

# IN THE SUPREME COURT OF THE STATE OF NEVADA

ROY DANIELS MORAGA,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Electronically Filed  
Feb 09 2022 08:50 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No: A-16-739641-W  
*Related Case 89C092174*  
Docket No: 84020

## RECORD ON APPEAL

**ATTORNEY FOR APPELLANT**

ROY D. MORAGA #31584,  
PROPER PERSON  
P.O. BOX 7000  
CARSON CITY, NV 89702

**ATTORNEY FOR RESPONDENT**

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

**I N D E X**

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CASE NO. C92174  
Dept No. 8

A-18-782168-W

VI

FILED

OCT 01 2018

IN THE EIGHTH JUDICIAL DISTRICT COURT IN AND FOR

THE COUNTY OF CLARK STATE OF NEVADA

CLERK OF COURT

ROY D. MORAGA,

Petitioner,

vs.

ISIDOR BACA,

Respondent,

PETITION FOR WRIT OF HABEAS CORPUS OF

ACTUAL INNOCENCE PURSUANT TO

NRS 207.010 TO NRS 207.012 AND

THE FIRST AMENDMENT CLAIM

THE Petitioner is incarcerated at the Northern Nevada  
Correctional Center P.O. Box 7000, CARSON CITY, NV 89702.

The Petitioner's Constitutional Amendment Rights have been  
Violated as the petitioner is Actually innocent of the Enhanced  
Habitual Criminal Statute.

Petitioner Now Seeks relief From judgment.

JURISDICTION

PURSUANT TO NRS 34.724(2)(C)

RECEIVED

OCT 01 2018

CLERK OF THE COURT

A-18-782168-W  
PWHC  
Petition for Writ of Habeas Corpus  
4785108



1 3. Name and location of the court which entered the judgment of conviction under attack:

2 8th Judicial District Court

4 4. Date of judgment or conviction: MARCH 15, 1990

6 5. Case Number(s): 92174

7 6. Length of sentence: LIFE WITHOUT (HABITUAL CRIMINAL ONLY)

10 7. Nature of the offense(s) involved regarding the conviction being challenged:

11 (N/A ON CONVICTION)

12 HABITUAL CRIMINAL STATUTE ONLY

15 8. What was your plea? (check one):

16 (a) Not guilty: ✓  
17 (b) Guilty: \_\_\_\_\_  
(c) Nolo Contendere: \_\_\_\_\_

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

19 (a). Jury: ✓  
20 (b) Trial without a jury: \_\_\_\_\_

22 10. Did you testify at trial: Yes

23 11. Did you appeal from judgment of conviction: Yes

24 12. If you did appeal, answer the following:

25 (a). Name of the court: District Court To NEVADA Supreme

26 Court - IN a MOTION To CORRECT AN illegal

27 SENTENCE ON other grounds, Never heard on these

28 new grounds / Newly Discovered Evidence

(b) Case(s) Number (s) or Citation(s) :

Motion To Correct AN illegal Sentence

CASE NO 92174

NRS 202.010, NRS 202.012,

Ex Post Facto Rule

WALKER V. Deeds, 50 F.3d 670, 673 (9th Cir. 1995)

NRS 34.724 (2)(c)

(c) Results

Barred By the CASE

State concisely every ground on which you claim that you are being held unlawfully or restrained of your liberty. Summarize briefly the fact(s) supporting each ground.

1 Ground: The court has previously barred this Action, citing "LAW OF  
2 the case doctrine" however, LAW OF the case does not bar this  
3 court from Addressing this claim for (4) Four reasons, First,  
4 Pursuant to the First Amendment in part states; TO Petition  
5 the Government for a redress of Grievances. Second, Actual  
6 Innocence claim, Third NRS 207.010, Fourth NRS 207.012

7 Supporting Facts:

8 ON MAY 23, 1990, Petitioner was sentenced to the Large habitual  
9 Criminal Statute. What the state failed to provide this court was  
10 that pursuant to NRS 207.012, "Nonviolent property crimes do not  
11 warrant harsh sanction available under habitual Criminal Statute.  
12 Prior convictions for nonviolent property crimes, although  
13 reprehensible, do not warrant harsh sanction available  
14 under the habitual Criminal Statute. See NRS 207.010, and  
15 Walker v. Deeds, 50 F.3d 670, 673 (9th Cir. 1995) ("NEVADA) and  
16 Exhibit 1 attached herewith, Also Applied (EX POST FACTO).  
17 NRS 207.010-Decision to Adjudicate defendant as habitual  
18 Criminal is not Automatic; Characterization and Adjudication of  
19 defendant as recidivist is matter purely within discretion  
20 of Trial Court. "NO discretion was used" ON Appeal of AN  
21 Order of the District Court denying the defendant's petition  
22 For postconviction relief, wherein the record indicated that  
23 the district court did not exercise its discretion by  
24 weighing appropriate factors for and against habitual  
25 Criminal enhancement (See NRS 207.010), but instead  
26 mistakenly concluded that Three convictions automatically  
27 established the defendant as a habitual Criminal, the  
28 enhancement of the defendant's Sentence to life

Ground: CONTINUED From page 4

Supporting Facts:

imprisonment was improper. A decision to Adjudicate a person as a habitual Criminal is NOT Automatic, and it was incumbent upon the district court to weigh properly whether the habitual Criminality count should have been dismissed pursuant to the discretion conferred by NRS 207.010. As a Characterization AND Adjudication of the defendant as a recidivist is a matter of Criminal Statute.

Ground: Violation of NRS 202.010

Supporting Facts:

The purpose of this Section is to permit dismissal when the prior offenses are stale or trivial, or in other circumstances where an adjudication of habitual criminality would not serve the purposes of the statute or the interests of justice. Moraga maintains that because one (1) of the prior convictions used in support of the habitual criminal charge is well over (13) years old, it is too stale to support his conviction. He now argues that because his conviction is so remote, the District Court abused its discretion. Moraga's past conduct, though reprehensible, simply does not warrant the harsh sanction available under the habitual criminality statute. So under these circumstances, it is an abuse of discretion for the District Court to have adjudicated Moraga a habitual criminal and imposed the maximum sentence. Surely a case involving crimes less violent and more stale than presented here would be hard to find; hence, the adjudication of habitual criminality in this case serves neither the purposes of the statute nor the interests of justice.





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WHEREFORE, Petitioner prays that the court grants Petitioner's relief to which he may be entitled to in this proceeding. Writ of habeas Corpus

EXECUTED at N N C C, Nevada on this day of September 26, 20 18

Roy D. Monaga  
PETITIONER

AFFIRMATION  
Pursuant to NRS 239b.030

The undersigned does hereby affirm that the preceding document, Petition For writ of  
habeas Corpus OF Actual INNOCENCE Pursuant To NRS 207.010, NRS 207.012 and  
First Amendment claim (Title of Document)

Filed in case number: C92124

☒ Document does not contain the social security number of any person

Or

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

☐ A specific state or federal law, to wit

Or

☐ For the administration of a public program

Or

☐ For the application for a federal or state grant

Or

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

DATE: 9-26-18

Roy D. Moraga  
(Signature)

Roy D. Moraga  
(Print Name)

Pro Se  
(Attorney For)

# IN THE SUPERIOR COURT

OF  
MARICOPA COUNTY, STATE OF ARIZONA

12-H

Feb. 7, 1977

JUDGE RAPP, PRESIDING

## OFFICE DISTRIBUTION

CLERK	
DEPUTY CLERK	
RECORDS	
PROPERTY	
LABORATORY	
TRAINING	
OTHER	

1036

WILSON D. PALMER, Clerk  
Carol S. Novallo, Deputy

CR 95949

STATE OF ARIZONA

County Attorney

vs.

By: Lin N. Stuart

Related  
Cases:

ROY DANIELS MORAGA

Adult Probation Department

Maricopa County Sheriff's Office

P.D. - Robert A. Hartsberg  
Defense Counsel

95949

### SENTENCE - PROBATION - NO JAIL

The State is represented by the above-named deputy;  
the defendant is present with counsel above named. Court  
Reporter: Marilyn Sanchez

The defendant is advised of the charge, the  
determination of guilt and is given an opportunity to speak.  
The Court has reviewed the Pre-Sentence Report,  
Having found no legal cause to delay, the Court  
enters the following judgment and sentence:

IT IS THE JUDGMENT of the Court that the defendant  
is guilty of the crime of Aggravated Assault, Open-End

committed on: December 21, 1976

in violation of ARS 13-241, 13-245 (A)

As punishment for this crime,

ORDERED suspending imposition of sentence and placing  
the defendant on probation for a period of FIVE (5) YEARS  
commencing February 7, 1977, under the supervision of  
the Probation Department of this Court, in accordance with the  
formal Judgment and Order suspending sentence and imposing terms  
of probation signed by the Court.

51-SENTENCE - PROBATION - NO JAIL  
(Continued on next page)

54

3  
Div

June 6, 1988  
Date

JAMES B. SULT  
Judge or Commissioner

Mary Slaughter  
Deputy

No. 12891

STATE VS. ROY DANIELS MORAGA

Having found no legal cause to delay rendition of judgment and pronouncement of sentence, the Court enters the following judgment and sentence.

IT IS THE JUDGMENT OF THE COURT that the Defendant is guilty of the crime of \_\_\_\_\_

Third Degree Burglary

a Class 4 felony/~~misdemeanor/undesignated~~ nondangerous and nonrepetitive offense, in violation of A.R.S. 13-1506, 13-1501, 13-701, 13-702, 13-801, committed on January 10, 1988

and \_\_\_\_\_

a Class \_\_\_\_\_ felony/misdemeanor/undesignated, nondangerous and nonrepetitive offense, in violation of A.R.S. \_\_\_\_\_

committed on \_\_\_\_\_

and \_\_\_\_\_

a Class \_\_\_\_\_ felony/misdemeanor/undesignated, nondangerous and nonrepetitive offense, in violation of A.R.S. \_\_\_\_\_

committed on \_\_\_\_\_

and \_\_\_\_\_

a Class \_\_\_\_\_ felony/misdemeanor/undesignated, nondangerous and nonrepetitive offense, in violation of A.R.S. \_\_\_\_\_

committed on \_\_\_\_\_

and \_\_\_\_\_

a Class \_\_\_\_\_ felony/misdemeanor/undesignated, nondangerous and nonrepetitive offense, in violation of A.R.S. \_\_\_\_\_

committed on \_\_\_\_\_

(Continued)

Page 2 64

Exhibit 2

THIS SEALED  
DOCUMENT,  
NUMBERED PAGE(S)  
12 - 17  
WILL FOLLOW VIA  
U.S. MAIL

27

**FILED**  
OCT 16 2018  
CLERK OF COURT

PPOW

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Roy D Moraga,  
Petitioner,  
vs.  
Isidor Baca,  
Respondent,

Case No: A-18-782168-W  
Department 6

**ORDER FOR PETITION FOR  
WRIT OF HABEAS CORPUS**

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on October 01, 2018. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

**IT IS HEREBY ORDERED** that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

**IT IS HEREBY FURTHER ORDERED** that this matter shall be placed on this Court's

Calendar on the 2 day of January, 2019, at the hour of

8:30AM 'clock for further proceedings.

District Court Judge B6

**RECEIVED  
OCT 15 2018  
CLERK OF THE COURT**

A-18-782168-W  
OPWH  
Order for Petition for Writ of Habeas Corpus  
4788567



1 ROY D. MORAGA #31584  
2 NNGL PO Box 7000  
3 CARSON CITY, NV 89702

FILED  
NOV 06 2018  
Clerk of Court

4  
5 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
6 IN AND FOR THE COUNTY OF CLARK

8 ROY D. MORAGA )  
9 Petitioner/Plaintiff, )  
10 vs. )  
11 ISIDOR BACA )  
Respondent/Defendant )

CASE NO. A-18-782168-W  
MOTION FOR APPOINTMENT  
OF COUNSEL PURSUANT TO  
NRS 34.750

13 Petitioner, ROY D. MORAGA, pursuant to NRS 34.750

14 (1) (2) request the Honorable Court to appoint counsel to represent him in this Habeas  
15 petition for the following reasons:

- 16 1. Petitioner is not able to afford counsel, see motion to proceed In Forma Pauperis and Affidavit in  
17 support filed with the court.
- 18 2. The issues involved in this matter are very complex.
- 19 3. The issues involved in this case will require investigation which the petitioner cannot do while  
20 confined in prison.
- 21 4. Petitioner has very limited knowledge of the law and processes thereof.
- 22 5. The ends of justice would best be served in this case if an attorney was appointed to represent the  
23 petitioner.

24 Dated this 31 day of October, 2018.

25 /s/ Roy D. Moraga

CLERK OF THE COURT  
NOV 06 2018  
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ROY D. MORAGA #31584  
NUCC P.O. Box 7060  
CARSON CITY, NV 89702

LEGAL  
MAIL

01 NOV 2018 PM 3 L

REMO NV 894



STANDARD

CLERK OF THE COURT  
200 LEWIS AVE, 3rd Floor  
LAS VEGAS, NEVADA 89101-36300

8910136300



RSPN

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, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,  
Plaintiff,

-vs-

**ROY MORAGA,  
#938554**

Defendant.

CASE NO: **A-18-782168-W  
89C092174**

DEPT NO: **VI**

**STATE'S RESPONSE TO DEFENDANT'S PETITION FOR  
WRIT OF HABEAS CORPUS (POST-CONVICTION)**

DATE OF HEARING: **JANUARY 2, 2019**  
TIME OF HEARING: **8:30 AM**

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JAMES R. SWEETIN, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in this State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction).

This response 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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//

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On January 9, 1990, Roy Moraga (hereinafter "Petitioner") was charged by way of  
4 Information with two (2) counts of Burglary (Felony – NRS 205.060) and two (2) counts of  
5 Sexual Assault (Felony – NRS 200.364, 200.366). On January 11, 1990, Petitioner entered a  
6 plea of not guilty and his case proceeded to trial.

7 Petitioner's jury trial began on March 12, 1990. On March 15, 1990, the jury found  
8 Petitioner guilty of all counts. On June 4, 1990, the State filed a Notice of Motion to Amend  
9 Information in order to seek habitual treatment. On June 13, 1990, pursuant to an Amended  
10 Information filed the same day, Petitioner was sentenced to life imprisonment without the  
11 possibility of parole under the "large" habitual criminal statute, NRS 207.010. Petitioner filed  
12 a Notice of Appeal on June 27, 1990. The Judgement of Conviction was filed on July 7, 1990.

13 On August 27, 1991, the Nevada Supreme Court affirmed Petitioner's conviction but  
14 remanded for the district court to resentence Petitioner separately on the underlying counts  
15 rather than giving him a single life sentence under the habitual criminal statute. Remittitur  
16 issued on September 7, 1991.

17 On October 21, 1991, pursuant to the Nevada Supreme Court's Remand Order, the  
18 district court took notice of the felony convictions entered at Defendant's initial sentencing  
19 and resented Defendant to the following: as to Count I – ten (10) years in the Nevada  
20 Department of Corrections ("NDC"); as to Count II- ten (10) years in NDC consecutive to  
21 Count I; as to Count III – life imprisonment with parole eligibility beginning after five (5)  
22 years, consecutive to Count II; and as to Count IV – pursuant to NRS 201.010, life without the  
23 possibility of parole, consecutive to Count III. The Amended Judgement of Conviction was  
24 filed on November 13, 1991.<sup>1</sup>

25 Defendant filed a Notice of Appeal on October 30, 1991. On October 4, 1995, the  
26 Nevada Supreme Court dismissed Petitioner's appeal. Remittitur issued on October 24, 1995.

27 //

28 

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<sup>1</sup> A Second Amended Judgement of Conviction was filed on September 29, 1993, to reflect one hundred eighty (180) days credit for time served.

1 On February 20, 1996, Petitioner filed his first Petition for Writ of Habeas Corpus  
2 (Post-Conviction). The State filed its response on April 4, 1996. Petitioner filed a Supplement  
3 on June 13, 1996. The State filed its response on June 27, 1996. On July 16, 1996, Petitioner  
4 filed a Reply to the State's Response. On July 19, 1996, the district court denied Petitioner's  
5 first Petition. On September 6, 1996, the district court filed its Findings of Fact, Conclusions  
6 of Law and Order. The Notice of Entry of Order was filed on September 20, 1996. Petitioner  
7 filed a Notice of Appeal on September 27, 1996.

8 On April 30, 1998, Petitioner filed a Motion to Modify or in the Alternative Correct  
9 Illegal Sentence. The State filed an Opposition on May 8, 1998. On May 28, 1998, the district  
10 court entered an Order Denying Defendant's Motion to Modify or Correct Illegal Sentence.  
11 On June 13, 1998, Petitioner filed a Notice of Appeal from the Oder denying his motion.

12 On April 20, 1999, the Nevada Supreme Court consolidated the appeal from the orders  
13 denying Petitioner's first Petition for Writ of Habeas Corpus and Petitioner's Motion to  
14 Modify Sentence or Correct Illegal Sentence. Both decisions were affirmed. Remittitur issued  
15 on May 18, 1999.

16 Petitioner filed his second Petition for Writ of Habeas Corpus (Post-Conviction) on  
17 January 10, 2006. The State filed a Response and Motion to Dismiss on February 27, 2006.  
18 Petitioner filed a Reply to the State's Response on May 24, 2006. On June 26, 2006, the district  
19 court denied Petitioner's second Petition for Writ of Habeas Corpus. The district court filed its  
20 Findings of Fact, Conclusions of Law and Order on February 8, 2007. Notice of Entry of Order  
21 was filed on February 13, 2007. On March 2, 2007, Petitioner filed a Notice of Appeal. On  
22 August 16, 2007, the Nevada Supreme Court issued an Order of Affirmance. Remittitur issued  
23 on September 11, 2007.

24 Petitioner filed his third Petition for Writ of Habeas Corpus (Post-Conviction) on  
25 December 8, 2010, in Pershing County. The Petition was transferred to the Eighth Judicial  
26 District on April 29, 2011, but was filed under Case No. 11-A640265-W and did not  
27 immediately come before the court. Petitioner filed a Supplement to his Petition on November  
28 4, 2011. On March 14, 2012, Petitioner filed a Motion for Judicial Action on his Petition. The

1 State filed an Opposition to this motion on March 23, 2012. On May 16, 2012, the State filed  
2 a Response and Motion to Dismiss Petitioner's third Petition.

3 On July 16, 2012, the district court denied Petitioner's third Petition for Writ of Habeas  
4 Corpus. On August 6, 2012, Petitioner filed a Motion to Reconsider. The State filed an  
5 Opposition to Motion to Reconsider on August 9, 2012. On August 13, 2012, the district court  
6 issued a Findings of Fact, Conclusions of Law, and Order denying Petitioner's third Petition.  
7 A Notice of Entry of Order was filed on August 21, 2012. The district court issued an Order  
8 denying Petitioner's Motion to Reconsider on October 5, 2012.

9 On September 17, 2012, Petitioner filed a Notice of Appeal from the order denying his  
10 third Petition. The Nevada Supreme Court issued an Order of Affirmance on July 13, 2013.  
11 Petitioner filed a Petition for Rehearing on August 6, 2013. On September 25, 2013, the court  
12 denied Petitioner's Petition for Rehearing.

13 Petitioner filed his fourth Petition for Writ of Habeas Corpus and Motion for  
14 Appointment of Counsel on August 14, 2013. The State responded on September 19, 2013.  
15 On October 21, 2013, the court denied Petitioner's fourth Petition for Writ of Habeas Corpus.  
16 The Findings of Fact, Conclusions of Law and Order was issued on December 4, 2013. On  
17 December 16, 2013, Petitioner filed a Notice of Appeal from the order denying his fourth  
18 Petition. The Nevada Supreme Court issued an Order of Affirmance on April 10, 2014.

19 On October 1, 2018, Petitioner filed the instant's fifth Petition for Writ of Habeas  
20 Corpus. The State responds herein.

## 21 **ARGUMENT**

### 22 **I. THIS COURT SHOULD DENY THE PETITION BECAUSE IT IS** 23 **PROCEDURALLY BARRED UNDER NRS 34.726(1).**

24 Defendant's Petition for Writ of Habeas Corpus is time barred with no good cause  
25 shown for delay. Pursuant to NRS 34.726(1):

26 //

27 //

28 //

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

8 (a) That the delay is not the fault of the petitioner; and

9 (b) That dismissal of the petition as untimely will unduly prejudice  
10 the petitioner.

11 (Emphasis added). The Supreme Court of Nevada has held that NRS 34.726 should be  
12 construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528  
13 (2001). As per the language of the statute, the one-year time bar proscribed by NRS 34.726  
14 begins to run from the date the judgment of conviction is filed or a remittitur from a timely  
15 direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

16 The one-year time limit for preparing petitions for post-conviction relief under NRS  
17 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),  
18 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite  
19 evidence presented by the defendant that he purchased postage through the prison and mailed  
20 the Notice within the one-year time limit.

21 Furthermore, the Nevada Supreme Court has held that the district court has a duty to  
22 consider whether a defendant's post-conviction petition claims are procedurally barred. State  
23 v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The  
24 Riker Court found that "[a]pplication of the statutory procedural default rules to post-  
25 conviction habeas petitions is mandatory," noting:

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

29 Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district  
30 court] when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme  
31 Court has granted no discretion to the district courts regarding whether to apply the statutory

1 procedural bars; the rules must be applied.

2 Further, the entry of an Amended Judgement of Conviction does not automatically  
3 restart the statutory time limit for post-conviction claims. Sullivan v. State, 120 Nev. 537, 540-  
4 41, 96 P.3d 761, 764 (2204). Since the district court may amend the judgement of conviction  
5 at any time to correct a clerical error or an illegal sentence, “restarting the one-year time period  
6 for all purposes every time an amendment occurs would frustrate the purpose and spirit of  
7 NRS 34.726.” Id. at 540, 96 P.3d at 764. Consequently, where a Petitioner is not challenging  
8 the proceedings related to an Amended Judgment of Conviction, the one-year time bar runs  
9 from the date on which the original Judgement of Conviction was entered or, if an appeal was  
10 taken from the original judgment, within one year after the appellate court issues its remittitur.  
11 Id. at 540, 96 P.3d at 764.

12 In the instant case, Defendant’s Judgement of Conviction was filed on July 7, 1990.  
13 Defendant filed a direct appeal, and remittitur was issued on September 17, 1991. An Amended  
14 Judgement of Conviction was filed on November 13, 1991, and a Second Amended Judgement  
15 of Conviction was filed on September 29, 1993. Petitioner appealed the Second Amended  
16 Judgement of Conviction, and remittitur issued on October 24, 1994. Appellant’s instant  
17 Petition was not filed until October 1, 2018. This is more than one year after the Judgement of  
18 Conviction, the Amended Judgement of Conviction, and the Second Amended Judgement of  
19 Conviction. Consequently, it is not necessary to address the argument of whether the one-year  
20 period should flow from the date of the original judgment or the date of an amended  
21 judgement, as more than one year has passed since the entry of all. Absent a showing of good  
22 cause for this delay and undue prejudice, Defendant’s claim must be dismissed because of its  
23 tardy filing.

24 **II. DEFENDANT’S FIFTH PETITION IS SUCCESSIVE.**

25 Defendant’s Petition should also be denied as successive pursuant to NRS 34.810(2).  
26 The relevant portions of NRS 34.810 state:

27 //

28 //

1 2. A second or successive petition must be dismissed if the judge  
2 or justice determines that it fails to allege new or different grounds  
3 for relief and that the prior determination was on the merits or, if  
4 new and different grounds are alleged, the judge or justice finds  
5 that the failure of the Defendant to assert those grounds in a prior  
6 petition constituted an abuse of the writ.

7 3. Pursuant to subsections 1 and 2, the petitioner has the burden  
8 of pleading and proving specific facts that demonstrate:

9 (a) Good cause for the petitioner's failure to present the claim or  
10 for presenting the claim again; and

11 (b) Actual prejudice to the petitioner.

12 Id. This is Defendant's fifth Petition. Defendant has previously filed four other Petitions  
13 spanning from February 20, 1996, to August 14, 2013, regarding the same issues. All of these  
14 prior Petitions have either been denied or disposed of. Furthermore, Petitioner has given no  
15 good cause for the delay, and has failed to demonstrate actual prejudice. As such, this fifth  
16 Petition must be denied as successive.

### 17 **III. DEFENDANT'S FIFTH PETITION IS BARRED BY LACHES.**

18 NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period  
19 exceeding five years between the filing of a judgment of conviction, an order imposing a  
20 sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the  
21 filing of a petition challenging the validity of a judgment of conviction..." The statute also  
22 requires that the State plead laches, which the State does. NRS 34.800.

23 Defendant's Judgement of Conviction was filed on July 7, 1990. Defendant filed a  
24 direct appeal, and remittitur was issued on September 17, 1991. An Amended Judgement of  
25 Conviction was filed on November 13, 1991, and a Second Amended Judgement of Conviction  
26 was filed on September 29, 1993. Petitioner appealed the Second Amended Judgement of  
27 Conviction, and remittitur issued on October 24, 1994. Since more than five years have elapsed  
28 from any given date, NRS 34.800 directly applies in this case and a presumption of prejudice  
to the State arises. Defendant does not rebut this presumption. Therefore, pursuant to NRS  
34.800, Defendant's Petition must be denied.

//



1 **III. DEFENDANT HAS NOT PROVIDED GOOD CAUSE OR EVIDENCE OF**  
2 **ACTUAL INNOCENCE TO OVERCOME THE PROCEDURAL BARS**

3 A showing of good cause and prejudice may overcome procedural bars. "To establish  
4 good cause, Defendant must show that an impediment external to the defense prevented their  
5 compliance with the applicable procedural rule. A qualifying impediment might be shown  
6 where the factual or legal basis for a claim was not reasonably available at the time of default."  
7 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court  
8 continued, "appellants cannot attempt to manufacture good cause[.]" Id. at 621, 81 P.3d at 526.

9 In order to establish prejudice, the defendant must show "not merely that the errors of  
10 [the proceedings] created the possibility of prejudice, but that they worked to his actual and  
11 substantial disadvantage, in affecting the state proceedings with error of constitutional  
12 dimensions." Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United  
13 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there  
14 must be a "substantial reason; one that affords a legal excuse." Hathaway v. State, 119 Nev.  
15 248, 252, 71 P.3d 503, 506 (2003). Clearly, any delay in the filing of the petition must not be  
16 the fault of the petitioner. NRS 34.726(1)(a).

17 Where a petition is procedurally barred and the petitioner cannot demonstrate good  
18 cause, the district court may nevertheless reach the merits of any constitutional claims if the  
19 petitioner demonstrates that failure to consider those constitutional claims would result in a  
20 fundamental miscarriage of justice. Lisle v. State, 351 P.3d 725, 729-730 (2015), citing  
21 Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). A fundamental miscarriage of  
22 justice requires "a colorable showing" that the petitioner "is actually innocent of the crime or  
23 is ineligible for the death penalty." Id. This generally requires the petitioner to present new  
24 evidence of his innocence. House v. Bell, 547 U.S. 518, 536-37, 126 S. Ct. 2064 (2006);  
25 Schlup v. Delo, 513 U.S. 298, 316, 115 S. Ct. 851 (1995).

26 When claiming a fundamental miscarriage based on actual innocence, the petitioner  
27 "must show that it is more likely than not that no reasonable juror would have convicted him  
28 absent a constitutional violation. Crump v. State, 2016 Nev. Unpub. LEXIS 374, \*9-10, citing

1 Pellegrini v. State, 117 Nev. at 887, 34 P.3d at 537 (2001). In this context, actual innocence  
2 means "factual innocence, not mere legal insufficiency." Mitchell v. State, 122 Nev. 1269,  
3 1273-74, 149 P.3d 33, 36 (2006).

4 In the instant case, Petitioner failed to raise any issue of good cause for the untimely  
5 delay in filing his Petition. Instead Petitioner asserts his actual innocence and cites to NRS  
6 207.010 and Walker v. Deeds, 50 F.3d 670, 673 (9th Cir. 1995) to support his claim that he  
7 was wrongfully adjudicated a habitual criminal because nonviolent property crimes do not  
8 warrant harsh sanctions under the habitual criminal statute. Petition at 4. This argument was  
9 already rejected by the Nevada Supreme Court in Petitioner's first Petition, and as such is  
10 barred from other review by the doctrine of the law of the case. "The law of the first appeal is  
11 law of the case on all subsequent appeals in which the facts are substantially the same." Hall  
12 v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting Walker v. State, 85 Nev. 337,  
13 343, 455 P.2d 34, 38 (1969)). "The doctrine of the law of the case cannot be avoided by a more  
14 detailed and precisely focused argument subsequently made after reflection upon the previous  
15 proceedings." Hall, 91 Nev. at 316, 535 P.2d at 799. Under the law of the case doctrine, issues  
16 previously decided on direct appeal may not be reargued in a habeas petition. Pellegrini v.  
17 State, 117 Nev. 860, 34 P.3d 519 (2001) (citing McNelson v. State, 115 Nev. 396, 414-15, 990  
18 P.2d 1263, 1275 (1999)).

19 In denying Defendant's first Post-Conviction Petition, the Nevada Supreme Court  
20 noted that the State adequately proved Petitioner had three prior convictions and the district  
21 court was entitled to use these convictions for sentence enhancement purposes. See Order  
22 Dismissing Appeal 10/30/95. Additionally, the case Petitioner cites to was decided after his  
23 sentencing and cannot be applied retroactively. Furthermore, Defendant has failed to provide  
24 any facts that would show he would be prejudiced by having to comply with the procedural  
25 time bar.

26 As such, Petitioner cannot show good cause or actual prejudice and this Petition should  
27 be denied.

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**CONCLUSION**

For all the foregoing, the State respectfully requests that Defendant's Petition for Writ of Habeas Corpus be DENIED.

DATED this 30th day of November, 2018.

Respectfully submitted,

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #01565

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

**CERTIFICATE OF MAILING**

I hereby certify that service of the above and foregoing was made this 30th day of NOVEMBER, 2018, to:

ROY MORAGA, BAC#31584  
N.N.C.C.  
P.O. BOX 7000  
CARSON CITY, NV 89702

BY /s/ HOWARD CONRAD  
Secretary for the District Attorney's Office  
Special Victims Unit

hjc/SVU

FILED

DEC 26 2018

EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

*Shirley L. Smith*  
CLERK OF COURT

ROY D. MORAGA, #31584

Petitioner,

vs,

ISIDOR BACA,

THE STATE OF NEVADA,

Respondent.

CASE NO. A-18-782168-W

Dept. NO. VI

PETITIONER'S REPLY AND OBJECTION  
TO STATES RESPONSE TO HABEAS-CORPUS

Comes now Roy D. Moraga, in pro-se with whom does so presents to and before this court this Reply and objection to States response to defendants petition for writ of habeas Corpus.

First and foremost this petitioner claims, asserts and charges that he (MORAGA) has presented and demonstrated Good Cause and has been exposed to prejudice by this prosecutions knowing and intentional acts.

WHEREAS petitioner (MORAGA) hereby claims "Actual Innocence", see Mitchell v. STATE OF NEVADA, 149 P.3d 33. (see also) NRS 50.095(2)(a)(b).

RECEIVED

DEC 26 2018

CLERK OF THE COURT

MITCHELL V. STATE OF NEVADA, 149 P.3d 33

## PROCEDURAL BARS AND LACHES

A post-conviction petition for a writ of habeas corpus must be filed within one year after the entry of the judgment of conviction or, if a timely appeal is taken from the judgment, within one year after this court issues its remitter. 4 Further, a second or successive petition must be dismissed if it fails to allege new or different grounds for relief and the prior determination was on the merits, or, if new and different grounds are alleged, the petitioner's failure to alleged them in the prior petition(s) constitutes an abuse of the writ. 5 A petitioner can overcome the bar to an untimely or successive petition by showing good cause and prejudice. 6

Even when a petitioner cannot show good cause sufficient to overcome the bars to an untimely or successive petition, habeas relief may still be granted if the petitioner can demonstrate that "a constitutional violation has probably resulted in the conviction of one who is actually innocent." 7

"[A]ctual innocence' means factual innocence, not mere legal insufficiency." 8 The conviction of a petitioner who was actually innocent would be a fundamental miscarriage of justice sufficient to overcome the procedural bars to an untimely or successive petition.

However, we have also held that when a holding in a defendant's direct appeal is overruled in a subsequent case, the doctrine of the law of the case should not be applied, because "to do so would unfairly impose a legal application upon [the defendant] (122 Nev. 1275) which we expressly overruled, citing to our published opinion disposing of his direct appeal." Thus, we (149 P.3d 37) decline to apply the law of the case doctrine to Mitchell's Attempted Murder Claim.

MURRAY V. CARRIER, 477 U.S. 478, 91 L. Ed. 2d 397, 106 S. Ct. 2639 Procedural default that is adequate to foreclose appellate review of a claim of constitutional error in a state criminal trial should ordinarily also bar collateral review of such a claim in a federal district court. But the history of the court's jurisprudence interpreting the Acts of Congress authorizing the issuance of the writ of habeas corpus unambiguously requires that we carefully preserve the exception which enables the federal writ to grant relief in cases of manifest injustice that exception cannot be adequately defined by a simply stated rule. The procedural default is always an important factor to be carefully reviewed; as Justice FRANKFURTER explained, "All that has gone before is not to be ignored as irrelevant," BROWN V. ALLEN, 344 U.S., at 500, 97 L. Ed. 469, 73 S. Ct. 397. But it is equally clear that the prisoner must always have some opportunity to reopen his case if he can make a sufficient showing that he is the victim of a fundamental miscarriage of justice.

Whether the inquiry is channeled by the use of the terms "Cause and Prejudice" or by the statutory duty to "dispose of the matter as law and justice require," 28 USC § 2243 [28 USC § 2243]-it is clear to me that appellate procedural default should not foreclose habeas corpus review of a meritorious constitutional claim that may establish the petitioner's innocence.

Affirm the decision of the Court of Appeals in *Murray v. Carrier*, while reversing the holding of the Court of Appeals that Counsel's inadvertence establishes "Cause," the Court goes on to declare that "Where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal court may grant the writ even in the absence of a showing of cause for the procedural default." *Ante*, at 496, 91 L. Ed. 2d, at 413. Under such circumstances, the Court explains, "the principles of comity and finality that inform the concepts of cause and prejudice must yield to the imperative of correcting a fundamentally unjust incarceration." *Ante*, at 495, 91 L. Ed. 2d, at 413 (quoting *Engle v. Isaac*, *Supra*, at 135, 71 L. Ed. 2d 783, 102 S. Ct. 1558). Although I believe that principles of "comity" and "finality" yield upon far less than a showing of actual innocence, because this inquiry represents a narrowing of the "Cause and Prejudice" Test. I agree that it is proper.

NRS 50.095. Impeachment by evidence of Conviction of Crime.

NRS 50.095(2) Evidence of a Conviction is inadmissible under this Section if a period of more than 10 years has elapsed since: (a) The date of the release of the witness from confinement; or (b) The expiration of the period of the witness's parole, Probation or Sentence, whichever is the later date.

NRS 34.195. Application Alleging unconstitutional prior restraint; Court required to render judgment on Application not later than 30 days After Application is Filed.

1. If the Application is Alleging an unconstitutional prior restraint of the Applicant's rights pursuant to the First Amendment to the Constitution of the United States or Section 9 of Article 1 of the Constitution of the State of Nevada, the Applicant shall insert the words "First Amendment Petition" in the caption of the Application for the writ in at least 10-point Type.

2. The Court shall render judgment on an Application for a writ described in Subsection 1 not later than 30 days After the date on which the Application for the writ is Filed. 1999, ch. 79, § 1, p. 176.



STATE LAWS GUARANTEEING a defendant procedural Rights At Sentencing may Create liberty interests protected Against Arbitrary deprivation by the due process Clause OF U. S. Const. Amend. XIV. Therefore, When a State has provided a Specific Method For determining Whether a Certain Sentence Shall be imposed, it is Not Correct to say that the defendant's interest in having that method Adhered to is merely a matter of State procedural law. Nevada's Law requiring a Court To review and make particularized Finding that it is just and proper for a defendant to be Adjudged a habitual Offender Also Creates a constitutionally protected liberty interest in a Sentencing procedure.

At Sentencing in this Case, the state Court Found That Moraga had been Convicted of three prior Felonies and Concluded that Moraga "Should be Adjudicated a habitual Criminal by reason of three prior convictions." IN reviewing this procedure the district Court Concluded that "The Application of Nevada's habitual Offender Statute, NRS § 207.010, was properly Applied in Moraga's Case. IN Nevada, "the decision to Adjudicate a person AS a habitual Criminal is NOT AN Automatic one." Clark V. State, 109 Nev. 426, 851 P.2d 426, 427 (Nev. 1993). IN particular, "having committed three Felonies does NOT, OF ITSELF, a habitual Criminal MAKE."

The Nevada Supreme Court has emphasized that the simple finding of three prior felonies "is not the same as an adjudication of habitual criminal status" and is inadequate because it does not clearly disclose that the court weighed the appropriate factors for and against the habitual criminal enhancement." Id. The sentencing judge, therefore, is required to make "an actual judgment on the question of whether it is just and proper for [the defendant] to be punished and segregated as a habitual criminal." Id. (emphasis added).

As in Moraga's case the trial court in his case did not "clearly disclose" that it "weighed the appropriate factors for and against the criminal enhancement." Nor did the court decide that it was "just and proper," based on the nature and gravity of his prior convictions, to adjudge Moraga a habitual offender under the relevant statute.

MOREOVER, if the trial court had weighed Moraga's prior convictions, under Nevada law, a prior conviction record for nonviolent property crimes, "though reprehensible, simply does not warrant the harsh sanction available under the habitual criminality statute." Sessions v. State, 106 Nev. 186, 789 P.2d 1242, 1245 (Nev. 1990) (per curiam).

WHEREFORE, MORAGA'S Sentence of the habitual Criminal  
Must be VACATED AND REMANDED.

IT is Further Requested that District Attorney  
STEVEN B. WOLFSON, JAMES R. SWEETIN, Chief Deputy  
District Attorney produce the pro-se writ of habeas  
Corpus (Post-Conviction) which they Allege Moraga  
Filed in 1996, First petition and that it be made  
AS part of the record, since there statement was  
made under penalty of perjury, once they can't, or  
refuse to produce this writ/Petition, MORAGA  
Shall be discharged From Custody.

Furthermore AND For the record Moraga has Served  
each one of his primary offense, in 1998 at  
Nevada STATE Prison (NSP) Moraga was paroled to  
Serve his habitual Criminal Count, Moraga has  
Served over 20 years on this life without Sentence  
For a Nonviolent property crime. See Exhibit 2  
ON File

#### CONCLUSION

WHEREAS Mr. MORAGA hereby Challenges this Chief  
Deputy District Attorney James R. Sweetin to present,  
Show and demonstrate where Moraga ever Argued AND  
or Cited WALKER v. Deeds, 50 F.3d 670, 673 (9th Cir. 1995)  
IN Addition to the Fact that there is "no such record"  
that this Argument was either presented to nor rejected  
by the Nevada Supreme Court.

Therefore this petitioner Claims, Asserts and Charges that this Alleged professional Chief Deputy District Attorney Mr. Sweetin, Did So KNOWING and intentionally present and Cite A False Assertion of Fabricated FACT.

(An Act of Saborn of a Perjured Testimony) As this Clearly prejured Statement was made in an effort to Advance the states position and to Suit their Agenda.

Secondly Whereas the Sentencing Court Acted erroneously by Sentencing MORAGA to Serve the primary offenses First and Seperetely AND then to Serve the enhancement Subsequently As this enhancement CANNOT STAND ALONE As this erroneous and "INVALID" Sentence exposes and reveals that the Court has Violated the Double Jopardy Clause AND Cruel and UNUSell punishment without Due process of LAW.

Furthermore this Newly discovered evidence Clearly AND without question establishes that the Court and the judges Treated MORAGA with extreme bias and prejudice AND AS Such this petitioner believes that he has Over-Come the procedural hurtles that this the respondent has mentioned.

Whereas MORAGA has presented Newly discovered evidence that reveals, UN-covers and exposes that A True Fundamental Miscarriage of Justice has Occurred Lisbe v. STATE, 351 P.3d 725 (2015) AND See House v. Bell, 126 S.Ct. 2064 (2006), AND Schlup v. Delo, 115 S.Ct. 851 (1995).

This petitioner Roy MORAGA # 31584 hereby Respectfully  
Requests As Justice Demands that this Court To look  
at and reveiw this reply and Objection to the STATES  
response AND AS SUCH COMES TO THE CONCLUSION THAT  
MORAGA'S Sentence in reference to the ENHANCEMENT  
AS AN habitual Criminal is "INVALID".

Therefore MORAGA prays this Court to remove AND  
Strike Said Sentence enhancement from his Term of  
imprisonment.

Whereas this "INVALID" enhancement is Clearly  
UNCONSTITUTIONAL.

#### CERTIFICATE OF SERVICE

I hereby Certify that ON the 20th day of December 2018, I  
mailed a True AND Correct Copy OF the Foregoing:  
Petitioner's Reply AND Objection to States response  
To Habeas Corpus Addressed To:

JAMES R. Sweetin, D. D. A.  
200 Lewis Ave.  
LAS Vegas, NV 89155-2212



OSCC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\*\*\*\*\*

ROY MORAGA, PLAINTIFF(S)  
VS.  
ISIDOR BACA, DEFENDANT(S)

CASE NO.: A-18-782168-W

DEPARTMENT 6

**CIVIL ORDER TO STATISTICALLY CLOSE CASE**

Upon review of this matter and good cause appearing,  
IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to  
statistically close this case for the following reason:

**DISPOSITIONS:**

- ☐ Default Judgment
- ☐ Judgment on Arbitration
- ☐ Stipulated Judgment
- ☐ Summary Judgment
- ☐ Involuntary Dismissal
- ☐ Motion to Dismiss by Defendant(s)
- ☐ Stipulated Dismissal
- ☐ Voluntary Dismissal
- ☐ Transferred (before trial)
- ☐ Non-Jury – Disposed After Trial Starts
- ☐ Non-Jury – Judgment Reached
- ☐ Jury – Disposed After Trial Starts
- ☐ Jury – Verdict Reached
- ☐ Other Manner of Disposition

DATED this 30th day of January, 2019.

  
DISTRICT COURT JUDGE

CLERK OF THE COURT

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**ORIGINAL**

Electronically Filed  
1/31/2019 4:35 PM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven B. Wolfson*

**FCCO**  
**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, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

**ROY MORAGA,**  
**#938554**

Defendant.

CASE NO: **A-18-782168-W**  
**89C092174**

DEPT NO: **VI**

**FINDINGS OF FACT, CONCLUSIONS OF**

**LAW AND ORDER**

DATE OF HEARING: **JANUARY 2, 2019**

TIME OF HEARING: **8:30 AM**

THIS CAUSE having presented before the Honorable JAMES BIXLER, District Judge, on the 2nd day of January, 2019; Petitioner not being present, proceeding IN FORMA PAUPERIS; Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through ROBERT TURNER, Chief Deputy District Attorney; and having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of

Law:

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Defendant's jury trial began on March 12, 1990. On March 15, 1990, the jury found Defendant guilty of all counts. On June 4, 1990, the State filed a Notice of Motion to Amend Information in order to seek habitual treatment. On June 13, 1990, pursuant to an Amended Information filed the same day, Defendant was sentenced to life imprisonment without the possibility of parole under the "large" habitual criminal statute, NRS 207.010. Defendant filed a Notice of Appeal on June 27, 1990. The Judgement of Conviction was filed on July 7, 1990.

On October 21, 1991, pursuant to the Nevada Supreme Court's Remand Order, the district court took notice of the felony convictions entered at Defendant's initial sentencing and resented Defendant to the following: as to Count I – ten (10) years in the Nevada Department of Corrections ("NDC"); as to Count II- ten (10) years in NDC consecutive to Count I; as to Count III – life imprisonment with parole eligibility beginning after five (5) years, consecutive to Count II; and as to Count IV – pursuant to NRS 201.010, life without the possibility of parole, consecutive to Count III. The Amended Judgement of Conviction was filed on November 13, 1991.<sup>1</sup>

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2



1 On February 20, 1996, Defendant filed his first Petition for Writ of Habeas Corpus  
2 (Post-Conviction). The State filed its response on April 4, 1996. Defendant filed a Supplement  
3 on June 13, 1996. The State filed its response on June 27, 1996. On July 16, 1996, Defendant  
4 filed a Reply to the State's Response. On July 19, 1996, the district court denied Defendant's  
5 first Petition. On September 6, 1996, the district court filed its Findings of Fact, Conclusions  
6 of Law and Order. The Notice of Entry of Order was filed on September 20, 1996. Defendant  
7 filed a Notice of Appeal on September 27, 1996.

8 On April 30, 1998, Defendant filed a Motion to Modify or in the Alternative Correct  
9 Illegal Sentence. The State filed an Opposition on May 8, 1998. On May 28, 1998, the district  
10 court entered an Order Denying Defendant's Motion to Modify or Correct Illegal Sentence.  
11 On June 13, 1998, Defendant filed a Notice of Appeal from the Oder denying his motion.

12 On April 20, 1999, the Nevada Supreme Court consolidated the appeal from the orders  
13 denying Defendant's first Petition for Writ of Habeas Corpus and Defendant's Motion to  
14 Modify Sentence or Correct Illegal Sentence. Both decisions were affirmed. Remittitur issued  
15 on May 18, 1999.

16 Defendant filed his second Petition for Writ of Habeas Corpus (Post-Conviction) on  
17 January 10, 2006. The State filed a Response and Motion to Dismiss on February 27, 2006.  
18 Defendant filed a Reply to the State's Response on May 24, 2006. On June 26, 2006, the  
19 district court denied Defendant's second Petition for Writ of Habeas Corpus. The district court  
20 filed its Findings of Fact, Conclusions of Law and Order on February 8, 2007. Notice of Entry  
21 of Order was filed on February 13, 2007. On March 2, 2007, Defendant filed a Notice of  
22 Appeal. On August 16, 2007, the Nevada Supreme Court issued an Order of Affirmance.  
23 Remittitur issued on September 11, 2007.

24 Defendant filed his third Petition for Writ of Habeas Corpus (Post-Conviction) on  
25 December 8, 2010, in Pershing County. The Petition was transferred to the Eighth Judicial  
26 District on April 29, 2011, but was filed under Case No. 11-A640265-W and did not  
27 immediately come before the court. Defendant filed a Supplement to his Petition on November  
28 4, 2011. On March 14, 2012, Defendant filed a Motion for Judicial Action on his Petition. The

1 State filed an Opposition to this motion on March 23, 2012. On May 16, 2012, the State filed  
2 a Response and Motion to Dismiss Defendant's third Petition.

3 On July 16, 2012, the district court denied Defendant's third Petition for Writ of Habeas  
4 Corpus. On August 6, 2012, Defendant filed a Motion to Reconsider. The State filed an  
5 Opposition to Motion to Reconsider on August 9, 2012. On August 13, 2012, the district court  
6 issued a Findings of Fact, Conclusions of Law, and Order denying Defendant's third Petition.  
7 A Notice of Entry of Order was filed on August 21, 2012. The district court issued an Order  
8 denying Defendant's Motion to Reconsider on October 5, 2012.

9 On September 17, 2012, Defendant filed a Notice of Appeal from the order denying his  
10 third Petition. The Nevada Supreme Court issued an Order of Affirmance on July 13, 2013.  
11 Defendant filed a Petition for Rehearing on August 6, 2013. On September 25, 2013, the court  
12 denied Defendant's Petition for Rehearing.

13 Defendant filed his fourth Petition for Writ of Habeas Corpus and Motion for  
14 Appointment of Counsel on August 14, 2013. The State responded on September 19, 2013.  
15 On October 21, 2013, the court denied Defendant's fourth Petition for Writ of Habeas Corpus.  
16 The Findings of Fact, Conclusions of Law and Order was issued on December 4, 2013. On  
17 December 16, 2013, Defendant filed a Notice of Appeal from the order denying his fourth  
18 Petition. The Nevada Supreme Court issued an Order of Affirmance on April 10, 2014.

19 On October 1, 2018, Defendant filed the instant's fifth Petition for Writ of Habeas  
20 Corpus. The State responded on November 30, 2018. Defendant replied on December 26,  
21 2018.

## 22 ANALYSIS

### 23 **I. THIS PETITION IS PROCEDURALLY BARRED UNDER NRS 34.726(1).**

24 Defendant's Petition for Writ of Habeas Corpus is time barred with no good cause  
25 shown for delay. Pursuant to NRS 34.726(1):

26 *Unless there is good cause shown for delay, a petition that challenges*  
27 *the validity of a judgment or sentence must be filed within 1 year of*  
28 *the entry of the judgment of conviction or, if an appeal has been taken*  
*from the judgment, within 1 year after the Supreme Court issues its*

1           *remittitur*. For the purposes of this subsection, good cause for delay  
2           exists if the petitioner demonstrates to the satisfaction of the court:

3           (a) That the delay is not the fault of the petitioner; and

4           (b) That dismissal of the petition as untimely will unduly prejudice  
5           the petitioner.

6           (Emphasis added). The Supreme Court of Nevada has held that NRS 34.726 should be  
7           construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528  
8           (2001). As per the language of the statute, the one-year time bar proscribed by NRS 34.726  
9           begins to run from the date the judgment of conviction is filed or a remittitur from a timely  
10          direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

11          The one-year time limit for preparing petitions for post-conviction relief under NRS  
12          34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),  
13          the Nevada Supreme Court rejected a habeas petition that was filed two days late despite  
14          evidence presented by the defendant that he purchased postage through the prison and mailed  
15          the Notice within the one-year time limit.

16          Furthermore, the Nevada Supreme Court has held that the district court has a duty to  
17          consider whether a defendant's post-conviction petition claims are procedurally barred. State  
18          v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The  
19          Riker Court found that "[a]pplication of the statutory procedural default rules to post-  
20          conviction habeas petitions is mandatory," noting:

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

25          Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district  
26          court] when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme  
27          Court has granted no discretion to the district courts regarding whether to apply the statutory  
28          procedural bars; the rules must be applied.

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1 Further, the entry of an Amended Judgement of Conviction does not automatically  
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11 In the instant case, Defendant’s Judgement of Conviction was filed on July 7, 1990.  
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18 Conviction. Consequently, it is not necessary to address the argument of whether the one-year  
19 period should flow from the date of the original judgment or the date of an amended  
20 judgement, as more than one year has passed since the entry of all. Absent a showing of good  
21 cause for this delay and undue prejudice, this Court finds Defendant’s claim must be dismissed  
22 because of its tardy filing.

## 23 **II. DEFENDANT’S FIFTH PETITION IS SUCCESSIVE**

24 Defendant’s Petition is also successive pursuant to NRS 34.810(2). The relevant  
25 portions of NRS 34.810 state:

26 2. A second or successive petition must be dismissed if the judge or  
27 justice determines that it fails to allege new or different grounds for  
28 relief and that the prior determination was on the merits or, if new and  
different grounds are alleged, the judge or justice finds that the failure

of the Defendant to assert those grounds in a prior petition constituted an abuse of the writ.

3. Pursuant to subsections 1 and 2, the petitioner has the burden of pleading and proving specific facts that demonstrate:

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

(b) Actual prejudice to the petitioner.

Id. This is Defendant's fifth Petition. Defendant has previously filed four other Petitions spanning from February 20, 1996, to August 14, 2013, regarding the same issues. All of these prior Petitions have either been denied or disposed of. Furthermore, Defendant has given no good cause for the delay, and has failed to demonstrate actual prejudice. As such, this Court finds this fifth Petition must be denied as successive.

### **III. DEFENDANT'S FIFTH PETITION IS BARRED BY LACHES**

NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period exceeding five years between the filing of a judgment of conviction, an order imposing a sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the filing of a petition challenging the validity of a judgment of conviction...." The statute also requires that the State plead laches, which the State does. NRS 34.800.

Defendant's Judgement of Conviction was filed on July 7, 1990. Defendant filed a direct appeal, and remittitur was issued on September 17, 1991. An Amended Judgement of Conviction was filed on November 13, 1991, and a Second Amended Judgement of Conviction was filed on September 29, 1993. Defendant appealed the Second Amended Judgement of Conviction, and remittitur issued on October 24, 1994. Since more than five years have elapsed from any given date, NRS 34.800 directly applies in this case and a presumption of prejudice to the State arises. Defendant does not rebut this presumption. Therefore, pursuant to NRS 34.800, this Court finds this Petition must be denied.

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1 **IV. DEFENDANT HAS NOT PROVIDED GOOD CAUSE OR EVIDENCE OF**  
2 **ACTUAL INNOCENCE TO OVERCOME THE PROCEDURAL BARS**

3 A showing of good cause and prejudice may overcome procedural bars. "To establish  
4 good cause, Defendant must show that an impediment external to the defense prevented their  
5 compliance with the applicable procedural rule. A qualifying impediment might be shown  
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26 When claiming a fundamental miscarriage based on actual innocence, the petitioner  
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22 Dismissing Appeal 10/30/95. Additionally, the case Defendant cites to was decided after his  
23 sentencing and cannot be applied retroactively. Furthermore, Defendant has failed to provide  
24 any facts that would show he would be prejudiced by having to comply with the procedural  
25 time bar.

26 As such, Defendant cannot show good cause or actual prejudice and this Court finds  
27 this Petition must be denied.

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**ORDER**

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

DATED this 28 day of January, 2019.

  
DISTRICT JUDGE

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

BY

  
ROBERT TURNER  
Chief Deputy District Attorney  
Nevada Bar #006526

for

hjc/SVU





1 NEO

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

4  
5 ROY MORAGA,

6 Petitioner,

Case No: A-18-782168-W

Dept No: VI

7 vs.

8 ISIDOR BACA,

9 Respondent,

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

10  
11 **PLEASE TAKE NOTICE** that on January 31, 2019, the court entered a decision or order in this matter,  
12 a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you  
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is  
15 mailed to you. This notice was mailed on February 5, 2019.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Debra Donaldson

18 Debra Donaldson, Deputy Clerk

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

20 I hereby certify that on this 5 day of February 2019, I served a copy of this Notice of Entry on the  
21 following:

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

24 ☒ The United States mail addressed as follows:  
25 Roy Moraga # 31584  
26 P.O. Box 7000  
Carson City, NV 89702

27 /s/ Debra Donaldson

28 Debra Donaldson, Deputy Clerk

**ORIGINAL**

Electronically Filed  
1/31/2019 4:35 PM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven B. Wolfson*

**FCCO**  
**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, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

**ROY MORAGA,**  
**#938554**

Defendant.

CASE NO: **A-18-782168-W**  
**89C092174**

DEPT NO: **VI**

**FINDINGS OF FACT, CONCLUSIONS OF**

**LAW AND ORDER**

DATE OF HEARING: **JANUARY 2, 2019**

TIME OF HEARING: **8:30 AM**

THIS CAUSE having presented before the Honorable JAMES BIXLER, District Judge, on the 2nd day of January, 2019; Petitioner not being present, proceeding IN FORMA PAUPERIS; Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through ROBERT TURNER, Chief Deputy District Attorney; and having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of

Law:

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Defendant's jury trial began on March 12, 1990. On March 15, 1990, the jury found Defendant guilty of all counts. On June 4, 1990, the State filed a Notice of Motion to Amend Information in order to seek habitual treatment. On June 13, 1990, pursuant to an Amended Information filed the same day, Defendant was sentenced to life imprisonment without the possibility of parole under the "large" habitual criminal statute, NRS 207.010. Defendant filed a Notice of Appeal on June 27, 1990. The Judgement of Conviction was filed on July 7, 1990.

On October 21, 1991, pursuant to the Nevada Supreme Court's Remand Order, the district court took notice of the felony convictions entered at Defendant's initial sentencing and resented Defendant to the following: as to Count I – ten (10) years in the Nevada Department of Corrections ("NDC"); as to Count II- ten (10) years in NDC consecutive to Count I; as to Count III – life imprisonment with parole eligibility beginning after five (5) years, consecutive to Count II; and as to Count IV – pursuant to NRS 201.010, life without the possibility of parole, consecutive to Count III. The Amended Judgement of Conviction was filed on November 13, 1991.<sup>1</sup>

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1 On February 20, 1996, Defendant filed his first Petition for Writ of Habeas Corpus  
2 (Post-Conviction). The State filed its response on April 4, 1996. Defendant filed a Supplement  
3 on June 13, 1996. The State filed its response on June 27, 1996. On July 16, 1996, Defendant  
4 filed a Reply to the State's Response. On July 19, 1996, the district court denied Defendant's  
5 first Petition. On September 6, 1996, the district court filed its Findings of Fact, Conclusions  
6 of Law and Order. The Notice of Entry of Order was filed on September 20, 1996. Defendant  
7 filed a Notice of Appeal on September 27, 1996.

8 On April 30, 1998, Defendant filed a Motion to Modify or in the Alternative Correct  
9 Illegal Sentence. The State filed an Opposition on May 8, 1998. On May 28, 1998, the district  
10 court entered an Order Denying Defendant's Motion to Modify or Correct Illegal Sentence.  
11 On June 13, 1998, Defendant filed a Notice of Appeal from the Oder denying his motion.

12 On April 20, 1999, the Nevada Supreme Court consolidated the appeal from the orders  
13 denying Defendant's first Petition for Writ of Habeas Corpus and Defendant's Motion to  
14 Modify Sentence or Correct Illegal Sentence. Both decisions were affirmed. Remittitur issued  
15 on May 18, 1999.

16 Defendant filed his second Petition for Writ of Habeas Corpus (Post-Conviction) on  
17 January 10, 2006. The State filed a Response and Motion to Dismiss on February 27, 2006.  
18 Defendant filed a Reply to the State's Response on May 24, 2006. On June 26, 2006, the  
19 district court denied Defendant's second Petition for Writ of Habeas Corpus. The district court  
20 filed its Findings of Fact, Conclusions of Law and Order on February 8, 2007. Notice of Entry  
21 of Order was filed on February 13, 2007. On March 2, 2007, Defendant filed a Notice of  
22 Appeal. On August 16, 2007, the Nevada Supreme Court issued an Order of Affirmance.  
23 Remittitur issued on September 11, 2007.

24 Defendant filed his third Petition for Writ of Habeas Corpus (Post-Conviction) on  
25 December 8, 2010, in Pershing County. The Petition was transferred to the Eighth Judicial  
26 District on April 29, 2011, but was filed under Case No. 11-A640265-W and did not  
27 immediately come before the court. Defendant filed a Supplement to his Petition on November  
28 4, 2011. On March 14, 2012, Defendant filed a Motion for Judicial Action on his Petition. The

1 State filed an Opposition to this motion on March 23, 2012. On May 16, 2012, the State filed  
2 a Response and Motion to Dismiss Defendant's third Petition.

3 On July 16, 2012, the district court denied Defendant's third Petition for Writ of Habeas  
4 Corpus. On August 6, 2012, Defendant filed a Motion to Reconsider. The State filed an  
5 Opposition to Motion to Reconsider on August 9, 2012. On August 13, 2012, the district court  
6 issued a Findings of Fact, Conclusions of Law, and Order denying Defendant's third Petition.  
7 A Notice of Entry of Order was filed on August 21, 2012. The district court issued an Order  
8 denying Defendant's Motion to Reconsider on October 5, 2012.

9 On September 17, 2012, Defendant filed a Notice of Appeal from the order denying his  
10 third Petition. The Nevada Supreme Court issued an Order of Affirmance on July 13, 2013.  
11 Defendant filed a Petition for Rehearing on August 6, 2013. On September 25, 2013, the court  
12 denied Defendant's Petition for Rehearing.

13 Defendant filed his fourth Petition for Writ of Habeas Corpus and Motion for  
14 Appointment of Counsel on August 14, 2013. The State responded on September 19, 2013.  
15 On October 21, 2013, the court denied Defendant's fourth Petition for Writ of Habeas Corpus.  
16 The Findings of Fact, Conclusions of Law and Order was issued on December 4, 2013. On  
17 December 16, 2013, Defendant filed a Notice of Appeal from the order denying his fourth  
18 Petition. The Nevada Supreme Court issued an Order of Affirmance on April 10, 2014.

19 On October 1, 2018, Defendant filed the instant's fifth Petition for Writ of Habeas  
20 Corpus. The State responded on November 30, 2018. Defendant replied on December 26,  
21 2018.

## 22 ANALYSIS

### 23 **I. THIS PETITION IS PROCEDURALLY BARRED UNDER NRS 34.726(1).**

24 Defendant's Petition for Writ of Habeas Corpus is time barred with no good cause  
25 shown for delay. Pursuant to NRS 34.726(1):

26 *Unless there is good cause shown for delay, a petition that challenges*  
27 *the validity of a judgment or sentence must be filed within 1 year of*  
28 *the entry of the judgment of conviction or, if an appeal has been taken*  
*from the judgment, within 1 year after the Supreme Court issues its*

1           *remittitur*. For the purposes of this subsection, good cause for delay  
2 exists if the petitioner demonstrates to the satisfaction of the court:

3           (a) That the delay is not the fault of the petitioner; and

4           (b) That dismissal of the petition as untimely will unduly prejudice  
5 the petitioner.

6           (Emphasis added). The Supreme Court of Nevada has held that NRS 34.726 should be  
7 construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528  
8 (2001). As per the language of the statute, the one-year time bar proscribed by NRS 34.726  
9 begins to run from the date the judgment of conviction is filed or a remittitur from a timely  
10 direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

11           The one-year time limit for preparing petitions for post-conviction relief under NRS  
12 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),  
13 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite  
14 evidence presented by the defendant that he purchased postage through the prison and mailed  
15 the Notice within the one-year time limit.

16           Furthermore, the Nevada Supreme Court has held that the district court has a duty to  
17 consider whether a defendant's post-conviction petition claims are procedurally barred. State  
18 v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The  
19 Riker Court found that "[a]pplication of the statutory procedural default rules to post-  
20 conviction habeas petitions is mandatory," noting:

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

25           Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district  
26 court] when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme  
27 Court has granted no discretion to the district courts regarding whether to apply the statutory  
28 procedural bars; the rules must be applied.

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1 Further, the entry of an Amended Judgement of Conviction does not automatically  
2 restart the statutory time limit for post-conviction claims. Sullivan v. State, 120 Nev. 537, 540-  
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**ORDER**

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

DATED this 28 day of January, 2019.

  
DISTRICT JUDGE

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

BY

  
ROBERT TURNER  
Chief Deputy District Attorney  
Nevada Bar #006526

for

hjc/SVU

*Steven D. Grierson*

DISTRICT COURT  
CLARK COUNTY, NEVADA

ROY MORAGA, CASE NO: A-18-782168-W  
Petitioner, Dept. No: VI  
VS.

ISIDOR BALA,

Respondent

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that: Roy MORAGA,  
hereby Appeals the, Notice of entry of Findings of Fact,  
CONCLUSIONS OF LAW AND Order Entered in by this court  
ON or About the, 5th day of Feb. 2019.

Dated This 10th day of Feb. 2019.

Respectfully Submitted,

Roy Moraga

Roy MORAGA # 31584

Nr N. C. C. P. O. Box 7000

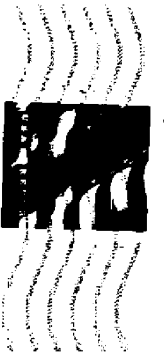
CARSON City, NV 89702

RECEIVED  
FEB 14 2019  
CLERK OF THE COURT  
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ROY D. MORAGA # 31584  
N. N. S. C. P.O. Box 7000  
CARSON CITY NV 89702

Legal  
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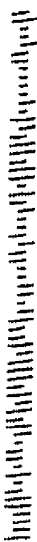


Clerk of the County

200 Lewis Ave. 3rd Floor

LAS VEGAS, NEVADA 89155

BSN 01#6300



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CLERK OF THE COURT

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

9 **ROY D. MORAGA,**

10 **Petitioner(s),**

11 **vs.**

12 **ISIDOR BACA,**

13 **Respondent(s),**

Case No: A-18-782168-W

Dept No: VI

16 **CASE APPEAL STATEMENT**

17  
18 1. Appellant(s): Roy Moraga

19 2. Judge: James Bixlar

20 3. Appellant(s): Roy Moraga

21 Counsel:

22 Roy Moraga #31584  
23 P.O. Box 7000  
24 Carson City, NV 89702

25 4. Respondent (s): Isidor Baca

26 Counsel:

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

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5. Appellant(s)'s Attorney Licensed in Nevada: N/A  
Permission Granted: N/A
- Respondent(s)'s Attorney Licensed in Nevada: Yes  
Permission Granted: N/A
6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No
7. Appellant Represented by Appointed Counsel On Appeal: N/A
8. Appellant Granted Leave to Proceed in Forma Pauperis\*\*: N/A  
*\*\*Expires 1 year from date filed*  
Appellant Filed Application to Proceed in Forma Pauperis: Yes,  
Date Application(s) filed: October 1, 2018
9. Date Commenced in District Court: October 1, 2018
10. Brief Description of the Nature of the Action: Civil Writ  
Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus
11. Previous Appeal: No  
Supreme Court Docket Number(s): N/A
12. Child Custody or Visitation: N/A
13. Possibility of Settlement: Unknown

Dated This 20 day of February 2019.

Steven D. Grierson, Clerk of the Court

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

cc: Roy Moraga

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROY DANIELS MORAGA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 78172  
District Court Case No. A782168

FILED

NOV 06 2019

*Elizabeth A. Brown*  
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, 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 8th day of October, 2019.

IN WITNESS WHEREOF, I have subscribed  
my name and affixed the seal of the Supreme  
Court at my Office in Carson City, Nevada this  
November 04, 2019.

Elizabeth A. Brown, Supreme Court Clerk

By: Sandy Young  
Management Assistant





**CERTIFIED COPY**

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

DATE: 11/4/19

Supreme Court Clerk, State of Nevada

By: S. Young Deputy

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROY DANIELS MORAGA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78172-COA

**FILED**

OCT 08 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

**ORDER OF AFFIRMANCE**

Roy Daniels Moraga appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on October 1, 2018. Eighth Judicial District Court, Clark County; James M. Bixler, Senior Judge.

Moraga filed his petition nearly 23 years after issuance of the remittitur on direct appeal on October 24, 1995.<sup>1</sup> Moraga's petition was therefore untimely filed. *See* NRS 34.726(1). His petition was also successive.<sup>2</sup> *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Moraga's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice, *see* NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3), or that he was actually innocent such that it would result in a fundamental

<sup>1</sup>*Moraga v. State*, Docket No. 22901 (Order Dismissing Appeal, October 4, 1995).

<sup>2</sup>*Moraga v. State*, Docket No. 64639 (Order of Affirmance, April 10, 2014); *Moraga v. State*, Docket No. 61734 (Order of Affirmance, July 23, 2013); *Moraga v. State*, Docket No. 49049 (Order of Affirmance, August 16, 2007); *Moraga v. State*, Docket No. 42828 (Order of Affirmance, September 15, 2004); *Moraga v. State*, Docket Nos. 29821, 32542 (Order Dismissing Appeals, April 20, 1999).

miscarriage of justice were his claims not decided on the merits, *see Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015). Further, because the State specifically pleaded laches, Moraga was required to overcome the presumption of prejudice to the State. *See* NRS 34.800(2). To be entitled to an evidentiary hearing, Moraga's good-cause or actual-innocence arguments had to raise specific facts that, if true and not belied by the record, would have entitled his claims to be heard on the merits. *See Berry*, 131 Nev. at 969, 363 P.3d at 1156.

Moraga claimed he was actually innocent of the habitual criminal adjudication and, accordingly, could overcome the procedural bars. However, the Nevada Supreme Court has already affirmed the validity of Moraga's adjudication as a habitual criminal. *See Moraga v. State*, Docket No. 22901 (Order Dismissing Appeal, October 4, 1995). This ruling is the law of the case and applies to *all* subsequent appeals. *See Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975). "The doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings." *Id.* at 316, 535 P.2d at 799. And Moraga failed to demonstrate he fell into an exception to the application of the law of the case. *See Tien Fu Hsu v. Cty. of Clark*, 123 Nev. 625, 630-32, 173 P.3d 724, 728-29 (2007).

As a separate and independent ground to deny relief, Moraga's claims were of legal, not factual, innocence, and thus did not demonstrate "actual innocence." *See Bousley v. United States*, 523 U.S. 614, 623 (1998). And because Moraga failed to demonstrate that the failure to consider his claims on the merits would result in a fundamental miscarriage of justice, he failed to overcome the presumption of prejudice to the State. *See* NRS 34.800(1)(b), (2).


To the extent Moraga claimed the decision in *Walker v. Deeds*, 50 F.3d 670 (9th Cir. 1995), constituted good cause to excuse his procedural bars, his claim failed. A good-cause claim must be raised within one year of its becoming available. *Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018). Moraga filed his petition decades after *Walker* was decided but offered no explanation for the delay. Accordingly, *Walker* could not constitute good cause. For the foregoing reasons, we conclude the district court did not err by denying Moraga's petition as procedurally barred without first conducting an evidentiary hearing.

Finally, Moraga sought the appointment of postconviction counsel. Although he was facing a sentence of life in prison without the possibility of parole, the issues Moraga presented were not difficult, he appeared to comprehend the proceedings, and counsel was not necessary to proceed with any discovery. We therefore conclude the district court did not abuse its discretion by denying Moraga's request for court-appointed counsel. See NRS 34.750(1). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Linda Marie Bell, Chief Judge  
Hon. James M. Bixler, Senior Judge  
Roy Daniels Moraga  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk



COURT OF APPEALS  
OF  
NEVADA

(1) 1978

**CERTIFIED COPY**

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

DATE: 11/14/19

Supreme Court Clerk, State of Nevada

By S. Young Deputy

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

ROY DANIELS MORAGA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 78172**  
District Court Case No. A782168

**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: November 04, 2019

Elizabeth A. Brown, Clerk of Court

By: Sandy Young  
Management Assistant

cc (without enclosures):

Hon. James M. Bixler, Senior Judge  
Attorney General/Carson City \ Aaron D. Ford, Attorney General  
Clark County District Attorney \ Alexander G. Chen, Chief Deputy District  
Attorney  
Roy Daniels Moraga

**RECEIPT FOR REMITTITUR**

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on NOV 06 2019.

Deputy HEATHER UNGERMANN  
District Court Clerk

RECEIVED  
APPEALS  
NOV 06 2019  
CLERK OF THE COURT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**January 02, 2019**

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A-18-782168-W	Roy Moraga, Plaintiff(s) vs. Isidor Baca, Defendant(s)
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January 02, 2019	8:30 AM	Petition for Writ of Habeas Corpus
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**HEARD BY:** Bixler, James

**COURTROOM:** RJC Courtroom 10C

**COURT CLERK:** Keith Reed

**RECORDER:** De'Awna Takas

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Defendant not present.

Present on behalf of the State, Deputy District Attorney Brad Turner. Court noted the late reply to the State's opposition. Matter submitted on the pleadings by Mr. Turner. Court stated findings and ORDERED, Defendant's request for appointment of counsel DENIED, Petition For Writ of Habeas Corpus DENIED; 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 February 1, 2022, 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 one volume with pages numbered 1 through 75.

ROY D. MORAGA,

Plaintiff(s),

vs.

ISIDOR BACA,

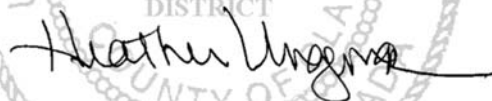
Defendant(s),

Case No: A-18-782168-W  
Related Case 89C092174  
Dept. No: XVII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 9 day of February 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

