IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * * * * * * *

ZANE M. FLOYD,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE MICHAEL P. VILLANI, DISTRICT JUDGE,

Respondent.

STATE OF NEVADA

Real Party in Interest.

Supreme Court No.

District Court Case Nos.
99C159897
Habeas Court Case No.
A-21-832952-W

APPENDIX IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS AND PROHIBITION

VOLUME 2 OF 2

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DOCUMENT	DATE	VOLUME	PAGE
State v. Floyd, Clark County District Court, Nevada, Case No. 99C159897, Court minutes	06/04/2021	2	344
Cy Ryan, *Corrections Department might lease out Jean prison*, Las Vegas Sun	03/13/2009	1	024
State v. Floyd, Clark County District Court, Nevada, Case No. 99C159897, Decision and Order	06/07/2021	2	390-393
State v. Floyd, Clark County District Court, Nevada, Case No. 99C159897, Exhibits in Support of Motion to Strike, or Alternatively, Motion to Stay the Second Supplemental Order of Execution and Second Supplemental Warrant of Execution	05/11/2021	2	309-334
State v. Floyd, Clark County District Court, Nevada, Case No. 99C159897, Exhibits in Support of Opposition to Motion for the Court to Issue Second Supplemental Order of Execution and Second Supplemental Warrant of Execution	04/21/2021	1-2	126-288
Historical Information of Northern Nevada Correctional Center (NNCC)	07/14/2021	2	405
Historical Information of Southern Desert Correctional Center (SDCC)	07/14/2021	2	406

DOCUMENT	DATE	VOLUME	PAGE
Historical Information of Warm Springs Correctional Center (WSCC)	07/14/2021	2	407-408
History of Nevada State Prison	07/13/2021	2	394-404
State v. Floyd, Clark County District Court, Nevada, Case No. 99C159897, Judgment of Conviction	09/05/2000	1	017-020
Judith R. Johnson, *The Penitentiaries in Arizona, Nevada, New Mexico and Utah from 1900 to 1980*, Criminology Studies, Vol. 1	00/00/1997	1	013-016
Minutes of the Assembly Committee on Ways and Means, p. 9	05/30/2015	1	044
Minutes of the Assembly Committee on Ways and Means, pp. 16-17	05/31/2015	1	045-046
Minutes of the Assembly Committee on Ways and Means, pp. 24-28	05/29/2015	1	039-043
Minutes of the Senate Committee on Finance, pp. 18-24	05/29/2015	1	032-038
State v. Floyd, Clark County District Court, Nevada, Case No. 99C159897, Motion and Notice of Motion for the Court to Issue Second Supplemental Order of Execution and Second	04/14/2021	1	047-108

DOCUMENT	DATE	VOLUME	PAGE
Supplemental Warrant of Execution			
State v. Floyd, Clark County District Court, Nevada, Case No. 99C159897, Motion to Strike, or Alternatively, Motion to Stay the Second Supplemental Order of Execution and Second Supplemental Warrant of Execution	05/11/2021	2	295-308
State v. Floyd, Clark County District Court, Nevada, Case No. 99C159897, Opposition to Motion for the Court to Issue Second Supplemental Order of Execution and Second Supplemental Warrant of Execution	04/21/2021	1-2	126-288
Rainsberger v. Nevada, Case No. 5576, Nevada Supreme Court, Order Staying Execution of Sentence of Death	04/11/1968	1	006-007
Patty Cafferata, *Capital Punishment Nevada Style*, 18 Nev. Law. 6	00/00/2010	1	025-031
State v. Floyd, Clark County District Court, Nevada, Case No. 99C159897, Recorder's Transcript of Hearing: State's Motion and Notice of Motion for the Court to Issue Second Supplemental Order of Execution and Second Supplemental Warrant of	06/04/2021	2	364-389

DOCUMENT	DATE	VOLUME	PAGE
Execution. Defendant's Motion to Strike, or Alternatively, Motion to Stay the Second Supplemental Order of Execution and Second Supplemental Warrant of Execution			
State v. Floyd, Clark County District Court, Nevada, Case No. 99C159897, Reply to Opposition to Defendant's Motion to Strike	05/20/2021	2	339-343
Sacramento Daily Union, *Execution of Allen Milstead at Dayton, Nevada Territory*, Volume 24, Number 3685, 13 January 1863	01/13/1863	1	001
State v. Floyd, Clark County District Court, Nevada, Case No. 99C159897, State's Addendum to State's Motion for the Court to Issue Second Supplemental Order of Execution and Second Supplemental Warrant of Execution	05/10/2021	2	289-294
State v. Floyd, Clark County District Court, Nevada, Case No. 99C159897, State's Opposition to Defendant's Motion to Strike	05/13/2021	2	335-338
State v. Floyd, Clark County District Court, Nevada, Case No. A-21-83295-W, State's Response to Petitioner's Third Petition for Writ of Habeas Corpus (Post Conviction)	06/04/2021	2	345-363

DOCUMENT	DATE	VOLUME	PAGE
Statutes of the State of Nevada Passed at the Twentieth Session of the Legislature, Chap. LII,	03/13/1901	1	002-005
The Condition of the State Prison, Legislative Commission of the Legislative Counsel Bureau, State of Nevada, Bulletin No. 79-2	08/00/1978	1	008-012
State v. Floyd, Clark County District Court, Nevada, Case No. 99C159897, Warrant of Execution	09/05/2000	1	021-023

Respectfully submitted,

/s/ Brad D. Levenson
BRAD D. LEVENSON
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

In accordance with NRAP Rule 25(c)(1)(C) the undersigned hereby certifies that on this 16th day of July, 2021, I personally served a true and correct copy of the foregoing APPENDIX IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS AND PROHIBITION by email to:

Alexander Chen
Chief Deputy District Attorney
motions@clarkcountyda.com
Eileen.davis@clarkcountyda.com

Further Service on the following party was made via UPS on July 16th, 2021:

Hon. Michael Villani
District Judge
Department XVII
Regional Justice Center
200 Lewis Ave
Las Vegas, NV 89155

/s/ Sara Jelinek
An Employee of the
Federal Public Defender, District of Nevada

EXHIBIT 15

EXHIBIT 15

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General

GREGORY M. SMITH
Chief of Staff

November 14, 2013

Law Offices of the Federal Public Defender
Michael Pescetta, Assistant Federal Public Defender
411 East Bonneville Avenue, Suite 250
Las Vegas, Nevada 89101

Re: Public Records Request

Dear Mr. Pescetta:

As we discussed on the telephone, I am the Deputy Attorney General and Construction Law Counsel for the State Public Works Division. SPWD staff gathered all documents in their possession that are responsive and they are contained on the enclosed CD.

The following list tracks the Attachment 'A' included in your March 29, 2013 correspondence.

1. Included is a copy of Facility Analysis performed by SPWD Facility Group. All other documents responsive to this request are contained on the enclosed CD.
2. Photos taken of various locations throughout Nevada State Prison including the death chamber and entryways to and from the chamber.
3. See response to No. 2.
4. SPWD does not have any documents that are responsive to this request other than what is produced here.
5. No design or "plans" were completed for the 'new execution chamber in Ely, Nevada.' As you may know, the Nevada Legislature did not approve this project for inclusion in the 2013 Capital Improvement Program.
6. All documents prepared in connection with the proposal to then Nevada Legislature to design an execution chamber at Ely State Prison are included.
7. SPWD does not have documents responsive to this request. I will forward your request to Department of Administration Director, Jeff Mohlencamp and NDOC Director, Greg Cox for further response as they deem appropriate.

8. SPWD does not have documents responsive to this request. I will forward your request to Department of Administration Director, Jeff Mohlencamp and NDOC Director, Greg Cox for further response as they deem appropriate.

Certain documents have been redacted for the simple reason that they contain irrelevant information. For example, a March 10-11, 2013, 4-page e-mail exchange between SPWD and the Legislature. The e-mail discusses numerous NDOC projects in addition to the Ely execution chamber. Projects irrelevant to your request were redacted. I also redacted NDOC Director Cox' e-mail address. To my knowledge Director Cox' e-mail is not public and I also do not believe it is relevant to your request.

I appreciate your patience in this matter. If you have any questions, please call me. Thank you.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By: _____
SUSAN K. STEWART
Deputy Attorney General
Construction Law Counsel
(775) 684-4173

SKS/lsd
Enclosure

Board of Commissioner
BRIAN SANDOVAL
Governor
CATHERINE CORTEZ MASTO
Attorney General
ROSS MILLER
Secretary of State

STATE OF NEVADA
DEPARTMENT OF CORRECTIONS

JAMES G. COX
Director

Office of the Chief Engineer
Southern Administration
3955 W. Russell Rd., Las Vegas, NV 89118
Phone: (702) 486-9928 - Fax: (702) 486-9961

August 29, 2012

Nevada State Prison, Modified Occupancy and Life Safety Plan

The NDOC has received a Legislative mandate to close the facility by April 1, 2012. With the general decommissioning of the facility there needs to be consideration for the continued operation of several buildings on the campus under the authority of a Modified Occupancy Certificate.

The NDOC Plan for continued beneficial use is as follows:

Buildings to be remain operational until such time that the operation/ mission/ use can be relocated to another facility.

A. The Generator Building

The Generator Building is operational and will continue to be operational with existing electrical service for the block heater and for lighting. The Gen-set is intended to remain operational to provide service to the DMV tag plant, Courtroom and the Northeast Corner of Unit 2.

1. The Use of this Building is: F-1 (factory)
2. The occupancy of this building is 1.
3. The access to this building is by uniformed Custody or Maintenance Staff only.
4. There is 1 exit.
5. Fire Watch is proposed to be by Uniformed Maintenance or Custody NDOC Staff, while there is an occupant in the building. The Building is furnished with one (1) wall mounted fire extinguisher.

B. The Tag Plant Building

The Tag Plant Building will remain operational and is self-contained with heating, cooling, and plumbing. Domestic water service and Fire Sprinkler service will be maintained. Electrical service will be supplied from the main switch gear.

1. The Use of this Building is: F-1 (factory)
2. The approximate square footage of this building is 4,000 sf. Per Table 1004.1.1. Fabrication and Manufacturing. The Floor Area per Occupant is 50.
3. The maximum occupancy of this building is therefore: 20. (DMV operates this plant with less than 19 persons). Two Exits are provided out of this plant. One located at the main entrance on the south side, and one on the north side.
4. Movement into and out of the Tag Plant is supervised by Uniformed NDOC Staff and /or DMV Staff.

5. Fire Protection is via Fire Sprinklers in this building.

6. The Fire Alarm System is monitored at the building and the service agreement with the Vendor is for maintenance only.

7. The Building is furnished with one (1) toilet and one (1) lavatory.

C. The New Maintenance building:
The new Maintenance building is self contained for Utility service. This building will remain operational. The building is furnished with its own fire sprinkler suppression system.

1. The Use of this Building mixed with F-1 and B functions.
2. The approximate square footage of this building is 4,000 sf. Per Table 1004.1.1. Fabrication and Manufacturing. The Floor Area per Occupant is 200.
3. The maximum occupancy of this building is therefore: 20. Five exits are provided out of this building.
4. Fire Protection is via Fire Sprinklers in this building.
5. The Fire Alarm System is monitored at the building and the service agreement with the Vendor is for maintenance only.

D. The Gate House:
The Gate house will be secure yet idled and will be not be used on a daily basis. This part of the operational is self contained as far as utilities. The HVAC is self contained as is the plumbing. The building is not fire sprinklered.

1. The Use of this Building is: B (office)
2. The approximate square footage of this building is 150 sf. Per Table 1004.1.1. Office. The Floor Area per Occupant is 100.
3. The maximum occupancy of this building is therefore: 2. Two Exits are provided out of this building.
4. The building serves as the main entrance to the Prison grounds and is supervised by Uniformed NDOC Staff when in use.
5. Fire Protection is proposed to be by Uniformed NDOC Staff when assigned. The Building is furnished with one (1) wall mounted fire extinguishers.
6. Combustible content has been removed from this building.

E. Court House (Tours and Events):
The Court House will remain operational on an as-needed basis. This building is self-contained with HVAC and water and plumbing. The space is not fire sprinklered.

1. The Use of this Building is: A-3 (assembly)
2. The approximate square footage of this building is 3,000 sf. Per Table 1004.1.1. Office. The Floor Area per Occupant is 40
3. The maximum occupancy of this building is therefore: 75. Two Exits are provided out of this building. One located at the main entrance on the north side, and one on the southeast side.

4. Movement into and out of the Court House is supervised by NDOC Staff.

5. Fire Watch is proposed to be by Uniformed NDOC Staff. The Building is furnished with one (1) wall mounted fire extinguisher.

6. The Building is equipped with three (3) toilets and three (3) lavatories. The existing restrooms will all be marked UNISEX , thus complying with the current requirements of IBC 2006 Chapter 29. Table 2902.1.

7. For ADA use, the requirement of providing (1) Accessible restroom will be accommodated with a portable ADA compliant restroom facility.

8. Accessible access into and out of the facility will be provided by staff escorts through temporary means.

F. Execution Chamber Area (Between FPU and Cell Block A):
This area will remain operational on an as-needed basis. We propose that the area be heated or cooled with portable units as needed and that the NDOC staff will post a fire watch during the use of this area.

Please refer to the attached sketch SK-2 witch highlights the area of intended use.

1. The Use of this Area in Cell Block A is: I-3. Condition 5. (Institutional)
2. The approximate square footage of this area is 200 sf. Per Table 1004.1.1. Prison. The Floor Area per Occupant is 7.
3. The maximum occupancy of this chamber is therefore: 29. Two Exits are provided. One Exit is provided out of this room. One located at the stair well inside building 3, and one on the exterior of the building.
4. Detention Cells adjacent to this room are for temporary holding and would be used under the direct supervision of Uniformed NDOC staff.

5. Movement into and out of the Execution Chamber is supervised by Uniformed NDOC Staff. Movement into and out of this location would be via the following route:

    a. Enter the Main Entrance at the NSP Front Doors.
    b. Proceed past the control room and onto the main yard.
    c. Ascend the stairway at Cell Block A 3 to gain entrance to the main floor of the cell block.
    d. Advance to the interior Cell house stairs. Proceed up one (1) flight.
    e. Advance to the Execution Chamber area via the interior stairs, one (1) flight.

6. Fire Watch is proposed to be by Uniformed NDOC Staff. The Stairway is furnished with one (1) wall mounted fire extinguisher.

7. Accommodations for the disabled are as follows:

a. Special accommodations for those person who are ambulatory and may need assistance with stairs or ramps will be assisted by NDOC Uniformed Staff.
b. Audio and Visually challenged persons will be provided reasonable accommodations as required by ADA via electronic means.
c. An alternate entrance and exit route will be through the vehicle sally port beneath tower 2 and into the Cell House 3 via the east exit and/or the exterior stairs.

8. Restrooms are not available in this area for the general public, however, temporary, (portable), restrooms will be provided in close proximity to this area.
9. Warden's office and Central Control:
10. These rooms will remain operational on an as-needed basis. We propose that the area be heated or cooled with portable units as needed and that the NDOC staff will post a fire watch during the use of this area.
11. The Use of this Area is: B. (office)
12. The approximate square footage of the Warden's office is 200 sf. Per Table 1004.1.1. Prison. The Floor Area per Occupant is 2
13. The approximate square footage of the Control Room is 200 sf. Per Table 1004.1.1. Prison. The Floor Area per Occupant is 2
14. The maximum occupancy of this area is therefore: 4. Two Exits are provided. One Exit is provided to the main yard.. One exit is provided at the main entrance.
15. Fire Watch is proposed to be by Uniformed NDOC Staff. This area is furnished with two (2) wall mounted fire extinguishers.
16. A Restroom is available near the Warden's office.

G. Guard Tower 2.

This area will remain operational on an as-needed basis. We propose that the area be heated or cooled with portable units as needed and that the NDOC staff will post a fire watch during the use of this area.

1. The Use of this Area is: I-3. Condition 5.
2. The approximate square footage of this area is 200 sf. Per Table 1004.1.1. Prison. The Floor Area per Occupant is 2.
3. Fire Watch is proposed to be by Uniformed NDOC Staff. This area is furnished with two (2) wall mounted fire extinguishers.
4. Fire Sprinklers are not provided in this building.

H. Buildings Scheduled to be completely removed from service:

1. Housing Unit 12
2. Housing Unit 13
3. Housing Unit 6 – 11
4. The Gymnasium

5. The Book Bindery

6. The Law Library

7. The Boiler Building

8. The Old Maintenance shops

9. Housing Units 5, and Unit 3. The Old Cell Blocks.

10. Administration: With the exceptions as noted above. The Warden's office and the Control Room.

11. The Culinary

12. The Cottages: The first two cottages along the Warm Springs Drive will be secured. The other cottages are under the purview of WSCC.

13. The remaining Guard Towers: Towers 3, 4 and 5.

I. The Buildings scheduled to be completely removed from service will undergo the following procedure:

1. All combustibles will be removed.
2. All doors will be locked.
3. All water to be drained, both domestic and fire.
4. All Power and low voltage service will be locked out at the panel.
5. Keys will be consolidated and accountable. Keys will be located in locked cabinets per NDOC key control policy.
6. Security will be checked no less than weekly and will be logged by Uniformed NDOC Staff.
7. Damage or Vandalism will be checked at each building weekly and logged by Uniformed NDOC staff.
8. Water lines to the Shut off valve will be insulated
9. Fuel that is not utilized for the Generators will be removed.
10. Sweeps will be added to the exterior doors to prevent the intrusion of vermin and insects.
11. Windows will be closed or boarded up to prevent access by insects or vermin.
12. Vents will be screened with insect mesh.
13. Other openings will be secured from access.

J. Mast Lighting:

Mast lighting will be decommissioned and provided with lock-out, tag-out at the Switch Gear.

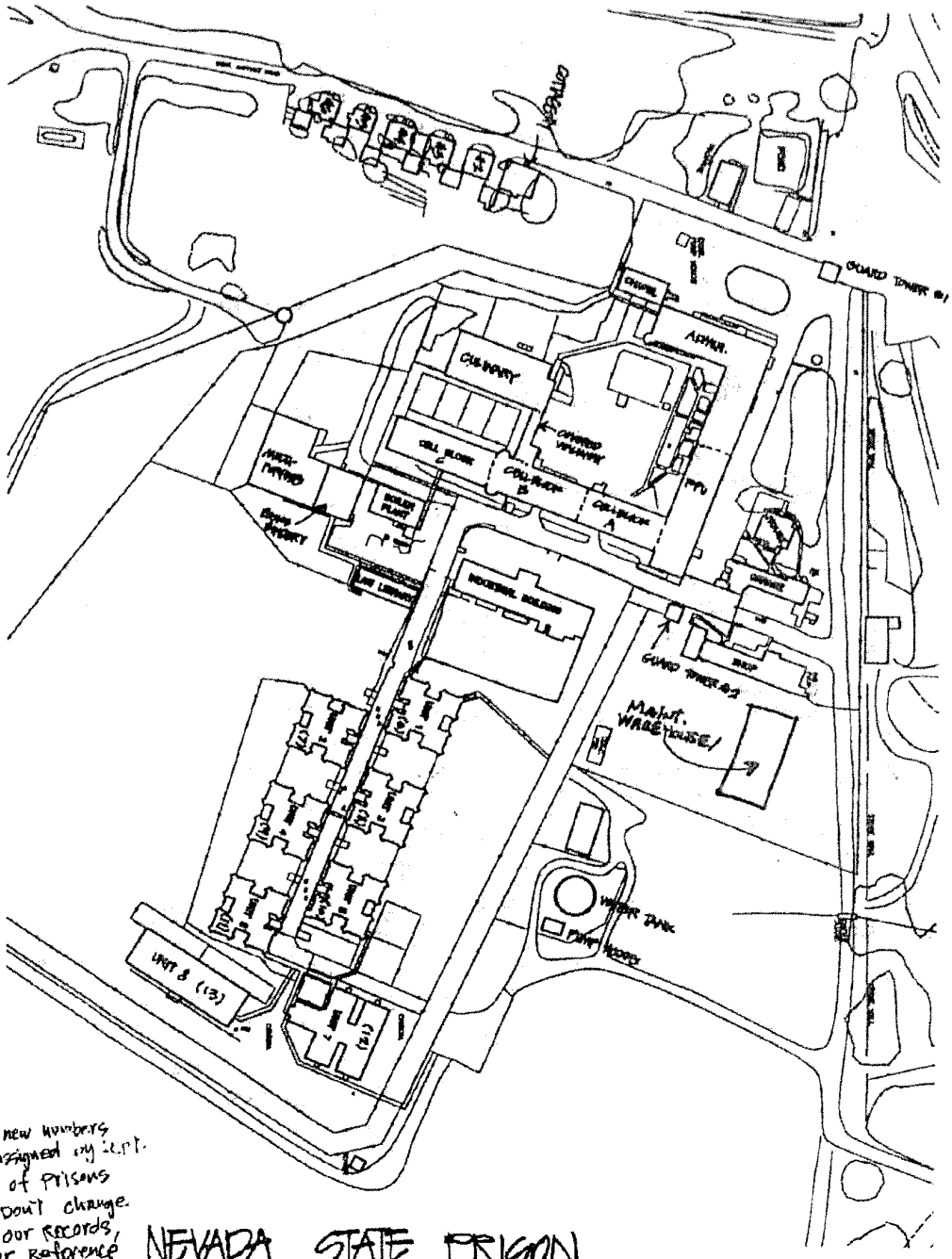
K. Training Exercises: NDOC may conduct training exercise in at this facility from time to time. Should one of these events occur, the NDOC will post a fire watch at each building that is utilized.

L. Courtesy Notice: NDOC will give the State Fire Marshall's office verbal or written notice of an event, prior to such event. Such notice will be given as soon as reasonability possible but not less than three (3) calendar days.

Submitted by:

Kent A. LeFevre, Chief Engineer

Sketch Attachments:
SK-1. Overall site plan 1 of 2
SK-2. Cell Block A



(10) = new numbers assigned by Dept. of Prisons (Don't change our records, For Reference only.)

NEVADA STATE PRISON

SK-1

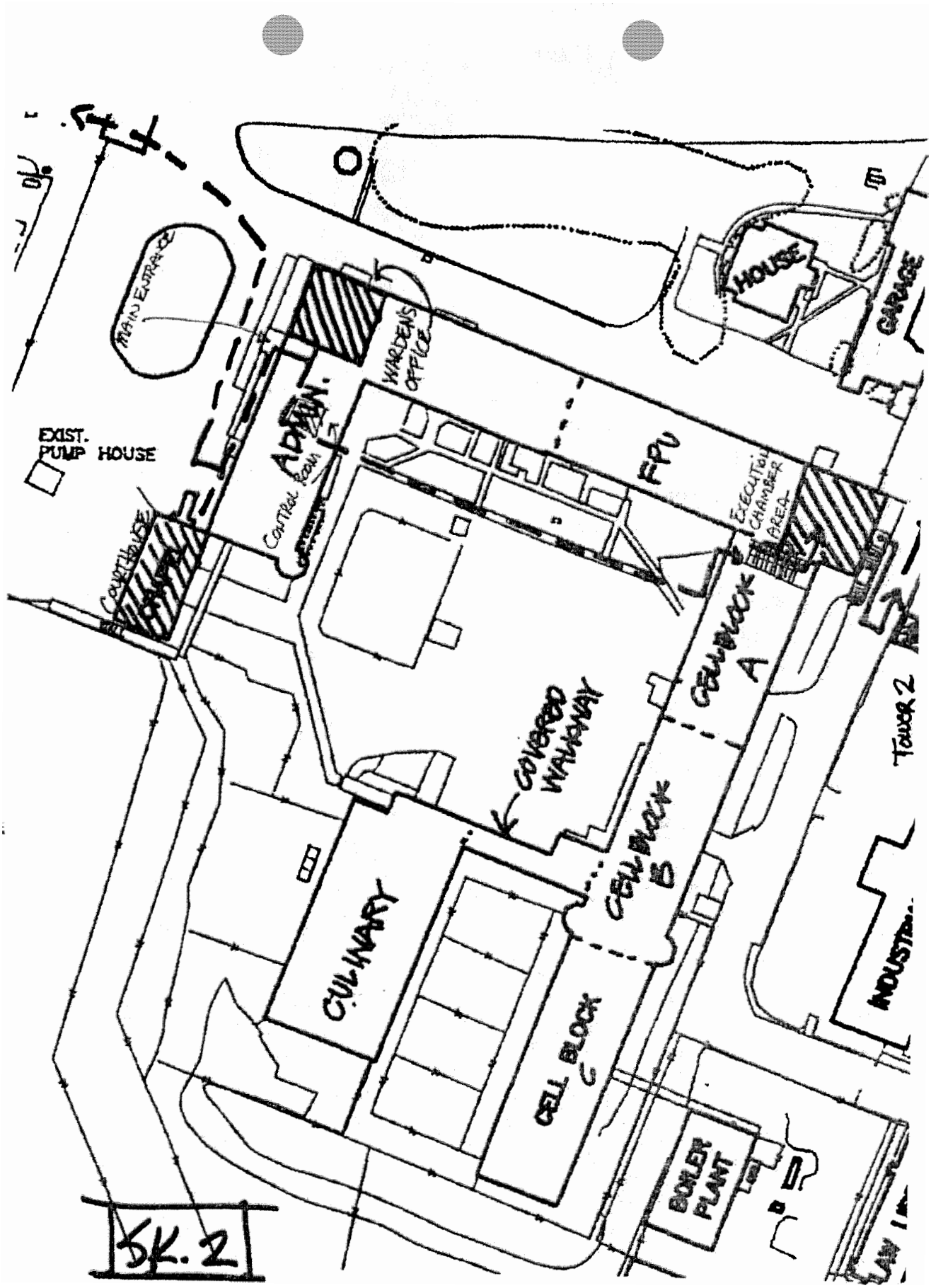

MAIN ENTRANCE
WARDENS OFFICE
ADMIN.
HOUSE
GARAGE
EXIST. PUMP HOUSE
COURTHOUSE
CONTROL ROOM
FPU
EXECUTION CHAMBER AREA
COVERED WALKWAY
CELLBLOCK A
CELLBLOCK B
TOWER 2
CULINARY
CELL BLOCK 2
BOILER PLANT
SK. 2

EXHIBIT 16a

EXHIBIT 16a

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-81,578-02

IN RE JOHN WILLIAM HUMMEL, Relator

ON MOTION FOR LEAVE TO FILE APPLICATION FOR WRIT OF MANDAMUS, APPLICATION FOR WRIT OF MANDAMUS, AND MOTION TO STAY THE EXECUTION
CAUSE NO. 1184294D IN THE 432ND JUDICIAL DISTRICT COURT TARRANT COUNTY

***Per curiam*. YEARY and SLAUGHTER, JJ., concur.**

O R D E R

We have before us a motion for leave to file an application for a writ of mandamus, an application for a writ of mandamus, and a motion to stay Relator's execution. In June 2011, a jury convicted Relator of the offense of capital murder. Based on the jury's answers to the special issues submitted pursuant to Texas Code of Criminal Procedure article 37.071, the trial court sentenced Relator to death. This Court affirmed

Relator's conviction and sentence on direct appeal. *Hummel v. State*, No. AP-76,596 (Tex. Crim. App. Nov. 20, 2013) (not designated for publication). And we denied relief on Relator's initial post-conviction application for a writ of habeas corpus. *Ex parte Hummel*, No. WR-81,578-02 (Tex. Crim. App. Feb. 10, 2016) (not designated for publication).

Relator is set to be executed on March 18, 2020. In the application for a writ of mandamus currently pending before this Court, Relator argues that the trial court erred in refusing to: (1) disqualify the prosecutor's office, and (2) withdraw the facially defective execution warrant issued in his case. On both issues, Relator has failed to show that he is entitled to the issuance of a writ of mandamus. Therefore, we deny leave to file the application. We also deny Relator's motion to stay his execution based upon that application.

However, we have also determined that the execution should be stayed at the present time in light of the current health crisis and the enormous resources needed to address that emergency. Therefore, on our own motion, we stay Relator's execution for a period of sixty days. The stay will be automatically lifted after that time.

IT IS SO ORDERED THIS THE 16th DAY OF MARCH, 2020.

Do Not Publish

EXHIBIT 16b

EXHIBIT 16b

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-59,939-04

IN RE TRACY BEATTY, Movant

ON MOTION TO STAY THE EXECUTION
CAUSE NO. 241-0978-04 IN THE 241ST JUDICIAL DISTRICT COURT
SMITH COUNTY

***Per curiam*. YEARY and SLAUGHTER, JJ., concur. KEASLER, J., not participating.**

O R D E R

We have before us a motion to stay Movant's execution. In August 2004, a jury found Movant guilty of the offense of capital murder. Based on the jury's answers to the special issues submitted pursuant to Texas Code of Criminal Procedure article 37.071, the trial court sentenced Movant to death. This Court affirmed Movant's conviction and sentence on direct appeal. *Beatty v. State*, No. AP-75,010 (Tex. Crim. App. Mar. 11, 2009) (not designated for publication).

This Court denied relief on Movant's initial post-conviction application for a writ of habeas corpus. *Ex parte Beatty*, No. WR-59,939-02 (Tex. Crim. App. May 6, 2009) (not designated for publication).[1] We also dismissed Movant's subsequent application. *Ex parte Beatty*, No. WR-59,939-03 (Tex. Crim. App. Oct. 14, 2015) (not designated for publication).

Relator is set to be executed on March 25, 2020. We have determined that the execution should be stayed at the present time in light of the current health crisis and the enormous resources needed to address that emergency. Therefore, we grant Movant's motion to stay his execution for a period of sixty days. The stay will be automatically lifted upon expiration of that time.

IT IS SO ORDERED THIS THE 19th DAY OF MARCH, 2020.

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[1] On August 6, 2004, applicant filed with this Court an application for an original writ of habeas corpus challenging two contempt orders. The Court denied him leave to file that application on October 27, 2004. *See Ex parte Beatty*, No. WR-59,939-01 (no written order issued).

EXHIBIT 16c

EXHIBIT 16c

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-81,577-02

IN RE FABIAN HERNANDEZ, Movant

ON MOTION TO STAY THE EXECUTION
CAUSE NO. 20060D05825 IN THE 346TH JUDICIAL DISTRICT COURT
EL PASO COUNTY

***Per curiam*.**

O R D E R

We have before us a motion to stay Movant's execution. In November 2009, a jury found Movant guilty of the 2006 offense of capital murder. Based on the jury's answers to the special issues submitted pursuant to Texas Code of Criminal Procedure article 37.071, the trial court sentenced Movant to death. This Court affirmed Movant's conviction and sentence on direct appeal. *Hernandez v. State*, 390 S.W.3d 310 (Tex. Crim. App. 2012).

This Court thereafter denied relief on Movant's initial post-conviction application for a writ of habeas corpus. *Ex parte Hernandez*, No. WR-81,577-01 (Tex. Crim. App. Jan. 28, 2015) (not designated for publication).

Relator is set to be executed on April 23, 2020. We have determined that the execution should be stayed at the present time. Therefore, we grant Movant's motion to stay his execution for a period of sixty days. The stay will be automatically lifted upon expiration of that time.

IT IS SO ORDERED THIS THE 1st DAY OF APRIL, 2020.

Do Not Publish

EXHIBIT 16d

EXHIBIT 16d

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE v. OSCAR FRANKLIN SMITH

Criminal Court for Davidson County
No. 89-F-1773

No. M2016-01869-SC-R11-PD

ORDER

On January 15, 2020, this Court set the execution of Oscar Franklin Smith for June 4, 2020. Mr. Smith has filed a motion to stay his execution due to the COVID-19 pandemic. Having reviewed Mr. Smith's motion, the State's response, and Mr. Smith's reply and supplement to the motion, it is hereby ORDERED that the motion is GRANTED. Accordingly, the execution is reset for February 4, 2021. The Warden or his designees shall notify Mr. Smith no later than January 20, 2021, of the method the Tennessee Department of Correction (TDOC) will use to carry out the execution and any decision by the Commissioner of TDOC to rely upon the Capital Punishment Enforcement Act. Counsel for Mr. Smith shall provide a copy of any order staying execution of this order to the Office of the Clerk of the Appellate Court in Nashville. The Clerk shall expeditiously furnish a copy of any order of stay to the Warden of the Riverbend Maximum Security Institution.

PER CURIAM

EXHIBIT 16e

EXHIBIT 16e

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-70,747-03

IN RE EDWARD LEE BUSBY, JR., Movant

ON MOTION TO STAY THE EXECUTION
CAUSE NO. 0920589A IN CRIMINAL DISTRICT COURT TWO
TARRANT COUNTY

***Per curiam*.**

O R D E R

We have before us a motion to stay Movant's execution. In November 2005, a jury found Movant guilty of the 2004 offense of capital murder. Based on the jury's answers to the special issues submitted pursuant to Texas Code of Criminal Procedure article 37.071, the trial court sentenced Movant to death. This Court affirmed Movant's conviction and sentence on direct appeal. *Busby v. State*, 253 S.W.3d 661 (Tex. Crim. App. 2008).

This Court thereafter denied relief on Movant's initial post-conviction application

for a writ of habeas corpus. *Ex parte Busby*, No. WR-70,747-01 (Tex. Crim. App. Feb. 25, 2009) (not designated for publication). And we dismissed his first subsequent habeas application. *Ex parte Busby*, No. WR-70,747-02 (Tex. Crim. App. Mar. 6, 2013) (not designated for publication).

Relator is set to be executed on May 6, 2020. We have determined that the execution should be stayed at the present time. Therefore, we grant Movant's motion to stay his execution for a period of sixty days. The stay will be automatically lifted upon expiration of that time.

IT IS SO ORDERED THIS THE 27th DAY OF APRIL, 2020.

Do Not Publish

EXHIBIT 16f

EXHIBIT 16f

Electronically RECEIVED on July 17, 2020
Appellate Court Clerk

Electronically FILED on July 17, 2020
Appellate Court Clerk

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE,	)	
	)	**HAMILTON COUNTY**
v.	)	**No. E1998-00562-SC-R11-PD**
	)	
	)	**CAPITAL CASE**
HAROLD WAYNE NICHOLS,	)	
	)	
Defendant.	)	

NOTICE

Rule 12.4(E), Rules of the Supreme Court of Tennessee, requires the State Attorney General to provide this Court with a copy of any executive order granting a reprieve from execution of a death sentence. Accordingly, the State Attorney General gives notice to this Court that, on July 17, 2020, Governor Bill Lee issued an executive reprieve from execution of the death sentence in the above case effective until December 31, 2020. A copy of the Executive Reprieve is herewith provided to the Court pursuant to Rule 12.4(E).

Respectfully submitted,

HERBERT SLATERY, III
Attorney General & Reporter

ANDRÉE SOPHIA BLUMSTEIN
Solicitor General

s/ Zachary T. Hinkle
ZACHARY T. HINKLE
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Criminal Appeals Division
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B.P.R. No. 32989

THE STATE OF TENNESSEE
EXECUTIVE CHAMBER

REPRIEVE

Pursuant to the authority vested in me by Article III, Section 6 of the Constitution of the State of Tennessee, I, Bill Lee, Governor of the State of Tennessee, do hereby grant to Harold Wayne Nichols a reprieve from execution of the sentence of death imposed upon him by the Criminal Court for Hamilton County in 1990 and scheduled to be carried out on August 4, 2020. *State v. Nichols*, No. E1998-00562-SC-R11-PD (Tenn. Jan. 15, 2020). This reprieve shall continue in effect until December 31, 2020.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State to be affixed at Nashville, Tennessee on this 17th day of July, 2020.

GOVERNOR

SECRETARY OF STATE

EXHIBIT 16g

EXHIBIT 16g

CAUSE NO. 1997CR1717D

STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	290TH JUDICIAL DISTRICT
CARLOS TREVINO	§	BEXAR COUNTY, TEXAS

ORDER WITHDRAWING EXECUTION DATE

The Court considered Defendant's Motion to Withdraw Order Setting Execution Date and Warrant of Execution.

Carlos Trevino is scheduled to be executed September 30, 2020, pursuant to an execution warrant issued by this Court on April 16, 2020. On March 13, 2020, Governor Abbott declared a disaster in Texas due to the threat posed by COVID-19, a disease caused by a novel coronavirus. That same date, the Texas Supreme Court issued its First Emergency Order Regarding the COVID-19 State of Disaster pursuant to Texas Government Code § 22.0035(b). That order provided, inter alia, that "all courts in Texas may in any case, civil or criminal - and must to avoid risk to court staff, parties, attorneys, jurors, and the public - without a participant's consent... [m]odify or suspend any and all deadlines and procedures, whether prescribed by statute, rule, or order, for a stated period ending no later than 30 days after the Governor's state of disaster has been lifted." This Order was renewed on June 29, 2020, (Eighteenth Emergency Order Regarding the COVID-19 State of Disaster) and August 6, 2020 (Twenty-Second Emergency Order Regarding the COVID-19 State of Disaster), which extended the Court's powers until September 30, 2020.

Because of the foregoing, and the current COVID-19 conditions in Texas, this Court ORDERS that the previous warrant of execution, setting the Defendant's execution date for September 30, 2020, be withdrawn and the death warrant be recalled.

It is also ORDERED that the Bexar County District Clerk's Office to communicate with Joni White, Assistant Director of Records and Classification, Texas Department of Criminal Justice, Institutional Division (or other such required personnel of the Texas Department of Criminal Justice, Institutional Division), immediately upon signing of this order, that the warrant of execution has been recalled until further ordered by this Court.

It is also HEREBY ORD~~R~~ERED that the parties are to reconvene for a hearing before this court to reset the execution date, said hearing to take place March 5, 2021, at 9:00 a.m.

The Bexar County District Clerk's Office shall issue correspondence to all parties to comply with Texas Code of Criminal Procedure Art. 43.141.

SIGNED AND ENTERED ON Sep 15, 2020.

Jennifer Peña (Sep 15, 2020 17:31 CDT)

JUDGE JENNIFER PEÑA
290TH JUDICIAL DISTRICT
BEXAR COUNTY, TEXAS

EXHIBIT 16h

EXHIBIT 16h

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE,	)	
	)	**HAMILTON COUNTY**
v.	)	**No. M1988-00096-SC-DPE-DD**
	)	
	)	**CAPITAL CASE**
PERVIS T. PAYNE,	)	
	)	
Defendant.	)	

NOTICE

Rule 12.4(E), Rules of the Supreme Court of Tennessee, requires the State Attorney General to provide this Court with a copy of any executive order granting a reprieve from execution of a death sentence. Accordingly, the State Attorney General gives notice to this Court that, on November 6, 2020, Governor Bill Lee issued an executive reprieve from execution of the death sentence in the above case effective until April 9, 2021. A copy of the Executive Reprieve is herewith provided to the Court pursuant to Rule 12.4(E).

Respectfully submitted,

HERBERT SLATERY, III
Attorney General & Reporter

ANDRÉE SOPHIA BLUMSTEIN
Solicitor General

LESLIE E. PRICE
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B.P.R. No. 020246
Leslie.Price@ag.tn.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been sent by first class mail, postage prepaid, to Kelley Henry, 810 Broadway, Suite 200, Nashville, TN 37203 on this the 6th day of November, 2020.

LESLIE E. PRICE
Senior Deputy Attorney General

THE STATE OF

TENNESSEE

EXECUTIVE CHAMBER

REPRIEVE

Pursuant to the authority vested in me by Article III, Section 6 of the Constitution of the State of Tennessee, I, Bill Lee, Governor of the State of Tennessee, do hereby grant to Pervis Tyrone Payne a reprieve from execution of the sentence of death imposed upon him by the Criminal Court for Shelby County in 1988 and scheduled to be carried out on December 3, 2020. *State v. Nichols*, No. M1988-00096-SC-DPE-DD (Tenn. Feb. 24, 2020). This reprieve shall continue in effect until April 9, 2021.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State to be affixed at Nashville, Tennessee on this 6th day of November, 2020.

Bill Lee

GOVERNOR

Tre Hargett

SECRETARY OF STATE

EXHIBIT 16i

EXHIBIT 16i

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE v. BYRON LEWIS BLACK

Criminal Court for Davidson County
No. 88-S-1479

No. M2000-00641-SC-DPE-CD

ORDER

On February 24, 2020, this Court set the execution of Byron Lewis Black for October 8, 2020. Subsequently, upon motion of Mr. Black, the Court reset the execution for April 8, 2021. Mr. Black has filed a "Motion to Reset Execution Date Due to Resurgent COVID-19 Pandemic, Infection of Counsel, and Outbreak on Death Row." The State filed a response asserting the motion is premature. Upon due consideration, because of the multiple issues caused by the continuing COVID-19 pandemic, it is hereby ORDERED that the execution of Byron Lewis Black is stayed pending further order of this Court.

PER CURIAM

EXHIBIT 16j

EXHIBIT 16j

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE v. OSCAR FRANKLIN SMITH

Criminal Court for Davidson County
No. 89-F-1773

No. M2016-01869-SC-R11-PD

ORDER

On January 15, 2020, this Court set the execution of Oscar Franklin Smith for June 4, 2020. Upon motion of Mr. Smith, the Court reset the execution for February 4, 2021, due to the onset of the COVID-19 pandemic. Mr. Smith has filed a "Motion for Stay of Execution Due to Resurgence of COVID-19 Pandemic, Infection of Counsel, and Outbreak on Death Row" along with a supplement to the motion. The State chose not to file a response. Upon due consideration, because of the multiple issues caused by the continuing COVID-19 pandemic, it is hereby ORDERED that the execution of Oscar Franklin Smith is stayed pending further order of this Court.

PER CURIAM

MOT

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #0010539
200 Lewis Avenue
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(702) 671-2500
State of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ZANE MICHAEL FLOYD,
#1619135

Defendant.

Case No. 99C159897
Dept No. XVII

ADDENDUM TO STATE'S MOTION FOR THE COURT TO ISSUE SECOND SUPPLEMENTAL ORDER OF EXECUTION AND SECOND SUPPLEMENTAL WARRANT OF EXECUTION

DATE OF HEARING:
TIME OF HEARING:

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through ALEXANDER CHEN, Chief Deputy District Attorney, and files this Addendum to State's Motion for the Court to Issue Second Supplemental Order of Execution and Second Supplemental Warrant of Execution.

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

POINTS AND AUTHORITIES

On April 15, 2021, the State of Nevada formally informed this Court that Defendant Zane Floyd had exhausted his appellate and post-conviction remedies. In exhausting his remedies, the State sought to have a new order of execution issued pursuant to NRS 176.505. Originally, the State proposed that the execution would take place the week of June 7, 2021.

The Director of the Department of Corrections is responsible for overseeing any execution that is scheduled to take place. NRS 176.355 sets forth the statutory requirements and subsections that the Director is required to follow by law:

> (a) Execute a sentence of death within the week, the first day being Monday and the last day being Sunday, that the judgment is to be executed, as designated by the district court. The Director may execute the judgment at any time during that week if a stay of execution is not entered by a court of appropriate jurisdiction.
>
> (b) Select the drug or combination of drugs to be used for the execution after consulting with the Chief Medical Officer.
>
> (c) Be present at the execution.
>
> (d) Notify those members of the immediate family of the victim who have, pursuant to NRS 176.357, requested to be informed of the time, date and place scheduled for the execution.
>
> (e) Invite a competent physician, the county coroner, a psychiatrist and not less than six reputable citizens over the age of 21 years to be present at the execution. The Director shall determine the maximum number of persons who may be present for the execution. The Director shall give preference to those eligible members or representatives of the immediate family of the victim who requested, pursuant to NRS 176.357, to attend the execution.

Since the time that the State filed its motion to have a new order of execution signed, Defendant Floyd has sought to block the issuance of an order of execution in both state and federal courts. This includes a § 1983 civil rights action where Defendant Floyd is challenging the drugs that would be used for his execution.

On May 6, 2021, the Director gave some preliminary testimony in federal court. The

Director indicated that although an execution could be performed if ordered for the week of June 7, 2021, it would be his preference have a longer time to fulfil his statutory obligations.

Although the State of Nevada that seeks this new order and eventual warrant of execution is an entirely separate entity from the Director of the Department of Prisons that is tasked with carrying out the actual execution, the State of Nevada recognizes the Director's preference for additional time. Given the Director's grave responsibilities to properly carry out the execution, it seems prudent to allow the Director to have the time that he trusts would be adequate to properly fulfill the execution.

Based upon the Director's recent testimony in federal court, the State is now proposing that the second supplemental order of execution specify that the execution should take place the week of July 26, 2021. By extending the time that the Director has to prepare for the execution, the State of Nevada is confident that the Director will be able to ensure that the execution is carried out to the highest standards required by law.

Additionally, similar to the State's previous request, even if an order of execution is signed for the week of July 26, 2021, a new warrant of execution could not issue pursuant to NRS 176.495 until July 9, 2021 because the warrant of execution must be carried out within 15 to 30 days of its issuance. Therefore, at this time the State is requesting that only the order of execution be issued.

Finally, Defendant Floyd, through his attorneys, has pointed out that the State in its previously proposed warrant of execution erroneously indicated that the execution would take place at Nevada State Prison located near Carson City, Nevada. This was a typographical error, and the correct location of execution, Ely State Prison, will be written in any newly proposed warrant of execution.

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///

DATED this 10th day of May, 2021.

Respectfully submitted,

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

BY */s/ Alexander Chen*
ALEXANDER CHEN
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of the above and foregoing ADDENDUM TO STATE'S MOTION FOR THE COURT TO ISSUE A SECOND SUPPLEMENTAL ORDER OF EXECUTION AND A SECOND SUPPLEMENTAL WARRANT OF EXECUTION, Points and Authorities, and Notice of Motion was made this 10th day of May, 2021, by facsimile transmission to:

BRAD LEVENSON
Email: brad_levenson@fd.org
DAVID ANTHONY
Email: david_anthony@fd.org
Ecf_nvchu@fd.org

BY */s/ E. Davis*
Employee for the District Attorney's Office

AC//ed

ORDR
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Las Vegas, Nevada 89155-2212
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State of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ZANE MICHAEL FLOYD,
#1619135

Defendant.

Case No. 99C159897
Dept No. XVII

SECOND SUPPLEMENTAL ORDER OF EXECUTION

A JUDGMENT OF DEATH having been entered on the 21st day of July, 2000, against the above named Defendant, ZANE MICHAEL FLOYD, as a result of his having been found guilty of Counts II, III, IV and V Murder of the First Degree with Use of a Deadly Weapon, by a duly and legally impaneled Jury of twelve persons; and

WHEREAS, this Court has made inquiry into the facts and found no legal reasons against the execution of the Judgment of Death.

IT IS ORDERED that the Director of the Department of Prisons shall execute the Judgment of Death, during the week commencing on the 26th day of July, 2021.

DATED this _____ day of May, 2021.

DISTRICT JUDGE

MSTR

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Attorneys for Zane Michael Floyd

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

v.

ZANE MICHAEL FLOYD,

Defendant.

Case No. 99C159897
Dept. No. XVII

MOTION TO STRIKE, OR ALTERNATIVELY, MOTION TO STAY THE SECOND SUPPLEMENTAL ORDER OF EXECUTION AND SECOND SUPPLEMENTAL WARRANT OF EXECUTION

Date of Hearing:
Time of Hearing:

(DEATH PENALTY CASE)

EXECUTION SOUGHT BY THE STATE FOR THE WEEK OF JULY 26, 2021

NOTICE OF HEARING ON MOTION TO STRIKE, OR ALTERNATIVELY, MOTION TO STAY THE SECOND SUPPLEMENTAL ORDER OF EXECUTION AND SECOND SUPPLEMENTAL WARRANT OF EXECUTION

PLEASE TAKE NOTICE that the above entitled Motion to Strike, or alternatively, Motion to Stay the Second Supplemental Order of Execution and Second Supplemental Warrant of Execution will come on for hearing before this Court in Department No. ___ on the ___ day of _____, 2021, at _____am/pm located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89101.

DATED this 11th day of May, 2021.

Respectfully submitted
RENE L. VALLADARES
Federal Public Defender

/s/ David Anthony
DAVID ANTHONY
Assistant Federal Public Defender

/s/ Brad D. Levenson
BRAD D. LEVENSON
Assistant Federal Public Defender

/s/ Jocelyn S. Murphy
JOCELYN S. MURPHY
Assistant Federal Public Defender

Petitioner Zane Michael Floyd moves this Court to strike the Second Supplemental Order of Execution and the Second Supplemental Warrant of Execution filed by the State on April 14, 2021, as stated in the Addendum filed by the State on May 10, 2021, as current law prohibits the execution from taking place at the Ely State Prison. In the alternative, Floyd requests this Court stay any action on the Second Supplemental Warrant and Order until the final disposition of this motion, his motion for leave to file and amended petition, amended petition, and his state petition for writ of habeas corpus. This motion is made and based on the following points and authorities and the entire file herein.

DATED this 11th day of May, 2021.

Respectfully submitted
RENE L. VALLADARES
Federal Public Defender

/s/ David Anthony
DAVID ANTHONY
Assistant Federal Public Defender

/s/ Brad D. Levenson
BRAD D. LEVENSON
Assistant Federal Public Defender

/s/ Jocelyn S. Murphy
JOCELYN S. MURPHY
Assistant Federal Public Defender

POINTS AND AUTHORITIES

I. INTRODUCTION

On March 26, 2021, Clark County District Attorney, Steve Wolfson, announced that the CCDA would be seeking a warrant of execution against Floyd.[1] On April 14, 2021, the State filed a Motion and Notice of Motion for the Court to Issue Second Supplemental Order of Execution and Second Supplemental Warrant of Execution. The proposed warrant submitted by the State sought Floyd's execution to be held at "the State Prison, located at or near Carson City, State of Nevada."

On May 10, 2021, the State filed an addendum to its motion seeking to change the location of the execution to Ely State Prison (ESP), even though NRS 176.355(3) expressly states that executions must be conducted at the state prison, which is Nevada State Prison, in Carson City. The State asserts that citing NSP as the execution location was a "typographical error," and "the correct location of execution" is ESP.

Floyd therefore moves to strike the State's proposed warrant seeking his execution at ESP as precluded under current law, or, in the alternative, to stay consideration of it until the final disposition of his recently submitted amended petition for writ of habeas corpus. Floyd also objects on notice grounds to the State

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[1] David Ferrara, *DA to proceed with death penalty against gunman in 1999 store killings*, Las Vegas Rev. J. (Mar. 26, 2021), available at https://www.reviewjournal.com/crime/courts/da-to-proceed-with-death-penalty-against-gunman-in-1999-store-killings-2315637/.

making such material changes to the execution warrant at the last moment thereby depriving him of adequate notice and an opportunity to respond.

II. ARGUMENT

A motion to strike is appropriate to remove any redundant, immaterial, impertinent, or scandalous pleading. NRCP 12(f). The second warrant sought by the State is redundant and immaterial as it has already submitted a proposed warrant for Floyd's execution at NSP. As explained in his pleadings on file with the Court, the State's recently proposed warrant is immaterial and impertinent as Floyd has pending litigation, making its application premature. The State's new warrant is further immaterial and impertinent because under NRS 176.355(3) the intended execution location, ESP, is against current law, and precluded by the statute. Under NRS 176.355(3), all executions must occur at NSP. Changing the warrant to ESP as the execution location therefore violates NRS 176.355(3) and as a result the new proposed warrant is illegal and cannot be signed by the Court.

A. NRS 176.355(3)'s use of "the," a definite article, plainly demonstrates the Legislature's intent for NSP to be the only prison where executions can occur

Under NRS 176.355(3), all executions "*must* take place at *the* state prison." (emphasis added). For this reason, any execution that does not take place at NSP is against current law and precluded under the statute.

The purpose of statutory interpretation "is to give effect to the Legislature's intent." *Hobbs v. State*, 127 Nev. 234, 237, 251 P.3d 177, 179 (2011). Traditionally, this begins with the statute's plain words; "when a statute is clear on its face, a court cannot go beyond the statute in determining legislative intent." *State v.*

Lucero, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011). But if a statute is ambiguous, this Court is permitted to go beyond its plain words to determine legislative intent. *Id.* "A statute is ambiguous if it is capable of being understood in two or more senses by reasonably well-informed persons." *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 476, 168 P.3d 731, 737 (2007). When interpreting an ambiguous statute, this Court turns to legislative history, reason, and public policy to determine legislative intent. *Lucero*, 127 Nev. at 95-96, 249 P.3d at 1228.

In interpreting a statute, a court's duty "is to interpret the statute's language; this duty does not include expanding upon or modifying the statutory language because such acts are the Legislature's function." *Williams v. United Parcel Servs.* 129 Nev. 386, 391-92, 302 P.3d 1144, 1147 (2013); *see also Williams v. State Dep't of Corr.*, 133 Nev. 594, 598-99, 402 P.3d 1260, 1264 (2017) ("[The Legislature's] explicit decision to use one word over another in drafting a statute is material. It is a decision that is imbued with legal significance and should not be presumed to be random or devoid of meaning." (internal citations omitted)) (quoting *S.E.C. v. McCarthy*, 322 F.3d 650, 656 (9th Cir. 2003).

NRS 176.355(3) is clear and unambiguous. Thus, legislative intent must be derived from the plain words of the text. NRS 176.355(3) provides that all executions "must take place at the state prison." Despite its decommissioned condition, NSP, in Carson City, is the state prison in Nevada, and resultantly the only prison where executions can take place. Construing this statute otherwise would eliminate the legal significance of the Legislature's intentional act. Use of the

definite article "the" denotes the Legislature's intent to limit executions to a specific place and a singular location, the state prison.

Notably, when drafting the statute and through its almost half a dozen amendments the Legislature made an explicit decision to use "the" instead of "a" or foregoing the use of a definite article altogether. *See Freytag v. Commissioner*, 501 U.S. 868, 902 (1991) (Scalia, J., concurring) (use of the definite article in the Constitution's conferral of appointment authority on "the Courts of Law" obviously narrows the class of eligible 'Courts of Law' to those courts of law envisioned by the Constitution"); *Pineda v. Bank of America, N.A.*, 241 P.3d 870, 875 (Cal. 2010) ("Use of the indefinite articles "a" or "an" signals a general reference, while use of the definite article 'the' (or 'these' in the instance of plural nouns) refers to a specific person, place, or thing."). Rules of statutory interpretation demand that this decision not be treated as "random or devoid of meaning." Expanding or modifying NRS 176.355(3) to include prisons other than NSP would diminish the legal significance of the Legislature's decision.

The subsequent construction of an execution chamber at ESP is inconsequential in interpreting the statute. NRS 176.355(3) must be applied by this Court as written, as "[i]t is the prerogative of the Legislature, not the Supreme Court, to change or rewrite a statute." *Holiday Ret. Corp. v. State, Div. of Indus. Relations*, 128 Nev. 150, 154, 274 P.3d 759, 761 (2012). Only the Legislature is vested with lawmaking authority and this Court may not rely on public policy to change or refuse to enforce NRS 176.355(3)'s plain meaning. *See Beazer Homes*

Nev., Inc. v. Eighth Judicial Dist. Court, 120 Nev. 575, 578 n.4, 97 P.3d 1132, 1134 n.4 (2018) ("When a statute is clear, unambiguous, not in conflict with other statutes and is constitutional, the judicial branch may not refuse to enforce the statute on public policy grounds. That decision is within the sole purview of the legislative branch."). Therefore, even though the Legislature's failure to change the statute to specify ESP was likely an oversight, the democratic process requires that the people's representatives in the Legislature change the statute. It should not be amended by a court decision.

Moreover, the Nevada Supreme Court has recognized NSP as the only prison where executions can occur. In *Kramer v. State*, Kramer asked the Nevada Supreme Court to take judicial notice that although his death warrant stated he would be executed at "the State Prison of the State of Nevada, at *Carson City*" the state prison, NSP, was not technically located within the Carson City limits. 60 Nev. 262, 262, 108 P.2d 304, 304 (1940). The Court affirmed Kramer's assertion and further noted that "Nevada has but one state prison and but one Carson City, and that the state prison is located approximately one mile from the city limits of said Carson City, which is the capital city of Nevada." *Id.* The Nevada Supreme Court unequivocally referenced NSP as the state prison, not ESP, which is located over 300 miles from Carson City and had yet to be constructed at the time of the statute's enactment.

Consistent with that position, the prior execution warrant in Floyd's case specified the location of the execution at the Nevada State Prison *see also* Ex. 6 at 2

(Judgment of Conviction) (sentencing Floyd to death "in the Nevada State Prison located at or near Carson City, State of Nevada."). And even the State in their second supplemental warrant, filed with this Court on April 14, 2021, recognized in the warrant that the "the State Prison" meant the Nevada State Prison. Motion at 4.

Moreover, interpreting "the" to encompass whichever maximum-security prison is identified as the "state prison," would lead to unreasonable and absurd results. *See Sheriff, Clark County v. Burcham*, 124 Nev. 1247, 1253, 198 P.3d 326, 329 (2008) ("[S]tatutory construction should always avoid an absurd result."). Presently, Nevada has two active prisons that are maximum security and classified as "state prisons" per their formal titles, Ely State Prison and High Desert State Prison. Thus, the statute would permit executions at either location as both are a "state prison." Adopting this interpretation would render NRS 176.355(3) vague and incapable of being properly enforced because it would be unclear, to an ordinary person, which "state prison" is required to be utilized to meet NRS 176.355(3)'s location requirement. *See Clancy v. State*, 129 Nev. 840, 847, 313 P.3d 226, 231 (2013) ("A statute is unconstitutionally vague (1) if it fails to provide a person of ordinary intelligence fair notice of what is prohibited; or (2) if it is so standardless that it authorizes or encourages seriously discriminatory enforcement.") (internal quotation marks omitted) (quoting *State v. Castaneda*, 126 Nev. 478, 481-82, 245 P.3d 550, 553 (2010)).

Accordingly, because NRS 176.355(3) plainly evidences the Legislature's intent for executions to only occur at NSP, the State's proposed amendment to its motion for a second execution warrant is precluded by current law and this Court should strike it as immaterial and impertinent.

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B. NRS 176.355's legislative history further supports interpreting the statute to only permit executions at NSP

Nonetheless, even if it is appropriate to go beyond NRS 176.355's plain text to determine legislative intent, legislative history also supports interpreting the statute in this manner.

While NRS 176.355 has virtually stayed the same since being codified in 1967, its been brought before the Legislature for amendments five times. In several instances NSP was the only prison referenced or alluded to when discussing the location of an execution under the statute. *See e.g.*, Ex. 1 at 125, (Hearing Before the Senate Committee on Judiciary, 62nd Legis. 124-27 (1983)) (statement of John Slansky, Warden of Northern Nevada Correctional Center describing the inept execution conditions at NSP); Ex. 2 at 1673-74 (Hearing Before the Assembly Committee on Judiciary, 62nd Legis. 1670-75 (1983)) (statement of Vernon Housewright, Director of Prisons, discussing changes to Nevada's method of execution due to the insufficiency of NSP's execution chamber); Ex. 3 at 1 (Memorandum Exhibit submitted for Hearing before Assembly Committee on Judiciary, 68th Sess. Legis. 1977-78 (1995)) (referencing NSP as the location where executions occur). Notably, the Nevada State prison was referenced even after Ely State Prison (in 1989) and Lovelock State Prison (1995) were opened.

Further, during a 1983 committee meeting it was specifically recognized that under NRS 176.355 executions are to be held at the State's maximum-security prison. *See* Ex. 1 at 126. During that time NSP was the only such facility in existence, with ESP being constructed in 1989 and High Desert over a decade later

in 2000. Permitting an execution at any prison other than NSP directly contradicts legislative intent evidencing otherwise.

Reading the statute to permit executions at locations other than NSP would be expanding upon NRS 176.355(3)'s limited scope and modifying its specific designation of a location for executions, an act that is solely left to the Legislature. Legislative history further shows that despite opining upon the meaning of NRS 176.355's text and passing several amendments, the Legislature failed to expand the statutory language to include prisons other than NSP. Specifically, in 1983, the Legislature amended NRS 176.355(3)'s statutory language from "within the limits of the state prison" to "at the state prison." Ex. 4 at 860-61, Ex. 5 at 1675. Legislators opined that the former language was unclear and as a result chose to clarify the language by limiting the places an execution can take place, not expanding them. *See* Ex. 1 at 126 (stating that "the normal place for the execution would be the maximum security prison," but the Legislature "did not know the meaning behind the words, 'within the limits of the state prison.'"). Thus, NRS 176.355's legislative history further demonstrates the Legislature's intent to make NSP the sole location for executions of death sentenced inmates.

In light of the above, striking the State's recently submitted execution warrant is required as it is against NRS 176.355(3) and precluded by current law, making it immaterial, impertinent, and redundant to the execution warrant is previously filed.

III. CONCLUSION

For the foregoing reasons, Floyd requests that this Court strike the second supplemental order of execution and second supplemental warrant of execution proffered by the State, changing Floyd's execution to ESP, finding it unlawful under NRS 176.355(3) and premature considering Floyd's current petition for writ of habeas corpus.

DATED this 11th day of May, 2021.

Respectfully submitted
RENE L. VALLADARES
Federal Public Defender

/s/ David Anthony
DAVID ANTHONY
Assistant Federal Public Defender

/s/ Brad D. Levenson
BRAD D. LEVENSON
Assistant Federal Public Defender

/s/ Jocelyn S. Murphy
JOCELYN S. MURPHY
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

In accordance with EDCR 8.04(c), the undersigned hereby certifies that on this 11th day of May, 2021 a true and correct copy of the foregoing MOTION TO STRIKE OR ALTERNATIVELY, MOTION TO STAY ENTRY OF SECOND SUPPLEMENTAL WARRANT AND ORDER OF EXECUTION, was filed electronically with the Eighth Judicial District Court. Electronic service of the foregoing document shall be made in accordance with the master service list as follows:

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/s/ Sara Jelinek
An Employee of the Federal Public Defenders Office, District of Nevada

EXHS

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Attorneys for Zane Michael Floyd

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

v.

ZANE MICHAEL FLOYD,

Defendant.

Case No. 99C159897
Dept. No. XVII

EXHIBITS IN SUPPORT OF MOTION TO STRIKE, OR ALTERNATIVELY, MOTION TO STAY ENTRY OF SECOND SUPPLEMENTAL WARRANT AND ORDER OF EXECUTION

Date of Hearing:
Time of Hearing:

(DEATH PENALTY CASE)

Exhibit	Document
1.	Minutes of the Nevada State Legislature, 62nd Sess., Senate Committee on Judiciary, dated Feb. 10, 1983.
2.	Minutes of the Nevada State Legislature, Assembly Committee on Judiciary, dated May 2, 1983.
3.	State of Nevada Legislative Counsel Bureau, Memorandum from Assemblywoman Jeannine Stroth to Jean Courey White, Research Analyst, re: Viewing of Executions by Victims' Families, dated Apr. 24, 1995.
4.	Nev. Rev. Stat. § 176.355(3)
5.	Minutes of the Nevada State Legislature, Assembly Committee on Judiciary, Dated May 27, 1983.
6.	*State of Nevada v. Zane Michael Floyd*, Case No. C159897

DATED this 11th day of May, 2021.

Respectfully submitted
RENE L. VALLADARES
Federal Public Defender

/s/ David Anthony
DAVID ANTHONY
Assistant Federal Public Defender

/s/ Brad D. Levenson
BRAD D. LEVENSON
Assistant Federal Public Defender

/s/ Jocelyn S. Murphy
JOCEYLN S. MURPHY
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EXHIBIT 1

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The Senate Committee on Judiciary was called to order by Chairman, Senator Thomas R.C. Wilson, at 9:00 a.m., Thursday, February 10, 1983, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is a copy of the Agenda; Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Thomas R.C. Wilson, Chairman
Senator Helen A. Foley, Vice Chairman
Senator Sue Wagner
Senator William H,. Hernstadt
Senator Thomas J. Hickey
Senator James H. Bilbray
Senator Bob Ryan

STAFF MEMBERS PRESENT:

Marilyn Hofmann, Committee Secretary

SENATE BILL 109

The first bill on the agenda was Senate Bill 109, an act relating to the execution of criminals; changing the method of inflicting the death penalty to lethal injection.

Senators Glaser and Ashworth were the first to testify. Senator Glaser stated that Senate Bill 109 is relatively simple, straightforward and self-explanatory. The method of capital punishment in the State of Nevada is the sole issue of this bill. Senator Glaser said that he feels that execution by lethal injection is a more sophisticated, humane method of capital punishment. He noted that several states have already adopted this method, i.e., Idaho, New Mexico, Texas and Oklahoma. The drug that is primarily used is sodium pentothal. He expressed that sodium pentothal injections are painless and clean. He also said that this type of method

would avoid some of the emotional trauma and publicity which usually accompanies other forms of execution. He said that sodium pentothal is used for putting animals away, and is considered the most humane method. The co-sponsor of the bill, Senator Ashworth, commented that the condition of the gas chamber at the maximum security prison is very old and there are indications that when used, a great deal of effort is necessary to seal the chamber. The use of lethal injection would eliminate that expense. In response to a question from Senator Wagner, Senator Ashworth stated that he did not believe that doctors would be involved in any way with the injection itself, but only as observers.

The next person to testify was John Slansky, Warden of the Northern Nevada Correctional Center. He is speaking on behalf of the Department of Prisons, and takes a position of advocacy on Senate Bill 109. His principal concern when proposing this bill, was the safety of the gas chamber at the Nevada State Prison. He said that the gas chamber is over thirty years old, and it is unsafe. He further stated that the primary concern at the time of the Jesse Bishop execution, was the safety of the staff, witnesses and the news media, and elaborate precautions were taken, including antidotes for cyanide gas. He said that execution by gas is an extremely complicated, dangerous and costly procedure; execution by lethal injection is none of those. Gas from a gas chamber must be vented into the open air, and is affected by weather conditions. He also said that during one test done in preparation for an execution, the windows in the witness room were blown out during pressurization. Senator Wagner asked the witness if his objectives in supporting this bill were different from the sponsors', since they are on record in support of the bill because it is more humane and will draw less attention, while the Department's is mainly safety and cost effectiveness. He said that he and the sponsors had not really discussed the question of humanity, but he emphasized that there is no conflict between the Department's position and the sponsors' position. He believes that the lethal injecton method would remove some of the carnival atmosphere that surrounds an execution. He also said that it is difficult to discuss humanity when someone is being executed. Mr. Slansky was asked who would administer the injection. He stated that it would be a violation of oath for a doctor to do the injection, and therefore one member of the prison staff would administer the drug, and he does not know who that would be, and does not believe that

the person who administers the drug would like to have his identity known.

Senator Hernstad suggested that perhaps the use of carbon monoxide gas would be preferable to cyanide gas. Senator Bilbray stated that a less circus atmosphere could be accomplished by administering lethal injection in a nursing facility, or the condemned person's room with family present. The Chairman questioned the warden regarding the reasons behind the location of the execution and the number of persons to be present. Mr. Slansky indicated that the normal place for the execution would be the maximum security prison, and he did not know the meaning behind the words, "within the limits of the state prison." He was then questioned regarding the words, "No person who has not been invited by the director may witness the execution." The warden stated that he had no reason for that particular language, but he could see why he might want to have certain persons at the execution. This language was apparently patterned after the Texas law. The warden said that he believed that there should be more than six official witnesses [that he should be able to have other "observers".] The Committee concensus was that this language simply allowed the director to invite more than six witnesses, at his discretion. There was discussion regarding how many witnesses attended the Jesse Bishop execution, and an exact number could not be determined. The Chairman stated, for the record: "I take it it's not the method of administering the death penalty which makes the event a sensational one; I gather it's the nature of the event itself.... it is consistent to say whether or not it's sensational really does not turn on the method of execution..it turns on the fact of execution, by whatever the method." The warden agreed with the Chairman, and stated that execution would be sensational no matter what the method. Senator Wagner emphasized that the number of people who are allowed to attend is a part of the sensationalism, and that this Committee should have some concern as to how many witnessess are there and how they are chosen. The warden said that whenever there is an execution, the local and national media wish to be there. Senator Wagner suggested that perhaps methods other than lethal injection would point out the ugliness of execution to a greater extent, and the warden agreed. In response to a question posed by Senator Ryan, the warden stated that there are 18 persons now awaiting execution in Nevada.

The next person to testify was Senator Joe Neal, who spoke

in opposition to Senate Bill 109. He first stated that he believes there is no way that a high degree of civility can be brought to the death penalty, and to entertain a bill such as Senate Bill 109, which allows the state to impose the death penalty by lethal injection, seems to indicate that the state is trying to make execution more palatable. He stated that perhaps execution should be kept at a degree where it is objectionable. The senator said that he is disturbed because he believes passage of this bill will tend to increase the number of executions. Senator Wilson asked the following question of Senator Neal: "Should the method of execution be for the benefit of the executed or for the benefit of society?" Senator Neal stated that there is no benefit to the one being executed. The chairman said that the question is not whether or not there should be capital punishment, but pertains to the method; whether there should be consideration for the convicted or for society, recognizing that those needs may be radically different. "Do you use the execution as an example, or do you choose the method out of consideration for the person being executed?" Sentor Neal replied that one could not adequately address that question without looking at both sides. In this instance, i.e., lethal injection, it seems to be one in which society itself is not bothered as consciously about that method of execution, since it is treated more like putting a puppy to sleep, and is therefore more palatable. He said that for the person being executed, it makes no difference, and the method is therefore for the benefit of society. "If you are trying to find a better method to kill someone in the name of the state...you are making it easier, and therefore the judge who might have some apprehension of imposing the death penalty..it is the easy way to die.. and from that perspective you are going to find more judgments of death..."

There being no further testimony regarding Senate Bill 109, the public hearing was closed on that matter.

SENATE BILL 110

The next matter was Senate Bill 110, an act relating to homesteads, increasing the amount exempt; increasing the value of a dwelling exempt from execution.

Testifying on behalf of this bill was the sponsor, Senator Nick Horn. He stated that this bill is one of the good things that the legislature can do for the citizens of the

EXHIBIT 2

EXHIBIT 2

MEMBERS PRESENT: Chairman Jan Stewart
Vice-Chairman Shelley Berkley
Mr. Mike Malone
Mrs. Jane Ham
Mr. Byron Bilyeu
Mr. Gene Collins
Mr. Robert Fay
Mr. David Humke
Mr. Leonard Nevin
Mr. James Stone
Mrs. Courtenay Swain

MEMBERS ABSENT : None

GUESTS PRESENT : See guest list attached as EXHIBIT A.

Chairman Stewart called the meeting to order at 8:20 a.m. The first bill considered by the Committee was SB 109.

SB 109: Changes method of inflicting death penalty. (BDR 14-70)

Senator Norman Glaser Introduced Vern Housewright, Director of Prisons, and stated they were here to discuss Senate Bill 109, which changes the method of inflicting the death penalty.

He said he first became interested in this when a warden at one of the interim finance committee meetings indicated to us there were some problems over at the prison when they had an execution out there a year or so ago. The gas chamber is on the top story and they had considerable trouble to make it leak proof. The cyanide gas is very toxic and posed a threat to other inmates in that wing.

He remembers back to 1961 when he first served in the Assembly, they used to evacuate the Warden and the Warden's family from the house next door, which is outside of the grounds.

After the execution, it takes time to vent off the gases and they can only admit a little bit of it into the atmosphere at a time, so it takes several days to evacuate the room.

He became acquainted with this method of execution, the death by lethal injection, when he was down in Oklahoma several years ago. Oklahoma and Texas, Arkansas, Idaho and one other State have death by lethal injection.

It occurred to him that this was a more humane way and much less costly and he said he doesn't think there is the "carnival type" atmosphere with it, as you have with the electric chair, firing squad or gas.

There was a man executed in the electric chair just a few days ago, he continued. They had to give him three shots of 30 second duration each time. Thirty seconds is quite awhile to have a current of electricity passing through your body, with all the convulsing and tensing that goes with it before he was finally pronounced dead.

Some of you (the committee) might have had sodium penathol in the operating room. He said he did a couple of years ago, and didn't even know they had given it to him. First thing he knew, he was awakened in the recovery room. All this would amount to would be an overdose of sodium pentathol.

The bill passed through Senate Judiciary, and they made an amendment which would be SB 109 - First Reprint.

Some of the changes made are:

They reduced the number of people that could view the execution. (Sec. 1, Par. 2, Line 14, of the original bill.)

He thinks that was the only major change. It passed out of committee handily and he thinks there was only one dissenting vote on the floor of the Senate.

Vernon Housewright is more acquainted with it than he is, and Warden Slansky and Warden Somner testified that they favored the bill. Warden Slansky appeared before the Senate Judiciary Committee.

Mr. Stewart asked Senator Glaser about his statement that sodium pentathol is a pleasant way to go. His question to Senator Glaser was: "Do you think we should make it a pleasant way to go?"

Senator Glaser replied that in the debate on the floor of the Senate, one of the Senators said that they should execute him in the same manner in which they executed their victims. He said he doesn't know whether we should torture them or not, but he shares Mr. Stewart's sentiment. As a rancher, he continued, he is not a bleeding heart. It wouldn't hurt him to torcher them, but he understands the terminology, that you can't use anything ---

Mr. Stewart said he supposes one of the purposes of capital punishment is for a deterrent, and he wonders if you lose the deterrent effect if you make it a pleasant way to go.

Senator Glaser said "no, but it speeds up the executions." He said one of the reluctants that people have to committing a

person to death is that they don't want to see them shot or hung. Right now there are 20 people on death row. One person has been there since 1963 and he was the man who chopped up Sonjia McCaskie, the Olympic skiier into little bits and pieces and put parts of her body in the trunk. He's still out there. He doesn't know why.

Perhaps if the death penalty were a little more accepted, then you might see some movement on death row.

Mr. Stewart said one of the problems that some states have wrestled with is the fact that the American Medical Association is coming out against their doctors, for instance being a part of injecting this lethal dose. Its in violation of their code. He asked Mr. Houseright if he saw that as a problem here?

Mr. Housewright said Warden Slansky would address that technique as it is used in Texas and they don't have to use a doctor.

Mr. Collins asked Senator Glaser what the difference was between electrocution, the gas chamber and death by the firing squad and the lethal injection?

Senator Glaser said the lethal injection was more humane and did not create the carnival atmosphere, as say the firing squad. He asked Mr. Collins if he recalled when Gary Gilmore was executed by firing squad in Utah? People gathered the day before, and they lined that man up at dawn as the sun was coming up over the Wasatch Mountains. The firing squad lined up and they even made a movie of it.

He continued that he didn't think there was anything glamorous or sensational about lying down on a gurney and having a needle jabbed into your vein.

Senator Glaser said he is advocating the death by injection for the following reasons:

(1) Our present system is archaic and costs the State money every time they fire it up.

(2) It's more humane and less sideshow atmosphere to this type of death.

Mr. Nevin asked what it costs for an execution by gas?

Senator Glaser said he would rather defer to the Director on that, but knows that when they buy cyanide, (and they only do it about once every 10 years) he understands they have to buy a barrel full at a time, which costs several thousands of dollars, and you only use a handful. The rest sits there, and they have to throw it out or dispose of it, unless they are going to have another execution within a short time.

Mr. Nevin said the death penalty does not deter crime to him, but it sure stops that person from doing it again.

Senator Glaser said when they used to hang the horse thief in the village square, it sure stopped horse thieving. How many horse thieves do you see today?

Vernon Housewright, Department of Prisons - In checking on the current gas chamber at the Nevada State Prison, he said, he asked their Chief Engineer, Bill Berning to prepare a statement of some of the problems with it. He was concerned with the fact that they could end up killing several of the people who witness the executions if they used the gas chamber. (EXHIBIT "B")

The chamber is surrounded on three sides with one-quarter inch plate glass. The glass could be broken during an execution if the condemned person were able to free a leg. The vacuum created by the evacuation of the gas could cause the gas to break. Due to age, the glass could become crystallized and break. The seal holding the glass in could fail. Any of these could cause gas to escape into the witness room or the control room.

The bags of cyanide pellets are dropped into an acid vat under the chair by an electric cellunoid. If there was an electrical problem or the cellunoid hung up for some reason, someone would have to enter the chamber to remove the cyanide bag. To do this, the vats would have to be drained of acid and someone would have to enter to remove the bag of cyanide. If the bag dropped when someone entered, there could be enough acid to activate the cyanide and produce enough gas to impair or kill the person trying to remove the cyanide bag.

After an execution, the acid vats are drained by pulling the plugs from a remote position by means of a nylon cord. If for some reason this failed, there would be no way to drain the vats.

The drained acid goes under the chamber, then to a drain pipe outside the building into an unknown spot north of the Nevada State Prison. Any leak along the way could harm any one in its path.

The gas is evacuated by an exhaust fan on the top of the chamber. If the exhaust fan failed, another fan would have to be installed to evacuate the gas. The person changing the fan could have his life seriously endangered.

From the gas evacuates, it is removed by way of a tall stack above the gas chamber, even though it is neutralized with ammonia prior to evacuation. The evacuated gas could drift to No. 2 tower, and present a problem to the No. 2 tower officers.

Even though the sinks in the control room are filled with water to serve as a trap, it is possible for the gas to enter the control room.

Mr. Housewright questions if there is a fail-safe method of knowing if all of the gas is evacuated prior to opening the door to remove the condemned from the chamber. He feels it is possible that the victim's lungs could be full of cyanide gas and possibly the gas could escape when the victim is removed.

All of the vat plugs, nylon strings, the door and any other connection to the outside of the chamber is sealed with vaseline. The vaseline seal could fail at any time during an evacuation and cause gas to leak.

The current gas chamber was constructed in 1950 and has been utilized in 11 executions. Chemicals and/or solutions necessary for operation of the chamber are:

1 gallon sulfuric acid
2 pounds sodium cyanide
1 gallon ammonia
4 pounds sodium hydroxide
ice
2 gallons of water
1 quart phenol phthaline

Regarding the Chief Engineer's concerns on the window, he informs Mr. Housewright that a window did in fact pop out of the chamber during a vacuum check that he performed a few years ago. He estimates that it would require a minimum of $30,000 to correct the deficiencies in the existing chamber.

When New Mexico adopted lethal injection, they offered to sell to Nevada their gas chamber and reported that it had been built in 1955 at a cost of $40,000 - in worse shape than the one that we have, he said.

Execution by lethal injection - Conversion of the gas chamber to a suitable enclosure for execution by lethal injection would require a minimum in the way of structural changes. The existing chairs would have to be removed. A platform could be constructed for placement of a gurney. Tubing for the syringes could be run into the chamber from the existing control room.

Chemicals and/or solutions necessary for lethal injection as used in Texas are:

1 gram sodium thiopentol - a muscle relaxant
30 cc saline solution - suspension solution
1 milligram pavilon - a respiratory suppressant
100 milli-equivalents potassium chloride - a chemical which alters blood electrolyte level.

A back-up syringe flowing with saline solution is utilized in case of problems with the primary injection. Unconsciousness is almost immediate. Death may take up to several minutes and is caused by the combined overdose of each of the above drugs.

Mr. Housewright continued by saying the current bill, SB 109, changes the method of execution from lethal gas to injection of lethal drug. The bill requres the Director to:

(1) Select the drug or combination of drugs in consultation with the State Health Officer.

(2) Be present at the execution.

(3) Invite a competent physician and not less than 6 or more than 9 witnesses.

(4) The execution must take place at the State Prison, and no person who has not been invited by the Director may be a witness.

Reference to the Doctor's Hippocratic Oath he is told that now the position of the American Medical Association is that a Doctor can consult with them regarding the types of drugs that should be used in carrying out the execution, and he can pronounce the individual dead.

The matter of the injection of the lethal drug as it was done in Texas, can be done by an emergency medical technician or anyone else for that matter that is trained in depressing the syringe that allows the drug to go into the body.

Mr. Malone asked Mr. Housewright about his statement that there was a leak in the gas chamber and several witnesses to the execution could be effected by the fumes. "Is it true that you or a warden would have to be there?"

Mr. Housewright replied that the bill makes it mandatory that the Director be present. There would be several staff members, including himself.

Mr. Malone continued by saying that he thought it had been brought up that the expense of renovating the gas chamber was quite high, and asked if Mr. Housewright could give an estimate of what that would be?

He replied that after talking to the staff after the last execution, he knows its quite high but has no exact figures on it.

EXHIBIT 3

EXHIBIT 3

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

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Lorne J. Malkiewich, *Director, Secretary*

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MEMORANDUM

DATE: April 24, 1995

TO: Assemblywoman Jeannine Stroth

FROM: Jean Courey White, Research Analyst

SUBJECT: **Viewing of Executions by Victims' Families**

You requested information regarding the viewing of executions by victims' families. Specifically, you asked if there were any space limitations for the viewing of executions in Nevada prisons. Also, you asked if any other states allow viewing of executions by victims' families, and if so, what are the age restrictions.

According to John Slansky, Acting Assistant Director of the Department of Prisons (887-3285), the room where executions are conducted (at the Nevada State Prison facility on Fifth Street in Carson City) is limited in size. Therefore, the maximum number of persons who could view an execution is 24.

A Westlaw search of the statutes of all 50 states reveals two states that have laws pertaining to the viewing of executions by victims' families: Washington and Louisiana. The West's *Revised Code of Washington* 10.95.180 states that the superintendent of prisons shall designate the witnesses allowed in several categories, including representatives from victims' families. The Washington code does not provide an age restriction for witnesses. West's *Louisiana Revised Statutes Annotated* 46:1844(N) regarding the basic rights for victims states that:

> In cases where the sentence is the death penalty, the victim's family shall have the right to be notified by the appropriate court of the time, date and place of the execution, and a representative of the family shall have the right to be present.

EXHIBIT E
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EXHIBIT 4

EXHIBIT 4

3. The term of imprisonment designated in the judgment shall begin on the date of sentence of the prisoner by the court.

4. Upon the expiration of the term of imprisonment of the prisoner, or the termination thereof for any legal reason, the [warden] *director of the department of prisons* shall return one of his certified copies of the judgment to the county clerk of the county from whence it was issued, with a brief report of his proceedings thereunder endorsed thereon, and the endorsed copy shall be filed with the county clerk. The return shall show the cause of the termination of such imprisonment, whether by death, legal discharge or otherwise.

SEC. 68. NRS 176.345 is hereby amended to read as follows:

176.345 1. When a judgment of death has been pronounced, a certified copy of the entry thereof in the minutes of the court shall be forthwith executed and attested in triplicate by the clerk under the seal of the court. There shall be attached to the triplicate copies a warrant signed by the judge, attested by the clerk, under the seal of the court, which shall recite the fact of the conviction and judgment, and appoint a week within which the judgment is to be executed, which must not be less than 60 days nor more than 90 days from the time of judgment, and must direct the sheriff to deliver the prisoner to such authorized person as the [warden of the state prison shall designate] *director of the department of prisons designates* to receive the prisoner, for execution, such prison to be designated in the warrant.

2. The original of the triplicate copies of the judgment and warrant shall be filed in the office of the county clerk, and two of the triplicate copies shall be immediately delivered by the clerk to the sheriff of the county; one of the triplicate copies to be delivered by the sheriff, with the prisoner, to such authorized person as the [warden of the state prison shall designate,] *director of the department of prisons designates,* which shall be the warrant and authority of the [warden of the state prison] *director* for the imprisonment and execution of the prisoner, as therein provided and commanded, and the [warden] *director* shall return his certified copy of the judgment to the county clerk of the county whence it was issued; and the other triplicate copy of such judgment and warrant to be the warrant and authority of the sheriff to deliver the prisoner to such authorized person so designated by the [warden of the state prison;] *director;* the last-mentioned copy to be returned to the county clerk by the sheriff with his proceedings endorsed thereon.

SEC. 69. NRS 176.355 is hereby amended to read as follows:

176.355 1. The judgment of death shall be inflicted by the administration of lethal gas.

2. The execution shall take place within the limits of the state prison, wherein a suitable and efficient enclosure and proper means for the administration of such gas for that purpose shall be provided by the board of prison commissioners.

3. The [warden of the state prison] *director of the department of prisons* must be present, and must invite a competent physician, and not less than six reputable citizens over the age of 21 years, to be present at the execution; but no other persons shall be present at the execution.

SEC. 70. NRS 176.365 is hereby amended to read as follows:

176.365 After the execution, the [warden] *director of the department of prisons* must make a return upon the death warrant to the court by which the judgment was rendered, showing the time, place, mode and manner in which it was executed.

SEC. 71. NRS 176.425 is hereby amended to read as follows:

176.425 1. If, after judgment of death, there is a good reason to believe that the defendant has become insane, the [warden of the state prison] *director of the department of prisons* to whom the convicted person has been delivered for execution may by a petition in writing, verified by a physician, petition a district judge of the district court of the county in which the state prison is situated, alleging the present insanity of such person, whereupon such judge shall:

(a) Fix a day for a hearing to determine whether the convicted person is insane;

(b) Appoint two physicians, at least one of whom shall be a psychiatrist, to examine the convicted person; and

(c) Give immediate notice of the hearing to the attorney general and to the district attorney of the county in which the conviction was had.

2. If [such judge shall determine] *the judge determines* that the hearing on and the determination of the sanity of the convicted person cannot be had before the date of the execution of such person, [such] *the* judge may stay the execution of the judgment of death pending the determination of the sanity of [such] *the* convicted person.

SEC. 72. NRS 176.435 is hereby amended to read as follows:

176.435 1. On the day fixed, the [warden of the state prison] *director of the department of prisons* shall bring the convicted person before the court, and the attorney general or his deputy shall attend the hearing. The district attorney of the county in which the conviction was had, and an attorney for the convicted person, may attend the hearing.

2. The court shall receive the report of the examining physicians and may require the production of other evidence. The attorney general or his deputy, the district attorney, and the attorney for the convicted person or such person if he is without counsel may introduce evidence and cross-examine any witness, including the examining physicians.

3. The court shall then make and enter its finding of sanity or insanity.

SEC. 73. NRS 176.445 is hereby amended to read as follows:

176.445 If it is found by the court that the convicted person is sane, the [warden] *director of the department of prisons* must execute the judgment of death; but if [such] *the* judgment has been stayed, as provided in NRS 176.425, the judge shall cause a certified copy of his order staying the execution of the judgment, together with a certified copy of his finding that the convicted person is sane, to be immediately forwarded by the clerk of the court to the clerk of the district court of the county in which the conviction was had, who shall give notice thereof to the district attorney of such county. [, whereupon proceedings shall] *Proceedings shall then* be instituted in the last-mentioned district court for the issuance of a new warrant of execution of the judgment of death in the manner provided in NRS 176.495.

SEC. 74. NRS 176.455 is hereby amended to read as follows:

EXHIBIT 5

EXHIBIT 5

A back-up syringe flowing with saline solution is utilized in case of problems with the primary injection. Unconsciousness is almost immediate. Death may take up to several minutes and is caused by the combined overdose of each of the above drugs.

Mr. Housewright continued by saying the current bill, SB 109, changes the method of execution from lethal gas to injection of lethal drug. The bill requres the Director to:

(1) Select the drug or combination of drugs in consultation with the State Health Officer.

(2) Be present at the execution.

(3) Invite a competent physician and not less than 6 or more than 9 witnesses.

(4) The execution must take place at the State Prison, and no person who has not been invited by the Director may be a witness.

Reference to the Doctor's Hippocratic Oath he is told that now the position of the American Medical Association is that a Doctor can consult with them regarding the types of drugs that should be used in carrying out the execution, and he can pronounce the individual dead.

The matter of the injection of the lethal drug as it was done in Texas, can be done by an emergency medical technician or anyone else for that matter that is trained in depressing the syringe that allows the drug to go into the body.

Mr. Malone asked Mr. Housewright about his statement that there was a leak in the gas chamber and several witnesses to the execution could be effected by the fumes. "Is it true that you or a warden would have to be there?"

Mr. Housewright replied that the bill makes it mandatory that the Director be present. There would be several staff members, including himself.

Mr. Malone continued by saying that he thought it had been brought up that the expense of renovating the gas chamber was quite high, and asked if Mr. Housewright could give an estimate of what that would be?

He replied that after talking to the staff after the last execution, he knows its quite high but has no exact figures on it.

EXHIBIT 6

EXHIBIT 6

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JOC
STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477
200 S. Third Street
Las Vegas, Nevada 89155
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ZANE MICHAEL FLOYD,
#1619135

Defendant.

Case No. C159897
Dept. No. V
Docket H

JUDGMENT OF CONVICTION

WHEREAS, on the 6th day of July, 1999, Defendant, ZANE MICHAEL FLOYD, entered a plea of Not Guilty to the crimes of BURGLARY WHILE IN POSSESSION OF A FIREARM; MURDER WITH USE OF A DEADLY WEAPON; ATTEMPT MURDER WITH USE OF A DEADLY WEAPON; SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON AND FIRST DEGREE KIDNAPING WITH USE OF A DEADLY WEAPON, NRS 205.060, 193.165; 200.010, 200.030, 193.165;200.010, 200.030, 193.165, 193.330; 200.310, 200.320, 193.165; 200.364; 200.366 and 193.165; and

WHEREAS, the Defendant ZANE MICHAEL FLOYD, was tried before a Jury and the Defendant was found guilty of the crime of COUNT I - BURGLARY WHILE IN POSSESSION OF A FIREARM; COUNT II, III, IV, V - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON; COUNT VI - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON; CT VII - FIRST DEGREE KIDNAPING WITH USE OF A DEADLY WEAPON; and CT VIII, IX, X and XI - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON, in

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violation of NRS 205.060, 193.165; 200.010, 200.030, 193.165;200.010, 200.030, 193.165, 193.330; 200.310, 200.320, 193.165; 200.364; 200.366 and 193.165, and the Jury verdict was returned on or about the 19th day of July, 2000. Thereafter, the same trial jury, deliberating in the penalty phase of said trial, in accordance with the provisions of NRS 175.552 and 175.554, found that there were Three (3) aggravating circumstances in connection with the commission of said crime, to-wit:

1. The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person;

2. The murder was committed upon one or more persons at random and without apparent motive; and

3. The Defendant has, in the immediate proceeding, been convicted of more than one offense of murder in the first or second degree.

That on or about the 21st day of July, 2000, the Jury unanimously found, beyond a reasonable doubt, that there were no mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances, and determined that the Defendant's punishment should be Death as to COUNTS II, III, IV and V - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON in the Nevada State Prison located at or near Carson City, State of Nevada.

WHEREAS, thereafter, on the 31st day of August, 2000, the Defendant being present in court with his counsel, CURTIS BROWN and DOUGLAS HEDGER, Deputy Public Defenders, and STEWART L. BELL, District Attorney, also being present; the above entitled Court did adjudge Defendant guilty thereof by reason of said trial and verdict and sentenced Defendant as follows:

As to COUNT I - BURGLARY WHILE IN POSSESSION OF A FIREARM - A maximum term of One Hundred Eighty (180) months with the minimum parole eligibility of Seventy-Two (72) months in the Nevada Department of Prisons and ordered to submit to testing to determine genetic markers. It is further recommended that the defendant be held responsible

for restitution totaling $1,638.48;

As to COUNTS II, III, IV, V - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON - Set by jury verdict as Death by Lethal Injection as to each count separately. It is further recommended that the Defendant also be held responsible for restitution totaling $15,051.00 as to Count II; $39,478.29 restitution as to Count III; $43,660.14 restitution as to Count IV; and $19,695.10 restitution as to Count V, and ordered to submit to testing to determine genetic markers;

As to Count VI - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON - A maximum term of Two-Hundred Forty (240) months in the Nevada Department of Prisons with the minimum parole eligibility of Ninety-Six (96) months, plus an equal and consecutive sentence of Two-Hundred Forty (240) months with the minimum parole eligibility of Ninety-Six (96) months for the Use of a Deadly Weapon and ordered to submit to testing to determine genetic markers. It is further recommended that Count VI be served consecutive to Count I and that the defendant be held responsible for restitution totaling $64,264.87.

As to COUNT VII - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON - LIFE in the Nevada Department of Prisons with the minimum parole eligibility of Sixty (60) months plus an equal and consecutive sentence of LIFE with the minimum parole eligibility of Sixty (60) months for the Use of a Deadly Weapon. It is further recommended that Count VII be served consecutive to Count VI.

As to COUNTS VIII, IX, X and XI - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON - As to each count separately, the Defendant is sentenced to LIFE in the Nevada Department of Prisons with minimum parole eligibility of One Hundred Twenty (120) months plus an equal and consecutive sentence of LIFE with minimum parole eligibility of One Hundred Twenty (120) months for Use of a Deadly Weapon. The Defendant shall submit to testing to determine genetic markers and shall submit to a term of LIFETIME supervision to commence upon completion of any term of incarceration or parole. It is further recommended that the defendant be held responsible for restitution totaling $210.00 as to Count VIII and Count VIII be served consecutive to Count VII; Count IX be served consecutive to Count VIII; Count X be

served consecutive to Count IX; and Count XI be served consecutive to Count X.

THEREFORE, the Clerk of the above entitled Court is hereby directed to enter this Judgment of Conviction as part of the record in the above entitled matter.

DATED this 5 day of September, 2000, in the City of Las Vegas, County of Clark, State of Nevada.

DISTRICT JUDGE

DA#C159897X/msf
LVMPD EV#9906030340
1° MURDER W/WPN - F

OPPS
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Clark County District Attorney
Nevada Bar #001565
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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ZANE MICHAEL FLOYD,
#1619135

Defendant.

CASE NO: 99C159897

DEPT NO: XVII

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO STRIKE

DATE OF HEARING: MAY 14, 2021
TIME OF HEARING: 8:30AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through ALEXANDER CHEN, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Strike.

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

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POINTS AND AUTHORITIES

ARGUMENT

DEFENDANT'S MOTION TO STRIKE IS ANOTHER ATTEMPT TO DELAY HIS EXECUTION

The instant Motion to Strike is a perfect example of how Defendant is making any argument—no matter how trivial —to further delay his execution.

Defendant now claims that the execution is precluded under NRS 176.355(3), because all executions "must take place at the state prison." Motion, at 5-6 (emphasis removed). Defendant is persistent that the closed Nevada State Prison in Carson City is the only state prison in Nevada where the execution can be held. The NRS does not specify that there is **only** one state prison in Nevada. In fact, Defendant concedes that there are two other Nevada "state prisons," including Ely State Prison and High Desert State Prison. Motion, at 9. Thus, it is unclear why the execution must take place at the decommissioned Nevada State Prison, and not any other state prison in Nevada.

Moreover, Defendant's reliance on Kramer v. Kramer to support his assertion that the execution must take place at "the" Nevada State Prison is not persuasive. 60 Nev. 262, 262, 108 P.2d 304, 304 (1940). When Kramer was decided by the Nevada Supreme Court in 1940, there was only **one** prison in the entire state of Nevada. Id. Neither Ely State Prison nor High Desert State Prison were possible options in 1940. Just because the Nevada Supreme Court held the execution in 1940 must take place at the Nevada State Prison in Carson City, the only Nevada state prison in existence at the time, does not mean all subsequent executions sixty years later must take place there.

Defendant repeatedly states the legislature's intent is clear that all executions must take place at the decommissioned Nevada State Prison in Carson City. Motion, at 6-8, 11-12. However, this Court can clearly see the legislature's intent by looking at the newly built execution chamber at Ely State Prison. In 2015, the legislature approved $860,000 to fund the new execution chamber at Ely State Prison. See www.reviewjournal.com/crime/nevadas-new-86000-execution-chamber-is-finished-but-gathering-dust/. Defendant claims the legislature funding the execution chamber at Ely State Prison is "inconsequential" in determining the

legislature's intent. Motion, at 7. But if the legislature's intent were for executions to take place only at the Nevada State Prison in Carson City, the legislature would not have approved almost a million dollars to construct a new execution chamber at Ely State Prison. Defendant's citations to multiple Minutes of the Nevada Legislature from 1983 do not demonstrate the legislature's clear intent in 2021.

CONCLUSION

While Defendant continues to raise numerous new arguments to this Court, he cannot argue with the fact that he has exhausted all appellate remedies. The instant Motion to Strike is nothing more than a meritless argument to further delay Defendant's execution. Therefore, the State respectfully requests this Court deny Defendant's Motion to Strike.

DATED this 13th day of May, 2021.

Respectfully submitted,

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

BY */s/ Alexander Chen*
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #010539
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Regional Justice Center
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Las Vegas, Nevada 89155
(702) 671-2750

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of the above and foregoing State's Opposition to Defendant's Motion to Strike, was made this 13th day of May, 2021, by electronic transmission to:

BRAD LEVENSON
Email: brad_levenson@fd.org
DAVID ANTHONY
Email: david_anthony@fd.org
Ecf_nvchu@fd.org

BY */s/ E. Davis*
Employee for the District Attorney's Office

AC//ed

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Attorneys for Defendant Zane M. Floyd

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. ZANE MICHAEL FLOYD, Defendant.	Case No. 99C159897 Dept. No. XVII **REPLY TO OPPOSITION TO MOTION TO STRIKE** Date of hearing: Time of hearing: **(DEATH PENALTY CASE)** **EXECUTION WARRANT SOUGHT BY THE STATE FOR THE WEEK OF JULY 26, 2021**

POINTS AND AUTHORITIES

I. INTRODUCTION

On May 11, 2021, Zane M. Floyd moved this Court to strike, or alternatively stay the Second Supplemental Order of Execution and Second Supplemental Warrant of Execution sought by the State. The State filed its opposition to the Motion on May 13, 2021.

Floyd now replies to the State's opposition.

II. ARGUMENT

The State makes almost no effort to address the relevant cannons of statutory construction necessary to interpreting NRS 176.355(3). *See Doe Dancer I v. La Fuente, Inc.*, 137 Nev. Adv. Op. 3, 481 P.3d 860, 866-67, 870-74 (2021) (incorporating canons of construction to determine statutory intent).

The State contends that this Court should look to the Legislature's actions in 2015, and 2021, to determine NRS 176.355(3)'s intent. Opp. at 2-3. But what the Legislature intended in 2015, 2021, or any subsequent year after NRS 176.355's enactment doesn't matter. "[T]he words of a statute must be taken in the sense in which they were understood at the time when the statute was enacted, and the statute must be construed as it was intended to be understood when it was passed." *See Orr Ditch & Water Co. v. Just. Ct. of Reno twp., Washoe Cty.*, 64 Nev. 138, 171, 178 P.2d 558, 574 (1947). Intent from 2021 cannot be attributed or transferred to past legislative actions. Thus, the only relevant consideration is the Legislature's intent in 1967 when NRS 176.355 was enacted.

It is uncontroverted between the parties that at the time NRS 176.355 was enacted "there was only one prison in the entire state of Nevada" and "[n]either Ely State Prison nor High Desert State Prison were possible options." *See* Opp. at 2. Taking NRS 176.355's words in the way they were "understood at the time when the statute was enacted," if Nevada State Prison was the only state prison in existence, then it is clear that the Legislature intended it to be the state prison referenced. *Id.* If statutes must be construed in the state of mind of the Legislature at the time of passage, then it does not follow that state prisons which weren't in existence, or even a forethought, could have been envisioned in the statute's intent.

If, as the State argues, the Legislature sought to change NRS 176.355(3), then it needed to amend the statute to evidence its intent. *See Metz v. Metz*, 120 Nev. 786, 792, 101 P.3d 779, 783-84 (2004) (concluding that "when the Legislature makes a substantial change in a statute's language, it indicates a change in the legislative intent."). Its failure to do so is an oversight only the Legislature can fix as "[i]t is the prerogative of the Legislature, not the Supreme Court, to change or rewrite a statute." *Holiday Ret. Corp. v. State, Div. of Indus. Relations*, 128 Nev. 150, 154, 274 P.3d 759, 761 (2012). Until then, this Court is bound by the Legislature's intent at NRS 176.355's enactment.

Moreover, contrary to the State's assertions, NRS 176.355(3) plainly specifies there is only one state prison in Nevada, by stating "execution[s] must take place at *the* state prison." (emphasis added); Opp. at 2. The State ignores the Legislature's intentional use of a definite article, "the," which signifies a singular and specific

"person, place, or thing." *Pineda v. Bank of America, N.A.*, 241 P.3d 870, 875 (Cal. 2010). Executions at subsequently constructed state prisons would only be applicable under the statute if the Legislature had used "a," or a general reference. Considering this, it is clear why Floyd's execution must take place at Nevada State Prison and not another state prison.

III. CONCLUSION

For the foregoing reasons, and those stated in his Motion, Floyd requests this Court strike the Second Supplemental Order of Execution and Second Supplemental Warrant of Execution, finding them both unlawful under NRS 176.355(3).

DATED this 20th day of May, 2021.

Respectfully submitted
RENE L. VALLADARES
Federal Public Defender

/s/ David Anthony
DAVID ANTHONY
Assistant Federal Public Defender

/s/ Brad D. Levenson
BRAD D. LEVENSON
Assistant Federal Public Defender

/s/ Jocelyn S. Murphy
JOCELYN S. MURPHY
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

In accordance with the EDCR 8.04(c), the undersigned hereby certifies that on this 20th day of May, 2021, a true and correct copy of the foregoing REPLY TO OPPOSITION TO MOTION TO STRIKE, was filed electronically with the Eighth Judicial District Court. Electronic service of the foregoing document shall be made in accordance with the master service list as follows:

Alexander Chen
Chief Deputy District Attorney
motions@clarkcountyda.com
Eileen.davis@clarkcountyda.com

/s/ Sara Jelinek
An Employee of the Federal Public Defenders Office, District of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor | **COURT MINUTES** | **June 04, 2021**

99C159897 The State of Nevada vs Zane M Floyd

June 04, 2021 08:30 AM All Pending Motions

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Albrecht, Samantha

RECORDER: Santi, Kristine

REPORTER:

PARTIES PRESENT:

Alexander G. Chen	**Attorney for Plaintiff**
Bradley D. Levenson	**Attorney for Defendant**
Brianna Vega Stutz	**Attorney for Plaintiff**
David S. Anthony	**Attorney for Defendant**
State of Nevada	**Plaintiff**

JOURNAL ENTRIES

STATE'S MOTION AND NOTICE OF MOTION FOR THE COURT TO ISSUE SECOND SUPPLEMENTAL ORDER OF EXECUTION AND SECOND SUPPLEMENTAL WARRANT OF EXECUTION...DEFENDANT'S MOTION TO STRIKE, OR ALTERNATIVELY, MOTION TO STAY THE SECOND SUPPLEMENTAL ORDER OF EXECUTION AND SECOND SUPPLEMENTAL WARRANT OF EXECUTION

Defendant not present.

Argument by Mr. Anthony and Mr. Chen regarding NRS 176.355 and the Kramer case. Court FINDS at the time of the statute there was only one State Prison and noted Ely was a State Prison, therefore COURT ORDERED, Defendant's Motion to Strike DENIED.

Argument by Mr. Chen and Mr. Anthony regarding the Motion for the Court to Issue Second Supplemental Order of Execution. Colloquy regarding execution dates. COURT ORDERED, matter TAKEN UNDER ADVISEMENT and advised a written decision would be issued before Monday.

COURT FURTHER ORDERED, Petitioner's Motion for Appointment of Counsel in Case A-21-832952-W GRANTED as no Opposition had been filed.

Mr. Levenson requested to argue all three Petitions on July 2nd in A-21-832952-W. State had no objection. COURT FURTHER ORDERED, Argument on 2nd Amended Petition SET for 7/2/2021. Mr. Levenson further requested daily transcripts under Rule 250. COURT SO ORDERED.

NDC

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Steven D. Grierson
CLERK OF THE COURT

RSPN
STEVEN B. WOLFSON
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Nevada Bar #001565
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Attorney for Respondent

DISTRICT COURT
CLARK COUNTY, NEVADA

ZANE MICHAEL FLOYD,
#1619135

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-21-832952-W
99C159897

DEPT NO: XVII

STATE'S RESPONSE TO PETITIONER'S THIRD PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

DATE OF HEARING: JULY 2, 2021
TIME OF HEARING: 8:30AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through ALEXANDER CHEN, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction).

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

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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On June 8, 1999, the State charged ZANE MICHAEL FLOYD (hereinafter "Petitioner") by way of Criminal Complaint with four counts of Murder with Use of a Deadly Weapon, three counts of Attempt Murder with Use of a Deadly Weapon, five counts of Sexual Assault with Use of a Deadly Weapon, one count of Burglary While in Possession of a Firearm, and one count of First Degree Kidnapping with Use of a Deadly Weapon. The State also filed a Notice of Reservation to Seek the Death Penalty. On June 25, 1999, the State filed an Amended Criminal Complaint adding an additional charge of Attempt Murder with Use of a Deadly Weapon.

On June 28, 1999, the State charged Petitioner by way of Information, and two amendments thereafter, as follows: Count 1 – Burglary While in Possession of a Firearm (Felony – NRS 205.060); Count 2 – Murder with Use of a Deadly Weapon (Open Murder) (Felony – NRS 200.010, 200.030, 193.165); Count 3 – Murder with Use of a Deadly Weapon (Open Murder) (Felony – NRS 200.010, 200.030, 193.165); Count 4 – Murder with Use of a Deadly Weapon (Open Murder) (Felony – NRS 200.010, 200.030, 193.165); Count 5 – Murder with Use of a Deadly Weapon (Open Murder) (Felony – NRS 200.010, 200.030, 193.165); Count 6 – Attempt Murder with Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165, 193.330); Count 7 – Attempt Murder with Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165, 193.330); Count 8 – First Degree Kidnapping with Use of a Deadly Weapon (Felony – NRS 200.310, 200.320, 193.165); Count 9 – Sexual Assault with Use of a Deadly Weapon (Felony – NRS 200.364, 200.366, 193.165); Count 10 –Sexual Assault with Use of a Deadly Weapon (Felony – NRS 200.364, 200.366, 193.165); Count 11 – Sexual Assault with Use of a Deadly Weapon (Felony – NRS 200.364, 200.366, 193.165); and Count 12 – Sexual Assault with Use of a Deadly Weapon (Felony – NRS 200.364, 200.366, 193.165). On July 6, 1999, the State filed a Notice of Intent to Seek the Death Penalty.

Petitioner's jury trial commenced on July 11, 2000. On July 19, 2000, the jury returned a verdict finding Petitioner guilty on all counts. At the penalty hearing, the State introduced

three aggravating circumstances in support of a death sentence. On July 21, 2000, the same jury returned a verdict of death.

On August 11, 2000, Petitioner filed a Motion for New Trial. The State filed its Opposition on August 17, 2000. On August 21, 2000, the district court denied the Motion for New Trial. The Order was filed on August 24, 2000.

On August 31, 2000, the district court adjudicated Petitioner guilty, and sentenced him to death for Counts 2, 3, 4, and 5. The Judgment of Conviction and the Order of Execution were filed on September 5, 2000.

On September 11, 2000, Petitioner filed a direct appeal with the Nevada Supreme Court. The Nevada Supreme Court affirmed Petitioner's conviction on March 13, 2002. The Court denied Petitioner's subsequent Motion for Rehearing on May 7, 2002. Appellate counsel then filed a Petition for Writ of Certiorari to the United States Supreme Court, which was denied on February 24, 2003. Remittitur issued on March 26, 2003.

On June 19, 2003, Petitioner filed his first Petition for Writ of Habeas Corpus (Post-Conviction). The State filed its Response on July 24, 2003. Petitioner then filed a Supplemental Petition through counsel, David Schieck, Esq., on October 6, 2004. The State filed its Supplemental Opposition on December 7, 2004. On January 18, 2005, the district court denied Petitioner's Petition. The Findings of Fact, Conclusions of Law and Order was filed on February 4, 2005.

Petitioner filed a Notice of Appeal on March 9, 2005, appealing the denial of his post-conviction Petition. On February 16, 2006, the Nevada Supreme Court affirmed the denial of Petitioner's Petition for Writ of Habeas Corpus. Remittitur issued on April 14, 2006.

On April 14, 2006, Petitioner filed a Petition for Writ of Habeas Corpus in the United States District Court and requested stay and abeyance. Stay and abeyance was granted on April 25, 2007, for exhaustion of state court remedies.

Petitioner then filed his second successive Petition for Writ of Habeas Corpus (Post-Conviction) on June 8, 2007. The State filed its Opposition on August 18, 2007. Petitioner filed his Reply on August 28, 2007. Following argument by both parties on December 13,

2007, the district court ordered an evidentiary hearing. Following the hearing on February 22, 2008, where Petitioner's former counsel, David Schieck, Esq. testified, the district court denied Petitioner's second Petition. The Findings of Fact, Conclusions of Law and Order was filed on April 2, 2008.

On April 7, 2008, Petitioner filed a Notice of Appeal from the denial of his second Petition for Writ of Habeas Corpus (Post-Conviction). On November 17, 2010, the Nevada Supreme Court affirmed the district court's denial of the second Petition. Remittitur issued February 18, 2011. The Nevada Supreme Court also denied Petitioner's request for Rehearing.

On September 22, 2014, the United States District Court denied Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction). Petitioner filed a Notice of Appeal to the United States Court of Appeals for the Ninth Circuit on October 22, 2014. On October 11, 2019, the United States Court of Appeals for the Ninth Circuit issued an Order affirming the United States District Court's denial of Petitioner's Petition for Writ of Habeas Corpus.

On November 2, 2020, the United States Supreme Court denied Petitioner's Petition for Writ of Certiorari. On November 5, 2020, Mandate was filed giving the judgment of the United States Court of Appeals for the Ninth Circuit full effect.

On April 14, 2021, the State filed a Motion Seeking an Execution Warrant. The same day, Petitioner filed a Motion to Transfer Case Under EDCR 1.60(H) and Motion to Disqualify the Clark County District Attorney's Office. On April 15, 2021, the State filed a Motion for the Court to Issue Second Supplemental Order of Execution and Second Supplemental Warrant of Execution. On April 21, 2021, Petitioner filed an Opposition to Motion for the Court to Issue Second Supplemental Order of Execution and Second Supplemental Warrant of Execution. Petitioner filed an Amended Opposition on April 26, 2021.

On April 26, 2021, the State filed an Opposition to Petitioner's Motion to Disqualify the Clark County District Attorney's Office and a Response to his Motion to Transfer Case Under EDCR 1.60(H). Petitioner filed both his Replies on April 29, 2021. On May 5, 2021, the State filed its Reply to Petitioner's Opposition to Motion for the Court to Issue Second Supplemental Order of Execution and Second Supplemental Warrant of Execution. On April

10, 2021, the State filed an Addendum to State's Motion for the Court to Issue Second Supplemental Order of Execution and Second Supplemental Warrant of Execution.

On May 11, 2021, Petitioner filed a Motion to Strike, or Alternatively, Motion to Stay the Second Supplemental Order of Execution and Second Supplemental Warrant of Execution. The State filed its Opposition to the Motion to Strike on May 13, 2021. Petitioner filed a Reply on May 20, 2021. On June 4, 2021, this Court denied Petitioner's Motion to Strike.

Following a hearing on May 14, 2021, this Court denied both Petitioner's Motion to Disqualify the Clark County District Attorney's Office and Motion to Transfer Case Under EDCR 1.60(H). This Court entered the Decision and Order Denying Petitioner's Motion to Disqualify the Clark County District Attorney's Office on May 18, 2021.

On April 15, 2021, Petitioner filed his third Petition for Writ of Habeas Corpus (Post-Conviction). Following a hearing on May 6, 2021, in the United States District Court, District of Nevada, Petitioner filed the instant Amended Petition for Writ of Habeas Corpus (Post-Conviction) (hereinafter "Third Petition") on May 11, 2021.

ARGUMENT

I. PETITIONER'S CLAIMS 2, 3, AND 4 ARE NOT COGNIZABLE CLAIMS FOR A HABEAS PETITION

A petition for writ of habeas corpus should only address (1) relief from a judgment of conviction or sentence in a criminal case; or (2) challenges to the computation of time that a petition has served pursuant to a judgment of conviction. NRS 34.720. "Habeas corpus is a unique remedy that is governed by its own statutes regarding procedure and appeal. Mazzan v. State, 109 Nev. 1067, 863 P.2d 1035 (1993). Given that habeas corpus is a statutorily created remedy, the claims raised must fit within the statutory scheme.

Claims 2, 3, and 4 in his Petition are claims that are outside the realm permitted by statute. Petitioner argues in Claim 2 that his due process is being deprived because he has not had an opportunity to seek clemency. In Claim 3 he argues that he cannot be executed at Ely State Prison. Finally in Claim 4 he argues that his execution would constitute cruel and unusual punishment. None of these three claims have anything to do with the validity of his judgment

of conviction or sentence as required by NRS 34.720. Moreover, as to Claim 4, "[A] claim challenging the constitutionality of Nevada's lethal-injection protocol is not cognizable in a postconviction petition for writ of habeas corpus." McConnell v. State, 125 Nev. 243, 212 P.3d 307 (2009) In denying the petition, the McConnell Court held that the petition was challenging the manner in which a death sentence was to be carried out, which is separate from the validity of the judgment of conviction or sentence. Id.

The instant third post-conviction Petition is not the proper vehicle to challenge his ability to seek clemency (Claim 2). It is not the proper vehicle to challenge where his execution will take place (Claim 3). It is not the proper vehicle to challenge the execution protocol (Claim 4). Petitioner's substantive claims of why this Court should not sign the Order of Execution and Warrant should not be raised in a post-conviction Petition and should be raised by challenging the Order itself. A post-conviction habeas is not the proper remedy. Therefore, Claims 2, 3, and 4 should all be dismissed as non-cognizable claims.

II. THIS THIRD PETITION IS TIME-BARRED

Petitioner's instant third Petition for Writ of Habeas Corpus was not filed within one year of the filing of the Remittitur. Thus, this third Petition is time-barred. Pursuant to NRS 34.726(1):

> Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year of the entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its remittitur. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:
>
> (a) That the delay is not the fault of the petitioner; and
>
> (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

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

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

In the instant case, Petitioner filed a direct appeal, and Remittitur issued on March 26, 2003. Petitioner filed the instant third Amended Petition on May 11, 2021—over eighteen years after the Remittitur from his direct appeal. Therefore, the instant third Petition is time-barred. Dickerson, 114 Nev. at 1087, 967 P.2d at 1133–34. Absent a showing of good cause to excuse this delay, the instant Petition must be dismissed.

III. THIS THIRD PETITION SHOULD BE DISMISSED BECAUSE IT IS SUCCESSIVE AND AN ABUSE OF THE WRIT

This third petition is successive because Petitioner failed to raise any of these grounds in a prior petition or direct appeal. NRS 34.810 gives the district court authority to dismiss a petition.

Pursuant to NRS 34.810:

> 1. The court shall dismiss a petition if the court determines that:
> (b) The petitioner's conviction was the result of a trial and the grounds for the petition could have been:
> (1) Presented to the trial court;
> (2) Raised in a direct appeal or a prior petition for a writ of habeas corpus or postconviction relief; or
> (3) Raised in any other proceeding that the petitioner has taken to secure relief from the petitioner's conviction and sentence, unless the court finds both cause for the failure to present the grounds and actual prejudice to the petitioner

None of these claims were (1) presented to the trial court; (2) raised on direct appeal or a prior petition; or (3) raised in any other proceeding. The Nevada Supreme Court has held that "[A]ll other claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be *considered waived in subsequent proceedings*." Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). "A court must dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier

proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001).

Furthermore, substantive claims are beyond the scope of habeas and waived. NRS 34.724(2)(a); Evans, 117 Nev. at 646–47, 29 P.3d at 523; Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), disapproved on other grounds, Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). Under NRS 34.810(3), a Petitioner may only escape these procedural bars if they meet the burden of establishing good cause and prejudice. Where a Petitioner does not show good cause for failure to raise claims of error upon direct appeal, the district court is not obliged to consider them in post-conviction proceedings. Jones v. State, 91 Nev. 416, 536 P.2d 1025 (1975).

Here, Petitioner was convicted at trial and proceeded to file a direct appeal, a first postconviction petition for a writ of habeas corpus, a second postconviction for a writ of habeas corpus, a federal petition for a writ of habeas corpus, and now the instant third postconviction petition for writ of habeas corpus. Petitioner has never raised any of these grounds on any prior petitions despite having the ability to do so.

NRS 34.810(2) reads:

> A second or successive petition *must be dismissed* if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are alleged, the judge or justice finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.

(emphasis added).

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

State, 116 Nev. 558, 563–64, 1 P.3d 969, 972 (2000) (holding that "where a Petitioner previously has sought relief from the judgment, the Petitioner's failure to identify all grounds for relief in the first instance should weigh against consideration of the successive motion.")

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

Here, this is Petitioner's third post-conviction Petition. Petitioner did not raise the instant claims on direct appeal, in his first Petition, in his second Petition, or in a federal Petition. Instead, Petitioner raises these claims for the first time now, over eighteen years later. Third Petition, at 20-22. Accordingly, this third Petition is an abuse of the writ, procedurally barred, and therefore, must be dismissed.

IV. APPLICATION OF THE PROCEDURAL BARS IS MANDATORY

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

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

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

This position was reaffirmed in State v. Greene, 129 Nev. 559, 307 P.3d 322 (2013). There the Court ruled that the Petitioner's petition was "untimely, successive, and an abuse of the writ" and that the Petitioner failed to show good cause and actual prejudice. Id. at 324, 307 P.3d at 326. Accordingly, the Court reversed the district court and ordered the Petitioner's petition dismissed pursuant to the procedural bars. Id. at 324, 307 P.3d at 322–23. The procedural bars are so fundamental to the post-conviction process that they must be applied by this Court even if not raised by the State. See Riker, 121 Nev. at 231, 112 P.3d at 1074. Therefore, application of the procedural bars is mandatory.

V. THE STATE AFFIRMATIVELY PLEADS LACHES

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

NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period exceeding five years [elapses] between the filing of a judgment of conviction, an order imposing a sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the filing of a petition challenging the validity of a judgment of conviction…" The Nevada Supreme Court has observed, "[P]etitions that are filed many years after conviction are an unreasonable burden on the criminal justice system. The necessity for a

workable system dictates that there must exist a time when a criminal conviction is final." Groesbeck v. Warden, 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the presumption, the statute requires the State plead laches. NRS 34.800(2).

The State affirmatively pleads laches in this case given that over eighteen years have elapsed between the issuing of Remittitur and the filing of the instant third Petition. In order to overcome the presumption of prejudice to the State, Petitioner has the heavy burden of proving a fundamental miscarriage of justice. See Little v. Warden, 117 Nev. 845, 853, 34 P.3d 540, 545 (2001). Based on Petitioner's representations and on what he has filed with this Court thus far, Petitioner has failed to meet that burden.

As discussed earlier, the one-year time bar began to run from the date the of the Remittitur on March 26, 2003. The third Petition was filed on May 11, 2021 – *over eighteen years* later. Because more than eighteen years have elapsed between the Remittitur and the filing of the instant third Petition, NRS 34.800 directly applies in this case, and a presumption of prejudice to the State arises. Therefore, pursuant to NRS 34.800, this third Petition should be dismissed under the doctrine of laches.

VI. PETITIONER CANNOT ESTABLISH GOOD CAUSE TO OVERCOME THE MANDATORY PROCEDURAL BARS

A showing of good cause and prejudice may overcome procedural bars. However, Petitioner cannot demonstrate good cause to explain why his Petition is untimely.

"To establish good cause, appellants must show that an impediment external to the defense prevented their compliance with the applicable procedural rule. A qualifying impediment might be shown where the factual or legal basis for a claim *was not reasonably available at the time of default*." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court continued, "appellants cannot attempt to manufacture good cause[.]" Id. at 621, 81 P.3d at 526. Rather, to find good cause, there must be a "substantial reason; one that affords a legal excuse." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Any delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

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

Further, to establish prejudice, the Petitioner must show "'not merely that the errors of [the proceedings] created possibility of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state proceedings with error of constitutional dimensions.'" Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)).

In the instant case, Petitioner cannot establish good cause to overcome the mandatory procedural bars because he cannot demonstrate that this claim was not reasonably available at the time of default. Clem, 119 Nev. at 621, 81 P.3d at 525.

A. Claim One

Petitioner asserts that he is raising Claim One now for the first time in the instant third Petition because the claim is based on "new scientific evidence demonstrating the equivalence" of fetal alcohol spectrum disorder (FASD) as an intellectual disability. Third Petition, at 20.

The "new scientific evidence" that Petitioner relies on are two separate Declarations of Dr. Natalie Novick Brown from October 17, 2006, and February 24, 2021. See Petitioner's "Exhibit 1" and "Exhibit 2." The first Declaration, "Exhibit 1" from October 17, 2006, explains that the Las Vegas Federal Public Defender, Capital Habeas Unit, retained Dr. Novick Brown to examine Petitioner's FASD. See "Exhibit 1" at 1. "Exhibit 1" was prepared for the purposes of Petitioner's second Petition, which was previously denied by the district court. Petitioner raised similar claims regarding his FASD in his second Petition, claiming that trial

counsel was ineffective for failing to investigate and present evidence of his FASD at trial. Second Petition, filed June 8, 2007, at 75-99. Similarly, Petitioner raised the issue that he was actually innocent of the offense because he committed it in a "dissociative fugue" based on his FASD. Id. at 109-110.

The second Declaration, "Exhibit 2" from February 24, 2021, was once again prepared by Dr. Novick Brown for the Las Vegas Federal Public Defender, Capital Habeas Unit, to address whether Petitioner's FASD is consistent with the DSM-5, and if it compares to an intellectual disability. See "Exhibit 2" at 2. Dr. Novick Brown's second Declaration and Petitioner's third Petition both revolve around the Diagnostic and Statistical Manual of Mental Disorders 5 (DSM-5) to prove that Petitioner's FASD renders him ineligible for execution. Petitioner constantly refers to this as "new scientific evidence," but fails to address why this claim is only being raised now for the first time eighteen years later. The DSM-5 was last updated in 2013. Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) (May 18, 2013). Petitioner fails to address how this is "new scientific evidence" when this was available for him to raise in 2013—over eight years ago.

Petitioner relies on Dr. Novick Brown's second Declaration to claim that he "meets the current diagnosis under the DSM-5 for the CNS impairment in FASD." Third Petition, at 27. He claims that his "FASD diagnosis under the DSM-5, ND-PAE, is a brain-based, life-long impactful, disorder deserving of the classification 'ID Equivalence.'" Id. at 32. Even if this were true, Petitioner does not and cannot address why he failed to raise this for the last eight years when this evidence was available in the DSM-5 as of 2013. Thus, this is hardly "new scientific evidence" to establish good cause to overcome the mandatory procedural bars.

Moreover, Petitioner claims that because of this DSM-5 "new scientific evidence" from 2013, he is ineligible for execution because of Roper v. Simmons, 543 U.S. 551, 578, 125 S. Ct. 1183, 1200 (2005). Third Petition, at 33-36. Petitioner claims that executing him with the United States Supreme Court precedent of Roper would be cruel and unusual punishment. Id. at 33-38. It is undisputed that Roper held that execution of individuals who were under 18 years of age at the time of their capital crimes is prohibited by the Eighth Amendment. Roper,

at 551, 125 S. Ct. at 1184. And it is undisputed that Petitioner committed these murders at the age of twenty-three. Third Petition, at 36. Petitioner claims that this "rationale of *Roper* extends to individuals age twenty-three because the human brain continues to develop beyond the age of eighteen," without any legal support that this assertion is true. Id. at 34. It is simply false that Petitioner is exempt from execution because he committed these murders at the age of twenty-three. Even if this were the case, once again, Petitioner cannot explain how Roper establishes good cause to overcome the mandatory procedural bars.

Petitioner claims that executing him would constitute cruel and unusual punishment because of his diagnosis under the DSM-5 and his mental age under Roper. Third Petition, at 37-38. However, Petitioner cannot demonstrate to this Court how this is "new scientific evidence" and could not have been raised earlier. At the absolute earliest, Petitioner could have raised these claims from the DSM-5 and Roper in 2013 when the DSM-5 was last updated. But, strategically, Petitioner through the Federal Public Defender's Office once again asks Dr. Novick Brown for a second Declaration in an attempt to delay his execution. The State has routinely raised this issue to this Court for the last two months that Petitioner is repeatedly filing anything he can to delay his execution further. The instant third, procedurally barred Petition is nothing short of a meritless attempt to further delay the execution. Therefore, Petitioner cannot demonstrate good cause to overcome the mandatory procedural bars and explain why he waited to provide this "new scientific evidence" to this Court until immediately after the State filed the Order of Execution. As such, this Petition must be dismissed.

B. Claim Two

Petitioner claims that he is raising Claim Two for the first time in the instant third Petition because the "factual basis for Claim [Two] was not known until the State announced it intended to seek a warrant for Floyd's execution without giving Floyd the opportunity to pursue clemency." Third Petition, at 21. After the jury returned a verdict of death against Petitioner back in 2000, he was obviously aware of the potential to be executed. Petitioner had the potential to seek clemency since 2000—he did not have to wait till the State filed the Warrant of Execution to pursue clemency.

In Nevada, the Pardons Board's constitutional power to grant pardons and commutations of sentences is exclusive. Nev. Const. art. 5, § 14. There is no due process right for a Petitioner to clemency. Niergarth v. State, 105 Nev. 26, 28, 768 P.2d 882, 883 (1989). Moreover, the Nevada Supreme Court has held that parole is not a constitutional right, but a right bestowed by "legislative grace." Goldsworthy v. Hannifin, 86 Nev. 252, 256, 468 P.2d 350, 353 (1970). Thus, Petitioner has no right to clemency or to apply for a Pardon before this Court can issue the Order of Execution or sign the Warrant. By waiting twenty-one years to apply for clemency, Petitioner cannot establish good cause to explain why this claim was untimely and just raised for the first time in his third Petition.

C. Claim Three

Petitioner claims that he can establish good cause to overcome the mandatory time-bar of his third claim because "[t]he State has only just notified Floyd that it intends to effectuate his execution at the Ely State Prison." Third Petition, at 21. Petitioner's third claim is essentially the same claim he raised in his recent Motion to Strike, which this Court has denied.

Petitioner claims that the execution is precluded under NRS 176.355(3), because all executions "must take place at the state prison." Third Petition, at 46-48. Petitioner asserts that the closed Nevada State Prison in Carson City is the only state prison in Nevada where the execution can be held. Petitioner concedes that there are two Nevada "state prisons," including Ely State Prison and High Desert State Prison. Id. at 47. It is unclear why the execution must take place at the decommissioned Nevada State Prison, and not any other state prison in Nevada.

Moreover, the Nevada State Legislature approved $860,000 in 2015 to fund a brand-new execution chamber at Ely State Prison. See www.reviewjournal.com/crime/nevadas-new-86000-execution-chamber-is-finished-but-gathering-dust/. If the legislature's intent were for executions to take place only at the Nevada State Prison in Carson City, the legislature would not have approved almost a million dollars to construct a new execution chamber at Ely State Prison. Petitioner has clearly known of the potential to be executed at Ely State Prison for

almost six years once the legislature approved almost a million dollars to construct the new execution chamber.

Therefore, Petitioner cannot establish good cause to overcome the mandatory procedural bars for this claim. Petitioner claims that the State has only "just notified" him of the intent to execute at Ely State Prison. However, Petitioner has been on notice that the execution will take place at Ely State Prison once the legislature approved almost a million dollars for the new execution chamber. Petitioner has already raised this claim in his Motion to Strike, which was denied by this Court. This is simply another claim he is raising attempting to delay the execution. Thus, Petitioner cannot establish good cause for this claim.

D. Claim Four

Lastly, Petitioner's fourth claim is newly raised in this Petition because it is based on a hearing held in federal court on May 6, 2021. Third Petition, at 22; See Petitioner's "Exhibit 4." Petitioner claims that the testimony from the hearing proves that NDOC is not capable of conducting an execution which complies with state and federal constitutions. Third Petition, at 22. Petitioner's assertion is without merit and cannot establish good cause to overcome the mandatory procedural bars.

NRS 176.355(1) provides that a sentence of death in Nevada "must be inflicted by an injection of a lethal drug." NRS 176.355(2)(b) requires the Director of the Department of Corrections to "[s]elect the drug or combination of drugs to be used for the execution after consulting with the State Health Officer." However as mentioned in State v. McConnell, the Nevada Supreme Court concluded that the method of lethal injection is not appropriate for a petition for a writ of habeas corpus, and it is certainly not appropriate to support any good cause for this delay. 120 Nev. 1043, 1056, 102 P.3d 606, 616 (2004). Moreover, the United States Supreme Court has held that the ultimate authority to determine the lethal injection protocol is left to the Department of Corrections. Hill v. McDonough, 547 U.S. 573, 577, 126 S. Ct. 2096, 2100 (2006). The specific protocol under which Petitioner's execution is to be carried out is within the discretion of the Nevada Department of Corrections. NRS 176.355.

Therefore, the method of lethal injection itself is not unconstitutional and is determined by NDOC.

Petitioner unjustifiably asserts that his execution is unconstitutional because "NDOC is not prepared to conduct his execution in a manner that complies with constitutional requirements." Third Petition, at 50. Petitioner repeatedly asserts that NDOC is not prepared to go forward with an execution—then cites to Director Daniels testimony where he testifies that they are "still in the process of looking at the various drugs to be used." Id. Not once does Director Daniels testify that the execution will be unconstitutional, in fact if anything the Director said if there were an order to execute, he would lawfully perform his duty. Instead, Director Daniels testified that the protocol has not been finalized. "Exhibit 4" at 40. Director Daniels testimony only explains that NDOC is running through protocols and procedures and that there are a lot of moving parts NDOC is processing while finalizing the protocol and execution. Id. at 40-44. Petitioner claims that his execution will be unconstitutional, when it is undisputed the protocol has not been finalized yet. Thus, it is unclear how the Petitioner can claim his execution will be unconstitutional, when the final protocol has not been determined.

In sum, Petitioner's instant third Petition is nothing more than another attempt to further delay his execution. This Petition amounts to a time-barred, successive, meritless post-conviction habeas petition. Moreover, he cannot establish good cause to overcome the procedural bars for all four claims. These claims are meritless and further examples of how Petitioner is making any argument to further delay his execution. Petitioner has exhausted all appellate remedies. Therefore, Petitioner cannot establish good cause to explain why his Petition was untimely, and the instant third Petition must be denied as procedurally barred.

E. Newly raised Claim 5

The State is aware and understands that Petitioner intends to file an amended petition that incorporates a claim based on the recently issued Order in Petrocelli v. State, No. 79069, 2021 WL 2073794 (May 21, 2021). Although the State understands there will be additional briefing, the verdict forms in Petrocelli were entirely different from the ones used in Petitioner's conviction.

The fact that this case was recently decided, however, was not an impediment external to the defense in not raising this claim earlier. The verdict form in this case has not changed since Petitioner's conviction. Thus, there is simply no good cause for this delay.

Furthermore, the issue in Petrocelli was that multiple verdict forms were proffered to the jury which all indicated that the aggravators outweighed the mitigators. Thus three total but separate verdict forms were offered, but all of the forms erroneously carried the language that the aggravating circumstances exist but that the mitigating circumstances do not outweigh the aggravating circumstances regardless of the verdict chosen. These forms were an error of law in that the only verdict in which the aggravating circumstances outweigh the mitigating circumstances is in a verdict imposing the death sentence, not life with or without the possibility of parole.

This situation is entirely different from the Petitioner Floyd's case because first the jury were required to identify the aggravators for each of the four victims. Then the jury appropriately selected the only option possible where the aggravators outweighed the mitigators and imposed a sentence of death. The verdict form used here was not one that would have led to unnecessary confusion as did the multiple verdict forms that were used in Petrocelli.

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CONCLUSION

Petitioner's instant third Petition is nothing more than a meritless argument to further delay his execution. Petitioner cannot establish good cause to overcome the mandatory procedural bars. Therefore, the State respectfully requests that Petitioner's third and procedurally barred Petition for Writ of Habeas Corpus (Post-Conviction) be DENIED.

DATED this 4th day of June, 2021.

Respectfully submitted,

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

BY /s/ Alexander Chen
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #10539

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the above and foregoing, was made this 4th day of June 2021, by email to:

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BY: /s/ Stephanie Johnson
Employee of the District Attorney's Office

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. ZANE M. FLOYD, Defendant.	CASE#: 99C159897 CASE#: A-21-832952-W DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

FRIDAY, JUNE 4, 2021

RECORDER'S TRANSCRIPT OF HEARING:
STATE'S MOTION AND NOTICE OF MOTION FOR THE COURT TO ISSUE SECOND SUPPLEMENTAL ORDER OF EXECUTION AND SECOND SUPPLEMENTAL WARRANT OF EXECUTION.
DEFENDANT'S MOTION TO STRIKE, OR ALTERNATIVELY, MOTION TO STAY THE SECOND SUPPLEMENTAL ORDER OF EXECUTION AND SECOND SUPPLEMENTAL WARRANT OF EXECUTION.

APPEARANCES:

For the State: ALEXANDER G. CHEN, ESQ.
Chief Deputy District Attorney
BRIANNA STUTZ, ESQ.
Deputy District Attorney

For the Defendant: BRAD D. LEVENSON, ESQ.
DAVID ANTHONY, ESQ.
Assistant Federal Public Defenders

RECORDED BY: KRISTINE SANTI, COURT RECORDER

Las Vegas, Nevada, Friday, June 4, 2021

[Hearing commenced at 8:35 a.m.]

THE COURT: Good morning, everyone.

MR. CHEN: Good morning.

THE COURT: We have two motions on calendar this morning. I think the first one we should handle is the motion to strike -- everyone have a seat -- and that was filed by counsel for Mr. Floyd.

MR. ANTHONY: Judge, we also -- if the Court would entertain it, both Mr. Chen and I are ready to argue the motion for reconsideration of the disqualification motion. If you would entertain that, we're ready to go on that as well.

THE COURT: I haven't reviewed that because it's set for next week, I believe.

MR. ANTHONY: Next Friday; correct.

THE COURT: Yeah, I just --

MR. ANTHONY: Okay.

THE COURT: -- haven't looked at it. I mean, I know it exists, I have not reviewed it.

So I think the motion to strike should be argued first.

MR. LEVENSON: Your Honor, may I approach the lectern.

THE COURT: Absolutely.

MR. LEVENSON: So Mr. Floyd's motion to strike the State's order and warrant of execution is predicated on Nevada Statute 176.355, the title of the statute is called Method, Time, and Place. This was a

statute that was passed in 1967. There is no dispute that at the time that the statute was passed that when the legislature said "the state prison" what they were referring to was the Nevada State Prison. It was the only state prison in existence at the time.

If we look at the rules of statutory construction that apply here we have a couple things to look at, first of all the statute uses the word "the" and "the" is a definite article. As a rule of statutory construction the word "the" refers to a specific reference. It doesn't say "a state prison" and it doesn't say "any state prison." This is a rule of statutory construction; it has been followed by appellate courts in Nevada.

The plain language also says state prison singular, which means we're talking about one place. The State's proffered execution warrant that they initially proffered to the Court similarly acknowledged that when they used the word "the state prison" what they were referring to is the Nevada State prison.

There's also a preexisting historical understanding. We cited to Your Honor the *Kramer* case, the *Kramer* case was from the 1940s and it was based on a predecessor statute where the Nevada Supreme Court recognized that the word "the state prison" was a reference to the Nevada State Prison located just outside of Carson City, Nevada.

The legislature also has a long history of requiring that executions take place at the Nevada State Prison. My understanding, from looking at the historical society regarding the Nevada State Prison, is that the legislature first passed the statute in 1901 requiring that after 1903 all executions had to take place at the Nevada State Prison. Before

that executions took place at the county seat where the defendant was convicted. So there is legislative intent starting in 1901 and it carries forward all the way until 1967 when the legislature passed the current version of NRS 176.355.

The State's arguments are few in their opposition to our motion. The first thing the State correctly acknowledges is that there was only one state prison in existence when the statute was enacted. The next argument that the State raises is what I would characterize as a strawman. The State argues that the statute doesn't say there is only one state prison. Well, of course not. It just talks about "the state prison."

The State also argues -- and I think this is the point where we have the most tension between the parties -- is the State argues correctly that the legislature apportioned money to fund the execution chamber in Ely, Nevada, at Ely State Prison.

So the argument the Court needs to sort out is -- and for the purposes of this argument, we will assume that the legislature had an oversight. I don't think any of us would debate that when the legislature apportioned the money for Ely State Prison that they -- at that time wanted executions to take place at the Ely State Prison. For purposes of argument, I'm willing to acknowledge that.

The question the Court has to answer is, can you take the intent of the legislature in 2015 and can you transfer it and import it to the intent of the legislature in 1967? The answer to that question has to be no. There is controlling authority cited in Mr. Floyd's reply brief citing to

the *Orr Ditch* case that talks about when you assess legislative intent you do so at the time the statute was enacted. You don't look at subsequent events, like the funding of the Ely State Prison, and say we can transfer the intent of the legislature in 2015 and say that that's what the legislature was assuming in 1967.

Again, we're willing to acknowledge that the legislature made an oversight here. But the way the democratic process works is that if a statute needs to be amended, it needs to be amended by the legislature. The one thing that we know for certain is that courts do not amend statutes. So where as Your Honor could probably look at the totality of these circumstances and say, well, they apportioned the money for the Ely State Prison, that can't suffice to say that the statute meant something that it absolutely did not mean to the legislature when they passed the statute in 1967.

Now, the State still has the warrant that they've proffered to the Court, it's still the one for Mr. Floyd's execution at the Nevada State Prison, they acknowledged in an addendum that they recently filed that that was a mistake. So at this point Your Honor doesn't have a corrected warrant, I don't know if the State's intention is to ask the Court at some point to interlineate to correct the typographical error, but the bottom line is, from Mr. Floyd's perspective, we do not want to delay, we do not want to hold back an argument that we know is going to be a real imminent argument at the point that the State asked this Court to interlineate, to correct the location from the Nevada State Prison to the Ely State Prison.

It's our argument that the language of the statute is plain, the

intent of the legislature is plain, and that authority from the Nevada Supreme Court does not allow this Court to transfer the intent of the legislature from 2015 into the intent of the legislature in 1967.

For those reasons we would ask that the Court grant our motion to strike the State's supplemental warrant to the extent that it's going to be corrected to say that the execution should occur at Ely State Prison.

THE COURT: When the Nevada State Prison in Carson City was closed, would that in effect abolish the death penalty, pending amending the statute?

MR. LEVENSON: I believe as a practical matter, Your Honor, I believe it would, unless the Department of Corrections announce that they were prepared to have the execution go forward at the place designated under state law, which is the Nevada State Prison. So if it is the warrant that's before the Court, without being corrected or interlineated, it would not be inconsistent with Nevada state law for the execution to proceed at that location. But until that statute is amended by the legislature, effectively that would mean that an execution could not take place at the Ely State Prison.

THE COURT: 176.355(3), as you had mentioned, says must take place at the state prison. Isn't Ely State Prison the state prison?

MR. LEVENSON: Well, Ely State Prison is a state prison, High Desert State Prison is a state prison, Lovelock is a state prison. So no argument that it is not a state prison. What I can say for certain is that it is not the state prison that was the intent of the legislature when they

passed the statute in 1967.

THE COURT: Well, we only had one state prison back --

MR. LEVENSON: That's correct, Your Honor.

THE COURT: -- when the statute was created.

MR. LEVENSON: That's correct.

THE COURT: Okay. Thank you.

Mr. Chen.

MR. CHEN: Thank you, Your Honor.

I don't have much to add, other than, based on the Court's questions, we would agree with the point that, in essence, if you believe --

THE COURT: I wasn't necessarily agreeing or disagreeing. I just wanted to pose that question -- I'm going to pose it to you as well -- is that the statute says the state prison, at the time it was Carson City.

MR. CHEN: And I misspoke in saying that. But just in terms of that philosophy, and that line of questioning, Your Honor, what we would say is effectively if this Court were to rule that it has to take at the state prison, then I would point out that the state prison isn't in a -- now that's -- I can't think of the word right now -- but it's lower case state prison. So it's just at the state prison, which to us specifies that it has to take place at a Nevada state prison, such as Ely.

But what I was also going to say was that you look at the plain language of a statute, but then, in addition, if you're going to do statutory interpretation, the case law is clear it can't lead to an absurd result. Clearly, if this Court were to find that the state prison is only one place

that's now closed, and was open at the time, it would lead to an absurd result, because although Nevada has passed the death penalty, has the death penalty, has not abolished the death penalty. By this Court ruling that the statute applies only to the one place that used to be near Carson City, it would lead to an absurd result. And that's -- cases like *Sheriff versus Burcham*, 124 Nevada 1247.

So our position would be that certainly when this statute was created the legislature intended for a death penalty to take place at a prison, at the time there was only one prison. So, for instance, there were no public shows of exhibition, shows of power, executing people in public as it happened centuries ago, this was going to take place at a Nevada sanctioned location, which would be the prison, Your Honor.

So to that I think this -- it's clear. And then you look at what's happened subsequently, I think Mr. Anthony referenced, that the legislature, again, when addressing the death penalty, has addressed funding Ely State Prison where executions could take place. I think it is clear that the legislature intends for it to happen at a Nevada state prison, such as Ely State Prison.

THE COURT: All right. Thank you.

Yes, Counsel.

MR. LEVENSON: Your Honor, may I briefly reply.

THE COURT: Absolutely.

MR. LEVENSON: First of all, I think I might need to correct what I said. I wanted to make sure I answered the Court's question correctly, when the Court asked, would this mean that the death penalty

was abolished, the answer is clearly no, there was not an intent to abolish the death penalty. What I would say is that this is something that the legislature could easily fix, if they wanted to. That's the way the democratic process should work and that there could be a special session. The legislature could do whatever they feel is appropriate. But the important thing is that the people's representatives need to be able to amend statutes if they don't conform to our current understanding.

Secondly, and finally, what I would say is that there's no debate that Ely State Prison is a state prison. And the term keeps being used of "a state prison." But what we're talking about is we're talking about the plain language and we're talking about a definite article and we're talking about a singular location.

Thank you, Your Honor.

THE COURT: In the statute -- and I had thought about this prior to today's argument -- the state prison is in lower case and I don't know if that has any impact on your position. Again, at the time there was only one state prison, so they said the state prison. Should my interpretation be that that's all that existed at the time, the intent was to send it to a state prison, the state prison, because there was only one. I mean, they wouldn't say anything else because there was only one.

And so am I to interpret that that language means -- it can only be held at Carson City?

MR. LEVENSON: Well, just to be clear, I believe the Nevada State Prison is actually not literally in Carson City. I believe it's just outside by one mile, so just to be clear about the record.

But to answer the Court's question, given the legislative history, and given the plain language of the statute, particularly when they use the word "the", the definite article, and they use a singular for state prison, that is a specific reference. And so the preexisting understanding that the legislature had, and that the Nevada Supreme Court had, interpreting those statues should be what controls here and it controls their legislative intent.

THE COURT: All right. Thank you.

I think first and foremost any legislative interpretation by any Court is to make sure that -- or to interpret a statute, one, by its plain meaning, but also so that we have an absurd result. At the time of this statute there was only one prison. Could the legislative back, when that statute was enacted, said the state prison or any other prisons that may be created in the future in any other county, perhaps. But I don't know if they would have done it at the time. I think the proper statutory construction would be not to lead to an absurd result, and Ely is a state prison, and I think the intent was to have it at a state prison and no other facility, Ely is a state prison. So I'm going to deny the motion to strike.

Now, we have the second motion filed in this matter by the State, motion issue second supplemental order of execution and second supplemental warrant of execution.

So let me hear from the State first.

MR. CHEN: And for the purpose of today, Your Honor, I actually only want to address the order and the reason being the warrant wouldn't actually be signed anytime soon, from my proposed date of

July 26th, we couldn't actually seek it until 15 to 30 days prior anyway.

So what I'm asking the Court to do is to consider signing the order of execution. Now, NRS 176.505 actually doesn't indicate that the State is the one who's to request this. We're certainly to request the warrant of execution. But the order of execution simply says that it's supposed to happen when the remitter comes and when they've exhausted all their legal appeals.

Now, this Court, it came down in November where the Supreme Court of the United States had rejected the final petition of writ of habeas corpus, that was done in federal court. So this Court might not have known. So, basically, when the State was made aware we started gathering the information. We did file to make the request. But formally I don't necessarily think it's even on the District Attorney's Office to make the request for the order, I think that that's just something that legally, and as the statute says, it shall be done.

So it would be our position that he's exhausted his appeals, that a warrant should be -- or I'm sorry -- an order should be issued.

Now, I understand that currently there are multiple lawsuits that are occurring, both federal court, there's petitions here, I understand that there's -- I believe they've also filed another state action in state court. So I understand that legal processes will take place and are going to happen. However, even if this Court were to file an order of execution for that week of July 26, it doesn't mean that, A, this court couldn't stay it if it felt the need to stay it at any point in time. Additionally, the federal court may very well step in and order a stay.

But even until that order is even signed I don't think that there's anything for any party to stay, because otherwise there's really no pending actions. If anything gets stayed, it would mean that we're staying the petition for writ of habeas corpus, we're staying all the things that actually need to be litigated in this case.

So in getting the order my hope is to let the legal processes play out. If for any reason this Court is not comfortable filing a warrant of execution at a later date, by all means I'm sure the Court will let us know that there are reasons that it's not comfortable signing it. But at this stage I think the statute mandates that it be done, and I think that it would be appropriate for the Court to issue the order at this time.

THE COURT: All right. Thank you.

Counsel.

MR. LEVENSON: Your Honor, the parties agree on the relevant statute and the legal standard that applies. Under NRS 176.505, the question that this Court is required to ask is whether legal reasons exist that prevent the execution of judgment. The State acknowledges that there are several pending actions, there's a pending petition for writ of habeas corpus, there's a declaratory judgment action in Department 14, there are several pending actions, and there's also Mr. Floyd's opportunity to seek further review, either from the Nevada Supreme Court, or to seek review of the Court's order on the transfer motion.

So when -- so in response to the State's argument that you could just issue the order and then stay it later if you thought so, our

position is that is plainly contrary to the statute. Under 505 the Court must ask whether legal reasons exist that prohibit the execution of judgment.

The other thing that I would just mention, as a practical matter, is that that puts a lot of stress on the Department of Corrections. If the Court goes forward and signs an order of execution, and then later has to modify the date, the warden and his staff put forth supposedly a lot of effort to prepare for executions. It's very expensive. They have to do training. They have to do run-throughs. So I would say that we shouldn't play any games where we start off with an arbitrary date and then later find that we're not actually giving the Department of Corrections the time that they need. And I think that's an important thing to keep in mind because it's not just us here in court, it's also another process that exists outside of this court.

The other thing I would say to Your Honor is is that we currently have status checks set for every three weeks. So it's not like this is a case that's going to slip through the cracks, the Court's kept us on a tight schedule. We're obtaining rulings on our motions. We also have a pending state petition where the Court is going to rule. And so it's our position that given all of these protective measures, and given what the statute requires, which is that there be legal cause for -- or a finding of no legal cause, we believe that the Court is simply not in a position to make that finding as we sit here today.

The one thing that I believe is very clear is that due to the outstanding litigation that we have, I don't think that there's any

reasonable possibility that we would be concluded by the week of July 26. We have -- in front of Your Honor, we have an argument scheduled for July 2nd, that argument will be an argument regarding the state petition that's pending before Your Honor in the habeas case.

If there is an evidentiary hearing that the Court chooses to order, we're not going to be able to proceed with the execution. Even if there is not, the Court would need to produce its findings of fact and conclusions of law. Those would need to be done with a notice of entry of order. That's a lot of things to get done if we're hearing argument on July 2nd. That's a very tight timeframe. I don't think, particularly given this procedural posture, that this Court can make the conclusions the statute requires that there are not legal reasons that exist.

And, finally, I think the other important point is is that that doesn't include appellate review, that doesn't include what the Nevada Supreme Court would have to do to look at these issues, like the motions and also the petition.

So I don't think that there's any doubt that that process of appellate review could not occur by July 26.

And one of the things I would add is is that the issues that we've brought to the Court are issues of first impression. The issue about the state prison, the issue about the disqualification of the prosecutor's office, the issue about -- well, actually, I need to back up on the transfer motion, but those are novel issues that need to be decided by an appellate court as well, and that cannot be done by our current deadline of July 26.

It's our position that we would not be able to obtain meaningful appellate review if this Court went forward on the arbitrary schedule that the State is proposing.

The other thing that we need to do, and I imagine that we might get to this today, Your Honor, is we still need to set responsive dates for the two motions for leave to file an amended petition and a second amended petition. And I'm hoping that we'll be able to do that today, but even if we do that today, that also would trigger another briefing schedule. And obviously our hope would be that we can resolve all those matters by July 2nd. But if we still have real concerns that we're not going to be concluded with all the litigation in time for the Court to prepare findings to determine whether an evidentiary hearing is warranted and to have appellate review.

So in the State's reply they assert that the motions have been fully litigated but we know that's not true. Right now we have the ability under the local rules to file objections to the Court's ruling on the transfer motion. As the Court may be aware, we're currently waiting on a written order from the Court so we can be able to go to the next step. And so I know that -- I've been in touch with the Court's law clerk about that but I think it's very important that we're able to get an order on the transfer motion.

One thing that I would also say to Your Honor, and I don't -- I know that it is prohibited to file a renewed motion under the local rules, but as I was preparing for this hearing, Your Honor, I discovered what I believed to be controlling authority in this jurisdiction as to the transfer

motion. I was able to locate a Nevada Supreme Court case from 1969 called *Rainsberger v State*, which actually says that successor in office means a particular department.

And so I don't want to reargue the motion, but I would like to make a request for Your Honor that I be allowed to at least have a limited opportunity for leave to argue for reconsideration and to direct the Court's attention to the *Rainsberger* case and it's from 1969. And the issue there was whether the warrant had the issue from a particular department and the Nevada Supreme Court held that it did and it had to be the one that was the court of conviction.

I have a copy of the *Rainsberger* case that I can provide to Your Honor, if necessary. Also I have a copy for the State.

But I'm not going to reargue the motion. I would just like the Court to consider the *Rainsberger* case when it issues its written order on the transfer motion.

Would the Court prefer that I approach the Court with the case or should I --

THE COURT: I'll take the copy of the case, provide the State a copy of that particular Nevada Supreme Court Case.

MR. CHEN: Thank you.

THE COURT: Thank you.

MR. LEVENSON: And I can answer any questions that the Court has about *Rainsberger*, it's a very brief opinion, it's about three sentences long.

THE COURT: Oh, -- yeah, let me just look at it now if it's only

three sentences long.

Is that it?

MR. LEVENSON: What I did, Your Honor, is I also included information from the district court case file to show that it was a department specific ruling.

[Pause in proceedings]

THE COURT: Go ahead, Counsel.

MR. LEVENSON: Thank you, Your Honor.

I'd like to move on briefly. I believe that the relevant statute that the Court will need to apply with respect to the State petition is NRS 176.487. Those are the issues that the Court needs to consider when determining whether a stay of execution should exist.

As the Court may recall from our petition we plead excuses to overcome procedural default affirmatively in the introduction to our petition. At this point in time I understand that the State will be responding to our petition.

But as the Court sits here right now, the Court cannot conclude in the present procedural posture that the claims that we've raised are necessarily procedurally defaulted. In fact, there are many of them that were not ripe before the State proceeded to seek an execution warrant. So we have good reasons to bring these claims in a petition now and these are claims that have not been previously considered by any district court or any state court.

And it's our position that before these issues are fully briefed, and before the procedural arguments have been briefed, then the

considerations that exist in 176.487 all militate in favor of this Court staying any decision to sign an execution order until the State and the Court had at least had an opportunity to see what the procedural arguments are. Because we have affirmatively alleged that we can overcome the procedural bars that would normally apply to a successive State petition.

Furthermore, Your Honor, another consideration that we raised in our opposition briefing is that Mr. Floyd still intends to seek commutation of his death sentence with the Pardons Board. Mr. Floyd has submitted a timely application for commutation of his death sentence by the May 30th deadline; that would allow Mr. Floyd to be placed on the Pardons Board September 21st, 2021, meeting agenda. And we would submit that until we've had an opportunity to have the Pardons Board at least consider the application and to put on -- put it on their calendar, that this Court shouldn't sign the execution order today. The Court should see whether or not Mr. Floyd is going to be able to be put on the calendar. We have no reason to believe that the Pardons Board would prejudge this case without giving Mr. Floyd an opportunity to present his request for clemency to the Pardons Board. So we would argue that that is another reason that the Court should and must consider, and a reason why the Court should not sign the State's execution order.

Finally, Your Honor, there's also a declaratory judgment action that's pending in Department 14. It argues that NDOC has received an unlawful delegation of authority from the legislative branch regarding the execution protocol without sufficient guidelines. Department 14 will need

to have adequate time to consider that argument. The current argument is scheduled for June 8th in front of Department 14. But if the Court were to sign the execution order now, it could jeopardize the ability for Mr. Floyd to seek meaningful review in Department 14, and also to seek any appellate review that might be available to him.

Finally, Your Honor, as far as the argument about representations regarding the Nevada Attorney General's Office, our position is is that if the Court is going to accommodate the Department of Corrections, which I think that we agreed last time that we would do, that we should actually hear from them before we set an arbitrary execution date. That is an issue that occurred in the Dozier matter back in 2017. There was an execution date set, the Department of Corrections was not prepared to go, and we had to come back to court to get another supplemental warrant of execution to accommodate the Department of Corrections. So I believe that the Court should be considering those factors as well.

And I believe that there's also considerations of judicial economy that warrant resolving these matters first before moving onto an execution order.

Finally, the last thing that I would say is that there's also the concern that the Department of Corrections legitimately has for the spread of COVID-19 in the prison system and that's something that the Department hasn't been asked to talk about or to opine about. But nonetheless that presents a serious risk for people who come in outside of the prison. Right now the prison requires negative COVID test for

people before they're even allowed into the prison.

I would submit, Your Honor, that if we're talking about spectators, if we're talking about media, if we're talking about the victims' family, or if we're talking about the defendant's family, that's a lot of people to put together in one place at one time. And empirically, from the few executions that did occur in 2020, those turned out to be super spreader events for COVID-19, it ended up getting correctional officers sick, witnesses sick, media individuals sick.

And so I think that for all of those reasons I believe that there is no rush for the Court to sign an order of execution specifying July 26 as the date for an execution.

And the last argument I would make, Your Honor, is that even if the Court was inclined to sign the order of execution, the Court could interlineate the date out because there's no reason to have a particular date in an order of execution. Even if the Court was going to sign the order of execution, it doesn't need to have a particular date specified. That's what's done in the warrant. And the State has already talked with the Court about its intentions with respect to the warrant. So we believe that there's not a reason for the date to be specified in the order.

Thank you, Your Honor.

THE COURT: All right. Thank you.

Let me hear from the State.

MR. CHEN: Thank you, Your Honor.

Our reading of 176.505 is that it does say that it must be a judgment at a specified time, that's the specific language, then the

warrant has to coordinate with the order itself.

In terms of the appellate review that Mr. Anthony is speaking of though, I mean, at some point this has to be final. And they have every right to litigate, and I understand that they're challenging every decision that this Court has made. I'm sure that in federal court, if things don't go the way that they're hoping, they'll challenge those decisions as well. But at some point the State's position is there needs to be some finality.

And just as an example, Mr. Anthony, who's a fine attorney, he handled Mr. Floyd's post-conviction petition back in 2005, I believe. He filed it. He raised a number of claims and then now in 2021 he's still the attorney raising additional claims. If at some point the Court doesn't just have the order in place, the litigation theoretically could last forever.

Even if a Court were to stay this matter, they have to only stay it a reasonable time to accomplish what it is that needs to be accomplished. If the Court never sets a date in certain, then there really is no goal, and theoretically this litigation will just continue for years and years and years without any order, without any warrant even being possible. Because I do believe that they will never find a good time to do this. I don't believe that at any point Defendant Floyd or his counsel will think that, yes, we agree that the protocol is so great or that the procedures are so great or everything is inline, that we agree that this is an execution that should take place.

So because of that I think that we just need to push everything forward and let the legal processes play out in the way that they do. And if someone stays it pursuant to statute, that happens. But at this point I

think it is appropriate for an order.

THE COURT: All right. Thank you.

Counsel, you had mentioned that July 26 is too early, again, we still need the warrant of execution, I mean, that has to be filed and various appeal issues are going to be ongoing. You had mentioned that if this Court issues a particular decision today, that -- and we have some other motions pending in petition -- that it gives you limited time to take, whatever decision I make, whatever decision -- I think you said Department 14 -- and I know there's a federal action pending as well. And you said that July 26 is not enough time either to get a stay from the higher court or request a stay from the trial court, whether District Court 14, 17, Supreme Court. If I set a date of execution in August, wouldn't that solve the issue of the -- how fast you have to get all the paperwork completed to pursue your appellate rights -- or your client's appellate rights? I'm just concerned about just not having a date. Because as we know, without a deadline nothing happens, I mean, that's just the reality of it, nothing happens without a deadline.

MR. LEVENSON: Well, the short answer, Your Honor, is that I think an August date would still be problematic from the perspective of appellate review; that would require the Nevada Supreme Court to act on multiple matters in a very short amount of time. So I'm concerned about that.

If we are taking the timeframe based on what was happening in federal court, that would still put us at a timeframe around September at the very minimum, from, you know, what's been going on in federal court.

One thing I want to clarify is is that when the State mentions the execution protocol, there still is no execution protocol. And that was the reason we were setting status checks in the first place. I think that the Court would be in a position at our next status check to make a much more reasonable determination regarding what seems reasonable to the Department of Corrections and to the Court and to the State and to Mr. Floyd once we have more information about the protocol. But to just say right now that August would be good enough, I don't think that we can conclude that as we sit here today.

THE COURT: What date do you want, besides no date?

MR. LEVENSON: Well, Your Honor, I think what we would be appropriate is to have the date be set from the Nevada Supreme Court's disposition of -- a final disposition of these matters. I believe what the statute say is that if there was an order of affirmance, and if any petitions for writ of mandamus were denied, the State statutory scheme says that that's the point at which an execution order and warrant could be signed and could be effectuated, is once those appellate remedies are exhausted there's -- the State statute is actually paired up to the date of an order of affirmance from the Nevada Supreme Court.

So I would say that's the date that we're looking at, would be the date on which the Nevada Supreme Court issues an order of affirmance or also denying any petitions for writ of mandamus.

THE COURT: All right. Thank you.

Anything further by the State?

MR. CHEN: No, thank you, Your Honor.

THE COURT: All right. I'm going to issue a written decision on or before Monday of next week on this particular motion.

And there was one other matter, I think, that we could take care of.

[Colloquy between the Court and the Law Clerk]

THE COURT: Apparently in the A case there's a motion for appointment of counsel, and that's -- I'm not sure when that is set for.

MR. ANTHONY: It's not -- I don't believe it's set yet, Your Honor.

THE COURT: Apparently I'm being told it's set on the 25th.

MR. ANTHONY: Okay.

THE COURT: And, obviously, I'm assuming there's no objection, I mean, I -- definitely I will appoint your office as counsel. So that motion is granted today. No oppositions been filed.

MR. ANTHONY: Your Honor, we do have one more matter, we had filed a petition and an amended petition and a second amended petition. I know Mr. Chen is answering today on the first two, the petition and the amended petition; that still leaves the second amended petition, which adds one more claim based on some new law that came out, *Petrocelli*. And so right now the briefing schedule is we have two weeks to reply and then the argument is July 2nd. It would be wonderful if we could argue all three petitions; that would be one more claim by -- on that July 2nd deadline. And I don't know how that briefing schedule would look, but it's only one more claim.

THE COURT: Any objection by the State?

MR. CHEN: No, Your Honor. If they file something timely, then we'll do our best to file something by the date that the Court is going to hear the petition. So we'll get everything done at once.

THE COURT: Is July 2nd a homicide day or is it non-homicide?

THE CLERK: Non-homicide.

THE COURT: July 2nd is fine.

MR. CHEN: Okay.

THE COURT: Okay? The parties agree on that.

MR. ANTHONY: Oh, and, Your Honor, I'm sorry, we have an order of transcript request, proposed order, that we'd like to file with the Court.

THE COURT: You have to file it electronically, but -- and I'll sign off on that, if it's submitted through electronic means. You can get it to -- as soon as you get back to your office, file it. Before I leave today, I'll sign it electronically.

MR. ANTHONY: And then we also wanted to request that this -- these hearings be -- be pursued under Rule 250 where we have daily transcript request since we're going to have a lot of hearings and it's a -- it is a death penalty case, and an important one with an execution date, that we have that request before the Court.

THE COURT: That's fine. I'll order daily transcripts for any of the hearings.

MR. ANTHONY: Thank you.

MR. CHEN: Thank you.

THE COURT: Okay. All right. Thank you, Counsel. Have a

good weekend.

MR. CHEN: You as well.

MR. ANTHONY: Thank you, Your Honor.

[Hearing concluded at 9:16 a.m.]

* * * * * *

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

Gina Villani
Court Recorder/Transcriber
District Court Dept. IX

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ZANE MICHAEL FLOYD,

Defendant.

CASE NO: 99C159897

DEPT NO: XVII

DECISION AND ORDER

DATE OF HEARING: June 4, 2021
TIME OF HEARING: 8:30 AM

THIS MATTER having come on for hearing before the Honorable MICHAEL VILLANI, on the 4th day of June 2021. The Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the Decision on State's Motion for the Court to Issue Second Supplemental Order of Execution and Second Supplemental Warrant of Execution.

The State seeks an Order for a Second Order of Execution. For purposes of this Order, the Court adopts the procedural history as set forth in the State's Second Supplemental Warrant of Execution.

The State's position is that Floyd has exhausted his legal remedies and therefore a second warrant of execution should be granted. The Nevada Supreme Court has affirmed Floyd's conviction, the United States Court of Appeals for the Ninth Circuit affirmed the denial of Floyd's Federal Habeas Petition, and the United States Supreme Court denied certiorari. *See* NRS 176.505(2) The State initially sought a date of warrant of execution for May 21, 2021. However, due to various delays, the State amended its request for July 26,

2021.

Floyd objects to this Court Granting the pending Motion for a Second Warrant of Execution based upon the following claims:

> 1. This case must be transferred to Department V. The Court previously denied said claim.
> 2. The Clark County District Attorney's office must be disqualified. The Court previously denied said claim.
> 3. Floyd is entitled to litigate his third State Habeas Petition, which was filed approximately 17 years after the Nevada Supreme Court filed Remittitur. As part of this claim, Floyd opposes said motion based upon the fact that he has the right to seek clemency and that the Pardons Board does not meet until the week of June 22, 2021.
> 4. The Nevada Department of Corrections should appear to discuss Covid-19 procedures for the execution.

The Court already ruled on claims one and two. Therefore only claims three and four will be addressed.

Floyd's third petition is primarily based upon a claim of fetal alcohol spectrum disorder. The Nevada Supreme Court as well the Federal District Court of Nevada and the United States Court of Appeals for the Ninth Circuit have ruled upon said claim. Further, no statutory or case law authority provides for a stay while Floyd seeks clemency. Floyd argues that since the Pardons Board does not meet until the week of June 22, 2021, that a stay should be granted. However, Floyd's request is moot as the amended execution date is for July 26, 2021.

/ / /

The Court is unpersuaded that the Nevada Department of Corrections must first prove that it can safely carry out an execution before the Court can sign an Order of Execution. Further, any claim that the timing of any of the Court's orders precludes appellate review is without merit.

The mere fact that Floyd is litigating his claims in both Federal and State Courts does not preclude this Court from granting the State's motion.

ORDER

THEREFORE, IT IS HEREBY ORDERED that State's Motion for the Court to Issue Second Supplemental Order of Execution for July 26, 2021 is GRANTED. IT IS HEREBY ORDERED the State is to provide a formal Second Supplemental Order of Execution.

Floyd's Motion to Strike, or Alternatively, Motion to Stay the Second supplemental Order of Execution and Second Supplement Warrant of Execution was previously ruled upon in open Court on June 4th, 2021, and was DENIED. COURT ORDERS State to submit an order consistent with the Court's ruling. Furthermore, Floyd request for a Stay is DENIED.

Dated this 7th day of June, 2021

DISTRICT JUDGE

208 4D6 F478 D690
Michael Villani
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

The State of Nevada vs Zane M Floyd	CASE NO: 99C159897 DEPT. NO. Department 17

AUTOMATED CERTIFICATE OF SERVICE

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

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History of NSP

HISTORY OF NSP

Nevada State Prison (NSP), is located in Carson City, Nevada. The prison was in continuous operation from its establishment in 1862 until its closure in 2012, a period of 150 years.

ABRAHAM CURRY

Abraham Curry was one of the first, and certainly the most important settler of Eagle Valley, the site of Carson City. He arrived in the valley in 1858 from Utah and purchased the Eagle Ranch for $500 and several mustang horses. On this property he built the Warm Springs Hotel, using the sandstone rock quarried on the site.
In December, 1861, the first Territorial Legislature met at the hotel and created the Board of Prison Commissioners. This Board was authorized to lease the property adjacent to Curry's hotel effective January 1, 1862. This is the date for the establishment of what was to become the Nevada State Prison. Curry was also appointed as the first territorial warden of the prison on that date.

The Territorial Legislature subsequently authorized the purchase of the 20 acres being used as a prison, including the quarry. This purchase was to be effective on March 1, 1864. Curry was given $80,000 in interest-bearing bonds for the property.
On October 31st, 1864, the Territory of Nevada was admitted to the Union. The Constitution of the State established the Board Prison Commissioners, composed of the Governor, Secretary of State, and Attorney General. The Lieutenant Governor of the state was to act as the ex officio warden in order to provide him with a salary. Lieutenant Governor John Crossman thus became the warden of the institution on March 4, 1865 and remained so until January 7, 1867

On May 1, 1867 a fire occurred at the prison, with total loss of all buildings, and all prison records. The buildings were rock and mortar structures, covered with dried wooden shingles. It was assumed that the inmates set fire to their shed-like housing. In 1870, another fire occurred and a major

portion of the institution was again destroyed. This incident resulted in a construction project using quarried stone on site and inmate labor to build substantial structures.

The Great Escape

On September 17, 1871, the most dramatic event in the history of the prison in the 19th century occurred. The Captain of the Guard was attacked while locking the inmates into their cells on this late Sunday afternoon. Twenty nine inmates participated in this escape, acquiring guns from the armory, shooting Lieutenant Governor Frank Denver and several guards, killing two people. Most were recaptured; two were hung by a posse, and the ringleader was never found. Convict Lake in Mono County, California is where the escapees made their last stand.

LIEUTENANT GOVERNOR FRANK DENVER

The Great Prison War of 1873

The following year, 1872, legislation resulted in the repeal of the portion of the Constitution which established the prison as the responsibility of the Lieutenant Governor. A new warden was appointed, but Lieutenant Governor Denver refused to hand over the institution and refused to allow the Governor, or any other members of the Prison Board, to enter the prison. Finally, the Governor called out the militia in March, 1873. Confronted by 60 soldiers and a small artillery piece, Denver surrendered the institution.

Prison Industry

The primary means of support for the prison during the 19th century was the shoe shop where inmates were engaged in the construction and sales of footwear. In addition, the institution obtained funds through the quarrying and dressing of sandstone taken from within the perimeter of the institution. Although it was not the major source of income, the quarry had the most profound and lasting effect on the face of Carson City. Public buildings and homes throughout Carson City reflect the prison as the source of the substantial construction material.

Buildings made of sandstone from Nevada State Prison quarry

NEVADA STATE CAPITOL 1871
EXTENSIONS DESIGNED BY FREDERICK DELONGCHAMPS
LISTED ON THE NATIONAL HISTORIC REGISTER

UNITED STATE MINT, CARSON CITY – NEVADA STATE MUSEUM 1869
LISTED ON THE NATIONAL HISTORIC REGISTER

OLD ORMSBY COUNTY COURTHOUSE – NEVADA ATTORNEY GENERAL'S OFFICE 1921
LISTED ON THE NATIONAL HISTORIC REGISTER

HERO'S MEMORIAL BUILDING – NEVADA ATTORNEY GENERAL'S OFFICE 1922
LISTED ON THE NATIONAL HISTORIC REGISTER

OLD STATE PRINTING OFFICE – STATE ARCHIVES BUILDING 1875
LISTED ON THE NATIONAL HISTORIC REGISTER

OLD STATE ARMORY 1882

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OLD STATE ARMORY 1882

UNITED METHODIST CHURCH 1867

UNITED METHODIST CHURCH 1867

MEYER'S HARDWARE – SECRETARY OF STATE 1864

MEYER'S HARDWARE –
SECRETARY OF STATE 1864

NEVADA STATE PRISON 1862-2012
ENDANGERED
LISTED ON THE NATIONAL HISTORIC REGISTER

NEVADA STATE PRISON 1862-2012
ENDANGERED
LISTED ON THE NATIONAL HISTORIC REGISTER

WARREN ENGINE COMPANY 1864

WARREN ENGINE COMPANY 1864

NEVADA STATE PRISON STAFF COTTAGES 1953

NEVADA STATE PRISON RANCH HOUSE 1924

BANK CLUB SALOON 1899
ENDANGERED
LISTED ON THE NATIONAL HISTORIC REGISTER

Demolished Structures

THE NEVADA ORPHANS HOME
1903

CURRY'S GREAT BASIN HOTEL-ORMSBY
COUNTY COURTHOUSE
1862

VIRGINIA & TRUCKEE RAILROAD
MAINTENANCE BUILDING
1873
LISTED ON THE NATIONAL HISTORIC REGISTER

Sandstone Homes

ABRAHAM CURRY HOUSE 1871
HOME OF NSP'S FIRST TERRITORIAL WARDEN
& FIRST SUPERINTENDENT OF THE U.S. MINT
IN CARSON CITY
ONE OF THE FOUR FOUNDERS OF CARSON
CITY
LISTED ON THE NATIONAL HISTORIC REGISTER

ABRAHAM CURRY HOUSE 1871
HOME OF NSP'S FIRST TERRITORIAL WARDEN
& FIRST SUPERINTENDENT OF THE U.S. MINT
IN CARSON CITY
ONE OF THE FOUR FOUNDERS OF CARSON
CITY
LISTED ON THE NATIONAL HISTORIC REGISTER

STEWART/NYE HOME
HOME OF GOVERNOR STEWART, NEVADA'S FIRST GOVERNOR AFTER STATEHOOD
NEVADA'S FIRST GUBERNATORIAL RESIDENCE
LISTED ON THE NATIONAL HISTORIC REGISTER

THOMAS J. EDWARDS HOUSE (MUSSER & MINNESOTA)

NEVADA STATE GOVERNOR'S MANSION

Fossils

In the late 1870s inmates working to quarry stone in the prison discovered the fossilized footprints of prehistoric creatures.

In 1882, the Carson City Sheriff communicated the discovery of the footprints to the California Academy of Science in San Francisco. The footprints were correctly identified as La Brea Fauna of the Pliocene era, but were attributed to a previously unknown race of giant humans. At that point the prints were estimated to be about 2 million years old. Varied interpretations of the origin of these mysterious impressions fueled academic controversy and

PA400

varied attribution from giant humans to giant sloths. In the end, the sloth advocates won out in 1917. Other prints include mammoths, native horses, large birds, dire wolves, and the sloths, big-toothed cats, elk and deer.

As late as 2013, scientific study has been carried out on footprints uncovered to the South of the License Plate Factory. While the fossil grotto may be compromised, the general area is a rich site of historic significance, suitable for scientific research and demonstration.

Longest Escape

1923 Leonard Fristoe and two other inmates accompanied Warden Tom Slater in the warden's car on a trip to Reno. Left unattended by the warden, Fristoe walked away and was not heard from again until 1968. He was arrested in California after a domestic disturbance and returned to NSP. His escape lasted for 45 years. This was the longest escape and recapture in U.S. history until 2015. In May, 1970, Fristoe received a pardon and was released based upon the split vote of the Pardons Board.

FRISTOE RETURNS TO NSP

License Plates

LICENSE PLATE FACTORY AT NEVADA STATE PRISON

In 1928, NSP became the site for state automobile license plate production. Until the advent of modern screening techniques, the license plates were stamped and painted using dies and stamps that were operated by trusted inmates. Today the "Tag Plant" is at another prison.

Big House Casino

With the legalization of gaming in Nevada, the Prison apparently saw no reason not to allow inmates to participate in organized and sanctioned gambling. Wardens provided space for gambling games and establishment of inmate game "owners". This practice is astounding to modern correctional practitioners, as it legitimized an underground inmate economy with the attendant negative opportunities for indebtedness between inmates, coercion, and inmate control of other inmates. The hiring of a core of professional administrators in 1967 resulted in the closure of the "casino".

NSP INMATES GAMBLING IN 1960S

Brass

Perhaps as an adjunct to the gambling, NSP coined its own money. This money took the form of brass coins of $5, $1, and 50, 25, 10, and 5 cents. These coins were minted from 1945 to 1964. Their use resulted in the phrase "brass" in the prison lexicon, meaning "money". Today these coins are collectors' items and given to long serving prison employees upon retirement.

Executions

The 1901 state legislature required that all executions be conducted by hanging at the state prison in Carson City beginning in 1903. The first inmate executed at the state prison was John Hancock on September 8, 1905.

ANDRIZA MIRCOVICH

PA402

The largest multiple execution in the history of Nevada occurred on November 17, 1905 when four men, Thomas F. Gorman, Al Linderman, Fred Reidt, and John P. Sevener, were executed using double gallows for the murder of a transient they threw off a moving train while they pilfered the box cars. Two Native Americans, Indian Johnny, a Shoshone, and Joe Ibapah, a Goshute, were executed using double gallows on December 7, 1906 for the murder of a transient.

GEE JON

The Nevada State Legislature passed a law in 1910 allowing condemned inmates to choose between execution by shooting or hanging. Andriza Mircovich was the first and only inmate in Nevada to be executed by shooting.

In 1921, a bill authorizing the use of gas was passed the Legislature. Ten men had been hanged at NSP before the law was enacted. Condemned murderer Gee Jon, of the Hip Sing Tong criminal society, became the first person to be executed by this method in the United States.

Thirty-two men were executed in Nevada's three gas chambers between 1924 and 1979. In 1983 the State Legislature changed the method of execution to lethal injection. On December 6, 1985, serial killer Carroll Cole became the first inmate to be executed in Nevada by lethal injection. The last execution in Nevada was in 2006. A total of 12 men have been executed by lethal injection. In December of 2016, the execution chamber at the Ely State Prison was completed. Henceforth, executions will be carried out there.

The Last Years of NSP

The Nevada State Prison remained the only state prison until the Department of Prisons expanded in 1964 with the opening of the Northern Nevada Correctional Center on the prison farm property in the Stewart area of Carson City. NSP operated as the state's maximum security prison until 1989 when the Ely State Prison was opened in eastern Nevada.

The decades of 1970 and 1980 were characterized by inmate violence and legal challenges to an antiquated corrections system. The institution witnessed several murders of inmates, high profile escapes, numerous hostage incidents, and attacks on staff. NSP also became troubled by racial tension and the rise of prison gangs. The operation of the prison became an issue in the gubernatorial election campaign of 1982,

contributing to the defeat of an incumbent Governor. Ultimately, control was regained by the hiring and influence of a "Town-Tamer", the former warden of San Quentin, George Sumner.

In the 1980s, NSP was expanded onto the northeastern bluff. These new housing units proved to be poorly designed, with obstructed lines of site and minimal opportunity for inmate supervision. These flaws, along with the deterioration of the original infrastructure, encroaching community, and the disordered perimeter resulted in a phased closing of the institution. The prison finally closed its doors on May 18, 2012.

References:

"History of Nevada – 1881" Thompson & West
"An Outline of Capital Punishment" Guy Louis Rocha
"Nevada State Prison" Wikipedia
Nevada Daily Appeal Newspaper
Biennial Reports of Wardens

Northern Nevada Correctional Center (NNCC)

P.O. Box 7000
Carson City, Nevada 89702
1721 E. Snyder Ave.
Carson City, Nevada 89701
(775) 887-9297

Administrative Staff

Perry Russell, Warden
Lisa Walsh, Associate Warden

Robert Hartman, Associate Warden

Visiting Information

Visit NNCC

Historical

Northern Nevada Correctional Center (NNCC) opened in 1964 with three housing units. From that date until 2008, seven additional housing units were added. NNCC is a medium custody facility. NNCC also is the Intake Center for the Northern region. The Regional Medical Facility for the Nevada is located here. This includes an in-patient medical and mental health unit. In addition, there is the MIC (Medical Intermediate Care) and SCU (Structured Care Unit) units for those inmates whose medical and mental health situations are stable but which require additional staff monitoring. NNCC also has the Regional Warehouse which is the distribution center for the facilities in Carson City and Reno.

Staffing

NNCC has a total of 373 staff members which includes custody, program, medical and mental health staff as well as support staff.

Capacity

The total bed capacity at NNCC is 1,619 inmates.

Programs: Vocational Training, Educational Opportunities, and Treatment Services

Current vocational programs are auto mechanics/auto shop, computer and dry cleaning. Educational services are conducted by Carson School District staff and include high school diploma, GED, Literacy programs and English as a Second Language. College courses are available and are provided through Western Nevada Community College. OASIS is a 9 to 12 month drug and alcohol rehabilitation program which contains 170 inmate participants. SSLP (Senior Structured Living Program) is available to those inmates 60 and over and has 120 inmates participating. The New Beginnings program is offered to prepare inmates for reintegration into society. A wide range of self-help and treatment programs are available and are administered by medical, mental health and program staff.

Prison Industries

Silver State Industries includes a wood shop, metal shop, paint shop, upholstery, mattress factory, print shop, and bookbindery. They manufacture a variety of products for governmental agencies and private entities.

Southern Desert Correctional Center (SDCC)

P.O. Box 208
Indian Springs, Nevada 89070-0208
20825 Cold Creek Road
Indian Springs, Nevada 89070
(702) 879-3800

Administrative Staff

William Hutchings, Warden
Monique Hubbard-Pickett, Associate Warden
James Scally, Associate Warden

Visiting Information

Visit SDCC

Historical

Located in Clark County, just north of Las Vegas, Southern Desert Correctional Center opened in February 1982.The department's fourth major institution has seven 102-cell housing units, one of which housed federal prisoners until the state took it over in 1987. Each 60-square foot cell housed one inmate at that time. A new 200-cell housing unit opened in 1989, and two 240-bed dormitory-style housing units were added in March 2008, bringing the population capacity from 714 in 1982 to its present capacity of 2,149.

Staffing

In addition to our staff of 198 Protective Service staff, Southern Desert Correctional Center employs a number of professional and skilled staff:

- 38 Program Staff (including Education Principal, AA and Braille, Psychologist, TRUST and Re-Entry)
- 12 Skilled Maintenance Personnel
- 4 Warehouse Employees
- 4 Correctional Cooks
- 1 Laundry/Dry Cleaning Specialist
- 1 Recreation Specialist
- 9 Administrative/Clerical
- 1 Institutional Chaplain

Capacity

Southern Desert Correctional Center houses mostly medium custody general population inmates, along with two separate specialized programming units. The total capacity for Southern Desert Correctional Center is approximately 2,149 inmates.

Programs: Vocational Training, Educational Opportunities, and Treatment Services

Southern Desert Correctional Center offers a wide range of programs for the inmate population and an opportunity pursue a GED, high school diploma or a college degree. Southern Desert offers the most programs of any of the facilities located in Nevada, to include: Anger Management, Stress Management, Fitness and Wellness, Inside/Out Dads, Domestic Violence, Toastmasters, Gang Awareness, Conflict Resolution, Victim Empathy, Commitment to Change, SOS Help for Emotions, Thinking for Change, relationships, Sex Offender Treatment, Stress and Anxiety management. Additionally, Southern Desert offers “New Beginnings” a re-entry program, Forklift Certification and OSHA Certification in cooperation with the local Teamsters Union. SDCC offers “TRUST” a therapeutic community and “Re-Entry” a unit to prepare inmates for reintegration back into the community. Recently, "Photovoltaic Solar Panel Program" was added as a component to the Re-Entry Program. Religious services and activities for all denominations are available.

Southern Desert also has its own medical and mental health staff serving the inmate population.

Prison Industries

Prison industries at SDCC offers card sorting and the Silver State automotive restoration and repair, along with Allwire.

Warm Springs Correctional Center (WSCC)

P.O. Box 7007
Carson City, Nevada 89702
3301 E. 5th Street
Carson City, Nevada 89701
(775) 977-5807

Visiting Information

Visit WSCC

Administrative Staff

Kyle Olsen, Warden
, Associate Warden

Historical

The Warm Springs Correctional Center (WSCC) was authorized by and constructed through appropriations from the 1961 legislative session and was known as the Nevada Women's Correctional Center until September 1997. It was converted to a medium security men's prison in 1998, then to a minimum custody facility in July 2003. The institution has been remodeled and expanded four times over the past 47 years. A second housing unit was added in 1979, and a third in 1987. The core services building, which houses food services, health care services, education facilities and the gymnasium, was added in 1981. The 1995 and 1997 legislatures authorized a fourth housing unit, two towers, a new security fence, additional classrooms and a complete remodel of the kitchen, dining room and entrance building. The completion of this project in July 1998 (funded in part with federal monies) brought the budgeted capacity of WSCC from 260 to 510 inmates. In July 2008, WSCC was converted back to a men's medium custody institution.

Staffing

WSCC is staffed by 125.5 employees. One hundred three are funded through the WSCC budget account, including 3 Administrators, 80 Correctional Officers and 16 Correctional Supervisors, 4 Caseworkers, 3 Food Service Workers, 4 Skilled Craftsman, and 3 Clerical positions. Inmate Health Care Services at WSCC are funded through the Department's Medical Division and includes 2 part time Physicians, 1 Director of Nursing, 6 Nurses, 2 Clerical positions, 1.5 Psychologists, 1 Psychiatric Nurse, .5 Psychiatrist, .5 Dentist, .5 Dental Technician and .5 Lab Technician.

Three other positions are paid for through the Offenders Store Fund and include 2 Storekeepers (Canteen and Coffee Shop) and 1 Physical Education/Recreation Specialist. High School, Adult Basic Education and Vocational Training is provided through the Carson City School District and staffed by five teachers.

Capacity

At this time WSCC is budgeted for 532 inmates.

Programs: Vocational Training, Educational Opportunities, and Treatment Services

Re-Entry

Staff work in collaboration with Pre-Release and Parole and Probation to provide community referrals for inmates getting out of prison this includes Welfare, Medicaid and Job Connect. Re-Entry staff track and obtain vital records for the inmate population; this includes Social Security cards and Birth Certificates. Re-Entry staff teach Getting it Right and Moral Recognition Therapy.

Getting It Right- Getting it Right consists of 5 workbooks: Personal Growth, Responsible Thinking, Managing My Life, Relapse Prevention, and Change Plan. During the 37.5 hours of class we cover a variety of skills that if implemented will reduce the likelihood of recidivism.

Moral Recognition Therapy- The MRT program is a self-paced, cognitive behavioral intervention awareness curriculum that has been developed for offenders. It is a workbook-based program that utilizes a series of group exercises and prescribed homework tasks that participants must complete at their own pace.

Education
Carson Adult Education- Coursework provided to inmates gives opportunity for High School Equivalence as well as high School Diploma.
Western Nevada College- Coursework provided to inmates give opportunity for Associates Degree in General Studies.

Substance Abuse

Phoenix- Substance abuse program. Community of inmates learning tools for sober living guided by trained substance abuse counselors. Generally a 6 month long program.

Mental Health

Commitment to Change- Changing criminal thinking by overcoming errors. 6 week class taught by WSCC Psychologist.

Anger Management- Learning coping mechanisms to minimize impact of anger. 6 week class taught by WSCC Psychologist.

Victim impact- Understand impact of crime on the community. 12 week class taught by WSCC Psychologist.

Miscellaneous

Veterans Integration Program- Housing area set aside for inmates who have served in the armed forces. These inmates are given periodic visits with veterans who have meetings to discuss PTSD and other veteran issues.

Healing Hounds Project- This program is in partnership with the Pet Network. Dogs are provided to inmates for the purpose of training dogs as Service animals for disabled veterans.

Puppies on parole- This program is in partnership with Nevada Humane Society. Dogs in this program are at risk dogs which are trained for eventual adoption in the community.

INK- This program is in partnership with Nevada Humane Society. Older cats which are difficult to adopt are cared for by inmates.

- Puppies up for Parole (Nevada Humane Society)