

1 **NOAS**
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9 *Attorney for Petitioner*

Electronically Filed
Dec 21 2021 04:03 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**DISTRICT COURT
CLARK COUNTY, NEVADA**

8 CASIMIRO VENEGAS,

9 *Petitioner,*

Case No.: A-19-791881-W

10 vs.

Dept. No.: 7

11 CALVIN JOHNSON, WARDEN and
12 THE STATE OF NEVADA,

13 *Respondents.*

NOTICE OF APPEAL

14 Notice is hereby given that **CASIMIRO VENEGAS**, Petitioner above
15 named, hereby appeals to the Supreme Court of Nevada from the Order denying
16 his **PETITION FOR WRIT OF HABEAS CORPUS**, entered in this action on
17 the 1st day of December 2021.

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THE GERSTEN LAW FIRM PLLC
9680 W Tropicana Avenue # 146
Las Vegas, NV 89147
Tel (702) 857-8777 | Fax (702) 857-8767

1 DATED this 15th day of December 2021.

2
3
4 Submitted by:

5 
6 By _____
7 JOSEPH Z. GERSTEN, ESQ.
8 Nevada Bar No.: 13876
9 The Gersten Law Firm PLLC
10 9680 W Tropicana Avenue, #146
11 Las Vegas, NV 89147
12 Telephone (702) 857-8777
13 joe@thegerstenlawfirm.com
14 Attorney for Petitioner
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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of December 2021, I filed a true and correct copy of the **NOTICE OF APPEAL** using the Eighth Judicial District's electronic filing system and/or deposited a true and correct copy in the United States Mail at Las Vegas, Nevada, enclosed in a sealed envelope, first class mail, postage prepaid, addressed as follows:

CALVIN JOHNSON, Warden
P.O. Box 650
Indian Springs, Nevada 89070-0650
22010 Cold Creek Road
Indian Springs, Nevada 89070

STEVEN B. WOLFSON, ESQ.
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89101

AARON FORD, ESQ.
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717



JOSEPH Z. GERSTEN, ESQ.
An Employee of The Gersten Law Firm PLLC

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-19-791881-W

Casimiro Venegas, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

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Location: **Department 7**
Judicial Officer: **Bell, Linda Marie**
Filed on: **03/18/2019**
Cross-Reference Case Number: **A791881**

CASE INFORMATION

Related Cases

C-16-313118-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Statistical Closures

12/11/2021 Summary Judgment

Case Status: **12/11/2021 Closed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-19-791881-W
Court Department 7
Date Assigned 03/18/2019
Judicial Officer Bell, Linda Marie

PARTY INFORMATION






Plaintiff	Venegas, Casimiro	<i>Lead Attorneys</i> Gersten, Joseph Z <i>Retained</i> 702-857-8777(W)
Defendant	Brian Williams Warden	Wolfson, Steven B <i>Retained</i> 702-455-5320(W)
	State of Nevada	Wolfson, Steven B <i>Retained</i> 702-455-5320(W)

DATE














EVENTS & ORDERS OF THE COURT

INDEX

EVENTS

03/18/2019	 Inmate Filed - Petition for Writ of Habeas Corpus Party: Plaintiff Venegas, Casimiro [1] Post Conviction
03/18/2019	 Motion for Appointment of Attorney Filed By: Plaintiff Venegas, Casimiro [2]
03/18/2019	 Notice of Motion Filed By: Plaintiff Venegas, Casimiro [3]
04/24/2019	 Order for Petition for Writ of Habeas Corpus [5] Order for Petition for Writ of Habeas Corpus
06/27/2019	 Response Filed by: Defendant State of Nevada

CASE SUMMARY
CASE NO. A-19-791881-W

	<i>[6] State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) and Motion to Appoint Counsel</i>
07/08/2019	 Notice of Rescheduling <i>[7] Notice of Rescheduling of Hearing</i>
03/01/2020	 Withdrawal of Motion Filed by: Plaintiff Venegas, Casimiro <i>[8] Motion to Withdraw as Counsel</i>
10/07/2020	 Petition for Writ of Habeas Corpus Filed by: Plaintiff Venegas, Casimiro <i>[9] Supplemental Petition for Writ of Habeas Corpus</i>
11/04/2020	 Response Filed by: Defendant State of Nevada <i>[10] State's Response to Defendant's Supplemental Petition for Writ of Habeas Corpus (Post Conviction)</i>
12/02/2020	 Request Filed by: Plaintiff Venegas, Casimiro <i>[11] Petitioner's Request for Enlargement of Time</i>
12/07/2020	 Order Filed By: Plaintiff Venegas, Casimiro <i>[12] Order RE Petitioner's Request for Enlargement of Time</i>
12/07/2020	 Notice of Entry of Order Filed By: Plaintiff Venegas, Casimiro <i>[13] Notice of Entry of Order</i>
01/19/2021	 Motion for Order Extending Time Filed by: Plaintiff Venegas, Casimiro <i>[14] Motion for Order Extending Time</i>
01/21/2021	 Clerk's Notice of Hearing <i>[15] Clerks Notice of Hearing</i>
01/22/2021	 Order Filed By: Plaintiff Venegas, Casimiro <i>[16] Order RE Petitioner's Request for Enlargement of Time</i>
02/18/2021	 Notice of Entry of Order Filed By: Plaintiff Venegas, Casimiro <i>[17] Notice of Entry of Order</i>
03/02/2021	 Motion for Order Extending Time Filed by: Plaintiff Venegas, Casimiro <i>[18] Motion for Order Extending Time</i>
03/02/2021	 Order Filed By: Plaintiff Venegas, Casimiro <i>[19] Order RE Petitioner's Request for Enlargement of Time</i>

CASE SUMMARY
CASE NO. A-19-791881-W

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CASE NO. A-19-791881-W

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CASE NO. A-19-791881-W

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Per minute order 11/18/2021 - sdg

per 12/01/21 minute order -yio

Journal Entry Details:

Dan Silverstein, present on behalf of the State. Mr. Akin requested a briefing schedule be set. COURT ORDERED, supplements due 11/05/19 and matter SET for Status Check on 11/12/19. 1/12/19 9:00 AM STATUS CHECK:STATUS OF CASE.....PETITION FOR WRIT OF HABEAS CORPUS;

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Per minute order 11/18/2021 - sdg

per 12/01/21 minute order -yio

Journal Entry Details:





Plaintiff not present. State advised it has no opposition to Plaintiff's request for appointed counsel. COURT ORDERED motion for counsel GRANTED; matter SET for status check on appointed counsel. 07/23/19 9:00 AM STATUS CHECK: CONFIRMATION OF COUNSEL ;

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CASE SUMMARY
CASE NO. A-19-791881-W

11/12/2019, 11/19/2019, 01/21/2020, 01/28/2020

CASE SUMMARY
CASE NO. A-19-791881-W

	<p><i>STATUS CHECK: STATUS OF CASE</i></p> <p>Continued; Continued; Continued; Briefing Schedule Set; Continued; Continued; Continued; Briefing Schedule Set; Journal Entry Details: <i>No parties present. COURT ORDERED, matter CONTINUED for parties presence. CONTINUED TO: 01/28/20 9:00 AM;</i> Continued; Continued; Continued; Briefing Schedule Set; Continued; Continued; Continued; Briefing Schedule Set;</p>
11/12/2019	<p> All Pending Motions (9:00 AM) (Judicial Officer: Bell, Linda Marie)</p> <p>Matter Heard; Journal Entry Details: <i>STATUS CHECK: STATUS OF CASE... PETITION FOR WRIT OF HABEAS CORPUS No parties present. Court noted at the last appearance parties were instructed to file supplemental briefs by 11/05/19 and nothing has been filed to date and no parties are present. COURT ORDERED, matter CONTINUED one week for parties appearance. CONTINUED TO: 11/19/19 9:00 AM;</i></p>
11/19/2019	<p> All Pending Motions (9:00 AM) (Judicial Officer: Bell, Linda Marie)</p> <p>Matter Heard; Journal Entry Details: <i>PETITION FOR WRIT OF HABEAS CORPUS...STATUS CHECK: STATUS OF CASE Mr. Akin advised he has had an opportunity to meet with Plaintiff and Plaintiff would like to take time to way his options and requested a briefing schedule be set in 60 days. COURT ORDERED, matter CONTINUED. CONTINUED TO: 01/21/19 9:00 AM;</i></p>
01/28/2020	<p> All Pending Motions (9:00 AM) (Judicial Officer: Bell, Linda Marie)</p> <p>Matter Heard; Journal Entry Details: <i>STATUS CHECK: STATUS OF CASE...PETITION FOR WRIT OF HABEAS CORPUS Mr. Akin requested a briefing schedule be set. COURT ORDERED, initial briefing due March 31st., 2020. Matter SET for Status Check. 04/07/20 9:00 AM STATUS CHECK;</i></p>
04/14/2020	<p>Status Check (10:30 AM) (Judicial Officer: Bell, Linda Marie)</p> <p><i>Status Check</i> Matter Heard;</p>
04/14/2020	<p> All Pending Motions (10:30 AM) (Judicial Officer: Bell, Linda Marie)</p> <p>Matter Heard; Journal Entry Details: <i>PETITION FOR WRIT OF HABEAS CORPUS...STATUS CHECK No parties present. Court noted briefing was due on March 31st however Mr. Akin moved to withdraw given his new employment and new counsel has not yet been appointed therefore COURT ORDERED, matter SET for appointment of counsel. 04/21/20 10:30 AM STATUS CHECK: APPOINTMENT OF COUNSEL;</i></p>
04/21/2020	<p>Status Check (10:30 AM) (Judicial Officer: Bell, Linda Marie)</p> <p><i>Status Check: Appointment of Counsel</i></p>

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	Counsel Confirmed;
04/21/2020	 All Pending Motions (10:30 AM) (Judicial Officer: Bell, Linda Marie) Matter Heard; Journal Entry Details: <i>PETITION FOR WRIT OF HABEAS CORPUS...STATUS CHECK: APPOINTMENT OF COUNSEL Mr. Gersten appearing via Bluejeans. Mr. Gersten confirmed as counsel of record for Plaintiff. COURT ORDERED, status check SET. 07/28/20 9:00 AM STATUS CHECK: BRIEFING 07/28/20 9:00 AM PETITION FOR WRIT OF HABEAS CORPUS;</i>
07/28/2020	Status Check (11:00 AM) (Judicial Officer: Bell, Linda Marie) 07/28/2020, 10/01/2020 <i>Status Check: Briefing</i> Continued; Briefing Schedule Set; Continued; Briefing Schedule Set;
07/28/2020	 All Pending Motions (11:00 AM) (Judicial Officer: Bell, Linda Marie) Matter Heard; Journal Entry Details: <i>PETITION FOR WRIT OF HABEAS CORPUS...STATUS CHECK: BRIEFING Bryan Schwartz, Deputy District Attorney, present on behalf of the State. Mr. Gersten advised he has had no contact with Mr. Venegas and has not received the file from Mr. Akin and requested a continuance. COURT SO ORDERED. CONTINUED TO: 09/29/20 11:00 AM;</i>
10/01/2020	 All Pending Motions (10:30 AM) (Judicial Officer: Bell, Linda Marie) Matter Heard; Journal Entry Details: <i>STATUS CHECK: BRIEFING...PETITION FOR WRIT OF HABEAS CORPUS Upon Court's inquiry, Mr. Gersten advised he still has not had contact with Defendant as he is housed at High Dessert State prison and requested 7 days to file supplemental brief to move forward. COURT SO ORDERED, additionally State has 30 days to respond and counsel has 30 days to reply and matter SET for status check. 12/17/20 10:30 AM STATUS CHECK: SET EVIDENTIARY HEARING...PETITION FOR WRIT OF HABEAS CORPUS CLERK'S NOTE: A copy of this Minute Order was emailed to DDA John Niman. //ke 10/06/20;</i>
12/17/2020	 Status Check (10:30 AM) (Judicial Officer: Bell, Linda Marie) 12/17/2020, 06/03/2021, 09/09/2021 <i>STATUS CHECK: SET HEARING</i> Continued; Matter Continued; Matter Continued; Per minute order 11/18/2021 - sdg per 12/01/21 minute order -yio Journal Entry Details: <i>Deft. not present, State not present. Mr. Gertsen present via Bluejeans. Mr. Gertsen noted the claims were light; client reached out to counsel. They are waiting for a letter from Deft. Following colloquy regarding scheduling and who the assigned Deputy District Attorney assigned to the case might be. COURT ORDERED, matter CONTINUED. CONTINUED TO: 11.18.21 10:30 A.M. CLERK'S NOTE: This minute order was generated utilizing the JAVS recording. /sb 10.11.21;</i> Continued; Matter Continued; Matter Continued; Per minute order 11/18/2021 - sdg per 12/01/21 minute order -yio Continued; Matter Continued; Matter Continued;

CASE SUMMARY

CASE NO. A-19-791881-W

Per minute order 11/18/2021 - sd
per 12/01/21 minute order -yio

12/17/2020



All Pending Motions (10:30 AM) (Judicial Officer: Bell, Linda Marie)

Matter Heard;

Journal Entry Details:

PETITION FOR WRIT OF HABEAS CORPUS...STATUS CHECK: SET HEARING Bryan Schwartz, Deputy District Attorney present on behalf of the State. Mr. Gersten advised the reply is due January 8th and then a hearing can be set. COURT ORDERED, matter CONTINUED. CONTINUED TO: 01/28/21 10:30 AM;

01/27/2021



Minute Order (7:30 AM) (Judicial Officer: Bell, Linda Marie)

Minute Order - No Hearing Held;

Journal Entry Details:

Petitioner's counsel was granted a request for enlargement of time on January 22, 2021. Because the reply brief is not due until March 4th, the status check and petition hearings will be moved to March 11, 2021. CLERK'S NOTE: A copy of this Minute Order was electronically served to all registered parties of Odyssey File and Serve.// ke 01/27/21;

02/25/2021

CANCELED Motion (10:30 AM) (Judicial Officer: Bell, Linda Marie)

Vacated

Petitioner's Request for Enlargement of Time

06/03/2021



All Pending Motions (10:30 AM) (Judicial Officer: Bell, Linda Marie)

Matter Heard;

Journal Entry Details:

State not present. Court noted there is not enough substance in claims brought forth in the Petition. Mr. Gersten informed that communication between him and his client has been minimal and requested additional time. COURT ORDERED matter CONTINUED. 09/02/21 10:30 AM STATUS CHECK: SET HEARING PETITION OF WRIT OF HABEAS CORPUS CLERK'S NOTE: A copy of this minute order was emailed to District Attorney Bryan Schwartz. // yo 06/08/21 ;

11/18/2021



Minute Order (3:00 AM) (Judicial Officer: Bell, Linda Marie)

Minute Order - No Hearing Held;

Journal Entry Details:

The Status Check and Petition for Writ of Habeas Corpus in this matter are re-set to Thursday, Dec. 2 at 10:30 a.m. No appearance is necessary on Nov. 18 at 10:30 a.m. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /mt;

12/01/2021



Minute Order (3:00 AM) (Judicial Officer: Bell, Linda Marie)

Minute Order - No Hearing Held;

Journal Entry Details:

The court denies Mr. Venegas s petition for writ of habeas corpus. The court sat through the trial that is the subject of the writ. Additionally, the court reviewed the original petition for writ of habeas corpus, the supplemental writ filed by counsel for Mr. Venegas, the response filed by the State and the reply filed by counsel for Mr. Venegas. In his original petition, Mr. Venegas raises claims belied by the record. In the supplemental petition, Mr. Venegas raises only bare assertions without any specific factual support that would support a meritorious post-conviction claim. In his original petition, Mr. Venegas raises a host of claims surrounding the assertion that the jury was not sworn in. Mr. Venegas fails to provide a transcript to support this assertion it appears that jury selection was not transcribed. Mr. Venegas also raises a claim that his counsel failed to object that his sentence exceeded the statutory penalties. Mr. Venegas was sentenced on a number of counts under the habitual criminal statute, within the permitted statutory scheme. The habitual criminal sentences do exceed the statutory penalties for the offenses charged, which is legal under the habitual criminal statute. Counsel for Mr. Venegas raised an issue that trial counsel failed to investigate, interview and introduce testimony from certain favorable witnesses. Counsel neither identified any specific witnesses, nor indicated what their testimony might be or how that testimony would have resulted in a different outcome. Because there are no specific

CASE SUMMARY

CASE NO. A-19-791881-W

claims, there is no basis for the court to hold an evidentiary hearing on this issue. Counsel for Mr. Venegas also raised the issue that appellate counsel failed to investigate and prosecute appeal. Trial counsel did file an appeal in this case, raising three issues regarding evidence and cumulative error. Counsel for Mr. Venegas failed to indicate what additional claims should have been investigated or raised and how those claims would have likely ended with a different outcome. Again, because of the lack of any specific information, the court lacks any basis to hold an evidentiary hearing. Because Mr. Venegas raises no claim supported by evidence that would entitle him to relief, his petition is denied. The December 2, 2021 hearing is vacated. State to prepare the order. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. // yo 12/01/21;

DISTRICT COURT CIVIL COVER SHEET

A-19-791881-W
Dept. VII

County, Nevada

Case No. _____
(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone): <i>Casimiro Venegal</i>	Defendant(s) (name/address/phone): <i>State of Nevada</i>
Attorney (name/address/phone):	Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)

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

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

3-18-2019

Date

Repark by Clerk
Signature of initiating party or representative

See other side for family-related case filings.

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN NIMAN
Deputy District Attorney
Nevada Bar #014408
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASIMIRO VENEGAS,
#2666143

Defendant.

CASE NO: A-19-791881-W
C-16-313118-1
DEPT NO: VII

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

DATE OF HEARING: DECEMBER 1, 2021
TIME OF HEARING: 10:00 AM

THIS CAUSE having come before the Honorable LINDA MARIE BELL, District Judge, on the 1st day of December, 2021, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On March 4, 2016, Casimiro Venegas (hereinafter "Petitioner") was charged by way of Information with one count CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147); two counts BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B Felony - NRS 205.060 - NOC 50426); two counts ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC

1 50138); four counts BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN
2 SUBSTANTIAL BODILY HARM (Category B Felony - NRS 200.481 - NOC 50226); one
3 count ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony -
4 NRS 200.010, 200.030, 193.330, 193.165 - NOC 50031); one count COERCION WITH USE
5 OF A DEADLY WEAPON (Category B Felony - NRS 207.190, 193.165 - NOC 53160); two
6 counts BATTERY WITH INTENT TO COMMIT A CRIME (Category B Felony - NRS
7 200.400.2 - NOC 50151) and one count AIMING A FIREARM AT A HUMAN BEING
8 (Gross Misdemeanor - NRS 202.290 - NOC 51447) for acts that occurred on or about January
9 12, 2019. On March 7, 2016, Petitioner plead not guilty to the charges.

10 Petitioner's jury trial began on March 13, 2017. That same day, the State filed an
11 Amended Information and Second Amended Information. On March 15, 2017, the State filed
12 a Third Amended Information. That same day, Petitioner's jury trial ended and the jury found
13 him guilty of all charges.

14 On September 7, 2017, Petitioner was sentenced as to Count 1 to a minimum of twenty
15 four (24) months and a maximum of sixty (60) months in the Nevada Department of
16 Corrections (NDC); and under the mandatory habitual felon enhancement statute in Count 2
17 to a maximum term of twenty five (25) years with a minimum parole eligibility of ten (10)
18 years in the NDC, concurrent with Count 1; and under the mandatory habitual felon
19 enhancement statute in Count 3 to a maximum term of twenty five (25) years with a minimum
20 parole eligibility of ten (10) years in the NDC, concurrent with Count 1 and Count 2; and under
21 the mandatory habitual felon enhancement statute in Count 4 to a maximum term of twenty
22 five (25) years with a minimum parole eligibility of ten (10) years in the NDC, consecutive
23 Counts 1 through 3; and under the mandatory habitual felon enhancement statute in Count 5
24 to a maximum term of twenty five (25) years with a minimum parole eligibility of ten (10)
25 years in the NDC, consecutive Counts 1 through 3 and concurrent to Count 4; and in Count 6
26 to a minimum of twenty four (24) months and a maximum of one hundred twenty (120) months
27 in the NDC, concurrent with Counts 1 through 5; and under the mandatory habitual felon
28 enhancement statute in Count 7 to a maximum term of twenty five (25) years with a minimum

1 parole eligibility of ten (10) years in the NDC, consecutive to Counts 1 through 3 and
2 concurrent to Counts 4 through 6; and in Count 8 to a minimum of twenty four (24) months
3 and a maximum of one hundred twenty (120) months in the NDC, concurrent with Counts 1
4 through 7; and in Count 9 to a minimum of twenty four (24) months and a maximum of sixty
5 (60) months in the NDC, concurrent with Counts 1 through 8; and in Count 10 to a minimum
6 of twenty four (24) months and a maximum of sixty (60) months in the NDC, concurrent with
7 Counts 1 through 9; and in Count 11 to Clark County Detention Center (CCDC) for three
8 hundred sixty four (364) days, concurrent with Counts 1 through 10; and in Count 12 to a
9 minimum of twenty four (24) months and a maximum of sixty (60) months in the NDC,
10 consecutive to Counts 1 through 5, and Count 7, concurrent to Count 6, Count 8, and Counts
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26 requested by defense counsel. On March 1, 2020, counsel filed a Motion to Withdraw;
27 accordingly, Mr. Joseph Gersten confirmed as counsel for Petitioner.

28 //

1 On October 7, 2020, Petitioner filed the instant Supplemental Petition for Writ of
2 Habeas Corpus (“Supplemental”). On December 1, 2021, this Court denied the Petition.

3 **ANALYSIS**

4 This Court sat through Petitioner’s trial and reviewed his original petition for writ of
5 habeas corpus, the supplemental writ, the State’s response, and Petitioner’s reply. In his
6 original petition, Mr. Venegas raises claims that are waived or are belied by the record. In the
7 supplemental petition, his attorney raises bare assertions without specific factual support that
8 would sustain a meritorious post-conviction claim.

9 **I. PETITIONER’S SUBSTANTIVE CLAIMS ARE WAIVED**

10 Petitioner claims he was denied his right to a speedy trial, that the court abused its
11 discretion, and he was denied a public trial. Petition at 5-9; 12-17. These are substantive claims
12 independent of ineffective assistance of counsel which could have been raised on direct appeal.

13 Substantive challenges must be first raised on direct appeal. Franklin v. State, 110 Nev.
14 750, 751, 877 P.2d 1058, 1058 (1994), disapproved on other grounds by Thomas v. State, 115
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16 ineffective assistance allegations and that could have been raised on direct appeal are waived.
17 NRS 34.724(2)(a); NRS 34.810(1)(a); Evans v. State, 117 Nev. 609, 617, 28 P.3d 498, 505
18 (2001).

19 Petitioner failed to raise these claims on direct appeal, and therefore these claims are
20 waived absent good cause and prejudice for the delay. Petitioner fails to address good cause
21 and prejudice, nor can he, as the facts and law necessary to assert these claims were available
22 on direct appeal. Accordingly, this Court finds these claims are waived.

23 **II. PETITIONER FAILED TO SHOW TRIAL COUNSEL WAS INEFFECTIVE**

24 This Court finds Petitioner’s claim of ineffective assistance of trial counsel lacks merit.
25 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
26 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
27 defense.” The United States Supreme Court has long recognized that “the right to counsel is
28 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,

1 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
2 (1993).

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

14 The court begins with the presumption of effectiveness and then must determine
15 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
16 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
17 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
18 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
19 537 P.2d 473, 474 (1975).

20 Counsel cannot be ineffective for failing to make futile objections or arguments. See
21 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
22 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
23 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
24 (2002).

25 Based on the above law, the role of a court in considering allegations of ineffective
26 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
27 whether, under the particular facts and circumstances of the case, trial counsel failed to render
28 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711

1 (1978). This analysis does not mean that the court should “second guess reasoned choices
2 between trial tactics nor does it mean that defense counsel, to protect himself against
3 allegations of inadequacy, must make every conceivable motion no matter how remote the
4 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel
5 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
6 cannot create one and may disserve the interests of his client by attempting a useless charade.”
7 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

8 “There are countless ways to provide effective assistance in any given case. Even the
9 best criminal defense attorneys would not defend a particular client in the same way.”
10 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
11 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
12 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
13 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's
14 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
15 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

16 Even if a defendant can demonstrate that his counsel's representation fell below an
17 objective standard of reasonableness, he must still demonstrate prejudice and show a
18 reasonable probability that, but for counsel's errors, the result of the trial would have been
19 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
20 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
21 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,
22 694, 104 S. Ct. at 2064–65, 2068).

23 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the
24 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
25 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
26 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
27 be supported with specific factual allegations, which if true, would entitle the petitioner to
28 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”

1 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
2 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims
3 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your
4 petition to be dismissed.” (emphasis added).

5 In his original petition, Mr. Venegas alleges his jury was not sworn in, though he fails
6 to provide any evidence of this claim. This claim is denied as a bare and naked assertion
7 suitable only for summary denial pursuant to Hargrove, 100 Nev. 498, 502, 686 P.2d 222, 225.
8 Further, this claim is belied by the court minutes which show the jury was sworn in. Court
9 Minutes: Jury Trial (3/13/2017), at 2. It would have been futile for Petitioner’s trial counsel to
10 object on this basis. Counsel cannot be deemed ineffective for failing to make futile objections.
11 Ennis v. State, 122 Nev. 694, 137 P.3d 1095 (2006).

12 As to Petitioner’s claim that counsel was ineffective for not objecting to court appointed
13 attorney fees, any objection would have been futile. Pursuant to NRS 178.3975, the court has
14 the jurisdiction to order a defendant to pay attorney’s fees if they are able to do so. Petitioner
15 has made no indication he cannot pay the fees, or he would suffer hardship if required to pay
16 the fees. Therefore, counsel cannot be ineffective for not objecting to the imposition of
17 attorney fees. Ennis, 122 Nev. 694, 137 P.3d 1095.

18 As to Petitioner’s claim that his sentence should be concurrent with the sentence he is
19 serving in his other case, neither the court minutes from sentencing nor the Judgment of
20 Conviction indicate this sentence is to be served concurrent to his sentence in any other case.
21 Thus, his claim is meritless.

22 Petitioner next claims counsel was ineffective for failing to investigate certain favorable
23 witnesses. Supplemental at 9. He also alleges counsel failed to present “contradictory and
24 exculpatory evidence.” Supplemental at 8. When a defendant contends that his attorney was
25 ineffective because he did not adequately investigate the case, he must show how a better
26 investigation would have rendered a more favorable outcome probable. Molina v. State, 120
27 Nev. 185, 192, 87 P.3d 533, 538 (2004).

28 //

1 Petitioner has failed to explain what witnesses should have been interviewed, what their
2 statements would have been, or how any additional testimony would have been beneficial to
3 his case. Petitioner also failed to allege what specific investigation should have been
4 undertaken. Because there are no specific claims, there is no basis for this Court to hold an
5 evidentiary hearing on this issue. These claims are denied. Given the “overwhelming evidence
6 of guilt presented at trial,” additional witness statements are unlikely to have rebutted the
7 multiple eyewitnesses and the fact that officers found Petitioner hiding nearby with items from
8 both crimes. Order of Affirmance, NSC 74241 dated October 22, 2018, at 3.

9 Petitioner also claims his attorney failed to object that his sentence exceeded the
10 statutory penalties. The habitual criminal sentences do exceed the statutory penalties for the
11 offenses charged, which is legal under the habitual criminal statute. Because Petitioner was
12 sentenced within the applicable statutory schemes, his contention is belied by the record.

13 **III. PETITIONER FAILED TO SHOW APPELLATE COUNSEL WAS**
14 **INEFFECTIVE**

15 This Court finds Petitioner’s claim of ineffective assistance of appellate counsel lacks
16 merit. There is a strong presumption that appellate counsel's performance was reasonable and
17 fell within “the wide range of reasonable professional assistance.” See United States v.
18 Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990); citing Strickland, 466 U.S. at 689, 104 S. Ct. at
19 2065. A claim of ineffective assistance of appellate counsel must satisfy the two-prong test set
20 forth by Strickland. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). In order
21 to satisfy Strickland’s second prong, the defendant must show that the omitted issue would
22 have had a reasonable probability of success on appeal. Id.

23 The professional diligence and competence required on appeal involves “winnowing
24 out weaker arguments on appeal and focusing on one central issue if possible, or at most on a
25 few key issues.” Jones v. Barnes, 463 U.S. 745, 751-52, 103 S. Ct. 3308, 3313 (1983). In
26 particular, a “brief that raises every colorable issue runs the risk of burying good arguments .
27 . . in a verbal mound made up of strong and weak contentions.” Id. at 753, 103 S. Ct. at 3313.
28 For judges to second-guess reasonable professional judgments and impose on appointed

counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy.” Id. at 754, 103 S. Ct. at 3314.

Petitioner argues his appellate counsel failed to investigate and prosecute his appeal. His counsel did file an appeal which raised three issues as well as cumulative error. Petitioner has failed to indicate what else appellate counsel should have investigated. These bare and naked allegations must be denied pursuant to Hargrove, 100 Nev. 498, 502, 686 P.2d 222, 225.

Petitioner alleges appellate counsel was ineffective for not raising the issue of the jury swearing-in, but as this claim is unsupported by any evidence, counsel cannot be ineffective for failing to raise it. Ennis, 122 Nev. 694, 137 P.3d 1095.

Because Petitioner raises no claims supported by evidence that would entitle him to relief, these claims are denied.

IV. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING

The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual allegations, which, if true, would entitle him to relief unless the factual allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove, 100 Nev. 498, 503, 686 P.2d 222, 225 (holding that “[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

It is improper to hold an evidentiary hearing simply to make a complete record. *See State v. Eighth Judicial Dist. Court*, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary hearing.”). Further, the United States Supreme Court has held that an evidentiary hearing is not required simply because counsel’s actions are challenged as being unreasonable strategic

1 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge
2 post hoc rationalization for counsel's decision making that contradicts the available evidence
3 of counsel's actions, neither may they insist counsel confirm every aspect of the strategic basis
4 for his or her actions. Id. There is a "strong presumption" that counsel's attention to certain
5 issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Id. (*citing*
6 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the
7 *objective* reasonableness of counsel's performance, not counsel's *subjective* state of mind. 466
8 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

9 In this case, there is no need to expand the record because Petitioner has failed to allege
10 specific facts that would entitle him to relief. Accordingly, an evidentiary hearing is
11 unnecessary.

12 **ORDER**

13 THEREFORE, IT IS HEREBY ORDERED that Defendant's Petition and
14 Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) are DENIED.

15 FURTHER, IT IS HEREBY ORDERED that Defendant's Request for an Evidentiary
16 Hearing is DENIED.

Dated this 11th day of December, 2021

17 

18
19 DISTRICT JUDGE
CAS 03F AD47 8545
Linda Marie Bell
District Court Judge

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

23 BY  for
24 JOHN NIMAN
25 Deputy District Attorney
Nevada Bar #014408

CERTIFICATE OF MAILING

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

CASIMIRO VENEGAS, BAC #1024122
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV, 89070

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

JN/sr/cg/L2

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

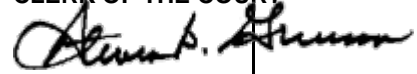
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5
6 Casimiro Venegas, Plaintiff(s) | CASE NO: A-19-791881-W
7 vs. | DEPT. NO. Department 7
8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 12/11/2021

15 Joseph Gersten joe@thegerstenlawfirm.com
16 Steve Wolfson pdmotions@clarkcountyda.com
17 Nicara Brown nicara@thegerstenlawfirm.com
18
19
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21
22
23
24
25
26
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28



1 NEFF

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 CASIMIRO VENEGAS,

6 Petitioner,

7 vs.

8 STATE OF NEVADA,

9 Respondent,

Case No: A-19-791881-W

Dept No: VII

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

11 PLEASE TAKE NOTICE that on December 11, 2021, the court entered a decision or order in this matter,
12 a 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 December 14, 2021.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

17 Amanda Hampton, Deputy Clerk

18
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 14 day of December 2021, I served a copy of this Notice of Entry on the
21 following:

22 ☒ By e-mail:

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

24 ☒ The United States mail addressed as follows:

25 Casimiro Venegas # 1024122 Joseph Z. Gersten, Esq.
P.O.Box 650 9680 W. Tropicana Ave., #146
26 Indain Springs, NV 89070 Las Vegas, NV 89147

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN NIMAN
Deputy District Attorney
Nevada Bar #014408
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASIMIRO VENEGAS,
#2666143

Defendant.

CASE NO: A-19-791881-W
C-16-313118-1
DEPT NO: VII

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

DATE OF HEARING: DECEMBER 1, 2021
TIME OF HEARING: 10:00 AM

THIS CAUSE having come before the Honorable LINDA MARIE BELL, District Judge, on the 1st day of December, 2021, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On March 4, 2016, Casimiro Venegas (hereinafter "Petitioner") was charged by way of Information with one count CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147); two counts BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B Felony - NRS 205.060 - NOC 50426); two counts ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC

1 50138); four counts BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN
2 SUBSTANTIAL BODILY HARM (Category B Felony - NRS 200.481 - NOC 50226); one
3 count ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony -
4 NRS 200.010, 200.030, 193.330, 193.165 - NOC 50031); one count COERCION WITH USE
5 OF A DEADLY WEAPON (Category B Felony - NRS 207.190, 193.165 - NOC 53160); two
6 counts BATTERY WITH INTENT TO COMMIT A CRIME (Category B Felony - NRS
7 200.400.2 - NOC 50151) and one count AIMING A FIREARM AT A HUMAN BEING
8 (Gross Misdemeanor - NRS 202.290 - NOC 51447) for acts that occurred on or about January
9 12, 2019. On March 7, 2016, Petitioner plead not guilty to the charges.

10 Petitioner's jury trial began on March 13, 2017. That same day, the State filed an
11 Amended Information and Second Amended Information. On March 15, 2017, the State filed
12 a Third Amended Information. That same day, Petitioner's jury trial ended and the jury found
13 him guilty of all charges.

14 On September 7, 2017, Petitioner was sentenced as to Count 1 to a minimum of twenty
15 four (24) months and a maximum of sixty (60) months in the Nevada Department of
16 Corrections (NDC); and under the mandatory habitual felon enhancement statute in Count 2
17 to a maximum term of twenty five (25) years with a minimum parole eligibility of ten (10)
18 years in the NDC, concurrent with Count 1; and under the mandatory habitual felon
19 enhancement statute in Count 3 to a maximum term of twenty five (25) years with a minimum
20 parole eligibility of ten (10) years in the NDC, concurrent with Count 1 and Count 2; and under
21 the mandatory habitual felon enhancement statute in Count 4 to a maximum term of twenty
22 five (25) years with a minimum parole eligibility of ten (10) years in the NDC, consecutive
23 Counts 1 through 3; and under the mandatory habitual felon enhancement statute in Count 5
24 to a maximum term of twenty five (25) years with a minimum parole eligibility of ten (10)
25 years in the NDC, consecutive Counts 1 through 3 and concurrent to Count 4; and in Count 6
26 to a minimum of twenty four (24) months and a maximum of one hundred twenty (120) months
27 in the NDC, concurrent with Counts 1 through 5; and under the mandatory habitual felon
28 enhancement statute in Count 7 to a maximum term of twenty five (25) years with a minimum

1 parole eligibility of ten (10) years in the NDC, consecutive to Counts 1 through 3 and
2 concurrent to Counts 4 through 6; and in Count 8 to a minimum of twenty four (24) months
3 and a maximum of one hundred twenty (120) months in the NDC, concurrent with Counts 1
4 through 7; and in Count 9 to a minimum of twenty four (24) months and a maximum of sixty
5 (60) months in the NDC, concurrent with Counts 1 through 8; and in Count 10 to a minimum
6 of twenty four (24) months and a maximum of sixty (60) months in the NDC, concurrent with
7 Counts 1 through 9; and in Count 11 to Clark County Detention Center (CCDC) for three
8 hundred sixty four (364) days, concurrent with Counts 1 through 10; and in Count 12 to a
9 minimum of twenty four (24) months and a maximum of sixty (60) months in the NDC,
10 consecutive to Counts 1 through 5, and Count 7, concurrent to Count 6, Count 8, and Counts
11 9 through 11; and in Count 13 to a minimum of twenty four (24) months and a maximum of
12 sixty (60) months in the NDC, concurrent with all counts. The aggregate total sentence was a
13 minimum of two hundred sixty-four (264) months and a maximum of six hundred sixty (660)
14 months in the NDC, with four hundred seventy-six (476) days credit for time served. The
15 Judgment of Conviction was filed September 21, 2017.

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25 appointment of counsel on July 23, 2019. On January 28, 2020, another briefing schedule was
26 requested by defense counsel. On March 1, 2020, counsel filed a Motion to Withdraw;
27 accordingly, Mr. Joseph Gersten confirmed as counsel for Petitioner.

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1 On October 7, 2020, Petitioner filed the instant Supplemental Petition for Writ of
2 Habeas Corpus (“Supplemental”). On December 1, 2021, this Court denied the Petition.

3 **ANALYSIS**

4 This Court sat through Petitioner’s trial and reviewed his original petition for writ of
5 habeas corpus, the supplemental writ, the State’s response, and Petitioner’s reply. In his
6 original petition, Mr. Venegas raises claims that are waived or are belied by the record. In the
7 supplemental petition, his attorney raises bare assertions without specific factual support that
8 would sustain a meritorious post-conviction claim.

9 **I. PETITIONER’S SUBSTANTIVE CLAIMS ARE WAIVED**

10 Petitioner claims he was denied his right to a speedy trial, that the court abused its
11 discretion, and he was denied a public trial. Petition at 5-9; 12-17. These are substantive claims
12 independent of ineffective assistance of counsel which could have been raised on direct appeal.

13 Substantive challenges must be first raised on direct appeal. Franklin v. State, 110 Nev.
14 750, 751, 877 P.2d 1058, 1058 (1994), disapproved on other grounds by Thomas v. State, 115
15 Nev. 148, 979 P.2d 222 (1999). Post-conviction habeas claims that are independent of
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17 NRS 34.724(2)(a); NRS 34.810(1)(a); Evans v. State, 117 Nev. 609, 617, 28 P.3d 498, 505
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19 Petitioner failed to raise these claims on direct appeal, and therefore these claims are
20 waived absent good cause and prejudice for the delay. Petitioner fails to address good cause
21 and prejudice, nor can he, as the facts and law necessary to assert these claims were available
22 on direct appeal. Accordingly, this Court finds these claims are waived.

23 **II. PETITIONER FAILED TO SHOW TRIAL COUNSEL WAS INEFFECTIVE**

24 This Court finds Petitioner’s claim of ineffective assistance of trial counsel lacks merit.
25 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
26 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
27 defense.” The United States Supreme Court has long recognized that “the right to counsel is
28 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,

1 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
2 (1993).

3 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
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5 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063–64. See also Love, 109 Nev. at 1138, 865
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13 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

14 The court begins with the presumption of effectiveness and then must determine
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17 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
18 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
19 537 P.2d 473, 474 (1975).

20 Counsel cannot be ineffective for failing to make futile objections or arguments. See
21 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
22 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
23 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
24 (2002).

25 Based on the above law, the role of a court in considering allegations of ineffective
26 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
27 whether, under the particular facts and circumstances of the case, trial counsel failed to render
28 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711

1 (1978). This analysis does not mean that the court should “second guess reasoned choices
2 between trial tactics nor does it mean that defense counsel, to protect himself against
3 allegations of inadequacy, must make every conceivable motion no matter how remote the
4 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel
5 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
6 cannot create one and may disserve the interests of his client by attempting a useless charade.”
7 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

8 “There are countless ways to provide effective assistance in any given case. Even the
9 best criminal defense attorneys would not defend a particular client in the same way.”
10 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
11 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
12 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
13 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's
14 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
15 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

16 Even if a defendant can demonstrate that his counsel's representation fell below an
17 objective standard of reasonableness, he must still demonstrate prejudice and show a
18 reasonable probability that, but for counsel's errors, the result of the trial would have been
19 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
20 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
21 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,
22 694, 104 S. Ct. at 2064–65, 2068).

23 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the
24 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
25 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
26 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
27 be supported with specific factual allegations, which if true, would entitle the petitioner to
28 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”

1 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
2 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims
3 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your
4 petition to be dismissed.” (emphasis added).

5 In his original petition, Mr. Venegas alleges his jury was not sworn in, though he fails
6 to provide any evidence of this claim. This claim is denied as a bare and naked assertion
7 suitable only for summary denial pursuant to Hargrove, 100 Nev. 498, 502, 686 P.2d 222, 225.
8 Further, this claim is belied by the court minutes which show the jury was sworn in. Court
9 Minutes: Jury Trial (3/13/2017), at 2. It would have been futile for Petitioner’s trial counsel to
10 object on this basis. Counsel cannot be deemed ineffective for failing to make futile objections.
11 Ennis v. State, 122 Nev. 694, 137 P.3d 1095 (2006).

12 As to Petitioner’s claim that counsel was ineffective for not objecting to court appointed
13 attorney fees, any objection would have been futile. Pursuant to NRS 178.3975, the court has
14 the jurisdiction to order a defendant to pay attorney’s fees if they are able to do so. Petitioner
15 has made no indication he cannot pay the fees, or he would suffer hardship if required to pay
16 the fees. Therefore, counsel cannot be ineffective for not objecting to the imposition of
17 attorney fees. Ennis, 122 Nev. 694, 137 P.3d 1095.

18 As to Petitioner’s claim that his sentence should be concurrent with the sentence he is
19 serving in his other case, neither the court minutes from sentencing nor the Judgment of
20 Conviction indicate this sentence is to be served concurrent to his sentence in any other case.
21 Thus, his claim is meritless.

22 Petitioner next claims counsel was ineffective for failing to investigate certain favorable
23 witnesses. Supplemental at 9. He also alleges counsel failed to present “contradictory and
24 exculpatory evidence.” Supplemental at 8. When a defendant contends that his attorney was
25 ineffective because he did not adequately investigate the case, he must show how a better
26 investigation would have rendered a more favorable outcome probable. Molina v. State, 120
27 Nev. 185, 192, 87 P.3d 533, 538 (2004).

28 //

1 Petitioner has failed to explain what witnesses should have been interviewed, what their
2 statements would have been, or how any additional testimony would have been beneficial to
3 his case. Petitioner also failed to allege what specific investigation should have been
4 undertaken. Because there are no specific claims, there is no basis for this Court to hold an
5 evidentiary hearing on this issue. These claims are denied. Given the “overwhelming evidence
6 of guilt presented at trial,” additional witness statements are unlikely to have rebutted the
7 multiple eyewitnesses and the fact that officers found Petitioner hiding nearby with items from
8 both crimes. Order of Affirmance, NSC 74241 dated October 22, 2018, at 3.

9 Petitioner also claims his attorney failed to object that his sentence exceeded the
10 statutory penalties. The habitual criminal sentences do exceed the statutory penalties for the
11 offenses charged, which is legal under the habitual criminal statute. Because Petitioner was
12 sentenced within the applicable statutory schemes, his contention is belied by the record.

13 **III. PETITIONER FAILED TO SHOW APPELLATE COUNSEL WAS**
14 **INEFFECTIVE**

15 This Court finds Petitioner’s claim of ineffective assistance of appellate counsel lacks
16 merit. There is a strong presumption that appellate counsel's performance was reasonable and
17 fell within “the wide range of reasonable professional assistance.” See United States v.
18 Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990); citing Strickland, 466 U.S. at 689, 104 S. Ct. at
19 2065. A claim of ineffective assistance of appellate counsel must satisfy the two-prong test set
20 forth by Strickland. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). In order
21 to satisfy Strickland’s second prong, the defendant must show that the omitted issue would
22 have had a reasonable probability of success on appeal. Id.

23 The professional diligence and competence required on appeal involves “winnowing
24 out weaker arguments on appeal and focusing on one central issue if possible, or at most on a
25 few key issues.” Jones v. Barnes, 463 U.S. 745, 751-52, 103 S. Ct. 3308, 3313 (1983). In
26 particular, a “brief that raises every colorable issue runs the risk of burying good arguments .
27 . . in a verbal mound made up of strong and weak contentions.” Id. at 753, 103 S. Ct. at 3313.
28 For judges to second-guess reasonable professional judgments and impose on appointed

counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy.” Id. at 754, 103 S. Ct. at 3314.

Petitioner argues his appellate counsel failed to investigate and prosecute his appeal. His counsel did file an appeal which raised three issues as well as cumulative error. Petitioner has failed to indicate what else appellate counsel should have investigated. These bare and naked allegations must be denied pursuant to Hargrove, 100 Nev. 498, 502, 686 P.2d 222, 225.

Petitioner alleges appellate counsel was ineffective for not raising the issue of the jury swearing-in, but as this claim is unsupported by any evidence, counsel cannot be ineffective for failing to raise it. Ennis, 122 Nev. 694, 137 P.3d 1095.

Because Petitioner raises no claims supported by evidence that would entitle him to relief, these claims are denied.

IV. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING

The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual allegations, which, if true, would entitle him to relief unless the factual allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove, 100 Nev. 498, 503, 686 P.2d 222, 225 (holding that “[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

It is improper to hold an evidentiary hearing simply to make a complete record. *See State v. Eighth Judicial Dist. Court*, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary hearing.”). Further, the United States Supreme Court has held that an evidentiary hearing is not required simply because counsel’s actions are challenged as being unreasonable strategic

1 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge
2 post hoc rationalization for counsel's decision making that contradicts the available evidence
3 of counsel's actions, neither may they insist counsel confirm every aspect of the strategic basis
4 for his or her actions. Id. There is a "strong presumption" that counsel's attention to certain
5 issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Id. (*citing*
6 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the
7 *objective* reasonableness of counsel's performance, not counsel's *subjective* state of mind. 466
8 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

9 In this case, there is no need to expand the record because Petitioner has failed to allege
10 specific facts that would entitle him to relief. Accordingly, an evidentiary hearing is
11 unnecessary.

12 **ORDER**

13 THEREFORE, IT IS HEREBY ORDERED that Defendant's Petition and
14 Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) are DENIED.


15 FURTHER, IT IS HEREBY ORDERED that Defendant's Request for an Evidentiary
16 Hearing is DENIED.

Dated this 11th day of December, 2021

17 

18 DISTRICT JUDGE
19 CAS 03F AD47 8545
Linda Marie Bell
District Court Judge

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

23 BY 
24 JOHN NIMAN
25 Deputy District Attorney
Nevada Bar #014408

for

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CASIMIRO VENEGAS, BAC #1024122
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV, 89070

JN/sr/cg/L2

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Casimiro Venegas, Plaintiff(s) | CASE NO: A-19-791881-W
7 vs. | DEPT. NO. Department 7
8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 12/11/2021

15 Joseph Gersten joe@thegerstenlawfirm.com
16 Steve Wolfson pdmotions@clarkcountyda.com
17 Nicara Brown nicara@thegerstenlawfirm.com
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

June 04, 2019

A-19-791881-W Casimiro Venegas, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

**June 04, 2019 9:00 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 17A

COURT CLERK: Kimberly Estala

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Dan Silverstein, Esq. present on behalf of the State.

Court noted a response is needed from the State and ORDERED, matter CONTINUED.

CONTINUED TO: 07/02/19 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 02, 2019

A-19-791881-W Casimiro Venegas, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

**July 02, 2019 9:00 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 17A

COURT CLERK: Kimberly Estala

RECORDER: Renee Vincent

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- No parties present.

COURT ORDERED, matter CONTINUED for presence of District Attorney.

CONTINUED TO: 07/09/19 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 16, 2019

A-19-791881-W Casimiro Venegas, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

**July 16, 2019 9:00 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 17A

COURT CLERK: Kimberly Estala

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT: Niman, John T. Attorney

JOURNAL ENTRIES

- Plaintiff not present.

State advised it has no opposition to Plaintiff's request for appointed counsel. COURT ORDERED motion for counsel GRANTED; matter SET for status check on appointed counsel.

07/23/19 9:00 AM STATUS CHECK: CONFIRMATION OF COUNSEL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 23, 2019

A-19-791881-W Casimiro Venegas, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

July 23, 2019 9:00 AM All Pending Motions

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 17A

COURT CLERK: Kimberly Estala

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT: Akin, Travis D Attorney
Niman, John T. Attorney

JOURNAL ENTRIES

- PETITION FOR WRIT OF HABEAS CORPUS...APPOINTMENT OF COUNSEL

Mr. Akin accepted appointment of counsel and requested a 45 day continuance. COURT SO ORDERED.

CONTINUED TO: 09/03/19 10:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

September 03, 2019

A-19-791881-W Casimiro Venegas, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

**September 03, 2019 9:00 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Bell, Linda Marie **COURTROOM:** RJC Courtroom 17A

COURT CLERK: Kimberly Estala

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT: Akin, Travis D Attorney

JOURNAL ENTRIES

- Dan Silverstein, present on behalf of the State.

Mr. Akin requested a briefing schedule be set. COURT ORDERED, supplements due 11/05/19 and matter SET for Status Check on 11/12/19.

1/12/19 9:00 AM STATUS CHECK:STATUS OF CASE....PETITION FOR WRIT OF HABEAS
CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

November 12, 2019

A-19-791881-W Casimiro Venegas, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

November 12, 2019 9:00 AM All Pending Motions

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 17A

COURT CLERK: Kimberly Estala

RECORDER: Renee Vincent

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- STATUS CHECK: STATUS OF CASE... PETITION FOR WRIT OF HABEAS CORPUS

No parties present.

Court noted at the last appearance parties were instructed to file supplemental briefs by 11/05/19 and nothing has been filed to date and no parties are present. COURT ORDERED, matter CONTINUED one week for parties appearance.

CONTINUED TO: 11/19/19 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

November 19, 2019

A-19-791881-W Casimiro Venegas, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

November 19, 2019 9:00 AM All Pending Motions

HEARD BY: Bell, Linda Marie **COURTROOM:** RJC Courtroom 17A

COURT CLERK: Kimberly Estala

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT: Akin, Travis D Attorney

JOURNAL ENTRIES

- PETITION FOR WRIT OF HABEAS CORPUS...STATUS CHECK: STATUS OF CASE

Mr. Akin advised he has had an opportunity to meet with Plaintiff and Plaintiff would like to take time to weigh his options and requested a briefing schedule be set in 60 days. COURT ORDERED, matter CONTINUED.

CONTINUED TO: 01/21/19 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

January 21, 2020

A-19-791881-W Casimiro Venegas, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

January 21, 2020 9:00 AM Status Check

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 17A

COURT CLERK: Kimberly Estala

RECORDER: Renee Vincent

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- No parties present.

COURT ORDERED, matter CONTINUED for parties presence.

CONTINUED TO: 01/28/20 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

January 28, 2020

A-19-791881-W Casimiro Venegas, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

January 28, 2020 9:00 AM All Pending Motions

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 17A

COURT CLERK: Kimberly Estala

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT: Akin, Travis D Attorney

JOURNAL ENTRIES

- STATUS CHECK: STATUS OF CASE...PETITION FOR WRIT OF HABEAS CORPUS

Mr. Akin requested a briefing schedule be set. COURT ORDERED, initial briefing due March 31st., 2020. Matter SET for Status Check.

04/07/20 9:00 AM STATUS CHECK

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

April 14, 2020

A-19-791881-W Casimiro Venegas, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

April 14, 2020 10:30 AM All Pending Motions

HEARD BY: Bell, Linda Marie **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Kimberly Estala

RECORDER: Renee Vincent

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- PETITION FOR WRIT OF HABEAS CORPUS...STATUS CHECK

No parties present.

Court noted briefing was due on March 31st however Mr. Akin moved to withdraw given his new employment and new counsel has not yet been appointed therefore COURT ORDERED, matter SET for appointment of counsel.

04/21/20 10:30 AM STATUS CHECK: APPOINTMENT OF COUNSEL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

April 21, 2020

A-19-791881-W Casimiro Venegas, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

April 21, 2020 10:30 AM All Pending Motions

HEARD BY: Bell, Linda Marie **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Kimberly Estala

RECORDER: Gail Reiger

REPORTER:

PARTIES

PRESENT: Gersten, Joseph Z Attorney

JOURNAL ENTRIES

- PETITION FOR WRIT OF HABEAS CORPUS...STATUS CHECK: APPOINTMENT OF COUNSEL

Mr. Gersten appearing via Bluejeans.

Mr. Gersten confirmed as counsel of record for Plaintiff. COURT ORDERED, status check SET.

07/28/20 9:00 AM STATUS CHECK: BRIEFING

07/28/20 9:00 AM PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 28, 2020

A-19-791881-W Casimiro Venegas, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

July 28, 2020 11:00 AM All Pending Motions

HEARD BY: Bell, Linda Marie **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Kimberly Estala

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT: Gersten, Joseph Z Attorney

JOURNAL ENTRIES

- PETITION FOR WRIT OF HABEAS CORPUS...STATUS CHECK: BRIEFING

Bryan Schwartz, Deputy District Attorney, present on behalf of the State.

Mr. Gersten advised he has had no contact with Mr. Venegas and has not received the file from Mr. Akin and requested a continuance. COURT SO ORDERED.

CONTINUED TO: 09/29/20 11:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

October 01, 2020

A-19-791881-W Casimiro Venegas, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

October 01, 2020 10:30 AM All Pending Motions

HEARD BY: Bell, Linda Marie **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Kimberly Estala

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT: Gersten, Joseph Z Attorney

JOURNAL ENTRIES

- STATUS CHECK: BRIEFING...PETITION FOR WRIT OF HABEAS CORPUS

Upon Court's inquiry, Mr. Gersten advised he still has not had contact with Defendant as he is housed at High Dessert State prison and requested 7 days to file supplemental brief to move forward. COURT SO ORDERED, additionally State has 30 days to respond and counsel has 30 days to reply and matter SET for status check.

12/17/20 10:30 AM STATUS CHECK: SET EVIDENTIARY HEARING...PETITION FOR WRIT OF HABEAS CORPUS

CLERK'S NOTE: A copy of this Minute Order was emailed to DDA John Niman. //ke 10/06/20

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

December 17, 2020

A-19-791881-W Casimiro Venegas, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

December 17, 2020 10:30 AM All Pending Motions

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 10C

COURT CLERK: Kimberly Estala

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT: Gersten, Joseph Z Attorney

JOURNAL ENTRIES

- PETITION FOR WRIT OF HABEAS CORPUS...STATUS CHECK: SET HEARING

Bryan Schwartz, Deputy District Attorney present on behalf of the State.

Mr. Gersten advised the reply is due January 8th and then a hearing can be set. COURT ORDERED, matter CONTINUED.

CONTINUED TO: 01/28/21 10:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

January 27, 2021

A-19-791881-W Casimiro Venegas, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

January 27, 2021 7:30 AM Minute Order

HEARD BY: Bell, Linda Marie

COURTROOM: No Location

COURT CLERK: Kimberly Estala

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Petitioner's counsel was granted a request for enlargement of time on January 22, 2021. Because the reply brief is not due until March 4th, the status check and petition hearings will be moved to March 11, 2021.

CLERK'S NOTE: A copy of this Minute Order was electronically served to all registered parties of Odyssey File and Serve.// ke 01/27/21

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

June 03, 2021

A-19-791881-W Casimiro Venegas, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

June 03, 2021 10:30 AM All Pending Motions

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 10C

COURT CLERK: Yolanda Orpineda

RECORDER: Kimberly Estala

REPORTER:

PARTIES

PRESENT: Gersten, Joseph Z Attorney

JOURNAL ENTRIES

- State not present.

Court noted there is not enough substance in claims brought forth in the Petition. Mr. Gersten informed that communication between him and his client has been minimal and requested additional time. COURT ORDERED matter CONTINUED.

09/02/21 10:30 AM STATUS CHECK: SET HEARING PETITION OF WRIT OF HABEAS CORPUS

CLERK'S NOTE: A copy of this minute order was emailed to District Attorney Bryan Schwartz. // yo
06/08/21

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

September 09, 2021

A-19-791881-W Casimiro Venegas, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

**September 09, 2021 10:30 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 14B

COURT CLERK: Yolanda Orpineda

RECORDER: Kimberly Estala

REPORTER:

PARTIES

PRESENT: Gersten, Joseph Z Attorney

JOURNAL ENTRIES

- Mr. Gersten present via BlueJeans.

Upon Court's inquiry, Mr. Gersten explained they still had not gotten in contact with their client and confirmed they needed more time. COURT ORDERED, matter CONTINUED. Colloquy regarding the District Attorney handling this case.

CONTINUED TO: 11/18/21 10:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

September 09, 2021

A-19-791881-W Casimiro Venegas, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

September 09, 2021 10:30 AM Status Check

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 14B

COURT CLERK: Yolanda Orpineda

RECORDER: Kimberly Estala

REPORTER:

PARTIES

PRESENT: Gersten, Joseph Z Attorney

JOURNAL ENTRIES

- Deft. not present, State not present. Mr. Gertsen present via Bluejeans.

Mr. Gertsen noted the claims were light; client reached out to counsel. They are waiting for a letter from Deft. Following colloquy regarding scheduling and who the assigned Deputy District Attorney assigned to the case might be. COURT ORDERED, matter CONTINUED.

CONTINUED TO: 11.18.21 10:30 A.M.

CLERK'S NOTE: This minute order was generated utilizing the JAVS recording. /sb 10.11.21

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

November 18, 2021

A-19-791881-W Casimiro Venegas, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

November 18, 2021 3:00 AM Minute Order

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 10C

COURT CLERK:
Shelley Boyle

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Status Check and Petition for Writ of Habeas Corpus in this matter are re-set to Thursday, Dec. 2 at 10:30 a.m. No appearance is necessary on Nov. 18 at 10:30 a.m.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /mt

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

December 01, 2021

A-19-791881-W	Casimiro Venegas, Plaintiff(s)
	vs.
	State of Nevada, Defendant(s)

December 01, 2021 3:00 AM Minute Order

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 10C

COURT CLERK:
Yolanda Orpineda

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The court denies Mr. Venegas s petition for writ of habeas corpus. The court sat through the trial that is the subject of the writ. Additionally, the court reviewed the original petition for writ of habeas corpus, the supplemental writ filed by counsel for Mr. Venegas, the response filed by the State and the reply filed by counsel for Mr. Venegas. In his original petition, Mr. Venegas raises claims belied by the record. In the supplemental petition, Mr. Venegas raises only bare assertions without any specific factual support that would support a meritorious post-conviction claim. In his original petition, Mr. Venegas raises a host of claims surrounding the assertion that the jury was not sworn in. Mr. Venegas fails to provide a transcript to support this assertion it appears that jury selection was not transcribed. Mr. Venegas also raises a claim that his counsel failed to object that his sentence exceeded the statutory penalties. Mr. Venegas was sentenced on a number of counts under the habitual criminal statute, within the permitted statutory scheme. The habitual criminal sentences do exceed the statutory penalties for the offenses charged, which is legal under the habitual criminal statute.

Counsel for Mr. Venegas raised an issue that trial counsel failed to investigate, interview and introduce testimony from certain favorable witnesses. Counsel neither identified any specific witnesses, nor indicated what their testimony might be or how that testimony would have resulted in

a different outcome. Because there are no specific claims, there is no basis for the court to hold an evidentiary hearing on this issue. Counsel for Mr. Venegas also raised the issue that appellate counsel failed to investigate and prosecute appeal. Trial counsel did file an appeal in this case, raising three issues regarding evidence and cumulative error. Counsel for Mr. Venegas failed to indicate what additional claims should have been investigated or raised and how those claims would have likely ended with a different outcome. Again, because of the lack of any specific information, the court lacks any basis to hold an evidentiary hearing. Because Mr. Venegas raises no claim supported by evidence that would entitle him to relief, his petition is denied. The December 2, 2021 hearing is vacated. State to prepare the order.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. // yo 12/01/21



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

JOSEPH Z. GERSTEN, ESQ.
9680 W. TROPICANA AVE. #146
LAS VEGAS, NV 89147

DATE: December 16, 2021
CASE: A-19-791881-W

RE CASE: CASIMIRO VENEGAS vs. THE STATE OF NEVADA; BRIAN WILLIAMS, WARDEN

NOTICE OF APPEAL FILED: December 15, 2021

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☐ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☐ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☒ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada }
County of Clark } SS:

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

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

CASIMIRO VENEGAS,

Plaintiff(s),

vs.

THE STATE OF NEVADA; BRIAN
WILLIAMS, WARDEN,

Defendant(s),

Case No: A-19-791881-W

Dept No: VII

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 16 day of December 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk