

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES HOWARD HAYES, JR.,
Appellant(s),

vs.

THE STATE OF NEVADA; AND JERRY
HOWELL, WARDEN,
Respondent(s),

Electronically Filed
Oct 01 2021 10:54 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-19-793315-W
Consolidated with A-21-831979-W
Docket No: 83151

RECORD ON APPEAL VOLUME 4

ATTORNEY FOR APPELLANT
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PROPER PERSON
P.O. BOX 208
INDIAN SPRINGS, NV 89070

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

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Heather A. Smith
CLERK OF THE COURT

1 ~~CONFIDENTIAL~~
2 Name: HOLES, JAMES H #1175077
3 Address: SDCC P.O. Box 208
4 Indian Springs, NV 89070
Telephone: N/A
Acting in Proper Person

5
6 IN THE 8th JUDICIAL DISTRICT COURT OF
7 THE STATE OF NEVADA IN AND FOR THE
8 COUNTY OF Clark

9
10 James H. Holes
11 Plaintiff (Petitioner),

"HEARING REQUESTED"

Case No. A-19-79315-W

12 vs.
13 State of Nevada
14 Defendant (Respondent).

Dept. No. 3

15
16 **REQUEST FOR SUBMISSION**

17 I, James H. Holes, acting in Proper Person, request that the
18 Supplemental petition for writ of habeas filed on 4-7-2021, 4-14-2021
19 be submitted to the Court for consideration and determination.

20 I hereby certify that a copy of this Request has been mailed to all parties or their counsel.

21 DATE: 6-30-2021

22 James H. Holes
23 (Signature)

24 JAMES H. HOLES
25 (Name)

26 SDCC P.O. Box 208
27 (Address)

Indian Springs, NV 89070

N/A
(Telephone Number)

28 ~~NOTE~~ NOTE: SEE EXHIBIT 329

RECEIVED

JUL 06 2021

CLERK OF THE COURT

A-19-793315-W

EXHIBIT [#] 329

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

March 08, 2021

A-19-793315-W James Hayes, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

March 08, 2021 8:30 AM Motion to Compel

HEARD BY: Trujillo, Monica

COURTROOM: RJC Courtroom 11C

COURT CLERK: Alan Castle

RECORDER: Rebeca Gomez

REPORTER:

PARTIES

PRESENT: Iscan, Ercan E Attorney
Nevada State of Defendant

JOURNAL ENTRIES

- After reviewing petition, Court determined Defendant needs to supplement his petition with specificity. Further, Court directed State to respond to Defendant's petition. Supplemental briefing schedule set and matter continued for decision. Defendant has until April 4, 2020 to supplement his petition; State has until May 5, 2020 to file a response.

5/10/21 8:30 a.m. Decision

PRINT DATE: 03/17/2021

Page 12 of 12

Minutes Date: August 19, 2019

CERTIFICATE OF SERVICE BY MAILING

I, JAMES H. HAYES, hereby certify, pursuant to NRCP 5(b), that on this 30th day of JUNE, 2021, I mailed a true and correct copy of the foregoing, "REQUEST FOR SUBMISSIONS FOR SUPPLEMENTAL petition for writ of habeas..." by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

Clark County District Courts
OFFICE OF THE CLERK
200 LAUDIS AVE. 3RD FLOOR
LAS VEGAS, NV
87735-1160

Clark County District Atty
200 LAUDIS AVE
LAS VEGAS, NV
87735-2212

Attorney General of Nevada
100 N. CARSON STREET
CARSON CITY, NV
89701

CC:FILE

DATED: this 30th day of JUNE, 2021.

James H. Hayes
JAMES H. HAYES #1175072
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

Mail # 1175077

5 Dec

P.O. Box 208

Indian Springs, NV

89070

Clark County District Courts
"Office of the Clerk"

200 LEWIS AVE; 3RD FLOOR

LAS VEGAS, NEVADA

0911-55168

12527

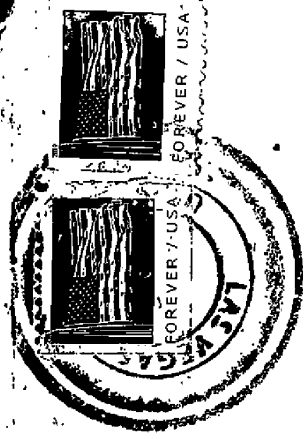
Mail

Subscribe and share "Youtube" channel...

Thanks

RICANTICMILLR

Google:



Electronically Filed
07/08/2021

Annex Shinn
CLERK OF THE COURT

1 James H. Hayes #1175077

2 /In Propria Personam
3 Post Office Box 208 S.D.C.C.
4 Indian Springs, Nevada 89018

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 James H. Hayes
9 Petitioner

10 vs

11 State of Nevada
12 Respondent

"HEARING REQUESTED"

Case No. A-19-773315-W

Dept No. 3

Docket _____

14 NOTICE OF MOTION

15 YOU WILL PLEASE TAKE NOTICE, that SUPPLEMENTAL Petition for writ
16 of HABEAS CORPUS

17 will come on for hearing before the above-entitled Court on the _____ day of _____, 20____,

18 at the hour of _____ o'clock _____ M. In Department _____ of said Court.

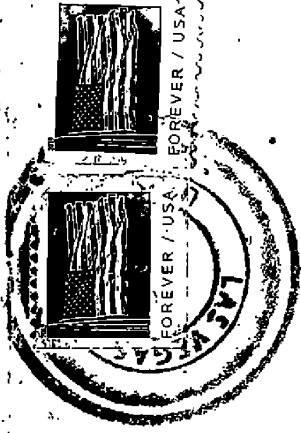
20 CC:FILE

22 DATED: this 30th day of JUNE, 2021.

24 BY: James H. Hayes
25 JAMES H. HAYES # 1175077
26 /In Propria Personam

CLERK OF THE COURT
JUL - 6 2021
RECEIVED

Hayes # 117577
50cc
P.O. Box 208
Indian Springs, NV
89070



Clark County District Courts
"Office of the Clerk"

200 LEWIS AVE; 3RD FLOOR

Las Vegas, Nevada

0911-551160

1977

May

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Thanks

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Google:

1 DISTRICT COURT

CLARK COUNTY, NEVADA

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Steven D. Grierson
CLERK OF THE COURT



3 James Hayes, Plaintiff(s)

4 vs.

Nevada State of, Defendant(s)

Case No.: A-19-793315-W

Department 3

6 **NOTICE OF HEARING**

8 Please be advised that the Plaintiff's Notice of Motion Re: Supplemental Petition for
9 Writ of Habeas Corpus in the above-entitled matter is set for hearing as follows:

10 **Date:** August 09, 2021

11 **Time:** 8:30 AM

12 **Location:** RJC Courtroom 11C
Regional Justice Center
200 Lewis Ave.
13 Las Vegas, NV 89101

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

17 STEVEN D. GRIERSON, CEO/Clerk of the Court

18
19 By: /s/ Michelle McCarthy
20 Deputy Clerk of the Court

21 **CERTIFICATE OF SERVICE**

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

24
25 By: /s/ Michelle McCarthy
26 Deputy Clerk of the Court

Electronically Filed
08/11/2021

Alvin L. Linn
CLERK OF THE COURT

1 Hayes, James H # 1175077

2 Southern Desert Correctional Center

3 Post Office Box 208

4 Indian Springs, Nevada 89070

5
6 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF Clark

8 JAMES H. HAYES

9 Petitioner,

10 Vs.

11 STATE OF NEVADA

12 Respondent(s).

13 HEARING REQUESTED

14 Case No. # A-19-793315-1W

15 Dept. No. # 3

16 Docket No. # _____

17 MOTION FOR TRANSCRIPTS AT STATE EXPENSE

18 Date of Hearing: _____

19 Time of Hearing: _____

20 "ORAL ARGUMENT REQUESTED: Yes ☒ No ☐

21 COMES NOW, Petitioner JAMES H. HAYES, proceeding in proper

22 person, and hereby moves this Honorable Court for an Order for the production of all

23 transcripts, papers, and pleadings, also any other document in regards to the above-

24 entitled action.

25 This Motion is made and based upon all papers and pleadings on file with the

clerk of the Court, which are hereby incorporated by this reference, the Memorandum

of Points and Authorities herein, and attached Affidavit of Petitioner.

7

2

3

10

3

2

3

CERTIFICATE OF SERVICE BY MAILING

I, JAMES H. HUBBS, hereby certify, pursuant to NRCP 5(b), that on this 23rd
day of July, 2021, I mailed a true and correct copy of the foregoing, "Motion for
TRANSCRIPTS of STATE EXPENSES"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

Clark County District Courts
OFFICE OF THE CLERK
200 LOUIS AVE. 3RD FL
LAS VEGAS, NV
89155-1160

Clark County District Attorney
200 LOUIS AVE
LAS VEGAS, NV
89155-2212

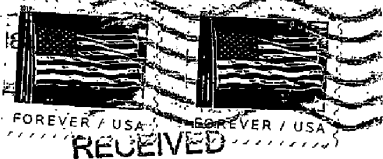
CC:FILE

DATED: this 23rd day of July, 2021.

James H. Hubbs
JAMES H. HUBBS #1175077
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

Healey, J #1175077
SDCC
P.O. Box 208
Indian Springs, NV
89070

LAS VEGAS NV 89001
26 JUL 2021 PM 4:10



AUG - 3 2021

CLERK OF THE COURT

Clark County District Courts
"Office of the Clerk"
200 LEWIS AVE; 3RD FLOOR
LAS VEGAS, NEVADA
89155-1160

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Mail

89155-1160

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UCCANT & ME LLC

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Heather J. Hume
CLERK OF THE COURT

CASE NO. A-19-793315-W

DEPT. NO. 3

James N. Hayes

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

"HEARING REQUESTED"

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
REQUEST FOR TRANSCRIPTS AT
STATE EXPENSE

The Petitioner respectfully request that this Court order the production of the transcripts, papers, pleadings, and any other documents with regard to the above-entitled case. That these documents are to be furnished to the petitioner at State Expense, due to his proverty.

That only with proper review of those documents of the above-entitled case will the petitioner be able to adequately prepare a post-conviction petition, or a disrec appeal, that would allege all issues and grounds for relief that he is seeking. PETERSON vs. WARDEN, 87 Nev. 134, 483 P.2d 204 (1971), holds that:

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CLERK OF THE COURT

" . . . does not contemplate that a record will be furnished at State Expense upon mere unsupported request of a petitioner who is unable to pay for them. . . so must he satisfy the

1 points raise merit and such merit
2 will be supported by review of the
record. . . "

3 Moreover, the petitioner would be prejudiced absent the Court's
4 granting of the within motion. Petitioner would not have means
5 necessary to file a proper person petition for writ of habeas
6 corpus, post-conviction or direct appeal to the Nevada Supreme
7 Court, that would allow the petitioner to allege all available
8 issues.

9 WHEREFORE, Petitioner, James A. Hayes prays that this Court
10 enter an order directing the reporter to prepare the foregoing
11 requested transcripts.

12 DATED this 23rd day of July . . . 2021 .

13
14 James A. Hayes
15
16

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28 . . .



**DISTRICT COURT
CLARK COUNTY, NEVADA

James Hayes, Plaintiff(s)

vs.

Nevada State of, Defendant(s)

Case No.: A-19-793315-W

Department 3

NOTICE OF HEARING

Please be advised that the Plaintiff's Motion for Transcripts at State Expense in the above-entitled matter is set for hearing as follows:

Date: September 13, 2021

Time: 8:30 AM

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

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

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

CERTIFICATE OF SERVICE

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

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

1 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

2 IN AND FOR THE COUNTY OF CLARK

3 JAMES H. HAYES

4 Petitioner,

5 Vs.

6 State of Nevada

7 Respondent(s).

8 Case No. # A-19-793315-W

9 Dept. No. # 3

10 Docket No. # _____

11 ORDER

12 Upon reading the motion of Petitioner, JAMES H. HAYES, requesting
13 transcripts at state expense, and having determined that the Movant has demonstrated
14 good cause pursuant to Peterson v. Warden, 87 Nev. 134, 483 P.2d 204 (1971);

15 IT IS HEREBY ORDERED that the Petitioner's motion for transcripts at state
16 expense is granted.

17 IT IS HEREBY FURTHER ORDERED, that the records be transcribed in the
18 case of _____, Case No. # _____, for the rates of
19 _____

20 IT IS HEREBY FURTHER ORDERED, the Clerk of the Court is to prepare all of
21 the transcripts, pleadings, papers, and any other documents in regard to the above-
22 entitled action, and forward said papers to Petitioner.

23 DATED This _____ day of _____, 20 _____.

24 CC: File

25 _____
26 DISTRICT JUDGE

27
RECEIVED
AUG 03 2021

CLERK OF THE COURT

1 IN THE 8th JUDICIAL DISTRICT AND FOR THE COUNTY
2 OF Clark

3
4
5 James H. Hayes
6 Plaintiff,
7 -vs-
8 State of Nevada
9 Respondent

Case No. A-19-793315-W
Dept. No. 3
Calendared: _____
File: _____

10
11 ORDER TO TRANSCRIBE RECORDS

12 IT IS HEREBY ORDERED, that the _____
13 transcribe the records on _____, Case No.
14 A-19-793315-W, for the dates of _____.
15 DATED this ____ day of _____, 2000

16
17
18 BY: _____
19 DISTRICT COURT JUDGE

20 ///
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AUG 03 2021
CLERK OF THE COURT

Annex Shinn
CLERK OF THE COURT

Hayes, James H ID NO. 1175077

SOUTHERN DESERT CORRECTIONAL CTN.
20825 COLD CREEK RD.
P.O. BOX 208
INDIAN SPRINGS, NV 89070

In the 8th Judicial District Court of the
State of Nevada in and for the County of
Clark

James H. Hayes
(Petitioner)

v.

State of Nevada
Charles Daniels (Noc Direct)

"HEARING REQUESTED"
CASE NO.: A-21-831979-W

DEPT. NO.: 3

DOCKET: A-19-793315-W Dept III
Consolidated with :
A-21-831979-W

Petition for Reconsideration/Rehearing

COMES NOW, ~~petitioner~~ James H. Hayes, herein above respectfully
moves this Honorable Court for an decision that is reasonable
application of clearly establish supreme court precedent
in favor of petitioner as relief is warranted

This Motion is made and based upon the accompanying Memorandum of Points and
Authorities,

DATED: this 11th day of August, 2021

BY: James H. Hayes
JAMES H. HAYES # 1175077
Defendant In Proper Personam

ADDITIONAL FACTS OF THE CASE:

Standard of Review:

District Court 8th Judicial decision is contrary to clearly established Supreme Court precedent. Here, the court applies a rule that contradicts the governing law set forth in Supreme Court cases (Harris v. Nelson, 394 U.S. 286, 89 S.Ct. 1082) or the court confronts a set of facts that are materially indistinguishable from a decision of the Court of Appeal of California, 1st Appellate District, Division Two (In re Ivan Von Statch 56 Cal. App. 5th 53)

District Court decision is an unreasonable application of clearly established Supreme Court precedent (Carel Waters 15 Cal. 3d 238)

Argument:

1. Habeas Corpus petition is an acceptable vehicle for a general declaration of the procedural rights of individuals detained under challenged procedures (Garcia v. Dunbar 253 Cal. App. 2d 338)

2. NRS chapter 34 acknowledge that "whenever in the power to issue the writ of habeas corpus is the power to furnish a remedy for the deprivation of any fundamental right which is cognizable in habeas corpus. The court's power could not be limited to either discharging the petitioner from, or remanding him to custody, but extended to disposing of him" as the justice of the case may require, thus this court, faced with a meritorious petition for a writ of habeas corpus, must consider factors of

1 justice and equity and craft an appropriate remedy.

2 3. The related federal action (1983) challenging the
3 actions of the Nevada Department of Corrections does not
4 lessen this honorable court's authority, and duty, to
5 provide effective habeas corpus relief.

6 4. If this honorable court finds the 8th Amendment
7 subjective and objective requirements satisfied, it must
8 grant appropriate injunctive relief.

9 5. NDOC's acting or failing to act with deliberate
10 indifference to a substantial risk of serious harm to a
11 prisoner is the equivalent of reckless disregard for that
12 risk (Owen v. 19). The U.S. Supreme Court has said, state courts
13 "have the duty and competence to vindicate rights secured
14 by the constitution in state criminal proceedings and
15 provide any necessary relief (Williams v. Taylor 529 U.S.
16 420 (2000)).

17 6. This petition is NOT a post-conviction writ
18 challenging a sentence or conviction. The petition before
19 this court is concerned with the population of the
20 prison and the problem of prisoners is very specific:
21 the containment in the dilapidated prison of a highly
22 contagious and deadly virus that has already led
23 to the death of inmates. Moreover, the measures petition
24 seeks are not permanent but only for as long as the
25 pandemic continues.

26 7. Petitioner contends that habeas corpus is an
27 appropriate vehicle to present issues related to the

1 conditions of confinement in a state prison, and to
2 vindicate the rights of prison inmates generally (IN RE
3 HEARD 42 Cal.3d 223) and there is ample authority to mandate
4 such broad systemic relief in order to redress this
5 massive ongoing infringement of the inmates' constitutional
6 rights to freedom from his current life-threatening
7 confinement conditions (IN RE LOFTON 244 Cal. App. 4th 1025)

8. The manner in which the writ of habeas
9 corpus has been employed to enhance the rights of
10 prisoners similarly situated to the petitioner is illustrated
11 by Supreme Court given the gravity of the emergency in
12 which the spread of the transmission of the coronavirus
13 may take place.

14 Finally, in the light most favorable to the state,
15 FRCP 15(c)(2) exception to 1 year deadline allowed to later present
16 new claims in an amended petition filed after the deadline
17 passes, the new claims relate back to the date of the
18 original petition if the new claims share a common core of
19 operative facts with the original petition as the state contended
20 in its filed opposition. (Cowan v. Steel 645 F.3d 815) (MAYLE v.
21 FELIX 125 S.Ct. 2562). Mayle expressly cited as a case where
22 relation back was proper, thus, even if one assumes that
23 the original petition did not state 8th Amendment claim and
24 unusual claim it did share a common core of operative
25 facts with the original petition and that means the claim
26 would relate back to the date of the original petition per
27 state's contentions in its opposition

CERTIFICATE OF SERVICE BY MAILING

I, James N. Haults, hereby certify, pursuant to NRCP 5(b), that on this 11th
day of August, 2021, I mailed a true and correct copy of the foregoing, "Petition
for Remand/Rehearing"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

Clark County District Courts
Office of the Clerk
200 LEWIS AVE. 310-91
LAS VEGAS, NV
89155-1160

Clark County District Attorney
200 LEWIS AVE
LAS VEGAS, NV
89155-2212

Attorney General of Nevada
100 NORTH WASHINGTON
CARSON CITY, NV
89701

CC:FILE

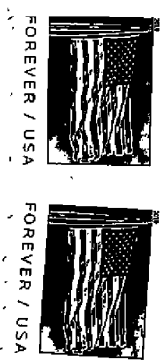
DATED: this 11th day of August, 2021.

James N. Haults
James N. Haults #1175077
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

Alakes, J #1175677
OBC
P.O. Box 2208
Tulsa, OK 74105
81070

Chick County District Courts
"Office of the Clerk"
200 Lewis Ave, Box 4100
Lawrence, MS 38942
89155-1160

LEED
May



Electronically Filed
08/18/2021

Heather L. Smith
CLERK OF THE COURT

1 HAYES, JAMES H. #1175077
2 / In Propria Personam
3 Post Office Box 208 S.D.C.C.
4 Indian Springs, Nevada 89018

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7 A-19-793315-W Dept III
8 Consolidated with :-
9 A-21-831979-W

10 JAMES H. HAYES
11 v.
12 State of Nevada;
13 CHARLES DANIELS (NDOC)

"HEARING REQUESTED"

Case No. A-21-831979-W

Dept No. 3

Docket _____

14 NOTICE OF MOTION

15 YOU WILL PLEASE TAKE NOTICE, that _____

16
17 will come on for hearing before the above-entitled Court on the _____ day of _____, 20____
18 at the hour of _____ o'clock ____ M. In Department _____, of said Court.

19
20 CC:FILE

21
22 DATED: this 11th day of August, 2021.

23
24 BY:

James H. Hayes
JAMES H. HAYES #1175077
/In Propria Personam

25
26
27 **RECEIVED**

28 **AUG 16 2021**

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA



James Hayes, Plaintiff(s)	Case No.: A-19-793315-W
vs.	A-21-831979-W
Nevada State of, Defendant(s)	Department 3

NOTICE OF HEARING

Please be advised that the Plaintiff's Petition for Reconsideration /Rehearing in the above-entitled matter is set for hearing as follows:

Date: September 23, 2021
Time: Chambers
Location: Chambers
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

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

CERTIFICATE OF SERVICE

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

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

1 **FCL**
2 **STEVEN B. WOLFSON**
3 Clark County District Attorney
4 Nevada Bar #001565
5 **JONATHAN VANBOSKERCK**
6 Chief Deputy District Attorney
7 Nevada Bar #06528
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 **JAMES HOWARD HAYES,**
10 aka James Howard Hayes Jr.,
11 #2796708

Petitioner,

-vs-

13 **THE STATE OF NEVADA,**

Respondent.

CASE NO: A-19-793315-W
A-21-831979-W

DEPT NO: III

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

DATE OF HEARING: JULY 19, 2021
TIME OF HEARING: 8:30 AM

19 THIS CAUSE having come before the Honorable MONICA TRUJILLO, District Court
20 Judge, on the 19th day of July, 2021, the Petitioner not being present, not being represented
21 by counsel, and the Respondent being represented by STEVEN B. WOLFSON, Clark County
22 District Attorney, through MORGAN THOMAS, Deputy District Attorney, and the Court
23 having considered the matter, including briefs, transcripts, and documents on file herein, now
24 therefore, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT, CONCLUSIONS OF LAW

STATEMENT OF THE CASE

27 On or about July 23, 2013, James H. Hayes (hereinafter, "Petitioner") was charged by
28 way of Criminal Complaint with one count of BURGLARY (Category B Felony – NRS

1 205.060) and one count of ATTEMPT GRAND LARCENY (Category D Felony/Gross
2 Misdemeanor – NRS 205.220.1, 205.222.2, 193.330). Following a Preliminary Hearing in
3 Justice Court, Las Vegas Township on June 14, 2016, the charge of BURGLARY was bound
4 over to District Court, and the charge of ATTEMPT GRAND LARCENY was dismissed.

5 On June 17, 2016, the State filed an Information with the District Court, charging
6 Petitioner with one count of BURGLARY. On August 29, 2017, the State filed an Amended
7 Notice of Intent to Seek Punishment as a Habitual Criminal. On November 7, 2018, pursuant
8 to a Guilty Plea Agreement (“GPA”), Petitioner entered a plea of Guilty pursuant to North
9 Carolina v. Alford, 400 U.S. 25 (1970) to one count of ATTEMPT GRAND LARCENY.

10 The terms of the GPA are as follows:

11 The State has agreed to make no recommendation at the time of sentencing. The
12 State has no opposition to probation with the only condition being thirty (30)
13 days in the Clark County Detention Center (CCDC), with thirty (30) days credit
for time served.

14 GPA at 1:22-24.

15 The GPA further includes, in pertinent part, the following acknowledgement:

16 I understand and agree that, if...an independent magistrate, by affidavit review,
17 confirms probable cause against me for new criminal charges including reckless
18 driving or DUI, but excluding minor traffic violations, the State will have the
19 unqualified right to argue for any legal sentence and term of confinement
20 allowable for the crime(s) to which I am pleading guilty, including the use of
21 any prior convictions I may have to increase my sentence as a habitual criminal
to five (5) to twenty (20) years, Life without the possibility of parole, Life with
the possibility of parole after ten (10) years, or a definite twenty-five (25) year
term with the possibility of parole after ten (10) years.

22 GPA at 2: 1-9.

23 An Amended Information reflecting the new charge of ATTEMPT GRAND
24 LARCENY was filed in conjunction with the GPA. Petitioner was adjudged Guilty pursuant
25 to Alford that same day, and the sentencing hearing was scheduled for March 6, 2019.

26 On January 31, 2019, the State filed a State’s Notice of Motion and Motion to Revoke
27 Bail, asserting that in Las Vegas Justice Court case number 19F01534X, a Justice of the Peace
28 had found probable cause to charge Petitioner with Burglary for acts committed on or around

1 January 26, 2019. The State's Motion to Revoke Bail was granted after a hearing on February
2 4, 2019.

3 At the sentencing hearing on March 6, 2019, the State argued that it had regained the
4 right to argue pursuant to the terms of the GPA. The Court agreed, and the State argued that
5 Petitioner should be punished under NRS 207.010 (the "Small Habitual Statute"). The Court
6 agreed, and Petitioner was sentenced to sixty (60) to one hundred seventy-four (174) months
7 in the Nevada Department of Corrections (NDOC), consecutive to Petitioner's sentence in
8 another case (C315125). The Court also awarded Petitioner ten (10) days credit for time
9 served. The Judgment of Conviction in this case was filed on March 12, 2019.

10 Petitioner filed a Notice of Appeal on March 28, 2019. Petitioner's Case Appeal
11 Statement was filed on August 9, 2019 (SCN 78590).

12 On April 15, 2019, Petitioner filed a Petition for Writ of Habeas Corpus ("Petition").
13 Pursuant to Court order, the State filed its Response on June 26, 2019. At the hearing on the
14 Petition on August 19, 2019, the Court noted that Petitioner filed two Addenda to his original
15 Petition (the first on May 7, 2019, and the second on May 9, 2019). Pursuant to the Court's
16 order, the State filed a Response to the Addenda on October 10, 2019. Petitioner filed a Reply
17 to the State's Response on November 4, 2019. On November 18, 2019, Petitioner's Petition
18 came before the Court, at which time the Court took the matter OFF CALENDAR due to
19 Petitioner's pending appeal.

20 On November 19, 2019, Petitioner filed another Notice of Appeal, appealing the denial
21 of his Coram Nobis motion. His Case Appeal Statement was filed on December 11, 2019 (SCN
22 80222). On August 31, 2020, the Nevada Court of Appeals affirmed the Court's denial of his
23 Coram Nobis motion. Remittitur issued on October 12, 2020.

24 On January 14, 2020, the Nevada Supreme Court AFFIRMED Petitioner's Judgment
25 of Conviction in SCN 78590. Remittitur issued on February 25, 2020.

26 On February 12, 2020, Petitioner filed an "Amended Petition for Writ of Habeas
27 Corpus" (his "Amended Petition"). This Court ordered a Response to that Amended Petition
28 on March 4, 2020. Thereafter, on March 6, 2020, Petitioner filed a "Petition: Expeditious

1 Judicial Examination NRS 34.360-34.830” (his “Petition: EJE”). Pursuant to this Court’s
2 order, the State filed its Response to both filings on April 17, 2020. Petitioner replied to the
3 State’s Response on May 15, 2020.

4 On May 15, 2020, Petitioner also filed an “Affidavit of Actual Innocence not Mere
5 Legal Insufficiency but ‘Factual Innocence.’” On May 27, 2020, Petitioner filed a
6 Supplemental Petition. While Petitioner’s numerous pleadings were pending, Petitioner filed
7 a Motion for Peremptory Challenge of Judge and to Disqualify Judge William Bill Kephart.
8 Thereafter, the State filed its Responses to Petitioner’s Affidavit of Actual Innocence and
9 Petitioner’s Supplemental Petition on June 10, 2020. As a result of Petitioner’s Peremptory
10 Challenge, Petitioner’s pending matters were taken off calendar on June 15, 2020. On June
11 29, 2020, Petitioner filed his Reply to the State’s Response to Petitioner’s Affidavit of Actual
12 Innocence.

13 On July 7, 2020, Chief Judge Linda Bell considered, and denied, Petitioner’s Motion
14 for Peremptory Challenge of Judge Kephart. Chief Judge Bell’s Decision and Order was filed
15 on July 8, 2020.

16 On July 23, 2020, Petitioner filed his Reply to the State’s Response to Petitioner’s
17 Supplemental Petition. Petitioner, that same day, filed a Motion for Ruling for Rule 60b
18 Motion for Relief; Motion to Vacate; Amended Petition for Writ of Habeas Corpus. The State
19 filed its Reponse to Petitioner’s Motion for Ruling on September 2, 2020. Petitioner’s Motion
20 for Ruling was denied on September 9, 2020.

21 On September 25, 2020, Petitioner filed a Motion for Expeditious Ruling for “Amended
22 Petition for Writ of Habeas Corpus” 3rd Request. On October 7, 2020, he filed a Motion to
23 Set Evidentiary Hearing and Issue Transport Order. On October 14, 2020, Petitioner filed a
24 Motion to Reconsider Order Denying Motion for Ruling for Rule 60b Motion for Relief;
25 Motion to Vacate; Amended Petition for Writ of Habeas Corpus. The State filed responsive
26 pleadings to each of Petitioner’s respective filings on November 10, 2020. On November 16,
27 2020, the Court considered, and denied, Petitioner’s three Motions. The Court’s Order was
28 filed on November 21, 2020.

1 On December 22, 2020, Petitioner filed a “Motion to Compel Judgment Pursuant to
2 Nevada Revised Statutes Chapter 34 FRCP Rule 12(c) for Amended Petition for Writ of
3 Habeas Corpus.” The State filed its Response to that Motion on January 27, 2021. On February
4 1, 2021, the Court denied Petitioner’s Motion to Compel. The Court also noted that no order
5 had been filed regarding Petitioner’s Amended Petition for Writ of Habeas Corpus; therefore,
6 the Court denied the Amended Petition as well. After the Court’s ruling on the matter,
7 Petitioner filed an “Opposition to State’s Response to Petitioner’s Motion to Compel
8 Judgment” on February 18, 2021. The Court issued its Findings of Fact, Conclusions of Law
9 and Order reflecting its denial of Petitioner’s Motion to Compel on March 17, 2021. Notice of
10 Entry of that Order was filed on March 19, 2021.

11 On February 2, 2021, Petitioner filed a “Reply Motion to Compel Judgment Pursuant
12 to Nevada Revised Statutes Chapter 34...FRCP Rule 12(c) for Amended Petition for Writ of
13 Habeas Corpus.” The State filed its Opposition to that “Reply Motion” on April 16, 2021. On
14 May 12, 2021, the Court denied Petitioner’s “Reply Motion.”

15 On March 9, 2021, the Court filed its Findings of Fact, Conclusions of Law and Order
16 denying Petitioner’s Amended Petition. That entry was noticed on March 10, 2021. On March
17 11, 2021, Petitioner filed a Petition to Reconsider that Order. He filed a subsequent Petition to
18 Reconsider on March 17, 2021. On March 18, 2021, Petitioner filed a Notice of Appeal from
19 the Court’s denial of his Amended Petition. As of the date of the instant Opposition, no
20 remittitur has issued from that appeal. On April 7, 2021, Petitioner filed a “Supplemental
21 Petition for Writ of Habeas Corpus” Petition (NRS 34.360-34.830). Petitioner filed a
22 “Supplemental ‘Addendum’” on April 14, 2021.

23 The State filed its Opposition to Petitioner’s various Petitions to Reconsider on April
24 9, 2021. On April 12, 2021, the Court denied Petitioner’s Petitions to Reconsider. Again, well
25 after the Court’s ruling, Petitioner filed a Reply to the State’s Opposition on May 6, 2021. On
26 May 12, 2021, the Court issued its Order Denying Petitioner’s Petition to Reconsider.

27 In the interim, Petitioner also filed the instant “Petition for Writ of Habeas Corpus
28 COVID-19 (Coronavirus)” (his “instant Petition”). The State filed an Opposition and Motion

1 to Consolidate on June 24, 2021. On July 19, 2021, this matter came before this Court. This
2 Court did not accept argument at the time of hearing, but made the following findings and
3 conclusions:

4 ANALYSIS

5 I. THE POST-CONVICTION CASES SHOULD BE CONSOLIDATED

6 NRS 34.780(1), explains that, to the extent they are not inconsistent with habeas
7 statutes, the Nevada Rules of Civil Procedure apply to post-conviction proceedings. Directly
8 on point, the Nevada Supreme Court has determined:

9
10 NRCP 42(a) allows consolidation of pending actions that involve “a common
11 question of law or fact.” Like under its identical federal counterpart, a district
court enjoys “broad, but not unfettered, discretion in ordering consolidation.”

12 Nalder v. Eighth Judicial Dist. Court, 136 Nev. 200, 206-07, 462 P.3d 677, 684 (2020)
13 (quoting Marcuse v. Del Webb Cmtys., Inc., 123 Nev. 278, 286, 163 P.3d 462, 468 (2007)).

14 Petitioner’s original post-conviction habeas proceeding was filed under Case No. A-
15 19-793315-W. In that proceeding, Petitioner raised a number of challenges to his judgment of
16 conviction in Case No. C315718, including allegations of Double Jeopardy, violations of Due
17 Process, and Cruel and Unusual Punishment. See, Petition for Writ of Habeas Corpus, filed
18 on April 15, 2019 (in Case No. A793315).

19 Upon review of the instant Petition, this Court finds that Petitioner again claims that
20 his sentence amounts to Cruel and Unusual Punishment under the Eighth Amendment. See
21 Instant Petition at 5. Therefore, because this action, and Petitioner’s separate post-conviction
22 action, each involve a common question – whether Petitioner’s judgment of conviction and
23 sentence are constitutional – this Court concludes that the two actions should be consolidated.

24 Moreover, this Court finds that judicial economy supports consolidation of the two
25 actions. Petitioner continues to file pleadings – with or without permission of this Court –
26 raising the same (or substantially similar) claims against his judgment of conviction. This
27 Court has determined that these numerous pleadings should be contained within the same

28 //

1 action, so as to allow for uniform consideration and treatment, as they all center around the
2 same underlying criminal case.

3 Therefore, this Court concludes that the instant actions should be consolidated into the
4 pre-existing post-conviction case, A793315.

5 **II. THE INSTANT PETITION DOES NOT WARRANT RELIEF**

6 Petitioner's instant Petition raises a single claim – that the COVID-19 pandemic has
7 rendered Petitioner's sentence of imprisonment cruel and unusual in violation of the Eighth
8 Amendment. See Instant Petition at 5. However, this Court finds that this claim is not
9 cognizable on habeas review. Further, this Court finds that the claim itself is procedurally
10 defaulted pursuant to the time-bar of NRS 34.726. As such, this Court concludes that Petitioner
11 is not entitled to relief.

12 **A. Petitioner's Claim is Not Cognizable in Habeas Review**

13 The Nevada Supreme Court has expressly excluded claims of cruel and unusual
14 punishment from consideration in post-conviction habeas review. See Bowen v. Warden,
15 Nevada State Prison, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984). The Bowen Court
16 explained:

17 We have repeatedly held that a petition for writ of habeas corpus may challenge
18 the validity of current confinement, but not the conditions thereof. See Director,
19 Dep't Prisons v. Arndt, 98 Nev. 84, 640 P.2d 1318 (1982); Rogers v. Warden,
20 84 Neb. [sic] 539, 445 P.2d 28 (1968); Rainsberger v. Leypoldt, 77 Nev. 399,
21 365 P.2d 489 (1961), cert. denied, 368 U.S. 516, 82 S.Ct. 530, 7 L.Ed.2d 522
22 (1962). In Rogers, we held that a claim of brutal treatment at the hands of prison
23 officials was not cognizable on a habeas petition, because the claim spoke to the
24 conditions and not the validity of confinement. In Arndt, we left open the
specific question raised by this appeal, whether the imposition of a qualitatively
more restrictive type of confinement within the prison, such as punitive
segregation, may be challenged by a petition for writ of habeas corpus. We now
hold that such a challenge speaks only to the conditions of confinement and
therefore may not be raised by a habeas corpus petition. See Rogers v. Warden,
supra.

25 Id. Thereafter, the Bowen Court affirmed the dismissal of a habeas petition challenging only
26 the conditions of confinement. Id.

27 The United States Supreme Court has discussed a litany of claims alleging cruel and
28 unusual punishments. In Wilson v. Seiter, 501 U.S. 294, 111 S.Ct. 2321 (1991), the Court

1 dealt with claims alleging “overcrowding, excessive noise, insufficient locker storage space,
2 inadequate heating and cooling, improper ventilation, unclean and inadequate restrooms,
3 unsanitary dining facilities and food preparation, and housing with mentally and physically ill
4 inmates.” At 296, 111 S.Ct. at 2323. The Wilson Court characterized such claims as
5 “conditions of confinement” claims, which required an allegation of “deliberate indifference”
6 by prison officials. Id. at 297, 111 S.Ct. at 2323.

7 Petitioner raises one claim – which he labels as “Violation of United States Constitution
8 8th Amendment ‘Cruel and Unusual Punishment’ (*Deliberate Indifference*). Instant Petition
9 at 2 (emphasis added). Therefore, this Court finds that Petitioner acknowledges he is not
10 challenging the validity of his judgment of conviction; rather, he is challenging the *conditions*
11 *of his confinement*. See Wilson, 501 U.S. at 297, 111 S.Ct. at 2323. Indeed, Petitioner
12 specifically alleges:

13 Petitioner’s “Deliberate Indifference” claim is established where the challenged
14 deficiency is sufficiently serious and prison officials know that petitioner face a
15 substantial risk of serious harm and disregard that risk by failing to take
reasonable measures to abate it as describe herein, and the target of the petition
is not what respondents have done but what they have refused to do.

16 Instant Petition at 4-5. Petitioner also includes a claim that the COVID-19 pandemic renders
17 his sentence cruel and unusual because of his risk of contracting the virus in prison. Id. As
18 such, this Court finds that Petitioner’s claim is not cognizable in habeas proceedings, and
19 concludes that the same must be dismissed. See Farmer v. Brennan, 511 U.S. 825, 832, 114
20 S.Ct. 1970, 1976 (1994) (holding that the proper way to raise a claim that one’s lawful
21 incarceration has exposed them to harm while incarcerated is to challenge the *conditions of*
22 *confinement* under the Eighth Amendment); see also Bowen, 100 Nev. at 490, 686 P.2d at 250
23 (conditions of confinement claims are not cognizable in habeas review).

24 Because the Nevada Supreme Court has clearly and expressly precluded conditions of
25 confinement claims from post-conviction habeas proceedings, this Court finds that the instant
26 Petition is not the proper legal vehicle within which to raise Petitioner’s claim. As such, this
27 Court concludes that it lacks the jurisdiction to grant habeas relief on the instant Petition, and
28 therefore, the same must be dismissed.

1 **B. Petitioner’s Instant Petition is Time-Barred**

2 The mandatory provision of NRS 34.726(1) states:

3 Unless there is good cause shown for delay, a petition that challenges the validity
4 of a judgment or sentence must be filed *within 1 year after entry of the judgment*
5 *of conviction or, if an appeal has been taken from the judgment, within 1 year*
6 *after the Supreme Court issues its remittitur.* For the purposes of this subsection,
 good cause for delay exists if the petitioner demonstrates to the satisfaction of
 the court:

- 7 (a) That the delay is not the fault of the petitioner; and
8 (b) That dismissal of the petition as untimely will unduly prejudice the
 petitioner.

9 (emphasis added). “[T]he statutory rules regarding procedural default are mandatory and
10 cannot be ignored when properly raised by the State.” State v. Dist. Court (Riker), 121 Nev.
11 225, 233, 112 P.3d 1070, 1075 (2005).

12 Per the language, the one-year time bar prescribed by NRS 34.726 begins to run from
13 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
14 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998); see Pellegrini v.
15 State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001) (holding that NRS 34.726 should be
16 construed by its plain meaning).

17 In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada
18 Supreme Court rejected a habeas petition that was filed two days late, pursuant to the “clear
19 and unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the
20 importance of filing the petition with the District Court within the one-year mandate, absent a
21 showing of “good cause” for the delay in filing. Gonzales, 118, Nev. at 593, 590 P.3d at 902.
22 The one-year time bar is therefore strictly construed. In contrast with the short amount of time
23 to file a notice of appeal, a prisoner has a full year to file a post-conviction habeas petition, so
24 there is no injustice in a strict application of NRS 34.726(1), despite any alleged difficulties
25 with the postal system. Id. at 595, 53 P.3d at 903.

26 The Nevada Supreme Court has held that courts have a *duty* to consider whether a
27 defendant’s post-conviction petition claims are procedurally barred, noting:

28 //

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

4 Riker, 121 Nev. at 231, 112 P.3d at 1074. The Nevada Supreme Court has granted no
5 discretion to the district courts regarding whether to apply the statutory procedural bars; the
6 rules *must* be applied.

7 This Court notes that Remittitur from the affirmance of Petitioner's Judgment of
8 Conviction was filed on February 25, 2020. Therefore, Petitioner had until February 25, 2021,
9 to file a timely post-conviction habeas petition. Dickerson, 114 Nev. at 1087, 967 P.2d at 1133-
10 34. Petitioner's instant Petition was not filed until March 30, 2021, over a month past the
11 statutory deadline. Therefore, this Court finds that, absent a showing of good cause and
12 prejudice, Petitioner's instant Petition must be dismissed as untimely. Riker, 121 Nev. at 233,
13 112 P.3d at 1075. This Court further finds that Petitioner does not attempt to demonstrate good
14 cause or prejudice. See generally, Instant Petition. Indeed, this Court finds that Petitioner could
15 not successfully do so, as Petitioner's contention is without merit.

16 Because Petitioner's instant Petition is time-barred, with no good cause shown for the
17 delay, this Court concludes that Petitioner's instant Petition must be dismissed pursuant to
18 NRS 34.726(1).

19 **C. Petitioner Fails to Demonstrate Good Cause to Overcome His Procedural**
20 **Defaults**

21 To avoid procedural default, under NRS 34.726, a defendant has the burden of pleading
22 and proving specific facts that demonstrate good cause for his failure to present his claim in
23 earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will
24 be unduly prejudiced if the petition is dismissed. See Hogan v. Warden, 109 Nev. 952, 959-
25 60, 860 P.2d 710, 715-16 (1993); Phelps v. Nevada Dep't of Prisons, 104 Nev. 656, 659, 764
26 P.2d 1303, 1305 (1988).

27 Specifically, under NRS 34.726, a petitioner must demonstrate: (1) "[t]hat the delay is
28 not the fault of the petitioner" and (2) that the petitioner will be "unduly prejudice[d]" if the

1 petition is dismissed as untimely. NRS 34.726. To meet the first requirement, “a petitioner
2 *must* show that an impediment external to the defense prevented him or her from complying
3 with the state procedural default rules.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503,
4 506 (2003) (emphasis added). “A qualifying impediment might be shown where the factual or
5 legal basis for a claim was not reasonably available *at the time of default*.” Clem v. State, 119
6 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Clem Court continued,
7 “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d at 526. To find
8 good cause there must be a “substantial reason; one that affords a legal excuse.” Hathaway,
9 119 Nev. at 252, 71 P.3d at 506 (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229,
10 1230 (1989)). Examples of good cause include interference by State officials and the previous
11 unavailability of a legal or factual basis. See State v. Huebler, 128 Nev. 192, 197, 275 P.3d
12 91, 95 (2012). Clearly, any delay in the filing of the petition must not be the fault of the
13 petitioner. NRS 34.726(1)(a).

14 Further, a petitioner raising good cause to excuse procedural bars must do so within a
15 *reasonable* time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34
16 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see
17 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably
18 available to the petitioner during the statutory time period did not constitute good cause to
19 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good
20 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,
21 453 120 S.Ct. 1587, 1592 (2000).

22 This Court finds that Petitioner does not attempt to address good cause. See generally,
23 Instant Petition. However, even if Petitioner attempted to raise a “good cause” argument, this
24 Court finds that Petitioner could not succeed, as COVID-19 is not a recently-arisen situation.
25 Rather, the national emergency declared due to the COVID-19 pandemic was declared on
26 March 13, 2020. Petitioner’s instant PWHC was filed on March 30, 2021, over a year after the
27 national emergency was declared. As such, this Court finds that Petitioner could not
28 successfully assert that his claim was raised within any “reasonable” time after the good cause

1 arose. See Hathaway, 119 Nev. at 252-53, 71 P.3d at 506-07. Instead, this Court finds that the
2 COVID-19 pandemic was prevalent at the time Petitioner could have filed a *timely* petition;
3 therefore, it is not a “qualifying impediment” sufficient to overcome the procedural bars. See
4 Clem, 119 Nev. at 621, 81 P.3d at 525.

5 As the COVID-19 pandemic cannot constitute good cause, and as Petitioner fails to
6 assert any other instance of good cause, this Court concludes that Petitioner cannot
7 demonstrate the requisite good cause to overcome the time-bar to his instant Petition.

8 **D. Petitioner Fails to Demonstrate Prejudice Sufficient to Overcome His**
9 **Procedural Defaults**

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

15 As previously found *supra*, this Court finds that the instant Petition does not allege that
16 “the state proceedings” were infected with any constitutional error. See Instant Petition at 4-
17 5; Hogan, 109 Nev. at 960, 860 P.2d at 716. Instead, this Court finds that Petitioner simply
18 alleges that prison officials have improperly and/or insufficiently responded to the COVID-19
19 pandemic. Id. Because Petitioner’s claim is clearly not cognizable in habeas review, this Court
20 finds that it does not suffice to demonstrate prejudice sufficient to overcome Petitioner’s
21 procedural default. Hogan, 109 Nev. at 960, 860 P.2d at 716.

22 Because Petitioner does not allege any cognizable claim, much less any claim that could
23 demonstrate prejudice, this Court concludes that Petitioner fails to overcome the time-bar to
24 the instant Petition, and as such, the instant Petition must be dismissed.

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CONCLUSION

THEREFORE, Court ORDERED, Petitioner James H. Hayes's Petition for Writ of Habeas Corpus (COVID-19) shall be, and is, DENIED

FURTHER, Court ORDERED, the instant action, A-21-831979-W, shall be, and is, CONSOLIDATED with Petitioner's original post-conviction action, A-19-793315-W.

DATED this _____ day of August, 2021.


Dated this 23rd day of August, 2021


DISTRICT COURT JUDGE

Respectfully submitted,

D29 CC6 B7EB 27C9
Monica Trujillo
District Court Judge

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

BY  for
JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar # 06528

CERTIFICATE OF MAILING

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

JAMES H. HAYES, BAC #1175077
SOUTHERN DESERT CORRECTIONAL CENTER
P.O. BOX 208
INDIAN SPRINGS, NV, 89018

BY _____
C. Garcia
Secretary for the District Attorney's Office

cg/L2

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 James Hayes, Plaintiff(s)

CASE NO: A-19-793315-W

7 vs.

DEPT. NO. Department 3

8 Nevada State of, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 8/23/2021

15 Melissa Boudreaux

mezama@clarkcountynv.gov



1 NEFF

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 JAMES HAYES,

6 Petitioner,

Case No: A-19-793315-W

Consolidated with A-21-831979-W

Dept No: III

7 vs.

8 STATE OF NEVADA,

9 Respondent,

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

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

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

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

17
18
19 CERTIFICATE OF E-SERVICE / MAILING

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

22 ☒ By e-mail:

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

23
24 ☒ The United States mail addressed as follows:

25 James Hayes # 1175077
P.O. Box 208
26 Indian Springs, NV 89070

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

1 **FCL**
2 **STEVEN B. WOLFSON**
3 Clark County District Attorney
4 Nevada Bar #001565
5 **JONATHAN VANBOSKERCK**
6 Chief Deputy District Attorney
7 Nevada Bar #06528
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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

9 **JAMES HOWARD HAYES,**
10 **aka James Howard Hayes Jr.,**
11 **#2796708**

11 **Petitioner,**

CASE NO: A-19-793315-W
A-21-831979-W

12 **-vs-**

13 **THE STATE OF NEVADA,**

DEPT NO: III

14 **Respondent.**

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

17 **DATE OF HEARING: JULY 19, 2021**
18 **TIME OF HEARING: 8:30 AM**

19 **THIS CAUSE** having come before the Honorable MONICA TRUJILLO, District Court
20 Judge, on the 19th day of July, 2021, the Petitioner not being present, not being represented
21 by counsel, and the Respondent being represented by STEVEN B. WOLFSON, Clark County
22 District Attorney, through MORGAN THOMAS, Deputy District Attorney, and the Court
23 having considered the matter, including briefs, transcripts, and documents on file herein, now
24 therefore, the Court makes the following findings of fact and conclusions of law.

25 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

26 **STATEMENT OF THE CASE**

27 On or about July 23, 2013, James H. Hayes (hereinafter, "Petitioner") was charged by
28 way of Criminal Complaint with one count of BURGLARY (Category B Felony – NRS

1 205.060) and one count of ATTEMPT GRAND LARCENY (Category D Felony/Gross
2 Misdemeanor – NRS 205.220.1, 205.222.2, 193.330). Following a Preliminary Hearing in
3 Justice Court, Las Vegas Township on June 14, 2016, the charge of BURGLARY was bound
4 over to District Court, and the charge of ATTEMPT GRAND LARCENY was dismissed.

5 On June 17, 2016, the State filed an Information with the District Court, charging
6 Petitioner with one count of BURGLARY. On August 29, 2017, the State filed an Amended
7 Notice of Intent to Seek Punishment as a Habitual Criminal. On November 7, 2018, pursuant
8 to a Guilty Plea Agreement (“GPA”), Petitioner entered a plea of Guilty pursuant to North
9 Carolina v. Alford, 400 U.S. 25 (1970) to one count of ATTEMPT GRAND LARCENY.

10 The terms of the GPA are as follows:

11 The State has agreed to make no recommendation at the time of sentencing. The
12 State has no opposition to probation with the only condition being thirty (30)
13 days in the Clark County Detention Center (CCDC), with thirty (30) days credit
for time served.

14 GPA at 1:22-24.

15 The GPA further includes, in pertinent part, the following acknowledgement:

16 I understand and agree that, if...an independent magistrate, by affidavit review,
17 confirms probable cause against me for new criminal charges including reckless
18 driving or DUI, but excluding minor traffic violations, the State will have the
19 unqualified right to argue for any legal sentence and term of confinement
20 allowable for the crime(s) to which I am pleading guilty, including the use of
21 any prior convictions I may have to increase my sentence as a habitual criminal
to five (5) to twenty (20) years, Life without the possibility of parole, Life with
the possibility of parole after ten (10) years, or a definite twenty-five (25) year
term with the possibility of parole after ten (10) years.

22 GPA at 2: 1-9.

23 An Amended Information reflecting the new charge of ATTEMPT GRAND
24 LARCENY was filed in conjunction with the GPA. Petitioner was adjudged Guilty pursuant
25 to Alford that same day, and the sentencing hearing was scheduled for March 6, 2019.

26 On January 31, 2019, the State filed a State’s Notice of Motion and Motion to Revoke
27 Bail, asserting that in Las Vegas Justice Court case number 19F01534X, a Justice of the Peace
28 had found probable cause to charge Petitioner with Burglary for acts committed on or around

1 January 26, 2019. The State's Motion to Revoke Bail was granted after a hearing on February
2 4, 2019.

3 At the sentencing hearing on March 6, 2019, the State argued that it had regained the
4 right to argue pursuant to the terms of the GPA. The Court agreed, and the State argued that
5 Petitioner should be punished under NRS 207.010 (the "Small Habitual Statute"). The Court
6 agreed, and Petitioner was sentenced to sixty (60) to one hundred seventy-four (174) months
7 in the Nevada Department of Corrections (NDOC), consecutive to Petitioner's sentence in
8 another case (C315125). The Court also awarded Petitioner ten (10) days credit for time
9 served. The Judgment of Conviction in this case was filed on March 12, 2019.

10 Petitioner filed a Notice of Appeal on March 28, 2019. Petitioner's Case Appeal
11 Statement was filed on August 9, 2019 (SCN 78590).

12 On April 15, 2019, Petitioner filed a Petition for Writ of Habeas Corpus ("Petition").
13 Pursuant to Court order, the State filed its Response on June 26, 2019. At the hearing on the
14 Petition on August 19, 2019, the Court noted that Petitioner filed two Addenda to his original
15 Petition (the first on May 7, 2019, and the second on May 9, 2019). Pursuant to the Court's
16 order, the State filed a Response to the Addenda on October 10, 2019. Petitioner filed a Reply
17 to the State's Response on November 4, 2019. On November 18, 2019, Petitioner's Petition
18 came before the Court, at which time the Court took the matter OFF CALENDAR due to
19 Petitioner's pending appeal.

20 On November 19, 2019, Petitioner filed another Notice of Appeal, appealing the denial
21 of his Coram Nobis motion. His Case Appeal Statement was filed on December 11, 2019 (SCN
22 80222). On August 31, 2020, the Nevada Court of Appeals affirmed the Court's denial of his
23 Coram Nobis motion. Remittitur issued on October 12, 2020.

24 On January 14, 2020, the Nevada Supreme Court AFFIRMED Petitioner's Judgment
25 of Conviction in SCN 78590. Remittitur issued on February 25, 2020.

26 On February 12, 2020, Petitioner filed an "Amended Petition for Writ of Habeas
27 Corpus" (his "Amended Petition"). This Court ordered a Response to that Amended Petition
28 on March 4, 2020. Thereafter, on March 6, 2020, Petitioner filed a "Petition: Expeditious

1 Judicial Examination NRS 34.360-34.830” (his “Petition: EJE”). Pursuant to this Court’s
2 order, the State filed its Response to both filings on April 17, 2020. Petitioner replied to the
3 State’s Response on May 15, 2020.

4 On May 15, 2020, Petitioner also filed an “Affidavit of Actual Innocence not Mere
5 Legal Insufficiency but ‘Factual Innocence.’” On May 27, 2020, Petitioner filed a
6 Supplemental Petition. While Petitioner’s numerous pleadings were pending, Petitioner filed
7 a Motion for Peremptory Challenge of Judge and to Disqualify Judge William Bill Kephart.
8 Thereafter, the State filed its Responses to Petitioner’s Affidavit of Actual Innocence and
9 Petitioner’s Supplemental Petition on June 10, 2020. As a result of Petitioner’s Peremptory
10 Challenge, Petitioner’s pending matters were taken off calendar on June 15, 2020. On June
11 29, 2020, Petitioner filed his Reply to the State’s Response to Petitioner’s Affidavit of Actual
12 Innocence.

13 On July 7, 2020, Chief Judge Linda Bell considered, and denied, Petitioner’s Motion
14 for Peremptory Challenge of Judge Kephart. Chief Judge Bell’s Decision and Order was filed
15 on July 8, 2020.

16 On July 23, 2020, Petitioner filed his Reply to the State’s Response to Petitioner’s
17 Supplemental Petition. Petitioner, that same day, filed a Motion for Ruling for Rule 60b
18 Motion for Relief; Motion to Vacate; Amended Petition for Writ of Habeas Corpus. The State
19 filed its Reponse to Petitioner’s Motion for Ruling on September 2, 2020. Petitioner’s Motion
20 for Ruling was denied on September 9, 2020.

21 On September 25, 2020, Petitioner filed a Motion for Expeditious Ruling for “Amended
22 Petition for Writ of Habeas Corpus” 3rd Request. On October 7, 2020, he filed a Motion to
23 Set Evidentiary Hearing and Issue Transport Order. On October 14, 2020, Petitioner filed a
24 Motion to Reconsider Order Denying Motion for Ruling for Rule 60b Motion for Relief;
25 Motion to Vacate; Amended Petition for Writ of Habeas Corpus. The State filed responsive
26 pleadings to each of Petitioner’s respective filings on November 10, 2020. On November 16,
27 2020, the Court considered, and denied, Petitioner’s three Motions. The Court’s Order was
28 filed on November 21, 2020.

1 On December 22, 2020, Petitioner filed a “Motion to Compel Judgment Pursuant to
2 Nevada Revised Statutes Chapter 34 FRCP Rule 12(c) for Amended Petition for Writ of
3 Habeas Corpus.” The State filed its Response to that Motion on January 27, 2021. On February
4 1, 2021, the Court denied Petitioner’s Motion to Compel. The Court also noted that no order
5 had been filed regarding Petitioner’s Amended Petition for Writ of Habeas Corpus; therefore,
6 the Court denied the Amended Petition as well. After the Court’s ruling on the matter,
7 Petitioner filed an “Opposition to State’s Response to Petitioner’s Motion to Compel
8 Judgment” on February 18, 2021. The Court issued its Findings of Fact, Conclusions of Law
9 and Order reflecting its denial of Petitioner’s Motion to Compel on March 17, 2021. Notice of
10 Entry of that Order was filed on March 19, 2021.

11 On February 2, 2021, Petitioner filed a “Reply Motion to Compel Judgment Pursuant
12 to Nevada Revised Statutes Chapter 34...FRCP Rule 12(c) for Amended Petition for Writ of
13 Habeas Corpus.” The State filed its Opposition to that “Reply Motion” on April 16, 2021. On
14 May 12, 2021, the Court denied Petitioner’s “Reply Motion.”

15 On March 9, 2021, the Court filed its Findings of Fact, Conclusions of Law and Order
16 denying Petitioner’s Amended Petition. That entry was noticed on March 10, 2021. On March
17 11, 2021, Petitioner filed a Petition to Reconsider that Order. He filed a subsequent Petition to
18 Reconsider on March 17, 2021. On March 18, 2021, Petitioner filed a Notice of Appeal from
19 the Court’s denial of his Amended Petition. As of the date of the instant Opposition, no
20 remittitur has issued from that appeal. On April 7, 2021, Petitioner filed a “Supplemental
21 Petition for Writ of Habeas Corpus” Petition (NRS 34.360-34.830). Petitioner filed a
22 “Supplemental ‘Addendum’” on April 14, 2021.

23 The State filed its Opposition to Petitioner’s various Petitions to Reconsider on April
24 9, 2021. On April 12, 2021, the Court denied Petitioner’s Petitions to Reconsider. Again, well
25 after the Court’s ruling, Petitioner filed a Reply to the State’s Opposition on May 6, 2021. On
26 May 12, 2021, the Court issued its Order Denying Petitioner’s Petition to Reconsider.

27 In the interim, Petitioner also filed the instant “Petition for Writ of Habeas Corpus
28 COVID-19 (Coronavirus)” (his “instant Petition”). The State filed an Opposition and Motion

1 to Consolidate on June 24, 2021. On July 19, 2021, this matter came before this Court. This
2 Court did not accept argument at the time of hearing, but made the following findings and
3 conclusions:

4 ANALYSIS

5 I. THE POST-CONVICTION CASES SHOULD BE CONSOLIDATED

6 NRS 34.780(1), explains that, to the extent they are not inconsistent with habeas
7 statutes, the Nevada Rules of Civil Procedure apply to post-conviction proceedings. Directly
8 on point, the Nevada Supreme Court has determined:

9
10 NRCP 42(a) allows consolidation of pending actions that involve “a common
11 question of law or fact.” Like under its identical federal counterpart, a district
court enjoys “broad, but not unfettered, discretion in ordering consolidation.”

12 Nalder v. Eighth Judicial Dist. Court, 136 Nev. 200, 206-07, 462 P.3d 677, 684 (2020)
13 (quoting Marcuse v. Del Webb Cmtys., Inc., 123 Nev. 278, 286, 163 P.3d 462, 468 (2007)).

14 Petitioner’s original post-conviction habeas proceeding was filed under Case No. A-
15 19-793315-W. In that proceeding, Petitioner raised a number of challenges to his judgment of
16 conviction in Case No. C315718, including allegations of Double Jeopardy, violations of Due
17 Process, and Cruel and Unusual Punishment. See, Petition for Writ of Habeas Corpus, filed
18 on April 15, 2019 (in Case No. A793315).

19 Upon review of the instant Petition, this Court finds that Petitioner again claims that
20 his sentence amounts to Cruel and Unusual Punishment under the Eighth Amendment. See
21 Instant Petition at 5. Therefore, because this action, and Petitioner’s separate post-conviction
22 action, each involve a common question – whether Petitioner’s judgment of conviction and
23 sentence are constitutional – this Court concludes that the two actions should be consolidated.

24 Moreover, this Court finds that judicial economy supports consolidation of the two
25 actions. Petitioner continues to file pleadings – with or without permission of this Court –
26 raising the same (or substantially similar) claims against his judgment of conviction. This
27 Court has determined that these numerous pleadings should be contained within the same

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1 action, so as to allow for uniform consideration and treatment, as they all center around the
2 same underlying criminal case.

3 Therefore, this Court concludes that the instant actions should be consolidated into the
4 pre-existing post-conviction case, A793315.

5 **II. THE INSTANT PETITION DOES NOT WARRANT RELIEF**

6 Petitioner's instant Petition raises a single claim – that the COVID-19 pandemic has
7 rendered Petitioner's sentence of imprisonment cruel and unusual in violation of the Eighth
8 Amendment. See Instant Petition at 5. However, this Court finds that this claim is not
9 cognizable on habeas review. Further, this Court finds that the claim itself is procedurally
10 defaulted pursuant to the time-bar of NRS 34.726. As such, this Court concludes that Petitioner
11 is not entitled to relief.

12 **A. Petitioner's Claim is Not Cognizable in Habeas Review**

13 The Nevada Supreme Court has expressly excluded claims of cruel and unusual
14 punishment from consideration in post-conviction habeas review. See Bowen v. Warden,
15 Nevada State Prison, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984). The Bowen Court
16 explained:

17 We have repeatedly held that a petition for writ of habeas corpus may challenge
18 the validity of current confinement, but not the conditions thereof. See Director,
19 Dep't Prisons v. Arndt, 98 Nev. 84, 640 P.2d 1318 (1982); Rogers v. Warden,
20 84 Neb. [sic] 539, 445 P.2d 28 (1968); Rainsberger v. Leypoldt, 77 Nev. 399,
21 365 P.2d 489 (1961), cert. denied, 368 U.S. 516, 82 S.Ct. 530, 7 L.Ed.2d 522
22 (1962). In Rogers, we held that a claim of brutal treatment at the hands of prison
23 officials was not cognizable on a habeas petition, because the claim spoke to the
24 conditions and not the validity of confinement. In Arndt, we left open the
specific question raised by this appeal, whether the imposition of a qualitatively
more restrictive type of confinement within the prison, such as punitive
segregation, may be challenged by a petition for writ of habeas corpus. We now
hold that such a challenge speaks only to the conditions of confinement and
therefore may not be raised by a habeas corpus petition. See Rogers v. Warden,
supra.

25 Id. Thereafter, the Bowen Court affirmed the dismissal of a habeas petition challenging only
26 the conditions of confinement. Id.

27 The United States Supreme Court has discussed a litany of claims alleging cruel and
28 unusual punishments. In Wilson v. Seiter, 501 U.S. 294, 111 S.Ct. 2321 (1991), the Court

1 dealt with claims alleging “overcrowding, excessive noise, insufficient locker storage space,
2 inadequate heating and cooling, improper ventilation, unclean and inadequate restrooms,
3 unsanitary dining facilities and food preparation, and housing with mentally and physically ill
4 inmates.” At 296, 111 S.Ct. at 2323. The Wilson Court characterized such claims as
5 “conditions of confinement” claims, which required an allegation of “deliberate indifference”
6 by prison officials. Id. at 297, 111 S.Ct. at 2323.

7 Petitioner raises one claim – which he labels as “Violation of United States Constitution
8 8th Amendment ‘Cruel and Unusual Punishment’ (*Deliberate Indifference*). Instant Petition
9 at 2 (emphasis added). Therefore, this Court finds that Petitioner acknowledges he is not
10 challenging the validity of his judgment of conviction; rather, he is challenging the *conditions*
11 *of his confinement*. See Wilson, 501 U.S. at 297, 111 S.Ct. at 2323. Indeed, Petitioner
12 specifically alleges:

13 Petitioner’s “Deliberate Indifference” claim is established where the challenged
14 deficiency is sufficiently serious and prison officials know that petitioner face a
15 substantial risk of serious harm and disregard that risk by failing to take
reasonable measures to abate it as describe herein, and the target of the petition
is not what respondents have done but what they have refused to do.

16 Instant Petition at 4-5. Petitioner also includes a claim that the COVID-19 pandemic renders
17 his sentence cruel and unusual because of his risk of contracting the virus in prison. Id. As
18 such, this Court finds that Petitioner’s claim is not cognizable in habeas proceedings, and
19 concludes that the same must be dismissed. See Farmer v. Brennan, 511 U.S. 825, 832, 114
20 S.Ct. 1970, 1976 (1994) (holding that the proper way to raise a claim that one’s lawful
21 incarceration has exposed them to harm while incarcerated is to challenge the *conditions of*
22 *confinement* under the Eighth Amendment); see also Bowen, 100 Nev. at 490, 686 P.2d at 250
23 (conditions of confinement claims are not cognizable in habeas review).

24 Because the Nevada Supreme Court has clearly and expressly precluded conditions of
25 confinement claims from post-conviction habeas proceedings, this Court finds that the instant
26 Petition is not the proper legal vehicle within which to raise Petitioner’s claim. As such, this
27 Court concludes that it lacks the jurisdiction to grant habeas relief on the instant Petition, and
28 therefore, the same must be dismissed.

1 **B. Petitioner’s Instant Petition is Time-Barred**

2 The mandatory provision of NRS 34.726(1) states:

3 Unless there is good cause shown for delay, a petition that challenges the validity
4 of a judgment or sentence must be filed *within 1 year after entry of the judgment*
5 *of conviction or, if an appeal has been taken from the judgment, within 1 year*
6 *after the Supreme Court issues its remittitur.* For the purposes of this subsection,
 good cause for delay exists if the petitioner demonstrates to the satisfaction of
 the court:

- 7 (a) That the delay is not the fault of the petitioner; and
8 (b) That dismissal of the petition as untimely will unduly prejudice the
 petitioner.

9 (emphasis added). “[T]he statutory rules regarding procedural default are mandatory and
10 cannot be ignored when properly raised by the State.” State v. Dist. Court (Riker), 121 Nev.
11 225, 233, 112 P.3d 1070, 1075 (2005).

12 Per the language, the one-year time bar prescribed by NRS 34.726 begins to run from
13 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
14 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998); see Pellegrini v.
15 State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001) (holding that NRS 34.726 should be
16 construed by its plain meaning).

17 In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada
18 Supreme Court rejected a habeas petition that was filed two days late, pursuant to the “clear
19 and unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the
20 importance of filing the petition with the District Court within the one-year mandate, absent a
21 showing of “good cause” for the delay in filing. Gonzales, 118, Nev. at 593, 590 P.3d at 902.
22 The one-year time bar is therefore strictly construed. In contrast with the short amount of time
23 to file a notice of appeal, a prisoner has a full year to file a post-conviction habeas petition, so
24 there is no injustice in a strict application of NRS 34.726(1), despite any alleged difficulties
25 with the postal system. Id. at 595, 53 P.3d at 903.

26 The Nevada Supreme Court has held that courts have a *duty* to consider whether a
27 defendant’s post-conviction petition claims are procedurally barred, noting:

28 //

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

4 Riker, 121 Nev. at 231, 112 P.3d at 1074. The Nevada Supreme Court has granted no
5 discretion to the district courts regarding whether to apply the statutory procedural bars; the
6 rules *must* be applied.

7 This Court notes that Remittitur from the affirmance of Petitioner's Judgment of
8 Conviction was filed on February 25, 2020. Therefore, Petitioner had until February 25, 2021,
9 to file a timely post-conviction habeas petition. Dickerson, 114 Nev. at 1087, 967 P.2d at 1133-
10 34. Petitioner's instant Petition was not filed until March 30, 2021, over a month past the
11 statutory deadline. Therefore, this Court finds that, absent a showing of good cause and
12 prejudice, Petitioner's instant Petition must be dismissed as untimely. Riker, 121 Nev. at 233,
13 112 P.3d at 1075. This Court further finds that Petitioner does not attempt to demonstrate good
14 cause or prejudice. See generally, Instant Petition. Indeed, this Court finds that Petitioner could
15 not successfully do so, as Petitioner's contention is without merit.

16 Because Petitioner's instant Petition is time-barred, with no good cause shown for the
17 delay, this Court concludes that Petitioner's instant Petition must be dismissed pursuant to
18 NRS 34.726(1).

19 **C. Petitioner Fails to Demonstrate Good Cause to Overcome His Procedural**
20 **Defaults**

21 To avoid procedural default, under NRS 34.726, a defendant has the burden of pleading
22 and proving specific facts that demonstrate good cause for his failure to present his claim in
23 earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will
24 be unduly prejudiced if the petition is dismissed. See Hogan v. Warden, 109 Nev. 952, 959-
25 60, 860 P.2d 710, 715-16 (1993); Phelps v. Nevada Dep't of Prisons, 104 Nev. 656, 659, 764
26 P.2d 1303, 1305 (1988).

27 Specifically, under NRS 34.726, a petitioner must demonstrate: (1) "[t]hat the delay is
28 not the fault of the petitioner" and (2) that the petitioner will be "unduly prejudice[d]" if the

1 petition is dismissed as untimely. NRS 34.726. To meet the first requirement, “a petitioner
2 *must* show that an impediment external to the defense prevented him or her from complying
3 with the state procedural default rules.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503,
4 506 (2003) (emphasis added). “A qualifying impediment might be shown where the factual or
5 legal basis for a claim was not reasonably available *at the time of default*.” Clem v. State, 119
6 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Clem Court continued,
7 “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d at 526. To find
8 good cause there must be a “substantial reason; one that affords a legal excuse.” Hathaway,
9 119 Nev. at 252, 71 P.3d at 506 (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229,
10 1230 (1989)). Examples of good cause include interference by State officials and the previous
11 unavailability of a legal or factual basis. See State v. Huebler, 128 Nev. 192, 197, 275 P.3d
12 91, 95 (2012). Clearly, any delay in the filing of the petition must not be the fault of the
13 petitioner. NRS 34.726(1)(a).

14 Further, a petitioner raising good cause to excuse procedural bars must do so within a
15 *reasonable* time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34
16 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see
17 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably
18 available to the petitioner during the statutory time period did not constitute good cause to
19 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good
20 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,
21 453 120 S.Ct. 1587, 1592 (2000).

22 This Court finds that Petitioner does not attempt to address good cause. See generally,
23 Instant Petition. However, even if Petitioner attempted to raise a “good cause” argument, this
24 Court finds that Petitioner could not succeed, as COVID-19 is not a recently-arisen situation.
25 Rather, the national emergency declared due to the COVID-19 pandemic was declared on
26 March 13, 2020. Petitioner’s instant PWHC was filed on March 30, 2021, over a year after the
27 national emergency was declared. As such, this Court finds that Petitioner could not
28 successfully assert that his claim was raised within any “reasonable” time after the good cause

1 arose. See Hathaway, 119 Nev. at 252-53, 71 P.3d at 506-07. Instead, this Court finds that the
2 COVID-19 pandemic was prevalent at the time Petitioner could have filed a *timely* petition;
3 therefore, it is not a “qualifying impediment” sufficient to overcome the procedural bars. See
4 Clem, 119 Nev. at 621, 81 P.3d at 525.

5 As the COVID-19 pandemic cannot constitute good cause, and as Petitioner fails to
6 assert any other instance of good cause, this Court concludes that Petitioner cannot
7 demonstrate the requisite good cause to overcome the time-bar to his instant Petition.

8 **D. Petitioner Fails to Demonstrate Prejudice Sufficient to Overcome His**
9 **Procedural Defaults**

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

15 As previously found *supra*, this Court finds that the instant Petition does not allege that
16 “the state proceedings” were infected with any constitutional error. See Instant Petition at 4-
17 5; Hogan, 109 Nev. at 960, 860 P.2d at 716. Instead, this Court finds that Petitioner simply
18 alleges that prison officials have improperly and/or insufficiently responded to the COVID-19
19 pandemic. Id. Because Petitioner’s claim is clearly not cognizable in habeas review, this Court
20 finds that it does not suffice to demonstrate prejudice sufficient to overcome Petitioner’s
21 procedural default. Hogan, 109 Nev. at 960, 860 P.2d at 716.

22 Because Petitioner does not allege any cognizable claim, much less any claim that could
23 demonstrate prejudice, this Court concludes that Petitioner fails to overcome the time-bar to
24 the instant Petition, and as such, the instant Petition must be dismissed.

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CONCLUSION

THEREFORE, Court ORDERED, Petitioner James H. Hayes's Petition for Writ of Habeas Corpus (COVID-19) shall be, and is, DENIED

FURTHER, Court ORDERED, the instant action, A-21-831979-W, shall be, and is, CONSOLIDATED with Petitioner's original post-conviction action, A-19-793315-W.

DATED this _____ day of August, 2021.


Dated this 23rd day of August, 2021


DISTRICT COURT JUDGE

Respectfully submitted,

D29 CC6 B7EB 27C9
Monica Trujillo
District Court Judge

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

BY  for
JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar # 06528

CERTIFICATE OF MAILING

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

JAMES H. HAYES, BAC #1175077
SOUTHERN DESERT CORRECTIONAL CENTER
P.O. BOX 208
INDIAN SPRINGS, NV, 89018

BY _____
C. Garcia
Secretary for the District Attorney's Office

cg/L2

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 James Hayes, Plaintiff(s)

CASE NO: A-19-793315-W

7 vs.

DEPT. NO. Department 3

8 Nevada State of, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 8/23/2021

15 Melissa Boudreaux

mezama@clarkcountynv.gov

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

August 19, 2019

A-19-793315-W James Hayes, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

**August 19, 2019 8:30 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: Zadrowski, Bernard B. Attorney

JOURNAL ENTRIES

- Court noted Defendant not present and in custody with the Nevada Department of Corrections. Further, Court noted State filed a response to Defendant's petition; however, Defendant has filed two addendums and ORDERED, matter CONTINUED for the State to file a response to the addendums. FURTHER ORDERED, State's response shall be due on or before 10/21/2019 and Defendant's reply shall be due on or before 11/04/2019.

NDC

CONTINUED TO: 11/18/2019 8:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

November 18, 2019

A-19-793315-W James Hayes, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

**November 18, 2019 8:30 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: Marland, Melanie H. Attorney

JOURNAL ENTRIES

- Court noted Defendant not present and in custody with the Nevada Department of Corrections. Court stated the matter has been fully briefed; however, this matter is still pending appeal with the Supreme Court and COURT ORDERED, matter OFF CALENDAR as the Court lacks jurisdiction at this time.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

June 15, 2020

A-19-793315-W	James Hayes, Plaintiff(s) vs. Nevada State of, Defendant(s)
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June 15, 2020	10:15 AM	Petition for Writ of Habeas Corpus
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HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: Waters, Steven L

Attorney

JOURNAL ENTRIES

- Court noted Defendant not present and in custody with the Nevada Department of Corrections. Further, Court stated Defendant has filed a motion to disqualify him from the matter; therefore, COURT ORDERED, matter OFF CALENDAR pending decision.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 07, 2020

A-19-793315-W James Hayes, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

July 07, 2020 11:00 AM Motion

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 10C

COURT CLERK: Kimberly Estala

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- No parties present.

COURT FINDS, there is no evidence to support Mr. Hayes's allegations. The Judgement of Conviction was affirmed on appeal and Judge Kephart denied having any bias or prejudice. Therefore, COURT ORDERED, motion DENIED. Court to prepare the order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

September 09, 2020

A-19-793315-W James Hayes, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

September 09, 2020 10:15 AM Motion

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: Marland, Melanie H. Attorney

JOURNAL ENTRIES

- Court noted Defendant not present and in custody with the Nevada Department of Corrections.
COURT ORDERED, Motion DENIED pursuant to EDCR 2.20.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

November 16, 2020

A-19-793315-W James Hayes, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

November 16, 2020 8:30 AM All Pending Motions

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: Iscan, Ercan E Attorney

JOURNAL ENTRIES

- PLAINTIFF'S MOTION FOR EXPEDITIOUS RULING FOR "AMENDED PETITION FOR WRIT OF HABEAS CORPUS" 3RD REQUEST:

Court noted Defendant not present and in custody with the Nevada Department of Corrections.
COURT ORDERED, Motion DENIED.

PLAINTIFF'S MOTION TO SET EVIDENTIARY HEARING AND ISSUE TRANSPORT ORDER:

COURT ORDERED, Motion DENIED.

PLAINTIFF'S MOTION TO RECONSIDER ORDER DENYING MOTION FOR RULING FOR RULE 60 (B) MOTION FOR RELIEF; MOTION TO VACATE; AMENDED PETITION FOR WRIT OF HABEAS CORPUS:

COURT ORDERED, Motion DENIED as a reconsideration is not warranted.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

February 01, 2021

A-19-793315-W	James Hayes, Plaintiff(s)
	vs.
	Nevada State of, Defendant(s)

February 01, 2021 8:30 AM Motion to Compel

HEARD BY: Trujillo, Monica **COURTROOM:** RJC Courtroom 11C

COURT CLERK: Grecia Snow

RECORDER: Rebeca Gomez

REPORTER:

PARTIES

PRESENT: Waters, Steven L Attorney

JOURNAL ENTRIES

- COURT ORDERED, Motion to Compel DENIED for the reasons stated in the State's response. State to prepare the order. Court noted as to the prior Amended Petition for Writ no order had been filed. COURT FURTHER ORDERED, Amended Petition for Writ DENIED. State to prepare the order as to findings of fact and conclusion of law consistent with the State's response.

NDC

CLERK'S NOTE: The above minute order has been distributed to: James Hayes #1175077, P.O. BOX 208, Indian Springs, Nevada 89070. /// 2/16/21 gs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

March 08, 2021

A-19-793315-W	James Hayes, Plaintiff(s)
	vs.
	Nevada State of, Defendant(s)

March 08, 2021 8:30 AM Motion to Compel

HEARD BY: Trujillo, Monica **COURTROOM:** RJC Courtroom 11C

COURT CLERK: Alan Castle

RECORDER: Rebeca Gomez

REPORTER:

PARTIES

PRESENT:	Iskan, Ercan E	Attorney
	Nevada State of	Defendant

JOURNAL ENTRIES

- After reviewing petition, Court determined Defendant needs to supplement his petition with specificity. Further, Court directed State to respond to Defendant's petition. Supplemental briefing schedule set and matter continued for decision. Defendant has until April 4, 2021 to supplement his petition; State has until May 5, 2021 to file a response.

5/10/21 8:30 a.m. Decision

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

April 12, 2021

A-19-793315-W James Hayes, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

April 12, 2021 8:30 AM Motion to Reconsider

HEARD BY: Trujillo, Monica **COURTROOM:** RJC Courtroom 11C

COURT CLERK: Natalie Ortega

RECORDER: Rebeca Gomez

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Defendant not present; incarcerated in the Nevada Department of Corrections (NDC). COURT ORDERED, motion DENIED for the reasons set forward in the State's opposition; State to prepare the Order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

April 29, 2021

A-19-793315-W	James Hayes, Plaintiff(s)
	vs.
	Nevada State of, Defendant(s)

April 29, 2021	3:00 AM	Motion
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HEARD BY: Trujillo, Monica	COURTROOM: RJC Courtroom 11C
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COURT CLERK: Grecia Snow

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- The Plaintiff s Petition for Reconsider Findings of Fact and Conclusion of Law came before this Court on the April 29, 2021 Chamber Calendar. The issues raised in this Petition were adjudicated when the Court issued its decision at the April 12, 2021 hearing on the Petition to Reconsider Findings of Fact Conclusion of Law Addendum. Therefore, COURT ORDERED, matter OFF CALENDAR.

CLERKS NOTE: This Minute Order was electronically served by Courtroom Clerk, Grecia Snow, to all registered parties for Odyssey File & Serve. 4/30/21 gs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

May 12, 2021

A-19-793315-W James Hayes, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

May 12, 2021 8:30 AM Decision

HEARD BY: Trujillo, Monica **COURTROOM:** RJC Courtroom 11C

COURT CLERK: Nylasia Packer

RECORDER: Rebeca Gomez

REPORTER:

PARTIES

PRESENT: Iscan, Ercan E Attorney

JOURNAL ENTRIES

- COURT ORDERED, matter DENIED based on States opposition. State to prepare order.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

June 09, 2021

A-19-793315-W	James Hayes, Plaintiff(s) vs. Nevada State of, Defendant(s)
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June 09, 2021	3:00 AM	Minute Order
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HEARD BY: Trujillo, Monica	COURTROOM: Chambers
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COURT CLERK: Grecia Snow

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Petitioner James Hayes Opposition To State s Opposition to Petitioner s Reply Motion to Compel Judgment Pursuant to Nevada Revised Statute Chapter 34 FRCP Rule 12(c) for Amended Petition for Writ of Habeas Corpus was to come before the Court for a hearing on June 14, 2021. Petitioner s Reply Motion to Compel Judgment Pursuant to Nevada Revised Statutes Chapter 34 FRCP Rule 12(c) for Amended Petition for Writ of Habeas Corpus was DENIED on May 12, 2021 and the above referenced filing is a rogue document. As a result the hearing on June 14, 2021 is VACATED.

CLERKS NOTE: This Minute Order was electronically served by Courtroom Clerk, Grecia Snow, to all registered parties for Odyssey File & Serve and mailed to James Hayes #115077, PO Box 208, Indian Springs NV 89070. 6/9/21 gs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 19, 2021

A-19-793315-W	James Hayes, Plaintiff(s)
	vs.
	Nevada State of, Defendant(s)

July 19, 2021	8:30 AM	Opposition and Counter-motion
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HEARD BY: Trujillo, Monica

COURTROOM: RJC Courtroom 11C

COURT CLERK: Grecia Snow

RECORDER: Rebeca Gomez

REPORTER:

PARTIES

PRESENT:	Thomas, Morgan B.A.	Attorney
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JOURNAL ENTRIES

- COURT FINDS the Petition is not an appropriate vehicle to challenge his conditions of confinement, cruel and unusual punishment is not appropriate for a post conviction Petition, and it is time barred, therefore, FURTHER ORDERED, Petition DENIED. State to prepare the Order consistent with the Opposition.

NDC

CLERK'S NOTE: The above minute order has been distributed to: James Hayes #1175077, P.O. Box 208, SDCC, Indian Springs, Nevada 89070. 8/4/21 gs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

August 09, 2021

A-19-793315-W James Hayes, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

August 09, 2021 8:30 AM Motion

HEARD BY: Trujillo, Monica **COURTROOM:** RJC Courtroom 11C

COURT CLERK: Grecia Snow

RECORDER: Rebeca Gomez

REPORTER:

PARTIES

PRESENT: Sullivan, Skyler L Attorney

JOURNAL ENTRIES

- Court ADVISED it was not sure what this was on for, therefore, ORDERED, matter OFF CALENDAR.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

September 23, 2021

A-19-793315-W James Hayes, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

September 23, 2021 3:00 AM Motion to Reconsider

HEARD BY: Trujillo, Monica **COURTROOM:** Chambers

COURT CLERK: Kathryn Hansen-McDowell

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Plaintiff's Petition for Reconsideration/Rehearing came before this Court on September 23, 2021 Chamber Calendar. The Court filed its Findings of Fact, Conclusions of Law and Order on after the filing of the instant Petition. There, the Court found that the Petition for Writ of Habeas Corpus was not the proper legal vehicle within which to raise Petitioner's Claim. Additionally, Petitioner's issues were adjudicated when the Court issued its Findings of Fact, Conclusions of Law and Order. Accordingly, after reviewing issues raised in Plaintiff's Petition, Plaintiff's Petition for Reconsideration/Rehearing is DENIED. State to prepare an Order and submit the same to Chambers.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. Copy US mailed to: James Hayes, #1175077, Southern Desert Correctional Center, PO Box 208, Indian Springs, NV 89070. 9/23/21khm

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated September 24, 2021, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises four volumes with pages numbered 1 through 760.

JAMES H. HAYES,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

Case No: A-19-793315-W
Consolidated with A-21-831979-W
Dept. No: III

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 1 day of October 2021.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk