

Electronically Filed  
Nov 17 2021 03:42 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

NOAS  
Rene L. Valladares  
Federal Public Defender  
Nevada Bar No. 11479  
Randolph M. Fiedler  
Assistant Federal Public Defender  
Nevada Bar No. 12577  
Randolph\_fiedler@fd.org  
Ellesse Henderson  
Assistant Federal Public Defender  
Nevada Bar No. 14674  
Ellesse\_henderson@fd.org  
411 E. Bonneville, Ste. 250  
Las Vegas, Nevada 89101  
(702) 388-6577  
(702) 388-5819 (Fax)

Attorney for Petitioner

DISTRICT COURT  
CLARK COUNTY, NEVADA

Donte Johnson,  
Petitioner,  
v.  
William Gittere, et al.,  
Respondents.

Case No. A-19-789336-W  
Dept. No. XVII

**Notice of Appeal**

(Death Penalty Habeas Corpus Case)

NOTICE IS HEREBY GIVEN that Petitioner Donte Johnson appeals to the  
Nevada Supreme Court from the Notice of Entry of Findings of Fact, Conclusions of

1 Law and Order filed in this action on October 11, 2021.

2 DATED this 10th day of November, 2021.

3 Respectfully submitted,

4 Rene L. Valladares  
Federal Public Defender

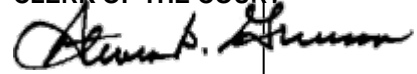
5 /s/ Randolph M. Fiedler  
6 Randolph M. Fiedler  
Assistant Federal Public Defender

7 /s/ Ellesse Henderson  
8 Ellesse Henderson  
Assistant Federal Public Defender

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

An Employee of  
The Federal Public Defender



APEL  
Rene L. Valladares  
Federal Public Defender  
Nevada Bar No. 11479  
Randolph M. Fiedler  
Assistant Federal Public Defender  
Nevada Bar No. 12577  
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Donte Johnson,  
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Case No. A-19-789336-W  
Dept. No. XVII

**Case Appeal Statement**

(Death Penalty Habeas Corpus Case)

1. Name of appellant filing this case appeal statement: Donte Johnson
2. Identify the judge issuing the decision, judgment, or order appealed from:  
Jacqueline Bluth, District Judge

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

Donte Johnson  
Appellant

Randolph M. Fiedler  
Ellesse Henderson  
Assistant Federal Public Defenders  
411 E. Bonneville Ave., #250  
Las Vegas, Nevada, 89101  
Counsel for Appellant

4. Identify the respondent and the name and address of appellate counsel, if known, for each respondent:

State of Nevada  
Respondent

Alex Chen  
Chief Deputy District Attorney  
Clark County District Attorney's Office  
200 Lewis Avenue  
Las Vegas, Nevada 89101

Aaron Ford  
Attorney General of Nevada  
100 N. Carson St.  
Carson City, Nevada 89701

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice in Nevada and, if so, whether the district court granted permission to appear under SCR 42: As far as undersigned is aware, all of the attorneys identified in response to question 3 or 4 are admitted to practice in Nevada.

- 1           6. Indicate whether appellant was represented by appointed or retained  
2           counsel in the district court: appointed.
- 3           7. Indicate whether appellant is represented by appointed or retained counsel  
4           on appeal: appointed.
- 5           8. Indicate whether appellant was granted leave to proceed in forma pauperis,  
6           and the date of entry of the district court order granting such leave:  
7           Appellant was not granted leave to proceed in forma pauperis in the Eighth  
8           Judicial District Court, but was so granted by the U.S. District Court for  
9           the District of Nevada on April 26, 2018. *See Johnson v. Filson*, No. 2:18-  
10          cv-00740-JAD-NJK.
- 11          9. Indicate the date the proceedings commenced in the district court: February  
12          13, 2019.
- 13          10. Provide a brief description of the nature of the action and result in the  
14          district court, including the type of judgment or order being appealed and  
15          the relief granted by the district court: Donte Johnson filed a petition for  
16          writ of habeas corpus (post-conviction) seeking post-conviction relief for his  
17          conviction and death sentence. The district court denied relief without an  
18          evidentiary hearing.
- 19          11. Indicate whether the case has previously been the subject of an appeal to  
20          or an original writ proceeding in the Supreme Court and, if so, the caption  
21          and Supreme Court docket number of the prior proceeding:

22          *Johnson v. State*, No. 36991

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

/s/ Celina Moore  
An Employee of  
The Federal Public Defender



# CASE SUMMARY

## CASE NO. A-19-789336-W

**Donte Johnson, Plaintiff(s)**  
**vs.**  
**William Gittere, Defendant(s)**

§  
§  
§  
§  
§

Location: **Department 17**  
 Judicial Officer: **Villani, Michael**  
 Filed on: **02/13/2019**  
 Case Number History:  
 Cross-Reference Case Number: **A789336**

### CASE INFORMATION

#### Related Cases

98C153154 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

#### Statistical Closures

10/08/2021 Other Manner of Disposition

Case Status: **10/08/2021 Closed**

### DATE

### CASE ASSIGNMENT

#### Current Case Assignment

Case Number A-19-789336-W  
 Court Department 17  
 Date Assigned 09/07/2021  
 Judicial Officer Villani, Michael

### PARTY INFORMATION

#### Plaintiff

**Johnson, Donte**

*Lead Attorneys*

**FIEDLER, RANDOLPH M**

*Retained*

388-5135(W)

#### Defendant

**Ford, Aaron**

**Wolfson, Steven B**

*Retained*

702-671-2700(W)

**Gittere, William**

**Wolfson, Steven B**

*Retained*

702-671-2700(W)

### DATE

### EVENTS & ORDERS OF THE COURT

### INDEX

#### EVENTS

02/13/2019



Exhibits

Filed By: Plaintiff Johnson, Donte  
 [1] Exhibit List Volume 1 Exhibits 1-7

02/13/2019



Petition for Writ of Habeas Corpus

Filed by: Plaintiff Johnson, Donte  
 [2] Petition for Writ of Habeas Corpus

02/14/2019



Exhibits

Filed By: Plaintiff Johnson, Donte  
 [3] Exhibit List Volume 2 Ex. 8-14

02/14/2019



Exhibits

Filed By: Plaintiff Johnson, Donte  
 [4] Exhibit List Volume 3 Exhibits 15-28

**CASE SUMMARY**  
**CASE NO. A-19-789336-W**

02/14/2019	 Exhibits Filed By: Plaintiff Johnson, Donte <i>[5] Exhibit List Volume 4 Exhibits 29-32</i>
02/15/2019	 Exhibits Filed By: Plaintiff Johnson, Donte <i>[6] Exhibit List Volume 5 Exhibits 33-39;</i>
02/15/2019	 Exhibits Filed By: Plaintiff Johnson, Donte <i>[7] Exhibit List Volume 6 Exhibits 40-44</i>
02/15/2019	 Exhibits Filed By: Plaintiff Johnson, Donte <i>[8] Exhibit List Volume 7 Ex. 45-53</i>
02/15/2019	 Exhibits Filed By: Plaintiff Johnson, Donte <i>[9] Exhibit List Volume 8 Exhibits 54-56</i>
02/15/2019	 Exhibits Filed By: Plaintiff Johnson, Donte <i>[10] Exhibit List Volume 9 Exhibits 57-59</i>
02/15/2019	 Exhibits Filed By: Plaintiff Johnson, Donte <i>[11] Exhibit List Volume 13 Exhibit 84</i>
02/15/2019	 Exhibits Filed By: Plaintiff Johnson, Donte <i>[12] Exhibit List Volume 10 Exhibits 60-65</i>
02/15/2019	 Exhibits Filed By: Plaintiff Johnson, Donte <i>[13] Exhibit List Volume 11 Exhibits 66-72</i>
02/15/2019	 Exhibits Filed By: Plaintiff Johnson, Donte <i>[14] Exhibit List Volume 12 Exhibits 73-83</i>
02/15/2019	 Exhibits Filed By: Plaintiff Johnson, Donte <i>[15] Exhibit List Volume 14 Exhibits 85-86 Part 1</i>
02/15/2019	 Exhibits Filed By: Plaintiff Johnson, Donte <i>[16] Exhibit List Volume 15 Exhibits 87-131</i>
02/15/2019	 Exhibits Filed By: Plaintiff Johnson, Donte <i>[17] Exhibit List Volume 16 Exhibits 132-142</i>
02/15/2019	 Exhibits Filed By: Plaintiff Johnson, Donte

**CASE SUMMARY**  
**CASE NO. A-19-789336-W**

*[18] Exhibit List Volume 17 Exhibits 143-152 Part 1*

02/15/2019



Exhibits

Filed By: Plaintiff Johnson, Donte

*[19] Exhibit List Volume 18 Exhibits 153-167*

02/15/2019



Exhibits

Filed By: Plaintiff Johnson, Donte

*[20] Exhibit List Volume 19 Exhibits 168-181*

02/15/2019



Motion for Leave to File

Party: Plaintiff Johnson, Donte

*[21] Motion for Leave to File Under Seal and Notice of Motion*

02/15/2019



Filed Under Seal

Filed By: Defendant Gittere, William

*[22] File Under Seal Exhibit 63*

02/15/2019



Exhibits

Filed By: Plaintiff Johnson, Donte

*[23] Exhibit List Volume 20 Exhibits 182-189*

02/15/2019



Exhibits

Filed By: Plaintiff Johnson, Donte

*[24] Exhibit List Volume 21 Ex. 190*

02/15/2019



Exhibits

Filed By: Plaintiff Johnson, Donte

*[25] Exhibit List Volume 22 Ex. 191-214*

02/19/2019



Exhibits

Filed By: Plaintiff Johnson, Donte

*[26] Exhibit List Volume 14 Exhibits 85-86 Part 3*

02/19/2019



Exhibits

Filed By: Plaintiff Johnson, Donte

*[27] Exhibit List Volume 14 Exhibits 85-86 Part 4*

02/19/2019



Exhibits

Filed By: Plaintiff Johnson, Donte

*[28] Exhibit List Volume 14 Exhibits 85-86 Part 2*

02/19/2019



Exhibits

Filed By: Plaintiff Johnson, Donte

*[29] Exhibit List Volume 14 Exhibits 85-86 Part 5*

02/19/2019



Exhibits

Filed By: Plaintiff Johnson, Donte

*[30] Exhibit List Volume 14 Exhibits 85-86 Part 6*

02/19/2019



Exhibits














Filed By: Plaintiff Johnson, Donte

*[31] Exhibit List Volume 14 Exhibits 85-86 Part 7*





**CASE SUMMARY**  
**CASE NO. A-19-789336-W**

02/19/2019	 Exhibits Filed By: Plaintiff Johnson, Donte <i>[32] Exhibit List Volume 17 Ex. 143-152 Part 2</i>
03/29/2019	 Recorders Transcript of Hearing <i>[33] Recorders Transcript of Hearing Re: Defendant's Motion for Leave to File Under Seal 02/25/2019</i>
04/04/2019	 Request Filed by: Plaintiff Johnson, Donte <i>[34] Request to Strike Petition</i>
04/11/2019	 Request Filed by: Plaintiff Johnson, Donte <i>[35] Request for Petition to be Stricken as it is Not Properly Before the Court</i>
04/29/2019	Administrative Reassignment - Judicial Officer Change <i>To Judge Jacqueline M. Bluth</i>
05/16/2019	 Motion Filed By: Defendant Gittere, William <i>[36] Motion to Vacate Briefing Schedule and Strike Habeas Petition.</i>
05/17/2019	 Amended Filed By: Plaintiff Johnson, Donte <i>[37] Amended Verification</i>
05/17/2019	 Exhibits Filed By: Plaintiff Johnson, Donte <i>[38] Index of Exhibit in Support of Amended Verification</i>
05/23/2019	 Motion Filed By: Defendant Gittere, William <i>[39] Motion to Vacate Briefing Schedule and Strike Habeas Petition - Hearing Requested.</i>
05/23/2019	 Clerk's Notice of Hearing <i>[40] Notice of Hearing</i>
05/28/2019	 Opposition to Motion Filed By: Plaintiff Johnson, Donte <i>[41] Opposition to Motions to Vacate Briefing Schedule and Strike Habeas Petition</i>
05/29/2019	 Response Filed by: Defendant Gittere, William <i>[42] State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction).</i>
06/20/2019	 Reply to Opposition <i>[43] Reply to Opposition to Motion to Vacate Briefing Schedule and Strike Habeas Petition.</i>
06/26/2019	 Motion Filed By: Plaintiff Johnson, Donte <i>[44] Motion to Withdraw Request to Strike Petition and to Withdraw Request for Petition to be Stricken as Not Properly Before the Court</i>

**CASE SUMMARY**  
**CASE NO. A-19-789336-W**

09/30/2019	 Stipulation and Order Filed by: Plaintiff Johnson, Donte <i>[45] Stipulation and Order to Modify Briefing Schedule</i>
11/22/2019	 Stipulation and Order to Modify Filed By: Plaintiff Johnson, Donte <i>[46] Stipulation and Order to Modify Briefing Schedule</i>
12/13/2019	 Reply Filed by: Plaintiff Johnson, Donte <i>[47] Reply to State's Response to Petition for Writ of Habeas Corpus (Post-Conviction)</i>
12/13/2019	 Exhibits Filed By: Plaintiff Johnson, Donte <i>[48] Exhibits in Support of Reply to State's Response to Petition for Writ of Habeas Corpus (Post-Conviction)</i>
12/13/2019	 Motion for Discovery Filed By: Plaintiff Johnson, Donte <i>[49] Motion and Notice of Motion for Leave to Conduct Discovery (Hearing Requested)</i>
12/13/2019	 Exhibits Filed By: Plaintiff Johnson, Donte <i>[50] Exhibits in Support of Petitioner's Motion for Leave to Conduct Discovery</i>
12/13/2019	 Motion Filed By: Plaintiff Johnson, Donte <i>[51] Motion and Notice of Motion for Evidentiary Hearing (Hearing Requested)</i>
12/13/2019	 Clerk's Notice of Hearing <i>[52] Notice of Hearing</i>
02/11/2020	 Supplemental Filed by: Plaintiff Johnson, Donte <i>[53] Notice of Supplemental Exhibit</i>
02/02/2021	 Objection Filed By: Plaintiff Johnson, Donte <i>[54] Notice of Objections to Proposed Order</i>
09/07/2021	Case Reassigned to Department 17 <i>From Judge Jacqueline Bluth to Judge Michael Villani</i>
09/22/2021	 Notice of Hearing <i>[55] Notice of Hearing</i>
10/08/2021	 Finding of Fact and Conclusions of Law <i>[56] Findings of Fact, Conclusions of Law and Order</i>
10/11/2021	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Plaintiff Johnson, Donte <i>[57] Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
11/10/2021	

**CASE SUMMARY**  
**CASE NO. A-19-789336-W**

	 <b>Notice of Appeal</b> Filed By: Plaintiff Johnson, Donte <i>[58] Notice of Appeal</i>
11/10/2021	 <b>Case Appeal Statement</b> Filed By: Plaintiff Johnson, Donte <i>[59] Case Appeal Statement</i>
	<b>HEARINGS</b>
02/25/2019	 <b>Motion to Seal/Redact Records (8:30 AM)</b> (Judicial Officer: Bixler, James) <i>Defendant's Motion for Leave to File Under Seal</i> Motion Granted; Defendant's Motion for Leave to File Under Seal Journal Entry Details: <i>Steve Owens, Chief Deputy District Attorney and Ellesse Henderson, Assistant Federal Public Defender, present. Court stated writ should be part of criminal case. On for today is to file deposition from 1998 under seal. If you read transcript, Judge Sobel did not actually order it under seal but what was said was the State should not release the video. Further, State had obligation not to release video. Mr. Fiedler stated transcript is actually filed under seal and never unsealed. COURT ORDERED, transcript to REMAIN UNDER SEAL. Colloquy. FURTHER ORDERED, motion GRANTED and the following briefing schedule issued: State's Opposition due by April 29, 2019, Deft's Reply due by June 28, 2019, and petition CONTINUED. 7/15/19 8:30 AM PETITION FOR WRIT OF HABEAS CORPUS;</i>
03/04/2019	<b>CANCELED Petition for Writ of Habeas Corpus (8:30 AM)</b> (Judicial Officer: Bonaventure, Joseph T.) <i>Vacated - Set in Error</i>
07/09/2019	 <b>Motion to Vacate (9:30 AM)</b> (Judicial Officer: Bluth, Jacqueline M.) <i>Defendant's Motion to Vacate Briefing Schedule and Strike Habeas Petition</i> Off Calendar; Journal Entry Details: <i>Also present on behalf of the Defendant, Federal Public Defender Alise Henderson and David Anthony. Mr. Owens advised proceedings are on for his motion to dismiss, for which the basis is that in Pro Per the Defendant filed a request to strike his petition and has since filed a motion to withdraw the request which should be granted, rendering his motion to dismiss moot. Mr. Fiedler concurred. Colloquy regarding continuation of July 31, 2019 petition and briefing. COURT ORDERED, Defendant's reply is due September 30th, matter SET for argument October 8th; Defendant's Motion to Vacate Briefing Schedule and Strike Habeas Petition DENIED/OFF CALENDAR. 10-8-19 9:00 AM ARGUMENT: PETITION FOR WRIT OF HABEAS CORPUS;</i>
10/08/2019	<b>CANCELED Petition for Writ of Habeas Corpus (9:30 AM)</b> (Judicial Officer: Bonaventure, Joseph T.) <i>Vacated - per Stipulation and Order</i>
01/16/2020	<b>CANCELED Motion for Leave (3:00 AM)</b> (Judicial Officer: Bluth, Jacqueline M.) <i>Vacated - per Law Clerk</i> <i>Motion and Notice of Motion for Leave to Conduct Discovery</i>
02/13/2020	<b>Argument (9:00 AM)</b> (Judicial Officer: Bluth, Jacqueline M.) <i>Petition for Writ of Habeas Corpus</i> Matter Heard;
02/13/2020	<b>Status Check (9:00 AM)</b> (Judicial Officer: Bluth, Jacqueline M.) <i>Setting of 1. Motion for Leave &amp; 2. Motion for Evidentiary Hearing</i> Matter Heard;
02/13/2020	 <b>All Pending Motions (9:00 AM)</b> (Judicial Officer: Bluth, Jacqueline M.) Matter Heard; Journal Entry Details:

## CASE SUMMARY

CASE NO. A-19-789336-W

PETITION FOR WRIT OF HABEAS CORPUS...SETTING OF 1. MOTION FOR LEAVE & 2.0 MOTION FOR EVIDENTIARY HEARING Present on behalf of the State, Deputy's Alex Chen and Skylar Sullivan, and on behalf of the Defendant, Federal Public Defender's Randy Fiedler and Elise Henderson. Mr. Fiedler advised the Defendant's presence was waived. Argument in support of Petition For Writ of Habeas Corpus by Ms. Henderson in regards to the procedural bars, ineffectiveness of counsel and requested an Evidentiary Hearing. Argument in opposition of petition and Evidentiary Hearing by Mr. Chen; nothings been heard to overcome the procedural bar. COURT ORDERED, a written decision will be issued and if it's determined an Evidentiary Hearing is necessary, it will be included in the order or minutes.;

05/15/2020



**Minute Order** (3:00 AM) (Judicial Officer: Bluth, Jacqueline M.)

Minute Order Re: Petitioner's Post-conviction Writ of Habeas Corpus/Petitioner's Motion for Discovery and Motion for an Evidentiary Hearing

Minute Order - No Hearing Held;

Journal Entry Details:

After review of the petition and the response, and hearing argument on February 13, 2020, Petitioner's Post-conviction Writ of Habeas Corpus is hereby DENIED. The Court finds the petition to be procedurally barred as both untimely pursuant to NRS 34.726 and successive pursuant to NRS 34.810. NRS 34.726 requires [u]nless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the appellate court issues its remittitur. Here, the remittitur on the appeal of the second penalty phase issued on January 28, 2008. The instant petition was filed in February 13, 2019, which is more than eleven years and therefore well beyond the one year time bar. The State, in its opposition, also plead laches under NRS 34.800(2) which states [a] period exceeding 5 years between the filing of a judgment of conviction, an order imposing a sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the filing of a petition challenging the validity of a judgment of conviction creates a rebuttable presumption of prejudice to the State. The prejudice can only be overcome if the petitioner shows that the petition is based upon grounds of which the petitioner could not have had knowledge by the exercise of reasonable diligence, or the petitioner demonstrates that a fundamental miscarriage of justice has occurred. NRS 34.800(1). No such showing has been made. NRS 34.810 states a second or successive petition must be dismissed if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are alleged, the judge or justice finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ. The instant petition is the third petition in this matter. The first petition was filed on February 13, 2008. Counsel was appointed for Petitioner and extensive briefing commenced. An evidentiary hearing was conducted over three days in June 2013. The Court denied the petition and the findings of fact and conclusions of law was entered on March 17, 2014. Petitioner filed a second petition on October 2, 2014 which was denied and a findings of fact and conclusions of law was filed on February 4, 2015. Subsequently, Petitioner initiated federal habeas proceedings on April 23, 2018 and while those were still pending, the federal public defender filed the instant petition on his behalf. The grounds in the instant third petition are not new and the prior determination was on the merits as shown through the evidentiary hearing and findings of fact/conclusions of law resulting from his first petition. Therefore, the petition is successive. The procedural bars can be overcome if the petitioner can prove good cause and prejudice. Here, the petitioner has failed to do so. Additionally, if the Petitioner is entitled to counsel in his first petition, he may assert an ineffective assistance of counsel claim in a second petition. *Crump v. Warden, Nevada State Prison*, 113 Nev. 293, 302, 934 P.2d 247, 253 (1997) (holding that ineffective assistance of post-conviction counsel could constitute the cause necessary to prevent procedural default). Here, Petitioner claims that post-conviction counsel's deficient performance provides the cause and the merits of the underlying claim provide the prejudice required to overcome all three procedural bars. Petitioner claims that counsel's failure to do any extra investigation beyond the record and raise certain meritorious claims was ineffective and thus the bars do not apply. This court disagrees with Petitioner's analysis to overcome the procedural bars as detailed below. First, upon review of the record, this Court finds that the Batson claims, juror conduct, and the jury instructions have been addressed in previous petitions where they were decided on the merits. While certain claims regarding expert testimony on why individuals may change their testimony, coerced statements and blood spatter may not have been raised previously, this Court does not find post-conviction counsel's deficient for failing to raise them. In order to show ineffective assistance of counsel, the Petitioner must show that counsel's representation fell below an objective standard of reasonableness and that prejudice resulted. *Strickland v. Washington*, 466 U.S. 668, 686 (1984). Prejudice results when, but for counsel's error, there is a reasonable probability that the result of the proceedings would have been different. *Id.* Here,

EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY**

**CASE NO. A-19-789336-W**

*Petitioner has not shown that the failure to raise those additional claims would have changed the result of the proceedings. Second, the failure to conduct additional investigations in this case does not raise to the level of ineffective assistance of counsel. A defendant who contends that his attorney was ineffective because he did not adequately investigate must show how a better investigation would have rendered a more favorable outcome probable. Molina v. State, 120 Nev. 185, 87 P.3d 533 (2004). Strickland states that a fair assessment of an attorney's performance requires that every effort be made to eliminate the distorting effects of hindsight.... Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989) (internal citation omitted). Here, Petitioner does not assert with specificity what an additional investigation would have uncovered and how it would have changed the outcome. Based on the ruling above, Petitioner's Motion for Discovery and Motion for an Evidentiary Hearing are also hereby DENIED. Counsel for the Defense to promptly submit an order. CLERK'S NOTE: The above minute order has been distributed via e-mail to: Federal Public Defender Randolph M. Fiedler and Chief Deputy District Attorney Alexander G. Chen. kar 5/18/20;*

10/28/2021



**Status Check** (3:00 AM) (Judicial Officer: Villani, Michael)

*Status Check: Order (Petitioner's Post-conviction Writ of Habeas Corpus/Petitioner's Motion for Discovery and Motion for an Evidentiary Hearing)*

Vacate; Order Filed

Journal Entry Details:

*Status Check for Findings of Fact Conclusions of Law & Order came before this Court on the October 28, 2021 Chamber Calendar. COURT NOTES, Order was filed October 8, 2021.*

*COURT ORDERED, matter VACATED. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 11/2/2021;*

DATE

FINANCIAL INFORMATION

**Plaintiff** Johnson, Donte

Total Charges

24.00

Total Payments and Credits

24.00

**Balance Due as of 11/12/2021**

**0.00**



## DISTRICT COURT CIVIL COVER SHEET

A-19-789336-W

Clark 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):	Defendant(s) (name/address/phone):
Donte Johnson, #66858	William Gittere, Warden
Ely State Prison	Ely State Prison
P.O. Box 1989	P.O. Box 1989
Ely, Nevada 89301	Ely, NV 89301
Attorney (name/address/phone):	Attorney (name/address/phone):
Randolph Fiedler, Assistant Federal Public Defender	Steven B. Wolfson, Clark County District Attorney
411 E. Bonneville Ave, Suite 250	200 Lewis Avenue
Las Vegas, NV 89101	Las Vegas, NV 89101
(702) 388-6577	(702) 671-2500

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

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

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

2/13/2019  
Date

Signature of initiating party or representative

See other side for family-related case filings.

**FFCO**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**ALEXANDER CHEN**  
Chief Deputy District Attorney  
Nevada Bar #0010539  
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-

DONTE JOHNSON,  
#1586283  
Defendant..

CASE NO: A-19-789336-W /  
98-C-153154-1

DEPT NO: VI

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

DATE OF HEARING: FEBRUARY 13, 2020  
TIME OF HEARING: 9:30 AM

THIS CAUSE having come on for hearing before the Honorable JACQUELINE BLUTH, District Judge, on the 13th day of February, 2020, the Petitioner not being present but represented by the Federal Public Defender's Office, by and through RANDOLPH FIEDLER and ELISE HENDERSON, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through ALEXANDER CHEN, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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

2 NRS 34.726 requires [u]nless there is good cause shown for delay, a petition that  
3 challenges the validity of a judgment or sentence must be filed within 1 year after entry of the  
4 judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after  
5 the appellate court issues its remittitur. Here, the remittitur on the appeal of the second penalty  
6 phase issued on January 28, 2008. The instant petition was filed on February 13, 2019, which  
7 is more than eleven years and therefore well beyond the one year time bar. The State, in its  
8 opposition, also plead laches under NRS 34.800(2) which states [a] period exceeding 5 years  
9 between the filing of a judgment of conviction, an order imposing a sentence of imprisonment  
10 or a decision on direct appeal of a judgment of conviction and the filing of a petition  
11 challenging the validity of a judgment of conviction creates a rebuttable presumption of  
12 prejudice to the State. The prejudice can only be overcome if the petitioner shows that the  
13 petition is based upon grounds of which the petitioner could not have had knowledge by the  
14 exercise of reasonable diligence, or the petitioner demonstrates that a fundamental miscarriage  
15 of justice has occurred. NRS 34.800(1). No such showing has been made.

16 NRS 34.810 states a second or successive petition must be dismissed if the judge or  
17 justice determines that it fails to allege new or different grounds for relief and that the prior  
18 determination was on the merits or, if new and different grounds are alleged, the judge or  
19 justice finds that the failure of the petitioner to assert those grounds in a prior petition  
20 constituted an abuse of the writ. The instant petition is the third petition in this matter. The  
21 first petition was filed on February 13, 2008. Counsel was appointed for Petitioner and  
22 extensive briefing commenced. An evidentiary hearing was conducted over three days in June  
23 2013. The Court denied the petition and the findings of fact and conclusions of law was entered  
24 on March 17, 2014. Petitioner filed a second petition on October 2, 2014 which was denied  
25 and a findings of fact and conclusions of law was filed on February 4, 2015. Subsequently,  
26 Petitioner initiated federal habeas proceedings on April 23, 2018 and while those were still  
27 pending, the federal public defender filed the instant petition on his behalf. The grounds in the  
28 instant third petition are not new and the prior determination was on the merits as shown

1 through the evidentiary hearing and findings of fact/conclusions of law resulting from his first  
2 petition. Therefore, the petition is successive.

3 The procedural bars can be overcome if the petitioner can prove good cause and  
4 prejudice. Here, the petitioner has failed to do so. Additionally, if Petitioner is entitled to  
5 counsel in his first petition, he may assert an ineffective assistance of counsel claim in a second  
6 petition. Crump v. Warden, Nevada State Prison, 113 Nev. 293, 302, 934 P.2d 247, 253 (1997)  
7 (holding that ineffective assistance of post-conviction counsel could constitute the cause  
8 necessary to prevent procedural default). Here, Petitioner claims that post-conviction counsel's  
9 deficient performance provides the cause and the merits of the underlying claim provide the  
10 prejudice required to overcome all three procedural bars. Petitioner claims that counsel's  
11 failure to do any extra investigation beyond the record and raise certain meritorious claims  
12 was ineffective and thus the bars do not apply. This court disagrees with Petitioner's analysis  
13 to overcome the procedural bars as detailed below.

14 First, upon review of the record, this Court finds that the Batson claims, juror conduct,  
15 and the jury instructions have been addressed in previous petitions where they were decided  
16 on the merits. While certain claims regarding expert testimony on why individuals may change  
17 their testimony, coerced statements and blood spatter may not have been raised previously,  
18 this Court does not find post-conviction counsel deficient for failing to raise them. In order to  
19 show ineffective assistance of counsel, the Petitioner must show that counsel's representation  
20 fell below an objective standard of reasonableness and that prejudice resulted. Strickland v.  
21 Washington, 466 U.S. 668, 686 (1984). Prejudice results when, but for counsel's error, there  
22 is a reasonable probability that the result of those additional claims would have changed the  
23 result of the proceedings.

24 Second, the failure to conduct additional investigations in this case does not raise to the  
25 level of ineffective assistance of counsel. A defendant who contends that his attorney was  
26 ineffective because he did not adequately investigate must show how a better investigation  
27 would have rendered a more favorable outcome probable. Molina v. State, 120 Nev. 185, 87  
28 P.3d 533 (2004). Strickland states that a fair assessment of an attorney's performance requires

1 that every effort be made to eliminate the distorting effects of hindsight. Ford v. State, 105  
2 Nev. 850, 853, 784 P.2d 951, 953 (1989)(internal citation omitted). Here, Petition does not  
3 assert with specificity what an additional investigation would have uncovered and how it  
4 would have changed the outcome.

5 **ORDER**

6 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief  
7 be DENIED.

8 THEREFORE, IT IS HEREBY ORDERED that the Petitioner's Motion for Discovery  
9 be DENIED.

10 THEREFORE, IT IS HEREBY ORDERED that the Petitioner's Motion for an  
11 Evidentiary Hearing be DENIED.

12 ~~DATED this \_\_\_\_ day of September, 2021.~~ Dated this 8th day of October, 2021

13  
14   
DISTRICT JUDGE

NH  
kj

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

C79 0B5 012C DE6B  
Jacqueline M. Bluth  
District Court Judge

17 BY /s/ Alexander Chen  
18 ALEXANDER CHEN  
19 Chief Deputy District Attorney  
Nevada Bar #0010539  
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1 **CSERV**

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

5  
6 Donte Johnson, Plaintiff(s)

CASE NO: A-19-789336-W

7 vs.

DEPT. NO. Department 17

8 William Gittere, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 10/8/2021

15 ECF Notifications CHU

ecf\_nvchu@fd.org

16 Jeremy Kip

Jeremy\_Kip@fd.org

17 District Attorney's Office

motions@clarkcountyda.com

18 Sara Jelinek

sara\_jelinek@fd.org

19 Randolph Fiedler

Randolph\_Fiedler@fd.org

20 Celina Moore

celina\_moore@fd.org

21 Steven Owens

steven.owens@clarkcountyda.com

22 Ellesse Henderson

ellesse\_henderson@fd.org

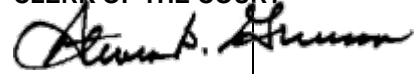
23 Eileen Davis

Eileen.davis@clarkcountyda.com

24 Alexander Chen

Alexander.Chen@clarkcountyda.com

25  
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28



1 NEFF

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

4  
5 DONTE JOHNSON,

6 Petitioner,

7 vs.

8 WILLIAM GITTERE; ET AL.,

9 Respondent,

Case No: A-19-789336-W

Dept No: XVII

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

11 **PLEASE TAKE NOTICE** that on October 8, 2021, the court entered a decision or order in this matter, a  
12 true and correct copy of which is attached to this notice.

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

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Heather Ungermann

17 Heather Ungermann, Deputy Clerk

18  
19 **CERTIFICATE OF E-SERVICE / MAILING**

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

22 ☒ By e-mail:

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

24 ☒ The United States mail addressed as follows:

25 Donte Johnson # 66858  
P.O. Box 1989  
26 Ely, NV 89301

Rene L. Valladares,  
Federal Public Defender  
411 E. Bonneville, Ste. 250  
Las Vegas, NV 89101

27 /s/ Heather Ungermann

28 Heather Ungermann, Deputy Clerk



**FFCO**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**ALEXANDER CHEN**  
Chief Deputy District Attorney  
Nevada Bar #0010539  
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-

DONTE JOHNSON,  
#1586283

Defendant..

CASE NO: A-19-789336-W /  
98-C-153154-1

DEPT NO: VI

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

DATE OF HEARING: FEBRUARY 13, 2020  
TIME OF HEARING: 9:30 AM

THIS CAUSE having come on for hearing before the Honorable JACQUELINE BLUTH, District Judge, on the 13th day of February, 2020, the Petitioner not being present but represented by the Federal Public Defender's Office, by and through RANDOLPH FIEDLER and ELISE HENDERSON, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through ALEXANDER CHEN, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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2 petition. Therefore, the petition is successive.

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4 prejudice. Here, the petitioner has failed to do so. Additionally, if Petitioner is entitled to  
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23 result of the proceedings.

24 Second, the failure to conduct additional investigations in this case does not raise to the  
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2 Nev. 850, 853, 784 P.2d 951, 953 (1989)(internal citation omitted). Here, Petition does not  
3 assert with specificity what an additional investigation would have uncovered and how it  
4 would have changed the outcome.

5 **ORDER**

6 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief  
7 be DENIED.

8 THEREFORE, IT IS HEREBY ORDERED that the Petitioner's Motion for Discovery  
9 be DENIED.

10 THEREFORE, IT IS HEREBY ORDERED that the Petitioner's Motion for an  
11 Evidentiary Hearing be DENIED.

12 ~~DATED this \_\_\_\_ day of September, 2021.~~ Dated this 8th day of October, 2021

13  
14   
DISTRICT JUDGE

NH  
kj

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

C79 0B5 012C DE6B  
Jacqueline M. Bluth  
District Court Judge

17 BY /s/ Alexander Chen  
18 ALEXANDER CHEN  
19 Chief Deputy District Attorney  
Nevada Bar #0010539  
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1 **CSERV**

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

5  
6 Donte Johnson, Plaintiff(s)

CASE NO: A-19-789336-W

7 vs.

DEPT. NO. Department 17

8 William Gittere, Defendant(s)

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23 Eileen Davis

Eileen.davis@clarkcountyda.com

24 Alexander Chen

Alexander.Chen@clarkcountyda.com

25

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**February 25, 2019**

---

A-19-789336-W      Donte Johnson, Plaintiff(s)  
vs.  
William Gittere, Defendant(s)

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<b>February 25, 2019</b>	<b>8:30 AM</b>	<b>Motion to Seal/Redact Records</b>	<b>Defendant's Motion for Leave to File Under Seal</b>
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**HEARD BY:** Bixler, James

**COURTROOM:** RJC Courtroom 10C

**COURT CLERK:** April Watkins

**RECORDER:** De'Awna Takas

**REPORTER:**

**PARTIES**

**PRESENT:** FIEDLER, RANDOLPH M      Attorney

**JOURNAL ENTRIES**

- Steve Owens, Chief Deputy District Attorney and Ellesse Henderson, Assistant Federal Public Defender, present.

Court stated writ should be part of criminal case. On for today is to file deposition from 1998 under seal. If you read transcript, Judge Sobel did not actually order it under seal but what was said was the State should not release the video. Further, State had obligation not to release video. Mr. Fiedler stated transcript is actually filed under seal and never unsealed. COURT ORDERED, transcript to REMAIN UNDER SEAL. Colloquy. FURTHER ORDERED, motion GRANTED and the following briefing schedule issued: State's Opposition due by April 29, 2019, Deft's Reply due by June 28, 2019, and petition CONTINUED.

7/15/19 8:30 AM PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**July 09, 2019**

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A-19-789336-W	Donte Johnson, Plaintiff(s) vs. William Gittere, Defendant(s)
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<b>July 09, 2019</b>	<b>9:30 AM</b>	<b>Motion to Vacate</b>
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<b>HEARD BY:</b> Bluth, Jacqueline M.	<b>COURTROOM:</b> RJC Courtroom 10C
---------------------------------------	-------------------------------------

**COURT CLERK:** Keith Reed

**RECORDER:** De'Awna Takas

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Also present on behalf of the Defendant, Federal Public Defender Alise Henderson and David Anthony. Mr. Owens advised proceedings are on for his motion to dismiss, for which the basis is that in Pro Per the Defendant filed a request to strike his petition and has since filed a motion to withdraw the request which should be granted, rendering his motion to dismiss moot. Mr. Fiedler concurred. Colloquy regarding continuation of July 31, 2019 petition and briefing. COURT ORDERED, Defendant's reply is due September 30th, matter SET for argument October 8th; Defendant's Motion to Vacate Briefing Schedule and Strike Habeas Petition DENIED/OFF CALENDAR.

10-8-19 9:00 AM ARGUMENT: PETITION FOR WRIT OF HABEAS CORPUS



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**February 13, 2020**

---

A-19-789336-W	Donte Johnson, Plaintiff(s)
	vs.
	William Gittere, Defendant(s)

---

**February 13, 2020      9:00 AM      All Pending Motions**

**HEARD BY:** Bluth, Jacqueline M.      **COURTROOM:** RJC Courtroom 10C

**COURT CLERK:** Keith Reed

**RECORDER:** De'Awna Takas

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- PETITION FOR WRIT OF HABEAS CORPUS...SETTING OF 1. MOTION FOR LEAVE & 2.0  
MOTION FOR EVIDENTIARY HEARING

Present on behalf of the State, Deputy's Alex Chen and Skylar Sullivan, and on behalf of the Defendant, Federal Public Defender's Randy Fiedler and Elise Henderson. Mr. Fiedler advised the Defendant's presence was waived. Argument in support of Petition For Writ of Habeas Corpus by Ms. Henderson in regards to the procedural bars, ineffectiveness of counsel and requested an Evidentiary Hearing. Argument in opposition of petition and Evidentiary Hearing by Mr. Chen; nothings been heard to overcome the procedural bar. COURT ORDERED, a written decision will be issued and if it's determined an Evidentiary Hearing is necessary, it will be included in the order or minutes.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**May 15, 2020**

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A-19-789336-W	Donte Johnson, Plaintiff(s)
	vs.
	William Gittere, Defendant(s)

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<b>May 15, 2020</b>	<b>3:00 AM</b>	<b>Minute Order</b>
---------------------	----------------	---------------------

<b>HEARD BY:</b> Bluth, Jacqueline M.	<b>COURTROOM:</b> RJC Courtroom 10C
---------------------------------------	-------------------------------------

**COURT CLERK:** Keith Reed

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- After review of the petition and the response, and hearing argument on February 13, 2020, Petitioner's Post-conviction Writ of Habeas Corpus is hereby DENIED. The Court finds the petition to be procedurally barred as both untimely pursuant to NRS 34.726 and successive pursuant to NRS 34.810.

NRS 34.726 requires [u]nless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the appellate court issues its remittitur. Here, the remittitur on the appeal of the second penalty phase issued on January 28, 2008. The instant petition was filed in February 13, 2019, which is more than eleven years and therefore well beyond the one year time bar. The State, in its opposition, also plead laches under NRS 34.800(2) which states [a] period exceeding 5 years between the filing of a judgment of conviction, an order imposing a sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the filing of a petition challenging the validity of a judgment of conviction creates a rebuttable presumption of prejudice to the State. The prejudice can only be overcome if the petitioner shows that the petition is based upon grounds of which the petitioner

could not have had knowledge by the exercise of reasonable diligence, or the petitioner demonstrates that a fundamental miscarriage of justice has occurred. NRS 34.800(1). No such showing has been made.

NRS 34.810 states a second or successive petition must be dismissed if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are alleged, the judge or justice finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ. The instant petition is the third petition in this matter. The first petition was filed on February 13, 2008. Counsel was appointed for Petitioner and extensive briefing commenced. An evidentiary hearing was conducted over three days in June 2013. The Court denied the petition and the findings of fact and conclusions of law was entered on March 17, 2014. Petitioner filed a second petition on October 2, 2014 which was denied and a findings of fact and conclusions of law was filed on February 4, 2015. Subsequently, Petitioner initiated federal habeas proceedings on April 23, 2018 and while those were still pending, the federal public defender filed the instant petition on his behalf. The grounds in the instant third petition are not new and the prior determination was on the merits as shown through the evidentiary hearing and findings of fact/conclusions of law resulting from his first petition. Therefore, the petition is successive.

The procedural bars can be overcome if the petitioner can prove good cause and prejudice. Here, the petitioner has failed to do so. Additionally, if the Petitioner is entitled to counsel in his first petition, he may assert an ineffective assistance of counsel claim in a second petition. *Crump v. Warden, Nevada State Prison*, 113 Nev. 293, 302, 934 P.2d 247, 253 (1997) (holding that ineffective assistance of post-conviction counsel could constitute the cause necessary to prevent procedural default). Here, Petitioner claims that post-conviction counsel's deficient performance provides the cause and the merits of the underlying claim provide the prejudice required to overcome all three procedural bars. Petitioner claims that counsel's failure to do any extra investigation beyond the record and raise certain meritorious claims was ineffective and thus the bars do not apply. This court disagrees with Petitioner's analysis to overcome the procedural bars as detailed below.

First, upon review of the record, this Court finds that the Batson claims, juror conduct, and the jury instructions have been addressed in previous petitions where they were decided on the merits. While certain claims regarding expert testimony on why individuals may change their testimony, coerced statements and blood spatter may not have been raised previously, this Court does not find post-conviction counsel's deficient for failing to raise them. In order to show ineffective assistance of counsel, the Petitioner must show that counsel's representation fell below an objective standard of reasonableness and that prejudice resulted. *Strickland v. Washington*, 466 U.S. 668, 686 (1984). Prejudice results when, but for counsel's error, there is a reasonable probability that the result of the proceedings would have been different. *Id.* Here, Petitioner has not shown that the failure to raise those additional claims would have changed the result of the proceedings.

Second, the failure to conduct additional investigations in this case does not raise to the level of

ineffective assistance of counsel. A defendant who contends that his attorney was ineffective because he did not adequately investigate must show how a better investigation would have rendered a more favorable outcome probable. *Molina v. State*, 120 Nev. 185, 87 P.3d 533 (2004). Strickland states that a fair assessment of an attorney's performance requires that every effort be made to eliminate the distorting effects of hindsight.... *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989) (internal citation omitted). Here, Petitioner does not assert with specificity what an additional investigation would have uncovered and how it would have changed the outcome.

Based on the ruling above, Petitioner's Motion for Discovery and Motion for an Evidentiary Hearing are also hereby DENIED.

Counsel for the Defense to promptly submit an order.

CLERK'S NOTE: The above minute order has been distributed via e-mail to: Federal Public Defender Randolph M. Fiedler and Chief Deputy District Attorney Alexander G. Chen. kar 5/18/20

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**October 28, 2021**

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A-19-789336-W	Donte Johnson, Plaintiff(s) vs. William Gittere, Defendant(s)
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<b>October 28, 2021</b>	<b>3:00 AM</b>	<b>Status Check</b>	<b>Order Filed</b>
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**HEARD BY:** Villani, Michael **COURTROOM:** Chambers

**COURT CLERK:** Samantha Albrecht

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Status Check for Findings of Fact Conclusions of Law & Order came before this Court on the October 28, 2021 Chamber Calendar. COURT NOTES, Order was filed October 8, 2021. COURT ORDERED, matter VACATED.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 11/2/2021

# 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

DONTE JOHNSON,

Plaintiff(s),

vs.

WILLIAM GITTERE; AARON FORD,

Defendant(s),

Case No: A-19-789336-W

Dept No: XVII

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 12 day of November 2021.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk