APP A-21-839320-W

Jan 3 2022

David Coil
Po Box 650 HDSP
Indian Springs
NV 89070

Clark County District Court

David Coil
Petitioner
vs
State of Nevada
Calvin Johnson
Respondant

Case A-21-839320-W
C-16-318335-1
Dept X

Appeal

Comes now Petitioner in pro se David Coil responding to this Court decision. Due Process would require this District Court to respond to Petitioners Amended Writ of Habeas Corpus received Dec 4, 2022 as Registered mail indicates. Petitioner fully intends to immediately comeence Appeal process in Nevada Supreme Court as instructed in Courts filed decision. Nevada Attorney General, High Dessert State Prison Warden, and Clark County District Attorney office also have copies as required

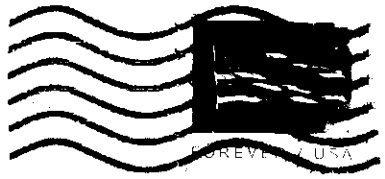
Dated this 3 day of January 2022

David Coil

David Coil 1189948

Co.L D 1184448
Po Box 650
Indian Spring NV
89070

LAS VEGAS NV 890
6 JAN 2022 PM 5 L



Clark County Clerk of Courts
200 Lewis Avenue
Las Vegas Nevada
89155

89101-630000

Electronically Filed
1/18/2022 8:12 AM
Steven D. Grierson
CLERK OF THE COURT

ASTA

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

DAVID COIL,

Plaintiff(s),

vs.

CALVIN JOHNSON; STATE OF NEVADA,

Defendant(s),

Case No: A-21-839320-W

Dept No: XI

CASE APPEAL STATEMENT

1. Appellant(s): David Coil

2. Judge: Tierra Jones

3. Appellant(s): David Coil

Counsel:

David Coil #1189948
P.O. Box 650
Indian Springs, NV 89070

4. Respondent (s): Calvin Johnson; State of Nevada

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89155-2212

Case Number: A-21-839320-W

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: No
Date Application(s) filed: N/A

9. Date Commenced in District Court: August 11, 2021

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 18 day of January 2022.

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: David Coil

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-21-839320-W

David Coil, Plaintiff(s)	§	Location:	**Department 11**
vs.	§	Judicial Officer:	**Roohani, Ellie**
Calvin Johnson, Defendant(s)	§	Filed on:	**08/11/2021**
	§	Case Number History:	
	§	Cross-Reference Case Number:	**A839320**

CASE INFORMATION

Related Cases
C-16-318335-1 (Writ Related Case)

Statistical Closures
12/07/2021 Other Manner of Disposition

Case Type: **Writ of Habeas Corpus**

Case Status: **12/07/2021 Closed**

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-21-839320-W
Court	Department 11
Date Assigned	01/18/2022
Judicial Officer	Roohani, Ellie

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**Coil, David**	**Pro Se**
Defendant	**Calvin Johnson**	
	State of Nevada	**Wolfson, Steven B** *Retained* 702-671-2700(W)

DATE — EVENTS & ORDERS OF THE COURT — INDEX

EVENTS

08/11/2021 Inmate Filed - Petition for Writ of Habeas Corpus
Party: Plaintiff Coil, David
[1] Post Conviction

08/12/2021 Order for Petition for Writ of Habeas Corpus
[2] Order for Petition for Writ of Habeas Corpus

09/23/2021 Response
Filed by: Defendant State of Nevada
[3] State's Response to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction), Motion for the Appointment of Counsel and Request for Evidentiary Hearing

12/07/2021 Findings of Fact, Conclusions of Law and Order
Filed By: Plaintiff Coil, David
[4] Findings of Fact, Conclusions of Law and Order

12/08/2021 Notice of Entry of Findings of Fact, Conclusions of Law
Filed By: Plaintiff Coil, David
[5] Notice of Entry of Findings of Fact, Conclusions of Law and Order

12/10/2021	Motion for Leave to File *[6] First Amended Habeas ; Motion for Leave to Respond to States Response, Declaring Appellett Being "Time Barred " and a Response to the Habeas Corpus Issues. Raised by the State dated Sept. 23, 2021*
01/13/2022	Notice of Appeal *[7] Notice of Appeal*
01/18/2022	Case Reassigned to Department 11 *From Judge Tierra Jones to Judge Ellie Roohani*
01/18/2022	Case Appeal Statement *Case Appeal Statement*

HEARINGS

11/08/2021	**Petition for Writ of Habeas Corpus** (8:30 AM) (Judicial Officer: Jones, Tierra) Denied; Journal Entry Details: *Mr. Coil not present and in the Nevada Department of Corrections. Matter submitted on the pleadings. Court Stated its Findings and ORDERED, Petition DENIED. State to prepare Findings of Facts and Conclusions of law, Consistent with their Response. NDC Clerk's Note: A copy of this minute order mailed to Mr. Coil I.D. #1189948 HDSP P.O. Box 650 Indian Springs, NV, 89070 /tb;*

DISTRICT COURT CIVIL COVER SHEET

A-21-839320-W
Dept. 10

County, Nevada

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

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

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
David Coil	Calvin Johnson
Attorney (name/address/phone):	Attorney (name/address/phone):

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

Civil Case Filing Types

Real Property	Torts	
Landlord/Tenant	**Negligence**	**Other Torts**
☐ Unlawful Detainer	☐ Auto	☐ Product Liability
☐ Other Landlord/Tenant	☐ Premises Liability	☐ Intentional Misconduct
Title to Property	☐ Other Negligence	☐ Employment Tort
☐ Judicial Foreclosure	**Malpractice**	☐ Insurance Tort
☐ Other Title to Property	☐ Medical/Dental	☐ Other Tort
Other Real Property	☐ Legal	
☐ Condemnation/Eminent Domain	☐ Accounting	
☐ Other Real Property	☐ Other Malpractice	

Probate	Construction Defect & Contract	Judicial Review/Appeal
Probate *(select case type and estate value)*	**Construction Defect**	**Judicial Review**
☐ Summary Administration	☐ Chapter 40	☐ Foreclosure Mediation Case
☐ General Administration	☐ Other Construction Defect	☐ Petition to Seal Records
☐ Special Administration	**Contract Case**	☐ Mental Competency
☐ Set Aside	☐ Uniform Commercial Code	**Nevada State Agency Appeal**
☐ Trust/Conservatorship	☐ Building and Construction	☐ Department of Motor Vehicle
☐ Other Probate	☐ Insurance Carrier	☐ Worker's Compensation
Estate Value	☐ Commercial Instrument	☐ Other Nevada State Agency
☐ Over $200,000	☐ Collection of Accounts	**Appeal Other**
☐ Between $100,000 and $200,000	☐ Employment Contract	☐ Appeal from Lower Court
☐ Under $100,000 or Unknown	☐ Other Contract	☐ Other Judicial Review/Appeal
☐ Under $2,500		

Civil Writ		Other Civil Filing
Civil Writ		**Other Civil Filing**
■ Writ of Habeas Corpus	☐ Writ of Prohibition	☐ Compromise of Minor's Claim
☐ Writ of Mandamus	☐ Other Civil Writ	☐ Foreign Judgment
☐ Writ of Quo Warrant		☐ Other Civil Matters

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

August 11, 2021
Date

PREPARED BY CLERK
Signature of initiating party or representative

See other side for family-related case filings.

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #005734
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID COIL,
#8323388

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: **A-21-839320-W**
C-16-318335-1

DEPT NO: **X**

FINDINGS OF FACT, CONCLUSIONS

OF LAW AND ORDER

DATE OF HEARING: **NOVEMBER 8, 2021**
TIME OF HEARING: **8:30 AM**

THIS CAUSE presenting before the Honorable TIERRA JONES, District Judge, on the 8th day of November, 2021; Petitioner not present, IN PROPER PERSON; Respondent present, being represented by STEVEN B. WOLFSON, District Attorney, through LAURA GOODMAN, Chief Deputy District Attorney; and having considered the matter, including briefs, transcripts, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

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FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On September 27, 2016, David Coil (hereinafter "Petitioner") was charged by way of Information with one count of SEX TRAFFICKING OF A CHILD UNDER 18 YEARS OF AGE (Category A Felony – NRS 201.300.2a1- NOC 58004), four (4) counts of SOLICITING PROSTITUTION (Category E Felony – NRS 201.354 – NOC 55102), one count of PANDERING (Category C Felony – NRS 201.300.1 – NOC 51000) and one count of ATTEMPT SEX TRAFFICKING OF A CHILD UNDER 18 YEARS OF AGE (Category B Felony – NRS 200.300.2a, 193.330 – NOC 58005) for acts committed on or between October 16, 2015 and August 23, 2016. On September 27, 2016, Petitioner waived his right to a preliminary hearing. On September 29, 2016, Petitioner pled not guilty and invoked his right to a speedy trial. A jury trial was set for November 28, 2016, but was continued due to the receipt of additional discovery, and Petitioner waived his right to a trial within sixty (60) days on November 30, 2016.

On January 18, 2017, Petitioner was referred for a competency evaluation and the Court found Petitioner competent on February 22, 2017. On June 20, 2017, Petitioner filed a Motion to Replace Public Defender for Cause and Defendant's Motion for Dismissal and Habeas Corpus for Untimely Trial Over 60 Days. The State did not respond. On July 2, 2017, the Court denied Petitioner's Pro Per Motion to Replace Public Defender for Cause and Defendant's Motion for Dismissal and Habeas Corpus for Untimely Trial Over 60 days.

On July 24, 2017, Petitioner expressed his desire to represent himself and the Court conducted a Faretta canvass to see if Petitioner was able to represent himself. Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, (1975). During the canvass, however, Petitioner decided to withdraw his request and move forward with counsel. Petitioner again requested to represent himself on September 18, 2017. On September 25, 2017, the Court conducted another Faretta canvass and Petitioner withdrew his request for a second time.

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Trial commenced on September 26, 2017, and the State filed an Amended Information the same day.[1] On September 28, 2017 before the third day of trial began, Petitioner decided to plead guilty to all charges alleged in the Amended Information. No Guilty Plea Agreement was filed as Petitioner pled straight up to all of the charges.

On November 8, 2017, Petitioner was sentenced as follows:

- Count 1 [Sex Trafficking a Child Under 18]- LIFE with the eligibility for parole after serving a minimum of sixty (60) months in the Nevada Department of Corrections (hereinafter "NDC");
- Count 2 [Soliciting Prostitution]- Maximum of thirty (30) months with a minimum parole eligibility of twelve (12) months concurrent with Count 1, suspended and placed on probation for an indeterminate period not to exceed three (3) years, with the only condition being to serve three-hundred sixty four (364) days in the Clark County Detention Center (hereinafter "CCDC");
- Count 3 [Soliciting Prostitution] - Maximum of thirty (30) months with a minimum parole eligibility of twelve (12) months, concurrent with Count 2, suspended and placed on probation for an indeterminate period not to exceed three (3) years, with only condition being to serve three-hundred sixty four (364) days in CCDC;
- Count 4 [Soliciting Prostitution]- Maximum of thirty (30) months with a minimum parole eligibility of twelve (12) months concurrent with Count 3, suspended and placed on probation for an indeterminate period not to exceed three (3) years, with only condition being to serve three-hundred sixty four (364) days in CCDC;
- Count 5 [Soliciting Prostitution]- Maximum of thirty (30) months with a minimum parole eligibility of twelve (12) months concurrent with Count 4, suspended and placed on probation for an indeterminate period not to exceed

[1] The Amended Information did not add additional charges. The State changed the language in the first count to reflect the statute and switched count 6 and 7 to make it clearer for the jury to understand.

three (3) years, with only condition being to serve three-hundred sixty four (364) days in CCDC; and

- Count 6 [Attempt Sex Trafficking of a Child Under 18]- Maximum of one hundred eighty (180) months with a minimum parole eligibility of seventy-two (72) months, consecutive to Count 5.

Count 7 [Pandering] was dismissed, and Petitioner was also required to register as a sex offender within 48 hours of release from custody. Petitioner was awarded four hundred forty-three (443) days credit for time served and the aggregate sentence was LIFE with parole eligibility after serving a minimum of one hundred thirty-two (132) months.

The Judgment of Conviction was filed on December 13, 2017.

On January 17, 2018, Petitioner filed a Notice of Appeal. On October 16, 2019, the Nevada Court of Appeals affirmed the Judgment of Conviction and Remittitur issued on November 12, 2019.

On February 25, 2019, the Court noted it received a letter from the Division of Parole and Probation requesting clarification of the Court's sentence. The Court ordered that the aggregate sentence is correct; however, Count 6 should be consecutive to Count 1 with an aggregate total of Life with parole eligibility after one hundred thirty-two (132) months has been served in the NDC. The Amended Judgment of Conviction was filed on March 4, 2019.

On June 3, 2021, Petitioner filed a Motion to Withdraw Guilty Plea Pursuant to NRS 176.165 and Motion for Extension of Time to File a Post-Conviction Writ of Habeas Corpus. The State filed an Opposition on June 10, 2021. On June 28, 2021, this Court denied both motions. The Order Denying Defendant's Motions to Withdraw Guilty Plea and Motion to Extend Time to File Petition for Writ of Habeas Corpus was filed on July 19, 2021.

On July 14, 2021, Petitioner filed another Motion for Extension of Time, and on July 28, 2021, Petitioner filed another Motion to Withdraw Plea. The State filed another Opposition on July 30, 2021. On August 4, 2021, the Court again denied both motions. The Order Denying Defendant's Motion to Withdraw Guilty Plea and Motion for Extension of Time was filed on August 10, 2021.

On August 11, 2021, Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction). On August 30, 2021, Petitioner filed a Motion for the Appointment of Counsel and Request for Evidentiary Hearing. The State filed its Response on September 23, 2021.

On November 8, 2021, this Court denied the Petition. This Court's Findings of Fact, Conclusions of Law and Order now follows.

STATEMENT OF FACTS

This Court relied on the following facts in sentencing Petitioner:

> On August 6, 2016, a teacher from a local school was contacted by a prior high school student, the victim (date of birth: July 30, 1999) who needed help. The teacher believed that the victim was the victim of sex trafficking and he contacted the police to file a report.
>
> A detective made contact with the victim at her home. She told the officers that in October, 2015, she was looking for employment on Craigslist.com, she was 16 years old at the time. She found a posting looking for "petit, young girls" and offered that they could make $1,500 a day with "no sex involved." She responded to the ad and made contact with the defendant, David Andrew Coil.
>
> The victim and Mr. Coil met at a fast food restaurant near the victim's home. After some discussion, Mr. Coil brought the victim back to his home. He provided the victim with alcohol and she became intoxicated. He explained to the victim that the job was performing "body rubs" at his residence. He had several girls who work at his residence and an established client base of men that came to his residence for body rubs. He also explained that while performing body rubs, the females working at Mr. Coil's residence were allowed to perform mutual masturbation on the clients by stimulating the male clients' penis with their hands. The females were also allowed to stimulate the clients' penis by straddling the naked males while they were lying on their backs and rubbing their bare vaginas against the males' penis as long as there was no full penetration.
>
> The rules provided by Mr. Coil were that she would have to remove her clothes upon arrival at his home and remain naked while in the home. She would be required to show him the money that she earned while at the residence and to not lie to him about anything. They were required to keep the sheets and towels used in the body rub room clean and changed after each use. The females were also told not to have vaginal intercourse with any of the clients coming to the residence; however, the victim and the other females were allowed to perform oral sex on the clients if the females made that decision.
>
> The victim told Mr. Coil that she did not believe the job was right for her and she apologized; she asked if there was anything she could do for wasting his time and he asked her to give him a body

> rub. The victim complied; both she and Mr. Coil were naked and she followed his instructions for completing a body rub. He had the victim straddle his body and rub her bare vagina across his penis. Afterwards, Mr. Coil paid her $200 including a gratuity.
>
> After realizing how much money she could make, she agreed to work for Mr. Coil and she worked from October 2015 to August 2016, working an average of four nights a week performing body rubs. She performed body rubs on Mr. Coil at least three additional times and she was paid the standard $80 fee with an additional $20 gratuity. There were additional females working in the home to include the defendant's adult daughter. Mr. Coil did not take any of the proceeds from the body rubs; he would remain nude as well as the girls and when the male appointments would arrive he would go into a back living room and remain out of sight until the clients left.
>
> After finding the most recent advertisement Mr. Coil had posted on Craigslist.com, the detective made contact with Mr. Coil pretending to be an interested 17 year old girl. Through the course of the text conversation, the two agreed to meet. On August 23, 2016, Mr. Coil arrived at the agreed to location showing his intent to recruit what he believed to be a 17 year old female for the purpose of prostitution. Mr. Coil was arrested, transported to the Clark County Detention Center and booked accordingly.

Presentence Investigation Report (hereinafter "PSI") at pages 4-5.

ANALYSIS

I. PETITIONER'S PETITION IS PROCEDURALLY BARRED

A. Petitioner's Petition is Time-barred

A petition challenging a judgment of conviction's validity must be filed within one year of the judgment or within one year of the remittitur, unless there is good cause to excuse delay. NRS 34.726(1). The Nevada Supreme Court has held that NRS 34.726 should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873–74, 34 P.3d 519, 528 (2001). The one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is issued. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998).

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

the Notice within the one-year time limit.

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

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

Id. (quoting Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984)). Additionally, the Court noted that procedural bars "cannot be ignored [by the district court] when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court has granted no discretion to the district courts regarding whether to apply the statutory procedural bars; the rules must be applied.

In this case, Petitioner's Judgment of Conviction was filed on December 13, 2017. On October 16, 2019, the Nevada Court of Appeals affirmed the Judgment of Conviction and Remittitur issued on November 12, 2019. Thus, Petitioner had until November 12, 2020 to file his Petition. Petitioner did not file the instant Petition until August 11, 2021. As such, he was nine (9) months too late. This delay exceeds the two (2) day delay discussed in Gonzales. Therefore, the Petition is procedurally time barred and denied.

B. Application of the Procedural Bars is Mandatory

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

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

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

This position was reaffirmed in State v. Greene, 129 Nev. 559, 307 P.3d 322 (2013). There the Court ruled that the defendant's petition was "untimely, successive, and an abuse of the writ" and that the defendant failed to show good cause and actual prejudice. Id. at 324, 307 P.3d at 326. Accordingly, the Court reversed the district court and ordered the defendant's petition dismissed pursuant to the procedural bars. Id. at 324, 307 P.3d at 322–23. The procedural bars are so fundamental to the post-conviction process that they must be applied by this Court even if not raised by the State. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

Because Petitioner's Petition is untimely and because he cannot show good cause or prejudice to overcome the mandatory procedural bar, it is denied.

II. PETITIONER HAS NOT DEMONSTRATED GOOD CAUSE OR PREJUDICE TO OVERCOME THE PROCEDURAL BAR

In his Pro Per Petition, Petitioner raised four (4) grounds. In Ground One, he claims that his counsel was ineffective for failing to notify the Court of an alleged conflict of interest causing the Court to fail to grant Petitioner a hearing pursuant to Young v. State, 120 Nev. 963 (2004), and that counsel failed to execute unnamed motions. Petition at page 11. In Ground Two, Petitioner argues that defense counsel was ineffective for not filing a motion to dismiss the Information for violation of Petitioner's right to a speedy trial based on the Prosecution's alleged devious tactics concerning last minute discovery. Petition at page 13. In Ground Three, Petitioner asserts that his counsel failed to prepare a defense, failed to obtain certain phone records or attempt to contact Defendant's unnamed witnesses. Petition at page 15. He also claims counsel did not spend enough time with him. Petition at 17. In Ground Four, Petitioner alleges that his counsel was ineffective for allowing Petitioner to plead guilty to a charge he was actually innocent of because he was improperly charged, and he did not understand the elements of the charges and the rights he was giving up by pleading guilty.

Petition at page 19.

To avoid procedural default, under NRS 34.726, a defendant has the burden of pleading and proving specific facts that demonstrate good cause for his failure to present his claim in earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will be unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a) (emphasis added); see Hogan v. Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep't of Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). "A court *must* dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001) (emphasis added).

To show good cause for delay under NRS 34.726(1), a petitioner must demonstrate the following: (1) "[t]hat the delay is not the fault of the petitioner" and (2) that the petitioner will be "unduly prejudice[d]" if the petition is dismissed as untimely. NRS 34.726. To meet the first requirement, "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) (emphasis added). "A qualifying impediment might be shown where the factual or legal basis for a claim was not reasonably available *at the time of default*." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court continued, "Petitioners cannot attempt to manufacture good cause[.]" Id. at 621, 81 P.3d at 526. To find good cause there must be a "substantial reason; one that affords a legal excuse." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Examples of good cause include interference by State officials and the previous unavailability of a legal or factual basis. See State v. Huebler, 128 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012). Clearly, any delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

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

In order to establish prejudice, the defendant must show "'not merely that the errors of [the proceedings] created possibility of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state proceedings with error of constitutional dimensions.'" Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)).

Here, Petitioner does not even attempt to address good cause or provide any reason in the body of his Petition for the filing of his untimely Petition. Because Petitioner has failed to attempt to demonstrate good cause or prejudice, and because any such attempt would be without merit, Petitioner did not meet his burden when trying to overcome his procedural defaults. Hogan, 109 Nev. at 959-60, 860 P.2d at 715-16. Therefore, Petitioner's Petition is denied pursuant to the applicable procedural bars.

Moreover, the Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The United States Supreme Court has long recognized that "the right to counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063–64. See also Love, 109 Nev. at 1138, 865

P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's representation fell below an objective standard of reasonableness, and second, that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. 466 U.S. at 687–88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). "[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

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

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

Based on the above law, the role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). This analysis does not mean that the court should "second guess reasoned choices between trial tactics nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Id. To be effective, the constitution "does not require that counsel do what is impossible or unethical. If there is no bona fide defense to the charge, counsel

cannot create one and may disserve the interests of his client by attempting a useless charade." United States v. Cronic, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

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

When a conviction is the result of a guilty plea, a defendant must show that there is a "reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

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

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

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

A. Ground One: Petitioner's Claim Regarding a Pre-Trial Motion to Dismiss Counsel is Insufficient to Warrant Relief

Petitioner's Ground One alleges that his counsel was ineffective for failing to notify the Court of an alleged conflict of interest causing the Court to fail to grant Petitioner a hearing pursuant to Young v. State, 120 Nev. 963 (2004), and that counsel failed to execute unnamed motions. Petition at page 11.

This assertion does not entitle Petitioner to relief, as the United States Supreme Court has previously found that criminal defendants are not entitled to any particular "relationship" with their attorney. Morris v. Slappy, 461 U.S. 1, 14, 103 S.Ct. 1610, 1617 (1983). Indeed, the Morris Court found that no specific amount of communication is required, so long as counsel is reasonably effective in his representation. Id.

Therefore, Petitioner improperly takes for granted the reasonable likelihood of the success of those complaints without setting forth any factual support. As such, Petitioner leaves his ineffective-assistance claims bare and naked, and insufficient to warrant relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Because Petitioner fails to set forth any support for a cognizable ineffective-assistance claim, Petitioner's Ground One is summarily denied.

Determining whether friction between a defendant and his attorney justifies substituting counsel is within the trial court's sound discretion, and this Court will not disturb its decision on appeal absent a clear abuse of discretion. Thomas v. State, 94 Nev. 605, 607, 584 P.2d 674, 676 (1978). Generally, a district court should not summarily reject a motion for new counsel where such motion is made considerably before trial without first conducting an "adequate inquiry" into the defendant's complaints. Garcia v. State, 121 Nev. 327, 337, 113 P.3d 836, 842 (2005) (quoting Young v. State, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004)). However, absent good cause shown, a defendant is not entitled to the substitution of court-appointed

counsel at public expense. Garcia, 121 Nev. at 337, 113 P.3d at 842; Young, 120 Nev. at 968, 102 P.3d at 576.

This Court has defined good cause as "a conflict of interest, a complete breakdown of communication, or an irreconcilable conflict which [could] lead . . . to an apparently unjust verdict." Gallego v. State, 117 Nev. 348, 363, 23 P.3d 227, 237 (2001), overruled on other grounds by Nunnery v. State, 127 Nev. 749, 263 P.3d 235 (2011). Good cause is not "determined solely according to the subjective standard of what the defendant perceives," nor is "[t]he mere loss of confidence in appointed counsel . . . good cause." Id. While a defendant's lack of trust in counsel is a factor in the determination, a defendant must nonetheless provide the court with legitimate explanations for it. Id. (citing McKee v. Harris, 649 F.2d 927, 932 (2nd Cir. 1981)).

Moreover, a defendant may not request substitute counsel based on his refusal to cooperate with present counsel because "'[s]uch a doctrine would lead to absurd results.'" Thomas, 94 Nev. at 608, P.2d 674 at 676 (quoting Shaw v. United States, 403 F.2d 528, 529 (8th Cir. 1968)). Because counsel alone is responsible for tactical decisions regarding a defense, a mere disagreement between counsel and a defendant regarding tactics cannot give rise to an irreconcilable conflict. See Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). In particular, where a defendant disagrees with counsel's reasonable defense strategy and wishes instead to present his own ill-conceived strategy, no conflict arises. See Gallego, 117 Nev. at 363, 23 P.3d at 237. Rather, attorney-client conflict warrants substitution "only when counsel and defendant are so at odds as to prevent presentation of an adequate defense." Id. This Court has articulated three factors to consider when reviewing a district court's denial of a motion to substitute counsel: (1) the extent of the conflict, (2) the motion's timeliness and the extent of inconvenience or delay, and (3) the adequacy of the court's inquiry into the defendant's complaints. Young, 120 Nev. at 968–69, 102 P.3d at 576–78.

In the instant matter, Petitioner has not demonstrated that there was conflict of interest or that a Young hearing would have been granted. As to the three (3) Young factors, Petitioner fails to provide any specific facts in support of his bare and naked allegations, so this Court is

unable to meaningfully address any of the three (3) factors. Claims for relief devoid of specific factual allegations are "bare" and "naked," and are insufficient to warrant relief, as are those claims belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 22, 225 (1984). "[Petitioner] *must* allege specific facts supporting the claims in the petition[.]…Failure to allege specific facts rather than just conclusions may cause [the] petition to be dismissed." NRS 34.725(6) (emphasis added).

Likewise, Petitioner's claim that counsel failed to execute motions fails to name any specific motions counsel should have and failed to file, rendering this also a bare and naked allegation pursuant to Hargrove and is summarily denied. Petitioner offers only generalities and vague references, rather than the requisite "specific facts." NRS 34.725(6). Because Petitioner offers only generalities, lacking specific factual bases, much less cogent argument, the instant Petition does not warrant review. Rowland, 107 Nev. at 479, 814 P.2d at 83. Therefore, the instant claim is summarily denied as a bare and naked allegation, and insufficiently pled.

B. Ground Two: Petitioner's Claim Regarding a Motion To Dismiss For a Speedy Trial Violation is Insufficient to Warrant Relief

In Ground Two, Petitioner argues that defense counsel was ineffective for not filing a motion to dismiss the Information for violation of Petitioner's right to a speedy trial based on the Prosecution's alleged devious tactics concerning last minute discovery. Petition at page 13.

The Sixth Amendment to the Constitution guarantees that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. Const. Amend. VI. The United States Supreme Court held in Smith v. Hooey, 393 U.S. 374, 89 S.Ct. 575 (1969) that a state is under an affirmative obligation by virtue of the Sixth Amendment, as interpreted in Klopfer v. North Carolina, 386 U.S. 213, 87 S.Ct. 988 (1967), to make every good faith effort to bring the accused to trial. The United States Supreme Court also held that both the accused and society have an interest in having a speedy trial. Barker v. Wingo, 407 U.S. 514, 519, 92 S.Ct. 2182, 2186 (1972). The Court recognized that the three basic interests of an accused are

"(1) to prevent undue and oppressive incarceration prior to trial, (2) to minimize anxiety and concern accompanying public accusation and (3) to limit the possibilities that long delay will impair the ability of an accused to defend himself." Smith, 393 U.S. at 378, 89 S.Ct. at 577; see also, United States v. Ewell, 383 U.S. 116, 120, 86 S.Ct. 773, 776 (1966); Klopfer, 386 U.S. at 221-26, 87 S.Ct. at 993-95; Dickey v. Florida, 398 U.S. 30, 37-38, 90 S.Ct. 1564, 1568-69 (1970). Therefore, "one of the major purposes of the provision is to guard against *inordinate delay* between public charge and trial, which, wholly aside from possible prejudice to a defense on the merits, may seriously interfere with the defendant's liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family, and his friends." Barker, 407 U.S. at 537, 92 S.Ct. at 2195 (White, J., concurring) (emphasis added).

Nevada law likewise recognizes a criminal defendant's right to trial within sixty (60) days of arraignment or indictment. NRS 178.556. Application of NRS 178.556 is addressed to the sound discretion of the trial court. Meegan v. State, 114 Nev. 1150, 968 P.2d 292, 295, 1153 (1998), abrogated on other grounds, Vanisi v. State, 117 Nev. 330, 22 P.3d 1164 (2001). The Nevada Supreme Court has "determined that the '60 day rule' prescribed in our statute has flexibility." Adams v. Sheriff, 91 Nev. 575, 575, 540 P.2d 118, 119 (1975). Indeed, "[i]f the defendant is responsible for the delay of trial beyond the 60 day limit, he may not complain." Oberle v. Fogliani, 82 Nev. 428, 430, 420 P.2d 251, 252 (1966). The purpose behind NRS 178.556 is "to prevent arbitrary, willful, or oppressive delays." In re Hansen, 79 Nev. 492, 495, 387 P.2d 659, 660 (1963).

Indeed, despite criminal defendants' various interests, the United States Supreme Court has recognized that pretrial delay is often "both inevitable and wholly justifiable." Doggett v. United States, 505 U.S. 647, 656, 112 S.Ct. 2686, 2693 (1992). "The essential ingredient is orderly expedition and not mere speed." Smith v. United States, 360 U.S. 1, 10, 79 S.Ct. 991, 997 (1959). For instance, the government may need time to collect witnesses, oppose pretrial motions, or track down the accused. Doggett, 505 U.S. at 656, 112 S.Ct. at 2693. Thus, "in large measure because of many procedural safeguards provided an accused, the ordinary

procedures for criminal prosecution are designed to move at a deliberate pace. A requirement of unreasonable speed would have a deleterious effect both upon the rights of the accused and upon the ability of society to protect itself." Ewell, 383 U.S. at 120, 86 S.Ct. at 776. A denial of the Sixth Amendment right to a speedy trial requires that the charges against an accused be dismissed. The United States Supreme Court has cautioned that because of the seriousness of the remedy involved, "where a defendant who may be guilty of a serious crime will go free, without having been tried, the right to a speedy trial should always be in balance, and not inconsistent, with the rights of public justice." Barker, 407 U.S. at 522, 92 S.Ct. at 2188.

First and foremost, a defendant cannot enter a guilty plea then later raise independent claims alleging a deprivation of his rights before entry of the plea. State v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d 1070, n.24 (2005) (quoting Tollet v. Henderson, 411 U.S. 258, 267 (1973). Generally, the entry of a guilty plea waives any right to appeal from events occurring prior to the entry of the plea. See Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975). '"[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. . . . [A defendant] may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.'" Id. (quoting Tollett, 411 U.S. at 267).

Here, Petitioner claims that defense counsel was ineffective for not filing a motion to dismiss the Information for violation of Petitioner's right to a speedy trial based on the Prosecution's alleged devious tactics concerning last minute discovery. Petition at page 13. However, Petitioner's guilty plea cures any earlier Constitutional defects because entering a guilty plea breaks the "chain of events." Webb, 91 Nev. at 538. Petitioner is alleging a violation of his constitutional rights that occurred prior to his guilty plea. Therefore, Petitioner cannot raise this claim, and it is denied.

Additionally, as the Information was filed on September 27, 2016, and Defendant's Motion for Dismissal and Habeas Corpus for Untimely Trial Over 60 Days was filed on June 20, 2017, there was only a delay of approximately nine (9) months between the filing of the Information and the filing of the Motion to Dismiss. The trial commenced on September 26,

2017. Thus, there was exactly one year between the filing of the Information and the start of the trial. Petitioner waived his right to a trial within sixty (60) days on November 30, 2016. Moreover, the delays Petitioner complains of were due to receiving additional discovery, which the State provided to counsel as soon as it was received. Petitioner's counsel needed additional time to prepare for trial based on the additional discovery and the request for a continuance was entirely reasonable under these circumstances. Petitioner already filed his own Motion for Dismissal and Habeas Corpus for Untimely Trial Over 60 Days on June 20, 2017, after Petitioner waived his right to a trial within sixty (60) days on November 30, 2016. On July 2, 2017, the Court denied Petitioner's Pro Per Motion to Replace Public Defender for Cause and Defendant's Motion for Dismissal and Habeas Corpus for Untimely Trial Over 60 days. Therefore, it was unnecessary for counsel to file the same futile motion which had already been denied. As such, this claim is likewise without merit and is denied.

C. Ground Three: Counsel Was Not Ineffective for Failing to Investigate

In Ground Three, Petitioner asserts that his counsel failed to prepare a defense, failed to obtain certain phone records or attempt to contact Defendant's unnamed witnesses. Petition at page 15. He also claims counsel did not spend enough time with him. Petition at 17.

A defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have changed the outcome of trial. Strickland, 466 U.S. at 687, 104 S. Ct. at 2064. Such a defendant must allege with specificity what the investigation would have revealed and how it would have altered the outcome of the trial. See State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

"[D]efense counsel has a duty 'to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." State v. Love, 109 Nev. at 1138, 865 P.2d at 323 (quoting Strickland, 466 U.S. at 691, 104 S. Ct. at 2066). A decision "not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgment.'" Id. Moreover, "[a] decision not to call a witness will not generally constitute ineffective assistance of counsel" Id. at 1145, 865 P.2d at 328.

Moreover, a defendant is not entitled to a particular "relationship" with his attorney. Morris v. Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983). There is no requirement for any specific amount of communication as long as counsel is reasonably effective in his representation. See Id.

Indeed, to establish a claim of ineffective assistance of counsel for advice regarding a guilty plea, a defendant must show "gross error on the part of counsel." Turner v. Calderon, 281 F.3d 851, 880 (9th Cir. 2002). A plea of guilty is presumptively valid, particularly where it is entered into on the advice of counsel, and the burden is on a defendant to show that the plea was not voluntarily entered. Bryant, 102 Nev. at 272, 721 P.2d at 368 (citing Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)); Jezierski v. State, 107 Nev. 395, 397, 812 P.2d 355, 356 (1991). Ultimately, while it is counsel's duty to candidly advise a defendant regarding a plea offer, the decision of whether or not to accept a plea offer is the defendant's. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 163 (2002).

Again, Petitioner's claims are bare and naked assertions so devoid of meaning that the State cannot effectively respond. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Petitioner has offered no specific allegations to support his claims. Petitioner makes a general allegation of failure to investigate. He fails to specify whose phone records counsel should have obtained or which witnesses he should have contacted. If they were Petitioner's phone records and Petitioner's witnesses, then Petitioner would know exactly what was contained in the phone records as well as the names and contact information for his witnesses, which he should have provided to his counsel at the appropriate time. Regardless, Petitioner does not provide what any further investigation would have yielded. At no point does Petitioner argue that if an investigation was conducted, the outcome would have been different. Neither does Petitioner show what would have been obtained from interviewing his unnamed witnesses. Petitioner engages in sweeping conclusions with no specific facts to support such conclusions. Therefore, Petitioner's claims are bare and naked allegations and are denied.

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Further, Petitioner is not entitled to a particular relationship with counsel. It does not matter if Petitioner is not satisfied that counsel did not spend enough time with him as long as counsel keeps Petitioner abreast of his case and maintains sufficient communication lines to provide effective assistance of counsel. In any event, Petitioner does not allege that counsel completely refrained from communicating with Petitioner, only that he did not spend enough time with him. As such, Petitioner's claim is without merit and is denied.

D. Ground Four: Petitioner Knowingly, Intelligently and Voluntarily Entered His Plea

In Ground Four, Petitioner alleges that his counsel was ineffective for allowing Petitioner to plead guilty to a charge he was actually innocent of because he was improperly charged, and he did not understand the elements of the charges and the rights he was giving up by pleading guilty. Petition at page 19.

Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be withdrawn to correct "manifest injustice." See also Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid, and the burden is on a defendant to show that the plea was not voluntarily entered. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant entered his plea voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

To determine whether a guilty plea was voluntarily entered, the Court will review the totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721 P.2d at 367. A proper plea canvass should reflect that:

> [T]he defendant knowingly waived his privilege against self-incrimination, the right to trial by jury, and the right to confront his accusers; (2) the plea was voluntary, was not coerced, and was not the result of a promise of leniency; (3) the defendant understood the consequences of his plea and the range of punishments; and (4) the defendant understood the nature of the charge, i.e., the elements of the crime.

Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev. 774, 476 P.2d 950 (1970)). The presence and advice of counsel is a significant factor in

determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d 107, 107 (1975).

This standard requires the court accepting the plea to personally address the defendant at the time he enters his plea in order to determine whether he understands the nature of the charges to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not rely simply on a written plea agreement without some verbal interaction with a defendant. Id. Thus, a "colloquy" is constitutionally mandated and a "colloquy" is but a conversation in a formal setting, such as that occurring between an official sitting in judgment of an accused at plea. Id. However, the court need not conduct a ritualistic oral canvass. State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas "do not require the articulation of talismanic phrases," but only that the record demonstrates a defendant entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1404 (1973); see also Brady v. United States, 397 U.S. 742, 747-48, 90 S. Ct. 1463, 1470 (1970).

In this case, Petitioner's claim that his counsel was ineffective for allowing Petitioner to plead guilty to a charge he was actually innocent of because he was improperly charged, and he did not understand the elements of the charges and the rights he was giving up by pleading guilty, is belied by the answers he gave during his plea canvass. The Court's canvass of Petitioner demonstrates that Petitioner understood the charges he was facing, that no one forced, threatened or made promises to induce his plea, and that his plea was voluntary:

> THE COURT: Okay, we're going to go back on the record in C-318335, State of Nevada versus David Coil. Mr. Coil is present with his attorney, Mr. Matsuda. The Deputy District Attorneys are here on behalf of the State. For the record, we are outside the presence of the jury. Mr. Coil, it is my understanding that you wish to plead guilty in this case?
>
> THE DEFENDANT: Yes, ma'am.
>
> THE COURT: Is that what you would like to do today?
>
> THE DEFENDANT: Yes, ma'am.
>
> THE COURT: And you would like to stop this trial at this point and just --

THE DEFENDANT: Yes, ma'am.

THE COURT: -- plead guilty?

. . . .

THE COURT: Sir, have you received a copy of the Amended Information in your case?

THE DEFENDANT: Is that what it was?

MR. MATSUDA: Yeah.

THE DEFENDANT: Yes. Yes, I did.

THE COURT: So do you know the charges that you're facing in this case?

THE DEFENDANT: Yes, ma'am.

THE COURT: And as to all of those charges, how do you plead?

THE DEFENDANT: Guilty.

THE COURT: And sir, are you making this plea freely and voluntarily?

THE DEFENDANT: Yes.

THE COURT: Has anyone forced you or threatened you or anyone closely associated with you to get you to enter this plea?

THE DEFENDANT: In no way.

THE COURT: Has anyone made you any promises to get you to enter this plea?

THE DEFENDANT: No way.

THE COURT: Okay. Sir, do you understand that by pleading guilty, you're giving up certain constitutional rights?

THE DEFENDANT: Yes.

THE COURT: Sir, do you understand by pleading guilty, you're giving up certain appellate rights?

THE DEFENDANT: Yes.

. . . .

THE COURT: Sir, do you understand the sentencing is strictly up to me and no one can promise you probation leniency or any special treatment?

THE DEFENDANT: Yes.

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THE COURT: I will also be the person making the decision about whether or not these counts will run concurrent or consecutive.

THE DEFENDANT: Yes.

Recorder's Transcript of Jury Trial – Day 3 dated September 28, 2017, pages 2-7.

Petitioner also disregards the fact that a defendant can show understanding by indicating that he committed the crimes charged, which is exactly what Petitioner did when entering his plea. Petitioner heard the Court recite all of the elements for each charge and proceeded to admit that he committed each of the crimes charged:

THE COURT: Sir in regards to count 1, are you pleading guilty to because in truth and in fact on or between October 16th of 2015 and August 23rd of 2016, here in Clark County, Nevada, you did willfully, unlawfully and feloniously induce, cause and/or recruit and/or obtain and/or maintain IP, a child under 18 years of age to engage in prostitution and/or to enter in any place within the state in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct or prostitution? Did you do that?

THE DEFENDANT: Yes.

THE COURT: In regards to count 2, did you on or -- is it true and in fact on or between October 16th of 2015 and August 6th of 2016, here in Clark County, you willfully and up lawfully solicited IP, a minor, by word, gesture or any other means to engage in sexual conduct, to wit: By touching and/or rubbing your penis with her hands and her bare genital opening for a fee in the amount of $200? Did you do that?

THE DEFENDANT: Yes.

THE COURT: Sir, in regards to count 3, here in Clark County, you did on or between October 15th, 2015 and August 6th of 2016 willfully and unlawfully solicit IP, a minor, by word, gesture or any other means to engage in sexual conduct, that being touching and/or rubbing your penis for a fee of $100?

THE DEFENDANT: Yes.

THE COURT: Are you pleading guilty to count 4 because in truth and in fact on or about October 15th of 2015 and between August 6th of 2016, here in Clark County, you did willfully and unlawfully solicit IP, a minor, by word, gesture or any other means to engage in sexual conduct, that being touching and/or rubbing your penis for a fee of $100?

THE DEFENDANT: Yes.

THE COURT: And in regards to count 5, are you pleading guilty because in truth and in fact on or between October 15th of 2015 and August 6th of 2016, you did willfully and unlawfully solicit IP, a

> minor, in Clark County by word, gesture or any other means to engage in sexual conduct, that being touching and/or rubbing of your penis for a fee of $100?
>
> THE DEFENDANT: Yes.
>
> THE COURT: And are you pleading guilty because -- to count 6 because in truth and in fact, on or between August 22nd of 2016 and August 23rd of 2016, here in Clark County, you did willfully, unlawfully and feloniously attempt to induce, cause or recruit Tiff, a person you believed to be a child under the 18 of age [sic] while you having the specific intent that Tiff engage in prostitution?
>
> THE DEFENDANT: Yes.
>
> THE COURT: And in regards to count 7, are you pleading guilty because in truth and in fact on or between August 22nd of 2016 and August 23rd of 2016, here in Clark County, you did willfully, unlawfully and feloniously induce O. Deeds to unlawfully become a prostitute and/or to continue to engage in prostitution?
>
> THE DEFENDANT: Yes.
>
> **THE COURT: Sir, do you have any questions you would like to ask me or your attorney before I accept these pleas?**
>
> **THE DEFENDANT: No.**

Recorder's Transcript of Jury Trial – Day 3 dated September 28, 2017, pages 7-9.

By admitting that he committed the crimes charged, Petitioner indicated that he understood the nature of the charges against him. Therefore, whether Petitioner was informed of the elements of these crimes is immaterial as to whether he knowingly and voluntarily entered his plea.

Further, Petitioner's claim that he was not advised of his rights until after accepting his guilty plea is incorrect. Before entering his guilty plea, the Court advised Petitioner of his many constitutional rights. Then, after accepting his plea, the Court advised Petitioner of several additional rights before finding that his plea was freely and voluntarily made. Petitioner cites to no authority or case law that says this method of canvassing is incorrect. Petitioner affirmed that he understood the rights he was forfeiting by pleading guilty and was entering his plea voluntarily:

> THE COURT: And sir, do you understand by entering this plea, you are waiving your Constitutional privilege against self-incrimination, including the right to refuse to testify at trial? You're waiving the right to testify at trial if you plead guilty?

THE DEFENDANT: Isn't -- isn't this my trial?

MR. MATSUDA: Yes. She's just asking you, do you understand that you're waiving your right because of your decision right now.

THE COURT: If you plead guilty, there's not going to be a trial.

THE DEFENDANT: Oh, yeah, that's fine.

THE COURT: So you won't be allowed to testify at trial; do you understand that?

THE DEFENDANT: Okay, the opposite, yes, yes.

THE COURT: Okay. And do you understand that at that trial the State would not have been allowed to comment on your refusal to testify? If you go -- went to trial, I would not allow the State to say anything if you chose not to testify.

MR. MATSUDA: In order to exercise your 5th amendment, they can't comment saying well, he didn't say anything.

THE DEFENDANT: Okay.

MR. MATSUDA: Do you understand?

THE DEFENDANT: Yes, I do.

THE COURT: Do you understand you're waiving your right to a trial that's free of excessive pretrial publicity prejudicial to your defense?

THE DEFENDANT: You went fast on me, I'm sorry.

THE COURT: Do you understand if you enter this plea, you are waiving your constitutional rights to a trial by an impartial jury that's free of excessive pretrial publicity prejudicial to your defense?

THE DEFENDANT: Yes.

THE COURT: Do you understand you would be waiving your constitutional right to confront and cross-examine any witnesses that would testify against you?

THE DEFENDANT: Yes.

THE COURT: You would be waiving your constitutional right to subpoena witnesses to testify on your own behalf.

THE DEFENDANT: Yes.

THE COURT: You would be waiving your constitutional right to testify in your own defense?

THE DEFENDANT: Yes.

THE COURT: You would be waiving your right to appeal this conviction with the assistance of an attorney, either appointed or retained, unless specifically reserved in writing and agreed upon? So you're waiving your right to appeal this conviction?

THE DEFENDANT: Oh, yes.

THE COURT: You're waiving your right to a direct appeal of any challenge based upon -- hold on -- you're waiving your right to a direct appeal of this conviction, including any challenges based upon reasonable constitutional jurisdictional or other grounds that challenge the legality of these proceedings. Do you understand that? You're waiving your right to an appeal in this case.

THE DEFENDANT: Yes.

. . . .

THE COURT: And is this plea voluntary?

THE DEFENDANT: Yes.

THE COURT: Is there anything else you need to add, State?

MR. MARTINEZ: Only that this is without negotiations with the State.

THE COURT: Okay. And just for the record, sir, do you understand that this plea is without any negotiation from State, so at sentencing the State will have the full right to argue for any legal sentence on each of these charges?

THE DEFENDANT: Yes.

THE COURT: And the State will have the full right to argue whether or not these charges run consecutive or concurrent?

THE DEFENDANT: Yes.

THE COURT: Do you have any questions you would like to ask myself or your attorney before I accept this plea?

THE DEFENDANT: No. I'd just like to make a statement when I have a chance.

THE COURT: Okay, you can make a statement at sentencing.

THE DEFENDANT: Oh, okay, okay.

THE COURT: Anything else?

THE DEFENDANT: No.

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> THE COURT: Sir, the Court finds that this plea is free and voluntarily made, that you understand the nature of the offense and the consequences of your actions, and based upon that, the State will -- I mean, I'm sorry, the Court will refer this to the Division of Parole and Probation, set it over for sentencing on?
>
> THE CLERK: November 8th at 8:30.

Recorder's Transcript of Jury Trial – Day 3 dated September 28, 2017, pages 11-15.

Thus, the record clearly demonstrates that Petitioner's plea was knowingly and voluntarily entered, that he admitted guilt to the charges to which he pled guilty, and that he understood the elements of the charges and the rights he was waiving by entering his plea. Therefore, this claim is denied.

1. Petitioner was not factually innocent

Actual innocence means factual innocence not mere legal insufficiency. Bousley v. United States, 523 U.S. 614, 623, 118 S.Ct. 1604, 1611 (1998); Sawyer v. Whitley, 505 U.S. 333, 338-39, 112 S.Ct. 2514, 2518-19 (1992). To establish actual innocence of a crime, a petitioner "must show that it is more likely than not that no reasonable juror would have convicted him absent a constitutional violation." Calderon v. Thompson, 523 U.S. 538, 560, 118 S. Ct. 1489, 1503 (1998) (emphasis added) (quoting Schlup v. Delo, 513 U.S. 298, 316, 115 S. Ct. 851, 861 (1995)). Actual innocence is a stringent standard designed to be applied only in the most extraordinary situations. Pellegrini, 117 Nev. at 876, 34 P.3d at 530.

"Without any new evidence of innocence, even the existence of a concededly meritorious constitutional violation is not itself sufficient to establish a miscarriage of justice that would allow a habeas court to reach the merits of the barred claim." Schlup, 513 U.S. at 316, 115 S. Ct. at 861. The Eighth Circuit Court of Appeals has "rejected free-standing claims of actual innocence as a basis for habeas review stating, '[c]laims of actual innocence based on newly discovered evidence have never been held to state a ground for federal habeas relief absent an independent constitutional violation occurring in the underlying state criminal proceeding.'" Meadows v. Delo, 99 F.3d 280, 283 (8th Cir. 1996) (citing Herrera v. Collins, 506 U.S. 390, 400, 113 S. Ct. 853, 860 (1993)). Furthermore, the newly discovered evidence suggesting the defendant's innocence must be "so strong that a court cannot have confidence

in the outcome of the trial." Schlup, 513 U.S. at 315, 115 S. Ct. at 861. Once a defendant has made a showing of actual innocence, he may then use the claim as a "gateway" to present his constitutional challenges to the court and require the court to decide them on the merits. Id.

In this case, Petitioner cannot establish that he is actually innocent because he is not alleging newly discovered facts. Actual innocence means factual innocence not mere legal insufficiency. Petitioner claims that he is not guilty of sex trafficking, but "facilitating" sex trafficking. Petitioner does not contest the other six (6) charges to which he plead guilty. Petition at page 20.

Petitioner was not charged with facilitating sex trafficking. Petitioner was charged with Sex Trafficking of a Child under 18 Years of Age (Category A Felony – NRS 201.300.2a1-NOC 58004) because he did willfully, unlawfully, and feloniously induce, cause, and/or recruit and/or obtain and/or maintain, IP, a child under eighteen (18) years of age, to engage in prostitution and/or to enter any place within this State in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct or prostitution. Petitioner does not get to choose what crimes to which he pleads guilty.

In Righetti, the Defendant was charged with murder under three theories, and plead guilty to murder, but only to two of the three theories alleged. Righetti v. Eighth Judicial Dist. Court, 388 P. 3d 643, 644 (2017). Defense did not notify the State of Defendant's position, and the State was not aware that the Defendant was only pleading guilty to certain theories. Id. The Court initially accepted the plea, but once the miscommunication surfaced the court revoked its acceptance and set the matter for trial. Id. at 645. In response, Defendant sought a Writ of Prohibition or Mandamus to enforce his plea. Id. The Nevada Supreme Court held that the district court properly revoked its acceptance of Defendant's guilty plea. Id. at 649. The Court reasoned that the State has an almost exclusive right to decide how to charge a criminal defendant, and while a criminal defendant has a statutory right to tender a guilty plea, he does not have a right to plead guilty a la carte to avoid the State's charging decisions. Id. at 647 citing Parsons v. Fifth Judicial Dist. Court, 110 Nev. 1239, 1244, 885 P.2d 1316, 1320 (1994), overruled on other grounds by Parsons v. State, 116 Nev. 928, 936, 10 P.3d 836. 841 (2000).

Like Righetti, Petitioner had the choice to either go to trial or plead guilty to the negotiated charges as alleged. Furthermore, if Petitioner wanted to be charged with facilitating sex trafficking, he could have offered it as an instruction at trial, yet he chose to plead guilty. "A guilty plea is more than a confession that the accused did various acts. It is an admission that he committed the crimes charged against him." United States v. Broce, 488 U.S. 563, 570, 109 S. CT. 757, 102 L. Ed. 2d. 927 (1989). A defendant who makes a counseled and voluntary guilty plea admits both the acts described in the indictment and the legal consequences of those acts. Righetti, 388 P. 3d at 648 quoting United States v. Allen, 24 F.3d 1180, 1183 (10th Cir. 1994). Furthermore, Petitioner admitted to committing the act of sex trafficking during his plea canvass:

> THE COURT: Sir in regards to count 1, are you pleading guilty to because in truth and in fact on or between October 16th of 2015 and August 23rd of 2016, here in Clark County, Nevada, you did willfully, unlawfully and feloniously induce, cause and/or recruit and/or obtain and/or maintain IP, a child under 18 years of age to engage in prostitution and/or to enter in any place within the state in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct or prostitution? Did you do that?
>
> DEFENDANT: Yes.

Therefore, it was proper to charge Petitioner with Sex Trafficking of a Child under 18 Years of Age and Petitioner is not actually innocent of this offense. This claim is without merit and is denied.

III. PETITIONER FAILS TO DEMONSTRATE HE IS ENTITLED TO APPOINTMENT OF COUNSEL

Under the United States Constitution, the Sixth Amendment provides no right to counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S.Ct. 2546, 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada Supreme Court similarly observed, "[t]he Nevada Constitution…does not guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution's right to counsel provision as being coextensive with the Sixth Amendment to the United States Constitution." McKague specifically held that, with the exception of NRS 34.820(1)(a)

(entitling appointed counsel when petitioner is under a sentence of death), one does not have "any constitutional or statutory right to counsel at all" in post-conviction proceedings. Id. at 164, 912 P.2d at 258.

The Nevada Legislature has, however, given courts discretion to appoint post-conviction counsel so long as "the court is satisfied that the allegation of indigency is true and the petition is not dismissed summarily." NRS 34.750.

NRS 34.750 reads:

> A petition may allege that the Defendant is unable to pay the costs of the proceedings or employ counsel. If the court is satisfied that the allegation of indigency is true and the petition is 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:
>
> (a) The issues are difficult;
>
> (b) The Defendant is unable to comprehend the proceedings; or
>
> (c) Counsel is necessary to proceed with discovery.

More recently, the Nevada Supreme Court examined whether a district court appropriately denied a defendant's request for appointment of counsel based upon the factors listed in NRS 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In Renteria-Novoa, the petitioner had been serving a prison term of eighty-five (85) years to life. Id. at 75, 391 P.3d at 760. After his judgment of conviction was affirmed on direct appeal, the petitioner filed a pro se habeas corpus petition and requested counsel be appointed. Id. The district court ultimately denied both the petition and the request for appointment of counsel. Id. In reviewing the district court's decision, the Renteria-Novoa Court examined the NRS 34.750 factors and concluded the district court's decision should be reversed and remanded. Id. The Court explained the petitioner was indigent, his petition could not be summarily dismissed, and he had, in fact, satisfied the statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor, the Court concluded that because petitioner represented he had issues with understanding the English language—which was corroborated by his use of an interpreter at his trial—that was enough to indicate the petitioner could not comprehend the proceedings. Id. Moreover, the

petitioner had demonstrated that the consequences he faced—a minimum eighty-five (85) year sentence—were severe and his petition may have been the only vehicle for which he could raise his claims. Id. at 76-77, 391 P.3d at 761-62. Finally, the petitioner's ineffective assistance of counsel claims may have required additional discovery and investigation beyond the record. Id.

A review of Petitioner's instant Petition, and his request, demonstrate that Petitioner does not meet the NRS 34.750 factors. First, Petitioner includes four (4) separate Grounds, each of which are bare and naked allegations and lacking in specificity. Therefore, because the issues raised by Petitioner are not suitable for review, the instant Petition is summarily denied, and does not entitle Petitioner to discretionary appointment of counsel. NRS 34.750(a); Renteria-Novoa, 133 Nev. at 76, 391 P.3d at 760-61.

Second, Petitioner has formulated four (4) separate claims for relief. Petitioner has not, and does not now, argue that he has any difficulties with the English language. Therefore, it is clear that Petitioner, while unhappy with the results of his underlying case, comprehends the proceedings, thus not necessitating the discretionary appointment of counsel. NRS 34.750(b); Renteria-Novoa, 133 Nev. at 76, 391 P.3d at 760-61.

Finally, Petitioner has not alleged what specific further discovery is necessary in this matter. Instead, Petitioner's request for counsel seems to be an assertion that the prison law library is insufficient, and/or that counsel would be helpful. However, neither of these assertions are statutory factors to be considered regarding the discretionary appointment of counsel. See NRS 34.750; see also Renteria-Novoa, 133 Nev. 75, 391 P.3d 760. Therefore, because Petitioner has not alleged what further discovery is necessary, and because his pleadings have shown his ability to formulate his claims, Petitioner does not show that counsel is necessary.

Because the statutory factors and the Renteria-Novoa analysis weigh against the discretionary appointment of counsel, Petitioner's Motion for the Appointment of Counsel is denied.

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IV. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING

NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

> 1. The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required. A petitioner must not be discharged or committed to the custody of a person other than the respondent *unless an evidentiary hearing is held.*
>
> 2. If the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, he shall dismiss the petition without a hearing.
>
> 3. If the judge or justice determines that an evidentiary hearing is required, he shall grant the writ and shall set a date for the hearing.

The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual allegations, which, if true, would entitle him to relief unless the factual allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that "[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

It is improper to hold an evidentiary hearing simply to make a complete record. *See* State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) ("The district court considered itself the 'equivalent of . . . the trial judge' and consequently wanted 'to make as complete a record as possible.' This is an incorrect basis for an evidentiary hearing."**)**. Further, the United States Supreme Court has held that an evidentiary hearing is not required simply because counsel's actions are challenged as being unreasonable strategic decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge post hoc rationalization for counsel's decision making that contradicts the available evidence of counsel's actions, neither may they insist counsel confirm every aspect of the strategic basis

for his or her actions. Id. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Id. (*citing* Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the *objective* reasonableness of counsel's performance, not counsel's *subjective* state of mind. 466 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

An evidentiary hearing is not warranted in this case. An expansion of the record is unnecessary because Petitioner has failed to assert any meritorious claims, counsel's testimony would not aid Petitioner, and the Petition can be disposed of with the existing record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; Mann, 118 Nev. at 356, 46 P.3d at 1231. Petitioner does not explain why expansion of the record is necessary in this case, much less make any specific assertion of what additional information would need to be introduced at an evidentiary hearing to allow resolution of Petitioner's claims. Each of Petitioner's claims may be resolved without expanding the record. Therefore, Petitioner's request for an evidentiary hearing is denied.

ORDER

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

Dated this 7th day of December, 2021

F28 046 6948 36D9
Tierra Jones
District Court Judge

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

BY 
TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #05734

hjc/SVU

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

David Coil, Plaintiff(s)	CASE NO: A-21-839320-W
vs.	DEPT. NO. Department 10
Calvin Johnson, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 12/7/2021

Taleen Pandukht	taleen.pandukht@clarkcountyda.com

Electronically Filed
12/8/2021 3:53 PM
Steven D. Grierson
CLERK OF THE COURT

NEFF

DISTRICT COURT
CLARK COUNTY, NEVADA

DAVID COIL,

Petitioner,

vs.

CALVIN JOHNSON,

Respondent,

Case No: A-21-839320-W

Dept No: X

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

PLEASE TAKE NOTICE that on December 7, 2021, 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 December 8, 2021.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton
Amanda Hampton, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 8 day of December 2021, I served a copy of this Notice of Entry on the following:

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

☑ The United States mail addressed as follows:
David Coil # 1189948
P.O. Box 650
Indian Springs, NV 89070

/s/ Amanda Hampton
Amanda Hampton, Deputy Clerk

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #005734
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID COIL,
#8323388

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: **A-21-839320-W**
C-16-318335-1

DEPT NO: **X**

FINDINGS OF FACT, CONCLUSIONS

OF LAW AND ORDER

DATE OF HEARING: **NOVEMBER 8, 2021**
TIME OF HEARING: **8:30 AM**

THIS CAUSE presenting before the Honorable TIERRA JONES, District Judge, on the 8th day of November, 2021; Petitioner not present, IN PROPER PERSON; Respondent present, being represented by STEVEN B. WOLFSON, District Attorney, through LAURA GOODMAN, Chief Deputy District Attorney; and having considered the matter, including briefs, transcripts, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

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FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On September 27, 2016, David Coil (hereinafter "Petitioner") was charged by way of Information with one count of SEX TRAFFICKING OF A CHILD UNDER 18 YEARS OF AGE (Category A Felony – NRS 201.300.2a1- NOC 58004), four (4) counts of SOLICITING PROSTITUTION (Category E Felony – NRS 201.354 – NOC 55102), one count of PANDERING (Category C Felony – NRS 201.300.1 – NOC 51000) and one count of ATTEMPT SEX TRAFFICKING OF A CHILD UNDER 18 YEARS OF AGE (Category B Felony – NRS 200.300.2a, 193.330 – NOC 58005) for acts committed on or between October 16, 2015 and August 23, 2016. On September 27, 2016, Petitioner waived his right to a preliminary hearing. On September 29, 2016, Petitioner pled not guilty and invoked his right to a speedy trial. A jury trial was set for November 28, 2016, but was continued due to the receipt of additional discovery, and Petitioner waived his right to a trial within sixty (60) days on November 30, 2016.

On January 18, 2017, Petitioner was referred for a competency evaluation and the Court found Petitioner competent on February 22, 2017. On June 20, 2017, Petitioner filed a Motion to Replace Public Defender for Cause and Defendant's Motion for Dismissal and Habeas Corpus for Untimely Trial Over 60 Days. The State did not respond. On July 2, 2017, the Court denied Petitioner's Pro Per Motion to Replace Public Defender for Cause and Defendant's Motion for Dismissal and Habeas Corpus for Untimely Trial Over 60 days.

On July 24, 2017, Petitioner expressed his desire to represent himself and the Court conducted a Faretta canvass to see if Petitioner was able to represent himself. Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, (1975). During the canvass, however, Petitioner decided to withdraw his request and move forward with counsel. Petitioner again requested to represent himself on September 18, 2017. On September 25, 2017, the Court conducted another Faretta canvass and Petitioner withdrew his request for a second time.

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Trial commenced on September 26, 2017, and the State filed an Amended Information the same day.[1] On September 28, 2017 before the third day of trial began, Petitioner decided to plead guilty to all charges alleged in the Amended Information. No Guilty Plea Agreement was filed as Petitioner pled straight up to all of the charges.

On November 8, 2017, Petitioner was sentenced as follows:

- Count 1 [Sex Trafficking a Child Under 18]- LIFE with the eligibility for parole after serving a minimum of sixty (60) months in the Nevada Department of Corrections (hereinafter "NDC");
- Count 2 [Soliciting Prostitution]- Maximum of thirty (30) months with a minimum parole eligibility of twelve (12) months concurrent with Count 1, suspended and placed on probation for an indeterminate period not to exceed three (3) years, with the only condition being to serve three-hundred sixty four (364) days in the Clark County Detention Center (hereinafter "CCDC");
- Count 3 [Soliciting Prostitution] - Maximum of thirty (30) months with a minimum parole eligibility of twelve (12) months, concurrent with Count 2, suspended and placed on probation for an indeterminate period not to exceed three (3) years, with only condition being to serve three-hundred sixty four (364) days in CCDC;
- Count 4 [Soliciting Prostitution]- Maximum of thirty (30) months with a minimum parole eligibility of twelve (12) months concurrent with Count 3, suspended and placed on probation for an indeterminate period not to exceed three (3) years, with only condition being to serve three-hundred sixty four (364) days in CCDC;
- Count 5 [Soliciting Prostitution]- Maximum of thirty (30) months with a minimum parole eligibility of twelve (12) months concurrent with Count 4, suspended and placed on probation for an indeterminate period not to exceed

[1] The Amended Information did not add additional charges. The State changed the language in the first count to reflect the statute and switched count 6 and 7 to make it clearer for the jury to understand.

three (3) years, with only condition being to serve three-hundred sixty four (364) days in CCDC; and

- Count 6 [Attempt Sex Trafficking of a Child Under 18]- Maximum of one hundred eighty (180) months with a minimum parole eligibility of seventy-two (72) months, consecutive to Count 5.

Count 7 [Pandering] was dismissed, and Petitioner was also required to register as a sex offender within 48 hours of release from custody. Petitioner was awarded four hundred forty-three (443) days credit for time served and the aggregate sentence was LIFE with parole eligibility after serving a minimum of one hundred thirty-two (132) months.

The Judgment of Conviction was filed on December 13, 2017.

On January 17, 2018, Petitioner filed a Notice of Appeal. On October 16, 2019, the Nevada Court of Appeals affirmed the Judgment of Conviction and Remittitur issued on November 12, 2019.

On February 25, 2019, the Court noted it received a letter from the Division of Parole and Probation requesting clarification of the Court's sentence. The Court ordered that the aggregate sentence is correct; however, Count 6 should be consecutive to Count 1 with an aggregate total of Life with parole eligibility after one hundred thirty-two (132) months has been served in the NDC. The Amended Judgment of Conviction was filed on March 4, 2019.

On June 3, 2021, Petitioner filed a Motion to Withdraw Guilty Plea Pursuant to NRS 176.165 and Motion for Extension of Time to File a Post-Conviction Writ of Habeas Corpus. The State filed an Opposition on June 10, 2021. On June 28, 2021, this Court denied both motions. The Order Denying Defendant's Motions to Withdraw Guilty Plea and Motion to Extend Time to File Petition for Writ of Habeas Corpus was filed on July 19, 2021.

On July 14, 2021, Petitioner filed another Motion for Extension of Time, and on July 28, 2021, Petitioner filed another Motion to Withdraw Plea. The State filed another Opposition on July 30, 2021. On August 4, 2021, the Court again denied both motions. The Order Denying Defendant's Motion to Withdraw Guilty Plea and Motion for Extension of Time was filed on August 10, 2021.

On August 11, 2021, Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction). On August 30, 2021, Petitioner filed a Motion for the Appointment of Counsel and Request for Evidentiary Hearing. The State filed its Response on September 23, 2021.

On November 8, 2021, this Court denied the Petition. This Court's Findings of Fact, Conclusions of Law and Order now follows.

STATEMENT OF FACTS

This Court relied on the following facts in sentencing Petitioner:

> On August 6, 2016, a teacher from a local school was contacted by a prior high school student, the victim (date of birth: July 30, 1999) who needed help. The teacher believed that the victim was the victim of sex trafficking and he contacted the police to file a report.
>
> A detective made contact with the victim at her home. She told the officers that in October, 2015, she was looking for employment on Craigslist.com, she was 16 years old at the time. She found a posting looking for "petit, young girls" and offered that they could make $1,500 a day with "no sex involved." She responded to the ad and made contact with the defendant, David Andrew Coil.
>
> The victim and Mr. Coil met at a fast food restaurant near the victim's home. After some discussion, Mr. Coil brought the victim back to his home. He provided the victim with alcohol and she became intoxicated. He explained to the victim that the job was performing "body rubs" at his residence. He had several girls who work at his residence and an established client base of men that came to his residence for body rubs. He also explained that while performing body rubs, the females working at Mr. Coil's residence were allowed to perform mutual masturbation on the clients by stimulating the male clients' penis with their hands. The females were also allowed to stimulate the clients' penis by straddling the naked males while they were lying on their backs and rubbing their bare vaginas against the males' penis as long as there was no full penetration.
>
> The rules provided by Mr. Coil were that she would have to remove her clothes upon arrival at his home and remain naked while in the home. She would be required to show him the money that she earned while at the residence and to not lie to him about anything. They were required to keep the sheets and towels used in the body rub room clean and changed after each use. The females were also told not to have vaginal intercourse with any of the clients coming to the residence; however, the victim and the other females were allowed to perform oral sex on the clients if the females made that decision.
>
> The victim told Mr. Coil that she did not believe the job was right for her and she apologized; she asked if there was anything she could do for wasting his time and he asked her to give him a body

> rub. The victim complied; both she and Mr. Coil were naked and she followed his instructions for completing a body rub. He had the victim straddle his body and rub her bare vagina across his penis. Afterwards, Mr. Coil paid her $200 including a gratuity.
>
> After realizing how much money she could make, she agreed to work for Mr. Coil and she worked from October 2015 to August 2016, working an average of four nights a week performing body rubs. She performed body rubs on Mr. Coil at least three additional times and she was paid the standard $80 fee with an additional $20 gratuity. There were additional females working in the home to include the defendant's adult daughter. Mr. Coil did not take any of the proceeds from the body rubs; he would remain nude as well as the girls and when the male appointments would arrive he would go into a back living room and remain out of sight until the clients left.
>
> After finding the most recent advertisement Mr. Coil had posted on Craigslist.com, the detective made contact with Mr. Coil pretending to be an interested 17 year old girl. Through the course of the text conversation, the two agreed to meet. On August 23, 2016, Mr. Coil arrived at the agreed to location showing his intent to recruit what he believed to be a 17 year old female for the purpose of prostitution. Mr. Coil was arrested, transported to the Clark County Detention Center and booked accordingly.

Presentence Investigation Report (hereinafter "PSI") at pages 4-5.

ANALYSIS

I. PETITIONER'S PETITION IS PROCEDURALLY BARRED

A. Petitioner's Petition is Time-barred

A petition challenging a judgment of conviction's validity must be filed within one year of the judgment or within one year of the remittitur, unless there is good cause to excuse delay. NRS 34.726(1). The Nevada Supreme Court has held that NRS 34.726 should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873–74, 34 P.3d 519, 528 (2001). The one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is issued. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998).

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

the Notice within the one-year time limit.

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

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

Id. (quoting Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984)). Additionally, the Court noted that procedural bars "cannot be ignored [by the district court] when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court has granted no discretion to the district courts regarding whether to apply the statutory procedural bars; the rules must be applied.

In this case, Petitioner's Judgment of Conviction was filed on December 13, 2017. On October 16, 2019, the Nevada Court of Appeals affirmed the Judgment of Conviction and Remittitur issued on November 12, 2019. Thus, Petitioner had until November 12, 2020 to file his Petition. Petitioner did not file the instant Petition until August 11, 2021. As such, he was nine (9) months too late. This delay exceeds the two (2) day delay discussed in Gonzales. Therefore, the Petition is procedurally time barred and denied.

B. Application of the Procedural Bars is Mandatory

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

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

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

This position was reaffirmed in State v. Greene, 129 Nev. 559, 307 P.3d 322 (2013). There the Court ruled that the defendant's petition was "untimely, successive, and an abuse of the writ" and that the defendant failed to show good cause and actual prejudice. Id. at 324, 307 P.3d at 326. Accordingly, the Court reversed the district court and ordered the defendant's petition dismissed pursuant to the procedural bars. Id. at 324, 307 P.3d at 322–23. The procedural bars are so fundamental to the post-conviction process that they must be applied by this Court even if not raised by the State. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

Because Petitioner's Petition is untimely and because he cannot show good cause or prejudice to overcome the mandatory procedural bar, it is denied.

II. PETITIONER HAS NOT DEMONSTRATED GOOD CAUSE OR PREJUDICE TO OVERCOME THE PROCEDURAL BAR

In his Pro Per Petition, Petitioner raised four (4) grounds. In Ground One, he claims that his counsel was ineffective for failing to notify the Court of an alleged conflict of interest causing the Court to fail to grant Petitioner a hearing pursuant to Young v. State, 120 Nev. 963 (2004), and that counsel failed to execute unnamed motions. Petition at page 11. In Ground Two, Petitioner argues that defense counsel was ineffective for not filing a motion to dismiss the Information for violation of Petitioner's right to a speedy trial based on the Prosecution's alleged devious tactics concerning last minute discovery. Petition at page 13. In Ground Three, Petitioner asserts that his counsel failed to prepare a defense, failed to obtain certain phone records or attempt to contact Defendant's unnamed witnesses. Petition at page 15. He also claims counsel did not spend enough time with him. Petition at 17. In Ground Four, Petitioner alleges that his counsel was ineffective for allowing Petitioner to plead guilty to a charge he was actually innocent of because he was improperly charged, and he did not understand the elements of the charges and the rights he was giving up by pleading guilty.

Petition at page 19.

To avoid procedural default, under NRS 34.726, a defendant has the burden of pleading and proving specific facts that demonstrate good cause for his failure to present his claim in earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will be unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a) (emphasis added); see Hogan v. Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep't of Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). "A court *must* dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001) (emphasis added).

To show good cause for delay under NRS 34.726(1), a petitioner must demonstrate the following: (1) "[t]hat the delay is not the fault of the petitioner" and (2) that the petitioner will be "unduly prejudice[d]" if the petition is dismissed as untimely. NRS 34.726. To meet the first requirement, "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) (emphasis added). "A qualifying impediment might be shown where the factual or legal basis for a claim was not reasonably available *at the time of default*." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court continued, "Petitioners cannot attempt to manufacture good cause[.]" Id. at 621, 81 P.3d at 526. To find good cause there must be a "substantial reason; one that affords a legal excuse." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Examples of good cause include interference by State officials and the previous unavailability of a legal or factual basis. See State v. Huebler, 128 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012). Clearly, any delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

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

In order to establish prejudice, the defendant must show "'not merely that the errors of [the proceedings] created possibility of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state proceedings with error of constitutional dimensions.'" Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)).

Here, Petitioner does not even attempt to address good cause or provide any reason in the body of his Petition for the filing of his untimely Petition. Because Petitioner has failed to attempt to demonstrate good cause or prejudice, and because any such attempt would be without merit, Petitioner did not meet his burden when trying to overcome his procedural defaults. Hogan, 109 Nev. at 959-60, 860 P.2d at 715-16. Therefore, Petitioner's Petition is denied pursuant to the applicable procedural bars.

Moreover, the Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The United States Supreme Court has long recognized that "the right to counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063–64. See also Love, 109 Nev. at 1138, 865

P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's representation fell below an objective standard of reasonableness, and second, that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. 466 U.S. at 687–88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). "[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

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

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

Based on the above law, the role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). This analysis does not mean that the court should "second guess reasoned choices between trial tactics nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Id. To be effective, the constitution "does not require that counsel do what is impossible or unethical. If there is no bona fide defense to the charge, counsel

cannot create one and may disserve the interests of his client by attempting a useless charade." United States v. Cronic, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

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

When a conviction is the result of a guilty plea, a defendant must show that there is a "reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

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

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

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

A. Ground One: Petitioner's Claim Regarding a Pre-Trial Motion to Dismiss Counsel is Insufficient to Warrant Relief

Petitioner's Ground One alleges that his counsel was ineffective for failing to notify the Court of an alleged conflict of interest causing the Court to fail to grant Petitioner a hearing pursuant to Young v. State, 120 Nev. 963 (2004), and that counsel failed to execute unnamed motions. Petition at page 11.

This assertion does not entitle Petitioner to relief, as the United States Supreme Court has previously found that criminal defendants are not entitled to any particular "relationship" with their attorney. Morris v. Slappy, 461 U.S. 1, 14, 103 S.Ct. 1610, 1617 (1983). Indeed, the Morris Court found that no specific amount of communication is required, so long as counsel is reasonably effective in his representation. Id.

Therefore, Petitioner improperly takes for granted the reasonable likelihood of the success of those complaints without setting forth any factual support. As such, Petitioner leaves his ineffective-assistance claims bare and naked, and insufficient to warrant relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Because Petitioner fails to set forth any support for a cognizable ineffective-assistance claim, Petitioner's Ground One is summarily denied.

Determining whether friction between a defendant and his attorney justifies substituting counsel is within the trial court's sound discretion, and this Court will not disturb its decision on appeal absent a clear abuse of discretion. Thomas v. State, 94 Nev. 605, 607, 584 P.2d 674, 676 (1978). Generally, a district court should not summarily reject a motion for new counsel where such motion is made considerably before trial without first conducting an "adequate inquiry" into the defendant's complaints. Garcia v. State, 121 Nev. 327, 337, 113 P.3d 836, 842 (2005) (quoting Young v. State, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004)). However, absent good cause shown, a defendant is not entitled to the substitution of court-appointed

counsel at public expense. Garcia, 121 Nev. at 337, 113 P.3d at 842; Young, 120 Nev. at 968, 102 P.3d at 576.

This Court has defined good cause as "a conflict of interest, a complete breakdown of communication, or an irreconcilable conflict which [could] lead . . . to an apparently unjust verdict." Gallego v. State, 117 Nev. 348, 363, 23 P.3d 227, 237 (2001), overruled on other grounds by Nunnery v. State, 127 Nev. 749, 263 P.3d 235 (2011). Good cause is not "determined solely according to the subjective standard of what the defendant perceives," nor is "[t]he mere loss of confidence in appointed counsel . . . good cause." Id. While a defendant's lack of trust in counsel is a factor in the determination, a defendant must nonetheless provide the court with legitimate explanations for it. Id. (citing McKee v. Harris, 649 F.2d 927, 932 (2nd Cir. 1981)).

Moreover, a defendant may not request substitute counsel based on his refusal to cooperate with present counsel because "'[s]uch a doctrine would lead to absurd results.'" Thomas, 94 Nev. at 608, P.2d 674 at 676 (quoting Shaw v. United States, 403 F.2d 528, 529 (8th Cir. 1968)). Because counsel alone is responsible for tactical decisions regarding a defense, a mere disagreement between counsel and a defendant regarding tactics cannot give rise to an irreconcilable conflict. See Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). In particular, where a defendant disagrees with counsel's reasonable defense strategy and wishes instead to present his own ill-conceived strategy, no conflict arises. See Gallego, 117 Nev. at 363, 23 P.3d at 237. Rather, attorney-client conflict warrants substitution "only when counsel and defendant are so at odds as to prevent presentation of an adequate defense." Id. This Court has articulated three factors to consider when reviewing a district court's denial of a motion to substitute counsel: (1) the extent of the conflict, (2) the motion's timeliness and the extent of inconvenience or delay, and (3) the adequacy of the court's inquiry into the defendant's complaints. Young, 120 Nev. at 968–69, 102 P.3d at 576–78.

In the instant matter, Petitioner has not demonstrated that there was conflict of interest or that a Young hearing would have been granted. As to the three (3) Young factors, Petitioner fails to provide any specific facts in support of his bare and naked allegations, so this Court is

unable to meaningfully address any of the three (3) factors. Claims for relief devoid of specific factual allegations are "bare" and "naked," and are insufficient to warrant relief, as are those claims belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 22, 225 (1984). "[Petitioner] *must* allege specific facts supporting the claims in the petition[.]…Failure to allege specific facts rather than just conclusions may cause [the] petition to be dismissed." NRS 34.725(6) (emphasis added).

Likewise, Petitioner's claim that counsel failed to execute motions fails to name any specific motions counsel should have and failed to file, rendering this also a bare and naked allegation pursuant to Hargrove and is summarily denied. Petitioner offers only generalities and vague references, rather than the requisite "specific facts." NRS 34.725(6). Because Petitioner offers only generalities, lacking specific factual bases, much less cogent argument, the instant Petition does not warrant review. Rowland, 107 Nev. at 479, 814 P.2d at 83. Therefore, the instant claim is summarily denied as a bare and naked allegation, and insufficiently pled.

B. Ground Two: Petitioner's Claim Regarding a Motion To Dismiss For a Speedy Trial Violation is Insufficient to Warrant Relief

In Ground Two, Petitioner argues that defense counsel was ineffective for not filing a motion to dismiss the Information for violation of Petitioner's right to a speedy trial based on the Prosecution's alleged devious tactics concerning last minute discovery. Petition at page 13.

The Sixth Amendment to the Constitution guarantees that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. Const. Amend. VI. The United States Supreme Court held in Smith v. Hooey, 393 U.S. 374, 89 S.Ct. 575 (1969) that a state is under an affirmative obligation by virtue of the Sixth Amendment, as interpreted in Klopfer v. North Carolina, 386 U.S. 213, 87 S.Ct. 988 (1967), to make every good faith effort to bring the accused to trial. The United States Supreme Court also held that both the accused and society have an interest in having a speedy trial. Barker v. Wingo, 407 U.S. 514, 519, 92 S.Ct. 2182, 2186 (1972). The Court recognized that the three basic interests of an accused are

"(1) to prevent undue and oppressive incarceration prior to trial, (2) to minimize anxiety and concern accompanying public accusation and (3) to limit the possibilities that long delay will impair the ability of an accused to defend himself." Smith, 393 U.S. at 378, 89 S.Ct. at 577; see also, United States v. Ewell, 383 U.S. 116, 120, 86 S.Ct. 773, 776 (1966); Klopfer, 386 U.S. at 221-26, 87 S.Ct. at 993-95; Dickey v. Florida, 398 U.S. 30, 37-38, 90 S.Ct. 1564, 1568-69 (1970). Therefore, "one of the major purposes of the provision is to guard against *inordinate delay* between public charge and trial, which, wholly aside from possible prejudice to a defense on the merits, may seriously interfere with the defendant's liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family, and his friends." Barker, 407 U.S. at 537, 92 S.Ct. at 2195 (White, J., concurring) (emphasis added).

Nevada law likewise recognizes a criminal defendant's right to trial within sixty (60) days of arraignment or indictment. NRS 178.556. Application of NRS 178.556 is addressed to the sound discretion of the trial court. Meegan v. State, 114 Nev. 1150, 968 P.2d 292, 295, 1153 (1998), abrogated on other grounds, Vanisi v. State, 117 Nev. 330, 22 P.3d 1164 (2001). The Nevada Supreme Court has "determined that the '60 day rule' prescribed in our statute has flexibility." Adams v. Sheriff, 91 Nev. 575, 575, 540 P.2d 118, 119 (1975). Indeed, "[i]f the defendant is responsible for the delay of trial beyond the 60 day limit, he may not complain." Oberle v. Fogliani, 82 Nev. 428, 430, 420 P.2d 251, 252 (1966). The purpose behind NRS 178.556 is "to prevent arbitrary, willful, or oppressive delays." In re Hansen, 79 Nev. 492, 495, 387 P.2d 659, 660 (1963).

Indeed, despite criminal defendants' various interests, the United States Supreme Court has recognized that pretrial delay is often "both inevitable and wholly justifiable." Doggett v. United States, 505 U.S. 647, 656, 112 S.Ct. 2686, 2693 (1992). "The essential ingredient is orderly expedition and not mere speed." Smith v. United States, 360 U.S. 1, 10, 79 S.Ct. 991, 997 (1959). For instance, the government may need time to collect witnesses, oppose pretrial motions, or track down the accused. Doggett, 505 U.S. at 656, 112 S.Ct. at 2693. Thus, "in large measure because of many procedural safeguards provided an accused, the ordinary

procedures for criminal prosecution are designed to move at a deliberate pace. A requirement of unreasonable speed would have a deleterious effect both upon the rights of the accused and upon the ability of society to protect itself." Ewell, 383 U.S. at 120, 86 S.Ct. at 776. A denial of the Sixth Amendment right to a speedy trial requires that the charges against an accused be dismissed. The United States Supreme Court has cautioned that because of the seriousness of the remedy involved, "where a defendant who may be guilty of a serious crime will go free, without having been tried, the right to a speedy trial should always be in balance, and not inconsistent, with the rights of public justice." Barker, 407 U.S. at 522, 92 S.Ct. at 2188.

First and foremost, a defendant cannot enter a guilty plea then later raise independent claims alleging a deprivation of his rights before entry of the plea. State v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d 1070, n.24 (2005) (quoting Tollet v. Henderson, 411 U.S. 258, 267 (1973). Generally, the entry of a guilty plea waives any right to appeal from events occurring prior to the entry of the plea. See Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975). '"[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. . . . [A defendant] may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.'" Id. (quoting Tollett, 411 U.S. at 267).

Here, Petitioner claims that defense counsel was ineffective for not filing a motion to dismiss the Information for violation of Petitioner's right to a speedy trial based on the Prosecution's alleged devious tactics concerning last minute discovery. Petition at page 13. However, Petitioner's guilty plea cures any earlier Constitutional defects because entering a guilty plea breaks the "chain of events." Webb, 91 Nev. at 538. Petitioner is alleging a violation of his constitutional rights that occurred prior to his guilty plea. Therefore, Petitioner cannot raise this claim, and it is denied.

Additionally, as the Information was filed on September 27, 2016, and Defendant's Motion for Dismissal and Habeas Corpus for Untimely Trial Over 60 Days was filed on June 20, 2017, there was only a delay of approximately nine (9) months between the filing of the Information and the filing of the Motion to Dismiss. The trial commenced on September 26,

2017. Thus, there was exactly one year between the filing of the Information and the start of the trial. Petitioner waived his right to a trial within sixty (60) days on November 30, 2016. Moreover, the delays Petitioner complains of were due to receiving additional discovery, which the State provided to counsel as soon as it was received. Petitioner's counsel needed additional time to prepare for trial based on the additional discovery and the request for a continuance was entirely reasonable under these circumstances. Petitioner already filed his own Motion for Dismissal and Habeas Corpus for Untimely Trial Over 60 Days on June 20, 2017, after Petitioner waived his right to a trial within sixty (60) days on November 30, 2016. On July 2, 2017, the Court denied Petitioner's Pro Per Motion to Replace Public Defender for Cause and Defendant's Motion for Dismissal and Habeas Corpus for Untimely Trial Over 60 days. Therefore, it was unnecessary for counsel to file the same futile motion which had already been denied. As such, this claim is likewise without merit and is denied.

C. Ground Three: Counsel Was Not Ineffective for Failing to Investigate

In Ground Three, Petitioner asserts that his counsel failed to prepare a defense, failed to obtain certain phone records or attempt to contact Defendant's unnamed witnesses. Petition at page 15. He also claims counsel did not spend enough time with him. Petition at 17.

A defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have changed the outcome of trial. Strickland, 466 U.S. at 687, 104 S. Ct. at 2064. Such a defendant must allege with specificity what the investigation would have revealed and how it would have altered the outcome of the trial. See State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

"[D]efense counsel has a duty 'to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." State v. Love, 109 Nev. at 1138, 865 P.2d at 323 (quoting Strickland, 466 U.S. at 691, 104 S. Ct. at 2066). A decision "not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgment.'" Id. Moreover, "[a] decision not to call a witness will not generally constitute ineffective assistance of counsel" Id. at 1145, 865 P.2d at 328.

Moreover, a defendant is not entitled to a particular "relationship" with his attorney. Morris v. Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983). There is no requirement for any specific amount of communication as long as counsel is reasonably effective in his representation. See Id.

Indeed, to establish a claim of ineffective assistance of counsel for advice regarding a guilty plea, a defendant must show "gross error on the part of counsel." Turner v. Calderon, 281 F.3d 851, 880 (9th Cir. 2002). A plea of guilty is presumptively valid, particularly where it is entered into on the advice of counsel, and the burden is on a defendant to show that the plea was not voluntarily entered. Bryant, 102 Nev. at 272, 721 P.2d at 368 (citing Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)); Jezierski v. State, 107 Nev. 395, 397, 812 P.2d 355, 356 (1991). Ultimately, while it is counsel's duty to candidly advise a defendant regarding a plea offer, the decision of whether or not to accept a plea offer is the defendant's. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 163 (2002).

Again, Petitioner's claims are bare and naked assertions so devoid of meaning that the State cannot effectively respond. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Petitioner has offered no specific allegations to support his claims. Petitioner makes a general allegation of failure to investigate. He fails to specify whose phone records counsel should have obtained or which witnesses he should have contacted. If they were Petitioner's phone records and Petitioner's witnesses, then Petitioner would know exactly what was contained in the phone records as well as the names and contact information for his witnesses, which he should have provided to his counsel at the appropriate time. Regardless, Petitioner does not provide what any further investigation would have yielded. At no point does Petitioner argue that if an investigation was conducted, the outcome would have been different. Neither does Petitioner show what would have been obtained from interviewing his unnamed witnesses. Petitioner engages in sweeping conclusions with no specific facts to support such conclusions. Therefore, Petitioner's claims are bare and naked allegations and are denied.

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Further, Petitioner is not entitled to a particular relationship with counsel. It does not matter if Petitioner is not satisfied that counsel did not spend enough time with him as long as counsel keeps Petitioner abreast of his case and maintains sufficient communication lines to provide effective assistance of counsel. In any event, Petitioner does not allege that counsel completely refrained from communicating with Petitioner, only that he did not spend enough time with him. As such, Petitioner's claim is without merit and is denied.

D. Ground Four: Petitioner Knowingly, Intelligently and Voluntarily Entered His Plea

In Ground Four, Petitioner alleges that his counsel was ineffective for allowing Petitioner to plead guilty to a charge he was actually innocent of because he was improperly charged, and he did not understand the elements of the charges and the rights he was giving up by pleading guilty. Petition at page 19.

Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be withdrawn to correct "manifest injustice." See also Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid, and the burden is on a defendant to show that the plea was not voluntarily entered. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant entered his plea voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

To determine whether a guilty plea was voluntarily entered, the Court will review the totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721 P.2d at 367. A proper plea canvass should reflect that:

> [T]he defendant knowingly waived his privilege against self-incrimination, the right to trial by jury, and the right to confront his accusers; (2) the plea was voluntary, was not coerced, and was not the result of a promise of leniency; (3) the defendant understood the consequences of his plea and the range of punishments; and (4) the defendant understood the nature of the charge, i.e., the elements of the crime.

Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev. 774, 476 P.2d 950 (1970)). The presence and advice of counsel is a significant factor in

determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d 107, 107 (1975).

This standard requires the court accepting the plea to personally address the defendant at the time he enters his plea in order to determine whether he understands the nature of the charges to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not rely simply on a written plea agreement without some verbal interaction with a defendant. Id. Thus, a "colloquy" is constitutionally mandated and a "colloquy" is but a conversation in a formal setting, such as that occurring between an official sitting in judgment of an accused at plea. Id. However, the court need not conduct a ritualistic oral canvass. State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas "do not require the articulation of talismanic phrases," but only that the record demonstrates a defendant entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1404 (1973); see also Brady v. United States, 397 U.S. 742, 747-48, 90 S. Ct. 1463, 1470 (1970).

In this case, Petitioner's claim that his counsel was ineffective for allowing Petitioner to plead guilty to a charge he was actually innocent of because he was improperly charged, and he did not understand the elements of the charges and the rights he was giving up by pleading guilty, is belied by the answers he gave during his plea canvass. The Court's canvass of Petitioner demonstrates that Petitioner understood the charges he was facing, that no one forced, threatened or made promises to induce his plea, and that his plea was voluntary:

> THE COURT: Okay, we're going to go back on the record in C-318335, State of Nevada versus David Coil. Mr. Coil is present with his attorney, Mr. Matsuda. The Deputy District Attorneys are here on behalf of the State. For the record, we are outside the presence of the jury. Mr. Coil, it is my understanding that you wish to plead guilty in this case?
>
> THE DEFENDANT: Yes, ma'am.
>
> THE COURT: Is that what you would like to do today?
>
> THE DEFENDANT: Yes, ma'am.
>
> THE COURT: And you would like to stop this trial at this point and just --

THE DEFENDANT: Yes, ma'am.

THE COURT: -- plead guilty?

. . . .

THE COURT: Sir, have you received a copy of the Amended Information in your case?

THE DEFENDANT: Is that what it was?

MR. MATSUDA: Yeah.

THE DEFENDANT: Yes. Yes, I did.

THE COURT: So do you know the charges that you're facing in this case?

THE DEFENDANT: Yes, ma'am.

THE COURT: And as to all of those charges, how do you plead?

THE DEFENDANT: Guilty.

THE COURT: And sir, are you making this plea freely and voluntarily?

THE DEFENDANT: Yes.

THE COURT: Has anyone forced you or threatened you or anyone closely associated with you to get you to enter this plea?

THE DEFENDANT: In no way.

THE COURT: Has anyone made you any promises to get you to enter this plea?

THE DEFENDANT: No way.

THE COURT: Okay. Sir, do you understand that by pleading guilty, you're giving up certain constitutional rights?

THE DEFENDANT: Yes.

THE COURT: Sir, do you understand by pleading guilty, you're giving up certain appellate rights?

THE DEFENDANT: Yes.

. . . .

THE COURT: Sir, do you understand the sentencing is strictly up to me and no one can promise you probation leniency or any special treatment?

THE DEFENDANT: Yes.

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THE COURT: I will also be the person making the decision about whether or not these counts will run concurrent or consecutive.

THE DEFENDANT: Yes.

Recorder's Transcript of Jury Trial – Day 3 dated September 28, 2017, pages 2-7.

Petitioner also disregards the fact that a defendant can show understanding by indicating that he committed the crimes charged, which is exactly what Petitioner did when entering his plea. Petitioner heard the Court recite all of the elements for each charge and proceeded to admit that he committed each of the crimes charged:

THE COURT: Sir in regards to count 1, are you pleading guilty to because in truth and in fact on or between October 16th of 2015 and August 23rd of 2016, here in Clark County, Nevada, you did willfully, unlawfully and feloniously induce, cause and/or recruit and/or obtain and/or maintain IP, a child under 18 years of age to engage in prostitution and/or to enter in any place within the state in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct or prostitution? Did you do that?

THE DEFENDANT: Yes.

THE COURT: In regards to count 2, did you on or -- is it true and in fact on or between October 16th of 2015 and August 6th of 2016, here in Clark County, you willfully and up lawfully solicited IP, a minor, by word, gesture or any other means to engage in sexual conduct, to wit: By touching and/or rubbing your penis with her hands and her bare genital opening for a fee in the amount of $200? Did you do that?

THE DEFENDANT: Yes.

THE COURT: Sir, in regards to count 3, here in Clark County, you did on or between October 15th, 2015 and August 6th of 2016 willfully and unlawfully solicit IP, a minor, by word, gesture or any other means to engage in sexual conduct, that being touching and/or rubbing your penis for a fee of $100?

THE DEFENDANT: Yes.

THE COURT: Are you pleading guilty to count 4 because in truth and in fact on or about October 15th of 2015 and between August 6th of 2016, here in Clark County, you did willfully and unlawfully solicit IP, a minor, by word, gesture or any other means to engage in sexual conduct, that being touching and/or rubbing your penis for a fee of $100?

THE DEFENDANT: Yes.

THE COURT: And in regards to count 5, are you pleading guilty because in truth and in fact on or between October 15th of 2015 and August 6th of 2016, you did willfully and unlawfully solicit IP, a

> minor, in Clark County by word, gesture or any other means to engage in sexual conduct, that being touching and/or rubbing of your penis for a fee of $100?
>
> THE DEFENDANT: Yes.
>
> THE COURT: And are you pleading guilty because -- to count 6 because in truth and in fact, on or between August 22nd of 2016 and August 23rd of 2016, here in Clark County, you did willfully, unlawfully and feloniously attempt to induce, cause or recruit Tiff, a person you believed to be a child under the 18 of age [sic] while you having the specific intent that Tiff engage in prostitution?
>
> THE DEFENDANT: Yes.
>
> THE COURT: And in regards to count 7, are you pleading guilty because in truth and in fact on or between August 22nd of 2016 and August 23rd of 2016, here in Clark County, you did willfully, unlawfully and feloniously induce O. Deeds to unlawfully become a prostitute and/or to continue to engage in prostitution?
>
> THE DEFENDANT: Yes.
>
> **THE COURT: Sir, do you have any questions you would like to ask me or your attorney before I accept these pleas?**
>
> **THE DEFENDANT: No.**

Recorder's Transcript of Jury Trial – Day 3 dated September 28, 2017, pages 7-9.

By admitting that he committed the crimes charged, Petitioner indicated that he understood the nature of the charges against him. Therefore, whether Petitioner was informed of the elements of these crimes is immaterial as to whether he knowingly and voluntarily entered his plea.

Further, Petitioner's claim that he was not advised of his rights until after accepting his guilty plea is incorrect. Before entering his guilty plea, the Court advised Petitioner of his many constitutional rights. Then, after accepting his plea, the Court advised Petitioner of several additional rights before finding that his plea was freely and voluntarily made. Petitioner cites to no authority or case law that says this method of canvassing is incorrect. Petitioner affirmed that he understood the rights he was forfeiting by pleading guilty and was entering his plea voluntarily:

> THE COURT: And sir, do you understand by entering this plea, you are waiving your Constitutional privilege against self-incrimination, including the right to refuse to testify at trial? You're waiving the right to testify at trial if you plead guilty?

THE DEFENDANT: Isn't -- isn't this my trial?

MR. MATSUDA: Yes. She's just asking you, do you understand that you're waiving your right because of your decision right now.

THE COURT: If you plead guilty, there's not going to be a trial.

THE DEFENDANT: Oh, yeah, that's fine.

THE COURT: So you won't be allowed to testify at trial; do you understand that?

THE DEFENDANT: Okay, the opposite, yes, yes.

THE COURT: Okay. And do you understand that at that trial the State would not have been allowed to comment on your refusal to testify? If you go -- went to trial, I would not allow the State to say anything if you chose not to testify.

MR. MATSUDA: In order to exercise your 5th amendment, they can't comment saying well, he didn't say anything.

THE DEFENDANT: Okay.

MR. MATSUDA: Do you understand?

THE DEFENDANT: Yes, I do.

THE COURT: Do you understand you're waiving your right to a trial that's free of excessive pretrial publicity prejudicial to your defense?

THE DEFENDANT: You went fast on me, I'm sorry.

THE COURT: Do you understand if you enter this plea, you are waiving your constitutional rights to a trial by an impartial jury that's free of excessive pretrial publicity prejudicial to your defense?

THE DEFENDANT: Yes.

THE COURT: Do you understand you would be waiving your constitutional right to confront and cross-examine any witnesses that would testify against you?

THE DEFENDANT: Yes.

THE COURT: You would be waiving your constitutional right to subpoena witnesses to testify on your own behalf.

THE DEFENDANT: Yes.

THE COURT: You would be waiving your constitutional right to testify in your own defense?

THE DEFENDANT: Yes.

THE COURT: You would be waiving your right to appeal this conviction with the assistance of an attorney, either appointed or retained, unless specifically reserved in writing and agreed upon? So you're waiving your right to appeal this conviction?

THE DEFENDANT: Oh, yes.

THE COURT: You're waiving your right to a direct appeal of any challenge based upon -- hold on -- you're waiving your right to a direct appeal of this conviction, including any challenges based upon reasonable constitutional jurisdictional or other grounds that challenge the legality of these proceedings. Do you understand that? You're waiving your right to an appeal in this case.

THE DEFENDANT: Yes.

. . . .

THE COURT: And is this plea voluntary?

THE DEFENDANT: Yes.

THE COURT: Is there anything else you need to add, State?

MR. MARTINEZ: Only that this is without negotiations with the State.

THE COURT: Okay. And just for the record, sir, do you understand that this plea is without any negotiation from State, so at sentencing the State will have the full right to argue for any legal sentence on each of these charges?

THE DEFENDANT: Yes.

THE COURT: And the State will have the full right to argue whether or not these charges run consecutive or concurrent?

THE DEFENDANT: Yes.

THE COURT: Do you have any questions you would like to ask myself or your attorney before I accept this plea?

THE DEFENDANT: No. I'd just like to make a statement when I have a chance.

THE COURT: Okay, you can make a statement at sentencing.

THE DEFENDANT: Oh, okay, okay.

THE COURT: Anything else?

THE DEFENDANT: No.

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//

> THE COURT: Sir, the Court finds that this plea is free and voluntarily made, that you understand the nature of the offense and the consequences of your actions, and based upon that, the State will -- I mean, I'm sorry, the Court will refer this to the Division of Parole and Probation, set it over for sentencing on?
>
> THE CLERK: November 8th at 8:30.

Recorder's Transcript of Jury Trial – Day 3 dated September 28, 2017, pages 11-15.

Thus, the record clearly demonstrates that Petitioner's plea was knowingly and voluntarily entered, that he admitted guilt to the charges to which he pled guilty, and that he understood the elements of the charges and the rights he was waiving by entering his plea. Therefore, this claim is denied.

1. Petitioner was not factually innocent

Actual innocence means factual innocence not mere legal insufficiency. Bousley v. United States, 523 U.S. 614, 623, 118 S.Ct. 1604, 1611 (1998); Sawyer v. Whitley, 505 U.S. 333, 338-39, 112 S.Ct. 2514, 2518-19 (1992). To establish actual innocence of a crime, a petitioner "must show that it is more likely than not that no reasonable juror would have convicted him absent a constitutional violation." Calderon v. Thompson, 523 U.S. 538, 560, 118 S. Ct. 1489, 1503 (1998) (emphasis added) (quoting Schlup v. Delo, 513 U.S. 298, 316, 115 S. Ct. 851, 861 (1995)). Actual innocence is a stringent standard designed to be applied only in the most extraordinary situations. Pellegrini, 117 Nev. at 876, 34 P.3d at 530.

"Without any new evidence of innocence, even the existence of a concededly meritorious constitutional violation is not itself sufficient to establish a miscarriage of justice that would allow a habeas court to reach the merits of the barred claim." Schlup, 513 U.S. at 316, 115 S. Ct. at 861. The Eighth Circuit Court of Appeals has "rejected free-standing claims of actual innocence as a basis for habeas review stating, '[c]laims of actual innocence based on newly discovered evidence have never been held to state a ground for federal habeas relief absent an independent constitutional violation occurring in the underlying state criminal proceeding.'" Meadows v. Delo, 99 F.3d 280, 283 (8th Cir. 1996) (citing Herrera v. Collins, 506 U.S. 390, 400, 113 S. Ct. 853, 860 (1993)). Furthermore, the newly discovered evidence suggesting the defendant's innocence must be "so strong that a court cannot have confidence

in the outcome of the trial." Schlup, 513 U.S. at 315, 115 S. Ct. at 861. Once a defendant has made a showing of actual innocence, he may then use the claim as a "gateway" to present his constitutional challenges to the court and require the court to decide them on the merits. Id.

In this case, Petitioner cannot establish that he is actually innocent because he is not alleging newly discovered facts. Actual innocence means factual innocence not mere legal insufficiency. Petitioner claims that he is not guilty of sex trafficking, but "facilitating" sex trafficking. Petitioner does not contest the other six (6) charges to which he plead guilty. Petition at page 20.

Petitioner was not charged with facilitating sex trafficking. Petitioner was charged with Sex Trafficking of a Child under 18 Years of Age (Category A Felony – NRS 201.300.2a1-NOC 58004) because he did willfully, unlawfully, and feloniously induce, cause, and/or recruit and/or obtain and/or maintain, IP, a child under eighteen (18) years of age, to engage in prostitution and/or to enter any place within this State in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct or prostitution. Petitioner does not get to choose what crimes to which he pleads guilty.

In Righetti, the Defendant was charged with murder under three theories, and plead guilty to murder, but only to two of the three theories alleged. Righetti v. Eighth Judicial Dist. Court, 388 P. 3d 643, 644 (2017). Defense did not notify the State of Defendant's position, and the State was not aware that the Defendant was only pleading guilty to certain theories. Id. The Court initially accepted the plea, but once the miscommunication surfaced the court revoked its acceptance and set the matter for trial. Id. at 645. In response, Defendant sought a Writ of Prohibition or Mandamus to enforce his plea. Id. The Nevada Supreme Court held that the district court properly revoked its acceptance of Defendant's guilty plea. Id. at 649. The Court reasoned that the State has an almost exclusive right to decide how to charge a criminal defendant, and while a criminal defendant has a statutory right to tender a guilty plea, he does not have a right to plead guilty a la carte to avoid the State's charging decisions. Id. at 647 citing Parsons v. Fifth Judicial Dist. Court, 110 Nev. 1239, 1244, 885 P.2d 1316, 1320 (1994), overruled on other grounds by Parsons v. State, 116 Nev. 928, 936, 10 P.3d 836. 841 (2000).

Like Righetti, Petitioner had the choice to either go to trial or plead guilty to the negotiated charges as alleged. Furthermore, if Petitioner wanted to be charged with facilitating sex trafficking, he could have offered it as an instruction at trial, yet he chose to plead guilty. "A guilty plea is more than a confession that the accused did various acts. It is an admission that he committed the crimes charged against him." United States v. Broce, 488 U.S. 563, 570, 109 S. CT. 757, 102 L. Ed. 2d. 927 (1989). A defendant who makes a counseled and voluntary guilty plea admits both the acts described in the indictment and the legal consequences of those acts. Righetti, 388 P. 3d at 648 quoting United States v. Allen, 24 F.3d 1180, 1183 (10th Cir. 1994). Furthermore, Petitioner admitted to committing the act of sex trafficking during his plea canvass:

> THE COURT: Sir in regards to count 1, are you pleading guilty to because in truth and in fact on or between October 16th of 2015 and August 23rd of 2016, here in Clark County, Nevada, you did willfully, unlawfully and feloniously induce, cause and/or recruit and/or obtain and/or maintain IP, a child under 18 years of age to engage in prostitution and/or to enter in any place within the state in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct or prostitution? Did you do that?
>
> DEFENDANT: Yes.

Therefore, it was proper to charge Petitioner with Sex Trafficking of a Child under 18 Years of Age and Petitioner is not actually innocent of this offense. This claim is without merit and is denied.

III. PETITIONER FAILS TO DEMONSTRATE HE IS ENTITLED TO APPOINTMENT OF COUNSEL

Under the United States Constitution, the Sixth Amendment provides no right to counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S.Ct. 2546, 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada Supreme Court similarly observed, "[t]he Nevada Constitution…does not guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution's right to counsel provision as being coextensive with the Sixth Amendment to the United States Constitution." McKague specifically held that, with the exception of NRS 34.820(1)(a)

(entitling appointed counsel when petitioner is under a sentence of death), one does not have "any constitutional or statutory right to counsel at all" in post-conviction proceedings. Id. at 164, 912 P.2d at 258.

The Nevada Legislature has, however, given courts discretion to appoint post-conviction counsel so long as "the court is satisfied that the allegation of indigency is true and the petition is not dismissed summarily." NRS 34.750.

NRS 34.750 reads:

> A petition may allege that the Defendant is unable to pay the costs of the proceedings or employ counsel. If the court is satisfied that the allegation of indigency is true and the petition is 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:
>
> (a) The issues are difficult;
>
> (b) The Defendant is unable to comprehend the proceedings; or
>
> (c) Counsel is necessary to proceed with discovery.

More recently, the Nevada Supreme Court examined whether a district court appropriately denied a defendant's request for appointment of counsel based upon the factors listed in NRS 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In Renteria-Novoa, the petitioner had been serving a prison term of eighty-five (85) years to life. Id. at 75, 391 P.3d at 760. After his judgment of conviction was affirmed on direct appeal, the petitioner filed a pro se habeas corpus petition and requested counsel be appointed. Id. The district court ultimately denied both the petition and the request for appointment of counsel. Id. In reviewing the district court's decision, the Renteria-Novoa Court examined the NRS 34.750 factors and concluded the district court's decision should be reversed and remanded. Id. The Court explained the petitioner was indigent, his petition could not be summarily dismissed, and he had, in fact, satisfied the statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor, the Court concluded that because petitioner represented he had issues with understanding the English language—which was corroborated by his use of an interpreter at his trial—that was enough to indicate the petitioner could not comprehend the proceedings. Id. Moreover, the

petitioner had demonstrated that the consequences he faced—a minimum eighty-five (85) year sentence—were severe and his petition may have been the only vehicle for which he could raise his claims. Id. at 76-77, 391 P.3d at 761-62. Finally, the petitioner's ineffective assistance of counsel claims may have required additional discovery and investigation beyond the record. Id.

A review of Petitioner's instant Petition, and his request, demonstrate that Petitioner does not meet the NRS 34.750 factors. First, Petitioner includes four (4) separate Grounds, each of which are bare and naked allegations and lacking in specificity. Therefore, because the issues raised by Petitioner are not suitable for review, the instant Petition is summarily denied, and does not entitle Petitioner to discretionary appointment of counsel. NRS 34.750(a); Renteria-Novoa, 133 Nev. at 76, 391 P.3d at 760-61.

Second, Petitioner has formulated four (4) separate claims for relief. Petitioner has not, and does not now, argue that he has any difficulties with the English language. Therefore, it is clear that Petitioner, while unhappy with the results of his underlying case, comprehends the proceedings, thus not necessitating the discretionary appointment of counsel. NRS 34.750(b); Renteria-Novoa, 133 Nev. at 76, 391 P.3d at 760-61.

Finally, Petitioner has not alleged what specific further discovery is necessary in this matter. Instead, Petitioner's request for counsel seems to be an assertion that the prison law library is insufficient, and/or that counsel would be helpful. However, neither of these assertions are statutory factors to be considered regarding the discretionary appointment of counsel. See NRS 34.750; see also Renteria-Novoa, 133 Nev. 75, 391 P.3d 760. Therefore, because Petitioner has not alleged what further discovery is necessary, and because his pleadings have shown his ability to formulate his claims, Petitioner does not show that counsel is necessary.

Because the statutory factors and the Renteria-Novoa analysis weigh against the discretionary appointment of counsel, Petitioner's Motion for the Appointment of Counsel is denied.

//

IV. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING

NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

> 1. The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required. A petitioner must not be discharged or committed to the custody of a person other than the respondent *unless an evidentiary hearing is held.*
>
> 2. If the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, he shall dismiss the petition without a hearing.
>
> 3. If the judge or justice determines that an evidentiary hearing is required, he shall grant the writ and shall set a date for the hearing.

The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual allegations, which, if true, would entitle him to relief unless the factual allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that "[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

It is improper to hold an evidentiary hearing simply to make a complete record. *See* State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) ("The district court considered itself the 'equivalent of . . . the trial judge' and consequently wanted 'to make as complete a record as possible.' This is an incorrect basis for an evidentiary hearing."**)**. Further, the United States Supreme Court has held that an evidentiary hearing is not required simply because counsel's actions are challenged as being unreasonable strategic decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge post hoc rationalization for counsel's decision making that contradicts the available evidence of counsel's actions, neither may they insist counsel confirm every aspect of the strategic basis

for his or her actions. Id. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Id. (*citing* Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the *objective* reasonableness of counsel's performance, not counsel's *subjective* state of mind. 466 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

An evidentiary hearing is not warranted in this case. An expansion of the record is unnecessary because Petitioner has failed to assert any meritorious claims, counsel's testimony would not aid Petitioner, and the Petition can be disposed of with the existing record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; Mann, 118 Nev. at 356, 46 P.3d at 1231. Petitioner does not explain why expansion of the record is necessary in this case, much less make any specific assertion of what additional information would need to be introduced at an evidentiary hearing to allow resolution of Petitioner's claims. Each of Petitioner's claims may be resolved without expanding the record. Therefore, Petitioner's request for an evidentiary hearing is denied.

ORDER

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

Dated this 7th day of December, 2021

F28 046 6948 36D9
Tierra Jones
District Court Judge

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

BY 
TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #05734

hjc/SVU

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

David Coil, Plaintiff(s)	CASE NO: A-21-839320-W
vs.	DEPT. NO. Department 10
Calvin Johnson, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 12/7/2021

Taleen Pandukht	taleen.pandukht@clarkcountyda.com

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	**COURT MINUTES**	**November 08, 2021**

A-21-839320-W David Coil, Plaintiff(s)
vs.
Calvin Johnson, Defendant(s)

November 08, 2021 **8:30 AM** **Petition for Writ of Habeas Corpus**

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES PRESENT: Goodman, Laura Attorney

JOURNAL ENTRIES

- Mr. Coil not present and in the Nevada Department of Corrections. Matter submitted on the pleadings. Court Stated its Findings and ORDERED, Petition DENIED. State to prepare Findings of Facts and Conclusions of law, Consistent with their Response.

NDC

Clerk's Note: A copy of this minute order mailed to Mr. Coil I.D. #1189948 HDSP P.O. Box 650 Indian Springs, NV, 89070 /tb

Certification of Copy

State of Nevada
County of Clark } **SS:**

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

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

DAVID COIL,

Plaintiff(s),

vs.

CALVIN JOHNSON; STATE OF NEVADA,

Defendant(s),

Case No: A-21-839320-W

Dept No: XI

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 18 day of January 2022.

Steven D. Grierson, Clerk of the Court

Amanda Hampton, Deputy Clerk