

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY LYNN LEWIS,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Electronically Filed
Jun 02 2021 10:11 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No: 95C129824
Related Case A-21-827377-W
Docket No: 82942

RECORD ON APPEAL VOLUME 2

ATTORNEY FOR APPELLANT

GARY LEWIS # 47615,
PROPER PERSON
1200 PRISON RD.
LOVELOCK, NV 89419

ATTORNEY FOR RESPONDENT

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

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MAR 17 2011

Allen L. Blum
CLERK OF COURT

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3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**
6

7 STATE OF NEVADA,)

8 Plaintiff(s),)

9 vs.)

10 GARY L. LEWIS,)

11 Defendant(s),)
12

) Case No: 95C129824

) Dept No: XII
)

95C129824

ASTA

Case Appeal Statement

1296403



13
14 **CASE APPEAL STATEMENT**

15 1. Appellant(s): Gary L. Lewis

16 2. Judge: Michelle Leavitt

17 3. Appellant(s): Gary L. Lewis

18 Counsel:

19 Gary L. Lewis #47615

20 P.O. Box 208

21 Indian Springs, NV 89070

22 4. Respondent: THE STATE OF NEVADA

23 Counsel:

24 David Roger, District Attorney

25 200 Lewis Ave.

26 Las Vegas, NV 89101

27 (702) 671-2700

28 5. Respondent's Attorney Licensed in Nevada: Yes

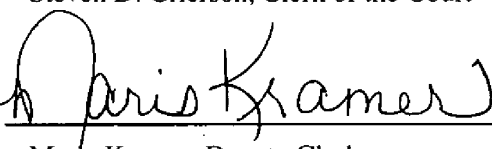
6. Appellant Represented by Appointed Counsel In District Court: Yes

- 1 7. Appellant Represented by Appointed Counsel On Appeal: N/A
2 8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A
3 9. Date Commenced in District Court: August 3, 1995
4 10. Brief Description of the Nature of the Action: Criminal
5 Type of Judgment or Order Being Appealed: Post-Conviction Relief
6 11. Previous Appeal: Yes
7 Supreme Court Docket Number(s): 53779
8 12. Child Custody or Visitation: N/A
9

10 Dated This 17 day of March 2011.

11 Steven D. Grierson, Clerk of the Court

12
13 By:


14 Marie Kramer, Deputy Clerk
15 200 Lewis Ave
16 PO Box 551601
17 Las Vegas, Nevada 89155-1601
18 (702) 671-0512
19
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MAR 17 2011

Heather Ungermann
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

GARY L. LEWIS,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

95C129824

NOED

Notice of Entry of Decision and Order
1298476



Case No: 95C129824

Dept No: XII

NOTICE OF ENTRY OF
DECISION AND ORDER

PLEASE TAKE NOTICE that on March 1, 2011, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on March 17, 2011.

STEVEN D. GRIERSON, CLERK OF THE COURT

By: *Heather Ungermann*
Heather Ungermann, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on this 17 day of March 2011, I placed a copy of this Notice of Entry of Decision and Order in:

The bin(s) located in the Office of the District Court Clerk of:
Clark County District Attorney's Office
Attorney General's Office – Appellate Division

- ☒ The United States mail addressed as follows:
Gary Lewis # 47615
P.O. Box 208
Indian Springs, NV 89070

Heather Ungermann
Heather Ungermann, Deputy Clerk

ORIGINAL

25

1 **ORDR**

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 JAMES R. SWEETIN
6 Chief Deputy District Attorney
7 Nevada Bar #005144
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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John D. Lamm
CLERK OF THE COURT

96C129824
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Findings of Fact, Conclusions of Law and C
1266303

DISTRICT COURT

CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 GARY L. LEWIS,
14 #1302110

15 Defendant.

CASE NO: C129824

DEPT NO: XII

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

18 DATE OF HEARING: 01/27/2011
19 TIME OF HEARING: 8:30 A.M.

20 THIS CAUSE having come on for hearing before the Honorable MICHELLE
21 LEAVITT, District Judge, on the 27th day of January, 2011, the Petitioner not being present,
22 proceeding IN FORMA PAUPERIS, the Respondent being represented by DAVID ROGER,
23 District Attorney, by and through FRANK M. PONTICELLO, Chief Deputy District
24 Attorney, and the Court having considered the matter, including briefs, transcripts, no
25 arguments of counsel, and documents on file herein, now therefore, the Court makes the
26 following findings of fact and conclusions of law:

27 //

28 //

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DEPARTMENT 12 CLERK OF THE COURT

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1 **FINDINGS OF FACT**

2 1. On August 15, 1995, Gary Lewis (hereinafter "Defendant") was charged by
3 way of Information with one (1) count of Sexual Assault with a Minor Under Sixteen Years
4 of Age (Felony – NRS 200.364, 200.366). Thereafter, Defendant entered into negotiations
5 with the State and on June 12, 1996, the State filed an Amended Information charging
6 Defendant with one (1) count of Sexual Assault.

7 2. Defendant entered into a Guilty Plea Agreement with the State on June 12,
8 1996, whereby he agreed to plead guilty pursuant to North Carolina v. Alford, 400 U.S. 25
9 (1970), to the charge as alleged in the Amended Information. In exchange for Defendant's
10 *Alford* plea, the State agreed to recommend concurrent time between this case and
11 Defendant's other case, C122079. The State retained the right to argue at the rendition of
12 sentence. Defendant was present in court with counsel on August 2, 1996, and sentenced to
13 LIFE with the possibility of parole to be served concurrently with C122079. Defendant
14 received no credit for time served. The Judgment of Conviction was filed on August 14,
15 1996. Defendant did not file a direct appeal.

16 3. Defendant filed a "First Amendment Petition" Writ of Habeas Corpus on
17 February 19, 2009. The district court held a hearing on Defendant's petition on February 26,
18 2009. The Court ultimately concluded that Defendant's petition was time-barred and that
19 Defendant made no attempt to demonstrate good cause. The Order denying Defendant's
20 petition was filed on May 29, 2009.¹ Defendant filed a Notice of Appeal on May 11, 2009.
21 The Nevada Supreme Court affirmed the denial of Defendant's petition on October 28, 2009.
22 Lewis v. Nevada, Docket No. 53779 (Order of Affirmance, Oct. 28, 2009). Remittitur
23 issued on November 24, 2009.

24 4. Defendant filed the instant petition and motions for an evidentiary hearing and
25 appointment of counsel on September 23, 2010. The State filed its response and motion to
26 dismiss on December 30, 2010.

27
28 ¹ Defendant filed an additional petition on March 23, 2009. On May 1, 2009, the district court determined that this petition was not a proper amendment or supplement as the original petition had been denied by the court. The Nevada Supreme Court determined that the district court did not abuse its discretion in declining to permit the original petition to be amended or supplemented after it was denied. Lewis v. Nevada, Docket No. 53779 (Order of Affirmance, Oct. 28, 2009).

1 5. This Court held a hearing on Defendant's petition on January 27, 2011.
2 Defendant was not present and the Court entertained no argument by the State.

3 6. Since Defendant's Judgment of Conviction was filed on August 14, 1996, and
4 Defendant did not file a direct appeal, Defendant had until Thursday, August 14, 1997, to
5 file his post-conviction habeas petition.

6 7. Defendant filed the instant petition on September 23, 2010, more than thirteen
7 (13) years after the one-year time limitation had passed.

8 8. Defendant's petition is time barred as outside the one-year time limitation.

9 9. A petition subject to procedural bars may be considered on its merits if good
10 cause is shown.

11 10. Defendant fails to demonstrate to the satisfaction of the court that good cause
12 for delay exists sufficient to overcome the one-year time bar.

13 11. Furthermore, the State specifically pled laches in its response and motion to
14 dismiss Defendant's petition.

15 12. Defendant failed to overcome the presumption that his delay of over fourteen
16 (14) years in filing the instant petition has prejudiced the State.

17 13. Since Defendant's petition is time-barred with no good cause shown, he is not
18 entitled to the appointment of an attorney or an evidentiary hearing on his claims.

19 **CONCLUSIONS OF LAW**

20 1. The mandatory provisions of NRS 34.726 read:

21 1. Unless there is good cause shown for delay, a petition that
22 challenges the validity of a judgment or sentence must be filed
23 *within 1 year after entry of the judgment of conviction or*, if an
24 appeal has been taken from the judgment, *within 1 year after the*
25 *supreme court issues its remittitur.* For the purposes of this
26 subsection, good cause for delay exists if the petitioner
demonstrates to the satisfaction of the court:
(a) That the delay is not the fault of the petitioner; and
(b) That dismissal of the petition as untimely will unduly
prejudice the petitioner.

27 (Emphasis added).

28 //

 //

1 2. In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada
2 Supreme Court rejected a habeas petition that was filed two days late, pursuant to the "clear
3 and unambiguous" mandatory provisions of NRS 34.726(1). Gonzales reiterated the
4 importance of filing the petition with the district court within the one year mandate, absent a
5 showing of "good cause" for the delay in filing. Id. at 593, 590 P.3d at 902. The one-year
6 time bar is therefore strictly construed.

7 3. The Nevada Supreme Court has found that "application of the statutory
8 procedural default rules to post-conviction habeas petitions is mandatory." State v. Eighth
9 Judicial Dist. Court ex rel. County of Clark (Riker), 121 Nev. 225, 231, 112 P.3d 1070,
10 1074 (2005) (citing State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003)).
11 "Habeas corpus petitions that are filed many years after conviction are an unreasonable
12 burden on the criminal justice system. The necessity for a workable system dictates that
13 there must exist a time when a criminal conviction is final." Riker, 121 Nev. at 231, 112 P.3d
14 at 1074 (quoting Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984).

15 4. "In order to demonstrate good cause, a petitioner must show that an
16 impediment external to the defense prevented him or her from complying with the state
17 procedural default rules." Hathaway v. State, 119 Nev. 30, 71 P.3d 503, 506 (2003); citing
18 Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); Lozada v. State, 110
19 Nev. 349, 353, 871 P.2d 944, 946 (1994); Passanisi v. Director, 105 Nev. 63, 769 P.2d 72
20 (1989); see also Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247, 252 (1997); Phelps v.
21 Director, 104 Nev. 656, 764 P.2d 1303 (1988).

22 5. Such an external impediment could be "that the factual or legal basis for a
23 claim was not reasonably available to counsel, or that 'some interference by officials' made
24 compliance impracticable." Hathaway, 71 P.3d at 506; quoting Murray v. Carrier, 477 U.S.
25 478, 488, 106 S.Ct. 2639, 2645 (1986); see also Gonzales, 118 Nev. at 595, 53 P.3d at 904;
26 citing Harris v. Warden, 114 Nev. 956, 959-60 n. 4, 964 P.2d 785 n. 4 (1998). Clearly, any
27 delay in filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

28 //

1 6. In addition, to find good cause there must be a "substantial reason; one that
2 affords a legal excuse." Hathaway, 71 P.3d at 506; quoting Colley v. State, 105 Nev. 235,
3 236, 773 P.2d 1229, 1230 (1989), quoting State v. Estencion, 625 P.2d 1040, 1042 (Haw.
4 1981). The lack of the assistance of counsel when preparing a petition, and even the failure
5 of trial counsel to forward a copy of the file to a petitioner, have been found to be non-
6 substantial, not constituting good cause. See Phelps v. Director Nevada Department of
7 Prisons, 104 Nev. 656, 660, 764 P.2d 1303 (1988); Hood v. State, 111 Nev. 335, 890 P.2d
8 797 (1995).

9 7. NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a]
10 period exceeding five years between the filing of a judgment of conviction, an order
11 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of
12 conviction and the filing of a petition challenging the validity of a judgment of
13 conviction...." The statute also requires that the State plead laches in its motion to dismiss
14 the petition. NRS 34.800.

15 8. In Coleman v. Thompson, 501 U.S. 722 (1991), the United States Supreme
16 Court ruled that the Sixth Amendment provides no right to counsel in post-conviction
17 proceedings. In McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada
18 Supreme Court similarly observed that "[t]he Nevada Constitution...does not guarantee a
19 right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution's
20 right to counsel provision as being coextensive with the Sixth Amendment to the United
21 States Constitution."

22 9. NRS 34.750 provides, in pertinent part:

23 "[a] petition may allege that the Defendant is unable to pay the
24 costs of the proceedings or employ counsel. If the court is
25 satisfied that the allegation of indigency is true and the petition *is*
26 *not dismissed summarily*, the court may appoint counsel at the
 time the court orders the filing of an answer and a return. In
 making its determination, the court may consider whether:

27 (a) The issues are difficult;

28 (b) The Defendant is unable to comprehend the proceedings; or

1 (c) Counsel is necessary to proceed with discovery.”
2 (emphasis added).

3 10. Under NRS 34.750, it is clear that the court has discretion in determining
4 whether to appoint counsel. McKague specifically held that with the exception of NRS
5 34.820(1)(a) [entitling appointed counsel when petition is under a sentence of death], one
6 does not have “[a]ny constitutional or statutory right to counsel at all” in post-conviction
7 proceedings. Id. at 164.

8 11. The Nevada Supreme Court has observed that a defendant “must show that the
9 requested review is not frivolous before he may have an attorney appointed.” Peterson v.
10 Warden, Nevada State Prison, 87 Nev. 134, 483 P.2d 204 (1971) (citing former statute NRS
11 177.345(2)).

12 12. A defendant is entitled to an evidentiary hearing if his petition is supported by
13 specific factual allegations, which, if true, would entitle him to relief, unless the factual
14 allegations are repelled by the record. Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603,
15 605 (1994), Hargrove, 100 Nev. at 503, 686 P.2d at 225. “The judge or justice, upon review
16 of the return, answer and all supporting documents which are filed, shall determine whether
17 an evidentiary hearing is required.” NRS 34.770(1). Defendant’s claims were all resolved
18 based on the record without the need to take further evidence so he is not entitled to an
19 evidentiary hearing.

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ORDER

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

DATED this 24 day of February, 2011.


DISTRICT JUDGE

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

BY  for
FRANK M. PONTICELLO
Chief Deputy District Attorney
Nevada Bar #000370

hjc/SVU

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY LYNN LEWIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 57980
District Court Case No. C129824

FILED

OCT 19 2011

Tracie Lindeman
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 15th day of September, 2011.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
October 12, 2011.

Tracie Lindeman, Supreme Court Clerk

By: Niki Wilcox
Deputy Clerk



95C129824
CCJA
NV Supreme Court Clerks Certificate/Judgm
1661345



IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY LYNN LEWIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57980

FILED

SEP 15 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus, a motion to appoint counsel, and a motion for an evidentiary hearing.¹ Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

Appellant filed his petition on September 3, 2010, more than 14 years after entry of the judgment of conviction on August 14, 1996.² Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.³ See NRS 34.810(2).

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²No direct appeal was taken.

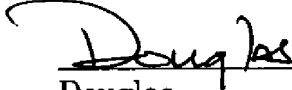
³Lewis v. State, Docket No. 53779 (Order of Affirmance, October 28, 2009).

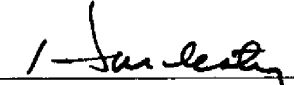
Appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3). Moreover, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of prejudice to the State. NRS 34.800(2).

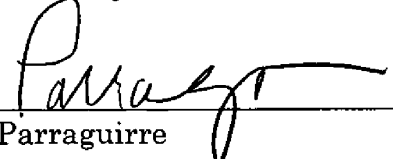
Appellant claimed he had good cause to overcome the procedural bars because he was illiterate and prescribed psychotropic medication. These reasons did not demonstrate good cause for the filing of an untimely and successive post-conviction petition. See Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988). Moreover, appellant failed to overcome the presumption of prejudice to the State. Therefore, the district court did not err in denying the petition as procedurally barred.

In addition, we conclude that the district court did not err in declining to appoint post-conviction counsel or to conduct an evidentiary hearing. See NRS 34.750; NRS 34.770. Accordingly, we

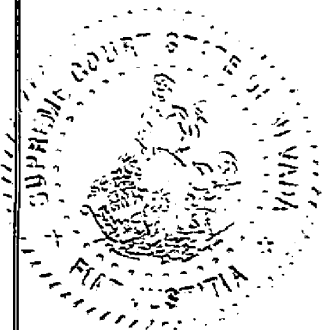
ORDER the judgment of the district court AFFIRMED.

 J.
Douglas


 J.
Hardesty


 J.
Parraguirre

cc: Hon. Michelle Leavitt, District Judge
Gary Lynn Lewis
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk



SUPREME COURT
OF
NEVADA

(C) 1947A 


CERTIFIED COPY
This document is a full, true and correct copy of
the original on file and of record in my office.
DATE: October 12, 2011
Supreme Court Clerk, State of Nevada
By: Mark Wilcox Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY LYNN LEWIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 57980
District Court Case No. C129824

REMITTITUR

TO: Steven Grierson, District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: October 12, 2011

Tracie Lindeman, Clerk of Court

By: Niki Wilcox
Deputy Clerk

cc (without enclosures):
Hon. Michelle Leavitt, District Judge
Gary Lynn Lewis
Attorney General/Carson City
Clark County District Attorney

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on OCT 19 2011.

HEATHER UNGERMANN

Deputy District Court Clerk

GARY LYNN LEWIS
POST OFFICE BOX 208
INDIAN SPRINGS NEVADA 89070
47615
IN PROPER PERSONA

DISTRICT COURT
CLARK COUNTY, NEVADA

GARY LYNN LEWIS,
- VS - DEFENDANT.
STATE OF NEVADA,
PLAINTIFF. /

CASE NO. C-129824
DEPT NO. VII

FILED
NOV 29 2011
CLERK OF COURT

12/22/11

" PRO SE MOTION TO WITHDRAW THE
ALFORD PLEA FOR THE ENTIRE PROCEEDING
WAS IN DIRECT VIOLATION OF THE CONSTITUTION. "

95C129824

NOT

Motion

1704285



COME NOW THE PRO SE DEFENDANT, (SEE: HAYNS V. KERNER,
404 US 519 (1972)) BRINGS BEFORE THIS HONORABLE COURT
A CONSTITUTIONAL CHALLENGE TO THE ENTIRE GUILTY PLEA
PROCEDURE (SEE: HOLLES V. STATE, 95 NEV. 664 (1979)).

THIS MOTION IS BASE ON PAPERS AND PLEADING FILED HEREIN
MEMORANDUM POINTS AND AUTHORITY HERETO, AND ANY AND
ALL ORAL ARGUMENT THIS COURT DEEM NECESSARY.

I.) STATEMENT OF FACTS.

THE DEFENDANT HAS CLAIMED ACTUAL INNOCENCE THROUGHOUT
THIS ENTIRE JUDICIAL PROCEEDINGS, AND THE DEFENDANT
CLEARLY STATES THAT HE DID NOT WILLINGLY AND INTELLIGENTLY
WAIVE HIS CONSTITUTIONAL RIGHT TO A FAIR AND IMPARTIAL

9

1 GARY LYNN LEWIS - 47615

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 GARY LYNN LEWIS)
9 VS DEFENDANT.)
10 STATE OF NEVADA)
11 PLAINTIFF.)

Case No. C-129824
Dept No. NLI
Docket _____

13
14 **NOTICE OF MOTION**

15 **YOU WILL PLEASE TAKE NOTICE, that** MOTION TO WITHDRAW
16 GUILTY PLEA

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 17 day of NOVEMBER, 2011.

23
24 BY: Gary Lewis # 47615
25 /In Propria Personam

26
27
28 **RECEIVED**

NOV 29 2011

CLERK OF THE COURT

TRIAL, AS REQUIRED BY THE UNITED STATES CONSTITUTION
AND THE STATES EQUIVALENT.

THE DEFENDANT STATES THAT THE COURT AND THE
DEFENDANT'S COURT APPOINTED COUNSEL KNEW THAT THE
DEFENDANT HAD A SECOND GRADE COMPREHENSION
LEVEL, AND DURING THIS ENTIRE LEGAL PROCEEDURE THE
DEFENDANT WAS SUBJECTED TO EXTREMELY HIGH DOSAGES
OF PSYCH-MEDICATION.

THE DEFENDANT'S COUNSEL FAILED TO PERFORM TO
THE STANDARDS OF STRECKLAND V WASHINGTON,
FOR THIS PLEA WAS NOT CLEARLY EXPLAINED TO THE DEFEN-
DANT PURSUANT TO A SECOND GRADE COMPREHENSION
LEVEL, NOR DID THE COURT ENQUIRE THE PHYSIC DOCTOR
TO TESTIFY AS TO THE EFFECTS OF THE MEDICATION THE
DOCTOR HAD PRESCRIBED THIS DEFENDANT.

III.) MEMORANDUM POINTS AND AUTHORITY.

THE DEFENDANT BRINGS A CONSTITUTIONAL CHALLENGE TO THE
WHOLE PLEA PROCEEDURE, IN WHICH THE COURT ACCEPTED A
UNCONSTITUTIONAL ALFORD PLEA IN DIRECT VIOLATION OF
THE LAW.

THE DEFENDANT HAD A CONSTITUTIONAL RIGHT TO A
FULL AND FAIR LEGAL PROCEEDINGS THAT WOULD ALLOW THIS
DEFENDANT TO WILLINGLY AND INTELLIGENTLY WAIVE HIS
RIGHT TO A TRIAL... YET THE COURT DOES NOT SHOW HOW THE

DEFENDANT WHO READING AND COMPREHENSION LEVEL
"WAS KNOWN TO BE AT A SECOND GRADE LEVEL AND
THE LEGAL PRESENTED CONTRACT IS WRITTEN FOR A
LAY PERSON WHO HAS AT LEAST A SIXTH GRADE
EDUCATION. (SEE: HATHWAY V. STATE, 119 NEV. 248 (2003))

THE MEDICATION WHICH IS MIND ALTERING
WAS NEVER ADDRESS BY THE COURT WHICH IS ALSO
A "DUE-PROCESS VIOLATION", FOR THE COURT HAS A DUTY
AND A OBLIGATION TO INQUIRE ON TO ALL MEDICATION
THAT CAN HAVE A MIND CHANGING EFFECT. (SEE:
MEAN V. STATE, 120 NEV. 1001 (NEV 2002)).

A.) "THE PLAINTIFF CAN NOT CLAIM LACHES
AS A DEFENSE IN GOOD FAITH."

THE DEFENDANT CLAIM ACTUAL INNOCENCE, HE HAS LEARNED
TO READ AND WRITE, AND COMPREHENDED AT A FIFTH
GRADE LEVEL OVER THE YEARS TO REACH SUCH THIS 2011 YEAR
WHERE THIS CONSTITUTIONAL CHALLENGE NOW IS MADE AND
THE STATE IS NOT PREJUDICE FOR THE GUILTY PLEA PROCEEDURE
WAS NOT CONSTITUTIONAL AS REQUIRED BY LAW. (SEE: HATHWAY
V. STATE, SUPRA) (SEE EDWARD V. CARPENTER, 529 US
466 (2000)) THE DEFENDANT WOULD BE PREJUDICE BY THIS
COURT IF THIS COURT DID NOT WITHDRAW THIS PLEA,

III.) CONCLUSION

THIS DEFENDANT BRINGS A CONSTITUTIONAL CHALLENGE TO THE GUILTY PLEA PROCEDURE, AS A MATTER OF LAW. THE DEFENDANT CLAIMS THAT HE DID NOT WILLINGLY AND INTELLIGENTLY WAIVE HIS CONSTITUTIONAL RIGHT TO A FULL AND FAIR TRIAL.

THE DEFENDANT DEMANDS THAT THIS GUILTY PLEA BE VOIDED AND THIS DEFENDANT BE PROVIDED HIS DAY IN COURT. . . THIS DEFENDANT ALSO CLAIMS A DUE PROCESS VIOLATION FOR THIS COURT DID NOT EXCEPT ANY EVIDENCE BY THE PLAINTIFF THAT WOULD PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT DID COMMIT THE ALLEGED CRIME WHICH MUST BE REQUIRED BY LAW UNDER THE ALFORD PLEA.

THE ILLEGAL EXCEPTANCE OF THE GUILTY PLEA BY THE EIGHT JUDICIAL DISTRICT COURT WAS IN VIOLATION OF THE DEFENDANT'S CONSTITUTIONAL RIGHTS AND MUST BE VOID AS A MATTER OF LAW.

THE SIXTH AMENDMENT REQUIRE THE COURT TO COMPLY WITH THE WELL ESTABLISH CONSTITUTIONAL RIGHTS OF A DEFENDANT DURING A ENTIRE GUILTY PLEA PROCEEDINGS THEREFORE INVALIDATING THIS GUILTY PLEA PROCEEDING IN ITS ENTIRETY.

1 WHEREFORE, CARY LEWIS, prays that the court grant ALL OF THE
2 relief to which he may be entitled in this proceeding.

3 EXECUTED at S.D.C.C.
4 on the 17 day of NOVEMBER, 2011.

5
6 Cary Lewis
7 Signature of Petitioner

8 **VERIFICATION**

9 Under penalty of perjury, pursuant to N.R.S. 208.165 et seq., the undersigned declares that he is
10 the Petitioner named in the foregoing petition and knows the contents thereof; that the pleading is
11 true and correct of his own personal knowledge, except as to those matters based on information and
12 belief, and to those matters, he believes them to be true.

13
14 Cary Lewis
15 Signature of Petitioner

16
17 DEFENDANT
18 Attorney for Petitioner

19
20
21
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25 21
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28

CERTIFICATE OF SERVICE BY MAILING

I, _____, hereby certify, pursuant to NRCP 5(b), that on this _____ day of _____, 20____, I mailed a true and correct copy of the foregoing, " _____ " by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

DESTITUTE ATTORNEY
700 LEWIS
LAS VEGAS NV
89155

ATTORNEY GENERAL
100 N CARSON ST
CARSON CITY NEVADA
89701

CC:FILE

DATED: this 17 day of NOVEMBER, 2011.

Sherry Lewis # 47675
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION

TO WITHDRAW

(Title of Document)

filed in District Court Case number C-129824

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.

Garry Lewis
Signature

11-17-01
Date

GARY LEWIS
Print Name

DEFENDANT
Title

56
FILED

NOV 29 2011

John A. Williams
CLERK OF COURT

CASE NO. C-129824

DEPT. NO. VII-17

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

GARY LYNN LEWIS

Petitioner

vs.

STATE OF NEVADA,

Respondent

12/22/11
**POSTCONVICTION PETITION
REQUESTING A GENETIC MARKER
ANALYSIS OF EVIDENCE WITHIN
THE POSSESSION OR CUSTODY
OF THE STATE OF NEVADA
(NRS 176.0918)**

TO: THE CLERK OF THE COURT FOR CLARK COUNTY,
(County Where Petitioner Was Convicted)
STATE OF NEVADA; THE ATTORNEY GENERAL OF THE STATE OF NEVADA,
AND; THE OFFICE OF THE DISTRICT ATTORNEY FOR THE STATE OF
NEVADA, COUNTY OF CLARK,
(County of District Attorney Where Petitioner Was Convicted)

1. I, GARY LYNN LEWIS, am the Petitioner in this matter. This
(Name of Petitioner / Convicted Inmate)
Petition requests this Court to issue an Order for a Genetic Marker Analysis of evidence
pursuant to NRS 176.0918.

2. Petitioner is informed and believes, and on the basis of such belief, alleges in good
faith that the State of Nevada, or a political subdivision of the State of Nevada, has
possession and control evidence in the form of Genetic Marker Information relating to the
investigation or prosecution that resulted in Petitioner's Judgment of Conviction.

1

95C129824
MOT
Motion
1704298



3. The Petitioner was convicted of committing all of the following Category A or Category B felony / felonies:

Crime's NRS	Title of Crime	Category A or B	Date of Conviction
200.364	SEXUAL ASSAULT	A	6-12-96

Crime's NRS	Title of Crime	Category A or B	Date of Conviction
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Crime's NRS	Title of Crime	Category A or B	Date of Conviction
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Crime's NRS	Title of Crime	Category A or B	Date of Conviction
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4. (If applicable) The Petitioner was sentenced to death and the date set for the execution is N/A
(Date of Execution if known)

5. Pursuant to NRS 176.0918(3)(a), the following information identifies the specific evidence either known or believed by the Petitioner to be in the possession or custody of the State of Nevada that can be subject to Genetic Marker Analysis. (Set forth the identity of such evidence here)

SEROLOGY STANDARD KIT
SEXUAL ASSAULT KIT

6. Pursuant to NRS 176.0918(3)(b), the following is the Petitioner's rationale as to why a reasonable possibility exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through Genetic Marker Analysis of the evidence identified in paragraph 5. (Set forth your rationale here)

FOR THE PETITIONER IS ACTUALLY INNOCENT
DID NOT HAVE ANY CONTACT WITH THE VICTIM

7. Pursuant to NRS 176.0918(3)(c), the type of Genetic Marker Analysis the Petitioner is requesting to be conducted on the evidence identified in paragraph 5 is:

DNA COMPARISON

8. [If applicable] Pursuant to NRS 176.0918(3)(d), the following are the results of all prior Genetic Marker Analysis performed on the evidence in the trial which resulted in the Petitioner's conviction. (Set forth all of such evidence here)

NONE

9. (If applicable) Pursuant to NRS 176.0918(3)(e), the following is a statement of the Petitioner that the type of Genetic Marker Analysis the Petitioner is requesting was not available at the time of trial or, if it was available, that the failure to request Genetic Marker Analysis before the Petitioner was convicted was not a result of a strategic or tactical decision as part of the representation of the Petitioner at the trial. (Set forth the applicable facts here)

THE PETITIONER WAS MISLEAD AND UNEDUCATED
WHERE THE APPOINTED COUNSEL FAILED TO ACT
IN THE BEST INTEREST OF THIS PETITIONER

PRAYER FOR GRANTING OF PETITION

The petitioner respectfully requests that the Court, pursuant to NRS 176.0918, grant the Petitioner's POSTCONVICTION PETITION REQUESTING A GENETIC MARKER ANALYSIS OF EVIDENCE WITHIN THE POSSESSION OR CUSTODY OF THE STATE OF NEVADA and the Petitioner requests this Court to issue an Order for a Genetic Marker Analysis of evidence pursuant to NRS 176.0918 (9).

Dated this 1 day of OCTOBER, 2011

[Signature]
(Petitioner's Signature Here)

DECLARATION OF PETITIONER

I, CARY LYNN LEWIS, declare and attest under penalty of perjury
(Name of Petitioner / Convicted Inmate)
of the laws of the State of Nevada that the information contained in this Petition does not contain any material misrepresentation of fact and that I have a good faith basis for relying on particular facts for the request.

Dated this 1 day of OCTOBER, 2011

[Signature]
(Petitioner's Declarant's Signature here)

DOC 2083 (04/10)

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Request

FOR GENETIC MARKER
(Title of Document)

filed in District Court Case number C-129824

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.

GARY LEWIS
Signature

11-17-011
Date

GARY LEWIS
Print Name

DEFENDANT
Title

Sted Stratton 45193
P.O. Box 208
Indian Springs, NE 68700

CONFIDENTIAL

LEGAL MAIL 99

Clerk Court
200 Lewis Ave
Las Vegas, NE 68155

3763

NOV 17 2011
LAW LIBRARY

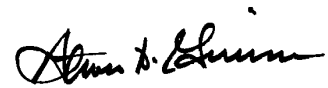


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CORRECTIONAL CENTER
NOV 18 2017
OUTGOING
MAIL



CLERK OF THE COURT

OPPS

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
JAMES SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144
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-

GARY LYNN LEWIS,
#1302110

Defendant.

CASE NO: 95C129824

DEPT NO: XII

**STATE'S OPPOSITION TO DEFENDANT'S PETITION REQUESTING GENETIC
MARKER ANALYSIS OF EVIDENCE WITHIN POSSESSION OR CUSTODY OF
THE STATE OF NEVADA**

DATE OF HEARING: December 22, 2011

TIME OF HEARING: 8:30 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
JAMES SWEETIN, Chief Deputy District Attorney, and hereby submits the attached Points
and Authorities in State's Opposition to Defendant's Petition Requesting Genetic Marker
Analysis Of Evidence Within Possession Of The State Of Nevada.

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

///

///

1 **POINTS AND AUTHORITIES**

2
3 **STATEMENT OF THE CASE**

4 On August 15, 1995, Gary Lewis (hereinafter “Defendant”) was charged by way of
5 Information with one (1) count of Sexual Assault with a Minor Under Sixteen Years of Age
6 (Felony – NRS 200.364, 200.366). Thereafter, Defendant entered into negotiations with the
7 State and on June 12, 1996, the State filed an Amended Information charging Defendant
8 with one (1) count of Sexual Assault.

9 Defendant entered into a Guilty Plea Agreement with the State on June 12, 1996,
10 whereby he agreed to plead guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970),
11 to the charge as alleged in the Amended Information. In exchange for Defendant’s *Alford*
12 plea, the State agreed to recommend concurrent time between this case and Defendant’s
13 other case, C122079. The State retained the right to argue at the rendition of sentence.
14 Defendant was present in court with counsel on August 2, 1996, and sentenced to LIFE with
15 the possibility of parole to be served concurrently with C122079. Defendant received no
16 credit for time served. The Judgment of Conviction was filed on August 14, 1996.
17 Defendant did not file a direct appeal.

18 Defendant filed a “First Amendment Petition” Writ of Habeas Corpus on February
19 19, 2009. The district court held a hearing on Defendant’s petition on February 26, 2009.
20 The Court ultimately concluded that Defendant’s petition was time-barred and that
21 Defendant made no attempt to demonstrate good cause. The Order denying Defendant’s
22 petition was filed on May 29, 2009.¹ Defendant filed a Notice of Appeal on May 11, 2009.
23 The Nevada Supreme Court affirmed the denial of Defendant’s petition on October 28, 2009.
24 Lewis v. Nevada, Docket No. 53779 (Order of Affirmance, Oct. 28, 2009). Remittitur
25

26 ¹ Defendant filed an additional petition on March 23, 2009. On May 1, 2009, the district court determined that this
27 petition was not a proper amendment or supplement as the original petition had been denied by the court. The Nevada
28 Supreme Court determined that the district court did not abuse its discretion in declining to permit the original petition to
be amended or supplemented after it was denied. Lewis v. Nevada, Docket No. 53779 (Order of Affirmance, Oct. 28,
2009).

1 issued on November 24, 2009.

2 Defendant filed a second petition for writ of habeas corpus (post-conviction) and
3 motions for an evidentiary hearing and appointment of counsel on September 23, 2010. The
4 State filed a response and motion to dismiss on December 30, 2010. The court filed its
5 Findings of Fact, Conclusions of Law and Order denying Defendant's Petition on March 1,
6 2011. Defendant filed a Notice of Appeal on March 14, 2011. The Nevada Supreme Court
7 affirmed the denial of Defendant's Petition on September 15, 2011. Lewis v. Nevada,
8 Docket No. 57980. Remittitur issued on October 12, 2011.

9 Defendant filed the instant Petition Requesting Genetic Marker Testing on November
10 29, 2011. The State's response is as follows.

11 **ARGUMENT**

12 **I. Defendant's Request for Genetic Marker Testing Should be Denied**

13 Defendant purports to seek DNA testing of a serology standard kit and sexual assault
14 kit he believes to be in the custody of the State of Nevada. Defendant apparently thinks the
15 tests would exculpate him. NRS 176.0918 states that:

16 [A] person convicted of a category A or B felony who is under sentence
17 of imprisonment for that conviction and who otherwise meets the requirements
18 of this section may file a post-conviction petition requesting a genetic marker
19 analysis of evidence within the possession or custody of the State which may
20 contain genetic marker information relating to the investigation or prosecution
21 that resulted in the judgment of conviction.

22 The statute, however, further provides the petition must include, without limitation:

23 (a) Information identifying specific evidence either known or believed to be
24 in the possession or custody of the State that can be subject to genetic
25 marker analysis;

26 (b) *The rationale for why a reasonable possibility exists that the petitioner
27 would not have been prosecuted or convicted if exculpatory results had
28 been obtained through a genetic marker analysis of the evidence
identified in paragraph (a);*

(c) *An identification of the type of genetic marker analysis the petitioner
is requesting to be conducted on the evidence identified in paragraph (a);*

(d) If applicable, the results of all prior genetic marker analysis performed
on evidence in the trial which resulted in the petitioner's conviction; and

1 (e) *A statement that the type of genetic marker analysis the petitioner is*
2 *requesting was not available at the time of trial or, if it was available, that*
3 *the failure to request genetic marker analysis before the petitioner was*
4 *convicted was not a result of a strategic or tactical decision as part of the*
5 *representation of the petitioner at the trial.*

6 Id. (emphasis added).

7 Defendant fails to establish even a prima facie entitlement to DNA testing under NRS
8 176.0918. First, Defendant fails to demonstrate how a genetic marker analysis of these kits
9 would not have resulted in his prosecution for this crime. In this case, “exculpatory”
10 evidence could be a *lack* of physical evidence such as semen. However, it is unclear whether
11 Defendant ejaculated. Therefore, even if the test produced no semen inculcating him in the
12 crime, he has failed to show a reasonable probability exists that he would not have been
13 prosecuted for the crime. There was extensive evidence presented at preliminary hearing
14 that Defendant sexually assaulted a seven (7) year-old boy by luring him into an apartment
15 basement with sunflower seeds and anally raping him, including the victim’s testimony and
16 the victim’s mother’s testimony. Moreover, at the time of this sexual assault, Defendant was
17 on probation for another incident where he had anal intercourse with a boy. Finally,
18 Defendant pled guilty to the crime pursuant to North Carolina v. Alford, 400 U .S. 25
19 (1970). Defendant cannot demonstrate the exculpatory value of performing this genetic
20 marker examination.

21 Second, Defendant fails to identify what type of genetic marker analysis he wishes to
22 have performed.

23 Third, Defendant fails to demonstrate that a type of genetic marker analysis was not
24 available to him at the time of his plea.

25 Thus, given Defendant’s failure to meet NRS 176.0918’s threshold prerequisites, his
26 petition should be denied.

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CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court deny Defendant's Petition Requesting Genetic Marker Testing.

DATED this 14th day of December, 2011.

Respectfully submitted,

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ James Sweetin

JAMES SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144

CERTIFICATE OF MAILING

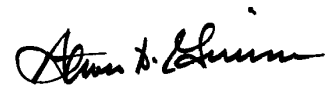
I hereby certify that service of the above and foregoing was made this 14th day of December, 2011, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

GARY LYNN LEWIS BAC #47615
SOUTHERN DESERT CORRECTIONAL CENTER
P.O. BOX 208
INDIAN SPRINGS, NV 89070

BY: /s/ J. Motl

Secretary for the District Attorney's Office

jg/JS/jm/SVU



CLERK OF THE COURT

OPPS

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
JAMES SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144
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-

GARY LYNN LEWIS,
#1302110

Defendant.

CASE NO: 95C129824

DEPT NO: XII

**STATE'S OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW GUILTY
PLEA**

DATE OF HEARING: December 22, 2011
TIME OF HEARING: 8:30 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through JAMES SWEETIN, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in State's Opposition to Defendant's Motion To Withdraw Guilty Plea.

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

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1 **POINTS AND AUTHORITIES**

2
3 **STATEMENT OF THE CASE**

4 On August 15, 1995, Gary Lewis (hereinafter “Defendant”) was charged by way of
5 Information with one (1) count of Sexual Assault with a Minor Under Sixteen Years of Age
6 (Felony – NRS 200.364, 200.366). Thereafter, Defendant entered into negotiations with the
7 State and on June 12, 1996, the State filed an Amended Information charging Defendant
8 with one (1) count of Sexual Assault.

9 Defendant entered into a Guilty Plea Agreement with the State on June 12, 1996,
10 whereby he agreed to plead guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970),
11 to the charge as alleged in the Amended Information. In exchange for Defendant’s *Alford*
12 plea, the State agreed to recommend concurrent time between this case and Defendant’s
13 other case, C122079. The State retained the right to argue at the rendition of sentence.
14 Defendant was present in court with counsel on August 2, 1996, and sentenced to LIFE with
15 the possibility of parole to be served concurrently with C122079. Defendant received no
16 credit for time served. The Judgment of Conviction was filed on August 14, 1996.
17 Defendant did not file a direct appeal.

18 Defendant filed a “First Amendment Petition” Writ of Habeas Corpus (post-
19 conviction) on February 19, 2009. The district court held a hearing on Defendant’s petition
20 on February 26, 2009. The Court ultimately concluded that Defendant’s petition was time-
21 barred and that Defendant made no attempt to demonstrate good cause. The Order denying
22 Defendant’s petition was filed on May 29, 2009.¹ Defendant filed a Notice of Appeal on
23 May 11, 2009. The Nevada Supreme Court affirmed the denial of Defendant’s petition on
24 October 28, 2009. Lewis v. Nevada, Docket No. 53779 (Order of Affirmance, Oct. 28,

25
26
27 ¹ Defendant filed an additional petition on March 23, 2009. On May 1, 2009, the district court determined that this
28 petition was not a proper amendment or supplement as the original petition had been denied by the court. The Nevada
Supreme Court determined that the district court did not abuse its discretion in declining to permit the original petition to
be amended or supplemented after it was denied. Lewis v. Nevada, Docket No. 53779 (Order of Affirmance, Oct. 28,
2009).

1 2009). Remittitur issued on November 24, 2009.

2 Defendant filed a second petition for writ of habeas corpus (post-conviction) and
3 motions for an evidentiary hearing and appointment of counsel on September 23, 2010. The
4 State filed a response and motion to dismiss on December 30, 2010. The court filed its
5 Findings of Fact, Conclusions of Law and Order denying Defendant's Petition on March 1,
6 2011. Defendant filed a Notice of Appeal on March 14, 2011. The Nevada Supreme Court
7 affirmed the denial of Defendant's Petition on September 15, 2011. Lewis v. Nevada,
8 Docket No. 57980. Remittitur issued on October 12, 2011.

9 Defendant filed the instant Motion to Withdraw Guilty Plea on November 29, 2011.
10 The State's response is as follows.

11 **ARGUMENT**

12 **I. DEFENDANT KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY** 13 **ENTERED HIS GUILTY PLEA**

14 "[A] motion to withdraw a plea of guilty...may be made only before sentence is
15 imposed or imposition of sentence is suspended" unless it is necessary "to correct manifest
16 injustice." NRS 176.165; Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990). The
17 determination of whether there was a "manifest injustice" depends on whether the plea was
18 entered voluntarily and knowingly. Baal, 106 Nev. at 72, 787 P.2d at 394. In determining
19 whether a guilty plea was freely, knowingly, and voluntarily entered, the Court reviews the
20 totality of the circumstances surrounding the plea. Bryant v. State, 102 Nev. 268, 271, 721
21 P.2d 364, 367 (1986) (*superseded by statute*). However, a guilty plea is presumptively valid.
22 Wilson v. State, 99 Nev. 362, 373, 664 P.2d 328, 334 (1983). In addition, when a guilty plea
23 is accepted by the trial court after proper canvassing as to whether the defendant freely,
24 knowingly, and intelligently entered his plea, such plea will be deemed properly accepted.
25 Baal, 106 Nev. at 72, 787 P.2d at 394. However, the failure to conduct a ritualistic oral
26 canvass does not require that the plea be invalidated. State v. Freese, 116 Nev. 1097, 13
27 P.3d 442 (2000).

28 Because of the age of this case the transcript of the plea canvass is not available;

1 therefore, the State will refer to the Guilty Plea Agreement.

2 In the present case, Defendant argues that his plea was not knowing and voluntary.
3 The crux of Defendant's argument is that he did not understand the plea because he
4 comprehends at a second grade level and was on anti-psychotic medicine at the time he
5 entered his plea.

6 Defendant signed a Guilty Plea Agreement ("GPA") in which he acknowledged that
7 his plea was knowing, voluntary, and intelligent:

8 "I understand that the consequences of my plea of guilty by way of the Alford
9 decision are that I will be imprisoned for a period of LIFE, with the possibility of
10 parole; or twenty-five (25) years; with a mandatory minimum of ten (10) years being
served before I am eligible for parole." (GPA at 2).

11 "I understand that I am not eligible for probation for the offense to which I am
12 pleading guilty." (GPA at 2).

13 "I understand that if more than one sentence of imprisonment is imposed and I am
14 eligible to serve the sentences concurrently, the sentencing judge has the discretion to
15 order the sentences concurrently or consecutively." (GPA at 2).

16 "I have not been promised or guaranteed any particular sentence by anyone. I know
17 that my sentence is to be determined by the court within the limits prescribed by
18 statute. I understand that if my attorney or the State or both recommend any specific
punishment to the Court, the Court is not obligated to accept the recommendation."
19 (GPA at 2).

20 "By entering my plea of guilty...I understand that I am waiving and forever giving up
the following rights and privileges:

21
22 6. The right to appeal the conviction, with the assistance of an attorney,
23 either appointed or retained, unless the appeal is based upon reasonable
24 constitutional jurisdictional or other grounds that challenge the legality of
the proceedings and except as otherwise provided in subsection 3 of NRS
174.035." (GPA at 4).

25
26 "I have discussed the elements of all of the original charge(s) against me with my
attorney and **I understand the nature of the charge(s) against me.**" (GPA at 4)
27 (Emphasis added).

28 "I have discussed with my attorney any possible defense, defense strategies and

1 circumstances which might be in my favor.” (GPA at 4).

2 “All the foregoing elements, consequences, rights and waiver of rights have been
3 thoroughly explained to me by my attorney.” (GPA at 4).

4 “I believe that pleading guilty by way of the Alford decision and accepting this plea
5 bargain is in my best interest, and that a trial would be contrary to my best interest.”
(GPA at 4).

6 “I am signing this voluntarily, after consultation with my attorney, and I am not acting
7 under duress or coercion or by virtue of any promises of leniency, except for those set
8 forth in this agreement.” (GPA at 4).

9 **“I am not now under the influence of any intoxicating liquor, a controlled
10 substance or other drug which would impair my ability to comprehend or
11 understand this agreement or the proceedings surrounding my entry of this
plea.”** (GPA at 5) (Emphasis added).

12 “My attorney has answered all my questions regarding this guilty plea agreement and
13 its consequences to my satisfaction and I am satisfied with the services provided by
14 my attorney.” (GPA at 5).

15 The GPA is replete with evidence that Defendant understood the terms of his guilty
16 plea and had discussed with his attorney the consequences stemming therefrom. Moreover,
17 the GPA specifically states Defendant was not under the influence of any drug which would
18 impair his ability to understand the agreement or the circumstances surrounding it.
19 Consequently, Defendant’s plea was irrefutably entered freely, knowingly, and voluntarily.
20 Looking at the totality of the circumstances, therefore, Defendant has not satisfied his burden
21 of proving that “manifest injustice” (as defined in NRS 176.165) exists to warrant the
22 withdrawal of his plea. Therefore, Defendant is not entitled to relief.

23 **II. THE STATE PLEADS EQUITABLE LACHES**

24 Defendant’s motion is barred by the doctrine of equitable laches. Hart v. State, 116
25 Nev. 558, 1 P.3d 969 (2000). The Nevada Supreme Court has held that in applying the
26 doctrine of laches to an individual case, several factors should be considered, including, “(1)
27 whether there was an inexcusable delay in seeking relief; (2) whether an implied waiver has
28 arisen from the defendant’s knowing acquiescence in existing conditions; and (3) whether

1 circumstances exist that prejudice the State.” Hart, 116 Nev. at 563-64, 1 P.3d at 972. In
2 addition to finding that equitable laches must be considered to determine whether manifest
3 injustice exists, the Court also found that a delay of less than a year can be a significant
4 enough delay to bar relief in a post-conviction motion to withdraw a guilty plea. Id.

5 Defendant entered into his Guilty Plea Agreement over fifteen (15) years ago on June
6 12, 1996. Although Defendant proffers the explanation for his delay in filing this motion
7 that he now comprehends at a fifth grade level, such a delay is inexcusable, especially given
8 that the facts pertinent to Defendant’s motion were available to him from the moment he
9 entered his plea. Additionally, if Defendant were allowed to withdraw his plea, the State
10 would suffer extreme prejudice because it would have to call long-lost witnesses whose once
11 vivid recollections have faded and re-gather evidence that may be lost or destroyed due to
12 the lengthy passage of time. Therefore, the doctrine of equitable laches must be applied in
13 the instant matter and Defendant’s motion should be denied.

14 **CONCLUSION**

15 For the foregoing reasons, the State respectfully requests that this Court deny
16 Defendant's Motion to Withdraw Guilty Plea.

17
18 DATED this 14th day of December, 2011.

19 Respectfully submitted,

20 DAVID ROGER
21 Clark County District Attorney
22 Nevada Bar #002781

23
24 BY /s/ James Sweetin
25 JAMES SWEETIN
26 Chief Deputy District Attorney
27 Nevada Bar #005144
28

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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 14th day of
December, 2011, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

GARY LYNN LEWIS BAC #47615
SOUTHERN DESERT CORRECTIONAL CENTER
P.O. BOX 208
INDIAN SPRINGS, NV 89070

BY: /s/ J. Motl
Secretary for the District Attorney's Office

jg/JS/jm/SVU

ORIGINAL

89

1 **ORDR**

2 MARY-ANNE MILLER
3 Clark County District Attorney
4 Nevada Bar #001419
5 JAMES SWEETIN
6 Chief Deputy District Attorney
7 Nevada Bar #005144
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

FILED

JAN 12 1 10 PM '12

[Signature]
CLERK COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

95C129824
ORDR
Order
1745600



10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 GARY LYNN LEWIS,
14 #1302110

15 Defendant.

Case No. C129824
Dept No. XII

16
17 **ORDER**

18 DATE OF HEARING: December 22, 2011
19 TIME OF HEARING: 8:30 A.M.

20 THIS MATTER having come on for hearing before the above entitled Court on the
21 22nd day of December, 2012, the Defendant not being present, represented in proper person,
22 the Plaintiff being represented by MARY-ANNE MILLER, District Attorney, through
23 JAMES SWEETIN, Chief Deputy District Attorney, and the Court having heard the
24 arguments of counsel and good cause appearing therefor,

25 ///

26 ///

27 ///

28 RECEIVED
JAN 12 2012

CLERK OF THE COURT

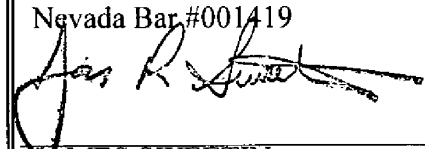
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1 IT IS HEREBY ORDERED that the Defendant's Motion to Withdraw the Alford Plea
2 for the Entire Proceeding was in Direct Violation of the Constitution, shall be, and it is
3 DENIED.

4 IT IS HEREBY ORDERED that the Defendant's Petition Requesting Genetic Marker
5 Analysis of Evidence within Possession or Custody of the State of Nevada, shall be, and it is
6 no ruling.

7 DATED this 11th day of January, 2012.

8
9
10 
DISTRICT JUDGE

11
12 MARY-ANNE MILLER
13 DISTRICT ATTORNEY
14 Nevada Bar #001419


15 JAMES SWEETIN
16 Chief Deputy District Attorney
17 Nevada Bar #005144

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28 jm/SVU

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FILED

JUL 09 2012

Alvin J. Johnson
CLERK OF COURT

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4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6 * * * *

7 THE STATE OF NEVADA VS GARY L
8 LEWIS

CASE NO.: 95C129824
DEPARTMENT 12

95C129824
COSCC
Criminal Order to Statistically Close Case
1897618



9
10 CRIMINAL ORDER TO STATISTICALLY CLOSE CASE

11 Upon review of this matter and good cause appearing,

12 IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
13 statistically close this case for the following reason:

14 DISPOSITIONS:

- 15 ☐ Nolle Prosequi (before trial)
16 ☐ Dismissed (after diversion)
17 ☐ Dismissed (before trial)
18 ☒ Guilty Plea with Sentence (before trial)
19 ☐ Transferred (before/during trial)
20 ☐ Bench (Non-Jury) Trial
21 ☐ Dismissed (during trial)
22 ☐ Acquittal
23 ☐ Guilty Plea with Sentence (during trial)
24 ☐ Conviction
25 ☐ Jury Trial
☐ Dismissed (during trial)
☐ Acquittal
☐ Guilty Plea with Sentence (during trial)
☐ Conviction
☐ Other Manner of Disposition

DATED this 5 day of July, 2012.

Michelle Leavitt
MICHELLE LEAVITT
DISTRICT COURT JUDGE

RECEIVED
JUL 09 2012
CLERK OF THE COURT

MICHELLE LEAVITT
DISTRICT JUDGE
DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

EIGHTH JUDICIAL DISTRICT COURT
IN AND FOR CLARK COUNTY, NEVADA

GARY L. LEWIS
PETITIONER

CASE No. C129824
DEPT No. VIII (8)

-v-

THE STATE OF NEVADA,
RESPONDENT(S)

"JUDICIAL NOTICE: PETITIONERS
NOTICE OF COURSES NON-COMMUNICATION."

Comes Now Gary LYNN Lewis (Allegedly) Represented By
Counsel; Mr. Gregory Denue, ESQ. PETITIONER Gives Notice
THAT AFTER BEING APPOINTED BY THIS HONORABLE COURT ON
THE 22ND DAY OF December, 2011 TO "Review The motion To
Determine WHETHER OR NOT IT WOULD BE ADVANTAGEOUS TO DO" (SO)
Mr. Denue HAS NOT COMMUNICATED WITH PETITIONER:

- 1) ANY QUESTIONS.
- 2) ANY STRATEGIES PUT FORTH AS AN (APPOINTED) ADVOCATE.
- 3) ANY CONCLUSIONS, AND/OR RESULTS OF HIS INQUIRY, AS ORDERED.

The Foregoing Averment(s) were made UNDER THE
PENALTY/OF PERJURY, Per 18 USC § 1621, 28 USC § 1746
ON THIS 8TH DAY, JULY, 2013. x Gary L. Lewis

Service BY mail TO the Following ON 9TH July 2013

- 1) Clerk OF The Court
EJD Courts (8)
200 E Lewis Ave, 3RD FL
Las Vegas, NV. 89155-1160

- 2) Clark Co. Dist DTY
200 E Lewis Ave
Las Vegas, NV. 89155-2216

96C129824
LSF
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95C129824

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 22, 2011

95C129824

The State of Nevada vs Gary L. Lewis

December 22, 2011 8:30 AM

All Pending Motions
(12/22/2011)

HEARD BY: Smith, Douglas E. (g)

COURTROOM: RJC Courtroom 14D

COURT CLERK: Susan Jovanovich

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: Ponticello, Frank M. Deputy District Attorney
State of Nevada Plaintiff

JOURNAL ENTRIES

Deft. not present; incarcerated in the Nevada Department of Corrections (NDC).

DEFENDANT'S PRO PER MOTION TO WITHDRAW THE ALFORD PLEA FOR THE ENTIRE PROCEEDING WAS IN DIRECT VIOLATION OF THE CONSTITUTION

COURT ORDERED, Motion DENIED.

DEFENDANT'S PRO PER POST CONVICTION PETITION REQUESTING A GENETIC MARKER ANALYSIS OF EVIDENCE WITHIN THE POSSESSION OR CUSTODY OF THE STATE OF NEVADA (NRS 176.0918)

Court stated it is not sure if there is evidence for testing. Mr. Ponticello advised State filed a written opposition, further noting he will not argue this as Deft. is not present in Court. Thereafter, State submitted on the pleadings. Court reviewed the Motion, noting it is inclined to allow to have testing, due to Deft. entering a plea pursuant to Alford. Court further noted Deft. needs to provide three points on the equitable laches arguments, including whether or not there was excusable delay, implied review, and if circumstances exist whether or not prejudiced by the State. COURT ORDERED, no ruling will be done at this time on this motion; Greg Denu, Esq. is hereby APPOINTED to review the motion to determine whether or not it would be advantageous to do

PRINT DATE: 12/22/2011

Page 1 of 2

Minutes Date:

December 22, 2011

GARY OK

95C129824

analysis of the DNA evidence.

¶

NDC

CLERK'S NOTE: A copy of the above minute order has been delivered by regular mail to: Gary Lewis #47615, S.D.C.C., P.O. BOX 208, Indian Springs, NV 89070. /// sj

PRINT DATE: 12/22/2011

Page 2 of 2

Minutes Date: December 22, 2011

STATE BAR OF NEVADA



June 24, 2013

Gary Lewis, #47615
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

RE: Grievance / Gregory Denué, Esq.
Reference No. SC13-0861

600 East Charleston Blvd.
Las Vegas, NV 89104-1563
phone 702.382.2200
toll free 800.254.2797
fax 702.385.2878

9456 Double R Blvd., Ste. B
Reno, NV 89521-5977
phone 775.329.4100
fax 775.329.0522

www.nvbar.org

Dear Mr. Lewis:

Please allow this letter to acknowledge receipt of your June 14, 2013, grievance to the State Bar of Nevada regarding your apparently court-appointed attorney, Gregory Denué.

A review of court records and the information provided indicates that your grievance involves issues best addressed in the appropriate court settings. The Office of Bar Counsel and the disciplinary boards of the State Bar are not substitutes for the court system. The State Bar has no authority to take any action which could affect the outcome of any civil disputes or litigation. Accordingly, your allegations are, at this time, more appropriately handled in the proper judicial forum.

Therefore, the grievance has been dismissed. As such, please consider this matter closed.

If a court makes any findings that clearly establish professional misconduct, you may submit that information with any supporting documentation for reconsideration.

Thank you for bringing this matter to the attention of our office.

Sincerely,

Phillip J. Pattee
Assistant Bar Counsel

GARY LYNN LEAVIS

NNCC # ~~47105~~ 47615

P.O. Box 7000

CONSON CITY, NV

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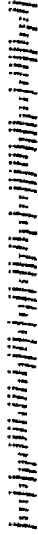
Clerk of the Court
Eighth Judicial Dist.
200 E. Lewis Ave, 3rd Fl
Las Vegas, NV 89155-1160

LEGAL MAIL

CONFIRMED

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FILED REC'D & FILED

MAR 11 3 07 PM 2014 MAR -4 PM 3:25

ALAN GLOVER
CLERK OF THE COURT BY [Signature] DEPUTY CLERK

**In The First Judicial District Court of the State of Nevada
In and for Carson City**

GARY L. LEWIS,

Plaintiff,

vs.

STATE OF NEVADA,

Defendant.

) Case No.: 14 EW 00007 1B

) Dept. No.: I

0129824

) ORDER TRANSFERRING ACTION

The Clerk of the First Judicial District Court of the State of Nevada, in and for Carson City having received on the 25th day of February, 2014, the following listed documents and having "Received" stamped same: **PETITION FOR WRIT OF HABEAS CORPUS,**

Under NRS 34.738(1),

A petition that challenges the validity of a conviction or sentence must be filed with the clerk of the district court for the county in which the conviction occurred. Any other petition must be filed with the clerk of the district court for the county in which the petitioner is incarcerated.

Petitioner challenges conviction.

IT IS HEREBY ORDERED that the action be transferred to the Clerk of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, for all further proceedings.

RECEIVED
MAR 10 2014

CLERK OF THE COURT

95C129824
ORDR
Order
3563861



Order Transferring Action - I

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DATED this 27 day of February, 2014.

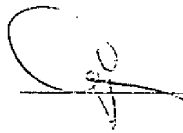
J. J. Russell
DISTRICT JUDGE

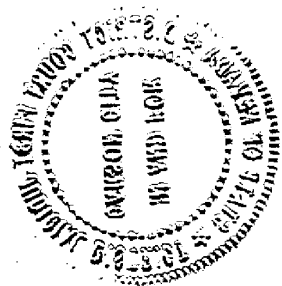
Order Transferring Action - 2

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CERTIFICATE OF SERVICE

I hereby certify that I am employed by the Office of the Carson City District Court Clerk, Carson City, Nevada, and that on the 4 day of September, 2014, I served the foregoing ORDER TRANSFERRING ACTION by depositing for mailing a true copy thereof to: [Petitioner's name & address] and to Catherine Cortez-Masto, Attorney General, 100 North Carson Street, Carson City, NV 89701.

 _____



CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

Date March 4, 2014

Alan Glover, City Clerk and Clerk of the First Judicial District
Court of the State of Nevada, in and for Carson City.

By [Signature] Deputy

Per NRS 239 Sec. 6 the SSN may be redacted, but in no way affects the legality of the document

Case No. _____

Dept. No. _____

24
FILED

MAR 11 3 07 PM '14

Ann K. Quinn
CLERK OF THE COURT

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

-ooo-

GARY L. LEWIS

Petitioner,

vs.

C129824
PETITION FOR WRIT
OF HABEAS CORPUS
(POST CONVICTION)

Respondent.
STATE OF NEVADA

95C129824
PWHC
Petition for Writ of Habeas Corpus
3563893



INSTRUCTIONS:

(1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.

(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of prisons, name the warden or head of the institution. If you are not in a specific institution of the department but within its custody, name the director of the department of prisons.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.

CLERK OF THE COURT

MAR 10 2014

RECEIVED

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(6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the attorney general's office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: NORTHERN NEVADA CORRECTION CENTER

2. Name and location of court which entered the judgment of conviction under attack: EIGHTH JUDICIAL DISTRICT COURT

3. Date of judgment of conviction: 7-16-96

4. Case number: 95C129824

5. (a) Length of sentence: LIFE

(b) If sentence is death, state any date upon which execution is scheduled: N/A

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

Yes No X

If "yes" list crime, case number and sentence being served at

this time: _____

7. Nature of offense involved in conviction being challenged: SEXUAL ASSULT

8. What was your plea? (check one)

(a) Not Guilty _____

(b) Guilty _____

(c) Guilty but mentally ill _____

(d) Nolo Contendere X

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

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

(a) Jury _____ (b) Judge without a jury _____

11. Did you testify at the trial? Yes _____ No X

12. Did you appeal from the judgment of conviction?

Yes _____ No X

13. If you did appeal, answer the following:

(a) Name of court: N/A

(b) Case number or citation: N/A

(c) Result: N/A

(d) Date of result: N/A

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

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

ATTORNEY STATED IT WOULD BE USELESS TO APPEAL DO
TO THE ENTITLING OF THE ALFORD PICA THERE IS NO APPEAL DUE TO
THE SENTENCE.

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

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

(a) (1) Name of court: EIGHTH JUDICIAL DISTRICT COURT

(2) Nature of proceedings: MOTION REQUESTING A
GENETIC MARKER ANALYSIS OF EVIDENCE WITHIN THE POSSESSION
OR CUSTODY OF THE STATE OF NEVADA (N.R.S. 176.0918)

(3) Grounds raised: EVIDENCE WAS NOT TESTED

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

(5) Result: MOTION DEFERRED TO WEEB DENUE ESQ

(6) Date of result: 12-22-01

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

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

(1) Name of court: N/A

(2) Nature of proceedings: N/A

- (3) Grounds raised: N/A
- (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No
- (5) Result: N/A
- (6) Date of result: N/A
- (7) If known, citations of any written opinion or date of orders entered pursuant to such result: N/A
-

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

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

- (1) First petition, application or motion?

Yes No

Citation or date of decision: N/A

- (2) Second petition, application or motion?

Yes No

Citation or date of decision: N/A

- (3) Third or subsequent petitions, applications or motions? Yes No

Citation or date of decision: N/A

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

five handwritten or typewritten pages in length.) THE COURT APPOINTED
GRIGG DENUE ESQ TO DETERMINE WHETHER OR NOT IT WOULD BE ADVANTAGEOUS
TO DO THE ANALYSIS OF THE DNA EVIDENCE PURSUANT M.R.S. 176.0918 AND NOTHING
HAS BEEN DONE TO THIS DATE.

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

(a) Which of the grounds is the same: NONE

(b) The proceedings in which these grounds were raised:

N/A

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

NONE

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) NONE

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) THE MARTINEZ V. ROYAL 132 S. CT 1309 IS THE PRESENT RULING FROM THE SUPREME COURT OF APPEAL WHICH MANDATES THAT INEFFECTIVE ASSISTANCE OF COUNSEL REFERS BACK TO THE HABEAS CORPUS STAGES OVER COMING ANY PROCEDURAL BAR. (SEE 736 F. 3d 1287 (2013 9TH CIR))

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes ☐ No ☒

If yes, state what court and the case number: N/A

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

ROBERT D. CARUSO D.P.D

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

If yes, specify where and when it is to be served, if you know:

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

1 (a) Ground one:

2 ACTUAL INNOCENSE

6 Supporting Facts:

7 IF THE D.N.A WOULD HAD BEEN TESTED PURSUANT TO
8 N.I.S. 176-0918 IT WOULD HAD PROVED THIS PETITIONER'S
9 ACTUAL INNOCENSE FOR THIS PETITIONER NEVER COMMITTED ANY
10 CRIME AND ENTERED THE AFFORD PLCA IN FEAR AND NO EDUCATION

Ground two:

INEFFECTIVE ASSISTANCE OF COUNSEL

Supporting Facts:

FOR FACTING TO DEMAND THE TESTING OF THE D.N. A PRIOR
TO ALLOWING THE ENTERANCE OF A ALFORD PLEA FOR THE
ATTORNEY ADVISED THIS PETITIONER TO ENTER A ALFORD PLEA
OVER THE PETITIONER INFORMING COUNSEL THAT HE WAS ACTUALLY
INNOCENT

THREE
(b) Ground ~~One~~:

EXCESSIVE INCARCERATION IN WHICH
THE NEVADA DEPARTMENT OF PRISON IS APPLYING
DUE TO PAROLE IS NOT A RIGHT

Supporting Facts:

THE PRISON SENTENCE WAS THE MINIMUM OF
TEN YEARS THE NEVADA STATE PRISON HAS DISREGARDED
THE MINIMUM PRISON SENTENCE TO UNOZINFEITY DUE TO PAROLE
IS NOT A RIGHT THIS PETITIONER HAS SPENT 74 YEARS
IN PRISON THE ALLEGED VICTIM IS 30 YEARS OLD NOW

VERIFICATION

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

① Hay Lynn, Lewis - 4765
Petitioner

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing
PETITION FOR WRIT OF HABEAS CORPUS to the below addresses on this 20 day of
FEBRUARY, 2014, by placing same into the hands of prison law library
staff for posting in the U.S. Mail, pursuant to N.R.C.P. 5:

ATTORNEY GENERAL
1003 N. CARSON ST
CARSON CITY, NEVADA
~~89201~~
_____, Nevada 89701

Hay Lynn Lewis
Signature of Petitioner In Pro Se

/ / /

/ / /

/ / /

1 WHEREFORE, petitioner prays that the court grant petitioner
2 relief to which he may be entitled in this proceeding.

3 EXECUTED at NORTHERN NEVADA CORP CT, Nevada on the 20
4

5 Day of FEBRUARY, 2014.
6
7
8
9

10 (X) Gary L. Lewis - 4765
11 _____
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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, WRIT OF

HABEAS CORPUS

(Title of Document)

filed in case number: 95C129824



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 2-20-014

D. Hay, Jr., Lewis - 47645
(Signature)

GARY L. LEWIS
(Print Name)

IN PRO-SE
(Attorney for)

CERTIFIED MAIL



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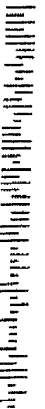


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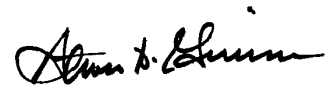


ALAN GLOVER
DISTRICT COURT CLERK
885 East Musser Street, Suite 3031
Carson City, Nevada 89701-4775

Eighth Judicial District Court
Clark County
200 Lewis Avenue
Las Vegas, NV 89155



1 ORDR



CLERK OF THE COURT

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 GARY L. LEWIS,

Case No.: C129824

6 Petitioner,

DEPT. No.: XII

7 vs.

8 THE STATE OF NEVADA,

9 Respondent.

10 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

11 FINDINGS OF FACT

12 1. On August 15, 1995, the State of Nevada ("State") charged Gary L. Lewis
13 ("Defendant") by way of Information with SEXUAL ASSAULT WITH A MINOR UNDER
14 SIXTEEN YEARS OF AGE (Felony – NRS 200.364, 200.366).

15 2. On June 12, 1996, the State filed an Amended Information charging the
16 Defendant with SEXUAL ASSAULT (Felony – NRS 200.364, 200.366) and the Defendant,
pursuant to *North Carolina v. Alford*, pled guilty to the charge in the Amended Information.

17 3. On August 2, 1996, the District Court adjudged the Defendant guilty and
18 sentenced the Defendant to the Nevada Department of Prisons for a term of LIFE WITH THE
19 POSSIBILITY OF PAROLE, to be served CONCURRENTLY with C122079. Defendant
received ZERO days credit for time served.

20 4. On August 14, 1996, the District Court entered the Judgment of Conviction.

21 5. On February 19, 2009, the Defendant filed a "First Amendment Petition Writ
22 of Habeas Corpus [sic]."

23 6. On February 26, 2009, the District Court denied the Defendant's Petition for
24 Writ of Habeas Corpus.

25 7. On March 23, 2009, the Defendant filed a "First Amendment Petition Writ of
Habeas Corpus [sic]."

26 8. On May 1, 2009, the District Court ordered that the "First Amended Petition"
27 that was filed on March 23, 2009 was an improper amendment or supplement as the original
28 petition was orally denied by the District Court.

33114
MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

- 1 9. On May 11, 2009, the Defendant filed a Notice of Appeal.
- 2 10. On June 2, 2009, the District Court entered the Notice of Entry of Order
- 3 Denying Defendant's Petition for Writ of Habeas Corpus.
- 4 11. On October 28, 2009, The Supreme Court Of The State Of Nevada affirmed
- 5 the judgment of the District Court. Remittitur issued November 24, 2009.
- 6 12. On September 23, 2010, the Defendant filed a Petition for Writ of Habeas
- 7 Corpus (Post-Conviction). The State filed its response on December 30, 2010.
- 8 13. On January 27, 2011, the District Court denied the Defendant's Petition for
- 9 Writ of Habeas Corpus (Post-Conviction). The Notice of Entry of Findings of Fact,
- 10 Conclusions Of Law, and Order was filed on March 17, 2011.
- 11 14. On March 14, 2011, the Defendant filed a Notice of Appeal.
- 12 15. On September 15, 2011, The Supreme Court Of The State Of Nevada affirmed
- 13 the judgment of the District Court. Remittitur issued October 12, 2011.
- 14 16. On November 29, 2011, the Defendant filed a "Motion to Withdraw the *Alford*
- 15 Plea for [sic] the Entire Proceeding was in Direct Violation of the Constitution." The State
- 16 filed its opposition on December 14, 2011.
- 17 17. On December 22, 2011, the District Court denied the Defendant's "Motion to
- 18 Withdraw the *Alford* Plea for [sic] the Entire Proceeding was in Direct Violation of the
- 19 Constitution."
- 20 18. On March 11, 2014, the Defendant filed a Petition for Writ of Habeas Corpus
- 21 (Post-Conviction).

22 CONCLUSIONS OF LAW

- 23 1. NRS 34.726(1), governing "Limitations on time to file..." requires that a
- 24 petition for a writ of habeas corpus "must be filed within 1 year after entry of the judgment of
- 25 conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme
- 26 Court issues its remittitur." Late-filing of a petition may be excused from procedural default if
- 27 the Petitioner can establish good cause for delay in bringing the claim. *Id.* Good cause for
- 28 late-filing consists of a showing that: (1) "delay is not the fault of the petitioner"; and (2)
- "dismissal of the petition as untimely will unduly prejudice the petitioner." *Id.* at (1)(a)-(b).
2. To avoid dismissal the defendant must plead and prove specific facts that
- demonstrate good cause for his failure to present claims before and actual prejudice. *See State*
- v. District Court*, 121 Nev. 225, 232, 112 P.3d 1070, 1074 (2005).
3. In order to demonstrate good cause, a petitioner must show that an impediment
- external to the defense prevented him or her from complying with the state procedural default
- rules. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

1
2 4. The court may excuse the failure to show good cause where the prejudice from
3 a failure to consider the claim amounts to a fundamental miscarriage of justice. *Pellegrini v.*
4 *State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

5 5. NRS 34.726 applies to successive petitions. *Pellegrini v. State*, 117 Nev. 860,
6 870, 34 P.3d 519, 526 (2001).

7 6. NRS 34.810(2), governing "Additional reasons for dismissal of petition,"
8 requires that "[a] second or successive petition must be dismissed if the judge or justice
9 determines that it fails to allege new or different grounds for relief and that the prior
10 determination was on the merits or, if new and different grounds are alleged, the judge or
11 justice finds that the failure of the petitioner to assert those grounds in a prior petition
12 constituted an abuse of the writ."

13 7. The petitioner has the burden of pleading and proving specific facts that
14 demonstrate both good cause for failing to present a claim or for presenting a claim again and
15 actual prejudice. NRS 34.810(3). *See also State v. Haberstroh*, 119 Nev. 173, 181, 69 P.3d
16 676, 681 (2003).

17 8. A court must dismiss a habeas petition if it presents claims that either were or
18 could have been presented in an earlier proceeding, unless the court finds both cause for
19 failing to present the claims earlier or for raising them again and actual prejudice to the
20 petitioner. *Evans v. State*, 117 Nev. 609, 621-622, 28 P.3d 498, 507 (2001).

21 9. Unlike initial petitions which certainly require a careful review of the record,
22 successive petitions may be dismissed based solely on the face of the petition. *Ford v.*
23 *Warden*, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

24 10. Application of the statutory procedural default rules to post-conviction habeas
25 petitions is mandatory. *State v. District Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070,
26 1074 (2005).

27 11. Meritless, successive and untimely petitions clog the court system and
28 undermine the finality of convictions. *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d 944, 950
(1994).

12 NRS 34.745(4), governing "Summary dismissal of successive petitions,"
13 requires that "if the petition is a second or successive petition challenging the validity of a
14 judgment of conviction or sentence and if it plainly appears from the face of the petition or an
15 amended petition and documents and exhibits that are annexed to it, or from records of the
16 court that the petitioner is not entitled to relief based on any of the grounds set forth in
17 subsection 2 of NRS 34.810, the judge or justice shall enter an order for its summary
18 dismissal and cause the petitioner to be notified of the entry of the order."

19 13. The Defendant failed to file the petition within one year after the District Court
20 entered the judgment of conviction on August 14, 1996.

MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

14. The Defendant failed to establish good cause for the delay in filing the petition and prejudice to the Defendant.

15. The petition is successive as the District Court previously denied the Defendant's post-conviction petitions that were filed on February 19, 2009, and September 23, 2010.

16. The petition neither sets forth good cause for the Defendant's failure to present these claims in the prior petitions nor actual prejudice to the Defendant.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus (Post-Conviction) shall be, and it is, hereby DENIED.

Dated this 27 day of March, 2014.

MICHELLE LEAVITT
DISTRICT COURT JUDGE
DEPARTMENT XII
EIGHTH JUDICIAL DISTRICT COURT

MICHELLE LEAVITT
DISTRICT JUDGE
DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

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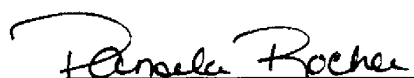
CERTIFICATE OF MAILING

I hereby certify that on the 31st day of March, 2014, I placed a copy of the Findings of Fact, Conclusions of Law, and Order in the U.S. Mail, postage prepaid to:

Gary L. Lewis #47615
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

Steven B. Wolfson
Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155

Catherine Cortez Masto
Nevada Attorney General
555 E. Washington, Suite 3900
Las Vegas, NV 89101-1068

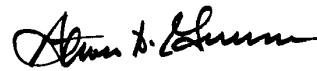

Pamela Rocha
Judicial Executive Assistant
Department XII
Eighth Judicial District Court

C129824

Gary L. Lewis

vs.

The State of Nevada



CLERK OF THE COURT

1 NEO

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 GARY L. LEWIS,

5
6 Petitioner,

Case No: 95C129824

Dept No: XII

7 vs.

8 THE STATE OF NEVADA,

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

9 Respondent,

10
11 PLEASE TAKE NOTICE that on March 31, 2014, 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
15 mailed to you. This notice was mailed on April 7, 2014.

STEVEN D. GRIERSON, CLERK OF THE COURT

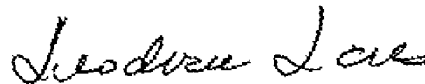


Teodora Jones, Deputy Clerk

18
19 CERTIFICATE OF MAILING

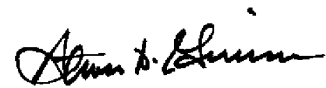
20 I hereby certify that on this 7 day of April 2014, I placed a copy of this Notice of Entry in:
21 The bin(s) located in the Regional Justice Center of:
22 Clark County District Attorney's Office
Attorney General's Office Appellate Division-

- 23 ☒ The United States mail addressed as follows:
24 Gary L. Lewis # 47615
P.O. Box 7000
25 Carson City, NV 89702



Teodora Jones, Deputy Clerk

1 ORDR



CLERK OF THE COURT

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 GARY L. LEWIS,

Case No.: C129824

6 Petitioner,

DEPT. No.: XII

7 vs.

8 THE STATE OF NEVADA,

9 Respondent.

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28 that was filed on March 23, 2009 was an improper amendment or supplement as the original
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3314
MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

- 1 9. On May 11, 2009, the Defendant filed a Notice of Appeal.
- 2 10. On June 2, 2009, the District Court entered the Notice of Entry of Order
- 3 Denying Defendant's Petition for Writ of Habeas Corpus.
- 4 11. On October 28, 2009, The Supreme Court Of The State Of Nevada affirmed
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- 21 (Post-Conviction).

22 CONCLUSIONS OF LAW

- 23 1. NRS 34.726(1), governing "Limitations on time to file..." requires that a
- 24 petition for a writ of habeas corpus "must be filed within 1 year after entry of the judgment of
- 25 conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme
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2. To avoid dismissal the defendant must plead and prove specific facts that
- demonstrate good cause for his failure to present claims before and actual prejudice. *See State*
- v. District Court*, 121 Nev. 225, 232, 112 P.3d 1070, 1074 (2005).
3. In order to demonstrate good cause, a petitioner must show that an impediment
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1
2 4. The court may excuse the failure to show good cause where the prejudice from
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4 *State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

5 5. NRS 34.726 applies to successive petitions. *Pellegrini v. State*, 117 Nev. 860,
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7 6. NRS 34.810(2), governing "Additional reasons for dismissal of petition,"
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9 determines that it fails to allege new or different grounds for relief and that the prior
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11 justice finds that the failure of the petitioner to assert those grounds in a prior petition
12 constituted an abuse of the writ."

13 7. The petitioner has the burden of pleading and proving specific facts that
14 demonstrate both good cause for failing to present a claim or for presenting a claim again and
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20 petitioner. *Evans v. State*, 117 Nev. 609, 621-622, 28 P.3d 498, 507 (2001).

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27 11. Meritless, successive and untimely petitions clog the court system and
28 undermine the finality of convictions. *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d 944, 950
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29 12. NRS 34.745(4), governing "Summary dismissal of successive petitions,"
30 requires that "if the petition is a second or successive petition challenging the validity of a
31 judgment of conviction or sentence and if it plainly appears from the face of the petition or an
32 amended petition and documents and exhibits that are annexed to it, or from records of the
33 court that the petitioner is not entitled to relief based on any of the grounds set forth in
34 subsection 2 of NRS 34.810, the judge or justice shall enter an order for its summary
35 dismissal and cause the petitioner to be notified of the entry of the order."

36 13. The Defendant failed to file the petition within one year after the District Court
37 entered the judgment of conviction on August 14, 1996.

MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

1 14. The Defendant failed to establish good cause for the delay in filing the petition
2 and prejudice to the Defendant.


3 15. The petition is successive as the District Court previously denied the
4 Defendant's post-conviction petitions that were filed on February 19, 2009, and September
5 23, 2010.

6 16. The petition neither sets forth good cause for the Defendant's failure to present
7 these claims in the prior petitions nor actual prejudice to the Defendant.

8 **ORDER**

9 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus
10 (Post-Conviction) shall be, and it is, hereby DENIED.

11 Dated this 27 day of March, 2014.

12 
13 MICHELLE LEAVITT
14 DISTRICT COURT JUDGE
15 DEPARTMENT XII
16 EIGHTH JUDICIAL DISTRICT COURT
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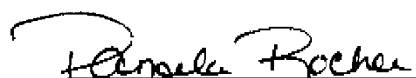
1 CERTIFICATE OF MAILING

2
3 I hereby certify that on the 31st day of March, 2014, I placed a copy of the Findings
4 of Fact, Conclusions of Law, and Order in the U.S. Mail, postage prepaid to:

5 Gary L. Lewis #47615
6 Northern Nevada Correctional Center
7 P.O. Box 7000
8 Carson City, NV 89702

Steven B. Wolfson
Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155

9 Catherine Cortez Masto
10 Nevada Attorney General
11 555 E. Washington, Suite 3900
12 Las Vegas, NV 89101-1068

13
14
15 
16 Pamela Rocha
17 Judicial Executive Assistant
18 Department XII
19 Eighth Judicial District Court

20
21
22
23 C129824

24 Gary L. Lewis

25 vs.

26 The State of Nevada
27
28

MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

GARY L. LEWIS
POST OFFICE BOX 7000
CARSON CITY, NEVADA 89702
#47615
IN PRO SE


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * *

GARY L. LEWIS, CASE NO. C-129824
-VS- PETITIONER. DEPT NO. XII
STATE OF NEVADA,
RESPONDENT /

" PRO SE PETITIONER'S STATEMENT OF APPEAL "

THIS PETITIONER DEMANDS THAT THIS COURT VIEW THIS PRO SE, PLEADING UNDER THE LEGAL PRINCIPAL FOUND IN HAINES V. KERNER, 404 US 519 (1972) AND APPLY THE FUNDAMENTAL FAIRNESS DOCTRINE TO SUCH AN APPEAL.

THE EIGHT JUDICIAL DISTRICT COURT ORDERED THE APPOINTMENT OF GREG DENUE ESQ, TO DETERMINE WHETHER OR NOT IT WOULD BE ADVANTAGEOUS TO DO ANALYSIS OF THE DNA EVIDENCE WHICH IS MANDATORY UNDER N.R.S. 176.0918) WHICH SUCH STATUTE HAS BEEN MADE RETROACTIVE BY LAW.

GREG DENUE ESQ, HAS NEVER ACTED ON THE ORDER OF THE COURT WHICH WAS MADE DECEMBER 22, 2011 THEREFORE THE PETITIONER SOUGHT AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM.

THIS NEVADA SUPREME COURT MUST VIEW THIS MATTER

1 OF 2

FOR JUSTICE DELAYED IS JUSTICE DENIED BY LAW. AND
FOR THE COURT APPOINTED COUNSEL TO IGNORE THE ORDER
OF THE COURT IS CLEARLY A MANIFEST OF JUSTICE.

RELIEF SOUGHT.

THIS NEVADA SUPREME COURT MUST INTERVENE AND
ORDER THAT D.N.A. ANALYSIS BE TAKEN ON THE
D.N.A. EVIDENCE IN WHICH THE STATE CLAIM TO HAVE
HAD PRIOR TO THE PETITIONER ENTERING A PLEA OF GUILT.

THE COURT SHALL ALSO ORDER THE PETITIONER RELEASE
IF THE STATE CAN NOT PRODUCE ANY D.N.A. EVIDENCE
TO BE ANALYSIS, AND APPOINTMENT OF NEW COUNSEL IF NEEDED.

THE ORDER OF THIS COURT SHALL BE FORTH.

DATED: APRIL 2, 2014

(X)

CERTIFICATE OF SERVICE BY MAIL

Pursuant to FRCP Rule 5 (b), I hereby certify that I am the petitioner named herein and that on this

17 day of APRIL, 2014, I mailed a true and correct copy of the foregoing :

NOTICE OF APPEAL, to the following:

DISTRICT ATTORNEY

700 LEWIS AVE

LAS VEGAS NEVADA

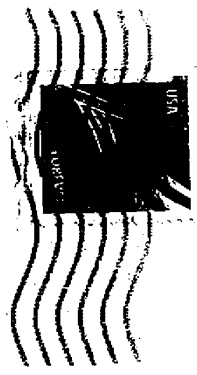
89101

(X) Day Lynn Lewis
Petitioner in PRO. PER.

13367

STEVEN PERLEY
P.O. BOX 7000
CARSON CITY NEVADA 89702

RENO NV 895
21 APR 2014 PM 2 T

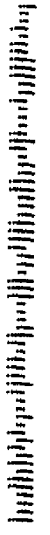


CLERK OF COURT
200 LEWIS AVE
LAS VEGAS NEVADA

89101

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OFFICE OF THE
CLERK OF COURT

89101\$5300



APR 16 2014

NORTHERN NEVADA
CORRECTIONAL CENTER

GARY L. LEWIS
P.O. Box 7000
CARSON CITY, NEVADA 89702
47615
IN PRO SE

Allen D. Shuman
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

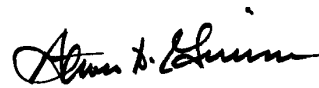
GARY, L. LEWIS, CASE NO. 95CI29824
-VS- PETITIONER, Dept NO. XII
STATE OF NEVADA,
RESPONDENT /

" NOTICE OF APPEAL, AND ATTACHED
STATEMENT OF APPEAL FOR PETITION FOR
WRIT OF HABEAS CORPUS. "

NOTICE IS HEREBY GIVEN THAT GARY L. LEWIS, HEREBY
APPEALS THE JUDGMENT ENTERED BY THIS HONORABLE COURT
ON ~~DECEMBER~~ MARCH 31, 2014.
DATED: APRIL 10, 2014

ⓧ

GARY L. LEWIS- 47615
P.O. Box 7000
CARSON CITY, NEVADA 89702



CLERK OF THE COURT

1 ASTA

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3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**
6

7 STATE OF NEVADA,

8 Plaintiff(s),

9 vs.

10 GARY L. LEWIS,

11 Defendant(s),
12

Case No: 95C129824
Dept No: XII

13
14 **CASE APPEAL STATEMENT**
15

16 1. Appellant(s): Gary L. Lewis

17 2. Judge: Michelle Leavitt

18 3. Appellant(s): Gary L. Lewis

19 Counsel:

20 Gary L. Lewis #47615
21 P.O. Box 7000
Carson City, NV 89702

22 4. Respondent: The State of Nevada

23 Counsel:

24 Steven B. Wolfson, District Attorney
25 200 Lewis Ave.
Las Vegas, NV 89101
26 (702) 671-2700

27 5. Respondent's Attorney Licensed in Nevada: Yes

28 6. Appellant Represented by Appointed Counsel In District Court: Yes

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7. Appellant Represented by Appointed Counsel On Appeal: N/A
8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A
9. Date Commenced in District Court: August 3, 1995
10. Brief Description of the Nature of the Action: Criminal
- Type of Judgment or Order Being Appealed: Writ of Habeas Corpus
11. Previous Appeal: Yes
- Supreme Court Docket Number(s): 53779, 57980
12. Child Custody or Visitation: N/A

Dated This 25 day of April 2014.

Steven D. Grierson, Clerk of the Court



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

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY LYNN LEWIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 65531
District Court Case No. C129824

FILED

OCT 20 2014

Tracie Lindeman
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 16th day of September, 2014.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
October 15, 2014.

Tracie Lindeman, Supreme Court Clerk

By: Sally Williams
Deputy Clerk

95C129824
CCJA
NV Supreme Court Clerk's Certificate/Judge
4368169



IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY LYNN LEWIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65531

FILED

SEP 16 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant filed his petition on March 11, 2014, more than 17 years after entry of the judgment of conviction on August 14, 1996. Thus, appellant's petition was untimely filed. *See* NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice. *See id.*

Appellant first claimed that the decision in *Martinez v. Ryan*, 566 U.S. ___, 132 S. Ct. 1309 (2012), provided good cause. This court has recently held that *Martinez* does not apply to Nevada's statutory post-

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. *See Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

conviction procedures. See *Brown v. McDaniel*, ___ Nev. ___, ___ P.3d ___ (Adv. Op. No. 60, August 7, 2014). Thus, the decision in *Martinez* would not provide good cause for this late petition.

Next, appellant claimed that the decision in *Ha Van Nguyen v. Curry*, 736 F.3d 1287 (9th Cir. 2013) provided good cause because it allows him to amend the petition and have the claim relate back to the first petition. Appellant misstated the holding in *Ha Van Nguyen* and its effect on his case. Appellant's first petition was resolved in 2009. See *Lewis v. State*, Docket No. 53779 (Order of Affirmance, October 28, 2009). Thus, no amendment was possible in 2014. Further, the 2009 petition itself was procedurally barred and any attempt to relate back to that petition would cause the amendment to suffer the same defect.

Finally, appellant claimed that he was actually innocent and he would be able to prove his actual innocence with genetic marker testing. Appellant did not demonstrate actual innocence because he failed to show that "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)); see also *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Appellant has previously unsuccessfully litigated a petition for genetic marker testing and has provided no evidence supporting his claim of

actual innocence. We therefore conclude that the district court did not err in denying appellant's petition as procedurally barred.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Hon. Michelle Leavitt, District Judge
Gary Lynn Lewis
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²To the extent that appellant challenged the Department of Corrections' calculation of his parole eligibility date, that challenge must be raised in a post-conviction petition for a writ of habeas corpus filed in the district court for the county in which he is incarcerated. See NRS 34.738(1).



CERTIFIED COPY
This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: October 15th, 2014
Supreme Court Clerk, State of Nevada

By [Signature] Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY LYNN LEWIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 65531
District Court Case No. C129824

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: October 15, 2014

Tracie Lindeman, Clerk of Court

By: Sally Williams
Deputy Clerk

cc (without enclosures):

Hon. Michelle Leavitt, District Judge
Gary Lynn Lewis
Clark County District Attorney
Attorney General/Carson City

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on OCT 20 2014.

HEATHER UNGERMANN MK

Deputy District Court Clerk

RECEIVED

OCT 17 2014

CLERK OF THE COURT

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14-34257

1 Case No. C129824

2 Dept. No. 12

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IN THE _____ JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7

IN AND FOR THE COUNTY OF _____

8

* * * * *

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Petitioner,

11

-vs-

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Respondent.

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THE COURT, having considered Petitioner's MOTION FOR PRODUCTION OF
TRANSCRIPTS, and with good cause appearing, it is hereby ORDERED that the
motion is granted.

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The Clerk of the Court is directed to cause to be prepared the transcripts
of the _____ of
_____, 20 __, and to provide same to Petitioner at his place of
confinement, i.e., Lovelock Correctional Center, Lovelock, Nevada 89419.
Such shall be effectuated at State expense.

24

IT IS SO ORDERED.

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Dated this _____ day of _____, 20 ____.

DISTRICT COURT JUDGE

Steven D. Grierson

Case No. 0129824
Dept. No. 12

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

* * * * *

May 21, 2020 @8:30 AM

GARY L. LEWIS,)
Defendant.)

-vs-

STATE OF NEVADA,)
Respondents.)

MOTION FOR PRODUCTION
OF TRANSCRIPTS
AT STATE EXPENSE

COMES NOW Defendant, Gary L. Lewis, in pro se,

and moves the Court for an order directing the Clerk of the
Court to prepare or cause to be prepared, transcripts of the

(list the hearing(s)/date(s) for which you request transcripts);

(Information on 8-15-95); (Guilty Plea Agreement on 6-12-96);
(Sentencing on 8-2-96); and (Judgment of Conviction on 8-14-96)

and to serve same upon him at his place of confinement.

This motion is made and based upon the requirements of NRS
34.370(4); NRS 34.760(2); all papers, pleadings and documents on
file herein; the instant (check applicable pending action to
which this motion relates) ☒ petition for writ of habeas
corpus _____ motion to/for _____;

RECEIVED

MAR 30 2020

CLERK OF THE COURT

LCC 11 FORM 26.054

Please Send
Back A
Filed Copy!

1 and the following points and authorities.

2 POINTS AND AUTHORITIES

3 Petitioner/Defendant has filed a X petition for writ of
4 habeas corpus ___ motion to/for _____
5 _____, presenting ground(s)/claim(s) for relief. NRS
6 34.730(4) and NRS 34.760(2) require that the presentation of
7 habeas petitions be supported by affidavits, records,
8 transcripts or other relevant evidence. Id. Petitions and
9 motions which are not supported by such evidence render the
10 claims therein to be bare and naked allegations, unsupported by
11 the record and meriting dismissal. Hargrove v. State, 100 Nev.
12 498, 686 P.2d 222 (1984). See also Griffin v. State, 122 Nev.
13 737, 137 P.3d 1165, 1170 (2006) (defendant must support his
14 claims with "specific facts" demonstrating entitlement to relief
15 sought); Berjarano v. Warden, 112 Nev. 1466, 929 P.2d 922 (1996)
16 (defendant bears burden of establishing factual allegations in
17 support of his claims).

18 In order to obtain this Court's order to produce the
19 requested transcripts, Petitioner/Defendant need show that they
20 would serve a useful purpose and that he would be prejudiced
21 without them. Peterson v. Warden, 87 Nev. 134, 483 P.2d 204,
22 205 (1971). Petitioner/Defendant requires the transcripts at
23 bar in order to support his ground(s)/claim(s), which have
24 merit, as shown on the separate page(s) annexed hereto as page
25 (s) _____ (you must describe your grounds/claims and
26 demonstrate how the requested transcripts are necessary to avoid
27 a dismissal/denial of same), and as are incorporated as if set
28 forth herein. Prejudice is demonstrated inasmuch as due to the

1 merit of Petitioner/Defendant's claims, same would be
2 dismissed/denied without the transcripts at issue.

3 Petitioner/Defendant is a pauper, as evidenced by his
4 having proceeded as a pauper in these proceedings. Therefore,
5 the transcripts must be provided at State expense so as to
6 satisfy the concerns of due process and fairness herein. See
7 e.g. Gardner v. California, 393 U.S. 367, 89 S.Ct. 580, 582
8 (1969) (transcripts in habeas proceedings may not be supplied
9 those who can afford them and denied to those who cannot).

10 CONCLUSION

11 For the reasons set forth above, the Court should grant the
12 instant motion via ordering the Clerk of the Court to produce
13 the above-described transcripts and serve same upon Petitioner/
14 Defendant at his place of confinement.

15 Dated this 25 day of March, 2020.

16 Day Lewis
17 Gary L Lewis # 47615
18 Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
19 Defendant In Pro Se

20 / / /

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Prepared By: Norman T. Powell
#47306

Mr. Gary L. Lewis, #47615
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

REC'D

MR

CLEI

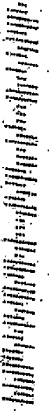
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Legal-Mail

Lovelock Correctional Center



Eighth Judicial District Court
Clerk of the Court
200 Lewis Avenue
Las Vegas, Nevada 89155-2311



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Steven D. Grierson

1. Gary L. Lewis, #47615
2. Lovelock Correctional Center
3. 1200 Prison Road
4. Lovelock, Nevada 89419
5.

6. EIGHTH JUDICIAL DISTRICT COURT
7. CLARK COUNTY, NEVADA
8.

9. GARY L. LEWIS
10. Defendant,

Case No. C129824
Dept No. 12

11. VS.

12. STATE OF NEVADA,
13. Respondents, et al.
14.

STATUS CHECK

15.
16. Comes Now, Gary L. Lewis, defendant, in pro-se,
17. and moves the Clerk of the Court to provide the
18. above stated name with a Status Check on said
19. requested transcripts and documents, dated on
20. March 25, 2020,
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22. Dated: April 27, 2020
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25. RECEIVED

26. MAY -4 2020

27. CLERK OF THE COURT

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Status Check

April

200 Lewis Avenue

98 Vepf, Nevada 89/55-2372

[Signature]

() Check for Additional Addresses Below

GARY L. LEWIS #47306
 Lovelock Correctional Center

x Day Lewis In Pro Se

ADDRESS(ES) Continued from Above (If Applicable):

~~Attorney For~~

Legal Assistant:
Norman T. Pouzel / #42306

_____, Nevada 89

_____, Nevada 89

Lovelock Correctional Center

Gary L. Lewis, #47615
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419



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Clerk Of The Court
Eighth Judicial District Court
200 Lewis Avenue
Las Vegas, Nevada 89105-2372

9510136300 0075

Legal-Mail



ORDER
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

GARY LYNN LEWIS,
#1302110

Defendant.

CASE NO: **95C129824**

DEPT NO: **XII**

ORDER DENYING DEFENDANT'S MOTION FOR
TRANSCRIPTS AT STATE'S EXPENSE

DATE OF HEARING: **CHAMBERS**
TIME OF HEARING: **CHAMBERS**

THIS MATTER having been previously scheduled before the above entitled Court on the 21st day of MAY, 2020; parties not present, without argument, and based upon the pleadings with good cause appearing,

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IT IS HEREBY ORDERED that DEFENDANT'S MOTION FOR TRANSCRIPTS AT STATE'S EXPENSE, shall be and is **DENIED**; further

IT IS HEREBY ORDERED that the hearing scheduled for May 21, 2020 is VACATED.

DATED this 2 day of June, 2020.

DISTRICT JUDGE

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

PR

BY

JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144

hjc/SVU

Original Copy

1. Gary Lewis # 47615

2. Lovelock Correctional Center

3. 1200 Prison Road

4. Lovelock, Nevada 89419

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8. DISTRICT COURT 8TH JUDICIAL
9. CLARK COUNTY, NEVADA

10.

11. THE STATE OF NEVADA,

12. Plaintiff,

13.

14. VS.

15. Gary L. Lewis

16. Defendant

17.

Case No. 95CI29824

Dept. No 140

Hearing Date

MOTION FOR PRODUCTION
OF ALL DOCUMENTS Pursuant
TO §2250 & NRS 34.900 + 34.990

Added to NRS by 2019-2976 (2055)

18. MOTION FOR ALL DOCUMENTS Pursuant TO §2250.

19. Petitioner/Defendant, In Prose hereby request the
20. Court to Grant said Motion to ORDER The Clerk
21. to Prepare the Following Documents Under The
22. American indigent Act and Pursuant TO § 2250.
23. This Motion is based on all Points and Authorities,
24. Papers and all other documents and tangible
25. items on File With this Court. The documents
that Petitioner/Defendant did have at one time,
were Misplaced and or destroyed by officials of
the State, either intentionally and or reckless —

FILED

JUL 13 2020

Alvin J. Williams
CLERK OF COURT

August 11, 2020
8:30 AM

CLERK OF THE COURT
JUL - 6 2020

1 Actions and Inactions. Pursuant to
2 § 2250 Indigent Petitioner entitled to
3 documents without cost, "Further", § 2250
4 states: if on any application for a writ of habeas
5 corpus an order has been made permitting the -
6 Petitioner to prosecute the application in forma
7 pauperis, the clerk of any court of the United -
8 states shall furnish to the Petitioner without cost
9 certified copies of such documents or parts of
10 the record on file. Petitioner is in the process
11 of requesting permission to file A writ of habeas
12 corpus and Further Petitioner is filing A Petition
13 Pursuant to NRS 34.900 to 34.910 - Factual Innocence.
14 Petitioner is in need of the following documents
15 (1) Las Vegas Metropolitan Police Department officer's
16 Report
17 (2) Incident Report, (3) Police Reports and statements
18 of alleged victims and witnesses (4) Referee's -
19 Transcript of Preliminary Hearing (5) Presence
20 Investigation Report and other Transcripts, The
21 records are needed to draft a proper Petition that's
22 supported by the records. Defendant's Petition will
23 be based on Meritorious and Factual Claims
24

25 CERTIFICATE OF SERVICE

26 I certify that I mailed a true and correct copy
27 of the Motion for all documents by presenting
28 documents to the Love Lock Correctional Center's

1 Law Library Clerk For Mailing By U.S. Postal Services,

2 Dated This 26th Day of JUNE 2020

3 Addressed as Follows

4

5 Clerk of The Court Steven B. Wolfson Esq

6 Regional Justice District Attorney

7 200 Lewis-Avenue 3rd Floor 200 Lewis Avenue

8 Las Vegas, NV 89155 P.O. Box 852212

9 Las Vegas, NV 89155

10

11 Signature: Gary Lewis

12 Name Gary Lewis # 47615

13

14

15

16 AFFIRMATION PURSUANT TO NRS 239B.030

17 I Certify That The Document MOTION

18 For Production Of All Documents Pursuant

19 to § 2250 & NRS 34.900 to 34.990 Bearing

20 Case No. 95C129824 Does Not

21 Contain the Social Security Number of any

22 Person. Dated This 26th Day of JUNE 2020

23

24 Signature: Gary Lewis

25 Name Gary Lewis # 47615

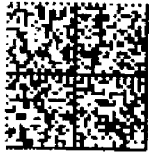
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Gary Lewis # 47615
L.C.C. 1200 Prison Rd,
Lovelock, NV 89419

Lovelock Correctional Center

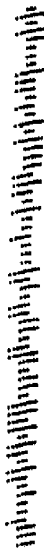


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**INMATE LEGAL
MAIL CONFIDENTIAL**

Clerk of The Court
Regional Justice Center
200 Lewis Ave 3rd Floor
Las Vegas, NV 89155

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ORDER
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

GARY LYNN LEWIS,
#1302110

Defendant.

CASE NO: **95C129824**

DEPT NO: **XII**

ORDER DENYING DEFENDANT'S MOTION FOR
PRODUCTION OF ALL DOCUMENTS

DATE OF HEARING: **AUGUST 11, 2020**
TIME OF HEARING: **12:00 P.M.**

THIS MATTER having presented before the above entitled Court on the 11th day of
AUGUST, 2020; Defendant not present, IN PROPER PERSON; the State represented by
NOREEN DEMONTE, Chief Deputy District Attorney; and without argument, based upon
the pleadings with good cause appearing,

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COURT ORDERED, Motion DENIED as the Defendant entered a Guilty Plea in 1996 and has filed three Petitions for Writ of Habeas Corpus which have all been denied and affirmed by the Nevada Supreme Court; the Defendant is asking for documents that the Court does not have.

DATED this _____ day of September, 2020 **Dated this 2nd day of September, 2020**


William Smith

DISTRICT JUDGE

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

C4A 75C 79E4 B0C8
Michelle Leavitt
District Court Judge

BY


NOREEN DEMONTE
Chief Deputy District Attorney
Nevada Bar #008213

hjc/SVU

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 The State of Nevada vs Gary L
7 Lewis

CASE NO: 95C129824

DEPT. NO. Department 12

8
9 **AUTOMATED CERTIFICATE OF SERVICE**

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

13 Service Date: 9/2/2020

14 Steven Wolfson

motions@clarkcountyda.com

Original

1. GARY L LEWIS # 47615

2. L.C.C-1200 Prison Rd

3. Lovelock, NV 89419

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DISTRICT COURT
CLARK COUNTY, NEVADA

GARY LYNN LEWIS,
Petitioner/Defendant,

VS

THE STATE OF NEVADA,
Plaintiff.

CASE NO. C129824-X
DEPT. NO. XII

MOTION: FOR
Production of
Documents
Pursuant to
NRS 7.055, also

Pursuant to the American Indigent Act as
Well as Pursuant to the United States
Supreme Court's Opinion held in Mayle v. Felix,
No. 04-563, 2005, Lexis 5016, 2005 WL 1469153-
(June 23, 2005). It is critical that defendant
Lewis obtain all his files as soon as possible.
The Public defender office is refusing to -
assist in this matter. Petitioner previously -
filed A Motion to the Court requesting -

FILED

OCT 05 2020

CLERK OF COURT

October 27, 2020
8:30 AM

RECEIVED

SEP 29 2020

CLERK OF DISTRICT COURT

1. Production of documents, Papers and
2. Pleadings Filed: [July/13/2020] with a
3. hearing date scheduled for [August/11/2020]
4. 8:30 AM. Before that, A Motion for Production
5. of Transcripts [At State Expense] Filed [May/21/-E-
6-20]. The Clark County Public Defender's Office
7. Stated that their office is unable to grant
8. my request, as it was granted (February/17/CC
9. 09) and mailed to me on (February/04/2009).
10. Unfortunately This is A falsifying of State
11. State documents under oath of office. Please
12. See Exhibit-1 Letter from the Public Defender's
13. office. Petitioner is in the process of filing A
14. Petition to the (9th) Circuit Court of Appeals.
15. The relevant Parties of the Public Defender's
16. office Claim to have sent me a huge variety
17. of legal documents on the 4th day of February
18. 2009. Please See Exhibit-2 - Filed (Feb/04/09).
19. As to Exhibit-1 there are discrepancies in
20. the dates, eg., Motion was granted on 02/17/09
21. and mailed to me on 02/04/09 That could
22. not have happened. It would be understandable
23. if the Motion had been granted on 02/04/09
24. and sent on 02/17/09. This further violates my
25. First Amendment's rights to adequate access
26. to the Courts. Defendant need the complete
27. records to complete the Petition to the 9th Cir..
28.

CONCLUSION

Defendant/Petitioner Prays that the Honorable Judge grant said Motion as A one time Courtesy Act under the American Indigent Act at State expense. Defendant is unable to pay for the records. Dated This 24~~th~~ Day of Sept 2020

CERTIFICATE OF SERVICE

I Certify that I mailed A True and Correct Copy of the foregoing Motion For Production of documents. BY Presenting same to the Lavelock Com Ctr. by giving to the L.C.C.S law Clerk For mailing addressed as follows:

<u>Clerk of The Court</u>	<u>Steven B. Wolfson ESQ</u>
<u>Regional Justice Center</u>	<u>District Attorney</u>
<u>200 Lewis-Ave 2nd Floor</u>	<u>200 Lewis Avenue</u>
<u>Las Vegas, NV-89155</u>	<u>P Box 552212</u>
	<u>Las Vegas, NV 89155</u>

by 2 lrs



Office of the Public Defender

309 S Third St. • Second Floor • P.O. Box 552610 • Las Vegas, NV 89155-2610

(702) 455-4685 • Fax (702) 455-5112

Darin F. Imlay, Public Defender • F. Virginia Eichacker, Assistant Public Defender



May 28, 2020

Gary L. Lewis, NDOC# 47615
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

RE: State of Nevada v. Gary L. Lewis
Case No. 95C129824

Dear Mr. Lewis:

The Office of the Clark County Public is in receipt of your correspondence postmarked May 20, 2020. Unfortunately, this office is unable to grant your request as this motion was granted February 17, 2009. Prior to the granting of your Motion to Withdraw Attorney of Record, a true and correct copy of your complete file was mailed to you on February 4, 2009. All documents included in the mailed are listed on the enclosed Certificate of Mailing.

As this office is no longer your attorney of record we are unable to assist you further.

Sincerely,

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

A handwritten signature in black ink, appearing to read "F. Virginia Eichacker".

F. Virginia Eichacker
Deputy Public Defender

/cg

Enclosure

Exhibit - 1

ORIGINAL

FILED

FEB 4 9 48 AM '09

29
1 CERT
2 PHILIP J. KOHN, PUBLIC DEFENDER
3 NEVADA BAR NO. 0556
309 South Third Street, Suite 226
4 Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

E. J. Smith
CLERK OF THE COURT

7 THE STATE OF NEVADA,

8 Plaintiff,

CASE NO. C129824X

DEPT. NO. XII

10 GARY LYNN LEWIS
11 #1302110

Defendant.

13 CERTIFICATE OF MAILING

14 THIS is to certify that on the 4th day of February, 2009 a true and correct copy of the
15 following documents:

- 16 1. Temporary Custody Record.
- 17 2. Las Vegas Metropolitan Police Department - Officer's Report.
- 18 3. Declaration of Arrest.
- 19 4. Incident Report.
- 20 5. Property Report.
- 21 6. Forensic Laboratory Examination Request.
- 22 7. Arrest Report.
- 23 8. Declaration for the Withdrawal of Whole Blood Sample.
- 24 9. Medical Records.
- 25 10. Police Reports including statements of Lorenzo Ritchie-Burrell, Raynaldo Sykes,
26 Ladonna Richie, Cassandra Simmons, Gary Lewis, and conversation with Tanya and
27 Sabrina.
11. Reporter's Transcript of Preliminary Hearing.
12. Guilty Plea Agreement Pursuant to Alford Decision.
13. Amended Information.
14. Presentence Investigation Report.
15. Certificate of Mailing - filed with the Court.

were deposited in the United States mail in Las Vegas, Nevada, in a sealed envelope, postage

28
RECEIVED to:
FEB 04 2009
CLERK OF THE COURT

Exhibit-2

Gary L. Lewis # 47615
L.C.C. 1200 Prison Road
Lovelock, NV 89819

INMATE LEGAL
MAIL CONFIDENTIAL

Chief of the Court
Regional Justice Center
200 Lewis Avenue 3rd Fl.
Las Vegas, NV 89155

RECEIVED
SEP 24 2020
LCC LIBRARY

ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STACEY KOLLINS
Chief Deputy District Attorney
Nevada Bar #005391
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

GARY LYNN LEWIS,
#1302110

Defendant.

CASE NO: **95C129824**

DEPT NO: **XII**

ORDER DENYING DEFENDANT'S MOTION FOR
PRODUCTION OF DOCUMENTS

DATE OF HEARING: **OCTOBER 27, 2020**
TIME OF HEARING: **12:00**

THIS MATTER having presented before the above entitled Court on the 27TH day of
OCTOBER, 2020; Defendant not present, in PROPER PERSON; the State represented by
BERNARD ZADROWSKI, Chief Deputy District Attorney; and without argument, and
based upon the pleadings with good cause appearing,

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1 **IT IS HEREBY ORDERED** that DEFENDANT'S MOTION FOR PRODUCTION
2 OF DOCUMENTS, shall be and is DENIED as Defendant's file was sent to him February 4,
3 2009.

4 DATED this _____ day of November, 2020. ~~Dated this 10th day of November, 2020~~

5
6 
DISTRICT JUDGE

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

799 699 C755 BB1D
Michelle Leavitt
District Court Judge

9
10 BY 

STACEY KOLINS
Chief Deputy District Attorney
Nevada Bar #005391

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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 The State of Nevada vs Gary L
7 Lewis

CASE NO: 95C129824

DEPT. NO. Department 12

8
9 **AUTOMATED CERTIFICATE OF SERVICE**

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

13 Service Date: 11/10/2020

14 Steven Wolfson

motions@clarkcountyda.com

THESE SEALED
MINUTES,
NUMBERED PAGE(S)
364 - 375
WILL FOLLOW VIA
U.S. MAIL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 27, 2011**

95C129824

The State of Nevada vs Gary L Lewis

January 27, 2011**8:30 AM****All Pending Motions****HEARD BY:** Leavitt, Michelle**COURTROOM:** RJC Courtroom 14D**COURT CLERK:** April Watkins**RECORDER:** Kerry Esparza**REPORTER:****PARTIES****PRESENT:**Ponticello, Frank M.
State of NevadaAttorney
Plaintiff**JOURNAL ENTRIES**

- DEFT'S PETITION FOR WRIT OF HABEAS CORPUS...DEFT'S PRO PER MOTION TO APPOINT COUNSEL...DEFT'S PRO PER MOTION FOR EVIDENTIARY HEARING

Court FINDS petition is successive, time barred, no good cause and ORDERED, petition and motions DENIED. State to prepare the order.

NDC

CLERK'S NOTE: The above minute order has been distributed to: Gary Lewis, BAC#47615, S.D.C.C., P.O. Box 208, Indian Springs, NV 89070. aw

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****December 22, 2011**

95C129824

The State of Nevada vs Gary L Lewis

December 22, 2011 8:30 AM**All Pending Motions****HEARD BY:** Smith, Douglas E.**COURTROOM:** RJC Courtroom 14D**COURT CLERK:** Susan Botzenhart**RECORDER:** Kerry Esparza**REPORTER:****PARTIES****PRESENT:**Ponticello, Frank M.
State of NevadaAttorney
Plaintiff**JOURNAL ENTRIES**

- Deft. not present; incarcerated in the Nevada Department of Corrections (NDC).

DEFENDANT'S PRO PER MOTION TO WITHDRAW THE ALFORD PLEA FOR THE ENTIRE PROCEEDING WAS IN DIRECT VIOLATION OF THE CONSTITUTION

COURT ORDERED, Motion DENIED.

DEFENDANT'S PRO PER POST CONVICTION PETITION REQUESTING A GENETIC MARKER ANALYSIS OF EVIDENCE WITHIN THE POSSESSION OR CUSTODY OF THE STATE OF NEVADA (NRS 176.0918)

Court stated it is not sure if there is evidence for testing. Mr. Ponticello advised State filed a written opposition, further noting he will not argue this as Deft. is not present in Court. Thereafter, State submitted on the pleadings. Court reviewed the Motion, noting it is inclined to allow to have testing, due to Deft. entering a plea pursuant to Alford. Court further noted Deft. needs to provide three points on the equitable laches arguments, including whether or not there was excusable delay, implied review, and if circumstances exist whether or not prejudiced by the State. COURT ORDERED, no ruling will be done at this time on this motion; Greg Denué, Esq. is hereby APPOINTED to review the motion to determine whether or not it would be advantageous to do

PRINT DATE: 06/02/2021

Page 14 of 18

Minutes Date: August 16, 1995

95C129824

analysis of the DNA evidence.

NDC

CLERK'S NOTE: A copy of the above minute order has been delivered by regular mail to: Gary Lewis #47615, S.D.C.C., P.O. BOX 208, Indian Springs, NV 89070. /// sj

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 20, 2020**

95C129824

The State of Nevada vs Gary L Lewis

May 20, 2020**8:00 AM****Minute Order****HEARD BY:** Leavitt, Michelle**COURTROOM:** Chambers**COURT CLERK:** Haly Pannullo**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Motion for Production of Transcripts at States Expense

The Motion for Production of Transcripts at States Expense is denied. The hearing scheduled for May 21, 2020 is vacated. State to prepare the order.

CLERK'S NOTE: The above minute order has been distributed to:
'Parker Brooks' <Parker.Brooks@clarkcountyda.com>; 'Yolanda Drofycz'
<Yolanda.Drofycz@clarkcountyda.com> hvp/5/20/20

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****August 11, 2020**

95C129824

The State of Nevada vs Gary L Lewis

August 11, 2020**12:00 AM****Motion****Motion for
Production of All
Documents****HEARD BY:** Leavitt, Michelle**COURTROOM:** RJC Courtroom 14D**COURT CLERK:** Haly Pannullo**RECORDER:** Sara Richardson**REPORTER:****PARTIES****PRESENT:**Demonte, Noreen C.
State of NevadaAttorney
Plaintiff**JOURNAL ENTRIES**

- COURT ORDERED, Motion DENIED as the Defendant entered a Guilty Plea in 1996 and has filed three Petitions for Writ of Habeas Corpus which have all been denied and affirmed by the Nevada Supreme Court; the Defendant is asking for documents that the Court does not have. COURT FURTHER ORDERED, State to prepare the Order.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****October 27, 2020**

95C129824

The State of Nevada vs Gary L Lewis

October 27, 2020**12:00 AM****Motion****MOTION FOR
PRODUCTION OF
DOCUMENTS****HEARD BY:** Leavitt, Michelle**COURTROOM:** RJC Courtroom 14D**COURT CLERK:** Haly Pannullo**RECORDER:** Sara Richardson**REPORTER:****PARTIES****PRESENT:**

State of Nevada

Plaintiff

Zadrowski, Bernard B.

Attorney

JOURNAL ENTRIES

- Defendant not present. COURT ORDERED, Motion DENIED as there is a letter indicating that a copy of the file was sent to the Defendant on 02/04/2009; State to prepare the Order.

NDC

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated May 25, 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 two volumes with pages numbered 1 through 381.

STATE OF NEVADA,

Plaintiff(s),

vs.

GARY L. LEWIS,

Defendant(s),

Case No: 95C129824

Related Case A-21-827377-W

Dept. No: XII

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 2 day of June 2021.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk