

Steven D. Grierson

Christopher Roach #1076731
Southern Desert Correctional Center
P.O. Box 208
Indian Springs, NV 89070

Electronically Filed
Aug 02 2021 01:30 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

District Court
Clark County, NEVADA

Christopher Roach

petitioner

Case No: A-21-829045-W

V

Dept No: XXIV

State Of NEVADA

Respondent

Notice of Appeal

Comes Now, Petitioner, Christopher Roach, herein above
respectfully moves this Honorable Court for an notice of appeal
to the Supreme Court of the State of NEVADA from the denial
of petition for writ of Habeas Corpus (post-conviction) which
was denied by Honorable Judge Erika Ballou on 6-26-21

This motion is made and based upon the accompanying Memorandum
of points and Authorities.

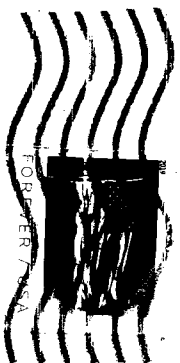
Dated: this

RECEIVED
JUL 26 2021
CLERK OF THE COURT

By Christopher Roach #1076731
Docket 83305, Document 2021-22362
Defendant In Proper Personam

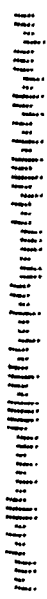
Christopher Powell #1076731
P.O. Box 208
SDCC
Indian Springs NV 89076

LAS VEGAS NV 890
21 JUL 2021 PM 4 L



Clerk of the Court
200 Lewis Ave 3rd Floor
Las Vegas NV 89155

89101-630000



RECEIVED
JUL 26 2021
CLERK OF THE COURT



1 ASTA

2
3
4
5
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**
9

10 CHRISTOPHER ROACH,

11 Plaintiff(s),

12 vs.

13 WILLIAMS HUTCHINGS (WARDEN),

14 Defendant(s),
15

Case No: A-21-829045-W

Dept No: XXIV

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Christopher Roach

20 2. Judge: Erika Ballou

21 3. Appellant(s): Christopher Roach

22 Counsel:

23 Christopher Roach #1076731
24 P.O. Box 208
Indian Springs, NV 89070

25 4. Respondent (s): Williams Hutchings (Warden)

26 Counsel:

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

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

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

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

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

7 8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A

8 **Expires 1 year from date filed

9 Appellant Filed Application to Proceed in Forma Pauperis: Yes,
Date Application(s) filed: February 8, 2021

10 9. Date Commenced in District Court: February 8, 2021

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

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

13 11. Previous Appeal: No

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

15 12. Child Custody or Visitation: N/A

16 13. Possibility of Settlement: Unknown

17 Dated This 29 day of July 2021.

18 Steven D. Grierson, Clerk of the Court

19
20
21 /s/ Heather Ungermann

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

27 cc: Christopher Roach
28

CASE SUMMARY

CASE NO. A-21-829045-W

Christopher Roach, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

§
§
§
§
§
§

Location: **Department 24**
 Judicial Officer: **Ballou, Erika**
 Filed on: **02/08/2021**
 Cross-Reference Case Number: **A829045**
 Defendant's Scope ID #: **2757657**

CASE INFORMATION

Related Cases

C-14-300979-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Case Status: **02/08/2021 Open**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-21-829045-W
 Court Department 24
 Date Assigned 02/08/2021
 Judicial Officer Ballou, Erika

PARTY INFORMATION

Plaintiff

Roach, Christopher

Lead Attorneys

Pro Se

Defendant

State of Nevada

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


DATE

EVENTS & ORDERS OF THE COURT


INDEX

EVENTS


02/08/2021

 Inmate Filed - Petition for Writ of Habeas Corpus
 Party: Defendant State of Nevada
[1] Petition for Writ of Habeas Corpus


02/08/2021

 Application to Proceed in Forma Pauperis
 Filed By: Plaintiff Roach, Christopher
[2] Application to Proceed in Forma Pauperis


02/08/2021

 Order for Petition for Writ of Habeas Corpus
[3] Order For Petition for Writ of Habeas Corpus


03/22/2021

 Notice of Change of Hearing
 Filed By: Plaintiff Roach, Christopher
[6] Notice of Change of Hearing

03/23/2021

 Response
[7] State's Response to Petition for Writ of Habeas Corpus (Post-Conviction)

03/25/2021

 Clerk's Notice of Nonconforming Document
[8] Clerk's Notice of Nonconforming Document

CASE SUMMARY

CASE NO. A-21-829045-W

06/26/2021



Finding of Fact and Conclusions of Law

[9] Findings of Fact, Conclusions of Law, and Order

07/02/2021



Notice of Entry of Findings of Fact, Conclusions of Law

Filed By: Defendant State of Nevada

[10] Notice of Entry of Findings of Fact, Conclusions of Law and Order

07/27/2021



Notice of Appeal

[11] Notice of Appeal

07/29/2021



Case Appeal Statement

Filed By: Plaintiff Roach, Christopher

Case Appeal Statement

HEARINGS

02/08/2021



Minute Order (1:45 PM) (Judicial Officer: Ballou, Erika)

Minute Order - No Hearing Held;

Journal Entry Details:

COURT ORDERED, briefing schedule SET and hearing SET. Briefing Schedule: State's Response Due by: 3/22/2021 Plaintiff/Def't.'s Reply Due by: 4/5/2021 4/12/2021 8:30 AM HEARING: PETITION FOR WRIT OF HABEAS CORPUS CLERK'S NOTE: The above minute order has been distributed to: Christopher Roach, #1076731, SDCC, PO Box 208, Indian Springs, NV 89070. (2/8/21)km;

03/22/2021



Minute Order (1:00 PM) (Judicial Officer: Ballou, Erika)

Minute Order - No Hearing Held;

Journal Entry Details:

The Order for Petition for Writ of Habeas Corpus filed on March 19, 2021 was erroneously filed. COURT ORDERED, the Order for Petition for Writ of Habeas Corpus STRICKEN. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Ro'Shell Hurtado, to all registered parties for Odyssey File & Serve.//rh;

03/22/2021



Minute Order (1:00 PM) (Judicial Officer: Ballou, Erika)

Minute Order - No Hearing Held;

Journal Entry Details:

The Order for Petition for Writ of Habeas Corpus filed on March 22, 2021 was erroneously filed. COURT ORDERED, the Order for Petition for Writ of Habeas Corpus STRICKEN. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Ro'Shell Hurtado, to all registered parties for Odyssey File & Serve.//rh;

05/12/2021



Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer: Ballou, Erika)

Petition for Writ of Habeas Corpus

Dismissed;

Journal Entry Details:

Pursuant to NRS 34.810(2), Petitioner s Writ of Habeas Corpus filed on February 08, 2021 is hereby DISMISSED as it is a successive petition lacking new or different grounds for relief. This Court further finds that Petitioner has failed to show good cause and prejudice for his failure to include the three claims for relief in this instant petition in his previous petitions. Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001) (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). Lastly, pursuant NRS 34.726(1) Petitioner had until January 22, 2017 to file a timely petition. This instant Petition was filed on February 8, 2021, therefore procedurally barred. Accordingly, Petitioner s third petition is hereby DISMISSED; advised the State to prepare the order. CLERK'S NOTE: This Minute Order was mail to: Christopher Roach, #1076731 SDCC, P.O.Box 208, Indian Springs, NV 89070.//05.12.2021rh;

CASE SUMMARY

CASE NO. A-21-829045-W

DISTRICT COURT CIVIL COVER SHEET

A-21-829045-W

County, Nevada

Dept. 24

Case No. _____
(Assigned by Clerk's Office)**I. Party Information** (provide both home and mailing addresses if different)

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

Christopher Roach

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

State of Nevada

Attorney (name/address/phone):

Attorney (name/address/phone):

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

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

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

02/08/2021

Date

Prepared by Clerk

Signature of initiating party or representative

See other side for family-related case filings.

Heather S. Linn
CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #13730
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

CHRISTOPHER ROACH,
aka Christopher LeRoy Roach #2757657

Petitioner,

-vs-

THE STATE OF NEVADA,
Respondent.

CASE NO: A-21-829045-W

DEPT NO: XXIV

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

DATE OF HEARING: MAY 12, 2021
TIME OF HEARING: 8:30 AM

THIS CAUSE having come before the Honorable ERIKA BALLOU, District Court Judge, on the 12th day of May, 2021, Petitioner not being present, not being represented by counsel, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through BRAD TURNER, Chief Deputy District Attorney, and the Court having reviewed the matter, including briefs, transcripts, and documents on file herein; now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

STATEMENT OF THE CASE

On September 22, 2014, CHRISTOPHER ROACH, aka Christopher LeRoy Roach (hereinafter "Petitioner") was charged by way of Information with CONSPIRACY TO

1 COMMIT ROBBERY (Category B Felony – NRS 200.380, 199.480); ROBBERY WITH USE
2 OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.165); COERCION
3 (Category B Felony – NRS 207.190); POSSESSION OF STOLEN PROPERTY (Category C
4 Felony – NRS 205.275); and POSSESSION OF CREDIT OR DEBIT CARD WITHOUT
5 CARDHOLDER’S CONSENT (Category D Felony – NRS 205.690) for actions committed
6 on or between June 30, 2014 and July 1, 2014.

7 On March 11, 2015, Petitioner executed a Guilty Plea Agreement (“GPA”), in which
8 Petitioner agreed to plead guilty to reduced charges of one count each of ROBBERY WITH
9 USE OF A DEADLY WEAPON and CONSPIRACY TO COMMIT ROBBERY. The State
10 filed an Amended Information reflecting the agreed-upon charges on that same day.

11 On May 6, 2015, Petitioner appeared for sentencing. The Court adjudicated Petitioner
12 guilty, consistent with his GPA, and sentenced Petitioner as follows: Count 1 – sixty (60) to
13 one hundred eighty (180) months in the Nevada Department of Corrections, plus a consecutive
14 sixty (60) to one hundred eighty (180) months for the use of a deadly weapon, and Count 2 –
15 thirteen (13) to sixty (60) months imprisonment, consecutive to Count 1. The Court also gave
16 Petitioner credit for three hundred nine (309) days of time served. Petitioner’s Judgment of
17 Conviction was filed on May 12, 2015.

18 On May 12, 2015, Petitioner noticed his appeal from his Judgment of Conviction. On
19 December 18, 2015, the Nevada Supreme Court affirmed Petitioner’s Judgment of Conviction.
20 Remittitur issued on January 22, 2016.

21 On October 31, 2017, Petitioner filed a Petition for Writ of Habeas Corpus
22 (Postconviction) (his “First Petition”). The State filed its Response to Petitioner’s First Petition
23 on December 13, 2017. On January 10, 2018, the Court determined that Petitioner’s First
24 Petition was time-barred, with no good cause or prejudice shown to overcome Petitioner’s
25 procedural defaults. The Court’s Findings of Fact, Conclusions of Law and Order was filed on
26 February 20, 2018.

27 On April 11, 2018, Petitioner filed another Petition for Writ of Habeas Corpus
28 (Postconviction) (his “Second Petition”). The State filed its Response to Petitioner’s Second

1 Petition on May 30, 2018. On June 27, 2018, the Court denied Petitioner's Second Petition.
2 The Court's Findings of Fact, Conclusions of Law and Order was filed on July 27, 2018.

3 On July 29, 2019, Petitioner filed a Motion to Correct an Illegal Sentence. The State
4 filed its Response to that Motion on August 16, 2019. On August 21, 2019, the Court denied
5 Petitioner's Motion. The Court's Order Denying Petitioner's Motion was filed on September
6 16, 2019.

7 On May 27, 2020, Petitioner filed a second Motion to Modify and/or Correct Illegal
8 Sentence. The Court considered, and denied, Petitioner's second such Motion on June 17,
9 2020. The Court's Order of denial was filed on July 8, 2020.

10 On February 8, 2021, Petitioner filed the instant Petition for Writ of Habeas Corpus
11 (Post-Conviction) (his "Third Petition"). The State filed its Response to Petitioner's Third
12 Petition on March 22, 2021.

13 On May 12, 2021, this matter was on calendar, whereupon this Court stated its findings
14 and conclusions, as follow:

15 STATEMENT OF FACTS

16 The Court, in sentencing Petitioner, relied on the following summary of facts:

17 On June 30, 2014, an officer was contacted by a female victim who
18 advised she left work walking from the Rio Hotel when she was ran into three
19 males with one striking up a conversation. One asked for directions and as she
20 turned around to point out where to go, he grabbed her cell phone from her hand
21 and stated, "Bitch be quiet, we have a gun". Suspect #2 male then lifted his shirt
22 and to expose a handgun in his waist. Suspect #1 male the grabbed her again and
23 took her fanny pack which contained the listed items. Suspect #1 asked for the
24 pin to her credit cards and cell phone. She stated she didn't have the pin as the
25 cards were not hers. Suspect #1 stated "don't lie to me bitch or we'll shoot you".
26 He then demanded she show the unlock code for the phone, so she did. Suspect
27 #1 then grabbed her arm again and started walking and told her to keep her
28 mouth shut and pushed her into the entryway of the Flamingo Palms Condos. He
then told her to walk backwards towards the Rio Casino and not to turn around
or they would shoot her. All three males then walked away. The victim walked
to her apartment and called 9-1-1. The victim was able to positively identify
suspect #1 as Christopher Roach. She stated he was the one who lifted up his
shirt and exposed the handgun. Suspect #2 was identified as Jeffery German who
was the one who physically grabbed her and took her fanny pack. And suspect
#3 was also identified as James Ivey who was standing nearby to block her
escape and was ransacking her backpack. All three were subsequently arrested
for this crime.

On July 1, 2014, the male and female victims stated they were sitting
inside the female's vehicle in the parking lot of a local apartment complex when

1 the male observed three males approaching them wearing dark clothing. The
2 three males, who were later identified as Christopher Roach, Jeffery German and
3 James Ivey, Jr, ran towards them and Mr. Roach pointed a semi-automatic 9mm
4 at the males' head. The male stepped back, and the female closed the door to her
5 vehicle. Mr. Roach then stated, "What you got in your pockets? At that time,
6 another unidentified male arrived on the scene and told the female to move from
7 the driver's seat and get into the passenger seat. The male then placed his hand
8 around the back of her neck and squeezed while pushing her head forward. The
9 unidentified male then instructed the male to get into the rear passenger seat. As
10 he complied, Mr. Ivey entered the vehicle and sat to his right while Mr. Roach
11 entered and sat to his left and again pointed the 9mm handgun at his head. The
12 instructions were being given by the unidentified male who remained outside the
13 vehicle. Mr. German also remained outside the vehicle while acting as if he were
14 a look out. The unidentified male got into the driver's seat and once again placed
15 his hand around the female's neck. He squeezed and pushed her forward while
16 digging his nails into her neck which left a red abrasion and caused her not to be
17 able to look at him. The male then requested the female give him her money, her
18 credit cards and her driver's license. She complied and gave him her \$500 and
19 her credit and debit card.

20 The male then asked for both of their cell phones and the keys to the
21 female's vehicle and her residence. The subjects then fled through the complex.
22 The male went to the entryway of the complex and observed what appeared to
23 be a dark-colored Toyota Corolla or Tercel driving very slowly in front of the
24 complex. Due to the fact the female's phone was an iPhone 5; it was able to be
25 tracked and was ultimately tracked to a local address where the defendants were
26 located in a vehicle.

27 Upon making contact with the vehicle, officers observed in plain view,
28 two semi-automatic handguns on the rear passenger floorboard. The males in the
vehicle matched the description provided by the victims. They were placed in
custody. The female driver was not arrested. She told officers her husband Mr.
Ivey and his friends asked her if she would give them a ride to an apartment
complex in the area of Flamingo and Arville. Upon arriving at the apartments,
she was told to park outside the complex while the three men exited and walked
into the complex. They then left the scene. The victims positively identified the
defendant's as the ones who robbed them.

Mr. Roach and Mr. Ivey were questioned, and both denied knowing
anything about the incident. Mr. German was searched by officers and located
in his rear pants pocket were the credit and debit card belonging to the female
victim. The vehicle was also searched and found inside were multiple
identification cards in other names. Additionally, officers located two BB type
semi-auto pistols on the rear floorboard area. The victims' cell phones were also
located in the vehicle.

PSI at 5-6.

ANALYSIS

I. PETITIONER'S CLAIMS ARE PROCEDURALLY BARRED

A. Petitioner's Claims are Time-Barred Pursuant to NRS 34.726(1)

Pursuant to NRS 34.726(1):

1 Unless there is good cause shown for delay, a petition that challenges the validity
2 of a judgment or sentence must be filed within 1 year of the entry of the judgment
3 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:

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

7 The Nevada Supreme Court has held that NRS 34.726 should be construed by its plain
8 meaning. Pellegrini v. State, 177 Nev. 860, 873-74, 34 P.3d 519, 528 (2001) (abrogated on
9 other grounds by Rippo v. State, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018)).
10 Per the language of the statute, the one-year time bar imposed by NRS 34.726(1) begins to run
11 from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is
12 filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

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

18 Furthermore, the Nevada Supreme Court has held that the district court has a *duty* to
19 consider whether a defendant's post-conviction petition claims are procedurally barred. State
20 v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The
21 Riker Court found that "[a]pplication of the statutory procedural default rules to post-
22 conviction habeas petitions is *mandatory*." Id. (emphasis added); see also, Huebler, 128 Nev.
23 192, 197 n.2, 275 P.3d 91, 95 n.2 (2012) ("under the current statutory scheme the time bar in
24 NRS 34.726 is *mandatory, not discretionary*." (Emphasis added)). In fact, procedural bars
25 "*cannot be ignored* [by the district court] when properly raised by the State." Id. at 223, 112
26 P.3d at 1075 (emphasis added). Even "a stipulation by the parties cannot empower a court to
27 disregard the mandatory procedural default rules." State v. Haberstroh, 119 Nev. 173, 180, 69
28 P.3d 676, 681 (2003); see also, Sullivan v. State, 120 Nev. 537, 540 n.6, 96 P.3d 761, 763-64

1 n.6 (2004) (concluding that a petition was improperly treated as timely and that a stipulation
2 to the petition's timeliness was invalid). The Sullivan Court went on to "expressly conclude
3 that the district court should have denied [a] petition" on the basis that it was procedurally
4 barred. 120 Nev. at 542, 96 P.3d at 765. It is clear, therefore, that the Nevada Supreme Court
5 has granted no discretion to the district courts regarding the application of the statutory
6 procedural bars; the rules *must* be applied.

7 The Nevada Supreme Court has expressed strong support for the one-year time bar. In
8 Colley v. State, the Court stated:

9
10 At some point, we must give finality to criminal cases. Should we allow
11 [petitioner's] post conviction relief proceeding to go forward, we would
12 encourage defendants to file groundless petitions for federal habeas corpus
13 relief, secure in the knowledge that a petition for post-conviction relief remained
14 indefinitely available to them. This situation would prejudice both the accused
15 and the State since the interests of both the petitioner and the government are
16 best served if post-conviction claims are raised while the evidence is still fresh.

17 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989) (citations omitted).

18 Here, Remittitur from Petitioner's direct appeal issued on January 22, 2016. Therefore,
19 this Court finds that Petitioner had until January 22, 2017, to file a timely petition. See
20 Dickerson, 114 Nev. at 1087, 967 P.2d at 1133-34. Petitioner's Third Petition was not filed
21 until February 8, 2021, over four (4) years *after* the time allowed by NRS 34.726(1). As such,
22 this Court concludes that Petitioner's claims are untimely and subject to dismissal unless
23 Petitioner can meet his burden of showing "good cause" for the delay. See NRS 34.726(1).

24 **B. Petitioner's Claims are Outside the Applicable Scope of Habeas Review**

25 NRS 34.810(1)(a) mandates, in pertinent part, "The court *shall* dismiss a petition if the
26 court determines that...[t]he petitioner's conviction was upon a plea of guilty...and the
27 petition is not based upon an allegation that the plea was involuntary or unknowingly entered
28 or that the plea was entered without the effective assistance of counsel." (Emphasis added).
Furthermore, substantive claims are outside the scope of habeas review, and are waived. NRS
34.724(2)(a); see also, Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001),
overruled on other grounds by Lisle v. State, 131 Nev. 356, 351 P.3d 725 (2015).

1 Petitioner raises three (3) claims in his Third Petition that he asserts warrant habeas
2 relief. However, this Court finds that none of the claims relate to the validity of Petitioner's
3 guilty plea, nor to the effectiveness of Petitioner's plea counsel. Petitioner's first claim alleges
4 that his conviction violates ex post facto laws under the United States Constitution. Petitioner's
5 second claim lacks any reference to Petitioner's plea or his plea counsel. Petitioner's third
6 claim makes a reference to the prohibition against Double Jeopardy, and heavily repeats
7 allegations from Petitioner's first claim. This Court, therefore, concludes that because none of
8 Petitioner's claims actually challenge the validity of Petitioner's guilty plea, nor the
9 effectiveness of Petitioner's plea counsel, Petitioner's Third Petition is outside the scope of
10 habeas review and must be dismissed pursuant to NRS 34.810(1)(a).

11 **C. Petitioner's Claims are Waived for Petitioner's Failure to Raise them on**
12 **Direct Appeal**

13 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and
14 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-
15 conviction proceedings...[A]ll other claims that are appropriate for a direct appeal must be
16 pursued on direct appeal, or they will be *considered waived in subsequent proceedings.*"
17 Franklin v. State, 100 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)
18 (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). "A
19 court must dismiss a habeas petition if it presents claims that either were or could have been
20 presented in an earlier proceeding, unless the court finds both cause for failing to present the
21 claims earlier or for raising them again and actual prejudice to the petitioner." Evans, 117 Nev.
22 at 646-47, 29 P.3d at 523.

23 This Court finds that Petitioner's claims do not challenge the validity of his guilty plea
24 itself, nor the effectiveness of plea counsel. Therefore, Petitioner's claims were appropriate
25 for a direct appeal, and this Court concludes that the claims are now waived for Petitioner's
26 failure to raise them thus. Franklin, 100 Nev. at 752, 877 P.2d at 1059.

27 **D. Petitioner's Claims are Successive Pursuant to NRS 34.810(2)**

28 NRS 34.810(2) reads:

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

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

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

22 This is Petitioner's Third Petition. Therefore, while Petitioner raises new claims for
23 relief, this Court finds that each of these claims was available at the time Petitioner filed his
24 earlier Petitions. As such, this Court concludes that Petitioner's claims are successive and must
25 be dismissed.

26 Petitioner argues that the U.S. Supreme Court's decision in United States v. Davis, 139
27 S.Ct. 2319 (2019), amounts to "new evidence" that was not available at the time Petitioner
28 filed his earlier pleadings. This claim fails for multiple reasons. First, Davis treated the
constitutionality of a federal statute – 18 U.S.C.A. § 924(c)(3)(B) – whereas Petitioner was
convicted under the Nevada Revised Statutes. Therefore, this Court finds that Davis has

1 nothing to do with Petitioner's conviction, and cannot provide grounds for relief. Second,
2 Davis was decided on June 24, 2019, over one and a half *years* before Petitioner filed his Third
3 Petition. Consequently, even assuming *arguendo* that Davis had any bearing on Petitioner's
4 case, this Court finds that Petitioner's claims based thereon are abusive due to Petitioner's
5 delay in filing his Third Petition. See McCleskey, 499 U.S. at 497-98. This Court therefore
6 concludes that Petitioner's Third Petition must be dismissed as successive.

7 **II. PETITIONER FAILS TO DEMONSTRATE GOOD CAUSE OR PREJUDICE** 8 **TO OVERCOME THE PROCEDURAL BARS**

9 To avoid procedural default, a petitioner has the burden of pleading and proving
10 specific facts that demonstrate good cause for his failure to present his claim in earlier
11 proceedings or to otherwise comply with the statutory requirements. See Hogan v. Warden,
12 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep't of Prisons, 104
13 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). "To establish good cause, [a petitioner] *must* show
14 that an impediment external to the defense prevented their compliance with the applicable
15 procedural rule. A qualifying impediment might be shown where the factual or legal basis for
16 a claim was not reasonably available at the time of default." Clem v. State, 119 Nev. 615, 621,
17 81 P.3d 521, 525 (2003) (emphasis added). The Clem Court continued, "appellants cannot
18 attempt to manufacture good cause[.]" Id. at 621, 81 P.3d at 526. Examples of good cause
19 include interference by State officials and the previous unavailability of a legal or factual basis.
20 See State v. Huebler, 128 Nev. 192, 196, 275 P.3d 91, 95 (2012).

21 In order to establish prejudice, the defendant must show "not merely that the errors of
22 [the proceedings] created possibility of prejudice, but that they worked to his actual and
23 substantial disadvantage, in affecting the state proceedings with error of constitutional
24 dimensions." Hogan, 109 Nev. at 960, 860 P.2d at 716 (quoting United States v. Frady, 456
25 U.S. 152, 170, 102 S.Ct. 1584, 1596 (1982)). To find good cause there must be a "substantial
26 reason; one that affords a legal excuse." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503,
27 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Clearly,
28 any delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

1 This Court finds that Petitioner does not recognize the need for demonstrating good
2 cause or prejudice, much less argue to support any such assertion. Indeed, the only reference
3 to any "previous unavailability" of any of Petitioner's claims is Petitioner's assertion of "new
4 evidence," which assertion is without merit.

5 Therefore, this Court concludes that Petitioner's failure to allege good cause or
6 prejudice, much less argue in support of the same, results in Petitioner being unable to
7 overcome the various procedural bars to his Third Petition. Hogan, 109 Nev. at 959-60, 860
8 P.2d at 715-16.

9 **CONCLUSION**

10 THEREFORE, IT IS HEREBY ORDERED, Petitioner Christopher Roach's Third
11 Petition for Writ of Habeas Corpus shall be, and is, DISMISSED, subject to the procedural
12 bars.

13 DATED this 25th day of June, 2021.


Dated this 26th day of June, 2021

14 
15

16 DISTRICT COURT JUDGE
17 AB9 1A7 8A64 443C
18 Erika Ballou
19 District Court Judge

20 Respectfully submitted,

21 STEVEN B. WOLFSON
22 Clark County District Attorney
23 Nevada Bar #1565

24 BY  for
25 KAREN MISHLER
26 Chief Deputy District Attorney
27 Nevada Bar #13730
28

//

//

//

//

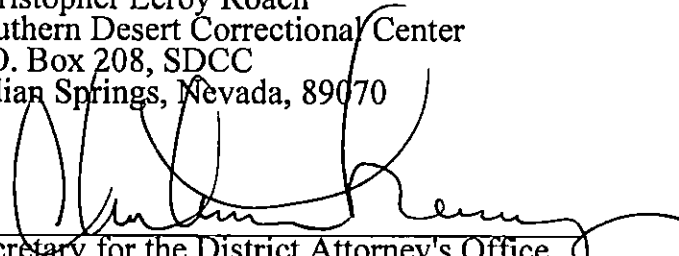
//

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 25th day of June 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

Christopher Leroy Roach
Southern Desert Correctional Center
P.O. Box 208, SDCC
Indian Springs, Nevada, 89070

BY


Secretary for the District Attorney's Office

14F10476A/KM/clh/L3

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Christopher Roach, Plaintiff(s) | CASE NO: A-21-829045-W
7 vs. | DEPT. NO. Department 24
8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 6/26/2021

15 D A motions@clarkcountyda.com

16 A G wiznetfilings@ag.nv.gov
17
18
19
20
21
22
23
24
25
26
27
28



NEFF

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CHRISTOPHER ROACH,

Petitioner,

vs.

STATE OF NEVADA,

Respondent,

Case No: A-21-829045-W

Dept No: XXIV

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

PLEASE TAKE NOTICE that on June 26, 2021, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on July 2, 2021.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 2 day of July 2021, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☒ The United States mail addressed as follows:

Christopher Roach # 1076731
P.O. Box 208
Indian Springs, NV 89070

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

Heaven S. Lumin
CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #13730
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

CHRISTOPHER ROACH,
aka Christopher LeRoy Roach #2757657

Petitioner,

-vs-

THE STATE OF NEVADA,
Respondent.

CASE NO: A-21-829045-W

DEPT NO: XXIV

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

DATE OF HEARING: MAY 12, 2021
TIME OF HEARING: 8:30 AM

THIS CAUSE having come before the Honorable ERIKA BALLOU, District Court Judge, on the 12th day of May, 2021, Petitioner not being present, not being represented by counsel, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through BRAD TURNER, Chief Deputy District Attorney, and the Court having reviewed the matter, including briefs, transcripts, and documents on file herein; now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

STATEMENT OF THE CASE

On September 22, 2014, CHRISTOPHER ROACH, aka Christopher LeRoy Roach (hereinafter "Petitioner") was charged by way of Information with CONSPIRACY TO

1 COMMIT ROBBERY (Category B Felony – NRS 200.380, 199.480); ROBBERY WITH USE
2 OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.165); COERCION
3 (Category B Felony – NRS 207.190); POSSESSION OF STOLEN PROPERTY (Category C
4 Felony – NRS 205.275); and POSSESSION OF CREDIT OR DEBIT CARD WITHOUT
5 CARDHOLDER’S CONSENT (Category D Felony – NRS 205.690) for actions committed
6 on or between June 30, 2014 and July 1, 2014.

7 On March 11, 2015, Petitioner executed a Guilty Plea Agreement (“GPA”), in which
8 Petitioner agreed to plead guilty to reduced charges of one count each of ROBBERY WITH
9 USE OF A DEADLY WEAPON and CONSPIRACY TO COMMIT ROBBERY. The State
10 filed an Amended Information reflecting the agreed-upon charges on that same day.

11 On May 6, 2015, Petitioner appeared for sentencing. The Court adjudicated Petitioner
12 guilty, consistent with his GPA, and sentenced Petitioner as follows: Count 1 – sixty (60) to
13 one hundred eighty (180) months in the Nevada Department of Corrections, plus a consecutive
14 sixty (60) to one hundred eighty (180) months for the use of a deadly weapon, and Count 2 –
15 thirteen (13) to sixty (60) months imprisonment, consecutive to Count 1. The Court also gave
16 Petitioner credit for three hundred nine (309) days of time served. Petitioner’s Judgment of
17 Conviction was filed on May 12, 2015.

18 On May 12, 2015, Petitioner noticed his appeal from his Judgment of Conviction. On
19 December 18, 2015, the Nevada Supreme Court affirmed Petitioner’s Judgment of Conviction.
20 Remittitur issued on January 22, 2016.

21 On October 31, 2017, Petitioner filed a Petition for Writ of Habeas Corpus
22 (Postconviction) (his “First Petition”). The State filed its Response to Petitioner’s First Petition
23 on December 13, 2017. On January 10, 2018, the Court determined that Petitioner’s First
24 Petition was time-barred, with no good cause or prejudice shown to overcome Petitioner’s
25 procedural defaults. The Court’s Findings of Fact, Conclusions of Law and Order was filed on
26 February 20, 2018.

27 On April 11, 2018, Petitioner filed another Petition for Writ of Habeas Corpus
28 (Postconviction) (his “Second Petition”). The State filed its Response to Petitioner’s Second

1 Petition on May 30, 2018. On June 27, 2018, the Court denied Petitioner's Second Petition.
2 The Court's Findings of Fact, Conclusions of Law and Order was filed on July 27, 2018.

3 On July 29, 2019, Petitioner filed a Motion to Correct an Illegal Sentence. The State
4 filed its Response to that Motion on August 16, 2019. On August 21, 2019, the Court denied
5 Petitioner's Motion. The Court's Order Denying Petitioner's Motion was filed on September
6 16, 2019.

7 On May 27, 2020, Petitioner filed a second Motion to Modify and/or Correct Illegal
8 Sentence. The Court considered, and denied, Petitioner's second such Motion on June 17,
9 2020. The Court's Order of denial was filed on July 8, 2020.

10 On February 8, 2021, Petitioner filed the instant Petition for Writ of Habeas Corpus
11 (Post-Conviction) (his "Third Petition"). The State filed its Response to Petitioner's Third
12 Petition on March 22, 2021.

13 On May 12, 2021, this matter was on calendar, whereupon this Court stated its findings
14 and conclusions, as follow:

15 STATEMENT OF FACTS

16 The Court, in sentencing Petitioner, relied on the following summary of facts:

17 On June 30, 2014, an officer was contacted by a female victim who
18 advised she left work walking from the Rio Hotel when she was ran into three
19 males with one striking up a conversation. One asked for directions and as she
20 turned around to point out where to go, he grabbed her cell phone from her hand
21 and stated, "Bitch be quiet, we have a gun". Suspect #2 male then lifted his shirt
22 and to expose a handgun in his waist. Suspect #1 male the grabbed her again and
23 took her fanny pack which contained the listed items. Suspect #1 asked for the
24 pin to her credit cards and cell phone. She stated she didn't have the pin as the
25 cards were not hers. Suspect #1 stated "don't lie to me bitch or we'll shoot you".
26 He then demanded she show the unlock code for the phone, so she did. Suspect
27 #1 then grabbed her arm again and started walking and told her to keep her
28 mouth shut and pushed her into the entryway of the Flamingo Palms Condos. He
then told her to walk backwards towards the Rio Casino and not to turn around
or they would shoot her. All three males then walked away. The victim walked
to her apartment and called 9-1-1. The victim was able to positively identify
suspect #1 as Christopher Roach. She stated he was the one who lifted up his
shirt and exposed the handgun. Suspect #2 was identified as Jeffery German who
was the one who physically grabbed her and took her fanny pack. And suspect
#3 was also identified as James Ivey who was standing nearby to block her
escape and was ransacking her backpack. All three were subsequently arrested
for this crime.

On July 1, 2014, the male and female victims stated they were sitting
inside the female's vehicle in the parking lot of a local apartment complex when

1 the male observed three males approaching them wearing dark clothing. The
2 three males, who were later identified as Christopher Roach, Jeffery German and
3 James Ivey, Jr, ran towards them and Mr. Roach pointed a semi-automatic 9mm
4 at the males' head. The male stepped back, and the female closed the door to her
5 vehicle. Mr. Roach then stated, "What you got in your pockets? At that time,
6 another unidentified male arrived on the scene and told the female to move from
7 the driver's seat and get into the passenger seat. The male then placed his hand
8 around the back of her neck and squeezed while pushing her head forward. The
9 unidentified male then instructed the male to get into the rear passenger seat. As
10 he complied, Mr. Ivey entered the vehicle and sat to his right while Mr. Roach
11 entered and sat to his left and again pointed the 9mm handgun at his head. The
12 instructions were being given by the unidentified male who remained outside the
13 vehicle. Mr. German also remained outside the vehicle while acting as if he were
14 a look out. The unidentified male got into the driver's seat and once again placed
15 his hand around the female's neck. He squeezed and pushed her forward while
16 digging his nails into her neck which left a red abrasion and caused her not to be
17 able to look at him. The male then requested the female give him her money, her
18 credit cards and her driver's license. She complied and gave him her \$500 and
19 her credit and debit card.

20 The male then asked for both of their cell phones and the keys to the
21 female's vehicle and her residence. The subjects then fled through the complex.
22 The male went to the entryway of the complex and observed what appeared to
23 be a dark-colored Toyota Corolla or Tercel driving very slowly in front of the
24 complex. Due to the fact the female's phone was an iPhone 5; it was able to be
25 tracked and was ultimately tracked to a local address where the defendants were
26 located in a vehicle.

27 Upon making contact with the vehicle, officers observed in plain view,
28 two semi-automatic handguns on the rear passenger floorboard. The males in the
vehicle matched the description provided by the victims. They were placed in
custody. The female driver was not arrested. She told officers her husband Mr.
Ivey and his friends asked her if she would give them a ride to an apartment
complex in the area of Flamingo and Arville. Upon arriving at the apartments,
she was told to park outside the complex while the three men exited and walked
into the complex. They then left the scene. The victims positively identified the
defendant's as the ones who robbed them.

Mr. Roach and Mr. Ivey were questioned, and both denied knowing
anything about the incident. Mr. German was searched by officers and located
in his rear pants pocket were the credit and debit card belonging to the female
victim. The vehicle was also searched and found inside were multiple
identification cards in other names. Additionally, officers located two BB type
semi-auto pistols on the rear floorboard area. The victims' cell phones were also
located in the vehicle.

PSI at 5-6.

ANALYSIS

I. PETITIONER'S CLAIMS ARE PROCEDURALLY BARRED

A. Petitioner's Claims are Time-Barred Pursuant to NRS 34.726(1)

Pursuant to NRS 34.726(1):

1 Unless there is good cause shown for delay, a petition that challenges the validity
2 of a judgment or sentence must be filed within 1 year of the entry of the judgment
3 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:

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

7 The Nevada Supreme Court has held that NRS 34.726 should be construed by its plain
8 meaning. Pellegrini v. State, 177 Nev. 860, 873-74, 34 P.3d 519, 528 (2001) (abrogated on
9 other grounds by Rippo v. State, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018)).
10 Per the language of the statute, the one-year time bar imposed by NRS 34.726(1) begins to run
11 from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is
12 filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

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

18 Furthermore, the Nevada Supreme Court has held that the district court has a *duty* to
19 consider whether a defendant's post-conviction petition claims are procedurally barred. State
20 v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The
21 Riker Court found that "[a]pplication of the statutory procedural default rules to post-
22 conviction habeas petitions is *mandatory*." Id. (emphasis added); see also, Huebler, 128 Nev.
23 192, 197 n.2, 275 P.3d 91, 95 n.2 (2012) ("under the current statutory scheme the time bar in
24 NRS 34.726 is *mandatory, not discretionary*." (Emphasis added)). In fact, procedural bars
25 "*cannot be ignored* [by the district court] when properly raised by the State." Id. at 223, 112
26 P.3d at 1075 (emphasis added). Even "a stipulation by the parties cannot empower a court to
27 disregard the mandatory procedural default rules." State v. Haberstroh, 119 Nev. 173, 180, 69
28 P.3d 676, 681 (2003); see also, Sullivan v. State, 120 Nev. 537, 540 n.6, 96 P.3d 761, 763-64

1 n.6 (2004) (concluding that a petition was improperly treated as timely and that a stipulation
2 to the petition's timeliness was invalid). The Sullivan Court went on to "expressly conclude
3 that the district court should have denied [a] petition" on the basis that it was procedurally
4 barred. 120 Nev. at 542, 96 P.3d at 765. It is clear, therefore, that the Nevada Supreme Court
5 has granted no discretion to the district courts regarding the application of the statutory
6 procedural bars; the rules *must* be applied.

7 The Nevada Supreme Court has expressed strong support for the one-year time bar. In
8 Colley v. State, the Court stated:

9
10 At some point, we must give finality to criminal cases. Should we allow
11 [petitioner's] post conviction relief proceeding to go forward, we would
12 encourage defendants to file groundless petitions for federal habeas corpus
13 relief, secure in the knowledge that a petition for post-conviction relief remained
14 indefinitely available to them. This situation would prejudice both the accused
15 and the State since the interests of both the petitioner and the government are
16 best served if post-conviction claims are raised while the evidence is still fresh.

17 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989) (citations omitted).

18 Here, Remittitur from Petitioner's direct appeal issued on January 22, 2016. Therefore,
19 this Court finds that Petitioner had until January 22, 2017, to file a timely petition. See
20 Dickerson, 114 Nev. at 1087, 967 P.2d at 1133-34. Petitioner's Third Petition was not filed
21 until February 8, 2021, over four (4) years *after* the time allowed by NRS 34.726(1). As such,
22 this Court concludes that Petitioner's claims are untimely and subject to dismissal unless
23 Petitioner can meet his burden of showing "good cause" for the delay. See NRS 34.726(1).

24 **B. Petitioner's Claims are Outside the Applicable Scope of Habeas Review**

25 NRS 34.810(1)(a) mandates, in pertinent part, "The court *shall* dismiss a petition if the
26 court determines that...[t]he petitioner's conviction was upon a plea of guilty...and the
27 petition is not based upon an allegation that the plea was involuntary or unknowingly entered
28 or that the plea was entered without the effective assistance of counsel." (Emphasis added).
Furthermore, substantive claims are outside the scope of habeas review, and are waived. NRS
34.724(2)(a); see also, Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001),
overruled on other grounds by Lisle v. State, 131 Nev. 356, 351 P.3d 725 (2015).

1 Petitioner raises three (3) claims in his Third Petition that he asserts warrant habeas
2 relief. However, this Court finds that none of the claims relate to the validity of Petitioner's
3 guilty plea, nor to the effectiveness of Petitioner's plea counsel. Petitioner's first claim alleges
4 that his conviction violates ex post facto laws under the United States Constitution. Petitioner's
5 second claim lacks any reference to Petitioner's plea or his plea counsel. Petitioner's third
6 claim makes a reference to the prohibition against Double Jeopardy, and heavily repeats
7 allegations from Petitioner's first claim. This Court, therefore, concludes that because none of
8 Petitioner's claims actually challenge the validity of Petitioner's guilty plea, nor the
9 effectiveness of Petitioner's plea counsel, Petitioner's Third Petition is outside the scope of
10 habeas review and must be dismissed pursuant to NRS 34.810(1)(a).

11 **C. Petitioner's Claims are Waived for Petitioner's Failure to Raise them on**
12 **Direct Appeal**

13 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and
14 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-
15 conviction proceedings...[A]ll other claims that are appropriate for a direct appeal must be
16 pursued on direct appeal, or they will be *considered waived in subsequent proceedings.*"
17 Franklin v. State, 100 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)
18 (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). "A
19 court must dismiss a habeas petition if it presents claims that either were or could have been
20 presented in an earlier proceeding, unless the court finds both cause for failing to present the
21 claims earlier or for raising them again and actual prejudice to the petitioner." Evans, 117 Nev.
22 at 646-47, 29 P.3d at 523.

23 This Court finds that Petitioner's claims do not challenge the validity of his guilty plea
24 itself, nor the effectiveness of plea counsel. Therefore, Petitioner's claims were appropriate
25 for a direct appeal, and this Court concludes that the claims are now waived for Petitioner's
26 failure to raise them thus. Franklin, 100 Nev. at 752, 877 P.2d at 1059.

27 **D. Petitioner's Claims are Successive Pursuant to NRS 34.810(2)**

28 NRS 34.810(2) reads:

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

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

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

22 This is Petitioner's Third Petition. Therefore, while Petitioner raises new claims for
23 relief, this Court finds that each of these claims was available at the time Petitioner filed his
24 earlier Petitions. As such, this Court concludes that Petitioner's claims are successive and must
25 be dismissed.

26 Petitioner argues that the U.S. Supreme Court's decision in United States v. Davis, 139
27 S.Ct. 2319 (2019), amounts to "new evidence" that was not available at the time Petitioner
28 filed his earlier pleadings. This claim fails for multiple reasons. First, Davis treated the
constitutionality of a federal statute – 18 U.S.C.A. § 924(c)(3)(B) – whereas Petitioner was
convicted under the Nevada Revised Statutes. Therefore, this Court finds that Davis has

1 nothing to do with Petitioner's conviction, and cannot provide grounds for relief. Second,
2 Davis was decided on June 24, 2019, over one and a half years before Petitioner filed his Third
3 Petition. Consequently, even assuming *arguendo* that Davis had any bearing on Petitioner's
4 case, this Court finds that Petitioner's claims based thereon are abusive due to Petitioner's
5 delay in filing his Third Petition. See McCleskey, 499 U.S. at 497-98. This Court therefore
6 concludes that Petitioner's Third Petition must be dismissed as successive.

7 **II. PETITIONER FAILS TO DEMONSTRATE GOOD CAUSE OR PREJUDICE** 8 **TO OVERCOME THE PROCEDURAL BARS**

9 To avoid procedural default, a petitioner has the burden of pleading and proving
10 specific facts that demonstrate good cause for his failure to present his claim in earlier
11 proceedings or to otherwise comply with the statutory requirements. See Hogan v. Warden,
12 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep't of Prisons, 104
13 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). "To establish good cause, [a petitioner] *must* show
14 that an impediment external to the defense prevented their compliance with the applicable
15 procedural rule. A qualifying impediment might be shown where the factual or legal basis for
16 a claim was not reasonably available at the time of default." Clem v. State, 119 Nev. 615, 621,
17 81 P.3d 521, 525 (2003) (emphasis added). The Clem Court continued, "appellants cannot
18 attempt to manufacture good cause[.]" Id. at 621, 81 P.3d at 526. Examples of good cause
19 include interference by State officials and the previous unavailability of a legal or factual basis.
20 See State v. Huebler, 128 Nev. 192, 196, 275 P.3d 91, 95 (2012).

21 In order to establish prejudice, the defendant must show "not merely that the errors of
22 [the proceedings] created possibility of prejudice, but that they worked to his actual and
23 substantial disadvantage, in affecting the state proceedings with error of constitutional
24 dimensions." Hogan, 109 Nev. at 960, 860 P.2d at 716 (quoting United States v. Frady, 456
25 U.S. 152, 170, 102 S.Ct. 1584, 1596 (1982)). To find good cause there must be a "substantial
26 reason; one that affords a legal excuse." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503,
27 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Clearly,
28 any delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

1 This Court finds that Petitioner does not recognize the need for demonstrating good
2 cause or prejudice, much less argue to support any such assertion. Indeed, the only reference
3 to any "previous unavailability" of any of Petitioner's claims is Petitioner's assertion of "new
4 evidence," which assertion is without merit.

5 Therefore, this Court concludes that Petitioner's failure to allege good cause or
6 prejudice, much less argue in support of the same, results in Petitioner being unable to
7 overcome the various procedural bars to his Third Petition. Hogan, 109 Nev. at 959-60, 860
8 P.2d at 715-16.

9 **CONCLUSION**

10 THEREFORE, IT IS HEREBY ORDERED, Petitioner Christopher Roach's Third
11 Petition for Writ of Habeas Corpus shall be, and is, DISMISSED, subject to the procedural
12 bars.

13 DATED this 25th day of June, 2021.


Dated this 26th day of June, 2021

14 

15
16 DISTRICT COURT JUDGE
17 AB9 1A7 8A64 443C
18 Erika Ballou
District Court Judge

18 Respectfully submitted,

19 STEVEN B. WOLFSON
20 Clark County District Attorney
Nevada Bar #1565

21 BY  for
22 KAREN MISHLER
23 Chief Deputy District Attorney
Nevada Bar #13730

24 //

25 //

26 //

27 //

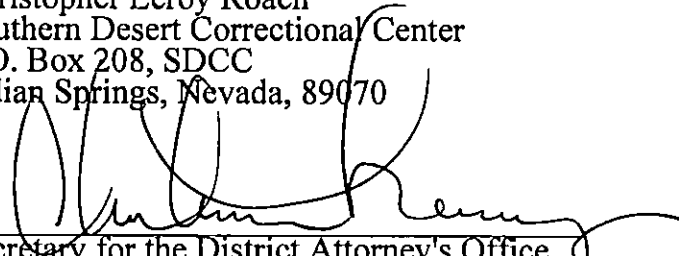
28 //

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 25th day of June 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

Christopher Leroy Roach
Southern Desert Correctional Center
P.O. Box 208, SDCC
Indian Springs, Nevada, 89070

BY


Secretary for the District Attorney's Office

14F10476A/KM/clh/L3

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Christopher Roach, Plaintiff(s) | CASE NO: A-21-829045-W
7 vs. | DEPT. NO. Department 24
8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 6/26/2021

15 D A motions@clarkcountynv.com

16 A G wiznetfilings@ag.nv.gov
17
18
19
20
21
22
23
24
25
26
27
28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

February 08, 2021

A-21-829045-W Christopher Roach, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

February 08, 2021 1:45 PM Minute Order

HEARD BY: Ballou, Erika

COURTROOM: Chambers

COURT CLERK: Kathryn Hansen-McDowell

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT ORDERED, briefing schedule SET and hearing SET.

Briefing Schedule:

State's Response Due by: 3/22/2021

Plaintiff/Deft.'s Reply Due by: 4/5/2021

4/12/2021 8:30 AM HEARING: PETITION FOR WRIT OF HABEAS CORPUS

CLERK'S NOTE: The above minute order has been distributed to: Christopher Roach, #1076731, SDCC, PO Box 208, Indian Springs, NV 89070. (2/8/21)km

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

March 22, 2021

A-21-829045-W Christopher Roach, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

March 22, 2021 1:00 PM Minute Order

HEARD BY: Ballou, Erika

COURTROOM: Chambers

COURT CLERK:
Ro'Shell Hurtado

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Order for Petition for Writ of Habeas Corpus filed on March 19, 2021 was erroneously filed.
COURT ORDERED, the Order for Petition for Writ of Habeas Corpus STRICKEN.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Ro'Shell Hurtado,
to all registered parties for Odyssey File & Serve.//rh

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

March 22, 2021

A-21-829045-W Christopher Roach, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

March 22, 2021 1:00 PM Minute Order

HEARD BY: Ballou, Erika

COURTROOM: Chambers

COURT CLERK:
Ro'Shell Hurtado

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Order for Petition for Writ of Habeas Corpus filed on March 22, 2021 was erroneously filed.
COURT ORDERED, the Order for Petition for Writ of Habeas Corpus STRICKEN.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Ro'Shell Hurtado,
to all registered parties for Odyssey File & Serve.//rh

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

May 12, 2021

A-21-829045-W	Christopher Roach, Plaintiff(s)
	vs.
	State of Nevada, Defendant(s)

May 12, 2021	8:30 AM	Petition for Writ of Habeas Corpus
--------------	---------	---------------------------------------

HEARD BY: Ballou, Erika

COURTROOM: RJC Courtroom 12C

COURT CLERK: Ro'Shell Hurtado

RECORDER: Toshiana Pierson

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Pursuant to NRS 34.810(2), Petitioner s Writ of Habeas Corpus filed on February 08, 2021 is hereby DISMISSED as it is a successive petition lacking new or different grounds for relief. This Court further finds that Petitioner has failed to show good cause and prejudice for his failure to include the three claims for relief in this instant petition in his previous petitions. Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001) (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).

Lastly, pursuant NRS 34.726(1) Petitioner had until January 22, 2017 to file a timely petition. This instant Petition was filed on February 8, 2021, therefore procedurally barred. Accordingly, Petitioner s third petition is hereby DISMISSED; advised the State to prepare the order.

CLERK'S NOTE: This Minute Order was mail to: Christopher Roach, #1076731 SDCC, P.O.Box 208, Indian Springs, NV 89070.//05.12.2021rh

Certification of Copy

State of Nevada }
County of Clark } SS:

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

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

CHRISTOPHER ROACH,

Plaintiff(s),

vs.

WILLIAMS HUTCHINGS (WARDEN),

Defendant(s),

Case No: A-21-829045-W

Dept No: XXIV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 29 day of July 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk