

Electronically Filed  
08/03/2021

*Heather L. Linn*  
CLERK OF THE COURT

Electronically Filed  
Aug 05 2021 11:23 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Bryan Ferguson #96803

In Proper Person  
P.O. Box 650 H.D.S.P.  
Indian Springs, Nevada 89018

8th DISTRICT COURT  
Clark COUNTY NEVADA

Bryan Ferguson,  
Plaintiff,

-v-

State of Nevada,  
Defendant,

Case No. A-21-827365-W  
Dept. No. B3C Courtroom 16 D  
Docket \_\_\_\_\_

NOTICE OF APPEAL

Notice is hereby given that the Bryan, Ferguson  
96803, by and through himself in proper person, does now appeal  
to the Supreme Court of the State of Nevada, the decision of the District  
Court Denied Writ of Habeas Corpus

Dated this date, 7-23-21.

Respectfully Submitted,

*Bryan Ferguson*

In Proper Person  
Bryan Ferguson #96803  
P.O. Box 650 H.D.S.P.  
Indian Springs, NV. 89070

Docket 83331 Document 2021-22750

RECEIVED

AUG 02 2021


CLERK OF THE COURT

**CERTIFICATE OF SERVICE BY MAILING**

I, Bryan Ferguson, hereby certify, pursuant to NRCP 5(b), that on this 23  
day of July, 2021, I mailed a true and correct copy of the foregoing, "Notice of  
Appeal Denied Writ of Habeas Corpus  
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,  
addressed as follows:

Steven D. Grileison  
Clerk of the Court  
200 Lewis Ave, 3rd Floor  
Las Vegas NV 89155-1150

DATED: this 23 day of July, 2021.

  
Bryan Ferguson # 96803  
/In Propria Persona  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Notice of

Appeal Denied writ of Habeas corpus  
(Title of Document)

filed in District Court Case number A-21-827365-W

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

-OR-

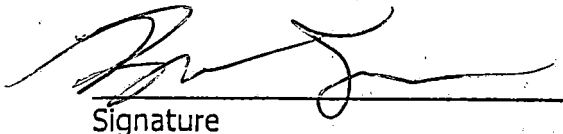
☐ Contains the social security number of a person as required by:

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

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

-or-

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

  
Signature

7-23-21  
Date

Bryan Ferguson #96803  
Print Name

Plaintiff  
Title

Bryan Ferguson #96803  
High Desert State Prison  
P.O. Box 650  
Indian Springs, NV 89070

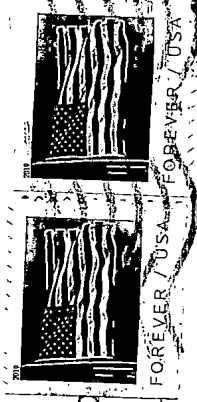
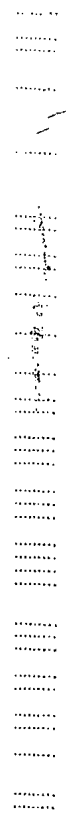
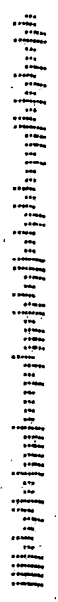
Steven D Grierson  
Clerk of the Court  
200 Lewis Avenue, 3rd floor  
Las Vegas, NV 89155-1160

HIGH DESERT STATE PRISON  
JUN 26 2021  
UNIT 7 A/B

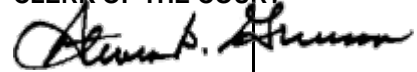
AUG - 2 2021

CLERK OF THE COURT

99101-530000



LAS VEGAS NV 890  
27 JUL 2021 PM 4  
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ASTA

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF CLARK**

BRYAN FERGASON,

Plaintiff(s),

vs.

STATE OF NEVADA; CALVIN JOHNSON,  
WARDEN HDSP,

Defendant(s),

Case No: A-21-827365-W

Dept No: XXXII

**CASE APPEAL STATEMENT**

1. Appellant(s): Bryan Fergason

2. Judge: Christy Craig

3. Appellant(s): Bryan Fergason

Counsel:

Bryan Fergason 396803  
P.O. Box 650  
Indian Springs, NV 89070

4. Respondent (s): State of Nevada; Calvin Johnson, Warden HDSP

Counsel:

Steven B. Wolfson, District Attorney  
200 Lewis Ave.

Las Vegas, NV 89155-2212

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

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

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

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

8. Appellant Granted Leave to Proceed in Forma Pauperis\*\*: N/A  
*\*\*Expires 1 year from date filed*

Appellant Filed Application to Proceed in Forma Pauperis: No  
Date Application(s) filed: N/A

9. Date Commenced in District Court: January 5, 2021

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

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

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 52788, 52877, 53848, 57538, 58625, 59264, 59871,  
59900, 59910, 64165, 64255, 65827, 66986, 71222, 72914, 73388, 74469, 78299, 78312,  
81048, 81852, 82757

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 4 day of August 2021.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann

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

cc: Bryan Ferguson

## EIGHTH JUDICIAL DISTRICT COURT

# CASE SUMMARY

## CASE NO. A-21-827365-W

Bryan Ferguson, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

§  
§  
§  
§  
§  
§

Location: **Department 32**  
Judicial Officer: **Craig, Christy**  
Filed on: **01/05/2021**  
Cross-Reference Case Number: **A827365**  
Supreme Court No.: **82757**

### CASE INFORMATION

#### Related Cases

06C228752-3 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

#### Statistical Closures

07/28/2021 Summary Judgment

Case Status: **07/28/2021 Closed**

### DATE

### CASE ASSIGNMENT

#### Current Case Assignment

Case Number A-21-827365-W  
Court Department 32  
Date Assigned 01/05/2021  
Judicial Officer Craig, Christy

### PARTY INFORMATION






		Lead Attorneys
Plaintiff	Ferguson, Bryan	Pro Se
Defendant	Calvin Johnson, Warden HDSP	Wolfson, Steven B Retained 702-671-2700(W)
	State of Nevada	Wolfson, Steven B Retained 702-671-2700(W)

### DATE


### EVENTS & ORDERS OF THE COURT


### INDEX


#### EVENTS


01/05/2021	 Inmate Filed - Petition for Writ of Habeas Corpus Party: Plaintiff Ferguson, Bryan [1] Post Conviction
01/06/2021	 Order for Petition for Writ of Habeas Corpus [2] Order for Petition for Writ of Habeas Corpus
04/07/2021	 Notice of Appeal Filed By: Plaintiff Ferguson, Bryan [3] Notice of Appeal
04/08/2021	 Case Appeal Statement Filed By: Plaintiff Ferguson, Bryan [4] Case Appeal Statement
05/04/2021	 Response [5] State's Response to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction)


**CASE SUMMARY**  
**CASE NO. A-21-827365-W**

05/27/2021  NV Supreme Court Clerks Certificate/Judgment - Dismissed  
*[6] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Dismissed*

07/28/2021  Finding of Fact and Conclusions of Law  
*[7] Findings of Fact, Conclusions of Law, and Order*

07/28/2021  Notice of Entry of Findings of Fact, Conclusions of Law  
Filed By: Defendant State of Nevada  
*[8] Notice of Entry of Findings of Fact, Conclusions of Law and Order*


08/03/2021  Notice of Appeal  
Filed By: Plaintiff Fergason, Bryan  
*[9] Notice of Appeal*


08/04/2021  Case Appeal Statement  
Filed By: Plaintiff Fergason, Bryan  
*Case Appeal Statement*

**DISPOSITIONS**

05/27/2021 **Clerk's Certificate** (Judicial Officer: Craig, Christy)  
Debtors: Bryan Fergason (Plaintiff)  
Creditors: State of Nevada (Defendant), Calvin Johnson, Warden HDSP (Defendant)  
Judgment: 05/27/2021, Docketed: 05/27/2021  
Comment: Supreme Court No.82757 " Appeal Dismissed"

**HEARINGS**

03/04/2021  **Petition for Writ of Habeas Corpus** (11:00 AM) (Judicial Officer: Craig, Christy)  
Matter Heard;  
Journal Entry Details:  
*Ms. Thomas requested additional time to respond to the Petitioner's Petition. COURT GRANTED request and SET the following briefing schedule. State's Response due: 05/06/2021 Petitioner's Reply due: 06/10/2021 Hearing date: 07/08/2021 07/08/2021 11:00 AM HEARING: WRIT OF HABEAS CORPUS (POST CONVICTION) CLERK'S NOTE: The above minute order has been distributed to: Bryan Fergason #95803, HDSP, PO Box 650, Indian Springs, NV 89070. 3/10/21 km;*

07/08/2021  **Hearing** (11:00 AM) (Judicial Officer: Craig, Christy)  
*WRIT OF HABEAS CORPUS (POST CONVICTION)*  
Denied; Hearing: Writ of Habeas Corpus (Post Conviction)  
Journal Entry Details:  
*Petitioner not present, incarcerated in the Nevada dept. of Corrections (NDC). COURT ORDERED, writ DENIED as it was time barred and barred as a successive petition where there were no new grounds raised; DIRECTED, Mr. Lexis to prepare the order. CLERK'S NOTE: The foregoing minutes were distributed via general mail to the following party: Bryan Fergason #96803 PO Box 650 HDSP Indian Springs, NV 89070 (7/19/21 amn). ;*



## DISTRICT COURT CIVIL COVER SHEET

A-21-827365-W  
Dept. 32

County, Nevada

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

(Assigned by Clerk's Office)

**I. Party Information** (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): Bryan Fergason	Defendant(s) (name/address/phone): The 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**

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <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
<b>Probate</b> <b>Probate</b> (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 <b>Estate Value</b> <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	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <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	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <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		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <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.

January 5, 2021

Date

PREPARED BY CLERK

Signature of initiating party or representative

See other side for family-related case filings.

*Heather S. Smith*  
CLERK OF THE COURT

**FCL**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
JONATHAN VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #006528  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Respondent

DISTRICT COURT  
CLARK COUNTY, NEVADA

BRYAN MICHAEL FERGASON,  
#1299193

Petitioner,

-vs-

THE STATE OF NEVADA,  
Respondent.

CASE NO: A-21-827365-W  
06C228752-3  
DEPT NO: XXXII

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

DATE OF HEARING: JULY 8, 2021  
TIME OF HEARING: 11:00AM

THIS CAUSE having come on for hearing before the Honorable CHRISTY CRAIG, District Judge, on the 8th day of July, 2021, the Petitioner not being present, proceeding in proper person, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through CHAD N. LEXIS, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **STATEMENT OF THE CASE**

3 On December 13, 2006, the State charged Bryan Fergason (hereinafter "Petitioner") by  
4 way of Indictment the following: Count 1 – Conspiracy to Possess Stolen Property and/or to  
5 Commit Burglary (Gross Misdemeanor – NRS 205.275, 199.480); and Counts 2-27 –  
6 Possession of Stolen Property (Felony – NRS 205.275).<sup>1</sup> On February 1, 2007, Petitioner filed  
7 a pre-trial Petition for Writ of Habeas Corpus. The State filed its Return on February 14, 2007.  
8 The district court denied Petitioner's pre-trial Petition on November 8, 2007.

9 On April 25, 2008, Petitioner filed a Motion to Sever. The State filed its Opposition on  
10 April 28, 2008. On May 1, 2008, the district court granted Petitioner's Motion.

11 On May 7, 2008, Petitioner filed a Motion in Limine to Bar Admission of Evidence that  
12 Defendant Committed Burglary in the Instant Case. The State filed its Opposition on May 8,  
13 2008. On May 12, 2009, the district court granted in part and denied in part Petitioner's  
14 Motion. After further pre-trial litigation, Petitioner's jury trial commenced on May 21, 2008.  
15 The same day, the State filed a Third Amended Indictment with the same charges, naming  
16 only the Petitioner. On May 29, 2008, the jury returned a verdict finding Petitioner guilty of:  
17 Count 1 – Conspiracy to Possess Stolen Property and/or to Commit Burglary; Counts 2, 5-6,  
18 12, 18-21, 25, and 27 – Possession of Stolen Property, Value \$250.00 or more; Counts 4, 7-  
19 11, 13-17, 22-24, and 26 – Possession of Stolen Property, Value \$2,500.00 or more. The jury  
20 found Petitioner not guilty of Count 3.

21 On October 1, 2008, the district court adjudicated Petitioner guilty and sentenced him  
22 as follows: Count 1 – 12 months in the Clark County Detention Center (CCDC); Count 2 –  
23 twenty (20) years to life in the Nevada Department of Corrections (NDC); Counts 4-14 –  
24 twenty (20) years to life in the NDC, concurrent to Counts 1 and 2; Counts 15-27 – twenty  
25 (20) years to life in the NDC, concurrent with each other, but consecutive to Counts 1-2 and  
26 4-14, and Petitioner's convictions in Case No. C227874. Petitioner received zero (0) days  
27 credit for time served. The Judgment of Conviction was filed on November 4, 2008. On April

28 <sup>1</sup> On December 15, 2006, the State filed an Amended Indictment, containing the same charges.

1 6, 2009, the district court filed an Amended Judgment of Conviction, wherein, the minimum  
2 term on Counts 4-14 and 15-27 was amended from twenty (20) years to ten (10) years.

3 Petitioner filed a Notice of Appeal on December 4, 2008. On August 4, 2010, the  
4 Nevada Supreme Court affirmed Petitioner's Judgment of Conviction. Remittitur issued on  
5 December 14, 2010.

6 On June 16, 2011, Petitioner filed a pro per Post-Conviction Petition for Writ of Habeas  
7 Corpus. The State filed its Response on August 9, 2011. On August 25, 2011, the district court  
8 denied Petitioner's Petition. The Findings of Fact, Conclusions of Law and Order was filed on  
9 November 9, 2011.

10 Petitioner filed a Notice of Appeal appealing the denial of the Petition on September  
11 22, 2011. On April 6, 2012, the Nevada Supreme Court ordered the denial of Petitioner's  
12 Petition reversed and remanded the case back for appointment of counsel, without reaching  
13 the merits of any other claims.

14 On May 15, 2012, Matthew Carling, Esq., was appointed as counsel. On November 2,  
15 2015, Petitioner filed a Supplemental Post-Conviction Petition for Writ of Habeas Corpus. The  
16 State filed its Response on January 15, 2016. Petitioner filed his Reply on February 19, 2016.  
17 On March 29, 2016, the district court ordered an evidentiary hearing on the matter. Following  
18 an evidentiary hearing on May 6, 2016, the district court denied Petitioner's Petition. The  
19 Findings of Fact, Conclusions of Law and Order was filed on August 16, 2016.

20 Petitioner filed a Notice of Appeal appealing the denial of the Petition on September 2,  
21 2016. On August 16, 2017, the Nevada Court of Appeals filed an Order Dismissing Appeal.  
22 Remittitur issued on September 20, 2017.

23 Petitioner filed a Motion to Amend Findings of Fact, Conclusions of Law and Order on  
24 September 15, 2017. The State filed its Response on September 19, 2017. On December 26,  
25 2017, the district court filed an Amended Findings of Fact, Conclusions of Law and Order.

26 On July 31, 2020, Petitioner filed a Motion to Withdraw Counsel, Re-Sentencing  
27 Pursuant to A.B. 236, and Appointment of Counsel. The State filed its Opposition on August  
28 18, 2020. On August 25, 2020, the district court denied Petitioner's Motions. The Order was

1 entered on September 2, 2020. Petitioner filed a Notice of Appeal on September 24, 2020,  
2 appealing the denial of his Motions. On October 14, 2020, the Nevada Supreme Court  
3 dismissed the appeal because the Court lacked jurisdiction to consider the appeal. Remittitur  
4 issued November 16, 2020.

5 On January 5, 2021, Petitioner filed the instant second Petition for Writ of Habeas  
6 Corpus (hereinafter "Second Petition"). The State filed its Response on May 4, 2021.  
7 Following a hearing on July 8, 2021, this Court now finds and concludes as follows:

### 8 **AUTHORITY**

#### 9 **I. THIS SECOND PETITION IS TIME-BARRED**

10 Petitioner's instant Second Petition for Writ of Habeas Corpus was not filed within one  
11 year of the filing of the Judgment of Conviction. Thus, the Petition is time-barred. Pursuant to  
12 NRS 34.726(1):

13 Unless there is good cause shown for delay, a petition that  
14 challenges the validity of a judgment or sentence must be filed  
15 within 1 year of the entry of the judgment of conviction or, if an  
16 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:

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

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

24 The one-year time limit for preparing petitions for post-conviction relief under NRS  
25 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),  
26 the Nevada Supreme Court rejected a habeas petition that was filed two (2) days late despite  
27 evidence presented by the defendant that he purchased postage through the prison and mailed  
28 the petition within the one-year time limit.

1 In the instant case, Petitioner filed a direct appeal, and Remittitur issued on December  
2 14, 2010. Petitioner filed the instant Petition on January 5, 2021—over eleven years after the  
3 Remittitur issued. Thus, the instant second Petition is time-barred. Absent a showing of good  
4 cause to excuse this delay, the instant Petition is dismissed.

5 **II. THIS SECOND PETITION IS BARRED AS SUCCESSIVE**

6 NRS 34.810(2) reads:

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

13 (emphasis added).

14 Second or successive petitions are petitions that either fail to allege new or different  
15 grounds for relief and the grounds have already been decided on the merits or that allege new  
16 or different grounds but a judge or justice finds that the petitioner's failure to assert those  
17 grounds in a prior petition would constitute an abuse of the writ. Second or successive petitions  
18 will only be decided on the merits if the petitioner can show good cause and prejudice. NRS  
19 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994); see also Hart v.  
20 State, 116 Nev. 558, 563–64, 1 P.3d 969, 972 (2000) (holding that “where a defendant  
21 previously has sought relief from the judgment, the defendant's failure to identify all grounds  
22 for relief in the first instance should weigh against consideration of the successive motion.”)

23 The Nevada Supreme Court has stated: “Without such limitations on the availability of  
24 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-  
25 conviction remedies. In addition, meritless, successive and untimely petitions clog the court  
26 system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d at 950.  
27 The Nevada Supreme Court recognizes that “[u]nlike initial petitions which certainly require  
28 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

1 the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497–98 (1991).  
2 Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

3 Here, as discussed supra, Section I., this is Petitioner’s second Post-Conviction Petition.  
4 Petitioner did not raise this claim on direct appeal or in his first Petition. He only raises it for  
5 the first time now, eleven years later. Petitioner recently raised this exact issue in his Motion  
6 for Re-Sentencing Pursuant to A.B. 236, which was denied by the district court on August 25,  
7 2020. Accordingly, this second Petition is an abuse of the writ, procedurally barred, and  
8 therefore, dismissed.

### 9 III. APPLICATION OF THE PROCEDURAL BARS IS MANDATORY

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

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

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

22 This position was reaffirmed in State v. Greene, 129 Nev. 559, 307 P.3d 322 (2013).  
23 There the Court ruled that the defendant’s petition was “untimely, successive, and an abuse of  
24 the writ” and that the defendant failed to show good cause and actual prejudice. Id. at 324, 307  
25 P.3d at 326. Accordingly, the Court reversed the district court and ordered the defendant’s  
26 petition dismissed pursuant to the procedural bars. Id. at 324, 307 P.3d at 322–23. The  
27 procedural bars are so fundamental to the post-conviction process that they must be applied  
28

1 by this Court even if not raised by the State. See Riker, 121 Nev. at 231, 112 P.3d at 1074.  
2 Therefore, application of the procedural bars is mandatory.

#### 3 IV. THE STATE AFFIRMATIVELY PLEADS LACHES

4 Certain limitations exist on how long a defendant may wait to assert a post-conviction  
5 request for relief. Consideration of the equitable doctrine of laches is necessary in determining  
6 whether a defendant has shown 'manifest injustice' that would permit a modification of a  
7 sentence. Hart, 116 Nev. at 563–64, 1 P.3d at 972. In Hart, the Nevada Supreme Court stated:  
8 "Application of the doctrine to an individual case may require consideration of several factors,  
9 including: (1) whether there was an inexcusable delay in seeking relief; (2) whether an implied  
10 waiver has arisen from the defendant's knowing acquiescence in existing conditions; and (3)  
11 whether circumstances exist that prejudice the State. See Buckholt v. District Court, 94 Nev.  
12 631, 633, 584 P.2d 672, 673–74 (1978)." Id.

13 NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period  
14 exceeding five years [elapses] between the filing of a judgment of conviction, an order  
15 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of  
16 conviction and the filing of a petition challenging the validity of a judgment of conviction..."  
17 The Nevada Supreme Court has observed, "[P]etitions that are filed many years after  
18 conviction are an unreasonable burden on the criminal justice system. The necessity for a  
19 workable system dictates that there must exist a time when a criminal conviction is final."  
20 Groesbeck v. Warden, 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the presumption, the  
21 statute requires the State plead laches. NRS 34.800(2).

22 The State affirmatively pleads laches in this case given that over eleven years has  
23 elapsed between the issuing of Remittitur and the filing of the second Petition. In order to  
24 overcome the presumption of prejudice to the State, Petitioner has the heavy burden of proving  
25 a fundamental miscarriage of justice. See Little v. Warden, 117 Nev. 845, 853, 34 P.3d 540,  
26 545 (2001). Based on Petitioner's representations and on what he has filed with this Court thus  
27 far, Petitioner has failed to meet that burden.  
28



1 As discussed supra, Section I., the one-year time bar began to run from the date the of  
2 the Remittitur on December 14, 2010. The second Petition was filed on January 5, 2021 – *over*  
3 *eleven years* later. Because more than eleven years have elapsed between the Remittitur and  
4 the filing of the instant second Petition, NRS 34.800 directly applies in this case, and a  
5 presumption of prejudice to the State arises. Therefore, pursuant to NRS 34.800, this second  
6 Petition is dismissed under the doctrine of laches.

7 **V. PETITIONER CANNOT ESTABLISH GOOD CAUSE TO OVERCOME**  
8 **THE MANDATORY PROCEDURAL BARS**

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

11 “To establish good cause, appellants must show that an impediment external to the  
12 defense prevented their compliance with the applicable procedural rule. A qualifying  
13 impediment might be shown where the factual or legal basis for a claim *was not reasonably*  
14 *available at the time of default.*” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003)  
15 (emphasis added). The Court continued, “appellants cannot attempt to manufacture good  
16 cause[.]” Id. at 621, 81 P.3d at 526. Rather, to find good cause, there must be a “substantial  
17 reason; one that affords a legal excuse.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503,  
18 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Any  
19 delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

20 A petitioner raising good cause to excuse procedural bars must do so within a  
21 reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34  
22 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see  
23 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506-07 (stating that a claim reasonably  
24 available to the petitioner during the statutory time period did not constitute good cause to  
25 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good  
26 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,  
27 453 120 S. Ct. 1587, 1592 (2000).

28 //

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

6 In the instant case, Petitioner cannot demonstrate good cause to overcome the  
7 mandatory procedural bars because he cannot demonstrate that this claim was not reasonably  
8 available at the time of default. Clem, 119 Nev. at 621, 81 P.3d at 525. Petitioner’s one and  
9 only claim is that he is entitled to relief under A.B. 236. Second Petition, at 6. A.B. 236 cannot  
10 provide good cause because it is inapplicable to Petitioner. Petitioner’s Amended Judgement  
11 of Conviction was filed on April 6, 2009—well before the effective date of A.B. 236.  
12 Therefore, Petitioner cannot establish good cause, and the Petition is denied as time barred.

#### 13 VI. PETITIONER CANNOT ESTABLISH PREJUDICE

14 Petitioner’s only claim is that his sentence does not comport with the amendments made  
15 by A.B. 236. Second Petition, at 6. However, A.B. 236 was not in effect at the time of  
16 Petitioner’s conviction and sentence and is inapplicable to Petitioner’s case.

17 It is well established that, under Nevada law, the proper penalty for a criminal  
18 conviction is the penalty in effect at the time of the commission of the offense and not the  
19 penalty in effect at the time of sentencing. State v. Second Judicial Dist. Ct. (“Pullin”), 124  
20 Nev. 564, 567, 188 P.3d 1079, 1081 (2008). Unless the Legislature clearly expresses its intent  
21 to apply a law retroactively, Nevada law requires the application of the law in effect at the  
22 time of the commission of the crime. Id.

23 Petitioner’s sentence cannot be modified based on the enactment of A.B. 236, which went  
24 into effect on July 1, 2019. The Legislature did not clearly express its intent to apply the law  
25 retroactively. Therefore, pursuant to Nevada law, the proper penalty for the Petitioner’s  
26 conviction is that which was in effect at the time of the commission of the crime. In the instant  
27 case, the Court sentenced Petitioner, for multiple convictions of Possession of Stolen Property,  
28 under the Large Habitual Statute, to a maximum of life with a minimum parole eligibility of

1 ten (10) years in the Nevada Department of Corrections. This sentence falls within the statutory  
2 sentencing guidelines because A.B. 236 is not applied retroactively. See NRS 207.010.  
3 Therefore, Petitioner cannot establish prejudice to overcome the mandatory procedural bars.

4 **VII. PETITIONER'S CLAIM IS WAIVED FOR FAILING TO BE RAISED**  
5 **ON DIRECT APPEAL**

6 Petitioner's only claim is that he is entitled to relief under A.B. 236. Second Petition,  
7 at 6. Pursuant to NRS 34.810:

8 1. The court shall dismiss a petition if the court determines that:

9 (a) The petitioner's conviction was upon a plea of guilty or  
10 guilty but mentally ill and the petition is not based upon an  
11 allegation that the plea was involuntarily or unknowingly entered  
12 or that the plea was entered without effective assistance of counsel.

13 (b) The petitioner's conviction was the result of a trial and  
14 the grounds for the petition could have been:

15 (1) Presented to the trial court;

16 (2) Raised in a direct appeal or a prior petition for a  
17 writ of habeas corpus or postconviction relief; or

18 (3) Raised in any other proceeding that the  
19 petitioner has taken to secure relief from the petitioner's  
20 conviction and sentence unless the court finds both cause  
21 for the failure to present the grounds and actual prejudice  
22 to the petitioner.

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

3 Pursuant to subsections 1 and 2, the petitioner has the burden  
of pleading and proving specific facts that demonstrate:

4 (a) Good cause for the petitioner's failure to present the  
claim or for presenting the claim again; and

5 (b) Actual prejudice to the petitioner.

6 The petitioner shall include in the petition all prior proceedings in  
which the petitioner challenged the same conviction or sentence.

7 4. The court may dismiss a petition that fails to include any prior  
proceedings of which the court has knowledge through the record  
of the court or through the pleadings submitted by the respondent.

8 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and  
9 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-  
10 conviction proceedings.... [A]ll other claims that are appropriate for a direct appeal must be  
11 pursued on direct appeal, or they will be *considered waived in subsequent proceedings.*"  
12 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)

1 (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). "A  
2 court must dismiss a habeas petition if it presents claims that either were or could have been  
3 presented in an earlier proceeding, unless the court finds both cause for failing to present the  
4 claims earlier or for raising them again and actual prejudice to the petitioner." Evans v. State,  
5 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001).

6 Furthermore, substantive claims are beyond the scope of habeas and waived. NRS  
7 34.724(2)(a); Evans, 117 Nev. at 646-47, 29 P.3d at 523; Franklin v. State, 110 Nev. 750, 752,  
8 877 P.2d 1058, 1059 (1994), disapproved on other grounds, Thomas v. State, 115 Nev. 148,  
9 979 P.2d 222 (1999). Under NRS 34.810(3), a defendant may only escape these procedural  
10 bars if they meet the burden of establishing good cause and prejudice. Where a defendant does  
11 not show good cause for failure to raise claims of error upon direct appeal, the district court is  
12 not obliged to consider them in post-conviction proceedings. Jones v. State, 91 Nev. 416, 536  
13 P.2d 1025 (1975).

14 Here, Petitioner cannot establish good cause or prejudice to escape the procedural  
15 defaults of this claim. Even so, the claim itself is not just time-barred, but is a substantive claim  
16 that goes beyond the scope of a habeas petition. Thus, this Petition is denied.

17 **ORDER**


18 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief  
19 shall be, and it is, hereby denied.

Dated this 28th day of July, 2021

20   
21  
22 DISTRICT JUDGE

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

2B9 B27 8BAB 14F6  
Christy Craig  
District Court Judge

25 BY   
26 JONATHAN VANBOSKERCK  
27 Chief Deputy District Attorney  
Nevada Bar #006528

28 //

CERTIFICATE OF SERVICE

I certify that on the 27<sup>th</sup> day of July, 2021, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

BRYAN FERGASON, NDC #96803  
HDSP  
P.O. BOX 650  
INDIAN SPRINGS, NV 89070

BY   
Secretary for the District Attorney's Office

06F21801C/bs/JV/ckb/L4

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Bryan Fergason, Plaintiff(s)

CASE NO: A-21-827365-W

7 vs.

DEPT. NO. Department 32

8 State of Nevada, Defendant(s)  
9

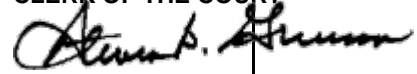
10 **AUTOMATED CERTIFICATE OF SERVICE**

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: 7/28/2021

15 Department XXXII

Dept32LC@clarkcountycourts.us



1 NEFF

2 **DISTRICT COURT**  
3 **CLARK COUNTY, NEVADA**

4  
5 BRYAN FERGASON,

6 Petitioner,

7 vs.

8 STATE OF NEVADA; ET.AL.,

9 Respondent,

Case No: A-21-827365-W

Dept No: XXXII

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

11 **PLEASE TAKE NOTICE** that on July 28, 2021, the court entered a decision or order in this matter, a true  
12 and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you  
14 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 28, 2021.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

17 Amanda Hampton, Deputy Clerk

18  
19 **CERTIFICATE OF E-SERVICE / MAILING**

20 I hereby certify that on this 28 day of July 2021, I served a copy of this Notice of Entry on the following:

21 ☒ By e-mail:

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

24 ☒ The United States mail addressed as follows:

25 Bryan Ferguson # 96803  
26 P.O. Box 650  
Indian Springs, NV 89070

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

*Heather S. Smith*  
CLERK OF THE COURT

**FCL**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
JONATHAN VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #006528  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Respondent

DISTRICT COURT  
CLARK COUNTY, NEVADA

BRYAN MICHAEL FERGASON,  
#1299193

Petitioner,

-vs-

THE STATE OF NEVADA,  
Respondent.

CASE NO: A-21-827365-W  
06C228752-3  
DEPT NO: XXXII

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

DATE OF HEARING: JULY 8, 2021  
TIME OF HEARING: 11:00AM

THIS CAUSE having come on for hearing before the Honorable CHRISTY CRAIG, District Judge, on the 8th day of July, 2021, the Petitioner not being present, proceeding in proper person, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through CHAD N. LEXIS, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **STATEMENT OF THE CASE**

3 On December 13, 2006, the State charged Bryan Fergason (hereinafter "Petitioner") by  
4 way of Indictment the following: Count 1 – Conspiracy to Possess Stolen Property and/or to  
5 Commit Burglary (Gross Misdemeanor – NRS 205.275, 199.480); and Counts 2-27 –  
6 Possession of Stolen Property (Felony – NRS 205.275).<sup>1</sup> On February 1, 2007, Petitioner filed  
7 a pre-trial Petition for Writ of Habeas Corpus. The State filed its Return on February 14, 2007.  
8 The district court denied Petitioner's pre-trial Petition on November 8, 2007.

9 On April 25, 2008, Petitioner filed a Motion to Sever. The State filed its Opposition on  
10 April 28, 2008. On May 1, 2008, the district court granted Petitioner's Motion.

11 On May 7, 2008, Petitioner filed a Motion in Limine to Bar Admission of Evidence that  
12 Defendant Committed Burglary in the Instant Case. The State filed its Opposition on May 8,  
13 2008. On May 12, 2009, the district court granted in part and denied in part Petitioner's  
14 Motion. After further pre-trial litigation, Petitioner's jury trial commenced on May 21, 2008.  
15 The same day, the State filed a Third Amended Indictment with the same charges, naming  
16 only the Petitioner. On May 29, 2008, the jury returned a verdict finding Petitioner guilty of:  
17 Count 1 – Conspiracy to Possess Stolen Property and/or to Commit Burglary; Counts 2, 5-6,  
18 12, 18-21, 25, and 27 – Possession of Stolen Property, Value \$250.00 or more; Counts 4, 7-  
19 11, 13-17, 22-24, and 26 – Possession of Stolen Property, Value \$2,500.00 or more. The jury  
20 found Petitioner not guilty of Count 3.

21 On October 1, 2008, the district court adjudicated Petitioner guilty and sentenced him  
22 as follows: Count 1 – 12 months in the Clark County Detention Center (CCDC); Count 2 –  
23 twenty (20) years to life in the Nevada Department of Corrections (NDC); Counts 4-14 –  
24 twenty (20) years to life in the NDC, concurrent to Counts 1 and 2; Counts 15-27 – twenty  
25 (20) years to life in the NDC, concurrent with each other, but consecutive to Counts 1-2 and  
26 4-14, and Petitioner's convictions in Case No. C227874. Petitioner received zero (0) days  
27 credit for time served. The Judgment of Conviction was filed on November 4, 2008. On April

28 <sup>1</sup> On December 15, 2006, the State filed an Amended Indictment, containing the same charges.

1 6, 2009, the district court filed an Amended Judgment of Conviction, wherein, the minimum  
2 term on Counts 4-14 and 15-27 was amended from twenty (20) years to ten (10) years.

3 Petitioner filed a Notice of Appeal on December 4, 2008. On August 4, 2010, the  
4 Nevada Supreme Court affirmed Petitioner's Judgment of Conviction. Remittitur issued on  
5 December 14, 2010.

6 On June 16, 2011, Petitioner filed a pro per Post-Conviction Petition for Writ of Habeas  
7 Corpus. The State filed its Response on August 9, 2011. On August 25, 2011, the district court  
8 denied Petitioner's Petition. The Findings of Fact, Conclusions of Law and Order was filed on  
9 November 9, 2011.

10 Petitioner filed a Notice of Appeal appealing the denial of the Petition on September  
11 22, 2011. On April 6, 2012, the Nevada Supreme Court ordered the denial of Petitioner's  
12 Petition reversed and remanded the case back for appointment of counsel, without reaching  
13 the merits of any other claims.

14 On May 15, 2012, Matthew Carling, Esq., was appointed as counsel. On November 2,  
15 2015, Petitioner filed a Supplemental Post-Conviction Petition for Writ of Habeas Corpus. The  
16 State filed its Response on January 15, 2016. Petitioner filed his Reply on February 19, 2016.  
17 On March 29, 2016, the district court ordered an evidentiary hearing on the matter. Following  
18 an evidentiary hearing on May 6, 2016, the district court denied Petitioner's Petition. The  
19 Findings of Fact, Conclusions of Law and Order was filed on August 16, 2016.

20 Petitioner filed a Notice of Appeal appealing the denial of the Petition on September 2,  
21 2016. On August 16, 2017, the Nevada Court of Appeals filed an Order Dismissing Appeal.  
22 Remittitur issued on September 20, 2017.

23 Petitioner filed a Motion to Amend Findings of Fact, Conclusions of Law and Order on  
24 September 15, 2017. The State filed its Response on September 19, 2017. On December 26,  
25 2017, the district court filed an Amended Findings of Fact, Conclusions of Law and Order.

26 On July 31, 2020, Petitioner filed a Motion to Withdraw Counsel, Re-Sentencing  
27 Pursuant to A.B. 236, and Appointment of Counsel. The State filed its Opposition on August  
28 18, 2020. On August 25, 2020, the district court denied Petitioner's Motions. The Order was

1 entered on September 2, 2020. Petitioner filed a Notice of Appeal on September 24, 2020,  
2 appealing the denial of his Motions. On October 14, 2020, the Nevada Supreme Court  
3 dismissed the appeal because the Court lacked jurisdiction to consider the appeal. Remittitur  
4 issued November 16, 2020.

5 On January 5, 2021, Petitioner filed the instant second Petition for Writ of Habeas  
6 Corpus (hereinafter "Second Petition"). The State filed its Response on May 4, 2021.  
7 Following a hearing on July 8, 2021, this Court now finds and concludes as follows:

### 8 **AUTHORITY**

#### 9 **I. THIS SECOND PETITION IS TIME-BARRED**

10 Petitioner's instant Second Petition for Writ of Habeas Corpus was not filed within one  
11 year of the filing of the Judgment of Conviction. Thus, the Petition is time-barred. Pursuant to  
12 NRS 34.726(1):

13 Unless there is good cause shown for delay, a petition that  
14 challenges the validity of a judgment or sentence must be filed  
15 within 1 year of the entry of the judgment of conviction or, if an  
16 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:

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

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

24 The one-year time limit for preparing petitions for post-conviction relief under NRS  
25 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),  
26 the Nevada Supreme Court rejected a habeas petition that was filed two (2) days late despite  
27 evidence presented by the defendant that he purchased postage through the prison and mailed  
28 the petition within the one-year time limit.

1 In the instant case, Petitioner filed a direct appeal, and Remittitur issued on December  
2 14, 2010. Petitioner filed the instant Petition on January 5, 2021—over eleven years after the  
3 Remittitur issued. Thus, the instant second Petition is time-barred. Absent a showing of good  
4 cause to excuse this delay, the instant Petition is dismissed.

5 **II. THIS SECOND PETITION IS BARRED AS SUCCESSIVE**

6 NRS 34.810(2) reads:

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

13 (emphasis added).

14 Second or successive petitions are petitions that either fail to allege new or different  
15 grounds for relief and the grounds have already been decided on the merits or that allege new  
16 or different grounds but a judge or justice finds that the petitioner's failure to assert those  
17 grounds in a prior petition would constitute an abuse of the writ. Second or successive petitions  
18 will only be decided on the merits if the petitioner can show good cause and prejudice. NRS  
19 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994); see also Hart v.  
20 State, 116 Nev. 558, 563–64, 1 P.3d 969, 972 (2000) (holding that “where a defendant  
21 previously has sought relief from the judgment, the defendant's failure to identify all grounds  
22 for relief in the first instance should weigh against consideration of the successive motion.”)

23 The Nevada Supreme Court has stated: “Without such limitations on the availability of  
24 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-  
25 conviction remedies. In addition, meritless, successive and untimely petitions clog the court  
26 system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d at 950.  
27 The Nevada Supreme Court recognizes that “[u]nlike initial petitions which certainly require  
28 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

1 the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497–98 (1991).  
2 Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

3 Here, as discussed supra, Section I., this is Petitioner’s second Post-Conviction Petition.  
4 Petitioner did not raise this claim on direct appeal or in his first Petition. He only raises it for  
5 the first time now, eleven years later. Petitioner recently raised this exact issue in his Motion  
6 for Re-Sentencing Pursuant to A.B. 236, which was denied by the district court on August 25,  
7 2020. Accordingly, this second Petition is an abuse of the writ, procedurally barred, and  
8 therefore, dismissed.

### 9 III. APPLICATION OF THE PROCEDURAL BARS IS MANDATORY

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

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

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

22 This position was reaffirmed in State v. Greene, 129 Nev. 559, 307 P.3d 322 (2013).  
23 There the Court ruled that the defendant’s petition was “untimely, successive, and an abuse of  
24 the writ” and that the defendant failed to show good cause and actual prejudice. Id. at 324, 307  
25 P.3d at 326. Accordingly, the Court reversed the district court and ordered the defendant’s  
26 petition dismissed pursuant to the procedural bars. Id. at 324, 307 P.3d at 322–23. The  
27 procedural bars are so fundamental to the post-conviction process that they must be applied  
28

1 by this Court even if not raised by the State. See Riker, 121 Nev. at 231, 112 P.3d at 1074.  
2 Therefore, application of the procedural bars is mandatory.

#### 3 IV. THE STATE AFFIRMATIVELY PLEADS LACHES

4 Certain limitations exist on how long a defendant may wait to assert a post-conviction  
5 request for relief. Consideration of the equitable doctrine of laches is necessary in determining  
6 whether a defendant has shown 'manifest injustice' that would permit a modification of a  
7 sentence. Hart, 116 Nev. at 563–64, 1 P.3d at 972. In Hart, the Nevada Supreme Court stated:  
8 "Application of the doctrine to an individual case may require consideration of several factors,  
9 including: (1) whether there was an inexcusable delay in seeking relief; (2) whether an implied  
10 waiver has arisen from the defendant's knowing acquiescence in existing conditions; and (3)  
11 whether circumstances exist that prejudice the State. See Buckholt v. District Court, 94 Nev.  
12 631, 633, 584 P.2d 672, 673–74 (1978)." Id.

13 NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period  
14 exceeding five years [elapses] between the filing of a judgment of conviction, an order  
15 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of  
16 conviction and the filing of a petition challenging the validity of a judgment of conviction..."  
17 The Nevada Supreme Court has observed, "[P]etitions that are filed many years after  
18 conviction are an unreasonable burden on the criminal justice system. The necessity for a  
19 workable system dictates that there must exist a time when a criminal conviction is final."  
20 Groesbeck v. Warden, 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the presumption, the  
21 statute requires the State plead laches. NRS 34.800(2).

22 The State affirmatively pleads laches in this case given that over eleven years has  
23 elapsed between the issuing of Remittitur and the filing of the second Petition. In order to  
24 overcome the presumption of prejudice to the State, Petitioner has the heavy burden of proving  
25 a fundamental miscarriage of justice. See Little v. Warden, 117 Nev. 845, 853, 34 P.3d 540,  
26 545 (2001). Based on Petitioner's representations and on what he has filed with this Court thus  
27 far, Petitioner has failed to meet that burden.  
28

1 As discussed supra, Section I., the one-year time bar began to run from the date the of  
2 the Remittitur on December 14, 2010. The second Petition was filed on January 5, 2021 – *over*  
3 *eleven years* later. Because more than eleven years have elapsed between the Remittitur and  
4 the filing of the instant second Petition, NRS 34.800 directly applies in this case, and a  
5 presumption of prejudice to the State arises. Therefore, pursuant to NRS 34.800, this second  
6 Petition is dismissed under the doctrine of laches.

7 **V. PETITIONER CANNOT ESTABLISH GOOD CAUSE TO OVERCOME**  
8 **THE MANDATORY PROCEDURAL BARS**

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

11 “To establish good cause, appellants must show that an impediment external to the  
12 defense prevented their compliance with the applicable procedural rule. A qualifying  
13 impediment might be shown where the factual or legal basis for a claim *was not reasonably*  
14 *available at the time of default.*” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003)  
15 (emphasis added). The Court continued, “appellants cannot attempt to manufacture good  
16 cause[.]” Id. at 621, 81 P.3d at 526. Rather, to find good cause, there must be a “substantial  
17 reason; one that affords a legal excuse.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503,  
18 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Any  
19 delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

20 A petitioner raising good cause to excuse procedural bars must do so within a  
21 reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34  
22 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see  
23 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506-07 (stating that a claim reasonably  
24 available to the petitioner during the statutory time period did not constitute good cause to  
25 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good  
26 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,  
27 453 120 S. Ct. 1587, 1592 (2000).

28 //

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

6 In the instant case, Petitioner cannot demonstrate good cause to overcome the  
7 mandatory procedural bars because he cannot demonstrate that this claim was not reasonably  
8 available at the time of default. Clem, 119 Nev. at 621, 81 P.3d at 525. Petitioner’s one and  
9 only claim is that he is entitled to relief under A.B. 236. Second Petition, at 6. A.B. 236 cannot  
10 provide good cause because it is inapplicable to Petitioner. Petitioner’s Amended Judgement  
11 of Conviction was filed on April 6, 2009—well before the effective date of A.B. 236.  
12 Therefore, Petitioner cannot establish good cause, and the Petition is denied as time barred.

#### 13 VI. PETITIONER CANNOT ESTABLISH PREJUDICE

14 Petitioner’s only claim is that his sentence does not comport with the amendments made  
15 by A.B. 236. Second Petition, at 6. However, A.B. 236 was not in effect at the time of  
16 Petitioner’s conviction and sentence and is inapplicable to Petitioner’s case.

17 It is well established that, under Nevada law, the proper penalty for a criminal  
18 conviction is the penalty in effect at the time of the commission of the offense and not the  
19 penalty in effect at the time of sentencing. State v. Second Judicial Dist. Ct. (“Pullin”), 124  
20 Nev. 564, 567, 188 P.3d 1079, 1081 (2008). Unless the Legislature clearly expresses its intent  
21 to apply a law retroactively, Nevada law requires the application of the law in effect at the  
22 time of the commission of the crime. Id.

23 Petitioner’s sentence cannot be modified based on the enactment of A.B. 236, which went  
24 into effect on July 1, 2019. The Legislature did not clearly express its intent to apply the law  
25 retroactively. Therefore, pursuant to Nevada law, the proper penalty for the Petitioner’s  
26 conviction is that which was in effect at the time of the commission of the crime. In the instant  
27 case, the Court sentenced Petitioner, for multiple convictions of Possession of Stolen Property,  
28 under the Large Habitual Statute, to a maximum of life with a minimum parole eligibility of



1 ten (10) years in the Nevada Department of Corrections. This sentence falls within the statutory  
2 sentencing guidelines because A.B. 236 is not applied retroactively. See NRS 207.010.  
3 Therefore, Petitioner cannot establish prejudice to overcome the mandatory procedural bars.

4 **VII. PETITIONER'S CLAIM IS WAIVED FOR FAILING TO BE RAISED**  
5 **ON DIRECT APPEAL**

6 Petitioner's only claim is that he is entitled to relief under A.B. 236. Second Petition,  
7 at 6. Pursuant to NRS 34.810:

8 1. The court shall dismiss a petition if the court determines that:

9 (a) The petitioner's conviction was upon a plea of guilty or  
10 guilty but mentally ill and the petition is not based upon an  
11 allegation that the plea was involuntarily or unknowingly entered  
12 or that the plea was entered without effective assistance of counsel.

13 (b) The petitioner's conviction was the result of a trial and  
14 the grounds for the petition could have been:

15 (1) Presented to the trial court;

16 (2) Raised in a direct appeal or a prior petition for a  
17 writ of habeas corpus or postconviction relief; or

18 (3) Raised in any other proceeding that the  
19 petitioner has taken to secure relief from the petitioner's  
20 conviction and sentence unless the court finds both cause  
21 for the failure to present the grounds and actual prejudice  
22 to the petitioner.

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

3 Pursuant to subsections 1 and 2, the petitioner has the burden  
of pleading and proving specific facts that demonstrate:

4 (a) Good cause for the petitioner's failure to present the  
claim or for presenting the claim again; and

5 (b) Actual prejudice to the petitioner.

6 The petitioner shall include in the petition all prior proceedings in  
which the petitioner challenged the same conviction or sentence.

7 4. The court may dismiss a petition that fails to include any prior  
proceedings of which the court has knowledge through the record  
of the court or through the pleadings submitted by the respondent.

8 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and  
9 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-  
10 conviction proceedings.... [A]ll other claims that are appropriate for a direct appeal must be  
11 pursued on direct appeal, or they will be *considered waived in subsequent proceedings.*"  
12 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)

1 (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). "A  
2 court must dismiss a habeas petition if it presents claims that either were or could have been  
3 presented in an earlier proceeding, unless the court finds both cause for failing to present the  
4 claims earlier or for raising them again and actual prejudice to the petitioner." Evans v. State,  
5 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001).

6 Furthermore, substantive claims are beyond the scope of habeas and waived. NRS  
7 34.724(2)(a); Evans, 117 Nev. at 646-47, 29 P.3d at 523; Franklin v. State, 110 Nev. 750, 752,  
8 877 P.2d 1058, 1059 (1994), disapproved on other grounds, Thomas v. State, 115 Nev. 148,  
9 979 P.2d 222 (1999). Under NRS 34.810(3), a defendant may only escape these procedural  
10 bars if they meet the burden of establishing good cause and prejudice. Where a defendant does  
11 not show good cause for failure to raise claims of error upon direct appeal, the district court is  
12 not obliged to consider them in post-conviction proceedings. Jones v. State, 91 Nev. 416, 536  
13 P.2d 1025 (1975).

14 Here, Petitioner cannot establish good cause or prejudice to escape the procedural  
15 defaults of this claim. Even so, the claim itself is not just time-barred, but is a substantive claim  
16 that goes beyond the scope of a habeas petition. Thus, this Petition is denied.

17 **ORDER**


18 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief  
19 shall be, and it is, hereby denied.

Dated this 28th day of July, 2021

20   
21  
22 DISTRICT JUDGE

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

2B9 B27 8BAB 14F6  
Christy Craig  
District Court Judge

25 BY   
26 JONATHAN VANBOSKERCK  
27 Chief Deputy District Attorney  
Nevada Bar #006528

28 //

CERTIFICATE OF SERVICE

I certify that on the 27<sup>th</sup> day of July, 2021, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

BRYAN FERGASON, NDC #96803  
HDSP  
P.O. BOX 650  
INDIAN SPRINGS, NV 89070

BY   
Secretary for the District Attorney's Office

06F21801C/bs/JV/ckb/L4

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Bryan Fergason, Plaintiff(s)

CASE NO: A-21-827365-W

7 vs.

DEPT. NO. Department 32

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: 7/28/2021

15 Department XXXII

Dept32LC@clarkcountycourts.us

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**March 04, 2021**

---

A-21-827365-W      Bryan Fergason, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

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**March 04, 2021      11:00 AM      Petition for Writ of Habeas  
Corpus**

**HEARD BY:** Craig, Christy

**COURTROOM:** RJC Courtroom 16D

**COURT CLERK:** Kathryn Hansen-McDowell

**RECORDER:** Kaihla Berndt

**REPORTER:**

**PARTIES**

**PRESENT:** Thomas, Morgan B.A.      Attorney

**JOURNAL ENTRIES**

- Ms. Thomas requested additional time to respond to the Petitioner's Petition. COURT GRANTED request and SET the following briefing schedule.

State's Response due: 05/06/2021

Petitioner's Reply due: 06/10/2021

Hearing date: 07/08/2021

07/08/2021 11:00 AM HEARING: WRIT OF HABEAS CORPUS (POST CONVICTION)

CLERK'S NOTE: The above minute order has been distributed to: Bryan Fergason #95803, HDSP, PO Box 650, Indian Springs, NV 89070. 3/10/21 km

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**July 08, 2021**

---

A-21-827365-W      Bryan Fergason, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

---

**July 08, 2021      11:00 AM      Hearing      Hearing: Writ of  
HAb eas Corpus (Post  
Conviction)**

**HEARD BY:** Craig, Christy

**COURTROOM:** RJC Courtroom 16D

**COURT CLERK:** Andrea Natali

**RECORDER:** Kaihla Berndt

**REPORTER:**

**PARTIES**

**PRESENT:** Lexis, Chad N.      Attorney

**JOURNAL ENTRIES**

- Petitioner not present, incarcerated in the Nevada dept. of Corrections (NDC).

COURT ORDERED, writ DENIED as it was time barred and barred as a successive petition where there were no new grounds raised; DIRECTED, Mr. Lexis to prepare the order.

CLERK'S NOTE: The foregoing minutes were distributed via general mail to the following party:  
Bryan Fergason #96803  
PO Box 650 HDSP  
Indian Springs, NV 89070  
(7/19/21 amn).

# 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

BRYAN FERGASON,

Plaintiff(s),

vs.

STATE OF NEVADA; CALVIN JOHNSON,  
WARDEN HDSP,

Defendant(s),

Case No: A-21-827365-W

Dept No: XXXII

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 4 day of August 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk