

Case Report Number:
LLV171209001315-001



Las Vegas Metropolitan Police
Department

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Elizabeth A. Brown
Clerk of Supreme Court

him get into a green two door vehicle that was parked on the northwest corner of the building. He reversed out of his parking spot, traveled west for a brief moment, and then exited the parking lot traveling east on Alexander and then south on Rainbow. Faasse stated the male was wearing a yellow hat, black sweatshirt and unknown color pants. She stated she did not give the male any money or property prior to him exiting the store. Faasse stated the male got into a two door smaller vehicle that had California license plate [REDACTED] displayed on the front part of the car and no license plate displayed on the back.

Offense

Offense	All Robbery, E/DW(F)- NRS 200.380	Domestic Violence Premises Entered	No
Code Section		Entry	
IBR Code		Using	
IBR Group		Weapons	Firearm (Type Not Stated)
Crime Against	Property		
UCR Hierarchy	03	Criminal Activity	None/Unknown
Location Type	Service/Gas Station	Type Security	
Completed	No	Tools	
Hate/Bias	None (No Bias)		

Offenders

Suspect Name: Unknown

Aliases

Alias

Alert(s)

Addresses

Address Type	Address	CSZ	County	Country
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Phones

Phone Type	Phone Number
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Emails

Email Address

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17F21808X - MITCHELL, RICHARD

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Attachment # 17-3

As here in Dist case #17-32771-1; C-18-32771-1 petitioner did not meet the standard criteria for any weapon enhancement charge, petitioner now petitions the court with the opinion found in U.S. v. Davis et al #18-431 decided June 24th 2019.

Under U.S.C. § 2254(b)(2) that

(A) the claim relies on a new rule of constitutional law made retroactive to cases on collateral review by the Supreme Court that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole would sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

Plaintiff here accepted a plea conviction of Count #1-Attempt Robbery (category B Felony-NRS 200.380, 193.330 - NAC 50144) and Count #2-Resisting Public Officer with use of a deadly/dangerous weapon (category D Felony - NRS 199.280 - NAC 55106), as more fully alleged in the charging document attached hereto as Exhibit "1". I hereby also agree to plead guilty to: Robbery (category B Felony-NRS 200.380 - NAC 50137) in Case No: C332717 With a unconstitutional deadly/dangerous weapon enhancement included in Count #2 in the course of resisting a public officer included by the officers with the offense! The courts convicted the plaintiff on all underlying charges adding a separate second charge of brandishing a deadly/dangerous

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Weapon" in connection of his crime. Here plaintiff was using said deadly/dangerous weapon as a hood prop for his vehicle, plaintiff was also under the influence of cocaine and hard liquor after a 10 day binge. Plaintiff was afraid for his life having knowledge of his commission of the first grand larceny, plaintiff also was in serious mental trance concerning the killings of unarmed black men by police officers. Plaintiff was in serious need of psychiatric assistance/evaluation as with immediate attention to his substance abuse which led to his offense, plaintiff did not leave his home the day of the offense with any intention of being in contact with any police - See attachment #17A and #17B where he was asked by said grand larceny victim if the larceny attempt was a joke - also See attachment #14A and #14B for excessive force used by the arresting officers. Mr. Mitchell was shot with less lethal rounds from a shotgun 4 times, 1 shot was to the chest area another to his hand where Mitchell began screaming and started swinging a bat in fear of losing his life. At that point "Sergeant Garcia" then drew his firearm and fired 4 rounds striking Mitchell in his right thigh, we request bodycam footage of entire event contained in event #7763112 also See attachment #14C, after Mitchell was shot he was placed under arrest for Resisting Arrest of a Public Officer with use of a deadly/dangerous weapon under event #171209-1247. Mr. Mitchell was then booked into CCDC while being treated at UMC for bodily injuries as a result of "Sergeant Garcia" discharging his firearm into the body of Mr. Mitchell on the erroneous grounds of flashing or brandishing a deadly/dangerous weapon with threats and intimidation of threats. Mr. Mitchell's said deadly/dangerous weapon was only a baseball bat used as an instrument to prop open the hood of his vehicle and was not intended to be used as an element of fear nor in any connection with any elements of the above mentioned

Went. Mr. Mitchell's said deadly/dangerous weapon was never used as a protective element that would lead to a substantial factor of imminent danger in case #17-32815-1 ^{C-18-332717-1} the said imminent danger is a result of "Sergeant Garcia" firing live rounds into the body of Mitchell whom never posed a imminent physical threat with only moments of Mitchell's trance like and erratic body language without a deadly/dangerous weapon. The peace officer nor "Sergeant Garcia" were ever in imminent danger but Mitchell's behavior led to a unnecessary use of deadly force by the officers which Mitchell is haunted by this knowledge and is sorrowful of his immediate unfortunate encounter with L.V.M.P.D. Request bodycam footages from case report #LH1171209001315-001

Findings in United States v. Davis et al #18-431

I.

In our constitutional order, a vague law is not law at all!
The statutes residual clause points to those felonies "that by [their] nature involve a substantial risk that physical force, the residual clause in turn defines a "crime of violence" as a felony "that by its nature involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense". Petitioner was convicted by plea agreement for count #1-Attempt Robbery (category B Felony NRS 200.380, 193.330 -NOC 50144) 1 to 10 years; Count #2-Resisting a Public Officer with the use of a dangerous weapon (category D Felony NRS 199.280 -NOC 55106) 1 to 4 years; Count #3-Plaintiff agree to plead guilty to Robbery (category B Felony NRS 200.380 -NOC 50137) in case #C382717

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Consecutively for a sum total of 7 to 20 years in prison. The Fifth circuit initially rejected their argument that § 924(e)'s residual clause is unconstitutionally vague, but on remand in light of *Sessions v. Dimaya*, 584 U.S. _____, the court reversed course and held § 924(e)(3)(B) unconstitutional. It then held that Mr. Davis and Mr. Glover convictions on the § 924(e) count charging robbery as the predicate crime of violence could be sustained under the elements clause, but that the other count which charged conspiracy as a predicate crime of violence could not be upheld because it depended on the residual clause.

Held: Section 924(e)(3)(B) is unconstitutionally vague. Pp. 4-25.

(a) In our constitutional order, a vague law is no law at all. The Vagueness doctrine rests on the twin constitutional pillars of due process and separation of powers. This court has recently applied the doctrine in two cases involving statutes that bear more than a passing resemblance to § 924(e)(3)(B)'s residual clause - *Johnson v. United States*, 576 U.S. _____, which addressed the residual clause of the Armed Career Criminal Act (ACCA) and *Sessions v. Dimaya* which addressed the residual clause of 18 U.S.C. § 16. The residual clause in each case require judges to use a "categorical approach" to determine whether an offense qualified as a violent felony or crime of violence. Judges had to disregard how the defendant actually committed the offense and instead imagine the degree of risk that would attend the idealized "ordinary case"

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of the offense. *Johnson*, 576 U.S., at _____. The Court held in each case that the imposition of criminal punishment cannot be made to depend on a judge's estimation of the degree of risk posed by a crime's imagined "ordinary case". The government and lower courts have long understood § 924(c)(3)(B) to require the same categorical approach. Now the government asks this Court to abandon the traditional categorical approach and hold that the statute commands a case-specific approach that would look at the defendant's actual conduct in the predicate crime. The government's case-specific approach would avoid the vagueness problems that doomed the statutes in *Johnson* and *Dimaya*, and would not yield to the same practical and Sixth Amendment complication that a case-specific approach under the ACPA and § 16 would, but this approach finds no support in § 924(c)'s text, context, and history. Pp. 4-9.

(b) This Court has already read the nearly identical language of § 16(b) to mandate a categorical approach. See *Hechal v. Ashcroft*, 543 U.S. 1, 7. And what is true of § 16(b) seems at least as true of § 924(c)(3)(B). The government claims that the singular term "offense" carries the "generic" meaning in connection with the elements clause but a "specific act" meaning in connection with the residual clause, but nothing in § 924(c)(3)(B) rebuts the presumption that the single term "offense" bears a consistent meaning. This reading is reinforced by the language of the residual clause itself, which speaks of an offense that "by its nature", involves a certain type of risk. Pp. 9-12.

(c) The categorical reading is also reinforced by § 924(c)(3)(B)'s role in the broader context of the federal criminal code. Dozens of federal statutes use the phrase "crime of violence" to refer to presently charged conduct. Some cross-reference § 924(c)'s definition, while others are governed

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by the virtually identical definition in § 16. The choice appears completely random. To hold that § 16(b) requires the categorical approach while § 924(c)(3)(B) requires the case-specific approach would make a hash of federal criminal code. Pp. 12-13.

(d) Section 924(c)(3)(B)'s history provides still further evidence that it carries the same categorical-approach command as § 16(b).

Cite as: 588 U.S. — (2019)

Syllabus

When Congress enacted the definition of "crime of violence" in § 16 in 1984, it also employed the term in numerous places in the Act including § 924(c). The two statutes, thus, were originally designed to be read together. And when Congress added a definition of "crime of violence" to § 924(c) in 1986, it copied the definition from § 16 without making any material changes to the language of the residual clause, which would have been a bizarre way of suggesting that the two clauses should bear drastically different meanings. Moreover, § 924(c) originally prohibited the use of a dangerous/deadly weapon in connection with any federal felony; before Congress narrowed § 924(c) in 1984 by limiting its predicate offenses to "crimes of violence". The case-specific reading would go a long way towards nullifying that limitation and restoring the statute's original breadth. Pp. 14-17.

(e) Relying on the canon of constitutional avoidance, the government insist that if the case-specific approach does not represent the best reading of the statute, it is nevertheless the Court's duty to adopt any "fairly possible" reading to save the statute from being unconstitutional. But it is doubtful the canon could play a proper role in this case even if the government's reading were "possible". This Court has sometimes adopted the narrower construction

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of a criminal statute to avoid having to hold it unconstitutional if it were construed more broadly, but it has not invoked the canon to expand the reach of a criminal statute in order to save it. To do so would risk offending the very same due process and separation of powers principles on which the vagueness doctrine itself rests and would sit uneasily with the rule of lenity's teaching that ambiguities about a criminal statute's breadth should be resolved in the defendant's favor. Pp. 17-19. 903 F.3d 483, affirmed in part, vacated in part, and remanded.

II.

Argument

In our constitutional order, a vague law is no law at all. The statute's residual clause point to those felonies "that by [their] nature involv[e] a substantial risk that physical force against the person or property of another may be used in the course of committing the offense" § 924(c)(3)(B).

But that's not all this writ concerns and presents, this writ presents claims of additional charges from the state government against Mr. Mitchell, charges in violation of #1 Substantiation and procedure law #2 charges in violation of Sentencing guidelines #3 Charge that were not agreed upon in plea deal and Factual Fraudulent charges of robbery supported by the record in which there are no crimes of violence. In furtherance the additional 1 to 4 years term consecutive is erroneous there was never a dangerous deadly weapon used but now Mitchell is punished for this action. The District Courts never addressed any statute which provides

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Statutes procedures to define the term "crimes of violence" which is found in Count # Understanding the two Subsection - of violence - the first known as the elements clause and the second known as the residual clause according to § 924(C)(3) any crime of violence is an offense that's a felony and (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another or (B) that by its nature involve a substantial risk that physical force against the person or property of another may be used in the "course of committing the offense."

Facts here the plaintiff was not in the course of committing the underlying offense but was said to be thought to be likely "again attempting to commit a robbery" See attachment #14-B Count #1 the first said robbery is (incorrect) "CVS" on Lake Mead was in the amount of \$108.00 which according to law is a grand larceny when profit is valued at less than a statutory cut-off amount and more than a statutory cut-off amount \$100.00 of petty larceny. Larceny the unlawful taking and carrying away of someone else personal property with intent to deprive the owner of it permanently. Count #2 was a Attempt Robbery Speedy Mart See attachment #17-A employee Faasse took the note and read it and stated "is this a joke" and threw the bag and note on the floor (with no signs of fear) Count #3 CVS Attempt Robbery Store located 1409 W. Craig Rd employee Melanie Aoude.

Correct charging would be "Attempt Robbery" the act or an instance of making an effort to accomplish something P.S.P without success, in criminal law an overt act done with the intent to commit a

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crime that falls short is an inchoate offense distinct from the attempted crime also term (solicitation) Count #3 Assisting Arrest with use of a deadly dangerous weapon, here plaintiff was under the influence of intoxicating liquor and Controlled substance mixed with other drugs and at least 10 days with no sleep!, which mixed with fear and guilt in a fatal manner which impaired plaintiff's ability to comprehend and understand his full surrounding and peace officers commands there was never intent to resist. Facts the records reflect there was no threats nor intimidation of threats, no brandishing a deadly dangerous weapon or waving of a deadly dangerous weapon alleged victim Donna Faasse at the Speedy Mart shows inchoate during attempt robbery! Shows no fear asking Mitchell "are you serious?" taking the said bag and note throwing them onto the floor with Mitchell stating "What if I did have a gun?" Still she ordered him to leave the store. See attachment #17-A for facts, there's no deadly dangerous weapon involved in commission of any said crimes Mitchell was intoxicated from hard liquor and cocaine on a two week binge without sleep almost out his mind! needing a drug rehab and psychological evaluation. See attachment #1-B "no habitual hearing only [intent and violation of prior Bad Act Rule] his last conviction was 2007

Decency, Security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for laws; it invites every man to become a law unto

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himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means to declare that the Government may commit crimes in order to secure the conviction of a private criminal-- would bring terrible retribution. Against pernicious doctrine this Court should resolutely set its face. On facts found in Lazada v. Deeds depriving of a direct appeal.

Violators of § 924(c) face a mandatory minimum sentence of 5 years in prison, here Mr. Mitchell received 10 years mandatory min/max concurrent term over and above any sentence he received for the underlying offense a crime of violence or drug trafficking which the minimum sentence rises to 7 years if the defendant brandishes a deadly/dangerous weapon in which Mr. Mitchell never brandishes his deadly/dangerous weapon and 10 years if he uses deadly/dangerous weapon in the commission of the crime, Mr. Mitchell was also shot in the process and suffers recurring nightmares of his near fatal ordeal.

Weapon enhancement unconstitutional as again certain types of weapons also trigger enhanced penalties, for example a defendant who uses a short barrel shotgun faces a minimum sentence of 10 years and repeat violators of § 924(c) carry a minimum sentence of 25 years; here Mr. Mitchell was in possession of a baseball bat used as a hood prop in which Mitchell doesn't meet the above criteria

In Mr. Mitchell's plea deal the district court agree Mr. Mitchell committed two separate § 924(c) violations by brandishing a deadly/dangerous weapon in connection with his crime. Here to the court and attorney agreed these plea convictions yielded a mandatory minimum maximum sentence for

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each crime handing down: see exhibit #3 page #1 Count #1 Attempt Robbery
Attempt: #1 - The act or an instance of making an effort to accomplish something P.S.P. without success. #2 In criminal law an overt act done with the intent to commit a crime, that falls short is an inchoate offense distinct from the attempted crime also term (solicitation)
which sentencing guidelines carry a 1 to 10 years for an attempt robbery max term

See exhibit #3 page #1 case # C-17-328865-1 also see page #2, Count #1 is not a robbery it is an attempt robbery Sentencing on page #2 is erroneous as follows count #1 a maximum of 240 months with minimum parole eligibility after 84 months See count #2 page #2 C-17-328865-1 resisting police officer with deadly dangerous weapon a Category D-Felony with a minimum term of not less than 1 year and a maximum of more than 4 years NRS 193.130 which here Mitchell received again 240 months with minimum parole eligibility after 84 months Concurrent with count #1 which is erroneous directing the courts to 193.130 Concerning count #2 Resisting Public Officer with use of dangerous deadly weapon as found in NRS 199.250 See exhibit #3 case # C-17-328865-1 also note in sentencing in #328865-1 the defendant is adjudged of said offenses under small habitual criminal statute on both counts #1 and #2 in case #328865-1 See controlling case as stated C-332717-1 in which the actual robbery being the greater offense being as found in exhibit #2 Robbery: The illegal taking of property from the person of another or in the presence by violence or intimidation aggravated larceny Also not can concurrent explain money taken of only \$108.00 in multiple denomination from the register.

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With robbery being the controlling sentence in greater crime See: exhibit #2 page #1 of guilty plea agreement "not J.O.C." it says the State agrees not to seek habitual criminal charge in this case and again here I agree that robbery being the greater offense is the controlling case concurrent with C-328865-1 as here in guilty agreement you see robbery count #1 attempt robbery #2 and resisting arrest of public officer as count #3 as here in the writing of attorney Belinda T. Harris (702) 455-3284 plaintiff was told 1 to 10 for the attempt robbery plaintiff was told 1 to 4 dangerous weapon also told a 2 to 15 for the robbery in total 5 to 12 and she told me she argue for 5 1/2 to 12 worse come to worse 'small habitual a 5 to 20 counsel was error and confusing here plaintiff received 7 to 20 years See page #6 exhibit #1 I never agreed to this See exhibit #1 page #6 I never signed in agreement to this see exhibit #2 case #C-12-028865-1

When Mr. Mitchell's case has tried him the defendant and convicted him of Robbery, Attempt Robbery, Resisting Arrest with dangerous deadly weapon and the habitual criminal treatment with a second violation of 924(c) weapons enhancement violation in a single prosecution both with minimum maximum sentences.

See: Deal v. United States 508 U.S. 129, 132 (1993); 12(a)(1) 112 stat 3469 in (2013), Congress changed the law so that going forward only a second § 924(c) violation committed "after a prior [§ 924(c)] conviction has become final" will trigger the 25 year minimum pub L. 115-391 § 403(a) 132 stat 522 L in this writ Mr. Mitchell #1209011 argues as in:

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United States, petitioner v. Maurice Lament Davis and Andre Levon Glover [Writ of certiorari US Supreme Court #18-431]

Here Mr. Mitchell presents argument that § 924(c)'s residual clause is unconstitutional: vague as first the Fifth Circuit rejected the argument *United States v. Davis* 677 Fed appx 933, 936 (2017) (per curiam) but after we vacated its judgment and remanded for further consideration in light of our decision in *Sessions v. Dimaya* 584 U.S. ____ (2018) striking down a different almost identically worded statute the courts reversed course and held § 924(c)(3)(B) unconstitutional 903 F 3d 483, 486 (2018) (per curiam) here the court held that Mr. Davis and Mr. Glover's convictions on one of the two § 924(c) counts the one that charged robbery as a predicate crime of violence could be sustained under the elements clause but it held that the other count which charged conspiracy as a predicate crime of violence depended on the residual clause: and so it vacated the men's conviction and sentences on that count.

As here petitioner was charged with a residual charge of Robbery, Attempt Robbery and Resisting Arrest of Police Officer but an enhanced charge for the dangerous deadly weapon depending on the residual clause and so it vacated the conviction and sentence on that count.

Because in certiorari #18-431 The Fifth Circuit ruling deepening a dispute among the lower courts about the constitutionality of § 924(c)'s residual clause we granted certiorari to resolve the question 586 U.S. ____ (2018)

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Our doctrine prohibiting the enforcement of vague laws rests on the twin:

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Constitutional pillars of due process and separation of powers See...
Dimaya 584 U.S. at — — (plurality opinion) (Slip op. at 4-5; id at — —)

Compare *United States v. Simms* 914 F.3d 229, 236-246 (CA4 2018) (en banc)
United States v. Salas 889 F.3d 681, 685-686 (CA10 2018) and *United States v. Eshetu* 898 F.3d 36, 37-38 (CA DC 2018) holding that § 924(c)(3)(B) is vague) with *United States v. Douglas* 907 F.3d 1, 11-16 (CA11 2018) (en banc) and *United States v. Barrett* 903 F.3d 166, 178-184 (CA2 2018) (Taken the opposite view).

(Gorsuch J. Concurring in part and concurring in judgment (slip op. at 2-9)

Vague laws contravene the "first essential of due process of law" that statutes must give people "of common intelligence" fair notice of what the law demands of them.

Connally v. General Constr. Co. 269 U.S. 335 391 (1926) See: *Collins v. Kentucky* 234 U.S. 634.638 (1914) Vague laws also undermine the constitution's separation of powers and the democratic self-governance it aims to protect only the people elected representatives in the legislature are authorized to "make an act a crime"

United States v. Hudson, 7 Cranch 32, 34 (1812) Vague statutes threaten to hand responsibility for defining crimes to relatively unaccountable police, prosecutor and judges, eroding the people's ability to oversee the creation of the laws they are expected to abide

II.

See — *Kolander v. Lawson* 461 U.S. 352, 357-359, and n.7 (1983) ;
United States v. L. Cohen Grocery Co. 255 U.S. 81, 89-91 (1921)
United States v. Reese 92 U.S. 214, 221 (1876).

As here Mr. Mitchell ~~has~~ ^{was} in case # C-17-328865-1 and # C-18-332717-1 never during
commission of crime have in possession a deadly dangerous weapon nor does he have
or brandish any weapon at time of arrest, Mr. Mitchell was under the influence of
drugs and alcohol which almost cost him his life.

In recent years the courts has applied these principles to two statutes that bear
more than a passing resemblance to § 924(x)(3)(B) residual clause in *Johnson*
v. United States 576 U.S. ____ (2015) the court addressed the residual clause
of the "Armed Carrier Criminal Act" (ACCA) which defines a "violent felony"
to include offenses that presented a "serious potential risk of physical injury
to another" § 924(x)(3)(B)(i) the ACCA's residual clause requires judges to use
a form of what we've called the "Categorical Approach" to determine whether
an offense qualified as a violent felony following the categorical approach
there's no way a sane (Fact Finder) would enhance the underlying offense
where there's no dangerous deadly weapon used in the commission of a crime.
Judges had to disregard how the defendant actually committed his crime
instead they were required to imagine the idealized "Ordinary Case" of the
defendant's crime and then guess what happened, whether a "serious
potential risk of physical injury to another" would attend its commission
Id at ____ (slip op. at 4) *Johnson* held this judicial inquiry produced
"more unpredictability and arbitrariness" when it comes to specifying
unlawful conduct than the constitution allows Id; at ____ (slip op. at 5)

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Next is Session II. Dimaya, the court must consider the residual clause of 18, U.S.C. § 16 which defines a crime of violence as here petitioner Mitchell's said dangerous deadly weapon cannot be enhanced as a crime of violence and given an enhancement of to years for that said crime.

For the purpose of many federal statutes like § 924(c)(3) § 16 contain an element clause and a residual clause unlike § 924(c)(3)'s element clause isn't limited to felonies; but the courts in #C-17-32885-1 and #C-18-332717 Mitchell v. State didn't use any material difference in the language or... Scope of the statutes residual clause as with the ACCA, our precedent under § 16's residual clause required the courts to use the categorical approach to determine whether Mr. Mitchell's offense qualified as a crime to use the dangerous deadly weapon enhancement prosecution and again as with the ACCA the U.S. Supreme Court held that § 16's residual clause was unconstitutionally vague in *U.S. v. Davis* (18-431) because it required court "to picture the kind of conduct that the crime involves in the ordinary case and to judge whether that abstraction presents some not-well-specified-yet-sufficiently-large degree of risk." *Dimaya* 564 U.S., at (slip op. at 11) Internal quotation marks omitted.

In *Johnson* and *Dimaya* the statutes before the courts as with the petitioner here, these statutes force decisions that the imposition of criminal punishment can't be made to depend on a judge's estimation of the degree of risk posed by a crime's imagined "ordinary case" but does § 924(c)(3)(B) requires that sort of inquest.

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Section 16 provides that the term "crime of violence" means "(a) an offense that has as an element the use, attempted use, or threatened use of physical force against a person, property of another, or (b) any other offense that is a felony and that by its nature involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense."

Here petitioner Mitchell did not plan any threatened force or threatened use of force nor any physical force to another, petitioner here was hallucinative and as he seen in countless movies a "note" stating "Give me the loot!" which would render him the cash needed for more drugs which almost caused him his life, when said victim told Mitchell to leave the store he left the property in desperate pursuit of more narcotics not knowing he needed a psychological evaluation. Petitioner was not carrying any dangerous/deadly weapon petitioner had no plans on committing any crime the day of his arrest, Question to the courts: how do you discharge a baseball bat?

Discharge: 1. To unload. 2. To release or dismiss.

Final question: What is discharged from a baseball bat? Splinters or a home run!

NOTE! Comparison: how can you compare excessive force by LVMPD with the use of 4 shots from a nonlethal shotgun which rendered petitioner helpless, better yet how do you compare excessive force from a 9mm handgun which was fired into petitioner body placing petitioner imminent danger of losing life and limb. Plaintiff was never close to LVMPD to cause any imminent danger to police department as if there were any trained or seasoned

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agents acting under the color of law, they would have realized plaintiff had a mental breakdown after being shot 4 times with a handgun, gun and once by the firearm of the arresting officer.

The government and lower courts have long thought for years almost everyone understood § 924(c)(3)(B) to require exactly the same categorical clause of the ACCA and § 16 today the government acknowledge that this understanding is correct then § 924(c)(3)(B) must be unconstitutional too but the government thinks it has now found a way around the problem in the aftermath of their decision holding the residual clause of the ACCA and § 16(b) unconstitutionally vague, the government must "abandon" its longstanding position "that § 924(c)(3)(B) requires a categorical analysis and began urging "lower courts" to "adopt a new case specific method" that would look to the defendant's actual conduct" in the predicate offense 903 F.3d. 485

Admittedly abandoning the categorical approach in favor of the case-specific approach would also have the effect of excluding from the statute's coverage defendants who commit categorically violent felonies in nonviolent ways and in that respect would be more "lenient" for some defendants regardless the constitutional principle avoidance to construe the statute to punish conduct that it doesn't unambiguously proscribe.

The US Supreme Court in *U.S. v. Davis* recognized that there would be no vagueness problem with asking a jury to decide whether a defendant's "real world conduct" created a substantial risk of physical violence

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Dimaya 564 U.S. at — (slip op. at 10-11) See Johnson 576 U.S. at — (slip op. at 6, 12)

This language requires the courts to look to the elements and the nature of the offense of conviction before enhancement rather than to the particular facts relating to petitioner's crime 543 U.S. at 7

The case-specific reading would cause § 924(c)(3)(B) penalties to apply to conduct they have not previously been understood to reach: categorically nonviolent felonies committed in violent ways. See Simms 914 F.3d at 256-257. (Wyon J. concurring)

Respect for due process and the separation of powers suggest a court may not in order to save Congress the trouble of having to write a new law construe a criminal statute to penalize conduct it does not clearly proscribe that statute could suddenly be deemed unconstitutional. post at 3

Thus giving this old law a new meaning by appealing to intuition it suggest that the categorical reading of § 924(c)(3)(B) is unnatural because if you were to ask John Q. whether a particular crime posed a substantial risk of violence "Surely he would respond", "well tell me how it went down - what happened?" Plaintiffs here ask the courts how was there official approach identified constitutional? That would be before "Johnson and Dimaya", identified constitutional problems with the categorical approach. post at 34.

II.

Consider the word "offense" its true that "in ordinary speech this word can carry at least two possible meanings: it can refer to "a generic crime, say the crime of fraud or theft in general" or it can refer to "The specific acts in which an offender engaged on a specific occasion, *Nijhawan v. Holder* 557 U.S. 29, 33-34 (2009) but the word "offense" appears just once in § 924(c)(3), in the statute prefatory language: and everyone agrees that in connection with the elements clause the term "offense" carries the first "generic" meaning of *id.* at 36 (similar language of the ACPA's elements clause "refers directly to (generic crimes) So reading this statute most naturally the "lower courts" would expect "offense" to retain the same meaning in connection with the residual clause after all "[i]n all but the most unusual situations a single use of a statutory phrase must have a fixed meaning.

Cochise Consultancy Inc. v. United States ex Rel Hunt, 587 U.S. (2019) Slip op. at 5)

Possession of a deadly/dangerous weapon by a carrier does not by its nature involve substantial risk that physical violence will be used by the carrier. See: *United States v. Diaz* 718 F.2d 96, 98 (1985)

III.

Closing Argument

After all how many felonies "Don't" involve a substantial risk of physical force when there committed using a dangerous/deadly weapon, let alone when the defendant brandishes or discharge a dangerous/deadly weapon?

Recognizing the difficulty, the government assures us that a jury wouldn't be allowed to find a felony to be a crime of violence solely because the defendant used a "dangerous/deadly" weapon although it could consider the deadly/dangerous weapon as a factor but the government identifies no textual basis for this rule and exactly how it would work in practice is anyone's guess!

For example the government says that selling "counterfeit handbags" (while carrying a dangerous/deadly weapon) wouldn't be a crime of violence under its approach. *Id.*, at 9. But why not? Because the counterfeit handbag trade is so inherently peaceful that there's no substantial risk of a violent confrontation with dissatisfied customers, territorial competitors or dogs, police officers? And how would a juror determine that?

Just as petitioner Mitchell was never found to be carrying a firearm and was not in violation of state or federal constitutional laws, Mitchell's question to the courts, how does the courts justify a 240 month maximum penalty and a 84 month minimum penalty for an enhanced deadly/dangerous weapon charge found in Count #2 that exceeds the guidelines of a weapon enhancement? Plaintiff is not aware he had to register a baseball bat but on return plaintiff received a unconstitutional charge for having a baseball bat

III.

See: Count #2 Case # C-17-325865-1 Count #2 in exhibit #3 judgment of conviction guilty plea agreement page #2
How would a competent juror determine that?

Its case-specific reading would cause § 924(c)(3)(B)'s penalties to apply to conduct they have not previously been understood to reach: categorically nonviolent which carrying a deadly/dangerous weapon technically is categorically nonviolent than any felonies committed in violent ways. See: *Simms* 914 F.3d at 256-257 (Wynn) J. Concurring.

With respect for due process and the separation of powers suggest a court may not in order to save congress the trouble of having to write a new law construe a criminal statute to penalize conduct it does not clearly proscribe.

Yes its exactly the point isn't it at least a little revealing that when the government had no motive to construct an alternative reading, even it thought the best reading of § 924(c)(3)(B) demands a categorical analysis?

This calls into question Mr. Mitchell's weapon enhancement conviction on the categorical reading and defendants whom enhancement § 924(c) convictions which are overturned by virtue of today's ruling will not even necessarily receive lighter sentences as the court has noted when defendants § 924(c) conviction is invalidated courts of appeals "routinely" vacate the defendants entire sentence on all counts for one reason so that the district courts may increase the sentence for any remaining counts

pg. 32

III.

if such an increase is warranted. Dean v. United States 581 U.S.
- (2017) (slip op at 5)

As here plaintiff is only attacking the unconstitutional weapon enhancement "based on the facts underlying the offense involved a substantial risk" that physical force against the person or property of another would be a result of a dangerous/deadly weapon carrier would result in the course of committing the controlling offense.

We must supply risk based on criminal statutes which supplies plenty of other models congress could follow alternatively still congress might choose to retain the categorical approach but avoid vagueness in other ways such as by defining crimes of violence to include certain enumerated offenses or offenses that carry certain minimum penalties as here plaintiff is penalized for a deadly/dangerous weapon that was never used in the commission of his offense, plaintiff received a weapon enhancement in Count #2 for a weapon that was never used in said crime.

Plaintiff understands the courts cant right every social wrong but must agree with the court of appeals conclusion that any such additional weapon enhancement sentence is unconstitutionally vague the court must affirm in part Count #1 of #C-17-3288-5-1 and vacate in part Count #2 of #C-16-33271-1 and remand for correctional and further proceeding consistent with the opinion.

Supreme Court of the United States, United States v. Maurice Lamont Davis
and Andre Leven Glover, Writ of Certiorari #18-431

Respectfully Submitted;

pg. 33

Mr. Mitchell #12091011

Closing

② Plaintiff never signed guilty plea agreement and statement on a plea canvas cannot finalize a plea agreement, plaintiff states violations of NRS 175. See Stamp file plea.

③ Sentencing Guidelines violations

See J.O.C. in case # C-18-332717-1 also see case # C-17-325865-1, both accompany sentencing guidelines for case # C-17-325865-1 is found in exhibit 3A case # C-18-332717-1 found in exhibit 2A See erroneous plea agreement exhibit #1

④ Deadly/dangerous weapon enhancement is unconstitutional, the weapon enhancement is the exact or greater than the actual crime.

⑤ See attachment 17A, said victim is not afraid nor intimidated, victim threw note and bag on floor stating "are you for real?"

The courts must reverse and vacate in case # C-18-332717-1 and case # C-17-325865-1

Respectfully Submitted:
✓ Richard L. Mitchell
1209011

* EXHIBITS *

#1 TRU #3

EXHIBIT

#1 Original Plea
Agreement
- EXRONEDUS -
SENTENCING STRUCTORS
By Attorney

Behind a T. Harris
NEVER Signed By
Plaintiff

1 **GPA**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 NOREEN DEMONTE
6 Chief Deputy District Attorney
7 Nevada Bar #8213
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,
15 Plaintiff,

16 -vs-

17 RICHARD LEE MITCHELL,
18 #7763112
19 Defendant.

CASE NO: C-17-328865-1

DEPT NO: XXVIII

20 GUILTY PLEA AGREEMENT

21 I hereby agree to plead guilty to: COUNT 1 - ATTEMPT ROBBERY (Category B
22 Felony - NRS 200.380, 193.330 - NOC 50144) and COUNT 2 - RESISTING PUBLIC
23 OFFICER WITH USE OF A DANGEROUS WEAPON (Category D Felony - NRS
24 199.280 - NOC 55106), as more fully alleged in the charging document attached hereto as
25 Exhibit "I".

26 I hereby also agree to plead guilty to: ROBBERY (Category B Felony - NRS 200.380
27 - NOC 50137) in Case No. C332717.

28 My decision to plead guilty is based upon the plea agreement in this case which is as
follows:

29 The parties stipulate to habitual criminal treatment. The State retains the right to
30 argue within the "small" criminal enhancement in the instant case. Additionally, the State
31 has no opposition to concurrent time between counts.

32 Small bitch

5 - 20

5 1/2 - 12

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FILES\CONTENT\OUTLOOK\F2FVOWIN\17F21808-GPA-001.DOCX

EXHIBIT #1

1 ///

2 I agree to the forfeiture of any and all weapons or any interest in any weapons seized
3 and/or impounded in connection with the instant case and/or any other case negotiated in
4 whole or in part in conjunction with this plea agreement.

5 I understand and agree that, if I fail to interview with the Department of Parole and
6 Probation (P&P), fail to appear at any subsequent ~~hearings~~ in this case, or an independent
7 magistrate, by affidavit review, confirms probable cause against me for new criminal charges
8 including reckless driving or DUI, ~~but excluding~~ minor traffic violations, that the State will
9 have the unqualified right to argue for any legal sentence and term of confinement allowable
10 for the crime(s) to which I am pleading guilty, including the use of any prior convictions I
11 may have to increase my sentence as an habitual criminal to five (5) to twenty (20) years,
12 Life without the possibility of parole, Life with the possibility of parole after ten (10) years,
13 or a definite twenty-five (25) year term with the possibility of parole after ten (10) years.

14 Otherwise I am entitled to receive the benefits of these negotiations as stated in this
15 plea agreement.

16 CONSEQUENCES OF THE PLEA

17 I understand that by pleading guilty I admit the facts which support all the elements of
18 the offense(s) to which I now plead as set forth in Exhibit "1".

19 **As to Count 1**, I understand that as a consequence of my plea of guilty The Court
20 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
21 term of not less than ONE (1) year and a maximum term of not more than ~~TEN (10)~~ years.
22 The minimum term of imprisonment may not exceed forty percent (40%) of the maximum
23 term of imprisonment. I understand that I may also be fined up to \$10,000.00.

24 **As to Count 2**, I understand that as a consequence of my plea of guilty The Court
25 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
26 term of not less than ONE (1) year and a maximum term of not more than FOUR (4) years.
27 The minimum term of imprisonment may not exceed forty percent (40%) of the maximum
28 term of imprisonment. I understand that I may also be fined up to \$5,000.00.

1 ///

2 Further, I understand that if I am sentenced under the under the "small" habitual
3 criminal enhancement, the Court must sentence me to a term not less than five (5) years and
4 a maximum of twenty (20) years in the Nevada Department of Corrections (NDC). I
5 understand that if I am sentenced under the "large" habitual criminal enhancement the Court
6 must sentence me to Life without the possibility of parole; Life with the possibility of parole,
7 parole eligibility begins after a minimum term of ten (10) years has been served; or a definite
8 term of twenty-five (25) years, parole eligibility begins after a minimum of ten (10) years has
9 been served. I understand that the law requires me to pay an Administrative Assessment
10 Fee.

11 I understand that, if appropriate, I will be ordered to make restitution to the victim of
12 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
13 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
14 reimburse the State of Nevada for any expenses related to my extradition, if any.

15 I understand that I am eligible for probation for the offense to which I am pleading
16 guilty. I understand that, except as otherwise provided by statute, the question of whether I
17 receive probation is in the discretion of the sentencing judge.

18 I further understand that if I am pleading guilty to charges of Burglary, Invasion of the
19 Home, Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled
20 Substance, or Gaming Crimes, for which I have prior felony conviction(s), I will not be
21 eligible for probation and may receive a higher sentencing range.

22 I understand that if more than one (1) sentence of imprisonment is imposed and I am
23 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
24 the sentences served concurrently or consecutively.

25 I also understand that information regarding charges not filed, dismissed charges, or
26 charges to be dismissed pursuant to this agreement may be considered by the judge at
27 sentencing.

28 I have not been promised or guaranteed any particular sentence by anyone. I know

1 that my sentence is to be determined by the Court within the limits prescribed by statute.

2 ///

3 I understand that if my attorney or the State of Nevada or both recommend any
4 specific punishment to the Court, the Court is not obligated to accept the recommendation.

5 I understand that if the State of Nevada has agreed to recommend or stipulate a
6 particular sentence or has agreed not to present argument regarding the sentence, or agreed
7 not to oppose a particular sentence, or has agreed to disposition as a gross misdemeanor
8 when the offense could have been treated as a felony, such agreement is contingent upon my
9 appearance in court on the initial sentencing date (and any subsequent dates if the sentencing
10 is continued). I understand that if I fail to appear for the scheduled sentencing date or I
11 commit a new criminal offense prior to sentencing the State of Nevada would regain the full
12 right to argue for any lawful sentence.

13 I understand if the offense(s) to which I am pleading guilty to was committed while I
14 was incarcerated on another charge or while I was on probation or parole that I am not
15 eligible for credit for time served toward the instant offense(s).

16 I understand that if I am not a United States citizen, any criminal conviction will
17 likely result in serious negative immigration consequences including but not limited to:

- 18 1. The removal from the United States through deportation;
- 19 2. An inability to reenter the United States;
- 20 3. The inability to gain United States citizenship or legal residency;
- 21 4. An inability to renew and/or retain any legal residency status; and/or
- 22 5. An indeterminate term of confinement, with the United States Federal
23 Government based on my conviction and immigration status.

24 Regardless of what I have been told by any attorney, no one can promise me that this
25 conviction will not result in negative immigration consequences and/or impact my ability to
26 become a United States citizen and/or a legal resident.

27 I understand that P&P will prepare a report for the sentencing judge prior to
28 sentencing. This report will include matters relevant to the issue of sentencing, including my

1 criminal history. This report may contain hearsay information regarding my background and
2 criminal history. My attorney and I will each have the opportunity to comment on the
3 information contained in the report at the time of sentencing. Unless the District Attorney
4 has specifically agreed otherwise, then the District Attorney may also comment on this
5 report.

6 WAIVER OF RIGHTS

7 By entering my plea of guilty, I understand that I am waiving and forever giving up
8 the following rights and privileges:

- 9 1. The constitutional privilege against self-incrimination, including the
10 right to refuse to testify at trial, in which event the prosecution would
not be allowed to comment to the jury about my refusal to testify.
- 11 2. The constitutional right to a speedy and public trial by an impartial jury,
12 free of excessive pretrial publicity prejudicial to the defense, at which
13 trial I would be entitled to the assistance of an attorney, either appointed
or retained. At trial the State would bear the burden of proving beyond
a reasonable doubt each element of the offense(s) charged.
- 14 3. The constitutional right to confront and cross-examine any witnesses
15 who would testify against me.
- 16 4. The constitutional right to subpoena witnesses to testify on my behalf.
- 17 5. The constitutional right to testify in my own defense.
- 18 6. The right to appeal the conviction with the assistance of an attorney,
19 either appointed or retained, unless specifically reserved in writing and
20 agreed upon as provided in NRS 174.035(3). I understand this means I
21 am unconditionally waiving my right to a direct appeal of this
22 conviction, including any challenge based upon reasonable
constitutional, jurisdictional or other grounds that challenge the legality
of the proceedings as stated in NRS 177.015(4). However, I remain free
to challenge my conviction through other post-conviction remedies
including a habeas corpus petition pursuant to NRS Chapter 34.

23 VOLUNTARINESS OF PLEA

24 I have discussed the elements of all of the original charge(s) against me with my
25 attorney and I understand the nature of the charge(s) against me.

26 I understand that the State would have to prove each element of the charge(s) against
27 me at trial.

28 I have discussed with my attorney any possible defenses, defense strategies and

1 circumstances which might be in my favor.

2 All of the foregoing elements, consequences, rights, and waiver of rights have been
3 thoroughly explained to me by my attorney.

4 I believe that pleading guilty and accepting this plea bargain is in my best interest, and
5 that a trial would be contrary to my best interest.

6 I am signing this agreement voluntarily, after consultation with my attorney, and I am
7 not acting under duress or coercion or by virtue of any promises of leniency, except for those
8 set forth in this agreement.

9 I am not now under the influence of any intoxicating liquor, a controlled substance or
10 other drug which would in any manner impair my ability to comprehend or understand this
11 agreement or the proceedings surrounding my entry of this plea.

12 My attorney has answered all my questions regarding this guilty plea agreement and
13 its consequences to my satisfaction and I am satisfied with the services provided by my
14 attorney.

15 DATED this ____ day of October, 2018.

16
17 RICHARD LEE MITCHELL
Defendant

18 AGREED TO BY:

19
20 NOREEN DEMONTE
21 Chief Deputy District Attorney
22 Nevada Bar #8213
23
24
25
26
27
28

1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of the
3 court hereby certify that:

- 4 1. I have fully explained to the Defendant the allegations contained in the
5 charge(s) to which guilty pleas are being entered.
- 6 2. I have advised the Defendant of the penalties for each charge and the
7 restitution that the Defendant may be ordered to pay.
- 8 3. I have inquired of Defendant facts concerning Defendant's immigration status
9 and explained to Defendant that if Defendant is not a United States citizen any
10 criminal conviction will most likely result in serious negative immigration
11 consequences including but not limited to:
- 12 a. The removal from the United States through deportation;
- 13 b. An inability to reenter the United States;
- 14 c. The inability to gain United States citizenship or legal residency;
- 15 d. An inability to renew and/or retain any legal residency status; and/or
- 16 e. An indeterminate term of confinement, by with United States Federal
17 Government based on the conviction and immigration status.
- 18 Moreover, I have explained that regardless of what Defendant may have been
19 told by any attorney, no one can promise Defendant that this conviction will
20 not result in negative immigration consequences and/or impact Defendant's
21 ability to become a United States citizen and/or legal resident.
- 22 4. All pleas of guilty offered by the Defendant pursuant to this agreement are
23 consistent with the facts known to me and are made with my advice to the
24 Defendant.
- 25 5. To the best of my knowledge and belief, the Defendant:
- 26 a. Is competent and understands the charges and the consequences of
27 pleading guilty as provided in this agreement,
- 28 b. Executed this agreement and will enter all guilty pleas pursuant hereto
voluntarily, and
- c. Was not under the influence of intoxicating liquor, a controlled
substance or other drug at the time I consulted with the Defendant as
certified in paragraphs 1 and 2 above.

Dated: This ____ day of October, 2018.

ATTORNEY FOR DEFENDANT

jm/L2

EXHIBIT

#1 - A

INVALID INFORMATION

C-18-332717-1

Steven D. Grierson

1 INFM
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHRISTOPHER P. PANDELIS
6 Chief Deputy District Attorney
7 Nevada Bar #009143
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 I.A. 6/20/18
13 10:00 A.M.
14 A. GREGORY, ESQ.

15 THE STATE OF NEVADA,
16 Plaintiff,

CASE NO: C-18-332717-1

17 -vs-

DEPT NO: III

18 RICHARD LEE MITCHELL,
19 #7763112
20 Defendant.

INFORMATION

21 STATE OF NEVADA }
22 COUNTY OF CLARK } ss.

23 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State
24 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

25 That RICHARD LEE MITCHELL, the Defendant(s) above named, having committed
26 the crimes of **BURGLARY (Category B Felony - NRS 205.060 - NOC 50424)** and
27 **ROBBERY (Category B Felony - NRS 200.380 - NOC 50137)**, on or about the 8th day of
28 December, 2017, within the County of Clark, State of Nevada, contrary to the form, force and
effect of statutes in such cases made and provided, and against the peace and dignity of the
State of Nevada,

COUNT 1 - BURGLARY

did willfully, unlawfully, and feloniously enter, with intent to commit a felony, to wit:
robbery, that certain building occupied by CVS PHARMACY, located at 1408 West Craig
Road, North Las Vegas, Clark County, Nevada.

W:\2017\2017FN2665\17FN2665-INFM-(MITCHELL_RICHARD)-001.DOCX

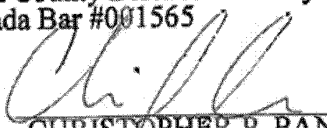
EXHIBIT # 3 - A

1 COUNT 2 - ROBBERY

2 did willfully, unlawfully, and feloniously take personal property, to wit: U.S.
3 Currency, from the person of MELANIE AOUE, or in her presence, by means of force or
4 violence, or fear of injury to, and without the consent and against the will of MELANIE
5 AOUE.

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

9 BY


10 CHRISTOPHER P. PANDELIS
11 Chief Deputy District Attorney
12 Nevada Bar #009143

13 These witnesses are in addition to those witnesses endorsed on the Information or
14 Indictment and any other witness for which a separate Notice of Witnesses and/or Expert
15 Witnesses has been filed.

16 NAME

ADDRESS

17 AOUE, MELANIE

613 Bright Lights Ave., NLV, NV

18 CUSTODIAN OF RECORDS

CCDC COMMUNICATIONS

19 CUSTODIAN OF RECORDS

CCDC RECORDS

20 CUSTODIAN OF RECORDS

Las Vegas City Detention Center Communications

21 CUSTODIAN OF RECORDS

Las Vegas City Detention Center Records

22 CUSTODIAN OF RECORDS

NLVPD COMMUNICATIONS

23 CUSTODIAN OF RECORDS

NLVPD RECORDS

24 SMIRGA, P.

NLVPD P# 1689

25 VITAL, M.

NLVPD P# 1923

26 VONG, LAN

1408 W. Craig Rd., NLV, NV

27 17FN2665X/erg/L-5
28 NLVPD EV#1721388
(TK)

EXHibit

2

JUDGEMENT OF CONVICTION
(Plea of Guilty)

C-18-332717-1

Controlling Case

Steven D. Grierson

1 JOCP

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4 THE STATE OF NEVADA,

5 *Plaintiff,*

6 -VS-

7 RICHARD LEE MITCHELL
8 #7763112

9 *Defendant.*

CASE NO: C-18-332717-1

DEPT NO: III

10 JUDGMENT OF CONVICTION
11 (PLEA OF GUILTY)

12 The Defendant previously appeared before the Court with counsel and entered a plea of
13 guilty to the crime of ROBBERY (Category B Felony) in violation of NRS 200.380; thereafter, on
14 the 10th day of January, 2019, the Defendant was present in court for sentencing with counsel
15 AMANDA S. GREGORY, ESQ., thereupon using the presentence report from C328865, and good
16 cause appearing,

17 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense and, in addition to
18 \$25.00 Administrative Assessment Fee, \$250.00 Fine, \$250.00 Indigent Defense Civil Assessment
19 Fee, \$108.00 Restitution to CVS and \$150.00 DNA Analysis Fee including testing to determine
20 genetic markers (waived if previously collected) plus the \$3.00 DNA Collection Fee, the Defendant
21 is sentenced to a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS and a MINIMUM of
22 FORTY-EIGHT (48) MONTHS in the Nevada Department of Corrections (NDC), CONCURRENT
23 with C328865; with THREE HUNDRED SIXTY-TWO (362) DAYS credit for time served.

24 DATED this 16th day of January, 2019.

25
26 *[Signature]*
DOUGLAS W. HERNDON
DISTRICT COURT JUDGE

27
28 controlling case
exhibit # 2

EXHIBIT

2-A

SENTENCING Guild lines

CASE # C-18-332717-1

NRS 200.380 Definition; penalty.

1. Robbery is the unlawful taking of personal property from the person of another, or in the person's presence, against his or her will, by means of force or violence or fear of injury, immediate or future, to his or her person, or the person of a member of his or her family, or of anyone in his or her company at the time of the robbery. A taking is by means of force or fear if force or fear is used to:

- (a) Obtain or retain possession of the property;
- (b) Prevent or overcome resistance to the taking; or
- (c) Facilitate escape.

↪ The degree of force used is immaterial if it is used to compel acquiescence to the taking of or escaping with the property. A taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

2. A person who commits robbery is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years.

[1911 C&P § 162; RL § 6427; NCL § 10109] — (NRS A 1961, 53; 1967, 470; 1993, 253; 1995, 1187; 2019, 408)

NRS 206.310 Injury to other property.

1. Every person who shall willfully or maliciously destroy or injure any real or personal property of another, for the destruction or injury of which no special punishment is otherwise specially prescribed, shall be guilty of a public offense proportionate to the value of the property affected or the loss resulting from such offense.

2. It is not a defense that the person engaging in the conduct prohibited by subsection 1 holds a leasehold interest in the real property that was destroyed or injured.

[1911 C&P § 497; RL § 6762; NCL § 10444] — (NRS A 1967, 516; 2013, 450)

NRS 199.280 Resisting public officer. A person who, in any case or under any circumstances not otherwise specially provided for, willfully resists, delays or obstructs a public officer in discharging or attempting to discharge any legal duty of his or her office shall be punished:

1. Where a firearm is used in the course of such resistance, obstruction or delay, or the person intentionally removes, takes or attempts to remove or take a firearm from the person of, or the immediate presence of, the public officer in the course of such resistance, obstruction or delay, for a category C felony as provided in NRS 193.130.

2. Where a dangerous weapon, other than a firearm, is used in the course of such resistance, obstruction or delay, or the person intentionally removes, takes or attempts to remove or take a weapon, other than a firearm, from the person of, or the immediate presence of, the public officer in the course of such resistance, obstruction or delay, for a category D felony as provided in NRS 193.130. (See below)

3. Where no dangerous weapon is used in the course of such resistance, obstruction or delay, for a misdemeanor.

[1911 C&P § 97; RL § 6362; NCL § 10046] — (NRS A 1967, 466; 1979, 1422; 1995, 1176; 2009, 163)

NRS 193.130 Categories and punishment of felonies. [Effective through June 30, 2020.]

1. Except when a person is convicted of a category A felony, and except as otherwise provided by specific statute, a person convicted of a felony shall be sentenced to a minimum term and a maximum term of imprisonment which must be within the limits prescribed by the applicable statute, unless the statute in force at the time of commission of the felony prescribed a different penalty. The minimum term of imprisonment that may be imposed must not exceed 40 percent of the maximum term imposed.

2. Except as otherwise provided by specific statute, for each felony committed on or after July 1, 1995:

(a) A category A felony is a felony for which a sentence of death or imprisonment in the state prison for life with or without the possibility of parole may be imposed, as provided by specific statute.

(b) A category B felony is a felony for which the minimum term of imprisonment in the state prison that may be imposed is not less than 1 year and the maximum term of imprisonment that may be imposed is not more than 20 years, as provided by specific statute.

(c) A category C felony is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years. In addition to any other penalty, the court may impose a fine of not more than \$10,000, unless a greater fine is authorized or required by statute.

(d) A category D felony is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 4 years. In addition to any other penalty, the court may impose a fine of not more than \$5,000, unless a greater fine is authorized or required by statute.

(e) E felony is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 4 years. Except as otherwise provided in paragraph (b) of subsection 1 of NRS 176A.100, upon sentencing a person who is found guilty of a category E felony, the court shall suspend the execution of the sentence and grant probation to the person upon such conditions as the court deems appropriate. Such conditions of probation may include, but are not limited to, requiring the person to serve a term of confinement of not more than 1 year in the county jail. In addition to any other penalty, the court may impose a fine of not more than \$5,000, unless a greater penalty is authorized or required by statute.

[1911 C&P § 18; RL § 6283; NCL § 9967] — (NRS A 1967, 458; 1995, 1167; 1997, 1177; 1999, 1186)

EXHIBIT #2-1

EXHIBIT

3

JUDGMENT OF CONVICTION

(Plea of Guilty)

CASE # C-17-328865-1

Guilty plea with "EXTRANEOUS"
SENTENCING

SEE Page # 2 unconstitutional
SENTENCING COUNT # 1 AND # 2

Steven D. Grierson

JOCP

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RICHARD LEE MITCHELL
#7763112

Defendant.

CASE NO. C-17-328865-1

DEPT. NO. XXVIII

JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of to the crimes of COUNT 1 – ATTEMPT ROBBERY (Category B Felony) in violation of NRS 200.380, 193.330; and COUNT 2 – RESISTING PUBLIC OFFICER WITH USE OF A DANGEROUS WEAPON (Category D Felony) in violation of NRS 199.280; thereafter, on the 5th day of December, 2018, the Defendant was present in court for sentencing with counsel BELINDA HARRIS, Deputy Public Defender, and good cause appearing,

<input type="checkbox"/> Nolle Prosequi (before trial)	<input type="checkbox"/> Bench (Non-Jury) Trial
<input type="checkbox"/> Dismissed (after diversion)	<input type="checkbox"/> Dismissed (during trial)
<input type="checkbox"/> Dismissed (before trial)	<input type="checkbox"/> Acquittal
<input checked="" type="checkbox"/> Guilty Plea with Sent. (before trial)	<input type="checkbox"/> Guilty Plea with Sent. (during trial)
<input type="checkbox"/> Transferred (before/during trial)	<input type="checkbox"/> Conviction
<input type="checkbox"/> Other Manner of Disposition	

Case Number: C-17-328865-1

CONCURRENT
CASE


12/10/18 (18)

EXHIBIT #3

1 force or violence, or fear of injury to, and without the consent and against the will of
2 MELANIE AOUBE.

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

6 BY



7 NOREEN DEMONTE
8 Chief Deputy District Attorney
9 Nevada Bar #008213

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27 17FN2665X/jm/L2
28 NLVPD EV#1721388

1 force or violence, or fear of injury to, and without the consent and against the will of
2 MELANIE AOUE.

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

6 BY



7 NOREEN DEMONTE
8 Chief Deputy District Attorney
9 Nevada Bar #008213
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17FN2665X/jm/L2
NLVPD EV#1721388

1 force or violence, or fear of injury to, and without the consent and against the will of
2 MELANIE AOUDE.

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

5 BY


6 NOREEN DEMONTE
7 Chief Deputy District Attorney
8 Nevada Bar #008213
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17FN2665X/jm/L2
NLVPD EV#1721388


1 by means of force or violence, or fear of injury to, and without the consent and against the will
2 of DONNA FAASSE and IRMA HINOJOSA, by placing a bag and a note on the counter and
3 demanding said money from DONNA FAASSE and IRMA HINOJOSA.

4 COUNT 2 - RESISTING PUBLIC OFFICER WITH USE OF A DANGEROUS WEAPON

5 did willfully, unlawfully, and feloniously resist, delay, or obstruct Officer M.
6 MIRAMONTES, Las Vegas Metropolitan Police Department, a public officer in discharging
7 or attempting to discharge any legal duty, to wit: by refusing to comply with lawful commands
8 of said Officer M. MIRAMONTES, Defendant using a dangerous weapon, to wit: a baseball
9 bat or Defendant removing, taking or attempting to take or remove the dangerous weapon from
10 the person of, or the immediate presence of, the public officer in the course of such resistance,
11 obstruction, or delay.

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

15 BY


16 NOREEN DEMONTE
17 Chief Deputy District Attorney
18 Nevada Bar #8212
19
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27 17F21808X/jm/L2
28 LVMPD EV#1712091427; 171209001315
(TK8)

EXHibit

3-A

SENTENCING Guild lines

Case # C-17-328865-1

Richard Lee Mitchell
Case No. C-17-328865-1
Case No. C-18-332717-1

State No. 1209011 Unit 11-B-1-K

NRS 200.380 Definition; penalty.

1. Robbery is the unlawful taking of personal property from the person of another, or in the person's presence, against his or her will, by means of force or violence or fear of injury, immediate or future, to his or her person, or the person of a member of his or her family, or of anyone in his or her company at the time of the robbery. A taking is by means of force or fear if force or fear is used to:

- (a) Obtain or retain possession of the property;
- (b) Prevent or overcome resistance to the taking; or
- (c) Facilitate escape.

↪ The degree of force used is immaterial if it is used to compel acquiescence to the taking of or escaping with the property. A taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

2. A person who commits robbery is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years.

[1911 C&P § 162; RL § 6427; NCL § 10109] — (NRS A 1961, 53; 1967, 470; 1993, 253; 1995, 1187; 2019, 408)

NRS 206.310 Injury to other property.

1. Every person who shall willfully or maliciously destroy or injure any real or personal property of another, for the destruction or injury of which no special punishment is otherwise specially prescribed, shall be guilty of a public offense proportionate to the value of the property affected or the loss resulting from such offense.

2. It is not a defense that the person engaging in the conduct prohibited by subsection 1 holds a leasehold interest in the real property that was destroyed or injured.

[1911 C&P § 497; RL § 6762; NCL § 10444] — (NRS A 1967, 516; 2013, 450)

NRS 199.280 Resisting public officer. A person who, in any case or under any circumstances not otherwise specially provided for, willfully resists, delays or obstructs a public officer in discharging or attempting to discharge any legal duty of his or her office shall be punished:

1. Where a firearm is used in the course of such resistance, obstruction or delay, or the person intentionally removes, takes or attempts to remove or take a firearm from the person of, or the immediate presence of, the public officer in the course of such resistance, obstruction or delay, for a category C felony as provided in NRS 193.130.

2. Where a dangerous weapon, other than a firearm, is used in the course of such resistance, obstruction or delay, or the person intentionally removes, takes or attempts to remove or take a weapon, other than a firearm, from the person of, or the immediate presence of, the public officer in the course of such resistance, obstruction or delay, for a category D felony as provided in NRS 193.130. (See below)

3. Where no dangerous weapon is used in the course of such resistance, obstruction or delay, for a misdemeanor.

[1911 C&P § 97; RL § 6362; NCL § 10046] — (NRS A 1967, 466; 1979, 1422; 1995, 1176; 2009, 163)

NRS 193.130 Categories and punishment of felonies. [Effective through June 30, 2020.]

1. Except when a person is convicted of a category A felony, and except as otherwise provided by specific statute, a person convicted of a felony shall be sentenced to a minimum term and a maximum term of imprisonment which must be within the limits prescribed by the applicable statute, unless the statute in force at the time of commission of the felony prescribed a different penalty. The minimum term of imprisonment that may be imposed must not exceed 40 percent of the maximum term imposed.

2. Except as otherwise provided by specific statute, for each felony committed on or after July 1, 1995:

(a) A category A felony is a felony for which a sentence of death or imprisonment in the state prison for life with or without the possibility of parole may be imposed, as provided by specific statute.

(b) A category B felony is a felony for which the minimum term of imprisonment in the state prison that may be imposed is not less than 1 year and the maximum term of imprisonment that may be imposed is not more than 20 years, as provided by specific statute.

(c) A category C felony is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years. In addition to any other penalty, the court may impose a fine of not more than \$10,000, unless a greater fine is authorized or required by statute.

(d) A category D felony is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 4 years. In addition to any other penalty, the court may impose a fine of not more than \$5,000, unless a greater fine is authorized or required by statute.

(e) E felony is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 4 years. Except as otherwise provided in paragraph (b) of subsection 1 of NRS 176A.100, upon sentencing a person who is found guilty of a category E felony, the court shall suspend the execution of the sentence and grant probation to the person upon such conditions as the court deems appropriate. Such conditions of probation may include, but are not limited to, requiring the person to serve a term of confinement of not more than 1 year in the county jail. In addition to any other penalty, the court may impose a fine of not more than \$5,000, unless a greater penalty is authorized or required by statute.

[1911 C&P § 18; RL § 6283; NCL § 9967] — (NRS A 1967, 458; 1995, 1167; 1997, 1177; 1999, 1186)

EXHIBIT #3-A

1 WHEREFORE, Petitioner, prays that the court grant Requested
2 relief to which he may be entitled in this proceeding.

3 EXECUTED at Greathorn Desert C.T.N.
4 on the 2nd day of Feb, 2021.

5
6 Richard Mitchell
7 Signature of Petitioner

8 VERIFICATION

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

13
14 Richard Mitchell
15 Signature of Petitioner

16
17 Pro-se
18 Attorney for Petitioner

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Petition

for writ of Habeas Corpus (post conviction)
(Title of Document)

filed in District Court Case number C-18-332717-1

☒ 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:

14th Amendment Due Process / Equal Protection
(State specific law)

-OR-

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

Richard Mitchell
Signature

2-2-2021
Date

RICHARD MITCHELL
Print Name

PRO/SE
Title

CERTIFICATE OF SERVICE BY MAILING

I, Richard Mitchell, hereby certify, pursuant to NRCP 5(b), that on this 2nd day of Feb, 2021, I mailed a true and correct copy of the foregoing, "Petition for writ of Habeas Corpus (Post Conviction)" by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

STEVEN D. GRIFFINSON
CLERK OF COURT
200 Lewis Ave. 3rd Floor
Las Vegas NEV.
89155 - 1160

OFFICE OF THE ATTORNEY GENERAL
555 E Washington Ave. Suite
3100 Las Vegas Nevada
89101 - 1058

CC:FILE

DATED: this 2nd day of Feb, 2021.

Richard Mitchell #1209011
RICHARD MITCHELL #1209011
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

Richard Mitchell #120 2011
Southern Desert Correctional Center
P.O. Box 208
Indian Springs, Nevada 89070

P COMMERCIAL BASE PRICING
USPS PRIORITY MAIL

VICTOR JOHNSON
LAS VEGAS STATE MAIL SERVICES
555 E WASHINGTON AVE #1208
LAS VEGAS NV 89101

SHIP TO: STEVEN D. GRIERSON
200 LEWIS AVE 3RD FL
LAS VEGAS NV 89101-6300

USPS TRACKING #

9205 5901 6610 8000 0965 84

ELECTRONIC RATE APPROVED #901661080

mark of the U.S. Postal Service

Clerk of E
Steven D.
200 Lewis
Las Vegas,

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02/03/2021

US POSTAGE \$008.00⁰

PRIORITY MAIL
ComBazPrice



ZIP 89101
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B5# 24631

he Court

Hienson

One Third Floor

evada 89155-1160

A

1 Richard Mitchell #1209011
2 / In Propria Personam
3 Post Office Box 208 S.D.C.C.
4 Indian Springs, Nevada 89018

FILED

FEB 24 2021

James A. Smith
CLERK OF COURT

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

7
8 State of Nevada et al.
9 Plaintiff
10 Richard Mitchell
11 Defendant

Case No. **A-21-830001-W**
Dept No. **Dept. 23**
Docket _____

13
14 **NOTICE OF MOTION**

15 YOU WILL PLEASE TAKE NOTICE, that Original Petition for
16 writ of Habeas Corpus (post conviction)
17 will come on for hearing before the above-entitled Court on the ____ day of _____, 20____,
18 at the hour of ____ o'clock ____ M. In Department ____, of said Court.

19
20 CC:FILE

RECEIVED

FEB - 4 2021

CLERK OF THE COURT

21
22 DATED: this 2nd day of FEB, 2021.

23
24 BY: Richard Mitchell #1209011
25 Richard Mitchell #1209011
26 /In Propria Personam
27
28

THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
108 - 110
WILL FOLLOW VIA
U.S. MAIL

THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
111
WILL FOLLOW VIA
U.S. MAIL

1 Richard Mitchell #1209011
 2 Defendant / In Propra Personam
 3 SUC, Post Office Box-208
 4 Indian Springs, Nevada-89070-0208.

FILED
 FEB 24 2021
Sharon A. Hoffman
 CLERK OF COURT

DISTRICT COURT
 CLARK COUNTY, NEVADA

6 Richard Mitchell,)
 7 Plaintiff,)
 8 vs.)
 9 State of Nevada,)
 10 et al,)
 11 Defendant.)

Case No. **A-21-830001-W**
 Dept. 23
 Dept.No.
 Docket No. #

** EX-Parte **
 MOTION TO APPOINT COUNSEL
 Date Of Hearing: T.B.A
 Time Of Hearing: T.B.A

16
 17 COMES NOW the Defendant R. Mitchell in proper person and
 18 hereby moves this Honorable Court for an ORDER granting him Counsel in the herein
 19 proceeding action.

20 This Motion is made and based upon all papers and pleadings on file herein
 21 and attached Points and Authorities.

RECEIVED
 FEB - 4 2021
 CLERK OF THE COURT

22
 23 Dated: This 17th Day Of Jan, 2021.
 24 2nd Feb 2021

25 Respectfully Submitted,
 26 BY: Richard Mitchell #1209011
 27 Richard Mitchell #1209011
 28 Defendant, In Forma Pauperis:

POINTS AND AUTHORITIES

NRS.34.750 Appointment of Counsel for indigents;pleading sipplemental to
petition;response to dismiss:

"If the Court is satisfied that the allegation of indigency is True and the
petition is Not dismissed summarily,the Court may appoint counsel to represent
the-"petitioner/defendant."

NRS.171.188 Procedure for appointment of attorney for indigent defendant:

"Any defendant charged with a public offense who is an indigent may, by oral
statement to the District Judge,justice of the peace,municipal judge or master,
request the appointment of an attorney to represent him."

NRS 178.397 Assignment of counsel:

"Every defendant accused of a gross misdemeanor or felony who is financially
unable to obtain counsel is entitled to have counsel assigned to represent him at
every stage of the proceedings from his initial appearance before a magistrate or
the court through appeal,unless he waives such appointment."

WHEREFORE ,petitioner/defendant,prays this Honorable Court will grant his
motion for the appointment of counsel to allow him the assistance that is needed
to insure that justice is served.

Dated:This 17th Day Of Feb, 2001.
and

Respectfully Submitted,

BY: Richard Mitchell # 1209011

Defendant, In Forma Pauperis:

////

////

////

ADDITIONAL FACTS OF THE CASE:

without appointment of Counsel Plaintiff
 Being un-trained in law two or Civil
 Habeas Proceedings Plaintiff won't be Allowed
 Due Process of Law nor Equal Protection
 of Law as Secured in The U.S. Constitution's
 14th Amendment with Plaintiff Here Now
 Having Knowledge That Prior Counsel,
 (Blenda T. Harris) was ineffective two Deprived
 Plaintiff of a (Truly "Direct appeal") which
 is a violation of the 6th Amendment Effective
 assist of Counsel as Counsel has this knowledge
 That Plaintiff Mitchell was not Happy with
 The 7 to 20 year sentence After # 1
 stating no Habitual Treatment in The Controlling
 Sentence # C-18-332717-1 Counsel had a Duty
 To Advise Mitchell of his Rights to a Direct
 appeal Even During a "Plea Deal" as Found
 in Mitchell v. US 1992 Fed 19th Circuit 1985
 Mitchell was Told 5-20 years But Received
 7-20 years See exhibit # 1 Counsel writes
 out what sentencing structure would be in Exhibit
 Plaintiff Now present Lazada v Reed (1991 488
 US 116 Fed 2d 956 111 Fed 860 As well as
Castellanos v. US 26 Fed 717 (7th Cir. 1994)
 This alone has Established Cause AND pre-judiced
 also Attorney (Blenda T. Harris) NEVER explained Mitchell
 had a Constitutional Right to a Direct appeal
 See Plea Deal page # 5 Line # 6

(3)

1 AFFIDAVIT OF: Motion To Appoint Counsel

2 STATE OF NEVADA)
3 COUNTY OF CLARK) ss:

4 TO WHOM IT MAY CONCERN:

5 I, Richard L. Mitchell the undersigned, do hereby swear that
6 all statements, facts and events within my foregoing Affidavit are
7 true and correct of my own knowledge, information and belief, and
8 as to those, I believe them to be True and Correct. Signed under the
9 penalty of perjury, pursuant to, NRS. 29.010; 53.045; 208.165, and state

10 the following: all stated in writ of Habeas
11 Corpus as also mentioned on page #3
12 of this Motion Requesting appointment of counsel
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24

25 FURTHER YOUR AFFIANT SAYETH NAUGHT.

26 EXECUTED At: Indian Springs, Nevada, this 2nd Day OF Feb

27 20 2021

28 BY: Richard L. Mitchell
X Richard L. Mitchell #120911
Post Office Box-208 (SDCC)
Indian Springs, Nevada 89070-0208
Affiant, In Propria Personam:

CERTIFICATE OF SERVICE BY MAILING

I, S. Mitchell, hereby certify, pursuant to NRCP 5(b), that on this 17th day of Feb, 2021, I mailed a true and correct copy of the foregoing, "EX-POSTA MOTION TO APPOINT COUNSEL"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

Steven D. Grierson
CLERK OF COURT
200 Lewis Ave 3rd floor
Las Vegas, NV
89155-1160

Office of The Attorney General
355 E. Washington Ave
Suite 3900
Las Vegas, NV
89101-1068

CC:FILE

DATED: this 17th day of Jan, 2021.
2nd Feb 2021

Richard Mitchell #1209011

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

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Ex-Parte Motion To Appoint Counsel
(Title of Document)

C-17-328865-1

filed in District Court Case number C-18-33207-1

☒ 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:

Co. Amendment
(State specific law)

-or-

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

Richard Mitchell
Signature

2-2-2021
Date

Richard MITCHELL
Print Name

PRO / SE
Title

THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
118 - 119
WILL FOLLOW VIA
U.S. MAIL

1 PPOW

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

5 Richard Lee Mitchell,

6 Petitioner,

7 vs.

8 Nevada State of; Warden William Hutchings,

9 Respondent,

Case No: A-21-830001-W

Department 23

Related Writ C-18-332717-1

**ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS**

10
11 Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on
12 February 24, 2021. The Court has reviewed the Petition and has determined that a response would assist
13 the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and
14 good cause appearing therefore,

15 **IT IS HEREBY ORDERED** that Respondent shall, within 45 days after the date of this Order,
16 answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS
17 34.360 to 34.830, inclusive.

18 **IT IS HEREBY FURTHER ORDERED** that this matter shall be placed on this Court's
19 Calendar on the _____ day of _____, 20____, at the hour of
20 _____ o'clock for further proceedings.
21
22
23
24

25 _____
26 District Court Judge
27
28

Heather L. Smith
CLERK OF THE COURT

PPOW

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Richard Lee Mitchell,

Petitioner,

vs.

Nevada State of; Warden William Hutchings,

Respondent,

Case No: A-21-830001-W
Department 23
Related Writ C-18-332717-1

**ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS**

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on February 24, 2021. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's

Calendar on the 12th day of May, 2021, at the hour of

11:00 a.m.
o'clock for further proceedings.

Dated this 4th day of March, 2021

Jasmin Lilly-Spells

District Court Judge
**D59 ADA 6651 72D3
Jasmin Lilly-Spells
District Court Judge**

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5		
6	Richard Mitchell, Plaintiff(s)	CASE NO: A-21-830001-W
7	vs.	DEPT. NO. Department 23
8	Nevada State of, Defendant(s)	
9		

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's
12 electronic filing system, but there were no registered users on the case.

13
14 If indicated below, a copy of the above mentioned filings were also served by mail
15 via United States Postal Service, postage prepaid, to the parties listed below at their last
known addresses on 3/5/2021

16	Richard Mitchell	#1209011
17		PO Box 208
18		Indian Springs, NV, 89070
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

DISTRICT COURT
CLARK COUNTY, NEVADA



Richard Mitchell, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

Case No.: A-21-830001-W
Department 23

NOTICE OF HEARING

Please be advised that the Plaintiff's Ex Parte Motion to Appoint Counsel in the above-entitled matter is set for hearing as follows:

Date: May 12, 2021
Time: 11:00 AM
Location: RJC Courtroom 12D
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Michelle McCarthy
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

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

By: /s/ Michelle McCarthy
Deputy Clerk of the Court

THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
124 - 125
WILL FOLLOW VIA
U.S. MAIL



1 **RSPN**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 ALEXANDER CHEN
6 Chief Deputy District Attorney
7 Nevada Bar #10539
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 RICHARD MITCHELL

10 Petitioner,

11 -vs-

12 THE STATE OF NEVADA,

13 Respondent.

CASE NO: A-21-830001-W

DEPT NO: 23

15 STATE'S RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

16 DATE OF HEARING: May 12, 2021

17 TIME OF HEARING: 11:00 AM

18
19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through ALEXANDER CHEN, Chief Deputy District Attorney, and hereby
21 submits the attached Points and Authorities in Response to Petitioner's Petition for Writ of
22 Habeas Corpus.

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

26 //

27 //

28 //

\\CLARKCOUNTYDA.NET\CRM\CASE2\2017\617\39\201761739C-RSPN-(RICHARD LEE MITCHELL)-001.DOCX

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On January 10, 2019, Richard Mitchell (hereinafter "Petitioner") pled guilty pursuant
4 to a Guilty Plea Agreement to one count of Robbery in case C-18-332717-1, which also
5 happens to be the companion case to this Petition. As part of the negotiations, the State agreed
6 to make no recommendation at the time of his sentence, it agreed not to seek criminal habitual
7 treatment in this case only, and this case would run concurrently with C328865.

8 Petitioner's sentencing took place on the same day that he entered his plea, by using the
9 Pre-Sentence Investigation Report from C328865. Petitioner was sentenced to a minimum of
10 48 months and a maximum of 120 months in the Nevada Department of Corrections concurrent
11 with C328865. Petitioner was also ordered to pay \$108 in restitution to CVS pharmacy.

12 Before Petitioner had entered his plea in this case, he had already been sentenced in
13 C328865 to one count of Attempt Robbery and one count of Resisting a Public Officer with
14 Use of a Dangerous Weapon on December 5, 2018. He was sentenced under the small habitual
15 statute and ordered to serve a minimum of 84 months and a maximum of 240 months on each
16 count to run concurrently between the two counts.

17 A Judgment of Conviction in this case was filed on January 17, 2019. There was no
18 appeal from his Judgment of Conviction. Petitioner then filed this Petition on February 24,
19 2021. The State now responds to this Court's order for a response. It should also be noted that
20 the bulk of Petitioner's claims are with regards to case C328865. Thus, the State will only
21 respond to claims that would still be relevant to this case.

22 **ARGUMENT**

23 **I. PETITIONER'S PETITION IS PROCEDURALLY BARRED**

24 a. Petitioner's Petition is time-barred

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

26 Unless there is good cause shown for delay, a petition that
27 challenges the validity of a judgment or sentence must be filed
28 *within 1 year after entry of the judgment of conviction* or, if an
appeal has been taken from the judgment, *within 1 year after the
Supreme Court issues its remittitur*. For the purposes of this

subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:
(emphasis added). “[T]he statutory rules regarding procedural default are mandatory and cannot be ignored when properly raised by the State.” Riker, 121 Nev. at 233, 112 P.3d at 1075.

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

In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada Supreme Court affirmed the rejection of a habeas petition that was filed two days late, pursuant to the “clear and unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the importance of filing the petition with the district court within the one-year mandate, absent a showing of “good cause” for the delay in filing. Gonzales, 118 Nev. at 593, 590 P.3d at 902. The one-year time bar is therefore strictly construed. In contrast with the short amount of time to file a notice of appeal, a prisoner has an ample full year to file a post-conviction habeas petition, so there is no injustice in a strict application of NRS 34.726(1). Id. at 593, 53 P.3d at 903.

Here, the original Judgment of Conviction was filed on January 17, 2019. Petitioner filed no direct appeal from the guilty plea or the sentence. Petitioner did not file the instant petition until February 24, 2021 which was almost two years after the Judgment of Conviction was filed. As a matter of law, Petitioner is untimely on the filing of his petition and it should be dismissed.

1. The procedural bars are mandatory

The Nevada Supreme Court has specifically found that the district court has a duty to consider whether the procedural bars apply to a post-conviction petition and not arbitrarily disregard them. In Riker, the Court held that “[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory,” and “cannot be ignored when properly

1 raised by the State.” 121 Nev. at 231–33, 112 P.3d at 1074–75. There, the Court reversed the
2 district court’s decision not to bar the petitioner’s untimely and successive petition:

3
4 Given the untimely and successive nature of [petitioner’s] petition,
5 the district court had a duty imposed by law to consider whether
6 any or all of [petitioner’s] claims were barred under NRS 34.726,
7 NRS 34.810, NRS 34.800, or by the law of the case . . . [and] the
8 court’s failure to make this determination here constituted an
9 arbitrary and unreasonable exercise of discretion.

10 Id. at 234, 112 P.3d at 1076. The Court justified this holding by noting that “[t]he necessity
11 for a workable system dictates that there must exist a time when a criminal conviction is final.”
12 Id. at 231, 112 P.3d 1074 (citation omitted); see also State v. Haberstroh, 119 Nev. 173, 180–
13 81, 69 P.3d 676, 681–82 (2003) (holding that parties cannot stipulate to waive, ignore or
14 disregard the mandatory procedural default rules nor can they empower a court to disregard
15 them).

16 In State v. Greene, the Nevada Supreme Court reaffirmed its prior holdings that the
17 procedural default rules are mandatory when it reversed the district court’s grant of a post-
18 conviction petition for writ of habeas corpus. See State v. Greene, 129 Nev. 559, 565–66, 307
19 P.3d 322, 326 (2013). There, the Court ruled that the petitioner’s petition was untimely and
20 successive, and that the petitioner failed to show good cause and actual prejudice. Id.
21 Accordingly, the Court reversed the district court and ordered the petitioner’s petition
22 dismissed pursuant to the procedural bars. Id. at 567, 307 P.3d at 327.

23 Petitioner does not set forth any good cause for his delayed filing in this matter. His
24 only claim is that the terms of the restitution ordered are somehow unclear, and since it is
25 unclear, his one-year time limit has been tolled. However, the Judgment of Conviction clearly
26 states that he owes \$108.00 in restitution to CVS. Notably, this is his argument to overcome
27 the one-year time limitation. He is not arguing that the restitution was based on a mistake of
28 law or fact, which would require him to file a motion to modify a sentence instead of this
petition. In fact, his main argument is that the Judgment of Conviction did not list the amount

1 of restitution, but this is simply incorrect. Therefore, Petitioner still cannot show that this Court
2 should even consider his Petition since it was filed late.

3
4 **II. EVEN ON THE MERITS, THE PETITION WOULD STILL FAIL BECAUSE
THERE IS NO ERROR WITH THE JUDGMENT OF CONVICTION**

5 Petitioner seems to take issue with the Judgment of Conviction in this case, but there is
6 nothing defective about it. NRS 176.105 sets forth the information that must be filed in a
7 judgment of conviction. NRS 176.105 reads:

8 1. If a defendant is found guilty and is sentenced as provided by law, the
9 judgment of conviction must set forth:

10 (a) The plea;

11 (b) The verdict or finding;

12 (c) The adjudication and sentence, including the date of the sentence, any
13 term of imprisonment, the amount and terms of any fine, restitution or
14 administrative assessment, a reference to the statute under which the
15 defendant is sentenced and, if necessary to determine eligibility for parole,
16 the applicable provision of the statute; and

17 (d) The exact amount of credit granted for time spent in confinement
18 before conviction, if any.

19 2. If the defendant is found not guilty, or for any other reason is entitled
20 to be discharged, judgment must be entered accordingly.

21 3. The judgment must be signed by the judge and entered by the clerk.

22 All of the information required by NRS 176.105 exists in Petitioner's Judgment of Conviction.
23 As such, his claim that the Judgment of Conviction is flawed simply lacks merit.

24 **III. PETITIONER WAS NOT DEPRIVED OF A DIRECT APPEAL**

25 Petitioner states that his attorney was ineffective because he was deprived of a direct
26 appeal in this case. His sole argument is that his counsel should have known an appeal was
27 warranted because the Judgment of Conviction was incomplete.

28 Claims of ineffective assistance of counsel are analyzed under the two-pronged test
articulated in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984), wherein the
defendant must show: 1) that counsel's performance was deficient, and 2) that the deficient
performance prejudiced the defense. At 687, 104 S.Ct. at 2064. Nevada adopted this standard
in Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984). "A court may consider the two test
elements in any order and need not consider both prongs if the defendant makes an insufficient

1 showing on either one.” Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1997);
2 Molina v. State, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004).

3 “Surmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 559
4 U.S. 356, 371, 130 S.Ct. 1473, 1485 (2010). The question is whether an attorney’s
5 representations amounted to incompetence under prevailing professional norms, “not whether
6 it deviated from best practices or most common custom.” Harrington v. Richter, 562 U.S. 86,
7 88, 131 S.Ct. 770, 778 (2011). Further, “[e]ffective counsel does not mean errorless counsel,
8 but rather counsel whose assistance is ‘[w]ithin the range of competence demanded of
9 attorneys in criminal cases.’” Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432, 537
10 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S.Ct. 1441, 1449
11 (1970)).

12 The court begins with the presumption of effectiveness and then must determine
13 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
14 ineffective. Means v. State, 120 Nev. 1001, 1011-1012, 103 P.3d 25, 32-33 (2004). The role
15 of a court in considering alleged ineffective assistance of counsel is “not to pass upon the
16 merits of the action not taken but to determine whether, under the particular facts and
17 circumstances of the case, trial counsel failed to render reasonably effective assistance.”
18 Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (citing Cooper v. Fitzharris,
19 551 F.2d 1162, 1166 (9th Cir. 1977)). “There are countless ways to provide effective assistance
20 in any given case. Even the best criminal defense attorneys would not defend a particular client
21 in the same way.” Strickland, 466 U.S. at 689, 104 S.Ct. at 689. “Strategic choices made by
22 counsel after thoroughly investigating the plausible options are almost unchallengeable.”
23 Dawson, 108 Nev. at 117, 825 P.2d at 596 (1992); see also Ford v. State, 105 Nev. 850, 853,
24 784 P.2d 951, 953 (1989) (“Ford I”). In essence, the court must “judge the reasonableness of
25 counsel’s challenged conduct on the facts of the particular case, viewed as of the time of
26 counsel’s conduct.” Strickland, 466 U.S. at 690, 104 S.Ct. at 2066.

27 This analysis does not indicate that the court should “second guess reasoned choices
28 between trial tactics, nor does it mean that defense counsel, to protect himself against

1 allegations of inadequacy, must make every conceivable motion no matter how remote the
2 possibilities are of success.” Donovan, 94 Nev. at 675, 584 P.2d at 711 (citing Cooper, 551
3 F.2d at 1166 (9th Cir. 1977)). Counsel cannot be deemed ineffective for failing to make futile
4 objections, file futile motions, or for failing to make futile arguments. Ennis v. State, 122 Nev.
5 694, 706, 137 P.3d 1095, 1103 (2006). Indeed, trial counsel has the “immediate and ultimate
6 responsibility of deciding if and when to object, which witnesses, if any, to call, and what
7 defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). Further, a
8 defendant who contends his attorney was ineffective because he did not adequately investigate
9 must show how a better investigation would have rendered a more favorable outcome
10 probable. Molina, 120 Nev. at 192, 87 P.3d at 538.

11 In sum, to be effective, the constitution “does not require that counsel do what is
12 impossible or unethical. If there is no bona fide defense to the charge, counsel cannot create
13 one and may disserve the interests of his client by attempting a useless charade.” United States
14 v. Cronin, 466 U.S. 648, 657 n.19, 104 S.Ct. 2039, 2046 n.19 (1984).

15 In order to meet the second “prejudice” prong of the test, the defendant must show a
16 reasonable probability that, but for counsel’s errors, the result of the trial would have been
17 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268. “A reasonable
18 probability is a probability sufficient to undermine confidence in the outcome.” Strickland,
19 466 U.S. at 694, 104 S.Ct. at 2068.

20 Importantly, when raising a Strickland claim, the defendant bears the burden to
21 demonstrate the underlying facts by a preponderance of the evidence. Means, 120 Nev. at
22 1012, 103 P.3d at 33. “Bare” or “naked” allegations are not sufficient to show ineffectiveness
23 of counsel; claims asserted in a petition for post-conviction relief must be supported with
24 specific factual allegations which if true would entitle petitioner to relief. Hargrove, 100 Nev.
25 at 502, 686 P.2d at 225. “Bare” and “naked” allegations are not sufficient, nor are those belied
26 and repelled by the record. Id. NRS 34.735(6) states, in relevant part, “[Petitioner] *must* allege
27 specific facts supporting the claims in the petition[.] . . . Failure to allege specific facts rather
28 than just conclusions may cause your petition to be dismissed.” (emphasis added).

1 The case law on the deprivation of an appeal is very clear in Nevada. A defendant is
2 only deprived of an appeal when he directs his counsel to file an appeal or when an attorney
3 should have known that he wanted to file an appeal based upon the totality of the
4 circumstances. Toston v. State, 127 Nev. 971 (2011).

5 However, from reading this Petition, Petitioner never makes a claim that he requested
6 an appeal or that his attorney should have known that he wanted one. His only claim is that his
7 attorney should have known the Judgment of Conviction was incomplete and thus should have
8 filed an appeal. However since there is no issue with the Judgment of Conviction, this claim
9 also fails.

10 Finally, Petitioner cites NRS176A.100, which is the statute on a court's authority to
11 suspend a sentence as a reason her attorney should have known to appeal. Petitioner again cites
12 no facts or authority to support this claim. Petitioner, citing both cases, says that his attorneys
13 were unfamiliar with the workings of this statute, but he does not say what they were
14 unfamiliar with. This is a bare and naked claim unsupported by any facts in the record, and
15 belied by his own guilty plea. Again, Petitioner fails to establish any facts that support his
16 claim so his Petition should be denied.

17 **IV. PETITIONER IS NOT ENTITLED TO APPOINTMENT OF COUNSEL**

18 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-
19 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566
20 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada
21 Supreme Court similarly observed that "[t]he Nevada Constitution...does not guarantee a right
22 to counsel in post-conviction proceedings, as we interpret the Nevada Constitution's right to
23 counsel provision as being coextensive with the Sixth Amendment to the United States
24 Constitution." McKague specifically held that with the exception of NRS 34.820(1)(a)
25 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
26 "any constitutional or statutory right to counsel at all" in post-conviction proceedings. Id. at
27 164, 912 P.2d at 258.

1 The Nevada Legislature has, however, given courts the discretion to appoint post-
2 conviction counsel so long as “the court is satisfied that the allegation of indigency is true and
3 the petition is not dismissed summarily.” NRS 34.750. NRS 34.750 reads:

4 A petition may allege that the Defendant is unable to pay the costs of the
5 proceedings or employ counsel. If the court is satisfied that the allegation of
6 indigency is true and the petition *is not dismissed summarily*, the court may
7 appoint counsel at the time the court orders the filing of an answer and a return.
8 In making its determination, the court may consider whether:

- 9
10 (a) The issues are difficult;
11 (b) The Defendant is unable to comprehend the proceedings; or
12 (c) Counsel is necessary to proceed with discovery.

13 (emphasis added). Accordingly, under NRS 34.750, it is clear that the Court has discretion in
14 determining whether to appoint counsel.

15 More recently, the Nevada Supreme Court examined whether a district court
16 appropriately denied a defendant’s request for appointment of counsel based upon the factors
17 listed in NRS 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In Renteria-
18 Novoa, the petitioner had been serving a prison term of eighty-five (85) years to life. Id. at 75,
19 391 P.3d at 760. After his judgment of conviction was affirmed on direct appeal, the defendant
20 filed a pro se postconviction petition for writ of habeas corpus and requested counsel be
21 appointed. Id. The district court ultimately denied the petitioner’s petition and his appointment
22 of counsel request. Id. In reviewing the district court’s decision, the Nevada Supreme Court
23 examined the statutory factors listed under NRS 34.750 and concluded that the district court’s
24 decision should be reversed and remanded. Id. The Court explained that the petitioner was
25 indigent, his petition could not be summarily dismissed, and he had in fact satisfied the
26 statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor, the Court concluded that
27 because petitioner had represented he had issues with understanding the English language
28 which was corroborated by his use of an interpreter at his trial, that was enough to indicate that
the petitioner could not comprehend the proceedings. Id. Moreover, the petitioner had
demonstrated that the consequences he faced—a minimum eighty-five (85) year sentence—
were severe and his petition may have been the only vehicle for which he could raise his

1 claims. Id. at 76-77, 391 P.3d at 761-62. Finally, his ineffective assistance of counsel claims
2 may have required additional discovery and investigation beyond the record. Id.

3 Pursuant to NRS 34.750, Petitioner has not demonstrated that counsel should be
4 appointed. As a preliminary matter, Petitioner's request is suitable only for summary denial as
5 he has failed to provide any specific facts to support his bare and naked request. Hargrove v.
6 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Similarly, unlike in Renteria-Novoa,
7 Petitioner's Sixth Petition should be summarily dismissed for several reasons, including, but
8 not limited to, his Petition being time-barred, successive, barred by laches, and his claim being
9 waived as well as meritless.

10 Notwithstanding summary dismissal, Petitioner's request should still be denied as he
11 has failed to meet any of the additional statutory factors under NRS 34.750. Petitioner's claim
12 is based from a plea of guilt to which he received a 4 to 10 year sentence. The issues are not
13 difficult, and as stated above, he has failed to put forth even an iota of information to support
14 his claim. Thus given that this is not a particularly difficult case, he is not entitled to the
15 appointment of attorney.

16 CONCLUSION

17 For the forgoing reasons, the State respectfully requests that Petitioner's instant Petition
18 for Writ of Habeas Corpus and Request be DENIED in its entirety.

19 DATED this 20th day of March, 2021.

20 Respectfully submitted,
21 STEVEN B. WOLFSON
22 Clark County District Attorney
Nevada Bar #1565

23 BY /s/ Alexander Chen
24 ALEXANDER CHEN
25 Chief Deputy District Attorney
26 Nevada Bar #10539
27
28

Heather Shinn
CLERK OF THE COURT

RICHARD L. MITCHELL ID NO. #1209811

SOUTHERN DESERT CORRECTIONAL CTN.
20825 COLD CREEK RD.
P.O. BOX 208
INDIAN SPRINGS, NV 89010

8th DISTRICT COURT IN AND FOR
CLARK COUNTY

RICHARD L. MITCHELL
Petitioner

CASE NO.: A-21-830001-W

DEPT. NO.: 23

CASE # A-21-829992-W

DEPT # 28

v.
STATE OF NEVADA

Y WARDEN: WILLIAM HUTCHINGS
Respondents
et al

NOTICE OF MOTION
HEARING REQUESTED

NOTICE OF MOTION TO JOIN

COMES NOW, PLAINTIFF IN PRO-SE herein above respectfully
moves this Honorable Court for an ORDER GRANTING MOTION TO JOIN
CASE #A-21-830001-W AND RELATED WRIT CASE #A-21-829992-W

This Motion is made and based upon the accompanying Memorandum of Points and
Authorities, U.S. CONSTITUTION 14th AMENDMENT DUE PROCESS
DATED: this 25 day of MARCH, 2021

BY: RICHARD L. MITCHELL
Richard L. Mitchell # 1209011
Defendant In Proper Personam

RECEIVED

MAR 30 2021

CLERK OF THE COURT

ADDITIONAL FACTS OF THE CASE:

PETITIONER RICHARD L. MITCHELL REQUEST THE COURT
FOR A "MOTION TO JOIN" TWO DIFFERENT COURT DATES
BUT RELATED WRITS IN THE SAME COURT ROOM AND DAY
... THE CASES ARE: (1) HEARING ON MAY 12th, 2021
#A-21-830001-W AT 11:00AM DEPT. 23 & (2) HEARING
ON APRIL 7th, 2021 #A-21-829992-W AT 11:00AM
DEPT. 28

CERTIFICATE OF SERVICE BY MAILING

I, RICHARD L. MITCHELL, hereby certify, pursuant to NRCP 5(b), that on this 25TH day of MARCH, 2021, I mailed a true and correct copy of the foregoing, "MOTION TO JOIN"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

STEVEN D. CRIVISON
CLERK OF THE COURT
200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS NV 89155-1160

CC:FILE

DATED: this 25 day of MARCH, 2021.

RICHARD L. MITCHELL
Richard L. Mitchell, DD # 1209011
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

(Title of Document)

filed in District Court Case number _____

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

-OR-

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

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

(State specific law)

-or-

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

Signature

Date

Print Name

Title

Richard Mitchell 1209084
Southern Desert Convention Center
P.O. Box 208
Indian Springs, NV 89070

Steven D. Harrison
Clerk of the Court
200 Lewis Avenue, 3rd Floor

Las Vegas, NV 89155-4648

"Legal Mail"



FOREVER / USA



FOREVER / USA



FOREVER / USA

Legal Mail

DISTRICT COURT
CLARK COUNTY, NEVADA



Richard Mitchell, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

Case No.: A-21-830001-W
Department 23

NOTICE OF HEARING

Please be advised that the Plaintiff's Notice of Motion to Join in the above-entitled matter is set for hearing as follows:

Date: May 03, 2021
Time: 11:00 AM
Location: RJC Courtroom 12D
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Michelle McCarthy
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

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

By: /s/ Michelle McCarthy
Deputy Clerk of the Court

Howard S. Linn
CLERK OF THE COURT

Richard L. Mitchell

NDOC No. 1209011

SOCC

In proper person

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

Richard L. Mitchell)

Petitioner,)

v.)

STATE OF NEVADA)

Case No. A-21-83001-W

WARDEN WILLIAM)

HUTCHINGS)

Dept. No. 23

Respondent.)

MOTION AND ORDER FOR TRANSPORTATION
OF INMATE FOR COURT APPEARANCE

OR, IN THE ALTERNATIVE,

FOR APPEARANCE BY TELEPHONE OR VIDEO CONFERENCE

Petitioner, Richard L. Mitchell, proceeding pro se, requests
that this Honorable Court order transportation for his personal appearance or, in the
alternative, that he be made available to appear by telephone or by video conference
at the hearing in the instant case that is scheduled for May 12, 2021
at 11:00AM.

CLERK OF THE COURT

RECEIVED
APR 1 8 2021

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

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

3 My mandatory release date is SEPTEMBER 21, 2027.

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

8
9 NRS 209.274 Transportation of Offender to Appear Before Court states:

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

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

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

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

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

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

1 ☒ I AM NEEDED AS A WITNESS.

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

8 ☒ THE HEARING WILL BE AN EVIDENTIARY HEARING.

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

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

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

27 6. REGIONAL JUSTICE CENTER is located approximately
28 40 miles from Las Vegas, Nevada.

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

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

13
14 Dated this _____ day of _____
15
16 _____
17
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CERTIFICATE OF SERVICE BY MAILING

I, RICHARD L. MITCHELL, hereby certify, pursuant to NRCP 5(b), that on this 14th
day of April, 2021, I mailed a true and correct copy of the foregoing, "NOTICE TO
TRANSPORT INMATE"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

STEVEN D. GRIERSON CLERK OF
THE COURT
200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS, NV 89155-1160

CC:FILE

DATED: this 14th day of April, 2021.

Richard L. Mitchell

RICHARD L. MITCHELL # 1209011

/In Propria Personam

Post Office Box 208, S.D.C.C.

Indian Springs, Nevada 89018

IN FORMA PAUPERIS:

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION

(Title of Document)

filed in District Court Case number A-21-830001-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.

Richard L. Mitchell
Signature

4-14-21
Date

Richard L. Mitchell
Print Name

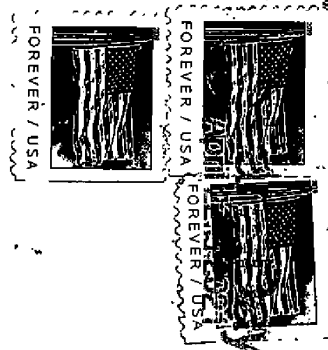
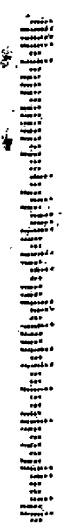
Pro-se
Title

Rudolf A. Mitchell 123004
Southern Desert Convention Center
P.O. Box 208
Indian Springs, NV 89070

LAS VEGAS, NV 890
14 APR 2021 PM 3 L

Steven D. Hinson
Clerk of the Court
200 Howard Avenue, 3rd floor
Las Vegas, NV 89155-1100

95104-630000



POSTAGE
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100
FEDERAL CENTER
LAS VEGAS, NV

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

RICHARD L. MITCHELL)

Petitioner,)

v.)

STATE OF NEVADA:
WARDEN WILLIAM
HUTCHINGS)

Case No. A-21-834001-W

Dept. No. 23

Respondent.)

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

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

RICHARD L. MITCHELL is necessary for the hearing that is scheduled in this
case on the 12th day of MAY, 2021, at
11:00AM.

THEREFOR, IT IS HEREBY ORDERED that,

☐ Pursuant to NRS 209.274, Warden WILLIAM HUTCHINGS
of SOUTHERN DESERT CORRECTIONAL CENTER is hereby commanded to have
RICHARD L. MITCHELL transported to appear before me at a hearing
scheduled for MAY 12th, 2021 at 11:00 AM at the
Clark County [RJC] County Courthouse. Upon completion of the hearing,

RECEIVED

APR 19 2021

CLERK OF THE COURT

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_____ is to be transported back to the above
named institution.

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

Dated this _____ day of _____, _____.

District Court Judge



1 **RSPN**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 ALEXANDER CHEN
6 Chief Deputy District Attorney
7 Nevada Bar #10539
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 RICHARD MITCHELL,
10
11 Petitioner,
12
13 -vs-
14 THE STATE OF NEVADA,
15
16 Respondent.

CASE NO: A-21-830001-W
DEPT NO: XXIII

STATE'S RESPONSE TO MOTION TO JOIN

DATE OF HEARING: May 12, 2021
TIME OF HEARING: 11:00 AM

17 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
18 District Attorney, through ALEXANDER CHEN, Chief Deputy District Attorney, and hereby
19 submits the attached Points and Authorities in Response to Petitioner's Motion to Join.

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

23 **POINTS AND AUTHORITIES**

24 **STATEMENT OF THE CASE**

25 On January 10, 2019, Richard Mitchell (hereinafter "Petitioner") pled guilty pursuant
26 to a Guilty Plea Agreement to one count of Robbery in case C-18-332717-1, which also
27 happens to be the companion case to this Petition. As part of the negotiations, the State agreed
28

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1 to make no recommendation at the time of his sentence, it agreed not to seek criminal habitual
2 treatment in this case only, and this case would run concurrently with C328865.

3 Petitioner's sentencing took place on the same day that he entered his plea, by using the
4 Pre-Sentence Investigation Report from C328865. Petitioner was sentenced to a minimum of
5 48 months and a maximum of 120 months in the Nevada Department of Corrections concurrent
6 with C328865. Petitioner was also ordered to pay \$108 in restitution to CVS pharmacy.

7 Before Petitioner had entered his plea in this case, he had already been sentenced in
8 C328865 to one count of Attempt Robbery and one count of Resisting a Public Officer with
9 Use of a Dangerous Weapon on December 5, 2018. He was sentenced under the small habitual
10 statute and ordered to serve a minimum of 84 months and a maximum of 240 months on each
11 count to run concurrently between the two counts.

12 A Judgment of Conviction in this case was filed on January 17, 2019. There was no
13 appeal from his Judgment of Conviction. Petitioner then filed his Petition in this case on
14 February 24, 2021. The State filed its Response to that Petition on March 20, 2021.

15 Also on February 24, 2021, Petitioner filed a postconviction Petition in case no.
16 A829992, regarding his Judgment of Conviction in C328865. The State filed its Response to
17 Petitioner's other Petition on March 29, 2021.

18 On March 31, 2021, Petitioner filed the instant Notice of Motion to Join ("Joinder"),
19 seeking to have the instant Petition (or, at least the hearing therefore) joined with his other
20 Petition.¹ The State's Response to Petitioner's Motion to Join now follows:

21 **ARGUMENT**

22 **I. JOINDER IS NOT CONTEMPLATED BY APPLICABLE HABEAS** 23 **STATUTES**

24 The Nevada Legislature has enacted detailed statutory guidelines for Petitions for
25 Postconviction Relief. See NRS 34.720 *et seq.* Consistent throughout those guidelines is the
26 *singular* reference to "*a* judgment of conviction." See, e.g., NRS 34.720(1), 34.730(2)(b),
27

28 ¹ Petitioner likewise filed a Motion to Join in A829992, but due to that Court's appointment of counsel,
the matter of joinder has been vacated pending appointed counsel's investigation into the issue.

1 34.738(3). Indeed, in the prescribed “form” for postconviction petitions, the Nevada
2 Legislature requires that petitioners give specific information regarding that singular judgment
3 of conviction which the petitioner seeks to challenge. NRS 34.735. Thereafter, petitioners are
4 directed to provide *separate* information regarding “conviction[(s)] other than the conviction
5 under attack” in the specific postconviction petition. *Id.* There is no prescribed “joinder” for
6 postconviction petitions challenging separate judgments of conviction. See generally NRS
7 34.720 *et seq.*

8 The Nevada Supreme Court has been clear: statutes should be interpreted according to
9 their plain meaning, and when the legislative intent of a statute is clear, courts must endeavor
10 to effectuate that intent. Sheriff v. Lugman, 101 Nev. 149, 155, 697 P.2d 107, 111 (1985).

11 In this instance, Nevada’s postconviction statutes are clear: petitioners may challenge
12 a judgment of conviction via a postconviction petition for writ of habeas corpus. NRS 34.720
13 *et seq.* However, where multiple judgments of conviction are challenged, those challenges
14 must occur in *separate* actions. See NRS 34.730(3) (directing the clerk of the court to file each
15 petition as a “new action separate and distinct” and “[w]henever possible, assigned to the
16 original judge or court.” The legislative intent is readily apparent: the judge or court which
17 entered the judgment of conviction is presumably the best-equipped to handle a review of the
18 challenge to that judgment of conviction.

19 Petitioner not only seeks to join two (2) separate judgments of conviction in his
20 challenge, but those separate judgments of conviction were entered by separate judges.
21 Petitioner does not provide any relevant legal authority, or cogent argument, supporting his
22 request. Instead, it appears that the plain language of the governing statutes would undermine
23 Petitioner’s request. Therefore, not only is Petitioner’s requested joinder completely devoid of
24 any statutory basis, but such an action would seem to violate the provisions of NRS
25 34.730(3)(b).

26 Because there is no legal basis for the relief Petitioner seeks, the State respectfully
27 requests that Petitioner’s Motion to Join be denied.

1 **II. CONSIDERATION OF PETITIONER'S JOINDER ACTION MUST BE**
2 **STAYED**

3 In the event this Court deems appropriate to consider Petitioner's request, the State
4 submits that such consideration, much less any disposition, must be stayed pending
5 Petitioner's other postconviction proceedings.

6 This Court's potential order of joinder would be ineffectual absent a corresponding
7 order from the Court presiding over Petitioner's other postconviction case. However, as noted
8 *supra*, the Joinder effort in that other case has been stayed pending appointed counsel's review
9 thereof. *See supra* n.1. Therefore, there is no need to consider Petitioner's request until after
10 that Court has reinstated Petitioner's effort therein.

11 Furthermore, in the unlikely event that both Courts deem joinder to be appropriate, the
12 postconviction cases would be consolidated into the *lower*-registered case number. As the
13 *other* case bears a lower-registered case number, there is no need for this Court to even
14 consider joinder unless that other Court deems Petitioner's joinder request to be meritorious.

15 **CONCLUSION**

16 For the forgoing reasons, the State respectfully requests that Petitioner's instant Motion
17 to Join be DENIED. In the alternative, the State requests that this Court STAY its
18 determination of Petitioner's Motion to Join until the other Court reinstates Petitioner's effort
19 in that case.

20 DATED this 11th day of May, 2021.

21 Respectfully submitted,

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

25 BY /s/Alexander Chen
26 ALEXANDER CHEN
27 Chief Deputy District Attorney
28 Nevada Bar #10539

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of State's Response to Motion to Join, was made this 11th day of May, 2021, by Electronic Filing to:

JOSEPH GERSTEN
info@thegerstenlawfirm.com


Secretary for the District Attorney's Office

Heaven's Honor
CLERK OF THE COURT

1 **FCL**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 ALEXANDER CHEN
6 Chief Deputy District Attorney
7 Nevada Bar #10539
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 RICHARD MITCHELL,
10
11 Petitioner,

11 -vs-

12 THE STATE OF NEVADA,
13
14 Respondent.

CASE NO: A-21-830001-W

DEPT NO: XXIII

14
15 **FINDINGS OF FACT, CONCLUSIONS OF**
16 **LAW, AND ORDER**

16 DATE OF HEARING: May 12, 2021
17 TIME OF HEARING: 11:00 AM

18 THIS CAUSE having come before the Honorable JASMIN LILLY-SPELLS, District
19 Court Judge, on the 12th day of May, 2021, Petitioner not being present, not being represented
20 by counsel, the Respondent being represented by STEVEN B. WOLFSON, Clark County
21 District Attorney, by and through AUSTIN BEAUMONT, Deputy District Attorney, and the
22 Court having reviewed the matter, including briefs, transcripts, and documents on file herein;
23 now therefore, the Court makes the following findings of fact and conclusions of law:

24 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

25 **STATEMENT OF THE CASE**

26 On January 10, 2019, Richard Mitchell (hereinafter "Petitioner") pled guilty pursuant
27 to a Guilty Plea Agreement to one count of Robbery in case C-18-332717-1, which also
28 happens to be the companion case to this Petition. As part of the negotiations, the State agreed

\\CLARKCOUNTYDA.NET\CRM\CASE2\2017\596\43\201759643C-RSPN-(RICHARD LEE MITCHELL)-002.DOCX

Statistically closed: USJR - CV - Other Manner of Disposition (USJROT)

1 to make no recommendation at the time of his sentence, it agreed not to seek criminal habitual
2 treatment in this case only, and this case would run concurrently with C328865.

3 Petitioner's sentencing took place on the same day that he entered his plea, by using the
4 Pre-Sentence Investigation Report from C328865. Petitioner was sentenced to a minimum of
5 48 months and a maximum of 120 months in the Nevada Department of Corrections concurrent
6 with C328865. Petitioner was also ordered to pay \$108 in restitution to CVS pharmacy.

7 Before Petitioner had entered his plea in this case, he had already been sentenced in
8 C328865 to one count of Attempt Robbery and one count of Resisting a Public Officer with
9 Use of a Dangerous Weapon on December 5, 2018. He was sentenced under the small habitual
10 statute and ordered to serve a minimum of 84 months and a maximum of 240 months on each
11 count to run concurrently between the two cases.

12 A Judgment of Conviction in this case was filed on January 17, 2019. There was no
13 appeal from his Judgment of Conviction. Petitioner then filed his Petition in this case on
14 February 24, 2021. The State filed its Response to that Petition on March 20, 2021.

15 Also on February 24, 2021, Petitioner filed a postconviction Petition in case no.
16 A829992, regarding his Judgment of Conviction in C328865. The State filed its Response to
17 Petitioner's other Petition on March 29, 2021.

18 On March 31, 2021, Petitioner filed the instant Notice of Motion to Join ("Joinder"),
19 seeking to have the instant Petition (or, at least the hearing therefore) joined with his other
20 Petition. The State filed its Response to that Joinder on May 11, 2021.

21 The matter came before this Court on May 12, 2021, at which time this Court made the
22 following findings and conclusions:

23 **ARGUMENT**

24 **I. THE INSTANT PETITION IS TIME-BARRED**

25 Pursuant to the mandatory provision of NRS 34.726(1):

26 Unless there is good cause shown for delay, a petition that challenges the validity
27 of a judgment or sentence must be filed *within 1 year after entry of the judgment*
28 *of conviction* or, if an appeal has been taken from the judgment, *within 1 year*
after the Supreme Court issues its remittitur.

1 (Emphasis added). The Nevada Supreme Court has explained, “the statutory rules regarding
2 procedural default are mandatory and cannot be ignored when properly raised by the State.”
3 State v. Eighth Judicial Dist. Court (“Riker”), 121 Nev. 225, 233, 112 P.3d 1070, 1075 (2005).

4 Accordingly, the one-year time bar of NRS 34.726 begins to run from the date the
5 judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson
6 v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998); see Pellegrini v. State, 117
7 Nev. 860, 873, 34 P.3d 519, 528 (2001) (holding NRS 34.726 should be construed by its “plain
8 meaning”).

9 In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada Supreme
10 Court affirmed the rejection of a habeas petition that was filed two days late, pursuant to the
11 “clear and unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the
12 importance of filing the petition with the district court within the one-year mandate, absent a
13 showing of “good cause” for the delay in filing. Gonzales, 118 Nev. at 593, 590 P.3d at 902.
14 The one-year time bar is therefore strictly construed. In contrast with the short amount of time
15 to file a notice of appeal, a prisoner has an ample full year to file a post-conviction habeas
16 petition, so there is no injustice in a strict application of NRS 34.726(1). Id. at 593, 53 P.3d at
17 903.

18 The Nevada Supreme Court has specifically found that the district court has a *duty* to
19 consider whether the procedural bars apply to a post-conviction petition and not arbitrarily
20 disregard them. In Riker, the Court reversed the district court’s decision not to bar the
21 petitioner’s untimely and successive petition:

22 Given the untimely and successive nature of [petitioner’s] petition, the district
23 court had a duty imposed by law to consider whether any or all of [petitioner’s]
24 claims were barred under NRS 34.726, NRS 34.810, NRS 34.800, or by the law
25 of the case . . . [and] the court’s failure to make this determination here
26 constituted an arbitrary and unreasonable exercise of discretion.

26 121 Nev. at 234, 112 P.3d at 1076. That Court noted: “[t]he necessity for a workable system
27 dictates that there must exist a time when a criminal conviction is final.” Id. at 231, 112 P.3d
28 1074 (citation omitted); see also State v. Haberstroh, 119 Nev. 173, 180–81, 69 P.3d 676, 681–

1 82 (2003) (holding that parties cannot stipulate to waive, ignore or disregard the mandatory
2 procedural default rules nor can they empower a court to disregard them).

3 In State v. Greene, the Nevada Supreme Court reaffirmed its prior holdings that the
4 procedural default rules are mandatory when it reversed the district court's grant of a post-
5 conviction petition for writ of habeas corpus. 129 Nev. 559, 565–66, 307 P.3d 322, 326 (2013).
6 There, the Court ruled that the petitioner's petition was untimely and successive, and that the
7 petitioner failed to show good cause and actual prejudice. Id. Accordingly, the Court reversed
8 the district court and ordered the petitioner's petition dismissed pursuant to the procedural
9 bars. Id. at 567, 307 P.3d at 327.

10 Here, Petitioner's Judgment of Conviction was filed on January 17, 2019. Petitioner
11 filed no direct appeal from the guilty plea or the sentence. Therefore, this Court finds that
12 Petitioner had until January 17, 2020, to file a timely petition. Petitioner did not file the instant
13 petition until February 24, 2021 – almost two years after his Judgment of Conviction was filed.
14 As such, this Court concludes that, as a matter of law, the instant Petition is procedurally
15 defaulted and subject to dismissal absent a showing of good cause and prejudice. NRS 34.726.

16 This Court further concludes that Petitioner does not set forth any good cause for his
17 failure to comply with the procedural rules. Petitioner's only claim is that the terms of the
18 restitution ordered are somewhat unclear, which he argues should toll the one-year time limit.
19 This Court finds that, contrary to Petitioner's assertions, Petitioner's Judgment of Conviction
20 clearly states that Petitioner owes \$108.00 in restitution to CVS. Because Petitioner's sole
21 argument to overcome the procedural bar is patently incorrect, Petitioner fails to make the
22 requisite showing to survive dismissal.

23 **II. APPOINTMENT OF COUNSEL IS NOT NECESSARY**

24 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-
25 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566
26 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada
27 Supreme Court similarly observed that “[t]he Nevada Constitution... does not guarantee a right
28 to counsel in post-conviction proceedings, as we interpret the Nevada Constitution's right to

1 counsel provision as being coextensive with the Sixth Amendment to the United States
2 Constitution.” McKague specifically held that with the exception of NRS 34.820(1)(a)
3 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
4 “any constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at
5 164, 912 P.2d at 258.

6 The Nevada Legislature has, however, given courts the discretion to appoint post-
7 conviction counsel so long as “the court is satisfied that the allegation of indigency is true and
8 the petition is not dismissed summarily.” NRS 34.750. NRS 34.750 reads:

9 A petition may allege that the Defendant is unable to pay the costs of the
10 proceedings or employ counsel. If the court is satisfied that the allegation of
11 indigency is true and the petition *is not dismissed summarily*, the court may
12 appoint counsel at the time the court orders the filing of an answer and a return.
13 In making its determination, the court may consider whether:
 (a) The issues are difficult;
 (b) The Defendant is unable to comprehend the proceedings; or
 (c) Counsel is necessary to proceed with discovery.

14 (emphasis added). Accordingly, under NRS 34.750, the Court has discretion in determining
15 whether to appoint counsel.

16 More recently, the Nevada Supreme Court examined whether a district court
17 appropriately denied a defendant’s request for appointment of counsel based upon the factors
18 listed in NRS 34.750. See Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In
19 Renteria-Novoa, the petitioner had been serving a prison term of eighty-five (85) years to life.
20 Id. at 75, 391 P.3d at 760. After his judgment of conviction was affirmed on direct appeal, the
21 defendant filed a pro se postconviction petition for writ of habeas corpus and requested counsel
22 be appointed. Id. The district court ultimately denied the petitioner’s petition and his
23 appointment of counsel request. Id. In reviewing the district court’s decision, the Nevada
24 Supreme Court examined the statutory factors listed under NRS 34.750 and concluded that the
25 district court’s decision should be reversed and remanded. Id. The Court explained that the
26 petitioner was indigent, his petition could not be summarily dismissed, and he had in fact
27 satisfied the statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor, the Court
28 concluded that because petitioner had represented he had issues with understanding the

1 English language which was corroborated by his use of an interpreter at his trial, that was
2 enough to indicate that the petitioner could not comprehend the proceedings. Id. Moreover,
3 the petitioner had demonstrated that the consequences he faced—a minimum eighty-five (85)
4 year sentence—were severe and his petition may have been the only vehicle for which he could
5 raise his claims. Id. at 76-77, 391 P.3d at 761-62. Finally, his ineffective assistance of counsel
6 claims may have required additional discovery and investigation beyond the record. Id.

7 Pursuant to NRS 34.750, this Court concludes that Petitioner has not demonstrated that
8 counsel should be appointed. As a preliminary matter, this Court finds that Petitioner's request
9 is suitable only for summary denial as he has failed to provide any specific facts to support his
10 bare and naked request. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).
11 Moreover, unlike Renteria-Novoa, this Court has found that Petitioner's Sixth Petition is
12 subject to dismissal pursuant to the procedural time-bar.

13 Notwithstanding the petition's summary dismissal, this Court finds that Petitioner has
14 failed to meet any of the additional statutory factors under NRS 34.750. Petitioner's claim is
15 based from a guilty plea, to which he received a 4 to 10 year sentence. The issues are not
16 difficult and, as stated above, Petitioner has failed to put forth any information to support his
17 claim. Thus, given that this is not a difficult case, this Court concludes that Petitioner is not
18 entitled to the appointment of attorney.

19 **III. JOINDER IS NOT CONTEMPLATED BY APPLICABLE HABEAS** 20 **STATUTES**

21 The Nevada Legislature has enacted detailed statutory guidelines for Petitions for
22 Postconviction Relief. See NRS 34.720 *et seq.* Consistent throughout those guidelines is the
23 *singular* reference to “a judgment of conviction.” See, e.g., NRS 34.720(1), 34.730(2)(b),
24 34.738(3). Indeed, in the prescribed “form” for postconviction petitions, the Nevada
25 Legislature requires that petitioners give specific information regarding that singular judgment
26 of conviction which the petitioner seeks to challenge. NRS 34.735. Thereafter, petitioners are
27 directed to provide *separate* information regarding “conviction[(s)] other than the conviction
28 under attack” in the specific postconviction petition. Id. There is no prescribed “joinder” for

1 postconviction petitions challenging separate judgments of conviction. See generally NRS
2 34.720 *et seq.*

3 The Nevada Supreme Court has been clear: statutes should be interpreted according to
4 their plain meaning, and when the legislative intent of a statute is clear, courts must endeavor
5 to effectuate that intent. Sheriff v. Luqman, 101 Nev. 149, 155, 697 P.2d 107, 111 (1985).

6 In this instance, Nevada's postconviction statutes are clear: petitioners may challenge
7 a judgment of conviction via a postconviction petition for writ of habeas corpus. NRS 34.720
8 *et seq.* However, where multiple judgments of conviction are challenged, those challenges
9 must occur in *separate* actions. See NRS 34.730(3) (directing the clerk of the court to file each
10 petition as a "new action separate and distinct" and "[w]henever possible, assigned to the
11 original judge or court." The legislative intent is readily apparent: the judge or court which
12 entered the judgment of conviction is presumably the best-equipped to handle a review of the
13 challenge to that judgment of conviction.

14 This Court finds that Petitioner not only seeks to join two (2) separate judgments of
15 conviction in his challenge, but those separate judgments of conviction were entered by
16 separate judges. Further, Petitioner does not provide any relevant legal authority, or cogent
17 argument, supporting his request. Instead, this Court finds that the plain language of the
18 governing statutes undermines Petitioner's request. Therefore, not only is Petitioner's
19 requested joinder completely devoid of any statutory basis, but this Court concludes that such
20 an action would seem to violate the provisions of NRS 34.730(3)(b).

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 **CONCLUSION**

2 THEREFORE, IT IS HEREBY ORDERED, Petitioner Richard Mitchell's Petition for
3 Writ of Habeas Corpus shall be, and is, DISMISSED, pursuant to the mandatory time-bar of
4 NRS 34.726.

5 IT IS FURTHER ORDERED that Petitioner's Motion for Appointment of Counsel
6 shall be, and is, DENIED.

7 IT IS FURTHER ORDERED that Petitioner's Motion to Join shall be, and is, DENIED.

8 DATED this _____ day of June, 2021.

Dated this 23rd day of July, 2021

9
10 
11 _____
DISTRICT COURT JUDGE

12 Respectfully submitted,

13 STEVEN B. WOLFSON
14 Clark County District Attorney
Nevada Bar #1565

9E9 E35 B45F 2819
Jasmin Lilly-Spells
District Court Judge

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

18 **CERTIFICATE OF MAILING FILING**

19 I hereby certify that service of Findings of Fact, Conclusions of
20 Law, And Order, was made this 17th day of June, 2021, by Mailing to:

21 Richard Mitchell #1209011
22 P.O. BOX 208, SDCC
Indian Springs NV 89070

23
24 
25 _____
Secretary for the District Attorney's Office

26
27
28 17F21808X/mcb

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Richard Mitchell, Plaintiff(s) CASE NO: A-21-830001-W
7 vs. DEPT. NO. Department 23
8 Nevada State of, 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 Findings of Fact, Conclusions of Law and Judgment was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

14 Service Date: 7/23/2021

15 Steven Wolfson Steven.wolfson@clarkcountyda.com
16
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1 NEFF

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 RICHARD MITHCELL,

6 Petitioner,

Case No: A-21-830001-W

Dept No: XXIII

7 vs.

8 STATE OF NEVADA; ET.AL.,

9 Respondent,

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

11 PLEASE TAKE NOTICE that on July 23, 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 26, 2021.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

18
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 26 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
Attorney General's Office – Appellate Division-

23
24 ☒ The United States mail addressed as follows:

25 Richard Mitchell # 1209011
P.O. Box 208
Indian Springs, NV 89070

26
27 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

Heaven's Honor
CLERK OF THE COURT

1 **FCL**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 ALEXANDER CHEN
6 Chief Deputy District Attorney
7 Nevada Bar #10539
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 RICHARD MITCHELL,
10
11 Petitioner,

11 -vs-

12 THE STATE OF NEVADA,
13
14 Respondent.

CASE NO: A-21-830001-W
DEPT NO: XXIII

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

DATE OF HEARING: May 12, 2021
TIME OF HEARING: 11:00 AM

18 THIS CAUSE having come before the Honorable JASMIN LILLY-SPELLS, District
19 Court Judge, on the 12th day of May, 2021, Petitioner not being present, not being represented
20 by counsel, the Respondent being represented by STEVEN B. WOLFSON, Clark County
21 District Attorney, by and through AUSTIN BEAUMONT, Deputy District Attorney, and the
22 Court having reviewed the matter, including briefs, transcripts, and documents on file herein;
23 now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

STATEMENT OF THE CASE

26 On January 10, 2019, Richard Mitchell (hereinafter "Petitioner") pled guilty pursuant
27 to a Guilty Plea Agreement to one count of Robbery in case C-18-332717-1, which also
28 happens to be the companion case to this Petition. As part of the negotiations, the State agreed

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Statistically closed: USJR - CV - Other Manner of Disposition (USJROT)

1 to make no recommendation at the time of his sentence, it agreed not to seek criminal habitual
2 treatment in this case only, and this case would run concurrently with C328865.

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4 Pre-Sentence Investigation Report from C328865. Petitioner was sentenced to a minimum of
5 48 months and a maximum of 120 months in the Nevada Department of Corrections concurrent
6 with C328865. Petitioner was also ordered to pay \$108 in restitution to CVS pharmacy.

7 Before Petitioner had entered his plea in this case, he had already been sentenced in
8 C328865 to one count of Attempt Robbery and one count of Resisting a Public Officer with
9 Use of a Dangerous Weapon on December 5, 2018. He was sentenced under the small habitual
10 statute and ordered to serve a minimum of 84 months and a maximum of 240 months on each
11 count to run concurrently between the two cases.

12 A Judgment of Conviction in this case was filed on January 17, 2019. There was no
13 appeal from his Judgment of Conviction. Petitioner then filed his Petition in this case on
14 February 24, 2021. The State filed its Response to that Petition on March 20, 2021.

15 Also on February 24, 2021, Petitioner filed a postconviction Petition in case no.
16 A829992, regarding his Judgment of Conviction in C328865. The State filed its Response to
17 Petitioner's other Petition on March 29, 2021.

18 On March 31, 2021, Petitioner filed the instant Notice of Motion to Join ("Joinder"),
19 seeking to have the instant Petition (or, at least the hearing therefore) joined with his other
20 Petition. The State filed its Response to that Joinder on May 11, 2021.

21 The matter came before this Court on May 12, 2021, at which time this Court made the
22 following findings and conclusions:

23 **ARGUMENT**

24 **I. THE INSTANT PETITION IS TIME-BARRED**

25 Pursuant to the mandatory provision of NRS 34.726(1):

26 Unless there is good cause shown for delay, a petition that challenges the validity
27 of a judgment or sentence must be filed *within 1 year after entry of the judgment*
28 *of conviction* or, if an appeal has been taken from the judgment, *within 1 year*
after the Supreme Court issues its remittitur.

1 (Emphasis added). The Nevada Supreme Court has explained, “the statutory rules regarding
2 procedural default are mandatory and cannot be ignored when properly raised by the State.”
3 State v. Eighth Judicial Dist. Court (“Riker”), 121 Nev. 225, 233, 112 P.3d 1070, 1075 (2005).

4 Accordingly, the one-year time bar of NRS 34.726 begins to run from the date the
5 judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson
6 v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998); see Pellegrini v. State, 117
7 Nev. 860, 873, 34 P.3d 519, 528 (2001) (holding NRS 34.726 should be construed by its “plain
8 meaning”).

9 In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada Supreme
10 Court affirmed the rejection of a habeas petition that was filed two days late, pursuant to the
11 “clear and unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the
12 importance of filing the petition with the district court within the one-year mandate, absent a
13 showing of “good cause” for the delay in filing. Gonzales, 118 Nev. at 593, 590 P.3d at 902.
14 The one-year time bar is therefore strictly construed. In contrast with the short amount of time
15 to file a notice of appeal, a prisoner has an ample full year to file a post-conviction habeas
16 petition, so there is no injustice in a strict application of NRS 34.726(1). Id. at 593, 53 P.3d at
17 903.

18 The Nevada Supreme Court has specifically found that the district court has a *duty* to
19 consider whether the procedural bars apply to a post-conviction petition and not arbitrarily
20 disregard them. In Riker, the Court reversed the district court’s decision not to bar the
21 petitioner’s untimely and successive petition:

22 Given the untimely and successive nature of [petitioner’s] petition, the district
23 court had a duty imposed by law to consider whether any or all of [petitioner’s]
24 claims were barred under NRS 34.726, NRS 34.810, NRS 34.800, or by the law
of the case . . . [and] the court’s failure to make this determination here
constituted an arbitrary and unreasonable exercise of discretion.

25
26 121 Nev. at 234, 112 P.3d at 1076. That Court noted: “[t]he necessity for a workable system
27 dictates that there must exist a time when a criminal conviction is final.” Id. at 231, 112 P.3d
28 1074 (citation omitted); see also State v. Haberstroh, 119 Nev. 173, 180–81, 69 P.3d 676, 681–

1 82 (2003) (holding that parties cannot stipulate to waive, ignore or disregard the mandatory
2 procedural default rules nor can they empower a court to disregard them).

3 In State v. Greene, the Nevada Supreme Court reaffirmed its prior holdings that the
4 procedural default rules are mandatory when it reversed the district court's grant of a post-
5 conviction petition for writ of habeas corpus. 129 Nev. 559, 565–66, 307 P.3d 322, 326 (2013).
6 There, the Court ruled that the petitioner's petition was untimely and successive, and that the
7 petitioner failed to show good cause and actual prejudice. Id. Accordingly, the Court reversed
8 the district court and ordered the petitioner's petition dismissed pursuant to the procedural
9 bars. Id. at 567, 307 P.3d at 327.

10 Here, Petitioner's Judgment of Conviction was filed on January 17, 2019. Petitioner
11 filed no direct appeal from the guilty plea or the sentence. Therefore, this Court finds that
12 Petitioner had until January 17, 2020, to file a timely petition. Petitioner did not file the instant
13 petition until February 24, 2021 – almost two years after his Judgment of Conviction was filed.
14 As such, this Court concludes that, as a matter of law, the instant Petition is procedurally
15 defaulted and subject to dismissal absent a showing of good cause and prejudice. NRS 34.726.

16 This Court further concludes that Petitioner does not set forth any good cause for his
17 failure to comply with the procedural rules. Petitioner's only claim is that the terms of the
18 restitution ordered are somewhat unclear, which he argues should toll the one-year time limit.
19 This Court finds that, contrary to Petitioner's assertions, Petitioner's Judgment of Conviction
20 clearly states that Petitioner owes \$108.00 in restitution to CVS. Because Petitioner's sole
21 argument to overcome the procedural bar is patently incorrect, Petitioner fails to make the
22 requisite showing to survive dismissal.

23 **II. APPOINTMENT OF COUNSEL IS NOT NECESSARY**

24 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-
25 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566
26 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada
27 Supreme Court similarly observed that “[t]he Nevada Constitution... does not guarantee a right
28 to counsel in post-conviction proceedings, as we interpret the Nevada Constitution's right to

1 counsel provision as being coextensive with the Sixth Amendment to the United States
2 Constitution.” McKague specifically held that with the exception of NRS 34.820(1)(a)
3 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
4 “any constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at
5 164, 912 P.2d at 258.

6 The Nevada Legislature has, however, given courts the discretion to appoint post-
7 conviction counsel so long as “the court is satisfied that the allegation of indigency is true and
8 the petition is not dismissed summarily.” NRS 34.750. NRS 34.750 reads:

9 A petition may allege that the Defendant is unable to pay the costs of the
10 proceedings or employ counsel. If the court is satisfied that the allegation of
11 indigency is true and the petition *is not dismissed summarily*, the court may
12 appoint counsel at the time the court orders the filing of an answer and a return.
13 In making its determination, the court may consider whether:
14 (a) The issues are difficult;
15 (b) The Defendant is unable to comprehend the proceedings; or
16 (c) Counsel is necessary to proceed with discovery.

17 (emphasis added). Accordingly, under NRS 34.750, the Court has discretion in determining
18 whether to appoint counsel.

19 More recently, the Nevada Supreme Court examined whether a district court
20 appropriately denied a defendant’s request for appointment of counsel based upon the factors
21 listed in NRS 34.750. See Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In
22 Renteria-Novoa, the petitioner had been serving a prison term of eighty-five (85) years to life.
23 Id. at 75, 391 P.3d at 760. After his judgment of conviction was affirmed on direct appeal, the
24 defendant filed a pro se postconviction petition for writ of habeas corpus and requested counsel
25 be appointed. Id. The district court ultimately denied the petitioner’s petition and his
26 appointment of counsel request. Id. In reviewing the district court’s decision, the Nevada
27 Supreme Court examined the statutory factors listed under NRS 34.750 and concluded that the
28 district court’s decision should be reversed and remanded. Id. The Court explained that the
petitioner was indigent, his petition could not be summarily dismissed, and he had in fact
satisfied the statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor, the Court
concluded that because petitioner had represented he had issues with understanding the

1 English language which was corroborated by his use of an interpreter at his trial, that was
2 enough to indicate that the petitioner could not comprehend the proceedings. Id. Moreover,
3 the petitioner had demonstrated that the consequences he faced—a minimum eighty-five (85)
4 year sentence—were severe and his petition may have been the only vehicle for which he could
5 raise his claims. Id. at 76-77, 391 P.3d at 761-62. Finally, his ineffective assistance of counsel
6 claims may have required additional discovery and investigation beyond the record. Id.

7 Pursuant to NRS 34.750, this Court concludes that Petitioner has not demonstrated that
8 counsel should be appointed. As a preliminary matter, this Court finds that Petitioner's request
9 is suitable only for summary denial as he has failed to provide any specific facts to support his
10 bare and naked request. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).
11 Moreover, unlike Renteria-Novoa, this Court has found that Petitioner's Sixth Petition is
12 subject to dismissal pursuant to the procedural time-bar.

13 Notwithstanding the petition's summary dismissal, this Court finds that Petitioner has
14 failed to meet any of the additional statutory factors under NRS 34.750. Petitioner's claim is
15 based from a guilty plea, to which he received a 4 to 10 year sentence. The issues are not
16 difficult and, as stated above, Petitioner has failed to put forth any information to support his
17 claim. Thus, given that this is not a difficult case, this Court concludes that Petitioner is not
18 entitled to the appointment of attorney.

19 **III. JOINDER IS NOT CONTEMPLATED BY APPLICABLE HABEAS** 20 **STATUTES**

21 The Nevada Legislature has enacted detailed statutory guidelines for Petitions for
22 Postconviction Relief. See NRS 34.720 *et seq.* Consistent throughout those guidelines is the
23 *singular* reference to “a judgment of conviction.” See, e.g., NRS 34.720(1), 34.730(2)(b),
24 34.738(3). Indeed, in the prescribed “form” for postconviction petitions, the Nevada
25 Legislature requires that petitioners give specific information regarding that singular judgment
26 of conviction which the petitioner seeks to challenge. NRS 34.735. Thereafter, petitioners are
27 directed to provide *separate* information regarding “conviction[(s)] other than the conviction
28 under attack” in the specific postconviction petition. Id. There is no prescribed “joinder” for

1 postconviction petitions challenging separate judgments of conviction. See generally NRS
2 34.720 *et seq.*

3 The Nevada Supreme Court has been clear: statutes should be interpreted according to
4 their plain meaning, and when the legislative intent of a statute is clear, courts must endeavor
5 to effectuate that intent. Sheriff v. Luqman, 101 Nev. 149, 155, 697 P.2d 107, 111 (1985).

6 In this instance, Nevada's postconviction statutes are clear: petitioners may challenge
7 a judgment of conviction via a postconviction petition for writ of habeas corpus. NRS 34.720
8 *et seq.* However, where multiple judgments of conviction are challenged, those challenges
9 must occur in *separate* actions. See NRS 34.730(3) (directing the clerk of the court to file each
10 petition as a "new action separate and distinct" and "[w]henever possible, assigned to the
11 original judge or court." The legislative intent is readily apparent: the judge or court which
12 entered the judgment of conviction is presumably the best-equipped to handle a review of the
13 challenge to that judgment of conviction.

14 This Court finds that Petitioner not only seeks to join two (2) separate judgments of
15 conviction in his challenge, but those separate judgments of conviction were entered by
16 separate judges. Further, Petitioner does not provide any relevant legal authority, or cogent
17 argument, supporting his request. Instead, this Court finds that the plain language of the
18 governing statutes undermines Petitioner's request. Therefore, not only is Petitioner's
19 requested joinder completely devoid of any statutory basis, but this Court concludes that such
20 an action would seem to violate the provisions of NRS 34.730(3)(b).

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 **CONCLUSION**

2 THEREFORE, IT IS HEREBY ORDERED, Petitioner Richard Mitchell's Petition for
3 Writ of Habeas Corpus shall be, and is, DISMISSED, pursuant to the mandatory time-bar of
4 NRS 34.726.

5 IT IS FURTHER ORDERED that Petitioner's Motion for Appointment of Counsel
6 shall be, and is, DENIED.

7 IT IS FURTHER ORDERED that Petitioner's Motion to Join shall be, and is, DENIED.

8 DATED this _____ day of June, 2021.

Dated this 23rd day of July, 2021

9
10 
11 DISTRICT COURT JUDGE

12 Respectfully submitted,

13 STEVEN B. WOLFSON
14 Clark County District Attorney
Nevada Bar #1565

9E9 E35 B45F 2819
Jasmin Lilly-Spells
District Court Judge

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

18 **CERTIFICATE OF MAILING FILING**

19 I hereby certify that service of Findings of Fact, Conclusions of
20 Law, And Order, was made this 17th day of June, 2021, by Mailing to:

21 Richard Mitchell #1209011
22 P.O. BOX 208, SDCC
Indian Springs NV 89070

23
24 
25 Secretary for the District Attorney's Office

26
27
28 17F21808X/mcb

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Richard Mitchell, Plaintiff(s) CASE NO: A-21-830001-W
7 vs. DEPT. NO. Department 23
8 Nevada State of, 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 Findings of Fact, Conclusions of Law and Judgment was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

14 Service Date: 7/23/2021

15 Steven Wolfson Steven.wolfson@clarkcountyda.com
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED

AUG - 4 2021

Elizabeth A. Brown
CLERK OF COURT

1 Richard L. Mitchell #1209011
2 In Propria Personam
3 Post Office Box 208, S.D.C.C.
4 Indian Springs, Nevada 89018

5 IN THE Eighth JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF Clark

9 Richard L. Mitchell
10 Plaintiff,

11 vs.

12 State of Nevada ET AL
13 William Hukings Wren
14 Defendant.

Case No. A-21-830001-W

Dept. No. XXIII

Docket _____

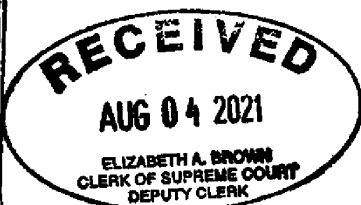
16 NOTICE OF APPEAL

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

21 Facts findings and conclusions

22 _____
23 ruled on the 23 day of July, 20 21.

25 Dated this 3 day of Aug, 20 21.



RECEIVED
APPEALS
AUG 18 2021

CLERK OF THE COURT

Respectfully Submitted.

Richard L. Mitchell #1209011

A-21-830001-W
NOAS
Notice of Appeal
4984327



CERTIFICATE OF SERVICE BY MAILING

I, Richard L. Mitchell, hereby certify, pursuant to NRCP 5(b), that on this 3
day of Aug, 2021, I mailed a true and correct copy of the foregoing, "Notice
of Appeal"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

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

Clerk of the Supreme
State of Nevada
201 S Carson St
Suite 201
Carson City NV 89701

CC:FILE

DATED: this 3 day of Aug, 2021.

Richard L. Mitchell
Richard L. Mitchell #1209011
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding notice

of Appeal

(Title of Document)

filed in District Court Case number A-21-830001-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.

Richard L. Mitchell
Signature

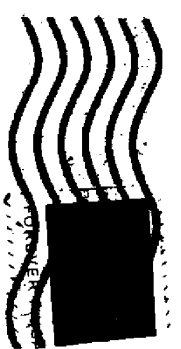
Aug 3, 2021
Date

Richard L. Mitchell
Print Name

Title

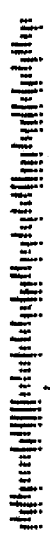
Richard E. Mitchell #7209011
Northern Nevada Correctional Center
P.O. Box 238
Indian Springs, Nevada 89070

LAS VEGAS NV 890
2 AUG 2021 PM 3 L



Clark of Eugene Court
For State of Nevada
261 North Carson St.
Carson City, Nevada 89701

89701-478199



10591 mail

10591 mail

FILED

AUG - 4 2021

Sharon A. Williams
CLERK OF COURT

Richard L. Mitchell, 1209011
Petitioner/In Propria Persona
Post Office Box 208, SDCC
Indian Springs, Nevada 89070-0208

IN THE Eleventh JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Clark

Richard L. Mitchell
Plaintiff,
vs.
State of Nevada
William Hatchings Lusk
Defendant.

CASE No. A-21-830001-W
DEPT. No. XXIII

DESIGNATION OF RECORD ON APPEAL

TO: Clerk of Supreme Court
State of Nevada
201 S Carson St
Suite 201
Carson City, NV 89701

A-21-830001-W
DROA
Designation of Record on Appeal
4964328



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

DATED this 3rd day of Aug, 20 21.

RESPECTFULLY SUBMITTED BY:

Richard L. Mitchell
Richard L. Mitchell #1209011
Plaintiff/In Propria Persona

RECEIVED
APPEALS

AUG 18 2021

CLERK OF THE COURT



1 ASTA

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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 RICHARD L. MITCHELL,

11 Plaintiff(s),

12 vs.

13 STATE OF NEVADA; WARDEN WILLIAM
14 HUTCHINGS,

15 Defendant(s),
16

Case No: A-21-830001-W

Dept No: XXIII

17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Richard L. Mitchell

20 2. Judge: Jasmin Lilly-Spells

21 3. Appellant(s): Richard L. Mitchell

22 Counsel:

23 Richard L. Mitchell #1209011
24 P.O. Box 208
25 Indian Springs, NV 89070

26 4. Respondent (s): State of Nevada; Warden William Hutchings

27 Counsel:

28 Steven B. Wolfson, District Attorney
200 Lewis Ave.

Las Vegas, NV 89155-2212

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

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

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

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

8. Appellant Granted Leave to Proceed in Forma Pauperis**: Yes, March 5, 2021
***Expires 1 year from date filed*
Appellant Filed Application to Proceed in Forma Pauperis: N/A
Date Application(s) filed: N/A

9. Date Commenced in District Court: February 24, 2021

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

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

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 18 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: Richard L. Mitchell

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

May 03, 2021

A-21-830001-W	Richard Mitchell, Plaintiff(s)
	vs.
	Nevada State of, Defendant(s)

May 03, 2021 11:00 AM Motion

HEARD BY: Lilly-Spells, Jasmin

COURTROOM: RJC Courtroom 12D

COURT CLERK:
 Carolyn Jackson

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:	Nevada State of	Defendant
	Raman, Jay	Attorney

JOURNAL ENTRIES

- Upon Court's inquiry, Mr. Raman advised the State's Opposition to the Return was filed on March 20, 2021; however, no Opposition to the Motion to Join was filed since the State was not aware of the Motion. COURT ORDERED, matter CONTINUED.

CONTINUED TO: 05/12/21

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

May 12, 2021

A-21-830001-W Richard Mitchell, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

May 12, 2021 11:00 AM All Pending Motions

HEARD BY: Lilly-Spells, Jasmin

COURTROOM: RJC Courtroom 12D

COURT CLERK:

Kathryn Hansen-McDowell

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT: Beaumont, Austin C. Attorney

JOURNAL ENTRIES

- Plaintiff not present, in Nevada Department of Corrections. Joseph Gersten, Esq. also present.

MOTION FOR APPOINTMENT OF ATTORNEY . . . PLAINTIFF'S NOTICE OF MOTION TO JOIN . .
. PETITION FOR WRIT OF HABEAS CORPUS

Mr. Gersten advised he represents the Plaintiff on case A829992; the Plaintiff filed a Motion to Join case A829992 and this case and a Motion For Appointment of Attorney. Mr. Gersten stated if the Court was inclined to appoint an attorney he was willing to be appointed. Colloquy. As to appointment of attorney COURT FINDS, Plaintiff is indigent however the issues raised do not need additional investigation and ORDERED, Motion for Appointment of Attorney DENIED. Court noted, the Plaintiff not being present and stated the motions were decided on the pleadings. As to Plaintiff's Motion to Join COURT FINDS joinder is not appropriate for post-conviction writs pursuant to NRS 34.730 and 34.720 and FURTHER ORDERED Motion to Join DENIED; and as to Petition for Writ of Habeas Corpus COURT FINDS pursuant to NRS 34.726 the Petition was filed untimely and is time-barred, not filed within a year and ADDITIONALLY ORDERED Petition for Writ of Habeas Corpus DENIED. State to prepare the order and submit it to Chambers.

PRINT DATE: 09/01/2021

Page 2 of 3

Minutes Date: May 03, 2021

A-21-830001-W

CLERK'S NOTE: The above minute order has been distributed to: Richard Mitchell #1209011, Southern Desert Correctional Center, PO Box 208, Indian Springs, NV 89070. 5/14/21km

PRINT DATE: 09/01/2021

Page 3 of 3

Minutes Date: May 03, 2021

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated August 24, 2021, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 184.

RICHARD L. MITCHELL,

Plaintiff(s),

vs.

STATE OF NEVADA; WARDEN WILLIAM HUTCHINGS,

Defendant(s),

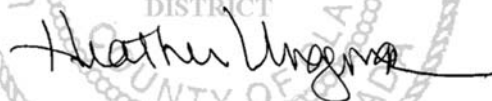
Case No: A-21-830001-W

Dept. No: XXIII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 1 day of September 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

