



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

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

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Elizabeth A. Brown
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August 24, 2021

Elizabeth A. Brown
Clerk of the Court
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

RE: JAMES H. HAYES vs. STATE OF NEVADA; WARDEN JERRY HOWELL

S.C. CASE: 83151

D.C. CASE: A-19-793315-W consolidated with A-21-831979-W

Dear Ms. Brown:

Pursuant to your Order Directing Entry and Transmission of Written Order, dated August 16, 2021, enclosed is a certified copy of the Findings of Fact, Conclusions of Law and Order filed August 23, 2021 in the above referenced case. If you have any questions regarding this matter, please do not hesitate to contact me at (702) 671-0512.

Sincerely,
STEVEN D. GRIERSON, CLERK OF THE COURT

A handwritten signature in black ink, appearing to read "Heather Ungermann", with a long horizontal flourish extending to the right.

Heather Ungermann, Deputy Clerk

Heather S. Smith
CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #06528
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-19-793315-W
A-21-831979-W

DEPT NO: III

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

DATE OF HEARING: JULY 19, 2021
TIME OF HEARING: 8:30 AM

THIS CAUSE having come before the Honorable MONICA TRUJILLO, District Court Judge, on the 19th day of July, 2021, the Petitioner not being present, not being represented by counsel, and the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, through MORGAN THOMAS, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT, CONCLUSIONS OF LAW

STATEMENT OF THE CASE

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

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

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

10 The terms of the GPA are as follows:

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

14 GPA at 1:22-24.

15 The GPA further includes, in pertinent part, the following acknowledgement:

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

22 GPA at 2: 1-9.

23 An Amended Information reflecting the new charge of ATTEMPT GRAND
24 LARCENY was filed in conjunction with the GPA. Petitioner was adjudged Guilty pursuant
25 to Alford that same day, and the sentencing hearing was scheduled for March 6, 2019.

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

1 January 26, 2019. The State's Motion to Revoke Bail was granted after a hearing on February
2 4, 2019.

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

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

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

20 On November 19, 2019, Petitioner filed another Notice of Appeal, appealing the denial
21 of his Coram Nobis motion. His Case Appeal Statement was filed on December 11, 2019 (SCN
22 80222). On August 31, 2020, the Nevada Court of Appeals affirmed the Court's denial of his
23 Coram Nobis motion. Remittitur issued on October 12, 2020.

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

26 On February 12, 2020, Petitioner filed an "Amended Petition for Writ of Habeas
27 Corpus" (his "Amended Petition"). This Court ordered a Response to that Amended Petition
28 on March 4, 2020. Thereafter, on March 6, 2020, Petitioner filed a "Petition: Expeditious

1 Judicial Examination NRS 34.360-34.830” (his “Petition: EJE”). Pursuant to this Court’s
2 order, the State filed its Response to both filings on April 17, 2020. Petitioner replied to the
3 State’s Response on May 15, 2020.

4 On May 15, 2020, Petitioner also filed an “Affidavit of Actual Innocence not Mere
5 Legal Insufficiency but ‘Factual Innocence.’” On May 27, 2020, Petitioner filed a
6 Supplemental Petition. While Petitioner’s numerous pleadings were pending, Petitioner filed
7 a Motion for Peremptory Challenge of Judge and to Disqualify Judge William Bill Kephart.
8 Thereafter, the State filed its Responses to Petitioner’s Affidavit of Actual Innocence and
9 Petitioner’s Supplemental Petition on June 10, 2020. As a result of Petitioner’s Peremptory
10 Challenge, Petitioner’s pending matters were taken off calendar on June 15, 2020. On June
11 29, 2020, Petitioner filed his Reply to the State’s Response to Petitioner’s Affidavit of Actual
12 Innocence.

13 On July 7, 2020, Chief Judge Linda Bell considered, and denied, Petitioner’s Motion
14 for Peremptory Challenge of Judge Kephart. Chief Judge Bell’s Decision and Order was filed
15 on July 8, 2020.

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

21 On September 25, 2020, Petitioner filed a Motion for Expeditious Ruling for “Amended
22 Petition for Writ of Habeas Corpus” 3rd Request. On October 7, 2020, he filed a Motion to
23 Set Evidentiary Hearing and Issue Transport Order. On October 14, 2020, Petitioner filed a
24 Motion to Reconsider Order Denying Motion for Ruling for Rule 60b Motion for Relief;
25 Motion to Vacate; Amended Petition for Writ of Habeas Corpus. The State filed responsive
26 pleadings to each of Petitioner’s respective filings on November 10, 2020. On November 16,
27 2020, the Court considered, and denied, Petitioner’s three Motions. The Court’s Order was
28 filed on November 21, 2020.

1 On December 22, 2020, Petitioner filed a “Motion to Compel Judgment Pursuant to
2 Nevada Revised Statutes Chapter 34 FRCP Rule 12(c) for Amended Petition for Writ of
3 Habeas Corpus.” The State filed its Response to that Motion on January 27, 2021. On February
4 1, 2021, the Court denied Petitioner’s Motion to Compel. The Court also noted that no order
5 had been filed regarding Petitioner’s Amended Petition for Writ of Habeas Corpus; therefore,
6 the Court denied the Amended Petition as well. After the Court’s ruling on the matter,
7 Petitioner filed an “Opposition to State’s Response to Petitioner’s Motion to Compel
8 Judgment” on February 18, 2021. The Court issued its Findings of Fact, Conclusions of Law
9 and Order reflecting its denial of Petitioner’s Motion to Compel on March 17, 2021. Notice of
10 Entry of that Order was filed on March 19, 2021.

11 On February 2, 2021, Petitioner filed a “Reply Motion to Compel Judgment Pursuant
12 to Nevada Revised Statutes Chapter 34...FRCP Rule 12(c) for Amended Petition for Writ of
13 Habeas Corpus.” The State filed its Opposition to that “Reply Motion” on April 16, 2021. On
14 May 12, 2021, the Court denied Petitioner’s “Reply Motion.”

15 On March 9, 2021, the Court filed its Findings of Fact, Conclusions of Law and Order
16 denying Petitioner’s Amended Petition. That entry was noticed on March 10, 2021. On March
17 11, 2021, Petitioner filed a Petition to Reconsider that Order. He filed a subsequent Petition to
18 Reconsider on March 17, 2021. On March 18, 2021, Petitioner filed a Notice of Appeal from
19 the Court’s denial of his Amended Petition. As of the date of the instant Opposition, no
20 remittitur has issued from that appeal. On April 7, 2021, Petitioner filed a “Supplemental
21 Petition for Writ of Habeas Corpus” Petition (NRS 34.360-34.830). Petitioner filed a
22 “Supplemental ‘Addendum’” on April 14, 2021.

23 The State filed its Opposition to Petitioner’s various Petitions to Reconsider on April
24 9, 2021. On April 12, 2021, the Court denied Petitioner’s Petitions to Reconsider. Again, well
25 after the Court’s ruling, Petitioner filed a Reply to the State’s Opposition on May 6, 2021. On
26 May 12, 2021, the Court issued its Order Denying Petitioner’s Petition to Reconsider.

27 In the interim, Petitioner also filed the instant “Petition for Writ of Habeas Corpus
28 COVID-19 (Coronavirus)” (his “instant Petition”). The State filed an Opposition and Motion

1 to Consolidate on June 24, 2021. On July 19, 2021, this matter came before this Court. This
2 Court did not accept argument at the time of hearing, but made the following findings and
3 conclusions:

4 ANALYSIS

5 I. THE POST-CONVICTION CASES SHOULD BE CONSOLIDATED

6 NRS 34.780(1), explains that, to the extent they are not inconsistent with habeas
7 statutes, the Nevada Rules of Civil Procedure apply to post-conviction proceedings. Directly
8 on point, the Nevada Supreme Court has determined:

9
10 NRCP 42(a) allows consolidation of pending actions that involve “a common
11 question of law or fact.” Like under its identical federal counterpart, a district
court enjoys “broad, but not unfettered, discretion in ordering consolidation.”

12 Nalder v. Eighth Judicial Dist. Court, 136 Nev. 200, 206-07, 462 P.3d 677, 684 (2020)
13 (quoting Marcuse v. Del Webb Cmtys., Inc., 123 Nev. 278, 286, 163 P.3d 462, 468 (2007)).

14 Petitioner’s original post-conviction habeas proceeding was filed under Case No. A-
15 19-793315-W. In that proceeding, Petitioner raised a number of challenges to his judgment of
16 conviction in Case No. C315718, including allegations of Double Jeopardy, violations of Due
17 Process, and Cruel and Unusual Punishment. See, Petition for Writ of Habeas Corpus, filed
18 on April 15, 2019 (in Case No. A793315).

19 Upon review of the instant Petition, this Court finds that Petitioner again claims that
20 his sentence amounts to Cruel and Unusual Punishment under the Eighth Amendment. See
21 Instant Petition at 5. Therefore, because this action, and Petitioner’s separate post-conviction
22 action, each involve a common question – whether Petitioner’s judgment of conviction and
23 sentence are constitutional – this Court concludes that the two actions should be consolidated.

24 Moreover, this Court finds that judicial economy supports consolidation of the two
25 actions. Petitioner continues to file pleadings – with or without permission of this Court –
26 raising the same (or substantially similar) claims against his judgment of conviction. This
27 Court has determined that these numerous pleadings should be contained within the same

28 //

1 action, so as to allow for uniform consideration and treatment, as they all center around the
2 same underlying criminal case.

3 Therefore, this Court concludes that the instant actions should be consolidated into the
4 pre-existing post-conviction case, A793315.

5 **II. THE INSTANT PETITION DOES NOT WARRANT RELIEF**

6 Petitioner's instant Petition raises a single claim – that the COVID-19 pandemic has
7 rendered Petitioner's sentence of imprisonment cruel and unusual in violation of the Eighth
8 Amendment. See Instant Petition at 5. However, this Court finds that this claim is not
9 cognizable on habeas review. Further, this Court finds that the claim itself is procedurally
10 defaulted pursuant to the time-bar of NRS 34.726. As such, this Court concludes that Petitioner
11 is not entitled to relief.

12 **A. Petitioner's Claim is Not Cognizable in Habeas Review**

13 The Nevada Supreme Court has expressly excluded claims of cruel and unusual
14 punishment from consideration in post-conviction habeas review. See Bowen v. Warden,
15 Nevada State Prison, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984). The Bowen Court
16 explained:

17 We have repeatedly held that a petition for writ of habeas corpus may challenge
18 the validity of current confinement, but not the conditions thereof. See Director,
19 Dep't Prisons v. Arndt, 98 Nev. 84, 640 P.2d 1318 (1982); Rogers v. Warden,
20 84 Neb. [sic] 539, 445 P.2d 28 (1968); Rainsberger v. Leypoldt, 77 Nev. 399,
21 365 P.2d 489 (1961), cert. denied, 368 U.S. 516, 82 S.Ct. 530, 7 L.Ed.2d 522
22 (1962). In Rogers, we held that a claim of brutal treatment at the hands of prison
23 officials was not cognizable on a habeas petition, because the claim spoke to the
24 conditions and not the validity of confinement. In Arndt, we left open the
specific question raised by this appeal, whether the imposition of a qualitatively
more restrictive type of confinement within the prison, such as punitive
segregation, may be challenged by a petition for writ of habeas corpus. We now
hold that such a challenge speaks only to the conditions of confinement and
therefore may not be raised by a habeas corpus petition. See Rogers v. Warden,
supra.

25 Id. Thereafter, the Bowen Court affirmed the dismissal of a habeas petition challenging only
26 the conditions of confinement. Id.

27 The United States Supreme Court has discussed a litany of claims alleging cruel and
28 unusual punishments. In Wilson v. Seiter, 501 U.S. 294, 111 S.Ct. 2321 (1991), the Court

1 dealt with claims alleging “overcrowding, excessive noise, insufficient locker storage space,
2 inadequate heating and cooling, improper ventilation, unclean and inadequate restrooms,
3 unsanitary dining facilities and food preparation, and housing with mentally and physically ill
4 inmates.” At 296, 111 S.Ct. at 2323. The Wilson Court characterized such claims as
5 “conditions of confinement” claims, which required an allegation of “deliberate indifference”
6 by prison officials. Id. at 297, 111 S.Ct. at 2323.

7 Petitioner raises one claim – which he labels as “Violation of United States Constitution
8 8th Amendment ‘Cruel and Unusual Punishment’ (*Deliberate Indifference*). Instant Petition
9 at 2 (emphasis added). Therefore, this Court finds that Petitioner acknowledges he is not
10 challenging the validity of his judgment of conviction; rather, he is challenging the *conditions*
11 *of his confinement*. See Wilson, 501 U.S. at 297, 111 S.Ct. at 2323. Indeed, Petitioner
12 specifically alleges:

13 Petitioner’s “Deliberate Indifference” claim is established where the challenged
14 deficiency is sufficiently serious and prison officials know that petitioner face a
15 substantial risk of serious harm and disregard that risk by failing to take
reasonable measures to abate it as describe herein, and the target of the petition
is not what respondents have done but what they have refused to do.

16 Instant Petition at 4-5. Petitioner also includes a claim that the COVID-19 pandemic renders
17 his sentence cruel and unusual because of his risk of contracting the virus in prison. Id. As
18 such, this Court finds that Petitioner’s claim is not cognizable in habeas proceedings, and
19 concludes that the same must be dismissed. See Farmer v. Brennan, 511 U.S. 825, 832, 114
20 S.Ct. 1970, 1976 (1994) (holding that the proper way to raise a claim that one’s lawful
21 incarceration has exposed them to harm while incarcerated is to challenge the *conditions of*
22 *confinement* under the Eighth Amendment); see also Bowen, 100 Nev. at 490, 686 P.2d at 250
23 (conditions of confinement claims are not cognizable in habeas review).

24 Because the Nevada Supreme Court has clearly and expressly precluded conditions of
25 confinement claims from post-conviction habeas proceedings, this Court finds that the instant
26 Petition is not the proper legal vehicle within which to raise Petitioner’s claim. As such, this
27 Court concludes that it lacks the jurisdiction to grant habeas relief on the instant Petition, and
28 therefore, the same must be dismissed.

1 **B. Petitioner’s Instant Petition is Time-Barred**

2 The mandatory provision of NRS 34.726(1) states:

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

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

9 (emphasis added). “[T]he statutory rules regarding procedural default are mandatory and
10 cannot be ignored when properly raised by the State.” State v. Dist. Court (Riker), 121 Nev.
11 225, 233, 112 P.3d 1070, 1075 (2005).

12 Per the language, the one-year time bar prescribed by NRS 34.726 begins to run from
13 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
14 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998); see Pellegrini v.
15 State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001) (holding that NRS 34.726 should be
16 construed by its plain meaning).

17 In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada
18 Supreme Court rejected a habeas petition that was filed two days late, pursuant to the “clear
19 and unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the
20 importance of filing the petition with the District Court within the one-year mandate, absent a
21 showing of “good cause” for the delay in filing. Gonzales, 118, Nev. at 593, 590 P.3d at 902.
22 The one-year time bar is therefore strictly construed. In contrast with the short amount of time
23 to file a notice of appeal, a prisoner has a full year to file a post-conviction habeas petition, so
24 there is no injustice in a strict application of NRS 34.726(1), despite any alleged difficulties
25 with the postal system. Id. at 595, 53 P.3d at 903.

26 The Nevada Supreme Court has held that courts have a *duty* to consider whether a
27 defendant’s post-conviction petition claims are procedurally barred, noting:

28 //

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

4 Riker, 121 Nev. at 231, 112 P.3d at 1074. The Nevada Supreme Court has granted no
5 discretion to the district courts regarding whether to apply the statutory procedural bars; the
6 rules *must* be applied.

7 This Court notes that Remittitur from the affirmance of Petitioner's Judgment of
8 Conviction was filed on February 25, 2020. Therefore, Petitioner had until February 25, 2021,
9 to file a timely post-conviction habeas petition. Dickerson, 114 Nev. at 1087, 967 P.2d at 1133-
10 34. Petitioner's instant Petition was not filed until March 30, 2021, over a month past the
11 statutory deadline. Therefore, this Court finds that, absent a showing of good cause and
12 prejudice, Petitioner's instant Petition must be dismissed as untimely. Riker, 121 Nev. at 233,
13 112 P.3d at 1075. This Court further finds that Petitioner does not attempt to demonstrate good
14 cause or prejudice. See generally, Instant Petition. Indeed, this Court finds that Petitioner could
15 not successfully do so, as Petitioner's contention is without merit.

16 Because Petitioner's instant Petition is time-barred, with no good cause shown for the
17 delay, this Court concludes that Petitioner's instant Petition must be dismissed pursuant to
18 NRS 34.726(1).

19 **C. Petitioner Fails to Demonstrate Good Cause to Overcome His Procedural**
20 **Defaults**

21 To avoid procedural default, under NRS 34.726, a defendant has the burden of pleading
22 and proving specific facts that demonstrate good cause for his failure to present his claim in
23 earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will
24 be unduly prejudiced if the petition is dismissed. See Hogan v. Warden, 109 Nev. 952, 959-
25 60, 860 P.2d 710, 715-16 (1993); Phelps v. Nevada Dep't of Prisons, 104 Nev. 656, 659, 764
26 P.2d 1303, 1305 (1988).

27 Specifically, under NRS 34.726, a petitioner must demonstrate: (1) "[t]hat the delay is
28 not the fault of the petitioner" and (2) that the petitioner will be "unduly prejudice[d]" if the

petition is dismissed as untimely. NRS 34.726. To meet the first requirement, “a petitioner *must* show that an impediment external to the defense prevented him or her from complying with the state procedural default rules.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (emphasis added). “A qualifying impediment might be shown where the factual or legal basis for a claim was not reasonably available *at the time of default*.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Clem Court continued, “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d at 526. To find good cause there must be a “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 252, 71 P.3d at 506 (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Examples of good cause include interference by State officials and the previous unavailability of a legal or factual basis. See State v. Huebler, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012). Clearly, any delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

Further, a petitioner raising good cause to excuse procedural bars must do so within a *reasonable* time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably available to the petitioner during the statutory time period did not constitute good cause to excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446, 453 120 S.Ct. 1587, 1592 (2000).

This Court finds that Petitioner does not attempt to address good cause. See generally, Instant Petition. However, even if Petitioner attempted to raise a “good cause” argument, this Court finds that Petitioner could not succeed, as COVID-19 is not a recently-arisen situation. Rather, the national emergency declared due to the COVID-19 pandemic was declared on March 13, 2020. Petitioner’s instant PWHC was filed on March 30, 2021, over a year after the national emergency was declared. As such, this Court finds that Petitioner could not successfully assert that his claim was raised within any “reasonable” time after the good cause

1 arose. See Hathaway, 119 Nev. at 252-53, 71 P.3d at 506-07. Instead, this Court finds that the
2 COVID-19 pandemic was prevalent at the time Petitioner could have filed a *timely* petition;
3 therefore, it is not a “qualifying impediment” sufficient to overcome the procedural bars. See
4 Clem, 119 Nev. at 621, 81 P.3d at 525.

5 As the COVID-19 pandemic cannot constitute good cause, and as Petitioner fails to
6 assert any other instance of good cause, this Court concludes that Petitioner cannot
7 demonstrate the requisite good cause to overcome the time-bar to his instant Petition.

8 **D. Petitioner Fails to Demonstrate Prejudice Sufficient to Overcome His**
9 **Procedural Defaults**

10 In order to establish prejudice, the defendant must show “not merely that the errors of
11 [the proceedings] created possibility of prejudice, but that they worked to his actual and
12 substantial disadvantage, in affecting the state proceedings with error of constitutional
13 dimensions.” Hogan, 109 Nev. at 960, 860 P.2d at 716 (quoting United States v. Frady, 456
14 U.S. 152, 170, 102 S.Ct. 1584, 1596 (1982)).

15 As previously found *supra*, this Court finds that the instant Petition does not allege that
16 “the state proceedings” were infected with any constitutional error. See Instant Petition at 4-
17 5; Hogan, 109 Nev. at 960, 860 P.2d at 716. Instead, this Court finds that Petitioner simply
18 alleges that prison officials have improperly and/or insufficiently responded to the COVID-19
19 pandemic. Id. Because Petitioner’s claim is clearly not cognizable in habeas review, this Court
20 finds that it does not suffice to demonstrate prejudice sufficient to overcome Petitioner’s
21 procedural default. Hogan, 109 Nev. at 960, 860 P.2d at 716.

22 Because Petitioner does not allege any cognizable claim, much less any claim that could
23 demonstrate prejudice, this Court concludes that Petitioner fails to overcome the time-bar to
24 the instant Petition, and as such, the instant Petition must be dismissed.

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1 **CONCLUSION**

2 THEREFORE, Court ORDERED, Petitioner James H. Hayes's Petition for Writ of
3 Habeas Corpus (COVID-19) shall be, and is, DENIED

4 FURTHER, Court ORDERED, the instant action, A-21-831979-W, shall be, and is,
5 CONSOLIDATED with Petitioner's original post-conviction action, A-19-793315-W.

6 DATED this _____ day of August, 2021.


7 Dated this 23rd day of August, 2021

8 
9 DISTRICT COURT JUDGE

10 Respectfully submitted,

D29 CC6 B7EB 27C9
Monica Trujillo
District Court Judge

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

13 BY  for
14 JONATHAN VANBOSKERCK
15 Chief Deputy District Attorney
16 Nevada Bar # 06528
17

18 **CERTIFICATE OF MAILING**

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

21 JAMES H. HAYES, BAC #1175077
22 SOUTHERN DESERT CORRECTIONAL CENTER
23 P.O. BOX 208
INDIAN SPRINGS, NV, 89018

24 August 24, 2021 BY _____

25 C. Garcia
26 Secretary for the District Attorney's Office



28 cg/L2

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 James Hayes, Plaintiff(s)

CASE NO: A-19-793315-W

7 vs.

DEPT. NO. Department 3

8 Nevada State of, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 8/23/2021

15 Melissa Boudreaux

mezama@clarkcountynv.gov