

*Steven D. Grierson*

1 Ismail Young #1210890

2 P.O. Box 650

3 Indian Springs, Nevada 89070

4 In Proper Person

Electronically Filed  
Aug 31 2021 11:11 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7  
8 THE STATE OF NEVADA,

9 PLAINTIFF,

CASE NO. A-19-805427-W

10 VS

C-18-329403 -

11 ISMAIL YOUNG,

DEPT NO. 44111

12 DEFENDANT.

13 1

14  
15 NOTICE OF APPEAL

16  
17 Ismail Young, Defendant in the above entitled matter  
18 hereby gives notice to this honorable court to appeal this court's  
19 August 12, 2021 decision deny Defendant's Petition for a Writ of  
20 Habeas Corpus (post-conviction)

21  
22 Respectfully Submitted, this 21<sup>st</sup> day of August 2021.

23 *Ismail Young*  
24 This document does not contain the name and social security  
25 number of any person.

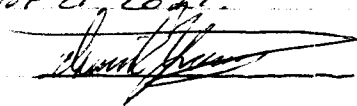
RECEIVED

AUG 26 2021

CLERK OF THE COURT

Certificate of Service

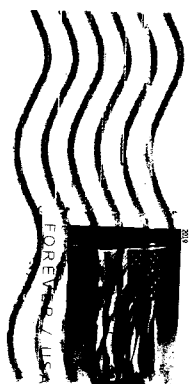
I, Ismail Young, do hereby certify that pursuant to NRCPS (b)  
I did mail a true and correct copy of the foregoing notice of  
appeal to Jonathan van Boskerck, NDA, 200 Lewis Ave, Las  
Vegas Nevada 89155-2212 on August 21, 2021.



Ismail Young

Ismael Young # 1210880  
PO BOX 650  
Indian Springs Nevada 89070

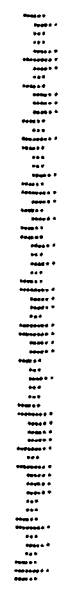
LAS VEGAS NV 890  
23 AUG 2021 PM 3 L

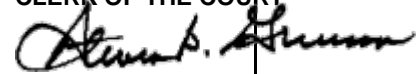


Joseph  
Murd

Clerk of the Court for the  
District Court, Clark County Nevada  
200 Lewis Ave.  
Las Vegas, Nevada 89155

89101-890199





1 ASTA

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

10 ISMAIL YOUNG,

11 Plaintiff(s),

12 vs.

13 STATE OF NEVADA,

14 Defendant(s),  
15

Case No: A-19-805427-W

Dept No: XXIII

16  
17 **CASE APPEAL STATEMENT**  
18

19 1. Appellant(s): Ismail Young

20 2. Judge: Jasmin Lilly-Spells

21 3. Appellant(s): Ismail Young

22 Counsel:

23 Ismail Young #1210890  
24 P.O. Box 650  
Indian Springs, NV 89070

25 4. Respondent (s): State of Nevada

26 Counsel:

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

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

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

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

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

7 8. Appellant Granted Leave to Proceed in Forma Pauperis\*\*: N/A  
8 *\*\*Expires 1 year from date filed*  
9 Appellant Filed Application to Proceed in Forma Pauperis: No  
Date Application(s) filed: N/A

10 9. Date Commenced in District Court: November 14, 2019

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

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

13 11. Previous Appeal: No

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

15 12. Child Custody or Visitation: N/A

16 13. Possibility of Settlement: Unknown

17 Dated This 30 day of August 2021.

18 Steven D. Grierson, Clerk of the Court

19  
20  
21 /s/ Heather Ungermann

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

25 cc: Ismail Young  
26  
27  
28

# CASE SUMMARY

## CASE NO. A-19-805427-W

**Ismail Young, Plaintiff(s)**  
**vs.**  
**State of Nevada, Defendant(s)**

§  
§  
§  
§  
§

Location: **Department 23**  
 Judicial Officer: **Lilly-Spells, Jasmin**  
 Filed on: **11/14/2019**  
 Case Number History:  
 Cross-Reference Case Number: **A805427**

### CASE INFORMATION

**Related Cases**  
 C-18-329403-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

**Statistical Closures**  
 03/17/2020 Summary Judgment

Case Status: **03/17/2020 Closed**

### DATE

### CASE ASSIGNMENT

#### Current Case Assignment

Case Number A-19-805427-W  
 Court Department 23  
 Date Assigned 01/04/2021  
 Judicial Officer Lilly-Spells, Jasmin

### PARTY INFORMATION

**Plaintiff** **Young, Ismail**

*Lead Attorneys*

**Pro Se**

**Defendant** **State of Nevada**







**Wolfson, Steven B**  
*Retained*  
 702-455-5320(W)

### DATE

### EVENTS & ORDERS OF THE COURT

### INDEX

#### EVENTS

11/14/2019	 Inmate Filed - Petition for Writ of Habeas Corpus Party: Plaintiff Young, Ismail [1] Post Conviction
11/14/2019	 Notice of Motion Filed By: Plaintiff Young, Ismail [2]
11/26/2019	 Order for Petition for Writ of Habeas Corpus [3] Order for Petition for Writ of Habeas Corpus
11/26/2019	 Clerk's Notice of Hearing [4] Notice of Hearing
11/27/2019	 Motion Filed By: Plaintiff Young, Ismail [5] Motion on Hearing of Habeas Corpus / Motion for Counsel Notice of Motion
01/06/2020	 Response Filed by: Defendant State of Nevada

**CASE SUMMARY**  
**CASE NO. A-19-805427-W**

*[6] State's Response to Defendant's Petition for Writ of Habeas Corpus*

03/17/2020



Findings of Fact, Conclusions of Law and Order

Filed By: Defendant State of Nevada

*[7] Findings of Fact, Conclusions of Law and Order*

03/18/2020



Notice of Entry of Findings of Fact, Conclusions of Law

Filed By: Defendant State of Nevada

*[8] Notice of Entry of Findings of Fact, Conclusions of Law and Judgment*

01/04/2021

Case Reassigned to Department 23

*Judicial Reassignment to Judge Jasmin Lilly-Spells*

05/04/2021



Inmate Filed - Petition for Writ of Habeas Corpus

Party: Plaintiff Young, Ismail

*[9] Post Conviction*

06/01/2021



Order for Petition for Writ of Habeas Corpus

*[10] A-19-805427-W Ismail Young- OPWH*

06/14/2021



Response

*[11] State's Response to Defendant's Second Petition for Writ of Habeas Corpus*

08/05/2021



Reply

*[12] Defendant's Reply to Plaintiff's Response to Defendant's Second Petition for a Writ of Habeas Corpus*

08/12/2021



Finding of Fact and Conclusions of Law

Filed By: Plaintiff Young, Ismail

*[13] Finding of Fact and Conclusions of Law*

08/18/2021



Notice of Entry of Findings of Fact, Conclusions of Law

Filed By: Defendant State of Nevada

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

08/27/2021



Notice of Appeal

*[15] Notice of Appeal*

08/30/2021



Case Appeal Statement

Filed By: Plaintiff Young, Ismail

*Case Appeal Statement*

**HEARINGS**

01/27/2020



**Petition for Writ of Habeas Corpus (8:30 AM)** (Judicial Officer: Silva, Cristina D.)

**01/27/2020, 02/12/2020, 02/19/2020**

Matter Continued;

Matter Continued;

Denied; Petitioner's Petition for Writ of Habeas Corpus

Journal Entry Details:

*Ashley Lacher Dep DA, present on behalf of the State; Petitioner Young is incarcerated in the Nevada Department of Corrections (NDC) and not present. This is the time set for hearing on the Petitioner's Petition for Habeas Corpus. The Court has reviewed the Petitioner's Petition and the State's Response. The Petitioner alleges that his counsel was ineffective because he made little effort to visit the Petitioner or to file a Petition; he also requested a different sentencing Judge. Judge Smith refused to honor the negotiations between the Petitioner and the State and, therefore, the Petitioner argued that his counsel was ineffective for failing to*

# CASE SUMMARY

CASE NO. A-19-805427-W

object to Judge Smith's decision not to honor the negotiations. In the State's Response, they argue that the Petitioner's allegation that his counsel made little effort to visit him is belied by the record based on the Guilty Plea Agreement. The Court reviewed the JAV's recording of the Petitioner's Change of Plea and the Petitioner acknowledged that he had met with counsel and had gone over the plea agreement with counsel. The Court noted that counsel was present for the Change of Plea; he was also present for three separate sentencing dates. During the hearing, the Petitioner acknowledged that he understood the nature of the offense, the potential consequences, and he indicated that his plea was freely and voluntarily made. Additionally, he indicated that he understood that sentencing was up to the Court so long as it fell within statutory guidelines. The Petitioner also willingly and voluntarily waived his right to a jury trial. COURT FINDS, that the allegations in the Petition that counsel was ineffective for failing to object to Judge Smith's decision not to honor the negotiations is not a reason to grant the Petition for Writ of Habeas Corpus. The Petitioner was advised and understood the risks of entering a guilty plea when he entered into the plea agreement, that sentencing was up to the Judge, and the Judge issued a sentence that was within the statutory guidelines. The Petitioner does not have a right to be sentenced by a Judge of his choosing. Any constitutionally seated District Court Judge can sentence a Deft. and that is what happened here. The Petitioner cannot show that but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. COURT ORDERED, the Petitioner's Petition for Writ of Habeas Corpus is DENIED. State to prepare Findings of Fact and Conclusions of Law. NDC CLERK'S NOTE: A copy of this minute order was mailed to Ismail Young #1210890, High Desert State Prison, P.O. Box 650, Indian Springs, Nevada, 89070. ;

Matter Continued;

Matter Continued;

Denied; Petitioner's Petition for Writ of Habeas Corpus

Journal Entry Details:

Ashley Lacher, Dep DA, present on behalf of the State; Petitioner Young is incarcerated in the Nevada Department of Corrections (NDC) and is not present. This is the time set for hearing on Petitioner's Petition for Writ of Habeas Corpus. Due to the pending trial, COURT ORDERED, matter CONTINUED. NDC CONTINUED TO: 02/19/20 8:30 AM ;

Matter Continued;

Matter Continued;

Denied; Petitioner's Petition for Writ of Habeas Corpus

01/27/2020

**Motion** (8:30 AM) (Judicial Officer: Silva, Cristina D.)

*Petitioner's Notice of Motion for his Petition for Writ of Habeas Corpus*

Matter Heard;

01/27/2020



**All Pending Motions** (8:30 AM) (Judicial Officer: Silva, Cristina D.)

*Petitioner's Notice of Motion for his Petition for Writ of Habeas Corpus . . . Petition for Writ of Habeas Corpus*

Matter Heard;

Journal Entry Details:

**PETITIONER'S NOTICE OF MOTION . . . PETITION FOR WRIT OF HABEAS CORPUS . .**

*Jacob Villani, Chf Dep DA, present on behalf of the State; Petitioner Ismail Young is incarcerated in the Nevada Department of Corrections (NDC) and is not present. This is the time set for hearing on the Petitioner's Petition for Writ of Habeas Corpus, which he filed pro se. Court noted that before making a determination on this Petition, the Court would like to review the Petitioner's change of plea. Therefore, COURT ORDERED, matter CONTINUED. NDC CONTINUED TO: 02/12/20 8:30 AM ;*

07/07/2021



**Petition for Writ of Habeas Corpus** (11:00 AM) (Judicial Officer: Lilly-Spells, Jasmin)

Denied;

Journal Entry Details:

**DA- VICTORIA VELLAGAS, PRESENT.** Matter submitted on the pleadings. COURT ORDERED petition DENIED. COURT FINDS AS FOLLOWED: Defendant has no Right to Counsel. The United States Constitution and the 6th Amendment do not provide a right to counsel in post-conviction proceedings. *Coleman v. Thompson*, 501 U.S. 722, 752, 111 S.Ct. 2546, 2566 (1991). Similarly, the Nevada Constitution does not provide a right to counsel in post-conviction proceedings. *McKague v. Warden*, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996). Nevada courts have the discretion to appoint post-conviction counsel if: (1) the court is satisfied that the petitioner is indigent and (2) the petition is not summarily dismissed. NRS 34.750. in making the determination of whether to appoint counsel, the court can consider (a) whether the issues are difficult; (b) whether the defendant is unable to comprehend the



**CASE SUMMARY**

**CASE NO. A-19-805427-W**

*proceedings; or (c) if counsel is necessary to proceed with discovery. The Petition is Time Barred. Petitioner's petition is time-barred. NRS 34.726(1).- must be filed within 1 year after the JOC or within 1 year after Supreme Court issues a remittitur. Statutory rules regarding procedural default are mandatory and can t be ignored when properly raised by the State. See Riker, 121 Nev. At 233 To overcome the time-bar, petitioner must demonstrate good cause and actual prejudice. NRS 34.726(1), NRS 34.810(1)(b)(3) or a showing that the procedural bars should be excused to prevent a fundamental miscarriage of justice. Pellegrini v. State, 117 Nev. 860 (2001)., abrogated on other grounds by Rippo v. Sate, 134 Nev. 411 (2018). \*\*\*\* not a full cite. Anise please give Alice a full cite. The Defendant has failed to cite any case law or give explanation to support good cause. Additionally, the instant petition is successive as the arguments raised are either arguments previously raised or arguments that could have been raised in the initial petition. Successive petitions are only decided on the merits if petitioner can show good cause and prejudice. NRS 34.810. Here, petitioner has not shown good cause or prejudice. A petition for post-conviction relief must be supported with factual allegations, not belied by the record and if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Here, defendant's factual contentions are belied by the record. Thus, petition denied. State to prepare order Findings and Facts and Conclusions of Law.;*

## DISTRICT COURT CIVIL COVER SHEET

A-19-805427-W

Dept. IX

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): Ismail Young	Defendant(s) (name/address/phone): State of Nevada
Attorney (name/address/phone):	Attorney (name/address/phone):

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

<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> <i>(select case type and estate value)</i> <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.

November 14, 2019

PREPARED BY CLERK

Date

Signature of initiating party or representative

See other side for family-related case filings.

**FFCO**

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
JONATHAN VANBOSKERCK  
Deputy District Attorney  
Nevada Bar #006528  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
702-671-2645  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ISMAIL T. YOUNG,  
#8184847

Defendant.

CASE NO: A-19-805427-W

C-18-329403-1

DEPT NO: XXIII

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

DATE OF HEARING: July 7, 2021

TIME OF HEARING: 11:00 AM

THIS MATTER having come on for hearing before the above-entitled Court on the 7<sup>th</sup> day of July, 2021, the Defendant not being present, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through VICTORIA VELLAGAS, Deputy District Attorney, without argument, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT, CONCLUSIONS OF LAW**

**PROCEDURAL HISTORY**

On January 26, 2018, the State filed an Information charging Ismail T. Young ("Petitioner") with Count 1 – Conspiracy to Commit Robbery; Count 2 – Robbery with Use of a Deadly Weapon; Counts 3 and 4 – Attempt Robbery with Use of a Deadly Weapon; Count

1 5 – Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm; Count 6 –  
2 Attempt Murder with Use of a Deadly Weapon; Count 7 – Battery with Intent to Commit  
3 Robbery; and Counts 8, 9, and 10 – Assault with a Deadly Weapon. A co-defendant, Carman  
4 De'Jour Hayes, was also charged on the first four (4) counts.

5 Petitioner waived his right to a preliminary hearing on January 22, 2018. Recorded  
6 Transcript of Conditional Waiver pp. 1-2. On January 31, 2018, Petitioner pled not guilty and  
7 invoked the sixty (60) day rule.

8 At calendar call on March 7, 2018, the State announced ready for trial. Defendant  
9 Hayes announced not ready and requested a continuance to file a Pre-Trial Petition for Writ of  
10 Habeas Corpus. Defendant Young did not object to Hayes' Motion to Continue. Due to the  
11 timing of the filing of the preliminary hearing transcripts, the State also did not object to the  
12 continuance. However, the State advised the court and the Defendants that the victim who  
13 was shot in the chest, Manuel Anderson was scheduled to enter into military boot camp on  
14 June 16, 2018, and all three victims were scheduled to graduate high school on May 25, 2018.  
15 The State requested that the trial be set prior to June 18, 2018, so that all three victims could  
16 testify at the trial. At that time, the Court indicated that the victims could be deposed prior to  
17 leaving for boot camp and/or college. The Court then reset trial for May 21, 2018.

18 On May 8, 2018, Defendant Hayes filed a Motion to Continue the Trial. At calendar  
19 call on May 16, 2018, the State once again announced ready for trial. This time, Defendant  
20 Young made an oral motion to continue the trial, which was granted by the Court. Since  
21 Defendant Hayes was not present at the calendar call, the Court denied his Motion to Continue  
22 Trial and issued a no bail bench warrant for his arrest. The trial was reset for August 13, 2018.

23 On August 10, 2018, a Motion to Continue trial was denied and the trial date for August  
24 13, 2018, stood. On August 13, 2018, the jury trial was continued to the next day due to a  
25 medical emergency with Petitioner's counsel. On that day, the Court was informed that the  
26 matter was resolved, but Petitioner wanted to speak with his attorney.

27 On August 16, 2018, Petitioner entered into a Guilty Plea Agreement ("GPA") where  
28 Petitioner plead guilty to one (1) count of Robbery and one (1) count of Attempt Murder.

1 Petitioner stipulated to the following negotiations: “Both parties retain the full right to argue  
2 at rendition of sentence, including the time to run consecutive between the counts. This deal  
3 is contingent on both defendants pleading guilty.” GPA p. 1. The Amended Information was  
4 also filed that day.

5 On October 3, 2018, the sentencing hearing was continued as counsel for the co-  
6 defendant had just filed a sentencing memorandum, and Petitioner’s counsel, Mr. Arnold,  
7 potentially would not be present. Later, the matter was recalled and the Court signed an Order  
8 so that Mr. Arnold could retain a mitigation expert. On October 31, 2018, the hearing was  
9 again continued to allow for the victim’s presence.

10 On January 9, 2019, Petitioner was adjudicated guilty and sentenced to Count 1 –  
11 maximum of one hundred eight (180) months and a minimum of seventy-two (72) months in  
12 the Nevada Department of Corrections; and Count 2 – maximum of one hundred eighty (180)  
13 months and a minimum of seventy-two (72) months, to run consecutive to Count 1 with four  
14 hundred one (401) days credit for time served. The aggregate sentence is a maximum of three  
15 hundred sixty (360) months and a minimum of one hundred forty-four (144) months.  
16 Restitution was also ordered in the amount of \$32,452.77, to be paid jointly and severally with  
17 the co-defendant. On January 17, 2019, the Judgment of Conviction was filed.

18 On November 12, 2019, Petitioner filed a pro per Motion to Withdraw Counsel. On  
19 December 4, 2019, this Court denied the Motion. On November 14, 2019, Petitioner filed a  
20 pro per Petition for Writ of Habeas Corpus (Post-Conviction) (hereinafter “First Petition”).  
21 The State responded on January 6, 2020. This petition was denied on March 17, 2020.

22 On May 4, 2021, Petitioner filed his second Petition for Writ of Habeas Corpus (Post-  
23 Conviction) (hereinafter “Second Petition”). On July 7<sup>th</sup>, 2021, this Court denied the Petition  
24 in open court and now finds as follows.

## 25 **ANALYSIS**

### 26 **I. THE PETITION IS TIME-BARRED**

27 This Second Petition for Writ of Habeas Corpus was filed too late. Pursuant to NRS  
28 34.726(1), petitions challenging the validity of a conviction must be filed within one year. The

1 Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain meaning.  
2 Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the language of the  
3 statute, the one-year time bar proscribed by NRS 34.726 begins to run from the date the  
4 judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson  
5 v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998). The one-year time limit is  
6 strictly applied. Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002).

7 The Nevada Supreme Court has granted no discretion to the district courts regarding  
8 whether to apply the statutory procedural bars; the rules must be applied. State v. Eighth  
9 Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The Riker Court  
10 found that “[a]pplication of the statutory procedural default rules to post-conviction habeas  
11 petitions is mandatory,” noting:

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

16 Id. Additionally, the Court noted that procedural bars “cannot be ignored [by the district court]  
17 when properly raised by the State.” Id. at 233, 112 P.3d at 1075.

18 There is no right to counsel in post-conviction proceedings. Coleman v. Thompson, 501  
19 U.S. 722, 752, 111 S.Ct. 2546, 2566 (1991). Similarly, the Nevada Constitution does not  
20 provide a right to counsel in post-conviction proceedings. McKague v. Warden, 112 Nev. 159,  
21 163, 912 P.2d 255, 258 (1996). Nevada courts have the discretion to appoint post-conviction  
22 counsel if: 1) the court is satisfied that the petitioner is indigent and 2) the petition is not  
23 summarily dismissed. NRS 34.750. In making the determination of whether to appoint  
24 counsel, the court can consider whether the issues are difficult, whether the defendant is unable  
25 to comprehend the proceedings, or if counsel is necessary to proceed with discovery. Id.

26 Here, Petitioner is not entitled to counsel because his petition is summarily dismissed  
27 as time-barred. The Judgment of Conviction was filed on January 9, 2019. Petitioner did not  
28 appeal his case to the Supreme Court. Thus, any petition filed by Petitioner needed to be filed

1 by January 9, 2020. This Second Petition was filed May 4, 2021 and is untimely absent a  
2 showing of good cause. Absent such a showing, the Petition should be denied.

## 3 **II. PETITIONER FAILS TO SHOW GOOD CAUSE**

4 To overcome a time-bar, the Petitioner must demonstrate good cause and actual  
5 prejudice. NRS 34.726(1), NRS 34.810(1)(b)(3). This narrow exception to the mandatory NRS  
6 34.726 procedural bar is reserved for extraordinary cases. *Sawyer v. Whitley*, 505 U.S. 333,  
7 340 (1992).

8 “To establish good cause, appellants must show that an impediment external to the  
9 defense prevented their compliance with the applicable procedural rule. A qualifying  
10 impediment might be shown where the factual or legal basis for a claim was not reasonably  
11 available at the time of default.” *Clem v. State*, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003).  
12 The Court continued, “appellants cannot attempt to manufacture good cause[.]” *Id.* at 621, 81  
13 P.3d at 526. Examples of good cause include interference by State officials and the previous  
14 unavailability of a legal or factual basis. *See State v. Huebler*, 128 Nev. Adv. Op. 19, 275 P.3d  
15 91, 95 (2012).

16 In order to establish prejudice, the defendant must show ““not merely that the errors of  
17 [the proceedings] created possibility of prejudice, but that they worked to his actual and  
18 substantial disadvantage, in affecting the state proceedings with error of constitutional  
19 dimensions.”” *Hogan v. Warden*, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting *United*  
20 *States v. Frady*, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there  
21 must be a “substantial reason; one that affords a legal excuse.” *Hathaway v. State*, 119 Nev.  
22 248, 252, 71 P.3d 503, 506 (2003) (quoting *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229,  
23 1230 (1989)). Clearly, any delay in the filing of the petition must not be the fault of the  
24 petitioner. NRS 34.726(1)(a).

25 Petitioner fails to cite any good cause for filing his Second Petition more than a year  
26 after his conviction. Additionally, the instant petition is successive as the arguments raised are  
27 either arguments previously raised or arguments that could have been raised in the initial  
28 petition. Successive petitions are only decided on the merits if Petitioner can show good cause

1 and prejudice. NRS 34.810. Here, Petitioner has not shown good cause or prejudice. As such,  
2 he cannot overcome the good cause requirement for this Petition to even be considered.  
3 Without good cause, there can be no actual prejudice caused by the good cause.

### 4 **III. PETITIONER HAS NOT SHOWN ACTUAL INNOCENCE**

5 A Petitioner may show that the procedural bars should be excused to prevent a  
6 fundamental miscarriage of justice. Pelligrini v. State, 117 Nev. 860, 34 P.3d 519 (2001),  
7 abrogated on other grounds by Rippo v. State, 134 Nev. 411, 423 P.3d 1084 (2018).

8 Here, Petitioner argues he should be able to overcome the procedural bars because his  
9 case is one of actual innocence. “Even absent a showing of good cause, this court will consider  
10 a claim if the petitioner can demonstrate that applying the procedural bars would result in a  
11 fundamental miscarriage of justice.” Bejarano v. State, 122 Nev. 1066, 1072, 146 P.3d 265,  
12 270 (2006). NRS 34.726(1) allows for the procedural bars to be overcome on an untimely  
13 petition when the petition is based on actual innocence. A petition for post-conviction relief  
14 must be supported with factual allegations, not belied by the record and of true, would entitle  
15 the Petitioner to relief. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

16 However “actual innocence” means “factual innocence, not mere legal insufficiency.”  
17 Mitchell v. State, 122 Nev. 1269, 1273-1274, 149 P.3d 33, 36 (2006). Petitioner asserts that  
18 when he threatened his robbery victims with a loaded gun, fired a shot into the air, pointed his  
19 gun at one victim, and pulled the trigger, he did not have the requisite intent to murder. As  
20 further proof of his lack of intent, he points out that he did not fire at the victims at the onset  
21 of the robbery and that he did not continue to fire once his victim fell.

22 This assertion is utterly without merit. Pulling the trigger of a loaded gun pointed at  
23 another shows an intent to kill the person. A person is presumed to intend the natural  
24 consequences of his actions. State v. Hall, 54 Nev. 213, 13 P.2d 624, 632 (1932). Petitioner  
25 fails to make a “credible claim of factual innocence.” Vitacca v. State, 125 Nev. 1086, 281  
26 P.3d 1228 (2009).


27 Petitioner’s factual contentions are belied by the record. Because Petitioner’s claim is  
28 not one of actual innocence, he fails to overcome the procedural hurdles.



**ORDER**

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

Dated this 12th day of August, 2021



968 031 3843 7A12  
Jasmin Lilly-Spells  
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 #10539

**CERTIFICATE OF MAILING**

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

ISMAIL YOUNG, BAC#1210890  
HIGH DESERT STATE PRISON  
22010 COLD CREEK ROAD  
P.O. BOX 650  
INDIAN SPRINGS, NEVADA 89070

BY /s/ L.M.  
Secretary for the District Attorney's Office

17FN2527A/AC/lm/GCU

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Ismail Young, Plaintiff(s)

CASE NO: A-19-805427-W

7 vs.

DEPT. NO. Department 23

8 State of Nevada, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Findings of Fact, Conclusions of Law and Order 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: 8/12/2021

15 Dept 23 Law Clerk

dept23lc@clarkcountycourts.us



1 NEFF

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

5 ISMAIL YOUNG,

6 Petitioner,

7 vs.

8 STATE OF NEVADA,

9 Respondent,  
10

Case No: A-19-805427-W

Dept No: XXIII

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

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

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you  
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed  
to you. This notice was mailed on August 18, 2021.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

17 Amanda Hampton, Deputy Clerk  
18

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

20 I hereby certify that on this 18 day of August 2021, I served a copy of this Notice of Entry on the  
21 following:

22 ☒ By e-mail:

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

24 ☒ The United States mail addressed as follows:

25 Ismail Young # 1210890  
26 P.O. Box 650  
Indain Springs, NV 89070  
27

28 /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  
JONATHAN VANBOSKERCK  
Deputy District Attorney  
Nevada Bar #006528  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
702-671-2645  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ISMAIL T. YOUNG,  
#8184847

Defendant.

CASE NO: A-19-805427-W

C-18-329403-1

DEPT NO: XXIII

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

DATE OF HEARING: July 7, 2021

TIME OF HEARING: 11:00 AM

THIS MATTER having come on for hearing before the above-entitled Court on the 7<sup>th</sup> day of July, 2021, the Defendant not being present, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through VICTORIA VELLAGAS, Deputy District Attorney, without argument, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT, CONCLUSIONS OF LAW**

**PROCEDURAL HISTORY**

On January 26, 2018, the State filed an Information charging Ismail T. Young ("Petitioner") with Count 1 – Conspiracy to Commit Robbery; Count 2 – Robbery with Use of a Deadly Weapon; Counts 3 and 4 – Attempt Robbery with Use of a Deadly Weapon; Count

1 5 – Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm; Count 6 –  
2 Attempt Murder with Use of a Deadly Weapon; Count 7 – Battery with Intent to Commit  
3 Robbery; and Counts 8, 9, and 10 – Assault with a Deadly Weapon. A co-defendant, Carman  
4 De'Jour Hayes, was also charged on the first four (4) counts.

5 Petitioner waived his right to a preliminary hearing on January 22, 2018. Recorded  
6 Transcript of Conditional Waiver pp. 1-2. On January 31, 2018, Petitioner pled not guilty and  
7 invoked the sixty (60) day rule.

8 At calendar call on March 7, 2018, the State announced ready for trial. Defendant  
9 Hayes announced not ready and requested a continuance to file a Pre-Trial Petition for Writ of  
10 Habeas Corpus. Defendant Young did not object to Hayes' Motion to Continue. Due to the  
11 timing of the filing of the preliminary hearing transcripts, the State also did not object to the  
12 continuance. However, the State advised the court and the Defendants that the victim who  
13 was shot in the chest, Manuel Anderson was scheduled to enter into military boot camp on  
14 June 16, 2018, and all three victims were scheduled to graduate high school on May 25, 2018.  
15 The State requested that the trial be set prior to June 18, 2018, so that all three victims could  
16 testify at the trial. At that time, the Court indicated that the victims could be deposed prior to  
17 leaving for boot camp and/or college. The Court then reset trial for May 21, 2018.

18 On May 8, 2018, Defendant Hayes filed a Motion to Continue the Trial. At calendar  
19 call on May 16, 2018, the State once again announced ready for trial. This time, Defendant  
20 Young made an oral motion to continue the trial, which was granted by the Court. Since  
21 Defendant Hayes was not present at the calendar call, the Court denied his Motion to Continue  
22 Trial and issued a no bail bench warrant for his arrest. The trial was reset for August 13, 2018.

23 On August 10, 2018, a Motion to Continue trial was denied and the trial date for August  
24 13, 2018, stood. On August 13, 2018, the jury trial was continued to the next day due to a  
25 medical emergency with Petitioner's counsel. On that day, the Court was informed that the  
26 matter was resolved, but Petitioner wanted to speak with his attorney.

27 On August 16, 2018, Petitioner entered into a Guilty Plea Agreement ("GPA") where  
28 Petitioner plead guilty to one (1) count of Robbery and one (1) count of Attempt Murder.

1 Petitioner stipulated to the following negotiations: “Both parties retain the full right to argue  
2 at rendition of sentence, including the time to run consecutive between the counts. This deal  
3 is contingent on both defendants pleading guilty.” GPA p. 1. The Amended Information was  
4 also filed that day.

5 On October 3, 2018, the sentencing hearing was continued as counsel for the co-  
6 defendant had just filed a sentencing memorandum, and Petitioner’s counsel, Mr. Arnold,  
7 potentially would not be present. Later, the matter was recalled and the Court signed an Order  
8 so that Mr. Arnold could retain a mitigation expert. On October 31, 2018, the hearing was  
9 again continued to allow for the victim’s presence.

10 On January 9, 2019, Petitioner was adjudicated guilty and sentenced to Count 1 –  
11 maximum of one hundred eight (180) months and a minimum of seventy-two (72) months in  
12 the Nevada Department of Corrections; and Count 2 – maximum of one hundred eighty (180)  
13 months and a minimum of seventy-two (72) months, to run consecutive to Count 1 with four  
14 hundred one (401) days credit for time served. The aggregate sentence is a maximum of three  
15 hundred sixty (360) months and a minimum of one hundred forty-four (144) months.  
16 Restitution was also ordered in the amount of \$32,452.77, to be paid jointly and severally with  
17 the co-defendant. On January 17, 2019, the Judgment of Conviction was filed.

18 On November 12, 2019, Petitioner filed a pro per Motion to Withdraw Counsel. On  
19 December 4, 2019, this Court denied the Motion. On November 14, 2019, Petitioner filed a  
20 pro per Petition for Writ of Habeas Corpus (Post-Conviction) (hereinafter “First Petition”).  
21 The State responded on January 6, 2020. This petition was denied on March 17, 2020.

22 On May 4, 2021, Petitioner filed his second Petition for Writ of Habeas Corpus (Post-  
23 Conviction) (hereinafter “Second Petition”). On July 7<sup>th</sup>, 2021, this Court denied the Petition  
24 in open court and now finds as follows.

## 25 **ANALYSIS**

### 26 **I. THE PETITION IS TIME-BARRED**

27 This Second Petition for Writ of Habeas Corpus was filed too late. Pursuant to NRS  
28 34.726(1), petitions challenging the validity of a conviction must be filed within one year. The

1 Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain meaning.  
2 Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the language of the  
3 statute, the one-year time bar proscribed by NRS 34.726 begins to run from the date the  
4 judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson  
5 v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998). The one-year time limit is  
6 strictly applied. Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002).

7 The Nevada Supreme Court has granted no discretion to the district courts regarding  
8 whether to apply the statutory procedural bars; the rules must be applied. State v. Eighth  
9 Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The Riker Court  
10 found that “[a]pplication of the statutory procedural default rules to post-conviction habeas  
11 petitions is mandatory,” noting:

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

16 Id. Additionally, the Court noted that procedural bars “cannot be ignored [by the district court]  
17 when properly raised by the State.” Id. at 233, 112 P.3d at 1075.

18 There is no right to counsel in post-conviction proceedings. Coleman v. Thompson, 501  
19 U.S. 722, 752, 111 S.Ct. 2546, 2566 (1991). Similarly, the Nevada Constitution does not  
20 provide a right to counsel in post-conviction proceedings. McKague v. Warden, 112 Nev. 159,  
21 163, 912 P.2d 255, 258 (1996). Nevada courts have the discretion to appoint post-conviction  
22 counsel if: 1) the court is satisfied that the petitioner is indigent and 2) the petition is not  
23 summarily dismissed. NRS 34.750. In making the determination of whether to appoint  
24 counsel, the court can consider whether the issues are difficult, whether the defendant is unable  
25 to comprehend the proceedings, or if counsel is necessary to proceed with discovery. Id.

26 Here, Petitioner is not entitled to counsel because his petition is summarily dismissed  
27 as time-barred. The Judgment of Conviction was filed on January 9, 2019. Petitioner did not  
28 appeal his case to the Supreme Court. Thus, any petition filed by Petitioner needed to be filed

1 by January 9, 2020. This Second Petition was filed May 4, 2021 and is untimely absent a  
2 showing of good cause. Absent such a showing, the Petition should be denied.

## 3 **II. PETITIONER FAILS TO SHOW GOOD CAUSE**

4 To overcome a time-bar, the Petitioner must demonstrate good cause and actual  
5 prejudice. NRS 34.726(1), NRS 34.810(1)(b)(3). This narrow exception to the mandatory NRS  
6 34.726 procedural bar is reserved for extraordinary cases. *Sawyer v. Whitley*, 505 U.S. 333,  
7 340 (1992).

8 “To establish good cause, appellants must show that an impediment external to the  
9 defense prevented their compliance with the applicable procedural rule. A qualifying  
10 impediment might be shown where the factual or legal basis for a claim was not reasonably  
11 available at the time of default.” *Clem v. State*, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003).  
12 The Court continued, “appellants cannot attempt to manufacture good cause[.]” *Id.* at 621, 81  
13 P.3d at 526. Examples of good cause include interference by State officials and the previous  
14 unavailability of a legal or factual basis. *See State v. Huebler*, 128 Nev. Adv. Op. 19, 275 P.3d  
15 91, 95 (2012).

16 In order to establish prejudice, the defendant must show ““not merely that the errors of  
17 [the proceedings] created possibility of prejudice, but that they worked to his actual and  
18 substantial disadvantage, in affecting the state proceedings with error of constitutional  
19 dimensions.”” *Hogan v. Warden*, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting *United*  
20 *States v. Frady*, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there  
21 must be a “substantial reason; one that affords a legal excuse.” *Hathaway v. State*, 119 Nev.  
22 248, 252, 71 P.3d 503, 506 (2003) (quoting *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229,  
23 1230 (1989)). Clearly, any delay in the filing of the petition must not be the fault of the  
24 petitioner. NRS 34.726(1)(a).

25 Petitioner fails to cite any good cause for filing his Second Petition more than a year  
26 after his conviction. Additionally, the instant petition is successive as the arguments raised are  
27 either arguments previously raised or arguments that could have been raised in the initial  
28 petition. Successive petitions are only decided on the merits if Petitioner can show good cause



1 and prejudice. NRS 34.810. Here, Petitioner has not shown good cause or prejudice. As such,  
2 he cannot overcome the good cause requirement for this Petition to even be considered.  
3 Without good cause, there can be no actual prejudice caused by the good cause.

### 4 **III. PETITIONER HAS NOT SHOWN ACTUAL INNOCENCE**

5 A Petitioner may show that the procedural bars should be excused to prevent a  
6 fundamental miscarriage of justice. Pelligrini v. State, 117 Nev. 860, 34 P.3d 519 (2001),  
7 abrogated on other grounds by Rippo v. State, 134 Nev. 411, 423 P.3d 1084 (2018).

8 Here, Petitioner argues he should be able to overcome the procedural bars because his  
9 case is one of actual innocence. “Even absent a showing of good cause, this court will consider  
10 a claim if the petitioner can demonstrate that applying the procedural bars would result in a  
11 fundamental miscarriage of justice.” Bejarano v. State, 122 Nev. 1066, 1072, 146 P.3d 265,  
12 270 (2006). NRS 34.726(1) allows for the procedural bars to be overcome on an untimely  
13 petition when the petition is based on actual innocence. A petition for post-conviction relief  
14 must be supported with factual allegations, not belied by the record and of true, would entitle  
15 the Petitioner to relief. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

16 However “actual innocence” means “factual innocence, not mere legal insufficiency.”  
17 Mitchell v. State, 122 Nev. 1269, 1273-1274, 149 P.3d 33, 36 (2006). Petitioner asserts that  
18 when he threatened his robbery victims with a loaded gun, fired a shot into the air, pointed his  
19 gun at one victim, and pulled the trigger, he did not have the requisite intent to murder. As  
20 further proof of his lack of intent, he points out that he did not fire at the victims at the onset  
21 of the robbery and that he did not continue to fire once his victim fell.

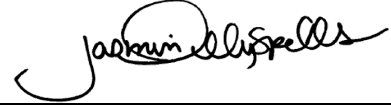
22 This assertion is utterly without merit. Pulling the trigger of a loaded gun pointed at  
23 another shows an intent to kill the person. A person is presumed to intend the natural  
24 consequences of his actions. State v. Hall, 54 Nev. 213, 13 P.2d 624, 632 (1932). Petitioner  
25 fails to make a “credible claim of factual innocence.” Vitacca v. State, 125 Nev. 1086, 281  
26 P.3d 1228 (2009).

27 Petitioner’s factual contentions are belied by the record. Because Petitioner’s claim is  
28 not one of actual innocence, he fails to overcome the procedural hurdles.

**ORDER**

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

Dated this 12th day of August, 2021



968 031 3843 7A12  
Jasmin Lilly-Spells  
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 #10539

**CERTIFICATE OF MAILING**

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

ISMAIL YOUNG, BAC#1210890  
HIGH DESERT STATE PRISON  
22010 COLD CREEK ROAD  
P.O. BOX 650  
INDIAN SPRINGS, NEVADA 89070

BY /s/ L.M.  
Secretary for the District Attorney's Office

17FN2527A/AC/lm/GCU

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Ismail Young, Plaintiff(s)

CASE NO: A-19-805427-W

7 vs.

DEPT. NO. Department 23

8 State of Nevada, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Findings of Fact, Conclusions of Law and Order 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: 8/12/2021

15 Dept 23 Law Clerk

dept23lc@clarkcountycourts.us

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**January 27, 2020**

---

A-19-805427-W      Ismail Young, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

---

**January 27, 2020      8:30 AM      All Pending Motions**

**HEARD BY:** Silva, Cristina D.      **COURTROOM:** RJC Courtroom 11B

**COURT CLERK:** Carol Donahoo

**RECORDER:** Gina Villani

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- PETITIONER'S NOTICE OF MOTION . . . PETITION FOR WRIT OF HABEAS CORPUS . .

Jacob Villani, Chf Dep DA, present on behalf of the State; Petitioner Ismail Young is incarcerated in the Nevada Department of Corrections (NDC) and is not present.

This is the time set for hearing on the Petitioner's Petition for Writ of Habeas Corpus, which he filed pro se. Court noted that before making a determination on this Petition, the Court would like to review the Petitioner's change of plea. Therefore, COURT ORDERED, matter CONTINUED.

NDC

CONTINUED TO: 02/12/20 8:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**February 12, 2020**

---

A-19-805427-W      Ismail Young, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

---

**February 12, 2020      8:30 AM      Petition for Writ of Habeas  
Corpus**

**HEARD BY:** Silva, Cristina D.

**COURTROOM:** RJC Courtroom 11B

**COURT CLERK:** Carol Donahoo

**RECORDER:** Gina Villani

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Ashley Lacher, Dep DA, present on behalf of the State; Petitioner Young is incarcerated in the Nevada Department of Corrections (NDC) and is not present.

This is the time set for hearing on Petitioner's Petition for Writ of Habeas Corpus. Due to the pending trial, COURT ORDERED, matter CONTINUED.

NDC

CONTINUED TO: 02/19/20 8:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**February 19, 2020**

---

A-19-805427-W	Ismail Young, Plaintiff(s) vs. State of Nevada, Defendant(s)
---------------	--

---

<b>February 19, 2020</b>	<b>8:30 AM</b>	<b>Petition for Writ of Habeas Corpus</b>	<b>Petitioner's Petition for Writ of Habeas Corpus</b>
--------------------------	----------------	---	--

**HEARD BY:** Silva, Cristina D.

**COURTROOM:** RJC Courtroom 11B

**COURT CLERK:** Carol Donahoo

**RECORDER:** Gina Villani

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Ashley Lacher Dep DA, present on behalf of the State; Petitioner Young is incarcerated in the Nevada Department of Corrections (NDC) and not present.

This is the time set for hearing on the Petitioner's Petition for Habeas Corpus. The Court has reviewed the Petitioner's Petition and the State's Response. The Petitioner alleges that his counsel was ineffective because he made little effort to visit the Petitioner or to file a Petition; he also requested a different sentencing Judge. Judge Smith refused to honor the negotiations between the Petitioner and the State and, therefore, the Petitioner argued that his counsel was ineffective for failing to object to Judge Smith's decision not to honor the negotiations.

In the State's Response, they argue that the Petitioner's allegation that his counsel made little effort to visit him is belied by the record based on the Guilty Plea Agreement. The Court reviewed the JAV's recording of the Petitioner's Change of Plea and the Petitioner acknowledged that he had met with counsel and had gone over the plea agreement with counsel. The Court noted that counsel was present for the Change of Plea; he was also present for three separate sentencing dates. During the hearing, the Petitioner acknowledged that he understood the nature of the offense, the potential

consequences, and he indicated that his plea was freely and voluntarily made. Additionally, he indicated that he understood that sentencing was up to the Court so long as it fell within statutory guidelines. The Petitioner also willingly and voluntarily waived his right to a jury trial.

COURT FINDS, that the allegations in the Petition that counsel was ineffective for failing to object to Judge Smith's decision not to honor the negotiations is not a reason to grant the Petition for Writ of Habeas Corpus. The Petitioner was advised and understood the risks of entering a guilty plea when he entered into the plea agreement, that sentencing was up to the Judge, and the Judge issued a sentence that was within the statutory guidelines. The Petitioner does not have a right to be sentenced by a Judge of his choosing. Any constitutionally seated District Court Judge can sentence a Deft. and that is what happened here. The Petitioner cannot show that but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. COURT ORDERED, the Petitioner's Petition for Writ of Habeas Corpus is DENIED.

State to prepare Findings of Fact and Conclusions of Law.

NDC

CLERK'S NOTE: A copy of this minute order was mailed to Ismail Young #1210890, High Desert State Prison, P.O. Box 650, Indian Springs, Nevada, 89070.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**July 07, 2021**

---

A-19-805427-W	Ismail Young, Plaintiff(s) vs. State of Nevada, Defendant(s)
---------------	--

---

<b>July 07, 2021</b>	<b>11:00 AM</b>	<b>Petition for Writ of Habeas Corpus</b>
----------------------	-----------------	---

**HEARD BY:** Lilly-Spells, Jasmin

**COURTROOM:** RJC Courtroom 12D

**COURT CLERK:** Alice Jacobson

**RECORDER:** Maria Garibay

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- DA- VICTORIA VELLAGAS, PRESENT.

Matter submitted on the pleadings. COURT ORDERED petition DENIED.

**COURT FINDS AS FOLLOWED:**

Defendant has no Right to Counsel.

The United States Constitution and the 6th Amendment do not provide a right to counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S.Ct. 2546, 2566 (1991).

Similarly, the Nevada Constitution does not provide a right to counsel in post-conviction proceedings. McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996). Nevada courts have the discretion to appoint post-conviction counsel if: (1) the court is satisfied that the petitioner is indigent and (2) the petition is not summarily dismissed. NRS 34.750. in making the determination of whether to appoint counsel, the court can consider (a) whether the issues are difficult; (b) whether the defendant is unable to comprehend the proceedings; or (c) if counsel is necessary to proceed with discovery.



The Petition is Time Barred.

Petitioner's petition is time-barred. NRS 34.726(1).- must be filed within 1 year after the JOC or within 1 year after Supreme Court issues a remittitur. Statutory rules regarding procedural default are mandatory and can t be ignored when properly raised by the State. See Riker, 121 Nev. At 233 To overcome the time-bar, petitioner must demonstrate good cause and actual prejudice. NRS 34.726(1), NRS 34.810(1)(b)(3) or a showing that the procedural bars should be excused to prevent a fundamental miscarriage of justice. Pellegrini v. State, 117 Nev. 860 (2001)., abrogated on other grounds by Rippo v. Sate, 134 Nev. 411 (2018). \*\*\*\* not a full cite. Anise please give Alice a full cite.

The Defendant has failed to cite any case law or give explanation to support good cause. Additionally, the instant petition is successive as the arguments raised are either arguments previously raised or arguments that could have been raised in the initial petition. Successive petitions are only decided on the merits if petitioner can show good cause and prejudice. NRS 34.810. Here, petitioner has not shown good cause or prejudice.

A petition for post-conviction relief must be supported with factual allegations, not belied by the record and if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

Here, defendant's factual contentions are belied by the record. Thus, petition denied. State to prepare order Findings and Facts and Conclusions of Law.

# 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 AND CONCLUSIONS OF LAW;  
NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT  
COURT MINUTES

ISMAIL YOUNG,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

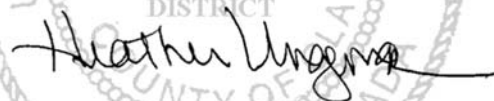
Case No: A-19-805427-W

Dept No: XXIII

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 30 day of August 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

