

# IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES HOWARD HAYES, JR.,  
Appellant(s),

vs.

THE STATE OF NEVADA; AND JERRY  
HOWELL, WARDEN,  
Respondent(s),

Electronically Filed  
Oct 01 2021 10:56 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No: A-21-831979-W  
*Consolidated with A-19-793315-W*  
Docket No: 83151

## RECORD ON APPEAL

**ATTORNEY FOR APPELLANT**  
JAMES HAYES #1175077,  
PROPER PERSON  
P.O. BOX 208  
INDIAN SPRINGS, NV 89070

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

**I N D E X**

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A-21-831979-W

James Hayes, Plaintiff(s)

vs.

Nevada State of, Defendant(s)

I N D E X

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James H. Hayes #1175877  
Petitioner/In Propria Persona  
Post Office Box 208, SDCC  
Indian Springs, Nevada 89070

CASE NO: A-21-831979-W  
Department 8

IN THE 8<sup>th</sup> JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF CLARK

JAMES H. HAYES

Petitioner,

vs.

State of Nevada  
Nevada Dept of Corrections  
Southern District Court, CLK

Respondent(s).

"HEARING REQUESTED"

Case No. \_\_\_\_\_

Dept. No. \_\_\_\_\_

Docket \_\_\_\_\_

"CORONAVIRUS (COVID-19)"

PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

INSTRUCTIONS:

COVID-19 (CORONAVIRUS)

- (1) This petition must be legibly handwritten or typewritten signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of corrections, name the warden or head of the institution. If you are not in a specific institution of the department within its custody, name the director of the department of corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction and sentence.

RECEIVED

MAR - 2 2021

CLERK OF THE COURT

Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

23. (a) GROUND ONE: Violation of United States Constitution  
8th Amendment "Cruel and Unusual Punishment"  
("Deliberate Indifference")

23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law):

In the face of the COVID-19 pandemic, which took  
its greatest toll among older individuals and in  
congregate living situations, and in an aged  
facility with ventilation, space, and sanitation  
problems, it was morally indefensible and constitu-  
tionally untenable not to immediately adopt and  
implement measures designed to permit physical  
distancing among inmates, including eliminating  
double celling and dormitory style housing. Nevada Dep.  
of Corrections (Southern Desert Correctional Center) has  
continued to show deliberate indifference to the risk  
of substantial harm to Mr. Hayes (petitioner), whose age  
made him vulnerable to COVID-19, even aside from  
preexisting and hereditary health conditions. Southern  
Desert Correctional Center (SDCC) was and still not adequately  
prepared to respond to the outbreak of COVID-19, the  
disease caused by the novel coronavirus, as petitioner  
is still housed in a dormitory with over 115 other inmates  
at least 50% of whom have tested positive and the  
declaration states that protecting oneself from infection

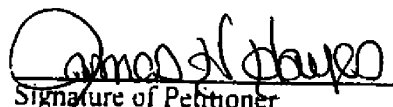
COVID-19 in this open dormitory is impossible because there is no opportunity to engage in social distancing. Petitioner alleges respondents acted with deliberate indifference to the risk of substantial harm to inmates by failing to immediately reduce the population of Southern Desert Correctional Center by releasing or transferring at least 50 percent of the inmate population of the prison, in accordance with the recommendation of public health experts who had been asked to advise NDOC on measures to combat COVID-19 considered necessary to protect the health of inmates, the health of correctional facility staff, the health of health care staff, and the health of the community as a whole, that violates the prohibition against cruel and unusual punishment in the 8th Amendment to the United States Constitution. On the same basis, petitioner also seeks declaratory relief for other similarly situated Southern Desert Correctional Center inmates. The World Health Organization declared COVID-19 a pandemic March 11, 2020 noting "the alarming levels of spread and severity and the alarming levels of infection in response to the virus," here at Southern Desert Correctional Center and entire NDOC the best way to slow and prevent spread of the virus is through social or physical distancing, which involves avoiding human contact, and staying at least six feet away from others. Consequently, most institutions in this country have either dramatically reduced the number of people in close quarters or closed entirely that Southern Desert Correctional Facility have failed to follow. When physicians, public health

1 officials, and the Centers for Disease Control and Prevention  
2 sounded the alarm that prisons and jails could  
3 become the epicenter of the COVID-19 pandemic if  
4 infection continues and that's why the CDC's lengthy and  
5 detailed guidance for correctional and detention facilities  
6 repeatedly emphasize the vital nature of social distancing  
7 for reducing transmission of the COVID-19 virus. When in  
8 fact, infections transmitted through droplets, like COVID-19,  
9 are particularly difficult to control in correctional facilities,  
10 as adequate physical distancing and decontamination of  
11 surfaces is usually impossible. By all accounts the COVID-19  
12 outbreak at Southern Desert Correctional Center and NDOC has  
13 been the worst epidemiological disaster in Nevada  
14 correctional history. And there is no assurance Southern  
15 Desert Correctional Center will not experience a second or  
16 even third spike so there is a failure to protect the lives  
17 of inmates, so it is inconceivable that petitioner is still in  
18 this dangerous environment. As petitioner exhibits eminent  
19 public health experts endorsed the conclusion that inmates  
20 of Southern Desert Correctional Center could be protected  
21 against the risks presented by COVID-19 only if the  
22 population of SDCC was drastically reduced, or the disaster  
23 at SDCC could only worsen since a substantial portion  
24 of the population could still get COVID-19, become seriously  
25 ill or die as SDCC remains unsafe for inmates, staff and  
26 others coming into the facility. Petitioner's "Deliberate  
27 Indifference" claim is established where the challenged  
28 deficiency is sufficiently serious and prison officials

1 know that ~~the~~ petitioner face a substantial risk of serious  
2 harm and disregarded that risk by failing to take reasonable  
3 measures to ~~mitigate~~ it as ~~is~~ describe herein, and the target  
4 of the petition is not what respondents have done but  
5 what they have refused to do. ~~which, in~~ which, in  
6 effect respondents maintain that prompt physical and  
7 social distancing is unnecessary a position at odds  
8 with experts opinion, that dormitories provide congregate  
9 living space, which is inimical to physical and social distancing.  
10 Petitioner contends that respondents failure to accompany  
11 the measures they are taking with a drastic reduction of  
12 Southern Desert Correctional Center (SDCC) population is not  
13 reasonable. Petitioner requests to grant declaratory relief  
14 requiring the release of petitioner being a non-violent  
15 inmate over the age of 50 whose age and health conditions  
16 put him at enhanced risk of death or grave illness from  
17 exposure to COVID-19. Petitioner seeks an injunction on  
18 the ground that there is a contemporary violation of a  
19 nature likely to continue, as respondents knowingly and  
20 unreasonably disregarding an objectively intolerable risk  
21 of harm, and they continue to do so. Petitioner's retain  
22 the essence of human dignity inherent in all persons, and  
23 respect for that dignity animates the 8th Amendment  
24 prohibition against cruel and unusual punishment. A prison  
25 that deprives inmates of basic sustenance, including adequate  
26 medical care, is incompatible with the concept of human  
27 dignity and has no place in civilized society.




1 WHEREFORE, MR. JAMES H. HAYES, prays that the court grant any and all  
2 relief to which he may be entitled in this proceeding.  
3 EXECUTED at SOUTHERN DESERT CORRECTIONAL CENTER  
4 on the 26 day of FEBRUARY, 2021.

5  
6   
7 Signature of Petitioner

8 VERIFICATION

9 Under penalty of perjury, pursuant to N.R.S. 208.165 et seq., the undersigned declares that he is  
10 the Petitioner named in the foregoing petition and knows the contents thereof; that the pleading is  
11 true and correct of his own personal knowledge, except as to those matters based on information and  
12 belief, and to those matters, he believes them to be true.

13  
14   
15 Signature of Petitioner

16  
17  
18 \_\_\_\_\_  
19 Attorney for Petitioner  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE BY MAILING

I, JAMES H. HAYES, hereby certify, pursuant to NRCP 5(b), that on this 26<sup>th</sup> day of FEBRUARY, 2021, I mailed a true and correct copy of the foregoing, "Petition for writ of Habeas Corpus "COVID-19"" by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

Clerk County District Courts  
Office of the Clerk  
200 LEWIS AVE. 3RD FL  
LAS VEGAS, NV  
89135-1160

Clerk County Dist. Attorney  
200 LEWIS AVE  
LAS VEGAS, NV  
89135-2212

Attorney General State of NV.  
100 N. Carson  
Carson City, NV  
89201

CC:FILE

DATED: this 26<sup>th</sup> day of FEBRUARY, 2021.

James H. Hayes  
James H. Hayes # 1195066  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Petition for  
Writ of Habeas Corpus "COVID-19"  
(Title of Document)

filed in District Court Case number \_\_\_\_\_

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

-OR-

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

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

\_\_\_\_\_  
(State specific law)

-OR-

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

James H. Hayes  
Signature

2-26-2021  
Date

JAMES H. HAYES  
Print Name

PRO PER  
Title

-8-

4015 J #1175077  
5000  
P.O. Box 200  
Indian Springs, NV  
89070

Clerk County District Courts  
"Office of the Clerk"  
200 BASIS AVE, 3RD FLOOR  
LAS VEGAS, NEVADA  
89155-1160

B/S #  
2491522



Hasler  
03/18/2021  
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DISTRICT COURT  
CLARK COUNTY, NEVADA  
\*\*\*\*



James Hayes, Plaintiff(s)

Case No.: A-21-831979-W

vs.

Nevada State of, Defendant(s)

Department 8

**NOTICE OF HEARING**

Please be advised that the Petition for Writ of Habeas Corpus in the above-entitled matter is set for hearing as follows:

**Date:** May 04, 2021

**Time:** 10:00 AM

**Location:** Phoenix Building 11th Floor 116  
Phoenix Building  
330 S. 3<sup>rd</sup> Street  
Las Vegas, NV 89101

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Patricia Azucena-Preza  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

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

By: /s/ Patricia Azucena-Preza  
Deputy Clerk of the Court

THIS SEALED  
DOCUMENT,  
NUMBERED PAGE(S)  
16 - 17  
WILL FOLLOW VIA  
U.S. MAIL





DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

James Hayes, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

Case No.: A-21-831979-W

Department 3

**NOTICE OF DEPARTMENT REASSIGNMENT**

NOTICE IS HEREBY GIVEN that the above-entitled action has been reassigned to Judge Monica Trujillo.

☒ This reassignment is due to: Minute Order Dated 05-05-2021.

ANY TRIAL DATE AND ASSOCIATED TRIAL HEARINGS STAND BUT MAY BE RESET BY THE NEW DEPARTMENT.

Any motions or hearings presently scheduled in the FORMER department will be heard by the NEW department as set forth below.

**Petition for Writ of Habeas Corpus (Covid 19 Corona Virus) will commence on 05/17/2021, at 8:30 AM.**

PLEASE INCLUDE THE NEW DEPARTMENT NUMBER ON ALL FUTURE FILINGS.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Salevao Asifoa  
S.L. Asifoa, Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that this 6th day of May, 2021

☒ The foregoing Notice of Department Reassignment was electronically served to all registered parties for case number A-21-831979-W.

☒ I mailed, via first-class, postage fully prepaid, the foregoing Clerk of the Court, Notice of Department Reassignment to:

James Hayes #1175077  
P.O. Box 208  
Indian Springs, Nevada 89070

/s/ Salevao Asifoa  
S.L. Asifoa, Deputy Clerk of the Court



1 **OPPS**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JONATHAN VANBOSKERCK  
6 Chief Deputy District Attorney  
7 Nevada Bar #06528  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 JAMES HOWARD HAYES,  
10 aka James Howard Hayes Jr.,  
11 #2796708

Petitioner,

-vs-

13 THE STATE OF NEVADA,

14 Respondent.

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

DEPT NO: III

15 **STATE'S OPPOSITION TO PETITION FOR WRIT OF**  
16 **HABEAS CORPUS "COVID-19 (CORONAVIRUS)"**  
17 **and**  
18 **MOTION TO CONSOLIDATE**

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

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
21 District Attorney, through JONATHAN VANBOSKERCK, Chief Deputy District Attorney,  
22 and hereby submits the attached Points and Authorities in Opposition to Petitioner's Petition  
23 for Writ of Habeas Corpus "COVID-19 (Coronavirus)."

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

27 //

28 //

1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 On or about July 23, 2013, James H. Hayes (hereinafter, "Petitioner") was charged by  
4 way of Criminal Complaint with one count of BURGLARY (Category B Felony – NRS  
5 205.060) and one count of ATTEMPT GRAND LARCENY (Category D Felony/Gross  
6 Misdemeanor – NRS 205.220.1, 205.222.2, 193.330). Following a Preliminary Hearing in  
7 Justice Court, Las Vegas Township on June 14, 2016, the charge of BURGLARY was bound  
8 over to District Court, and the charge of ATTEMPT GRAND LARCENY was dismissed.

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

14 The terms of the GPA are as follows:

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

18 GPA at 1:22-24.

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

20 I understand and agree that, if...an independent magistrate, by affidavit review,  
21 confirms probable cause against me for new criminal charges including reckless  
22 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  
23 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  
24 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  
25 term with the possibility of parole after ten (10) years.

26 GPA at 2: 1-9.

27 //

28 //

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

4 On January 31, 2019, the State filed a State's Notice of Motion and Motion to Revoke  
5 Bail, asserting that in Las Vegas Justice Court case number 19F01534X, a Justice of the Peace  
6 had found probable cause to charge Petitioner with Burglary for acts committed on or around  
7 January 26, 2019. The State's Motion to Revoke Bail was granted after a hearing on February  
8 4, 2019.

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

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

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

26 On November 19, 2019, Petitioner filed another Notice of Appeal, appealing the denial  
27 of his Coram Nobis motion. His Case Appeal Statement was filed on December 11, 2019 (SCN

28 //

1 80222). On August 31, 2020, the Nevada Court of Appeals affirmed the Court's denial of his  
2 Coram Nobis motion. Remittitur issued on October 12, 2020.

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

5 On February 12, 2020, Petitioner filed an "Amended Petition for Writ of Habeas  
6 Corpus" (his "Amended Petition"). This Court ordered a Response to that Amended Petition  
7 on March 4, 2020. Thereafter, on March 6, 2020, Petitioner filed a "Petition: Expeditious  
8 Judicial Examination NRS 34.360-34.830" (his "Petition: EJE"). Pursuant to this Court's  
9 order, the State filed its Response to both filings on April 17, 2020. Petitioner replied to the  
10 State's Response on May 15, 2020.

11 On May 15, 2020, Petitioner also filed an "Affidavit of Actual Innocence not Mere  
12 Legal Insufficiency but 'Factual Innocence.'" On May 27, 2020, Petitioner filed a  
13 Supplemental Petition. While Petitioner's numerous pleadings were pending, Petitioner filed  
14 a Motion for Peremptory Challenge of Judge and to Disqualify Judge William Bill Kephart.  
15 Thereafter, the State filed its Responses to Petitioner's Affidavit of Actual Innocence and  
16 Petitioner's Supplemental Petition on June 10, 2020. As a result of Petitioner's Peremptory  
17 Challenge, Petitioner's pending matters were taken off calendar on June 15, 2020. On June  
18 29, 2020, Petitioner filed his Reply to the State's Response to Petitioner's Affidavit of Actual  
19 Innocence.

20 On July 7, 2020, Chief Judge Linda Bell considered, and denied, Petitioner's Motion  
21 for Peremptory Challenge of Judge Kephart. Chief Judge Bell's Decision and Order was filed  
22 on July 8, 2020.

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

28 //

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

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

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

23 On March 9, 2021, the Court filed its Findings of Fact, Conclusions of Law and Order  
24 denying Petitioner’s Amended Petition. That entry was noticed on March 10, 2021. On March  
25 11, 2021, Petitioner filed a Petition to Reconsider that Order. He filed a subsequent Petition to  
26 Reconsider on March 17, 2021. On March 18, 2021, Petitioner filed a Notice of Appeal from  
27 the Court’s denial of his Amended Petition. As of the date of the instant Opposition, no  
28 remittitur has issued from that appeal. On April 7, 2021, Petitioner filed a “Supplemental

1 Petition for Writ of Habeas Corpus” Petition (NRS 34.360-34.830). Petitioner filed a  
2 “Supplemental ‘Addendum’” on April 14, 2021.

3 The State filed its Opposition to Petitioner’s various Petitions to Reconsider on April  
4 9, 2021. On April 12, 2021, the Court denied Petitioner’s Petitions to Reconsider. Again, well  
5 after the Court’s ruling, Petitioner filed a Reply to the State’s Opposition on May 6, 2021. On  
6 May 12, 2021, the Court issued its Order Denying Petitioner’s Petition to Reconsider.

7 In the interim, Petitioner also filed the instant “Petition for Writ of Habeas Corpus  
8 COVID-19 (Coronavirus)” (his “instant Petition”). For some unknown reason, the instant  
9 Petition was filed under a new civil case number. The State now files its Opposition to the  
10 instant Petition, as follows:

### 11 ARGUMENT

#### 12 **I. THE POST-CONVICTION CASES SHOULD BE CONSOLIDATED**

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

16  
17 NRCP 42(a) allows consolidation of pending actions that involve “a common  
18 question of law or fact.” Like under its identical federal counterpart, a district  
court enjoys “broad, but not unfettered, discretion in ordering consolidation.”

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

21 Petitioner’s original post-conviction habeas proceeding was filed under Case No. A-  
22 19-793315-W. In that proceeding, Petitioner raised a number of challenges to his judgment of  
23 conviction in Case No. C315718, including allegations of Double Jeopardy, violations of Due  
24 Process, and Cruel and Unusual Punishment. See, Petition for Writ of Habeas Corpus, filed  
25 on April 15, 2019 (in Case No. A793315).

26 In the instant Petition, Petitioner again claims that his sentence amounts to Cruel and  
27 Unusual Punishment under the Eighth Amendment. See Instant Petition at 5. Therefore,  
28 because this action, and Petitioner’s separate post-conviction action, each involve a common

1 question – whether Petitioner’s judgment of conviction and sentence are constitutional – the  
2 two actions should be consolidated.

3 Moreover, judicial economy supports consolidation of the two actions. Petitioner  
4 continues to file pleadings – with or without permission of this Court – raising the same (or  
5 substantially similar) claims against his judgment of conviction. These numerous pleadings  
6 should be contained within the same action, so as to allow for uniform consideration and  
7 treatment, as they all center around the same underlying criminal case.

8 As such, the State requests that this Court consolidate the instant action into the pre-  
9 existing post-conviction case, A793315.

## 10 **II. THE INSTANT PETITION DOES NOT WARRANT RELIEF**

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

### 16 **A. Petitioner’s Claim is Not Cognizable in Habeas Review**

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

21 We have repeatedly held that a petition for writ of habeas corpus may challenge  
22 the validity of current confinement, but not the conditions thereof. See Director,  
23 Dep’t Prisons v. Arndt, 98 Nev. 84, 640 P.2d 1318 (1982); Rogers v. Warden,  
24 84 Neb. [sic] 539, 445 P.2d 28 (1968); Rainsberger v. Leypoldt, 77 Nev. 399,  
25 365 P.2d 489 (1961), cert. denied, 368 U.S. 516, 82 S.Ct. 530, 7 L.Ed.2d 522,  
26 (1962). In Rogers, we held that a claim of brutal treatment at the hands of prison  
27 officials was not cognizable on a habeas petition, because the claim spoke to the  
28 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.

//



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

3 The United States Supreme Court has discussed a litany of claims alleging cruel and  
4 unusual punishments. In Wilson v. Seiter, 501 U.S. 294, 111 S.Ct. 2321 (1991), the Court  
5 dealt with claims alleging “overcrowding, excessive noise, insufficient locker storage space,  
6 inadequate heating and cooling, improper ventilation, unclean and inadequate restrooms,  
7 unsanitary dining facilities and food preparation, and housing with mentally and physically ill  
8 inmates.” At 296, 111 S.Ct. at 2323. The Wilson Court characterized such claims as  
9 “conditions of confinement” claims, which required an allegation of “deliberate indifference”  
10 by prison officials. Id. at 297, 111 S.Ct. at 2323.

11 Petitioner raises one claim – which he labels as “Violation of United States Constitution  
12 8<sup>th</sup> Amendment ‘Cruel and Unusual Punishment’ (*Deliberate Indifference*). Instant Petition  
13 at 2 (emphasis added). Therefore, Petitioner seems to acknowledge that he is not challenging  
14 the validity of his judgment of conviction; rather, he is challenging the *conditions of his*  
15 *confinement*. See Wilson, 501 U.S. at 297, 111 S.Ct. at 2323. Indeed, Petitioner specifically  
16 alleges:

17 Petitioner’s “Deliberate Indifference” claim is established where the challenged  
18 deficiency is sufficiently serious and prison officials know that petitioner face a  
19 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.

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

28 //

1 Because the Nevada Supreme Court has clearly and expressly precluded conditions of  
2 confinement claims from post-conviction habeas proceedings, the instant Petition is not the  
3 proper legal vehicle within which to raise Petitioner's claim. As such, this Court lacks the  
4 jurisdiction to grant habeas relief on the instant Petition, and the same should be dismissed.

5 **B. Petitioner's Instant Petition is Time-Barred**

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

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

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

16 (emphasis added). "[T]he statutory rules regarding procedural default are mandatory and  
17 cannot be ignored when properly raised by the State." State v. Dist. Court (Riker), 121 Nev.  
18 225, 233, 112 P.3d 1070, 1075 (2005).

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

24 In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada  
25 Supreme Court rejected a habeas petition that was filed two days late, pursuant to the "clear  
26 and unambiguous" mandatory provisions of NRS 34.726(1). Gonzales reiterated the  
27 importance of filing the petition with the District Court within the one-year mandate, absent a  
28 showing of "good cause" for the delay in filing. Gonzales, 118, Nev. at 593, 590 P.3d at 902.  
The one-year time bar is therefore strictly construed. In contrast with the short amount of time  
to file a notice of appeal, a prisoner has a full year to file a post-conviction habeas petition, so

//

1 there is no injustice in a strict application of NRS 34.726(1), despite any alleged difficulties  
2 with the postal system. Id. at 595, 53 P.3d at 903.

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

5 Habeas corpus petitions that are filed many years after conviction are an  
6 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 Riker, 121 Nev. at 231, 112 P.3d at 1074. The Nevada Supreme Court has granted no  
9 discretion to the district courts regarding whether to apply the statutory procedural bars; the  
10 rules *must* be applied.

11 Remittitur from the affirmance of Petitioner's Judgment of Conviction was filed on  
12 February 25, 2020. Therefore, Petitioner had until February 25, 2021, to file a timely post-  
13 conviction habeas petition. Dickerson, 114 Nev. at 1087, 967 P.2d at 1133-34. Petitioner's  
14 instant Petition was not filed until March 30, 2021, over a month past the statutory deadline.  
15 Therefore, absent a showing of good cause and prejudice, Petitioner's instant Petition must be  
16 dismissed as untimely. Riker, 121 Nev. at 233, 112 P.3d at 1075. Petitioner does not attempt  
17 to demonstrate good cause or prejudice. See generally, Instant Petition. Indeed, the State  
18 maintains that Petitioner could not successfully do so, as Petitioner's contention is without  
19 merit. See Section II(B), *infra*.

20 Because Petitioner's instant Petition is time-barred, with no good cause shown for the  
21 delay, the State respectfully submits that Petitioner's instant Petition *must* be dismissed  
22 pursuant to NRS 34.726(1).

23 **C. Petitioner Fails to Demonstrate Good Cause to Overcome His Procedural**  
24 **Defaults**

25 To avoid procedural default, under NRS 34.726, a defendant has the burden of pleading  
26 and proving specific facts that demonstrate good cause for his failure to present his claim in  
27 earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will  
28 be unduly prejudiced if the petition is dismissed. See Hogan v. Warden, 109 Nev. 952, 959–

1 60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep’t of Prisons, 104 Nev. 656, 659, 764  
2 P.2d 1303, 1305 (1988).

3 Specifically, under NRS 34.726, a petitioner must demonstrate: (1) “[t]hat the delay is  
4 not the fault of the petitioner” and (2) that the petitioner will be “unduly prejudice[d]” if the  
5 petition is dismissed as untimely. NRS 34.726. To meet the first requirement, “a petitioner  
6 *must* show that an impediment external to the defense prevented him or her from complying  
7 with the state procedural default rules.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503,  
8 506 (2003) (emphasis added). “A qualifying impediment might be shown where the factual or  
9 legal basis for a claim was not reasonably available *at the time of default*.” Clem v. State, 119  
10 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Clem Court continued,  
11 “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d at 526. To find  
12 good cause there must be a “substantial reason; one that affords a legal excuse.” Hathaway,  
13 119 Nev. at 252, 71 P.3d at 506 (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229,  
14 1230 (1989)). Examples of good cause include interference by State officials and the previous  
15 unavailability of a legal or factual basis. See State v. Huebler, 128 Nev. 192, 197, 275 P.3d  
16 91, 95 (2012). Clearly, any delay in the filing of the petition must not be the fault of the  
17 petitioner. NRS 34.726(1)(a).

18 Further, a petitioner raising good cause to excuse procedural bars must do so within a  
19 *reasonable* time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34  
20 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see  
21 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably  
22 available to the petitioner during the statutory time period did not constitute good cause to  
23 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good  
24 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,  
25 453 120 S.Ct. 1587, 1592 (2000).

26 As stated *supra*, Petitioner does not attempt to address good cause. See generally,  
27 Instant Petition. However, even if Petitioner attempted to raise a “good cause” argument, he  
28 could not succeed, as COVID-19 is not a recently-arisen situation. Rather, the national

1 emergency declared due to the COVID-19 pandemic was declared on March 13, 2020.  
2 Petitioner's instant PWHC was filed on March 30, 2021, over a year after the national  
3 emergency was declared. As such, Petitioner could not successfully assert that his claim was  
4 raised within any "reasonable" time after the good cause arose. See Hathaway, 119 Nev. at  
5 252-53, 71 P.3d at 506-07. Instead, the COVID-19 pandemic was prevalent at the time  
6 Petitioner could have filed a *timely* petition; therefore, it is not a "qualifying impediment"  
7 sufficient to overcome the procedural bars. See Clem, 119 Nev. at 621, 81 P.3d at 525.

8 As the COVID-19 pandemic cannot constitute good cause, and as Petitioner fails to  
9 assert any other instance of good cause, Petitioner cannot demonstrate the requisite good cause  
10 to overcome the time-bar to his instant Petition.

11 **D. Petitioner Fails to Demonstrate Prejudice Sufficient to Overcome His**  
12 **Procedural Defaults**

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

18 As set forth in Section II(A), *supra*, the instant Petition does not allege that "the state  
19 proceedings" were infected with any constitutional error. See Instant Petition at 4-5; Hogan,  
20 109 Nev. at 960, 860 P.2d at 716. Instead, Petitioner simply alleges that prison officials have  
21 improperly and/or insufficiently responded to the COVID-19 pandemic. Id. Because  
22 Petitioner's claim is clearly not cognizable in habeas review, it certainly cannot suffice to  
23 demonstrate prejudice sufficient to overcome Petitioner's procedural default. Hogan, 109 Nev.  
24 at 960, 860 P.2d at 716.

25 Because Petitioner does not allege any cognizable claim, much less any claim that could  
26 demonstrate prejudice, Petitioner fails to overcome the time-bar to the instant Petition, and the  
27 instant Petition should be dismissed.

28 //

1 CONCLUSION

2 For the foregoing reasons, the State respectfully requests that this Court consolidate the  
3 instant action into Petitioner's pre-existing post-conviction case.

4 Moreover, because the instant Petition does not warrant relief, the State submits that  
5 this Court should DENY the same as outside the scope of habeas review, or as procedurally  
6 defaulted.

7 DATED this 24th day of June, 2021.

8 Respectfully submitted,

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

11 BY

BB  
12 JONATHAN VANBOSKERCK  
13 Chief Deputy District Attorney  
Nevada Bar #06528

for

14  
15  
16 CERTIFICATE OF MAILING

17 I hereby certify that service of the above and foregoing was made this 24th day of  
18 June, 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

19 JAMES H. HAYES, BAC #1175077  
20 SOUTHERN DESERT CORRECTIONAL CENTER  
21 20825 COLD CREEK ROAD  
LAS VEGAS, NV, 89166

22 BY

Corina Garcia

C. Garcia

23 Secretary for the District Attorney's Office  
24  
25  
26  
27

28 JV/cg/L2

*Howard Shuman*  
CLERK OF THE COURT

HALES, JAMES H

NDOC No. 1175077

In proper person

IN THE 8th JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR THE  
COUNTY OF CLARK

JAMES H. HALES

Petitioner,

v.

STATE OF NEVADA

Respondent.)

"HEARING REQUESTED"

Case No. A-21-831979-W

Dept. No. 3

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

Petitioner, JAMES H. HALES, proceeding pro se, requests  
that this Honorable Court order transportation for his personal appearance or, in the  
alternative, that he be made available to appear by telephone or by video conference  
at the hearing in the instant case that is scheduled for July 19, 2021  
at 8:30 AM

CLERK OF THE COURT  
JUL - 6 2021

RECEIVED

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

2 1. I am an inmate incarcerated at Southern Desert Correctional Center

3 My mandatory release date is October 1, 2025.

4  
5 2. The Department of Corrections is required to transport offenders to and  
6  
7 from Court if an inmate is required or requests to appear before a Court in this state.  
8

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

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

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

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

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

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

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



1 ☒ I AM NEEDED AS A WITNESS.

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

8 ☒ THE HEARING WILL BE AN EVIDENTIARY HEARING.

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

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

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

27 6. Southern Desert Correctional Ctr is located approximately  
28 40 miles from Las Vegas, Nevada.

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

7           8. The rules of the institution prohibit me from placing telephone calls from  
8 the institution, except for collect calls, unless special arrangements are made with  
9 prison staff. Nev. Admin. Code DOC 718.01. However, arrangements for my  
10 telephone appearance can be made by contacting the following staff member at my  
11 institution: Warden Hutchings,  
12 whose telephone number is 725-216-6500

13  
14 Dated this 28<sup>th</sup> day of JUNE, 2021.

15  
16 James H. Hayes

17  
18  
19 JAMES H. HAYES #1175077  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

**CERTIFICATE OF SERVICE BY MAILING**

I, JAMES H. NILES, hereby certify, pursuant to NRCP 5(b), that on this 28<sup>th</sup>  
day of JUNE, 2021, I mailed a true and correct copy of the foregoing, "Motion  
and order for transportation of inmate..."  
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

CLARK COUNTY DIST COURT  
OFFICE OF THE CLERK  
200 LEWIS AVE, 3RD FLOOR  
LAS VEGAS, NEVADA  
89165-1160

CLARK COUNTY DISTRICT ATTORNEY  
200 LEWIS AVE  
LAS VEGAS, NEVADA  
89165-2212

ATTORNEY GENERAL OF NEVADA  
100 N. PERCIVAL STREET  
CARSON CITY, NEVADA  
89701

CC:FILE

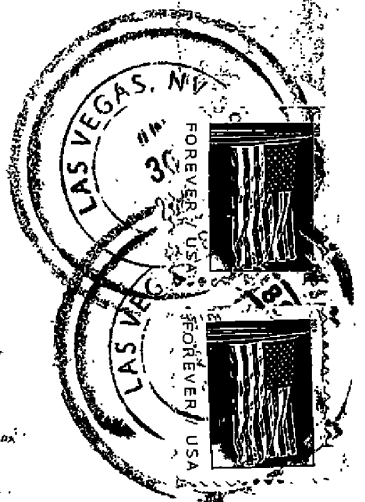
DATED: this 28<sup>th</sup> day of JUNE, 2021.

James H. Niles  
JAMES H. NILES #1175077  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

Hayes, James #115074  
Box  
P.O. Box 208  
Indian Springs, NV  
89070

Clerk County District Courts  
"Office of the Clerk"  
200 Lewis Ave, 3rd Floor

Las Vegas, NV 89155-1110



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Mail

!! Special !!  
"January 29, 1994" and pre 1994

03719009  
JLCANTC/MLLC

27

Electronically Filed  
07/08/2021

*Heather L. Smith*  
CLERK OF THE COURT

1 Hayes, James A #1175077  
2 / In Propria Personam  
3 Post Office Box 208 S.D.C.C.  
4 Indian Springs, Nevada 89018

5 **DISTRICT COURT**  
6 **CLARK COUNTY, NEVADA**

7  
8 JAMES A. HAYES  
9 (Petitioner)

10 v.

11 State of Nevada  
12 (Respondent)

"HEARING REQUESTED"

Case No. A-21-831979-W

Dept No. 3

Docket \_\_\_\_\_

13  
14 **NOTICE OF MOTION**

15 **YOU WILL PLEASE TAKE NOTICE, that** \_\_\_\_\_

16  
17 will come on for hearing before the above-entitled Court on the 28<sup>th</sup> day of \_\_\_\_\_, 20\_\_\_\_,  
18 at the hour of \_\_\_\_ o'clock \_\_\_\_ M. In Department \_\_\_\_ of said Court.

19  
20 CC:FILE

21  
22 **DATED:** this 28<sup>th</sup> day of JUNE, 2021.

23  
24 BY:

*James A. Hayes*  
JAMES A. HAYES #1175077  
/In Propria Personam

CLERK OF THE COURT

JUL - 6 2021

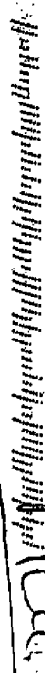
RECEIVED

Wheeler, James #1175074  
DOE  
P.O. Box 208  
Indian Springs, NV  
89070

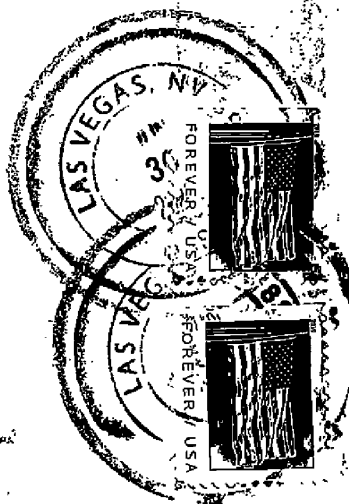
Clerk County District Courts  
"Office of the Clerk"  
200 Lewis Ave, 3rd Floor

Las Vegas, NV 89155-1100

9513333333



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Mail



!! sorry  
"January" "February" "March" "April" "May" "June" "July" "August" "September" "October" "November" "December"

GOOGLE  
CLANTRMELLC

1 IN THE 8th JUDICIAL DISTRICT COURT OF THE  
2 STATE OF NEVADA IN AND FOR THE  
3 COUNTY OF Clark

4 JAMES H. HOPES

5 )  
6 Petitioner, )

7 )  
8 v. )

9 ) Case No. A-21-831979-1N

10 )  
11 STATE OF NEVADA

12 ) Dept. No. 3

13 )  
14 Respondent.)

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

19 Based upon the above motion, I find that the presence of

20 JAMES H. HOPES is necessary for the hearing that is scheduled in this  
21 case on the 19th day of July, 2021, at  
22 8:30 A.M.

23 THEREFOR, IT IS HEREBY ORDERED that,

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

RECEIVED

JUL 06 2021

CLERK OF THE COURT

1 \_\_\_\_\_ is to be transported back to the above  
2 named institution.

3  
4 ☐ Pursuant to NRS 209.274(2)(a), Petitioner shall be made available for telephonic  
5 or video conference appearance by his or her institution. My clerk will contact  
6 \_\_\_\_\_ at \_\_\_\_\_ to make  
7 arrangements for the Court to initiate the telephone appearance for the hearing.

8  
9 Dated this \_\_\_\_\_ day of \_\_\_\_\_.

10  
11  
12 \_\_\_\_\_  
13 District Court Judge  
14  
15  
16  
17  
18  
19  
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29



Electronically Filed  
07/22/2021

*Arnell L. Linn*  
CLERK OF THE COURT

James James H 1175077  
Petitioner/In Propria Persona  
Post Office Box 208, SDCC  
Indian Springs, Nevada 89070

IN THE 8<sup>th</sup> JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF CLARK

JAMES H. JAMES  
Petitioner,

vs.  
State of Nevada  
Southern District Correctional Institute  
SDCC  
Respondent(s).

"HEARING REQUESTED"

Case No. A-21-831979-W

Dept. No. 3

Docket July 19, 2021 8:30AM

"OPPOSITION TO STATE'S OPPOSITION"

PETITION FOR WRIT OF HABEAS CORPUS ~~PROSECUTOR'S OPPOSITION~~

INSTRUCTIONS:

CONSENTING (COURT-19)

- (1) This petition must be legibly handwritten or typewritten signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of corrections, name the warden or head of the institution. If you are not in a specific institution of the department within its custody, name the director of the department of corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction and sentence.

RECEIVED

JUL 21 2021

CLERK OF THE COURT

POINTS AND AUTHORITIES  
STATEMENT OF THE CASE

ON March 30, 2021, JAMES H. HAYES (hereinafter PETITIONER) filed the instant petition for writ of HABEAS CORPUS.

ON June 24, 2021, state filed its opposition to petitioner's petition for writ of HABEAS CORPUS along with a motion to consolidate.

ON July 13, 2021, petitioner received the state's opposition and motion to consolidate here at Southern Desert Correctional Center.

ARGUMENT:

I. PETITIONER'S instant petition for writ of HABEAS CORPUS is NOT a "POST-CONVICTION" writ and does NOT challenge petitioner's judgment of conviction and sentence, nor does it involve a common question. WHEREAS, the instant petition contains ONLY ONE ISSUE "8th AMEND VIOLATION CRUEL AND UNUSUAL PUNISHMENT 'DELIBERATE INDIFFERENCE'" that was NOT included in petitioner's "POST-CONVICTION" writ of HABEAS CORPUS or anything substantially similar to that claim.

II. PETITIONER'S claim is COGNIZABLE in HABEAS RELIEF. The Court of Appeal of California granted PRISONER'S petition for the SAME claim in petitioner's writ of HABEAS CORPUS "DELIBERATE INDIFFERENCE of the DEPARTMENT of CORRECTIONS and STATE PRISON to the

1 risk of substantial harm amounting to cruel and un-  
2 usual punishment under U.S. Const. 8<sup>th</sup> Amend. (In re  
3 IVEN VON STACH 20 Cal. App. 5<sup>th</sup> 53). Petitioner never  
4 argued that his sentence was cruel and unusual but  
5 that his confinement was in violation of the 8<sup>th</sup>  
6 Amend. through the NDOC's deliberate indifference.

7 II. Petitioner's petition is NOT time-barred.  
8 The mandatory provisions of post-conviction petitions  
9 is NOT applicable in the instant proceedings which  
10 in fact the time for granting or denying review was  
11 extended in Von Stach, 2020 Cal. LEXIS 7610. Furthermore,  
12 the California Court of Appeals held that "the pendency  
13 of a related action challenging actions of the Department  
14 of Corrections does not lessen a court's authority, and  
15 duty, to provide effective habeas corpus relief."

16 III. The state offers nothing more in support  
17 of their claim than a general denial of "BARRED" then  
18 by alleging only a conclusory statement of fact in  
19 their opposition have indicated a willingness to rely on  
20 the record and the merits of petitioner's claim can  
21 be reached without ordering an evidentiary hearing.

22 IV. Petitioner has demonstrated sufficient  
23 prejudice because it was deliberate indifference, in violation  
24 of U.S. Const. 8<sup>th</sup> Amend., for the NDOC to disregard the  
25 experts' conclusions that, because of COVID-19 it was  
26 essential to reduce the population to permit physical  
27 distancing among inmates, that was morally indefensible  
28 and constitutionally untenable.

1 WHEREFORE, JAMES H. HAYS, prays that the court grant PETITIONER  
2 relief to which he may be entitled in this proceeding.

3 EXECUTED at SOUTHERN DETENT CORRECTIONAL CENTER  
4 on the 14<sup>th</sup> day of July, 2021.

5  
6 James H. Hays  
7 Signature of Petitioner

8 VERIFICATION

9 Under penalty of perjury, pursuant to N.R.S. 208.165 et seq., the undersigned declares that he is  
10 the Petitioner named in the foregoing petition and knows the contents thereof; that the pleading is  
11 true and correct of his own personal knowledge, except as to those matters based on information and  
12 belief, and to those matters, he believes them to be true.

13  
14 James H. Hays  
15 Signature of Petitioner

16  
17 PRO SE  
18 Attorney for Petitioner

19  
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4-

CERTIFICATE OF SERVICE BY MAILING

I, JAMES H. HAYES, hereby certify, pursuant to NRCP 5(b), that on this 14<sup>th</sup>  
day of July, 2021, I mailed a true and correct copy of the foregoing, "Opposition  
to state's opposition to defendant's petition for writ..."  
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

Clark County Dist. Courts  
OFFICE OF THE CLERK  
200 LAUREL AVE: 2041  
LAS VEGAS, NV  
89155-1160

Clark County Dist. Attorney  
200 LAUREL AVE  
LAS VEGAS, NV  
89155-2212

CC:FILE

DATED: this 14<sup>th</sup> day of July, 2021.

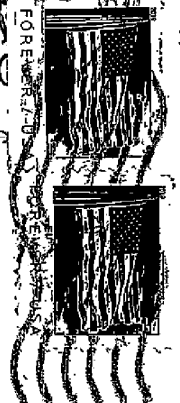
James H. Hayes  
James H. Hayes #1175072  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

Pages #1175077  
504  
P.O. Box 208  
Indian Springs, NV  
89000

12B4A

Clark County District Court  
"Office of the Clerk"  
200 Lewis Ave, 3rd Floor  
Las Vegas, Nevada  
89155-1140

LAS VEGAS NV 8  
19 JUL 2021  
PM 0  
SENDER  
FORWARDED TO



LEGO  
Mail

*Steven D. Grierson*

1 NOYES, James H. #1175077

2 In Propria Personam  
3 Post Office Box 208, S.D.C.C.  
4 Indian Springs, Nevada 89018

5 IN THE 8<sup>th</sup> JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
6  
7 IN AND FOR THE COUNTY OF CLARK

8 State of Nevada

9  
10 Plaintiff,

11 vs.

12 JAMES H. NOYES

13 Defendant.

Case No. A-21-831979-W

Dept. No. 3

Docket \_\_\_\_\_

14  
15  
16 **NOTICE OF APPEAL**

17 NOTICE IS HEREBY GIVEN, That the Petitioner/Defendant,  
18 JAMES H. NOYES, in and through his proper person, hereby  
19 appeals to the Supreme Court of Nevada from the ORDER denying and/or  
20 dismissing the

21 Petition for Writ of Habeas Corpus (COVID-19 Coronavirus)

22  
23 ruled on the 19<sup>th</sup> day of July, 2021.

24  
25 Dated this 10<sup>th</sup> day of August, 2021.

26 Respectfully Submitted,

27 James H. Noyes

28 RECEIVED

29 AUG 12 2021

CLERK OF THE COURT

44415 \*1175077  
5000  
P.O. Box 208  
Indian Springs NV  
89070

LAS VEGAS NV 890  
11 AUG 2021 PM 5 L



FOREVER / USA

Clerk County District Courts  
"Office of the Clerk"

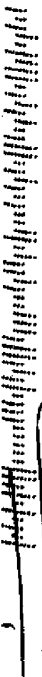
200 LEWIS AVE, 3rd Floor

Las Vegas, Nevada

89155-1100

Legal Mail

9515539999



11/15/2021 ... 10:00 AM ... 2021

UCANTC MELLG

Google

Southern Desert  
Correctional Center  
AUG 11 2021  
OUTGOING MAIL



Hayes James H, 1175072  
Petitioner/In Propria Persona  
Post Office Box 208, SDCC  
Indian Springs, Nevada 89070-0208

Electronically Filed  
8/12/2021 12:56 PM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF Clark

State of Nevada  
Plaintiff,

vs.

James H. Hayes  
Defendant.

CASE No. A-21-831979-W  
DEPT.No. 3

DESIGNATION OF RECORD ON APPEAL

TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The above-named Plaintiff hereby designates the entire record of the above-entitled case, to include all the papers, documents, pleadings, and transcripts thereof, as and for the Record on Appeal.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

RESPECTFULLY SUBMITTED BY:

James H. Hayes  
James H. Hayes # 1175072  
Plaintiff/In Propria Persona

**CERTIFICATE OF SERVICE BY MAILING**

I, JAMES H. HOWES, hereby certify, pursuant to NRCP 5(b), that on this 10<sup>th</sup> day of August, 2021, I mailed a true and correct copy of the foregoing, "Petition for Writ of Habeas Corpus (COVID-19; CORONAVIRUS)" by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

Clerk County District Courts  
OFFICE OF THE CLERK  
200 LAUREL AVE. 3RD FLOOR  
LAS VEGAS, NV  
89155-1160

Clerk County District Attorney  
200 LAUREL AVE  
LAS VEGAS, NV  
89155-2212

CC:FILE

DATED: this 10<sup>th</sup> day of August, 2021.

James H. Howes  
JAMES H. HOWES # 1175072  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
**IN FORMA PAUPERIS:**



1 ASTA

2  
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5  
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**  
7 **STATE OF NEVADA IN AND FOR**  
8 **THE COUNTY OF CLARK**  
9

10 JAMES H. HAYES,

11 Plaintiff(s),

12 vs.

13 STATE OF NEVADA; NEVADA DEPT. OF  
14 CORRECTIONS; SOUTHERN DESERT CORR.  
15 CTR.,

16 Defendant(s),

Case No: A-21-831979-W

Dept No: III

17  
18 **CASE APPEAL STATEMENT**  
19

20 1. Appellant(s): James H. Hayes

21 2. Judge: Monica Trujillo

22 3. Appellant(s): James H. Hayes

23 Counsel:

24 James H. Hayes #1175077  
25 P.O. Box 20 8  
26 Indain Springs, NV 89070

27 4. Respondent (s): State of Nevada; Nevada Dept. of Corrections; Southern Desert Corr. Ctr.

28 Counsel:

Steven B. Wolfson, District Attorney

200 Lewis Ave.  
Las Vegas, NV 89155-2212

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

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

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

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

8. Appellant Granted Leave to Proceed in Forma Pauperis\*\*: Yes, March 21, 2021  
*\*\*Expires 1 year from date filed*  
Appellant Filed Application to Proceed in Forma Pauperis: N/A  
Date Application(s) filed: N/A

9. Date Commenced in District Court: March 30, 2021

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

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

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 13 day of August 2021.

Steven D. Grierson, Clerk of the Court

/s/ Amanda Hampton

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

cc: James H. Hayes



1 ASTA

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JAMES H. HAYES,

11

Plaintiff(s),

12

vs.

13

14

STATE OF NEVADA; NEVADA DEPT. OF  
CORRECTIONS; SOUTHERN DESERT CORR.  
CTR.,

15

16

Defendant(s),

17

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Case No: A-21-831979-W

*Consolidated with A-19-793315-W*

Dept No: III

**Amended**

## AMENDED CASE APPEAL STATEMENT

1. Appellant(s): James H. Hayes

2. Judge: Monica Trujillo

3. Appellant(s): James H. Hayes

Counsel:

James H. Hayes #1175077

P.O. Box 20 8

Indain Springs, NV 89070

4. Respondent (s): State of Nevada; Nevada Dept. of Corrections; Southern Desert Corr. Ctr.

Counsel:

Steven B. Wolfson, District Attorney

200 Lewis Ave.  
Las Vegas, NV 89155-2212

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

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

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

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

8. Appellant Granted Leave to Proceed in Forma Pauperis\*\*: Yes, March 21, 2021  
*\*\*Expires 1 year from date filed*  
Appellant Filed Application to Proceed in Forma Pauperis: N/A  
Date Application(s) filed: N/A

9. Date Commenced in District Court: March 30, 2021

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

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

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 13 day of August 2021.

Steven D. Grierson, Clerk of the Court

/s/ Amanda Hampton

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

cc: James H. Hayes

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**May 04, 2021**

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A-21-831979-W	James Hayes, Plaintiff(s) vs. Nevada State of, Defendant(s)
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<b>May 04, 2021</b>	<b>10:00 AM</b>	<b>Petition for Writ of Habeas Corpus</b>
---------------------	-----------------	---

<b>HEARD BY:</b> Peterson, Jessica K.	<b>COURTROOM:</b> Phoenix Building 11th Floor 116
---------------------------------------	--

**COURT CLERK:** Kory Schlitz

**RECORDER:** Nancy Maldonado

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- COURT ADVISED the Defendant is seeking relief due to COVID 19, adding the Defendant has a criminal companion case in Department Three with Judge Trujillo; Judge Bell will be issuing a Minute Order transferring this case to Department Three to be heard with Defendant's companion case.

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

## Writ of Habeas Corpus

# COURT MINUTES

May 05, 2021

A-21-831979-W      James Hayes, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

**May 05, 2021                  3:00 AM                  Minute Order**

**HEARD BY:** Bell, Linda Marie                      **COURTROOM:** No Location

**COURT CLERK:** Jill Chambers

**RECORDED:**

**REPORTER:**

**PARTIES  
PRESENT:**

## JOURNAL ENTRIES

- Mr. Hayes filed a Petition for Writ of Habeas Corpus on March 30, 2021. The underlying criminal matter related to this case was adjudicated in Department 3. Pursuant to EDCR 1.30(b)(15), the Clerk of the Court shall re-assign this case to Department 3.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Jill Chambers, to all registered parties for Odyssey File & Serve. jmc 5/5/21



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**May 17, 2021**

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A-21-831979-W	James Hayes, Plaintiff(s) vs. Nevada State of, Defendant(s)
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<b>May 17, 2021</b>	<b>8:30 AM</b>	<b>Petition for Writ of Habeas Corpus</b>
---------------------	----------------	---

**HEARD BY:** Kierny, Carli

**COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Grecia Snow

**RECORDER:** Rebeca Gomez

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Zadrowski, Bernard B.	Attorney
-----------------	-----------------------	----------

**JOURNAL ENTRIES**

- Court noted a response from the State was not filed. Mr. Zadrowski advised they had not received the Petition; requested 45 days to respond to the Petition. COURT ORDERED, request GRANTED; State's Response DUE 6/28/21; matter CONTINUED.

NDC

7/19/21 8:30 AM - PETITION FOR WRIT OF HABEAS CORPUS (COVID 19 CORONA VIRUS)

CLERK'S NOTE: The above minute order has been distributed to: James Hayes #1175077, P.O. Box 208, Indian Springs, Nevada 89070. 5/25/21 gs

**July 19, 2021**

A-21-831979-W      James Hayes, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

59



# Certification of Copy and Transmittal of Record

State of Nevada }  
County of Clark } SS:

Pursuant to the Supreme Court order dated September 24, 2021, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 60.

JAMES H. HAYES,

Plaintiff(s),

vs.

STATE OF NEVADA; NEVADA DEPT. OF  
CORRECTIONS; SOUTHERN DESERT  
CORR. CTR,

Defendant(s),

Case No: A-21-831979-W  
*Consolidated with A-19-793315-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 1 day of October 2021.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk