

Steven D. Grierson

Electronically Filed
Jun 29 2021 09:12 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

1 KEVIN BROOKS

2 Appellant In Proper Person

3 P.O. Box 650 H.D.S.P.

4 Indian Springs, Nevada 89018

5 8th DISTRICT COURT

6 CLARK COUNTY NEVADA

7
8 KEVIN BROOKS and RALPH,

9 KEVIN CLARK

10 Appellant,

11 -v-

12 STATE OF NEVADA,

13 Respondent.

Case No. A-21-827394-W

Dept.No. III

Docket

14 NOTICE OF APPEAL

15 Notice is hereby given that the Appellant, KEVIN

16 BROOKS,

17 by and through himself in proper person, does now appeal
18 to the Supreme Court of the State of Nevada, the decision of the District
19 Court Denying Petition For writ of Habeas Corpus.

20
21 Dated this date, June 17, 2021.

22
23 Respectfully Submitted,

24 Kevin Brooks

25 In Proper Person

26
27
28
RECEIVED
JUN 22 2021
CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAILING

I, KEVIN BROOKS, hereby certify, pursuant to NRCP 5(b), that on this 17th
day of June, 2021, I mailed a true and correct copy of the foregoing, "Notice
of Appeal"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

CLARK COUNTY COURT
200 LEWIS AVE. 3RD FLOOR
LAS VEGAS, NV. 89155-1160

DATED: this 17th day of June, 2021.

Kevin Brooks
KEVIN BROOKS # 33384
Appellant /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
(Title of Document)

filed in District Court Case number A-21-827394-W

☒ 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.

Kevin Brooks
Signature

6-17-2021
Date

Kevin Brooks
Print Name

Pro Se
Title

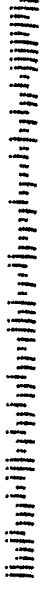
A postage stamp featuring a portrait of a man, with the text "FOREVER USA" and wavy cancellation lines.

LAS VEGAS NV 890

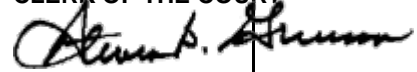
18 JUN 2021 PM 4 L

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UNIT 7 C/D
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HDSP



1 ASTA

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3
4
5
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**
9

10 KEVIN BROOKS aka RALPH KEVIN BROOKS,

11 Plaintiff(s),

12 vs.

13 STATE OF NEVADA,

14 Defendant(s),
15

Case No: A-21-827394-W

Dept No: III

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Kevin Brooks

20 2. Judge: Monica Trujillo

21 3. Appellant(s): Kevin Brooks

22 Counsel:

23 Kevin Brooks #33384
24 P.O. Box 650
Indian Springs, NV 89070

25 4. Respondent (s): State of Nevada

26 Counsel:

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

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

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

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

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

7 8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A
8 **Expires 1 year from date filed
9 Appellant Filed Application to Proceed in Forma Pauperis: No
10 Date Application(s) filed: N/A

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

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

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

14 11. Previous Appeal: No

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

16 12. Child Custody or Visitation: N/A

17 13. Possibility of Settlement: Unknown

18 Dated This 24 day of June 2021.

19 Steven D. Grierson, Clerk of the Court

20
21 /s/ Amanda Hampton

22 Amanda Hampton, Deputy Clerk
23 200 Lewis Ave
24 PO Box 551601
25 Las Vegas, Nevada 89155-1601
26 (702) 671-0512

27 cc: Kevin Brooks
28

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-21-827394-W

Kevin Brooks, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

§
§
§
§
§

Location: **Department 3**
 Judicial Officer: **Trujillo, Monica**
 Filed on: **01/05/2021**
 Cross-Reference Case Number: **A827394**

CASE INFORMATION

Related Cases

90C093713-2 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Case Status: **01/05/2021 Open**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-21-827394-W
 Court Department 3
 Date Assigned 01/05/2021
 Judicial Officer Trujillo, Monica

PARTY INFORMATION

Plaintiff

Brooks, Kevin

Lead Attorneys

Pro Se

Defendant

State of Nevada

Wolfson, Steven B
Retained
 702-671-2700(W)


DATE

EVENTS & ORDERS OF THE COURT


INDEX

EVENTS

01/05/2021

 Inmate Filed - Petition for Writ of Habeas Corpus
 Party: Plaintiff Brooks, Kevin
Post Conviction


01/26/2021

 Order for Petition for Writ of Habeas Corpus
Order for Petition for Writ of Habeas Corpus


04/14/2021

 Response
State's Response to Petitioner's Petition for Writ of Habeas Corpus


06/08/2021

 Findings of Fact, Conclusions of Law and Order
 Filed By: Plaintiff Brooks, Kevin
Findings of Fact, Conclusions of Law, and Order

06/10/2021

 Notice of Entry of Findings of Fact, Conclusions of Law
 Filed By: Defendant State of Nevada
Notice of Entry of Findings of Fact, Conclusions of Law and Order

06/23/2021

 Notice of Appeal
Notice of Appeal

CASE SUMMARY

CASE NO. A-21-827394-W

06/24/2021



Case Appeal Statement

Filed By: Plaintiff Brooks, Kevin

Case Appeal Statement

HEARINGS

03/17/2021



Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer: Cherry, Michael A.)

03/17/2021, 05/19/2021

Petition for Writ of Habeas Corpus

Matter Continued;

Denied;

Journal Entry Details:

State submitted on its response. COURT ORDERED, Petition DENIED. State to prepare the order as to findings of fact and conclusions of law. NDC ;

Matter Continued;

Denied;

Journal Entry Details:

Ms. Demonte present via BlueJeans. Plaintiff not present. Court noted the State needs some time to respond to the Petition. COURT ORDERED, matter CONTINUED and the following briefing schedule SET: Opposition DUE by April 28, 2021 Reply DUE by May 12, 2021 NDC CONTINUED TO: 5/19/21 8:30 AM CLERK'S NOTE: A copy of this minute order was sent via mail to: Kevin Brooks #33384 (PO Box 650, Indian Springs, NV 89070). /mk 3/17/21;

DISTRICT COURT CIVIL COVER SHEET

A-21-827394-W
Dept. 3

County, Nevada

Case No. _____

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone):

Kevin Brooks

Defendant(s) (name/address/phone):

State of Nevada

Attorney (name/address/phone):

Attorney (name/address/phone):

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

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

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

January 5, 2021

Date

PREPARED BY CLERK

Signature of initiating party or representative

See other side for family-related case filings.

Heather S. Smith
CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #1565
JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #6528
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-

KEVIN BROOKS, aka,
Ralph Kevin Clark #1061224
Defendant.

CASE NO: A-21-827394-W

DEPT NO: III

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

DATE OF HEARING: MAY 19, 2021
TIME OF HEARING: 8:30 A.M.

Michael

THIS CAUSE having come on for hearing before the Honorable ~~MONICA TRUJILLO~~,
Senior
~~District~~ Judge, on the 19th day of May, 2021, the Petitioner not being present, proceeding in
proper person, the Respondent being represented by STEVEN B. WOLFSON, Clark County
District Attorney, by and through ERCAN ISCAN, 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:

STATEMENT OF THE CASE

On April 5, 1990, the petitioner, Kevin Brooks ("Petitioner"), was charged by way of
Amended Indictment with two counts of Burglary (Felony – NRS 205.060). Petitioner was
also charged therein as a habitual criminal. On July 9, 1990, Petitioner was found guilty of

1 both counts by a jury. On September 21, 1990, Petitioner was sentenced to life without the
2 possibility of parole as to both Counts 1 and 2. Petitioner filed a Notice of Appeal on October
3 3, 1990. Petitioner's Judgment of Conviction was filed on October 5, 1990.

4 On February 7, 1991, Petitioner filed a Petition for Post-Conviction Relief. The Petition
5 was denied, apparently *sua sponte*, on March 13, 1991. Order of Remand, filed September 30,
6 1991, Docket No. 22285. On March 6, 1991, Petitioner filed a Motion for Leave to Proceed in
7 Forma Pauperis. The State's Response was filed on March 14, 1991. Petitioner filed a Notice
8 of Appeal on March 28, 1991. On March 29, 1991, Petitioner filed an Application for Order
9 to Have Direct Appeals Held in Abeyance pending the resolution of his post-conviction
10 proceedings. Petitioner's Motion for Leave to Proceed in Forma Pauperis was denied on April
11 10, 1991.

12 Petitioner filed a Petition for Post-Conviction Relief on April 17, 1991. The State's
13 Opposition was filed May 9, 1991. The Petition was denied on May 20, 1991. On December
14 20, 1991, the Nevada Supreme Court's Order dismissing Petitioner's appeal was filed—the
15 Court denied his claim that his two life sentences constitute cruel and unusual punishment, and
16 his claim that the district court erred in admitting a post-arrest statement he made. Remittitur
17 issued January 31, 1992.

18 Petitioner filed a Notice of Appeal on August 12, 1994, appealing the district court's
19 denial of his Motion to Proceed in Forma Pauperis. The Court's Order dismissing Petitioner's
20 appeal was filed on November 9, 1994, and Remittitur issued November 29, 1994.

21 Petitioner filed a Petition for Writ of Habeas Corpus (post-conviction) on April 9, 1999.
22 The State's Response was filed on May 24, 1999. The Petition was denied on June 22, 1999.
23 Petitioner filed a Notice of Appeal on July 23, 1999. The Order affirming the district court's
24 denial of the Petition was filed April 10, 2001, and Remittitur issued March 20, 2001.

25 On January 15, 2003, Petitioner filed a Motion to Vacate or Correct Illegal Sentence.
26 The State's Response was filed January 22, 2003. Petitioner's Motion was denied on January
27 27, 2003. Petitioner filed a Notice of Appeal on February 11, 2003. The Order affirming the
28 district court's decision was filed on January 28, 2004. Remittitur issued on April 15, 2004.

1 Petitioner filed a Petition for Writ of Habeas Corpus on March 31, 2004. The State's
2 Notice of Motion and State's Motion to Dismiss Defendant's Pro Per Petition for Writ of
3 Habeas Corpus was filed May 17, 2004. Petitioner's Reply to the State's Motion was filed
4 May 27, 2004. Petitioner's Petition was declared moot and the State's Motion was granted on
5 June 21, 2004. Petitioner filed a Notice of Appeal on July 12, 2004. The Order affirming the
6 district court's decision was filed November 3, 2004, and Remittitur issued December 2, 2004.

7 On December 20, 2005, Petitioner filed two motions: a Motion of Defendant for
8 Production of Favorable Evidence and a Motion to Dismiss Prosecution and Judgment of
9 Conviction Due to a Lack of Evidence. The State's Opposition and Response were filed
10 January 4, 2006. Petitioner's Motions were denied on February 8, 2006. Petitioner filed a
11 Notice of Appeal on February 15, 2006, appealing the denial of his Motion of Defendant for
12 Production of Favorable Evidence and a Notice of Appeal on February 24, 2006, appealing
13 the denial of his Motion to Dismiss Prosecution and Judgment of Conviction Due to a Lack of
14 Evidence. The Order affirming the denial of his Motions was filed July 14, 2006, and
15 Remittitur issued August 10, 2006.

16 Petitioner filed a Motion for Reconsideration on February 24, 2006, requesting the court
17 reconsider his Motions that were dismissed on February 8, 2006. The State's Opposition was
18 filed on March 2, 2006. Petitioner's Motion was denied on March 8, 2006.

19 Petitioner filed a Motion for Written Judgment or Findings Pursuant to N.R.S. 34.830
20 on June 13, 2006, and the State's Opposition was filed on June 21, 2006. Petitioner's Motion
21 was denied on June 28, 2006.

22 Petitioner filed another Motion for Written Judgment or Findings Pursuant to N.R.S.
23 34.575(1), 34.380(2) on September 20, 2006, and the State's Opposition was filed September
24 28, 2006. Petitioner filed a Reply to the State's Opposition on October 6, 2006. Petitioner's
25 Motion was denied on October 11, 2006. Petitioner filed a Notice of Appeal on October 26,
26 2006. The Order affirming this denial was filed December 5, 2006.

27 ///

28 ///

1 On July 3, 2007, the Supreme Court's Order affirming the district court's denial of
2 Petitioner's Petition for Writ of Habeas Corpus was filed, and Remittitur issued on September
3 13, 2007.

4 On December 30, 2009, Petitioner filed a Petition for Writ of Habeas Corpus. The
5 State's Response was filed on February 3, 2010. Petitioner's Reply to the State's Response
6 was filed on February 25, 2010. The matter came before the court for hearing on March 10,
7 2010, and Petitioner's Petition was denied. Petitioner filed a Notice of Appeal on April 2,
8 2010. The Order affirming the district court's denial of the Petition was filed on September
9 10, 2010, and Remittitur issued on October 20, 2010.

10 On February 26, 2013, Petitioner filed a Petition for Writ of Habeas Corpus, and a
11 Motion for Appointment of Counsel and Request for an Evidentiary Hearing. The State's
12 Opposition to Defendant's Motion for Appointment of Counsel and Request for an Evidentiary
13 Hearing was filed on March 27, 2013. The State's Response to the Petition for Writ of Habeas
14 Corpus was filed on April 30, 2013. The Petition was heard on July 22, 2013, and Petitioner's
15 Petition was denied. Petitioner filed a Motion for Reconsideration on August 15, 2014. The
16 State filed its Opposition on August 30, 2013. Petitioner's Motion was denied on September
17 9, 2013.

18 Petitioner filed a Notice of Appeal on August 23, 2013. The Court's Order affirming
19 the district court's denial of the Petition was filed on February 12, 2014. Remittitur issued on
20 May 12, 2014.

21 Petitioner filed a Motion for Correction of Illegal Sentence on September 7, 2017.
22 Petitioner's Motion was denied on October 11, 2017. On November 2, 2017, Petitioner filed a
23 Notice of Appeal. On June 26, 2018, Petitioner filed a Motion for Modification of Sentence,
24 and the State's Opposition was filed on July 12, 2018. Petitioner's Motion was denied on July
25 18, 2018. On August 21, 2018, Petitioner filed a Motion for Reconsideration. Petitioner filed
26 a Notice of Appeal on August 24, 2018. On October 10, 2018, Petitioner's Motion to Correct
27 Illegal Sentence was denied, but the Motion for Reconsideration was granted.

28 ///

1 Petitioner filed a Motion for Modification of Sentence on November 16, 2018, and the
2 State's Opposition was filed on December 5, 2018. Petitioner's Motion was denied on
3 December 10, 2018. The Supreme Court affirmed the district court, denied rehearing, and
4 denied review. Remittitur issued on December 29, 2018.

5 Petitioner filed a Notice of Appeal on January 7, 2019, appealing the district court's
6 denial of his Motion for Modification of Sentence. The Court's Order affirming the district
7 court's denial of Petitioner's Motion filed on June 26, 2018, was filed on June 25, 2019, and
8 Remittitur issued on October 7, 2019. The Court's Order affirming the district court's denial
9 of Petitioner's Motion for Modification of Sentence filed on November 16, 2018, was filed on
10 December 20, 2019, and Remittitur issued on March 26, 2020.

11 Petitioner filed a Motion to Amend Judgment on July 20, 2020, and that Motion was
12 denied on August 10, 2020. Petitioner filed a Motion for Extension of Time, and Motion Title
13 Addition on August 17, 2020, and that Motion was denied on September 21, 2020. Petitioner
14 filed a Motion to Amend his previous Motion to Amend Judgment on September 25, 2020,
15 and another Motion to Amend Judgment or in the Alternative, Motion for Correction of Illegal
16 Sentence on the same date. The State's Opposition was filed on October 5, 2020. Petitioner
17 filed a Notice of Appeal on October 12, 2020, appealing the denial of his Motion to Amend
18 Judgment. On October 19, 2020, Petitioner's Motion to Amend the Motion to Amend
19 Judgment was denied, as well as the Motion to Amend Judgment or in the Alternative to
20 Correct an Illegal Sentence. Petitioner filed a Notice of Appeal on November 10, 2020,
21 appealing the denial of his Motion to Amend Judgment or in the Alternative to Correct an
22 Illegal Sentence.

23 ANALYSIS

24 **I. PETITIONER'S PETITION IS PROCEDURALLY BARRED**

25 **a. Application of the procedural bars is mandatory**

26 The Nevada Supreme Court has specifically found that the district court has a duty to
27 consider whether the procedural bars apply to a post-conviction petition and not arbitrarily
28 disregard them. In Riker, the Court held that "[a]pplication of the statutory procedural default

1 rules to post-conviction habeas petitions is mandatory,” and “cannot be ignored when properly
2 raised by the State.” 121 Nev. at 231–33, 112 P.3d at 1074–75. There, the Court reversed the
3 district court’s decision not to bar the petitioner’s untimely and successive petition:

4 Given the untimely and successive nature of [petitioner’s] petition, the
5 district court had a duty imposed by law to consider whether any or all of
6 [petitioner’s] claims were barred under NRS 34.726, NRS 34.810, NRS
7 34.800, or by the law of the case . . . [and] the court’s failure to make this
8 determination here constituted an arbitrary and unreasonable exercise of
9 discretion.

10 Id. at 234, 112 P.3d at 1076. The Court justified this holding by noting that “[t]he necessity
11 for a workable system dictates that there must exist a time when a criminal conviction is final.”
12 Id. at 231, 112 P.3d 1074 (citation omitted); see also State v. Haberstroh, 119 Nev. 173, 180–
13 81, 69 P.3d 676, 681–82 (2003) (holding that parties cannot stipulate to waive, ignore, or
14 disregard the mandatory procedural default rules nor can they empower a court to disregard
15 them).

16 In State v. Greene, the Nevada Supreme Court reaffirmed its prior holdings that the
17 procedural default rules are mandatory when it reversed the district court’s grant of a post-
18 conviction petition for writ of habeas corpus. See 129 Nev. 559, 565–66, 307 P.3d 322, 326
19 (2013). There, the Court ruled that the petitioner’s petition was untimely and successive, and
20 that the petitioner failed to show good cause and actual prejudice. Id. Accordingly, the Court
21 reversed the district court and ordered the petitioner’s petition dismissed pursuant to the
22 procedural bars. Id. at 567, 307 P.3d at 327.

23 Because Petitioner’s Petition is procedurally defaulted and because he cannot show
24 good cause or prejudice to overcome the mandatory procedural bars, it is dismissed.

25 **b. Petitioner’s Substantive Claims are Waived as Petitioner Failed to Raise
26 Them on Direct Appeal**

27 Pursuant to NRS 34.810:

28 1. The court shall dismiss a petition if the court determines that:

...

(b) The petitioner's conviction was the result of a trial and the grounds for the petition could have been:

(1) Presented to the trial court;

(2) Raised in a direct appeal or a prior petition for a writ of habeas corpus or postconviction relief; or

(3) Raised in any other proceeding that the petitioner has taken to secure relief from the petitioner's conviction and sentence, unless the court finds both good cause for the failure to present the grounds and actual prejudice to the petitioner.

...

3. Pursuant to subsections 1 and 2, the petitioner has the burden of pleading and proving specific facts that demonstrate:

(a) Good cause for the petitioner's failure to present the claim or for presenting the claim again; and

(b) Actual prejudice to the petitioner.

The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must first be pursued in post-conviction proceedings. . . . [A]ll other claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be *considered waived in subsequent proceedings*." Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). Furthermore, substantive claims are beyond the scope of habeas and waived. NRS 34.724(2)(a); see also Evans, 117 Nev. at 646–47, 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d at 1059.

Here, Petitioner's claims related to Assembly Bill 236, Section 86 (A.B. 236) are direct appeal issues. Because Petitioner did not raise this issue on direct appeal, his claims are waived.

c. Petitioner's Petition is Time-Barred Under NRS 34.726(1)

The instant Petition is time-barred pursuant to NRS 34.726(1):

Unless there is good cause shown for delay, a petition that 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 Supreme Court issues its remittitur. For

1 the purposes of this subsection, good cause for delay exists if the petitioner
2 demonstrates to the satisfaction of the court:

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

4 (b) That dismissal of the petition as untimely will unduly prejudice the
5 petitioner.

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

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

16 Here, the Judgment of Conviction was filed on October 5, 1990. Petitioner filed a
17 Notice of Appeal and remittitur issued on January 8, 1992. Petitioner did not file the instant
18 Petition until January 5, 2021. Accordingly, he is approximately thirty-one (31) years too late.
19 Thus, dismissal of the Petition is required absent a showing of good cause.

20 **d. Laches Applies**

21 Certain limitations exist on how long a defendant may wait to assert a post-conviction
22 request for relief. Consideration of the equitable doctrine of laches is necessary in determining
23 whether a defendant has shown ‘manifest injustice’ that would permit a modification of a
24 sentence. Hart, 116 Nev. at 563–64, 1 P.3d at 972. In Hart, the Nevada Supreme Court stated:
25 “Application of the doctrine to an individual case may require consideration of several factors,
26 including: (1) whether there was an inexcusable delay in seeking relief; (2) whether an implied
27 waiver has arisen from the defendant’s knowing acquiescence in existing conditions; and (3)
28 whether circumstances exist that prejudice the State. See Buckholt v. District Court, 94 Nev.
631, 633, 584 P.2d 672, 673–74 (1978).” Id.

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

10 Here, the State affirmatively plead laches. Petitioner’s Judgment of Conviction was
11 filed on October 5, 1990, and remittitur issued on his direct appeal on January 8, 1992. This
12 occurred approximately thirty-one (31) years ago, and, thus, is outside the period of five (5)
13 years prescribed by NRS 34.800. The State would be prejudiced in having to respond to a
14 challenge to Petitioner’s Judgment of Conviction filed over thirty (30) years ago. Therefore,
15 the instant Petition is barred by laches.

16 **e. Petitioner’s Petition is Successive and/or Abusive Under NRS 34.810(2),**
17 **and is Barred by Res Judicata**

18 NRS 34.810(2) reads:

19 A second or successive petition *must be dismissed* if the judge or justice
20 determines that it fails to allege new or different grounds for relief and that
21 the prior determination was on the merits or, if new and different grounds
22 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.

23 (emphasis added).

24 Second or successive petitions are petitions that either fail to allege new or different
25 grounds for relief and the grounds have already been decided on the merits or that allege new
26 or different grounds but a judge or justice finds that the petitioner’s failure to assert those
27 grounds in a prior petition would constitute an abuse of the writ. Second or successive petitions
28 will only be decided on the merits if the petitioner can show good cause and prejudice. NRS

1 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994); see also Hart v.
2 State, 116 Nev. 558, 563–64, 1 P.3d 969, 972 (2000) (holding that “where a defendant
3 previously has sought relief from the judgment, the defendant’s failure to identify all grounds
4 for relief in the first instance should weigh against consideration of the successive motion.”).

5 The Nevada Supreme Court has stated: “[w]ithout such limitations on the availability
6 of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse
7 post-conviction remedies. In addition, meritless, successive and untimely petitions clog the
8 court system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d at
9 950. The Nevada Supreme Court recognizes that “[u]nlike initial petitions which certainly
10 require a careful review of the record, successive petitions may be dismissed based solely on
11 the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In
12 other words, if the claim or allegation was previously available with reasonable diligence, it is
13 an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467,
14 497–98 (1991). Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112
15 P.3d at 1074.

16 Here, this is not Petitioner’s first petition. Indeed, Petitioner has asserted the same claim
17 in previous proceedings. Accordingly, the instant Petition is successive and is dismissed. It
18 appears that Petitioner has resubmitted his Motion to Amend Judgment, or in the Alternative,
19 Motion for Correction of Illegal Sentence in the form of a Petition for Writ of Habeas Corpus.
20 In that Motion, which appears to be identical, Petitioner made the same A.B. 236 argument he
21 now raises in the instant Petition. Motion to Amend Judgment, or in the Alternative, Motion
22 for Correction of Illegal Sentence, filed September 25, 2020, 90-C-093713, at 2–14. On
23 October 19, 2020, when that Motion was heard by the district court, the court denied
24 Petitioner’s Motion “consistent with State’s opposition.” Court Minutes, October 19, 2020,
25 All Pending Motions, 90-C-093713.

26 This Court has already once considered and denied Petitioner’s claim that A.B. 236
27 should apply retroactively. Re-litigation of this issue is precluded by the doctrine of res
28 judicata. Exec. Mngmt. v. Ticor Titles Ins. Co., 114 Nev. 823, 834, 963 P.2d 465, 473 (1998)

(citing Univ. of Nev. v. Tarkanian, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994)); see Mason v. State, 206 S.W.3d 869, 875 (Ark. 2005) (recognizing the doctrine’s applicability in the criminal context); see also York v. State, 342 S.W. 528, 553 (Tex. Crim. Appl. 2011). Accordingly, by simply continuing to file motions and petitions with the same argument, his Petition is barred by the doctrine of *res judicata*. Id.; Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

Here, Petitioner’s *exact* A.B. 236 argument has been previously denied by the district court. Accordingly, Petitioner’s claim is barred by the doctrine of *res judicata* and is dismissed.

II. PETITIONER FAILS TO ESTABLISH GOOD CAUSE TO OVERCOME PROCEDURAL DEFAULT

Petitioner claims that his conviction violates Due Process because the passage of A.B. 236 reverses his status as a habitual criminal, thus making him no longer subject to a sentence of life without the possibility of parole. However, Petitioner has not and cannot demonstrate good cause or prejudice to overcome the procedural bars—his claim is barred by the doctrine of the law of the case, is meritless, is untimely, and successive.

Under NRS 34.810(3), a defendant may only escape these procedural bars if they meet the burden of establishing good cause and prejudice. Where a defendant does not show good cause for failure to raise claims of error upon direct appeal, the district court is not obliged to consider them in post-conviction proceedings. Jones v. State, 91 Nev. 416, 536 P.2d 1025 (1975). To avoid procedural default under NRS 34.726 and NRS 34.810, a defendant has the burden of pleading and proving specific facts that demonstrate good cause for his failure to present his claim in earlier proceedings or comply with the statutory requirements. See Hogan, 109 Nev. at 959–60, 860 P.2d at 715–16; Phelps, 104 Nev. at 659, 764 P.2d at 1305.

“To establish good cause, appellants *must* show that an impediment external to the defense prevented their compliance with the applicable procedural rule.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. Such an external impediment could be “that the factual or legal basis for a claim was not reasonably available

1 to counsel, or that ‘some interference by officials’ made compliance impracticable.”
2 Hathaway, 119 Nev. at 251, 71 P.3d at 506 (quoting Murray v. Carrier, 477 U.S. 478, 488, 106
3 S. Ct. 2639, 2645 (1986)); see also Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing Harris v.
4 Warden, 114 Nev. 956, 959–60 n.4, 964 P.2d 785, 785 n.4 (1998)). Any delay in filing of the
5 petition must not be the fault of the petitioner. NRS 34.726(1)(a).

6 The Nevada Supreme Court has clarified that, a defendant cannot attempt to
7 manufacture good cause. See Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there
8 must be a “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251, 71
9 P.3d at 506; (quoting Colley v. State, 105 Nev. at 236, 773 P.2d at 1230). Excuses such as the
10 lack of assistance of counsel when preparing a petition, as well as the failure of trial counsel
11 to forward a copy of the file to a petitioner have been found not to constitute good cause. See
12 Phelps, 104 Nev. at 660, 764 P.2d at 1306, superseded by statute on other grounds as
13 recognized in Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145 (2004); Hood v. State,
14 111 Nev. 335, 890 P.2d 797 (1995).

15 In this case, Petitioner claims that A.B. 236 which amends the circumstances under
16 which a defendant may be charged as a habitual criminal, should apply to him, ultimately
17 meaning he would no longer be subject to life without the possibility of parole. However, it is
18 well established that under Nevada law, the proper penalty for a criminal conviction is the
19 penalty in effect at the time of the commission of the offense. State v. Second Judicial Dist.
20 Court (Pullin), 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008). Unless the Legislature clearly
21 expresses its intent to apply a law retroactively, Nevada law requires the application of the law
22 in effect at the time of the commission of the crime. Id.

23 It is clear the amendments upon which Petitioner relies were not in effect at the time of
24 his sentencing. Furthermore, Petitioner’s sentence is clearly within the limits set forth by
25 statute, precluding any finding of any legal basis to grant Petitioner’s Petition. See Glegola v.
26 State, 110 Nev. 344, 871 P.2d 950 (1994) (recognizing the presumption of validity for
27 sentences within the limits set by the legislature). Because Petitioner improperly relies on a
28 legislative amendment that had not taken effect as of the time of his sentencing, Petitioner

1 cannot demonstrate that he is entitled to relief. Additionally, because Petitioner’s argument is
2 legally invalid and without merit, Petitioner is unable to establish good cause to overcome the
3 procedural defaults.

4 Petitioner *may* have been able to establish good cause if the Legislature intended A.B.
5 236 to apply retroactively. However, A.B. 236 contains no retroactivity provisions, nor is there
6 any inkling of legislative intent elsewhere to apply A.B. 236 retroactively. Ultimately, A.B.
7 236 was not intended to apply retroactively, nor has any court determined that it does, and
8 thus, Petitioner cannot establish good cause to overcome the procedural bars and the Petition
9 is denied.

10 **III. PETITIONER CANNOT ESTABLISH SUFFICIENT PREJUDICE TO** 11 **OVERCOME PROCEDURAL DEFAULT**

12 “A court *must* dismiss a habeas petition if it presents claims that either were or could
13 have been presented in an earlier proceeding, unless the court finds both cause for failing to
14 present the claims earlier or for raising them again and actual prejudice to the petitioner.”
15 Evans v. State, 117 Nev. 609, 646–47, 29 P.3d 498, 523 (2001). To demonstrate prejudice to
16 overcome the procedural bars, a defendant must show “not merely that the errors of [the
17 proceeding] created possibility of prejudice, but that they worked to his actual and substantial
18 disadvantage, in affecting the state proceedings with error of constitutional dimensions.”
19 Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v.
20 Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there must be a
21 “substantial reason; one that affords a legal excuse.” Hathaway v. State, 119 Nev. 248, 252,
22 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230
(1989)).

23 Here, Petitioner cannot demonstrate the requisite prejudice to overcome default—
24 Petitioner’s argument that his sentence should be modified as a result of the enactment of A.B.
25 236 is an incorrect assumption of the law and is therefore meritless. As discussed above, it is
26 well established that the proper penalty for a criminal conviction is the penalty in effect at the
27 time of the commission of the offense. State v. Second Judicial Dist. Court (Pullin), 124 Nev.
28

1 at 567, 188 P.3d at 1081. Petitioner has failed to demonstrate good cause and thus Petitioner's
2 Petition is dismissed.

3 **ORDER**

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


6 DATED this _____ day of June, 2021.

Dated this 8th day of June, 2021

7
8 
DISTRICT JUDGE

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

F09 594 7BB0 5095
Monica Trujillo
District Court Judge

11 BY  for
12 JONATHAN VANBOSKERCK
13 Chief Deputy District Attorney
Nevada Bar #6528

14
15 **CERTIFICATE OF MAILING**

16
17 I hereby certify that service of the above and foregoing was made this 9th day of June,
18 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

19 KEVIN BROOKS, BAC #33384
20 HIGH DESERT STATE PRISON
21 P.O. BOX 650
INDIAN SPRINGS, NV, 89070

22
23 BY 
Secretary for the District Attorney's Office

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Kevin Brooks, Plaintiff(s)

CASE NO: A-21-827394-W

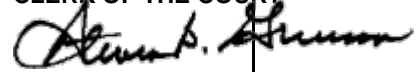
7 vs.

DEPT. NO. Department 3

8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's
12 electronic filing system, but there were no registered users on the case. The filer has been
13 notified to serve all parties by traditional means.
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1 NEFF

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

4 KEVIN BROOKS,

5
6 Petitioner,

Case No: A-21-827394-W

Dept No: III

7 vs.

8 STATE OF NEVADA,

9 Respondent,

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

10
11 **PLEASE TAKE NOTICE** that on June 8, 2021, the court entered a decision or order in this matter, a
12 true and correct copy of which is attached to this notice.

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

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Amanda Hampton

18 Amanda Hampton, Deputy Clerk

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

20 I hereby certify that on this 10 day of 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 Kevin Brooks # 33384
26 P.O. Box 650
27 Indian Springs, NV 89070

28 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #1565
JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #6528
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-

KEVIN BROOKS, aka,
Ralph Kevin Clark #1061224
Defendant.

CASE NO: A-21-827394-W

DEPT NO: III

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

DATE OF HEARING: MAY 19, 2021
TIME OF HEARING: 8:30 A.M.

Michael

THIS CAUSE having come on for hearing before the Honorable ~~MONICA TRUJILLO~~,
Senior
~~District~~ Judge, on the 19th day of May, 2021, the Petitioner not being present, proceeding in
proper person, the Respondent being represented by STEVEN B. WOLFSON, Clark County
District Attorney, by and through ERCAN ISCAN, 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:

STATEMENT OF THE CASE

On April 5, 1990, the petitioner, Kevin Brooks ("Petitioner"), was charged by way of
Amended Indictment with two counts of Burglary (Felony – NRS 205.060). Petitioner was
also charged therein as a habitual criminal. On July 9, 1990, Petitioner was found guilty of

1 both counts by a jury. On September 21, 1990, Petitioner was sentenced to life without the
2 possibility of parole as to both Counts 1 and 2. Petitioner filed a Notice of Appeal on October
3 3, 1990. Petitioner's Judgment of Conviction was filed on October 5, 1990.

4 On February 7, 1991, Petitioner filed a Petition for Post-Conviction Relief. The Petition
5 was denied, apparently *sua sponte*, on March 13, 1991. Order of Remand, filed September 30,
6 1991, Docket No. 22285. On March 6, 1991, Petitioner filed a Motion for Leave to Proceed in
7 Forma Pauperis. The State's Response was filed on March 14, 1991. Petitioner filed a Notice
8 of Appeal on March 28, 1991. On March 29, 1991, Petitioner filed an Application for Order
9 to Have Direct Appeals Held in Abeyance pending the resolution of his post-conviction
10 proceedings. Petitioner's Motion for Leave to Proceed in Forma Pauperis was denied on April
11 10, 1991.

12 Petitioner filed a Petition for Post-Conviction Relief on April 17, 1991. The State's
13 Opposition was filed May 9, 1991. The Petition was denied on May 20, 1991. On December
14 20, 1991, the Nevada Supreme Court's Order dismissing Petitioner's appeal was filed—the
15 Court denied his claim that his two life sentences constitute cruel and unusual punishment, and
16 his claim that the district court erred in admitting a post-arrest statement he made. Remittitur
17 issued January 31, 1992.

18 Petitioner filed a Notice of Appeal on August 12, 1994, appealing the district court's
19 denial of his Motion to Proceed in Forma Pauperis. The Court's Order dismissing Petitioner's
20 appeal was filed on November 9, 1994, and Remittitur issued November 29, 1994.

21 Petitioner filed a Petition for Writ of Habeas Corpus (post-conviction) on April 9, 1999.
22 The State's Response was filed on May 24, 1999. The Petition was denied on June 22, 1999.
23 Petitioner filed a Notice of Appeal on July 23, 1999. The Order affirming the district court's
24 denial of the Petition was filed April 10, 2001, and Remittitur issued March 20, 2001.

25 On January 15, 2003, Petitioner filed a Motion to Vacate or Correct Illegal Sentence.
26 The State's Response was filed January 22, 2003. Petitioner's Motion was denied on January
27 27, 2003. Petitioner filed a Notice of Appeal on February 11, 2003. The Order affirming the
28 district court's decision was filed on January 28, 2004. Remittitur issued on April 15, 2004.

1 Petitioner filed a Petition for Writ of Habeas Corpus on March 31, 2004. The State's
2 Notice of Motion and State's Motion to Dismiss Defendant's Pro Per Petition for Writ of
3 Habeas Corpus was filed May 17, 2004. Petitioner's Reply to the State's Motion was filed
4 May 27, 2004. Petitioner's Petition was declared moot and the State's Motion was granted on
5 June 21, 2004. Petitioner filed a Notice of Appeal on July 12, 2004. The Order affirming the
6 district court's decision was filed November 3, 2004, and Remittitur issued December 2, 2004.

7 On December 20, 2005, Petitioner filed two motions: a Motion of Defendant for
8 Production of Favorable Evidence and a Motion to Dismiss Prosecution and Judgment of
9 Conviction Due to a Lack of Evidence. The State's Opposition and Response were filed
10 January 4, 2006. Petitioner's Motions were denied on February 8, 2006. Petitioner filed a
11 Notice of Appeal on February 15, 2006, appealing the denial of his Motion of Defendant for
12 Production of Favorable Evidence and a Notice of Appeal on February 24, 2006, appealing
13 the denial of his Motion to Dismiss Prosecution and Judgment of Conviction Due to a Lack of
14 Evidence. The Order affirming the denial of his Motions was filed July 14, 2006, and
15 Remittitur issued August 10, 2006.

16 Petitioner filed a Motion for Reconsideration on February 24, 2006, requesting the court
17 reconsider his Motions that were dismissed on February 8, 2006. The State's Opposition was
18 filed on March 2, 2006. Petitioner's Motion was denied on March 8, 2006.

19 Petitioner filed a Motion for Written Judgment or Findings Pursuant to N.R.S. 34.830
20 on June 13, 2006, and the State's Opposition was filed on June 21, 2006. Petitioner's Motion
21 was denied on June 28, 2006.

22 Petitioner filed another Motion for Written Judgment or Findings Pursuant to N.R.S.
23 34.575(1), 34.380(2) on September 20, 2006, and the State's Opposition was filed September
24 28, 2006. Petitioner filed a Reply to the State's Opposition on October 6, 2006. Petitioner's
25 Motion was denied on October 11, 2006. Petitioner filed a Notice of Appeal on October 26,
26 2006. The Order affirming this denial was filed December 5, 2006.

27 ///

28 ///

1 On July 3, 2007, the Supreme Court's Order affirming the district court's denial of
2 Petitioner's Petition for Writ of Habeas Corpus was filed, and Remittitur issued on September
3 13, 2007.

4 On December 30, 2009, Petitioner filed a Petition for Writ of Habeas Corpus. The
5 State's Response was filed on February 3, 2010. Petitioner's Reply to the State's Response
6 was filed on February 25, 2010. The matter came before the court for hearing on March 10,
7 2010, and Petitioner's Petition was denied. Petitioner filed a Notice of Appeal on April 2,
8 2010. The Order affirming the district court's denial of the Petition was filed on September
9 10, 2010, and Remittitur issued on October 20, 2010.

10 On February 26, 2013, Petitioner filed a Petition for Writ of Habeas Corpus, and a
11 Motion for Appointment of Counsel and Request for an Evidentiary Hearing. The State's
12 Opposition to Defendant's Motion for Appointment of Counsel and Request for an Evidentiary
13 Hearing was filed on March 27, 2013. The State's Response to the Petition for Writ of Habeas
14 Corpus was filed on April 30, 2013. The Petition was heard on July 22, 2013, and Petitioner's
15 Petition was denied. Petitioner filed a Motion for Reconsideration on August 15, 2014. The
16 State filed its Opposition on August 30, 2013. Petitioner's Motion was denied on September
17 9, 2013.

18 Petitioner filed a Notice of Appeal on August 23, 2013. The Court's Order affirming
19 the district court's denial of the Petition was filed on February 12, 2014. Remittitur issued on
20 May 12, 2014.

21 Petitioner filed a Motion for Correction of Illegal Sentence on September 7, 2017.
22 Petitioner's Motion was denied on October 11, 2017. On November 2, 2017, Petitioner filed a
23 Notice of Appeal. On June 26, 2018, Petitioner filed a Motion for Modification of Sentence,
24 and the State's Opposition was filed on July 12, 2018. Petitioner's Motion was denied on July
25 18, 2018. On August 21, 2018, Petitioner filed a Motion for Reconsideration. Petitioner filed
26 a Notice of Appeal on August 24, 2018. On October 10, 2018, Petitioner's Motion to Correct
27 Illegal Sentence was denied, but the Motion for Reconsideration was granted.

28 ///

1 Petitioner filed a Motion for Modification of Sentence on November 16, 2018, and the
2 State's Opposition was filed on December 5, 2018. Petitioner's Motion was denied on
3 December 10, 2018. The Supreme Court affirmed the district court, denied rehearing, and
4 denied review. Remittitur issued on December 29, 2018.

5 Petitioner filed a Notice of Appeal on January 7, 2019, appealing the district court's
6 denial of his Motion for Modification of Sentence. The Court's Order affirming the district
7 court's denial of Petitioner's Motion filed on June 26, 2018, was filed on June 25, 2019, and
8 Remittitur issued on October 7, 2019. The Court's Order affirming the district court's denial
9 of Petitioner's Motion for Modification of Sentence filed on November 16, 2018, was filed on
10 December 20, 2019, and Remittitur issued on March 26, 2020.

11 Petitioner filed a Motion to Amend Judgment on July 20, 2020, and that Motion was
12 denied on August 10, 2020. Petitioner filed a Motion for Extension of Time, and Motion Title
13 Addition on August 17, 2020, and that Motion was denied on September 21, 2020. Petitioner
14 filed a Motion to Amend his previous Motion to Amend Judgment on September 25, 2020,
15 and another Motion to Amend Judgment or in the Alternative, Motion for Correction of Illegal
16 Sentence on the same date. The State's Opposition was filed on October 5, 2020. Petitioner
17 filed a Notice of Appeal on October 12, 2020, appealing the denial of his Motion to Amend
18 Judgment. On October 19, 2020, Petitioner's Motion to Amend the Motion to Amend
19 Judgment was denied, as well as the Motion to Amend Judgment or in the Alternative to
20 Correct an Illegal Sentence. Petitioner filed a Notice of Appeal on November 10, 2020,
21 appealing the denial of his Motion to Amend Judgment or in the Alternative to Correct an
22 Illegal Sentence.

23 ANALYSIS

24 **I. PETITIONER'S PETITION IS PROCEDURALLY BARRED**

25 **a. Application of the procedural bars is mandatory**

26 The Nevada Supreme Court has specifically found that the district court has a duty to
27 consider whether the procedural bars apply to a post-conviction petition and not arbitrarily
28 disregard them. In Riker, the Court held that "[a]pplication of the statutory procedural default

1 rules to post-conviction habeas petitions is mandatory,” and “cannot be ignored when properly
2 raised by the State.” 121 Nev. at 231–33, 112 P.3d at 1074–75. There, the Court reversed the
3 district court’s decision not to bar the petitioner’s untimely and successive petition:

4 Given the untimely and successive nature of [petitioner’s] petition, the
5 district court had a duty imposed by law to consider whether any or all of
6 [petitioner’s] claims were barred under NRS 34.726, NRS 34.810, NRS
7 34.800, or by the law of the case . . . [and] the court’s failure to make this
8 determination here constituted an arbitrary and unreasonable exercise of
9 discretion.

10 Id. at 234, 112 P.3d at 1076. The Court justified this holding by noting that “[t]he necessity
11 for a workable system dictates that there must exist a time when a criminal conviction is final.”
12 Id. at 231, 112 P.3d 1074 (citation omitted); see also State v. Haberstroh, 119 Nev. 173, 180–
13 81, 69 P.3d 676, 681–82 (2003) (holding that parties cannot stipulate to waive, ignore, or
14 disregard the mandatory procedural default rules nor can they empower a court to disregard
15 them).

16 In State v. Greene, the Nevada Supreme Court reaffirmed its prior holdings that the
17 procedural default rules are mandatory when it reversed the district court’s grant of a post-
18 conviction petition for writ of habeas corpus. See 129 Nev. 559, 565–66, 307 P.3d 322, 326
19 (2013). There, the Court ruled that the petitioner’s petition was untimely and successive, and
20 that the petitioner failed to show good cause and actual prejudice. Id. Accordingly, the Court
21 reversed the district court and ordered the petitioner’s petition dismissed pursuant to the
22 procedural bars. Id. at 567, 307 P.3d at 327.

23 Because Petitioner’s Petition is procedurally defaulted and because he cannot show
24 good cause or prejudice to overcome the mandatory procedural bars, it is dismissed.

25 **b. Petitioner’s Substantive Claims are Waived as Petitioner Failed to Raise
26 Them on Direct Appeal**

27 Pursuant to NRS 34.810:

28 1. The court shall dismiss a petition if the court determines that:

...

(b) The petitioner's conviction was the result of a trial and the grounds for the petition could have been:

(1) Presented to the trial court;

(2) Raised in a direct appeal or a prior petition for a writ of habeas corpus or postconviction relief; or

(3) Raised in any other proceeding that the petitioner has taken to secure relief from the petitioner's conviction and sentence, unless the court finds both good cause for the failure to present the grounds and actual prejudice to the petitioner.

...

3. Pursuant to subsections 1 and 2, the petitioner has the burden of pleading and proving specific facts that demonstrate:

(a) Good cause for the petitioner's failure to present the claim or for presenting the claim again; and

(b) Actual prejudice to the petitioner.

The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must first be pursued in post-conviction proceedings. . . . [A]ll other claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be *considered waived in subsequent proceedings*." Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). Furthermore, substantive claims are beyond the scope of habeas and waived. NRS 34.724(2)(a); see also Evans, 117 Nev. at 646–47, 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d at 1059.

Here, Petitioner's claims related to Assembly Bill 236, Section 86 (A.B. 236) are direct appeal issues. Because Petitioner did not raise this issue on direct appeal, his claims are waived.

c. Petitioner's Petition is Time-Barred Under NRS 34.726(1)

The instant Petition is time-barred pursuant to NRS 34.726(1):

Unless there is good cause shown for delay, a petition that 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 Supreme Court issues its remittitur. For

1 the purposes of this subsection, good cause for delay exists if the petitioner
2 demonstrates to the satisfaction of the court:

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

4 (b) That dismissal of the petition as untimely will unduly prejudice the
5 petitioner.

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

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

16 Here, the Judgment of Conviction was filed on October 5, 1990. Petitioner filed a
17 Notice of Appeal and remittitur issued on January 8, 1992. Petitioner did not file the instant
18 Petition until January 5, 2021. Accordingly, he is approximately thirty-one (31) years too late.
19 Thus, dismissal of the Petition is required absent a showing of good cause.

20 **d. Laches Applies**

21 Certain limitations exist on how long a defendant may wait to assert a post-conviction
22 request for relief. Consideration of the equitable doctrine of laches is necessary in determining
23 whether a defendant has shown ‘manifest injustice’ that would permit a modification of a
24 sentence. Hart, 116 Nev. at 563–64, 1 P.3d at 972. In Hart, the Nevada Supreme Court stated:
25 “Application of the doctrine to an individual case may require consideration of several factors,
26 including: (1) whether there was an inexcusable delay in seeking relief; (2) whether an implied
27 waiver has arisen from the defendant’s knowing acquiescence in existing conditions; and (3)
28 whether circumstances exist that prejudice the State. See Buckholt v. District Court, 94 Nev.
631, 633, 584 P.2d 672, 673–74 (1978).” Id.

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

10 Here, the State affirmatively plead laches. Petitioner’s Judgment of Conviction was
11 filed on October 5, 1990, and remittitur issued on his direct appeal on January 8, 1992. This
12 occurred approximately thirty-one (31) years ago, and, thus, is outside the period of five (5)
13 years prescribed by NRS 34.800. The State would be prejudiced in having to respond to a
14 challenge to Petitioner’s Judgment of Conviction filed over thirty (30) years ago. Therefore,
15 the instant Petition is barred by laches.

16 **e. Petitioner’s Petition is Successive and/or Abusive Under NRS 34.810(2),**
17 **and is Barred by Res Judicata**

18 NRS 34.810(2) reads:

19 A second or successive petition *must be dismissed* if the judge or justice
20 determines that it fails to allege new or different grounds for relief and that
21 the prior determination was on the merits or, if new and different grounds
22 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.

23 (emphasis added).

24 Second or successive petitions are petitions that either fail to allege new or different
25 grounds for relief and the grounds have already been decided on the merits or that allege new
26 or different grounds but a judge or justice finds that the petitioner’s failure to assert those
27 grounds in a prior petition would constitute an abuse of the writ. Second or successive petitions
28 will only be decided on the merits if the petitioner can show good cause and prejudice. NRS

1 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994); see also Hart v.
2 State, 116 Nev. 558, 563–64, 1 P.3d 969, 972 (2000) (holding that “where a defendant
3 previously has sought relief from the judgment, the defendant’s failure to identify all grounds
4 for relief in the first instance should weigh against consideration of the successive motion.”).

5 The Nevada Supreme Court has stated: “[w]ithout such limitations on the availability
6 of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse
7 post-conviction remedies. In addition, meritless, successive and untimely petitions clog the
8 court system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d at
9 950. The Nevada Supreme Court recognizes that “[u]nlike initial petitions which certainly
10 require a careful review of the record, successive petitions may be dismissed based solely on
11 the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In
12 other words, if the claim or allegation was previously available with reasonable diligence, it is
13 an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467,
14 497–98 (1991). Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112
15 P.3d at 1074.

16 Here, this is not Petitioner’s first petition. Indeed, Petitioner has asserted the same claim
17 in previous proceedings. Accordingly, the instant Petition is successive and is dismissed. It
18 appears that Petitioner has resubmitted his Motion to Amend Judgment, or in the Alternative,
19 Motion for Correction of Illegal Sentence in the form of a Petition for Writ of Habeas Corpus.
20 In that Motion, which appears to be identical, Petitioner made the same A.B. 236 argument he
21 now raises in the instant Petition. Motion to Amend Judgment, or in the Alternative, Motion
22 for Correction of Illegal Sentence, filed September 25, 2020, 90-C-093713, at 2–14. On
23 October 19, 2020, when that Motion was heard by the district court, the court denied
24 Petitioner’s Motion “consistent with State’s opposition.” Court Minutes, October 19, 2020,
25 All Pending Motions, 90-C-093713.

26 This Court has already once considered and denied Petitioner’s claim that A.B. 236
27 should apply retroactively. Re-litigation of this issue is precluded by the doctrine of res
28 judicata. Exec. Mngmt. v. Ticor Titles Ins. Co., 114 Nev. 823, 834, 963 P.2d 465, 473 (1998)

(citing Univ. of Nev. v. Tarkanian, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994)); see Mason v. State, 206 S.W.3d 869, 875 (Ark. 2005) (recognizing the doctrine's applicability in the criminal context); see also York v. State, 342 S.W. 528, 553 (Tex. Crim. Appl. 2011). Accordingly, by simply continuing to file motions and petitions with the same argument, his Petition is barred by the doctrine of *res judicata*. Id.; Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

Here, Petitioner's *exact* A.B. 236 argument has been previously denied by the district court. Accordingly, Petitioner's claim is barred by the doctrine of *res judicata* and is dismissed.

II. PETITIONER FAILS TO ESTABLISH GOOD CAUSE TO OVERCOME PROCEDURAL DEFAULT

Petitioner claims that his conviction violates Due Process because the passage of A.B. 236 reverses his status as a habitual criminal, thus making him no longer subject to a sentence of life without the possibility of parole. However, Petitioner has not and cannot demonstrate good cause or prejudice to overcome the procedural bars—his claim is barred by the doctrine of the law of the case, is meritless, is untimely, and successive.

Under NRS 34.810(3), a defendant may only escape these procedural bars if they meet the burden of establishing good cause and prejudice. Where a defendant does not show good cause for failure to raise claims of error upon direct appeal, the district court is not obliged to consider them in post-conviction proceedings. Jones v. State, 91 Nev. 416, 536 P.2d 1025 (1975). To avoid procedural default under NRS 34.726 and NRS 34.810, a defendant has the burden of pleading and proving specific facts that demonstrate good cause for his failure to present his claim in earlier proceedings or comply with the statutory requirements. See Hogan, 109 Nev. at 959–60, 860 P.2d at 715–16; Phelps, 104 Nev. at 659, 764 P.2d at 1305.

“To establish good cause, appellants *must* show that an impediment external to the defense prevented their compliance with the applicable procedural rule.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. Such an external impediment could be “that the factual or legal basis for a claim was not reasonably available

1 to counsel, or that ‘some interference by officials’ made compliance impracticable.”
2 Hathaway, 119 Nev. at 251, 71 P.3d at 506 (quoting Murray v. Carrier, 477 U.S. 478, 488, 106
3 S. Ct. 2639, 2645 (1986)); see also Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing Harris v.
4 Warden, 114 Nev. 956, 959–60 n.4, 964 P.2d 785, 785 n.4 (1998)). Any delay in filing of the
5 petition must not be the fault of the petitioner. NRS 34.726(1)(a).

6 The Nevada Supreme Court has clarified that, a defendant cannot attempt to
7 manufacture good cause. See Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there
8 must be a “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251, 71
9 P.3d at 506; (quoting Colley v. State, 105 Nev. at 236, 773 P.2d at 1230). Excuses such as the
10 lack of assistance of counsel when preparing a petition, as well as the failure of trial counsel
11 to forward a copy of the file to a petitioner have been found not to constitute good cause. See
12 Phelps, 104 Nev. at 660, 764 P.2d at 1306, superseded by statute on other grounds as
13 recognized in Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145 (2004); Hood v. State,
14 111 Nev. 335, 890 P.2d 797 (1995).

15 In this case, Petitioner claims that A.B. 236 which amends the circumstances under
16 which a defendant may be charged as a habitual criminal, should apply to him, ultimately
17 meaning he would no longer be subject to life without the possibility of parole. However, it is
18 well established that under Nevada law, the proper penalty for a criminal conviction is the
19 penalty in effect at the time of the commission of the offense. State v. Second Judicial Dist.
20 Court (Pullin), 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008). Unless the Legislature clearly
21 expresses its intent to apply a law retroactively, Nevada law requires the application of the law
22 in effect at the time of the commission of the crime. Id.

23 It is clear the amendments upon which Petitioner relies were not in effect at the time of
24 his sentencing. Furthermore, Petitioner’s sentence is clearly within the limits set forth by
25 statute, precluding any finding of any legal basis to grant Petitioner’s Petition. See Glegola v.
26 State, 110 Nev. 344, 871 P.2d 950 (1994) (recognizing the presumption of validity for
27 sentences within the limits set by the legislature). Because Petitioner improperly relies on a
28 legislative amendment that had not taken effect as of the time of his sentencing, Petitioner

1 cannot demonstrate that he is entitled to relief. Additionally, because Petitioner's argument is
2 legally invalid and without merit, Petitioner is unable to establish good cause to overcome the
3 procedural defaults.

4 Petitioner *may* have been able to establish good cause if the Legislature intended A.B.
5 236 to apply retroactively. However, A.B. 236 contains no retroactivity provisions, nor is there
6 any inkling of legislative intent elsewhere to apply A.B. 236 retroactively. Ultimately, A.B.
7 236 was not intended to apply retroactively, nor has any court determined that it does, and
8 thus, Petitioner cannot establish good cause to overcome the procedural bars and the Petition
9 is denied.

10 **III. PETITIONER CANNOT ESTABLISH SUFFICIENT PREJUDICE TO** 11 **OVERCOME PROCEDURAL DEFAULT**

12 "A court *must* dismiss a habeas petition if it presents claims that either were or could
13 have been presented in an earlier proceeding, unless the court finds both cause for failing to
14 present the claims earlier or for raising them again and actual prejudice to the petitioner."
15 Evans v. State, 117 Nev. 609, 646–47, 29 P.3d 498, 523 (2001). To demonstrate prejudice to
16 overcome the procedural bars, a defendant must show "not merely that the errors of [the
17 proceeding] created possibility of prejudice, but that they worked to his actual and substantial
18 disadvantage, in affecting the state proceedings with error of constitutional dimensions."
19 Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v.
20 Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there must be a
21 "substantial reason; one that affords a legal excuse." Hathaway v. State, 119 Nev. 248, 252,
22 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230
(1989)).

23 Here, Petitioner cannot demonstrate the requisite prejudice to overcome default—
24 Petitioner's argument that his sentence should be modified as a result of the enactment of A.B.
25 236 is an incorrect assumption of the law and is therefore meritless. As discussed above, it is
26 well established that the proper penalty for a criminal conviction is the penalty in effect at the
27 time of the commission of the offense. State v. Second Judicial Dist. Court (Pullin), 124 Nev.
28

1 at 567, 188 P.3d at 1081. Petitioner has failed to demonstrate good cause and thus Petitioner's
2 Petition is dismissed.

3 **ORDER**

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


6 DATED this _____ day of June, 2021.

Dated this 8th day of June, 2021

7
8 
DISTRICT JUDGE

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

F09 594 7BB0 5095
Monica Trujillo
District Court Judge

11 BY  for
12 JONATHAN VANBOSKERCK
13 Chief Deputy District Attorney
Nevada Bar #6528

14
15 **CERTIFICATE OF MAILING**

16
17 I hereby certify that service of the above and foregoing was made this 9th day of June,
18 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

19 KEVIN BROOKS, BAC #33384
20 HIGH DESERT STATE PRISON
21 P.O. BOX 650
INDIAN SPRINGS, NV, 89070

22
23 BY 
Secretary for the District Attorney's Office

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Kevin Brooks, Plaintiff(s)

CASE NO: A-21-827394-W

7 vs.

DEPT. NO. Department 3

8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's
12 electronic filing system, but there were no registered users on the case. The filer has been
13 notified to serve all parties by traditional means.
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

March 17, 2021

A-21-827394-W Kevin Brooks, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

**March 17, 2021 8:30 AM Petition for Writ of Habeas
Corpus**

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

COURT CLERK: Madalyn Kearney

RECORDER: Rebeca Gomez

REPORTER:

PARTIES

PRESENT: Demonte, Noreen C. Attorney

JOURNAL ENTRIES

- Ms. Demonte present via BlueJeans.

Plaintiff not present. Court noted the State needs some time to respond to the Petition. COURT ORDERED, matter CONTINUED and the following briefing schedule SET:

Opposition DUE by April 28, 2021

Reply DUE by May 12, 2021

NDC

CONTINUED TO: 5/19/21 8:30 AM

CLERK'S NOTE: A copy of this minute order was sent via mail to: Kevin Brooks #33384 (PO Box 650, Indian Springs, NV 89070). /mk 3/17/21

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

May 19, 2021

A-21-827394-W	Kevin Brooks, Plaintiff(s) vs. State of Nevada, Defendant(s)
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May 19, 2021	8:30 AM	Petition for Writ of Habeas Corpus
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HEARD BY: Cherry, Michael A. **COURTROOM:** RJC Courtroom 11C

COURT CLERK: Grecia Snow

RECORDER: Rebeca Gomez

REPORTER:

PARTIES

PRESENT: Iscan, Ercan E Attorney

JOURNAL ENTRIES

- State submitted on its response. COURT ORDERED, Petition DENIED. State to prepare the order as to findings of fact and conclusions of law.

NDC

Certification of Copy

State of Nevada }
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER;
DISTRICT COURT MINUTES

KEVIN BROOKS aka RALPH KEVIN
BROOKS,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

Case No: A-21-827394-W

Dept No: III

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 24 day of June 2021.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk