

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jul 16 2021 08:56 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

BARRON HAMM,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: 09C256384

Docket No: 83087

RECORD ON APPEAL VOLUME 3

ATTORNEY FOR APPELLANT
BARRON HAMM # 1052277,
PROPER PERSON
P.O. BOX 650
INDIAN SPRINGS, NV 89070P

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

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09C256384

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 30, 2015

09C256384

The State of Nevada vs Barron Hamm

March 30, 2015

9:00 AM

Defendant's Pro Per Motion Requesting of the
Sentencing Court to Issue its Order Granting the
Petitioner a Copy of his Plea Canvassing and
Sentencing Transcripts Pursuant to NRS 7.40 et seq
and 7.055

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: April Watkins

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: Jobe, Michelle Y.
State of Nevada

Attorney for Pltff.
Plaintiff

JOURNAL ENTRIES

- COURT ORDERED, motion GRANTED. Deft. can be provided copies of transcripts.

NDC

CLERK'S NOTE: The above minute order has been distributed to: Barron Hamm #1052277, High
Desert State Prison, P.O. Box 650, Indian Springs, NV 89018. aw

EXHIBIT B

PRINT DATE: 03/31/2015

Page 1 of 1

Minutes Date: March 30, 2015

Barron
HAMM
C.256384

DEPT NO IX

TO CLERK OF the courts
200 LEWIS AVENUE
P.O. BOX 552212
LAS VEGAS NEVADA 89155

RE I would like a copy of my
sentencing transcript's & ~~Plea~~ court canvassing
Because I was granted permission
District court Judge Jennifer P tognoli.
Dept 9 to receive Both ~~transcripts~~
transcript. the case No. is C256384

Thank For your time & concern
in this matter's.

RECEIVED
MAY 15 2015
COUNTY CLERK

RECEIVED
MAY 11 2015
CLERK OF THE COURT

EXHIBIT C



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

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

Steven D Grierson
Clerk of the Court

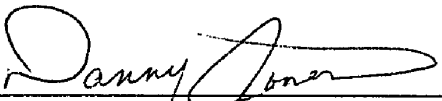
May 18, 2015

Case: C256384

Dear Sir or Madam:

Your copy request cannot be completed for the following reason(s):

- ☐ Case file is not available at this time.
- ☐ Incorrect case number was provided.
- ☐ Copy requests must be paid for in advance. See attached price list.
- ☒ Document(s) requested are not available.
- ☐ Request is not legible.
- ☐ Insufficient information was provided.
- ☒ Other: For sentencing transcripts you must contact Reporter/Recorder: Renee Vincent at (702)671-4339.



Danny Jones, Deputy Clerk

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Felony/Gross
Misdemeanor**

COURT MINUTES

May 14, 2010

09C256384

The State of Nevada vs Barron Hamm

May 14, 2010

8:45 AM

Sentencing

SENTENCING Court Clerk: Tina Hurd Reporter/Recorder: Renee Vincent
Heard By: Linda Bell

PARTIES

PRESENT:

Coffee, Scott L.	Attorney
Hamm, Barron	Defendant
Jimenez, Sonia V.	Attorney
Public Defender	Attorney

JOURNAL ENTRIES

- Conference at the bench. DEFT. HAMM ADJUDGED GUILTY OF COUNT 1 - SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON (F) and COUNT 2 - ASSAULT WITH A DEADLY WEAPON (F). Matter argued and submitted. Sworn statements by Karen Kennedy Grill and the victim's mother Kimberly Brown Fleming. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee and \$150.00 DNA Analysis fee including testing to determine genetic markers, Deft. SENTENCED as follows: Count 1 - to a MAXIMUM term of LIFE with a MINIMUM parole eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC) plus a CONSECUTIVE term of a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of NINETY SIX (96) MONTHS for use of a deadly weapon. Court stated her findings regarding the weapons enhancement. Count 2 - to a MAXIMUM term of SEVENTY TWO (72) MONTHS with a MINIMUM parole eligibility of TWENTY FOUR (24) MONTHS in the Nevada Department of Corrections (NDC), CONSECUTIVE to Count 1. 375 DAYS credit for time served. Deft. to PAY \$36,796.27 RESTITUTION to the Fleming Family and \$6,000.00 RESTITUTION to Victims of Violent Crimes. BOND, if any, EXONERATED.

PRINT DATE: 05/18/2015

Page 1 of 2

Minutes Date: May 14, 2010

09C256384

09C256384

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 30, 2015

09C256384

The State of Nevada vs Barron Hamm

March 30, 2015

9:00 AM

**Defendant's Pro Per Motion Requesting of the
Sentencing Court to Issue its Order Granting the
Petitioner a Copy of his Plea Canvassing and
Sentencing Transcripts Pursuant to NRS 7.40 et seq
and 7.055**

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: April Watkins

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: Jobe, Michelle Y.
State of Nevada

Attorney for Pltff.
Plaintiff

JOURNAL ENTRIES

- COURT ORDERED, motion GRANTED. Deft. can be provided copies of transcripts.

NDC

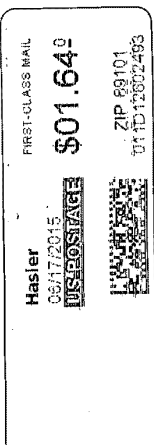
CLERK'S NOTE: The above minute order has been distributed to: Barron Hamm #1052277, High Desert State Prison, P.O. Box 650, Indian Springs, NV 89018. aw

PRINT DATE: 03/31/2015

Page 1 of 1

Minutes Date: March 30, 2015

1001 Hamm 1052277
Box 650 [HDP]
Spring, Nevada



1702612

TO THE CLERK OF THE COURT
200 LEWIS AVENUE
LAS VEGAS NEVADA 89155

CONFIDENTIAL
LEGAL MAIL

DISTRICT COURT
CLARK COUNTY, NEVADA

DEPT. VII

1 Friday, May 14, 2010 at 9:16 a.m.

2
3 THE COURT: Page 2, State of Nevada versus Barron Hamm, Case
4 Number C256384. Let the record reflect the presence of Mr. Hamm with his
5 counsel, Mr. Coffee. State represented by Ms. Jimenez.

6 This is on for sentencing. Is there any legal cause or reason we
7 should not go forward with sentencing today?

8 MR. COFFEE: No, Judge.

9 THE COURT: Sir, by virtue of your plea of guilty to second degree
10 murder with use of a deadly weapon, a felony, and assault with use of a deadly
11 weapon, a felony, I adjudicate you guilty of those offenses. State?

12 MS. JIMENEZ: Thank you, Judge. Judge, for the most part, the
13 sentence in this case is negotiated. The bottom end of the sentence is a
14 stipulated 20 years. The one thing for the Court to make a determination on is
15 as to the second degree murder charge, whether the Court is going to sentence
16 the Defendant to a term of years of 25 years or to the life tail on this sentence.
17 The State is asking the Court to sentence the Defendant to the life tail. From
18 the State's point of view, this isn't even a close call.

19 If you go through the Defendant's lengthy juvenile record, he has
20 juvenile offenses dating back to 2003. These offenses include multiple
21 instances of violence and other crimes, crimes involving weapons. There's two
22 separate batteries that he committed, malicious destruction of property,
23 possession of stolen vehicle, possession of dangerous weapon, burglary, grand
24 larceny, another burglary. He's violated probation and parole. He had three
25 terms of probation as a juvenile, and, as you know, the juvenile system is aimed

1 towards rehabilitation. It's not the same as the adult system. So he would've
2 had multiple opportunities to get whatever help and treatment he required
3 through the juvenile system.

4 I want to point out as well that there's a paragraph on page 4 that
5 talks about charges which were dismissed or not pursued, and included in there
6 is a robbery, attempt robbery, possession of a dangerous weapon, second
7 offense, a handgun and revolver. The Defendant was actually charged with
8 those as a juvenile. In fact, they began seeking certification on those charges
9 as an adult, but what happened was, there was a plea hearing.

10 He had other charges that were pending, and based on the plea
11 hearing, he pled to a burglary and an amended charge on the possession of
12 dangerous weapon and was continued on parole in the juvenile system. So
13 those weren't charges that were unsubstantiated or not gone forward on. They
14 were simply dismissed as part of a negotiation. And so I would ask that the
15 Court take into consideration that he does have those prior crimes of violences
16 (phonetic).

17 He finished his parole and committed the crime in the instant
18 offense approximately two and a half weeks after he was done with his juvenile
19 parole. The night that this happened, Jared Flemming was having a birthday
20 party. He has a very large family. It's a blended family, and he's got many
21 brothers and sisters. And he had an older sister who was grown, out of the
22 house and had her own apartment where she and her twin babies stayed, along
23 with the babies' father.

24 And she -- Jared was going to turn 15 years old, and she said, you
25 know, you can have your party here at my house. It was sort of his first

1 grownup party without his parents present, and she was letting him have the
2 apartment. There was another party actually going on at his parents' house for
3 one of his younger siblings who was turning, I believe, two years old or
4 somewhere around there.

5 So Jared's older sister Jasmine took her children, her babies over to
6 her parents' house, left them there, picked up Jared and some of his friends and
7 took them back to the apartment, helped them get set up for the party. As
8 people started to arrive, she went back to her parents' house to be there with
9 her kids and her sister or brother who was having the party. And she went
10 back and forth and checked a few times on Jared and his friends. He hadn't
11 had his birthday yet. He was still 14.

12 She checked the first time, and everything was fine. More people
13 had showed up. Some other of Jared's older sisters and brothers were
14 present -- I think his sisters, actually, were present at the party. And when
15 Jasmine returned later in the night, things had gotten a little bit out of control.
16 Some people who weren't invited had showed up. Some of the older kids had
17 brought some alcohol to the party, and she shut things down. She said that
18 everyone needed to leave because she was checking in and responsible for
19 what was going on at the apartment, and she thought, okay, it's late, it's time
20 for everybody to go.

21 One of the uninvited guests was the Defendant and some of his
22 friends, who are a member of what he calls, I guess, a dance crew that goes by
23 ATM, which stands for Addicted To Money. They had showed up at the party
24 uninvited. It was a large apartment complex, and whether he heard the noise or
25 what happened, he showed up uninvited and was basically causing a ruckus in

1 the party. At one point one of the kids saw him lift up his shirt and display a
2 gun.

3 And when Jasmine came home and told everybody to leave, he
4 went outside with his friends, but they kind of stayed outside. Jasmine told
5 Jared he had just a few friends who were going to stay the night, and she told
6 Jared, you know, close the door, don't let anybody else in, and she and one of
7 her sisters went -- they were going to go back to their parents' house to get
8 trash bags to clean up from the party.

9 As they walked out, one of the companions of the Defendant made
10 some comments to her. She didn't pay him any mind. You know, I think her
11 sister maybe said something back, and they continued out to their car and
12 started to drive off to the parents' house, which is when they heard the
13 gunshots. She actually thought she was being shot at because of the exchange
14 that had just happened outside the apartment. She had no idea that those were
15 the shots that were shooting and killing her brother.

16 The Defendant, after Jasmine left, had gone back into the
17 apartment. He walked into the apartment, he pulled out a gun, he pointed it at
18 everyone and told them to get on the floor. What his ultimate intention was we
19 may never know. I think it's very reasonable to assume that his intention was
20 commit a robbery in that apartment and demand money from these individuals.

21 There were still some younger kids there. The youngest, I think,
22 was 12 years old. They were in a side bedroom. They turned around and they
23 saw the Defendant with the gun, and they got scared and hid underneath the
24 cribs, Jasmine's children's cribs, because they were afraid of what the
25 Defendant was going to do.

1 He had the gun pointed, and Jared, as probably most 14-year-olds
2 did, he was scared, and he ran past the Defendant, and he ran out of the
3 apartment. And as he was running, the Defendant took his gun, followed him
4 outside and shot two to three times at Jared. He hit Jared in the back, and
5 Jared was killed as he was running away.

6 There was absolutely no reason for the Defendant to go back into
7 that apartment. The party was shut down. There was certainly no reason for
8 him to shoot a scared 14-year-old boy in the back as he was fleeing.

9 I'm sure when Jared's parents found out what happened -- you
10 know, parents worry about their kids. When they're little, they worry. You
11 know, are they going to climb up on the couch and jump off and hurt
12 themselves? We've got to keep them away from the pool or -- you know, as
13 they get older, is he going to climb a tree and fall out and break his arm or --
14 you know, maybe riding his bike, get into an accident. They probably never
15 imagined they be getting a phone call that their 14-year-old son was shot in the
16 back and then to go to the hospital and find out that he died of those injuries.

17 It was an absolutely senseless crime, a crime that has affected this
18 very large and loving family that will affect all of them for the rest of their lives.
19 And not just them, but the other children who were in that apartment who
20 witnessed what happened, who saw their friend, heard the friend get shot and
21 killed, were themselves afraid and at risk. You know, he probably wouldn't
22 appreciate me saying this, but the little 12-year-old, Tyjuan Bell, who's one of
23 the named victims, he testified at the Grand Jury -- at one point he just broke
24 down balling because of what had happened and the emotion of what had
25 happened to him.

1 This was a horrible incident that occurred, and absolutely based on
2 his record, based on his conduct that night, a life sentence is appropriate, and
3 we would ask that you impose that sentence.

4 THE COURT: Thank you. Sir, is there anything that you'd like to say
5 before your attorney speaks on your behalf?

6 THE DEFENDANT: All that -- no. All that that they say I got arrested
7 on, that wasn't even what I got charged with. Nothing --

8 MR. COFFEE: I'll expound on that, Barron.

9 THE DEFENDANT: All right.

10 THE COURT: Okay. Is there anything else you'd like to say, sir?

11 THE DEFENDANT: I don't even want the deal because I took the deal,
12 right -- I was forced to take this deal. Now I don't want it.

13 THE COURT: Okay. Mr. Coffee?

14 MR. COFFEE: Judge, this is a difficult case. The shooting is senseless.
15 I agree with the District Attorney on that. I'm a little troubled that we feel the
16 need to spin facts at a sentencing like this, but I suppose that's the nature of
17 the business.

18 Barron Hamm showed up at a party and -- his record, by the way,
19 as mentioned, things that he was arrested for that he hasn't been convicted for,
20 a number of things. If the crimes were that serious, this Court is well aware
21 how the criminal justice system works. There was an allegation of kidnapping
22 at some point, for example. If it would've been a legitimate charge, I would've
23 expected the State to do their job and push forward on that prosecution.
24 Perhaps certify him as an adult. That never happened.

25 He hadn't really been formally placed in juvenile detention for a

1 significant period of time. He had been continued on probation. He comes
2 from a tough area of town. There's question about that. He's had contact with
3 law enforcement.

4 But on the night in question, one of Barron's friends got a text that
5 there was a party, and the party was loud. There were a lot of people there.
6 Barron showed up with ATM, which he has described continuously as a dance
7 crew. I don't think there's any reason to doubt that. One of the officers in the
8 police report say it sounds like a dance crew. It's not a gang. They're not
9 jacking people. That's not what was going on.

10 He shows up at the party, and he buys a gun from somebody. We
11 know that he buys a gun that night at the party because he tells his mom that
12 in the police interview room when there's no one around. They don't think
13 they're being heard. He's told the police, I'm not involved in things. He says, I
14 got the gun that night from a friend. Somebody brought it at the party.

15 He leaves the party, and he's trying to avoid a confrontation with
16 some other boys that he's had problems with the past. He goes back into the
17 party. They try to stop him at the door, he walks back in, and he pulls out the
18 gun. He says -- and I take issue with the State's claim that he says get down
19 or -- witnesses at the scene, they are split on what he said. The witness
20 closest to the scene say, he says calm down, calm down. The witness is very
21 sure of that. There's no demand for money, nothing like that.

22 Barron has been -- he's 18, but he's not really 18. I think the Court
23 knows that. He's been in special education classes. He is functioning at a level
24 of a 12-year-old at best. He tries to the control the situation, tries to calm
25 people down. Somebody runs, and he pulls off a shot. And the reason that I

1 say it's a shot -- not shots -- is what the State said a moment go. There's one
2 bullet that is found in the boy's body. This Court knows how homicide
3 scenes work -- scenes work. They look for other shells, for other casings.
4 There are no other shells or casings found at the scene. One that can be
5 verified. He gets frightened and then he leaves.

6 When he's interviewed -- he turns himself in, by the way, with an
7 uncle to the police. They make calls trying to locate him. He's identified easily.
8 It's not a planned event. That's pretty clear from everything we know about
9 this. He is there at the party with people that know him. They identify him very
10 easily. Calls are made, and his family brings him in. We've got family member
11 after family member after family member in the courtroom here with Barron
12 today. They've all helped raise Barron to some extent, I think. They've all tried
13 to take care of him for the better part of his life, done the best that he could.

14 He's placed in a police room, and he denies being involved. Not
15 that big of a surprise. When his mother comes in -- and this is in the PSI, and I
16 think it's very telling -- he says, "I did do that, Mom. I shot that boy. I got
17 scared." And I think that's exactly what happened. He tried to control a
18 situation. He's not the strongest-minded person in the world. Somebody ran,
19 he got scared and fired a shot, and it had tragic consequences for another
20 family that can never have their son back. It is a tragedy.

21 The Court's decision this morning comes down to one of two
22 things, 20 to 52 years, 20 to life. I don't -- there's probably competing views
23 on the different sides of the courtroom as to what the Court should do. He's
24 never had a significant period of incarceration in his life. The Court knows that
25 that can change, how a person acts, how a person feels. We'd ask you

1 consider the sentence of 20 to 52 years given his youth, given the unplanned
2 nature of this all, and it is most certainly unplanned if you look at the facts.
3 There are tragic consequences, but we would ask the Court to give that
4 sentence at least consideration.

5 THE COURT: Okay. Thank you. Anything else from the Defense?

6 MR. COFFEE: No, Judge.

7 THE COURT: Okay.

8 MR. COFFEE: And we spoke with the family. They just want to express
9 their condolences to the victim's family.

10 THE COURT: Okay. Thank you. And do we have any speakers?

11 MS. JIMENEZ: We do, Judge. If I could check and confirm who exactly
12 is going to speak.

13 THE COURT: Okay.

14 [Pause]

15 MS. JIMENEZ: In this court, do we have them stand up and have them
16 speak?

17 THE COURT: That would be fine. In fact, if you put her --

18 MS. JIMENEZ: Wherever you'd like.

19 THE COURT: -- in that chair. I can just see better if she -- that's perfect.
20 Ma'am, and you can go ahead and have a seat.

21 THE SPEAKER: Can I sit here?

22 THE COURT: That's fine, too. The Clerk is going to swear you in.

23 **KAREN KENNEDY GRILL,**

24 being first duly sworn as a speaker, testified as follows:

25 THE CLERK: Thank you. Would you state your name for the record.

1 MS. GRILL: My name is Karen Kennedy Grill. And, Your Honor, one
2 bullet is all it takes to murder a 14-year-old boy. Jared Flemming is dead. He
3 will never skateboard again. He will never smile and laugh and look into his
4 father's eyes. His family will be without him. In their first thoughts every
5 morning will be how shattered their lives are and how much they miss Jared,
6 and their last thoughts at night will be the same, and they will live this day after
7 day for the rest of their lives.

8 I believe the Defendant knows right from wrong. I believe he
9 knows that's wrong to murder other people and shatter lives. His family will
10 suffer every day, and they will never get Jared back, and we will think about
11 Jared every day. I don't think it's fair that Jared's life was taken away and the
12 Defendant has another chance at a life in a possible 20 years, to get and
13 possibly murder somebody's child. Thank you.

14 THE COURT: Thank you, ma'am.

15 [Pause]

16 MS. FLEMMING: Hi, Your Honor. I'm -- I'm Jared's mother.

17 THE COURT: Okay, ma'am. If you could come up, the clerk is just going
18 to swear you in, and then you can say whatever you like.

19 MS. FLEMMING: Okay.

20 THE COURT: And after she's swears you, feel free to sit or stand,
21 whatever you're more comfortable with.

22 THE CLERK: Please raise your right hand.

23 **KIMBERLY BROWN FLEMMING,**

24 being first duly sworn as a speaker, testified as follows:

25 THE CLERK: Thank you. Please state your name for the record.

1 MS. FLEMMING: My name is Kimberly Brown Flemming. I'm Jared's
2 mother. This is my friend Jared. This is his last year of school in the 8th grade
3 graduation. This is what I have left. He had just began 9th grade. I've written
4 something that I'd like to read to you, please.

5 THE COURT: That's fine.

6 MS. FLEMMING: It started out this morning that Jared's father and
7 siblings wanted to speak today. They wanted to let everyone know how much
8 despair has entered our lives the very second we were told Jared is dead. But
9 as they began write down their feelings of anguish, it turned down -- it turned
10 from sadness to anger, so I've decided that I will try my best to speak for our
11 family.

12 For as long as I can remember, I have always tried to protect Jared
13 from evil in this world. Jared had asthma. I was always so scared that
14 something would happen to him during the night while I slept. So every night I
15 would peek in on him while he slept in his room just to calm my mind that he
16 was safe and breathing. I never dreamed I would ever receive a phone call from
17 his sisters telling me my son has been shot.

18 I answered the phone at 1:00 a.m. in the morning to my daughter
19 yelling at me, Kim, he's dead. He's dead. He's dead. Jared's dead. My mind
20 instantly went to denial that it could be that serious of a situation. I figured
21 maybe he'd been shot in the arm or in the leg, and my daughter was just
22 panicking. My husband instantly drove to my oldest daughter's home to find
23 his beloved son laying lifeless on the ground while an emergency medical
24 response team worked relentlessly to revive him.

25 We later learned that Jared had been shot in the back, entering his

1 lung on the right and exiting through his heart. His friends who attended his
2 15th birthday party that had ended only an hour previous to this witnessed
3 Jared take three deep breaths and drop to the ground, never to breathe again.
4 Later that same morning, Jared's father was so devastated, he attempted to kill
5 himself. Luckily, a family member stopped him.

6 Jared's father and I have no doubt that Barron Hamm was the
7 person that had murdered our son. We had only wished it had gone to trial so
8 we, his parents, could've had some kind of understanding how this monster of
9 a human could justify to himself to shoot not only once, but twice at a child
10 whom he already knew was scared of him. Jared never tried to argue nor fight
11 with Barron Hamm. My son was simply running for his life, and Barron Hamm
12 cowardly shot him in the back.

13 Your Honor, I mean no disrespect to you, but our family has not only
14 been let down by the loss of Jared, but we also feel we've been let down by
15 the court in prosecuting this unremorseful animal that killed our son and my
16 children's brother.

17 My son Jared will never graduate high school, let alone be able to
18 go to college like he had planned. He will never get married, and he will never
19 give me any grandchildren. I wish someone could help me to understand why
20 an admitted murderer who intentionally brought a gun and brandished it to
21 several teenagers threatening their lives and intentionally pointing that same gun
22 at my 15-year-old son and shot once and missed, shot a second time hitting
23 him in the back intentionally. How that can be considered second degree
24 murder is a cop-out to our family.

25 How can giving him ten years in prison for a murder charge possibly

1 make up for the death of any human? This monster who has no regard for
2 human life will still get a chance to enjoy freedom, get married, possibly have a
3 family in his future. This is -- this is like a spit in our face. I would have gladly
4 made a deal that Barron Hamm can get out of prison in 10 to 20 years if you
5 could bring my son back to me in 10 to 20 years.

6 Barron Hamm made a choice that day to condemn my son to death.
7 Jared's family did not expect to have this animal kill, but the idea of Barron
8 Hamm getting the possibly of walking freely on the streets again is
9 unbelievable.

10 The one thing I would like to say to Barron Hamm is that Jared has
11 nine other siblings that love, cherish and miss him dearly, not to mention an
12 extended family and friends. Do not ever think you will be forgotten when it
13 comes time for your parole hearing. God willing, Jared's father and myself, as
14 well as every sibling, will be present at every hearing to try to forbid you from
15 ever getting out.

16 I would like for everyone to know Jared was not a gang member as
17 the media portrayed him at first. Jared was a loving son, brother and uncle.
18 He was loyal to his friends and considerate to adults. He was characterized as
19 amicable to his peers. He was recognized as a skilled drummer, dedicated
20 skateboarder and had just begun playing high school football. He always spoke
21 of college and dreamed about what the future could hold for him.

22 Our family will never again feel complete. Every holiday and
23 celebration will hold tears and loneliness for his family and friends. I've always
24 been there for Jared to defend him when I know he is innocent. This will be
25 the final fight for him for at least 20 years, but I will never quit. Even after I die,

1 you will -- Barron Hamm will see me in his nightmares knowing that I am still
2 fighting for my son. As for Jared's father, his son meant the world to him, and
3 that enjoyment will forever be gone. We loved Jared, and we miss him. Thank
4 you.

5 THE COURT: Thank you. Ma'am, I'm sorry to you and your family for
6 your loss.

7 MS. FLEMMING: Thank you.

8 THE COURT: Okay. Ms. Jimenez, anything else?

9 MS. JIMENEZ: No, Judge.

10 THE COURT: Okay. Sir, if you could please stand. Sir, in accordance
11 with the laws of the State of Nevada, on Count 1, second degree murder, I
12 sentence you to life in the Nevada Department of Corrections with minimum
13 parole eligibility after ten years has been served.

14 With regard to the weapon enhancement, I sentence you to a
15 maximum of 20 years or 240 months in the Nevada Department of Corrections
16 and a minimum of 96 months in the Nevada Department of Corrections. That
17 sentence will run consecutively to the 10 to life. The reason for imposing the
18 weapon enhancement is considering the factors under NRS 193.165.

19 First of all, the facts and circumstances of this crime, since it is a
20 murder case, the maximum sentence on the weapon enhancement, I believe, is
21 appropriate. Mr. Hamm does have a fairly significant juvenile record. Certainly,
22 I cannot imagine a crime that would have more impact on the victim, Mr.
23 Flemming, and his family. And based on that, I do think that the sentence and
24 the weapon enhancement is appropriate considering all of the factors.

25 With respect to Count 2, assault with a deadly weapon, sir, I

1 sentence you to a minimum of 24 months and a maximum of 72 months in the
2 Nevada Department of Corrections, and that will run consecutively to Count 1.
3 I have -- you'll also be required to pay restitution to Victims of Violent Crimes in
4 the amount of \$6,000.

5 And Ms. Jimenez, I had some additional receipts, but I wasn't very
6 clear on whether that was -- what the amount was in addition to the \$6,000.

7 MS. JIMENEZ: It was sent directly to you. I don't think I got a copy of
8 those. Could I just check with the family members and find out what it was
9 that they sent? Thank you.

10 THE COURT: And, sir, while they're figuring that out, you'll also be
11 required to pay a \$25 administrative assessment fee and \$150 DNA analysis
12 fee. What's the credit for time served figure, Mr. Coffee?

13 MR. COFFEE: 375 days, Your Honor.

14 THE COURT: You'll receive 375 days credit for time served.

15 [Pause]

16 MS. JIMENEZ: Judge, I'm sorry, I'm going to need to do some math.
17 There is more expenses here. I'm going to have to pull this up and then just
18 subtract the \$6,000 --

19 THE COURT: Okay. I'm going to trail -- just trail it for a moment to get
20 the restitution figure.

21 MS. JIMENEZ: Thank you.

22 [Matter trailed at 9:42 a.m.]

23 [Matter recalled at 9:48 a.m.]

24 THE COURT: Okay. Let's go back to Hamm for a minute. Ms. Jimenez,
25 you have the amount minus the \$6,000?

1 MS. JIMENEZ: Yes, I do, Judge. Just so the record has my math, there
2 was a total of funeral expenses of \$16,300.27. There was also a receipt for
3 medical bills in the amount of \$26,496. That totaled to \$42,796.27. If you
4 subtract the \$6,000 that the Court has ordered be paid to Victims of Violent
5 Crimes, the rest of the amount that is owed to the victim's family is
6 \$36,796.27.

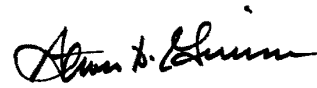
7 THE COURT: Okay. So Mr. Hamm will also be ordered to pay restitution
8 to the Flemming family in the amount of \$36,796.27. Thank you.

9 [Proceedings concluded at 9:44 a.m.]

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20 ATTEST: I do hereby certify that I have truly and correctly transcribed the
21 audio-visual recording of the proceeding in the above entitled case to the
22 best of my ability.

23 

24 Renee Vincent, Court Recorder/Transcriber



CLERK OF THE COURT

1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHRISTOPHER F. BURTON
6 Deputy District Attorney
7 Nevada Bar #012940
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 BARRON HAMM,
13 #2707761

14 Defendant.

CASE NO: 09C256384

DEPT NO: XI

15 STATE'S OPPOSITION TO DEFENDANT'S PRO PER MOTION
16 TO VACATE SENTENCE

17 DATE OF HEARING: JULY 15, 2015
18 TIME OF HEARING: 9:00 AM

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
19 District Attorney, through CHRISTOPHER F. BURTON, Deputy District Attorney, and
20 hereby submits the attached Points and Authorities in Opposition to Defendant's Pro Per
21 Motion To Vacate Sentence.

22 This Opposition is made and based upon all the papers and pleadings on file herein, the
23 attached points and authorities in support hereof, and oral argument at the time of hearing, if
24 deemed necessary by this Honorable Court.

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 22, 2009, an Indictment was filed charging Barron Hamm ("Defendant") as
4 follows: COUNT 1 – Burglary while in Possession of a Firearm (Category B Felony – NRS
5 205.060); COUNT 2 – Assault with a Deadly Weapon (Category B Felony – NRS 200.471);
6 COUNT 3 – Murder with Use of a Deadly Weapon (Category A Felony – NRS 200.010,
7 200.030, 193.165); COUNT 4 – Carrying Concealed Firearm or other Deadly Weapon
8 (Category C Felony – NRS 202.350(1)(d)(3)). On March 12, 2010, an Amended Indictment
9 was filed charging Defendant as follows: COUNT 1 – Second Degree Murder with Use of a
10 Deadly Weapon (Category A Felony – NRS 200.010, 200.030, 193.165) and COUNT 2 –
11 Assault with a Deadly Weapon.

12 On March 12, 2010, Defendant pleaded guilty to the charges included in the Amended
13 Indictment. A Guilty Plea Agreement was filed the same day. On May 14, 2010, Defendant
14 was sentenced to a period of incarceration in the Nevada Department of Corrections as
15 follows: COUNT 1 – Life, with a minimum parole eligibility of 10 years, plus a consecutive
16 sentence of 240 months, minimum parole eligibility of 96 months for the use of a deadly
17 weapon; COUNT 2 – 72 months, minimum parole eligibility of 24 months, to run consecutive
18 to COUNT 1, with 375 days credit for time served. A Judgment of Conviction was filed May
19 20, 2010.

20 On August 5, 2010, Defendant filed a Notice of Appeal. Defendant's appeal was
21 dismissed on September 10, 2010. Remittitur issued October 6, 2010.

22 On February 13, 2012, Defendant filed a Motion to Withdraw his Guilty Plea. The
23 State filed an Opposition on February 22, 2012. Defendant's Motion was denied February 24,
24 2012.

25 On October 31, 2012, Defendant filed a Petition for Writ of Habeas Corpus. The State
26 filed a Response and Motion to Dismiss on November 14, 2012. On January 10, 2013,
27 Defendant's Petition was denied. A Findings of Fact, Conclusions of Law, and Order was
28 filed January 29, 2013.

1 Defendant filed a Notice of Appeal from the dismissal of his Petition on February 22,
2 2013. The judgment of the District Court was affirmed by the Nevada Supreme Court on
3 September 19, 2013. Remittitur issued October 17, 2013.

4 On April 10, 2014, Defendant filed another Motion to Withdraw his Guilty Plea. The
5 State filed an Opposition on May 1, 2014. Defendant's Motion was denied May 5, 2014.

6 Defendant filed a Motion for Transcripts on October 3, 2014. The State filed an
7 Opposition on October 8, 2014. On March 30, 2015, Defendant's Motion was granted.

8 Defendant filed the instant Motion to Vacate Sentence on June 23, 2015. The State's
9 Opposition follows.

10 ARGUMENT

11 To the extent Defendant asks for a third time to withdraw his guilty plea, his Motion is
12 not properly before the court and is precluded by the doctrine of res judicata. See Mason v.
13 State, 206 S.W.3d 869, 875 (Ark. 2005) (recognizing the doctrine's applicability in the
14 criminal context); see also York v. State, 342 S.W. 528, 553 (Tex. Crim. Appl. 2011).
15 Defendant has on two prior occasions asked this Court to allow him to withdraw his plea.
16 Those prior motions have been denied. Accordingly, by simply continuing to file motions
17 with the same arguments, his motion is barred by the doctrine of res judicata. Id.; Hall v. State,
18 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).¹

19 To the extent Defendant complains of delay in receiving certain transcripts this Court
20 has granted his request for, the State takes no position other than that already outlined in its
21 Opposition filed October 8, 2014. However, the State does point out that a delay in receiving
22 transcripts is not grounds for vacating an otherwise proper sentence.

23 //

24 //

25 //

26 //

27

28 ¹ The State also notes that Defendant's request is not raised in the proper context of a post-conviction Petition for Writ of Habeas Corpus. See Harris v. State, 130 Nev. Adv. Rep. 47, 329 P.3d 619 (2014). This represents an independent reason to dismiss Defendant's instant Motion. See NRS 34.735.

1 **CONCLUSION**

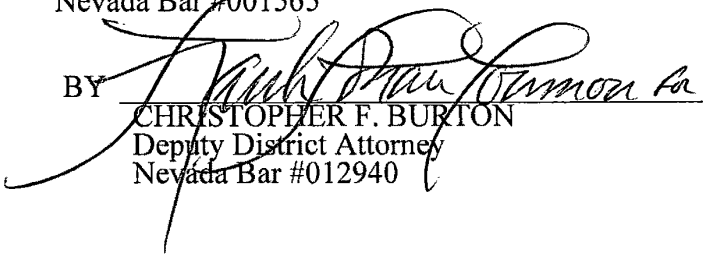
2 For the foregoing reasons, the State asks that Defendant's Motion be DENIED.

3 DATED this 10th day of July, 2015.

4 Respectfully submitted,

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

8 BY



CHRISTOPHER F. BURTON
Deputy District Attorney
Nevada Bar #012940

11 **CERTIFICATE OF MAILING**

12 I hereby certify that service of the above and foregoing was made this 10th day of July,
13 2015, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

14 BARRON HAMM #1052277
15 HIGH DESERT STATE PRISON
16 P.O. BOX 650
17 INDIAN SPRINGS, NV 89018

18 BY


R. JOHNSON
Secretary for the District Attorney's Office

21 CFB/rj/M-1

1 IN THE Eighth JUDICIAL DISTRICT COURT OF THE
2 STATE OF NEVADA IN AND FOR THE
3 COUNTY OF Clark
4

5 Barron Hamm)

6 Petitioner,)

7 v.)

8)
9)
10)
11 The State of Nevada)

12)
13 Respondent.)
14)

09C256384
Case No. 2756384

Dept. No. XI

15
16 ORDER FOR TRANSPORTATION OF INMATE FOR COURT APPEARANCE
17 OR, IN THE ALTERNATIVE, FOR APPEARANCE BY TELEPHONE OR VIDEO
18 CONFERENCE

19 Based upon the above motion, I find that the presence of
20 Barron Hamm is necessary for the hearing that is scheduled in this
21 case on the 15 day of JUNE, 2015, at
22 9:00 a.m.

23 THEREFOR, IT IS HEREBY ORDERED that,

24 ☐ Pursuant to NRS 209.274, Warden _____
25 of _____ is hereby commanded to have
26 _____ transported to appear before me at a hearing
27 scheduled for _____ at _____ at the
28 _____ County Courthouse. Upon completion of the hearing,

09C256384
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1 Barron Hamm is to be transported back to the above
2 named institution.
3

4 ☐ Pursuant to NRS 209.274(2)(a), Petitioner shall be made available for telephonic
5 or video conference appearance by his or her institution. My clerk will contact
6 _____ at _____ to make
7 arrangements for the Court to initiate the telephone appearance for the hearing.
8

9 Dated this _____ day of _____,
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12 _____
13 District Court Judge
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1 Barron Hamm
2 NDOC No. 1052277
3 Barron Hamm
4 In proper person

5
6 IN THE Eighth JUDICIAL DISTRICT COURT OF THE
7 STATE OF NEVADA IN AND FOR THE
8 COUNTY OF Clark

9
10 Barron Hamm)
11)
12 Petitioner,)
13 v.) 09C256384
14) Case No. C 256384
15)
16 The State of Nevada) Dept. No. X1
17 Respondent.)
18)
19)

20 MOTION AND ORDER FOR TRANSPORTATION
21 OF INMATE FOR COURT APPEARANCE
22 OR, IN THE ALTERNATIVE,
23 FOR APPEARANCE BY TELEPHONE OR VIDEO CONFERENCE

24
25 Petitioner, Barron Hamm, proceeding pro se, requests
26 that this Honorable Court order transportation for his personal appearance or, in the
27 alternative, that he be made available to appear by telephone or by video conference
28 at the hearing in the instant case that is scheduled for July 15, 2015
29 9:00 am.

CLERK OF THE COURT
JUL 10 2015



1 In support of this Motion, I allege the following:

2 1. I am an inmate incarcerated at High Desert state prison.

3 My mandatory release date is LIFE SENTENCE.

4
5 2. The Department of Corrections is required to transport offenders to and
6
7 from Court if an inmate is required or requests to appear before a Court in this state.

8
9 NRS 209.274 Transportation of Offender to Appear Before Court states:

10 "1. Except as otherwise provided in this section, when an offender is
11 required or requested to appear before a Court in this state, the
12 Department shall transport the offender to and from Court on the day
13 scheduled for his appearance.

14 2. If notice is not provided within the time set forth in NRS 50.215, the
15 Department shall transport the offender to Court on the date scheduled
16 for his appearance if it is possible to transport the offender in the usual
17 manner for the transportation of offenders by the Department. If it is
18 not possible for the Department to transport the offender in the usual
19 manner:

20 (a) The Department shall make the offender available on the date scheduled
21 for his appearance to provide testimony by telephone or by video conference,
22 if so requested by the Court.

23 (b) The Department shall provide for special transportation of the offender to
24 and from the Court, if the Court so orders. If the Court orders special
25 transportation, it shall order the county in which the Court is located to
26 reimburse the Department for any cost incurred for the special transportation.

27 (c) The Court may order the county sheriff to transport the offender to and
28 from the Court at the expense of the county."

29 3. My presence is required at the hearing because:

1 ☒ I AM NEEDED AS A WITNESS.

2 My petition raises substantial issues of fact concerning events in which I
3 participated and about which only I can testify. *See U.S. v. Hayman*, 342 U.S.
4 205 (1952) (District Court erred when it made findings of fact concerning
5 Hayman's knowledge and consent to his counsel's representation of a witness
6 against Hayman without notice to Hayman or Hayman's presence at the
7 evidentiary hearing).

8 ☒ THE HEARING WILL BE AN EVIDENTIARY HEARING.

9 My petition raises material issues of fact that can be determined only in my
10 presence. *See Walker v. Johnston*, 312 U.S. 275 (1941) (government's contention
11 that allegations are improbable and unbelievable cannot serve to deny the
12 petitioner an opportunity to support them by evidence). The Nevada
13 Supreme Court has held that the presence of the petitioner for habeas corpus
14 relief is required at any evidentiary hearing conducted on the merits of the
15 claim asserted in the petition. *See Gebers v. Nevada*, 118 Nev. 500 (2002).

16 4. The prohibition against ex parte communication requires that I be present
17 at any hearing at which the state is present and at which issues concerning the claims
18 raised in my petition are addressed. U.S. Const. amends. V, VI.

19 5. If a person incarcerated in a state prison is required or is requested to
20 appear as a witness in any action, the Department of Corrections must be notified in
21 writing not less than 7 business days before the date scheduled for his appearance in
22 Court if the inmate is incarcerated in a prison located not more than 40 miles from
23 Las Vegas. NRS 50.215(4). If a person is incarcerated in a prison located 41 miles or
24 more from Las Vegas, the Department of Corrections must be notified in writing not
25 less than 14 business days before the date scheduled for the person's appearance in
26 Court.

27 6. High Desert State Prison is located approximately
28 60 miles from Las Vegas, Nevada.

1 7. If there is insufficient time to provide the required notice to the Department
2 of Corrections for me to be transported to the hearing, I respectfully request that this
3 Honorable Court order the Warden to make me available on the date of the
4 scheduled appearance, by telephone, or video conference, pursuant to NRS
5 209.274(2)(a), so that I may provide relevant testimony and/or be present for the
6 evidentiary hearing.

7 8. The rules of the institution prohibit me from placing telephone calls from
8 the institution, except for collect calls, unless special arrangements are made with
9 prison staff. Nev. Admin. Code DOC 718.01. However, arrangements for my
10 telephone appearance can be made by contacting the following staff member at my
11 institution: RE-ENTRY OFFICER MILDEN, HDSP
12 whose telephone number is ON COURT FILE

13
14 Dated this 30 day of JUNE, 2015.

15
16 x *Burton Hamm*

17
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19 Defendant/Proper Person
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Legal Argument

8.) the defendant ask the judge to please grant his motion to be transported to court because the defendant is the only one ~~who~~ who can argue to what ~~was~~ was said the day of his sentence. the defendant can show the court's that the grounds that he ~~argued~~ argued has merit & good cause. the defendant is need as witness & the hearing would be a Evidentiary hearing to determine facts and substantial evidences to support the allegation made against the defendant.

the defendant can show good cause to ~~the~~ the court to why he need the judge to grant his motion to transport defendant to court because the District court would argue that he shouldn't be present

Join the ~~the~~ assign hearing 07-15-2015 the defendant ask the court's to please grant the motion and request.

(see walker vs. Johnson 372 us 215 (1944))

also see GERBER'S vs. NEVADA 509 sd 1092 (2007).

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_____, I served the foregoing Motion and Order for Transportation of Inmate for Court Appearance or, in the Alternative, Motion for Appearance by Telephone or Video Conference, by mailing a true and correct copy thereof in a sealed envelope, upon which first class postage was fully prepaid, addressed to:

Las Vegas Nevada, 89185.

Defendant / Pro SE

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion

TO vacate sentence
(Title of Document)

filed in District Court Case number C 256-384

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.

Barron Hamm
Signature

07-01-2015
Date

Barron Hamm
Print Name

Defendant/PROSE
Title

STÉVEN D. GRIERSON, Clerk of the Court
200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS NV 89155-1160

RETURN SERVICE REQUESTED

Barron Hamm #1052277
PO Box 650
Indian Springs, NV 89070

Barton Hamm #1052272
PO Box 650 [AD32]
Indian Springs Nevada 89070

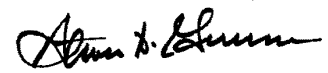


CONFIDENTIAL
LEGAL MAIL

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07/06/2015
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TO THE CLERK OF THE COURTS
200 LEWIS AVENUE 3RD FLOOR
LAS VEGAS NEVADA 89155

HIGH DESERT STATE PRISON
JUL 31 2013
UNIT 4 C/D



CLERK OF THE COURT

1 **ORDR**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHRISTOPHER J. LAURENT
6 Chief Deputy District Attorney
7 Nevada Bar #005043
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 BARRON HAMM,
14 #2707761

15 Defendant.

CASE NO: 09C256384

DEPT NO: XI

16 ORDER DENYING DEFENDANT'S PRO PER MOTION
17 TO VACATE SENTENCE

18 DATE OF HEARING: JULY 15, 2015

19 TIME OF HEARING: 9:00 A.M.

20 THIS MATTER having come on for hearing before the above entitled Court on the
21 15th day of July, 2015, the Defendant not being present, IN PROPER PERSON, the Plaintiff
22 being represented by STEVEN B. WOLFSON, District Attorney, through CHRISTOPHER
23 J. LAURENT, Chief Deputy District Attorney, without argument, based on the pleadings and
24 good cause appearing therefor,

25 ///

26 ///

27 ///

28 ///

1 COURT FINDS no new information has been provided, and there is no reason to grant
2 this motion; THEREFORE IT IS HEREBY ORDERED that the Defendant's Pro Per Motion
3 to Vacate Sentence, shall be, and it is DENIED on the same basis the Court denied it
4 previously.

5 DATED this 21st day of July, 2015.

6
7 
DISTRICT JUDGE

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

10
11 BY  for

12 CHRISTOPHER J. LAURENT
13 Chief Deputy District Attorney
14 Nevada Bar #005043
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CERTIFICATE OF SERVICE

I certify that on the 24th day of July, 2015, I mailed a copy of the foregoing Order

to:

BARRON HAMM #1052277
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

BY



R. JOHNSON

Secretary for the District Attorney's Office

rj/M-1

Electronically Filed
08/19/2015 12:48:03 PM

1 Barron Hamm 1052277
In Proper Person
2 P.O. Box 650 H.D.S.P.
Indian Springs, Nevada 89018
3
4

Ann L. Blum

CLERK OF THE COURT

5 Eighth DISTRICT COURT
6 Clark COUNTY NEVADA
7

8 STATE OF Nevada,
9 Plaintiff,
10 -v-
11 Barron Hamm 1052277,
12 Defendant,
13

Case No. C256384

Dept. No. XI

Docket _____

14 NOTICE OF APPEAL

15 Notice is hereby given that the DEFendant Barron
16 HAMM, by and through himself in proper person, does now appeal
17 to the Supreme Court of the State of Nevada, the decision of the District
18 Court denying his motion to vacate sentencing
19
20

21 Dated this date, August 8, 2015.
22
23

Respectfully Submitted,

Barron Hamm II 1052277

In Proper Person

RECEIVED

CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAILING

I, BARRON HAMM, hereby certify, pursuant to NRCP 5(b), that on this 08
day of August, 20 15 I mailed a true and correct copy of the foregoing, "Notice
of appeal motion to vacate sentencing
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

clerk's of the courts
200 Lewis Avenue
Las Vegas Nevada 89155

Distrist attorney
200 Lewis ave 3rd flr
Las Vegas Nevada 89155

DATED: this 08 day of August, 20 15.

Barron Hamm 2707761
BARRON HAMM #1052277
/In Propria Persona
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Notice of appeal Denied motion to vacate sentencing
(Title of Document)

filed in District Court Case number C-756-384

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.

Barron Hamm
Signature

08-08-2015
Date

Barron HAMM
Print Name

Pro-se
Title

Barton Hamm #
P.O. Box 165227
Indian Springs Nevada 89107

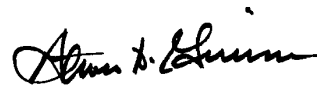
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Hasler
08/14/2015
35/300
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CLERK OF THE COURT

200 Lewis Avenue
3rd Floor

Las Vegas Nevada 89155



CLERK OF THE COURT

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

STATE OF NEVADA,

Plaintiff(s),

vs.

BARRON HAMM,

Defendant(s),

Case No: 09C256384

Dept No: XI

CASE APPEAL STATEMENT

1. Appellant(s): Barron Hamm

2. Judge: Elizabeth Gonzalez

3. Appellant(s): Barron Hamm

Counsel:

Barron Hamm #1052277
P.O. Box 650
Indian Springs, NV 89070

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89101

1 (702) 671-2700

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

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

6 6. Appellant Represented by Appointed Counsel In District Court: Yes

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

8 8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9 9. Date Commenced in District Court: July 22, 2009

10 10. Brief Description of the Nature of the Action: Criminal

11 Type of Judgment or Order Being Appealed: Misc. Order

12 11. Previous Appeal: Yes

13 Supreme Court Docket Number(s): 56559, 62688, 63467

14 12. Child Custody or Visitation: N/A

15 Dated This 20 day of August 2015.

16 Steven D. Grierson, Clerk of the Court

17
18 

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

25 cc: Barron Hamm
26
27
28

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRON HAMM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 68661
District Court Case No. C256384

FILED

MAR 18 2016

Tracie Lindeman
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 17th day of February, 2016.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
March 14, 2016.

Tracie Lindeman, Supreme Court Clerk

By: Sally Williams
Deputy Clerk

09C256384
CCJA
NV Supreme Court Clerks Certificate/Judgn
4532353



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BARRON HAMM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68661

FILED

FEB 17 2016

TRACIE L. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE


This is an appeal from a district court order denying a motion to vacate sentence.¹ Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.


In his motion to vacate sentence filed on June 23, 2015, appellant Barron Hamm challenged the denial of his request to withdraw his guilty plea and inferred that defense counsel provided ineffective assistance of counsel at sentencing. We construe a motion to vacate sentence as a motion to modify or correct an illegal sentence. Hamm's claims fell outside the narrow scope of claims permissible in a motion to modify or correct an illegal sentence. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Therefore, without considering the merits


¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

of any of the claims raised in the motion, we conclude the district court did not err in denying the motion. Accordingly, we

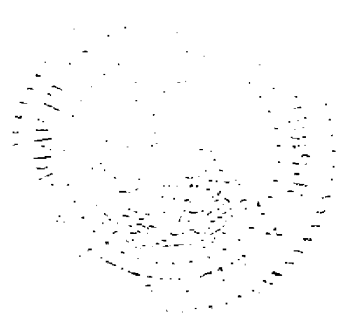
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Barron Hamm
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk



CERTIFIED COPY
This document is a full, true and correct copy of
the original on file and of record in my office.
DATE: March 14th 2016
Supreme Court Clerk, State of Nevada
By: Daniel M. Miller Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRON HAMM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 68661
District Court Case No. C256384

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: March 14, 2016

Tracie Lindeman, Clerk of Court

By: Sally Williams
Deputy Clerk

cc (without enclosures):
Hon. Elizabeth Goff Gonzalez, District Judge
Barron Hamm
Clark County District Attorney
Attorney General/Carson City

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on MAR 18 2016.

HEATHER UNGERMANN
Deputy District Court Clerk

RECEIVED

MAR 17 2016

CLERK OF THE COURT

55

Case No. C-256384/09C256384
Dept. No. 11

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

BASSON HAMM, Jr.
Petitioner,

v.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

BRIAN E. WILLIAMS, Sr. Warden
HDSP Respondent.

INSTRUCTIONS:

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

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: High Desert State Prison

Name and location of court which entered the judgment of conviction under attack: Eighth Judicial District Court, Clark County, Las Vegas, Nevada

Date of judgment of conviction: 5-13-2010/5-14-2010

Case number: 09C256384

(a) Length of sentence: 96mo - 240 & 72mo's / 24mo's - 72mo's

RECEIVED
MAY 17 2017
CLERK OF THE COURT

CLERK OF THE COURT

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

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

3 Yes No X.....

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

5

6

7 7. Nature of offense involved in conviction being challenged: Murder in Second degree

8 Assault with Deadly Weapon

9 8. What was your plea? (check one)

10 (a) Not guilty

11 (b) Guilty X.....

12 (c) Guilty but mentally ill

13 (d) Nolo contendere

14 9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a

15 plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was

16 negotiated, give details:

17

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

19 (a) Jury

20 (b) Judge without a jury

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

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

23 13. If you did appeal, answer the following:

24 (a) Name of court: Nev State Supreme Court

25 (b) Case number or citation: 56559 - 62688

26 (c) Result: Dismissed

27 (d) Date of result: 10/14/2010 & 10/22/2013

28 (Attach copy of order or decision, if available.) see case summary

1 14. If you did not appeal, explain briefly why you did not:

2
3
4 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any
5 petitions, applications or motions with respect to this judgment in any court, state or federal? Yes No X.

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

7 (a) (1) Name of court: Eighth Judicial District Court

8 (2) Nature of proceeding: Writ of Habeas Corpus 09-01-2009

9 10/31/2012

10 (3) Grounds raised: Appt. of Counsel, Previous Lawyer in

11 Court did not raise Miranda, and move for motion

12 to suppress. March 2010

13 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No X.

14 (5) Result:

15 (6) Date of result:

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

17
18 (b) As to any second petition, application or motion, give the same information:

19 (1) Name of court: Eighth Judicial District Court

20 (2) Nature of proceeding: Writ of Habeas Corpus

21 (3) Grounds raised: To Dismiss Counsel

22 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No X.

23 (5) Result: Dismissed

24 (6) Date of result: 9-14-2009

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

26
27 (c) As to any third or subsequent additional applications or motions, give the same information as above, list
28 them on a separate sheet and attach.

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

3 (1) First petition, application or motion? Yes X No

4 Citation or date of decision: 56559 10/14/10

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

6 Citation or date of decision: 62688

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

8 Citation or date of decision:

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

13
14 17. Has any ground being raised in this petition been previously presented to this or any other court by way of
15 petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

16 (a) Which of the grounds is the same: NONE

17
18 (b) The proceedings in which these grounds were raised: ineffective legal
19 counsel

20 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this
21 question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your
22 response may not exceed five handwritten or typewritten pages in length.)

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

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

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes No X
If yes, state what court and the case number:

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: Scott Coffee Public Defender

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes No X
If yes, specify where and when it is to be served, if you know:

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

1 (a) Ground ONE: Ineffective of assistance of Legal
2 Counsel
3
4

5 Supporting FACTS (Tell your story briefly without citing cases or law.): Counsel made
6 error's so serious that counsel was
7 not functioning as the counsel guaranteed
8 the Petitioner By the Sixth Amendment
9 (1791) and Counsel error's deprived the
10 petitioner of a fair judicial proceedings and/or
11 fair trial, to a trial attorney's performance
12 was deficient, against reasonableness 486
13 US @ 687-88 Strickland v. Washington 466 US 668
14 (1984) There is a reasonable probability that
15 if Coffee's unprofessional error's, the result
16 of the proceeding would have been different
17 see US § 694,

18 There are several item's that would
19 have, and should have been addressed
20 due to the Fourth Amendment (1791) The Right
21 of the Person / People to be secure etc... Being
22 Read his Miranda the Petitioner, Miranda v.
23 Arizona 384 US 436, 86 S.Ct. 1602 (1966) And
24 see pg 86 By a Juror from Grand Jury
25 Basically all information, submitted should
26 have been omitted, since the Petitioner came
27 to Police Station on his own, fruits of the poisonous
28 tree doctrine, illegal interrogation, also in the
grand jury, a lawyer must be present for cross
examination

1 (b) Ground TWO: Evidentiary Hearing was never
2 procured, to show that there was factual
3 evidence to convict me, especially a gun
4 that would constitute an enhancement element

5 Supporting FACTS (Tell your story briefly without citing cases or law.): Since this was
6 malicious prosecution, and Counsel did not
7 pursue what was available to me for
8 a dismissal, motion to suppress that was
9 submitted wasn't followed through of
10 March 2010, see NRS 179.505, and con-
11 versation intercepted was used, Oral
12 Communication with my mother should not
13 have been used against me to prosecute
14 me see NRS 179.440, Petitioner and
15 mother run foul of the NRS 200.650 pro-
16 hibition against such a video recording.

17 There are also other variables involved in
18 the Sentencing Portion of Statutory Credits
19 Afforded to the Petitioner consistent with
20 NRS 209.4465(4)(b). And that The Nevada
21 Dept. of Corrections has not Afforded your
22 Statutory Credits, to the Petitioner pursuant
23 to Vonsaydewitz v. LeGrand, and Goldsworthy
24 v. Hannigan 86 Nev. 250, 255 (1970) and per de novo
25 State v. Catania, 120 Nev. 1030-1033 (2004)
26 which would afford me 40% percent on the
27 minimum and/or (20) Statutory credits @ per month
28 since I have done my minimum on my minimum

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(c) Ground THREE:

Did not follow up on the Supreme
Court Appeal

Supporting FACTS (Tell your story briefly without citing cases or law.):

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(d) Ground FOUR: Did not pursue other Writs
of Habeas Corpus (s).

Supporting FACTS (Tell your story briefly without citing cases or law.):

WHEREFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at **High Desert State Prison** on the ____ day of the month of May, 2017

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number _____ Does not contain the social security number of any person.

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

CERTIFICATE OF SERVICE BY MAIL

_____, hereby certify pursuant to N.R.C.P. 5(b), that on this ____ day of the month of _____, 20____, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

D.W. Neven, Warden High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070

Attorney General of Nevada
100 North Carson Street
Carson City, Nevada 89701

Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

* Print your name and NDOC back number and sign

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding NRS 34.185

NRS 34.720 Habeas Corpus
(Title of Document)

#

filed in District Court Case number _____

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

Nevada
(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.

[Signature]
Signature

05/09/17
Date

Barron Hamm
Print Name

Pro Se litigant
Title

Barron Hamm, #
High Desert State Prison
22010 Cold Creek Rd - Box #650
Indian Springs, N.V.
(89040-0650)

May 9th 2017.

Steven D. Dresner, Clerk of Courts
Eighth Judicial District Court
Clark County Regional Justice Center
200 Lewis Ave, 3rd Floor
Las Vegas, N.V. (89155-1160)

Re: Enclosed NRS. 34.185 Habeas Corpus

Dear Mr. Dresner.

Please file this for me
so that I may serve Adam Foxall, A.G.,
and Steve Wilson DA, and miscellaneous parties.

~~Handwritten signature~~
x Barron Hamm
NRS 12015 Barron Hamm prose
HD SP.
Box 650
Indian Spgs. NV
(89070)

Barron Hamm, #
High Desert State Prison
22010 Cold Creek Road - Box #650
Indian Springs. N.V. (89090)

Mr Steven D. Griesmer - Clerk
Eighth Judicial District Court
Clark County Regional Justice Ctr.
200 Lewis Ave. 2nd Floor
Las Vegas. NV. (89155)

UNIT 6A1B
MAY 09 2017
RECEIVED STATE PRISON

Heather S. Hamer
CLERK OF THE COURT

PPOW

**DISTRICT COURT
CLARK COUNTY, NEVADA**

BARRON HAMM JR,

Petitioner,

vs.

BRIAN E WILLIAMS SR WARDEN, HDSP,

Respondent,

Case No: 09C256384
Department 1

**ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS**

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on May 17, 2017. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's

Calendar on the 24th day of July, 20 17, at the hour of

a.m.

9:00 o'clock for further proceedings.

Kenneth D. Brey 5/30/17
District Court Judge

RECEIVED

JUN 06 2017

CLERK OF THE COURT



1 **RSPN**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **CHARLES THOMAN**
6 **Deputy District Attorney**
7 **Nevada Bar #12649**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

DISTRICT COURT
CLARK COUNTY, NEVADA

9 **BARRON HAMM,**
10 **Petitioner,**
11 **-vs-**
12 **THE STATE OF NEVADA,**
13 **Respondent.**

CASE NO: 09C256384

DEPT NO: I

15 **STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS**
16 **CORPUS**

17 **DATE OF HEARING: JULY 24, 2017**
18 **TIME OF HEARING: 9:00 AM**

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
19 District Attorney, through CHARLES THOMAN, Deputy District Attorney, and hereby
20 submits the attached Points and Authorities in Response to Defendant's Petition for Writ of
21 Habeas Corpus.

22 This response is made and based upon all the papers and pleadings on file herein, the
23 attached points and authorities in support hereof, and oral argument at the time of hearing, if
24 deemed necessary by this Honorable Court.

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 22, 2009, the State charged BARRON HAMM (hereinafter "Defendant") by
4 way of indictment with: COUNT 1 – Burglary While in Possession of a Firearm (Felony –
5 NRS 205.060); COUNT 2 – Assault with a Deadly Weapon (Felony – NRS 200.471); COUNT
6 3 – Murder with Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165); and
7 COUNT 4 – Carrying Concealed Firearm or Other Deadly Weapon (Felony – NRS
8 202.350(1)(d)(3)).

9 On March 12, 2010, after negotiations, the State charged Defendant by way of
10 Amended Indictment with: COUNT 1 – Second Degree Murder with Use of a Deadly Weapon
11 (Category A Felony – NRS 200.010, 200.030, 193.165) and COUNT 2 – Assault with a Deadly
12 Weapon (Category B Felony – NRS 200.471). That day, Defendant entered into a Guilty Plea
13 Agreement (GPA) with the State wherein he pleaded guilty to both counts as charged in the
14 Amended Indictment. The State retained the right to argue on the charge of Second Degree
15 Murder. Both parties stipulated to a sentence of eight (8) to twenty (20) years for the deadly
16 weapon enhancement, and to a sentence of twenty-four (24) to seventy-two (72) months for
17 the charge of Assault with Use of a Deadly Weapon, and agreed to run that sentence
18 consecutive to COUNT 1. The plea agreement was conditional on the district court agreeing
19 to and following through with the stipulated portion of the sentence.

20 On May 14, 2010, Defendant appeared in court with counsel, was adjudged guilty, and
21 was sentenced on COUNT 1 to a MAXIMUM term of LIFE with a MINIMUM parole
22 eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC) plus a
23 CONSECUTIVE term of a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with
24 a MINIMUM parole eligibility of NINETY-SIX (96) MONTHS for use of a deadly weapon,
25 and on COUNT 2 to a MAXIMUM term of SEVENTY-TWO (72) MONTHS with a
26 MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS in the NDC,
27 CONSECUTIVE to COUNT 1. THREE HUNDRED SEVENTY-FIVE (375) DAYS credit
28 for time served. Defendant was also ordered to PAY \$36,796.27 RESTITUTION to the family

1 of the victim and \$6,000.00 RESTITUTION to Victims of Violent Crimes. Judgment Of
2 Conviction was filed on May 20, 2010.

3 On August 5, 2010, Defendant filed an untimely Notice Of Appeal from his Judgment
4 Of Conviction. On September 10, 2010, the Supreme Court of Nevada dismissed Defendant's
5 appeal for want of jurisdiction. Remittitur issued on October 6, 2010.

6 On February 13, 2012, Defendant filed a Motion To Withdraw Guilty Plea, which the
7 State opposed on February 22, 2012. The district court denied Defendant's motion on
8 February 24, 2012, and the order of denial was filed on May 7, 2012.

9 On October 31, 2012, Defendant filed a Petition For Writ Of Habeas Corpus (Post-
10 Conviction). The State filed its response and motion to dismiss Defendant's petition as time-
11 barred with no good cause shown for the delay on November 14, 2012. On January 10, 2013,
12 the district court denied Defendant's petition, entering its Findings Of Fact, Conclusions Of
13 Law, And Order on January 29, 2013, and its notice of entry on February 4, 2013. Defendant
14 filed a notice of appeal on February 22, 2013. On September 19, 2013, the Supreme Court
15 affirmed the district court's denial of Defendant's petition, with remittitur issuing on October
16 17, 2013.

17 On June 23, 2015, Defendant filed a Motion to Vacate Sentence. The State responded
18 on July 10, 2015. This Court denied the Motion on July 15, 2015. On August 19, 2015,
19 Defendant appealed. The Nevada Supreme Court affirmed this Court's denial of Defendant's
20 Motion to Vacate Sentence on February 17, 2016. Remittitur issued March 14, 2016.

21 On May 17, 2017, Defendant filed the instant Petition for Writ of Habeas Corpus
22 ("Second Petition"). The State responds as follows:

23 ARGUMENT

24 I. THE SECOND PETITION IS TIME-BARRED

25 Defendant's Second Petition is time barred with no good cause shown for delay.
26 Pursuant to NRS 34.726(1):

27 Unless there is good cause shown for delay, a petition that
28 challenges the validity of a judgment or sentence must be filed
within 1 year of the entry of the judgment of conviction or, if an
appeal has been taken from the judgment, within 1 year after the

1 Supreme Court issues its remittitur. For the purposes of this
2 subsection, good cause for delay exists if the petitioner
3 demonstrates to the satisfaction of the court:

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

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

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

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

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

26 Id. Additionally, the Court noted that procedural bars “cannot be ignored [by the district court]
27 when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
28 has granted no discretion to the district courts regarding whether to apply the statutory
procedural bars; the rules *must* be applied.

A showing of good cause and prejudice may overcome procedural bars. “To establish
good cause, appellants *must* show that an impediment external to the defense prevented their
compliance with the applicable procedural rule. A qualifying impediment might be shown

1 where the factual or legal basis for a claim was not reasonably available at the time of default.”
2 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court
3 continued, “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d at 526.
4 In order to establish prejudice, the defendant must show “not merely that the errors of [the
5 proceedings] created possibility of prejudice, but that they worked to his actual and substantial
6 disadvantage, in affecting the state proceedings with error of constitutional dimensions.”
7 Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v.
8 Fraday, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there must be a
9 “substantial reason; one that affords a legal excuse.” Hathaway v. State, 119 Nev. 248, 252,
10 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230
11 (1989)). Clearly, any delay in the filing of the petition must not be the fault of the petitioner.
12 NRS 34.726(1)(a).

13 In the instant case, a Judgment of Conviction was entered on May 20, 2010. Remittitur
14 from Defendant’s first appeal issued on October 6, 2010. Therefore, Defendant had until
15 October 6, 2011 to file a Petition for Writ of Habeas Corpus. Because Defendant’s instant
16 Petition for Writ of Habeas Corpus is presented well outside the one year time bar, the Petition
17 must be dismissed. Additionally, Defendant offers no argument, and can offer no argument,
18 demonstrating why the issues raised could not have been raised previously. Additionally,
19 Defendant cites no law, and offers no argument, as to why the time-bar should not be applied
20 or whether he was prejudiced. Claims unsupported by legal citations will not be considered by
21 this Court. See NRAP 28(a)(9)(A), (j); Edwards v. Emperor’s Garden Rest., 122 Nev. 317,
22 330 n.38, 130 P.3d 1280, 1288 n.38 (2006); Dept. of Motor Vehicles and Public Safety v.
23 Rowland, 107 Nev. 475, 479, 814 P.2d 80, 83 (1991) (unsupported arguments are summarily
24 rejected); Randall v. Salvation Army, 100 Nev. 466, 470-71, 686 P.2d 241, 244 (1984) (court
25 may decline consideration of issues lacking citation to relevant legal authority).

26 Because the Petition is untimely, and because Defendant can demonstrate neither good
27 cause nor prejudice, Defendant’s Second Petition should be denied.

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CONCLUSION

Based on the foregoing, the State respectfully requests that Defendant's Petition for Writ of Habeas Corpus be DENIED.

DATED this 11th day of July, 2017.

Respectfully submitted,

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

BY /s/ CHARLES THOMAN
CHARLES THOMAN
Deputy District Attorney
Nevada Bar #12649

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 11th day of July, 2017, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

BARRON HAMM, BAC #1152965
HIGH DESERT STATE PRISON
22010 COLD CREEK RD
P.O. BOX 650
INDIAN SPRINGS, NV, 89070

BY /s/ L.M.
Secretary for the District Attorney's Office

JN/CT/llm/GANG



1 FCL
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #1565
5 CHARLES THOMAN
6 Deputy District Attorney
7 Nevada Bar #12649
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 BARRON HAMM,
13 #2707761

14 Defendant.

CASE NO: 09C256384

DEPT NO: I

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

16 DATE OF HEARING: JULY 24, 2017.
17 TIME OF HEARING: 9:00 A.M.

18 THIS CAUSE having come on for hearing before the Honorable KENNETH CORY,
19 District Judge, on the 24th day of July, 2017, the Petitioner not being present, PROCEEDING
20 IN PROPER PERSON, the Respondent being represented by STEVEN B. WOLFSON, Clark
21 County District Attorney, by and through NOREEN DEMONTE, Chief Deputy District
22 Attorney, and the Court having considered the matter, including briefs, transcripts, and
23 documents on file herein, now therefore, the Court makes the following findings of fact and
24 conclusions of law:

25 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

26 On July 22, 2009, the State charged BARRON HAMM (hereinafter "Defendant") by
27 way of indictment with: COUNT 1 – Burglary While in Possession of a Firearm (Felony –
28 NRS 205.060); COUNT 2 – Assault with a Deadly Weapon (Felony – NRS 200.471); COUNT

1 3 – Murder with Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165); and
2 COUNT 4 – Carrying Concealed Firearm or Other Deadly Weapon (Felony – NRS
3 202.350(1)(d)(3)).

4 On March 12, 2010, after negotiations, the State charged Defendant by way of
5 Amended Indictment with: COUNT 1 – Second Degree Murder with Use of a Deadly Weapon
6 (Category A Felony – NRS 200.010, 200.030, 193.165) and COUNT 2 – Assault with a Deadly
7 Weapon (Category B Felony – NRS 200.471). That day, Defendant entered into a Guilty Plea
8 Agreement (GPA) with the State wherein he pleaded guilty to both counts as charged in the
9 Amended Indictment. The State retained the right to argue on the charge of Second Degree
10 Murder. Both parties stipulated to a sentence of eight (8) to twenty (20) years for the deadly
11 weapon enhancement, and to a sentence of twenty-four (24) to seventy-two (72) months for
12 the charge of Assault with Use of a Deadly Weapon, and agreed to run that sentence
13 consecutive to COUNT 1. The plea agreement was conditional on the district court agreeing
14 to and following through with the stipulated portion of the sentence.

15 On May 14, 2010, Defendant appeared in court with counsel, was adjudged guilty, and
16 was sentenced on COUNT 1 to a MAXIMUM term of LIFE with a MINIMUM parole
17 eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC) plus a
18 CONSECUTIVE term of a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with
19 a MINIMUM parole eligibility of NINETY-SIX (96) MONTHS for use of a deadly weapon,
20 and on COUNT 2 to a MAXIMUM term of SEVENTY-TWO (72) MONTHS with a
21 MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS in the NDC,
22 CONSECUTIVE to COUNT 1. THREE HUNDRED SEVENTY-FIVE (375) DAYS credit
23 for time served. Defendant was also ordered to PAY \$36,796.27 RESTITUTION to the family
24 of the victim and \$6,000.00 RESTITUTION to Victims of Violent Crimes. Judgment Of
25 Conviction was filed on May 20, 2010.

26 On August 5, 2010, Defendant filed an untimely Notice Of Appeal from his Judgment
27 Of Conviction. On September 10, 2010, the Supreme Court of Nevada dismissed Defendant's
28 appeal for want of jurisdiction. Remittitur issued on October 6, 2010.

1 On February 13, 2012, Defendant filed a Motion To Withdraw Guilty Plea, which the
2 State opposed on February 22, 2012. The district court denied Defendant's motion on
3 February 24, 2012, and the order of denial was filed on May 7, 2012.

4 On October 31, 2012, Defendant filed a Petition For Writ Of Habeas Corpus (Post-
5 Conviction). The State filed its response and motion to dismiss Defendant's petition as time-
6 barred with no good cause shown for the delay on November 14, 2012. On January 10, 2013,
7 the district court denied Defendant's petition, entering its Findings Of Fact, Conclusions Of
8 Law, And Order on January 29, 2013, and its notice of entry on February 4, 2013. Defendant
9 filed a notice of appeal on February 22, 2013. On September 19, 2013, the Supreme Court
10 affirmed the district court's denial of Defendant's petition, with remittitur issuing on October
11 17, 2013.

12 On June 23, 2015, Defendant filed a Motion to Vacate Sentence. The State responded
13 on July 10, 2015. This Court denied the Motion on July 15, 2015. On August 19, 2015,
14 Defendant appealed. The Nevada Supreme Court affirmed this Court's denial of Defendant's
15 Motion to Vacate Sentence on February 17, 2016. Remittitur issued March 14, 2016.

16 On May 17, 2017, Defendant filed the instant Petition for Writ of Habeas Corpus
17 ("Second Petition"). The State Responded on July 11, 2017. On July 24, 2017, this Court
18 DENIED the petition for the following reasons:

19 **DEFENDANT'S PETITION IS PROCEDURALLY BARRED PURSUANT TO NRS**
20 **34.726**

21 Defendant's Second Petition is time barred with no good cause shown for delay.
22 Pursuant to NRS 34.726(1):

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

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

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

6 The one-year time limit for preparing petitions for post-conviction relief under NRS
7 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
8 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
9 evidence presented by the defendant that he purchased postage through the prison and mailed
10 the Notice within the one-year time limit.

11 Furthermore, the Nevada Supreme Court has held that the district court has a *duty* to
12 consider whether a defendant's post-conviction petition claims are procedurally barred. State
13 v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The
14 Riker Court found that "[a]pplication of the statutory procedural default rules to post-
15 conviction habeas petitions is mandatory," noting:

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

19 Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district court]
20 when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
21 has granted no discretion to the district courts regarding whether to apply the statutory
22 procedural bars; the rules *must* be applied.

23 A showing of good cause and prejudice may overcome procedural bars. "To establish
24 good cause, appellants *must* show that an impediment external to the defense prevented their
25 compliance with the applicable procedural rule. A qualifying impediment might be shown
26 where the factual or legal basis for a claim was not reasonably available at the time of default."
27 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court
28 continued, "appellants cannot attempt to manufacture good cause[.]" Id. at 621, 81 P.3d at 526.

1 In order to establish prejudice, the defendant must show “not merely that the errors of [the
2 proceedings] created possibility of prejudice, but that they worked to his actual and substantial
3 disadvantage, in affecting the state proceedings with error of constitutional dimensions.”
4 Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v.
5 Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there must be a
6 “substantial reason; one that affords a legal excuse.” Hathaway v. State, 119 Nev. 248, 252,
7 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230
8 (1989)). Clearly, any delay in the filing of the petition must not be the fault of the petitioner.
9 NRS 34.726(1)(a). In the instant case, a Judgment of Conviction was entered on May 20, 2010.
10 Remittitur from Defendant’s first appeal issued on October 6, 2010. Therefore, Defendant had
11 until October 6, 2011 to file a Petition for Writ of Habeas Corpus. Because Defendant’s instant
12 Petition for Writ of Habeas Corpus is presented well outside the one year time bar, the Petition
13 must be dismissed. Additionally, Defendant offers no argument, and can offer no argument,
14 demonstrating why the issues raised could not have been raised previously. Additionally,
15 Defendant cites no law, and offers no argument, as to why the time-bar should not be applied
16 or whether he was prejudiced. Claims unsupported by legal citations will not be considered by
17 this Court. See NRAP 28(a)(9)(A), (j); Edwards v. Emperor’s Garden Rest., 122 Nev. 317,
18 330 n.38, 130 P.3d 1280, 1288 n.38 (2006); Dept. of Motor Vehicles and Public Safety v.
19 Rowland, 107 Nev. 475, 479, 814 P.2d 80, 83 (1991) (unsupported arguments are summarily
20 rejected); Randall v. Salvation Army, 100 Nev. 466, 470-71, 686 P.2d 241, 244 (1984) (court
21 may decline consideration of issues lacking citation to relevant legal authority).

22 Because the Petition is untimely, and because Defendant can demonstrate neither good
23 cause nor prejudice, Defendant’s Second Petition is denied.

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DATED this 11 day of August, 2017.

DISTRICT JUDGE

BY

CHARLES THOMAS
Deputy District Attorney
Nevada Bar #12649

I hereby certify that service of the above and foregoing was made this 3rd day of August, 2017, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

BARRON HAMM, #1152965
H.D.S.P.
P.O. BOX 650
INDIAN SPRINGS, NV 89070-0650

BY:

Secretary for the District Attorney's Office

CT/JN/jg/GANG



1 NEO

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 BARRON HAMM,

5
6 Petitioner,

Case No: 09C256384

Dept No: I

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

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

10
11 PLEASE TAKE NOTICE that on August 16, 2017, the court entered a decision or order in this matter, a
true and correct copy of which is attached to this notice.

12 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
13 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
14 mailed to you. This notice was mailed on August 22, 2017.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

17
18
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 22 day of August 2017, 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 Barron Hamm # 1052277
P.O. Box 650
Indian Springs, NV 89070

26
27 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk



1 FCL
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #1565
5 CHARLES THOMAN
6 Deputy District Attorney
7 Nevada Bar #12649
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 BARRON HAMM,
13 #2707761

14 Defendant.

CASE NO: 09C256384

DEPT NO: I

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

16 DATE OF HEARING: JULY 24, 2017.
17 TIME OF HEARING: 9:00 A.M.

18 THIS CAUSE having come on for hearing before the Honorable KENNETH CORY,
19 District Judge, on the 24th day of July, 2017, the Petitioner not being present, PROCEEDING
20 IN PROPER PERSON, the Respondent being represented by STEVEN B. WOLFSON, Clark
21 County District Attorney, by and through NOREEN DEMONTE, Chief Deputy District
22 Attorney, and the Court having considered the matter, including briefs, transcripts, and
23 documents on file herein, now therefore, the Court makes the following findings of fact and
24 conclusions of law:

25 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

26 On July 22, 2009, the State charged BARRON HAMM (hereinafter "Defendant") by
27 way of indictment with: COUNT 1 – Burglary While in Possession of a Firearm (Felony –
28 NRS 205.060); COUNT 2 – Assault with a Deadly Weapon (Felony – NRS 200.471); COUNT

1 3 – Murder with Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165); and
2 COUNT 4 – Carrying Concealed Firearm or Other Deadly Weapon (Felony – NRS
3 202.350(1)(d)(3)).

4 On March 12, 2010, after negotiations, the State charged Defendant by way of
5 Amended Indictment with: COUNT 1 – Second Degree Murder with Use of a Deadly Weapon
6 (Category A Felony – NRS 200.010, 200.030, 193.165) and COUNT 2 – Assault with a Deadly
7 Weapon (Category B Felony – NRS 200.471). That day, Defendant entered into a Guilty Plea
8 Agreement (GPA) with the State wherein he pleaded guilty to both counts as charged in the
9 Amended Indictment. The State retained the right to argue on the charge of Second Degree
10 Murder. Both parties stipulated to a sentence of eight (8) to twenty (20) years for the deadly
11 weapon enhancement, and to a sentence of twenty-four (24) to seventy-two (72) months for
12 the charge of Assault with Use of a Deadly Weapon, and agreed to run that sentence
13 consecutive to COUNT 1. The plea agreement was conditional on the district court agreeing
14 to and following through with the stipulated portion of the sentence.

15 On May 14, 2010, Defendant appeared in court with counsel, was adjudged guilty, and
16 was sentenced on COUNT 1 to a MAXIMUM term of LIFE with a MINIMUM parole
17 eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC) plus a
18 CONSECUTIVE term of a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with
19 a MINIMUM parole eligibility of NINETY-SIX (96) MONTHS for use of a deadly weapon,
20 and on COUNT 2 to a MAXIMUM term of SEVENTY-TWO (72) MONTHS with a
21 MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS in the NDC,
22 CONSECUTIVE to COUNT 1. THREE HUNDRED SEVENTY-FIVE (375) DAYS credit
23 for time served. Defendant was also ordered to PAY \$36,796.27 RESTITUTION to the family
24 of the victim and \$6,000.00 RESTITUTION to Victims of Violent Crimes. Judgment Of
25 Conviction was filed on May 20, 2010.

26 On August 5, 2010, Defendant filed an untimely Notice Of Appeal from his Judgment
27 Of Conviction. On September 10, 2010, the Supreme Court of Nevada dismissed Defendant's
28 appeal for want of jurisdiction. Remittitur issued on October 6, 2010.

1 On February 13, 2012, Defendant filed a Motion To Withdraw Guilty Plea, which the
2 State opposed on February 22, 2012. The district court denied Defendant's motion on
3 February 24, 2012, and the order of denial was filed on May 7, 2012.

4 On October 31, 2012, Defendant filed a Petition For Writ Of Habeas Corpus (Post-
5 Conviction). The State filed its response and motion to dismiss Defendant's petition as time-
6 barred with no good cause shown for the delay on November 14, 2012. On January 10, 2013,
7 the district court denied Defendant's petition, entering its Findings Of Fact, Conclusions Of
8 Law, And Order on January 29, 2013, and its notice of entry on February 4, 2013. Defendant
9 filed a notice of appeal on February 22, 2013. On September 19, 2013, the Supreme Court
10 affirmed the district court's denial of Defendant's petition, with remittitur issuing on October
11 17, 2013.

12 On June 23, 2015, Defendant filed a Motion to Vacate Sentence. The State responded
13 on July 10, 2015. This Court denied the Motion on July 15, 2015. On August 19, 2015,
14 Defendant appealed. The Nevada Supreme Court affirmed this Court's denial of Defendant's
15 Motion to Vacate Sentence on February 17, 2016. Remittitur issued March 14, 2016.

16 On May 17, 2017, Defendant filed the instant Petition for Writ of Habeas Corpus
17 ("Second Petition"). The State Responded on July 11, 2017. On July 24, 2017, this Court
18 DENIED the petition for the following reasons:

19 **DEFENDANT'S PETITION IS PROCEDURALLY BARRED PURSUANT TO NRS**
20 **34.726**

21 Defendant's Second Petition is time barred with no good cause shown for delay.
22 Pursuant to NRS 34.726(1):

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

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

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

6 The one-year time limit for preparing petitions for post-conviction relief under NRS
7 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
8 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
9 evidence presented by the defendant that he purchased postage through the prison and mailed
10 the Notice within the one-year time limit.

11 Furthermore, the Nevada Supreme Court has held that the district court has a *duty* to
12 consider whether a defendant's post-conviction petition claims are procedurally barred. State
13 v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The
14 Riker Court found that "[a]pplication of the statutory procedural default rules to post-
15 conviction habeas petitions is mandatory," noting:

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

19 Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district court]
20 when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
21 has granted no discretion to the district courts regarding whether to apply the statutory
22 procedural bars; the rules *must* be applied.

23 A showing of good cause and prejudice may overcome procedural bars. "To establish
24 good cause, appellants *must* show that an impediment external to the defense prevented their
25 compliance with the applicable procedural rule. A qualifying impediment might be shown
26 where the factual or legal basis for a claim was not reasonably available at the time of default."
27 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court
28 continued, "appellants cannot attempt to manufacture good cause[.]" Id. at 621, 81 P.3d at 526.

1 In order to establish prejudice, the defendant must show “not merely that the errors of [the
2 proceedings] created possibility of prejudice, but that they worked to his actual and substantial
3 disadvantage, in affecting the state proceedings with error of constitutional dimensions.”
4 Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v.
5 Fraday, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there must be a
6 “substantial reason; one that affords a legal excuse.” Hathaway v. State, 119 Nev. 248, 252,
7 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230
8 (1989)). Clearly, any delay in the filing of the petition must not be the fault of the petitioner.
9 NRS 34.726(1)(a). In the instant case, a Judgment of Conviction was entered on May 20, 2010.
10 Remittitur from Defendant’s first appeal issued on October 6, 2010. Therefore, Defendant had
11 until October 6, 2011 to file a Petition for Writ of Habeas Corpus. Because Defendant’s instant
12 Petition for Writ of Habeas Corpus is presented well outside the one year time bar, the Petition
13 must be dismissed. Additionally, Defendant offers no argument, and can offer no argument,
14 demonstrating why the issues raised could not have been raised previously. Additionally,
15 Defendant cites no law, and offers no argument, as to why the time-bar should not be applied
16 or whether he was prejudiced. Claims unsupported by legal citations will not be considered by
17 this Court. See NRAP 28(a)(9)(A), (j); Edwards v. Emperor’s Garden Rest., 122 Nev. 317,
18 330 n.38, 130 P.3d 1280, 1288 n.38 (2006); Dept. of Motor Vehicles and Public Safety v.
19 Rowland, 107 Nev. 475, 479, 814 P.2d 80, 83 (1991) (unsupported arguments are summarily
20 rejected); Randall v. Salvation Army, 100 Nev. 466, 470-71, 686 P.2d 241, 244 (1984) (court
21 may decline consideration of issues lacking citation to relevant legal authority).

22 Because the Petition is untimely, and because Defendant can demonstrate neither good
23 cause nor prejudice, Defendant’s Second Petition is denied.

24 //

25 //

26 //

27 //

28 //

1 ORDER

2 THEREFORE, IT IS HEREBY ORDERED that the issues included in Defendant's
3 Second Petition for Writ of Habeas Corpus (Post-Conviction) shall be, and it is, hereby
4 DENIED.

5 DATED this 11 day of August, 2017.

6
7 
8 DISTRICT JUDGE

9 STEVEN B. WOLFSON
10 Clark County District Attorney
Nevada Bar #1565

11 BY 
12

13 CHARLES THOMAN
Deputy District Attorney
Nevada Bar #12649

14
15
16
17
18
19 CERTIFICATE OF MAILING

20 I hereby certify that service of the above and foregoing was made this 3rd day of
21 August, 2017, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

22 BARRON HAMM, #1152965
23 H.D.S.P.
P.O. BOX 650
24 INDIAN SPRINGS, NV 89070-0650

25 BY 
26

27 Secretary for the District Attorney's Office
28

CT/JN/jg/GANG

Barron Hamm 1052272

FILED

SEP 08 2017

In proper person

P.O. Box 650 HDSP.

~~Clerk of Court~~

Indian Springs, Nevada 89018

Eighth District

Clark County Nevada

State of Nevada

Case No. C256384

Plaintiff

DEPT No. 1

v.

Barron Hamm 1052272

Defendant

Notice of appeal

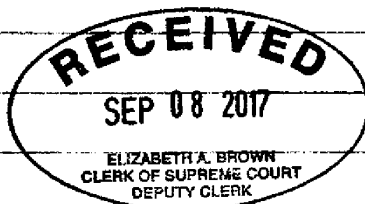
Notice is hereby given that the Defendant, Barron Hamm,
By and through himself in proper person does now appeal
to the Supreme Court of the State of Nevada, the decision of
the District Court. Denying his petition for writ of habeas
corpus.

Date this date August 29, 2017

Respectfully submitted

Barron Hamm # 1052272

In proper person



RECEIVED
APPEALS

SEP 25 2017

CLERK OF THE COURT

08C256384
NOASC
Notice of Appeal (original)
4685440



4000
350
3650

Certificate of service by mailing

I Barron Hamm, here certify, Pursuant to NRC-P 5(b) that on this 29, day of August, 2017 I mailed a true and correct copy of the foregoing Notice of appeal petition for writ of Habeas corpus.

By depositing it in the High Desert State Prison Legal Library, First-class Postage Fully Prepaid addressed as follows

CLERKS OF the ~~State~~ Courts

200 LEWIS AVE.

Las Vegas Nevada 89155

District attorney

200 LEWIS AVE 3rd Floor

Las Vegas Nevada 89155

Dated this 29 day of August ~~2017~~ 2017

Barron Hamm ^{II} 270 7761

Barron Hamm [#] 105 2222

In proper person

Post Office box 650 [HDS-P]

Indian Springs Nevada 89015

Baron Ham 1053373
PO Box 650 (H.D.S.P.)
Indian Springs Nevada 89070

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FIRST CLASS MAIL
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Supreme Court of Nevada
Office of the Clerk
201 S. Carson Street
201 Suite 201

HIGH DESERT STATE

AUG 31 2017

UNIT 6A/B



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

STATE OF NEVADA,

Plaintiff(s),

vs.

BARRON HAMM,

Defendant(s),

Case No: 09C256384

Dept No: I

CASE APPEAL STATEMENT

1. Appellant(s): Barron Hamm

2. Judge: Kenneth Cory

3. Appellant(s): Barron Hamm

Counsel:

Barron Hamm #1052277

P.O. Box 1989

Ely, NV 89301

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney

200 Lewis Ave.

Las Vegas, NV 89101

(702) 671-2700

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. Appellant Represented by Appointed Counsel In District Court: Yes

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

8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9. Date Commenced in District Court: July 22, 2009

10. Brief Description of the Nature of the Action: Criminal

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

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 56559, 62688, 63467, 68661

12. Child Custody or Visitation: N/A

Dated This 26 day of September 2017.

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: Barron Hamm

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRON HAMM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 74096
District Court Case No. C256384

FILED

SEP 25 2018

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

Elizabeth A. Brown
CLERK OF COURT

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 24th day of August, 2018.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this September 19, 2018.

Elizabeth A. Brown, Supreme Court Clerk

By: Amanda Ingersoll
Chief Deputy Clerk

09C256384
CCJA
NV Supreme Court Clerks Certificate/Judge
4782450



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BARRON HAMM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74096

FILED

AUG 24 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Barron Hamm appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 17, 2017.¹ Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Hamm filed his petition seven years after entry of the judgment of conviction on May 20, 2010. No timely direct appeal was taken. Hamm's petition was therefore untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. See NRS 34.726(1); *Dickerson v. State*, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998) (holding the statute of limitation begins to run from the later of the issuance of the remittitur from a timely direct appeal or the entry of the judgment of conviction). Hamm did not attempt to demonstrate good

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

cause to excuse his delay. We therefore conclude the district court did not err by denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.

Silver C.J.
Silver

Tao J.
Tao

Gibbons J.
Gibbons

cc: Hon. Kenneth C. Cory, District Judge
Barron Hamm
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

CERTIFIED COPY

This document is a full, true and correct copy of the original on file and of record in my office.

DATE:

9/19/18

Supreme Court Clerk, State of Nevada

By

[Signature]

Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRON HAMM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 74096
District Court Case No. C256384

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: September 19, 2018

Elizabeth A. Brown, Clerk of Court

By: Amanda Ingersoll
Chief Deputy Clerk

cc (without enclosures):
Hon. Kenneth C. Cory, District Judge
Barron Hamm
Clark County District Attorney
Attorney General/Carson City

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on SEP 25 2018.

HEATHER UNGERMANN
Deputy District Court Clerk

RECEIVED
APPEALS

SEP 24 2018

CLERK OF THE COURT

Heather H. H. H.
CLERK OF THE COURT.

DA
PP

In The Eighth Judicial District court of the state of Nevada
In and For the county of Clark

The state of Nevada
vs

case No: C256384
Dept No: XI

2/24/2021
11:00 a.m.

Barron Hamm Jr

a Petition ~~requesting~~ requesting the defendant's sentencing be set aside
and his guilty Plea agreement be withdrawn from record.
come now Barron Hamm Jr, Proceeding in proper person
and moved this Honorable court For an order granting Defendant
Permission to withdraw his illegally guilty Plea agreement.
and give him a ^{evidentiary} ~~evidentiary~~ hearing in the case No: C256384, on
the Date of 14th in month May in the year 2010 were the defendant
was then represented By attorney Scott L. Coffee as counsel
This petition is Based on all paper & pleading on File
with the Clerk of the court's which are here by
Incorporated by this reference, and point's & authorities
herein. and attached affidavit & point's of argument of Defendant.
Date this 16th day of December 2020

RECEIVED
DEC 2-2-2020
CLERK OF THE COURT

MEMORANDUM OF POINTS AND AUTHORITIES

on July 22, 2009, an indictment was ~~filed~~ filed charging Barron Hamm Jr (Defendant) as follows: count 1. Burglary while in possession of a Fire arm (category B. Felony - NRS 205.060); count 2. Assault with a deadly weapon (category B. Felony - NRS 202.471); count 3. murder with the use of a deadly weapon (category A - NRS 200.010 & 200.030, 193.165); count 4. ~~carrying~~ carrying a concealed Fire arm or other Deadly weapon (category C. Felony - NRS 202.350(1)(d)(3)). on March 12, 2010 an amendment indictment was filed charging Defendant as follows: count 1. Second Degree murder use of a deadly weapon (category A. Felony - NRS 200.010, 200.030, 193.165) and count 2. Assault with ~~use of~~ a deadly weapon.

On March 12, 2010, Defendant pleaded guilty to the charges ~~and~~ included in the amendment indictment. a guilty plea agreement was filed the same day. on May 14, 2010 Defendant was sentenced to a period of incarceration in the Nevada Department of correction as follows: count 1. life with a minimum eligibility of 10 years, Plus a consecutive sentence of 240 months, minimum parole eligibility of 96 months for the use of a deadly weapon; count 2. 72 months, minimum parole eligibility of 24 months to run consecutive to count 1, with 375 days credit for time served. a Judgment of conviction was filed May 19, 2010; on August 5, 2010 Defendant filed a notice of appeal. Defendant's appeals was dismissed on September 19, 2010. Remittitur issued October 19, 2010. on February 22, 2012. Defendant's motion was denied, on ~~February 22, 2012~~ on October 31, 2012 Defendant filed a Petition for writ of Habeas corpus. The state filed a response and motion to Dismiss on November 14, 2012. on January 20, 2013, Defendant's

Petition was Denied. a Finding of Fact, conclusion of Law and order was Filed January 29, 2013.

Defendant Filed a notice of appeal from the dismissal of his petition on February 22, 2013. The Judgment of the District court was affirmed by the Nevada supreme court on September 19, 2013.

Remittitur issued October 17, 2013.

On April 10, 2014 Defendant Filed another motion to withdraw his guilty Plea the state Filed an opposition on May 1, 2014. the Defendant's motion was Denied May 5, 2014.

The Defendant Filed a motion for transcripts on October 3, 2014. The state Filed an opposition on October 8, 2014.

On March 30, 2015 Defendant's motion was granted

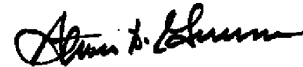
Defendant Filed the instant motion to vacate sentence on June 23, 2015. The ~~state's~~ State's opposition Follows.

The Defendant Barron Hamm Jr. ask the court's to please honor this petition of writ.

Do to the Fact the Defendant U.S. constitutional rights was violated by the court's the Defendant can clearly show that his 14th & 5th amendment rights which is his due process and the right to have equal protection against a unbiased court. the Defendant can clearly show you when he suffer manifest injustice the Defendant Barron Hamm Jr. ~~he~~ was forced to ~~a~~ deal that wasn't in his best interest Barron Hamm Jr. Inform the court on May 14 2010 in his Sentencing transcript page (7) line 11-12 Barron Hamm Jr. tells the Judge that I don't even want the deal because I took the deal right -- I was forced to take this deal now I don't want it. The reason Barron Hamm Jr. ~~state~~ state's he suffer manifest Injustice is the court knew the Defendant Barron Hamm Jr. was not competent to understand the proceeding. see sentencing transcript that took place on May 14, 2010 where it was brought to the court attention that the Defendant Barron Hamm Jr. was not competent. see page (8) line 22-24 where ~~it~~ it shows Barron Hamm Jr. clearly been manipulate & forced in to a deal that didn't fit his best interest. see page (8) line 22-24 where it's state's Barron has been -- he is 18, but he's not really 18 I think the court knows that Barron Hamm Jr. He been in special education classe He is functioning at a level of a 12 year old at best. ~~the~~ c

with that Being Presented & the evidence showed the
Defendant Barron Hammet ask the court to please allow him
to have his sentence set ~~as~~ aside & Fair equal ^{Protection} ~~protection~~
In Law which is his constitutional right as a us citizen

See N.S.S. 176:165. the Defendant have right
to have the court's set aside his guilty Plea
IF he can prove he suffer's manifest INjustice.



CLERK OF THE COURT

1 RTRAN

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6
7 THE STATE OF NEVADA,

8 Plaintiff,

9 v.

10 BARRON HAMM,

11 Defendant.

CASE NO. 09-C-256384

DEPT. VII

COPY

12
13 BEFORE THE HONORABLE LINDA M. BELL, DISTRICT COURT JUDGE
14 FRIDAY, MAY 14, 2010

15
16 **RECORDER'S TRANSCRIPT OF**
17 **SENTENCING**

18 APPEARANCES:

19
20 For the Plaintiff:

SONIA V. JIMENEZ, ESQ.
Deputy District Attorney

21
22 For the Defendant:

SCOTT COFFEE, ESQ.
Deputy Public Defender

23
24
25 RECORDED BY: RENEE VINCENT, COURT RECORDER

1 Friday, May 14, 2010 at 9:16 a.m.

2
3 THE COURT: Page 2, State of Nevada versus Barron Hamm, Case
4 Number C256384. Let the record reflect the presence of Mr. Hamm with his
5 counsel, Mr. Coffee. State represented by Ms. Jimenez.

6 This is on for sentencing. Is there any legal cause or reason we
7 should not go forward with sentencing today?

8 MR. COFFEE: No, Judge.

9 THE COURT: Sir, by virtue of your plea of guilty to second degree
10 murder with use of a deadly weapon, a felony, and assault with use of a deadly
11 weapon, a felony, I adjudicate you guilty of those offenses. State?

12 MS. JIMENEZ: Thank you, Judge. Judge, for the most part, the
13 sentence in this case is negotiated. The bottom end of the sentence is a
14 stipulated 20 years. The one thing for the Court to make a determination on is
15 as to the second degree murder charge, whether the Court is going to sentence
16 the Defendant to a term of years of 25 years or to the life tail on this sentence.
17 The State is asking the Court to sentence the Defendant to the life tail. From
18 the State's point of view, this isn't even a close call.

19 If you go through the Defendant's lengthy juvenile record, he has
20 juvenile offenses dating back to 2003. These offenses include multiple
21 instances of violence and other crimes, crimes involving weapons. There's two
22 separate batteries that he committed, malicious destruction of property,
23 possession of stolen vehicle, possession of dangerous weapon, burglary, grand
24 larceny, another burglary. He's violated probation and parole. He had three
25 terms of probation as a juvenile, and, as you know, the juvenile system is aimed

1 towards rehabilitation. It's not the same as the adult system. So he would've
2 had multiple opportunities to get whatever help and treatment he required
3 through the juvenile system.

4 I want to point out as well that there's a paragraph on page 4 that
5 talks about charges which were dismissed or not pursued, and included in there
6 is a robbery, attempt robbery, possession of a dangerous weapon, second
7 offense, a handgun and revolver. The Defendant was actually charged with
8 those as a juvenile. In fact, they began seeking certification on those charges
9 as an adult, but what happened was, there was a plea hearing.

10 He had other charges that were pending, and based on the plea
11 hearing, he pled to a burglary and an amended charge on the possession of
12 dangerous weapon and was continued on parole in the juvenile system. So
13 those weren't charges that were unsubstantiated or not gone forward on. They
14 were simply dismissed as part of a negotiation. And so I would ask that the
15 Court take into consideration that he does have those prior crimes of violence
16 (phonetic).

17 He finished his parole and committed the crime in the instant
18 offense approximately two and a half weeks after he was done with his juvenile
19 parole. The night that this happened, Jared Flemming was having a birthday
20 party. He has a very large family. It's a blended family, and he's got many
21 brothers and sisters. And he had an older sister who was grown, out of the
22 house and had her own apartment where she and her twin babies stayed, along
23 with the babies' father.

24 And she -- Jared was going to turn 15 years old, and she said, you
25 know, you can have your party here at my house. It was sort of his first

1 grownup party without his parents present, and she was letting him have the
2 apartment. There was another party actually going on at his parents' house for
3 one of his younger siblings who was turning, I believe, two years old or
4 somewhere around there.

5 So Jared's older sister Jasmine took her children, her babies over to
6 her parents' house, left them there, picked up Jared and some of his friends and
7 took them back to the apartment, helped them get set up for the party. As
8 people started to arrive, she went back to her parents' house to be there with
9 her kids and her sister or brother who was having the party. And she went
10 back and forth and checked a few times on Jared and his friends. He hadn't
11 had his birthday yet. He was still 14.

12 She checked the first time, and everything was fine. More people
13 had showed up. Some other of Jared's older sisters and brothers were
14 present -- I think his sisters, actually, were present at the party. And when
15 Jasmine returned later in the night, things had gotten a little bit out of control.
16 Some people who weren't invited had showed up. Some of the older kids had
17 brought some alcohol to the party, and she shut things down. She said that
18 everyone needed to leave because she was checking in and responsible for
19 what was going on at the apartment, and she thought, okay, it's late, it's time
20 for everybody to go.

21 One of the uninvited guests was the Defendant and some of his
22 friends, who are a member of what he calls, I guess, a dance crew that goes by
23 ATM, which stands for Addicted To Money. They had showed up at the party
24 uninvited. It was a large apartment complex, and whether he heard the noise or
25 what happened, he showed up uninvited and was basically causing a ruckus in.

1 the party. At one point one of the kids saw him lift up his shirt and display a
2 gun.

3 And when Jasmine came home and told everybody to leave, he
4 went outside with his friends, but they kind of stayed outside. Jasmine told
5 Jared he had just a few friends who were going to stay the night, and she told
6 Jared, you know, close the door, don't let anybody else in, and she and one of
7 her sisters went -- they were going to go back to their parents' house to get
8 trash bags to clean up from the party.

9 As they walked out, one of the companions of the Defendant made
10 some comments to her. She didn't pay him any mind. You know, I think her
11 sister maybe said something back, and they continued out to their car and
12 started to drive off to the parents' house, which is when they heard the
13 gunshots. She actually thought she was being shot at because of the exchange
14 that had just happened outside the apartment. She had no idea that those were
15 the shots that were shooting and killing her brother.

16 The Defendant, after Jasmine left, had gone back into the
17 apartment. He walked into the apartment, he pulled out a gun, he pointed it at
18 everyone and told them to get on the floor. What his ultimate intention was we
19 may never know. I think it's very reasonable to assume that his intention was
20 commit a robbery in that apartment and demand money from these individuals.

21 There were still some younger kids there. The youngest, I think,
22 was 12 years old. They were in a side bedroom. They turned around and they
23 saw the Defendant with the gun, and they got scared and hid underneath the
24 cribs, Jasmine's children's cribs, because they were afraid of what the
25 Defendant was going to do.

1 He had the gun pointed, and Jared, as probably most 14-year-olds
2 did, he was scared, and he ran past the Defendant, and he ran out of the
3 apartment. And as he was running, the Defendant took his gun, followed him
4 outside and shot two to three times at Jared. He hit Jared in the back, and
5 Jared was killed as he was running away.

6 There was absolutely no reason for the Defendant to go back into
7 that apartment. The party was shut down. There was certainly no reason for
8 him to shoot a scared 14-year-old boy in the back as he was fleeing.

9 I'm sure when Jared's parents found out what happened -- you
10 know, parents worry about their kids. When they're little, they worry. You
11 know, are they going to climb up on the couch and jump off and hurt
12 themselves? We've got to keep them away from the pool or -- you know, as
13 they get older, is he going to climb a tree and fall out and break his arm or --
14 you know, maybe riding his bike, get into an accident. They probably never
15 imagined they be getting a phone call that their 14-year-old son was shot in the
16 back and then to go to the hospital and find out that he died of those injuries.

17 It was an absolutely senseless crime, a crime that has affected this
18 very large and loving family that will affect all of them for the rest of their lives.
19 And not just them, but the other children who were in that apartment who
20 witnessed what happened, who saw their friend, heard the friend get shot and
21 killed, were themselves afraid and at risk. You know, he probably wouldn't
22 appreciate me saying this, but the little 12-year-old, Tyjuan Bell, who's one of
23 the named victims, he testified at the Grand Jury -- at one point he just broke
24 down balling because of what had happened and the emotion of what had
25 happened to him.

1 This was a horrible incident that occurred, and absolutely based on
2 his record, based on his conduct that night, a life sentence is appropriate, and
3 we would ask that you impose that sentence.

4 THE COURT: Thank you. Sir, is there anything that you'd like to say
5 before your attorney speaks on your behalf?

6 THE DEFENDANT: All that -- no. All that that they say I got arrested
7 on, that wasn't even what I got charged with. Nothing --

8 MR. COFFEE: I'll expound on that, Barron.

9 THE DEFENDANT: All right.

10 THE COURT: Okay. Is there anything else you'd like to say, sir?

11 THE DEFENDANT: ~~I don't even want the deal because I took the deal.~~
12 ~~right -- I was forced to take this deal. Now I don't want it.~~

13 THE COURT: Okay. Mr. Coffee?

14 MR. COFFEE: Judge, this is a difficult case. The shooting is senseless.
15 I agree with the District Attorney on that. I'm a little troubled that we feel the
16 need to spin facts at a sentencing like this, but I suppose that's the nature of
17 the business.

18 Barron Hamm showed up at a party and -- his record, by the way,
19 as mentioned, things that he was arrested for that he hasn't been convicted for,
20 a number of things. If the crimes were that serious, this Court is well aware
21 how the criminal justice system works. There was an allegation of kidnapping
22 at some point, for example. If it would've been a legitimate charge, I would've
23 expected the State to do their job and push forward on that prosecution.
24 Perhaps certify him as an adult. That never happened.

25 He hadn't really been formally placed in juvenile detention for a

1 significant period of time. He had been continued on probation. He comes
2 from a tough area of town. There's question about that. He's had contact with
3 law enforcement.

4 But on the night in question, one of Barron's friends got a text that
5 there was a party, and the party was loud. There were a lot of people there.
6 Barron showed up with ATM, which he has described continuously as a dance
7 crew. I don't think there's any reason to doubt that. One of the officers in the
8 police report say it sounds like a dance crew. It's not a gang. They're not
9 jacking people. That's not what was going on.

10 He shows up at the party, and he buys a gun from somebody. We
11 know that he buys a gun that night at the party because he tells his mom that
12 in the police interview room when there's no one around. They don't think
13 they're being heard. He's told the police, I'm not involved in things. He says, I
14 got the gun that night from a friend. Somebody brought it at the party.

15 He leaves the party, and he's trying to avoid a confrontation with
16 some other boys that he's had problems with the past. He goes back into the
17 party. They try to stop him at the door, he walks back in, and he pulls out the
18 gun. He says -- and I take issue with the State's claim that he says get down
19 or -- witnesses at the scene, they are split on what he said. The witness
20 closest to the scene say, he says calm down, calm down. The witness is very
21 sure of that. There's no demand for money, nothing like that.

22 Barron has been -- he's 18, but he's not really 18. I think the Court
23 knows that. He's been in special education classes. He is functioning at a level
24 of a 12-year-old at best. He tries to control the situation, tries to calm
25 people down. Somebody runs, and he pulls off a shot. And the reason that I

1 say it's a shot -- not shots -- is what the State said a moment go. There's one
2 bullet that is found in the boy's body. This Court knows how homicide
3 scenes work -- scenes work. They look for other shells, for other casings.
4 There are no other shells or casings found at the scene. One that can be
5 verified. He gets frightened and then he leaves.

6 When he's interviewed -- he turns himself in, by the way, with an
7 uncle to the police. They make calls trying to locate him. He's identified easily.
8 It's not a planned event. That's pretty clear from everything we know about
9 this. He is there at the party with people that know him. They identify him very
10 easily. Calls are made, and his family brings him in. We've got family member
11 after family member after family member in the courtroom here with Barron
12 today. They've all helped raise Barron to some extent, I think. They've all tried
13 to take care of him for the better part of his life, done the best that he could.

14 He's placed in a police room, and he denies being involved. Not
15 that big of a surprise. When his mother comes in -- and this is in the PSI, and I
16 think it's very telling -- he says, "I did do that, Mom. I shot that boy. I got
17 scared." And I think that's exactly what happened. He tried to control a
18 situation. He's not the strongest-minded person in the world. Somebody ran,
19 he got scared and fired a shot, and it had tragic consequences for another
20 family that can never have their son back. It is a tragedy.

21 The Court's decision this morning comes down to one of two
22 things, 20 to 52 years, 20 to life. I don't -- there's probably competing views
23 on the different sides of the courtroom as to what the Court should do. He's
24 never had a significant period of incarceration in his life. The Court knows that
25 that can change, how a person acts, how a person feels. We'd ask you

1 consider the sentence of 20 to 52 years given his youth, given the unplanned
2 nature of this all, and it is most certainly unplanned if you look at the facts.
3 There are tragic consequences, but we would ask the Court to give that
4 sentence at least consideration.

5 THE COURT: Okay. Thank you. Anything else from the Defense?

6 MR. COFFEE: No, Judge.

7 THE COURT: Okay.

8 MR. COFFEE: And we spoke with the family. They just want to express
9 their condolences to the victim's family.

10 THE COURT: Okay. Thank you. And do we have any speakers?

11 MS. JIMENEZ: We do, Judge. If I could check and confirm who exactly
12 is going to speak.

13 THE COURT: Okay.

14 [Pause]

15 MS. JIMENEZ: In this court, do we have them stand up and have them
16 speak?

17 THE COURT: That would be fine. In fact, if you put her --

18 MS. JIMENEZ: Wherever you'd like.

19 THE COURT: -- in that chair. I can just see better if she -- that's perfect.
20 Ma'am, and you can go ahead and have a seat.

21 THE SPEAKER: Can I sit here?

22 THE COURT: That's fine, too. The Clerk is going to swear you in.

23 **KAREN KENNEDY GRILL,**

24 being first duly sworn as a speaker, testified as follows:

25 THE CLERK: Thank you. Would you state your name for the record.

1 MS. GRILL: My name is Karen Kennedy Grill. And, Your Honor, one
2 bullet is all it takes to murder a 14-year-old boy. Jared Flemming is dead. He
3 will never skateboard again. He will never smile and laugh and look into his
4 father's eyes. His family will be without him. In their first thoughts every
5 morning will be how shattered their lives are and how much they miss Jared,
6 and their last thoughts at night will be the same, and they will live this day after
7 day for the rest of their lives.

8 I believe the Defendant knows right from wrong. I believe he
9 knows that's wrong to murder other people and shatter lives. His family will
10 suffer every day, and they will never get Jared back, and we will think about
11 Jared every day. I don't think it's fair that Jared's life was taken away and the
12 Defendant has another chance at a life in a possible 20 years, to get and
13 possibly murder somebody's child. Thank you.

14 THE COURT: Thank you, ma'am.

15 [Pause]

16 MS. FLEMMING: Hi, Your Honor. I'm -- I'm Jared's mother.

17 THE COURT: Okay, ma'am. If you could come up, the clerk is just going
18 to swear you in, and then you can say whatever you like.

19 MS. FLEMMING: Okay.

20 THE COURT: And after she's swears you, feel free to sit or stand,
21 whatever you're more comfortable with.

22 THE CLERK: Please raise your right hand.

23 **KIMBERLY BROWN FLEMMING,**

24 being first duly sworn as a speaker, testified as follows:

25 THE CLERK: Thank you. Please state your name for the record.

1 MS. FLEMMING: My name is Kimberly Brown Flemming. I'm Jared's
2 mother. This is my friend Jared. This is his last year of school in the 8th grade
3 graduation. This is what I have left. He had just began 9th grade. I've written
4 something that I'd like to read to you, please.

5 THE COURT: That's fine.

6 MS. FLEMMING: It started out this morning that Jared's father and
7 siblings wanted to speak today. They wanted to let everyone know how much
8 despair has entered our lives the very second we were told Jared is dead. But
9 as they began write down their feelings of anguish, it turned down -- it turned
10 from sadness to anger, so I've decided that I will try my best to speak for our
11 family.

12 For as long as I can remember, I have always tried to protect Jared
13 from evil in this world. Jared had asthma. I was always so scared that
14 something would happen to him during the night while I slept. So every night I
15 would peek in on him while he slept in his room just to calm my mind that he
16 was safe and breathing. I never dreamed I would ever receive a phone call from
17 his sisters telling me my son has been shot.

18 I answered the phone at 1:00 a.m. in the morning to my daughter
19 yelling at me, Kim, he's dead. He's dead. He's dead. Jared's dead. My mind
20 instantly went to denial that it could be that serious of a situation. I figured
21 maybe he'd been shot in the arm or in the leg, and my daughter was just
22 panicking. My husband instantly drove to my oldest daughter's home to find
23 his beloved son laying lifeless on the ground while an emergency medical
24 response team worked relentlessly to revive him.

25 We later learned that Jared had been shot in the back, entering his

1 lung on the right and exiting through his heart. His friends who attended his
2 15th birthday party that had ended only an hour previous to this witnessed
3 Jared take three deep breaths and drop to the ground, never to breathe again.
4 Later that same morning, Jared's father was so devastated, he attempted to kill
5 himself. Luckily, a family member stopped him.

6 Jared's father and I have no doubt that Barron Hamm was the
7 person that had murdered our son. We had only wished it had gone to trial so
8 we, his parents, could've had some kind of understanding how this monster of
9 a human could justify to himself to shoot not only once, but twice at a child
10 whom he already knew was scared of him. Jared never tried to argue nor fight
11 with Barron Hamm. My son was simply running for his life, and Barron Hamm
12 cowardly shot him in the back.

13 Your Honor, I mean no disrespect to you, but our family has not only
14 been let down by the loss of Jared, but we also feel we've been let down by
15 the court in prosecuting this unremorseful animal that killed our son and my
16 children's brother.

17 My son Jared will never graduate high school, let alone be able to
18 go to college like he had planned. He will never get married, and he will never
19 give me any grandchildren. I wish someone could help me to understand why
20 an admitted murderer who intentionally brought a gun and brandished it to
21 several teenagers threatening their lives and intentionally pointing that same gun
22 at my 15-year-old son and shot once and missed, shot a second time hitting
23 him in the back intentionally. How that can be considered second degree
24 murder is a cop-out to our family.

25 How can giving him ten years in prison for a murder charge possibly

1 make up for the death of any human? This monster who has no regard for
2 human life will still get a chance to enjoy freedom, get married, possibly have a
3 family in his future. This is -- this is like a spit in our face. I would have gladly
4 made a deal that Barron Hamm can get out of prison in 10 to 20 years if you
5 could bring my son back to me in 10 to 20 years.

6 Barron Hamm made a choice that day to condemn my son to death.
7 Jared's family did not expect to have this animal kill, but the idea of Barron
8 Hamm getting the possibly of walking freely on the streets again is
9 unbelievable.

10 The one thing I would like to say to Barron Hamm is that Jared has
11 nine other siblings that love, cherish and miss him dearly, not to mention an
12 extended family and friends. Do not ever think you will be forgotten when it
13 comes time for your parole hearing. God willing, Jared's father and myself, as
14 well as every sibling, will be present at every hearing to try to forbid you from
15 ever getting out.

16 I would like for everyone to know Jared was not a gang member as
17 the media portrayed him at first. Jared was a loving son, brother and uncle.
18 He was loyal to his friends and considerate to adults. He was characterized as
19 amicable to his peers. He was recognized as a skilled drummer, dedicated
20 skateboarder and had just begun playing high school football. He always spoke
21 of college and dreamed about what the future could hold for him.

22 Our family will never again feel complete. Every holiday and
23 celebration will hold tears and loneliness for his family and friends. I've always
24 been there for Jared to defend him when I know he is innocent. This will be
25 the final fight for him for at least 20 years, but I will never quit. Even after I die,

1 you will -- Barron Hamm will see me in his nightmares knowing that I am still
2 fighting for my son. As for Jared's father, his son meant the world to him, and
3 that enjoyment will forever be gone. We loved Jared, and we miss him. Thank
4 you.

5 THE COURT: Thank you. Ma'am, I'm sorry to you and your family for
6 your loss.

7 MS. FLEMMING: Thank you.

8 THE COURT: Okay. Ms. Jimenez, anything else?

9 MS. JIMENEZ: No, Judge.

10 THE COURT: Okay. Sir, if you could please stand. Sir, in accordance
11 with the laws of the State of Nevada, on Count 1, second degree murder, I
12 sentence you to life in the Nevada Department of Corrections with minimum
13 parole eligibility after ten years has been served.

14 With regard to the weapon enhancement, I sentence you to a
15 maximum of 20 years or 240 months in the Nevada Department of Corrections
16 and a minimum of 96 months in the Nevada Department of Corrections. That
17 sentence will run consecutively to the 10 to life. The reason for imposing the
18 weapon enhancement is considering the factors under NRS 193.165.

19 First of all, the facts and circumstances of this crime, since it is a
20 murder case, the maximum sentence on the weapon enhancement, I believe, is
21 appropriate. Mr. Hamm does have a fairly significant juvenile record. Certainly,
22 I cannot imagine a crime that would have more impact on the victim, Mr.
23 Flemming, and his family. And based on that, I do think that the sentence and
24 the weapon enhancement is appropriate considering all of the factors.

25 With respect to Count 2, assault with a deadly weapon, sir, I

1 sentence you to a minimum of 24 months and a maximum of 72 months in the
2 Nevada Department of Corrections, and that will run consecutively to Count 1.
3 I have -- you'll also be required to pay restitution to Victims of Violent Crimes in
4 the amount of \$6,000.

5 And Ms. Jimenez, I had some additional receipts, but I wasn't very
6 clear on whether that was -- what the amount was in addition to the \$6,000.

7 MS. JIMENEZ: It was sent directly to you. I don't think I got a copy of
8 those. Could I just check with the family members and find out what it was
9 that they sent? Thank you.

10 THE COURT: And, sir, while they're figuring that out, you'll also be
11 required to pay a \$25 administrative assessment fee and \$150 DNA analysis
12 fee. What's the credit for time served figure, Mr. Coffee?

13 MR. COFFEE: 375 days, Your Honor.

14 THE COURT: You'll receive 375 days credit for time served.

15 [Pause]

16 MS. JIMENEZ: Judge, I'm sorry, I'm going to need to do some math.
17 There is more expenses here. I'm going to have to pull this up and then just
18 subtract the \$6,000 --

19 THE COURT: Okay. I'm going to trail -- just trail it for a moment to get
20 the restitution figure.

21 MS. JIMENEZ: Thank you.

22 [Matter trailed at 9:42 a.m.]

23 [Matter recalled at 9:48 a.m.]

24 THE COURT: Okay. Let's go back to Hamm for a minute. Ms. Jimenez,
25 you have the amount minus the \$6,000?

1 MS. JIMENEZ: Yes, I do, Judge. Just so the record has my math, there
2 was a total of funeral expenses of \$16,300.27. There was also a receipt for
3 medical bills in the amount of \$26,496. That totaled to \$42,796.27. If you
4 subtract the \$6,000 that the Court has ordered be paid to Victims of Violent
5 Crimes, the rest of the amount that is owed to the victim's family is
6 \$36,796.27.

7 THE COURT: Okay. So Mr. Hamm will also be ordered to pay restitution
8 to the Flemming family in the amount of \$36,796.27. Thank you.

9 [Proceedings concluded at 9:44 a.m.]

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ATTEST: I do hereby certify that I have truly and correctly transcribed the
audio-visual recording of the proceeding in the above entitled case to the
best of my ability.



Renee Vincent, Court Recorder/Transcriber

CERTIFICATE OF SERVICE

I, Barron Hamm Jr. certify that on this date I did serve a true and correct copy of the foregoing Motion upon Respondent(s), via U.S. Mail, by placing same in the United States Postal Service (Prison Mail System), postage being fully prepaid, and addressed to:

Clerk's of the court's
200 Lewis Avenue
Las Vegas Nevada 89155

AND

District attorney
200 Lewis Avenue 3rd Floor
Las Vegas Nevada 89155

Dated this 16 day of December, 2020.

By: Barron Hamm Jr.

Movant, In Proper Person

AFFIRMATION PURSUANT TO NRS 239B.030

** I certify that the foregoing document DOES NOT contain the social security number of any Persons.

12-16-2020
(Date)

Barron Hamm Jr.
(Signature)

BARRON, HAMM S.F. 105 2277
1200 PRISON ROAD
LOVE LOCK, NEVADA 89419

INMATE
MAIL CENTER

Lovelock Correctional Center



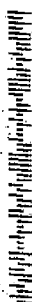
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DEC 22 2020

CLERK OF THE COURT

STEVEN D. GRIFFITH, CLERK OF THE COURT
200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS, NEVADA 89155



1 **OPI**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 DANIELLE K. PIEPER
6 Chief Deputy District Attorney
7 Nevada Bar #008610
8 200 Lewis Avenue
9 Las Vegas, Nevada, 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 BARRON HAMM,
13 #2707761

14 Defendant.

CASE NO. 09C256384

DEPT NO. XXVIII

15 **ORDER FOR PRODUCTION OF INMATE**
16 **BARRON HAMM, BAC #1052277**

17 DATE OF HEARING: 4/7/2021
18 TIME OF HEARING: 11:00 AM

19 TO: NEVADA DEPARTMENT OF CORRECTIONS; and

20 TO: JOSEPH LOMBARDO, Sheriff of Clark County, Nevada:

21 Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by STEVEN
22 B. WOLFSON, District Attorney, through DANIELLE K. PIEPER, Chief Deputy District
23 Attorney, and good cause appearing therefor,

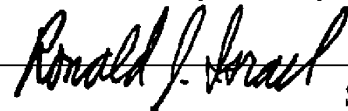
24 IT IS HEREBY ORDERED that NEVADA DEPARTMENT OF CORRECTIONS
25 shall be, and is, hereby directed to produce BARRON HAMM, Defendant in Case Number
26 09C256384, wherein THE STATE OF NEVADA is the Plaintiff, inasmuch as the said
27 BARRON HAMM is currently incarcerated in the NEVADA DEPARTMENT OF
28 CORRECTIONS located in Clark County, Nevada, and his presence will be required in Las

1 Vegas, Nevada, commencing on 4/7/2021, at the hour of 11:00 o'clock AM and continuing
2 until completion of the prosecution's case against the said Defendant.

3 IT IS FURTHER ORDERED that JOSEPH LOMBARDO, Sheriff of Clark County,
4 Nevada, shall accept and retain custody of the said BARRON HAMM in the Clark County
5 Detention Center, Las Vegas, Nevada, pending completion of said matter in Clark County, or
6 until the further Order of this Court; or in the alternative shall make all arrangements for the
7 transportation of the said BARRON HAMM to and from the Nevada Department of
8 Corrections facility which are necessary to insure the BARRON HAMM's appearance in Clark
9 County pending completion of said matter, or until further Order of this Court.

10 Dated this 25th day of February, 2021

11
12 09C256384


SC

13
14 STEVEN B. WOLFSON
15 Clark County District Attorney
Nevada Bar #001565

36B 200 CECA E81C
Ronald J. Israel
District Court Judge

16
17 BY /s/ DANIELLE K. PIEPER
18 DANIELLE K. PIEPER
19 Chief Deputy District Attorney
20 Nevada Bar #008610
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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 The State of Nevada vs Barron
7 Hamm
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CASE NO: 09C256384

DEPT. NO. Department 28

9 **AUTOMATED CERTIFICATE OF SERVICE**

10 Electronic service was attempted through the Eighth Judicial District Court's
11 electronic filing system, but there were no registered users on the case. The filer has been
12 notified to serve all parties by traditional means.
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1 **RSPN**
2 **STEVEN B. WOLFSON**
3 Clark County District Attorney
4 Nevada Bar #001565
5 **TALEEN PANDUKHT**
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8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 BARRON HAMM,
13 #2707761

14 Defendant.

CASE NO: 09C256384-1

DEPT NO: XXVIII

15 **STATE'S RESPONSE AND MOTION TO DISMISS PETITIONER'S THIRD**
16 **PETITION FOR WRIT OF HABEAS CORPUS**

17 DATE OF HEARING: April 27, 2020
18 TIME OF HEARING: 11:00 AM

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
19 District Attorney, through TALEEN PANDUKHT, Chief Deputy District Attorney, and
20 hereby submits the attached Points and Authorities in Response to Petitioner's Third Petition
21 for Writ of Habeas Corpus and the State's Motion to Dismiss.

22 This Response is made and based upon all the papers and pleadings on file herein, the
23 attached points and authorities in support hereof, and oral argument at the time of hearing, if
24 deemed necessary by this Honorable Court.

25 //

26 //

27 //

28 //

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 22, 2009, the State charged Barron Hamm (hereinafter "Petitioner") by way of
4 Indictment with: Count 1 – Burglary While in Possession of a Firearm (Felony – NRS
5 205.060); Count 2 – Assault with a Deadly Weapon (Felony – NRS 200.471); Count 3 –
6 Murder with Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165); and Count
7 4 – Carrying Concealed Firearm or Other Deadly Weapon (Felony – NRS 202.350(1)(d)(3)).

8 On March 12, 2010, after negotiations, the State charged Petitioner by way of Amended
9 Indictment with: Count 1 – Second Degree Murder with Use of a Deadly Weapon (Category
10 A Felony – NRS 200.010, 200.030, 193.165) and Count 2 – Assault with a Deadly Weapon
11 (Category B Felony – NRS 200.471). That same day, Petitioner entered into a Guilty Plea
12 Agreement (hereinafter "GPA") with the State wherein he pled guilty to both counts as
13 charged in the Amended Indictment. The terms of the GPA were as follows: "The State will
14 retain the full right to argue on the charge of Second Degree Murder. Both parties agree to
15 stipulate to a sentence of eight (8) to twenty (20) years for the deadly weapon enhancement.
16 Both parties also agree to stipulate to a sentence of twenty-four (24) to seventy-two (72)
17 months for the charge of Assault with Use of a Deadly Weapon and agree to run the sentence
18 consecutive to Count 1. Further, this agreement is conditional on the Court agreeing to and
19 following through with the stipulated portion of the sentence."

20 On May 14, 2010, Petitioner appeared in District Court with counsel, was adjudged
21 guilty, and was sentenced on Count 1 to a maximum term of Life with a minimum parole
22 eligibility of ten (10) years in the Nevada Department Of Corrections (hereinafter "NDC")
23 plus a consecutive term of a maximum of two hundred forty (240) months with a minimum
24 parole eligibility of ninety-six (96) months for use of a deadly weapon, and on Count 2 to a
25 maximum term of seventy-two (72) months with a minimum parole eligibility of twenty-four
26 (24) months in the NDC, consecutive to Count 1, with three hundred seventy-five (375) days
27 credit for time served. Petitioner was also ordered to pay \$36,796.27 restitution to the family

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1 of the victim and \$6,000.00 restitution to Victims of Violent Crimes. The Judgment of
2 Conviction was filed on May 20, 2010.

3 On August 5, 2010, Petitioner filed an untimely Notice of Appeal from his Judgment
4 of Conviction. On September 10, 2010, the Supreme Court of Nevada dismissed Defendant's
5 appeal for lack of jurisdiction. Remittitur issued on October 6, 2010.

6 On February 13, 2012, Petitioner filed a Motion to Withdraw Guilty Plea, which the
7 State opposed on February 22, 2012. The District Court denied Petitioner's motion on
8 February 24, 2012, and the order of denial was filed on May 7, 2012.

9 On October 31, 2012, Petitioner filed his First Petition for Writ of Habeas Corpus (Post-
10 Conviction) (hereinafter "First Petition"). On November 14, 2012, the State filed its Response
11 and Motion to Dismiss the First Petition as time-barred with no good cause shown for the
12 delay. On January 10, 2013, the District Court denied Petitioner's First Petition, entering its
13 Findings of Fact, Conclusions of Law, and Order on January 29, 2013. Petitioner filed a Notice
14 of Appeal on February 22, 2013. On September 19, 2013, the Supreme Court affirmed the
15 District Court's denial of Petitioner's First Petition, with Remittitur issuing on October 17,
16 2013.

17 On June 23, 2015, Petitioner filed a Motion to Vacate Sentence. The State responded
18 on July 10, 2015. This Court denied the Motion on July 15, 2015. On August 19, 2015,
19 Petitioner appealed. The Nevada Supreme Court affirmed the District Court's denial of
20 Petitioner's Motion to Vacate Sentence on February 17, 2016. Remittitur issued on March 14,
21 2016.

22 On May 17, 2017, Petitioner filed a Second Petition for Writ of Habeas Corpus (Post-
23 Conviction) (hereinafter "Second Petition"). The State filed its Response on July 11, 2017.
24 On July 24, 2017, the district court denied Petitioner's Second Petition. The Findings of Fact,
25 Conclusions of Law and Order was filed on August 16, 2017. Petitioner filed a Notice of
26 Appeal on September 8, 2017. On August 24, 2018, the Supreme Court affirmed the District
27 Court's denial of Petitioner's Second Petition, with Remittitur issuing on September 19, 2018.

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1 On February 2, 2021, Petitioner filed the instant Third Petition Requesting the
2 Defendant's Sentencing Be Set Aside and His Guilty Plea Agreement be Withdrawn From
3 Record. The State's response now follows.

4 **STATEMENT OF THE FACTS**

5 On May 3, 2009, officers of the Las Vegas Metropolitan Police Department received a
6 call regarding a person that had been shot. Upon arrival, the officers located a 14 year old male
7 lying on the ground with a gunshot wound. The juvenile victim was transported to Sunrise
8 Hospital and was later pronounced dead.

9 During an investigation, officers learned that the victim's sister had thrown a birthday
10 party at her apartment for the 14 year old victim on May 2, 2009. Approximately 25 people
11 attended the party ranging in ages from 12 to 19 and alcohol was consumed by many of the
12 attendees. During the party, several uninvited males arrived at the party and claimed to be
13 members of the street gang "ATM." One of the "ATM" members was recognized by witnesses
14 as "Burger," later identified as Petitioner, a student at Chaparral High School.

15 At approximately 1:00AM, the victim's sister returned to the party and observed the
16 "ATM" members. She decided to end the party and asked everybody to leave except the 14
17 year old victim and a few juveniles that were sleeping over. Petitioner and the other "ATM"
18 members left the party; however, a short time later Petitioner returned and knocked on the
19 door. The door was opened and Petitioner walked inside. He pulled out a revolver and told
20 everybody to "Calm down" or "Get down." The 14 year old panicked and ran out the front
21 door. Petitioner stepped out of the front door, fired the gun and then fled the scene. The
22 witnesses exited the apartment, discovered the 14 year old victim lying on the ground bleeding
23 from a gunshot wound and called police.

24 Several witnesses reviewed their Chaparral High School yearbook, identified Petitioner
25 as the suspect and informed police. Later, witnesses were shown a photo lineup by police and
26 positively identified Petitioner. Detectives attempted to locate Petitioner at his residence but
27 were unsuccessful. On May 4, 2009, a family member called detectives and agreed to bring
28 Petitioner in for an interview. During questioning, Petitioner admitted attending the party but

1 denied being an “ATM” gang member. He admitted to re-entering the apartment but stated
2 that he did not know how the shots were fired. A short time later, Petitioner asked for his
3 mother and she was brought into the interview room. After a brief discussion, the detectives
4 left Petitioner and his mother in the room with the video recorder on. While speaking to his
5 mother, Petitioner lowered his voice and stated, “I did shoot the boy though, I did do that, I
6 told you I shot him and I got scared.”

7 Petitioner was arrested, transported to the Clark County Juvenile Hall and booked
8 accordingly. On May 6, 2009, Petitioner was certified as an adult, transported to the Clark
9 County Detention Center, and booked accordingly.

10 **ARGUMENT**

11 **I. PETITIONER’S PETITION IS PROCEDURALLY BARRED.**

12 **a. Petitioner’s Petition is Time-Barred.**

13 Pursuant to NRS 34.726(1):

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

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

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

25 The one-year time limit for preparing petitions for post-conviction relief under NRS
26 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
27 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite

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1 evidence presented by the defendant that he purchased postage through the prison and mailed
2 the Notice within the one-year time limit.

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

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

11 Id. Additionally, the Court noted that procedural bars “cannot be ignored [by the district court]
12 when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
13 has granted no discretion to the district courts regarding whether to apply the statutory
14 procedural bars; the rules *must* be applied.

15 In the instant case, the Judgment of Conviction was filed on May 20, 2010, and
16 Petitioner filed a direct appeal. The Nevada Supreme Court issued an Order dismissing
17 Petitioner’s appeal as the Notice of Appeal was untimely filed and remittitur issued on October
18 6, 2010. Thus, the one-year time bar began to run from the date remittitur issued. The instant
19 Petition was not filed until February 2, 2021. This is almost ten (10) years in excess of the
20 one-year time frame. Absent a showing of good cause for this delay and undue prejudice,
21 Petitioner’s Petition must be dismissed because of its tardy filing.

22 **b. Petitioner’s Petition is Successive and/or an Abuse of Writ.**

23 NRS 34.810(2) reads:

24 A second or successive petition *must* be dismissed if the judge or
25 justice determines that it fails to allege new or different grounds
26 for relief and that the prior determination was on the merits or, if
27 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.

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1 (emphasis added). Second or successive petitions are petitions that either fail to allege new or
2 different grounds for relief and the grounds have already been decided on the merits or that
3 allege new or different grounds but a judge or justice finds that the petitioner's failure to assert
4 those grounds in a prior petition would constitute an abuse of the writ. Second or successive
5 petitions will only be decided on the merits if the petitioner can show good cause and
6 prejudice. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

7 The Nevada Supreme Court has stated: "Without such limitations on the availability of
8 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-
9 conviction remedies. In addition, meritless, successive and untimely petitions clog the court
10 system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950.
11 The Nevada Supreme Court recognizes that "[u]nlike initial petitions which certainly require
12 a careful review of the record, successive petitions may be dismissed based solely on the face
13 of the petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words,
14 if the claim or allegation was previously available with reasonable diligence, it is an abuse of
15 the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497-498 (1991).
16 Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

17 Here, Petitioner previously filed a Petition for Writ of Habeas Corpus on October 31,
18 2012, which raised the same claim that his plea was not voluntarily entered into because he
19 was not competent to understand his plea. See Petition for Writ of Habeas Corpus, filed
20 October 31, 2012, p. 8-9. This Court denied Petitioner's 2012 Petition and entered its Findings
21 of Fact, Conclusions of Law and Order on January 29, 2013. On May 17, 2017, Petitioner filed
22 a Second Petition for Writ of Habeas Corpus, which was denied on July 24, 2017. The Findings
23 of Fact, Conclusions of Law and Order was filed on August 16, 2017. Therefore, Petitioner's
24 instant Petition is successive and must be denied. As this Petition is successive, pursuant to
25 NRS 34.810(2), it cannot be decided on the merits absent a showing of good cause and
26 prejudice. NRS 34.810(3).

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1 **c. Petitioner’s Petition is Barred by the Law of the Case Doctrine and Res**
2 **Judicata**

3 “The law of a first appeal is law of the case on all subsequent appeals in which the facts
4 are substantially the same.” Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting
5 Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). “The doctrine of the law of the
6 case cannot be avoided by a more detailed and precisely focused argument subsequently made
7 after reflection upon the previous proceedings.” Id. at 316, 535 P.2d at 799. Under the law of
8 the case doctrine, issues previously decided on direct appeal may not be reargued in a habeas
9 petition. Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing McNelson v.
10 State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this Court cannot
11 overrule the Nevada Supreme Court. Nev. Const. Art. VI § 6. Further, defendants cannot
12 attempt to relitigate the same motions over and over within the district court due to res judicata.
13 See Mason v. State, 206 S.W.3d 869, 875 (Ark. 2005) (recognizing the doctrine’s applicability
14 in the criminal context); see also York v. State, 342 S.W. 528, 553 (Tex. Crim. Appl. 2011).

15 Here, as noted above, Petitioner previously raised his competency to enter his plea in
16 his first Petition for Writ of Habeas Corpus. See Petition for Writ of Habeas Corpus, filed
17 October 31, 2012, p. 8-9. This Court denied Petitioner’s Petition and entered its Findings of
18 Fact, Conclusions of Law and Order on January 29, 2013. Petitioner appealed this Court’s
19 decision. The Nevada Supreme Court affirmed the Court’s denial of his Petition for Writ of
20 Habeas Corpus and determined that “no relief based on [his] submissions is warranted.” Order
21 of Affirmance, No. 62688, filed September 19, 2013, p. 2, fn 4. Therefore, as Petitioner’s
22 claims have been reviewed and dismissed by the Nevada Supreme Court, Petitioner’s instant
23 claims are barred by the law of the case. Thus, his Petition must be denied.

24 Further, Petitioner’s claims are barred by the doctrine of res judicata. However,
25 Petitioner has previously raised this claim in other Motions and Petitions. See Motion to
26 Withdraw Plea, filed February 13, 2012, p. 6-7; Petition for Writ of Habeas Corpus, filed
27 October 31, 2012, p. 8-9; Motion to Withdraw Plea, filed April 10, 2014, p. 2-3. All of these
28 pleadings were previously denied by this Court. See Order, filed May 7, 2012; Findings of

1 Fact, Conclusions of Law and Order, filed January 29, 2013; Order, filed May 16, 2014.
2 Accordingly, by simply continuing to file motions with the same arguments, his motion is
3 barred by the doctrine of res judicata. Id.; Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799
4 (1975).

5 **d. The State Affirmatively Pleads Laches.**

6 NRS 34.800 creates a rebuttable presumption of prejudice to the State if “[a] period
7 exceeding five years [elapses] between the filing of a judgment of conviction, an order
8 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of
9 conviction and the filing of a petition challenging the validity of a judgment of conviction...”
10 The Nevada Supreme Court observed in Groesbeck v. Warden, “[P]etitions that are filed many
11 years after conviction are an unreasonable burden on the criminal justice system. The necessity
12 for a workable system dictates that there must exist a time when a criminal conviction is final.”
13 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the presumption, the statute requires the State
14 plead laches in its motion to dismiss the petition. NRS 34.800(2). The State affirmatively
15 pleads laches in the instant case.

16 The Judgment of Conviction was filed on May 20, 2010, and the instant pleading was
17 filed on February 2, 2021. This is over five (5) years. The State would be prejudiced in having
18 to respond to a challenge to the Petitioner’s Judgment of Conviction filed over five (5) years
19 ago. Finding witnesses and evidence after all this time would be all but impossible. Therefore,
20 the State affirmatively pleads laches in the instant case.

21 **II. PETITIONER FAILED TO DEMONSTRATE GOOD CAUSE TO OVERCOME**
22 **THE PROCEDURAL BAR.**

23 A showing of good cause and prejudice may overcome procedural bars. “To establish
24 good cause, appellants *must* show that an impediment external to the defense prevented their
25 compliance with the applicable procedural rule. A qualifying impediment might be shown
26 where the factual or legal basis for a claim was not reasonably available at the time of default.”
27 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court
28 continued, “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d at 526

1 To find good cause there must be a “substantial reason; one that affords a legal excuse.”
2 Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105
3 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Clearly, any delay in the filing of the petition
4 must not be the fault of the petitioner. NRS 34.726(1)(a). Additionally, “bare” and “naked”
5 allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled
6 by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “A claim is
7 ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the
8 claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

9 Here, Petitioner cannot demonstrate good cause to overcome the procedural bars. In
10 fact, Petitioner does not even address good cause in his motion. Instead, Petitioner merely
11 raises his claims without ever addressing the one-year time bar or his tardy filing. All of the
12 facts and law alleged in Petitioner’s motion were available for direct appeal or a timely filed
13 habeas petition. Further, Petitioner does not even allege an impediment external to the defense.
14 Therefore, Petitioner has failed to demonstrate good cause to overcome the procedural bars
15 and, accordingly, Petitioner’s second Petition must be denied as untimely and successive.

16 **III. PETITIONER SIMILARLY FAILED TO DEMONSTRATE PREJUDICE.**

17 In order to establish prejudice, the defendant must show “‘not merely that the errors of
18 [the proceedings] created possibility of prejudice, but that they worked to his actual and
19 substantial disadvantage, in affecting the state proceedings with error of constitutional
20 dimensions.’” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United
21 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). Here, it is unclear whether
22 Petitioner is claiming counsel was ineffective for allegedly coercing him into taking the
23 negotiations or substantively claiming that his plea was not knowingly and voluntarily entered.
24 Petition at 4-5. Regardless, Petitioner’s claims are meritless as Petitioner received effective
25 assistance of counsel and his plea was knowingly and voluntarily entered.

26 **a. Petitioner received effective assistance of counsel**

27 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
28 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his

1 defense.” The United States Supreme Court has long recognized that “the right to counsel is
2 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
3 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
4 (1993).

5 To prevail on a claim of ineffective assistance of counsel as it relates to a guilty plea, a
6 defendant must prove he was denied “reasonably effective assistance” of counsel by satisfying
7 the two-prong test of Strickland. 466 U.S. at 686-87, 104 S. Ct. at 2063-64; see also Love, 109
8 Nev. at 1138, 865 P.2d at 323. Under the Strickland test, a defendant must show first that his
9 counsel’s representation fell below an objective standard of reasonableness, and second, that
10 but for counsel’s ineffective assistance, he would not have pleaded guilty and would have
11 insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370 (1985).

12 The court begins with the presumption of effectiveness and then must determine
13 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
14 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
15 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
16 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
17 537 P.2d 473, 474 (1975).

18 Counsel cannot be ineffective for failing to make futile objections or arguments. See
19 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
20 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
21 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
22 (2002).

23 Based on the above law, the role of a court in considering allegations of ineffective
24 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
25 whether, under the particular facts and circumstances of the case, trial counsel failed to render
26 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
27 (1978). This analysis does not mean that the court should “second guess reasoned choices
28 between trial tactics nor does it mean that defense counsel, to protect himself against

1 allegations of inadequacy, must make every conceivable motion no matter how remote the
2 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel
3 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
4 cannot create one and may disserve the interests of his client by attempting a useless charade.”
5 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

6 “There are countless ways to provide effective assistance in any given case. Even the
7 best criminal defense attorneys would not defend a particular client in the same way.”
8 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
9 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
10 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
11 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s
12 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s
13 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

14 Even if a defendant can demonstrate that his counsel’s representation fell below an
15 objective standard of reasonableness, he must still demonstrate prejudice and show a
16 reasonable probability that, but for counsel’s errors, the result of the trial would have been
17 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
18 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
19 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,
20 694, 104 S. Ct. at 2064-65, 2068).

21 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the
22 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
23 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
24 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
25 be supported with specific factual allegations, which if true, would entitle the petitioner to
26 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”
27 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
28 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims

1 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your
2 petition to be dismissed.” (emphasis added).

3 A party seeking review bears the responsibility “to cogently argue, and present relevant
4 authority” to support his assertions. Edwards v. Emperor’s Garden Restaurant, 122 Nev. 317,
5 330 n.38, 130 P.3d 1280, 1288 n.38 (2006); Dept. of Motor Vehicles and Public Safety v.
6 Rowland, 107 Nev. 475, 479, 814 P.2d 80, 83 (1991) (defendant’s failure to present legal
7 authority resulted in no reason for the district court to consider defendant’s claim); Maresca
8 v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (an arguing party must support his arguments
9 with relevant authority and cogent argument; “issues not so presented need not be addressed”);
10 Randall v. Salvation Army, 100 Nev. 466, 470-71, 686 P.2d 241, 244 (1984) (court may
11 decline consideration of issues lacking citation to relevant legal authority); Holland Livestock
12 v. B & C Enterprises, 92 Nev. 473, 533 P.2d 950 (1976) (issues lacking citation to relevant
13 legal authority do not warrant review on the merits).

14 Here, Petitioner claims that counsel was ineffective for allegedly coercing him into
15 accepting the negotiations. However, Petitioner provides no evidence to this Court to
16 demonstrate that counsel coerced him into taking the negotiations or that he was prejudiced in
17 anyway by accepting the negotiations. Instead, Petitioner only quotes to his sentencing
18 transcript where he informed the Court that he no longer wanted to accept the negotiations.
19 Petition at 4. Petitioner fails to point out to this Court that Petitioner made this comment after
20 his Motion to Withdraw Plea had been litigated and denied. This Court reviewed Petitioner’s
21 claims and determined that Petitioner did not have a basis to withdraw his plea. See Order,
22 filed May 7, 2012. Thus, Petitioner’s claims are bare, naked and only appropriate for summary
23 denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Further, Petitioner was originally facing
24 four (4) counts, including an open murder charge. Counsel negotiated Petitioner’s plea to only
25 two (2) counts and obtained stipulations to one of the counts and the weapon enhancement.
26 Counsel’s performance was obviously not ineffective as this negotiation was in Petitioner’s
27 best interest. As Petitioner has failed to demonstrate both deficient performance and prejudice,
28 Petitioner’s claim fails.

1 To the extent Petitioner claims counsel was ineffective because he was not presented
2 with a better offer, defense counsel cannot be deemed ineffective for his failure to secure a
3 more favorable offer. Counsel does not have control over what the State offers, see Young v.
4 District Court, 107 Nev. 642, 818 P.2d 844 (1991). Counsel cannot be deemed ineffective
5 merely because the Defendant's risk in disregarding counsel's advice did not pay off. See
6 Cronic, 466 U.S. at 657 n.19, 104 S. Ct. at 2046 n.19 (noting counsel is not required to do
7 what is impossible). Therefore, Petitioner's claim fails. As Petitioner has failed to demonstrate
8 both good cause and prejudice to overcome the procedural bars, his Petition must be denied.

9 **b. Petitioner's plea was knowingly and voluntarily entered into.**

10 Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be
11 withdrawn to correct "manifest injustice." See also Baal v. State, 106 Nev. 69, 72, 787 P.2d
12 391, 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid
13 and the burden is on a defendant to show that the plea was not voluntarily entered. Bryant v.
14 State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336,
15 337, 535 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant entered
16 his plea voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

17 To determine whether a guilty plea was voluntarily entered, the Court will review the
18 totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721
19 P.2d at 367. A proper plea canvass should reflect that:

20 [T]he defendant knowingly waived his privilege against self-
21 incrimination, the right to trial by jury, and the right to confront
22 his accusers; (2) the plea was voluntary, was not coerced, and was
23 not the result of a promise of leniency; (3) the defendant
understood the consequences of his plea and the range of
punishments; and (4) the defendant understood the nature of the
charge, i.e., the elements of the crime.

24 Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev.
25 774, 476 P.2d 950 (1970)). The presence and advice of counsel is a significant factor in
26 determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d
27 107, 107 (1975).

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1 This standard requires the court accepting the plea to personally address the defendant
2 at the time he enters his plea in order to determine whether he understands the nature of the
3 charges to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not
4 rely simply on a written plea agreement without some verbal interaction with a defendant. Id.
5 Thus, a “colloquy” is constitutionally mandated and a “colloquy” is but a conversation in a
6 formal setting, such as that occurring between an official sitting in judgment of an accused at
7 plea. See id. However, the court need not conduct a ritualistic oral canvass. State v. Freese,
8 116 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas “do not
9 require the articulation of talismanic phrases,” but only that the record demonstrates a
10 defendant entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev.
11 573, 575, 516 P.2d 1403, 1404 (1973); see also Brady v. United States, 397 U.S. 742, 747-48,
12 90 S. Ct. 1463, 1470 (1970).

13 The standard described above also applies to Alford pleas. Alford, 400 U.S. 25, 91 S.
14 Ct. 160. A plea of guilty pursuant to Alford dictates that courts may constitutionally accept
15 guilty pleas from defendants who simultaneously protest their innocence when the defendant
16 “intelligently concludes that his interests require entry of a guilty plea and the record before
17 the judge contains strong evidence of actual guilt.” Id. at 37, 91 S. Ct. at 167. A guilty plea
18 pursuant to Alford is still, by definition, a plea of guilty and has been deemed constitutionally
19 valid when entered into to avoid, for example, a harsher penalty. Tiger v. State, 98 Nev. 555,
20 654 P.2d 1031 (1982); Gomes v. State, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

21 In this case, Petitioner claims that he should be permitted to withdraw his guilty plea
22 because he did not understand his plea. Petition at 4-5. However, Petitioner has failed “to
23 cogently argue, and present relevant authority” to support his assertions. Edwards, 122 Nev.
24 at 330 n.38, 130 P.3d at 1288 n.38; Rowland, 107 Nev. at 479, 814 P.2d at 83; Maresca, 103
25 Nev. at 673, 748 P.2d at 6; Randall, 100 Nev. at 470-71, 686 P.2d at 244; Holland Livestock,
26 92 Nev. at 533 P.2d 950. Thus, his claims should be summarily denied. Further, Petitioner’s
27 claims are meritless as they are belied by the record.

28 //

1 According to Petitioner's Guilty Plea Agreement, Petitioner acknowledged that he was
2 entering his plea knowingly and voluntarily:

3 VOLUNTARINESS OF PLEA

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

6 I understand that the State would have to prove each element of
7 the charge(s) against me at trial.

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

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

11 **I believe that pleading guilty and accepting this plea bargain**
12 **is in my best interest, and that a trial would be contrary to my**
best interest.

13 **I am signing this agreement voluntarily, after consultation**
14 **with my attorney, and I am not acting under duress or**
coercion or by virtue of any promises of leniency, except for
those set forth in this agreement.

15 I am not now under the influence of any intoxicating liquor, a
16 controlled substance or other drug which would in any manner
17 impair my ability to comprehend or understand this agreement or
the proceedings surrounding my entry of this plea.

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

20 Guilty Plea Agreement ("GPA"), 3/12/10, p. 4-5 (emphasis added). Additionally, Petitioner's
21 counsel, as an officer of the Court, acknowledged that Petitioner was entering his plea
22 knowingly and voluntarily. Id. at 6. Therefore, Petitioner's claims are belied by the GPA itself
23 and his Petition must be denied. As Petitioner has failed to demonstrate prejudice sufficient to
24 overcome the procedural bars, the Petition must be denied.

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1 **IV. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING.**

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

- 3 1. The judge or justice, upon review of the return, answer and all
4 supporting documents which are filed, shall determine whether an
5 evidentiary hearing is required. A petitioner must not be
6 discharged or committed to the custody of a person other than the
7 respondent *unless an evidentiary hearing is held*.
8 2. If the judge or justice determines that the petitioner is not
9 entitled to relief and an evidentiary hearing is not required, he shall
10 dismiss the petition without a hearing.
11 3. If the judge or justice determines that an evidentiary hearing is
12 required, he shall grant the writ and shall set a date for the hearing.

13 The Nevada Supreme Court has held that if a petition can be resolved without
14 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
15 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A
16 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual
17 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
18 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove, 100 Nev. at
19 503, 686 P.2d at 225 (holding that “[a] defendant seeking post-conviction relief is not entitled
20 to an evidentiary hearing on factual allegations belied or repelled by the record”). “A claim is
21 ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the
22 claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

23 It is improper to hold an evidentiary hearing simply to make a complete record. See
24 State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The
25 district court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted
26 ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary
27 hearing.”). Further, the United States Supreme Court has held that an evidentiary hearing is
28 not required simply because counsel’s actions are challenged as being unreasonable strategic
29 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge
30 post hoc rationalization for counsel’s decision making that contradicts the available evidence
31 of counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis

1 for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain
2 issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (*citing*
3 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the
4 *objective* reasonableness of counsel’s performance, not counsel’s *subjective* state of mind. 466
5 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

6 Here, as demonstrated above, Petitioner’s claims are procedurally barred and belied by
7 the record. Therefore, Petitioner has failed to demonstrate that an evidentiary hearing is
8 necessary. As Petitioner’s claims should be summarily denied, his request for an evidentiary
9 hearing should be similarly denied.

10 **CONCLUSION**

11 For the foregoing reasons, Petitioner’s Petition must be dismissed and/or denied.

12 DATED this 23rd day of March, 2021.

13 Respectfully submitted,

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

16
17 BY /s/ TALEEN PANDUKHT
18 TALEEN PANDUKHT
19 Chief Deputy District Attorney
Nevada Bar #5734

20 **CERTIFICATE OF MAILING**

21 I hereby certify that service of the above and foregoing was made this 23rd day of
22 March, 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

23 BARRON HAMM, BAC#1052277
24 LOVELOCK CORRECTIONAL CENTER
25 1200 PRISON ROAD
LOVELOCK, NEVADA 89419

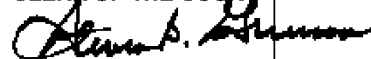
26 BY /s/ L.M.
27 Secretary for the District Attorney's Office

28 09F09275X/TRP/ss/lm/GU

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**DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
3/26/2021 2:25 PM
Steven D. Grierson
CLERK OF THE COURT



The State of Nevada vs Barron Hamm

Case No.: 09C256384

Department 28

NOTICE OF HEARING

Please be advised that the State's Response and Motion to Dismiss Petitioner's Third Petition for Writ of Habeas Corpus in the above-entitled matter is set for hearing as follows:

Date: April 05, 2021

Time: 11:00 AM

Location: RJC Courtroom 15C
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/ Imelda Murrieta
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/ Imelda Murrieta
Deputy Clerk of the Court

1 B.S. Pals

2 Barron HAMM JR

3 the Petitioner

4 Love Lock 1200 prison road

5 Love Lock Nevada 89419

6

7 Barron Hamm Jr

8 #270 7761 Petitioner

9 vs

10 The STATE OF Nevada

11 Plaintiff

12 Now come Barron Hamm Jr response to STATE motion

13 to dismiss petitioner's petition for his sentence to be set

14 aside and his guilty plea agreement be withdrawn from record

15 Barron Hamm Jr the petitioner ask the Honorable court to

16 please dismiss the state's motion to Dismiss the petitioner's

17 petition his sentencing to be set aside and his guilty plea

18 agreement be withdrawn from record. do to the fact that the

19 petitioner filed a petition in court on Feb 2, 2021

20 the state didn't argue no reason why the

21 petitioner shouldn't receive a evidentiary hearing.

22 it was a date set out by the court's to

23 hear the petitioner's petition and the state argument

24 which was Feb 24, 2021 the state still did not produce

25 an argument or a opposition to the petitioner

26 Petition

27

28

FILED

APR 26 2021

CLERK OF COURT

RECEIVED

APR 19 2021

CLERK OF THE COURT

so therefore the court's granted the petitioner
Petition & order the state to Please have
the Petitioner Brought down so he attend
the hearing. ~~now~~ on May 26, 2021 at 11:00 am.

Now that ~~the~~ court's ~~agreed~~ with the petitioner
the state would like the court's to ~~withdraw~~
withdraw these original orders.

~~But~~ the Petitioner ask the honorable court's
Please not ~~be~~ prejudice him Do to the
fact that the state already has failed
to produce their argument within the
time frame the court's set for the state
to respond we have to hold them to a higher ~~stand~~
stander Do to the fact they have access to
the court's way Better then petitioner
and they have way more resorces then the petitioner

so petitioner shouldn't have to suffer any more
time Do to the fact that the stat felled
Produce an argument within a reasonable time
set By the courts.

--- Certificate of Service ---

I Barron Hamm Jr certify that on this date I did serve a true correct copy of the foregoing response upon Respondent(s) via us-mail, By placing same in the United States Postal service (Prison mail system), postage being fully pre paid, and addressed to

CLERK'S OF THE COURT'S
700 LEWIS AVENUE
LAS VEGAS NEVADA 89155

AND
District Attorney
700 LEWIS AVENUE 3RD FLOOR
LAS VEGAS NEVADA 89155

on this 11 day of April, 2021

By Barron Hamm Jr.

2A Affirmation Pursuant to NRS 239.B.030

I certify that the foregoing document does not contain the social security number of any persons.

04-11-2021
Date

Barron Hamm Jr.
(Signature)

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #1565
TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #5734
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,
Plaintiff,

-vs-

BARRON HAMM,
#2707761

Defendant.

CASE NO: 09C256384

DEPT NO: XXVIII

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

DATE OF HEARING: MAY 26, 2021
TIME OF HEARING: 11:00 A.M.

THIS CAUSE having come on for hearing before the Honorable Ronald Israel, District Judge, on the 26th day of May, 2021, the Petitioner being present, proceeding in proper person, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through Steve Waters, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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1 On August 5, 2010, Petitioner filed an untimely Notice of Appeal from his Judgment
2 of Conviction. On September 10, 2010, the Supreme Court of Nevada dismissed Petitioner's
3 appeal for lack of jurisdiction. Remittitur issued on October 6, 2010.

4 On February 13, 2012, Petitioner filed a Motion to Withdraw Guilty Plea, which the
5 State opposed on February 22, 2012. The District Court denied Petitioner's motion on
6 February 24, 2012, and the order of denial was filed on May 7, 2012.

7 On October 31, 2012, Petitioner filed his First Petition for Writ Of Habeas Corpus
8 (Post-Conviction) (hereinafter "First Petition"). On November 14, 2012, the State filed its
9 Response and Motion to Dismiss the First Petition as time-barred with no good cause shown
10 for the delay. On January 10, 2013, the District Court denied Petitioner's First Petition,
11 entering its Findings of Fact, Conclusions of Law, and Order on January 29, 2013. Petitioner
12 filed a Notice of Appeal on February 22, 2013. On September 19, 2013, the Supreme Court
13 affirmed the District Court's denial of Petitioner's First Petition, with Remittitur issuing on
14 October 17, 2013.

15 On June 23, 2015, Petitioner filed a Motion to Vacate Sentence. The State responded
16 on July 10, 2015. This Court denied the Motion on July 15, 2015. On August 19, 2015,
17 Petitioner appealed. The Nevada Supreme Court affirmed the District Court's denial of
18 Petitioner's Motion to Vacate Sentence on February 17, 2016. Remittitur issued on March 14,
19 2016.

20 On May 17, 2017, Petitioner filed a Second Petition for Writ of Habeas Corpus (Post-
21 Conviction) (hereinafter "Second Petition"). The State filed its Response on July 11, 2017. On
22 July 24, 2017, the district court denied Petitioner's Second Petition. The Findings of Fact,
23 Conclusions of Law and Order was filed on August 16, 2017. Petitioner filed a Notice of
24 Appeal on September 8, 2017. On August 24, 2018, the Supreme Court affirmed the District
25 Court's denial of Petitioner's Second Petition, with Remittitur issuing on September 19, 2018.

26 On February 2, 2021, Petitioner filed a Third "Petition Requesting the Defendant's
27 Sentencing Be Set Aside and His Guilty Plea Agreement be Withdrawed From Record." The
28 //

1 State's Response was filed on March 23, 2021. The matter came before the Court for hearing
2 on May 26, 2021, and the Court's ruling follows.

3 **STATEMENT OF THE FACTS**

4 On May 3, 2009, officers of the Las Vegas Metropolitan Police Department received a
5 call regarding a person that had been shot. Upon arrival, the officers located a 14-year-old
6 male lying on the ground with a gunshot wound. The juvenile victim was transported to
7 Sunrise Hospital and was later pronounced dead.

8 During an investigation, officers learned that the victim's sister had thrown a birthday
9 party at her apartment for the 14-year-old victim on May 2, 2009. Approximately twenty-five
10 (25) people attended the party ranging in ages from twelve (12) to nineteen (19) and alcohol
11 was consumed by many of the attendees. During the party, several uninvited males arrived at
12 the party and claimed to be members of the street gang "ATM." One of the "ATM" members
13 was recognized by witnesses as "Burger," later identified as Petitioner, a student at Chaparral
14 High School.

15 At approximately 1:00 AM, the victim's sister returned to the party and observed the
16 "ATM" members. She decided to end the party and asked everybody to leave except the 14-
17 year-old victim and a few juveniles that were sleeping over. Petitioner and the other "ATM"
18 members left the party; however, a short time later Petitioner returned and knocked on the
19 door. The door was opened, and Petitioner walked inside. He pulled out a revolver and told
20 everybody to "Calm down" or "Get down." The 14-year-old panicked and ran out the front
21 door. Petitioner stepped out of the front door, fired the gun, and then fled the scene. The
22 witnesses exited the apartment, discovered the 14-year-old victim lying on the ground bleeding
23 from a gunshot wound and called police.

24 Several witnesses reviewed their Chaparral High School yearbook, identified Petitioner
25 as the suspect and informed police. Later, witnesses were shown a photo lineup by police and
26 positively identified Petitioner. Detectives attempted to locate Petitioner at his residence but
27 were unsuccessful. On May 4, 2009, a family member called detectives and agreed to bring
28 Petitioner in for an interview. During questioning, Petitioner admitted attending the party but

1 denied being an “ATM” gang member. He admitted to re-entering the apartment but stated
2 that he did not know how the shots were fired. A short time later, Petitioner asked for his
3 mother, and she was brought into the interview room. After a brief discussion, the detectives
4 left Petitioner and his mother in the room with the video recorder on. While speaking to his
5 mother, Petitioner lowered his voice and stated, “I did shoot the boy though, I did do that, I
6 told you I shot him and I got scared.”

7 Petitioner was arrested, transported to Clark County Juvenile Hall and booked
8 accordingly. On May 6, 2009, Petitioner was certified as an adult, transported to the Clark
9 County Detention Center, and booked accordingly.

10 ANALYSIS

11 **I. PETITIONER’S PETITION IS PROCEDURALLY BARRED.**

12 **a. Petitioner’s Petition is Time-Barred.**

13 Pursuant to NRS 34.726(1):

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

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

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

24 The one-year time limit for preparing petitions for post-conviction relief under NRS
25 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
26 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
27 evidence presented by the defendant that he purchased postage through the prison and mailed
28 the Notice within the one-year time limit.

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

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

9 Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district court]
10 when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
11 has granted no discretion to the district courts regarding whether to apply the statutory
12 procedural bars; the rules *must* be applied.

13 In the instant case, the Judgment of Conviction was filed on May 20, 2010, and
14 Petitioner filed a direct appeal. The Nevada Supreme Court issued an Order dismissing
15 Petitioner's appeal as the Notice of Appeal was untimely filed and remittitur issued on October
16 6, 2010. Thus, the one-year time bar began to run from the date remittitur issued. The instant
17 Petition was not filed until February 2, 2021. This is almost ten (10) years beyond the one-
18 year time frame. As there is no good cause for this delay, Petitioner's Petition is denied because
19 of its tardy filing.

20 **b. Petitioner's Petition is Successive and/or an Abuse of Writ.**

21 NRS 34.810(2) reads:

22 A second or successive petition *must* be dismissed if the judge or justice
23 determines that it fails to allege new or different grounds for relief and that
24 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.

25 (emphasis added). Second or successive petitions are petitions that either fail to allege new or
26 different grounds for relief and the grounds have already been decided on the merits or that
27 allege new or different grounds, but a judge or justice finds that the petitioner's failure to assert
28 those grounds in a prior petition would constitute an abuse of the writ. Second or successive

1 petitions will only be decided on the merits if the petitioner can show good cause and prejudice.
2 NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

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

13 Here, Petitioner previously filed a Petition for Writ of Habeas Corpus on October 31,
14 2012, which raised the same claim that his plea was not voluntarily entered into because he
15 was not competent to understand his plea. See Petition for Writ of Habeas Corpus, filed
16 October 31, 2012, at 8–9. This Court denied Petitioner’s 2012 Petition and entered its Findings
17 of Fact, Conclusions of Law, and Order on January 29, 2013. On May 17, 2017, Petitioner
18 filed a Second Petition for Writ of Habeas Corpus, which was denied on July 24, 2017. The
19 Findings of Fact, Conclusions of Law, and Order was filed on August 16, 2017. Therefore,
20 Petitioner’s instant Petition is successive and is denied. As this Petition is successive, pursuant
21 to NRS 34.810(2), it cannot be decided on the merits absent a showing of good cause and
22 prejudice. NRS 34.810(3).

23 **c. Petitioner’s Petition is Barred by the Law of the Case Doctrine and Res**
24 **Judicata**

25 “The law of a first appeal is law of the case on all subsequent appeals in which the facts
26 are substantially the same.” Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting
27 Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). “The doctrine of the law of the
28 case cannot be avoided by a more detailed and precisely focused argument subsequently made

1 after reflection upon the previous proceedings.” Id. at 316, 535 P.2d at 799. Under the law of
2 the case doctrine, issues previously decided on direct appeal may not be reargued in a habeas
3 petition. Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing McNelson v.
4 State, 115 Nev. 396, 414–15, 990 P.2d 1263, 1275 (1999)). Furthermore, this Court cannot
5 overrule the Nevada Supreme Court. NEV. CONST. Art. VI § 6. Further, defendants cannot
6 attempt to relitigate the same motions over and over within the district court due to res judicata.
7 See Mason v. State, 206 S.W.3d 869, 875 (Ark. 2005) (recognizing the doctrine’s applicability
8 in the criminal context); see also York v. State, 342 S.W. 528, 553 (Tex. Crim. Appl. 2011).

9 Here, as noted above, Petitioner previously raised the issue of his competency to enter
10 his plea in his first Petition for Writ of Habeas Corpus. See Petition for Writ of Habeas Corpus,
11 filed October 31, 2012, at 8–9. This Court denied Petitioner’s Petition and entered its Findings
12 of Fact, Conclusions of Law, and Order on January 29, 2013. Petitioner appealed this Court’s
13 decision. The Nevada Supreme Court affirmed the Court’s denial of his Petition for Writ of
14 Habeas Corpus and determined that “no relief based on [his] submissions is warranted.” Order
15 of Affirmance, No. 62688, filed September 19, 2013, at 2 n.4. Therefore, as Petitioner’s claims
16 have been reviewed and dismissed by the Nevada Supreme Court, Petitioner’s instant claims
17 are barred by the law of the case. Thus, his Petition is denied.

18 Further, Petitioner’s claims are barred by the doctrine of res judicata. However,
19 Petitioner has previously raised this claim in other Motions and Petitions. See Motion to
20 Withdraw Plea, filed February 13, 2012, at 6–7; Petition for Writ of Habeas Corpus, filed
21 October 31, 2012, 8–9; Motion to Withdraw Plea, filed April 10, 2014, 2–3. All of these
22 pleadings were previously denied by this Court. See Order, filed May 7, 2012; Findings of
23 Fact, Conclusions of Law, and Order, filed January 29, 2013; Order, filed May 16, 2014.
24 Accordingly, by simply continuing to file motions with the same arguments, his motion is
25 barred by the doctrine of res judicata. Id.; Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799
26 (1975).

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1 **II. PETITIONER FAILED TO DEMONSTRATE GOOD CAUSE TO OVERCOME**
2 **THE PROCEDURAL BARS.**

3 A showing of good cause and prejudice may overcome procedural bars. “To establish
4 good cause, appellants *must* show that an impediment external to the defense prevented their
5 compliance with the applicable procedural rule. A qualifying impediment might be shown
6 where the factual or legal basis for a claim was not reasonably available at the time of default.”
7 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court
8 continued, “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d at 526.
9 To find good cause there must be a “substantial reason; one that affords a legal excuse.”
10 Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105
11 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Clearly, any delay in the filing of the petition
12 must not be the fault of the petitioner. NRS 34.726(1)(a). Additionally, “bare” and “naked”
13 allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled
14 by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “A claim is
15 ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the
16 claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

17 Here, Petitioner cannot demonstrate good cause to overcome the procedural bars. In
18 fact, Petitioner did not even address good cause in his Petition. Instead, Petitioner merely raises
19 his claims without ever addressing the one-year time bar or his tardy filing. All the facts and
20 law alleged in Petitioner’s Petition were available for direct appeal or a timely-filed habeas
21 petition. Further, Petitioner does not even allege an impediment external to the defense.
22 Therefore, Petitioner has failed to demonstrate good cause to overcome the procedural bars
23 and, accordingly, Petitioner’s second Petition is denied as untimely and successive.

24 **III. PETITIONER SIMILARLY FAILED TO DEMONSTRATE PREJUDICE.**

25 To establish prejudice, the defendant must show ““not merely that the errors of [the
26 proceedings] created possibility of prejudice, but that they worked to his actual and substantial
27 disadvantage, in affecting the state proceedings with error of constitutional dimensions.””
28 Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v.

1 Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). Here, it is unclear whether Petitioner
2 is claiming counsel was ineffective for allegedly coercing him into taking the negotiations or
3 substantively claiming that his plea was not knowingly and voluntarily entered. Regardless,
4 Petitioner's claims are meritless as Petitioner received effective assistance of counsel and his
5 plea was knowingly and voluntarily entered.

6 **a. Petitioner received effective assistance of counsel**

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

13 To prevail on a claim of ineffective assistance of counsel as it relates to a guilty plea, a
14 defendant must prove he was denied "reasonably effective assistance" of counsel by satisfying
15 the two-prong test of Strickland. 466 U.S. at 686–87, 104 S. Ct. at 2063–64; see also Love,
16 109 Nev. at 1138, 865 P.2d at 323. Under the Strickland test, a defendant must show first that
17 his counsel's representation fell below an objective standard of reasonableness, and second,
18 that but for counsel's ineffective assistance, he would not have pleaded guilty and would have
19 insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370 (1985).

20 The court begins with the presumption of effectiveness and then must determine
21 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
22 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel
23 does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of
24 competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432,
25 537 P.2d 473, 474 (1975).

26 Counsel cannot be ineffective for failing to make futile objections or arguments. See
27 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
28 "immediate and ultimate responsibility of deciding if and when to object, which witnesses, if

1 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
2 (2002).

3 Based on the above law, the role of a court in considering allegations of ineffective
4 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
5 whether, under the particular facts and circumstances of the case, trial counsel failed to render
6 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
7 (1978). This analysis does not mean that the court should “second guess reasoned choices
8 between trial tactics nor does it mean that defense counsel, to protect himself against
9 allegations of inadequacy, must make every conceivable motion no matter how remote the
10 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel
11 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
12 cannot create one and may disserve the interests of his client by attempting a useless charade.”
13 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

14 “There are countless ways to provide effective assistance in any given case. Even the
15 best criminal defense attorneys would not defend a particular client in the same way.”
16 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
17 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
18 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
19 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s
20 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s
21 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

22 Even if a defendant can demonstrate that his counsel’s representation fell below an
23 objective standard of reasonableness, he must still demonstrate prejudice and show a
24 reasonable probability that, but for counsel’s errors, the result of the trial would have been
25 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
26 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
27 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687–
28 89, 694, 104 S. Ct. at 2064–65, 2068).

1 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the
2 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
3 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
4 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
5 be supported with specific factual allegations, which if true, would entitle the petitioner to
6 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”
7 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
8 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims
9 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your
10 petition to be dismissed.” (emphasis added).

11 A party seeking review bears the responsibility “to cogently argue, and present relevant
12 authority” to support his assertions. Edwards v. Emperor’s Garden Restaurant, 122 Nev. 317,
13 330 n.38, 130 P.3d 1280, 1288 n.38 (2006); Dept. of Motor Vehicles and Public Safety v.
14 Rowland, 107 Nev. 475, 479, 814 P.2d 80, 83 (1991) (defendant’s failure to present legal
15 authority resulted in no reason for the district court to consider defendant’s claim); Maresca v.
16 State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (an arguing party must support his arguments
17 with relevant authority and cogent argument; “issues not so presented need not be addressed”);
18 Randall v. Salvation Army, 100 Nev. 466, 470–71, 686 P.2d 241, 244 (1984) (court may
19 decline consideration of issues lacking citation to relevant legal authority); Holland Livestock
20 v. B & C Enterprises, 92 Nev. 473, 533 P.2d 950 (1976) (issues lacking citation to relevant
21 legal authority do not warrant review on the merits).

22 Here, Petitioner claims that counsel was ineffective for allegedly coercing him into
23 accepting the negotiations. However, Petitioner provides no evidence to this Court to
24 demonstrate that counsel coerced him into taking the negotiations or that he was prejudiced in
25 any way by accepting the negotiations. Instead, Petitioner only quotes his sentencing transcript
26 where he informed the Court that he no longer wanted to accept the negotiations. Petitioner
27 fails to point out that Petitioner made this comment after his Motion to Withdraw Plea had
28 been litigated and denied. This Court reviewed Petitioner’s claims and determined that

1 Petitioner did not have a basis to withdraw his plea. See Order, filed May 7, 2012. Thus,
2 Petitioner's claims are bare, naked, and only appropriate for summary denial. Hargrove, 100
3 Nev. at 502, 686 P.2d at 225. Further, Petitioner was originally facing four (4) counts,
4 including an open murder charge. Counsel negotiated Petitioner's plea to only two (2) counts
5 and obtained stipulations to one of the counts and the weapon enhancement. Counsel's
6 performance was not ineffective as this negotiation was in Petitioner's best interest. As
7 Petitioner has failed to demonstrate both deficient performance and prejudice, Petitioner's
8 claim fails.

9 To the extent Petitioner claims counsel was ineffective because he was not presented
10 with a better offer, defense counsel cannot be deemed ineffective for his failure to secure a
11 more favorable offer. Counsel does not have control over what the State offers. See Young v.
12 District Court, 107 Nev. 642, 818 P.2d 844 (1991). Counsel cannot be deemed ineffective
13 merely because the Defendant's risk in disregarding counsel's advice did not pay off. See
14 Cronic, 466 U.S. at 657 n.19, 104 S. Ct. at 2046 n.19 (noting counsel is not required to do what
15 is impossible). Therefore, Petitioner's claim fails. As Petitioner has failed to demonstrate both
16 good cause and prejudice to overcome the procedural bars, his Petition is denied.

17 **b. Petitioner's plea was knowingly and voluntarily entered into.**

18 Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be
19 withdrawn to correct "manifest injustice." See Baal v. State, 106 Nev. 69, 72, 787 P.2d 391,
20 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid and the
21 burden is on a defendant to show that the plea was not voluntarily entered. Bryant v. State, 102
22 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336, 337, 535
23 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant entered his plea
24 voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

25 To determine whether a guilty plea was voluntarily entered, the Court will review the
26 totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721
27 P.2d at 367. A proper plea canvass should reflect that:

28 //

1 [T]he defendant knowingly waived his privilege against self-incrimination,
2 the right to trial by jury, and the right to confront his accusers; (2) the plea
3 was voluntary, was not coerced, and was not the result of a promise of
4 leniency; (3) the defendant understood the consequences of his plea and the
range of punishments; and (4) the defendant understood the nature of the
charge, i.e., the elements of the crime.

5 Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev.
6 774, 476 P.2d 950 (1970)). The presence and advice of counsel is a significant factor in
7 determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d
8 107, 107 (1975).

9 This standard requires the court accepting the plea to personally address the defendant
10 at the time he enters his plea to determine whether he understands the nature of the charges to
11 which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not rely simply
12 on a written plea agreement without some verbal interaction with a defendant. Id. Thus, a
13 “colloquy” is constitutionally mandated, and a “colloquy” is but a conversation in a formal
14 setting, such as that occurring between an official sitting in judgment of an accused at plea.
15 See id. However, the court need not conduct a ritualistic oral canvass. State v. Freese, 116
16 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas “do not require
17 the articulation of talismanic phrases,” but only that the record demonstrates a defendant
18 entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev. 573, 575,
19 516 P.2d 1403, 1404 (1973); see also Brady v. United States, 397 U.S. 742, 747–48, 90 S. Ct.
20 1463, 1470 (1970).

21 In this case, Petitioner claims that he should be permitted to withdraw his guilty plea
22 because he did not understand his plea. However, Petitioner has failed “to cogently argue, and
23 present relevant authority” to support his assertions. Edwards, 122 Nev. at 330 n.38, 130 P.3d
24 at 1288 n.38; Rowland, 107 Nev. at 479, 814 P.2d at 83; Maresca, 103 Nev. at 673, 748 P.2d
25 at 6; Randall, 100 Nev. at 470–71, 686 P.2d at 244; Holland Livestock, 92 Nev. at 533 P.2d
26 950. Thus, his claims are summarily denied. Further, Petitioner’s claims are meritless as they
27 are belied by the record.

28 //

1 According to Petitioner's Guilty Plea Agreement, Petitioner acknowledged that he was
2 entering his plea knowingly and voluntarily:

3 VOLUNTARINESS OF PLEA

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

6 I understand that the State would have to prove each element of the
7 charge(s) against me at trial.

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

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

12 **I believe that pleading guilty and accepting this plea bargain is in my
13 best interest, and that a trial would be contrary to my best interest.**

14 **I am signing this agreement voluntarily, after consultation with my
15 attorney, and I am not acting under duress or coercion or by virtue of
16 any promises of leniency, except for those set forth in this agreement.**

17 I am not now under the influence of any intoxicating liquor, a controlled
18 substance or other drug which would in any manner impair my ability to
19 comprehend or understand this agreement or the proceedings surrounding
20 my entry of this plea.

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

24 Guilty Plea Agreement, filed March 12, 2010, at 4-5 (emphasis added). Additionally,
25 Petitioner's counsel, as an officer of the Court, acknowledged that Petitioner was entering his
26 plea knowingly and voluntarily. Id. at 6. Therefore, Petitioner's claims are belied by the GPA
27 itself and his Petition is denied. As Petitioner has failed to demonstrate prejudice sufficient to
28 overcome the procedural bars, the Petition is denied.

29 **IV. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING.**

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

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

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

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

6 The Nevada Supreme Court has held that if a petition can be resolved without
7 expanding the record, no evidentiary hearing is necessary. Marshall v. State, 110 Nev. 1328,
8 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A
9 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual
10 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
11 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove, 100 Nev. at
12 503, 686 P.2d at 225 (holding that “[a] defendant seeking post-conviction relief is not entitled
13 to an evidentiary hearing on factual allegations belied or repelled by the record”). “A claim is
14 ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the
15 claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

16 It is improper to hold an evidentiary hearing simply to make a complete record. See
17 State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The
18 district court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted
19 ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary
20 hearing.”). Further, the United States Supreme Court has held that an evidentiary hearing is
21 not required simply because counsel’s actions are challenged as being unreasonable strategic
22 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge
23 in post hoc rationalization for counsel’s decision making that contradicts the available
24 evidence of counsel’s actions, neither may they insist counsel confirm every aspect of the
25 strategic basis for his or her actions. Id. There is a “strong presumption” that counsel’s
26 attention to certain issues to the exclusion of others reflects trial tactics rather than “sheer
27 neglect.” Id. (citing Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls
28 for an inquiry in the *objective* reasonableness of counsel’s performance, not counsel’s
subjective state of mind. 466 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

1 Here, as demonstrated above, Petitioner's claims are procedurally barred and belied by
2 the record. Therefore, Petitioner has failed to demonstrate that an evidentiary hearing is
3 necessary. As Petitioner's claims are summarily denied, his request for an evidentiary hearing
4 is similarly denied.

5 **ORDER**

6 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief
7 shall be, and it is, hereby denied.

Dated this 16th day of June, 2021



09C256384

SC

11 STEVEN B. WOLFSON
12 Clark County District Attorney
Nevada Bar #1565

97A F4F 52D2 A646
Ronald J. Israel
District Court Judge

14 BY /s/ TALEEN PANDUKHT
15 TALEEN PANDUKHT
16 Chief Deputy District Attorney
Nevada Bar #5734

18 **CERTIFICATE OF MAILING**

19 I hereby certify that service of the above and foregoing was made this ____ day of June,
20 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

21 BARRON HAMM, BAC#1052277
22 LOVELOCK CORRECTIONAL CENTER
23 1200 PRISON ROAD
LOVELOCK, NEVADA 89419

24 BY /s/ L.M.
25 Secretary for the District Attorney's Office

26
27
28 09F09275X/TP/lm/GU

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 The State of Nevada vs Barron
7 Hamm

CASE NO: 09C256384

DEPT. NO. Department 28

8
9 **AUTOMATED CERTIFICATE OF SERVICE**

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

13 Service Date: 6/16/2021

14 Dept 28 Law Clerk

dept28lc@clarkcountycourts.us

Steven D. Grierson

Barron Hamm Jr. 1052277

Defendant in Proper Person

P.O. Box H.D.S.P.

Indian Springs, Nevada 89070

District Court

Clark County Nevada

STATE OF Nevada

Plaintiff

Case No C256384

Dept No: XXV III

v

Barron Hamm Jr. 1052277

Defendant

Notice of appeal

Notice is hereby given that the Defendant, Barron Hamm Jr.

By and through himself in proper person, does now appeal
to the Supreme Court of the State of Nevada, the Decision of
the District Court. Petition of writ of Habeas corpus

Decision / Petition requesting that the Defendant sentencing be
set aside and my guilty plea agreement be withdrawn from record.

Dated this date, ~~20th~~ 8th of June 2021.

RECEIVED
JUN 17 2021
CLERK OF THE COURT

Affirmation
Pursuant to NRS. 239B.030

The undersigned does hereby affirm that the preceding _____
Notice of appeal Petition of writ of Habeas corpus
& Petition requesting the defendant ~~seating~~ sentencing
Be set aside and his guilty plea agreement Be withdrawn
From record:

Filed in District court case number C 256 384.

☒ ~~Does~~ Does not contain the social security number of any
Person.

- or

☐ contains the social security number of any Person.

A. A specific state or federal law to wit

state specific law)

or

B. For the administration of a Public program or For an application
for a Federal or state grant

Barron Hamm Jr
(Signature)

Barron Hamm Jr
(Print Name)

~~June 8, 2021~~ June 8, 2021

Defendant Prose
Title

BURTON HAMM JR
H.A.S.P. P.O. Box 650
Indian Springs Nevada 89070

LAS VEGAS NV 890
14 JUN 2021 PM 5 L

RECEIVED
JUN 17 2021

CLERK OF THE COURT

STEVEN D. GRIESON CLERK OF THE
COURTS.
200 LEWIS AVENUE
LAS VEGAS NEVADA 89155

3762

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

STATE OF NEVADA,

Plaintiff(s),

vs.

BARRON HAMM,

Defendant(s),

Case No: 09C256384

Dept No: XXVIII

CASE APPEAL STATEMENT

1. Appellant(s): Barron Hamm

2. Judge: Ronald J. Israel

3. Appellant(s): Barron Hamm

Counsel:

Barron Hamm #1052277
P.O. Box 650
Indian Springs, NV 89070

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89101

09C256384

-1-

(702) 671-2700

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: Yes

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

8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9. Date Commenced in District Court: July 22, 2009

10. Brief Description of the Nature of the Action: Criminal

Type of Judgment or Order Being Appealed: Post-Conviction Relief

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 56559, 62688, 63467, 68661, 74096

12. Child Custody or Visitation: N/A

Dated This 18 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: Barron Hamm



1 NEO

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 BARRON HAMM,

6 Petitioner,

Case No: 09C256384

Dept No: XXVIII

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

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

10
11 PLEASE TAKE NOTICE that on June 16, 2021, the court entered a decision or order in this matter, a
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed
15 to you. This notice was mailed on June 18, 2021.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

18
19 CERTIFICATE OF E-SERVICE / MAILING

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

21 ☒ By e-mail:

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

24 ☒ The United States mail addressed as follows:

25 Barron Hamm # 1052277
26 P.O. Box 650
27 Indian Springs, NV 89070

28 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #1565
TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #5734
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,
Plaintiff,

-vs-

BARRON HAMM,
#2707761

Defendant.

CASE NO: 09C256384

DEPT NO: XXVIII

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

DATE OF HEARING: MAY 26, 2021
TIME OF HEARING: 11:00 A.M.

THIS CAUSE having come on for hearing before the Honorable Ronald Israel, District Judge, on the 26th day of May, 2021, the Petitioner being present, proceeding in proper person, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through Steve Waters, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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1 On August 5, 2010, Petitioner filed an untimely Notice of Appeal from his Judgment
2 of Conviction. On September 10, 2010, the Supreme Court of Nevada dismissed Petitioner's
3 appeal for lack of jurisdiction. Remittitur issued on October 6, 2010.

4 On February 13, 2012, Petitioner filed a Motion to Withdraw Guilty Plea, which the
5 State opposed on February 22, 2012. The District Court denied Petitioner's motion on
6 February 24, 2012, and the order of denial was filed on May 7, 2012.

7 On October 31, 2012, Petitioner filed his First Petition for Writ Of Habeas Corpus
8 (Post-Conviction) (hereinafter "First Petition"). On November 14, 2012, the State filed its
9 Response and Motion to Dismiss the First Petition as time-barred with no good cause shown
10 for the delay. On January 10, 2013, the District Court denied Petitioner's First Petition,
11 entering its Findings of Fact, Conclusions of Law, and Order on January 29, 2013. Petitioner
12 filed a Notice of Appeal on February 22, 2013. On September 19, 2013, the Supreme Court
13 affirmed the District Court's denial of Petitioner's First Petition, with Remittitur issuing on
14 October 17, 2013.

15 On June 23, 2015, Petitioner filed a Motion to Vacate Sentence. The State responded
16 on July 10, 2015. This Court denied the Motion on July 15, 2015. On August 19, 2015,
17 Petitioner appealed. The Nevada Supreme Court affirmed the District Court's denial of
18 Petitioner's Motion to Vacate Sentence on February 17, 2016. Remittitur issued on March 14,
19 2016.

20 On May 17, 2017, Petitioner filed a Second Petition for Writ of Habeas Corpus (Post-
21 Conviction) (hereinafter "Second Petition"). The State filed its Response on July 11, 2017. On
22 July 24, 2017, the district court denied Petitioner's Second Petition. The Findings of Fact,
23 Conclusions of Law and Order was filed on August 16, 2017. Petitioner filed a Notice of
24 Appeal on September 8, 2017. On August 24, 2018, the Supreme Court affirmed the District
25 Court's denial of Petitioner's Second Petition, with Remittitur issuing on September 19, 2018.

26 On February 2, 2021, Petitioner filed a Third "Petition Requesting the Defendant's
27 Sentencing Be Set Aside and His Guilty Plea Agreement be Withdrawed From Record." The
28 //

1 State's Response was filed on March 23, 2021. The matter came before the Court for hearing
2 on May 26, 2021, and the Court's ruling follows.

3 **STATEMENT OF THE FACTS**

4 On May 3, 2009, officers of the Las Vegas Metropolitan Police Department received a
5 call regarding a person that had been shot. Upon arrival, the officers located a 14-year-old
6 male lying on the ground with a gunshot wound. The juvenile victim was transported to
7 Sunrise Hospital and was later pronounced dead.

8 During an investigation, officers learned that the victim's sister had thrown a birthday
9 party at her apartment for the 14-year-old victim on May 2, 2009. Approximately twenty-five
10 (25) people attended the party ranging in ages from twelve (12) to nineteen (19) and alcohol
11 was consumed by many of the attendees. During the party, several uninvited males arrived at
12 the party and claimed to be members of the street gang "ATM." One of the "ATM" members
13 was recognized by witnesses as "Burger," later identified as Petitioner, a student at Chaparral
14 High School.

15 At approximately 1:00 AM, the victim's sister returned to the party and observed the
16 "ATM" members. She decided to end the party and asked everybody to leave except the 14-
17 year-old victim and a few juveniles that were sleeping over. Petitioner and the other "ATM"
18 members left the party; however, a short time later Petitioner returned and knocked on the
19 door. The door was opened, and Petitioner walked inside. He pulled out a revolver and told
20 everybody to "Calm down" or "Get down." The 14-year-old panicked and ran out the front
21 door. Petitioner stepped out of the front door, fired the gun, and then fled the scene. The
22 witnesses exited the apartment, discovered the 14-year-old victim lying on the ground bleeding
23 from a gunshot wound and called police.

24 Several witnesses reviewed their Chaparral High School yearbook, identified Petitioner
25 as the suspect and informed police. Later, witnesses were shown a photo lineup by police and
26 positively identified Petitioner. Detectives attempted to locate Petitioner at his residence but
27 were unsuccessful. On May 4, 2009, a family member called detectives and agreed to bring
28 Petitioner in for an interview. During questioning, Petitioner admitted attending the party but

1 denied being an “ATM” gang member. He admitted to re-entering the apartment but stated
2 that he did not know how the shots were fired. A short time later, Petitioner asked for his
3 mother, and she was brought into the interview room. After a brief discussion, the detectives
4 left Petitioner and his mother in the room with the video recorder on. While speaking to his
5 mother, Petitioner lowered his voice and stated, “I did shoot the boy though, I did do that, I
6 told you I shot him and I got scared.”

7 Petitioner was arrested, transported to Clark County Juvenile Hall and booked
8 accordingly. On May 6, 2009, Petitioner was certified as an adult, transported to the Clark
9 County Detention Center, and booked accordingly.

10 ANALYSIS

11 **I. PETITIONER’S PETITION IS PROCEDURALLY BARRED.**

12 **a. Petitioner’s Petition is Time-Barred.**

13 Pursuant to NRS 34.726(1):

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

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

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

24 The one-year time limit for preparing petitions for post-conviction relief under NRS
25 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
26 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
27 evidence presented by the defendant that he purchased postage through the prison and mailed
28 the Notice within the one-year time limit.

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

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

9 Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district court]
10 when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
11 has granted no discretion to the district courts regarding whether to apply the statutory
12 procedural bars; the rules *must* be applied.

13 In the instant case, the Judgment of Conviction was filed on May 20, 2010, and
14 Petitioner filed a direct appeal. The Nevada Supreme Court issued an Order dismissing
15 Petitioner's appeal as the Notice of Appeal was untimely filed and remittitur issued on October
16 6, 2010. Thus, the one-year time bar began to run from the date remittitur issued. The instant
17 Petition was not filed until February 2, 2021. This is almost ten (10) years beyond the one-
18 year time frame. As there is no good cause for this delay, Petitioner's Petition is denied because
19 of its tardy filing.

20 **b. Petitioner's Petition is Successive and/or an Abuse of Writ.**

21 NRS 34.810(2) reads:

22 A second or successive petition *must* be dismissed if the judge or justice
23 determines that it fails to allege new or different grounds for relief and that
24 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.

25 (emphasis added). Second or successive petitions are petitions that either fail to allege new or
26 different grounds for relief and the grounds have already been decided on the merits or that
27 allege new or different grounds, but a judge or justice finds that the petitioner's failure to assert
28 those grounds in a prior petition would constitute an abuse of the writ. Second or successive

1 petitions will only be decided on the merits if the petitioner can show good cause and prejudice.
2 NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

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

13 Here, Petitioner previously filed a Petition for Writ of Habeas Corpus on October 31,
14 2012, which raised the same claim that his plea was not voluntarily entered into because he
15 was not competent to understand his plea. See Petition for Writ of Habeas Corpus, filed
16 October 31, 2012, at 8–9. This Court denied Petitioner’s 2012 Petition and entered its Findings
17 of Fact, Conclusions of Law, and Order on January 29, 2013. On May 17, 2017, Petitioner
18 filed a Second Petition for Writ of Habeas Corpus, which was denied on July 24, 2017. The
19 Findings of Fact, Conclusions of Law, and Order was filed on August 16, 2017. Therefore,
20 Petitioner’s instant Petition is successive and is denied. As this Petition is successive, pursuant
21 to NRS 34.810(2), it cannot be decided on the merits absent a showing of good cause and
22 prejudice. NRS 34.810(3).

23 **c. Petitioner’s Petition is Barred by the Law of the Case Doctrine and Res**
24 **Judicata**

25 “The law of a first appeal is law of the case on all subsequent appeals in which the facts
26 are substantially the same.” Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting
27 Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). “The doctrine of the law of the
28 case cannot be avoided by a more detailed and precisely focused argument subsequently made

1 after reflection upon the previous proceedings.” Id. at 316, 535 P.2d at 799. Under the law of
2 the case doctrine, issues previously decided on direct appeal may not be reargued in a habeas
3 petition. Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing McNelson v.
4 State, 115 Nev. 396, 414–15, 990 P.2d 1263, 1275 (1999)). Furthermore, this Court cannot
5 overrule the Nevada Supreme Court. NEV. CONST. Art. VI § 6. Further, defendants cannot
6 attempt to relitigate the same motions over and over within the district court due to res judicata.
7 See Mason v. State, 206 S.W.3d 869, 875 (Ark. 2005) (recognizing the doctrine’s applicability
8 in the criminal context); see also York v. State, 342 S.W. 528, 553 (Tex. Crim. Appl. 2011).

9 Here, as noted above, Petitioner previously raised the issue of his competency to enter
10 his plea in his first Petition for Writ of Habeas Corpus. See Petition for Writ of Habeas Corpus,
11 filed October 31, 2012, at 8–9. This Court denied Petitioner’s Petition and entered its Findings
12 of Fact, Conclusions of Law, and Order on January 29, 2013. Petitioner appealed this Court’s
13 decision. The Nevada Supreme Court affirmed the Court’s denial of his Petition for Writ of
14 Habeas Corpus and determined that “no relief based on [his] submissions is warranted.” Order
15 of Affirmance, No. 62688, filed September 19, 2013, at 2 n.4. Therefore, as Petitioner’s claims
16 have been reviewed and dismissed by the Nevada Supreme Court, Petitioner’s instant claims
17 are barred by the law of the case. Thus, his Petition is denied.

18 Further, Petitioner’s claims are barred by the doctrine of res judicata. However,
19 Petitioner has previously raised this claim in other Motions and Petitions. See Motion to
20 Withdraw Plea, filed February 13, 2012, at 6–7; Petition for Writ of Habeas Corpus, filed
21 October 31, 2012, 8–9; Motion to Withdraw Plea, filed April 10, 2014, 2–3. All of these
22 pleadings were previously denied by this Court. See Order, filed May 7, 2012; Findings of
23 Fact, Conclusions of Law, and Order, filed January 29, 2013; Order, filed May 16, 2014.
24 Accordingly, by simply continuing to file motions with the same arguments, his motion is
25 barred by the doctrine of res judicata. Id.; Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799
26 (1975).

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1 **II. PETITIONER FAILED TO DEMONSTRATE GOOD CAUSE TO OVERCOME**
2 **THE PROCEDURAL BARS.**

3 A showing of good cause and prejudice may overcome procedural bars. “To establish
4 good cause, appellants *must* show that an impediment external to the defense prevented their
5 compliance with the applicable procedural rule. A qualifying impediment might be shown
6 where the factual or legal basis for a claim was not reasonably available at the time of default.”
7 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court
8 continued, “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d at 526.
9 To find good cause there must be a “substantial reason; one that affords a legal excuse.”
10 Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105
11 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Clearly, any delay in the filing of the petition
12 must not be the fault of the petitioner. NRS 34.726(1)(a). Additionally, “bare” and “naked”
13 allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled
14 by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “A claim is
15 ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the
16 claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

17 Here, Petitioner cannot demonstrate good cause to overcome the procedural bars. In
18 fact, Petitioner did not even address good cause in his Petition. Instead, Petitioner merely raises
19 his claims without ever addressing the one-year time bar or his tardy filing. All the facts and
20 law alleged in Petitioner’s Petition were available for direct appeal or a timely-filed habeas
21 petition. Further, Petitioner does not even allege an impediment external to the defense.
22 Therefore, Petitioner has failed to demonstrate good cause to overcome the procedural bars
23 and, accordingly, Petitioner’s second Petition is denied as untimely and successive.

24 **III. PETITIONER SIMILARLY FAILED TO DEMONSTRATE PREJUDICE.**

25 To establish prejudice, the defendant must show “‘not merely that the errors of [the
26 proceedings] created possibility of prejudice, but that they worked to his actual and substantial
27 disadvantage, in affecting the state proceedings with error of constitutional dimensions.’”
28 Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v.

1 Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). Here, it is unclear whether Petitioner
2 is claiming counsel was ineffective for allegedly coercing him into taking the negotiations or
3 substantively claiming that his plea was not knowingly and voluntarily entered. Regardless,
4 Petitioner's claims are meritless as Petitioner received effective assistance of counsel and his
5 plea was knowingly and voluntarily entered.

6 **a. Petitioner received effective assistance of counsel**

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

13 To prevail on a claim of ineffective assistance of counsel as it relates to a guilty plea, a
14 defendant must prove he was denied "reasonably effective assistance" of counsel by satisfying
15 the two-prong test of Strickland. 466 U.S. at 686–87, 104 S. Ct. at 2063–64; see also Love,
16 109 Nev. at 1138, 865 P.2d at 323. Under the Strickland test, a defendant must show first that
17 his counsel's representation fell below an objective standard of reasonableness, and second,
18 that but for counsel's ineffective assistance, he would not have pleaded guilty and would have
19 insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370 (1985).

20 The court begins with the presumption of effectiveness and then must determine
21 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
22 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel
23 does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of
24 competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432,
25 537 P.2d 473, 474 (1975).

26 Counsel cannot be ineffective for failing to make futile objections or arguments. See
27 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
28 "immediate and ultimate responsibility of deciding if and when to object, which witnesses, if

1 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
2 (2002).

3 Based on the above law, the role of a court in considering allegations of ineffective
4 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
5 whether, under the particular facts and circumstances of the case, trial counsel failed to render
6 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
7 (1978). This analysis does not mean that the court should “second guess reasoned choices
8 between trial tactics nor does it mean that defense counsel, to protect himself against
9 allegations of inadequacy, must make every conceivable motion no matter how remote the
10 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel
11 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
12 cannot create one and may disserve the interests of his client by attempting a useless charade.”
13 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

14 “There are countless ways to provide effective assistance in any given case. Even the
15 best criminal defense attorneys would not defend a particular client in the same way.”
16 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
17 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
18 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
19 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s
20 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s
21 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

22 Even if a defendant can demonstrate that his counsel’s representation fell below an
23 objective standard of reasonableness, he must still demonstrate prejudice and show a
24 reasonable probability that, but for counsel’s errors, the result of the trial would have been
25 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
26 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
27 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687–
28 89, 694, 104 S. Ct. at 2064–65, 2068).

1 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the
2 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
3 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
4 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
5 be supported with specific factual allegations, which if true, would entitle the petitioner to
6 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”
7 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
8 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims
9 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your
10 petition to be dismissed.” (emphasis added).

11 A party seeking review bears the responsibility “to cogently argue, and present relevant
12 authority” to support his assertions. Edwards v. Emperor’s Garden Restaurant, 122 Nev. 317,
13 330 n.38, 130 P.3d 1280, 1288 n.38 (2006); Dept. of Motor Vehicles and Public Safety v.
14 Rowland, 107 Nev. 475, 479, 814 P.2d 80, 83 (1991) (defendant’s failure to present legal
15 authority resulted in no reason for the district court to consider defendant’s claim); Maresca v.
16 State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (an arguing party must support his arguments
17 with relevant authority and cogent argument; “issues not so presented need not be addressed”);
18 Randall v. Salvation Army, 100 Nev. 466, 470–71, 686 P.2d 241, 244 (1984) (court may
19 decline consideration of issues lacking citation to relevant legal authority); Holland Livestock
20 v. B & C Enterprises, 92 Nev. 473, 533 P.2d 950 (1976) (issues lacking citation to relevant
21 legal authority do not warrant review on the merits).

22 Here, Petitioner claims that counsel was ineffective for allegedly coercing him into
23 accepting the negotiations. However, Petitioner provides no evidence to this Court to
24 demonstrate that counsel coerced him into taking the negotiations or that he was prejudiced in
25 any way by accepting the negotiations. Instead, Petitioner only quotes his sentencing transcript
26 where he informed the Court that he no longer wanted to accept the negotiations. Petitioner
27 fails to point out that Petitioner made this comment after his Motion to Withdraw Plea had
28 been litigated and denied. This Court reviewed Petitioner’s claims and determined that

1 Petitioner did not have a basis to withdraw his plea. See Order, filed May 7, 2012. Thus,
2 Petitioner's claims are bare, naked, and only appropriate for summary denial. Hargrove, 100
3 Nev. at 502, 686 P.2d at 225. Further, Petitioner was originally facing four (4) counts,
4 including an open murder charge. Counsel negotiated Petitioner's plea to only two (2) counts
5 and obtained stipulations to one of the counts and the weapon enhancement. Counsel's
6 performance was not ineffective as this negotiation was in Petitioner's best interest. As
7 Petitioner has failed to demonstrate both deficient performance and prejudice, Petitioner's
8 claim fails.

9 To the extent Petitioner claims counsel was ineffective because he was not presented
10 with a better offer, defense counsel cannot be deemed ineffective for his failure to secure a
11 more favorable offer. Counsel does not have control over what the State offers. See Young v.
12 District Court, 107 Nev. 642, 818 P.2d 844 (1991). Counsel cannot be deemed ineffective
13 merely because the Defendant's risk in disregarding counsel's advice did not pay off. See
14 Cronic, 466 U.S. at 657 n.19, 104 S. Ct. at 2046 n.19 (noting counsel is not required to do what
15 is impossible). Therefore, Petitioner's claim fails. As Petitioner has failed to demonstrate both
16 good cause and prejudice to overcome the procedural bars, his Petition is denied.

17 **b. Petitioner's plea was knowingly and voluntarily entered into.**

18 Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be
19 withdrawn to correct "manifest injustice." See Baal v. State, 106 Nev. 69, 72, 787 P.2d 391,
20 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid and the
21 burden is on a defendant to show that the plea was not voluntarily entered. Bryant v. State, 102
22 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336, 337, 535
23 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant entered his plea
24 voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

25 To determine whether a guilty plea was voluntarily entered, the Court will review the
26 totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721
27 P.2d at 367. A proper plea canvass should reflect that:

28 //

1 [T]he defendant knowingly waived his privilege against self-incrimination,
2 the right to trial by jury, and the right to confront his accusers; (2) the plea
3 was voluntary, was not coerced, and was not the result of a promise of
4 leniency; (3) the defendant understood the consequences of his plea and the
range of punishments; and (4) the defendant understood the nature of the
charge, i.e., the elements of the crime.

5 Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev.
6 774, 476 P.2d 950 (1970)). The presence and advice of counsel is a significant factor in
7 determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d
8 107, 107 (1975).

9 This standard requires the court accepting the plea to personally address the defendant
10 at the time he enters his plea to determine whether he understands the nature of the charges to
11 which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not rely simply
12 on a written plea agreement without some verbal interaction with a defendant. Id. Thus, a
13 “colloquy” is constitutionally mandated, and a “colloquy” is but a conversation in a formal
14 setting, such as that occurring between an official sitting in judgment of an accused at plea.
15 See id. However, the court need not conduct a ritualistic oral canvass. State v. Freese, 116
16 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas “do not require
17 the articulation of talismanic phrases,” but only that the record demonstrates a defendant
18 entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev. 573, 575,
19 516 P.2d 1403, 1404 (1973); see also Brady v. United States, 397 U.S. 742, 747–48, 90 S. Ct.
20 1463, 1470 (1970).

21 In this case, Petitioner claims that he should be permitted to withdraw his guilty plea
22 because he did not understand his plea. However, Petitioner has failed “to cogently argue, and
23 present relevant authority” to support his assertions. Edwards, 122 Nev. at 330 n.38, 130 P.3d
24 at 1288 n.38; Rowland, 107 Nev. at 479, 814 P.2d at 83; Maresca, 103 Nev. at 673, 748 P.2d
25 at 6; Randall, 100 Nev. at 470–71, 686 P.2d at 244; Holland Livestock, 92 Nev. at 533 P.2d
26 950. Thus, his claims are summarily denied. Further, Petitioner’s claims are meritless as they
27 are belied by the record.

28 //

1 According to Petitioner's Guilty Plea Agreement, Petitioner acknowledged that he was
2 entering his plea knowingly and voluntarily:

3 VOLUNTARINESS OF PLEA

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

6 I understand that the State would have to prove each element of the
7 charge(s) against me at trial.

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

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

12 **I believe that pleading guilty and accepting this plea bargain is in my
13 best interest, and that a trial would be contrary to my best interest.**

14 **I am signing this agreement voluntarily, after consultation with my
15 attorney, and I am not acting under duress or coercion or by virtue of
16 any promises of leniency, except for those set forth in this agreement.**

17 I am not now under the influence of any intoxicating liquor, a controlled
18 substance or other drug which would in any manner impair my ability to
19 comprehend or understand this agreement or the proceedings surrounding
20 my entry of this plea.

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

24 Guilty Plea Agreement, filed March 12, 2010, at 4-5 (emphasis added). Additionally,
25 Petitioner's counsel, as an officer of the Court, acknowledged that Petitioner was entering his
26 plea knowingly and voluntarily. Id. at 6. Therefore, Petitioner's claims are belied by the GPA
27 itself and his Petition is denied. As Petitioner has failed to demonstrate prejudice sufficient to
28 overcome the procedural bars, the Petition is denied.

29 **IV. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING.**

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

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

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

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

6 The Nevada Supreme Court has held that if a petition can be resolved without
7 expanding the record, no evidentiary hearing is necessary. Marshall v. State, 110 Nev. 1328,
8 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A
9 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual
10 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
11 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove, 100 Nev. at
12 503, 686 P.2d at 225 (holding that “[a] defendant seeking post-conviction relief is not entitled
13 to an evidentiary hearing on factual allegations belied or repelled by the record”). “A claim is
14 ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the
15 claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

16 It is improper to hold an evidentiary hearing simply to make a complete record. See
17 State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The
18 district court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted
19 ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary
20 hearing.”). Further, the United States Supreme Court has held that an evidentiary hearing is
21 not required simply because counsel’s actions are challenged as being unreasonable strategic
22 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge
23 in post hoc rationalization for counsel’s decision making that contradicts the available
24 evidence of counsel’s actions, neither may they insist counsel confirm every aspect of the
25 strategic basis for his or her actions. Id. There is a “strong presumption” that counsel’s
26 attention to certain issues to the exclusion of others reflects trial tactics rather than “sheer
27 neglect.” Id. (citing Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls
28 for an inquiry in the *objective* reasonableness of counsel’s performance, not counsel’s
subjective state of mind. 466 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

1 Here, as demonstrated above, Petitioner's claims are procedurally barred and belied by
2 the record. Therefore, Petitioner has failed to demonstrate that an evidentiary hearing is
3 necessary. As Petitioner's claims are summarily denied, his request for an evidentiary hearing
4 is similarly denied.

5 **ORDER**

6 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief
7 shall be, and it is, hereby denied.

Dated this 16th day of June, 2021



09C256384

SC

11 STEVEN B. WOLFSON
12 Clark County District Attorney
Nevada Bar #1565

97A F4F 52D2 A646
Ronald J. Israel
District Court Judge

14 BY /s/ TALEEN PANDUKHT
15 TALEEN PANDUKHT
16 Chief Deputy District Attorney
Nevada Bar #5734

18 **CERTIFICATE OF MAILING**

19 I hereby certify that service of the above and foregoing was made this ____ day of June,
20 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

21 BARRON HAMM, BAC#1052277
22 LOVELOCK CORRECTIONAL CENTER
23 1200 PRISON ROAD
LOVELOCK, NEVADA 89419

24 BY /s/ L.M.
25 Secretary for the District Attorney's Office

26
27
28 09F09275X/TP/lm/GU

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 The State of Nevada vs Barron
7 Hamm

CASE NO: 09C256384

DEPT. NO. Department 28

8
9 **AUTOMATED CERTIFICATE OF SERVICE**

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

13 Service Date: 6/16/2021

14 Dept 28 Law Clerk

dept28lc@clarkcountycourts.us

DOCUMENTARY EXHIBITS

Grand Jury Case # 09AGJ.036X

Exhibit " 1

Date 7/14/09

7
1 **IND**
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 SONIA JIMENEZ
6 Chief Deputy District Attorney
7 Nevada Bar #008818
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff
12
13
14
15
16
17

18 DISTRICT COURT
19 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,)
11)
12 Plaintiff,)

13 -vs-

Case No.
Dept. No.

13 BARRON HAMM,
14 #2707761

15 Defendant(s).
16)
17)

INDICTMENT

18 STATE OF NEVADA }
19 COUNTY OF CLARK } ss.

20 The Defendant(s) above named, BARRON HAMM, accused by the Clark County
21 Grand Jury of the crimes of BURGLARY WHILE IN POSSESSION OF A FIREARM
22 (Felony - NRS 205.060); ASSAULT WITH A DEADLY WEAPON (Felony - NRS
23 200.471); MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010,
24 200.030, 193.165); and CARRYING CONCEALED FIREARM OR OTHER DEADLY
25 WEAPON (Felony - NRS 202.350 (1)(d)(3)); committed at and within the County of Clark,
26 State of Nevada, on or about the 3rd day of May, 2009, as follows:

27 ///

28 ///

1 COUNT 1 – BURGLARY WHILE IN POSSESSION OF A FIREARM

2 did then and there wilfully, unlawfully, and feloniously enter, while in possession of a
3 firearm, with intent to commit assault and/or assault with use of a deadly weapon, that
4 certain building occupied by JAZMIN FLEMMING and/or JARED FLEMMING, located at
5 2675 Nellis Avenue, # 1142, Clark County, Nevada.

6 COUNT 2 – ASSAULT WITH A DEADLY WEAPON

7 did then and there wilfully, unlawfully, feloniously and intentionally place another
8 person, to-wit: JARED FLEMMING and/or HEATHER HERNANDEZ and/or TYJUAN
9 BELL and/or MALIQUE HALEY and/or MICHAEL VILLANUEVA, in reasonable
10 apprehension of immediate bodily harm with use of a deadly weapon, to-wit: a firearm, by
11 pointing the firearm at said individuals and yelling for everyone to get on the ground and/or
12 for everyone to lay on the ground.

13 COUNT 3 – MURDER WITH USE OF A DEADLY WEAPON

14 did then and there wilfully, feloniously, without authority of law, and with malice
15 aforethought, kill JARED FLEMMING, a human being, by shooting the said JARED
16 FLEMMING in the back, with a deadly weapon, to-wit: a firearm, the said actions of the
17 Defendant resulting in the death of the said JARED FLEMMING, the Defendant being
18 responsible under one or more of the following principles of criminal liability, to-wit: (1) by
19 having premeditation and deliberation in its commission; and/or (2) the killing occurring
20 during the perpetration or attempted perpetration of a burglary.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 COUNT 4 - CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON

2 did then and there wilfully, intentionally, unlawfully and feloniously carry concealed
3 upon his person, a firearm or other deadly weapon, to-wit: a handgun.

4 DATED this ____ day of July, 2009.

5
6 DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781
7

8
9 BY

SONIA JIMENEZ
Chief Deputy District Attorney
Nevada Bar #008818
10

11 ENDORSEMENT: A True Bill
12

13
14 _____
Foreperson, Clark County Grand Jury
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Names of witnesses testifying before the Grand Jury:

DA#09AGJ036X/09F09275X/ds
LVMPD EV# 0905030318
(TK5)

Grand Jury Case # 09AGJ036X

Exhibit # 2

Date 7/14/09

INSTRUCTION NO. _____

Every person who, by day or night, enters any house, room or apartment with the intent to commit assault therein has committed the crime of Burglary.

“Assault” means intentionally placing another person in reasonable apprehension of immediate bodily harm.

INSTRUCTION NO. _____

It is not necessary that the State prove the defendant actually committed an assault inside the house, room or apartment, after he entered in order for you to find he has committed the crime of burglary. The gist of the crime of burglary is the unlawful entry with criminal intent. Therefore, a burglary was committed if the defendant entered the house, room or apartment with the intent to commit an assault regardless of whether or not that crime occurred.

INSTRUCTION NO. _____

Consent to enter is not a defense to the crime of burglary so long as it is shown that entry was made with the specific intent to commit an assault therein.

INSTRUCTION NO. _____

Every person who commits the crime of burglary, who has in his possession or gains possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the structure, or upon leaving the structure, has committed the crime of burglary while in possession of a weapon.

INSTRUCTION NO. _____

"Deadly weapon" means any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death, or, any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

INSTRUCTION NO. _____

An Assault With a Deadly Weapon is an intentional placing of another person in reasonable apprehension of immediate bodily harm, by or through the use of a deadly weapon.

To constitute an assault, it is not necessary that any actual injury be inflicted.

INSTRUCTION NO. _____

Murder is the unlawful killing of a human being, with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

INSTRUCTION NO. _____

Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, from anger, hatred, revenge, or from particular ill will, spite or grudge toward the person killed. It may

also arise from any unjustifiable or unlawful motive or purpose to injure another, proceeding from a heart fatally bent on mischief or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intention to injure another and the actual execution of the intent but denotes an unlawful purpose and design as opposed to accident and mischance.

INSTRUCTION NO. _____

Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

INSTRUCTION NO. _____

There are certain kinds of murder which carry with them conclusive evidence of malice aforethought. One of these classes of murder is murder committed in the perpetration or attempted perpetration of burglary. Therefore, a killing which is committed in the perpetration of a burglary is deemed to be murder of the first degree, whether the killing was intentional or unintentional or accidental. This is called the Felony-Murder rule.

The specific intent to perpetrate or attempt to perpetrate burglary must be proven by slight or marginal evidence for purposes of this grand jury hearing.

INSTRUCTION NO. _____

Every person found to be carrying any pistol, revolver, firearm or other dangerous or deadly weapon concealed on his person is guilty of the crime of Carrying a Concealed Weapon.

INSTRUCTION NO. _____

"Concealed Weapon" means any pistol, revolver, firearm or other dangerous or deadly weapon, whether loaded or unloaded, which is carried upon a person in such a manner as not to be discernible by ordinary observation.

"Carrying upon a person" means actually on the person or in a container carried by the person.

Grand Jury Case # 09AGJ036X

Exhibit " 28 "

Date 7/14/09 _____

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
PHOTO LINE-UP WITNESS INSTRUCTIONS

NAME: Marique Harley EVENT#: 090
ADDRESS: _____ INTERVIEWED BY: CBW
PHONE NUMBER: _____ LOCATION: 4171 Barber
DATE & TIME: 5/6/09

"In a moment I am going to show you a group of photographs. This group of photographs may or may not contain a picture of the person who committed the crime now being investigated. The fact that the photos are being shown to you should not cause you to believe or guess that the guilty person has been caught. You do not have to identify anyone. It is just as important to free innocent persons from suspicion as it is to identify those who are guilty. Please keep in mind that hair styles, beards, and mustaches are easily changed. Also, photographs do not always depict the true complexion of a person - it may be lighter or darker than shown in the photo. You should pay no attention to any markings or numbers that may appear on the photos. Also, pay no attention to whether the photos are in color or black and white, or any other difference in the type or style of the photographs. You should study only the person shown in each photograph. Please do not talk to anyone other than Police Officers while viewing the photos. You must make up your own mind and not be influenced by other witnesses, if any. When you have completed viewing all the photos, please tell me whether or not you can make an identification. If you can, tell me in your own words how sure you are of your identification. Please do not indicate in any way to other witnesses that you have or have not made an identification. Thank you."

SIGNED: ✓ Marique Harley

STATEMENT:

DATE & TIME: 5/6/09

I am a 100% sure this is Burger B.

SIGNED: Marique Harley

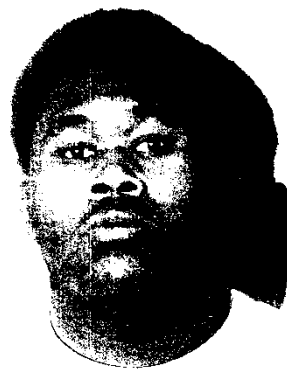
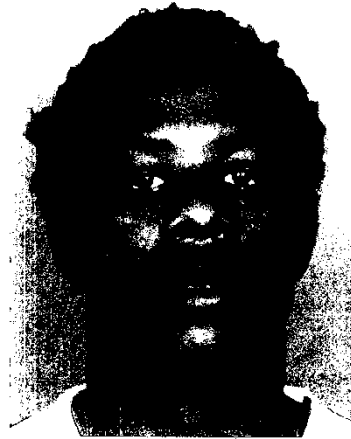
DATE & TIME: 5/6/09 1650

OFFICER'S NAME & P#:

LVMPD 104 (REV. 5-96) • AUTOMATED/WP12

[Signature] 4407

Clark County Juvenile Justice Services.



MH



Grand Jury Case # 09AGJ036X

Exhibit " 29 "

Date 7/14/09 _____

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
PHOTO LINE-UP WITNESS INSTRUCTIONS

NAME: AUSTON CHILDS
ADDRESS: _____
PHONE NUMBER: _____

EVENT#: 090503-0318
INTERVIEWED BY: W. WISEMAN
LOCATION: _____
DATE & TIME: 5-7-09 1314

"In a moment I am going to show you a group of photographs. This group of photographs may or may not contain a picture of the person who committed the crime now being investigated. The fact that the photos are being shown to you should not cause you to believe or guess that the guilty person has been caught. You do not have to identify anyone. It is just as important to free innocent persons from suspicion as it is to identify those who are guilty. Please keep in mind that hair styles, beards, and mustaches are easily changed. Also, photographs do not always depict the true complexion of a person - it may be lighter or darker than shown in the photo. You should pay no attention to any markings or numbers that may appear on the photos. Also, pay no attention to whether the photos are in color or black and white, or any other difference in the type or style of the photographs. You should study only the person shown in each photograph. Please do not talk to anyone other than Police Officers while viewing the photos. You must make up your own mind and not be influenced by other witnesses, if any. When you have completed viewing all the photos, please tell me whether or not you can make an identification. If you can, tell me in your own words how sure you are of your identification. Please do not indicate in any way to other witnesses that you have or have not made an identification. Thank you."

SIGNED: Auston Childs

STATEMENT:

DATE & TIME: _____

I am 100% sure the pic picture was Burger B.

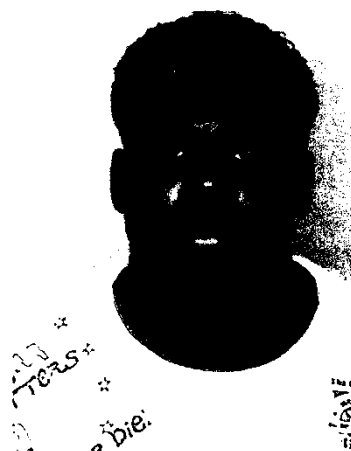
SIGNED: _____

DATE & TIME: _____

OFFICER'S NAME & P#: _____

LVMPD 104 (REV. 5-96) • AUTOMATED/WP12

Clark County Juvenile Justice Services.



Grand Jury Case # 09AGJ036X

Exhibit # 30

Date 7/14/09

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
PHOTO LINE-UP WITNESS INSTRUCTIONS

NAME: TYJUAN Bell

ADDRESS: _____

PHONE NUMBER: _____

EVENT#: 090503-0318

INTERVIEWED BY: WILLIAM/Bell

LOCATION: _____

DATE & TIME: 5-7-09 1345

"In a moment I am going to show you a group of photographs. This group of photographs may or may not contain a picture of the person who committed the crime now being investigated. The fact that the photos are being shown to you should not cause you to believe or guess that the guilty person has been caught. You do not have to identify anyone. It is just as important to free innocent persons from suspicion as it is to identify those who are guilty. Please keep in mind that hair styles, beards, and mustaches are easily changed. Also, photographs do not always depict the true complexion of a person - it may be lighter or darker than shown in the photo. You should pay no attention to any markings or numbers that may appear on the photos. Also, pay no attention to whether the photos are in color or black and white, or any other difference in the type or style of the photographs. You should study only the person shown in each photograph. Please do not talk to anyone other than Police Officers while viewing the photos. You must make up your own mind and not be influenced by other witnesses, if any. When you have completed viewing all the photos, please tell me whether or not you can make an identification. If you can, tell me in your own words how sure you are of your identification. Please do not indicate in any way to other witnesses that you have or have not made an identification. Thank you."

SIGNED: Tyjuan Bell

STATEMENT:

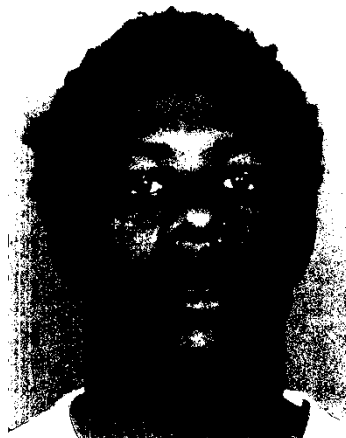
DATE & TIME: _____

SIGNED: _____

DATE & TIME: _____

OFFICER'S NAME & P#: _____

Clark County Juvenile Justice Services.



TDB



Grand Jury Case # 09A GJ036X

Exhibit " 31

Date 7/14/09

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
PHOTO LINE-UP WITNESS INSTRUCTIONS

NAME: Bernard Bynum EVENT#: _____
ADDRESS: _____ INTERVIEWED BY: WILDEMAN/BUN
PHONE NUMBER: _____ LOCATION: 300 Cason Ave
DATE & TIME: 7-14-09 @ 1445

"In a moment I am going to show you a group of photographs. This group of photographs may or may not contain a picture of the person who committed the crime now being investigated. The fact that the photos are being shown to you should not cause you to believe or guess that the guilty person has been caught. You do not have to identify anyone. It is just as important to free innocent persons from suspicion as it is to identify those who are guilty. Please keep in mind that hair styles, beards, and mustaches are easily changed. Also, photographs do not always depict the true complexion of a person - it may be lighter or darker than shown in the photo. You should pay no attention to any markings or numbers that may appear on the photos. Also, pay no attention to whether the photos are in color or black and white, or any other difference in the type or style of the photographs. You should study only the person shown in each photograph. Please do not talk to anyone other than Police Officers while viewing the photos. You must make up your own mind and not be influenced by other witnesses, if any. When you have completed viewing all the photos, please tell me whether or not you can make an identification. If you can, tell me in your own words how sure you are of your identification. Please do not indicate in any way to other witnesses that you have or have not made an identification. Thank you."

SIGNED: K Bernard Bynum

STATEMENT:

DATE & TIME: _____

I am 100% sure that the person circled was Bernard B.
He was at the party and he showed a gun while he was
dancing. I saw the gun. M35160

SIGNED: K Bernard Bynum

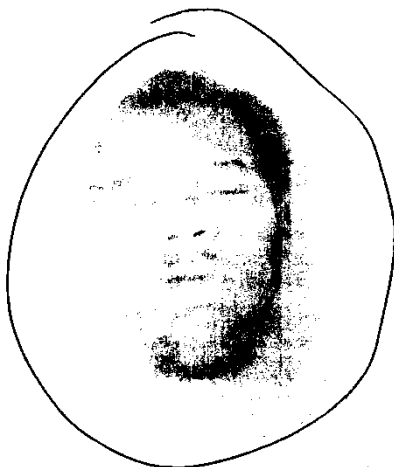
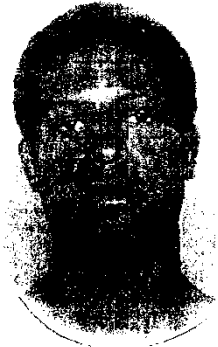
DATE & TIME: 7-14-09 @ 1450

OFFICER'S NAME & P#:

WILDEMAN/BUN 3516 / 4407

LVMPD 104 (REV. 5-96) • AUTOMATED/WP12

Clark County Juvenile Justice Services.



BB 7/14/09

Grand Jury Case # 09A6303bX

Exhibit " 32

Date 7/14/09

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
PHOTO LINE-UP WITNESS INSTRUCTIONS

NAME: Michael Villanueva
ADDRESS: _____
PHONE NUMBER: _____

EVENT#: 090503-0318
INTERVIEWED BY: WINDSMAN/BUN
LOCATION: 300 Carson
DATE & TIME: 7-14-09 @ 1445

"In a moment I am going to show you a group of photographs. This group of photographs may or may not contain a picture of the person who committed the crime now being investigated. The fact that the photos are being shown to you should not cause you to believe or guess that the guilty person has been caught. You do not have to identify anyone. It is just as important to free innocent persons from suspicion as it is to identify those who are guilty. Please keep in mind that hair styles, beards, and mustaches are easily changed. Also, photographs do not always depict the true complexion of a person - it may be lighter or darker than shown in the photo. You should pay no attention to any markings or numbers that may appear on the photos. Also, pay no attention to whether the photos are in color or black and white, or any other difference in the type or style of the photographs. You should study only the person shown in each photograph. Please do not talk to anyone other than Police Officers while viewing the photos. You must make up your own mind and not be influenced by other witnesses, if any. When you have completed viewing all the photos, please tell me whether or not you can make an identification. If you can, tell me in your own words how sure you are of your identification. Please do not indicate in any way to other witnesses that you have or have not made an identification. Thank you."

SIGNED: Michael Villanueva
DATE & TIME: 7-14-09 @ 1455

STATEMENT:

I'm pretty sure that the person I circled is the
man who did the shooting at the party
1351140

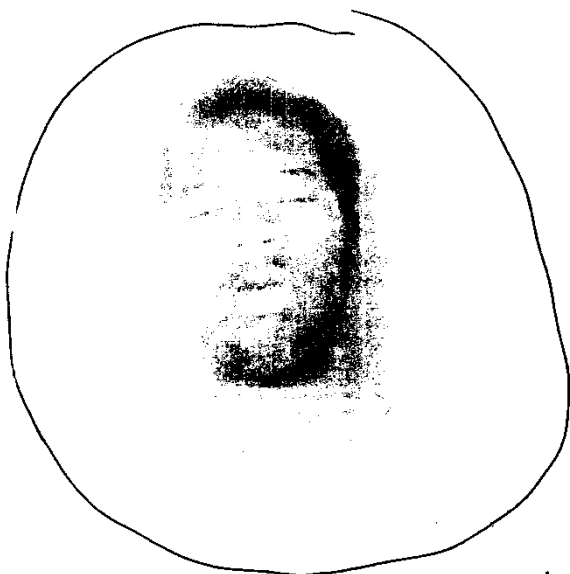
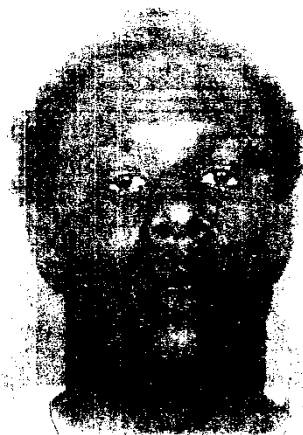
SIGNED: Michael Villanueva
DATE & TIME: 7-14-09 @ 1456

OFFICER'S NAME & P#:

LVMPD 104 (REV. 5-96) • AUTOMATED/WP12

WINDSMAN / BUN 3516 / 14407

Clark County Juvenile Justice Services.



7-14-09 M.V
@ 454

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****July 22, 2009**

09C256384

The State of Nevada vs Barron Hamm

July 22, 2009**11:30 AM****Grand Jury Indictment****GRAND JURY
INDICTMENT****Relief Clerk: Shelly****Landwehr/sl****Reporter/Recorder:****Cheryl Carpenter****Heard By: Linda Bell****HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Mitchell, Scott S.

Attorney

JOURNAL ENTRIES

- Duane Schlismann, Grand Jury Foreman, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. The State presented Grand Jury Case Number 09AGJ036X to the Court. COURT ORDERED, the indictment may be filed and is assigned Case Number C256384, Department 14. Mr. Mitchell requested a bench warrant, COURT ORDERED, NO BAIL BENCH WARRANT. Exhibit(s) 1-34 lodged with Clerk of District Court.

BW(CUSTODY)

07/29/09 09:00 AM INITIAL ARRAIGNMENT (DEPT. 14)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****July 27, 2009**

09C256384

The State of Nevada vs Barron Hamm

July 27, 2009**9:00 AM****Bench Warrant Return**

**BENCH WARRANT
RETURN Court
Clerk: Linda Skinner
Reporter/Recorder:
Cheryl Gardner
Heard By: Donald
Mosley**

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

Coffee, Scott L.

Attorney

Hamm, Barron

Defendant

Public Defender

Attorney

Villegas, Victoria A.

Attorney

JOURNAL ENTRIES

- Mr. Coffee advised this matter was taken to the Grand Jury before the Preliminary Hearing and that the Public Defender's Office needs to be appointed. COURT SO ORDERED. DEFENDANT ARRAIGNED, PLED NOT GUILTY AND WAIVED THE SIXTY (60) DAY RULE. COURT ORDERED, matter set for trial in ordinary course with priority. Mr. Coffee requested 21 days from the filing of the Grand Jury Transcript to file a writ. Court advised Defendants rights are reserved. CUSTODY

1/13/10 9:00 AM STATUS CHECK: DISCOVERY

3/9/10 9:00 AM CALENDAR CALL (#1)

3/15/10 1:30 PM JURY TRIAL (#1)

PRINT DATE: 07/15/2021

Page 2 of 32

Minutes Date: July 22, 2009

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****September 08, 2009**

09C256384

The State of Nevada vs Barron Hamm

September 08, 2009**9:00 AM****Petition for Writ of Habeas
Corpus**

**PTN FOR WRIT OF
HABEAS CORPUS
Court Clerk: Linda
Skinner
Reporter/Recorder:
Maureen Schorn
Heard By: Donald
Mosley**

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

Campbell, Donishia L.	Attorney
Coffee, Scott L.	Attorney
Hamm, Barron	Defendant
Jimenez, Sonia V.	Attorney
Public Defender	Attorney

JOURNAL ENTRIES

- Court noted the issue is probable cause primarily as to Count 1, that the Defense does not feel there was enough evidence presented to the Grand Jury to support this Count. Statements by Mr. Coffee in support of the Writ. Statements by Ms. Jimenez in opposition. COURT ORDERED, Writ DENIED. Mr. Coffee requested a stay to appeal to the Supreme Court. Court DENIED request.
CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 21, 2009

09C256384

The State of Nevada vs Barron Hamm

September 21, 2009

9:00 AM

Motion to Dismiss

**DEFT'S PRO PER
MTN TO DISMISS
COUNSEL/09 Court
Clerk: Tina Hurd
Reporter/Recorder:
Renee Vincent
Heard By: Linda Bell**

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

Coffee, Scott L.
Hamm, Barron
Jimenez, Sonia V.
Public Defender

Attorney
Defendant
Attorney
Attorney

JOURNAL ENTRIES

- Court advised she read the motion and Deft. Hamm is indicating Mr. Coffee has not been communicating with his family. Mr. Coffee advised he met with Deft's family at the time of the Preliminary Hearing, 15 people, and provided discovery to them. They have his phone number and he returns phone calls. Mr. Coffee advised the family was not present at the time of the Writ. An unidentified family member present and stated they were not aware of the hearing and have not been able to contact Mr. Coffee. Colloquy between Court and Deft. COURT ORDERED, motion DENIED. CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 06, 2010**

09C256384

The State of Nevada vs Barron Hamm

January 06, 2010**9:00 AM****Motion to Dismiss**

**DEFT' PRO PER
MTN TO DISMISS
COUNSEL
ANDAPPOINTMEN
T OF ALTERNATIVE
COUNSEL/10 Relief
Clerk: Carol
Donahoo
Reporter/Recorder:
Renee Vincent
Heard By: Bell, Linda**

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

Coffee, Scott L.
Hamm, Barron
Public Defender
Turner, Robert B.

Attorney
Defendant
Attorney
Attorney

JOURNAL ENTRIES

- Upon Court's inquiry, Deft. Hamm stated he would like new counsel; colloquy. COURT ORDERED, matter CONTINUED. In the meantime, Mr. Coffee to meet with Deft. to try negotiate a solution.
CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 13, 2010**

09C256384

The State of Nevada vs Barron Hamm

January 13, 2010**9:00 AM****All Pending Motions**

**ALL PENDING
MOTIONS (1/13/10)
Relief Clerk: Susan
Jovanovich/sj
Reporter/Recorder:
Cheryl Carpenter
Heard By: Linda Bell**

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

Coffee, Scott L.
Hamm, Barron
Jimenez, Sonia V.
Public Defender

Attorney
Defendant
Attorney
Attorney

JOURNAL ENTRIES

- STATUS CHECK: DISCOVERY...DEFT'S PRO PER MOTION TO DISMISS COUNSEL AND APPOINTMENT OF ALTERNATIVE COUNSEL

Mr. Coffee advised issues have been resolved between Deft. and himself, and Deft. is comfortable on having him remain in the case. Upon Court's inquiry, Mr. Coffee advised there are no remaining issues with Discovery; and requested any exculpatory information the State may have, to be provided. Ms. Jimenez advised she is aware of the obligations, and State will comply with the rules and procedures. Court so noted. COURT ORDERED, Deft's Motion is MOOT.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 10, 2010**

09C256384

The State of Nevada vs Barron Hamm

March 10, 2010**9:00 AM****Calendar Call****CALENDAR CALL****Court Clerk: Tina
Hurd****Reporter/Recorder:****Cheryl Carpenter****Heard By: Linda Bell****HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Campbell, Donishia L.

Attorney

Coffee, Scott L.

Attorney

Hamm, Barron

Defendant

Jimenez, Sonia V.

Attorney

Public Defender

Attorney

JOURNAL ENTRIES

- Mr. Coffee announced ready for trial and advised they reviewed the State's file and will be picking up copies this morning. He does not anticipate a problem. Mr. Coffee advised he made a Brady request during the file review regarding anyone carrying a weapon at the party. Additionally, several of the witnesses have been represented by his office as juveniles. Mr. Coffee advised his review of the situation is it will not result in a conflict and they will not be using any confidential information. Mr. Coffee advised, also, he expects the issue that this was the victim's 14th birthday party to be raised and stated it does not seem to be part of the res gestae and he will be asking to remove that from the jury's consideration. Mr. Coffee requested a status check on Friday to make sure everything is set and, if there is a resolution, they will not have to scramble to be heard at the last

09C256384

minute. Conference at the bench. COURT ORDERED, this case will proceed to trial on Monday; matter set for status check on Friday and the Court will take up any pre-trial issues at that time.

CUSTODY

3-12-10 8:45 AM STATUS CHECK: TRIAL READINESS

3-15-10 9:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 12, 2010**

09C256384

The State of Nevada vs Barron Hamm

March 12, 2010**8:45 AM****Status Check**

**STATUS CHECK:
TRIAL READINESS
Court Clerk: Tina
Hurd
Reporter/Recorder:
Renee Vincent
Heard By: Linda Bell**

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

Campbell, Donishia L.	Attorney
Coffee, Scott L.	Attorney
Hamm, Barron	Defendant
Jimenez, Sonia V.	Attorney
Public Defender	Attorney

JOURNAL ENTRIES

- Guilty Plea Agreement FILED IN OPEN COURT. NEGOTIATIONS: State retains full right to argue on the charge of Second Degree Murder. Parties stipulate to a sentence of 8-20 years for the deadly weapon enhancement. Parties also stipulate to a sentence of 24-72 months for the charge of Assault with a Deadly Weapon and agree to run the sentence consecutive to Count 1. Further, this agreement is conditional on the Court agreeing to and following through with the stipulated portion of the sentence. Ms. Jimenez advised, if the Court is not inclined to abide by the stipulations, either party may withdraw from the negotiations. Court acknowledged. DEFT. HAMM ARRAIGNED AND PLED GUILTY TO THE AMENDED INDICTMENT FILED IN OPEN COURT CHARGING--COUNT 1 - SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON (F) and COUNT 2 -

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Minutes Date: July 22, 2009

09C256384

ASSAULT WITH A DEADLY WEAPON (F). COURT ACCEPTED plea and ORDERED, matter referred to the Division of Parole and Probation (P&P) and set for sentencing.

CUSTODY

5-14-10 8:45 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 14, 2010**

09C256384

The State of Nevada vs Barron Hamm

May 14, 2010**8:45 AM****Sentencing****SENTENCING****Court Clerk: Tina
Hurd****Reporter/Recorder:
Renee Vincent****Heard By: Linda Bell****HEARD BY:****COURTROOM:** No Location**COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Coffee, Scott L.
Hamm, Barron
Jimenez, Sonia V.
Public Defender

Attorney
Defendant
Attorney
Attorney

JOURNAL ENTRIES

- Conference at the bench. DEFT. HAMM ADJUDGED GUILTY OF COUNT 1 - SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON (F) and COUNT 2 - ASSAULT WITH A DEADLY WEAPON (F). Matter argued and submitted. Sworn statements by Karen Kennedy Grill and the victim's mother Kimberly Brown Fleming. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee and \$150.00 DNA Analysis fee including testing to determine genetic markers, Deft. SENTENCED as follows: Count 1 - to a MAXIMUM term of LIFE with a MINIMUM parole eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC) plus a CONSECUTIVE term of a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of NINETY SIX (96) MONTHS for use of a deadly weapon. Court stated her findings regarding the weapons enhancement. Count 2 - to a MAXIMUM term of SEVENTY

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Minutes Date: July 22, 2009

TWO (72) MONTHS with a MINIMUM parole eligibility of TWENTY FOUR (24) MONTHS in the Nevada Department of Corrections (NDC), CONSECUTIVE to Count 1. 375 DAYS credit for time served. Deft. to PAY \$36,796.27 RESTITUTION to the Fleming Family and \$6,000.00 RESTITUTION to Victims of Violent Crimes. BOND, if any, EXONERATED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 04, 2010

09C256384

The State of Nevada vs Barron Hamm

August 04, 2010

8:45 AM

**Motion to Withdraw as
Counsel**

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 15C

COURT CLERK: Tina Hurd
Sandra Harrell

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT:	State of Nevada	Plaintiff
	WATERS, WILLIAM M., ESQ	Attorney
	Westmeyer, Daniel	Attorney

JOURNAL ENTRIES

- Defendant not present, incarcerated at NDC. Mr. Waters advised he will send file to Defendant.
COURT ORDERED, Motion to Withdraw is GRANTED.

NDC

CLERK'S NOTE: A copy of the above minute order was mailed to Barron Hamm #1052277 @ High Desert State Prison PO BOX 650, Indian Springs, NV 89018./sjh

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 01, 2010

09C256384

The State of Nevada vs Barron Hamm

September 01, 2010 8:45 AM

Motion for Appointment

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 15C

COURT CLERK: Tina Hurd
Shelly Landwehr

RECORDER: Renee Vincent

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS, Deft. did not show a basis and did not file a petition. Further, Court noted it is unclear if Mr. Coffee will be filing an appeal. COURT ORDERED, motion, DENIED.

NDC

**PLEADING
CONTINUES
IN NEXT
VOLUME**