petitioner filed the instant Petition on February 9, 2021 – four years since the Remittitur.
14 Thus, the instant Petition is time-barred. This Petition is also successive as Petitioner
15 previously filed multiple post-conviction Petitions with the district court. Absent a showing
16 of good cause to excuse this delay, the instant Petition is dismissed.

17 **II. APPLICATION OF THE PROCEDURAL BARS IS MANDATORY**

18 The Nevada Supreme Court has held that the district court has a *duty* to consider
19 whether a defendant’s post-conviction petition claims are procedurally barred. State v.
20 Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The
21 Riker Court found that “[a]pplication of the statutory procedural default rules to post-
22 conviction habeas petitions is mandatory,” noting:

23 Habeas corpus petitions that are filed many years after conviction
24 are an unreasonable burden on the criminal justice system. The
25 necessity for a workable system dictates that there must exist a time
when a criminal conviction is final.

26 Id. Additionally, the Court noted that procedural bars “cannot be ignored [by the district
27 court] when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme
28

1 Court has granted no discretion to the district courts regarding whether to apply the statutory
2 procedural bars; the rules *must* be applied.

3 This position was reaffirmed in State v. Greene, 129 Nev. 559, 307 P.3d 322 (2013).
4 There the Court ruled that the defendant's petition was "untimely, successive, and an abuse
5 of the writ" and that the defendant failed to show good cause and actual prejudice. Id. at 324,
6 307 P.3d at 326. Accordingly, the Court reversed the district court and ordered the
7 defendant's petition dismissed pursuant to the procedural bars. Id. at 324, 307 P.3d at 322–
8 23. The procedural bars are so fundamental to the post-conviction process that they must be
9 applied by this Court even if not raised by the State. See Riker, 121 Nev. at 231, 112 P.3d at
10 1074. Therefore, application of the procedural bars is mandatory.

11 **III. PETITIONER CANNOT ESTABLISH GOOD CAUSE**

12 A showing of good cause and prejudice may overcome procedural bars. However,
13 Petitioner cannot demonstrate good cause to explain why his Petition was untimely.

14 "To establish good cause, appellants must show that an impediment external to the
15 defense prevented their compliance with the applicable procedural rule. A qualifying
16 impediment might be shown where the factual or legal basis for a claim *was not reasonably*
17 *available at the time of default.*" Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003)
18 (emphasis added). The Court continued, "appellants cannot attempt to manufacture good
19 cause[.]" Id. at 621, 81 P.3d at 526. Rather, to find good cause, there must be a "substantial
20 reason; one that affords a legal excuse." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503,
21 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Any
22 delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

23 A petitioner raising good cause to excuse procedural bars must do so within a
24 reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34
25 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see
26 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably
27 available to the petitioner during the statutory time period did not constitute good cause to
28 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good

1 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S.
2 446, 453 120 S. Ct. 1587, 1592 (2000).

3 Further, to establish prejudice, the defendant must show “not merely that the errors
4 of [the proceedings] created possibility of prejudice, but that they worked to his actual and
5 substantial disadvantage, in affecting the state proceedings with error of constitutional
6 dimensions.” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting
7 United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)).

8 In the instant case, Petitioner cannot demonstrate good cause to overcome the
9 mandatory procedural bars because he cannot demonstrate that this claim was not reasonably
10 available at the time of default. Clem, 119 Nev. at 621, 81 P.3d at 525. Petitioner fails to
11 address good cause and does not explain why he is now raising this issue four years later.
12 Petitioner fails to state any claims in his Petition and simply makes incoherent and vague
13 arguments about treason and the Constitution. Because Petitioner cannot establish good
14 cause to explain why his Petition was untimely, the Petition is denied as time barred.

15 **IV. PETITIONER IS NOT ENTITLED TO POST-CONVICTION COUNSEL**

16 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in
17 post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546 (1991).
18 In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada Supreme
19 Court similarly observed that “[t]he Nevada Constitution ... does not guarantee a right to
20 counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right to
21 counsel provision as being coextensive with the Sixth Amendment to the United States
22 Constitution.” McKague specifically held that with the exception of NRS 34.820(1)(a)
23 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
24 “[a]ny constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at
25 164, 912 P.2d at 258.

26 The Nevada Legislature has, however, given courts the discretion to appoint post-
27 conviction counsel so long as “the court is satisfied that the allegation of indigency is true
28 and the petition is not dismissed summarily.” NRS 34.750. NRS 34.750(1) reads:

1 [a] petition may allege that the Defendant is unable to pay the costs
2 of the proceedings or employ counsel. If the court is satisfied that the
3 allegation of indigency is true and the petition *is not dismissed*
4 *summarily*, the court may appoint counsel at the time the court
5 orders the filing of an answer and a return. In making its
6 determination, the court may consider whether:

7 (a) The issues are difficult;

8 (b) The Defendant is unable to comprehend the proceedings;

9 or

10 (c) Counsel is necessary to proceed with discovery.

11 (emphasis added). Accordingly, under NRS 34.750, it is clear that the Court has discretion in
12 determining whether to appoint counsel.

13 More recently, the Nevada Supreme Court examined whether a district court
14 appropriately denied a defendant's request for appointment of counsel based upon the factors
15 listed in NRS 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In
16 Renteria-Novoa, the petitioner had been serving a prison term of eighty-five (85) years to
17 life. Id. at 75, 391 P.3d at 760. After his judgment of conviction was affirmed on direct
18 appeal, the defendant filed a pro se postconviction petition for writ of habeas corpus and
19 requested counsel be appointed. Id. The district court ultimately denied the petitioner's
20 petition and his appointment of counsel request. Id. In reviewing the district court's decision,
21 the Nevada Supreme Court examined the statutory factors listed under NRS 34.750 and
22 concluded that the district court's decision should be reversed and remanded. Id. The Court
23 explained that the petitioner was indigent, his petition could not be summarily dismissed, and
24 he had in fact satisfied the statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor,
25 the Court concluded that because petitioner had represented he had issues with understanding
26 the English language which was corroborated by his use of an interpreter at his trial, that was
27 enough to indicate that the petitioner could not comprehend the proceedings. Id. Moreover,
28 the petitioner had demonstrated that the consequences he faced—a minimum eighty-five (85)
year sentence—were severe and his petition may have been the only vehicle for which he
could raise his claims. Id. at 76-77, 391 P.3d at 761-62. Finally, his ineffective assistance of

1 counsel claims may have required additional discovery and investigation beyond the record.
2 Id.

3 Pursuant to NRS 34.750, Petitioner has not demonstrated that counsel should be
4 appointed. Petitioner's request is suitable only for summary denial as he has failed to provide
5 any specific facts to support his bare and naked request. Hargrove, at 502, 686 P.2d at 225.
6 Similarly, unlike in Renteria-Novoa, Petitioner's Petition is summarily dismissed for several
7 reasons, including, but not limited to, his Petition is time-barred, successive, and his claim is
8 waived as meritless.

9 Petitioner fails to address what he specifically needs counsel for in his untimely post-
10 conviction Petition. As discussed supra, Section IV., aside from being barred, Petitioner's
11 allegations are bare and naked allegation without support from the record and have already
12 been denied multiple times by the district courts. Therefore, this Court declines to appoint
13 counsel because nothing raised in his post-conviction Petition warrants appointing an
14 attorney and there is no constitutional right to counsel in post-conviction proceedings.
15 Coleman, 501 U.S. 722, 111 S. Ct. 2546.

16 **VI. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

17 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It
18 reads:

19 1. The judge or justice, upon review of the return, answer and all
20 supporting documents which are filed, shall determine whether an
21 evidentiary hearing is required. A petitioner must not be discharged
or committed to the custody of a person other than the respondent
unless an evidentiary hearing is held.

22 2. If the judge or justice determines that the petitioner is not entitled
23 to relief and an evidentiary hearing is not required, he shall dismiss
the petition without a hearing.

24 3. If the judge or justice determines that an evidentiary hearing is
25 required, he shall grant the writ and shall set a date for the hearing.

26 The Nevada Supreme Court has held that if a petition can be resolved without
27 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
28 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A

1 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual
2 allegations, which, if true, would entitle him to relief unless the factual allegations are
3 repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove, 100
4 Nev. at 503, 686 P.2d at 225 (holding that “[a] defendant seeking post-conviction relief is not
5 entitled to an evidentiary hearing on factual allegations belied or repelled by the record”). “A
6 claim is ‘belied’ when it is contradicted or proven to be false by the record as it existed at the
7 time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is improper to
8 hold an evidentiary hearing simply to make a complete record. See State v. Eighth Judicial
9 Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court considered
10 itself the ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as complete a
11 record as possible.’ This is an incorrect basis for an evidentiary hearing.”).

12 Further, the United States Supreme Court has held that an evidentiary hearing is not
13 required simply because counsel’s actions are challenged as being unreasonable strategic
14 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not
15 indulge post hoc rationalization for counsel’s decision making that contradicts the available
16 evidence of counsel’s actions, neither may they insist counsel confirm every aspect of the
17 strategic basis for his or her actions. Id. There is a “strong presumption” that counsel’s
18 attention to certain issues to the exclusion of others reflects trial tactics rather than “sheer
19 neglect.” Id. (citing Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls
20 for an inquiry in the *objective* reasonableness of counsel’s performance, not counsel’s
21 *subjective* state of mind. 466 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994) (emphasis added).

22 Here, there is no reason to expand the record because Petitioner fails to present
23 specific factual allegations that would entitle him to relief. Marshall, 110 Nev. at 1331, 885
24 P.2d at 605. There is nothing else for an evidentiary hearing to determine. Petitioner’s claims
25 are barred and bare and naked. There is no need to expand the record because Petitioner’s
26 claims are meritless and can be disposed of on the existing record. Therefore, an evidentiary
27 hearing is not warranted.

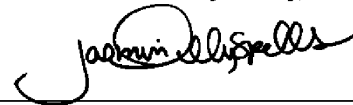
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ORDER

THEREFORE, **IT IS HEREBY ORDERED** that the Petition for Post-Conviction Relief shall be, and is DENIED.

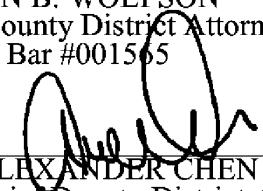
Dated this 22nd day of July, 2021



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

C0A 3D8 E20E 1DC2
Jasmin Lilly-Spells
District Court Judge

BY



ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #010539

hjc/SVU

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Justin Langford, Plaintiff(s) CASE NO: A-18-784811-W
7 vs. DEPT. NO. Department 23
8 Warden Renee Baker,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

16 Service Date: 7/22/2021

17 maria case-bateson maria.case-bateson@clarkcountyda.com

18 If indicated below, a copy of the above mentioned filings were also served by mail
19 via United States Postal Service, postage prepaid, to the parties listed below at their last
20 known addresses on 7/23/2021

21 Justin Langford #1159546
22 1200 Prison Road
23 Lovelock, NV, 89419

24 Steven Wolfson Juvenile Division - District Attorney's Office
25 601 N Pecos Road
26 Las Vegas, NV, 89101
27
28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

January 28, 2019

A-18-784811-W	Justin Langford, Plaintiff(s)
	vs.
	Warden Renee Baker, Defendant(s)

January 28, 2019	9:00 AM	Petition for Writ of Habeas Corpus
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HEARD BY: Hardy, Joe

COURTROOM: RJC Courtroom 11D

COURT CLERK: Kristin Duncan
Dara Yorke

RECORDER: Matt Yarbrough

REPORTER:

PARTIES

PRESENT:	Villani, Jacob J.	Attorney
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JOURNAL ENTRIES

- Court indicated it had reviewed Plaintiff's Petition for Writ Of Habeas Corpus, as well as the State's Response. Finding that oral argument was not necessary due to its review of the pleadings, COURT ORDERED, Petition DENIED WITHOUT PREJUDICE for all of the reasons set forth in the State s response. Court indicated the State was to prepare the order, including the reasons from the response and submit it directly to the Court.

CLERK'S NOTE: A copy of this minute order was mailed to the Petitioner Justin Langford (1159546) Lovelock Correctional Center 1200 Prison Road Lovelock, NV 89419.// 1-30-19/ dy

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

February 25, 2019

A-18-784811-W	Justin Langford, Plaintiff(s)
	vs.
	Warden Renee Baker, Defendant(s)

February 25, 2019 9:00 AM Motion to Strike

HEARD BY: Hardy, Joe

COURTROOM: RJC Courtroom 11D

COURT CLERK: Kristin Duncan

RECORDER: Matt Yarbrough

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- The Court noted that it was unclear whether the District Attorneys' Office was properly served with the instant Motion, as there was no response to said Motion, and a District Attorney had not appeared in open court. COURT ORDERED the instant Motion was hereby CONTINUED, and the Court would provide electronic service of said Motion to the District Attorneys' Office. COURT FURTHER ORDERED, the Opposition to the instant Motion would be DUE BY March 18, 2019, and any Reply would be DUE BY March 25, 2019.

CONTINUED TO: 4/3/19 9:00 AM

CLERK'S NOTE: A copy of this minute order, along with a copy of the Motion to Strike State's Response (Telephonic Hearing), was e-mailed to: James R. Sweetin, DDA [james.sweetin@clarkcountyda.com] and Jacob Villani, DDA [jacob.villani@clarkcountyda.com]. A copy of this minute order was mailed to: Justin Langford #1159546 [Lovelock Correctional Center 1200 Prison Road Lovelock, NV 89149]. (KD 2/27/19)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

April 03, 2019

A-18-784811-W Justin Langford, Plaintiff(s)
vs.
Warden Renee Baker, Defendant(s)

April 03, 2019 9:00 AM Motion to Strike

HEARD BY: Hardy, Joe

COURTROOM: RJC Courtroom 11D

COURT CLERK: Kristin Duncan

RECORDER: Matt Yarbrough

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Given the filing of the Judicial Notice, COURT ORDERED the instant Motion was hereby VACATED as MOOT.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

May 19, 2021

A-18-784811-W	Justin Langford, Plaintiff(s)
	vs.
	Warden Renee Baker, Defendant(s)

May 19, 2021 11:00 AM All Pending Motions

HEARD BY: Lilly-Spells, Jasmin **COURTROOM:** RJC Courtroom 12D

COURT CLERK:
Carolyn Jackson

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:	Raman, Jay	Attorney
	State of Nevada	Defendant

JOURNAL ENTRIES

- PETITION FOR WRIT OF HABEAS CORPUS . . . PLAINTIFF'S MOTION FOR APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING

Plaintiff is in custody of the Nevada Department of Corrections and not transported.

Court stated it would not hear oral arguments regarding the Petition for Writ of Habeas Corpus. Court stated regarding the Petition for Writ of Habeas Corpus the Petition is DENIED. Court finds the Petition is time-barred pursuant to NRS 34.726. The one-year time period begins to run from the date of conviction, *Jefferson v. State*, 114 Nev. 1084, 967 P.2d 1132 (1998). The one-year time period should be strictly applied under *Gonzalez v. State*, 118 Nev. 590, also at 53 P.3d 901 (2002). The application of the procedural bar is mandatory under *State v. Eighth Judicial District Court (Riker)*, 121 Nev. 225, 112 P.3d 1070 (2005). Here, the Petitioner's Writ is over three years late. The Petitioner has not shown good cause for the delay. The Petitioner must show that an impediment extended to the defense preventing his compliance with the procedural rule. *Clinton v. State*, 119 Nev. 615, 81 P.3d 521 (2003). Petitioner here has not put forth any evidence to show that good cause exist. The Court further finds here Petitioner claim is incoherent and vague and do not therefore, warrant relief

PRINT DATE: 08/05/2021

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Minutes Date: January 28, 2019

for post conviction must be support with the factual allegations. *Hargrove v. State* 100 Nev. 498, 686 P.2d 222 (1984). Moreover, the Court has previously denied Petitioner's post-conviction petition. Additionally, the claim that this Court does not have subject matter jurisdiction is not supported by the evidence or any caselaw. With regards to Petitioner's claim and request for evidentiary hearing, the Court finds that there is no sixth amendment constitutional right to counsel in post-conviction proceedings. *Coleman v. Thompson*, 501 U.S. 722 (1991), 111 S. Ct. 2546 (1991). Nevada courts have also ruled that the Nevada Constitution does not provide for a right for post-conviction counsel either under *McCabe v. Warden* 112 Nev. 159, 912 P.2d (1996). Nevada courts do have the discretion to appoint counsel if the court is satisfied that the individual is indigent and the petition cannot be dismissed summarily under NRS 34.750. In making this determination, the court can consider (1) whether the issues are difficult, (2) defendant is unable to comprehend the proceeding and (3) whether counsel is unable to proceed with discovery. The Court finds here that although the Defendant is indigent if he is in the prison that the petition can be dismissed summarily and thus, the Petitioner is not entitled to counsel and therefore, the Motion to Appoint Counsel is DENIED. The Court also finds that there is no basis for an evidentiary hearing and thus, does not entitled the Plaintiff to relief so the request for evidentiary hearing is therefore, DENIED. State to prepare the Order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 19, 2021

A-18-784811-W	Justin Langford, Plaintiff(s)
	vs.
	Warden Renee Baker, Defendant(s)

July 19, 2021 11:00 AM Motion

HEARD BY: Lilly-Spells, Jasmin

COURTROOM: RJC Courtroom 12D

COURT CLERK:

Rem Lord

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- COURT NOTED Mr. Langford was not transported. COURT stated findings and ORDERED, Plaintiff's Motion for Request in Status Check and Copy of Court Docket Sheet taken OFF CALENDAR.

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated July 28, 2021, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises three volumes with pages numbered 1 through 569.

JUSTIN ODELL LANGFORD,

Plaintiff(s),

vs.

WARDEN RENEE BAKER,

Defendant(s),

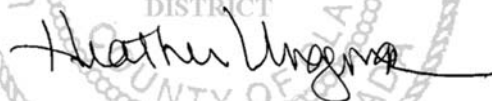
Case No: A-18-784811-W

Dept. No: XXIII

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 5 day of August 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

