

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Aug 02 2021 04:06 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

KENNETH ROBERT CIZEK
Appellant,

No. 83220

vs.

CHARLES DANIELS, NDOC DIRECTOR
Respondents.

RECORD ON APPEAL

VOL I

JOHN RANDALL QUINTERO #93782
NORTHERN NEVADA
CORRECTIONAL CENTER
P.O. BOX 7000
CARSON CITY, NV 89702

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APPELLANT IN PROPER PERSON

ATTORNEYS FOR RESPONDENT

THE SUPREME COURT OF THE STATE OF NEVADA

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Kenneth Robert Cizek
(Name)
1234275
(I.D. No.)

Northern Nevada Correctional Center
Post Office Box 7000
Carson City, NV 89702

Movant, In Proper Person

REC'D & FILED

2021 APR 27 PM 2:17

AUDREY ROWLATT
CLERK

BY KR
DEPUTY

First Judicial Dist. Court State of
Nevada IN and for Carson

Kenneth Robert Cizek

Plaintiff/Movant

vs.
Charles Daniels, NDoc Dir.
Defendant/Respondent

Case No.: 21 EW 000171B
Dept. II

Writ of habeas Corpus
Injunction

COMES NOW, Kenneth Cizek, in proper person and herein
above respectfully moves this Honorable Court for a(n) granting writ of
habeas Corpus / Injunction

The instant motion is made and based upon all papers and pleadings on file herein as well
as the following Memorandum of Points and Authorities and attached exhibits (where
applicable).

MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner is an Inmate in the lawful Custody of the Nevada Department of Corrections (NDOC). Since the time the petitioner was remanded to the NDOC, he has been penalized 10 days per month, 120 days per year Labor Credits for Not being "Diligence in labor per" NRS. 209.4465 (2). The NDOC Pre-Calculates an offenders Sentence 10 days per month / 120 days per year labor Credits once NDOC enters the Judgement of Conviction for that offender. By Pre-Calculating the 10 days per month / 120 days per year labor Credits this shortens an offenders Sentence/Experation date; and once an offender is Not "diligence in labor" the NDOC removes 10 days a month labor Credits for that month causing the offenders Sentence and Experation Date to move into the future, causing him to serve a longer Sentence. Petitioner is currently housed in Administrative Segregation at No Fault of his own, and due to Covid-19 he is unable to be transferred to a facility where he would be able to be diligence in labor and keeping his experation date from moving 10 days per month into the future. Administrative Segregation (Ad-Seg) is a limited Movement housing unit and Inmated Housed in this unit Are Not Afforded

MEMORANDUM OF POINTS AND AUTHORITIES

the ability to earn labor Credits. This administrative action clearly violates the U.S. Constitutional Amendment XIV- Equal Protection Clause, by treating different classes of inmates differently. Inmates who are housed in General Population are clearly able to keep their labor Credits while those who are housed in Ad-Seg are penalized for being classified differently. The State will argue that in the case of Vickers v. Dzurenda, 433 P.3d 306, 134 Nev. Adv. Rep. 91, 2018 Nev. App. Lexis 14, Petitioner is admitting he has not worked and just like in the Vickers case he is not entitled to labor Credits per NRS. 209.4465(2). Petitioner's case and the Vickers case are far from the same. The inmate in the Vickers case was in general population and afforded the right to work. Also the inmate in the Vickers case did not bring up the fact that NDOC pre-calculates the labor Credits and removes them without notice or hearing violating Due Process. Petitioner will show several constitutional violations of NRS. 209.4465(2) and NDOC, showing the difference between this petition and the Vickers case. For example per NDOC's own Administrative Regulation 507 (AR) (See Exhibit for AR 507). Ad-Seg is not to be used

MEMORANDUM OF POINTS AND AUTHORITIES

as punishment. However, is it Not Punishment by Causing Ad-Seg Inmates to Serve Longer Sentences, by Penalizing their expiration Dates 10 days per Month / 120 days per year? This Violates the Constitutional Amendment of "Due Process" by removing Labor Credits without No Notice or hearing therefore, Depriving Petitioner of his Constitutional right to "Due Process." Also NDOC Knows or Should have Known that NRS. 209.4465(2) is unconstitutional and Violates offenders Constitutional rights and Therefore NDOC is being "Diliberatly indifferent" to the rights of offenders in its Custody. NRS. 34.724 (1) Now requires Prisoners "to Exhaust all available administrative remedies before filing a Post Conviction Petition for a Writ of Habeas Corpus Challenging the Computation of time the offender has served." This petition is Challenging the Constitutionality of NRS. 209.4465(2) and how it is applied to petitioners Sentence as well as the duration of that Sentence. NDOC AR 740.03. 3. B. (see Exhibit for AR 740). States "Only inmates Claimes arising out of, or related to Issues within the authority and Control of the Department May be Submitted for Review and Resolution

MEMORANDUM OF POINTS AND AUTHORITIES

Non-grievable issues include: (B) State, Federal and local Law regulations;" Therefore petitioner is unable to Exhaust his administrative remedies, and in doing so would be an abuse of the grievance procedures (See Exhibit AR 740.04) and possible disciplinary action may be taken upon the Petitioner. Petitioner prays this Court will construe this petition liberally, and understand petitioner has limited access to the Law Due to Covid-19. Petitioner is Not an Attorney and is Not Adversed in the Law. Petitioner believes that a Writ of Habeas Corpus is the proper Vehicle to attack the Constitutionality of NRS. 209.4465(2) and how it is being applied by NDOC, causing the duration of petitioners Sentence to be longer. "The essence of Habeas Corpus is an attack by a person in custody upon the legality of that custody." Preiser v. Rodriguez 411 us 475, 484, 36 L.Ed. 2d 439, 93 S.Ct. 1827 (1973). When a Prisoner Challenges "The Fact or Duration of his Confinement", based upon the alleged unconstitutionality of State administrative action, Such a Challenge is Just as Close to the Core of a Habeas Corpus as an attack on the Prisoners Conviction." Id at 489

MEMORANDUM OF POINTS AND AUTHORITIES

BRIEF STATEMENT OF FACTS AND CASE HISTORY

Prisoners may not attempt to evade habeas procedural requirements such as exhaustion of state remedies by characterizing their claims as seeking some other type of relief. *Id.* at 489-90. Thus in *Preiser* the Supreme Court held that a prisoner could not bring a civil complaint in court when the prisoner was seeking injunctive relief to compel the restoration of good conduct time credits. *Id.* at 487. Because the requested relief necessarily would have resulted in the shortening duration of the prisoners confinement, the court held that habeas corpus is the prisoners sole remedy. *Id.* at 500. Petitioner challenging labor credits being removed is challenging his continued confinement, thus a habeas corpus is the only way to attack his continued confinement / duration of that confinement and the unconstitutionality of state administrative actions. Petitioner prays this court issue an order wherein NRS. 209.4465(2) is unconstitutional

and Violates the following Constitutional Rights of Petitioner; Equal Protection, Due Process, Diliberate Indifference, Petitioner Also request Injunctive Relief to Compel the restoration of Labor Credits and Stop NDoc from Removing anymore labor Credits for the remainder of Petitioners Sentence.

Respectfully Submitted,

Dated this 21st day of April, 2021.

By:

Kenneth Cizek

CERTIFICATE OF SERVICE

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

Attorney General of Nevada
100 N. Carson Street
Carson City, NV 89701-4717

AND

Dated this 21st day of April, 2021.

By: Kenneth Cizek

Movant, In Proper Person

AFFIRMATION PURSUANT TO NRS 239B.030

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

Persons.

4/21/2021
(Date)

[Signature]
(Signature)

EXHIBIT A

Administrative Regulation - 740

AR - 507

NRS. 209.4465 (2)

Vickers V. Dzurenda 433 P.3d 306

EXHIBIT A

**NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION**

740

INMATE GRIEVANCE PROCEDURE

Supersedes: AR 740 (02/12/10); and AR 740 (Temporary, 06/16/14); 09/16/14; (Temporary, 01/03/17); 03/07/17; 08/30/17

Effective Date: Temporary 11/20/18

AUTHORITY: NRS 209.131, 209.243; 41.031; 41.0322; 41.0375; 42 U.S.C. § 15601, *et seq.* and 28 C.F.R. Part 115

PURPOSE:

The purpose of this Administrative Regulation ("AR") is to set forth the requirements and procedures of the administrative process that Nevada Department of Corrections ("NDOC") inmates must utilize to resolve addressable grievances and claims including, but not limited to, claims for personal property, property damage, disciplinary appeals, personal injuries, and any other tort or civil rights claim relating to conditions of confinement. Inmates may use the Inmate Grievance Procedure to resolve addressable inmate claims only if the inmate can factually demonstrate a loss or harm. This procedure describes the formal grievance processes and will guide NDOC employees in the administration, investigation, response and resolution of inmate grievances. The provisions of this AR shall be effective on or after the effective date of this AR. The provisions of this AR are not retroactive and do not apply to incidents and/or claims that occurred prior to the effective date of this AR. Only inmate claims arising out of, or relating to, issues within the authority and control of the NDOC may be submitted for review and resolution by way of the grievance process. A good faith effort will be made to resolve legitimate inmate claims without requiring the inmate to file a formal grievance. This AR does not create any right, liberty or property interest, or establish the basis for any cause of action against the State of Nevada, its political subdivisions, agencies, boards, commissions, departments, officers or employees.

RESPONSIBILITY

1. The Director, through the Deputy Directors (DDs), shall be responsible in establishing and supervising an inmate grievance process that provides an appropriate response to an inmate's claim, as well as an administrative means for prompt and fair resolution of, inmate problems and concerns.
2. The Deputy Director or designated Administrator shall be responsible for 2nd level grievances.
3. The Warden through the Associate Wardens (AWs) shall be responsible in managing the grievance process at each institution and any facilities under the control of the parent institution. The AW may designate an Inmate Grievance Coordinator to conduct functions

required by this regulation under the AW authority and supervision.

740.01 ADMINISTRATION OF INMATE GRIEVANCES

1. All grievances, whether accepted or not, will be entered into NOTIS.
2. Each institution/facility shall establish locked boxes where all inmates have access to submit their grievances directly to the box. Keys will be issued by the Warden, to an AW and/or a designated staff.
 - A. Lock boxes will be maintained in segregation/max units in a manner in which the inmate will be allowed to have direct access. A designated staff may go cell to cell to pick up grievances in segregation /max units due to security and safety concerns, if necessary.
 - B. Emergency grievances will be handed to any staff member for immediate processing per this regulation.
3. Grievances will be treated as legal correspondence and will be gathered daily, Monday through Friday, excluding holidays, by the AW or designated Grievance Coordinator(s) and or designated staff member.
4. Grievance forms will be kept in housing units and may be accessed through the unit staff, the unit caseworker or in the Institutional Law Library.
5. Grievances may be GRANTED, DENIED, PARTIALLY GRANTED, ABANDONED, DUPLICATE NOT ACCEPTED, OR GRIEVABLE, RESOLVED, SETTLEMENT OR WITHDRAWN or referred to the Investigator General's Office at any level as deemed appropriate after the claim in the grievance has been investigated. PREA grievances shall immediately be referred to the Inspector General. Grievance findings or responses will not be titled "Substantiated."
6. The Grievance Coordinator should record receipts, transmittals, actions, and responses on all grievances to NOTIS within three (3) working days of receipt.
 - A. The coordinator should sign, date and enter the approximate time as noted on DOC 3091, 3093 and 3094.
 - B. The front page of the grievance should be date stamped the day entered into NOTIS.
7. Monthly and annual grievance reports generated by NOTIS will be reviewed by the Deputy Directors (DDs), Wardens and Associate Wardens (AWs) on a quarterly and annual basis.

740.02 GRIEVANCE RECORDS

1. Grievance documents shall be stored at the facility/institution where the grievance issue occurred. The results of the grievance shall be stored in NOTIS.

- A. Grievance files shall be in separate files for each inmate and maintained in alphabetical order.
 - B. Grievance copies shall not be placed in an inmate's Institutional or Central File, nor shall they be available to employees not involved in the grievance process, unless the employee has a need for the information in the grievance or the responses to the grievance.
- 2. Grievance files shall be maintained at each institution for a minimum of five (5) years following final disposition of the grievance.
 - 3. Employees who are participating in the disposition of a grievance shall have access to records essential to the disposition of the grievance only.
 - 4. Inmates will not have access to grievance records unless ordered by a court, as grievance records are considered confidential and they may be redacted, if appropriate.
 - 5. Upon completion of each level of the grievance process, the form and copies of all relevant attachments shall be maintained in the inmate's separate grievance file. Originals shall be given to the inmate.

740.03 GRIEVANCE ISSUES

- 1. Inmates may use the Inmate Grievance Procedure to resolve addressable inmate claims, only if the inmate can factually demonstrate a loss or harm. Grievances may be filed to include, but not limited to, personal property, property damage, disciplinary appeals, personal injuries, and any other tort claim or civil rights claim relating to conditions of institutional life. The inmate must state the action or remedy that will satisfy the claim in the grievance.
 - A. If the inmate does not factually demonstrate a loss or harm and does not state the action or remedy that will satisfy the claim in the grievance, the grievance will not be accepted and returned to the inmate with an explanation as to what was missing in order for the grievance to be processed.
 - B. A Grievance will not be used as an inmate request form (DOC 3012) to advise staff of issues, actions or conditions that they do not like but suffered no harm or loss.
 - C. A Grievance must be legible, with a clearly defined remedy requested.
- 2. All allegations of inmate abuse by Department staff, employees, agents or independent contractors, shall be immediately reported to the Warden, AWs, and the Inspector General's Office, in accordance with investigator guidelines via the NOTIS reporting system.

- A. Any grievance reporting of sexual abuse against an inmate will be referred to the Warden or designee for entry into the NOTIS reporting system and referral to the Office of the Inspector General.
- B. Inmates who allege abuse other than sexual abuse will be interviewed by a supervisor of the staff who allegedly committed the abuse to ascertain if he/she agrees to pursue administrative remedies, which will be documented in the NOTIS system.
- 3. Only inmate claims arising out of, or relating to, issues within the authority and control of the Department may be submitted for review and resolution. Non-grievable issues include:
 - A. State and federal court decisions.
 - B. State, federal and local laws and regulations.
 - C. Parole Board actions and/or decisions.
 - D. Medical diagnosis, medication or treatment/care provided by a private/contract community hospital.
- 4. Claims for which the inmate lacks standing will not be accepted, including, but not limited to:
 - A. Filing a grievance on behalf of another inmate unless the inmate is so physically or emotionally handicapped as to be incapable of filing a grievance, and with the other inmate's approval, or in the case(s) of any third party reporting of Sexual Abuse.
 - B. The inmate filing the grievance was not a direct participant in the matter being grieved, except a third party allegation of sexual abuse.
 - C. An inmate may not file more than one (1) grievance per seven (7) day week, Monday through Sunday. More than one (1) grievance filed during the seven day week period will not be accepted, unless it alleges sexual abuse or it is an emergency grievance that involves health or safety claims.
 - D. The inclusion of more than one grievance issue, per form will be cause for the grievance to not be accepted.
 - E. Grievances that have the same issue in a previously filed grievance will not be accepted, even if the requested action or remedy is different on the subsequent grievance.
- 5. In the event an inmate's claim is not accepted or not within the intended scope of this Regulation, the inmate may not appeal that decision to the next procedural level.

6. An inmate whose grievance is denied in its entirety may appeal the grievance to the next level, within the substantive and procedural requirements outlined herein, unless the action requested has already been Granted at a lower level.
 - A. Administrators or employees of the institution shall automatically allow appeals without interference unless the grievance is granted..
 - B. An inmate's election not to sign and date any grievance form at any level shall constitute abandonment of the claim.
 - C. If the Grievance is "**Granted**" at any level, the grievance process is considered complete and the inmate's administrative remedies exhausted, and the inmate cannot appeal the decision to a higher level.
7. Time limits shall begin to run from the date an inmate receives a response.
8. An overdue grievance response at any level is not an automatic finding for the inmate.
 - A. The response must be completed, even if it is overdue.
 - B. The inmate may proceed to the next grievance level, if a response is overdue.
 - C. The overdue response does not count against the inmate's timeframe for an appeal if he or she waits for the response before initiating the appeal.
9. Inmates who participate in or utilize the Inmate Grievance Procedure shall not be subjected to retaliation, i.e. an assertion that an employee took some adverse action against an inmate for filing a grievance, except as noted in 740.05, where the action did not reasonably advance a legitimate correctional goal.
 - A. Retaliation is a grievable issue.
 - B. An unfounded claim of retaliation will be handled as an abuse of the grievance procedure and a disciplinary action may be taken.
10. Comprehensive responses are required for inmate grievances. Statements such as "Your grievance is denied" are not acceptable. An explanation is necessary.

740.04 ABUSE OF THE INMATE GRIEVANCE PROCEDURE

1. Inmates are encouraged to use the Grievance Procedure to resolve addressable claims where the inmate can define a specific loss or harm, however, they are prohibited from abusing the system by knowingly, willfully or maliciously filing excessive, frivolous or vexatious grievances, which are considered to be an abuse of the Inmate Grievance Procedure. Any of the below listed violations will result in the grievance being not accepted and disciplinary action may be taken.

K R- 507

NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION
507

ADMINISTRATIVE SEGREGATION

Supersedes: AR 507 (Temporary, 04/10/10)
Effective Date: 05/20/10

AUTHORITY

NRS 209.131

RESPONSIBILITY

An Associate Warden is responsible to ensure that proper procedures are followed in the placement, retention and release of inmates from administrative segregation.

507.01 GENERAL PROCEDURES

1. ADMINISTRATIVE SEGREGATION CLASSIFICATION

~~A. Where segregation units exist, the supervision of inmates under administrative segregation will be governed by written procedure. (4-4237)~~

~~B. Inmates will be temporarily placed in administrative segregation to protect the safety of the inmate, other persons, the institution or community or to conduct investigations into violent misconduct or misconduct which threatens escape or a significant disruption of institutional operations.~~

C. The inmate will be retained in administrative segregation only after a completion of formal classification procedures.

D. Administrative segregation is not to be used for the purpose of punishment.

~~E. Administrative segregation may also be used:~~

~~(1) For inmates seeking or being recommended for protective segregation only in those institutions where conventional protective segregation housing areas do not exist pending transfer to institutions with protective segregation housing areas.~~

(2) Where an inmate in protective segregation cannot be housed safely with other protective segregation inmates

NRS. 209. 4465

3'

Vickers J. Dzurenda

Plain language of NRS 209.4465(2) requiring "diligence in labor" means an offender must actually work to earn labor credits. *Vickers v. Dzurenda*, 433 P.3d 306, 134 Nev. Adv. Rep. 91, 2018 Nev. App. LEXIS 14 (Nev. Ct. App. 2018).

Although appellant argued he was entitled to 10 days per month labor credit for each month he was willing and able to work, regardless of whether he actually worked, the plain meaning of NRS 209.4465(2) belied appellant's arguments. Because appellant admitted he had not worked, he was not entitled to labor credits, and the district court did not err in dismissing his postconviction petition. *Vickers v. Dzurenda*, 433 P.3d 306, 134 Nev. Adv. Rep. 91, 2018 Nev. App. LEXIS 14 (Nev. Ct. App. 2018).

Plaintiff is unable to work

Motion for Leave to
Proceed in Forma
Pauperis
(Kenneth Cizek)

Filed April 27, 2021

REC'D & FILED ✓

2021 APR 30 AM 11:55

AUSREY ROGLATT
CLERK

BY _____
DEPUTY

**FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY**

KENNETH ROBERT CIZEK,

CASE NO 21 EW 00017 1B

Petitioner,

DEPT. 2

vs.

**CHARLES DANIELS, NDOC
Director,**

Respondent.

**ORDER REQUIRING ANSWER OR RESPONSE AND RETURN
TO POSTCONVICTION PETITION FOR WRIT OF HABEAS CORPUS
AND
SETTING STATUS CONFERENCE RE TIMELY FILING**

Petitioner filed a Petition for Writ of Habeas Corpus (Post Conviction) on
April 27, 2021. A copy of the Petition is attached to this order.

NRS 34.745(2) provides:

If a petition challenges the computation of time that the
petitioner has served pursuant to a judgment of conviction, the
judge...shall order the Attorney General to:

(a) File:

(1) A response or an answer to the petition; and

(2) A return,

within 45 days or a longer period fixed by the judge.

THE COURT ORDERS:

The Attorney General will file a response or an answer to the petition, and a
return, by **June 1, 2021**.

1 A status hearing to check on the timely filing of an answer or response is set for
2 **June 22, 2021.** If the Attorney General timely files an answer or response the
3 status hearing will be vacated without further order. If a response is not timely
4 filed the attorney handling the case for the Attorney General must appear.

5 With his petition, Petitioner filed a Motion for Leave to Proceed in Forma
6 Pauperis. There are no filing fees in cases involving a petition for writ of habeas
7 corpus, so Petitioner's motion for leave is denied.

8 April 30, 2021.

9 
10 JAMES E. WILSON JR.
11 District Judge
12
13

14 **CERTIFICATE OF SERVICE**

15 I certify that I am an employee of the First Judicial District Court of
16 Nevada; that on the 30 day of April 2021 I served a copy of this document by
17 placing a true copy in an envelope addressed to:

18 Office of the Attorney General
19 100 N. Carson Street
20 Carson City, NV 89701

Kenneth Cizek, #1234275
NNCC
P.O. Box 7000
Carson City, NV 89702

21 the envelope sealed and then deposited in the Court's central mailing basket in the
22 court clerk's office for delivery to the USPS at 1111 South Roop Street, Carson City,
23 Nevada, for mailing.

24 
25 Bessie Shadron
26 Judicial Assistant
27
28

REC'D & FILED

2021 MAY -4 AM 9:45

AUDREY ROWLAND
CLERK

BY  DEPUTY

**FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY**

KENNETH ROBERT CIZEK,

CASE NO 21 EW 00017 1B

Petitioner,

DEPT. 2

vs.

**CHARLES DANIELS, NDOC
Director,**

Respondent.

**AMENDED ORDER REQUIRING ANSWER OR RESPONSE AND
RETURN TO POSTCONVICTION PETITION FOR WRIT OF HABEAS
CORPUS AND SETTING STATUS CONFERENCE RE TIMELY FILING**

Petitioner filed a Petition for Writ of Habeas Corpus (Post Conviction) on April 27, 2021. An earlier version of this order was entered on April 30, 2021, which mistakenly did not include a copy of the petition and did not include the time of the status check hearing. A copy of the Petition is attached to this order.

NRS 34.745(2) provides:

If a petition challenges the computation of time that the petitioner has served pursuant to a judgment of conviction, the judge...shall order the Attorney General to:

(a) File:

(1) A response or an answer to the petition; and

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within 45 days or a longer period fixed by the judge.

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2 A status hearing to check on the timely filing of an answer or response is set for
3 **June 22, 2021 at 11:00 a.m.** If the Attorney General timely files an answer or
4 response the status hearing will be vacated without further order. If a response is
5 not timely filed the attorney handling the case for the Attorney General must
6 appear.

7 With his petition, Petitioner filed a Motion for Leave to Proceed in Forma
8 Pauperis. There are no filing fees in cases involving a petition for writ of habeas
9 corpus, so Petitioner's motion for leave is denied.

10 May 3, 2021.

11 
12 JAMES E. WILSON JR.
13 District Judge

14 **CERTIFICATE OF SERVICE**

15 I certify that I am an employee of the First Judicial District Court of
16 Nevada; that on the 4 day of May 2021 I served a copy of this document by
17 placing a true copy in an envelope addressed to:

18 Office of the Attorney General
19 100 N. Carson Street
20 Carson City, NV 89701

Kenneth Cizek, #1234275
NNCC
P.O. Box 7000
Carson City, NV 89702

21 the envelope sealed and then deposited in the Court's central mailing basket in the
22 court clerk's office for delivery to the USPS at 1111 South Roop Street, Carson City,
23 Nevada, for mailing.

24 
25 Beanie Shadron
26 Judicial Assistant
27
28

Kenneth Robert Cizek
(Name)

1234275
(I.D. No.)

Northern Nevada Correctional Center
Post Office Box 7000
Carson City, NV 89702

Movant, In Proper Person

REC'D & FILED

2021 APR 27 PM 2:17

AUDREY ROWLAND
CLERK

BY KP
CLERK

First Judicial Dist. Court State of
Nevada IN and for Carson

Kenneth Robert Cizek

Plaintiff/Movant

vs.
Charles Daniels, NDoc Dir.

Defendant/Respondent

Case No.: 21 EW 000171B
Dept. II

Writ of habeas Corpus
Injunction

COMES NOW, Kenneth Cizek, in proper person and herein
above respectfully moves this Honorable Court for a(n) granting writ of
habeas Corpus / Injunction

The instant motion is made and based upon all papers and pleadings on file herein as well
as the following Memorandum of Points and Authorities and attached exhibits (where
applicable).

MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner is an Inmate in the lawful Custody of the Nevada Department of Corrections (NDOC). Since the time the petitioner was remanded to the NDOC, he has been penalized 10 days per month, 120 days per year Labor Credits for Not being "Diligence in labor per" NRS. 209.4465 (2). The NDOC Pre-Calculates an offenders Sentence 10 days per month / 120 days per year labor Credits once NDOC enters the Judgement of Conviction for that offender. By Pre-Calculating the 10 days per month / 120 days per year labor Credits this shortens an offenders Sentence/Experation date; and once an offender is Not "diligence in labor" the NDOC removes 10 days a month labor Credits for that month causing the offenders Sentence and Experation Date to move into the future, causing him to serve a longer Sentence. Petitioner is currently housed in Administrative Segregation at No Fault of his own, and due to Covid-19 he is unable to be transferred to a facility where he would be able to be diligence in labor and keeping his experation date from moving 10 days per month into the future. Administrative Segregation (Ad-Seg) is a limited Movement housing unit and Inmated Housed in this unit Are Not Afforded

MEMORANDUM OF POINTS AND AUTHORITIES

the ability to earn labor Credits. This administrative action clearly violates the U.S. Constitutional Amendment XIV- Equal Protection Clause, by treating different classes of inmates differently. Inmates who are housed in General Population are clearly able to keep their labor Credits while those who are housed in Ad-Seg are penalized for being classified differently. The State will argue that in the case of Vickers v. Dzurenda, 433 P.3d 306, 134 Nev. Adv. Rep. 91, 2018 Nev. App. Lexis 14, Petitioner is admitting he has not worked and just like in the Vickers case he is not entitled to labor Credits per NRS. 209.4465(2). Petitioner's case and the Vickers case are far from the same. The inmate in the Vickers case was in general population and afforded the right to work. Also the inmate in the Vickers case did not bring up the fact that NDOC pre-calculates the labor Credits and removes them without notice or hearing violating Due Process. Petitioner will show several constitutional violations of NRS. 209.4465(2) and NDOC, showing the difference between this petition and the Vickers case. For example per NDOC's own Administrative Regulation 507 (AR) (See Exhibit for AR 507). Ad-Seg is not to be used

MEMORANDUM OF POINTS AND AUTHORITIES

as punishment. However, is it Not Punishment by Causing Ad-Seg Inmates to Serve Longer Sentences, by penalizing their expiration Dates 10 days per Month / 120 days per year? This Violates the Constitutional Amendment of "Due Process" by removing Labor Credits without No Notice or hearing therefore, Depriving Petitioner of his Constitutional Right to "Due Process". Also NDOC Knows or Should have Known that NRS. 209.4465(2) is unconstitutional and Violates offenders Constitutional rights and Therefore NDOC is being "Diliberatly indifferent" to the rights of offenders in its Custody. NRS. 34.724(1) Now requires Prisoners "to Exhaust all available administrative remedies before filing a Post Conviction Petition for a Writ of Habeas Corpus Challenging the Computation of time the offender has served." This Petition is Challenging the Constitutionality of NRS. 209.4465(2) and how it is applied to petitioners Sentence as well as the duration of that Sentence. NDOC AR 740.03. 3.B. (see Exhibit for AR 740). States "Only inmates Claims arising out of, or related to, Issues within the authority and Control of the Department May be Submitted for Review and Resolution

MEMORANDUM OF POINTS AND AUTHORITIES

Non-grievable issues include: (B) State, Federal and local Law regulations;" Therefore petitioner is unable to Exhaust his administrative remedies, and in doing so would be an abuse of the grievance procedures (See Exhibit AR 740.04) and possible disciplinary action may be taken upon the Petitioner. Petitioner prays this Court will construe this petition liberally, and understand petitioner has limited access to the Law Due to Covid-19. Petitioner is Not an Attorney and is Not Adversed in the Law. Petitioner believes that a Writ of habeas Corpus is the proper vehicle to attack the Constitutionality of NRS. 209.4465(2) and how it is being applied by NDOC, causing the duration of petitioners sentence to be longer." The essence of Habeas Corpus is an attack by a person in custody upon the legality of that custody." Preiser v. Rodriguez 411 us 475, 484, 36 L.Ed. 2d 439, 93 S.Ct. 1827 (1973). When a prisoner challenges "The fact or Duration of his confinement, based upon the alleged unconstitutionality of State administrative action, Such a Challenge is Just as close to the core of a Habeas Corpus as an attack on the prisoners conviction." Id at 489

MEMORANDUM OF POINTS AND AUTHORITIES

BRIEF STATEMENT OF FACTS AND CASE HISTORY

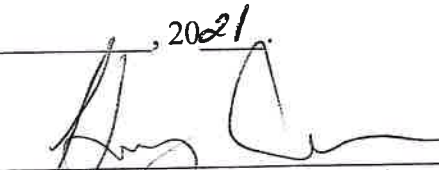
Prisoners may not attempt to evade habeas procedural requirements such as exhaustion of state remedies by characterizing their claims as seeking some other type of relief. *Id.* at 489-90. Thus in *Preiser* the Supreme Court held that a prisoner could not bring a civil complaint in court when the prisoner was seeking injunctive relief to compel the restoration of good conduct time credits. *Id.* at 487. Because the requested relief necessarily would have resulted in the shortening duration of the prisoners confinement, the Court held that habeas corpus is the prisoners sole remedy. *Id.* at 500. Petitioner challenging labor credits being removed is challenging his continued confinement, thus a habeas corpus is the only way to attack his continued confinement / duration of that confinement and the unconstitutionality of state administrative actions. Petitioner prays this Court issue an order wherein NRS. 209.4465(2) is unconstitutional

and Violates the following Constitutional Rights of Petitioner; Equal Protection, Due Process, Diliberate Indifference, Petitioner Also request Injunctive Relief to Compel the restoration of Labor Credits and Stop NDOC from Removing anymore labor Credits for the remainder of Petitioners Sentence.

Respectfully Submitted,

Dated this 21st day of April, 2021.

By:


Kenneth Cizek


CERTIFICATE OF SERVICE

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

Attorney General of Nevada
100 N. Carson Street
Carson City, NV 89701-4717

AND

Dated this 21st day of April, 2021.

By: 

Movant, In Proper Person

AFFIRMATION PURSUANT TO NRS 239B.030

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

4/21/2021
(Date)

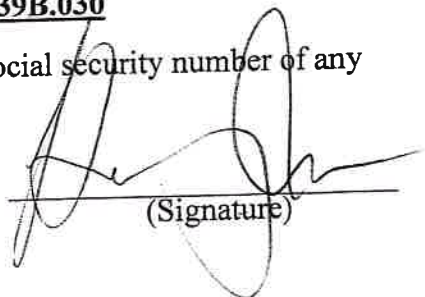

(Signature)

EXHIBIT A

Administrative Regulation - 740
AR - 507

NRS. 209.4465 (2)

Vickers V. Dzurenda 433 P.3d 306

EXHIBIT A

NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION
740

INMATE GRIEVANCE PROCEDURE

Supersedes: AR 740 (02/12/10); and AR 740 (Temporary, 06/16/14); 09/16/14; (Temporary, 01/03/17); 03/07/17; 08/30/17

Effective Date: Temporary 11/20/18

AUTHORITY: NRS 209.131, 209.243; 41.031; 41.0322; 41.0375; 42 U.S.C. § 15601, *et seq.* and 28 C.F.R. Part 115

PURPOSE:

The purpose of this Administrative Regulation ("AR") is to set forth the requirements and procedures of the administrative process that Nevada Department of Corrections ("NDOC") inmates must utilize to resolve addressable grievances and claims including, but not limited to, claims for personal property, property damage, disciplinary appeals, personal injuries, and any other tort or civil rights claim relating to conditions of confinement. Inmates may use the Inmate Grievance Procedure to resolve addressable inmate claims only if the inmate can factually demonstrate a loss or harm. This procedure describes the formal grievance processes and will guide NDOC employees in the administration, investigation, response and resolution of inmate grievances. The provisions of this AR shall be effective on or after the effective date of this AR. The provisions of this AR are not retroactive and do not apply to incidents and/or claims that occurred prior to the effective date of this AR. Only inmate claims arising out of, or relating to, issues within the authority and control of the NDOC may be submitted for review and resolution by way of the grievance process. A good faith effort will be made to resolve legitimate inmate claims without requiring the inmate to file a formal grievance. This AR does not create any right, liberty or property interest, or establish the basis for any cause of action against the State of Nevada, its political subdivisions, agencies, boards, commissions, departments, officers or employees.

RESPONSIBILITY

1. The Director, through the Deputy Directors (DDs), shall be responsible in establishing and supervising an inmate grievance process that provides an appropriate response to an inmate's claim, as well as an administrative means for prompt and fair resolution of, inmate problems and concerns.
2. The Deputy Director or designated Administrator shall be responsible for 2nd level grievances.
3. The Warden through the Associate Wardens (AWs) shall be responsible in managing the grievance process at each institution and any facilities under the control of the parent institution. The AW may designate an Inmate Grievance Coordinator to conduct functions

required by this regulation under the AW authority and supervision.

740.01 ADMINISTRATION OF INMATE GRIEVANCES

1. All grievances, whether accepted or not, will be entered into NOTIS.
2. Each institution/facility shall establish locked boxes where all inmates have access to submit their grievances directly to the box. Keys will be issued by the Warden, to an AW and/or a designated staff.
 - A. Lock boxes will be maintained in segregation/max units in a manner in which the inmate will be allowed to have direct access. A designated staff may go cell to cell to pick up grievances in segregation /max units due to security and safety concerns, if necessary.
 - B. Emergency grievances will be handed to any staff member for immediate processing per this regulation.
3. Grievances will be treated as legal correspondence and will be gathered daily, Monday through Friday, excluding holidays, by the AW or designated Grievance Coordinator(s) and or designated staff member.
4. Grievance forms will be kept in housing units and may be accessed through the unit staff, the unit caseworker or in the Institutional Law Library.
5. Grievances may be GRANTED, DENIED, PARTIALLY GRANTED, ABANDONED, DUPLICATE NOT ACCEPTED, OR GRIEVABLE, RESOLVED, SETTLEMENT OR WITHDRAWN or referred to the Investigator General's Office at any level as deemed appropriate after the claim in the grievance has been investigated. PREA grievances shall immediately be referred to the Inspector General. Grievance findings or responses will not be titled "Substantiated."
6. The Grievance Coordinator should record receipts, transmittals, actions, and responses on all grievances to NOTIS within three (3) working days of receipt.
 - A. The coordinator should sign, date and enter the approximate time as noted on DOC 3091, 3093 and 3094.
 - B. The front page of the grievance should be date stamped the day entered into NOTIS.
7. Monthly and annual grievance reports generated by NOTIS will be reviewed by the Deputy Directors (DDs), Wardens and Associate Wardens (AWs) on a quarterly and annual basis.

740.02 GRIEVANCE RECORDS

1. Grievance documents shall be stored at the facility/institution where the grievance issue occurred. The results of the grievance shall be stored in NOTIS.

- A. Grievance files shall be in separate files for each inmate and maintained in alphabetical order.
 - B. Grievance copies shall not be placed in an inmate's Institutional or Central File, nor shall they be available to employees not involved in the grievance process, unless the employee has a need for the information in the grievance or the responses to the grievance.
- 2. Grievance files shall be maintained at each institution for a minimum of five (5) years following final disposition of the grievance.
 - 3. Employees who are participating in the disposition of a grievance shall have access to records essential to the disposition of the grievance only.
 - 4. Inmates will not have access to grievance records unless ordered by a court, as grievance records are considered confidential and they may be redacted, if appropriate.
 - 5. Upon completion of each level of the grievance process, the form and copies of all relevant attachments shall be maintained in the inmate's separate grievance file. Originals shall be given to the inmate.

740.03 GRIEVANCE ISSUES

- 1. Inmates may use the Inmate Grievance Procedure to resolve addressable inmate claims, only if the inmate can factually demonstrate a loss or harm. Grievances may be filed to include, but not limited to, personal property, property damage, disciplinary appeals, personal injuries, and any other tort claim or civil rights claim relating to conditions of institutional life. The inmate must state the action or remedy that will satisfy the claim in the grievance.
 - A. If the inmate does not factually demonstrate a loss or harm and does not state the action or remedy that will satisfy the claim in the grievance, the grievance will not be accepted and returned to the inmate with an explanation as to what was missing in order for the grievance to be processed.
 - B. A Grievance will not be used as an inmate request form (DOC 3012) to advise staff of issues, actions or conditions that they do not like but suffered no harm or loss.
 - C. A Grievance must be legible, with a clearly defined remedy requested.
- 2. All allegations of inmate abuse by Department staff, employees, agents or independent contractors, shall be immediately reported to the Warden, AWs, and the Inspector General's Office, in accordance with investigator guidelines via the NOTIS reporting system.

- A. Any grievance reporting of sexual abuse against an inmate will be referred to the Warden or designee for entry into the NOTIS reporting system and referral to the Office of the Inspector General.

- B. Inmates who allege abuse other than sexual abuse will be interviewed by a supervisor of the staff who allegedly committed the abuse to ascertain if he/she agrees to pursue administrative remedies, which will be documented in the NOTIS system.
- 3. Only inmate claims arising out of, or relating to, issues within the authority and control of the Department may be submitted for review and resolution. Non-grievable issues include:
 - A. State and federal court decisions.
 - B. State, federal and local laws and regulations.
 - C. Parole Board actions and/or decisions.
 - D. Medical diagnosis, medication or treatment/care provided by a private/contract community hospital.
- 4. Claims for which the inmate lacks standing will not be accepted, including, but not limited to:
 - A. Filing a grievance on behalf of another inmate unless the inmate is so physically or emotionally handicapped as to be incapable of filing a grievance, and with the other inmate's approval, or in the case(s) of any third party reporting of Sexual Abuse.
 - B. The inmate filing the grievance was not a direct participant in the matter being grieved, except a third party allegation of sexual abuse.
 - C. An inmate may not file more than one (1) grievance per seven (7) day week, Monday through Sunday. More than one (1) grievance filed during the seven day week period will not be accepted, unless it alleges sexual abuse or it is an emergency grievance that involves health or safety claims.
 - D. The inclusion of more than one grievance issue, per form will be cause for the grievance to not be accepted.
 - E. Grievances that have the same issue in a previously filed grievance will not be accepted, even if the requested action or remedy is different on the subsequent grievance.
- 5. In the event an inmate's claim is not accepted or not within the intended scope of this Regulation, the inmate may not appeal that decision to the next procedural level.

6. An inmate whose grievance is denied in its entirety may appeal the grievance to the next level, within the substantive and procedural requirements outlined herein, unless the action requested has already been Granted at a lower level.
 - A. Administrators or employees of the institution shall automatically allow appeals without interference unless the grievance is granted..
 - B. An inmate's election not to sign and date any grievance form at any level shall constitute abandonment of the claim.
 - C. If the Grievance is "Granted" at any level, the grievance process is considered complete and the inmate's administrative remedies exhausted, and the inmate cannot appeal the decision to a higher level.
7. Time limits shall begin to run from the date an inmate receives a response.
8. An overdue grievance response at any level is not an automatic finding for the inmate.
 - A. The response must be completed, even if it is overdue.
 - B. The inmate may proceed to the next grievance level, if a response is overdue.
 - C. The overdue response does not count against the inmate's timeframe for an appeal if he or she waits for the response before initiating the appeal.
9. Inmates who participate in or utilize the Inmate Grievance Procedure shall not be subjected to retaliation, i.e. an assertion that an employee took some adverse action against an inmate for filing a grievance, except as noted in 740.05, where the action did not reasonably advance a legitimate correctional goal.
 - A. Retaliation is a grievable issue.
 - B. An unfounded claim of retaliation will be handled as an abuse of the grievance procedure and a disciplinary action may be taken.
10. Comprehensive responses are required for inmate grievances. Statements such as "Your grievance is denied" are not acceptable. An explanation is necessary.

740.04 ABUSE OF THE INMATE GRIEVANCE PROCEDURE

1. Inmates are encouraged to use the Grievance Procedure to resolve addressable claims where the inmate can define a specific loss or harm, however, they are prohibited from abusing the system by knowingly, willfully or maliciously filing excessive, frivolous or vexatious grievances, which are considered to be an abuse of the Inmate Grievance Procedure. Any of the below listed violations will result in the grievance being not accepted and disciplinary action may be taken.

HR-507

**NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION
507**

ADMINISTRATIVE SEGREGATION

Supersedes: AR 507 (Temporary, 04/10/10)
Effective Date: 05/20/10

AUTHORITY

NRS 209.131

RESPONSIBILITY

An Associate Warden is responsible to ensure that proper procedures are followed in the placement, retention and release of inmates from administrative segregation.

507.01 GENERAL PROCEDURES

1. ADMINISTRATIVE SEGREGATION CLASSIFICATION

~~A. Where segregation units exist, the supervision of inmates under administrative segregation will be governed by written procedure. (4-4237)~~

~~B. Inmates will be temporarily placed in administrative segregation to protect the safety of the inmate, other persons, the institution or community or to conduct investigations into violent misconduct or misconduct which threatens escape or a significant disruption of institutional operations.~~

C. The inmate will be retained in administrative segregation only after a completion of formal classification procedures.

D. Administrative segregation is not to be used for the purpose of punishment.

~~E. Administrative segregation may also to be used:~~

~~(1) For inmates seeking or being recommended for protective segregation only in those institutions where conventional protective segregation housing areas do not exist pending transfer to institutions with protective segregation housing areas.~~

(2) Where an inmate in protective segregation cannot be housed safely with other protective segregation inmates

NRS. 209. 4465

3'

Vickers J. Dzurenda

Plain language of NRS 209.4465(2) requiring "diligence in labor" means an offender must actually work to earn labor credits. *Vickers v. Dzurenda*, 433 P.3d 306, 134 Nev. Adv. Rep. 91, 2018 Nev. App. LEXIS 14 (Nev. Ct. App. 2018).

Although appellant argued he was entitled to 10 days per month labor credit for each month he was willing and able to work, regardless of whether he actually worked, the plain meaning of NRS 209.4465(2) belied appellant's arguments. Because appellant admitted he had not worked, he was not entitled to labor credits, and the district court did not err in dismissing his postconviction petition. *Vickers v. Dzurenda*, 433 P.3d 306, 134 Nev. Adv. Rep. 91, 2018 Nev. App. LEXIS 14 (Nev. Ct. App. 2018).

Plaintiff is unable to work

AARON D. FORD
Attorney General
GEORDAN GOEBEL (Bar. No. 13132)
Deputy Attorney General
State of Nevada
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717
(775) 684-1200 (phone)
(775) 684-1108 (fax)
ggoebel@ag.nv.gov
Attorneys for Respondents

REC'D & FILED

2021 MAY -7 PM 1:35

AUSREY ROWLATT
CLERK

BY

DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

KENNETH ROBERT CIZEK,

Petitioner,

vs.

CHARLES DANIELS, NDOC DIRECTOR,

Respondent.

Case No.: 21 EW 00017 1B

Dept. No. 1

NDOC DIRECTOR DANIELS' NOTICE OF APPEARANCE FOR RESPONDENTS

The State of Nevada, by and through counsel, AARON D. FORD, Attorney General of the State of Nevada, hereby notifies the Court and respective parties to this action that Deputy Attorney General GEORDAN GOEBEL has assumed responsibility for representing the interests of the named respondent, the Attorney General of the State of Nevada, and the interests of the State of Nevada in the above-entitled action.

Attorney General Aaron D. Ford should be removed from notices on this case and all future pleadings and notices should be directed to the undersigned counsel.

RESPECTFULLY SUBMITTED this 7th day of May, 2021.

AARON D. FORD
Attorney General

By:

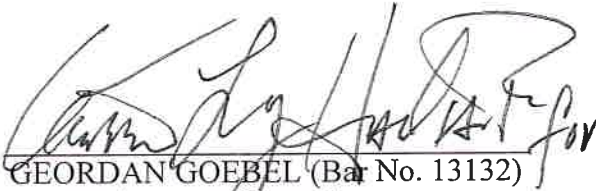
GEORDAN GOEBEL (Bar No. 13132)
Deputy Attorney General

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned hereby affirms that the preceding document does not contain the social security number of any person.

DATED this 7th day of May, 2021.

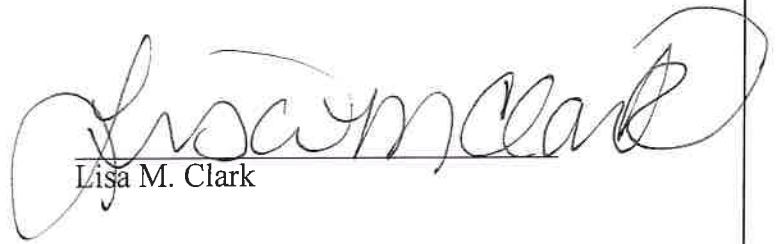
By:


GEORDAN GOEBEL (Bar No. 13132)
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 7th day of May, 2021, I caused to be deposited for mailing a true and correct copy of the foregoing, **NDOC DIRECTOR DANIELS' NOTICE OF APPEARANCE FOR RESPONDENTS**, to the following:

Kenneth Cizek, #1234275
NNCC
P.O. Box 7000
Carson City, NV 89702


Lisa M. Clark

AARON D. FORD
Attorney General
GEORDAN GOEBEL (Bar. No. 13132)
Deputy Attorney General
State of Nevada
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717
(775) 684-1200 (phone)
(775) 684-1108 (fax)
ggoebel@ag.nv.gov
Attorneys for Respondents

REC'D & FILED /
2021 JUN -1 AM 10:29
ABBEY R. BLATT
CLERK
BY [Signature] DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

KENNETH ROBERT CIZEK,

Petitioner,

vs.

CHARLES DANIELS, NDOC DIRECTOR,

Respondent.

Case No.: 21 EW 00017 1B

Dept. No. 1

**CHARLES DANIELS, NDOC DIRECTOR'S RETURN FOR PETITIONER KENNETH
ROBERT CIZEK**

Attached is a certified copy of petitioner's judgment(s) of conviction, incorporated here by reference. The attached demonstrates the petitioner is in custody or under Respondent's power or restraint, and sets forth the authority and cause of imprisonment or restraint of the petitioner. NRS 34.430(2).

AARON D. FORD
Attorney General

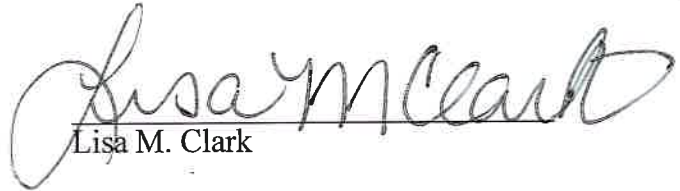
By:

[Signature]
GEORDAN GOEBEL (Bar No. 13132)
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 1st day of June, 2021, I caused to be deposited for mailing a true and correct copy of the foregoing, **CHARLES DANIELS, NDOC DIRECTOR'S RETURN FOR PETITIONER KENNETH ROBERT CIZEK,** to the following:

Kenneth Cizek, #1234275
NNCC
P.O. Box 7000
Carson City, NV 89702


Lisa M. Clark

(U.S. Rev. Statutes, Sec.906. Attestation by Legal Keeper of Records with Certificate
(seal attached) of Secretary of State to official capacity of said Legal keeper)

STATE OF NEVADA }
COUNTY OF CARSON CITY } SS

I, **Kristy Rodriguez, Official Custodian** hereby certify:

That I am the Corrections Case Records Manager of the Nevada Department of Corrections, a penal institution of the State of Nevada, situated in the County and State aforesaid; that in my legal custody as such officer are the original files and records of persons heretofore committed to said penal institution; that the (1) **Photograph, (2) Fingerprint Record and (3) Commitment** attached hereto are copies of the original records of **Cizek, Kenneth #1234275** of imprisonment therein; that I have compared the foregoing and attached copies with their respective originals now on file in my office and each thereof contains, and is, a full, true and correct transcript and copy from its said original.

IN WITNESS WHEREOF, I have here unto set my hand this **20th** day of **May, A.D. 2021**



Signature
Corrections Case Records Manager

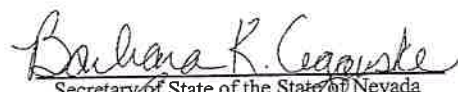
Official Title

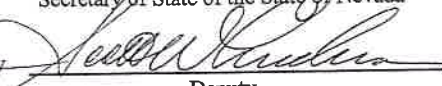
STATE OF NEVADA }
COUNTY OF CARSON CITY } SS.

I, **Barbara K Cegavske**, Secretary of State of the State of Nevada, do hereby certify that **Kristy Rodriguez**, whose name is subscribed to the above Certificate, was at the date thereof, and is now, The Corrections Case Records Manager of the Nevada Department of Corrections and is the Legal Keeper and the officer having the legal custody of the original records of said Nevada Department of Corrections; that the said Certificate is in due form; and that the signature subscribed thereto is his genuine signature.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the
Seal of the State of Nevada this 21st day of May A.D. 2021

[SEAL]



Secretary of State of the State of Nevada
By 

Deputy

1 **CODE 1850**

1234275

2020-101385

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5
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **STATE OF NEVADA,**

10 **Plaintiff,**

11 **vs.**

12 **KENNETH CIZEK,**

13 **Defendant.**

Case No. CR20-0120

Dept. No. 4

14 _____ /
15 **JUDGMENT**

16 The Defendant, having entered a plea of Guilty, and no sufficient cause
17 being shown by Defendant as to why judgment should not be pronounced against him, the
18 Court renders judgment as follows:

19 That Kenneth Cizek is guilty of the crime of Attempted Battery With Use of
20 Deadly Weapon, a violation of NRS 200.481 and NRS 193.330, a category C felony, as
21 charged in the Information, and that he be punished by imprisonment in the Nevada
22 Department of Corrections for the maximum term of sixty (60) months with the minimum
23 parole eligibility of eighteen (18) months, with credit for ninety-one (91) days time served,
24 to be served concurrently with sentence imposed in 20CR-03451.

25 The Defendant is further ordered to pay a Three Dollar (\$3.00) administrative
26 Assessment fee for obtaining a biological specimen and conducting a genetic marker
27 analysis, a Twenty-Five Dollar (\$25.00) administrative assessment fee, a One Hundred
28

1 Fifty Dollar (\$150.00) DNA analysis fee and a Five Hundred Dollar (\$500.00) attorney fee
2 for reimbursement of legal expenses to the Clerk of the Second Judicial District Court.

3 Any fees imposed today (as reflected in this Judgment) constitutes a lien, as
4 defined in NRS 176.275. Should Kenneth Cizek not pay the fees, collection efforts may be
5 undertaken against hm.

6 The fees are subject to removal from the Defendant's inmate accounts at the
7 Washoe County Jail and/or Nevada Department of Corrections.

8 Dated this 28 day of May, 2020.

9
10
11 Connie J. Steinheimer
12 DISTRICT JUDGE
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State of Nevada Department of Corrections
Booking Summary Report for: June 8, 2020

Page 1 of 2

OFFENDER:

NDOC ID#: 1234275
BOOKING ID#: 2020-101385 (ACTIVE)
NAME: CIZEK, KENNETH
DOB: 11/16/1983
AGE: 36
ADDRESS:

GENDER: MALE
POB: LINDSAY, CALIFORNIA
ADMIN DATE: 06/05/2020
COMMIT COUNTY:
TERM MIN/MAX: 0 MONTHS 0 DAYS, 0 MONTHS 0 DAYS

CIZEK, KENNETH

1234275

DESCRIPTION:

HEIGHT: 6-5
WEIGHT: 210
EYE COLOR: BLUE
HAIR COLOR: BLONDE
FACIAL HAIR: GOATEE
BUILD: LARGE
COMPLEXION: FAIR
DEXTERITY:
ETHNICITY: CAUCASIAN
DNA TAKEN: YES



IDENTIFICATION:

STATE IDENTIFICATION NUMBER:
P & P BIN:
STATE IDENTIFICATION NUMBER:
FEDERAL BUREAU OF INVESTIGATION NUMBER:
STATE IDENTIFICATION NUMBER:
SOCIAL SECURITY NUMBER:

NV04568847
1005193060
OR16340814
797977XBX4
CA21109517

COMMITMENT ORDERS / HOLDS AND DETAINERS:

NONE LISTED

ALERTS:

NONE LISTED

IDENTIFYING MARKS:

[Tattoo] Left Arm SLEEVED WITH DEVIL WOMAN, SKULLS, PLAYING CARDS, FINGERS OVER AN EYEBALL
[Tattoo] Right Arm SLEEVED WITH TOMBSTONES, ZOMBIE FEMALE, DEADSTONE WITH "DAD SERGIO M, MATT E, MATT A, NATHAN B", ROSE, BOUND ANGEL, CRYING FEMALE, SKULLS, DEVIL WOMAN
[Tattoo] Right Fingers "1937"
[Tattoo] Lower Left Arm "CHRISTIE" ON WRIST
[Tattoo] Lower Right Arm "NEVER FORGOTTEN" ON WRIST
[Tattoo] Left Fingers "ASH LIL SIS AVA, MOTHER OF ONE, LOVE HER HELP HER, KISS HER"
[Scar] Left Head SCAR ON EAR
[Tattoo] Right Leg "TC" SNAKE PIN-UP FEMALE WITH SNAKE
[Tattoo] Chest "TULARE COUNTY, LOGAN", DEVIL SKULLS
[Tattoo] Stomach MARILYN MONROE, CRYING ANGEL
[Tattoo] Neck LADY LIBERTY COVERING HER FACE, SKULLS, EYEBALL
[Tattoo] Back "CIZEK", DRAGON, SNAKE, DEMON
[Tattoo] Left Leg FEMALE ON BEACH
[Tattoo] Left Hand "RUSSIAN QUEEN" WITH CROWN
[Tattoo] Right Hand DEMON FACE

ALSO KNOWN AS:

(DOB: 11/16/1983) - CIZEK, KEN

GANG AFFILIATION:

NONE LISTED

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SUBMISSION

APPROXIMATE CLASS

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CIZEK, KENNETH

TCN: NVNDOC6005950C

SIGNATURE OF PERSON FINGERPRINTED

SOCIAL SECURITY NO

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ALIASES/MAIDEN

LAST NAME FIRST NAME MIDDLE NAME SUFFIX

UNIVERSAL CONTROL NO

STATE IDENTIFICATION NO

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FEDERAL BUREAU OF INVESTIGATION, UNITED STATES DEPARTMENT OF JUSTICE
CRIMINAL JUSTICE INFORMATION SERVICES DIVISION, CLARKSBURG, WV 26306

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CHARGE/CITATION 1. 00000, 2. 00000, 3.				DISPOSITION 1. 2. 3.	
ADDITIONAL				ADDITIONAL	
ADDITIONAL INFORMATION BASIS FOR CAUTION				STATE BUREAU STAMP Central Sites: 808 W NYE LN CARSON CITY, NV 89703	

1 AARON D. FORD
Attorney General
2 GEORDAN GOEBEL (Bar. No. 13132)
Deputy Attorney General
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7 ggoebel@ag.nv.gov
CFinlayson@ag.nv.gov
8 *Attorneys for Respondents*

REC'D & FILED

2021 JUN -1 AM 10:29

AUGREY ROWLATT
CLERK
BY RD DEPUTY

9
10 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
11 **IN AND FOR CARSON CITY**

12 KENNETH ROBERT CIZEK,

Case No.: 21 EW 00017 1B

13 Petitioner,

Dept. No. 1

14 vs.

15 CHARLES DANIELS, NDOC DIRECTOR,

16 Respondent.

17 **MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO PETITION FOR WRIT OF**
18 **HABEAS CORPUS (FIRST REQUEST) AND MOTION**
19 **TO CONTINUE STATUS CHECK HEARING**

20 Respondents, by and through counsel, Aaron D. Ford, Attorney General of the State of Nevada,
21 and Geordan Goebel, Deputy Attorney General, hereby respectfully move this Court for an order
22 granting a thirty (30) day enlargement of time, or up to and including July 1, 2021, to file and serve a
23 response to the petition for writ of habeas corpus filed by Petitioner Kenneth Robert Cizek, (Cizek).
24 Respondent also respectfully moves this Court for an order continuing the status check hearing
currently scheduled for Tuesday, June 22, 2021.

25 These motions are based upon the provisions of Nevada Rule of Civil Procedure 6(b)(1)(B),
26 District Court Rule 17, and First Judicial District Court Rule 9.

27 ///

28 ///

1 This is Respondents' first request for an enlargement of time to file their response and for a
2 continuance of the status check hearing, and they make this motion in good faith and not for the
3 purposes of any unnecessary delay.

4
5 AARON D. FORD
Attorney General

6
7 By:  
8 GEORDAN GOEBEL (Bar No. 13132)
Deputy Attorney General

AARON D. FORD
Attorney General
GEORDAN GOEBEL (Bar. No. 13132)
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Attorneys for Respondents

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

KENNETH ROBERT CIZEK,

Petitioner,

vs.

CHARLES DANIELS, NDOC DIRECTOR,

Respondent.

Case No.: 21 EW 00017 1B

Dept. No. 1

**DECLARATION OF COUNSEL IN SUPPORT OF RESPONDENT'S MOTION FOR
ENLARGEMENT OF TIME TO RESPOND TO PETITION FOR WRIT OF HABEAS
CORPUS (FIRST REQUEST) AND MOTION TO CONTINUE STATUS CHECK HEARING**

STATE OF NEVADA)
 : ss.
CARSON CITY)

I, CHARLES L. FINLAYSON, hereby state, based on personal knowledge and/or information and belief, that the assertions of this declaration are true:

1. I am a Senior Deputy Attorney General of the Post-Conviction Division of the Nevada Attorney General's Office, and I make this declaration on behalf of Respondents' motion for enlargement of time.

2. By this motion, I am requesting a thirty (30) day enlargement of time, to and including, to, to respond to Cizek's request to amend writ of habeas corpus. This is the first request for enlargement.

3. The response is currently due today, June 1, 2021.

1
2 4. Deputy Attorney General Geordan Goebel is assigned to this case. However, due to a
3 family medical emergency, Mr. Goebel will be out of the office for a prolonged period of time and is
4 unable to respond within the relevant time frame. Accordingly, Respondents respectfully request a
5 thirty-day (30-) extension of time in this matter to complete our response.

6 5. This motion for enlargement of time is made in good faith and not for the purpose of
7 unduly delaying the ultimate disposition of this case.

8 Pursuant to 28 U.S.C. § 1746, Declarant herein certifies, under penalty of perjury, that the
9 foregoing is true and correct.

10 DATED this 1st of June, 2021.

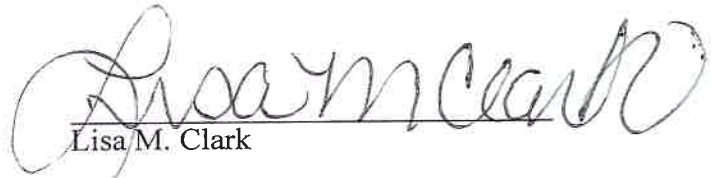
11 By:


CHARLES L. FINLAYSON (Bar No. 13685)
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 1st day of June, 2021, I caused to be deposited for mailing a true and correct copy of the foregoing, **MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO PETITION FOR WRIT OF HABEAS CORPUS (FIRST REQUEST) AND MOTION TO CONTINUE STATUS CHECK HEARING**, to the following:

Kenneth Cizek, #1234275
NNCC
P.O. Box 7000T
Carson City, NV 89702



Lisa M. Clark

1 AARON D. FORD
Attorney General
2 GEORDAN GOEBEL (Bar. No. 13132)
Deputy Attorney General
3 State of Nevada
Office of the Attorney General
4 100 North Carson Street
Carson City, NV 89701-4717
5 (775) 684-1200 (phone)
(775) 684-1108 (fax)
6 ggoebel@ag.nv.gov
Attorneys for Respondents
7

REC'D & FILED ✓

2021 JUN -9 PM 12:24

AUDREY ROBERTS
CLERK

BY RF DEPUTY

8 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
9 **IN AND FOR CARSON CITY**

10 KENNETH ROBERT CIZEK,

Case No.: 21 EW 00017 1B

11 Petitioner,

Dept. No. 1

12 vs.

13 CHARLES DANIELS, NDOC DIRECTOR,

14 Respondent.

15 **NDOC DIRECTOR DANIELS' RESPONSE TO PETITION**

16 Respondent Director Charles Daniels answers Petitioner Kenneth Robert Cizek's¹ ("Cizek")
17 Petition for Writ of Habeas Corpus. Cizek is not entitled to the application of statutory work time
18 credits because he has not worked. Cizek's Constitutional challenges fail. His legal arguments do not
19 entitle him to any relief.

20 Respondent bases this response upon the papers and pleadings on file herein and the following
21 Memorandum of Points and Authorities.

22
23 ¹ This petition appears to have been prepared by an inmate legal assistant. Compare, *Mario*
24 *Ramirez v. The State of Nevada*, First Judicial District Court Docket No. 21 EW 00004 1B; *Todd*
25 *Tonnochy v. Governor Steve Sisolak*, First Judicial District Court Docket No. 21 EW 00005 1B; *Carlos*
26 *Castro v. Director Charles Daniels*, First Judicial District Court Docket No. 21 EW 00007 1B.
27 Although inmates are entitled to the assistance of a jailhouse lawyer, see *Johnson v. Avery*, 393 U.S.
28 483 (1969), such inmates must comply with the obligation of Nevada Department of Corrections' Administrative Regulation (AR) 722.04(11). AR 722.04(11) provides: "Any inmate assisting in the preparation of legal documents must clearly identify themselves as an inmate and document this by writing 'inmate' before their name and follow with their prison identification number." Contrary to the requirements of AR 722.04(11), no other inmate is identified as assisting the petition. This Court should order Cizek to identify his inmate legal assistant for his petition and any future filings.

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1 Cizek claims that he is entitled to work credits because he is willing to work but is not allowed
2 to work. The Nevada Court of Appeals has held that it is not unconstitutional to decline to grant work
3 credits under NRS 209.4465 to individuals who are willing to work but for whom no work is available.
4 *Vickers*, 134 Nev. at 751. Cizek's contention that his claim is different from the situation in *Vickers*
5 because *Vickers* was not in administrative segregation fails. The issue is not how the petitioner is
6 classified, but whether he actually performs work.

7 Cizek's contention fails to state a claim for which relief can be granted in this petition. Work
8 credits are governed by NRS 209.4465(2), which provides:

9 2. In addition to the credits allowed pursuant to subsection 1, the
10 Director may allow not more than 10 days of credit each month for an
11 offender whose diligence in labor and study merits such credits. In
addition to the credits allowed pursuant to this subsection, an offender is
entitled to the following credits for educational achievement:

- 12 (a) For earning a general educational development certificate, 60 days.
13 (b) For earning a high school diploma, 90 days.
(c) For earning his first associate degree, 120 days.

14 This section of the statute provides for time credits for work actually performed, however
15 (unlike section 1 of the statute which provides for mandatory good time credits) the award of work
16 credits is discretionary. As noted, Cizek has no constitutionally protected liberty interest in work
17 credits, even when he is able to work but no work is available. *See also: Kalka v. Vasquez*, 867 F.2d
18 546, 547 (9th Cir. 1989); *Toussaint v McCarthy*, 801 F.2d 1080, 1094-95 (9th Cir. 1986).

19 Cizek's factual and legal contentions are without merit.

20 **B. Cizek's Constitutional Challenge to NRS 209.4465 Is Without Merit.**

21 The crux of Cizek's petition is a Constitutional challenge to NDOC's application of NRS
22 209.4465 to administrative segregation inmates' time credit histories. Petition at 5. Cizek claims he is
23 being penalized on time credits due to his administrative segregation status which does not allow him to
24 participate in "diligence in labor." Petition at 2.

25 His request for relief seeks a court order determining NRS 209.4465 to be unconstitutional as
26 applied, and to grant Cizek work time credits for all the time he has been incarcerated even though he
27 has not worked. Petition at 3. Cizek also asserts (incorrectly) that the application of time credits
28 shortens his sentence, and the absence of such credits lengthens his sentence. *Id.*

1 A condition precedent to a Constitutional legal challenge is, by definition, the existence of a
2 Constitutional right. However, the United States Supreme Court has determined that inmates do not
3 have any protectable due process or liberty interest in release on parole, unless that right is created by
4 state statute. The State providing prisoners with estimated parole-eligibility, mandatory-release, and
5 sentence-expiration dates based on an assumption that inmates will earn the maximum credits, creates
6 no liberty interest. *See: Anselmo v. Bisbee*, 133 Nev. 317, 320 (2017) (“[The Nevada Supreme Court]
7 has consistently held that given its discretionary language, Nevada’s parole statute creates no
8 protectable liberty interest sufficient to invoke the Due Process Clause.”) (internal quotation marks
9 omitted). “Because a prisoner has no due process rights to clemency, a change in the method of
10 determining how a statutory grant of clemency will be administered does not implicate a
11 constitutionally protected interest.” *Niergarth v. State*, 105 Nev. 26, 28 (1989).

12 Cizek contends that he should receive work time credits for the entire time since he has been
13 remanded to custody (Cizek has prior felony convictions), solely because he claims he is able to work
14 but has not been assigned a job. Petition at 2. However, as is shown above, Cizek has no
15 constitutionally protected liberty interest in earning work/study time credits, administrative segregation
16 or not. In Nevada, the statutes relating to work/study time credits create only the possibility of earning
17 an earlier release, they do not create any constitutionally protected liberty interest. *See generally:*
18 *Cooper v. Sumner*, 672 F. Supp. 1361, 1367 (D. Nev. 1987). Inmates must actually perform labor or
19 complete approved study programs to earn work/study time credits. The plain language of NRS
20 209.4465(2) requiring “diligence in labor” means an offender must actually work to earn labor credits.
21 *Vickers*, 134 Nev. at 751.

22 The constitutionality of the application of NRS 209.4465 to time credits has been long
23 established. The application of statutory time credits is subject only to rational basis review, *see*
24 *McGinnis v. Royster*, 410 U.S. 263, 270 (1973). Because “inmates are not a suspect class,” as “there is
25 no fundamental constitutional right to parole,” (Citation) there can be no fundamental constitutional
26 right to receive credit to accelerate a parole eligibility date, (Citation), there is no constitutional or
27 inherent right of a convicted person to be conditionally released before the expiration of a valid
28 sentence. *Vickers*, 134 Nev. at 750.

1 Cizek's claim that the work time credits he seeks would shorten his sentence is also inaccurate.
2 The first part of NRS 209.4465(7)(b) establishes a general rule — that credits earned pursuant to NRS
3 209.4465 apply to eligibility for parole. *See Williams v. State Dep't of Corr.*, 133 Nev. 594; 402 P.3d
4 1260, 1262 (Nev. 2017). The application of statutory time credits does not shorten the inmate's
5 minimum sentence.

6 Cizek cites to the equal protection and due process clauses of the Constitution as the legal basis
7 for his time credits challenge. Petition at 3-4. The equal protection clause is part of the Fourteenth
8 Amendment to the United States Constitution. "The Constitution requires that Congress treat similarly
9 situated persons similarly." *Rostker v. Goldberg*, 453 U.S. 57, 101 S.Ct. 2646 (1981). The equal
10 protection clause of the Constitution provides that no state shall deny to any person within its
11 jurisdiction the "equal protection of the laws." U.S. Const. amend. XIV, §1. This means "that all
12 persons similarly situated receive like treatment under the law." *Gaines v. State*, 116 Nev. 359, 371
13 (2000). Where a classification does not affect fundamental rights, then the legislation at issue "will be
14 upheld provided the challenged classification is rationally related to a legitimate government interest."
15 *Id.* Prisoners are not a suspect class, so the rational basis test applies. *Id.*, see also *Glauner v. Miller*,
16 184 F.3d 1053, 1054 (9th Cir. 1999).

17 The guarantees of the Fourteenth Amendment Due Process Clause apply only when a
18 constitutionally protected liberty interest is at stake. *Tellis v. Godinez*, 5 F.3d 1314, 1316 (9th Cir.
19 1995). Liberty interests can arise both under the United States Constitution and from state law. *Wolff*
20 *v. McDonnell*, 418 U.S. 539, 557-58 (1974). A state may not deprive an inmate of life, liberty, or
21 property without due process of law. *Id.* Federal law holds that an inmate does not have a liberty
22 interest protected by the Due Process Clause of the United States Constitution absent a showing of a
23 legitimate claim of entitlement. *Kentucky Dept. of Corr. v. Thompson*, 490 U.S. 454, 462 (1989).

24 Nevada state law is in accord: an inmate does not have a legally protectable liberty interest in
25 parole release. *State ex rel. Board of Parole Comm'rs v. Morrow*, 127 Nev. 265, 255 (2011);
26 *Severance v. Armstrong*, 96 Nev. 836, 839 (1980).

27 Cizek alleges that inmates in administrative segregation must be treated the same as inmates in
28 general population. Because Cizek is not a member of a suspect class, and the award of statutory

credits do not impact a “fundamental right,” he bears the burden to show that there is no “conceivable basis which might support it.” *Heller v. Doe*, 509 U.S. 312, 320-321 (1993).

Precluding inmates who are sentenced to prison for felony convictions from early release is rationally related to a legitimate governmental interest. Precluding inmates who do not work from receiving time credits for work they did not perform is rationally related to a legitimate government interest. Cizek has made no showing of any violation of a “fundamental right” regarding his work time credits or parole eligibility. No equal protection or due process violation(s) have been established. Cizek’s arguments to the contrary are foreclosed by existing law.

Applying the foregoing conclusively establishes that Cizek has not been denied any Constitutional rights, nor has NDOC committed any Constitutional violations.

C. Cizek’s Administrative Segregation Based Constitutional Claim Is Not Properly Presented In A Habeas Action.

Cizek’s Constitutional challenges regarding his lack of work time credits because he is in administrative segregation, and therefore is not able to work, have no merit. As noted above, an inmate does not have any constitutionally protected liberty interest in work time credits, even when he is able to work but no work is available for him.

Cizek’s claim that NDOC discriminates against him by restricting his work opportunities based on his administrative segregation status is not a challenge to his judgment of conviction or to NDOC’s computation of his time served. This specific type of claim is not properly raised in a petition for a writ of habeas corpus. *See*: NRS 34.724(1); NRS 209.4465(1), (2); NRS 209.461(8); *Cooper*, 672 F.Supp. at 1367.

A Writ of Habeas Corpus is inappropriate to address Cizek’s claims because a Writ of Habeas Corpus is only available to obtain relief from the conviction or sentence, or to challenge the computation of time that the person has served. NRS 34.724(1). A time challenge Habeas Corpus Writ is an improper pleading to challenge a state statute as being Unconstitutional or to challenge any alleged “deliberate indifference” to the rights of offenders.

Cizek’s legal arguments do not have merit. The Court should deny his petition.

///

1 **CONCLUSION**

2 Cizek has not demonstrated he is entitled to any relief, including any work time credits. His
3 Constitutional challenges are without merit. A habeas petition is not the proper pleading to raise
4 Constitutional challenges to a state time credits statute. The Court should deny his petition.

5 RESPECTFULLY SUBMITTED this 9th day of June, 2021.

6 AARON D. FORD
7 Attorney General

8 By: 
9 GEORDAN GOEBEL (Bar No. 13132)
10 Deputy Attorney General
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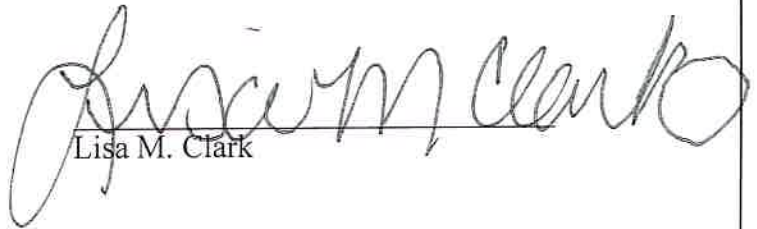
INDEX OF EXHIBITS

EXHIBIT No.	EXHIBIT DESCRIPTION	NUMBER OF PAGES
1.	NDOC Inmate Search	1
2.	Information	3
3.	Judgment of Conviction	2
4.	Proposed Order	4

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 9th day of June, 2021, I caused to be deposited for mailing a true and correct copy of the foregoing *NDOC DIRECTOR DANIELS' RESPONSE TO PETITION*, to the following:

Kenneth Cizek, #1234275
NNCC
P.O. Box 7000
Carson City, NV 89702



Lisa M. Clark

EXHIBIT 1

NDOC INMATE SEARCH

EXHIBIT 1

Search By Offender ID

Offender ID: 1234275

-Or-

Search By Demographics

First Name: Wildcard %

Last Name: Wildcard %

Submit

NOTICE:

The information provided here represents raw data. As such, the Nevada Department of Corrections makes no warranty or guarantee that the data is error free. The information should not be used as an official record by any law enforcement agency or any other entity.

Any questions regarding an inmate, please call Family Services at (775) 887-3367. Victims looking for inmate information please contact Victim Services at (775) 887-3393. Any questions regarding the web portal for law enforcement access to inmate information should be referred to PIO Scott Kelley, email: skcelley@doc.nv.gov or (775) 887-3309

Currently the following web browsers are supported for the Inmate Search Internet Explorer 11, Chrome, Firefox and Opera. If you are unable to view inmate photos, please use a supported browser.

Download Offender Data

Demographic Alias Booking Parole Release

Up to date as of 2021-05-06

Identification and Demographics

Name	Offender ID	Gender	Ethnic	Age	Height	Weight	Build	Complexion	Hair	Eyes	Institution	Custody Level	Aliases	Prior Felonies
WILLIAMS, JAMES	214201	M	W	37	6' 0"	210 lbs	Lean	Dark	Black	Blue	MC WEND	Close	VAGS BANKS, JAMES K. M. 1 CHIK. 10 KIM CHIK J. M. 1 J. M. 1 VAGS K. M. 1 K. M. 1 K. M. 1	10

Booking Information

Offense Code	Offense Description	Sent. Status	Sent. Min	Sent. Max	Sent. FED	Sent. MFR	Sent. County	Sent. PEXD	Sent. Type	Sent. RRD	Sent. Start Date
22-01	Aggravated Assault with a Dangerous Weapon	Rev.	180	360	180	180	180	180	180	180	2/21/22

Immata Photo Unavailable

Parole Hearing Details

Offender Book ID	Parole Hearing Date	Parole Hearing Location
222-43	11/21/2025	PAROLE CHAMBERS 211

EXHIBIT 2

INFORMATION

EXHIBIT 2

DA #20-426

RPD RP19-024766

FILED
Electronically
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2020-03-25 11:34:57 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 7808758 : caguiar

1 CODE 1800
2 Christopher J. Hicks
3 #7747
4 One South Sierra Street
5 Reno, NV 89501
6 districtattorney@da.washoecounty.us
7 (775) 328-3200
8 Attorney for Plaintiff

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
10
11 IN AND FOR THE COUNTY OF WASHOE

12 * * *

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No.: CR20-0120

15 v.

Dept. No.: D04

16 KENNETH CIZEK,

17 Defendant.

18 INFORMATION

19 CHRISTOPHER J. HICKS , District Attorney within and for the
20 County of Washoe, State of Nevada, in the name and by the authority
21 of the State of Nevada, informs the above entitled Court that, the
22 defendant above-named, KENNETH CIZEK , has committed the crime(s) of:
23 ATTEMPTED BATTERY WITH USE OF DEADLY WEAPON, a violation of
24 NRS 200.481 and NRS 193.330, a category C felony, (50248) in the
25 manner following, to wit:

26 That the said defendant, KENNETH CIZEK, on or about
December 14, 2019, within the County of Washoe, State of Nevada, did
willfully and unlawfully attempt to use force or violence upon the
person of BENTON LEROY BOND, with a deadly weapon, to wit, a large

1 rock, by throwing the rock at the victim, striking him in the elbow,
2 at 38 East 2nd Street, Reno.
3

4 All of which is contrary to the form of the Statute in such
5 case made and provided, and against the peace and dignity of the
6 State of Nevada.
7

8 CHRISTOPHER J. HICKS
9 District Attorney
10 Washoe County, Nevada
11

12
13 By: AM Ormaas
14 ALISON M. ORMAAS
15 9139
16 DEPUTY District Attorney
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1 The following are the names of such witnesses as are known
2 to me at the time of the filing of the within Information:

3 JOHN R BISHOP
4 RYAN NOEL
5 HUNTER MERCURIO
6 BENTON LEROY BOND
7

8 AFFIRMATION PURSUANT TO NRS 239B.030

9 The party executing this document hereby affirms that this
10 document submitted for recording does not contain the social security
11 number of any person or persons pursuant to NRS 239B.030.
12

13 CHRISTOPHER J. HICKS
14 District Attorney
15 Washoe County, Nevada

16 By: AM Ormaas
17 ALISON M. ORMAAS
18 9139
19 DEPUTY District Attorney
20
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22
23
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25

26 PCN RPD0062039C; RPD0064744C-CIZEK

EXHIBIT 3

JUDGMENT OF CONVICTION

EXHIBIT 3

1 CODE 1850

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5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 KENNETH CIZEK,

13 Defendant.

Case No. CR20-0120

Dept. No. 4

14
15 JUDGMENT

16 The Defendant, having entered a plea of Guilty, and no sufficient cause
17 being shown by Defendant as to why judgment should not be pronounced against him, the
18 Court renders judgment as follows:

19 That Kenneth Cizek is guilty of the crime of Attempted Battery With Use of
20 Deadly Weapon, a violation of NRS 200.481 and NRS 193.330, a category C felony, as
21 charged in the Information, and that he be punished by imprisonment in the Nevada
22 Department of Corrections for the maximum term of sixty (60) months with the minimum
23 parole eligibility of eighteen (18) months, with credit for ninety-one (91) days time served,
24 to be served concurrently with sentence imposed in 20CR-03451.

25 The Defendant is further ordered to pay a Three Dollar (\$3.00) administrative
26 Assessment fee for obtaining a biological specimen and conducting a genetic marker
27 analysis, a Twenty-Five Dollar (\$25.00) administrative assessment fee, a One Hundred
28

1 Fifty Dollar (\$150.00) DNA analysis fee and a Five Hundred Dollar (\$500.00) attorney fee
2 for reimbursement of legal expenses to the Clerk of the Second Judicial District Court.

3 Any fees imposed today (as reflected in this Judgment) constitutes a lien, as
4 defined in NRS 176.275. Should Kenneth Cizek not pay the fees, collection efforts may be
5 undertaken against hm.

6 The fees are subject to removal from the Defendant's inmate accounts at the
7 Washoe County Jail and/or Nevada Department of Corrections.

8 Dated this 28 day of May, 2020.

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11 Connie J. Steinheimer
12 DISTRICT JUDGE
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EXHIBIT 4

PROPOSED ORDER

EXHIBIT 4

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6 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR CARSON CITY**

8 KENNETH ROBERT CIZEK,

Case No.: 21 EW 00017 1B

9 Petitioner,

Dept. No. 1

10 vs.

11 CHARLES DANIELS, NDOC DIRECTOR,

12 Respondent.

13 **ORDER DENYING CIZEK'S PETITION FOR WRIT OF HABEAS CORPUS**

14 THIS MATTER comes before the Court on Kenneth Robert Cizek's ("Cizek") petition for writ
15 of habeas corpus, and Respondent Daniel's answer thereto. This Court has reviewed all pleadings,
16 documents and exhibits on file in the above-entitled matter. Based on this review, the Court makes the
17 following findings of fact, conclusions of law, and order.

18 Cizek is currently incarcerated with the Nevada Department of Corrections ("NDOC") pursuant
19 to a judgment of conviction and probation revocation order entered by the Second Judicial District
20 Court in case number CR 20-0120. Cizek was convicted of Attempted Battery With Use of a Deadly
21 Weapon, a Category C Felony. The Court sentenced Cizek to 18-60 months.

22 On April 27, 2021 Cizek filed a habeas petition challenging NDOC's computation of time
23 served against his sentence. Respondent answered Cizek's petition.

24 Cizek claims that NRS 209.4465 is unconstitutional as applied to him as Cizek is in
25 administrative segregation which prevents him from working. He is mistaken. Prisoners have no
26 vested liberty interest in being released on parole, and no entitlement to time credits for work they do
27 not perform. The State providing prisoners with estimated parole-eligibility, mandatory-release, and
28 sentence-expiration dates based on an assumption that inmates will earn the maximum credits, creates

1 no liberty interest. *Anselmo v. Bisbee*, 133 Nev. 317, 320 (2017) (“[The Nevada Supreme Court] has
2 consistently held that given its discretionary language, Nevada’s parole statute creates no protectable
3 liberty interest sufficient to invoke the Due Process Clause.”) (internal quotation marks omitted).
4 “Because a prisoner has no due process rights to clemency, a change in the method of determining how
5 a statutory grant of clemency will be administered does not implicate a constitutionally protected
6 interest.” *Niergarth v. State*, 105 Nev. 26, 28 (1989).

7 The Nevada Court of Appeals has held that it is not unconstitutional to decline to grant work
8 credits under NRS 209.4465 to individuals who are willing to work. *Vickers v. Dzurenda*, 134 Nev.
9 747 (Nev. App. 2018). Cizek provides no argument warranting a different conclusion in this case.
10 Cizek’s claim that NDOC discriminates against him by restricting his work opportunities based on his
11 administrative segregation status is not a challenge to his judgment of conviction or to NDOC’s
12 computation of his time served. This type of claim is not properly raised in a petition for a writ of
13 habeas corpus. NRS 34.724(1); NRS 209.4465(1), (2); NRS 209.461(8); *Cooper v. Sumner*, 672
14 F.Supp. 1361, 1367 (D. Nev. 1987).

15 Cizek’s contention that NDOC is “deducting” work time credits from Cizek’s account is
16 factually incorrect, as the work time credits are only awarded for work performed, not deducted for
17 work not performed. *Vickers*, supra. Cizek’s claim that the work time credits he seeks would shorten
18 his sentence is also inaccurate. NRS 209.4465(7)(b) provides that time credits earned pursuant to NRS
19 209.4465 “[a]pply to eligibility for parole, they do not shorten the inmate’s sentence. *Williams v. State*
20 *Dep’t of Corr.*, 133 Nev. 594; 402 P.3d 1260, 1262 (Nev. 2017).

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1 The Court deeming itself fully informed,

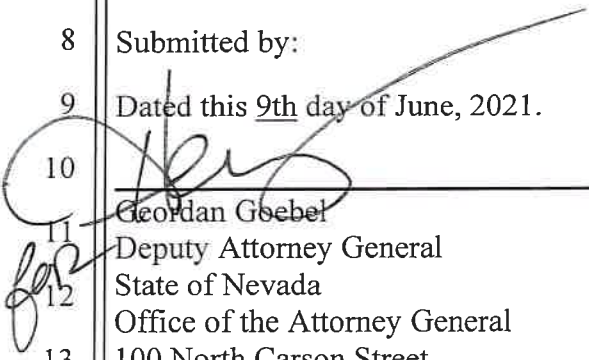
2 **IT IS HEREBY ORDERED** that Cizek's petition for writ of habeas corpus is DENIED.

3 ORDERED this _____ day of _____, 2021.

4
5 _____
6 DISTRICT JUDGE
7

8 Submitted by:

9 Dated this 9th day of June, 2021.

10 
11 _____
12 Geordan Goebel

13 Deputy Attorney General

14 State of Nevada

15 Office of the Attorney General

16 100 North Carson Street

17 Carson City, NV 89701-4717

18 (775) 684-1200 (phone)

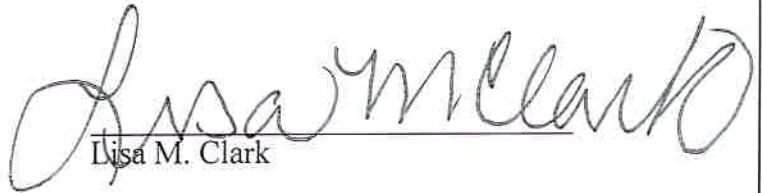
19 (775) 684-1108 (fax)

20 ggoebel@ag.nv.gov
21
22
23
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 9th day of June, 2021, I caused to be deposited for mailing a true and correct copy of the foregoing **(PROPOSED)** **ORDER DENYING CIZEK'S PETITION FOR WRIT OF HABEAS CORPUS**, to the following:

Kenneth Cizek, #1234275
NNCC
P.O. Box 7000
Carson City, NV 89702


Lisa M. Clark

REC'D & FILED

2021 JUN 17 PM 4:21

AUDREY ECHLATT
CLERK

BY _____

DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

KENNETH ROBERT CIZEK,

Petitioner,

vs.

CHARLES DANIELS, NDOC DIRECTOR,

Respondent.

Case No.: 21 EW 00017 1B

Dept. No. 1

ORDER DENYING CIZEK'S PETITION FOR WRIT OF HABEAS CORPUS

THIS MATTER comes before the Court on Kenneth Robert Cizek's ("Cizek") petition for writ of habeas corpus, and Respondent Daniel's answer thereto. This Court has reviewed all pleadings, documents and exhibits on file in the above-entitled matter. Based on this review, the Court makes the following findings of fact, conclusions of law, and order.

Cizek is currently incarcerated with the Nevada Department of Corrections ("NDOC") pursuant to a judgment of conviction and probation revocation order entered by the Second Judicial District Court in case number CR 20-0120. Cizek was convicted of Attempted Battery With Use of a Deadly Weapon, a Category C Felony. The Court sentenced Cizek to 18-60 months.

On April 27, 2021 Cizek filed a habeas petition challenging NDOC's computation of time served against his sentence. Respondent answered Cizek's petition.

Cizek claims that NRS 209.4465 is unconstitutional as applied to him as Cizek is in administrative segregation which prevents him from working. He is mistaken. Prisoners have no vested liberty interest in being released on parole, and no entitlement to time credits for work they do not perform. The State providing prisoners with estimated parole-eligibility, mandatory-release, and sentence-expiration dates based on an assumption that inmates will earn the maximum credits, creates

1 no liberty interest. *Anselmo v. Bisbee*, 133 Nev. 317, 320 (2017) (“[The Nevada Supreme Court] has
2 consistently held that given its discretionary language, Nevada’s parole statute creates no protectable
3 liberty interest sufficient to invoke the Due Process Clause.”) (internal quotation marks omitted).
4 “Because a prisoner has no due process rights to clemency, a change in the method of determining how
5 a statutory grant of clemency will be administered does not implicate a constitutionally protected
6 interest.” *Niergarth v. State*, 105 Nev. 26, 28 (1989).

7 The Nevada Court of Appeals has held that it is not unconstitutional to decline to grant work
8 credits under NRS 209.4465 to individuals who are willing to work. *Vickers v. Dzurenda*, 134 Nev.
9 747 (Nev. App. 2018). Cizek provides no argument warranting a different conclusion in this case.
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20 *Dep’t of Corr.*, 133 Nev. 594; 402 P.3d 1260, 1262 (Nev. 2017).

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1 The Court deeming itself fully informed,

2 **IT IS HEREBY ORDERED** that Cizek's petition for writ of habeas corpus is DENIED.

3 ORDERED this 17 day of June, 2021.

4 James Wilson
5 DISTRICT JUDGE

6
7
8 Submitted by:

9 Dated this 9th day of June, 2021.

10 Geordan Goebel

11 Deputy Attorney General

12 State of Nevada

13 Office of the Attorney General

14 100 North Carson Street

15 Carson City, NV 89701-4717

16 (775) 684-1200 (phone)

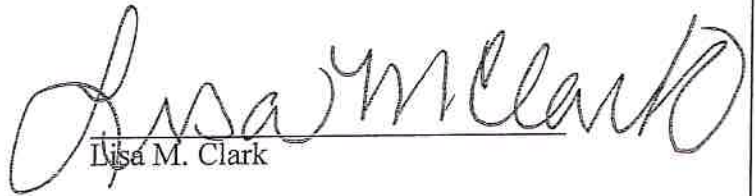
17 (775) 684-1108 (fax)

18 ggoebel@ag.nv.gov

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 9th day of June, 2021, I caused to be deposited for mailing a true and correct copy of the foregoing **(PROPOSED)** ORDER DENYING CIZEK'S PETITION FOR WRIT OF HABEAS CORPUS, to the following:

Kenneth Cizek, #1234275
NNCC
P.O. Box 7000
Carson City, NV 89702


Lisa M. Clark

2021 JUN 21 AM 8:58

AUBREY ROWLATT
CLERK

BY KP DEPUTY

**In The First Judicial District Court of the State of Nevada
In and for Carson City**

KENNETH ROBERT CIZEK,
Petitioner,

vs

CHARLES DANIELS, NDOC DIRECTOR,
Respondent.

Case No.: 21 EW 00017 1B

Dept. No.: II

**NOTICE OF ENTRY OF DECISION OR
ORDER**

PLEASE TAKE NOTICE that on June 17, 2021, the Court entered a decision or order in this matter, a true and correct copy of which is attached to this Notice.

You may appeal to the Supreme Court from the decision or order of this Court. If you wish to appeal, you must file a Notice of Appeal with the Clerk of this Court within 33 days after the date this Notice is mailed to you. This Notice was mailed on June 21, 2021.

DATED this 21st day of June, 2021.

Aubrey Rowlatt
AUBREY ROWLATT, Clerk

By KP, Deputy

cc: KENNETH ROBERT CIZEK
CHARLES DANIELS, NDOC DIRECTOR
GEORDAN GOEBEL, DEPUTY ATTORNEY GENERAL
Aaron Ford, Attorney General
CHRISTOPHER J. HICKS, District Attorney

REC'D & FILED

2021 JUN 17 PM 4:21

AUBREY DEHLATT
CLERK

BY _____
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

KENNETH ROBERT CIZEK,

Petitioner,

vs.

CHARLES DANIELS, NDOC DIRECTOR,

Respondent.

Case No.: 21 EW 00017 1B

Dept. No. 1

ORDER DENYING CIZEK'S PETITION FOR WRIT OF HABEAS CORPUS

THIS MATTER comes before the Court on Kenneth Robert Cizek's ("Cizek") petition for writ of habeas corpus, and Respondent Daniel's answer thereto. This Court has reviewed all pleadings, documents and exhibits on file in the above-entitled matter. Based on this review, the Court makes the following findings of fact, conclusions of law, and order.

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On April 27, 2021 Cizek filed a habeas petition challenging NDOC's computation of time served against his sentence. Respondent answered Cizek's petition.

Cizek claims that NRS 209.4465 is unconstitutional as applied to him as Cizek is in administrative segregation which prevents him from working. He is mistaken. Prisoners have no vested liberty interest in being released on parole, and no entitlement to time credits for work they do not perform. The State providing prisoners with estimated parole-eligibility, mandatory-release, and sentence-expiration dates based on an assumption that inmates will earn the maximum credits, creates

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20 *Dep’t of Corr.*, 133 Nev. 594; 402 P.3d 1260, 1262 (Nev. 2017).

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1 The Court deeming itself fully informed,

2 **IT IS HEREBY ORDERED** that Cizek's petition for writ of habeas corpus is DENIED.

3 ORDERED this 17 day of June, 2021.

4 James Wilson
5 DISTRICT JUDGE

6
7
8 Submitted by:

9 Dated this 9th day of June, 2021.

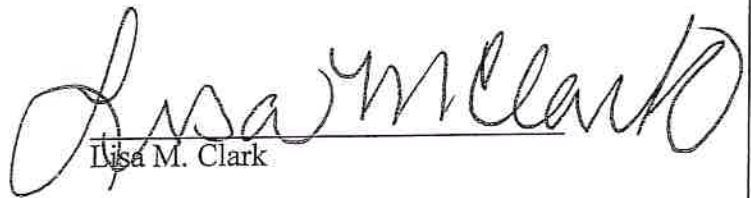
10 Geordan Goebel

11 Deputy Attorney General
12 State of Nevada
13 Office of the Attorney General
14 100 North Carson Street
15 Carson City, NV 89701-4717
16 (775) 684-1200 (phone)
17 (775) 684-1108 (fax)
18 ggoebel@ag.nv.gov
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 9th day of June, 2021, I caused to be deposited for mailing a true and correct copy of the foregoing **(PROPOSED)** **ORDER DENYING CIZEK'S PETITION FOR WRIT OF HABEAS CORPUS**, to the following:

Kenneth Cizek, #1234275
NNCC
P.O. Box 7000
Carson City, NV 89702


Lisa M. Clark

Kenneth Cizer

(Name)

1234275

(I.D. No.)

Northern Nevada Correctional Center
Post Office Box 7000
Carson City, Nevada 89702

REC'D & FILED

2021 JUL 12 PM 4:45

AUBREY FORLATT
CLERK

BY [Signature] DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CARSON CITY

Kenneth Robert Cizer

Petitioner/Defendant,

vs.

Charles Daniels, NDOC Director

Respondent/Plaintiff

Case No.: 21 EW 00017 IB

Dept. No. II

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that I, Kenneth Robert Cizer appeal the
Judgment / Order entered on the 17 day of JUNE, 2021 by this
court.

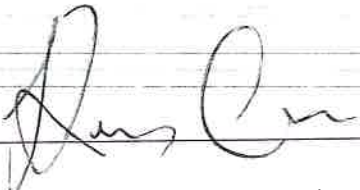
Dated this 7th day of Jun, 2021.

[Signature]
(Signature)

CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP Rule 5(b), I hereby certify that I am the Defendant named herein and that on this 7th day of July, 2021, I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the following:

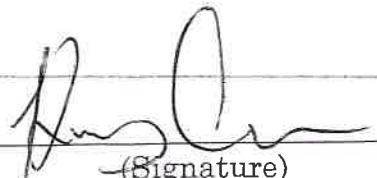
County District Attorney
GEORDAN GOEBEL / Deputy Attorney General
100 N. Carson St., Carson City, NV 89701


(Signature)

AFFIRMATION PURSUANT TO NRS 239B.030


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

July 7th 2021
(Date)


(Signature)

REC'D & FILED ✓

2021 JUL 13 PM 4:25

AUDREY J. HALL
CLERK
BY 
DEPUTY

**In The First Judicial District Court of the State of Nevada
In and for Carson City**

KENNETH ROBERT CIZEK,

Petitioner(s),

vs.

CHARLES DANIELS, NDOC DIRECTOR,
Respondent(s).

Case No.: 21 EW 00017 1B

Dept. No.: II

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

- KENNETH ROBERT CIZEK

2. Identify the judge issuing the decision, judgment, or order appealed from:

- HONORABLE JAMES E. WILSON, JR.

3. Identify each appellant and the name and address of counsel for each appellant:

- KENNETH ROBERT CIZEK # 1234275 (PROPER PERSON)
P.O. BOX 7000
CARSON CITY, NV 89702

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

- CHARLES DANIELS, NDOC DIRECTOR (RESPONDENT)
AARON FORD, ATTORNEY GENERAL
100 NORTH CARSON STREET
CARSON CITY, NV 89701-4717

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that

attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

- NOT APPLICABLE

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

- APPELLANT IN PROPER PERSON IN DISTRICT COURT

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

- APPELLANT IN PROPER PERSON ON APPEAL

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

- NOT APPLICABLE (WRIT OF HABEAS CORPUS

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed):

- WRIT OF HABEAS CORPUS INJUNCTION FILED APRIL 27, 2021

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

- ORDER DENYING CIZEK'S PETITION FOR WRIT OF HABEAS CORPUS
FILED JUNE 17, 2021

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

- NOT APPLICABLE

12. Indicate whether this appeal involves child custody or visitation:

- NOT APPLICABLE

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

- NOT APPLICABLE.

1 Dated this 13th day of July, 2021.

2 AUBREY ROWLATT, Carson City Clerk
3 885 E. Musser St., #3031
4 Carson City, NV 89701

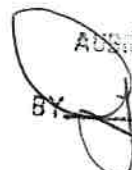
5 By , Deputy
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21 EW 17

IN THE SUPREME COURT OF THE STATE OF NEVADA


2021 JUL 29 PM 4:27

KENNETH ROBERT CIZEK,
Appellant,
vs.
CHARLES DANIELS, NDOC
DIRECTOR,
Respondent.

ASHLEY HOWLAND
CLERK
BY  DEPUTY **FILED**

No. 83220

JUL 28 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

*ORDER DIRECTING TRANSMISSION OF RECORD
AND REGARDING BRIEFING*

This court has concluded that its review of the complete record is warranted. *See* NRAP 10(a)(1). Accordingly, the clerk of the district court shall have 30 days from the date of this order to transmit to the clerk of this court a certified copy of the complete trial court record of this appeal. *See* NRAP 11(a)(2). The record shall include copies of documentary exhibits submitted in the district court proceedings, but shall not include any physical, non-documentary exhibits or the original documentary exhibits. The record shall also include any presentence investigation reports submitted in a sealed envelope identifying the contents and marked confidential. *See* NRS 176.156(5).

Within 120 days, appellant may file either (1) a brief that complies with the requirements in NRAP 28(a) and NRAP 32; or (2) the "Informal Brief Form for Pro Se Parties" provided by the supreme court clerk. NRAP 31(a)(1). If no brief is submitted, the appeal may be decided on the record on appeal. NRAP 34(g). Respondent need not file a response to any brief filed by appellant, unless ordered to do so by this court. NRAP

46A(c). The court generally will not grant relief without providing an opportunity to file a response. *Id.*

It is so ORDERED.

1. J. J. J. J. J., C.J.

cc: Kenneth Robert Cizek
Attorney General/Carson City
Carson City Clerk

STATE OF NEVADA,

CARSON CITY.

} ss.

I, AUBREY ROWLATT, Carson City Clerk of Carson City, State of Nevada, and ex-officio Clerk of the District Court, in and for Carson City, do hereby certify that the foregoing is a full, true and correct copy of the original documents designated in the action entitled and numbered 21 EW 00017 1B:

KENNETH ROBERT CIZEK,

Plaintiff,

vs.

CHARLES DANIELS, NDOC DIRECTOR,

Defendant.

which now remains on file and of record in my office in said Carson City.

In testimony whereof, I have hereunto set my hand and
Affixed my official seal, at Carson City, in said State, this

2 day of August, 20 21

Aubrey Rowlett, Clerk