

**NOTC**

JEANNIE N. HUA, ESQ.  
Nevada Bar No. 5672  
LAW OFFICE OF JEANNIE N. HUA, INC.  
5550 Painted Mirage Rd., Ste. 320  
Las Vegas, Nevada 89149  
(702) 239-5715  
JeannieHua@aol.com  
Attorneys for Defendant  
Jeffrey Brown

~~CASE NO: A-21-839615-A~~  
~~Electronically Filed~~  
~~Aug 19 2021 02:29 p.m.~~  
~~Department 27~~  
Elizabeth A. Brown  
Clerk of Supreme Court

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

vs.

JEFFREY BROWN, aka  
Jeffrey Kent Brown, #3074249 ,

Defendant.

Case No. A-19-793350-W

Dept No. XII

**NOTICE OF APPEAL**

Notice is hereby given that JEFFREY BROWN, defendant above named, hereby appeals to the Supreme Court of Nevada from the Findings of Facts, Conclusions of Law entered in this action on the 11 th day of August, 2021.

DATED this 17<sup>th</sup> of August, 2021.

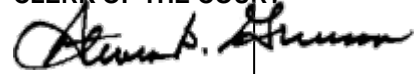
LAW OFFICE OF JEANNIE HUA

By /s/ Jeannie N. Hua  
JEANNIE N. HUA, ESQ.  
Nevada Bar No. 5672  
Attorney for Defendant  
Jeffrey Brown

**CERTIFICATE OF SERVICE**

I, Jeannie Hua hereby affirm that I serviced a copy of the Notice of Appeal via electronic transmission to –

Alexander Chen  
Chief Deputy District Attorney  
Alexander.chen@clarkcountydacountyda.com



**ASTA**  
JEANNIE N. HUA, ESQ.  
Nevada Bar No. 5672  
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Las Vegas, Nevada 89149  
(702) 239-5715  
JeannieHua@aol.com  
Attorney for Defendant  
Jeffrey Brown

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

vs.

JEFFREY BROWN ,  
aka JEFFREY KENT BROWN

Defendant.

Case No. A-19-793350-W  
~~A-19-79335--W~~

Dept. No. XII

**CASE APPEAL STATEMENT**

1. Name of appellant filing this case appeal statement: **JEFFREY BROWN.**

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

**Michelle Leavitt.**

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

**JEANNIE N. HUA, ESQ.**  
**Painted Mirage Road., Ste. 320**  
**Las Vegas, Nevada 89149**

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

**STEVEN B. WOLFSON, ESQ.**  
**Clark County District Attorney**  
**200 Lewis Avenue**

CASE APPEAL STATEMENT - 1

1 **Las Vegas, Nevada 89155-2212**

2 **///**

3 5. Indicate whether any attorney identified above in response to question 3 or 4 is  
4 not licensed to practice law in Nevada and, if so, whether the district court granted that  
5 attorney permission to appear under SCR 42 (attach a copy of any district court order  
6 granting such permission): **Not applicable.**

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

9 7. Indicate whether appellant is represented by appointed or retained counsel on  
10 appeal: **Appointed counsel.**

11 8. Indicate whether appellant was granted leave to proceed in forma pauperis,  
12 and the date of entry of the district court order granting such leave: **Motion for**  
13 **Appointment of Counsel was granted on June 18, 2019.**

14 9. Indicate the date the proceedings commenced in the district court (e.g., date  
15 complaint, indictment, information, or petition was filed): **April 11, 2019.**

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

19 **Grand jury indicted Defendant with Aggravated Stalking (Category B**  
20 **felony – NRS 200.575 – NOC 50333); two counts of Attempted Murder with Use**  
21 **of a Deadly Weapon (Category B Felony – NRS 200.010, 200.030, 193.330, 193 –**  
22 **NOC 50021); Battery with Use of a Deadly Weapon Resulting in Substantial**  
23 **Bodily Harm Constituting Domestic Violence (Category B Felony – NRS 200.481;**  
24 **200.485; 33.018 – NOC 57936); Battery with Use of a Deadly Weapon Resulting in**  
25 **Substantial Bodily Harm (Category B Felony – NRS 200.481 – NOC 50226);**  
26 **Assault with a Deadly Weapon (Category B Felony – NRS 200.481 – NOC 50226);**  
27 **Assault with a Deadly Weapon (Category B Felony – NRS 200.471 – NOC 50201);**  
28 **Child Abuse, Neglect, or Endangerment with Use of a Deadly Weapon (Category**

1 **B Felony – NRS 200.508, 193.165 – NOC 55228); and two counts of Discharge of**  
2 **Firearm from or within a Structure or Vehicle (Category B Felony – NRS 202.287**  
3 **– NOC 51445). Defendant pled guilty to one count of Attempt Murder with Use of**  
4 **a Deadly Weapon and one count of Assault with a Deadly Weapon on January**  
5 **17, 2028. Judgment of Conviction was filed on July 2, 2018. For Count One, Trial**  
6 **Court sentenced Defendant to a maximum of twenty years with a minimum**  
7 **parole eligibility of eight years for Attempt Murder, plus a consecutive term of**  
8 **twenty years with a minimum parole eligibility of eight years for the Use of a**  
9 **Deadly Weapon; and for Count Two, a maximum of seventy-two months with a**  
10 **minimum parole eligibility of sixteen months for Assault with Use of Deadly**  
11 **Weapon, concurrent with Count One.**

12 **Defendant filed a Pro Per Petition for Writ of Habeas Corpus on**  
13 **April 11, 2019. Counsel for Defendant filed a Supplement to Petitioner’ s Post**  
14 **Conviction Writ of Habeas Corpus on October 7, 2019. State filed a response on**  
15 **January 15, 2020. Reply was filed on February 10, 2020. Trial Court denied**  
16 **Defendant’ s Writ. Notice of Entry of Findings of Facts and Conclusions of Law**  
17 **and Order was filed on August 3, 2020.**

18 **Nevada Court of Appeal dismissed the appeal on July 12, 2021 because**  
19 **the Finding of Fact and Conclusions of Law was incomplete. Since then, the**  
20 **amended Finding of Fact and Conclusions of Law has been filed on August 9,**  
21 **2021.**

22 11. Indicate whether the case has previously been the subject of an appeal to or  
23 original writ proceeding in the Supreme Court and, if so, the caption and Supreme  
24 Court docket number of the prior proceeding: **None.**

25 12. Indicate whether this appeal involves child custody or visitation: **No.**

26 13. If this is a civil case, indicate whether this appeal involves the possibility of  
27 settlement: **Not applicable.**

1 DATED this 16th day of August, 2021.

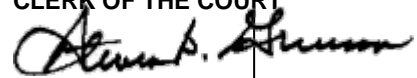
2 Law Office of Jeannie N. Hua

3  
4 By /s/ Jeannie N. Hua  
5 JEANNIE N. HUA, ESQ.  
6 Nevada Bar No. 5672  
7 Attorney for Defendant  
8 Jeffrey Brown  
9

10 Certification of Service by Electronic Transmission

11  
12 I, Jeannie Hua hereby acknowledge that I sent the Case Appeal Statement via  
13 email on August 16, 2021 to the following attorney –

14 Chief Deputy District Attorney Alexander Chen  
15 [alexander.chen@clarkcountynyda.com](mailto:alexander.chen@clarkcountynyda.com)  
16  
17  
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Jeannie N. Hua, Esq.  
5550 Painted Mirage Road  
#320  
Las Vegas, Nevada 89149  
(702) 239-5715  
Jeanniehua@aol.com

IN THE SUPREME COURT  
OF THE STATE OF NEVADA

JEFFREY KENT BROWN,

Appellant,

vs.

STATE OF NEVADA,

Respondent

Case No.: A-19-793350-W

CERTIFICATE THAT NO TRANSCRIPT IS BEING  
REQUESTED

Notice is hereby given that Appellant Jeffrey Brown is not requesting the preparation of transcripts  
for this appeal.

Dated this 17<sup>th</sup> day of August, 2021

/s/ Jeannie N. Hua  
Nevada Bar # 5672  
Law Office of Jeannie N. Hua, Inc.  
5550 Painted Mirage Road  
Suite 320  
Las Vegas, Nevada 89149  
(702) 239-5715

CERTIFICATE OF SERVICE

I, Jeannie Hua hereby affirm that I serviced a copy of the Notice of Appeal via electronic transmission to –

Alexander Chen  
Chief Deputy District Attorney  
Alexander.chen@clarkcountyda.com

/s/ Jeannie Hua

CERTIFICATE THAT NO TRANSCRIPT IS BEING REQUESTED - 1

# CASE SUMMARY

## CASE NO. A-19-793350-W

**Jeffrey Brown, Plaintiff(s)**  
**vs.**  
**Isidro Baca, Warden, Defendant(s)**

§  
§  
§  
§  
§  
§

Location: **Department 12**  
 Judicial Officer: **Leavitt, Michelle**  
 Filed on: **04/11/2019**  
 Cross-Reference Case Number: **A793350**  
 Supreme Court No.: **81648**

### CASE INFORMATION

#### Related Cases

C-16-318858-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

#### Statistical Closures

08/10/2020 Other Manner of Disposition

Case Status: **08/10/2020 Closed**

### DATE

### CASE ASSIGNMENT

#### Current Case Assignment

Case Number A-19-793350-W  
 Court Department 12  
 Date Assigned 04/11/2019  
 Judicial Officer Leavitt, Michelle

### PARTY INFORMATION






		<i>Lead Attorneys</i>
<b>Plaintiff</b>	<b>Brown, Jeffrey</b>	<b>Hua, Jeannie N</b> <i>Retained</i> 702-589-7540(W)
<b>Defendant</b>	<b>Isidro Baca, Warden</b>	<b>Wolfson, Steven B</b> <i>Retained</i> 702-455-5320(W)

### DATE



### EVENTS & ORDERS OF THE COURT

### INDEX

#### EVENTS


04/11/2019	 Inmate Filed - Petition for Writ of Habeas Corpus Party: Plaintiff Brown, Jeffrey <i>[1] Post Conviction</i>
04/11/2019	 Motion for Appointment of Attorney Filed By: Plaintiff Brown, Jeffrey <i>[2]</i>
04/11/2019	 Application to Proceed in Forma Pauperis Filed By: Plaintiff Brown, Jeffrey <i>[3]</i>
04/26/2019	 Order for Petition for Writ of Habeas Corpus <i>[4] Order for Petition for Writ of Habeas Corpus</i>
05/01/2019	 Motion Filed By: Plaintiff Brown, Jeffrey <i>[5] Motion to Revisit Petitioner's Motion for Transcripts at State's Expense by Consideration of the Supplemental</i>


**CASE SUMMARY**  
**CASE NO. A-19-793350-W**


05/08/2019	 Clerk's Notice of Hearing <i>[6] Notice of Hearing</i>
05/10/2019	 Amended Petition Filed By: Plaintiff Brown, Jeffrey <i>[7] Amended Petition for Writ of Habeas Corpus</i>
06/04/2019	 Response Filed by: Defendant Isidro Baca, Warden <i>[8] State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction), Request for Evidentiary Hearing, and Motion for Appointment of Counsel</i>
06/11/2019	 Request Filed by: Plaintiff Brown, Jeffrey <i>[9] Request for Submission of Petitioner's Motion for Appointment of Counsel</i>
10/07/2019	 Supplement <i>[10] Supplement to Petitioner's Post Conviction Writ of Habeas Corpus</i>
01/16/2020	 Response Filed by: Plaintiff Brown, Jeffrey <i>[11] State's Response to Defendant's Supplemental Petition for Writ of Habeas Corpus</i>
02/10/2020	 Reply Filed by: Plaintiff Brown, Jeffrey <i>[12] Reply to State's Response to Petitioner's Supplemental Petition for Writ of Habeas Corpus</i>
07/30/2020	 Findings of Fact, Conclusions of Law and Order Filed By: Plaintiff Brown, Jeffrey <i>[13]</i>
08/03/2020	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Defendant Isidro Baca, Warden <i>[14] Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
08/10/2020	 Order to Statistically Close Case <i>[15] CIVIL ORDER TO STATISTICALLY CLOSE CASE</i>
08/13/2020	 Notice of Appeal (Criminal) Party: Plaintiff Brown, Jeffrey <i>[16] Notice of Appeal</i>
08/13/2020	 Case Appeal Statement Filed By: Plaintiff Brown, Jeffrey <i>[17] Case Appeal Statement</i>
08/09/2021	 NV Supreme Court Clerks Certificate/Judgment - Dismissed <i>[18] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Dismissed</i>
08/09/2021	 Finding of Fact and Conclusions of Law Filed By: Plaintiff Brown, Jeffrey <i>[19] Amended Finding of Fact, Conclusions of Law and Order</i>




**CASE SUMMARY**  
**CASE NO. A-19-793350-W**

08/11/2021  Notice of Entry of Findings of Fact, Conclusions of Law  
Filed By: Defendant Isidro Baca, Warden  
*[20] Notice of Entry of Amended Findings of Fact, Conclusions of Law and Order*

08/17/2021  Case Appeal Statement  
Filed By: Plaintiff Brown, Jeffrey  
*[21] Case Appeal Statement*

08/17/2021  Certificate  
Filed By: Plaintiff Brown, Jeffrey  
*[22] CERTIFICATE THAT NO TRANSCRIPT IS BEING REQUESTED*

08/17/2021  Notice of Appeal  
*[23] Notice of Appeal*

**DISPOSITIONS**

08/09/2021 **Clerk's Certificate** (Judicial Officer: Leavitt, Michelle)  
Debtors: Jeffrey Brown (Plaintiff)  
Creditors: Isidro Baca, Warden (Defendant)  
Judgment: 08/09/2021, Docketed: 08/10/2021  
Comment: Supreme Court No. 81648 Appeal Dismissed


**HEARINGS**

06/13/2019 **Petition for Writ of Habeas Corpus (8:30 AM)** (Judicial Officer: Leavitt, Michelle)  
**06/13/2019, 06/18/2019, 08/08/2019, 12/12/2019, 02/13/2020**

Matter Continued;  
Matter Continued;  
Matter Continued;  
Matter Continued;  
Matter Continued;  
Matter Continued;  
Matter Continued;  
Matter Continued;  
Matter Continued;





06/13/2019 **Motion (8:30 AM)** (Judicial Officer: Leavitt, Michelle)  
**06/13/2019, 06/18/2019, 08/08/2019, 12/12/2019, 02/13/2020**

*Motion to Revisit Petitioner's Motion for Transcripts at State's Expense by Consideration of the Supplemental*  
Matter Continued;  
Matter Continued;  
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Matter Continued;  
Matter Continued;

06/13/2019  **All Pending Motions (8:30 AM)** (Judicial Officer: Leavitt, Michelle)

# CASE SUMMARY

## CASE NO. A-19-793350-W

	<p>Matter Heard; Journal Entry Details: <i>PETITION FOR WRIT OF HABEAS CORPUS ... MOTION TO REVISIT PETITIONER'S MOTION FOR TRANSCRIPTS AT STATE'S EXPENSE BY CONSIDERATION OF THE SUPPLEMENTAL COURT ORDERED, matter CONTINUED for ruling. CONTINUED TO: 06/18/19 8:30 AM;</i></p>
06/18/2019	<p> <b>All Pending Motions</b> (8:30 AM) (Judicial Officer: Leavitt, Michelle)</p> <p>Matter Heard; Journal Entry Details: <i>PETITION FOR WRIT OF HABEAS CORPUS ... MOTION TO REVISIT PETITIONER'S MOTION FOR TRANSCRIPTS AT STATE'S EXPENSE BY CONSIDERATION OF THE SUPPLEMENTAL Upon review of the Petition, COURT ORDERED, Post Conviction Counsel APPOINTED; matter SET for Status Check regarding appointment of counsel; pending matters CONTINUED. 08/08/19 8:30 AM STATUS CHECK: CONFIRMATION OF COUNSEL;</i></p>
08/08/2019	<p><b>Status Check: Confirmation of Counsel</b> (8:30 AM) (Judicial Officer: Leavitt, Michelle) <i>Status Check: Confirmation of Counsel (post conviction)</i> Counsel Confirmed;</p>
08/08/2019	<p> <b>All Pending Motions</b> (8:30 AM) (Judicial Officer: Leavitt, Michelle)</p> <p>Matter Heard; Journal Entry Details: <i>PETITION FOR WRIT OF HABEAS CORPUS ... MOTION TO REVISIT PETITIONER'S MOTION FOR TRANSCRIPTS AT STATE'S EXPENSE BY CONSIDERATION OF THE SUPPLEMENTAL ... STATUS CHECK: CONFIRMATION OF COUNSEL Defendant not present. Ms. Bolton accepted appointment and requested a briefing schedule. COURT ORDERED, Supplemental due 10/07/19; Reply due 11/06/19; Response due 12/06/19; matters CONTINUED and SET for Hearing. NDC CONTINUED TO: 12/12/19 8:30 AM 12/12/19 8:30 AM HEARING RE: PETITION FOR WRIT ;</i></p>
12/12/2019	<p><b>Hearing</b> (8:30 AM) (Judicial Officer: Leavitt, Michelle) <b>12/12/2019, 02/13/2020</b> <i>Hearing: Re: Petition for Writ of Habeas Corpus</i> Matter Continued;</p>
12/12/2019	<p> <b>All Pending Motions</b> (8:30 AM) (Judicial Officer: Leavitt, Michelle)</p> <p>Matter Continued; Journal Entry Details: <i>Defendant not present. Upon Court's inquiry, Ms. Hua advised that she did not receive the State's Opposition. Ms. Lamanna advised that she did not receive the Supplemental Petition. COURT ORDERED, State's Reply due 1/23/20; Response due 2/9/20; All matters CONTINUED. NDC CONTINUED TO: 2/13/19 8:30 AM ;</i></p>
02/13/2020	<p> <b>All Pending Motions</b> (8:30 AM) (Judicial Officer: Leavitt, Michelle)</p> <p>Matter Heard; Journal Entry Details: <i>HEARING: RE: PETITION FOR WRIT OF HABEAS CORPUS ... PETITION FOR WRIT OF HABEAS CORPUS ... MOTION TO REVISIT PETITIONER'S MOTION FOR TRANSCRIPTS AT STATE'S EXPENSE BY CONSIDERATION OF THE SUPPLEMENTAL Counsel submitted on the briefs. COURT ORDERED, Petition DENIED; Motion to Revisit Motion OFF CALENDAR. Ms. Hua requested the Court sign an Order for Appointment for Appellate Counsel. COURT SO CONFIRMED. NDC;</i></p>

## DISTRICT COURT CIVIL COVER SHEET

A-19-793350-W

Dept. XII

County, Nevada

Case No.

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone): Jeffrey Brown	Defendant(s) (name/address/phone): Isidro Baca, Warden
Attorney (name/address/phone):	Attorney (name/address/phone):

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

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

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

April 11, 2019

Date

Signature of initiating party or representative

See other side for family-related case filings.

*Heather S. Hume*  
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**

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 **THE STATE OF NEVADA,**  
10 **Plaintiff,**

11 **-vs-**

12 **JEFFREY BROWN,**  
13 **#3074249**

14 **Defendant.**

**CASE NO: A-19-793350-W**

**DEPT NO: XII**

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

17 **DATE OF HEARING: FEBRUARY 13, 2020**  
18 **TIME OF HEARING: 8:30 AM**

19 **THIS CAUSE** having come on for hearing before the Honorable MICHELLE  
20 **LEAVITT**, District Judge, on the 13 day of February, 2020, the Petitioner not being present,  
21 represented by Jeannie N. Hua, the Respondent being represented by STEVEN B. WOLFSON,  
22 Clark County District Attorney, by and through ANDREA ORWOLL, Deputy District  
23 Attorney, and the Court having considered the matter, including briefs, transcripts, arguments  
24 of counsel, and documents on file herein, now therefore, the Court makes the following  
findings of fact and conclusions of law:

25 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

26 **PROCEDURAL HISTORY**

27 **On October 19, 2016, a grand jury indicted Petitioner with Aggravated Stalking;**  
28 **Attempt Murder with use of a Deadly Weapon; Battery with use of a Deadly Weapon Resulting**

1 in Substantial Bodily Harm Constituting Domestic Violence; Battery with use of a Deadly  
2 Weapon Resulting in Substantial Bodily Harm; Assault with a Deadly Weapon; Child Abuse,  
3 Neglect, or Endangerment with use of a Deadly Weapon; and Discharge of a Firearm from or  
4 Within a Structure or Vehicle.

5 On January 17, 2018, Petitioner plead guilty to Attempt Murder with use of a Deadly  
6 Weapon and Assault with a Deadly Weapon.

7 On June 21, 2018, Petitioner was sentenced to an aggregate sentence of 8 to 20 years,  
8 with a consecutive sentence of 8 to 20 years for the deadly weapon enhancement. The  
9 Judgment of Conviction was filed on July 2, 2018.

10 On April 11, 2019, Petitioner filed a Petition for Writ of Habeas Corpus ("Petition").  
11 On May 10, 2019, Petitioner filed an Amended Petition ("Amended Petition"). The State filed  
12 its response June 4, 2019.

13 On June 18, 2019, the district court appointed counsel. On October 7, 2019, counsel for  
14 Petitioner filed a Supplement to Petitioner's Post Conviction Writ of Habeas Corpus  
15 ("Supplement"). On January 16, 2020, the State filed a Response to Petitioner's Supplement.  
16 On February 10, 2020, counsel for Petitioner filed a Reply to the State's Response to  
17 Petitioner's Supplement. On February 13, 2020, the district court denied Petitioner's Petition,  
18 Amended Petition, and Supplement. Findings of Fact, Conclusion of Law and Order reflecting  
19 the Court's denial of Petitioner's Supplement were filed on July 30, 2020. Petitioner appealed  
20 the court's decision and on July 12, 2021, the Nevada Court of Appeals dismissed the appeal  
21 because the filed Findings of Fact, Conclusions of Law and Order "did not resolve all of the  
22 claims raised in those Petitions."

### 23 ANALYSIS

24 A defendant has the Sixth Amendment right to an effective assistance of counsel in  
25 criminal proceedings. See Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063  
26 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Nevada has  
27 adopted the standard outlined in Strickland in determining whether a defendant received  
28 effective assistance of counsel. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113

1 (1996); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984). To show that  
2 counsel was ineffective, the defendant must prove that he was denied "reasonably effective  
3 assistance" of counsel by satisfying a two-pronged test. Strickland, 466 U.S. at 686-687, 104  
4 S. Ct. at 2064; see State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this  
5 test, the defendant must show that his counsel's representation fell below an objective standard  
6 of reasonableness, and that, but for counsel's errors, there is a reasonable probability that the  
7 result of the proceedings would have been different. See Strickland, 466 U.S. at 687-688, 694,  
8 104 S. Ct. at 2064, 2068.

9 "Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559  
10 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). The question is whether an attorney's  
11 representations amounted to incompetence under prevailing professional norms, "not whether  
12 it deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86,  
13 88, 131 S. Ct. 770, 778 (2011). Furthermore, "[e]ffective counsel does not mean errorless  
14 counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded  
15 of attorneys in criminal cases.'" Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432,  
16 537 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441,  
17 1449 (1970)).

18 A court begins with a presumption of effectiveness and then must determine whether  
19 the defendant has demonstrated by a preponderance of the evidence that counsel was  
20 ineffective. Means v. State, 120 Nev. 1001, 1011-12, 103 P.3d 25, 35 (2004). The role of a  
21 court in considering allegations of ineffective assistance of counsel is "not to pass upon the  
22 merits of the action not taken but to determine whether, under the particular facts and  
23 circumstances or' the case, trial counsel failed to render reasonably effective assistance."  
24 Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (emphasis added) (citing  
25 Cooper v. Fitzharris, 551F.2d1162, 1166 (9th Cir. 1977)). In considering whether trial counsel  
26 was effective, the court must determine whether counsel made a "sufficient inquiry into the  
27 information . . . pertinent to his client's case." Doleman v State, 112 Nev. 843, 846, 921 P.2d  
28 278, 280 (1996)(citing Strickland, 466 U.S. at 690-691, 104 S. Ct. at 2066). Once this decision

1 is made, the court will consider whether counsel made "a reasonable strategy decision on how  
2 to proceed with his client's case." Doleman, 112 Nev. at 846, 921 P.2d at 280 (citing Strickland,  
3 466 U.S. at 690-691, 104 S. Ct. at 2066). Counsel's strategy decision is a "tactical" decision  
4 and will be "virtually unchallengeable absent extraordinary circumstances." Id. at 846, 921  
5 P.2d at 280; see also Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland,  
6 466 U.S. at 691, 104 S. Ct. at 2066.

7 The Strickland analysis does not mean courts should "second guess reasoned choices  
8 between trial tactics, nor does it mean that defense counsel, to protect himself against  
9 allegations of inadequacy, must make every conceivable motion no matter how remote the  
10 possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711 (citing Cooper, 551  
11 F.2d at 1166 (9th Cir. 1977)). Therefore, counsel cannot be deemed ineffective for failing to  
12 make futile objections, file futile motions, or raise futile arguments. Ennis v. State, 122 Nev.  
13 694, 706, 137 P.3d 1095, 1103 (2006).

14 Even if a defendant can show that his counsel's representation fell below an objective  
15 standard of reasonableness, he must still demonstrate prejudice and a reasonable probability  
16 that, but for counsel's errors, the result of the trial would have been different. McNelson v.  
17 State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687). "A  
18 reasonable probability is a probability sufficient to undermine confidence in the outcome."  
19 Strickland, 466 U.S. at 694, 104 S. Ct. at 2068.

20 Courts must dismiss a petition if a petitioner pled guilty and the petitioner is not alleging  
21 "that the plea was involuntarily or unknowingly entered, or that the plea was entered without  
22 effective assistance of counsel." NRS 34.810(1)(a). Although a defendant may attack the  
23 validity of a guilty plea by showing that he received ineffective assistance of counsel, the  
24 defendant maintains the burden of demonstrating "a reasonable probability that, but for  
25 counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."  
26 See Molina v. State, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004); Kirksey v. State, 112 Nev.  
27 980, 988, 923 P.2d 1102, 1107 (1996) (quoting Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct.  
28 366, 370 (1985)). "A reasonable probability is a probability sufficient to undermine confidence

1 in the outcome.” Strickland, 466 U.S. at 694, 104 S. Ct. at 2068. “Bare” or “naked” allegations  
2 are not sufficient to show ineffectiveness of counsel. Hargrove v. State, 100 Nev. 498, 502,  
3 686 P.2d 222, 225 (1984). A defendant who contends his attorney was ineffective because he  
4 did not adequately investigate must show how a better investigation would have rendered a  
5 more favorable outcome. Molina, 120 Nev. at 192, 87 P.3d at 538. Ultimately, while it is  
6 counsel’s duty to candidly advise a defendant regarding a plea offer, the decision of whether  
7 or not to accept a plea offer is the defendants. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 163  
8 (2002).

9 **I. PETITIONER’S PETITION IS DENIED**

10 **A. Petitioner’s Guilty Plea Agreement Cures Earlier Constitutional Defects.**

11 In McMann v. Richardson, the United States Supreme Court stated that “a voluntary  
12 plea of guilty entered on advice of counsel constitutes a waiver of all non-jurisdictional defects  
13 in any prior stage of the proceedings against the defendant.” 397 U.S. 759, 762, 90 S. Ct. 1441,  
14 1444 (1970) (citing Glenn v. McMann, 349 F.2d 1018 (C. A. 2d Cir. 1965), cert. denied, 383  
15 U.S. 915 (1966)). Therefore, any earlier constitutional defects, such as the State’s failure to  
16 provide Marcum notice, are cured by Petitioner’s guilty plea agreement.

17 **B. Petitioner failed to show his counsel was ineffective.**

18 **1. Petitioner failed to show that counsel was ineffective for failing to raise**  
19 **Marcum notice (Ground 1).**

20 Petitioner first argues that counsel was ineffective for failing to challenge the State’s  
21 alleged failure to provide Marcum notice. Petition, at 7-9. However, Petitioner failed to show  
22 a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and  
23 would have insisted on going to trial. Molina, 120 Nev. at 190-91, 87 P.3d at 537. Thus,  
24 Petitioner failed to demonstrate that counsel was ineffective for failing to challenge the lack  
25 of Marcum notice.

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1                   **2. Petitioner failed to show that counsel was ineffective for failing to order a**  
2                   **competency evaluation (Ground 2).**

3                   Petitioner next argues that counsel was ineffective for advising Defendant to take a plea  
4 before subjecting him to a competency exam. Petition, 10-12. Petitioner claim is a naked and  
5 bare allegation because he does not identify what a competency evaluation would have  
6 revealed. Petitioner merely states that his mental state was “fragile” and “confused.” Id. at 10.  
7 Petitioner failed to explain how a fragile and confused state affected his decision to enter a  
8 guilty plea agreement. Without this information, this court cannot determine how a  
9 competency evaluation would have rendered a different outcome for the Petitioner.

10                  In fact, Petitioner’s claim is belied by the record and his petition. First, Petitioner alleges  
11 that counsel was ineffective for failing to order a competency exam, but immediately claims  
12 that he was at a competency hearing on April 1, 2018. Petition, 11. Second, the record shows  
13 that Petitioner was found competent to stand for trial under the Dusky standard. Court Minutes,  
14 April 6, 2018. Thus, Defendant's naked and bare allegation is belied by the record.

15                   **3. Petitioner failed to show counsel was ineffective for making misleading**  
16                   **representations (Ground 3).**

17                  Petitioner argues that counsel was ineffective for providing him with ill and misleading  
18 advice. Petition, 13. A defendant is not entitled to a particular “relationship” with his attorney.  
19 Morris v. Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983). There is no requirement for  
20 any specific amount of communication as long as counsel is reasonably effective in his  
21 representation. Id. Petitioner’s current complaint is belied by his statement that he was satisfied  
22 with his representation. GPA, 6. Thus, the claim must be denied. Furthermore, Petitioner has  
23 failed to specify what kind of “ill” and “misleading” information his counsel gave him that  
24 compelled him into pleading guilty. Similarly, Petitioner complains that his counsel failed to  
25 provide case files to him once withdrawn. However, he does not identify what these files were.  
26 Without this information, this court cannot determine how the alleged misleading information  
27 and the failure to provide Petitioner with files affected his decision to plead guilty. Since  
28 Petitioner has not shown that the result would have been different had he had more

1 communication with counsel, his claim is a naked and bare allegation that is belied by the  
2 record.

3 **4. Petitioner failed to show that counsel was ineffective for advising him to**  
4 **enter a plea when he had a valid self-defense claim (Grounds 4 and 5).**

5 Petitioner next argues that his self-defense theory would have had a major impact on  
6 every count of attempt murder. Petition, 17 (Ground 4). Petitioner further-argues that counsel  
7 was ineffective because he advised Petitioner to plead guilty despite knowing about the self-  
8 defense theory. Petition, 22 (Ground 5).

9 Petitioner fails to identify what type of advice his counsel gave him that forced him to  
10 plead guilty. Without this information, this court cannot analyze how, but for counsel's alleged  
11 misleading advise, Petitioner would have insisted on proceeding to trial. Petitioner's claim is  
12 also belied by the record. All of the information Petitioner discusses in his petition were  
13 available to him before he decided to plead guilty. Petitioner has the ultimate authority to enter  
14 or reject a plea offer. Johnson v. State, 117 Nev.153, 161-62, 17P.3d 1008, 1012 (2001) (citing  
15 Jones v. Barnes, 463 U.S. 745, 751, 103 S. Ct. 3302 (1983) (the accused has the ultimate  
16 authority to plead guilty)). In fact, Petitioner's GPA states "I have discussed with my attorney  
17 any possible defense, defense strategies and circumstances which might be in my favor." GPA,  
18 at 5. The GPA also stated that "I believe that pleading guilty and accepting this plea bargain  
19 is in my best interest, and that a trial would be contrary to my best interest." Id. Finally,  
20 considering Petitioner's crime and the strength of the evidence-shooting two victims in the  
21 back and admitting to shooting his estranged wife to "shut her up" it was objectively  
22 reasonable to advise Petitioner to take the plea. Presentence Investigation Report, 4-5. Thus,  
23 Petitioner's claims include only naked and bare allegation that is belied by the record.

24 **5. Petitioner failed to show counsel was ineffective for failing to file a motion**  
25 **to withdraw guilty plea (Ground 6).**

26 It is well-settled law that when a defendant pleads guilty, the only claims that may be  
27 raised thereafter are those involving the voluntariness of the plea itself, or that the plea was  
28 entered without effective assistance of counsel. NRS 34.810(1); Kirksey, 112 Nev. at 999,923

1 P.2d at 1114, (citing Warden, Nevada State Prison v. State, 100 Nev. 430,432, 683 P.2d 504,  
2 505 (1984)). A defendant cannot enter a guilty plea then later raise independent claims alleging  
3 a deprivation of his rights before entry of the plea. State v. Eighth Judicial District Court, 121  
4 Nev. 225, 112 P.3d 1070, n.24 (2005) (quoting Tollet v. Henderson, 411 U.S. 258,267 (1973)).

5 Here, Petitioner's allegation is a naked and bare allegation because he failed to identify  
6 the basis for wanting to withdraw his GPA. Without this information, this court cannot analyze  
7 filing a motion to withdraw guilty plea would have rendered him a more favorable result. Also,  
8 Petitioner does not allege his entry of plea was involuntary. Therefore, Petitioner's claim is a  
9 naked and bare allegation that must be denied.

10 **C. Petitioner cannot demonstrate cumulative error.**

11 The Nevada Supreme Court has not endorsed application of its direct appeal cumulative  
12 error standard to the post-conviction Strickland context. McConnell v. State, 125 Nev. 243,  
13 259, 212 P.3d 307,318 (2009). Nor should cumulative error apply on post-conviction review.  
14 Middleton v. Roper, 455 F.3d 838, 851 (8th Cir. 2006), cert. denied, 549 U.S. 1134, 1275 S.Ct.  
15 980 (2007) ("a habeas petitioner cannot build a showing of prejudice on series of errors, none  
16 of which would by itself meet the prejudice test.").

17 Nevertheless, even where available, a cumulative error finding in the context of a  
18 Strickland claim is extraordinarily rare and requires an extensive aggregation of errors. See  
19 Harris By and Through Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995). In fact, logic  
20 dictates that there can be no cumulative error where the defendant fails to demonstrate any  
21 single violation of Strickland. See Turner v. Quarterman, 481 F.3d 292, 301 (5th Cir. 2007)  
22 ("where individual allegations of error are not of constitutional stature or are not errors, there  
23 is 'nothing to cumulate.'") (quoting Yohey v. Collins, 985 F.2d 222, 229 (5th Cir. 1993));  
24 Hughes v. Epps, 694 F.Supp.2d 533, 563 (N.D. Miss. 2010) (citing Leal v. Dretke, 428 F.3d  
25 543, 552-553 (5th Cir. 2005)). Since Petitioner has not demonstrated any claim warrants relief  
26 under Strickland, there are no errors to cumulate.

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1     **II.     PETITIONER'S AMENDED PETITION IS DENIED**

2             Upon filing a Petition for a Writ of Habeas Corpus, NRS 34.750(5) prohibits a  
3     petitioner from filing any additional pleadings or supplements, except for those specifically  
4     provided for in subsections (2)-(4), unless ordered by the Court. Because Petitioner's  
5     Amended Petition was filed after he filed his Petition and filed without leave of this Court, the  
6     pleadings and claims raised are hereby struck and any new claims or allegations contained  
7     therein are denied.

8     **III.    PETITIONER'S SUPPLEMENT IS DENIED**

9             **A. Trial counsel was not ineffective in his pretrial investigation of petitioner's self-**  
10            **defense claim.**

11            A defendant who contends his attorney was ineffective because he did not adequately  
12     investigate must show how a better investigation would have changed the outcome of trial.  
13     Strickland, 466 U.S. at 687, 104 S. Ct. at 2064. Such a defendant must allege with specificity  
14     what the investigation would have revealed and how it would have altered the outcome of the  
15     trial. See Love, 109 Nev. at 1138, 865 P.2d at 323.

16            Petitioner argues that trial counsel was ineffective because he did not investigate  
17     Petitioner's self-defense claim. Supp. Petition at 3. First, Petitioner claims counsel should have  
18     consulted ballistics experts to study the trajectory of the bullets as well as the positions of the  
19     victim and Petitioner. Supp. Petition at 3. Next, Petitioner claims counsel should have hired  
20     an investigator to determine whether witnesses could corroborate Petitioner's self-defense  
21     claim. Supp. Petition at 3. Specifically, Petitioner argues that counsel should have interviewed  
22     the victims, security guards at the incident. Supp. Petition at 4. However, in pleading guilty,  
23     Petitioner waived his ability to raise this claim because it does not allege that Petitioner's plea  
24     was involuntary or that counsel was ineffective in the plea process. NRS 34.810(1)(a).

25            Additionally, Petitioner's claims fail under Molina because Petitioner does not explain  
26     what better investigation into those areas would have shown. Petitioner does not explain how  
27     a ballistics expert's conclusion would have shown that Petitioner acted in self-defense. Next,  
28     Petitioner does not allege that there even were witnesses who could corroborate Petitioner's

1 claims. Petitioner also does not explain what information counsel would have received if he  
2 had interviewed the security guards and victim.

3 Further, all of Petitioner's claims are belied under Hargrove by the Guilty Plea  
4 Agreement. In signing the Guilty Plea, Petitioner confirmed that he had spoken with his  
5 attorney about any possible defenses, defense strategies, and circumstances that were in his  
6 favor. Guilty Plea Agreement at 5. Petitioner further confirmed that he believed that pleading  
7 guilty would be in his best interest. Guilty Plea Agreement at 5. Additionally, Petitioner does  
8 not allege that he would not have plead guilty had trial counsel conducted the alleged  
9 investigation. Finally, it was Petitioner's decision to enter the guilty plea without this level of  
10 investigation and that decision belonged to him and not counsel. Rhyne, 118 Nev. at 8, 38 P.3d  
11 at 163. As Petitioner pled guilty in lieu of going to trial, Petitioner fails to explain how any  
12 such investigation or interviews would have changed the result of trial.

13 **D. COUNSEL WAS NOT INEFFECTIVE REGARDING INFORMING**  
14 **PETITIONER OF HIS RIGHT TO TESTIFY BEFORE THE GRAND JURY**

15 Petitioner claims that trial counsel was ineffective because he did not inform him of his  
16 right to testify and present evidence at the grand jury. Supp. Petition at 4. Petitioner argues  
17 that had he known of this right, he would have testified that he was defending himself. Marcum  
18 notice was served to defense counsel on October 5, 2016. As such, Petitioner cannot show  
19 prejudice sufficient for ineffective assistance of counsel purposes because he does not  
20 articulate what specific facts or evidence would have impacted the outcome as required under  
21 Strickland. Petitioner does not explain how his testimony would have established that he shot  
22 two victims, whom he stalked, out of self-defense. Petitioner failed to show a reasonable  
23 probability that, but for counsel's errors, he would not have pleaded guilty and would have  
24 insisted on going to trial. Molina, 120 Nev. at 190-91, 87 P.3d at 537. Thus, Defendant failed  
25 to demonstrate that counsel was ineffective.

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1           **E. NO INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO**  
2           **PREPARE A SENTENCING MEMORANDUM**

3           Petitioner complains that counsel was ineffective because he did not file a sentencing  
4 memorandum and did not address the prejudicial information in the state's sentencing  
5 memorandum. Supp. Petition at 5. As a result, Petitioner claims he was sentenced to the  
6 maximum sentence. Petitioner's claim fails because the decision to file a sentencing  
7 memorandum or offer the information orally at a sentencing hearing is a virtually  
8 unchallengeable strategic decision. Doleman, 112 Nev. at 846, 921 P.2d at 280.

9           At sentencing, defense counsel's argument rebutted arguments made by the state in  
10 their sentencing memorandum and orally. Specifically, in the State's sentencing  
11 memorandum, the State argued that Petitioner should be sentenced to the maximum and  
12 regurgitated the facts elicited from the Grand Jury and pointed the court to several calls  
13 Petitioner made while in custody where he (1) acknowledged that he was trying to kill one of  
14 the victims; (2) asked others to get "dirt" on another victim to use at trial; (3) suborn perjury  
15 through his son, a witness to the case; and (4) asked his son to destroy what he believed to be  
16 incriminating evidence. Sentencing Memorandum at 2-8. At sentencing, the State highlighted  
17 the key facts, trauma suffered by the victims, Petitioner's lack of remorse; and rebutted  
18 mitigating factors such as his age, self-defense claim, and lack of criminal history. Recorder's  
19 Transcript Re: Sentencing at 2-6. In response, trial counsel argued his theory of the case, and  
20 explained that given Petitioner's age, health, and lack of history, they had a valid argument for  
21 self-defense. Transcript Re: Sentencing at 6-8.

22           However, the district court disagreed with Petitioner's argument, explaining that per  
23 the law in Nevada, a person cannot use deadly force in self-defense unless deadly force is first  
24 used against them. Transcript Re: Sentencing at 7. Petitioner fails to explain what other facts  
25 would have changed the district court's position because Petitioner is not alleging that deadly  
26 force was actually used against Petitioner before he shot two people in the back. As such,  
27 Petitioner's claim fails.

28       //

1 **ORDER**

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

4 DATED this \_\_\_\_\_ day of August, 2021.


Dated this 9th day of August, 2021

5   
6 MICHELLE LEAVITT

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

5EB 5B6 1E0E 81BF  
Michelle Leavitt  
District Court Judge

9 BY

  
10 JONATHON VANBOSKERCK  
11 Chief Deputy District Attorney  
Nevada Bar #6528

12  
13  
14 **CERTIFICATE OF SERVICE**

15 I certify that on the 5<sup>th</sup> day of August, 2021, I mailed a copy of the foregoing  
16 proposed Findings of Fact, Conclusions of Law, and Order to:

17 JEFFREY BROWN, NDC #1200868  
18 NNCC  
19 P.O. BOX 7000  
20 CARSON CITY, NV 89702

21 BY

  
22 Secretary for the District Attorney's Office

23  
24  
25  
26  
27  
28 16F15698X/jb/JV/ckb/L4

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Jeffrey Brown, Plaintiff(s)

CASE NO: A-19-793350-W

7 vs.

DEPT. NO. Department 12

8 Isidro Baca, Warden,  
9 Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

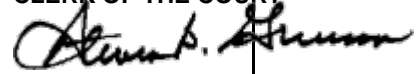
12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Finding of Fact and Conclusions of Law was served via the court's  
14 electronic eFile system to all recipients registered for e-Service on the above entitled case as  
listed below:

15 Service Date: 8/9/2021

16 JEANNIE HUA, ESQ.

jeanniehua@aol.com





NEFF

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JEFFREY BROWN,

Petitioner,

vs.

ISIDRO BACA, WARDEN,

Respondent,

Case No: A-19-793350-W

Dept No: XII

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

**PLEASE TAKE NOTICE** that on August 9, 2021, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on August 11, 2021.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

**CERTIFICATE OF E-SERVICE / MAILING**

I hereby certify that on this 11 day of August 2021, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

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

☒ The United States mail addressed as follows:

Jeffrey Brown # 1200868  
P.O. Box 7000  
Carson City, NV 89702

Jeannie N. Hua, Esq.  
5550 Painted Mirage Rd., Ste 320  
Las Vegas, NV 89149

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

*Heather S. Linn*  
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**

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 **THE STATE OF NEVADA,**  
10 **Plaintiff,**

11 **-vs-**

12 **JEFFREY BROWN,**  
13 **#3074249**

14 **Defendant.**

**CASE NO: A-19-793350-W**

**DEPT NO: XII**

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

17 **DATE OF HEARING: FEBRUARY 13, 2020**  
18 **TIME OF HEARING: 8:30 AM**

19 **THIS CAUSE** having come on for hearing before the Honorable MICHELLE  
20 **LEAVITT**, District Judge, on the 13 day of February, 2020, the Petitioner not being present,  
21 represented by Jeannie N. Hua, the Respondent being represented by STEVEN B. WOLFSON,  
22 Clark County District Attorney, by and through ANDREA ORWOLL, Deputy District  
23 Attorney, and the Court having considered the matter, including briefs, transcripts, arguments  
24 of counsel, and documents on file herein, now therefore, the Court makes the following  
findings of fact and conclusions of law:

25 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

26 **PROCEDURAL HISTORY**

27 **On October 19, 2016, a grand jury indicted Petitioner with Aggravated Stalking;**  
28 **Attempt Murder with use of a Deadly Weapon; Battery with use of a Deadly Weapon Resulting**

1 in Substantial Bodily Harm Constituting Domestic Violence; Battery with use of a Deadly  
2 Weapon Resulting in Substantial Bodily Harm; Assault with a Deadly Weapon; Child Abuse,  
3 Neglect, or Endangerment with use of a Deadly Weapon; and Discharge of a Firearm from or  
4 Within a Structure or Vehicle.

5 On January 17, 2018, Petitioner plead guilty to Attempt Murder with use of a Deadly  
6 Weapon and Assault with a Deadly Weapon.

7 On June 21, 2018, Petitioner was sentenced to an aggregate sentence of 8 to 20 years,  
8 with a consecutive sentence of 8 to 20 years for the deadly weapon enhancement. The  
9 Judgment of Conviction was filed on July 2, 2018.

10 On April 11, 2019, Petitioner filed a Petition for Writ of Habeas Corpus ("Petition").  
11 On May 10, 2019, Petitioner filed an Amended Petition ("Amended Petition"). The State filed  
12 its response June 4, 2019.

13 On June 18, 2019, the district court appointed counsel. On October 7, 2019, counsel for  
14 Petitioner filed a Supplement to Petitioner's Post Conviction Writ of Habeas Corpus  
15 ("Supplement"). On January 16, 2020, the State filed a Response to Petitioner's Supplement.  
16 On February 10, 2020, counsel for Petitioner filed a Reply to the State's Response to  
17 Petitioner's Supplement. On February 13, 2020, the district court denied Petitioner's Petition,  
18 Amended Petition, and Supplement. Findings of Fact, Conclusion of Law and Order reflecting  
19 the Court's denial of Petitioner's Supplement were filed on July 30, 2020. Petitioner appealed  
20 the court's decision and on July 12, 2021, the Nevada Court of Appeals dismissed the appeal  
21 because the filed Findings of Fact, Conclusions of Law and Order "did not resolve all of the  
22 claims raised in those Petitions."

### 23 ANALYSIS

24 A defendant has the Sixth Amendment right to an effective assistance of counsel in  
25 criminal proceedings. See Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063  
26 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Nevada has  
27 adopted the standard outlined in Strickland in determining whether a defendant received  
28 effective assistance of counsel. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113

(1996); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984). To show that counsel was ineffective, the defendant must prove that he was denied "reasonably effective assistance" of counsel by satisfying a two-pronged test. Strickland, 466 U.S. at 686-687, 104 S. Ct. at 2064; see State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, the defendant must show that his counsel's representation fell below an objective standard of reasonableness, and that, but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. See Strickland, 466 U.S. at 687-688, 694, 104 S. Ct. at 2064, 2068.

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

A court begins with a presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011-12, 103 P.3d 25, 35 (2004). The role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances or' the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (emphasis added) (citing Cooper v. Fitzharris, 551F.2d1162, 1166 (9th Cir. 1977)). In considering whether trial counsel was effective, the court must determine whether counsel made a "sufficient inquiry into the information . . . pertinent to his client's case." Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996)(citing Strickland, 466 U.S. at 690-691, 104 S. Ct. at 2066). Once this decision

1 is made, the court will consider whether counsel made "a reasonable strategy decision on how  
2 to proceed with his client's case." Doleman, 112 Nev. at 846, 921 P.2d at 280 (citing Strickland,  
3 466 U.S. at 690-691, 104 S. Ct. at 2066). Counsel's strategy decision is a "tactical" decision  
4 and will be "virtually unchallengeable absent extraordinary circumstances." Id. at 846, 921  
5 P.2d at 280; see also Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland,  
6 466 U.S. at 691, 104 S. Ct. at 2066.

7 The Strickland analysis does not mean courts should "second guess reasoned choices  
8 between trial tactics, nor does it mean that defense counsel, to protect himself against  
9 allegations of inadequacy, must make every conceivable motion no matter how remote the  
10 possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711 (citing Cooper, 551  
11 F.2d at 1166 (9th Cir. 1977)). Therefore, counsel cannot be deemed ineffective for failing to  
12 make futile objections, file futile motions, or raise futile arguments. Ennis v. State, 122 Nev.  
13 694, 706, 137 P.3d 1095, 1103 (2006).

14 Even if a defendant can show that his counsel's representation fell below an objective  
15 standard of reasonableness, he must still demonstrate prejudice and a reasonable probability  
16 that, but for counsel's errors, the result of the trial would have been different. McNelson v.  
17 State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687). "A  
18 reasonable probability is a probability sufficient to undermine confidence in the outcome."  
19 Strickland, 466 U.S. at 694, 104 S. Ct. at 2068.

20 Courts must dismiss a petition if a petitioner pled guilty and the petitioner is not alleging  
21 "that the plea was involuntarily or unknowingly entered, or that the plea was entered without  
22 effective assistance of counsel." NRS 34.810(1)(a). Although a defendant may attack the  
23 validity of a guilty plea by showing that he received ineffective assistance of counsel, the  
24 defendant maintains the burden of demonstrating "a reasonable probability that, but for  
25 counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."  
26 See Molina v. State, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004); Kirksey v. State, 112 Nev.  
27 980, 988, 923 P.2d 1102, 1107 (1996) (quoting Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct.  
28 366, 370 (1985)). "A reasonable probability is a probability sufficient to undermine confidence

1 in the outcome.” Strickland, 466 U.S. at 694, 104 S. Ct. at 2068. “Bare” or “naked” allegations  
2 are not sufficient to show ineffectiveness of counsel. Hargrove v. State, 100 Nev. 498, 502,  
3 686 P.2d 222, 225 (1984). A defendant who contends his attorney was ineffective because he  
4 did not adequately investigate must show how a better investigation would have rendered a  
5 more favorable outcome. Molina, 120 Nev. at 192, 87 P.3d at 538. Ultimately, while it is  
6 counsel’s duty to candidly advise a defendant regarding a plea offer, the decision of whether  
7 or not to accept a plea offer is the defendants. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 163  
8 (2002).

9 **I. PETITIONER’S PETITION IS DENIED**

10 **A. Petitioner’s Guilty Plea Agreement Cures Earlier Constitutional Defects.**

11 In McMann v. Richardson, the United States Supreme Court stated that “a voluntary  
12 plea of guilty entered on advice of counsel constitutes a waiver of all non-jurisdictional defects  
13 in any prior stage of the proceedings against the defendant.” 397 U.S. 759, 762, 90 S. Ct. 1441,  
14 1444 (1970) (citing Glenn v. McMann, 349 F.2d 1018 (C. A. 2d Cir. 1965), cert. denied, 383  
15 U.S. 915 (1966)). Therefore, any earlier constitutional defects, such as the State’s failure to  
16 provide Marcum notice, are cured by Petitioner’s guilty plea agreement.

17 **B. Petitioner failed to show his counsel was ineffective.**

18 **1. Petitioner failed to show that counsel was ineffective for failing to raise**  
19 **Marcum notice (Ground 1).**

20 Petitioner first argues that counsel was ineffective for failing to challenge the State’s  
21 alleged failure to provide Marcum notice. Petition, at 7-9. However, Petitioner failed to show  
22 a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and  
23 would have insisted on going to trial. Molina, 120 Nev. at 190-91, 87 P.3d at 537. Thus,  
24 Petitioner failed to demonstrate that counsel was ineffective for failing to challenge the lack  
25 of Marcum notice.

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1                   **2. Petitioner failed to show that counsel was ineffective for failing to order a**  
2                   **competency evaluation (Ground 2).**

3                   Petitioner next argues that counsel was ineffective for advising Defendant to take a plea  
4 before subjecting him to a competency exam. Petition, 10-12. Petitioner claim is a naked and  
5 bare allegation because he does not identify what a competency evaluation would have  
6 revealed. Petitioner merely states that his mental state was “fragile” and “confused.” Id. at 10.  
7 Petitioner failed to explain how a fragile and confused state affected his decision to enter a  
8 guilty plea agreement. Without this information, this court cannot determine how a  
9 competency evaluation would have rendered a different outcome for the Petitioner.

10                  In fact, Petitioner’s claim is belied by the record and his petition. First, Petitioner alleges  
11 that counsel was ineffective for failing to order a competency exam, but immediately claims  
12 that he was at a competency hearing on April 1, 2018. Petition, 11. Second, the record shows  
13 that Petitioner was found competent to stand for trial under the Dusky standard. Court Minutes,  
14 April 6, 2018. Thus, Defendant's naked and bare allegation is belied by the record.

15                   **3. Petitioner failed to show counsel was ineffective for making misleading**  
16                   **representations (Ground 3).**

17                  Petitioner argues that counsel was ineffective for providing him with ill and misleading  
18 advice. Petition, 13. A defendant is not entitled to a particular “relationship” with his attorney.  
19 Morris v. Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983). There is no requirement for  
20 any specific amount of communication as long as counsel is reasonably effective in his  
21 representation. Id. Petitioner’s current complaint is belied by his statement that he was satisfied  
22 with his representation. GPA, 6. Thus, the claim must be denied. Furthermore, Petitioner has  
23 failed to specify what kind of “ill” and “misleading” information his counsel gave him that  
24 compelled him into pleading guilty. Similarly, Petitioner complains that his counsel failed to  
25 provide case files to him once withdrawn. However, he does not identify what these files were.  
26 Without this information, this court cannot determine how the alleged misleading information  
27 and the failure to provide Petitioner with files affected his decision to plead guilty. Since  
28 Petitioner has not shown that the result would have been different had he had more

1 communication with counsel, his claim is a naked and bare allegation that is belied by the  
2 record.

3 **4. Petitioner failed to show that counsel was ineffective for advising him to**  
4 **enter a plea when he had a valid self-defense claim (Grounds 4 and 5).**

5 Petitioner next argues that his self-defense theory would have had a major impact on  
6 every count of attempt murder. Petition, 17 (Ground 4). Petitioner further-argues that counsel  
7 was ineffective because he advised Petitioner to plead guilty despite knowing about the self-  
8 defense theory. Petition, 22 (Ground 5).

9 Petitioner fails to identify what type of advice his counsel gave him that forced him to  
10 plead guilty. Without this information, this court cannot analyze how, but for counsel's alleged  
11 misleading advise, Petitioner would have insisted on proceeding to trial. Petitioner's claim is  
12 also belied by the record. All of the information Petitioner discusses in his petition were  
13 available to him before he decided to plead guilty. Petitioner has the ultimate authority to enter  
14 or reject a plea offer. Johnson v. State, 117 Nev.153, 161-62, 17P.3d 1008, 1012 (2001) (citing  
15 Jones v. Barnes, 463 U.S. 745, 751, 103 S. Ct. 3302 (1983) (the accused has the ultimate  
16 authority to plead guilty)). In fact, Petitioner's GPA states "I have discussed with my attorney  
17 any possible defense, defense strategies and circumstances which might be in my favor." GPA,  
18 at 5. The GPA also stated that "I believe that pleading guilty and accepting this plea bargain  
19 is in my best interest, and that a trial would be contrary to my best interest." Id. Finally,  
20 considering Petitioner's crime and the strength of the evidence-shooting two victims in the  
21 back and admitting to shooting his estranged wife to "shut her up" it was objectively  
22 reasonable to advise Petitioner to take the plea. Presentence Investigation Report, 4-5. Thus,  
23 Petitioner's claims include only naked and bare allegation that is belied by the record.

24 **5. Petitioner failed to show counsel was ineffective for failing to file a motion**  
25 **to withdraw guilty plea (Ground 6).**

26 It is well-settled law that when a defendant pleads guilty, the only claims that may be  
27 raised thereafter are those involving the voluntariness of the plea itself, or that the plea was  
28 entered without effective assistance of counsel. NRS 34.810(1); Kirksey, 112 Nev. at 999,923



1 P.2d at 1114, (citing Warden, Nevada State Prison v. State, 100 Nev. 430,432, 683 P.2d 504,  
2 505 (1984)). A defendant cannot enter a guilty plea then later raise independent claims alleging  
3 a deprivation of his rights before entry of the plea. State v. Eighth Judicial District Court, 121  
4 Nev. 225, 112 P.3d 1070, n.24 (2005) (quoting Tollet v. Henderson, 411 U.S. 258,267 (1973)).

5 Here, Petitioner's allegation is a naked and bare allegation because he failed to identify  
6 the basis for wanting to withdraw his GPA. Without this information, this court cannot analyze  
7 filing a motion to withdraw guilty plea would have rendered him a more favorable result. Also,  
8 Petitioner does not allege his entry of plea was involuntary. Therefore, Petitioner's claim is a  
9 naked and bare allegation that must be denied.

10 **C. Petitioner cannot demonstrate cumulative error.**

11 The Nevada Supreme Court has not endorsed application of its direct appeal cumulative  
12 error standard to the post-conviction Strickland context. McConnell v. State, 125 Nev. 243,  
13 259, 212 P.3d 307,318 (2009). Nor should cumulative error apply on post-conviction review.  
14 Middleton v. Roper, 455 F.3d 838, 851 (8th Cir. 2006), cert. denied, 549 U.S. 1134, 1275 S.Ct.  
15 980 (2007) ("a habeas petitioner cannot build a showing of prejudice on series of errors, none  
16 of which would by itself meet the prejudice test.").

17 Nevertheless, even where available, a cumulative error finding in the context of a  
18 Strickland claim is extraordinarily rare and requires an extensive aggregation of errors. See  
19 Harris By and Through Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995). In fact, logic  
20 dictates that there can be no cumulative error where the defendant fails to demonstrate any  
21 single violation of Strickland. See Turner v. Quarterman, 481 F.3d 292, 301 (5th Cir. 2007)  
22 ("where individual allegations of error are not of constitutional stature or are not errors, there  
23 is 'nothing to cumulate.'") (quoting Yohey v. Collins, 985 F.2d 222, 229 (5th Cir. 1993));  
24 Hughes v. Epps, 694 F.Supp.2d 533, 563 (N.D. Miss. 2010) (citing Leal v. Dretke, 428 F.3d  
25 543, 552-553 (5th Cir. 2005)). Since Petitioner has not demonstrated any claim warrants relief  
26 under Strickland, there are no errors to cumulate.

27 //

28 //

1     **II.     PETITIONER'S AMENDED PETITION IS DENIED**

2             Upon filing a Petition for a Writ of Habeas Corpus, NRS 34.750(5) prohibits a  
3     petitioner from filing any additional pleadings or supplements, except for those specifically  
4     provided for in subsections (2)-(4), unless ordered by the Court. Because Petitioner's  
5     Amended Petition was filed after he filed his Petition and filed without leave of this Court, the  
6     pleadings and claims raised are hereby struck and any new claims or allegations contained  
7     therein are denied.

8     **III.    PETITIONER'S SUPPLEMENT IS DENIED**

9             **A. Trial counsel was not ineffective in his pretrial investigation of petitioner's self-**  
10            **defense claim.**

11            A defendant who contends his attorney was ineffective because he did not adequately  
12     investigate must show how a better investigation would have changed the outcome of trial.  
13     Strickland, 466 U.S. at 687, 104 S. Ct. at 2064. Such a defendant must allege with specificity  
14     what the investigation would have revealed and how it would have altered the outcome of the  
15     trial. See Love, 109 Nev. at 1138, 865 P.2d at 323.

16            Petitioner argues that trial counsel was ineffective because he did not investigate  
17     Petitioner's self-defense claim. Supp. Petition at 3. First, Petitioner claims counsel should have  
18     consulted ballistics experts to study the trajectory of the bullets as well as the positions of the  
19     victim and Petitioner. Supp. Petition at 3. Next, Petitioner claims counsel should have hired  
20     an investigator to determine whether witnesses could corroborate Petitioner's self-defense  
21     claim. Supp. Petition at 3. Specifically, Petitioner argues that counsel should have interviewed  
22     the victims, security guards at the incident. Supp. Petition at 4. However, in pleading guilty,  
23     Petitioner waived his ability to raise this claim because it does not allege that Petitioner's plea  
24     was involuntary or that counsel was ineffective in the plea process. NRS 34.810(1)(a).

25            Additionally, Petitioner's claims fail under Molina because Petitioner does not explain  
26     what better investigation into those areas would have shown. Petitioner does not explain how  
27     a ballistics expert's conclusion would have shown that Petitioner acted in self-defense. Next,  
28     Petitioner does not allege that there even were witnesses who could corroborate Petitioner's

1 claims. Petitioner also does not explain what information counsel would have received if he  
2 had interviewed the security guards and victim.

3 Further, all of Petitioner's claims are belied under Hargrove by the Guilty Plea  
4 Agreement. In signing the Guilty Plea, Petitioner confirmed that he had spoken with his  
5 attorney about any possible defenses, defense strategies, and circumstances that were in his  
6 favor. Guilty Plea Agreement at 5. Petitioner further confirmed that he believed that pleading  
7 guilty would be in his best interest. Guilty Plea Agreement at 5. Additionally, Petitioner does  
8 not allege that he would not have plead guilty had trial counsel conducted the alleged  
9 investigation. Finally, it was Petitioner's decision to enter the guilty plea without this level of  
10 investigation and that decision belonged to him and not counsel. Rhyne, 118 Nev. at 8, 38 P.3d  
11 at 163. As Petitioner pled guilty in lieu of going to trial, Petitioner fails to explain how any  
12 such investigation or interviews would have changed the result of trial.

13 **D. COUNSEL WAS NOT INEFFECTIVE REGARDING INFORMING**  
14 **PETITIONER OF HIS RIGHT TO TESTIFY BEFORE THE GRAND JURY**

15 Petitioner claims that trial counsel was ineffective because he did not inform him of his  
16 right to testify and present evidence at the grand jury. Supp. Petition at 4. Petitioner argues  
17 that had he known of this right, he would have testified that he was defending himself. Marcum  
18 notice was served to defense counsel on October 5, 2016. As such, Petitioner cannot show  
19 prejudice sufficient for ineffective assistance of counsel purposes because he does not  
20 articulate what specific facts or evidence would have impacted the outcome as required under  
21 Strickland. Petitioner does not explain how his testimony would have established that he shot  
22 two victims, whom he stalked, out of self-defense. Petitioner failed to show a reasonable  
23 probability that, but for counsel's errors, he would not have pleaded guilty and would have  
24 insisted on going to trial. Molina, 120 Nev. at 190-91, 87 P.3d at 537. Thus, Defendant failed  
25 to demonstrate that counsel was ineffective.

26 //

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1           **E. NO INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO**  
2           **PREPARE A SENTENCING MEMORANDUM**

3           Petitioner complains that counsel was ineffective because he did not file a sentencing  
4 memorandum and did not address the prejudicial information in the state's sentencing  
5 memorandum. Supp. Petition at 5. As a result, Petitioner claims he was sentenced to the  
6 maximum sentence. Petitioner's claim fails because the decision to file a sentencing  
7 memorandum or offer the information orally at a sentencing hearing is a virtually  
8 unchallengeable strategic decision. Doleman, 112 Nev. at 846, 921 P.2d at 280.

9           At sentencing, defense counsel's argument rebutted arguments made by the state in  
10 their sentencing memorandum and orally. Specifically, in the State's sentencing  
11 memorandum, the State argued that Petitioner should be sentenced to the maximum and  
12 regurgitated the facts elicited from the Grand Jury and pointed the court to several calls  
13 Petitioner made while in custody where he (1) acknowledged that he was trying to kill one of  
14 the victims; (2) asked others to get "dirt" on another victim to use at trial; (3) suborn perjury  
15 through his son, a witness to the case; and (4) asked his son to destroy what he believed to be  
16 incriminating evidence. Sentencing Memorandum at 2-8. At sentencing, the State highlighted  
17 the key facts, trauma suffered by the victims, Petitioner's lack of remorse; and rebutted  
18 mitigating factors such as his age, self-defense claim, and lack of criminal history. Recorder's  
19 Transcript Re: Sentencing at 2-6. In response, trial counsel argued his theory of the case, and  
20 explained that given Petitioner's age, health, and lack of history, they had a valid argument for  
21 self-defense. Transcript Re: Sentencing at 6-8.

22           However, the district court disagreed with Petitioner's argument, explaining that per  
23 the law in Nevada, a person cannot use deadly force in self-defense unless deadly force is first  
24 used against them. Transcript Re: Sentencing at 7. Petitioner fails to explain what other facts  
25 would have changed the district court's position because Petitioner is not alleging that deadly  
26 force was actually used against Petitioner before he shot two people in the back. As such,  
27 Petitioner's claim fails.

28       //

1 **ORDER**

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

4 DATED this \_\_\_\_\_ day of August, 2021.


Dated this 9th day of August, 2021

5   
6 MICHELLE LEAVITT

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

5EB 5B6 1E0E 81BF  
Michelle Leavitt  
District Court Judge

9 BY

  
10 JONATHON VANBOSKERCK  
11 Chief Deputy District Attorney  
Nevada Bar #6528

12  
13  
14 **CERTIFICATE OF SERVICE**

15 I certify that on the 5<sup>th</sup> day of August, 2021, I mailed a copy of the foregoing  
16 proposed Findings of Fact, Conclusions of Law, and Order to:

17 JEFFREY BROWN, NDC #1200868  
18 NNCC  
19 P.O. BOX 7000  
20 CARSON CITY, NV 89702

21 BY

  
22 Secretary for the District Attorney's Office

23  
24  
25  
26  
27  
28 16F15698X/jb/JV/ckb/L4

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Jeffrey Brown, Plaintiff(s)

CASE NO: A-19-793350-W

7 vs.

DEPT. NO. Department 12

8 Isidro Baca, Warden,  
9 Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 8/9/2021

16 JEANNIE HUA, ESQ.

jeanniehua@aol.com

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**June 13, 2019**

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A-19-793350-W      Jeffrey Brown, Plaintiff(s)  
vs.  
Isidro Baca, Warden, Defendant(s)

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**June 13, 2019      8:30 AM      All Pending Motions**

**HEARD BY:** Leavitt, Michelle      **COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Haly Pannullo

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:**      Lamanna, Brianna K.      Attorney

**JOURNAL ENTRIES**

- PETITION FOR WRIT OF HABEAS CORPUS ... MOTION TO REVISIT PETITIONER'S MOTION  
FOR TRANSCRIPTS AT STATE'S EXPENSE BY CONSIDERATION OF THE SUPPLEMENTAL

COURT ORDERED, matter CONTINUED for ruling.

CONTINUED TO: 06/18/19 8:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**June 18, 2019**

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A-19-793350-W      Jeffrey Brown, Plaintiff(s)  
vs.  
Isidro Baca, Warden, Defendant(s)

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**June 18, 2019      8:30 AM      All Pending Motions**

**HEARD BY:** Leavitt, Michelle      **COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Haly Pannullo

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:**      Dunn, Ann Marie      Attorney

**JOURNAL ENTRIES**

- PETITION FOR WRIT OF HABEAS CORPUS ... MOTION TO REVISIT PETITIONER'S MOTION FOR TRANSCRIPTS AT STATE'S EXPENSE BY CONSIDERATION OF THE SUPPLEMENTAL

Upon review of the Petition, COURT ORDERED, Post Conviction Counsel APPOINTED; matter SET for Status Check regarding appointment of counsel; pending matters CONTINUED.

08/08/19 8:30 AM STATUS CHECK: CONFIRMATION OF COUNSEL



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**August 08, 2019**

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A-19-793350-W      Jeffrey Brown, Plaintiff(s)  
vs.  
Isidro Baca, Warden, Defendant(s)

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**August 08, 2019      8:30 AM      All Pending Motions**

**HEARD BY:** Leavitt, Michelle      **COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Haly Pannullo

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:**      Bolton, Jennifer      Attorney  
                 Brooks, Parker      Attorney

**JOURNAL ENTRIES**

- PETITION FOR WRIT OF HABEAS CORPUS ... MOTION TO REVISIT PETITIONER'S MOTION FOR TRANSCRIPTS AT STATE'S EXPENSE BY CONSIDERATION OF THE SUPPLEMENTAL ... STATUS CHECK: CONFIRMATION OF COUNSEL

Defendant not present. Ms. Bolton accepted appointment and requested a briefing schedule. COURT ORDERED, Supplemental due 10/07/19; Reply due 11/06/19; Response due 12/06/19; matters CONTINUED and SET for Hearing.

NDC

CONTINUED TO: 12/12/19 8:30 AM

12/12/19 8:30 AM HEARING RE: PETITION FOR WRIT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**December 12, 2019**

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A-19-793350-W      Jeffrey Brown, Plaintiff(s)  
vs.  
Isidro Baca, Warden, Defendant(s)

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**December 12, 2019      8:30 AM      All Pending Motions**

**HEARD BY:** Leavitt, Michelle      **COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Haly Pannullo  
Carolyn Jackson

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:**      Hua, Jeannie N      Attorney  
Lamanna, Brianna K.      Attorney

**JOURNAL ENTRIES**

- Defendant not present. Upon Court's inquiry, Ms. Hua advised that she did not receive the State's Opposition. Ms. Lamanna advised that she did not receive the Supplemental Petition. COURT ORDERED, State's Reply due 1/23/20; Response due 2/9/20; All matters CONTINUED.

NDC

CONTINUED TO: 2/13/19 8:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**February 13, 2020**

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A-19-793350-W      Jeffrey Brown, Plaintiff(s)  
vs.  
Isidro Baca, Warden, Defendant(s)

---

**February 13, 2020      8:30 AM      All Pending Motions**

**HEARD BY:** Leavitt, Michelle      **COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Haly Pannullo

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

**PRESENT:**      Hua, Jeannie N      Attorney  
Orwoll, Andrea D.      Attorney

**JOURNAL ENTRIES**

- HEARING: RE: PETITION FOR WRIT OF HABEAS CORPUS ... PETITION FOR WRIT OF HABEAS CORPUS ... MOTION TO REVISIT PETITIONER'S MOTION FOR TRANSCRIPTS AT STATE'S EXPENSE BY CONSIDERATION OF THE SUPPLEMENTAL

Counsel submitted on the briefs. COURT ORDERED, Petition DENIED; Motion to Revisit Motion OFF CALENDAR. Ms. Hua requested the Court sign an Order for Appointment for Appellate Counsel. COURT SO CONFIRMED.

NDC

# Certification of Copy

State of Nevada }  
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; CERTIFICATE THAT NO TRANSCRIPT OF BEING REQUESTED; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; NOTICE OF ENTRY OF AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT MINUTES

JEFFREY BROWN,

Plaintiff(s),

vs.

ISIDRO BACA, WARDEN, NNCC,

Defendant(s),

Case No: A-19-793350-W

Dept No: XII

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 19 day of August 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk