

IN THE SUPREME COURT OF THE STATE OF NEVADA

ISMAIL T. YOUNG,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Electronically Filed
Sep 15 2021 10:28 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-19-805427-W

Docket No: 83444

RECORD ON APPEAL

ATTORNEY FOR APPELLANT

ISMAIL YOUNG #1210890,
PROPER PERSON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT

STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NV 89155-2212

I N D E X

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A-19-805427-W

Ismail Young, Plaintiff(s)

vs.

State of Nevada, Defendant(s)

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
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324403-1

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CLERK OF COURT

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

Ismail Young
Petitioner,

v.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

A-19-805427-W
Dept. IX

The State of Nevada
Respondent.

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: High Desert State Prison, Indian Springs, NV
2. Name and location of court which entered the judgment of conviction under attack: Dept. No. 8
District Court Clark County, Nevada
3. Date of judgment of conviction: January 9, 2019
4. Case number: C-18-324403-1
5. (a) Length of sentence: 144 to 360 months

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-1-
CLERK OF THE COURT

1 (b) If sentence is death, state any date upon which execution is scheduled:....

2 6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion?

3 Yes No ☒

4 If "yes," list crime, case number and sentence being served at this time:

5
6 N/A

7 7. Nature of offense involved in conviction being challenged: Robbery, Attempt murder

8
9 8. What was your plea? (check one)

10 (a) Not guilty

11 (b) Guilty ☒

12 (c) Guilty but mentally ill

13 (d) Nolo contendere

14 9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a
15 plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was
16 negotiated, give details:

17 N/A

18 10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)

19 (a) Jury

20 (b) Judge without a jury

21 11. Did you testify at the trial? Yes No

22 12. Did you appeal from the judgment of conviction? Yes No

23 13. If you did appeal, answer the following:

24 (a) Name of court:

25 (b) Case number or citation:

26 (c) Result:

27 (d) Date of result:

28 (Attach copy of order or decision, if available.)

1 14. If you did not appeal, explain briefly why you did not:

2

3 N/A

4 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any
5 petitions, applications or motions with respect to this judgment in any court, state or federal? Yes No ☒

6 16. If your answer to No. 15 was "yes," give the following information:

7 (a) (1) Name of court: N/A

8 (2) Nature of proceeding: N/A

9

10 (3) Grounds raised: N/A

11

12

13 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No ☒

14 (5) Result: N/A

15 (6) Date of result: N/A

16 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:

17

18 (b) As to any second petition, application or motion, give the same information:

19 (1) Name of court: N/A

20 (2) Nature of proceeding: N/A

21 (3) Grounds raised: N/A

22 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No ☒

23 (5) Result: N/A

24 (6) Date of result: N/A

25 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:

26 None

27

28 (c) As to any third or subsequent additional applications or motions, give the same information as above, list
them on a separate sheet and attach.

1 (d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any
2 petition, application or motion?

3 (1) First petition, application or motion? Yes ☒ No ☐

4 Citation or date of decision: N/A

5 (2) Second petition, application or motion? Yes ☐ No ☒

6 Citation or date of decision: N/A

7 (3) Third or subsequent petitions, applications or motions? Yes ☐ No ☒

8 Citation or date of decision: N/A

9 (e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you
10 did not. (You must relate specific facts in response to this question. Your response may be included on paper which
11 is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in
12 length.) N/A

13
14 17. Has any ground being raised in this petition been previously presented to this or any other court by way of
15 petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

16 (a) Which of the grounds is the same: None

17
18 (b) The proceedings in which these grounds were raised: N/A

19
20 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this
21 question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your
22 response may not exceed five handwritten or typewritten pages in length.) N/A

23
24 18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached,
25 were not previously presented in any other court, state or federal, list briefly what grounds were not so presented,
26 and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your
27 response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not
28 exceed five handwritten or typewritten pages in length.) N/A

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

NO, I'm not
Filing more than one year after conviction.

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes No ☒

If yes, state what court and the case number: None

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal:

NO Direct Appeal

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes No ☒

If yes, specify where and when it is to be served, if you know: None

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

Ineffective Assistance of Counsel

Counsel performance was below bar, Counsel showed no entrust in the defendants case.

1 (a) Ground ONE: Ineffective Assistance of Counsel

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3
4
5 Supporting FACTS (Tell your story briefly without citing cases or law.): The United States Supreme
6 Court has long recognized that "the right to counsel is the right to the
7 effective assistance of counsel," Strickland v. Washington, 466 U.S. 668,
8 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136,
9 1138, 865 P.2d 322, 323 (1993). The defendant's counsel failed to show
10 muster in his duty. For the allegation against Mr. Young were so
11 severe, great lengths should have been taken by the counsel on
12 Mr. Young's behalf. The duty of counsel must demonstrate reasonable as
13 well as ethical standards. Mr. Young's counsel made little to no effort
14 to visit Mr. Young about his case. Mr. Young's counsel not once filed a
15 petition on the defendant's behalf. All would have been in good faith
16 in assisting with Mr. Young's case, but "NO ACTION" was taken
17 on counsel's behalf. Trial counsel has the immediate and ultimate
18 responsibility of defending the accused. Counsel deprived the defendant
19 of the right to effective assistance of counsel, simply by failing to
20 render adequate legal assistance. Mr. Young verbally requested a different
21 sentencing judge which was granted (see case summary). On the day
22 of sentencing, judge Douglas E. Smith refused to honor the agreement,
23 which trial counsel had "NO OBJECTION" to furthering, his neglected
24 as Mr. Young's counsel. Counsel deficient performance outlined the
25 outcome of Mr. Young's case. The two-part test of Strickland shows
26 in this matter. Mr. Young respectfully ask this honorable court
27 to take notice. The proper remedy should take place.
28 "Strickland v. Washington."

1 (b) Ground TWO:
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5 Supporting FACTS (Tell your story briefly without citing cases or law.):
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(c) Ground THREE:

Supporting FACTS (Tell your story briefly without citing cases or law.):

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(d) Ground FOUR:

Supporting FACTS (Tell your story briefly without citing cases or law.):

BEFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at High Desert State Prison on the ____ day of the month of November, 2019.

Ismail T. Young #1210890
*

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

Ismail T. Young #1210890
*

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceeding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number C-18-329403-1 Does not contain the social security number of any person.

Ismail T. Young #1210890
*

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

CERTIFICATE OF SERVICE BY MAIL

I, Ismail T. Young, hereby certify pursuant to N.R.C.P. 5(b), that on this ____ day of the month of November, 2019, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

Warden High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070

Attorney General of Nevada
100 North Carson Street
Carson City, Nevada 89701

Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155

Ismail T. Young #1210890
*

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

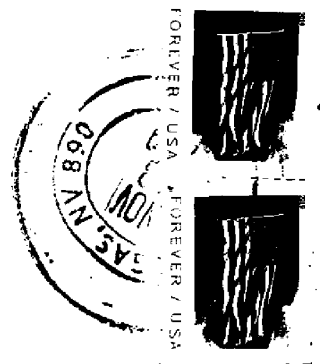
* Print your name and NDOC back number and sign

Ismail T. Young #1210890

-10-

Ismael Young #210890
HDS
PO Box #650
Indian Springs, NV, 89070

Steven D. Grierson
200 Lewis Avenue 3rd Floor
Las Vegas, NV, 89155-1160



HIGH DESERT STATE PRISON

NOV 12 2019

UNIT 6 A/B

Eighth Judicial Court

FILED

NOV 14 2019

Alma L. Johnson
CLERK OF COURT

7

Ismail Young

Petitioner(s),

case

Dept.

A-19-805427-W

Dept. IX

vs

The State of Nevada

Respondent(s),

Notice of Motion

You will please take notice that a hearing will be set by this court on the ____ day of ____ 20__ at the hour of ____ o'clock ____ am in department ____ of said court. Determining if the state have the obligation to file a reply and/or opposition to petitioner Post Conviction Writ

By: Ismail Young
Ismail Young
#1210890

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NOV 26 2019

Alfonso J. Williams
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

Ismail Young,

Petitioner,

vs.

State of Nevada,

Respondent,

Case No: A-19-805427-W
Department 9

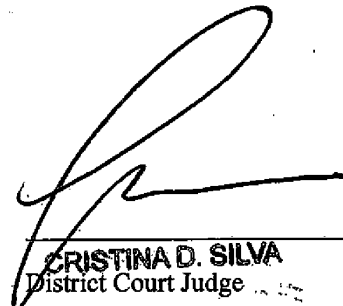
ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS

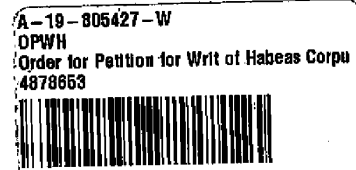
Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on November 14, 2019. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

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

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's Calendar on the 27th day of January, 2020, at the hour of

8:30 a.m. for further proceedings.


CRISTINAD. SILVA
District Court Judge





**DISTRICT COURT
CLARK COUNTY, NEVADA

Ismail Young, Plaintiff(s)

vs.

State of Nevada, Defendant(s)

Case No.: A-19-805427-W

Department 9

NOTICE OF HEARING

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

Date: January 27, 2020

Time: 8:30 AM

Location: RJC Courtroom 11B
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

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

CERTIFICATE OF SERVICE

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

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

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NOV 27 2019

CLERK OF COURT

District Court
Clark County, Nevada

Eighth Judicial District Court

Ismail T. Young

Case No: A-19-805427-W

vs.

Dept. 1X

State of Nevada


Motion on Hearing of Habeas Corpus / Motion For Counsel
Notice of Motion

Come now plaintiff Ismail T. Young in this said motion to the court to have a hearing on petitioners Petition For Writ OF HABEAS CORPUS (Postconviction). Petitioner would also like for NEW Counsel to represent the petitioner at said hearing on all pleadings going forward. I humbly ask this Honorable Court to grant this Motion for a hearing of Petition For Writ of Habeas Corpus (Postconviction), Along with the Request of New Counsel of Representation.

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NOV 27 2019

CLERK OF THE COURT

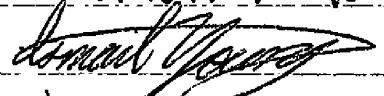
A-19-805427-W
MOT
Motion
4879588


Notice of Motion

You will please take notice that a hearing will be set by this Court on the _____ day of _____ 20____ at the hour of _____ o'clock in department _____ of said Court. For New Counsel/Hearing on (PostConviction) Writ OF Habeas Corpus.

Dated 25 day of November 2019.

Ismail T. Young



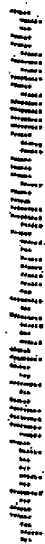
#1210890

IN PROPER PERSON

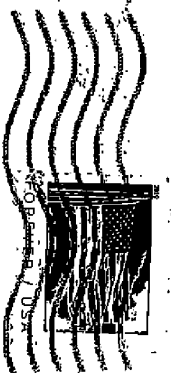
Ismael Young #210890
H.D.S.P.
P.O. Box #1660
Indian Springs, NV, 890150

Steven D. Grier
200 Lewis Avenue 3rd floor
Las Vegas, NV, 89155-1160

89101-630000



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HIGH DESERT STATE PRISON

NOV 25 2019

UNIT 6 C/D



1 **RSPN**
2 **STEVEN B. WOLFSON**
3 Clark County District Attorney
4 Nevada Bar #001565
5 **JONATHAN VANBOSKERCK**
6 Chief Deputy District Attorney
7 Nevada Bar #006528
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 ISMAIL T. YOUNG,
13 #8184847

14 Defendant.

CASE NO: A-19-805427-W

C-18-329403-1

DEPT NO: IX

15 STATE'S RESPONSE TO DEFENDANT'S PETITION FOR
16 WRIT OF HABEAS CORPUS

17 DATE OF HEARING: JANUARY 27, 2020
18 TIME OF HEARING: 8:30 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through JONATHAN VANBOSKERCK, Chief Deputy District Attorney,
21 and hereby submits the attached Points and Authorities in Response to Defendant's Petition
22 For Writ Of Habeas Corpus.

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

26 //

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//

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On January 26, 2018, the State filed an Information charging Ismail T. Young
4 ("Petitioner") with Count 1 – Conspiracy to Commit Robbery; Count 2 – Robbery with Use
5 of a Deadly Weapon; Counts 3 and 4 – Attempt Robbery with Use of a Deadly Weapon; Count
6 5 – Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm; Count 6 –
7 Attempt Murder with Use of a Deadly Weapon; Count 7 – Battery with Intent to Commit
8 Robbery; and Counts 8, 9, and 10 – Assault with a Deadly Weapon. Petitioner was also charged
9 with a co-defendant, Carman De'Jour Hayes, on the first four (4) counts.

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

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

23 On May 8, 2018, Defendant Hayes filed a Motion to Continue the Trial. At calendar
24 call on May 16, 2018, the State once again announced ready for trial. This time, Defendant
25 Young made an oral motion to continue the trial, which was granted by the Court. Since
26 Defendant Hayes was not present at the calendar call, the Court denied his Motion to Continue
27 Trial and issued a no bail bench warrant for his arrest. The trial was reset for August 13, 2018.
28

1 On August 10, 2018, a Motion to Continue trial was denied and the trial date for August
2 13, 2018, stood. On August 13, 2018, the jury trial was continued to the next day due to a
3 medical emergency with Petitioner's counsel. On that day, the Court was informed that the
4 matter was resolved, but Petitioner wanted to speak with his attorney.

5 On August 16, 2018, Petitioner entered into a Guilty Plea Agreement ("GPA") where
6 Petitioner plead guilty to one (1) count of Robbery and one (1) count of Attempt Murder.
7 Petitioner stipulated to the following negotiations: "Both parties retain the full right to argue
8 at rendition of sentence, including the time to run consecutive between the counts. This deal
9 is contingent on both defendants pleading guilty." GPA p. 1. The Amended Information was
10 also filed that day.

11 On October 3, 2018, the sentencing hearing was continued as counsel for the co-
12 defendant had just filed a sentencing memorandum, and Mr. Arnold potentially would not be
13 present. Later, the matter was recalled and the Court signed an Order so that Mr. Arnold could
14 retain a mitigation expert. On October 31, 2018, the hearing was again continued for the victim
15 speaker's presence.

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

24 On November 12, 2019, Petitioner filed a pro per Motion to Withdraw Counsel. On
25 December 4, 2019, this Court denied the Motion. On November 14, 2019, Petitioner filed the
26 instant pro per Petition for Writ of Habeas Corpus (Post-Conviction).

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1 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
2 104 S.Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
3 (1993).

4 To prevail on a claim of ineffective assistance of trial counsel, a Petitioner must prove
5 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of
6 Strickland, 466 U.S. at 686-87, 104 S.Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865
7 P.2d at 323. Under the Strickland test, a Petitioner must show first that his counsel’s
8 representation fell below an objective standard of reasonableness, and second, that but for
9 counsel’s errors, there is a reasonable probability that the result of the proceedings would have
10 been different. 466 U.S. at 687-88, 694, 104 S.Ct. at 2065, 2068; Warden, Nevada State Prison
11 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).
12 “[T]here is no reason for a court deciding an ineffective assistance claim to approach the
13 inquiry in the same order or even to address both components of the inquiry if the defendant
14 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S.Ct. at 2069.

15 The Court begins with the presumption of effectiveness and then must determine
16 whether the Petitioner has demonstrated by a preponderance of the evidence that counsel was
17 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
18 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
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21 Based on the above law, the role of a Court in considering allegations of ineffective
22 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
23 whether, under the particular facts and circumstances of the case, trial counsel failed to render
24 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
25 (1978). This analysis does not mean that the Court should “second guess reasoned choices
26 between trial tactics nor does it mean that defense counsel, to protect himself against
27 allegations of inadequacy, must make every conceivable motion no matter how remote the
28 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel

1 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
2 cannot create one and may disserve the interests of his client by attempting a useless charade.”
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4 “There are countless ways to provide effective assistance in any given case. Even the
5 best criminal defense attorneys would not defend a particular client in the same way.”
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7 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
8 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
9 P.2d 951, 953 (1989). In essence, the Court must “judge the reasonableness of counsel’s
10 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s
11 conduct.” Strickland, 466 U.S. at 690, 104 S.Ct. at 2066.

12 Even if a Petitioner can demonstrate that his counsel’s representation fell below an
13 objective standard of reasonableness, he must still demonstrate prejudice and show a
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16 Strickland, 466 U.S. at 687, 104 S.Ct. at 2064). “A reasonable probability is a probability
17 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-
18 89, 694, 104 S.Ct. at 2064-65, 2068).

19 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the
20 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
21 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
22 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
23 be supported with specific factual allegations, which if true, would entitle the petitioner to
24 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”
25 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
26 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims
27 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your
28 petition to be dismissed.” (emphasis added).

1 Unsupported arguments and baseless assertions are suitable for summary dismissal.
2 Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (“It is appellant’s responsibility to
3 present relevant authority and cogent argument; issues not so presented need not be addressed
4 by this court.”); State v. Haberstroh, 119 Nev. 173, 187, 69 P.3d 676, 685-86 (2003)
5 (“[c]ontentions unsupported by specific argument or authority should be summarily rejected
6 on appeal.”) (internal citations omitted); Jones v. State, 113 Nev. 454, 468, 937 P.2d 55, 64
7 (1997) (holding that Jones’ unsupported contention should be summarily rejected on appeal).

8 Counsel cannot be ineffective for failing to make futile objections or arguments. See
9 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
10 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
11 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
12 (2002).

13 There is a “strong presumption” that counsel’s attention to certain issues to the
14 exclusion of others reflects trial tactics rather than “sheer neglect.” Harrington v. Richter, 131
15 S. Ct. 770, 788 (2011). Although courts may not indulge post hoc rationalization for counsel’s
16 decision-making that contradicts the available evidence of counsel’s actions, neither may they
17 insist counsel confirm every aspect of the strategic basis for his or her actions. Id. “Effective
18 counsel does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the
19 range of competence demanded of attorneys in criminal cases.’” Jackson v. Warden, Nevada
20 State Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975), quoting McMann v. Richardson,
21 397 U.S. 759, 771, 90 S.Ct. 1441, 1449 (1970).

22 In considering whether trial counsel has met this standard, the court should first
23 determine whether counsel made a “sufficient inquiry into the information that is pertinent to
24 his client’s case.” Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996); citing
25 Strickland, 466 U.S. at 690-691, 104 S.Ct. at 2066. Once such a reasonable inquiry has been
26 made by counsel, the court should consider whether counsel made “a reasonable strategy
27 decision on how to proceed with his client’s case.” Doleman, 112 Nev. at 846, 921 P.2d at 280,
28 citing Strickland, 466 U.S. at 690-691, 104 S.Ct. at 2066. Finally, counsel’s strategy decision

1 is a “tactical” decision and will be “virtually unchallengeable absent extraordinary
2 circumstances.” Doleman, 112 Nev. at 846, 921 P.2d at 280; Howard v. State, 106 Nev. 713,
3 722, 800 P.2d 175, 180 (1990); Strickland, 466 U.S. at 691, 104 S.Ct. at 2066

4 When considering ineffective-assistance-of-counsel claims where the Petitioner
5 pleaded guilty, the Nevada Supreme Court has held that:

6
7 A defendant who pleads guilty upon the advice of counsel may attack the validity
8 of the guilty plea by showing that he received ineffective assistance of counsel
9 under the Sixth Amendment to the United States Constitution. However, guilty
10 pleas are presumptively valid, especially when entered on advice of counsel, and
11 a defendant has a heavy burden to show the district court that he did not enter
12 his plea knowingly, intelligently, or voluntarily. To establish prejudice in the
13 context of a challenge to a guilty plea based upon an assertion of ineffective
14 assistance of counsel, *a defendant must demonstrate a reasonable probability*
15 *that, but for counsel’s errors, he would not have pleaded guilty and would have*
16 *insisted on going to trial.*

17 (emphasis added). Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004) (internal
18 quotations and citations omitted). “A reasonable probability is a probability sufficient to
19 undermine confidence in the outcome.” Strickland, 466 U.S. at 694, 104 S.Ct. at 2068. It is
20 counsel’s duty to candidly advise a Petitioner regarding whether or not they believe it would
21 be beneficial for a Petitioner to accept a plea offer, but the ultimate decision of whether or not
22 to accept a plea offer is the Petitioner’s, as it was in this case. Rhyne, 118 Nev. at 8, 38 P.3d
23 at 163.

24 **B. Lack of Communication.**

25 Petitioner complains that his counsel “made little to no effort” to visit him about this
26 case. Petition at 6. First, Petitioner is not entitled to any particular relationship with counsel.
27 See Morris v. Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983) (A defendant is not entitled
28 to a particular “relationship” with his attorney. There is no requirement for any specific amount
of communication as long as counsel is reasonably effective in his representation).

1 Second, this claim is belied by the record based upon the GPA. Within the GPA,
2 Counsel signed and certified that he had explained everything to Petitioner prior to his entry
3 of plea:

4
5 I, the undersigned, as the attorney for the Defendant named herein and as an
6 officer of the court hereby certify that:

7 1. I have fully explained to the Defendant the allegations contained in the
8 charge(s) to which guilty pleas are being entered.

9 2. I have advised the Defendant of the penalties for each charge and the
10 restitution that the Defendant may be ordered to pay.

11 3. I have inquired of Defendant facts concerning Defendant's immigration
12 status and explained to Defendant that if Defendant is not a United States citizen
13 any criminal conviction will most likely result in serious negative immigration
14 consequences including but not limited to:

- 15 a. The removal from the United States through deportation;
- 16 b. An inability to reenter the United States;
- 17 c. The inability to gain United States citizenship or legal residency;
- 18 d. An inability to renew and/or retain any legal residency status;
19 and/or
- 20 e. An indeterminate term of confinement, by with United States
21 Federal Government based on the conviction and immigration status.

22 Moreover, I have explained that regardless of what Defendant may have been
23 told by any attorney, no one can promise Defendant that this conviction will not
24 result in negative immigration consequences and/or impact Defendant's ability
25 to become a United States citizen and/or legal resident.

26 4. All pleas of guilty offered by the Defendant pursuant to this agreement
27 are consistent with the facts known to me and are made with my advice to the
28 Defendant.

5. To the best of my knowledge and belief, the Defendant:

- 26 a. Is competent and understands the charges and the consequences of
27 pleading guilty as provided in this agreement,
- 28 b. Executed this agreement and will enter all guilty pleas pursuant
hereto voluntarily, and

1 c. Was not under the influence of intoxicating liquor, a controlled
2 substance or other drug at the time I consulted with the Defendant as
3 certified in paragraphs 1 and 2 above.

4 GPA p. 6.

5 As such, this claim is belied by the record. Hargrove v. State, 100 Nev. 498, 502, 686
6 P.2d 222, 225 (1984).

7 **C. Failure to File a Petition.**

8 Petitioner complains that his counsel did not file a petition on his behalf. Petition at 6.
9 Petitioner fails to explain what petition or action should have been taken. Moreover, he fails
10 to allege how the outcome of the case would have changed if a Petition was filed. Petitioner's
11 complaint is nothing more than a mere naked assertion suitable only for summary denial under
12 Hargrove. 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

13 **D. Counsel Was Not Ineffective at Sentencing.**

14 According to Petitioner, his counsel was ineffective for failing to render legal
15 assistance. Petition at 6. Petitioner states that he requested a different sentencing judge, which
16 was granted. Id. However, on the day of sentencing, Judge Douglas E. Smith refused to honor
17 the agreement, and his counsel had no objection. Id.

18 At calendar call on August 8, 2018, the Court noted that a Senior Judge would be
19 presiding over the trial. On August 16, 2018, Senior Judge Bonaventure presided, but the trial
20 was vacated as the matter had resolved. Mr. Weinstock made a request that the Senior Judge
21 be available for sentencing, if possible. The Senior Judge advised that he was agreeable to
22 sentencing the defendants and would make himself available. Sentencing was originally set
23 for October 3, 2018, but the matter was continued. The Honorable Douglas E. Smith was
24 presiding, but since Senior Judge Bonaventure had agreed to sentence the Petitioner, the Court
25 stated it will notify him of the sentencing date. On October 31, 2018, Senior Judge
26 Bonaventure was present, but the matter was continued. On January 9, 2019, the Honorable
27 Douglas E. Smith did preside over the hearing.
28

1 Counsel for Petitioner did not make the request to have Senior Judge Bonaventure sit
2 for the sentencing hearing, it was his co-defendant's counsel's request. Moreover, Judge
3 Bonaventure was clear that he was agreeable and would make himself available. Petitioner
4 failed to allege any facts that would show Judge Bonaventure was available on January 8,
5 2019, but that Judge Douglas Smith refused to let him preside. In fact, at the first setting for
6 sentencing, the Court continued the matter so that Judge Bonaventure could be present. Still,
7 this case is in Department 9, and the presiding Judge at the time had the ability to preside over
8 sentencing. Without any formal request for recusal, Judge Smith was able to preside over the
9 case as this was his department. Moreover, a defendant does not have a right to be sentenced
10 by the trial judge that took his guilty plea. Dieudonne v. State, 127 Nev. 1, 5-8, 245 P.3d 1202,
11 1205-1207 (2011). Therefore, this claim is nothing more than a mere naked assertion suitable
12 only for summary denial under Hargrove. 100 Nev. at 502, 686 P.2d at 225.

13 **E. Petitioner Failed to Argue That But For His Counsel's Errors, He Would Have**
14 **Proceeded to Trial.**

15 Overall, Petitioner failed to argue, and cannot show, that but for counsel's errors, he
16 would not have plead guilty and would have insisted on going to trial. See Molina v. State,
17 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004). First, Petitioner was originally charged with
18 ten (10) Category B felonies, but plead guilty to only two (2). This substantially lessened the
19 amount of time he would potentially face if he was found guilty at trial. Second, trial was set
20 to begin on August 16, 2018, but Petitioner took a favorable deal instead of going through with
21 trial. With the possibility of facing a lengthier sentence, Petitioner cannot now argue that but
22 for the alleged error, he would have gone to trial. For the reasons stated above, Petitioner's
23 counsel was effective, and his claim should be denied.

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CONCLUSION

For the foregoing reasons, the State respectfully requests Defendant's Petition for Writ Of Habeas Corpus be DENIED.

DATED this 6th day of January, 2020.

Respectfully submitted,

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

BY /s// JONATHAN VANBOSKERCK
JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 6th day of January, 2020, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

ISMAIL YOUNG, #1210890
HIGH DESERT STATE PRISON
PO BOX 650
INDIAN SPRINGS, NV 89070

BY /s// E. DEL PADRE
E. DEL PADRE
Secretary for the District Attorney's Office

JV/sw/GCU



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

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

DATE OF HEARING: FEBRUARY 19, 2020
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable CRISTINA D. SILVA, District Judge, on the 19 day of February, 2020, the Petitioner not being present, proceeding in proper person, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through ASHLEY LACHER, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

STATEMENT OF THE CASE

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

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

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

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

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

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

24 On August 10, 2018, a Motion to Continue trial was denied and the trial date for August
25 13, 2018, stood. On August 13, 2018, the jury trial was continued to the next day due to a
26 medical emergency with Petitioner's counsel. On that day, the Court was informed that the
27 matter was resolved, but Petitioner wanted to speak with his attorney.
28

1 On August 16, 2018, Petitioner entered into a Guilty Plea Agreement ("GPA") where
2 Petitioner plead guilty to one (1) count of Robbery and one (1) count of Attempt Murder.
3 Petitioner stipulated to the following negotiations: "Both parties retain the full right to argue
4 at rendition of sentence, including the time to run consecutive between the counts. This deal
5 is contingent on both defendants pleading guilty." GPA p. 1. The Amended Information was
6 also filed that day.

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

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

20 On November 12, 2019, Petitioner filed a pro per Motion to Withdraw Counsel. On
21 December 4, 2019, this Court denied the Motion. On November 14, 2019, Petitioner filed his
22 pro per Petition for Writ of Habeas Corpus (Post-Conviction). On January 6, 2020, the State
23 filed its Response.

24 **STATEMENT OF THE FACTS**

25 The Court relied on the following factual summary in sentencing Petitioner:

26
27 On November 11, 2017, officers were dispatched in reference to a report
28 of a shooting of a victim. Upon arrival, they learned that the three victims were
walking home when they saw a red Cadillac parked on the road. A man later

1 identified as the defendant, Ismail T. Young, exited the Cadillac and approached
2 them. He demanded that they give him everything they had, grabbed victim #1
3 by the shirt and fired a gun up into the air. He was later identified as the
4 defendant Ismail T. Young. The victim said, "If you're going to do it, do it. He
5 was promptly shot by Mr. Young in the upper torso. Mr. Young then took a
6 backpack from victim #2 that contained a Sony PlayStation 4 and got back into
7 the Cadillac where the co-defendant, Carman Hayes was
8 waiting for him. Victim #3 was not directly involved in the altercation.

9 An anonymous witness came forward and stated he had seen the suspect
10 enter the red Cadillac after the shooting and he followed the vehicle in his own
11 vehicle to obtain the license plate number. He also took a photo of the vehicle.
12 During the investigation, the vehicle was found to be owned by another party
13 that was not involved in the instant offense. The owner sometimes allowed the
14 co-defendant to use the vehicle.

15 On November 28, 2017, the detective assigned to the investigation,
16 located the stolen PlayStation 4 at a local Cash America/Super Pawn, victim #4,
17 through the serial number. A third party not involved in the robbery pawned the
18 PlayStation 4 and backpack for \$ 100.00. The detective recovered the items from
19 the pawn shop.

20 On December 1, 2017, warrants were served on Mr. Hayes' and Mr.
21 Young's residences. Mr. Hayes was arrested, transported to the Las Vegas City
22 Jail and booked accordingly. Mr. Young was arrested as a juvenile and placed
23 in the Las Vegas Juvenile Detention Center until December 3, 2017. On
24 December 4, 2017, he was Direct Filed as an Adult and transported to the Clark
25 County Detention Center where he was booked accordingly.

26 Presentence Investigation Report ("PSI") dated September 12, 2018 at 5.

27 ANALYSIS

28 **PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL**

A. Standard of Review.

The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal
prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
defense." The United States Supreme Court has long recognized that "the right to counsel is
the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686,
104 S.Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
(1993).

To prevail on a claim of ineffective assistance of trial counsel, a Petitioner must prove
he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of

1 Strickland, 466 U.S. at 686-87, 104 S.Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865
2 P.2d at 323. Under the Strickland test, a Petitioner must show first that his counsel's
3 representation fell below an objective standard of reasonableness, and second, that but for
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5 been different. 466 U.S. at 687-88, 694, 104 S.Ct. at 2065, 2068; Warden, Nevada State Prison
6 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).
7 "[T]here is no reason for a court deciding an ineffective assistance claim to approach the
8 inquiry in the same order or even to address both components of the inquiry if the defendant
9 makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S.Ct. at 2069.

10 The Court begins with the presumption of effectiveness and then must determine
11 whether the Petitioner has demonstrated by a preponderance of the evidence that counsel was
12 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel
13 does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of
14 competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432,
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16 Based on the above law, the role of a Court in considering allegations of ineffective
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18 whether, under the particular facts and circumstances of the case, trial counsel failed to render
19 reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
20 (1978). This analysis does not mean that the Court should "second guess reasoned choices
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22 allegations of inadequacy, must make every conceivable motion no matter how remote the
23 possibilities are of success." Id. To be effective, the constitution "does not require that counsel
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25 cannot create one and may disserve the interests of his client by attempting a useless charade."
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26 present relevant authority and cogent argument; issues not so presented need not be addressed
27 by this court.”); State v. Haberstroh, 119 Nev. 173, 187, 69 P.3d 676, 685-86 (2003)
28 (“[c]ontentions unsupported by specific argument or authority should be summarily rejected

1 on appeal.”) (internal citations omitted); Jones v. State, 113 Nev. 454, 468, 937 P.2d 55, 64
2 (1997) (holding that Jones’ unsupported contention should be summarily rejected on appeal).

3 Counsel cannot be ineffective for failing to make futile objections or arguments. See
4 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
5 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
6 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
7 (2002).

8 There is a “strong presumption” that counsel’s attention to certain issues to the
9 exclusion of others reflects trial tactics rather than “sheer neglect.” Harrington v. Richter, 131
10 S. Ct. 770, 788 (2011). Although courts may not indulge post hoc rationalization for counsel’s
11 decision-making that contradicts the available evidence of counsel’s actions, neither may they
12 insist counsel confirm every aspect of the strategic basis for his or her actions. Id. “Effective
13 counsel does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the
14 range of competence demanded of attorneys in criminal cases.’” Jackson v. Warden, Nevada
15 State Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975), quoting McMann v. Richardson,
16 397 U.S. 759, 771, 90 S.Ct. 1441, 1449 (1970).

17 In considering whether trial counsel has met this standard, the court should first
18 determine whether counsel made a “sufficient inquiry into the information that is pertinent to
19 his client’s case.” Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996); citing
20 Strickland, 466 U.S. at 690-691, 104 S.Ct. at 2066. Once such a reasonable inquiry has been
21 made by counsel, the court should consider whether counsel made “a reasonable strategy
22 decision on how to proceed with his client’s case.” Doleman, 112 Nev. at 846, 921 P.2d at 280,
23 citing Strickland, 466 U.S. at 690-691, 104 S.Ct. at 2066. Finally, counsel’s strategy decision
24 is a “tactical” decision and will be “virtually unchallengeable absent extraordinary
25 circumstances.” Doleman, 112 Nev. at 846, 921 P.2d at 280; Howard v. State, 106 Nev. 713,
26 722, 800 P.2d 175, 180 (1990); Strickland, 466 U.S. at 691, 104 S.Ct. at 2066

27 When considering ineffective-assistance-of-counsel claims where the Petitioner
28 pleaded guilty, the Nevada Supreme Court has held that:

1 A defendant who pleads guilty upon the advice of counsel may attack the validity
2 of the guilty plea by showing that he received ineffective assistance of counsel
3 under the Sixth Amendment to the United States Constitution. However, guilty
4 pleas are presumptively valid, especially when entered on advice of counsel, and
5 a defendant has a heavy burden to show the district court that he did not enter
6 his plea knowingly, intelligently, or voluntarily. To establish prejudice in the
7 context of a challenge to a guilty plea based upon an assertion of ineffective
8 assistance of counsel, *a defendant must demonstrate a reasonable probability
that, but for counsel's errors, he would not have pleaded guilty and would have
insisted on going to trial.*

9 (emphasis added). Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004) (internal
10 quotations and citations omitted). "A reasonable probability is a probability sufficient to
11 undermine confidence in the outcome." Strickland, 466 U.S. at 694, 104 S.Ct. at 2068. It is
12 counsel's duty to candidly advise a Petitioner regarding whether or not they believe it would
13 be beneficial for a Petitioner to accept a plea offer, but the ultimate decision of whether or not
14 to accept a plea offer is the Petitioner's, as it was in this case. Rhyne, 118 Nev. at 8, 38 P.3d
15 at 163.

16 **B. Lack of Communication.**

17 This Court FINDS that counsel advised Petitioner, and that Petitioner understood, the
18 risks of entering a guilty plea when he entered into the plea agreement, that sentencing was up
19 to the Judge, and that the Judge issued a sentence within the statutory guidelines.

20 Petitioner complained that his counsel "made little to no effort" to visit him about this
21 case. Petition at 6. First, Petitioner is not entitled to any particular relationship with counsel.
22 See Morris v. Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983) (A defendant is not entitled
23 to a particular "relationship" with his attorney. There is no requirement for any specific amount
24 of communication as long as counsel is reasonably effective in his representation).

25 Second, this claim is belied by the record based upon the GPA. Within the GPA,
26 Counsel signed and certified that he had explained everything to Petitioner prior to his entry
27 of plea:
28

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

3 1. I have fully explained to the Defendant the allegations contained in the
4 charge(s) to which guilty pleas are being entered.

5 2. I have advised the Defendant of the penalties for each charge and the
6 restitution that the Defendant may be ordered to pay.

7 3. I have inquired of Defendant facts concerning Defendant's immigration
8 status and explained to Defendant that if Defendant is not a United States citizen,
9 any criminal conviction will most likely result in serious negative immigration
10 consequences including but not limited to:

- 11 a. The removal from the United States through deportation;
- 12 b. An inability to reenter the United States;
- 13 c. The inability to gain United States citizenship or legal residency;
- 14 d. An inability to renew and/or retain any legal residency status;
and/or
- 15 e. An indeterminate term of confinement, by with United States
16 Federal Government based on the conviction and immigration status.

17 Moreover, I have explained that regardless of what Defendant may have been
18 told by any attorney, no one can promise Defendant that this conviction will not
19 result in negative immigration consequences and/or impact Defendant's ability
20 to become a United States citizen and/or legal resident.

21 4. All pleas of guilty offered by the Defendant pursuant to this agreement
22 are consistent with the facts known to me and are made with my advice to the
23 Defendant.

24 5. To the best of my knowledge and belief, the Defendant:

- 25 a. Is competent and understands the charges and the consequences of
26 pleading guilty as provided in this agreement,
- 27 b. Executed this agreement and will enter all guilty pleas pursuant
28 hereto voluntarily, and
- c. Was not under the influence of intoxicating liquor, a controlled
substance or other drug at the time I consulted with the Defendant as
certified in paragraphs 1 and 2 above.

1 GPA p. 6.

2 As such, this claim is belied by the record. Hargrove v. State, 100 Nev. 498, 502, 686
3 P.2d 222, 225 (1984).

4 **C. Failure to File a Petition.**

5 Petitioner complained that his counsel did not file a petition on his behalf. Petition at 6.
6 Petitioner failed to explain what petition or action should have been taken. Moreover, he failed
7 to allege how the outcome of the case would have changed if a Petition was filed. Petitioner's
8 complaint is nothing more than a mere naked assertion suitable only for summary denial under
9 Hargrove, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

10 **D. Counsel Was Not Ineffective at Sentencing.**

11 This Court FINDS that the allegations in the Petition, that counsel was ineffective for
12 failing to object to the Honorable Douglas Smith's decision not to honor the negotiations, is
13 not a reason to grant the Petition for Writ of Habeas Corpus. Additionally, the Court FINDS
14 that Petitioner does not have a right to be sentenced by a Judge of his choosing.

15 According to Petitioner, his counsel was ineffective for failing to render legal
16 assistance. Petition at 6. Petitioner stated that he requested a different sentencing judge, which
17 was granted. Id. However, on the day of sentencing, Judge Douglas E. Smith refused to honor
18 the agreement, and his counsel had no objection. Id.

19 At calendar call on August 8, 2018, the Court noted that a Senior Judge would be
20 presiding over the trial. On August 16, 2018, Senior Judge Bonaventure presided, but the trial
21 was vacated as the matter had resolved. Mr. Weinstock made a request that the Senior Judge
22 be available for sentencing, if possible. The Senior Judge advised that he was agreeable to
23 sentencing the defendants and would make himself available. Sentencing was originally set
24 for October 3, 2018, but the matter was continued. The Honorable Douglas E. Smith was
25 presiding, but since Senior Judge Bonaventure had agreed to sentence the Petitioner, the Court
26 stated it will notify him of the sentencing date. On October 31, 2018, Senior Judge
27 Bonaventure was present, but the matter was continued. On January 9, 2019, the Honorable
28 Douglas E. Smith did preside over the hearing.

1 Counsel for Petitioner did not make the request to have Senior Judge Bonaventure sit
2 for the sentencing hearing, it was his co-defendant's counsel's request. Moreover, Judge
3 Bonaventure was clear that he was agreeable and would make himself available. Petitioner
4 failed to allege any facts that would show Judge Bonaventure was available on January 8,
5 2019, but that Judge Douglas Smith refused to let him preside. In fact, at the first setting for
6 sentencing, the Court continued the matter so that Judge Bonaventure could be present. Still,
7 this case is in Department 9, and the presiding Judge at the time had the ability to preside over
8 sentencing. Without any formal request for recusal, Judge Smith was able to preside over the
9 case as this was his department. Moreover, a defendant does not have a right to be sentenced
10 by the trial judge that took his guilty plea. Dieudonne v. State, 127 Nev. 1, 5-8, 245 P.3d 1202,
11 1205-1207 (2011). Therefore, this claim is nothing more than a mere naked assertion suitable
12 only for summary denial under Hargrove, 100 Nev. at 502, 686 P.2d at 225.

13 **E. Petitioner Failed to Argue That But For His Counsel's Errors, He Would Have**
14 **Proceeded to Trial.**

15 This Court FINDS that Petitioner cannot show that but for counsel's errors, he would
16 not have pled guilty and would have insisted on going to trial.

17 Overall, Petitioner failed to argue, and cannot show, that but for counsel's errors, he
18 would not have plead guilty and would have insisted on going to trial. See Molina v. State,
19 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004). First, Petitioner was originally charged with
20 ten (10) Category B felonies, but plead guilty to only two (2). This substantially lessened the
21 amount of time he would potentially face if he was found guilty at trial. Second, trial was set
22 to begin on August 16, 2018, but Petitioner took a favorable deal instead of going through with
23 trial. With the possibility of facing a lengthier sentence, Petitioner cannot now argue that but
24 for the alleged error, he would have gone to trial. For the reasons stated above, Petitioner's
25 counsel was effective, and his claim should be denied.

26 //

27 //

28 //

1 ORDER

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

4 DATED this 13th day of March, 2020.

5
6 
DISTRICT JUDGE
wml

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

9
10 BY  

JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528

11
12
13
14 CERTIFICATE OF MAILING

15 I hereby certify that service of the above and foregoing was made this 17 day of
16 March, 2020, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

17 ISMAIL YOUNG, #1210890
18 HIGH DESERT STATE PRISON
19 PO BOX 650
INDIAN SPRINGS, NV 89070

20 BY 

E. DEL PADRE
Secretary for the District Attorney's Office

21
22
23
24
25
26
27
28 sw/GCU



1 NEO

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 ISMAIL YOUNG,

5
6 Petitioner,

Case No: A-19-805427-W

Dept No: IX

7 vs.

8 STATE OF NEVADA,

9 Respondent,

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

10
11 PLEASE TAKE NOTICE that on March 17, 2020, the court entered a decision or order in this matter, a
true and correct copy of which is attached to this notice.

12 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
13 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
14 mailed to you. This notice was mailed on March 18, 2020.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

17
18
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 18 day of March 2020, I served a copy of this Notice of Entry on the
following:

21 ☒ By e-mail:

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

23
24 ☒ The United States mail addressed as follows:

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

26
27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk



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

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

DATE OF HEARING: FEBRUARY 19, 2020
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable CRISTINA D. SILVA, District Judge, on the 19 day of February, 2020, the Petitioner not being present, proceeding in proper person, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through ASHLEY LACHER, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

STATEMENT OF THE CASE

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

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

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

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

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

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

24 On August 10, 2018, a Motion to Continue trial was denied and the trial date for August
25 13, 2018, stood. On August 13, 2018, the jury trial was continued to the next day due to a
26 medical emergency with Petitioner’s counsel. On that day, the Court was informed that the
27 matter was resolved, but Petitioner wanted to speak with his attorney.
28

1 On August 16, 2018, Petitioner entered into a Guilty Plea Agreement ("GPA") where
2 Petitioner plead guilty to one (1) count of Robbery and one (1) count of Attempt Murder.
3 Petitioner stipulated to the following negotiations: "Both parties retain the full right to argue
4 at rendition of sentence, including the time to run consecutive between the counts. This deal
5 is contingent on both defendants pleading guilty." GPA p. 1. The Amended Information was
6 also filed that day.

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

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

20 On November 12, 2019, Petitioner filed a pro per Motion to Withdraw Counsel. On
21 December 4, 2019, this Court denied the Motion. On November 14, 2019, Petitioner filed his
22 pro per Petition for Writ of Habeas Corpus (Post-Conviction). On January 6, 2020, the State
23 filed its Response.

24 **STATEMENT OF THE FACTS**

25 The Court relied on the following factual summary in sentencing Petitioner:

26
27 On November 11, 2017, officers were dispatched in reference to a report
28 of a shooting of a victim. Upon arrival, they learned that the three victims were
walking home when they saw a red Cadillac parked on the road. A man later

1 identified as the defendant, Ismail T. Young, exited the Cadillac and approached
2 them. He demanded that they give him everything they had, grabbed victim #1
3 by the shirt and fired a gun up into the air. He was later identified as the
4 defendant Ismail T. Young. The victim said, "If you're going to do it, do it. He
5 was promptly shot by Mr. Young in the upper torso. Mr. Young then took a
6 backpack from victim #2 that contained a Sony PlayStation 4 and got back into
7 the Cadillac where the co-defendant, Carman Hayes was
8 waiting for him. Victim #3 was not directly involved in the altercation.

9 An anonymous witness came forward and stated he had seen the suspect
10 enter the red Cadillac after the shooting and he followed the vehicle in his own
11 vehicle to obtain the license plate number. He also took a photo of the vehicle.
12 During the investigation, the vehicle was found to be owned by another party
13 that was not involved in the instant offense. The owner sometimes allowed the
14 co-defendant to use the vehicle.

15 On November 28, 2017, the detective assigned to the investigation,
16 located the stolen PlayStation 4 at a local Cash America/Super Pawn, victim #4,
17 through the serial number. A third party not involved in the robbery pawned the
18 PlayStation 4 and backpack for \$ 100.00. The detective recovered the items from
19 the pawn shop.

20 On December 1, 2017, warrants were served on Mr. Hayes' and Mr.
21 Young's residences. Mr. Hayes was arrested, transported to the Las Vegas City
22 Jail and booked accordingly. Mr. Young was arrested as a juvenile and placed
23 in the Las Vegas Juvenile Detention Center until December 3, 2017. On
24 December 4, 2017, he was Direct Filed as an Adult and transported to the Clark
25 County Detention Center where he was booked accordingly.

26 Presentence Investigation Report ("PSI") dated September 12, 2018 at 5.

27 ANALYSIS

28 **PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL**

A. Standard of Review.

The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal
prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
defense." The United States Supreme Court has long recognized that "the right to counsel is
the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686,
104 S.Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
(1993).

To prevail on a claim of ineffective assistance of trial counsel, a Petitioner must prove
he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of

1 Strickland, 466 U.S. at 686-87, 104 S.Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865
2 P.2d at 323. Under the Strickland test, a Petitioner must show first that his counsel's
3 representation fell below an objective standard of reasonableness, and second, that but for
4 counsel's errors, there is a reasonable probability that the result of the proceedings would have
5 been different. 466 U.S. at 687-88, 694, 104 S.Ct. at 2065, 2068; Warden, Nevada State Prison
6 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).
7 "[T]here is no reason for a court deciding an ineffective assistance claim to approach the
8 inquiry in the same order or even to address both components of the inquiry if the defendant
9 makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S.Ct. at 2069.

10 The Court begins with the presumption of effectiveness and then must determine
11 whether the Petitioner has demonstrated by a preponderance of the evidence that counsel was
12 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel
13 does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of
14 competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432,
15 537 P.2d 473, 474 (1975).

16 Based on the above law, the role of a Court in considering allegations of ineffective
17 assistance of counsel is "not to pass upon the merits of the action not taken but to determine
18 whether, under the particular facts and circumstances of the case, trial counsel failed to render
19 reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
20 (1978). This analysis does not mean that the Court should "second guess reasoned choices
21 between trial tactics nor does it mean that defense counsel, to protect himself against
22 allegations of inadequacy, must make every conceivable motion no matter how remote the
23 possibilities are of success." Id. To be effective, the constitution "does not require that counsel
24 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
25 cannot create one and may disserve the interests of his client by attempting a useless charade."
26 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S.Ct. 2039, 2046 n.19 (1984).

27 "There are countless ways to provide effective assistance in any given case. Even the
28 best criminal defense attorneys would not defend a particular client in the same way."

1 Strickland, 466 U.S. at 689, 104 S.Ct. at 689. “Strategic choices made by counsel after
2 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
3 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
4 P.2d 951, 953 (1989). In essence, the Court must “judge the reasonableness of counsel’s
5 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s
6 conduct.” Strickland, 466 U.S. at 690, 104 S.Ct. at 2066.

7 Even if a Petitioner can demonstrate that his counsel’s representation fell below an
8 objective standard of reasonableness, he must still demonstrate prejudice and show a
9 reasonable probability that, but for counsel’s errors, the result of the trial would have been
10 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
11 Strickland, 466 U.S. at 687, 104 S.Ct. at 2064). “A reasonable probability is a probability
12 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-
13 89, 694, 104 S.Ct. at 2064-65, 2068).

14 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the
15 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
16 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
17 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
18 be supported with specific factual allegations, which if true, would entitle the petitioner to
19 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”
20 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
21 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims
22 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your
23 petition to be dismissed.” (emphasis added).

24 Unsupported arguments and baseless assertions are suitable for summary dismissal.
25 Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (“It is appellant’s responsibility to
26 present relevant authority and cogent argument; issues not so presented need not be addressed
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18 determine whether counsel made a “sufficient inquiry into the information that is pertinent to
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20 Strickland, 466 U.S. at 690-691, 104 S.Ct. at 2066. Once such a reasonable inquiry has been
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3 under the Sixth Amendment to the United States Constitution. However, guilty
4 pleas are presumptively valid, especially when entered on advice of counsel, and
5 a defendant has a heavy burden to show the district court that he did not enter
6 his plea knowingly, intelligently, or voluntarily. To establish prejudice in the
7 context of a challenge to a guilty plea based upon an assertion of ineffective
8 assistance of counsel, *a defendant must demonstrate a reasonable probability
that, but for counsel's errors, he would not have pleaded guilty and would have
insisted on going to trial.*

9 (emphasis added). Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004) (internal
10 quotations and citations omitted). "A reasonable probability is a probability sufficient to
11 undermine confidence in the outcome." Strickland, 466 U.S. at 694, 104 S.Ct. at 2068. It is
12 counsel's duty to candidly advise a Petitioner regarding whether or not they believe it would
13 be beneficial for a Petitioner to accept a plea offer, but the ultimate decision of whether or not
14 to accept a plea offer is the Petitioner's, as it was in this case. Rhyne, 118 Nev. at 8, 38 P.3d
15 at 163.

16 **B. Lack of Communication.**

17 This Court FINDS that counsel advised Petitioner, and that Petitioner understood, the
18 risks of entering a guilty plea when he entered into the plea agreement, that sentencing was up
19 to the Judge, and that the Judge issued a sentence within the statutory guidelines.

20 Petitioner complained that his counsel "made little to no effort" to visit him about this
21 case. Petition at 6. First, Petitioner is not entitled to any particular relationship with counsel.
22 See Morris v. Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983) (A defendant is not entitled
23 to a particular "relationship" with his attorney. There is no requirement for any specific amount
24 of communication as long as counsel is reasonably effective in his representation).

25 Second, this claim is belied by the record based upon the GPA. Within the GPA,
26 Counsel signed and certified that he had explained everything to Petitioner prior to his entry
27 of plea:
28

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

3 1. I have fully explained to the Defendant the allegations contained in the
4 charge(s) to which guilty pleas are being entered.

5 2. I have advised the Defendant of the penalties for each charge and the
6 restitution that the Defendant may be ordered to pay.

7 3. I have inquired of Defendant facts concerning Defendant's immigration
8 status and explained to Defendant that if Defendant is not a United States citizen,
9 any criminal conviction will most likely result in serious negative immigration
10 consequences including but not limited to:

- 11 a. The removal from the United States through deportation;
- 12 b. An inability to reenter the United States;
- 13 c. The inability to gain United States citizenship or legal residency;
- 14 d. An inability to renew and/or retain any legal residency status;
and/or
- 15 e. An indeterminate term of confinement, by with United States
16 Federal Government based on the conviction and immigration status.

17 Moreover, I have explained that regardless of what Defendant may have been
18 told by any attorney, no one can promise Defendant that this conviction will not
19 result in negative immigration consequences and/or impact Defendant's ability
20 to become a United States citizen and/or legal resident.

21 4. All pleas of guilty offered by the Defendant pursuant to this agreement
22 are consistent with the facts known to me and are made with my advice to the
23 Defendant.

24 5. To the best of my knowledge and belief, the Defendant:

- 25 a. Is competent and understands the charges and the consequences of
26 pleading guilty as provided in this agreement,
- 27 b. Executed this agreement and will enter all guilty pleas pursuant
28 hereto voluntarily, and
- c. Was not under the influence of intoxicating liquor, a controlled
substance or other drug at the time I consulted with the Defendant as
certified in paragraphs 1 and 2 above.

1 GPA p. 6.

2 As such, this claim is belied by the record. Hargrove v. State, 100 Nev. 498, 502, 686
3 P.2d 222, 225 (1984).

4 **C. Failure to File a Petition.**

5 Petitioner complained that his counsel did not file a petition on his behalf. Petition at 6.
6 Petitioner failed to explain what petition or action should have been taken. Moreover, he failed
7 to allege how the outcome of the case would have changed if a Petition was filed. Petitioner's
8 complaint is nothing more than a mere naked assertion suitable only for summary denial under
9 Hargrove, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

10 **D. Counsel Was Not Ineffective at Sentencing.**

11 This Court FINDS that the allegations in the Petition, that counsel was ineffective for
12 failing to object to the Honorable Douglas Smith's decision not to honor the negotiations, is
13 not a reason to grant the Petition for Writ of Habeas Corpus. Additionally, the Court FINDS
14 that Petitioner does not have a right to be sentenced by a Judge of his choosing.

15 According to Petitioner, his counsel was ineffective for failing to render legal
16 assistance. Petition at 6. Petitioner stated that he requested a different sentencing judge, which
17 was granted. Id. However, on the day of sentencing, Judge Douglas E. Smith refused to honor
18 the agreement, and his counsel had no objection. Id.

19 At calendar call on August 8, 2018, the Court noted that a Senior Judge would be
20 presiding over the trial. On August 16, 2018, Senior Judge Bonaventure presided, but the trial
21 was vacated as the matter had resolved. Mr. Weinstock made a request that the Senior Judge
22 be available for sentencing, if possible. The Senior Judge advised that he was agreeable to
23 sentencing the defendants and would make himself available. Sentencing was originally set
24 for October 3, 2018, but the matter was continued. The Honorable Douglas E. Smith was
25 presiding, but since Senior Judge Bonaventure had agreed to sentence the Petitioner, the Court
26 stated it will notify him of the sentencing date. On October 31, 2018, Senior Judge
27 Bonaventure was present, but the matter was continued. On January 9, 2019, the Honorable
28 Douglas E. Smith did preside over the hearing.

1 Counsel for Petitioner did not make the request to have Senior Judge Bonaventure sit
2 for the sentencing hearing, it was his co-defendant's counsel's request. Moreover, Judge
3 Bonaventure was clear that he was agreeable and would make himself available. Petitioner
4 failed to allege any facts that would show Judge Bonaventure was available on January 8,
5 2019, but that Judge Douglas Smith refused to let him preside. In fact, at the first setting for
6 sentencing, the Court continued the matter so that Judge Bonaventure could be present. Still,
7 this case is in Department 9, and the presiding Judge at the time had the ability to preside over
8 sentencing. Without any formal request for recusal, Judge Smith was able to preside over the
9 case as this was his department. Moreover, a defendant does not have a right to be sentenced
10 by the trial judge that took his guilty plea. Dieudonne v. State, 127 Nev. 1, 5-8, 245 P.3d 1202,
11 1205-1207 (2011). Therefore, this claim is nothing more than a mere naked assertion suitable
12 only for summary denial under Hargrove, 100 Nev. at 502, 686 P.2d at 225.

13 **E. Petitioner Failed to Argue That But For His Counsel's Errors, He Would Have**
14 **Proceeded to Trial.**

15 This Court FINDS that Petitioner cannot show that but for counsel's errors, he would
16 not have pled guilty and would have insisted on going to trial.

17 Overall, Petitioner failed to argue, and cannot show, that but for counsel's errors, he
18 would not have plead guilty and would have insisted on going to trial. See Molina v. State,
19 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004). First, Petitioner was originally charged with
20 ten (10) Category B felonies, but plead guilty to only two (2). This substantially lessened the
21 amount of time he would potentially face if he was found guilty at trial. Second, trial was set
22 to begin on August 16, 2018, but Petitioner took a favorable deal instead of going through with
23 trial. With the possibility of facing a lengthier sentence, Petitioner cannot now argue that but
24 for the alleged error, he would have gone to trial. For the reasons stated above, Petitioner's
25 counsel was effective, and his claim should be denied.

26 //

27 //

28 //

1 ORDER

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

4 DATED this 13th day of March, 2020.

5
6 
DISTRICT JUDGE
wml

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

9
10 BY  

JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528

11
12
13
14 CERTIFICATE OF MAILING

15 I hereby certify that service of the above and foregoing was made this 17 day of
16 March, 2020, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

17 ISMAIL YOUNG, #1210890
18 HIGH DESERT STATE PRISON
19 PO BOX 650
INDIAN SPRINGS, NV 89070

20 BY 

E. DEL PADRE
Secretary for the District Attorney's Office

21
22
23
24
25
26
27
28 sw/GCU

1 Ismail Young #1210890
2 Post Office Box 650
3 Indian Springs, Nevada 89070
4 Pro Per

FILED
MAY 04 2021
Clerk of Court

5
6 DISTRICT COURT
7 CLARK COUNTY, NEVADA
8

A-19-805427-W
Dept. 23

9 ISMAIL YOUNG,
10 Petitioner

Case No. —

11 vs

Dept. No.

12 WARDEN, HIGH DESERT

13 STATE PRISON,

14 Respondent.

PETITION FOR WRIT
OF HABEAS CORPUS
(POST-CONVICTION)

15
16
17
18 Ismail Young, Petitioner, is currently
19 unconstitutionally restrained of his freedoms and
20 liberties by Warden, High Desert State Prison
21 in Indian Springs, Nevada as follows:
22

CLERK OF THE COURT

23
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25
26
27
28

1 A. GROUNDS FOR RELIEF.⁷

2
3 Ismail Young ("Petitioner" herein) is unconst-
4 itutionally imprisoned and restrained of his
5 freedoms and liberties in violation of U.S.C.A.
6 Am. 4, 5, 6 and 14; Nev. Const. art. 1 § 8 and
7 Nevada Revised Statutes as follows:

8
9 GROUND ONE.

10
11 PETITIONER WAS DENIED THE EFFECTIVE ASSISTANCE
12 OF TRIAL COUNSEL IN VIOLATION OF U.S.C.A. AM.
13 6 and 14; NEV. CONST. ART. 1 § 8 WHEN COUNSEL
14 ~~REASONABLY~~ REFUSED TO DISCLOSE THE DISCOVERY IN
15 THE CASE, REFUSED TO DISCUSS THE MERITS OF
16 THE CASE WITH PETITIONER AND WHEN COUNSEL
17 INVOKED FEAR WITHIN PETITIONER WHO WAS
18 SEVENTEEN YEARS OF AGE.

19
20 1. Petitioner was seventeen years of age when
21 the below discussed events occurred. Petitioner was
22 certified an adult and kept with adults at Clark
23 County Detention Center. He was kept in custody until
24 pronouncement of sentence represented by appointed
25

26 2. Petitioner is assisted by another inmate in
27 the drafting of this petition. I am not trained in
28 law and this honorable court would be best suited
29 to appoint counsel to assist petitioner.

counsel Carl Arnold.

2. The factual summary relied upon by the Honorable Court at Sentencing discloses the following

" On November 11, 2017 Officers were dispatched in reference to a report of a shooting of a victim. Upon arrival, they learned that the three victims were walking home when they saw a red Cadillac parked on the side of the road. A man later identified ~~as~~^{as} defendant, Ismail T. Young, exited the Cadillac and approached them. He demanded they give them everything they had, grabbed victim #1 by the shirt and fired a gun up into the air. He was later identified as the defendant Ismail T. Young. The victim said "if you're going to do it, do it. He was promptly shot by Mr. Young in the upper torso. Mr. Young then took a backpack from victim #2 that contained a Sony Play station 4 and got back into the Cadillac where the co-defendant, Carmen Hayse was waiting for him. Victim #3 was not directly involved in the altercation.

An anonymous witness came forward and stated that he seen the suspect enter the Cadillac after the shooting and he followed the vehicle in his own vehicle to obtain the license plate number. He also took a photo of the vehicle. During the

1 investigation, the vehicle was found to be
2 owned by another party that was not involved
3 in the instant offense. The owner sometimes
4 allows the co-defendant to use the vehicle.

5 On November 28, 2017 the detective assigned
6 to the investigation located the stolen Play Station
7 4 at a local Cash America/Super Pawn, Victim
8 #4, through the serial number. A third party
9 not involved in the robbery pawned the
10 Play Station 4 and backpack for \$100.00. The
11 detective recovered the items from the pawn shop.
12

13 On December 1, 2017, warrants were served
14 on Mr. Hayes and Mr. Young's residence. Mr.
15 Hayes' was arrested as a juvenile and placed
16 in the Las Vegas juvenile Detention Center until
17 December 3, 2017. On December 4, 2017 he was
18 Direct Filed as an Adult and transported to
19 the Clark County Detention Center where he was
20 booked accordingly.

21 Presentence Investigation Report dated September 12, 2018
22 at p.5.
23
24

25 3. On August 16, 2018 Petitioner entered into
26 a Guilty Plea Agreement where petitioner pleaded
27 guilty to (1) count of Robbery and (1) count of
28 Attempt murder. An amended information was
29 filed that day.

1 4. On January 9, 2009 Petitioner was adjudicated
2 guilty and sentenced to count (1) - maximum of
3 (180) months and a minimum of (72) months in
4 the Nevada Department of Corrections, and count 2
5 - maximum of (180) months and a minimum of (72)
6 months, to run consecutive to count 1 with (401)
7 days credit time served.

8
9 5. Prior to pleading guilty Defense counsel did
10 not visit petitioner or discuss the case with
11 petitioner. Petitioner repeatedly asked counsel
12 for the discovery and counsel sent a copy of
13 the criminal complaint to petitioner's family.
14 Records at the jail will show petitioner received
15 no mail and no visit from counsel.
16

17 6. Counsel's conduct invoked fear into the young
18 seventeen year old. This is his first adult
19 case and petitioner felt that counsel was
20 controlling with his tactics and he feared
21 that if he did not go along with counsel he
22 was doomed. Petitioner answered all questions
23 at the plea hearing in the affirmative or
24 negative based solely on counsel making
25 him fear if petitioner did not play along.
26
27
28

1 7. consistent with petitioner's allegations
2 that counsel would not discuss the case and
3 provide the discovery is a request made
4 in a motion to have counsel withdraw where
5 petitioner requested post trial that:

6
7 "wherefore, Defendant prays this Honorable court
8 grant his motion to withdraw counsel and
9 that counsel deliver to defendant all papers,
10 documents, pleadings, discovery and any other
11 tangible property which belongs to or was
12 prepared by counsel for the defendant to allow
13 defendant the proper assistance that is needed
14 to insure that justice is served"

15
16 Motion TO WITHDRAW COUNSEL, filed November 12 2019
17 at 2.

18
19 7. On December 4, 2019 this honorable court
20 denied the motion to withdraw.²

21
22 2. Petitioner cannot adequately determine the soundness
23 of counsel's decisions / strategies until such
24 time as counsel or the court discloses to petitioner
25 the discovery in the case and the defense's file.
26 (i.e. what investigation counsel did, what other
27 witnesses stated which is recorded and can be
28 used to learn their account of the events).

1 8. Petitioner does hereby request all discovery
2 be disclosed to him that was disclosed to counsel.
3 This information is necessary to prove counsel's
4 ineffectiveness.

5
6 9. Petitioner requests counsel be appointed to
7 conduct discovery post-conviction.

8
9 10. Had counsel shared discovery ad discussed
10 the case with petitioner as I have petitioner
11 would not have entered into a plea agreement
12 that cost him a (30) year sentence. Petitioner
13 ~~asserts~~ incorporates the grounds below in support
14 of this claim.

15
16 11. Petitioner asserts that he did have the intent
17 to rob. He did not have the intent to murder.
18 Petitioner shot a round in the air. A scuffle
19 occurred, the victim became aggressive telling
20 petitioner to shoot him and an accidental
21 shot hit the victim. Petitioner did not fire
22 more rounds ad kill the victim which is
23 evidence he had no intent to attempt murder.
24 Discovery of other witness accounts is suspected
25 to corroborate petitioner's claims. The question is
26 did counsel even obtain actual statements
27 from the victim? Did counsel have an investig-
28 ator attempt to talk to the witnesses? what

1 investigation was done before convincing this
2 youth to plead guilty to attempt murder of
3 another.?

4
5 12. Petitioner was of the belief that the shot
6 hitting the victim in the chest/torso area
7 meant automatically he attempt murder. where
8 as here counsel does not even go and see
9 petitioner or discuss the case it is absolutely
10 believable a seventeen year old would not
11 understand the level of proof required, make
12 out beforehand to kill, to sustain a conviction
13 for attempt murder. There were several witnesses
14 present none of whom petitioner even fired
15 at. Petitioner shot in the air which is not
16 the actions of a killer. He ran when the round
17 hit his victim. He did not continue firing.
18 He did not walk up to him shooting.

19
20 13. This is a foolish act of bravado by a
21 youth that went extremely bad but this
22 young man is not a killer and in no way
23 intended or attempted to kill anyone. In
24 this regard the conviction is wrong. Petitioner
25 is not attempting to dupe the court. He readily
26 admits his involvement.

1 14. Petitioner is actually innocent of Attempt
2 murder and a fundamental miscarriage of
3 justice will occur if this claim is not heard.

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GROUND TWO.

PETITIONER WAS DENIED THE EFFECTIVE ASSISTANCE
OF TRIAL COUNSEL IN VIOLATION OF U.S.C.A. AM.
6 and 14; NEV. CONST. ART 1 § 8 WHEN COUNSEL
DID NOT CONVEY THE SPECIFIC TERMS OF A PLEA
AGREEMENT TO PETITIONER WHICH DENIED PET-
ITIONER A MORE FAVORABLE AGREEMENT.

15. Petitioner incorporates 99 1-14 here.

16. Defense counsel told petitioner that the State
did offer a sentence of (6) years to (15)
years for the Robbery taking into account
his young age. Counsel did not inform petiti-
oner the deal was time sensitive and he must
agree now.

17. Petitioner asked time to think about it.
When later communicating with counsel and
learning a (4) year to (10) year sentence
was not going to be available it was learned
the State retook the (6) to (15) year deal
off the table for not agreeing sooner.

1 18. Had counsel conveyed to petitioner the
2 plea agreement was some sensitive act
3 needed to be agreed to then petitioner would
4 have pleaded guilty to the (6) to (15) year
5 term. Petitioner was in fact punished by
6 the D.A. for not taking the deal immediately
7 which is evidenced by the later deal
8 that was twice as long as the first.
9

10 GROUND THREE

11 PETITIONER WAS DENIED THE EFFECTIVE ASSISTANCE
12 OF TRIAL COUNSEL AND VIOLATION OF U.S.C.A. AM
13 6 and 14; NEV. CONST. ART 1 § 8 WHEN COUNSEL
14 FAILED TO COMMUNICATE THAT THE STATE WOULD
15 ARGUE FOR THE MAXIMUM SENTENCE.
16

17 19. Petitioner incorporates 9/11-18 here.
18

19 20. Counsel would communicate with petitioner
20 at hearings briefly. At the plea hearing counsel
21 damned the plea contract on this young man
22 and told him specifically the state was going
23 to only argue (5) to (15) years. Petitioner was
24 not trained in the law of contracts. Petitioner
25 was unaware of the differences between what
26 he read and what counsel verbally stated to
27 him. Petitioner believed he was going to be
28

1 receive what the State argued for at that point.
2

3 21. Had counsel informed petitioner the State would
4 argue for higher than (5) to (15) years petitioner
5 would not have entered into the agreement
6 and would not have pleaded guilty to these
7 charges.
8

9 GROUND FOUR.

10 PETITIONER WAS DENIED THE EFFECTIVE ASSISTANCE
11 OF TRIAL COUNSEL IN VIOLATION OF U.S. C. A. ART. -
12 6 and 14; NEV. CONST. ART. 1 § 8 WHERE COUNSEL
13 ADVISED PETITIONER TO PLEAD GUILTY TO A CRIME
14 HE DID NOT COMMIT.
15

16 22. Petitioner incorporates §§ 1-21 here.
17

18 23. Petitioner did not walk up shooting at the
19 victims. Petitioner did shoot in the air. Petitioner
20 did hit one victim in the torso when the
21 victim lunged at the petitioner. The shot was
22 accidental. Petitioner did not continue shooting.
23 Petitioner did not shoot anyone else and ran.
24 Petitioner did not attempt to kill anyone.
25

26 25. Counsel did not explain mens rea to
27 petitioner. Counsel did not explain what
28 malice and aforethought meant. when I

1 was discussing means race and aforethought
2 with petitioner he was truly stupidified and
3 did not know the meaning of either. Counsel
4 did not thoroughly explain the state's burden
5 to prove the elements of Attempt Murder. Had
6 Petitioner known the meaning of the elements
7 he would not have pleaded guilty to Attempt
8 Murder. Petitioner asserts he did not commit
9 Attempt Murder.

10
11 26. Counsel advised petitioner to plead guilty
12 to a crime he did not commit which is
13 ineffective assistance. And counsel explained
14 the crime Attempt Murder means race, intent
15 to kill with malice aforethought and if
16 counsel would not have advised petitioner to
17 plead to Attempt Murder petitioner would not
18 have pleaded guilty.

19
20 27. A fundamental miscarriage of justice will
21 occur if this claim is not considered as petition-
22 er is actually innocent of Attempt Murder.
23
24
25
26

GROUND FIVE

PETITIONER WAS DENIED THE EFFECTIVE ASSISTANCE
OF COUNSEL IN VIOLATION OF U.S.C.A. ART. 6
and 14; NEV. CONST. ART. 1 § 8 WHEN COUNSEL
FAILED TO ARIEVE MITIGATING EVIDENCE.

28. Petitioner incorporates 9/9/1-27 here.

29. Petitioner asserts that victims 1-3 would be able to corroborate his claim the shot went off after the victim suddenly lunged at petitioner and that petitioner did not walk up shooting, shot in the air and such would have been in mitigation of a lesser sentence. Counsel failed to investigate, depose the witnesses and present mitigating evidence.

30. Had counsel presented said mitigating evidence it is likely that petitioner would have received a lesser sentence.

GROUND SIX.

PETITIONER WAS DENIED THE EFFECTIVE ASSISTANCE
OF COUNSEL IN VIOLATION OF U.S.C.A. ART. 6
AND 14; NEV. CONST. ART. 1 § 8 WHEN COUNSEL
FAILED TO INFORM PETITIONER OF NEW LAWS
RELATED TO YOUTHFUL OFFENDERS AND/OR
DID NOT SEEK A SHORTER SENTENCE FOR PETITION-
ER BEING SEVENTEEN YEARS OF AGE.

31. Petitioner incorporates ¶¶ 1-30 here.

32. Petitioner currently does not have immediate
access to a law library and the prison does not
have persons trained in law to assist petitioner.
Also, any citation needed must be ordered on
a form giving the specific citation. An other
requests are not returned. Counsel being appoin-
ted would better assist petitioner and this
honorable court to address the claims in
this petition.

33. Petitioner was (17) years of age at the time
of the crime and his sentence of (30) years
appears to be excessive under the law for
such a young offender. Counsel failed to
inform petitioner of developments in law
and/or failed to argue them to the tribunal.

34. Petitioner is aware of laws in other States / jurisdictions that may be applied here. Studies were done in Arizona that youths under (18) years of age have not fully developed their frontal lobe of the brain which limits their understanding / consequence of their criminal actions. Counsel failed to mention and argue these points and findings in mitigation of a lesser sentence.

35. Counsel failed to consult or present an expert on this subject in mitigation of a lesser sentence.

36. It is likely that had counsel presented this information petitioner would have received a lesser sentence.

GROUNDS SEVERAL.

1 PETITIONER WAS DENIED THE EFFECTIVE ASSISTANCE
2 OF COUNSEL IN VIOLATION OF U.S. C. A. 2 AM. 6
3 AND 14; NEW. CONST. ART. 1 § 8 WHERE COUNSEL
4 FAILED TO OBJECT TO THE STATES USE OF HIS
5 JUVENILE RECORD.

6
7 36. Petitioner incorporates 9/91 1-35 here.

8
9 37. Petitioner asserts it was illegal to use his
10 juvenile record at sentencing. The use of his
11 juvenile record caused him to receive a larger
12 sentence than that which likely would have
13 been lesser had it not been used. Counsel
14 failed to object to the use of this juvenile
15 record.

16
17 38. Had counsel objected to the use of the juvenile
18 record petitioner likely would have been senten-
19 ced to a lesser sentence.

B. Conclusion.

Wherefore, Petitioner prays that this honorable Court will grant petitioner:

1. Appointment of counsel to do discovery; to conduct an evidentiary hearing et cetera.
2. Order trial counsel to give the defense file and all discovery to petitioner.
3. Grant Petitioner an evidentiary hearing to prove his claims.
4. Grant the petition on the merits.

I do hereby swear under penalty of perjury that the above information is true and correct to the best of my information and beliefs except where based upon information of others.

Sworn, this — day of ——— 2021.

ISMAIL YOUNG

Affirmation.

I do hereby affirm the above Petition
for a writ of Habeas Corpus does not
contain the names and Social Security
number of any person.

Ismael Young
ISMAEL YOUNG

This document does not contain the
Social Security number of any person.

Ismael Young

Certificate of Service

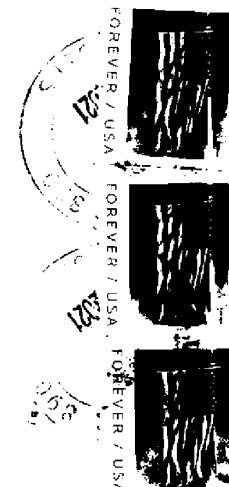
Pursuant to NMRP Rule 5 (b) I do hereby certify that on April 6, 2021 I did mail a true and correct copy of the foregoing Petition for A writ of Habeas Corpus to Warden, Hugh Robert State Prison, P.O. Box 650 Indian Springs Nevada 89070 by use of the United States Postal Service.

ISMAIL YOUNG

Ismail Young #1210800
HOSP
Q360#450
IND ANS-01045/11/892070

District Court
Clark County, Nevada
200 Lewis Ave
LV, NV. 89101

HIGH COURT STATE PRISON
APR 5 2021
UNIT 15 C/O



Heather L. Smith
CLERK OF THE COURT

PPOW

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Ismail Young,

Petitioner,

vs.

State of Nevada,

Respondent,

Case No: A-19-805427-W
Department 23

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

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on May 04, 2021. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

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

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

Calendar on the 7th day of July, 2021, 20____, at the hour of

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

Dated this 1st day of June, 2021

Jasmin Lilly-Spells

79A3FF6C5A47D9
Jasmin Lilly-Spells
District Court Judge

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

13
14 If indicated below, a copy of the above mentioned filings were also served by mail
15 via United States Postal Service, postage prepaid, to the parties listed below at their last
16 known addresses on 6/2/2021

16 Ismail Young HDSP
17 P.O. Box 650
18 Indian Springs, NV, 89070

18 Steven Wolfson Juvenile Division - District Attorney's Office
19 601 N Pecos Road
20 Las Vegas, NV, 89101
21
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1 **RSPN**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **ALEXANDER CHEN**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #10539**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

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

10 **THE STATE OF NEVADA,**

11 **Plaintiff,**

12 **-vs-**

13 **ISMAIL T. YOUNG,**
14 **#8184847**

15 **Defendant.**

CASE NO: A-19-805427-W

C-18-329403-1

DEPT NO: XXIII

16 **STATE'S RESPONSE TO DEFENDANT'S SECOND PETITION FOR WRIT OF**
17 **HABEAS CORPUS**

18 **DATE OF HEARING: July 7, 2021**
19 **TIME OF HEARING: 11:00 AM**

20 **COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County**
21 **District Attorney, through JONATHAN VANBOSKERCK, Chief Deputy District Attorney,**
22 **and hereby submits the attached Points and Authorities in Response to Defendant's Second**
23 **Petition For Writ Of Habeas Corpus.**

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On January 26, 2018, the State filed an Information charging Ismail T. Young
4 ("Petitioner") with Count 1 – Conspiracy to Commit Robbery; Count 2 – Robbery with Use
5 of a Deadly Weapon; Counts 3 and 4 – Attempt Robbery with Use of a Deadly Weapon; Count
6 5 – Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm; Count 6 –
7 Attempt Murder with Use of a Deadly Weapon; Count 7 – Battery with Intent to Commit
8 Robbery; and Counts 8, 9, and 10 – Assault with a Deadly Weapon. A co-defendant, Carman
9 De'Jour Hayes, was also charged on the first four (4) counts.

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

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

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

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1 On August 10, 2018, a Motion to Continue trial was denied and the trial date for August
2 13, 2018, stood. On August 13, 2018, the jury trial was continued to the next day due to a
3 medical emergency with Petitioner's counsel. On that day, the Court was informed that the
4 matter was resolved, but Petitioner wanted to speak with his attorney.

5 On August 16, 2018, Petitioner entered into a Guilty Plea Agreement ("GPA") where
6 Petitioner plead guilty to one (1) count of Robbery and one (1) count of Attempt Murder.
7 Petitioner stipulated to the following negotiations: "Both parties retain the full right to argue
8 at rendition of sentence, including the time to run consecutive between the counts. This deal
9 is contingent on both defendants pleading guilty." GPA p. 1. The Amended Information was
10 also filed that day.

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

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

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

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1 On May 4, 2021, Petitioner filed his second Petition for Writ of Habeas Corpus (Post-
2 Conviction) (hereinafter "Second Petition").

3 **STATEMENT OF THE FACTS**

4 The Court relied on the following factual summary in sentencing Petitioner:

5 On November 11, 2017, officers were dispatched in reference to a report
6 of a shooting of a victim. Upon arrival, they learned that the three victims were
7 walking home when they saw a red Cadillac parked on the road. A man later
8 identified as the defendant, Ismail T. Young, exited the Cadillac and approached
9 them. He demanded that they give him everything they had, grabbed victim #1
10 by the shirt and fired a gun up into the air. He was later identified as the
11 defendant Ismail T. Young. The victim said, "If you're going to do it, do it. He
12 was promptly shot by Mr. Young in the upper torso. Mr. Young then took a
13 backpack from victim #2 that contained a Sony PlayStation 4 and got back into
14 the Cadillac where the co-defendant, Carman Hayes was
15 waiting for him. Victim #3 was not directly involved in the altercation.

16 An anonymous witness came forward and stated he had seen the suspect
17 enter the red Cadillac after the shooting and he followed the vehicle in his own
18 vehicle to obtain the license plate number. He also took a photo of the vehicle.
19 During the investigation, the vehicle was found to be owned by another party
20 that was not involved in the instant offense. The owner sometimes allowed the
21 co-defendant to use the vehicle.

22 On November 28, 2017, the detective assigned to the investigation,
23 located the stolen PlayStation 4 at a local Cash America/Super Pawn, victim #4,
24 through the serial number. A third party not involved in the robbery pawned the
25 PlayStation 4 and backpack for \$ 100.00. The detective recovered the items from
26 the pawn shop.

27 On December 1, 2017, warrants were served on Mr. Hayes' and Mr.
28 Young's' residences. Mr. Hayes was arrested, transported to the Las Vegas City
Jail and booked accordingly. Mr. Young was arrested as a juvenile and placed
in the Las Vegas Juvenile Detention Center until December 3, 2017. On
December 4, 2017, he was Direct Filed as an Adult and transported to the Clark
County Detention Center where he was booked accordingly.

29 Presentence Investigation Report ("PSI") dated September 12, 2018 at 5.

30 **ARGUMENT**

31 **I. YOUNG'S PETITION IS UNTIMELY**

32 A petition challenging a judgment of conviction's validity must be filed within one year
33 of the judgment or within one year of the remittitur, unless there is good cause to excuse delay.
34 NRS 34.726(1). The Nevada Supreme Court has held that NRS 34.726 should be construed by

1 its plain meaning. *Pellegrini v. State*, 117 Nev. 860, 873–74, 34 P.3d 519, 528 (2001). The
2 one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of
3 conviction is filed or a remittitur from a timely direct appeal is issued. *Dickerson v. State*, 114
4 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998).

5 The one-year time limit for preparing petitions for post-conviction relief under NRS
6 34.726 is strictly applied. In *Gonzales v. State*, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
7 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
8 evidence presented by the defendant that he purchased postage through the prison and mailed
9 the Notice within the one-year time limit.

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

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

18 *Id.* (quoting *Groesbeck v. Warden*, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984)).
19 Additionally, the Court noted that procedural bars “cannot be ignored [by the district court]
20 when properly raised by the State.” *Id.* at 233, 112 P.3d at 1075. The Nevada Supreme Court
21 has granted no discretion to the district courts regarding whether to apply the statutory
22 procedural bars; the rules must be applied.

23 Here, the Judgment of Conviction was filed on January 9, 2019. Petitioner did not
24 appeal his case to the Supreme Court. Thus, any petition filed by Petitioner needed to be filed
25 by January 9, 2020. This Second Petition was filed May 4, 2021 and is untimely absent a
26 showing of good cause. Absent such a showing, the Petition should be denied.

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1 **II. YOUNG HAS NOT SHOWN GOOD CAUSE OR PREJUDICE**

2 A showing of good cause and prejudice may overcome procedural bars.

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

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

17 Here, Young fails to cite any good cause for filing his Second Petition more than a year
18 after his conviction. As such, he cannot overcome the good cause requirement for this Petition
19 to even be considered. Without good cause, there can be no actual prejudice caused by the
20 good cause.

21 **III. YOUNG’S SECOND PETITION IS SUCCESSIVE**

22 Second or successive petitions are those that either fail to allege new or different
23 grounds for relief and the grounds have already been decided on the merits or that allege new
24 or different grounds but a judge or justice finds that the petitioner’s failure to assert those
25 grounds in a prior petition would constitute an abuse of the writ. NRS 34.810(2) reads:

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

1 Second or successive petitions will only be decided on the merits if the petitioner can
2 show good cause and prejudice. NRS 34.810(3). The Nevada Supreme Court has stated:
3 “Without such limitations on the availability of post-conviction remedies, prisoners could
4 petition for relief in perpetuity and thus abuse post-conviction remedies. In addition, meritless,
5 successive and untimely petitions clog the court system and undermine the finality of
6 convictions.” *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

7 The Nevada Supreme Court recognizes that “[u]nlike initial petitions which certainly
8 require a careful review of the record, successive petitions may be dismissed based solely on
9 the face of the petition.” *Ford v. Warden*, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In
10 other words, if the claim or allegation was previously available with reasonable diligence, it is
11 an abuse of the writ to wait to assert it in a later petition. *McClesky v. Zant*, 499 U.S. 467, 497-
12 98 (1991). Application of NRS 34.810(2) is mandatory. *See Riker*, 121 Nev. at 231, 112 P.3d
13 at 1074.

14 Petitioner already raised a claim of ineffective assistance of counsel in his First Petition.
15 Therefore, the matter has already been considered and denied. This successive petition should
16 be dismissed.

17 **IV. THE SECOND PETITION FAILS TO RAISE NEW ISSUES OR ONLY**
18 **RAISES ISSUES THAT COULD HAVE BEEN BROUGHT UP IN HIS**
19 **FIRST PETITION**

20 Petitioner raises the same issue in his Second Petition as he did in the First Petition, that
21 his counsel was ineffective.

22 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
23 he was denied “reasonably effective assistance” of counsel by satisfying a two-prong test.
24 *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984). A defendant must
25 show his counsel's representation fell below an objective standard of reasonableness and that
26 but for counsel's errors, there is a reasonable probability the result of the proceedings would
27 have been different. *Id.* at 687–88. The court begins with the presumption of counsel's
28 effectiveness and then determines whether the defendant has demonstrated by a preponderance

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1 of the evidence that counsel was ineffective. *Means v. State*, 120 Nev. 1001, 1011, 103 P.3d
2 25, 32 (2004).

3 In his First Petition, Petitioner alleged that his counsel was ineffective under the
4 *Strickland* standard because he “failed to show muster in his duty.” First Petition, p. 6, 9-10;
5 *see also Strickland v. Washington*, 466 U.S. 668, 686 (1984). Essentially, because the charges
6 were so severe, counsel needed to go to great lengths on his client’s behalf. As discussed in
7 the State’s response, a defendant is not entitled to any particular relationship with his counsel.
8 *Morris v. Slappy*, 461 U.S. 1, 14 (1983). Petitioner did not specify what lengths counsel should
9 have reached, nor did he allege the results of the case would have been different had these
10 lengths been obtained. First Petition, p. 6, 10-25. Petitioner did mention in his First Petition
11 that his attorney made little effort, did not file an unspecified petition, and failed to object to
12 the sentencing judge. First Petition, p. 6, 10-25. Petitioner offered the bare allegation that his
13 counsel failed to render adequate legal assistance.

14 The Second Petition explores the same themes as the First, though the Second Petition
15 includes slightly more detail. To the extent this detail is relevant, the allegations contained
16 therein could have been included in an appeal or in the First Petition. Petitioner does not allege,
17 nor could he, that any of his allegations are based on new information not available to him
18 earlier.

19 **A. Ground One – No Communication, No Discovery, Coercion**

20 Petitioner asserts he never discussed his case with his counsel before he pled guilty and
21 that counsel never provided him with discovery materials. Further, counsel frightened him into
22 pleading to a crime he did not commit.

23 **1. No Communication**

24 The communication allegation was discussed in the State’s response to the First
25 Petition. State’s Response to Defendant’s Petition for Writ of Habeas Corpus (“First
26 Response”), p. 8-10. The First Response refers to the record, in which Petitioner’s counsel
27 certified in the Guilty Plea Agreement (“GPA”) that he explained the allegations, advised of
28 //

1 the penalties, and explained immigration consequences. First Response, p. 9. This claim is
2 successive.

3 **2. No Discovery**

4 Petitioner does not allege what discovery materials he was entitled to receive other than
5 the police report, which he acknowledges receiving. Second Petition, p. 5, 12-13. Petitioner
6 states he requires witness statements to allow him to learn their account of the events. Second
7 Petition, p. 6, 26-28. Petitioner has alleged no facts as to why the witnesses' account might
8 differ from his own. If he had chosen to proceed to trial, he would have heard the witnesses
9 directly. He has all the information he needs to evaluate counsel's decisions. Petitioner's
10 complaint is a mere naked assertion suitable only for summary denial. *Hargrove v. State*, 100
11 Nev. 498, 502, 686 P.2d 222, 225 (1984).

12 Petitioner demands post-conviction counsel be appointed to assist him in discovery.
13 Second Petition, p. 6, 6-7. In Nevada, there is no right to appointed counsel post-conviction.
14 *McKague v. Warden*, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996). The court may appoint
15 counsel if the requirements of NRS 34.750 are met. *Renteria-Novoa v. State*, 133 Nev. 75, 391
16 P.3d 760 (2017). If the petitioner is indigent and the petition not be subject to summary
17 judgment, the court may weigh the severity of the consequences, the difficulty of the issues,
18 the petitioner's lack of comprehension, or whether counsel is necessary to proceed with
19 discovery. NRS 34.750.

20 Here, Petitioner may be indigent but the petition is subject to summary judgment, as it
21 is both time-barred and successive. Regarding the factors, the consequences are severe, as
22 Petitioner faces up to 30 years in prison. Petitioner, unlike the defendant in *Renteria-Novoa*,
23 comprehends the English language. The issues are not difficult, as Petitioner merely wants
24 anything in his file. An attorney is not needed to help with discovery, as Petitioner points to
25 no discovery materials in existence.

26 Petitioner claims that if counsel had shared discovery with him and guided him more
27 closely during the process, he would not have pled guilty. As explained in the First Response,
28 however, Petitioner only pled to two of the ten Category B felonies charged against him. First

1 Response, p. 11, 17-22. He articulates no anticipated discovery that would make this deal
2 unfavorable.

3 This claim is successive.

4 **3. Coercion**

5 Petitioner asserts he feared “doom” if he did not “play along” with his attorney. Second
6 Petition, p. 5, 17-25. However, Petitioner offers no detail on counsel’s frightening manner.
7 Although it is readily believable that being on trial for attempted murder would frighten
8 anyone, there is no evidence Petitioner’s counsel was at fault. Petitioner points to his
9 inexperience with being tried as an adult but glosses over his previous experience with juvenile
10 prosecutions. This naked assertion requires summary denial under *Hargrove*.

11 This claim could have been made in the First Petition.

12 **4. Factual Innocence**

13 Petitioner has added a claim of factual innocence to his petition. He asserts that when
14 he threatened his robbery victims with a loaded gun, fired a shot into the air, pointed his gun
15 at one victim, and pulled the trigger, he did not have the requisite intent to murder. Second
16 Petition p. 6, 16-21. He asserts that the fact he did not approach the victims by firing at the
17 onset of the robbery and that he did not continue to fire once his victim fell prove his lack of
18 intent.

19 This assertion is utterly without merit. A person is presumed to intend the natural
20 consequences of his actions. *See e.g., State v. Hall*, 54 Nev. 213, 13 P.2d 624, 632 (1932).
21 Consciously pulling the trigger of a loaded gun pointed at another is presumed to have the
22 necessary intent to kill the person. *Id.*

23 Petitioner speculates that his victims will share his interpretation of events. Second
24 Petition, p. 6, 24-28. Petitioner points to no support for his speculation, other than that there
25 were people present at whom Petitioner *did not* shoot. Second Petition, p. 7, 13-15. He also
26 contends that since he ran away after the round hit his victim, the victims would testify that he
27 had not really meant to kill when he fired the gun. Second Petition, p. 7, 16-18. Petitioner fails
28 to mention, though, that he paused to steal another victim’s backpack before he ran.

1 “If there is no bona fide defense to the charge, counsel cannot create one and may
2 disserve the interests of his client by attempting a useless charade.” *United States v. Chronic*,
3 466 U.S. 648, 657 (1984).

4 This claim could have been made in the First Petition.

5 **B. Ground Two – No Disclosure of Plea’s Time-Sensitivity**

6 Petitioner claims his counsel was ineffective because he was not informed the State’s
7 initial offer of 6-15 years was time-sensitive. However, any plea deal may be withdrawn before
8 acceptance. Petitioner held out for an offer of 4-10 years, which the State refused to accept.

9 Petitioner now claims that if he had known he had to accept the State’s offer within a
10 reasonable time, he would have not held out for his preferred offer.

11 This claim could have been made in the First Petition.

12 **C. Ground Three – No Disclosure of State’s Intent to Argue for Maximum
13 Sentence**

14 Petitioner repeats his claim that his counsel was ineffective for not warning him the
15 State would argue for the maximum sentence. This was both addressed in the First Response
16 and belied by the record. Petitioner’s agreement with the State specified that both parties
17 retained full rights to argue sentencing. GPA p. 1.

18 This claim is successive.

19 **D. Ground Four – Advised to Plead to a Crime He Did Not Commit**

20 Petitioner repeats his claim of factual innocence based on the assertion that he did not
21 intend to kill when he fired a gun at the torso of another. This issue was addressed above under
22 Ground One. Petitioner does add that he did not know the terms “mens rea” or “malice
23 aforethought” so his plea was not knowingly made. Petitioner’s knowledge of legal terms is
24 not required for his pleading guilty to his actions.

25 This claim could have been made in the First Petition.

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1 **E. Ground Five – Failure to Mitigate**

2 For his claim that counsel failed to present mitigating evidence, Petitioner asserts that
3 his three victims would have testified on his behalf. This assertion is unsupported by the
4 record.

5 This claim could have been made in the First Petition.

6 **F. Ground Six – Failure to Argue Petitioner’s Youth**

7 Petitioner claims his counsel did not argue his youth as a mitigating factor. Not only is
8 this a claim that could have been brought in his First Petition, it is without merit. According
9 to Petitioner, the State initially offered him a lower sentence due to his youth. Second Petition,
10 p. 8, 15-18.

11 As proof that age was not considered as a mitigating factor, Petitioner asserts that a
12 thirty year sentence for a person aged seventeen is *per se* excessive. There is, however, no
13 convenient time in one’s life to serve a thirty year sentence. Sentences for persons tried as
14 adults are doled out based on the crimes committed, not based on the defendant’s age.

15 This claim could have been made in the First Petition.

16 **G. Ground Seven – Failure to Suppress Juvenile Record**

17 Although Petitioner argues his youth in Ground Six, he objects to his juvenile criminal
18 record being held against him in Ground Seven. Without citing any authority, he asserts the
19 use of his juvenile criminal record in sentencing him for his first adult crime is illegal.

20 Counsel cannot be ineffective for failing to make futile objections or arguments. *Ennis*
21 *v. State*, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the “immediate
22 and ultimate responsibility of deciding if and when to object, which witnesses, if any, to call,
23 and what defenses to develop.” *Rhyne v. State*, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002).
24 Petitioner offers only a naked allegation that the court could not legally consider his juvenile
25 record.

26 This claim could have been made in the First Petition.

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CONCLUSION

For the foregoing reasons, the State respectfully requests Defendant's Second Petition for Writ Of Habeas Corpus be DENIED.

DATED this _14th_ day of June, 2021.

Respectfully submitted,

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

BY /s/ ALEXANDER CHEN
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #0010539

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this ____ day of June, 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

AC/lm/GCU

Electronically Filed
08/05/2021

Heather L. Smith
CLERK OF THE COURT

1 ISMAIL T. YOUNG

2 Post Office Box 650

3 INDIAN SPRINGS, NEVADA 89070

4
5
6 DISTRICT COURT

7 CLARK COUNTY, NEVADA

8
9 THE STATE OF NEVADA,

10 PLAINTIFF,

CASE NO. A-19-805427-W

11 VS.

DEPT. NO. XXIII

12 ISMAIL T. YOUNG,

13 DEFENDANT.

14
15
16
17 DEFENDANT'S REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT'S
18 SECOND PETITION FOR A WRIT OF HABEAS CORPUS
19

20 Comes now, ISMAIL YOUNG, Defendant appearing
21 pro per, who respectfully replies to Plaintiff's June 14, 2021
22 Response to Defendant's Second Petition For A Writ of Habeas
23 Corpus.

24 This reply is based on the legal arguments below
25 and all papers, pleadings and documents on file in
26 this case.
27
28

RECEIVED
AUG 05 2021
CLERK OF THE COURT

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4 A. LEGAL ARGUMENTS.
5

6 I. PETITIONER SHOULD BE ALLOWED TO PROCEED UPON THE MERITS
7 OF HIS SUCCESSIVE PETITION FOR CAUSE AND PREJUDICE.
8

9 On November 12, 2019 Petitioner filed a pro per motion to
10 Withdraw Counsel which sought to remove trial counsel from the
11 case and requested counsel turn over the defense's file to him.

12
13 On November 14, 2019 Petitioner filed a pro per habeas petition
14 alleging trial counsel ineffective on several grounds.
15

16 On December 4, 2019 this honorable court denied Petitioner's
17 motion to have counsel withdrawn. In doing so the court denied
18 defendant access to the evidence in this case in counsel's possession.
19

20 On May 4, 2021 Petitioner received help from another inmate
21 who is not trained in law who helped draft and file the success-
22 ive petition at bar.

23
24 Petitioner concedes the Successive petition exceeds the 1-year
25 time limitation to file habeas corpus calculated from time of
26 remittitur ~~or the date the judgment of~~ or the date the judgment of
27 conviction is filed if direct appeal is not taken. HRS 34.126(1).
28 However, Petitioner asserts cause and prejudice to overcome

the procedural bar as follows:

i) WARDEN AT HIGH DESERT STATE PRISON DOES NOT AFFORD
INMATES ADEQUATE ACCESS TO LEGAL RESEARCH MATERIALS
OR PERSONS TRAINED IN LAW TO ASSIST IN THE DRAFTING
OF DOCUMENTS AND PRESENTING LEGITIMATE LEGAL ISSUES.

Warden at High Desert State Prison only allows inmates to mail
a form to the law library to request legal research materials - please
see Ex. 1 (law library Request Form). The requirement on the form is
to provide specific citation to receive said materials. id. The
space affording an inmate to request topics to research is rarely
ever returned. Petitioner twice attempted to request ineffective
assistance research materials because another inmate attempted
to help him and did not receive any response. Since helping petition-
er I personally have attempted twice to research the topic of
youth offender certified adult defendants pleading guilty and not
only the process and requirements of such but whether competency
is determined prior to adjudication of certification as adult and
received no response. I sought cases on mental development
of youths and ineffective assistance of counsel claims based on
insufficient explanation of culpability and intent (mens rea) which
is one of the strongest issues pleaded in this honorable court in
the successive petition. Petitioner was not explained the mens
rea aspect of Attempt murder before pleading guilty and the
evidence would not have shown he attempted to murder anyone.
id at 5-8. I received no response to these requests.

(3 of 8)

1 Petitioner and assistant are aware that no inmate or staff are
2 trained in law who work at the law library. No assistants are allowed
3 to visit the units, no procedure is created for trained assistants to
4 assist inmates. Inmates are not allowed to do their own researches
5 on a research engine and we are forced to rely on other untrained
6 inmates to provide us legal research materials. This delapidated
7 access interferes with convicted prisoners ability to know
8 legal issues and standards or court rules, time hours et cetera.
9 This type of access assures Prisoners won't effectively research
10 what they think is error and won't properly or timely present
11 Colorable Claims.

12
13 The United States Constitution guarantees prisoners right of access
14 to the courts. Bounds v. Smith, 430 U.S. 817, 828 (1977) (prisoners have
15 fundamental constitutional right to adequate, effective and meaningful
16 access to the courts to challenge constitutional rights), overruled
17 in part by Lewis v. Casey, 518 U.S. 343 (1996); see also Johnson v.
18 Avery, 393 U.S. 483, 485 (1969) (prisoners right of access to the courts
19 cannot be denied or obstructed). The right of access imposes an
20 affirmative duty on prison officials to help inmates prepare and
21 file legal papers, either by establishing an adequate law library
22 or by providing adequate assistance from persons trained in the
23 law. Prison officials are not required to provide both as long as
24 access to either is "meaningful." Bounds, at 828.

25
26 The access warden provides is not meaningful and is cause as
27 to why the claims were not timely filed in this honorable court.

Petitioner was in fact unable to know a limitation of time to file applied to his case because he himself could not access a legal research engine or ask a person trained in law the scope and procedure of habeas corpus in Nevada. As such, cause is shown.

(ii) DENYING PETITIONER WITHDRAWAL OF COUNSEL AND/OR DENYING

PETITIONER DISCLOSURE OF THE DEFENSE'S FILE IMPAIRS PETITIONER'S ABILITY TO RAISE COLORABLE CLAIMS.

This honorable court's clerk will usually send fugitive documents filed by a proper defendant to the attorney at record unfilled by court rule and policy.

This honorable court denying the motion to have counsel withdrawn, Denied December 4, 2019, has prevented Petitioner or an assistant to overlook the evidence in the case to present colorable claims. Recently this honorable court required cause shown for nondisclosure of the defense's file by counsel which is indicative of counsel's desire to not assist Petitioner by sending him the defense's file.

Until Petitioner has the discovery he cannot fully litigate the case and counsel's ineffectiveness. Petitioner asserts now that counsel should be appointed for the purpose of assisting in discovery disclosure and having a person the court trusts to inform the court of colorable claims Petitioner needs to present.

Petitioner's assistant asks this honorable court to remember Petitioner's youth and this is his first criminal case as an adult which he pleaded guilty to.

1 (iii) Petitioner will be prejudiced by being denied the ability
2 to proceed upon the merits of his petition.
3

4 Petitioner incorporates the grounds of his habeas petition
5 here and asserts there is a reasonable likelihood of success
6 on the merits of each ground raised and he will suffer undue
7 prejudice as the result of a dismissal.
8

9 Petitioner prays this honorable court will not dismiss the
10 present petition.
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(6 of 7)

B. Conclusion.

wherefore Petitioner prays this honorable court will

1. Not grant Respondent's motion to Dismiss and allow Petitioner to proceed on the merits of his petition;

2. Order previous counsel disclose the defense file to petitioner;

3. Appoint counsel to assist in discovering and presenting colorable claims to the court;

4. Grant any other relief this honorable court deems appropriate.

Respectfully Submitted, this 11th day of July 2021

PETITIONER

This document does not contain the name of Social Security number of any person.

PETITIONER

CERTIFICATE OF SERVICE

I, ISMAIL YOUNG, Do hereby certify that on July 13, 2021,
I did mail a true and correct copy of the foregoing Reply
TO PLAINTIFF'S RESPONSE TO DEFENDANT'S SECOND PETITION FOR
A WRIT OF HABEAS CORPUS TO: ALEXANDER CHEN, CHIEF DEPUTY
DISTRICT ATTORNEY, 200 LEWIS AVE., LAS VEGAS, NEVADA, 89135-
2212.



PETITIONER

**NDOC LAW LIBRARY
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EXHIBIT 1

DOC 1716 (05/2020)

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HDSP
PO Box #650
Indian Springs, NV, 89040

3762

581012300 0075

Clerk of the Court
Steven D. Grierson Court Clerk
200 Lewis Ave 3rd Floor
Indian Springs, NV 89040

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 7th 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

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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
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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
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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.

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1 Petitioner stipulated to the following negotiations: “Both parties retain the full right to argue
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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)
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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 7th, 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

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

II. PETITIONER FAILS TO SHOW GOOD CAUSE

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

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

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

Petitioner fails to cite any good cause for filing his Second Petition more than a year after his conviction. 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

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.

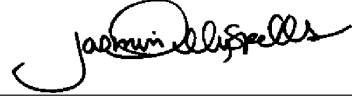
22 This assertion is utterly without merit. Pulling the trigger of a loaded gun pointed at
23 another shows an intent to kill the person. A person is presumed to intend the natural
24 consequences of his actions. State v. Hall, 54 Nev. 213, 13 P.2d 624, 632 (1932). Petitioner
25 fails to make a “credible 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
CLARK COUNTY, NEVADA

4
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,

Case No: A-19-805427-W

Dept No: XXIII

7 vs.

8 STATE OF NEVADA,

9 Respondent,

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

10
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
15 to you. This notice was mailed on August 18, 2021.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Amanda Hampton

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

24 ☒ The United States mail addressed as follows:
25 Ismail Young # 1210890
P.O. Box 650
26 Indain Springs, NV 89070

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

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 7th 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

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25 ANALYSIS

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

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

II. PETITIONER FAILS TO SHOW GOOD CAUSE

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

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

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

Petitioner fails to cite any good cause for filing his Second Petition more than a year after his conviction. 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

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.

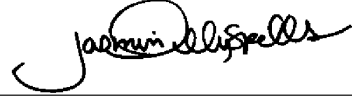
22 This assertion is utterly without merit. Pulling the trigger of a loaded gun pointed at
 23 another shows an intent to kill the person. A person is presumed to intend the natural
 24 consequences of his actions. State v. Hall, 54 Nev. 213, 13 P.2d 624, 632 (1932). Petitioner
 25 fails to make a “credible 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
CLARK COUNTY, NEVADA

4
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

Steven D. Grierson

1 Ismail Young #1210890

2 P.O. Box 650

3 Indian Springs, Nevada 89070

4 In Proper Person

5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,

9 PLAINTIFF, Case NO. A-19-805427-W

10 VS

C-18-328403 -

11 ISMAIL YOUNG,

Dept NO. KX111

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 denying Defendants Petition for a writ of
20 Habeas Corpus (post-conviction).

21
22 Respectfully Submitted, this 21st day of August 2021.

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

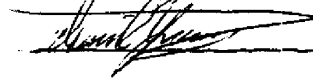
RECEIVED

AUG 26 2021

CLERK OF THE COURT

Certificate of Service

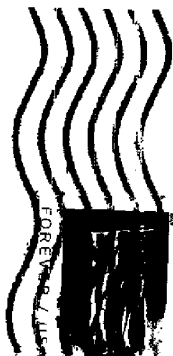
I, Ismail Young, do hereby certify that pursuant to MRCP 3 (b) I did mail a true and correct copy of the foregoing notice of appeal to Jonathan van Boskerck, DDA, 200 Lewis Ave, Las Vegas Nevada 89155-2212 on August 21, 2021.



Ismail Young

ISMAIL YOUNG # 1210880
PO BOX 652
Indian Springs Nevada 89070

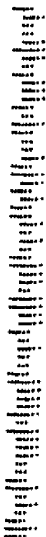
LAS VEGAS NV 890
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Clerk of the Court for the
District Court, Clark County Nevada
200 Lewis Ave.
Las Vegas, Nevada 89155

89104-630155





1 ASTA

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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

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5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A
- Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A
6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No
7. Appellant Represented by Appointed Counsel On Appeal: N/A
8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A
***Expires 1 year from date filed*
Appellant Filed Application to Proceed in Forma Pauperis: No
Date Application(s) filed: N/A
9. Date Commenced in District Court: November 14, 2019
10. Brief Description of the Nature of the Action: Civil Writ
Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus
11. Previous Appeal: No
Supreme Court Docket Number(s): N/A
12. Child Custody or Visitation: N/A
13. Possibility of Settlement: Unknown

Dated This 30 day of August 2021.

Steven D. Grierson, Clerk of the Court

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

cc: Ismail Young

**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
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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)

February 19, 2020	8:30 AM	Petition for Writ of Habeas Corpus	Petitioner's Petition for Writ of Habeas Corpus
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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

PRINT DATE: 09/15/2021

Page 3 of 6

Minutes Date: January 27, 2020

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)

**July 07, 2021 11:00 AM Petition for Writ of Habeas
Corpus**

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

PRINT DATE: 09/15/2021

Page 5 of 6

Minutes Date: January 27, 2020

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 and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated September 13, 2021, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 127.

ISMAIL YOUNG,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

Case No: A-19-805427-W

Dept. No: IX

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 15 day of September 2021.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk