

1 **NOAS**

2 Rene L. Valladares

3 Federal Public Defender

4 Nevada Bar No. 11479

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8 David_Anthony@fd.org

9 Brad D. Levenson

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13 411 E. Bonneville, Ste. 250

14 Las Vegas, Nevada 89101

15 (702) 388-6577

16 (702) 388-5819 (Fax)

17 Attorneys for Zane Michael Floyd

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23
DISTRICT COURT
CLARK COUNTY, NEVADA

13 Zane Michael Floyd,

14 Petitioner,

15 v.

16 William Gittere, Warden, Ely State
17 Prison; AARON FORD; Attorney General,
18 State of Nevada,

19 Respondents.

Case No. A-21-832952-W
Dept. No. 17

Notice of Appeal

DEATH PENALTY CASE.

1 Notice is hereby given that Petitioner appeals to the Nevada Supreme Court
2 from the August 16, 2021, Findings of Fact, Conclusions of Law and Order Denying
3 Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction), as well as all
4 orders, rulings, or decisions related thereto that are made appealable thereby.

5 Written notice of entry of the order was filed on August 18, 2021.

6 DATED this 26th day of August, 2021.

7 Respectfully submitted
8 Rene L. Valladares
Federal Public Defender

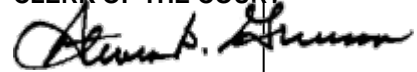
9 /s/ David Anthony
10 David Anthony
Assistant Federal Public Defender

11 /s/ Brad D. Levenson
12 Brad D. Levenson
Assistant Federal Public Defender

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

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



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Attorneys for Petitioner Zane M. Floyd

DISTRICT COURT
CLARK COUNTY, NEVADA

Zane Michael Floyd,

Petitioner,

v.

Case No. A-21-832952-W
Dept. No. 17

Case Appeal Statement

William Gittere, Warden, Ely State
Prison; Aaron Ford; Attorney General,
State of Nevada.

Respondents.

DEATH PENALTY CASE.

Case Appeal Statement

1. Name of petitioner filing this case appeal statement: Zane Michael
Floyd.
2. Identify the judge issuing the decision, judgment, or order appealed
from: The Honorable Michael Villani of the Eighth Judicial District Court.

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

3 Petitioner:

4 Zane Michael Floyd

5 Counsel for Petitioner:

6 Rene L. Valladares

7 David Anthony

8 Brad D. Levenson

9 Office of the Federal Public Defender

10 411 E. Bonneville, Ste. 250

11 Las Vegas, Nevada 89101

12 4. Identify each respondent and the name and address of counsel for each
13 respondent:

14 Respondents:

15 William Gittere, Warden, Ely State Prison; Aaron Ford; Attorney
16 General, State of Nevada.

17 Counsel for Respondents:

18 Alexander Chen

19 Chief Deputy District Attorney

20 5. Indicate whether any attorney identified above in response to question
21 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court
22 granted that attorney permission to appear under SCR 42: Not applicable.

23 6. Indicate whether petitioner was represented by appointed or retained
counsel in the district court: Appellant was represented by appointed counsel, the
Office of the Federal Public Defender in the district court.

1 7. Indicate whether appellant was represented by appointed or retained
2 counsel on appeal: Petitioner is represented by appointed counsel, the Office of the
3 Federal Public Defender on appeal.

4 8. Indicate whether petitioner was granted leave to proceed in forma
5 pauperis, and the date of entry of the district court order granting such leave:
6 Petitioner filed an application to proceed Informa Pauperis on April 23, 2021.
7 Undersigned counsel were appointed by the court on June 4, 2021. 6/4/21 TT at 24.
8 Mr. Floyd has been represented by appointed counsel for all of the proceedings in
9 his criminal case, Case No. 99C159897. Mr. Floyd was granted leave to proceed in
10 forma pauperis and the Federal Public Defender was appointed to represent him on
11 April 17, 2006, in *Floyd v. Baker*, Case No. 2:06-cv-00471-RFB-DJA, Docket No. 6.
12 The Federal Public Defender has represented Mr. Floyd in all subsequent state and
13 federal proceedings.

14 9. Indicate the date the proceeding commenced in the district court: On
15 April 15, 2021.

16 10. Provide a brief description of the nature of the action and result in the
17 district court, including the type of judgment or order being appealed and the relief
18 granted by the district court: Mr. Floyd filed a petition for writ of habeas corpus
19 (post-conviction) on April 15, 2021, raising two constitutional claims challenging the
20 validity of his death sentence. Mr. Floyd filed an amended petition on May 11, 2021,
21 raising two additional claims for relief challenging his death sentence. Mr. Floyd
22 filed a second amended petition on June 3, 2021, raising an additional claim
23

1 challenging his death sentence. The State's motion to dismiss the petitions was
2 argued at a hearing on July 9, 2021, and the district court denied the petitions by
3 order, dated August 16, 2021. Notice of entry of order was issued on August 18,
4 2021.

5 11. Indicate whether the case has previously been the subject of an appeal
6 to or original writ proceeding in the Supreme Court or Court of Appeals, and if so,
7 the caption and docket number of the prior proceeding: This case has been the
8 subject of appeal in the Supreme Court or Court of Appeals.

9
10 *Floyd v. State*, Supreme Court of Nevada, Case No. 36752 (2002)

11 *Floyd v. State*, Supreme Court of Nevada, Case No. 44868 (2006)

12 *Floyd v. State*, Supreme Court of Nevada, Case No. 51409 (2010)

13 *Floyd v. Eighth Judicial District Court*, Supreme Court of Nevada, Case
No. 83108 (2021, pending)

14 *Floyd v. Eighth Judicial District Court*, Supreme Court of Nevada, Case
No. 83167 (2021, pending)

15 *Floyd v. Eighth Judicial District Court*, Supreme Court of Nevada, Case
16 No. 83225 (2021, pending)

17 *Floyd v. Daniels, et al.*, Supreme Court of Nevada, Case No. 83181 (2021,
18 pending)

19 12. Indicate whether this appeal involves child custody or visitation: This
20 appeal does not involve child custody or visitation.

21 ///

22 ///

1 13. If this is a civil case, indicate whether this appeal involves the
2 possibility of settlement: This appeal does not involve the possibility of settlement.

3 DATED this 26th day of August, 2021.

4 Respectfully submitted
5 Rene L. Valladares
6 Federal Public Defender

7 /s/ David Anthony
8 David Anthony
9 Assistant Federal Public Defender

10 /s/ Brad D. Levenson
11 Brad D. Levenson
12 Assistant Federal Public Defender
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Alexander Chen
Chief Deputy District Attorney
motions@clarkcountydade.com
Eileen.davis@clarkcountydade.com

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

CASE SUMMARY

CASE NO. A-21-832952-W

Zane Floyd, Plaintiff(s)
vs.
William Gittere, Defendant(s)

§
§
§
§
§

Location: **Department 17**
 Judicial Officer: **Villani, Michael**
 Filed on: **04/15/2021**
 Case Number History:
 Cross-Reference Case Number: **A832952**

CASE INFORMATION

Related Cases
 99C159897 (Related)

Case Type: **Writ of Habeas Corpus**

Case Status: **04/15/2021 Open**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-21-832952-W
 Court Department 17
 Date Assigned 04/16/2021
 Judicial Officer Villani, Michael

PARTY INFORMATION





| | | |
|------------------|--|--|
| Plaintiff | Floyd, Zane M | <i>Lead Attorneys</i> Levenson, Bradley D. <i>Retained</i> 702-671-2501(W) |
| Defendant | Attorney General, State of Nevada Ely State Prison Ford, Aaron Gittere, William | |
| Other | State of Nevada | Wolfson, Steven B <i>Retained</i> 702-671-2700(W) |

DATE

EVENTS & ORDERS OF THE COURT

INDEX

EVENTS

| | |
|------------|---|
| 04/15/2021 |  Petition for Writ of Habeas Corpus Filed by: Plaintiff Floyd, Zane M <i>[1] Petition for Writ of Habeas Corpus (Post-Conviction)</i> |
| 04/15/2021 |  Exhibits Filed By: Plaintiff Floyd, Zane M <i>[2] Exhibits in Support of Petition for Writ of Habeas Corpus (Post-Conviction)</i> |
| 04/15/2021 |  Motion to Disqualify Attorney Filed By: Plaintiff Floyd, Zane M <i>[3] Motion to Disqualify the Clark County District Attorney's Office</i> |
| 04/15/2021 |  Waiver Filed by: Plaintiff Floyd, Zane M |

CASE SUMMARY
CASE NO. A-21-832952-W

[4] Waiver of Petitioner's In-Person Presence at Hearings

04/15/2021



Clerk's Notice of Hearing

[5] Clerk's Notice of Hearing

04/16/2021



Notice of Department Reassignment

[6] Notice of Department Reassignment

04/16/2021



Motion for Appointment of Attorney

Filed By: Plaintiff Floyd, Zane M

[7] Motion for Appointment of Counsel and Notice of Hearing

04/16/2021



Application to Proceed in Forma Pauperis

Filed By: Plaintiff Floyd, Zane M

[8] Application to Proceed in Forma Pauperis

04/19/2021



Clerk's Notice of Hearing

[9] Notice of Hearing

04/19/2021



Waiver

Filed by: Plaintiff Floyd, Zane M

[10] Waiver of Petitioner's In-Person Presence at Hearings

04/23/2021



Clerk's Notice of Hearing

[11] Notice of Hearing

04/23/2021



Application

Filed By: Plaintiff Floyd, Zane M

[12] Application to Proceed in Forma Pauperis

04/28/2021



Order to Proceed In Forma Pauperis

[13] (Proposed) Order to Proceed Informa Pauperis

05/05/2021



Clerk's Notice of Nonconforming Document

[14] Clerk's Notice of Nonconforming Document

05/11/2021



Motion for Leave to File

Party: Plaintiff Floyd, Zane M

[15] Motion for Leave to File Amended Petition for Writ of Habeas Corpus (Post-Conviction)

05/11/2021



Exhibits

Filed By: Plaintiff Floyd, Zane M

[16] Exhibits in Support of Motion for Leave to File Amended Petition for Writ of Habeas Corpus (Post-Conviction)

05/11/2021



Amended Petition

Filed By: Plaintiff Floyd, Zane M

[17] Amended Petition for Writ of Habeas Corpus (Post-Conviction)

05/11/2021



Exhibits

Filed By: Plaintiff Floyd, Zane M

[18] Exhibits in Support of Amended Petition for Writ of Habeas Corpus (Post-Conviction)

CASE SUMMARY
CASE NO. A-21-832952-W




| | |
|------------|--|
| 05/17/2021 |  Clerk's Notice of Hearing <i>[19] Notice of Hearing</i> |
| 06/03/2021 |  Motion for Leave to File Party: Plaintiff Floyd, Zane M <i>[21] Motion for Leave to File Second Amended Petition for Writ of Habeas Corpus (Post-Conviction)</i> |
| 06/03/2021 |  Exhibits Filed By: Plaintiff Floyd, Zane M <i>[22] Exhibits in Support of Motion for Leave to File Second Amended Petition for Writ of Habeas Corpus (Post-Conviction)</i> |
| 06/03/2021 |  Amended Petition Filed By: Plaintiff Floyd, Zane M <i>[23] Second Amended Petition for Writ of Habeas Corpus (Post-Conviction)</i> |
| 06/03/2021 |  Exhibits Filed By: Plaintiff Floyd, Zane M <i>[24] Exhibits in Support of Second Amended Petition for Writ of Habeas Corpus (Post-Conviction)</i> |
| 06/03/2021 |  Clerk's Notice of Hearing <i>[25] Clerk's Notice of Hearing</i> |
| 06/04/2021 |  Response Filed by: Defendant Attorney General, State of Nevada; Other State of Nevada <i>[26] State's Response to Petitioner's Third Petition for Writ of Habeas Corpus (Post-Conviction)</i> |
| 06/08/2021 |  Recorders Transcript of Hearing <i>[27] Recorder's Transcript of Hearing: State's Motion and Notice of Motion for the Court to Issue Second Supplemental Order of Execution and Second Supplemental Warrant of Execution/Defendant's Motion to Strike, or Alternatively, Motion to Stay the Second Supplemental Order of Execution and Second Supplemental Warrant of Execution Heard on June 4, 2021</i> |
| 06/09/2021 |  Objection <i>[28] Objection to Order Denying Motion to Transfer Case Under EDCR 1.60(H)</i> |
| 06/09/2021 |  Exhibits <i>[29] Exhibits to Objection to Order Denying Motion to Transfer Case Under EDCR 1.60(H)</i> |
| 06/10/2021 |  Recorders Transcript of Hearing <i>[30] Recorders Transcript of Hearing Re: All Pending Motions, May 14, 2021</i> |
| 06/18/2021 |  Reply Filed by: Plaintiff Floyd, Zane M <i>[31] Reply to Response to Second Amended Petition for Writ of Habeas Corpus (Post-Conviction)</i> |
| 06/18/2021 |  Exhibits Filed By: Plaintiff Floyd, Zane M <i>[32] Exhibits in Support of Reply to Response to Second Amended Petition for Writ of Habeas Corpus (Post-Conviction)</i> |

CASE SUMMARY
CASE NO. A-21-832952-W

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|------------------------|---|
| 07/20/2021 |  Recorders Transcript of Hearing <i>[33] Recorder's Transcript of Hearing: Petition for Writ of Habeas Corpus; Friday, July 9, 2021</i> |
| 08/09/2021 |  Document Filed Filed by: Other State of Nevada <i>[34] Correction to the Record From the August 6, 2021 Hearing.</i> |
| 08/10/2021 |  Notice Filed By: Plaintiff Floyd, Zane M <i>[35] Notice of Exhibits to Second Amended Petition in Support of Claim Two</i> |
| 08/10/2021 |  Exhibits Filed By: Plaintiff Floyd, Zane M <i>[36] Exhibits to Second Amended Petition in Support of Claim Two</i> |
| 08/10/2021 |  Exhibits Filed By: Plaintiff Floyd, Zane M <i>[37] Exhibit Nine to Second Amended Petition in Support of Claim Two</i> |
| 08/16/2021 |  Findings of Fact, Conclusions of Law and Order Filed By: Plaintiff Floyd, Zane M <i>[38] Findings of Fact, Conclusions of Law and Order</i> |
| 08/18/2021 |  Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Other State of Nevada <i>[39] Notice of Entry of Findings of Fact, Conclusions of Law and Order</i> |
| 08/26/2021 |  Notice of Appeal Filed By: Plaintiff Floyd, Zane M <i>[40] Notice of Appeal</i> |
| 08/26/2021 |  Case Appeal Statement Filed By: Plaintiff Floyd, Zane M <i>[41] Case Appeal Statement</i> |
| <u>HEARINGS</u> | |
| 04/23/2021 |  Minute Order (3:00 AM) (Judicial Officer: Villani, Michael) Minute Order - No Hearing Held; Journal Entry Details: <i>By stipulation and agreement by Parties via email communications with Dept. 17 Law Clerk, COURT ORDERS, matter SET for April 30, 2021, VACATED and RESET to May 14, 2021, at 8:30 AM.;</i> |
| 04/30/2021 | CANCELED Status Check: Status of Case (8:30 AM) (Judicial Officer: Villani, Michael) <i>Vacated - per Law Clerk</i> <i>Status Check: Briefing Schedule</i> |
| 05/14/2021 |  Status Check: Status of Case (8:30 AM) (Judicial Officer: Villani, Michael) <i>Status Check: Briefing Schedule</i> Briefing Schedule Set; Journal Entry Details: <i>Alexander Chen and Brianna Stutz also present on behalf of the State. Defendant not present. COURT ORDERED, Briefing Schedule SET as follows: State's Responsive Pleading due by 6/4/2021, Reply Brief due by 6/18/2021, and matter SET for hearing. COURT FURTHER</i> |

CASE SUMMARY

CASE NO. A-21-832952-W

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| | <i>ORDERED, Petition for Writ of Habeas Corpus hearing on 6/11/2021 VACATED. NDC 7/2/2021 8:30 AM PETITION FOR WRIT OF HABEAS CORPUS;</i> |
| 05/18/2021 | CANCELED Motion to Disqualify Attorney (10:00 AM) (Judicial Officer: Peterson, Jessica K.) <i>Vacated - Set in Error</i> |
| 06/01/2021 | CANCELED Motion to Disqualify Attorney (10:00 AM) (Judicial Officer: Peterson, Jessica K.) <i>Vacated - Set in Error</i> |
| 06/04/2021 |  Motion for Appointment of Attorney (8:30 AM) (Judicial Officer: Villani, Michael) <i>Petitioner's Motion for Appointment of Counsel and Notice of Hearing</i> Granted; Journal Entry Details: <i>Matter heard with Case 99C159897. Defendant not present. COURT ORDERED, Petitioner's Motion for Appointment of Counsel GRANTED as no Opposition had been filed. NDC;</i> |
| 06/09/2021 |  Minute Order (3:00 AM) (Judicial Officer: Villani, Michael) Minute Order - No Hearing Held; Journal Entry Details: <i>COURT ORDERED, Recorder's Transcript of Hearing filed 5/20/2021 STRICKEN due to an incorrect caption on Page 1, incorrectly stating Honorable Jacob Villani, which will be refiled to reflect Honorable Michael Villani.;</i> |
| 06/11/2021 | CANCELED Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer: Villani, Michael) <i>Vacated - per Judge</i> <i>Petition for Writ of Habeas Corpus</i> |
| 06/25/2021 | CANCELED Motion to Disqualify Attorney (8:30 AM) (Judicial Officer: Peterson, Jessica K.) <i>Vacated - Moot</i> <i>Federal Public Defender's Motion to Disqualify Clark County District Attorney's Office</i> |
| 06/25/2021 | CANCELED Motion for Leave (8:30 AM) (Judicial Officer: Silva, Cristina D.) <i>Vacated - Moot</i> <i>Motion for Leave to File Amended Petition for Writ of Habeas Corpus (Post-Conviction)</i> |
| 06/25/2021 | CANCELED Motion for Leave (8:30 AM) (Judicial Officer: Silva, Cristina D.) <i>Vacated - Moot</i> <i>Motion for Leave to File Second Amended Petition for Writ of Habeas Corpus (Post Conviction)</i> |
| 07/02/2021 | CANCELED Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer: Villani, Michael) <i>Vacated - per Law Clerk</i> <i>Petition for Writ of Habeas Corpus</i> |
| 07/09/2021 |  Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer: Villani, Michael) <i>Petition for Writ of Habeas Corpus</i> Denied; Journal Entry Details: <i>Arguments by Mr. Levenson and Mr. Chen regarding the Petition. Upon Court's inquiry, Mr. Levenson stated Defendant was not IQ tested at the time of trial, however he was tested during the first federal post conviction they handled. Court FINDS as to the clemency issue, that there was no right to clemency, it had previously ruled on this issue and the previous decision made in C159897 STANDS in this case today and as to the Ely State Prison versus Nevada State Prison issue, Court FINDS the decision previously made in C159897 applies to the issue of preclusion in this case, therefore the new prison, under the statute, is allowed to perform the execution in this matter. Court stated it would follow the U.S. Supreme Court's bright-line test on the Atkin's issue related to IQ, however it does not FIND sufficient information to warrant the granting of the Petition on this issue and it does not FIND the Fetal Alcohol Spectrum Disorder (FASD) rises to the level of intellectually disabled, therefore COURT ORDERED,</i> |

CASE SUMMARY
CASE NO. A-21-832952-W

Petition DENIED. Court directed Mr. Chen to prepare the Order from today's hearing. NDC;

DATE

FINANCIAL INFORMATION

Plaintiff Floyd, Zane M

Total Charges

24.00

Total Payments and Credits

24.00

Balance Due as of 8/27/2021

0.00

DISTRICT COURT CIVIL COVER SHEET

_____ **Clark** _____ County, Nevada
 Case No. _____
 (Assigned by Clerk's Office)

CASE NO: A-21-832952-W
Department 8

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

| | |
|--|---|
| Plaintiff(s) (name/address/phone): <div style="text-align: center;">Zane Floyd, #66514</div> <div style="text-align: center;">Ely State Prison</div> <div style="text-align: center;">P.O. Box 1989</div> <div style="text-align: center;">Ely, NV 89301</div> | Defendant(s) (name/address/phone): <div style="text-align: center;">William Gittere, Warden</div> <div style="text-align: center;">Ely State Prison</div> <div style="text-align: center;">P.O. Box 1989</div> <div style="text-align: center;">Ely, NV 89301</div> |
| Attorney (name/address/phone): <div style="text-align: center;">Brad D. Levenson</div> <div style="text-align: center;">Federal Public Defenders Office</div> <div style="text-align: center;">411 E. Bonneville Ave., Suite 250</div> <div style="text-align: center;">Las Vegas, NV 89101</div> | Attorney (name/address/phone): <div style="text-align: center;">Steven B. Wolfson</div> <div style="text-align: center;">Clark County District Attorney</div> <div style="text-align: center;">200 Lewis Ave,</div> <div style="text-align: center;">Las Vegas, NV 89101</div> |

II. Nature of Controversy (please select the one most applicable filing type below)

Civil Case Filing Types

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

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

04/15/2021

Date

/s/ **Brad D. Levenson**

Signature of initiating party or representative

See other side for family-related case filings.

Heather S. Smith
CLERK OF THE COURT

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #010539
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

ZANE MICHAEL FLOYD,
Petitioner,

-vs-

WILLIAM GITTERE, Warden, Ely State
Prison; AARON FORD; Attorney General,
THE STATE OF NEVADA,

Respondent.

CASE NO: A-21-832952-W
DEPT NO: XVII

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

DATE OF HEARING: JULY 9, 2021
TIME OF HEARING: 8:30

THIS CAUSE having come on for hearing before the Honorable Michael Villani, District Judge, on the 9th day of July, 2021, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

STATEMENT OF THE CASE

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

1 a Notice of Reservation to Seek the Death Penalty. On June 25, 1999, the State filed an
2 Amended Criminal Complaint adding an additional charge of Attempt Murder with Use of a
3 Deadly Weapon.

4 On June 28, 1999, the State charged Petitioner by way of Information, and two
5 amendments thereafter, as follows: Count 1 – Burglary While in Possession of a Firearm
6 (Felony – NRS 205.060); Count 2 – Murder with Use of a Deadly Weapon (Open Murder)
7 (Felony – NRS 200.010, 200.030, 193.165); Count 3 – Murder with Use of a Deadly Weapon
8 (Open Murder) (Felony – NRS 200.010, 200.030, 193.165); Count 4 – Murder with Use of a
9 Deadly Weapon (Open Murder) (Felony – NRS 200.010, 200.030, 193.165); Count 5 – Murder
10 with Use of a Deadly Weapon (Open Murder) (Felony – NRS 200.010, 200.030, 193.165);
11 Count 6 – Attempt Murder with Use of a Deadly Weapon (Felony – NRS 200.010, 200.030,
12 193.165, 193.330); Count 7 – Attempt Murder with Use of a Deadly Weapon (Felony – NRS
13 200.010, 200.030, 193.165, 193.330); Count 8 – First Degree Kidnapping with Use of a Deadly
14 Weapon (Felony – NRS 200.310, 200.320, 193.165); Count 9 – Sexual Assault with Use of a
15 Deadly Weapon (Felony – NRS 200.364, 200.366, 193.165); Count 10 – Sexual Assault with
16 Use of a Deadly Weapon (Felony – NRS 200.364, 200.366, 193.165); Count 11 – Sexual
17 Assault with Use of a Deadly Weapon (Felony – NRS 200.364, 200.366, 193.165); and Count
18 12 – Sexual Assault with Use of a Deadly Weapon (Felony – NRS 200.364, 200.366, 193.165).
19 On July 6, 1999, the State filed a Notice of Intent to Seek the Death Penalty.

20 Petitioner's jury trial commenced on July 11, 2000. On July 19, 2000, the jury returned
21 a verdict finding Petitioner guilty on all counts. At the penalty hearing, the State introduced
22 three aggravating circumstances in support of a death sentence. On July 21, 2000, the same
23 jury returned a verdict of death.

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

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

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

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

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

18 On April 14, 2006, Petitioner filed a Petition for Writ of Habeas Corpus in the United
19 States District Court and requested stay and abeyance. Stay and abeyance was granted on April
20 25, 2007, for exhaustion of state court remedies.

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22 Conviction) on June 8, 2007. The State filed its Opposition on August 18, 2007. Petitioner
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24 2007, the district court ordered an evidentiary hearing. Following the hearing on February 22,
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14 day, Petitioner filed a Motion to Transfer Case Under EDCR 1.60(H) and Motion to Disqualify
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16 the Court to Issue Second Supplemental Order of Execution and Second Supplemental
17 Warrant of Execution. On April 21, 2021, Petitioner filed an Opposition to Motion for the
18 Court to Issue Second Supplemental Order of Execution and Second Supplemental Warrant
19 of Execution. Petitioner filed an Amended Opposition on April 26, 2021.

20 On April 26, 2021, the State filed an Opposition to Petitioner's Motion to Disqualify
21 the Clark County District Attorney's Office and a Response to his Motion to Transfer Case
22 Under EDCR 1.60(H). Petitioner filed both his Replies on April 29, 2021. On May 5, 2021,
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24 Supplemental Order of Execution and Second Supplemental Warrant of Execution. On April
25 10, 2021, the State filed an Addendum to State's Motion for the Court to Issue Second
26 Supplemental Order of Execution and Second Supplemental Warrant of Execution.

27 On May 11, 2021, Petitioner filed a Motion to Strike, or Alternatively, Motion to Stay
28 the Second Supplemental Order of Execution and Second Supplemental Warrant of Execution.

1 The State filed its Opposition to the Motion to Strike on May 13, 2021. Petitioner filed a Reply
2 on May 20, 2021. On June 4, 2021, this Court denied Petitioner's Motion to Strike.

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

7 On April 15, 2021, Petitioner filed his third Petition for Writ of Habeas Corpus (Post-
8 Conviction). Following a hearing on May 6, 2021, in the United States District Court, District
9 of Nevada, Petitioner filed the instant Amended Petition for Writ of Habeas Corpus (Post-
10 Conviction) (hereinafter "Third Petition") on May 11, 2021. On July 9, 2021, this Court
11 entertained oral argument and now issues the following conclusions of law.

12 ANALYSIS

13 Petitioner makes the claim that he cannot be executed because he suffers from Fetal
14 Alcohol Spectrum Disorder ("FASD"). In Atkins v. Virginia, 536 U.S. 304 (2002), the United
15 States Supreme Court held that the execution of a mentally retarded individual constitutes
16 cruel and unusual punishment prohibited by the Eighth Amendment of the United States
17 Constitution. Atkins sets forth a bright-line test on IQ. Petitioner has previously had his IQ
18 tested and was tested for intellectual disability. However, even if Petitioner suffers from the
19 effects of FASD, his diagnosis does not rise to the level of intellectual disability. Following
20 the bright-line rule articulated by Atkins, Petitioner is not entitled to relief.

21 Petitioner argues that he has a right to seek clemency before the Pardons Board. In
22 Nevada, the Pardons Board's constitutional power to grant pardons and commutations of
23 sentences is exclusive. Nev. Const. art. 5, § 14. There is no due process right for a Petitioner
24 to clemency. Niergarth v. State, 105 Nev. 26, 28, 768 P.2d 882, 883 (1989). Moreover, the
25 Nevada Supreme Court has held that parole is not a constitutional right, but a right bestowed
26 by "legislative grace." Goldsworthy v. Hannifin, 86 Nev. 252, 256, 468 P.2d 350, 353 (1970).
27 Seeking clemency is not a constitutional right, therefore Petitioner is not entitled to relief.

Petitioner argues that he is wrongfully imprisoned because the State intends to perform his execution at Ely State Prison. At the time NRS 176.355 was enacted, there was only one State Prison. However, Ely State Prison is a State prison. In interpreting statutes, this Court is permitted to consider the policy and spirit of the law and will seek to avoid an interpretation that leads to an absurd result. Smith v. Kisorin USA, Inc., 127 Nev. 444 (2011). Since Ely State Prison is a lawful Nevada prison, Petitioner is not entitled to relief.

Petitioner raises a claim based on a May 6, 2021 federal court hearing regarding the Director of the Nevada State Prison's ability to perform the execution. This is not an issue for this Court to decide, therefore the petition is denied.

Finally, Petitioner raises an issued based upon the recently issued Order in Petrocelli v. State, No. 79069, 2021 WL 2073794 (May 21, 2021). This Court does not believe that the Order in that case applies to this case, therefore the petition is denied.

ORDER

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

DATED this _____ day of August, 2021.

Dated this 16th day of August, 2021

Wm A ✓

DISTRICT JUDGE

AA9 791 C42B B20A

Michael Villani

District Court Judge

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

BY */s/ Alexander Chen*

ALEXANDER CHEN

Chief Deputy District Attorney

Nevada Bar #010539

1 **CERTIFICATE OF ELECTRONIC TRANSMISSION**

2 I hereby certify that service of the above and foregoing Findings of Fact, Conclusions
3 of Law and Order, was made this 6th day of August, 2021, by electronic transmission to:

4 BRAD LEVENSON

5 Email: brad_levenson@fd.org

6 DAVID ANTHONY

7 Email: david_anthony@fd.org

8 Ecf_nvchu@fd.org

9
10
11 BY /s/ E. Davis

12 Employee for the District Attorney's Office

13
14
15
16 AC//ed

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Zane Floyd, Plaintiff(s)

CASE NO: A-21-832952-W

7 vs.

DEPT. NO. Department 17

8 William Gittere, 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: 8/16/2021

15 Amanda White

awhite@ag.nv.gov

16 Heather Procter

hprocter@ag.nv.gov

17 Randall Gilmer

drgilmer@ag.nv.gov

18 Frank Toddre

ftoddre@ag.nv.gov

19 Brad Levenson

Brad_Levenson@fd.org

20 David Anthony

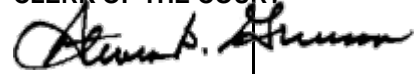
david_anthony@fd.org

21 Alexander Chen

motions@clarkcountyda.com

22 Sara Jelinek

ecf_nvchu@fd.org



NEFF

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ZANE FLOYD,

Petitioner,

vs.

WILLIAM GITTERE; ET.AL.,

Respondent,

Case No: A-21-832952-W

Dept No: XVII

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

PLEASE TAKE NOTICE that on August 16, 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 18, 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 18 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:

Zane Floyd # 66514
P.O. Box 1989
Ely, NV 89301

Rene L. Valladares
Federal Public Defender
411 E. Bonneville Ave., #250
Las Vegas, NV 89101
david_anthony@fd.org
brad_levenson@fd.org

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

Heather S. Smith
CLERK OF THE COURT

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #010539
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

ZANE MICHAEL FLOYD,
Petitioner,

-vs-

WILLIAM GITTERE, Warden, Ely State
Prison; AARON FORD; Attorney General,
THE STATE OF NEVADA,

Respondent.

CASE NO: A-21-832952-W
DEPT NO: XVII

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

DATE OF HEARING: JULY 9, 2021
TIME OF HEARING: 8:30

THIS CAUSE having come on for hearing before the Honorable Michael Villani, District Judge, on the 9th day of July, 2021, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

STATEMENT OF THE CASE

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

1 a Notice of Reservation to Seek the Death Penalty. On June 25, 1999, the State filed an
2 Amended Criminal Complaint adding an additional charge of Attempt Murder with Use of a
3 Deadly Weapon.

4 On June 28, 1999, the State charged Petitioner by way of Information, and two
5 amendments thereafter, as follows: Count 1 – Burglary While in Possession of a Firearm
6 (Felony – NRS 205.060); Count 2 – Murder with Use of a Deadly Weapon (Open Murder)
7 (Felony – NRS 200.010, 200.030, 193.165); Count 3 – Murder with Use of a Deadly Weapon
8 (Open Murder) (Felony – NRS 200.010, 200.030, 193.165); Count 4 – Murder with Use of a
9 Deadly Weapon (Open Murder) (Felony – NRS 200.010, 200.030, 193.165); Count 5 – Murder
10 with Use of a Deadly Weapon (Open Murder) (Felony – NRS 200.010, 200.030, 193.165);
11 Count 6 – Attempt Murder with Use of a Deadly Weapon (Felony – NRS 200.010, 200.030,
12 193.165, 193.330); Count 7 – Attempt Murder with Use of a Deadly Weapon (Felony – NRS
13 200.010, 200.030, 193.165, 193.330); Count 8 – First Degree Kidnapping with Use of a Deadly
14 Weapon (Felony – NRS 200.310, 200.320, 193.165); Count 9 – Sexual Assault with Use of a
15 Deadly Weapon (Felony – NRS 200.364, 200.366, 193.165); Count 10 – Sexual Assault with
16 Use of a Deadly Weapon (Felony – NRS 200.364, 200.366, 193.165); Count 11 – Sexual
17 Assault with Use of a Deadly Weapon (Felony – NRS 200.364, 200.366, 193.165); and Count
18 12 – Sexual Assault with Use of a Deadly Weapon (Felony – NRS 200.364, 200.366, 193.165).
19 On July 6, 1999, the State filed a Notice of Intent to Seek the Death Penalty.

20 Petitioner's jury trial commenced on July 11, 2000. On July 19, 2000, the jury returned
21 a verdict finding Petitioner guilty on all counts. At the penalty hearing, the State introduced
22 three aggravating circumstances in support of a death sentence. On July 21, 2000, the same
23 jury returned a verdict of death.

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

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2 to death for Counts 2, 3, 4, and 5. The Judgment of Conviction and the Order of Execution
3 were filed on September 5, 2000.

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5 Court. The Nevada Supreme Court affirmed Petitioner's conviction on March 13, 2002. The
6 Court denied Petitioner's subsequent Motion for Rehearing on May 7, 2002. Appellate counsel
7 then filed a Petition for Writ of Certiorari to the United States Supreme Court, which was
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11 Petition through counsel, David Schieck, Esq., on October 6, 2004. The State filed its
12 Supplemental Opposition on December 7, 2004. On January 18, 2005, the district court denied
13 Petitioner's Petition. The Findings of Fact, Conclusions of Law and Order was filed on
14 February 4, 2005.

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17 Petitioner's Petition for Writ of Habeas Corpus. Remittitur issued on April 14, 2006.

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7 States Court of Appeals for the Ninth Circuit on October 22, 2014. On October 11, 2019, the
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17 Warrant of Execution. On April 21, 2021, Petitioner filed an Opposition to Motion for the
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1 The State filed its Opposition to the Motion to Strike on May 13, 2021. Petitioner filed a Reply
2 on May 20, 2021. On June 4, 2021, this Court denied Petitioner's Motion to Strike.

3 Following a hearing on May 14, 2021, this Court denied both Petitioner's Motion to
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5 EDCR 1.60(H). This Court entered the Decision and Order Denying Petitioner's Motion to
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7 On April 15, 2021, Petitioner filed his third Petition for Writ of Habeas Corpus (Post-
8 Conviction). Following a hearing on May 6, 2021, in the United States District Court, District
9 of Nevada, Petitioner filed the instant Amended Petition for Writ of Habeas Corpus (Post-
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11 entertained oral argument and now issues the following conclusions of law.

12 ANALYSIS

13 Petitioner makes the claim that he cannot be executed because he suffers from Fetal
14 Alcohol Spectrum Disorder ("FASD"). In Atkins v. Virginia, 536 U.S. 304 (2002), the United
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1 Petitioner argues that he is wrongfully imprisoned because the State intends to perform
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3 State Prison. However, Ely State Prison is a State prison. In interpreting statutes, this Court is
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10 Finally, Petitioner raises an issued based upon the recently issued Order in Petrocelli v.
11 State, No. 79069, 2021 WL 2073794 (May 21, 2021). This Court does not believe that the
12 Order in that case applies to this case, therefore the petition is denied.

13 **ORDER**

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

16 DATED this ____ day of August, 2021.

Dated this 16th day of August, 2021



18 **DISTRICT JUDGE**

AA9 791 C42B B20A
Michael Villani
District Court Judge

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

21 BY /s/ Alexander Chen
22 **ALEXANDER CHEN**
23 Chief Deputy District Attorney
Nevada Bar #010539

1 **CERTIFICATE OF ELECTRONIC TRANSMISSION**

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3 of Law and Order, was made this 6th day of August, 2021, by electronic transmission to:

4 BRAD LEVENSON

5 Email: brad_levenson@fd.org

6 DAVID ANTHONY

7 Email: david_anthony@fd.org

8 Ecf_nvchu@fd.org

9
10
11 BY /s/ E. Davis

12 Employee for the District Attorney's Office

13
14
15
16 AC//ed

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Zane Floyd, Plaintiff(s)

CASE NO: A-21-832952-W

7 vs.

DEPT. NO. Department 17

8 William Gittere, 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: 8/16/2021

15 Amanda White

awhite@ag.nv.gov

16 Heather Procter

hprocter@ag.nv.gov

17 Randall Gilmer

drgilmer@ag.nv.gov

18 Frank Toddre

ftoddre@ag.nv.gov

19 Brad Levenson

Brad_Levenson@fd.org

20 David Anthony

david_anthony@fd.org

21 Alexander Chen

motions@clarkcountyda.com

22 Sara Jelinek

ecf_nvchu@fd.org

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

April 23, 2021

A-21-832952-W Zane Floyd, Plaintiff(s)
vs.
William Gittere, Defendant(s)

April 23, 2021 3:00 AM Minute Order

HEARD BY: Villani, Michael **COURTROOM:** Chambers

COURT CLERK: Samantha Albrecht

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- By stipulation and agreement by Parties via email communications with Dept. 17 Law Clerk,
COURT ORDERS, matter SET for April 30, 2021, VACATED and RESET to May 14, 2021, at 8:30 AM.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

May 14, 2021

| | |
|---------------|-------------------------------|
| A-21-832952-W | Zane Floyd, Plaintiff(s) |
| | vs. |
| | William Gittere, Defendant(s) |

| | | |
|---------------------|----------------|-------------------------------------|
| May 14, 2021 | 8:30 AM | Status Check: Status of Case |
|---------------------|----------------|-------------------------------------|

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

COURT CLERK: Samantha Albrecht

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

| | | |
|-----------------|----------------------|----------|
| PRESENT: | Anthony, David S. | Attorney |
| | Levenson, Bradley D. | Attorney |

JOURNAL ENTRIES

- Alexander Chen and Brianna Stutz also present on behalf of the State. Defendant not present.

COURT ORDERED, Briefing Schedule SET as follows: State's Responsive Pleading due by 6/4/2021, Reply Brief due by 6/18/2021, and matter SET for hearing. COURT FURTHER ORDERED, Petition for Writ of Habeas Corpus hearing on 6/11/2021 VACATED.

NDC

7/2/2021 8:30 AM PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

June 04, 2021

| | |
|---------------|-------------------------------|
| A-21-832952-W | Zane Floyd, Plaintiff(s) |
| | vs. |
| | William Gittere, Defendant(s) |

| | | |
|----------------------|----------------|---|
| June 04, 2021 | 8:30 AM | Motion for Appointment of Attorney |
|----------------------|----------------|---|

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

COURT CLERK: Samantha Albrecht

RECORDER: Kristine Santi

REPORTER:

PARTIES

| | | |
|-----------------|----------------------|----------|
| PRESENT: | Anthony, David S. | Attorney |
| | Chen, Alexander G. | Attorney |
| | Levenson, Bradley D. | Attorney |
| | State of Nevada | Other |
| | Stutz, Brianna Vega | Attorney |

JOURNAL ENTRIES

- Matter heard with Case 99C159897.

Defendant not present.

COURT ORDERED, Petitioner's Motion for Appointment of Counsel GRANTED as no Opposition had been filed.

NDC

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus

COURT MINUTES

June 09, 2021

A-21-832952-W Zane Floyd, Plaintiff(s)
vs.
William Gittere, Defendant(s)

June 09, 2021 3:00 AM Minute Order

HEARD BY: Villani, Michael **COURTROOM:** Chambers

COURT CLERK: Samantha Albrecht

RECORDED:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT ORDERED, Recorder's Transcript of Hearing filed 5/20/2021 STRICKEN due to an incorrect caption on Page 1, incorrectly stating Honorable Jacob Villani, which will be refiled to reflect Honorable Michael Villani.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 09, 2021

| | |
|---------------|--|
| A-21-832952-W | Zane Floyd, Plaintiff(s) vs. William Gittere, Defendant(s) |
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| July 09, 2021 | 8:30 AM | Petition for Writ of Habeas Corpus |
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HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Samantha Albrecht

RECORDER: Kristine Santi

REPORTER:

PARTIES

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| PRESENT: | Anthony, David S. Chen, Alexander G. Levenson, Bradley D. State of Nevada | Attorney Attorney Attorney Other |
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JOURNAL ENTRIES

- Arguments by Mr. Levenson and Mr. Chen regarding the Petition. Upon Court's inquiry, Mr. Levenson stated Defendant was not IQ tested at the time of trial, however he was tested during the first federal post conviction they handled. Court FINDS as to the clemency issue, that there was no right to clemency, it had previously ruled on this issue and the previous decision made in C159897 STANDS in this case today and as to the Ely State Prison versus Nevada State Prison issue, Court FINDS the decision previously made in C159897 applies to the issue of preclusion in this case, therefore the new prison, under the statute, is allowed to perform the execution in this matter. Court stated it would follow the U.S. Supreme Court's bright-line test on the Atkin's issue related to IQ, however it does not FIND sufficient information to warrant the granting of the Petition on this issue and it does not FIND the Fetal Alcohol Spectrum Disorder (FASD) rises to the level of intellectually disabled, therefore COURT ORDERED, Petition DENIED. Court directed Mr. Chen to prepare the Order from today's hearing.

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

ZANE MICHAEL FLOYD,

Plaintiff(s),

vs.

WILLIAM GITTERE, Warden, Ely State Prison;
AARON FORD; ATTORNEY GENERAL,
STATE OF NEVADA,

Defendant(s),

Case No: A-21-832952-W

Dept No: XVII

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 27 day of August 2021.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk

