

1 **NOASC**
2 Dwight Solander
3 700 Elm St #29
4 Boulder City, NV 89005
5 702-695-1682
6 [dwight202@msn.com](mailto:dwright202@msn.com)
7 In pro per

Electronically Filed
Sep 15 2021 10:22 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

9 State of Nevada,
10 Plaintiff,

11 vs.

12 Dwight Solander,
13 Defendant

Case No.: A-20-815535-W

Dept: XXI


NOTICE OF APPEAL

14 TO: JOE HARDY, District Judge, Eighth District Court, Dept.15

15 TO: STEVEN B. WOLFSON, Clark County District Attorney

16 NOTICE IS GIVEN That Dwight Solander, Defendant in the above
17 referenced matter, appeals to the Supreme Court of the State of Nevada the
18 denial of the Defendants Writ of Habeas Corpus as indicated by the order mailed
19 to Defendant on 8/25/2021.

20 Dated this 6th day of September, 2021 by:

21 
22 Dwight Solander
23 700 Elm St #29
24 Boulder City, NV 89005
25 702-695-1682
26 [dwight202@msn.com](mailto:dwright202@msn.com)
27 In pro per

28 **RECEIVED**

SEP 13 2021

CLERK OF THE COURT

Steven D. Grierson

NEFF

**DISTRICT COURT
CLARK COUNTY, NEVADA**

DWIGHT SOLANDER,

Petitioner,

vs.

JEREMY BEAN, WARDEN HDSP,

Respondent,

Case No: A-20-815535-W

Dept No: XXI

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

PLEASE TAKE NOTICE that on August 23, 2021, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on August 25, 2021.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 25 day of August 2021, I served a copy of this Notice of Entry on the following:

☒ By e-mail:
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☒ The United States mail addressed as follows:
Dwight Solander
700 Elm St., #29
Boulder City, NV 89005
Last Known Address

/s/ Amanda Hampton


Amanda Hampton, Deputy Clerk

Certificate of Mailing

I do hereby certify that I, Dwight Solander, did deposit into the US mail, first class postage prepaid, I true and correct copy of the foregoing NOTICE OF APPEAL
A - 20-815535-W addressed to the following:

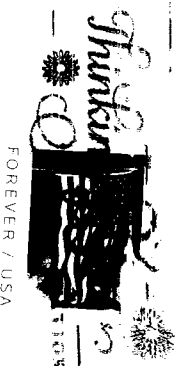
Steven B Wolfson
Clark County District Attorney
200 Lewis Ave 3rd Floor
Las Vegas, NV 89155

Dated this 6TH day of SEP., 2021 by:


Dwight Solander
700 Elm St. #29
Boulder City, NV 89005
702-695-1682
In Pro Per

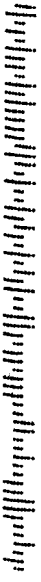
SELMANS R
700 ELM # 29
89005

LAS VEGAS NV 890
7 SEP 2021 PM 5 L



CLERK OF DISTRICT COURT
200 LEWIS 3RD FLOOR
LAS VEGAS, NV 89005

89101-630000





1 ASTA
2
3
4
5

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

10 DWIGHT SOLANDER,

11 Plaintiff(s),

12 vs.

13 JEREMY BEAN, WARDEN,

14 Defendant(s),
15

Case No: A-20-815535-W

Dept No: XXI

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Dwight Solander

20 2. Judge: Joe Hardy, Jr.

21 3. Appellant(s): Dwight Solander

22 Counsel:

23 Dwight Solander
24 700 Elm St., #29
Boulder City, NV 89005

25 4. Respondent (s): Jeremy Bean, Warden

26 Counsel:

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

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

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

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

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

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

10 9. Date Commenced in District Court: May 27, 2020

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

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

13 11. Previous Appeal: Yes

14 Supreme Court Docket Number(s): 67710, 67711, 76228, 76405, 82082, 82427

15 12. Child Custody or Visitation: N/A

16 13. Possibility of Settlement: Unknown

17 Dated This 14 day of September 2021.

18 Steven D. Grierson, Clerk of the Court

19
20
21 /s/ Amanda Hampton

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

25 cc: Dwight Solander
26
27
28

CASE SUMMARY

CASE NO. A-20-815535-W

Dwight Solander, Plaintiff(s)
vs.
Jeremy Bean, Warden HDSP, Defendant(s)

§
§
§
§
§
§

Location: **Department 21**
 Judicial Officer: **Clark Newberry, Tara**
 Filed on: **05/27/2020**
 Case Number History:
 Cross-Reference Case Number: **A815535**
 Supreme Court No.: **82082**

CASE INFORMATION

Related Cases
 C-14-299737-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Statistical Closures
 06/02/2021 Summary Judgment

Case Status: **06/02/2021 Closed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-20-815535-W
 Court Department 21
 Date Assigned 06/04/2021
 Judicial Officer Clark Newberry, Tara

PARTY INFORMATION

Plaintiff Solander, Dwight

Lead Attorneys

Pro Se

Defendant Jeremy Bean, Warden HDSP


Samuels, Katrina A
Retained
 702-486-3770(W)


DATE


EVENTS & ORDERS OF THE COURT


INDEX


EVENTS

05/27/2020  Inmate Filed - Petition for Writ of Habeas Corpus
 Party: Plaintiff Solander, Dwight
[1] Petition for Writ of Habeas Corpus (Postconviction)

05/27/2020  Order for Petition for Writ of Habeas Corpus
[2]








06/17/2020  Motion
 Filed By: Plaintiff Solander, Dwight
[3] Motion for 20 Day Leave of Court to File Legal Brief in Support of Petition; Hearing Requested

06/17/2020  Clerk's Notice of Hearing
[4] Notice of Hearing

06/18/2020  Order Granting
 Filed By: Plaintiff Solander, Dwight
[5] Order Granting 20 Day Leave of Court

CASE SUMMARY

CASE NO. A-20-815535-W

07/09/2020	 Amended Petition Filed By: Plaintiff Solander, Dwight <i>[6] 1st Amended Petition for Writ of Habeas Corpus (Postconviction) Pursuant to NRS 34.360</i> <i>*Hearing Requested*</i>
07/13/2020	 Response Filed by: Defendant Jeremy Bean, Warden HDSP <i>[7] Response to Petition for Writ of Habeas Corpus</i>
07/27/2020	 Motion Filed By: Plaintiff Solander, Dwight <i>[8] Motion to Extend Leave to File Legal Brief In Support of Petition</i>
07/27/2020	 Order Filed By: Plaintiff Solander, Dwight <i>[9] Order Extending Leave to File Legal Brief in Support of Motion</i>
08/14/2020	 Brief Filed By: Plaintiff Solander, Dwight <i>[10] Legal Brief in Support of Petition for Writ of Habeas Corpus Per NRS 34.360</i>
09/03/2020	 Opposition to Motion Filed By: Plaintiff Solander, Dwight <i>[11] State's Opposition to Defendant's Motion to Stay Time to File Writ</i>
10/09/2020	 Decision and Order <i>[12]</i>
10/13/2020	 Notice of Entry of Order Filed By: Defendant Jeremy Bean, Warden HDSP <i>[13]</i>
11/05/2020	 Notice of Appeal <i>[14]</i>
11/09/2020	 Case Appeal Statement Filed By: Plaintiff Solander, Dwight <i>[15]</i>
01/04/2021	Case Reassigned to Department 15 <i>Judicial Reassignment to Judge Joe Hardy</i>
01/05/2021	 Inmate Filed - Petition for Writ of Habeas Corpus Party: Plaintiff Solander, Dwight <i>[16] Post Conviction</i>
01/06/2021	 Order for Petition for Writ of Habeas Corpus <i>[17] Order for Petition for Writ of Habeas Corpus</i>
02/01/2021	 Motion Filed By: Defendant Jeremy Bean, Warden HDSP <i>[18] Motion to Transfer Petition for Writ of Hebeas Corpus</i>
02/08/2021	



CASE SUMMARY
CASE NO. A-20-815535-W

	 Motion for Leave to File <i>[19] Motion for Leave of Court to Complete and File Legal Brief in Support of Writ of Habeas Corpus</i>
02/08/2021	 Clerk's Notice of Hearing <i>[20] Notice of Hearing</i>
05/25/2021	 NV Supreme Court Clerks Certificate/Judgment - Dismissed <i>[21] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Dismissed</i>
06/01/2021	 Order to Show Cause <i>[22] Order to Show Cause</i>
06/02/2021	 Decision and Order <i>[23] Order from the Hearing on March 9, 2021</i>
06/04/2021	 Notice of Department Reassignment <i>[24] Notice of Department Reassignment</i>
06/07/2021	 Order for Petition for Writ of Habeas Corpus <i>[25] ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS</i>
06/09/2021	 Return to Writ of Habeas Corpus Filed By: Plaintiff Solander, Dwight <i>[26] State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction)</i>
08/23/2021	 Findings of Fact, Conclusions of Law and Order Filed By: Plaintiff Solander, Dwight <i>[27] Findings of Fact, Conclusions of Law and Order</i>
08/25/2021	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Defendant Jeremy Bean, Warden HDSP <i>[28] Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
09/13/2021	 Notice of Appeal <i>[29] Notice of Appeal</i>
09/14/2021	 Case Appeal Statement Filed By: Plaintiff Solander, Dwight <i>Case Appeal Statement</i>
	<u>DISPOSITIONS</u>
05/25/2021	Clerk's Certificate (Judicial Officer: Hardy, Joe) Debtors: Dwight Solander (Plaintiff) Creditors: Jeremy Bean, Warden HDSP (Defendant) Judgment: 05/25/2021, Docketed: 05/26/2021 Comment: Supreme Court No. 82082 Appeal Dismissed
	<u>HEARINGS</u>
09/01/2020	 Petition for Writ of Habeas Corpus (1:45 PM) (Judicial Officer: Adair, Valerie) Denied; Journal Entry Details: <i>Court stated that the motion will be decided on the briefs. Court stated its findings and</i>

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-20-815535-W

	<i>ORDERED, Motion DENIED. State to prepare the Order.;</i>
09/01/2020	CANCELED Motion (1:45 PM) (Judicial Officer: Adair, Valerie) <i>Vacated - per Order</i> <i>Plaintiff's Motion for 20 Day Leave of Court to File Legal Brief in Support of Petition</i>
03/09/2021	Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer: Hardy, Joe) Matter Transferred;
03/09/2021	Motion (8:30 AM) (Judicial Officer: Hardy, Joe) <i>Motion to Transfer Petition for Writ of Habeas Corpus</i> Motion Granted;
03/09/2021	 All Pending Motions (8:30 AM) (Judicial Officer: Hardy, Joe) Matter Heard; Journal Entry Details: <i>The State present via Blue Jeans. PETITION OR WRIT OF HABEAS CORPUS...MOTION TO TRANSFER PETITION FOR WRIT OF HABEAS CORPUS Mr. Solander explained that he filed the first Habeas Petition to address an internal issue; however, the second Habeas Petition was filed post-conviction, and was completely unrelated to the first Habeas Petition. Additionally, Mr. Solander stated that he agreed with the State's Motion to Transfer, noting that the second Habeas Petition should not have been placed in the instant case, but should have been set in the underlying criminal case. The State affirmed Mr. Solander's representations, stating that the second Habeas Petition was not a time computation challenge, and should be transferred to the underlying criminal case. Upon Court's inquiry, the State advised that the District Attorney's Office needed to respond to the Habeas Petition, rather than the Attorney General's Office. COURT ORDERED the Motion to Transfer Petition for Writ of Habeas Corpus, was hereby GRANTED; the Petition for Writ of Habeas Corpus, filed on January 5, 2021, was hereby TRANSFERRED to case number C-14-299737-1, and SET for a hearing in that case. Upon Court's inquiry regarding whether Mr Solander had the file, Mr. Solander stated that said issue remained pending, and was currently being heard by the Supreme Court. COURT ORDERED the District Attorney's Office to respond to the Petition for Writ of Habeas Corpus, and SET a BRIEFING SCHEDULE as follows: (1) the State's response to be filed on later than May 11, 2021; and (2) Mr. Solander's response to the State's response, to be filed no later than June 11, 2021. Mr. Solander advised that the Motion pending in the instant case on March 16, 2021, could be vacated. COURT ORDERED Plaintiff's Motion for Leave of Court to Complete and File Legal Brief in Support of Writ of Habeas Corpus, pending hearing in the instant case on March 16, 2021, was hereby VACATED. 6/24/21 8:30 AM (CASE NUMBER C299737-1) PETITION FOR WRIT OF HABEAS CORPUS;</i>
03/16/2021	CANCELED Motion for Leave (8:30 AM) (Judicial Officer: Hardy, Joe) <i>Vacated</i> <i>Plaintiffs - Motion for Leave of Court to Complete and File Legal Brief in Support of Writ of Habeas Corpus</i>
07/07/2021	CANCELED Show Cause Hearing (9:00 AM) (Judicial Officer: Hardy, Joe) <i>Vacated</i>
08/12/2021	 Petition for Writ of Habeas Corpus (1:30 PM) (Judicial Officer: Clark Newberry, Tara) Denied; Journal Entry Details: <i>Court noted Deft. was present out of custody. COURT FINDS the State's return reflects the findings of the Court that there was no good cause shown for a failure to raise the claims on a direct appeal; more specifically NRA 34.810(1) required that a petition raised post-conviction that was not based on an allegation that the plea was involuntary or unknowingly entered or without effective assistance of counsel was improper. COURT FINDS there were 6 separate claims for relief without merit, therefore, ORDERED petition DENIED. State DIRECTED to prepare the order; State may use the template of the legal argument and analysis as set forth in its return as a basis for the order. Mr. Solander indicated he had filed a motion for a continuance to get the legal arguments together. COURT STATED ITS FINDINGS and ORDERED the Motion to Continue ADVANCED and DENIED; State to prepare the order. CLERK'S NOTE: Subsequent to hearing, Court acknowledged the Motion for Status and to</i>

CASE SUMMARY

CASE NO. A-20-815535-W

Grant Motion for Production of Documents set for August 19, 2021 and the Motion for Continuance of Hearing set for August 24, 2021 were assigned the Department 15, therefore, ORDERED prior rulings VACATED; matter to REMAIN on calendar as set to be heard by Department 15. A copy of this minute order was provided to the Defendant via U.S. Mail: Dwight Solander 700 Elm St. #29 Boulder City, NV 89005. // cbm 09/01/2021;

DISTRICT COURT CIVIL COVER SHEET

A-20-815535-W
Dept. 21

County, Nevada

Case No. _____

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone): Dwight Solander	Defendant(s) (name/address/phone): Jeremy Bean, Warden HDSP
Attorney (name/address/phone):	Attorney (name/address/phone):

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

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

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

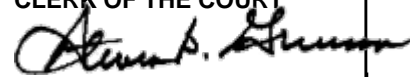
May 27, 2020

PREPARED BY CLERK

Date

Signature of initiating party or representative

See other side for family-related case filings.



FCCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STACEY KOLLINS
Chief Deputy District Attorney
Nevada Bar #005391
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-

DWIGHT CONRAD SOLANDER,
#3074262,

Defendant.

CASE NO: **A-20-815535-W**

DEPT NO: **XV**

FINDINGS OF FACT, CONCLUSIONS OF

LAW AND ORDER

DATE OF HEARING: **JUNE 24, 2021**
TIME OF HEARING: **8:30 AM**

THIS CAUSE having presented before the Honorable JOE HARDY, District Court Judge, on the 24th day of June, 2021; Defendant no present, IN PROPER PERSON; the State represented by STEVEN B. WOLFSON, Clark County District Attorney, through ELISE M. CONLIN, Deputy District Attorney; and having considered the matter, including briefs, transcripts, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

//

//

//

1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **STATEMENT OF THE CASE**

3 On July 28, 2014, DWIGHT CONRAD SOLANDER (hereinafter, "Defendant") was
4 charged by way of Information with three counts of CHILD ABUSE, NEGLECT OR
5 ENDANGERMENT WITH SUBSTANTIAL BODILY HARM (Category B Felony – NRS
6 200.508(1)); thirteen counts of CHILD ABUSE, NEGLECT OR ENDANGERMENT
7 (Category B Felony – NRS 200.508(1)); and nine counts of SEXUAL ASSAULT WITH A
8 MINOR UNDER FOURTEEN YEARS OF AGE (Category A Felony (NRS 200.364,
9 200.366) for actions committed on or between January 19, 2011 and November 11, 2013.

10 On January 31, 2018, Defendant accepted negotiations in this case and, pursuant to said
11 negotiations, Petitioner was charged by way of Amended Information with three counts of
12 CHILD ABUSE, NEGLECT, OR ENDANGERMENT RESULTING IN SUBSTANTIAL
13 BODILY HARM (Category B Felony – NRS 200.508). That same day, pursuant to a Guilty
14 Plea Agreement ("GPA") filed in open court, Defendant pleaded guilty to the charges as
15 alleged in the Amended Information. Under the terms of the negotiation, the State retained the
16 right to argue at sentencing. The district court accepted Petitioner's plea and referred the matter
17 to the Division of Parole and Probation for the preparation of a Presentence Investigation
18 Report ("PSI").

19 On June 5, 2018, Defendant appeared for sentencing in this case. The district court
20 adjudicated Petitioner guilty of all counts and sentenced him to thirty-six (36) to one hundred
21 twenty (120) months in the Nevada Department of Corrections (NDC) on each count, with all
22 counts running concurrently. Defendant received 105 days of credit for time served. The
23 Judgment of Conviction ("JOC") was filed on June 18, 2018.

24 On June 20, 2018, Defendant filed a Motion for Reconsideration of Sentence. The Court
25 denied Defendant's Motion for Reconsideration on July 10, 2018. The Order Denying
26 Defendant's Motion for Reconsideration was filed on August 23, 2018.

27 //

28 //

1 On July 10, 2018, Defendant filed a Notice of Appeal from his JOC. On January 14,
2 2020, the Nevada Supreme Court affirmed Defendant's JOC. Remittitur issued on February
3 25, 2020.

4 On May 27, 2020, Petitioner filed a Petition for Writ of Habeas Corpus. Thereafter, on
5 July 9, 2020, Petitioner filed an Amended Petition. The State, through the Office of the
6 Attorney General, filed its Response to Petitioner's first Petition on July 13, 2020. On July 27,
7 2020, Petitioner requested leave to file an additional legal brief in support of his Petition, which
8 the Court immediately granted. On September 1, 2020, the Court denied Petitioner's first
9 Petition. The Court noticed entry of its Decision and Order Denying Petitioner's first Petition
10 on October 13, 2020.

11 On November 5, 2020, Petitioner noticed his appeal from the denial of his first Petition
12 (Nevada Supreme Court Case No. 82082). As of the date of this Response, Petitioner's appeal
13 is still pending before the Nevada Supreme Court.

14 On January 5, 2021, Petitioner filed another Petition for Writ of Habeas Corpus (Post-
15 Conviction) (his "instant Petition"). On February 8, 2021, Petitioner filed a Motion for Leave
16 of Court to Complete and File Legal Brief in Support of Writ of Habeas Corpus (his "Motion
17 for Leave"). On March 10, 2021, the State filed its Opposition to Petitioner's instant Petition.
18 On June 24, 2021, the instant Petition came before this Court for hearing, at which time this
19 Court did not hear oral argument, and made the following findings and conclusions:

20 STATEMENT OF FACTS

21 The Court considered the following factual synopsis when sentencing Defendant:

22 On March 4, 2014, LVMPD received a report from Child Protective
23 Services (CPS) detailing an extensive history of abuse and neglect to
24 three female victims (DOB: 10-21-01; DOB: 01-23-03; DOB: 07-25-
25 04) by Janet Solander, Dwight Conrad Solander, and Danielle Hinton.
Janet Solander and Dwight Conrad Solander had adopted the three
victims on January 19, 2011. Danielle Hinton is Janet Solander's adult
daughter.

26 The victims reported to CPS that Janet, Dwight, and Danielle would
27 hit them with a paint stick until they bled. They would hit the girls
28 with the stick if they had an accident in their underwear, if they took
too long going to the bathroom, or if they answered homework
problems incorrectly. They mainly hit the girls on their legs and
buttocks.

1 The victims related further that Janet had a timer, and they were not
2 allowed to use the bathroom until the timer went off. This caused the
3 girls to have trouble using the bathroom and made their stomachs hurt.
4 If the girls had bathroom accidents, they were not allowed to eat for
5 days. Janet blended their food, and they did not know what they were
6 eating. If the victims got in trouble, they had to sit on a bucket with a
7 toilet seat on top for hours at a time. If they got into trouble, Janet
8 made them take a cold shower and Janet would pour ice water on
9 them. They were not provided a towel to dry off, but they had to stand
10 in front of a large fan. Additionally, the girls slept on boards with no
11 sheets or blankets. They slept in their underwear with a fan blowing
12 on them. Victim #2 (DOB: 01-23-03) has a scar on her back from
13 Janet pouring hot water on her. Sometimes after the victims had
14 bathroom accidents, Janet would make them put their soiled
15 underwear in their mouths and leave it there until their mouths would
16 bleed. Victim #3 (DOB: 07-25-04) reported that Janet stuck a paint
17 stick in her vagina because she could not hold her bladder. Victim #3
18 also has scarring on her right ear and back from Janet pouring hot
19 water on her. The girls also reported that Janet would put a catheter in
20 them, and if urine came out, she would hit them with a paint stick.

21 All three victims have scars on their arms, legs, and buttocks.

22 Presentence Investigation Report ("PSI") at 4.

23 ANALYSIS

24 **I. PETITIONER'S FIRST CLAIM IS WAIVED**

25 Petitioner's claim alleges that unspecified evidence related to CPS's location and
26 retrieval of the child victims violates the Fifth Amendment. See Instant Petition at 7-8. This
27 Court finds that Petitioner's claim cannot entitle Petitioner to relief, as it is substantive, and
28 therefore was waived both by Petitioner's entry of plea and by Petitioner's failure to raise it
on direct appeal. Further, this Court finds that Petitioner fails to argue, much less demonstrate,
good cause and prejudice to overcome the procedural bars to this claim.

Pursuant to NRA 34.810(1):

The court *shall* dismiss a petition if the court determines that:

(a) The petitioner's conviction was upon a plea of guilty...and the
petition is not based upon an allegation that the plea was involuntarily
or unknowingly entered or that the plea was entered without effective
assistance of counsel.

...
unless the court finds both cause for the failure to present the grounds and
actual prejudice to the petitioner.

(emphasis added).

1 Furthermore, the Nevada Supreme Court has held that “challenges to the validity of a
2 guilty plea and claims of ineffective assistance of trial and appellate counsel must first be
3 pursued in post-conviction proceedings.... [A]ll other claims that are appropriate for a direct
4 appeal must be pursued on direct appeal, or they will be *considered waived in subsequent*
5 *proceedings.*” Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis
6 added) (disapproved of on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222
7 (1999)). “A court must dismiss a habeas petition if it presents claims that either were or could
8 have been presented in an earlier proceeding, unless the court finds both cause for failing to
9 present the claims earlier or for raising them again and actual prejudice to the petitioner.”
10 Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001), overruled on other grounds by
11 Lisle v. State, 131 Nev. 356, 351 P.3d 725 (2015). Additionally, substantive claims are beyond
12 the scope of habeas and waived. NRS 34.724(2)(a); see also Evans, 117 Nev. at 646-47, 29
13 P.3d 498 at 523; Franklin, 110 Nev. at 752, 877 P.2d 1058 at 1059.

14 A petitioner may only escape these procedural bars if they meet the burden of
15 establishing good cause and prejudice, as set forth in NRS 34.810(3):

16 ...the petitioner has the burden of pleading and proving specific facts
17 that demonstrate:

18 (a) Good cause for the petitioner’s failure to present the claim or
19 for presenting the claim again; and

20 (b) Actual prejudice to the petitioner.

21 Where a defendant does not show good cause for his failure to raise claims of error upon direct
22 appeal, the district court is not obliged to consider them in post-conviction proceedings. Jones
23 v. State, 91 Nev. 416, 536 P.2d 1025 (1975).

24 Furthermore, Petitioner waived any claims relating to the constitutionality of evidence
25 when he chose to plead guilty. The Nevada Supreme Court has explained:

26 “[A] guilty plea represents a break in the chain of events which has
27 preceded it in the criminal process. When a criminal defendant has
28 solemnly admitted in open court that he is in fact guilty of the offense
with which he is charged, he may not thereafter raise independent
claims relating to the deprivation of constitutional rights that occurred
prior to the entry of the guilty plea.”

1 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollett v. Henderson, 411
2 U.S. 258, 267, 93 S.Ct. 1602, 1608 (1973)). An entry of a guilty plea “waive[s] all
3 constitutional claims based on events occurring prior to the entry of the plea[], except those
4 involving voluntariness of the plea[] [itself].” Warden, Nevada State Prison v. Lyons, 100 Nev.
5 430, 431, 683 P.2d 505 (1984); see also Kirksey v. State, 112 Nev. 980, 999, 923 P.2d 1102,
6 1114 (1996) (“Where the defendant has pleaded guilty, the only claims that may be raised
7 thereafter are those involving the voluntariness of the plea itself and the effectiveness of
8 counsel.”).

9 This Court finds that Petitioner’s claim deals only with unspecified evidence – it does
10 not deal with the validity of the guilty plea, nor the effectiveness of counsel; therefore, pursuant
11 to Franklin and Webb, this Court concludes that Petitioner’s claim is waived and is subject to
12 dismissal absent a showing of good cause and prejudice. See 110 Nev. at 752, 877 P.2d at
13 1059; see also 91 Nev. at 470, 538 P.2d at 165.

14 This Court further finds that Petitioner does not attempt to address good cause for his
15 failure to raise these claims on direct appeal. See instant Petition at 7-8. This Court finds that
16 he could not successfully do so, because there was no impediment external to the defense that
17 precluded this claim from being raised thus, and all of the facts and law necessary to raise this
18 issue were available at the time Petitioner filed his direct appeal.

19 Likewise, this Court finds that Petitioner fails to argue prejudice sufficient to overcome
20 his procedural defaults. See instant Petition at 7-8. Further, any attempt would be unsuccessful,
21 as this Court finds that Petitioner’s underlying complaint is meritless. As an initial matter,
22 Petitioner fails to specifically allege *what* evidence violates the Fifth Amendment, much less
23 *how* that Amendment was violated. See id. Therefore, this Court concludes that Petitioner’s
24 claim is bare and naked and cannot demonstrate prejudice. Hargrove v. State, 100 Nev. 498,
25 502, 686 P.2d 222, 225 (1984) (“[b]are” and “naked” allegations are not sufficient to warrant
26 post-conviction relief); NRS 34.735(6) (“[Petitioner] must allege specific facts supporting the
27 claims in the petition...Failure to raise specific facts rather than just conclusions may cause
28 [the] petition to be dismissed.”).

1 Because this Court has concluded that Petitioner's first claim is procedurally defaulted,
2 both by Petitioner's decision to plead guilty, and by Petitioner's failure to raise his claim on
3 direct appeal, with no good cause or prejudice shown, the instant Petition is suitable for
4 dismissal.

5 **II. ACTUAL INNOCENCE IS NOT, ITSELF, A COGNIZABLE GROUND FOR**
6 **RELIEF**

7 Petitioner's second claim alleges that he is actually innocent of the crime because he
8 was not proximate to the crime scene and because evidence was illegally collected. See instant
9 Petition at 9. This Court finds that Petitioner is not entitled to relief on this claim, as actual
10 innocence itself is not a cognizable claim for habeas relief. Further, to the extent Petitioner is
11 challenging the sufficiency of the evidence, this Court finds that Petitioner waived this claim
12 by entering a guilty plea.

13 The United States Supreme Court has explained that actual innocence means factual
14 innocence, not legal insufficiency. Bousley v. United States, 523 U.S. 614, 623, 118 S.Ct.
15 1604, 1611 (1998); Sawyer v. Whitley, 505 U.S. 333, 338-39, 112 S.Ct. 2514, 2518-19 (1992).
16 To establish actual innocence of a crime, a petitioner "must show that it is more likely than
17 not that no reasonable juror would have convicted him absent a constitutional violation."
18 Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). Actual innocence is a stringent
19 standard designed to be applied only in the most extraordinary situations. Schlup v. Delo, 513
20 U.S. 298, 316, 115 S.Ct. 851, 861 (1995); Pellegrini, 117 Nev. at 876, 34 P.2d at 530. In order
21 to meet the standard for actual innocence, a petitioner must show that the newly discovered
22 evidence suggesting a petitioner's innocence is "so strong that a court cannot have confidence
23 in the outcome of the trial." Schlup, 513 U.S. at 316, 115 S.Ct. at 861.

24 However, the United States Supreme Court has specified that a claim of actual
25 innocence is a "gateway" to present otherwise procedurally defaulted constitutional
26 challenges, rather than itself a ground for habeas relief. Schlup, 513 U.S. at 315, 115 S.Ct. at
27 861. The Eighth Circuit Court of Appeals has expressly "rejected free-standing claims of
28 actual innocence as a basis for habeas review." Meadows v. Delo, 99 F.3d 280, 283 (8th Cir.

1 1996) (citing Herrera v. Collins, 506 U.S. 390, 400, 113 S.Ct. 853, 860 (1993)).

2 This Court finds that, not only does Petitioner fail to recognize that “actual innocence”
3 is not, itself, a cognizable claim for relief, but Petitioner fails to allege *new facts* in support of
4 his actual innocence claim. See instant Petition at 9. Petitioner’s allegation of illegally-
5 gathered evidence does not specify *what* evidence was illegally gathered. See id. As such, this
6 Court concludes that Petitioner’s claim is bare and naked, and is instead suitable only for
7 summary denial under Hargrove. 100 Nev. at 502, 686 P.2d 225.

8 Furthermore, this Court finds that the substance of Petitioner’s claim suggests the
9 existing evidence of which Petitioner was aware was insufficient to support conviction. See
10 instant Petition at 9. However, “actual innocence” is limited to *new evidence* that was not
11 presented. Schlup, 513 U.S. at 316, 115 S.Ct. at 861. Therefore, this Court finds that evidence
12 of Petitioner’s whereabouts is inapplicable to a claim of “actual innocence.” Id. Regardless,
13 this Court finds that Petitioner made the decision to plead guilty in this case, and, as such,
14 relieved the State of its burden to prove Petitioner’s guilt. See Kirksey, 112 Nev. at 993-94,
15 923 P.2d at 1110-11. Furthermore, this Court concludes that Petitioner’s decision to plead
16 guilty waived any substantive claim of insufficient evidence. Id.; Webb, 91 Nev. at 470, 538
17 P.2d at 165.

18 Since this Court has concluded that Petitioner’s claim is not, itself, a cognizable claim
19 for relief, and that the substance of his claim was waived by Petitioner pleading guilty,
20 Petitioner’s claim is subject to dismissal.

21 **III. PETITIONER’S THIRD AND FOURTH CLAIMS ARE WAIVED BY**
22 **PETITIONER’S FAILURE TO RAISE THEM ON DIRECT APPEAL**

23 Petitioner’s third claim alleges that he should have been severed from his co-defendant
24 due to a gross disparity in culpability. See instant Petition at 10. His fourth claim contends that
25 the specific allegations of substantial bodily harm in his underlying case did not meet the
26 statutory definitions thereof. See id. at 11. This Court finds that neither of these claims can
27 entitle Petitioner to relief, as he waived each of them by failing to raise them on direct appeal.

28 //

1 Petitioner's third and fourth claims are each substantive in nature, and as such, this
2 Court finds they were suitable to be raised on direct appeal. See instant Petition at 10-11.
3 Therefore, this Court concludes that Petitioner's failure to raise them thus results in a waiver
4 of each. NRS 34.724(2)(a) (habeas petitioners are not a substitute for remedies available upon
5 direct review of the trial court proceedings); NRS 34.810(1)(a); Evans, 117 Nev. at 646-47,
6 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d at 1059.

7 Petitioner does not recognize this waiver, much less argue that good cause and prejudice
8 exist to overcome the procedural bars. See instant Petition at 10-11. Indeed, this Court finds
9 that Petitioner could not demonstrate good cause, as each of his claims arise from facts or
10 situations which, by their nature, were available at the time Petitioner filed his direct appeal,
11 and Petitioner fails to enumerate any impediment external to the defense that precluded these
12 issues from being waived. See id.

13 Furthermore, this Court finds that Petitioner cannot demonstrate prejudice, as his
14 individual claims lack merit. Regarding Petitioner's claim of severance, NRS 173.135 clearly
15 allows two or more defendants to be charged together if they participated in the same criminal
16 conduct. The litmus test for the necessity of severance is a showing of clear, manifest, or undue
17 prejudice from a joint trial. United State v. Enriquez-Estrada, 999 F.2d 1355 (9th Cir. 1993).
18 However, the decision to sever is left within the discretion of the trial court. Amen v. State,
19 106 Nev. 749, 755, 801 P.2d 1354, 1359 (1990).

20 This Court finds that Petitioner does not provide any specific allegations of undue
21 prejudice resulting from misjoinder; instead, Petitioner claims that severance was warranted
22 because "culpability" of the defendants was "grossly mismatched." Instant Petition at 10.
23 Petitioner then claims that he bore *no* culpability because he was allegedly absent for *most* of
24 the abuse. Id. However, Petitioner overlooks the preliminary hearing testimony that placed
25 Petitioner *inside* the house, *participating* in aspects of the abuse. See, e.g. Preliminary Hearing
26 Transcript – Volume 1 at 22, 24 (describing beatings with a paint stick which Petitioner had
27 labeled "Board of Education"), 29-32 (Petitioner affixed toilet seats to Home Depot buckets,
28 which the victims were forced to sit on from the time they woke up until they went to bed), 34

1 (Petitioner would withhold food and water from the victims); see also, Preliminary Hearing
2 Transcript – Volume V at 49 (Petitioner purchased the catheters used to abuse the victims).
3 Finally, Petitioner asserts that he had no duty to report any crime committed by his wife, the
4 co-defendant. Id. However, this Court finds that Petitioner’s position is contrary to Nevada
5 law: NRS 49.305(2)(e) creates an express exception to spousal privilege in the case where one
6 spouse is charged with crime(s) against the person’s child. Therefore, because Petitioner’s
7 severance claim is without merit, this Court concludes it cannot demonstrate prejudice
8 sufficient to overcome procedural Petitioner’s procedural defaults.

9 Likewise, this Court finds that Petitioner’s substantial bodily harm complaint is without
10 merit, as Petitioner’s decision to plead guilty relieved the State of its burden to establish each
11 of the statutory elements of that charge. See, GPA at 2 (“I understand that by pleading guilty,
12 I admit the facts which support all the elements of the offenses to which I now plead...”), 4
13 (“By entering my plea of guilty, I understand that I am waiving and forever giving up...the
14 State[’s] burden of proving beyond a reasonable doubt each element of the offense(s)
15 charged.”). Furthermore, this Court finds that Petitioner’s choice to plead guilty waived any
16 challenge to the sufficiency of the substantial bodily harm enhancement. Kirksey, 112 Nev. at
17 993-94, 923 P.2d at 1110-11; Webb, 91 Nev. at 470, 538 P.2d at 165.

18 Because Petitioner’s claims are waived by his failure to raise them on direct appeal, and
19 because Petitioner fails to overcome his procedural defaults, this Court concludes that
20 Petitioner’s third and fourth claims are suitable only for dismissal.

21 **IV. PETITIONER’S FIFTH CLAIM FAILS TO STATE GROUNDS FOR RELIEF**

22 Petitioner’s fifth claim complains that certain judicial findings are not supported by the
23 facts. See instant Petition at 12. However, this Court finds that while Petitioner takes issue
24 with “[c]omments from the bench” such as “ ‘court feels,’ ‘court thinks,’ etc.,” Petitioner fails
25 to specifically allege findings, rather than expressions, that were unsubstantiated or improper.
26 See id. This Court concludes that Petitioner’s failure to offer a basis for relief, much less
27 specific allegations in support thereof, renders Petitioner’s claim insufficient, bare and naked,
28 and suitable only for summary denial under Hargrove. 100 Nev. at 502, 686 P.2d at 225; see

1 also NRS 34.735(6).

2 **V. PETITIONER FAILS TO DEMONSTRATE INEFFECTIVE ASSISTANCE OF**
3 **COUNSEL**

4 Finally, Petitioner alleges that counsel was ineffective in six (6) ways. Instant Petition
5 at 13. This Court finds that Petitioner fails to acknowledge his burden when raising such a
6 claim, much less demonstrate that, pursuant to that burden, counsel was ineffective.

7 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
8 prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his
9 defense.” The United States Supreme Court has long recognized that “the right to counsel is
10 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
11 104 S.Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
12 (1993).

13 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
14 she was denied “reasonably effective assistance” of counsel by satisfying the two-prong test
15 of Strickland, 466 U.S. at 686-87, 104 S.Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865
16 P.2d at 323. Under Strickland, a defendant must show first that his counsel's representation
17 fell below an objective standard of reasonableness, and second, that but for counsel's errors,
18 there is a reasonable probability that the result of the proceedings would have been different.
19 466 U.S. at 687-88, 694, 104 S.Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100
20 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). “[T]here is
21 no reason for a court deciding an ineffective assistance claim to approach the inquiry in the
22 same order or even to address both components of the inquiry if the defendant makes an
23 insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S.Ct. at 2069.

24 The Court begins with the presumption of effectiveness and then must determine
25 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
26 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
27 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
28 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,

1 537 P.2d 473, 474 (1975).

2 Counsel cannot be ineffective for failing to make futile objections or arguments. See
3 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
4 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
5 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
6 (2002). Further, a defendant who contends his attorney was ineffective because he did not
7 adequately investigate must show how a better investigation would have rendered a more
8 favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

9 Based on the above law, the role of a court in considering allegations of ineffective
10 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
11 whether, under the particular facts and circumstances of the case, trial counsel failed to render
12 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
13 (1978). This analysis does not mean that the court should “second guess reasoned choices
14 between trial tactics nor does it mean that defense counsel, to protect himself against
15 allegations of inadequacy, must make every conceivable motion no matter how remote the
16 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel
17 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
18 cannot create one and may disserve the interests of his client by attempting a useless charade.”
19 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S.Ct. 2039, 2046 n.19 (1984).

20 “There are countless ways to provide effective assistance in any given case. Even the
21 best criminal defense attorneys would not defend a particular client in the same way.”
22 Strickland, 466 U.S. at 689, 104 S.Ct. at 689. “Strategic choices made by counsel after
23 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
24 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
25 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's
26 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
27 conduct.” Strickland, 466 U.S. at 690, 104 S.Ct. at 2066.

28 //

1 Even if a defendant can demonstrate that his counsel's representation fell below an
2 objective standard of reasonableness, he must still demonstrate prejudice and show a
3 reasonable probability that, but for counsel's errors, the result of the trial would have been
4 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
5 Strickland, 466 U.S. at 687, 104 S.Ct. at 2064). "A reasonable probability is a probability
6 sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-89,
7 694, 104 S.Ct. at 2064-65, 2068). This portion of the test is slightly modified when the
8 convictions occurs due to a guilty plea. Hill v. Lockhart, 474 U.S. 52, 59 (1985); Kirksey v.
9 State, 112 Nev. at 988. For a guilty plea, a defendant "must show that there is a reasonable
10 probability that, but for counsel's errors, he would not have pleaded guilty and would have
11 insisted on going to trial." Kirksey, 112 Nev. at 998 (quoting Hill, 474 U.S. at 59).

12 This Court finds that Petitioner does not invoke Strickland, much less attempt to meet
13 that standard. See instant Petition at 13-14. Further, this Court's review of each of Petitioner's
14 assertions of ineffectiveness shows that none are sufficient to entitle Petitioner to relief.

15 **A. Ineffectiveness during Direct Appeal**

16 Petitioner first alleges that his direct appeal was "adjudicated on incomplete
17 information" due to counsel's ineffectiveness. Instant Petition at 13. While Petitioner offers a
18 list of generalized errors by counsel, this Court finds that he fails to specify *what* the errors
19 were, or *how* they were committed by counsel. Id.; Means, 120 Nev. at 1011, 103 P.3d at 32.
20 Further, Petitioner fails to specify *how* the result of his direct appeal would have differed, had
21 counsel acted effectively with regards to each of these general errors. McNelson, 115 Nev. at
22 403, 990 P.2d at 1268. As such, this Court concludes that Petitioner's assertion is bare and
23 naked, and is suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

24 **B. Failure to Investigate Allegations**

25 Petitioner next alleges that trial counsel failed to properly investigate the facts
26 underlying Petitioner's case. Instant Petition at 13. However, this Court finds that Petitioner
27 fails to specifically allege *what* a proper investigation would have shown, much less *how* that
28 information would have affected Petitioner's decision to accept plea negotiations. Molina, 120

1 Nev. at 192, 87 P.3d at 538. Therefore, this Court concludes that Petitioner's allegation is
2 insufficient to meet Petitioner's burden under Strickland. Id.

3 **C. Coercion regarding Guilty Plea**

4 Petitioner's third allegation asserts that counsel's poor trial preparation, and failure to
5 convey an earlier plea deal, resulted in Petitioner's plea being "the only option." Instant
6 Petition at 13-14. While Petitioner includes various allegations of factors that led to his guilty
7 plea, this Court finds that Petitioner has failed to substantiate those allegations with any
8 specific facts. As such, this Court concludes that Petitioner's third allegation is bare and naked
9 and suitable only for denial under Hargrove. 100 Nev. at 502, 686 P.2d at 225.

10 Further, this Court finds that Petitioner's claim that his plea was coerced is expressly
11 belied by the record of Petitioner's guilty plea. By executing his GPA, Petitioner affirmed:

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

14 I am signing this agreement voluntarily, after consultation with
15 my attorney, and *I am not acting under duress or coercion...*

16 GPA at 5 (emphasis added). Furthermore, contrary to his instant allegations of unpreparedness,
17 Petitioner affirmed: "My attorney has answered all my questions regarding this guilty plea
18 agreement and its consequences to my satisfaction and I am satisfied with the services
19 provided by my attorney." Id. at 6. Because Petitioner's claim is belied by the record, this
20 Court concludes that it cannot entitle Petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d
21 at 225; Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002) ("A claim is 'belied'
22 when it is contradicted or proven to be false by the record as it existed at the time the claim
was made.").

23 Finally, even on the merits of his claim, this Court finds that Petitioner cannot
24 demonstrate that he is entitled to relief. To establish a claim of ineffective assistance of counsel
25 for advice regarding a guilty plea, a defendant must *show* "gross error on the part of counsel."
26 Turner v. Calderon, 281 F.3d 851, 880 (9th Cir. 2002). Further, the Nevada Supreme Court
27 has held that a reasonable plea recommendation which hindsight reveals is unwise is not
28 ineffective assistance. Larson v. State, 104 Nev. 691, 694, 766 P.2d 261, 263 (1988).

1 Importantly, the question is not whether "counsel's advice [was] right or wrong, but...whether
2 that advice was within the range of competence demanded of attorneys in criminal cases."
3 Turner, 281 F.3d at 880 (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S.Ct. 1441,
4 1449 (1970)). Petitioner has merely provided a list of allegations against counsel; however,
5 this Court finds that he has failed to *show* that counsel's performance amounted to "gross
6 error" so as to warrant relief. As such, this Court concludes that Petitioner's claim fails to meet
7 Petitioner's burden and cannot warrant relief.

8 **D. Petitioner's Fourth, Fifth, and Sixth Allegations of Ineffectiveness are**
9 **devoid of any factual support**

10 This Court finally finds that Petitioner, though he lists three (3) additional allegations
11 of counsel's purported ineffectiveness, fails to include any additional information. See instant
12 Petition at 13-14. As such, this Court concludes that Petitioner's allegations are left bare and
13 naked, and suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

14 **CONCLUSION**

15 THEREFORE, Court **ORDERED**, Petitioner Dwight Solander's Petition for Writ of
16 Habeas Corpus (Post-Conviction) shall be and is DENIED.

17 Dated this 6th day of August, 2021

18 
19 _____

20 Respectfully submitted,

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

AB9 E92 1978 8C7A
Joe Hardy
District Court Judge

24 BY  for

25 ELISE McCONLIN
26 Deputy District Attorney
27 Nevada Bar #014856

28 JJ/hjc/SVU



NEFF

**DISTRICT COURT
CLARK COUNTY, NEVADA**

DWIGHT SOLANDER,

Petitioner,

vs.

JEREMY BEAN, WARDEN HDSP,

Respondent,

Case No: A-20-815535-W

Dept No: XXI

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

PLEASE TAKE NOTICE that on August 23, 2021, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on August 25, 2021.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 25 day of August 2021, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

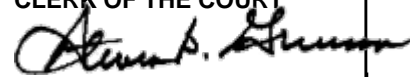
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☒ The United States mail addressed as follows:

Dwight Solander
700 Elm St., #29
Boulder City, NV 89005
Last Known Address

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk



FCCO
STEVEN B. WOLFSON
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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-

DWIGHT CONRAD SOLANDER,
#3074262,

Defendant.

CASE NO: **A-20-815535-W**

DEPT NO: **XV**

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: **JUNE 24, 2021**
TIME OF HEARING: **8:30 AM**

THIS CAUSE having presented before the Honorable JOE HARDY, District Court Judge, on the 24th day of June, 2021; Defendant no present, IN PROPER PERSON; the State represented by STEVEN B. WOLFSON, Clark County District Attorney, through ELISE M. CONLIN, Deputy District Attorney; and having considered the matter, including briefs, transcripts, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

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1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **STATEMENT OF THE CASE**

3 On July 28, 2014, DWIGHT CONRAD SOLANDER (hereinafter, "Defendant") was
4 charged by way of Information with three counts of CHILD ABUSE, NEGLECT OR
5 ENDANGERMENT WITH SUBSTANTIAL BODILY HARM (Category B Felony – NRS
6 200.508(1)); thirteen counts of CHILD ABUSE, NEGLECT OR ENDANGERMENT
7 (Category B Felony – NRS 200.508(1)); and nine counts of SEXUAL ASSAULT WITH A
8 MINOR UNDER FOURTEEN YEARS OF AGE (Category A Felony (NRS 200.364,
9 200.366) for actions committed on or between January 19, 2011 and November 11, 2013.

10 On January 31, 2018, Defendant accepted negotiations in this case and, pursuant to said
11 negotiations, Petitioner was charged by way of Amended Information with three counts of
12 CHILD ABUSE, NEGLECT, OR ENDANGERMENT RESULTING IN SUBSTANTIAL
13 BODILY HARM (Category B Felony – NRS 200.508). That same day, pursuant to a Guilty
14 Plea Agreement ("GPA") filed in open court, Defendant pleaded guilty to the charges as
15 alleged in the Amended Information. Under the terms of the negotiation, the State retained the
16 right to argue at sentencing. The district court accepted Petitioner's plea and referred the matter
17 to the Division of Parole and Probation for the preparation of a Presentence Investigation
18 Report ("PSI").

19 On June 5, 2018, Defendant appeared for sentencing in this case. The district court
20 adjudicated Petitioner guilty of all counts and sentenced him to thirty-six (36) to one hundred
21 twenty (120) months in the Nevada Department of Corrections (NDC) on each count, with all
22 counts running concurrently. Defendant received 105 days of credit for time served. The
23 Judgment of Conviction ("JOC") was filed on June 18, 2018.

24 On June 20, 2018, Defendant filed a Motion for Reconsideration of Sentence. The Court
25 denied Defendant's Motion for Reconsideration on July 10, 2018. The Order Denying
26 Defendant's Motion for Reconsideration was filed on August 23, 2018.

27 //

28 //

1 On July 10, 2018, Defendant filed a Notice of Appeal from his JOC. On January 14,
2 2020, the Nevada Supreme Court affirmed Defendant's JOC. Remittitur issued on February
3 25, 2020.

4 On May 27, 2020, Petitioner filed a Petition for Writ of Habeas Corpus. Thereafter, on
5 July 9, 2020, Petitioner filed an Amended Petition. The State, through the Office of the
6 Attorney General, filed its Response to Petitioner's first Petition on July 13, 2020. On July 27,
7 2020, Petitioner requested leave to file an additional legal brief in support of his Petition, which
8 the Court immediately granted. On September 1, 2020, the Court denied Petitioner's first
9 Petition. The Court noticed entry of its Decision and Order Denying Petitioner's first Petition
10 on October 13, 2020.

11 On November 5, 2020, Petitioner noticed his appeal from the denial of his first Petition
12 (Nevada Supreme Court Case No. 82082). As of the date of this Response, Petitioner's appeal
13 is still pending before the Nevada Supreme Court.

14 On January 5, 2021, Petitioner filed another Petition for Writ of Habeas Corpus (Post-
15 Conviction) (his "instant Petition"). On February 8, 2021, Petitioner filed a Motion for Leave
16 of Court to Complete and File Legal Brief in Support of Writ of Habeas Corpus (his "Motion
17 for Leave"). On March 10, 2021, the State filed its Opposition to Petitioner's instant Petition.
18 On June 24, 2021, the instant Petition came before this Court for hearing, at which time this
19 Court did not hear oral argument, and made the following findings and conclusions:

20 STATEMENT OF FACTS

21 The Court considered the following factual synopsis when sentencing Defendant:

22 On March 4, 2014, LVMPD received a report from Child Protective
23 Services (CPS) detailing an extensive history of abuse and neglect to
24 three female victims (DOB: 10-21-01; DOB: 01-23-03; DOB: 07-25-
25 04) by Janet Solander, Dwight Conrad Solander, and Danielle Hinton.
Janet Solander and Dwight Conrad Solander had adopted the three
victims on January 19, 2011. Danielle Hinton is Janet Solander's adult
daughter.

26 The victims reported to CPS that Janet, Dwight, and Danielle would
27 hit them with a paint stick until they bled. They would hit the girls
28 with the stick if they had an accident in their underwear, if they took
too long going to the bathroom, or if they answered homework
problems incorrectly. They mainly hit the girls on their legs and
buttocks.

1 The victims related further that Janet had a timer, and they were not
2 allowed to use the bathroom until the timer went off. This caused the
3 girls to have trouble using the bathroom and made their stomachs hurt.
4 If the girls had bathroom accidents, they were not allowed to eat for
5 days. Janet blended their food, and they did not know what they were
6 eating. If the victims got in trouble, they had to sit on a bucket with a
7 toilet seat on top for hours at a time. If they got into trouble, Janet
8 made them take a cold shower and Janet would pour ice water on
9 them. They were not provided a towel to dry off, but they had to stand
10 in front of a large fan. Additionally, the girls slept on boards with no
11 sheets or blankets. They slept in their underwear with a fan blowing
12 on them. Victim #2 (DOB: 01-23-03) has a scar on her back from
13 Janet pouring hot water on her. Sometimes after the victims had
14 bathroom accidents, Janet would make them put their soiled
15 underwear in their mouths and leave it there until their mouths would
16 bleed. Victim #3 (DOB: 07-25-04) reported that Janet stuck a paint
17 stick in her vagina because she could not hold her bladder. Victim #3
18 also has scarring on her right ear and back from Janet pouring hot
19 water on her. The girls also reported that Janet would put a catheter in
20 them, and if urine came out, she would hit them with a paint stick.

21 All three victims have scars on their arms, legs, and buttocks.

22 Presentence Investigation Report ("PSI") at 4.

23 ANALYSIS

24 **I. PETITIONER'S FIRST CLAIM IS WAIVED**

25 Petitioner's claim alleges that unspecified evidence related to CPS's location and
26 retrieval of the child victims violates the Fifth Amendment. See Instant Petition at 7-8. This
27 Court finds that Petitioner's claim cannot entitle Petitioner to relief, as it is substantive, and
28 therefore was waived both by Petitioner's entry of plea and by Petitioner's failure to raise it
on direct appeal. Further, this Court finds that Petitioner fails to argue, much less demonstrate,
good cause and prejudice to overcome the procedural bars to this claim.

Pursuant to NRA 34.810(1):

The court *shall* dismiss a petition if the court determines that:

(a) The petitioner's conviction was upon a plea of guilty...and the
petition is not based upon an allegation that the plea was involuntarily
or unknowingly entered or that the plea was entered without effective
assistance of counsel.

...
unless the court finds both cause for the failure to present the grounds and
actual prejudice to the petitioner.

(emphasis added).

1 Furthermore, the Nevada Supreme Court has held that “challenges to the validity of a
2 guilty plea and claims of ineffective assistance of trial and appellate counsel must first be
3 pursued in post-conviction proceedings.... [A]ll other claims that are appropriate for a direct
4 appeal must be pursued on direct appeal, or they will be *considered waived in subsequent*
5 *proceedings.*” Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis
6 added) (disapproved of on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222
7 (1999)). “A court must dismiss a habeas petition if it presents claims that either were or could
8 have been presented in an earlier proceeding, unless the court finds both cause for failing to
9 present the claims earlier or for raising them again and actual prejudice to the petitioner.”
10 Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001), overruled on other grounds by
11 Lisle v. State, 131 Nev. 356, 351 P.3d 725 (2015). Additionally, substantive claims are beyond
12 the scope of habeas and waived. NRS 34.724(2)(a); see also Evans, 117 Nev. at 646-47, 29
13 P.3d 498 at 523; Franklin, 110 Nev. at 752, 877 P.2d 1058 at 1059.

14 A petitioner may only escape these procedural bars if they meet the burden of
15 establishing good cause and prejudice, as set forth in NRS 34.810(3):

16 ...the petitioner has the burden of pleading and proving specific facts
17 that demonstrate:

18 (a) Good cause for the petitioner’s failure to present the claim or
19 for presenting the claim again; and

20 (b) Actual prejudice to the petitioner.

21 Where a defendant does not show good cause for his failure to raise claims of error upon direct
22 appeal, the district court is not obliged to consider them in post-conviction proceedings. Jones
23 v. State, 91 Nev. 416, 536 P.2d 1025 (1975).

24 Furthermore, Petitioner waived any claims relating to the constitutionality of evidence
25 when he chose to plead guilty. The Nevada Supreme Court has explained:

26 “[A] guilty plea represents a break in the chain of events which has
27 preceded it in the criminal process. When a criminal defendant has
28 solemnly admitted in open court that he is in fact guilty of the offense
with which he is charged, he may not thereafter raise independent
claims relating to the deprivation of constitutional rights that occurred
prior to the entry of the guilty plea.”

1 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollett v. Henderson, 411
2 U.S. 258, 267, 93 S.Ct. 1602, 1608 (1973)). An entry of a guilty plea “waive[s] all
3 constitutional claims based on events occurring prior to the entry of the plea[], except those
4 involving voluntariness of the plea[] [itself].” Warden, Nevada State Prison v. Lyons, 100 Nev.
5 430, 431, 683 P.2d 505 (1984); see also Kirksey v. State, 112 Nev. 980, 999, 923 P.2d 1102,
6 1114 (1996) (“Where the defendant has pleaded guilty, the only claims that may be raised
7 thereafter are those involving the voluntariness of the plea itself and the effectiveness of
8 counsel.”).

9 This Court finds that Petitioner’s claim deals only with unspecified evidence – it does
10 not deal with the validity of the guilty plea, nor the effectiveness of counsel; therefore, pursuant
11 to Franklin and Webb, this Court concludes that Petitioner’s claim is waived and is subject to
12 dismissal absent a showing of good cause and prejudice. See 110 Nev. at 752, 877 P.2d at
13 1059; see also 91 Nev. at 470, 538 P.2d at 165.

14 This Court further finds that Petitioner does not attempt to address good cause for his
15 failure to raise these claims on direct appeal. See instant Petition at 7-8. This Court finds that
16 he could not successfully do so, because there was no impediment external to the defense that
17 precluded this claim from being raised thus, and all of the facts and law necessary to raise this
18 issue were available at the time Petitioner filed his direct appeal.

19 Likewise, this Court finds that Petitioner fails to argue prejudice sufficient to overcome
20 his procedural defaults. See instant Petition at 7-8. Further, any attempt would be unsuccessful,
21 as this Court finds that Petitioner’s underlying complaint is meritless. As an initial matter,
22 Petitioner fails to specifically allege *what* evidence violates the Fifth Amendment, much less
23 *how* that Amendment was violated. See id. Therefore, this Court concludes that Petitioner’s
24 claim is bare and naked and cannot demonstrate prejudice. Hargrove v. State, 100 Nev. 498,
25 502, 686 P.2d 222, 225 (1984) (“[b]are” and “naked” allegations are not sufficient to warrant
26 post-conviction relief); NRS 34.735(6) (“[Petitioner] must allege specific facts supporting the
27 claims in the petition...Failure to raise specific facts rather than just conclusions may cause
28 [the] petition to be dismissed.”).

1 Because this Court has concluded that Petitioner's first claim is procedurally defaulted,
2 both by Petitioner's decision to plead guilty, and by Petitioner's failure to raise his claim on
3 direct appeal, with no good cause or prejudice shown, the instant Petition is suitable for
4 dismissal.

5 **II. ACTUAL INNOCENCE IS NOT, ITSELF, A COGNIZABLE GROUND FOR**
6 **RELIEF**

7 Petitioner's second claim alleges that he is actually innocent of the crime because he
8 was not proximate to the crime scene and because evidence was illegally collected. See instant
9 Petition at 9. This Court finds that Petitioner is not entitled to relief on this claim, as actual
10 innocence itself is not a cognizable claim for habeas relief. Further, to the extent Petitioner is
11 challenging the sufficiency of the evidence, this Court finds that Petitioner waived this claim
12 by entering a guilty plea.

13 The United States Supreme Court has explained that actual innocence means factual
14 innocence, not legal insufficiency. Bousley v. United States, 523 U.S. 614, 623, 118 S.Ct.
15 1604, 1611 (1998); Sawyer v. Whitley, 505 U.S. 333, 338-39, 112 S.Ct. 2514, 2518-19 (1992).
16 To establish actual innocence of a crime, a petitioner "must show that it is more likely than
17 not that no reasonable juror would have convicted him absent a constitutional violation."
18 Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). Actual innocence is a stringent
19 standard designed to be applied only in the most extraordinary situations. Schlup v. Delo, 513
20 U.S. 298, 316, 115 S.Ct. 851, 861 (1995); Pellegrini, 117 Nev. at 876, 34 P.2d at 530. In order
21 to meet the standard for actual innocence, a petitioner must show that the newly discovered
22 evidence suggesting a petitioner's innocence is "so strong that a court cannot have confidence
23 in the outcome of the trial." Schlup, 513 U.S. at 316, 115 S.Ct. at 861.

24 However, the United States Supreme Court has specified that a claim of actual
25 innocence is a "gateway" to present otherwise procedurally defaulted constitutional
26 challenges, rather than itself a ground for habeas relief. Schlup, 513 U.S. at 315, 115 S.Ct. at
27 861. The Eighth Circuit Court of Appeals has expressly "rejected free-standing claims of
28 actual innocence as a basis for habeas review." Meadows v. Delo, 99 F.3d 280, 283 (8th Cir.

1 1996) (citing Herrera v. Collins, 506 U.S. 390, 400, 113 S.Ct. 853, 860 (1993)).

2 This Court finds that, not only does Petitioner fail to recognize that “actual innocence”
3 is not, itself, a cognizable claim for relief, but Petitioner fails to allege *new facts* in support of
4 his actual innocence claim. See instant Petition at 9. Petitioner’s allegation of illegally-
5 gathered evidence does not specify *what* evidence was illegally gathered. See id. As such, this
6 Court concludes that Petitioner’s claim is bare and naked, and is instead suitable only for
7 summary denial under Hargrove. 100 Nev. at 502, 686 P.2d 225.

8 Furthermore, this Court finds that the substance of Petitioner’s claim suggests the
9 existing evidence of which Petitioner was aware was insufficient to support conviction. See
10 instant Petition at 9. However, “actual innocence” is limited to *new evidence* that was not
11 presented. Schlup, 513 U.S. at 316, 115 S.Ct. at 861. Therefore, this Court finds that evidence
12 of Petitioner’s whereabouts is inapplicable to a claim of “actual innocence.” Id. Regardless,
13 this Court finds that Petitioner made the decision to plead guilty in this case, and, as such,
14 relieved the State of its burden to prove Petitioner’s guilt. See Kirksey, 112 Nev. at 993-94,
15 923 P.2d at 1110-11. Furthermore, this Court concludes that Petitioner’s decision to plead
16 guilty waived any substantive claim of insufficient evidence. Id.; Webb, 91 Nev. at 470, 538
17 P.2d at 165.

18 Since this Court has concluded that Petitioner’s claim is not, itself, a cognizable claim
19 for relief, and that the substance of his claim was waived by Petitioner pleading guilty,
20 Petitioner’s claim is subject to dismissal.

21 **III. PETITIONER’S THIRD AND FOURTH CLAIMS ARE WAIVED BY**
22 **PETITIONER’S FAILURE TO RAISE THEM ON DIRECT APPEAL**

23 Petitioner’s third claim alleges that he should have been severed from his co-defendant
24 due to a gross disparity in culpability. See instant Petition at 10. His fourth claim contends that
25 the specific allegations of substantial bodily harm in his underlying case did not meet the
26 statutory definitions thereof. See id. at 11. This Court finds that neither of these claims can
27 entitle Petitioner to relief, as he waived each of them by failing to raise them on direct appeal.

28 //

1 Petitioner's third and fourth claims are each substantive in nature, and as such, this
2 Court finds they were suitable to be raised on direct appeal. See instant Petition at 10-11.
3 Therefore, this Court concludes that Petitioner's failure to raise them thus results in a waiver
4 of each. NRS 34.724(2)(a) (habeas petitioners are not a substitute for remedies available upon
5 direct review of the trial court proceedings); NRS 34.810(1)(a); Evans, 117 Nev. at 646-47,
6 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d at 1059.

7 Petitioner does not recognize this waiver, much less argue that good cause and prejudice
8 exist to overcome the procedural bars. See instant Petition at 10-11. Indeed, this Court finds
9 that Petitioner could not demonstrate good cause, as each of his claims arise from facts or
10 situations which, by their nature, were available at the time Petitioner filed his direct appeal,
11 and Petitioner fails to enumerate any impediment external to the defense that precluded these
12 issues from being waived. See id.

13 Furthermore, this Court finds that Petitioner cannot demonstrate prejudice, as his
14 individual claims lack merit. Regarding Petitioner's claim of severance, NRS 173.135 clearly
15 allows two or more defendants to be charged together if they participated in the same criminal
16 conduct. The litmus test for the necessity of severance is a showing of clear, manifest, or undue
17 prejudice from a joint trial. United State v. Enriquez-Estrada, 999 F.2d 1355 (9th Cir. 1993).
18 However, the decision to sever is left within the discretion of the trial court. Amen v. State,
19 106 Nev. 749, 755, 801 P.2d 1354, 1359 (1990).

20 This Court finds that Petitioner does not provide any specific allegations of undue
21 prejudice resulting from misjoinder; instead, Petitioner claims that severance was warranted
22 because "culpability" of the defendants was "grossly mismatched." Instant Petition at 10.
23 Petitioner then claims that he bore *no* culpability because he was allegedly absent for *most* of
24 the abuse. Id. However, Petitioner overlooks the preliminary hearing testimony that placed
25 Petitioner *inside* the house, *participating* in aspects of the abuse. See, e.g. Preliminary Hearing
26 Transcript – Volume 1 at 22, 24 (describing beatings with a paint stick which Petitioner had
27 labeled "Board of Education"), 29-32 (Petitioner affixed toilet seats to Home Depot buckets,
28 which the victims were forced to sit on from the time they woke up until they went to bed), 34

1 (Petitioner would withhold food and water from the victims); see also, Preliminary Hearing
2 Transcript – Volume V at 49 (Petitioner purchased the catheters used to abuse the victims).
3 Finally, Petitioner asserts that he had no duty to report any crime committed by his wife, the
4 co-defendant. Id. However, this Court finds that Petitioner’s position is contrary to Nevada
5 law: NRS 49.305(2)(e) creates an express exception to spousal privilege in the case where one
6 spouse is charged with crime(s) against the person’s child. Therefore, because Petitioner’s
7 severance claim is without merit, this Court concludes it cannot demonstrate prejudice
8 sufficient to overcome procedural Petitioner’s procedural defaults.

9 Likewise, this Court finds that Petitioner’s substantial bodily harm complaint is without
10 merit, as Petitioner’s decision to plead guilty relieved the State of its burden to establish each
11 of the statutory elements of that charge. See, GPA at 2 (“I understand that by pleading guilty,
12 I admit the facts which support all the elements of the offenses to which I now plead...”), 4
13 (“By entering my plea of guilty, I understand that I am waiving and forever giving up...the
14 State[’s] burden of proving beyond a reasonable doubt each element of the offense(s)
15 charged.”). Furthermore, this Court finds that Petitioner’s choice to plead guilty waived any
16 challenge to the sufficiency of the substantial bodily harm enhancement. Kirksey, 112 Nev. at
17 993-94, 923 P.2d at 1110-11; Webb, 91 Nev. at 470, 538 P.2d at 165.

18 Because Petitioner’s claims are waived by his failure to raise them on direct appeal, and
19 because Petitioner fails to overcome his procedural defaults, this Court concludes that
20 Petitioner’s third and fourth claims are suitable only for dismissal.

21 **IV. PETITIONER’S FIFTH CLAIM FAILS TO STATE GROUNDS FOR RELIEF**

22 Petitioner’s fifth claim complains that certain judicial findings are not supported by the
23 facts. See instant Petition at 12. However, this Court finds that while Petitioner takes issue
24 with “[c]omments from the bench” such as “ ‘court feels,’ ‘court thinks,’ etc.,” Petitioner fails
25 to specifically allege findings, rather than expressions, that were unsubstantiated or improper.
26 See id. This Court concludes that Petitioner’s failure to offer a basis for relief, much less
27 specific allegations in support thereof, renders Petitioner’s claim insufficient, bare and naked,
28 and suitable only for summary denial under Hargrove. 100 Nev. at 502, 686 P.2d at 225; see

1 also NRS 34.735(6).

2 **V. PETITIONER FAILS TO DEMONSTRATE INEFFECTIVE ASSISTANCE OF**
3 **COUNSEL**

4 Finally, Petitioner alleges that counsel was ineffective in six (6) ways. Instant Petition
5 at 13. This Court finds that Petitioner fails to acknowledge his burden when raising such a
6 claim, much less demonstrate that, pursuant to that burden, counsel was ineffective.

7 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
8 prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his
9 defense.” The United States Supreme Court has long recognized that “the right to counsel is
10 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
11 104 S.Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
12 (1993).

13 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
14 she was denied “reasonably effective assistance” of counsel by satisfying the two-prong test
15 of Strickland, 466 U.S. at 686-87, 104 S.Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865
16 P.2d at 323. Under Strickland, a defendant must show first that his counsel's representation
17 fell below an objective standard of reasonableness, and second, that but for counsel's errors,
18 there is a reasonable probability that the result of the proceedings would have been different.
19 466 U.S. at 687-88, 694, 104 S.Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100
20 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). “[T]here is
21 no reason for a court deciding an ineffective assistance claim to approach the inquiry in the
22 same order or even to address both components of the inquiry if the defendant makes an
23 insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S.Ct. at 2069.

24 The Court begins with the presumption of effectiveness and then must determine
25 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
26 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
27 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
28 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,

1 537 P.2d 473, 474 (1975).

2 Counsel cannot be ineffective for failing to make futile objections or arguments. See
3 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
4 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
5 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
6 (2002). Further, a defendant who contends his attorney was ineffective because he did not
7 adequately investigate must show how a better investigation would have rendered a more
8 favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

9 Based on the above law, the role of a court in considering allegations of ineffective
10 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
11 whether, under the particular facts and circumstances of the case, trial counsel failed to render
12 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
13 (1978). This analysis does not mean that the court should “second guess reasoned choices
14 between trial tactics nor does it mean that defense counsel, to protect himself against
15 allegations of inadequacy, must make every conceivable motion no matter how remote the
16 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel
17 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
18 cannot create one and may disserve the interests of his client by attempting a useless charade.”
19 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S.Ct. 2039, 2046 n.19 (1984).

20 “There are countless ways to provide effective assistance in any given case. Even the
21 best criminal defense attorneys would not defend a particular client in the same way.”
22 Strickland, 466 U.S. at 689, 104 S.Ct. at 689. “Strategic choices made by counsel after
23 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
24 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
25 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's
26 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
27 conduct.” Strickland, 466 U.S. at 690, 104 S.Ct. at 2066.

28 //

1 Even if a defendant can demonstrate that his counsel's representation fell below an
2 objective standard of reasonableness, he must still demonstrate prejudice and show a
3 reasonable probability that, but for counsel's errors, the result of the trial would have been
4 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
5 Strickland, 466 U.S. at 687, 104 S.Ct. at 2064). "A reasonable probability is a probability
6 sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-89,
7 694, 104 S.Ct. at 2064-65, 2068). This portion of the test is slightly modified when the
8 convictions occurs due to a guilty plea. Hill v. Lockhart, 474 U.S. 52, 59 (1985); Kirksey v.
9 State, 112 Nev. at 988. For a guilty plea, a defendant "must show that there is a reasonable
10 probability that, but for counsel's errors, he would not have pleaded guilty and would have
11 insisted on going to trial." Kirksey, 112 Nev. at 998 (quoting Hill, 474 U.S. at 59).

12 This Court finds that Petitioner does not invoke Strickland, much less attempt to meet
13 that standard. See instant Petition at 13-14. Further, this Court's review of each of Petitioner's
14 assertions of ineffectiveness shows that none are sufficient to entitle Petitioner to relief.

15 **A. Ineffectiveness during Direct Appeal**

16 Petitioner first alleges that his direct appeal was "adjudicated on incomplete
17 information" due to counsel's ineffectiveness. Instant Petition at 13. While Petitioner offers a
18 list of generalized errors by counsel, this Court finds that he fails to specify *what* the errors
19 were, or *how* they were committed by counsel. Id.; Means, 120 Nev. at 1011, 103 P.3d at 32.
20 Further, Petitioner fails to specify *how* the result of his direct appeal would have differed, had
21 counsel acted effectively with regards to each of these general errors. McNelson, 115 Nev. at
22 403, 990 P.2d at 1268. As such, this Court concludes that Petitioner's assertion is bare and
23 naked, and is suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

24 **B. Failure to Investigate Allegations**

25 Petitioner next alleges that trial counsel failed to properly investigate the facts
26 underlying Petitioner's case. Instant Petition at 13. However, this Court finds that Petitioner
27 fails to specifically allege *what* a proper investigation would have shown, much less *how* that
28 information would have affected Petitioner's decision to accept plea negotiations. Molina, 120

1 Nev. at 192, 87 P.3d at 538. Therefore, this Court concludes that Petitioner's allegation is
2 insufficient to meet Petitioner's burden under Strickland. Id.

3 **C. Coercion regarding Guilty Plea**

4 Petitioner's third allegation asserts that counsel's poor trial preparation, and failure to
5 convey an earlier plea deal, resulted in Petitioner's plea being "the only option." Instant
6 Petition at 13-14. While Petitioner includes various allegations of factors that led to his guilty
7 plea, this Court finds that Petitioner has failed to substantiate those allegations with any
8 specific facts. As such, this Court concludes that Petitioner's third allegation is bare and naked
9 and suitable only for denial under Hargrove. 100 Nev. at 502, 686 P.2d at 225.

10 Further, this Court finds that Petitioner's claim that his plea was coerced is expressly
11 belied by the record of Petitioner's guilty plea. By executing his GPA, Petitioner affirmed:

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

14 I am signing this agreement voluntarily, after consultation with
15 my attorney, and *I am not acting under duress or coercion...*

16 GPA at 5 (emphasis added). Furthermore, contrary to his instant allegations of unpreparedness,
17 Petitioner affirmed: "My attorney has answered all my questions regarding this guilty plea
18 agreement and its consequences to my satisfaction and I am satisfied with the services
19 provided by my attorney." Id. at 6. Because Petitioner's claim is belied by the record, this
20 Court concludes that it cannot entitle Petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d
21 at 225; Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002) ("A claim is 'belied'
22 when it is contradicted or proven to be false by the record as it existed at the time the claim
was made.").

23 Finally, even on the merits of his claim, this Court finds that Petitioner cannot
24 demonstrate that he is entitled to relief. To establish a claim of ineffective assistance of counsel
25 for advice regarding a guilty plea, a defendant must *show* "gross error on the part of counsel."
26 Turner v. Calderon, 281 F.3d 851, 880 (9th Cir. 2002). Further, the Nevada Supreme Court
27 has held that a reasonable plea recommendation which hindsight reveals is unwise is not
28 ineffective assistance. Larson v. State, 104 Nev. 691, 694, 766 P.2d 261, 263 (1988).

1 Importantly, the question is not whether "counsel's advice [was] right or wrong, but...whether
2 that advice was within the range of competence demanded of attorneys in criminal cases."
3 Turner, 281 F.3d at 880 (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S.Ct. 1441,
4 1449 (1970)). Petitioner has merely provided a list of allegations against counsel; however,
5 this Court finds that he has failed to *show* that counsel's performance amounted to "gross
6 error" so as to warrant relief. As such, this Court concludes that Petitioner's claim fails to meet
7 Petitioner's burden and cannot warrant relief.

8 **D. Petitioner's Fourth, Fifth, and Sixth Allegations of Ineffectiveness are**
9 **devoid of any factual support**

10 This Court finally finds that Petitioner, though he lists three (3) additional allegations
11 of counsel's purported ineffectiveness, fails to include any additional information. See instant
12 Petition at 13-14. As such, this Court concludes that Petitioner's allegations are left bare and
13 naked, and suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

14 **CONCLUSION**

15 THEREFORE, Court **ORDERED**, Petitioner Dwight Solander's Petition for Writ of
16 Habeas Corpus (Post-Conviction) shall be and is DENIED.

17 Dated this 6th day of August, 2021

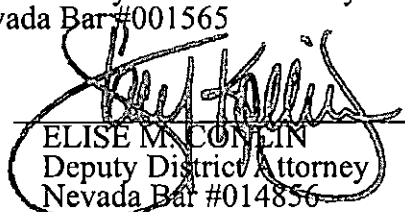
18 
19 _____

20 Respectfully submitted,

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

AB9 E92 1978 8C7A
Joe Hardy
District Court Judge

24 BY


25 ELISE MC CONLIN
26 Deputy District Attorney
27 Nevada Bar #014856

for

28 JJ/hjc/SVU

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

September 01, 2020

A-20-815535-W Dwight Solander, Plaintiff(s)
vs.
Jeremy Bean, Warden HDSP, Defendant(s)

**September 01, 2020 1:45 PM Petition for Writ of Habeas
Corpus**

HEARD BY: Adair, Valerie **COURTROOM:** RJC Courtroom 11C

COURT CLERK: Kristen Brown

RECORDER: Robin Page

REPORTER:

PARTIES

PRESENT: Samuels, Katrina Ann Attorney

JOURNAL ENTRIES

- Court stated that the motion will be decided on the briefs. Court stated its findings and ORDERED, Motion DENIED. State to prepare the Order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

March 09, 2021

A-20-815535-W	Dwight Solander, Plaintiff(s)
	vs.
	Jeremy Bean, Warden HDSP, Defendant(s)

March 09, 2021 8:30 AM All Pending Motions

HEARD BY: Hardy, Joe **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Kristin Duncan

RECORDER: Matt Yarbrough

REPORTER:

PARTIES

PRESENT:	Samuels, Katrina A	Attorney
	Solander, Dwight	Plaintiff

JOURNAL ENTRIES

- The State present via Blue Jeans.

PETITION OR WRIT OF HABEAS CORPUS...MOTION TO TRANSFER PETITION FOR WRIT OF HABEAS CORPUS

Mr. Solander explained that he filed the first Habeas Petition to address an internal issue; however, the second Habeas Petition was filed post-conviction, and was completely unrelated to the first Habeas Petition. Additionally, Mr. Solander stated that he agreed with the State's Motion to Transfer, noting that the second Habeas Petition should not have been placed in the instant case, but should have been set in the underlying criminal case. The State affirmed Mr. Solander's representations, stating that the second Habeas Petition was not a time computation challenge, and should be transferred to the underlying criminal case. Upon Court's inquiry, the State advised that the District Attorney's Office needed to respond to the Habeas Petition, rather than the Attorney General's Office.

COURT ORDERED the Motion to Transfer Petition for Writ of Habeas Corpus, was hereby GRANTED; the Petition for Writ of Habeas Corpus, filed on January 5, 2021, was hereby TRANSFERRED to case number C-14-299737-1, and SET for a hearing in that case. Upon Court's inquiry regarding whether Mr Solander had the file, Mr. Solander stated that said issue remained pending, and was currently being heard by the Supreme Court.

COURT ORDERED the District Attorney's Office to respond to the Petition for Writ of Habeas Corpus, and SET a BRIEFING SCHEDULE as follows: (1) the State's response to be filed on later than May 11, 2021; and (2) Mr. Solander's response to the State's response, to be filed no later than June 11, 2021.

Mr. Solander advised that the Motion pending in the instant case on March 16, 2021, could be vacated. COURT ORDERED Plaintiff's Motion for Leave of Court to Complete and File Legal Brief in Support of Writ of Habeas Corpus, pending hearing in the instant case on March 16, 2021, was hereby VACATED.

6/24/21 8:30 AM (CASE NUMBER C299737-1) PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

August 12, 2021

A-20-815535-W	Dwight Solander, Plaintiff(s) vs. Jeremy Bean, Warden HDSP, Defendant(s)
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August 12, 2021	1:30 PM	Petition for Writ of Habeas Corpus
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HEARD BY: Clark Newberry, Tara **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Carina Bracamontez-Munguia

RECORDER: Robin Page

REPORTER:

PARTIES

PRESENT:	Solander, Dwight	Plaintiff
	Wong, Hetty O.	Attorney

JOURNAL ENTRIES

- Court noted Deft. was present out of custody. COURT FINDS the State's return reflects the findings of the Court that there was no good cause shown for a failure to raise the claims on a direct appeal; more specifically NRA 34.810(1) required that a petition raised post-conviction that was not based on an allegation that the plea was involuntary or unknowingly entered or without effective assistance of counsel was improper. COURT FINDS there were 6 separate claims for relief without merit, therefore, ORDERED petition DENIED. State DIRECTED to prepare the order; State may use the template of the legal argument and analysis as set forth in its return as a basis for the order. Mr. Solander indicated he had filed a motion for a continuance to get the legal arguments together. COURT STATED ITS FINDINGS and ORDERED the Motion to Continue ADVANCED and DENIED; State to prepare the order.

CLERK'S NOTE: Subsequent to hearing, Court acknowledged the Motion for Status and to Grant Motion for Production of Documents set for August 19, 2021 and the Motion for Continuance of Hearing set for August 24, 2021 were assigned the Department 15, therefore, ORDERED prior rulings

VACATED; matter to REMAIN on calendar as set to be heard by Department 15. A copy of this minute order was provided to the Defendant via U.S. Mail: Dwight Solander 700 Elm St. #29 Boulder City, NV 89005. // cbm 09/01/2021

Certification of Copy

State of Nevada }
County of Clark } SS:

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

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

DWIGHT SOLANDER,

Plaintiff(s),

vs.

JEREMY BEAN, WARDEN,

Defendant(s),

Case No: A-20-815535-W

Dept No: XXI

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 14 day of September 2021.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk

