

Steven D. Grierson

District Court
Clark County, Nevada

Sammie Nunn
Appellant

v.

State of Nevada
Respondent

Electronically Filed
Oct 21 2021 04:13 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-21-835110-W

Dept No: XXI

Notice of Appeal

Comes Now Appellant, Sammie Lee Nunn III, humbly to this Honorable Court of The STATE of Nevada, to Appeal Findings of facts, conclusions of Law and Order hearing Dated September 7, 2021. Time of Hearing 1:30pm in the Clark County District Court of Nevada. This comes in response to Appellant having ineffective assistance of Counsel and being from Seattle Washington, ignorant to Nevada Law. Appellant was transferred to Nevada to work at the Tesla plant and while doing a job in Las Vegas was aggressively harassed and robbed at a store where he was forced to utilize self defense. Appellant is a member of the International Brotherhood of Electrical Workers Union Local 595. Appellants Attorney turned down numerous leads and evidence and witnesses who were willing to come forward. This is a violation of Appellants 5th, 8th and 14th Amendment.

RECEIVED

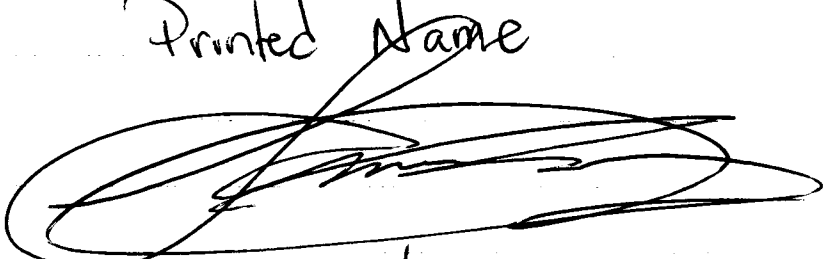
OCT 14 2021

CLERK OF THE COURT

and Rights to the Constitution. Appellant is located at Pioche Conservation Camp and is not afforded the opportunity to utilize a legal law library and would need the assistance of effective counsel competent enough to file the proper paperwork at the proper time and confer with Appellant timely opportunity to correctly appeal this case. There was also a money issue in the case where Appellant was accused of wanting 50 cents from victim even though there is bank records showing Appellant had funds at the time of incident leaving no logical reason to beg or ask for 50 cents. Appellant and Counsel's breakdown in their relationship has rendered a perfect example of a miscarriage of justice leaving his conviction unreliable. This comes from all pleadings, motions and court ~~records~~ records available in the case. Declarant subject to the penalty of perjury and all abiding laws in the State of Nevada.

Dated 9th month October year 2021

Sammy Nunn
Printed Name



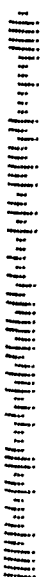
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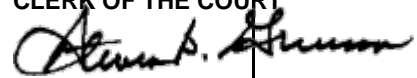
SAMMIE NUNN # 1226304
P.O. BOX 509
PIOCHE, NV 89043

LAS VEGAS NV 890
12 OCT 2021 PM 5 L

CLERK OF THE COURT
200 LEWIS AVE, 3RD FLOOR
LAS VEGAS, NV 89155

89101-630000





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6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**
9

10 SAMMIE NUNN, III,

11 Plaintiff(s),

12 vs.

13 STATE OF NEVADA,

14 Defendant(s),
15

Case No: A-21-835110-W

Dept No: XXI

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Sammie Nunn

20 2. Judge: Tara Clark Newberry

21 3. Appellant(s): Sammie Nunn

22 Counsel:

23 Sammie Nunn #1226304
24 P.O. Box 509
Pioche, NV 89043

25 4. Respondent (s): State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.
Las Vegas, NV 89155-2212

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: May 24, 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 15 day of October 2021.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann

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

cc: Sammie Nunn

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-21-835110-W

Sammie Nunn, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

§
§
§
§
§

Location: **Department 21**
 Judicial Officer: **Clark Newberry, Tara**
 Filed on: **05/24/2021**
 Cross-Reference Case Number: **A835110**

CASE INFORMATION

Related Cases

C-18-336184-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Statistical Closures

09/20/2021 Summary Judgment

Case Status: **09/20/2021 Closed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-21-835110-W
 Court Department 21
 Date Assigned 05/24/2021
 Judicial Officer Clark Newberry, Tara

PARTY INFORMATION

Plaintiff **Nunn, Sammie**

Lead Attorneys

Pro Se

Defendant **State of Nevada**







Wolfson, Steven B
Retained
 702-671-2700(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

EVENTS

05/24/2021	 Inmate Filed - Petition for Writ of Habeas Corpus Party: Plaintiff Nunn, Sammie [1] Post Conviction
05/24/2021	 Order for Petition for Writ of Habeas Corpus [2] Order for Petition for Writ of Habeas Corpus
07/06/2021	 Response Filed by: Defendant State of Nevada [3] State's Response to Petitioner's Pro Per Third Petition for Writ of Habeas Corpus
08/27/2021	 Clerk's Notice of Hearing [5] Notice of Hearing
09/01/2021	 Response Filed by: Plaintiff Nunn, Sammie [6] State's Response and Motion to Strike Amended Supplementary Motion to Amended Second habeas Corpus Filed Within One year of Judgment of Conviction on January 24, 2020
09/20/2021	 Finding of Fact and Conclusions of Law Filed By: Defendant State of Nevada

CASE SUMMARY
CASE NO. A-21-835110-W

[7] Findings of Fact and Conclusions of Law and Order

09/23/2021



Notice of Entry of Findings of Fact, Conclusions of Law

Filed By: Defendant State of Nevada

[8] Notice of Entry of Findings of Fact, Conclusions of Law and Order

10/14/2021



Notice of Appeal

[9] Notice of Appeal

10/15/2021



Case Appeal Statement

Filed By: Plaintiff Nunn, Sammie

Case Appeal Statement

DISPOSITIONS

09/20/2021

Order of Dismissal (Judicial Officer: Clark Newberry, Tara)

Debtors: Sammie Nunn (Plaintiff)

Creditors: State of Nevada (Defendant)

Judgment: 09/20/2021, Docketed: 09/21/2021

HEARINGS

09/07/2021



Petition for Writ of Habeas Corpus (1:30 PM) (Judicial Officer: Clark Newberry, Tara)

Denied;

Journal Entry Details:

Court noted the Deft. was in the custody of the Nevada Department of Corrections (NDC) and Advised the matter would be decided without oral argument. Court noted this was a Pro Per filing and Advised it procedurally concurred with the State's position that the Petition for Writ of Habeas Corpus was denied as it was procedurally barred. Therefore, COURT ORDERED petition DENIED. COURT FINDS pursuant to NRS 34.726-1 a petition that challenges the Judgment of Conviction or sentence must be filed within one year; COURT FINDS the operative Judgment of Conviction was filed on June 20, 2021, an Amended Judgment of Conviction was filed on November 18, 2021 and the Writ was filed on May 24, 2021, thus the writ is barred. Court DIRECTED the State to prepare the order. Court additionally noted for the record there was a procedural work around when leave was requested, however, in this case the Court did not grant leave nor was it requested prior to the Petitioner providing a supplement, therefore, COURT FURTHER ORDERED, the August 27, 2021 Amended Supplementary Motion to Amended Second Habeas Corpus Filed within One Year of JOC on January 24th, 2020 hereby STRICKEN from the record. NDC CLERK'S NOTE: Subsequent to hearing, COURT ORDERED, the State's Motion to Strike Amended Supplementary Motion to Amended Second Habeas Corpus filed within One Year of Judgment of Conviction on January 24, 2020 GRANTED; thus the September 28, 2021 hearing VACATED. // cbm 09-15-2021 CLERK S NOTE: A copy of this minute order has been mailed to: Sammie Nunn, #1226304, Pioche Conservation Camp, 1 Hardtimes Road, P.O. Box 509, Pioche, Nevada 89043. // cbm 09-15-2021;

09/28/2021

CANCELED Motion (1:30 PM) (Judicial Officer: Clark Newberry, Tara)

Vacated

Plaintiff's Amended Supplementary Motion to Amended Second Habeas Corpus Filed within One Year of JOC on January 24th, 2020

DISTRICT COURT CIVIL COVER SHEET

A-21-835110-W

County, Nevada

Dept. 21

Case No. _____

(Assigned by Clerk's Office)

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

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

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

May 24, 2021

Date

PREPARED BY CLERK

Signature of initiating party or representative

See other side for family-related case filings.

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

DISTRICT COURT
CLARK COUNTY, NEVADA

SAMMIE NUNN,
#2751864

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-21-835110-W

DEPT NO: XXI

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: SEPTEMBER 7, 2021
TIME OF HEARING: 1:30 PM

THIS CAUSE having come on for hearing before the Honorable TARA CLARK-NEWBERRY, District Judge, on the 7th day of September, 2021, the Petitioner not being present, proceeding in pro per, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through LAURA GOODMAN, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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PROCEDURAL HISTORY

On November 14, 2018, Sammie Nunn (hereinafter "Petitioner") was charged by way of Indictment with one count of BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony – NRS 200.481) and one count of BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.481) for his actions on or between May 27, 2018 and June 3, 2018.

On June 6, 2019, pursuant to a Guilty Plea Agreement ("GPA"), Petitioner pled guilty to one count of BATTERY WITH USE OF A DEADLY WEAPON. As part of the GPA, the parties agreed that the State would not oppose probation and would not oppose Petitioner's release on house arrest after the entry of Petitioner's plea. The parties also stipulated to an underlying sentence of two (2) to five (5) years in the Nevada Department of Corrections ("NDOC"). GPA at 1. The Court canvassed Petitioner and accepted Petitioner's guilty plea.

On June 11, 2019, Petitioner was adjudged guilty and was sentenced to a minimum of forty-eight (48) to one hundred twenty (120) months in NDOC. Petitioner's sentence was suspended, and Petitioner was placed on probation for a term not to exceed five (5) years. Petitioner was also placed on house arrest.

On July 10, 2019, a Violation Report was filed, indicating Petitioner had violated the terms of his probation by failing to abide by the curfew restrictions and by consuming controlled substances. While the revocation proceedings were ongoing, on July 15, 2019, Petitioner filed a Motion to Dismiss Counsel and Appoint Alternate Counsel. Petitioner's Motion to Dismiss Counsel was granted, for the limited purpose of having alternate counsel to determine whether there were grounds to withdraw Petitioner's guilty plea.

On October 10, 2019, Petitioner filed a Post-Conviction Petition for Writ of Habeas Corpus (his "first Petition"). In his first Petition, Petitioner raised a single argument: a new witness, E. McKonnen, could testify to Petitioner's actual innocence. First Petition at 5-6. The State filed its Response to Petitioner's first Petition on October 16, 2019. The Court denied Petitioner's first Petition on November 5, 2019.

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1 On November 14, 2019, the Court conducted a hearing regarding the revocation of
2 Petitioner's probation. Following arguments by the parties, the Court found that Petitioner
3 violated his probation and revoked the same. The Court modified Petitioner's sentence of
4 imprisonment to thirty-six (36) to one hundred twenty (120) months in NDOC. The Court gave
5 Petitioner five hundred ten (510) days credit for time served. Petitioner's Amended Judgment
6 of Conviction was filed on November 18, 2019.

7 On November 21, 2019, Petitioner noticed his appeal from his Amended Judgment of
8 Conviction. On March 5, 2021, the Nevada Court of Appeals affirmed Petitioner's Amended
9 Judgment of Conviction. Remittitur issued on March 31, 2021.

10 On January 24, 2020 (while his direct appeal was pending), Petitioner filed his second
11 Post-Conviction Petition for Writ of Habeas Corpus (his "second Petition"). The State filed its
12 Response and Motion to Dismiss that second Petition on February 25, 2020. On March 10,
13 2020, Petitioner – through counsel – filed a "Supplementary Motion for Evidentiary Hearing."
14 The State filed its Response to that Supplementary Motion on March 31, 2020.

15 On April 29, 2021, Petitioner filed a Notice of Appeal, referencing the Court's denial
16 of Petitioner's first Petition on November 5, 2019. The Nevada Supreme Court dismissed
17 Petitioner's appeal as untimely on May 21, 2021. Remittitur issued on June 17, 2021.

18 On May 10, 2021, Petitioner filed another Notice of Appeal, alleging that he had
19 expired his sentence, and asking the Nevada Supreme Court to release him from custody. The
20 Nevada Supreme Court dismissed that appeal on May 26, 2021, citing a lack of any appealable
21 order. Remittitur issued on June 22, 2021.

22 On May 24, 2021, Petitioner filed his third Post-Conviction Petition for Writ of Habeas
23 Corpus (his "Third Petition"). The State responded on July 6, 2021.

24 On August 27th, 2021, Defendant filed the instant Amended Motion. The
25 State's responded, and moved to strike the Amended Motion, on September 1, 2021. On
26 September 7, 2021, this Court decided the Third Petition and Amended Motion as follows.

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FACTUAL FINDINGS

On May 27, 2018, Prince Alidu (the "Victim") was at Your Stop Liquor, a convenience store, when he was approached by Petitioner, who asked Victim for fifty (50) cents. Grand Jury Transcript, Tuesday, November 6, 2018 ("GJT") at 16. Victim told Petitioner he did not have the money, after which Petitioner's female friend angrily approached Victim. Id. Petitioner then came back to Victim and called him names. Id. at 17. Victim asked Petitioner to leave him alone, and Petitioner left to the nearby apartment complex. Id. A few minutes later, however, Petitioner came back with a tool in his hand. Id. Victim described the tool as being approximately one foot long. Id. at 17-18. Petitioner hit Victim in the face with the tool, resulting in significant bleeding and an eventual scar. Id.

Officer Vesperas was in the area of Your Stop Liquor on May 27, 2018, when he was flagged down by a pedestrian. GJT at 6-7. That pedestrian directed Vesperas's attention to another individual down the street. Id. at 7. The individual to which Vesperas was directed had a foot-long wrench in his hand. Id. Vesperas identified that individual as Petitioner. Id. at 8.

Petitioner told Vesperas that he had been attacked and had hit an attacker with the wrench. GJT at 8. However, Vesperas did not notice any injuries that would require medical attention, and Petitioner did not complain of any such injuries. Id. at 9.

Officer Hawkins also responded to the area of Your Stop Liquor on May 27, 2018. GJT at 11. Hawkins came into contact with Victim, who was bleeding from his head. Id. at 12. Victim identified Petitioner to Hawkins at the scene of the interaction. Id.

On June 3, 2018, Victim was again outside Your Stop Liquor when he was approached by Petitioner. GJT at 20. At this encounter, Petitioner pulled out a handgun and again hit the Victim over the head. Id. at 21.

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ANALYSIS

I. THE THIRD PETITION IS PROCEDURALLY BARRED

Pursuant to NRS 34.726(1), "a Petition that challenges the validity of a judgment or sentence must be filed *within 1 year of the entry of the judgment of conviction...*" (Emphasis added). The Supreme Court of Nevada 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). As per the language of the statute, 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 filed. 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. Additionally, that 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.

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1 Petitioner's Judgment of Conviction was filed on June 20, 2019. While Petitioner *did*
2 challenge his Amended Judgment of Conviction via appeal, that challenge dealt with the
3 propriety of Petitioner's revocation from probation – it did not challenge the validity of
4 Petitioner's conviction – therefore, the one-year time-bar began to run at the time Petitioner's
5 original Judgment of Conviction was filed. As such, Petitioner had until June 20, 2020, to file
6 a timely post-conviction Habeas Petition. NRS 34.726. The instant Petition was not filed until
7 May 24, 2021, nearly a full year after Petitioner's time had expired. Therefore, pursuant to
8 NRS 34.726, Petitioner's Third Petition is untimely, and should be dismissed absent a showing
9 of good cause and prejudice.

10 **A. Petitioner's Claims are Successive, or Constitute an Abuse of the Writ**

11 NRS 34.810(2) explains:

12 A second or successive Petition *must* be dismissed if the Judge or Justice
13 determines that it fails to allege new or different grounds for relief and that the
14 prior determination was on the merits or, if new and different grounds are
15 alleged, the Judge or Justice finds that the failure of the Petitioner to assert those
grounds in a prior Petition constituted an abuse of the Writ.

16 (emphasis added). Second or successive Petitions are Petitions that either fail to allege new or
17 different grounds for relief and the grounds have already been decided on the merits or that
18 allege new or different grounds, but a Judge or Justice finds that the Petitioner's failure to
19 assert those grounds in a prior Petition would constitute an abuse of the Writ. Second or
20 successive Petitions will only be decided on the merits if the Petitioner can show good cause
21 and prejudice. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

22 The Nevada Supreme Court has stated: "Without such limitations on the availability of
23 post-conviction remedies, prisoners could Petition for relief in perpetuity and thus abuse post-
24 conviction remedies. In addition, meritless, successive and untimely Petitions clog the Court
25 system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950.
26 The Nevada Supreme Court recognizes that "[u]nlike initial Petitions which certainly require
27 a careful review of the record, successive Petitions may be dismissed based solely on the face
28 of the Petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words,

1 if the claim or allegation was previously available with reasonable diligence, it is an abuse of
2 the Writ to wait to assert it in a later Petition. McClesky v. Zant, 499 U.S. 467, 497-498 (1991).
3 Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

4 As stated *supra*, this is Petitioner's *third* post-conviction Habeas Petition. Each of
5 Petitioner's first two Petitions were previously adjudicated on the merits; therefore, the instant
6 Petition is successive, and must be dismissed. NRS 34.810(2). Further, to the extent that
7 Petitioner raises new claims that were not raised in Petitioner's earlier Petitions, Petitioner's
8 third Petition amount to an abuse of the Writ and must likewise be dismissed. Id.

9 Because the instant Petition is successive and/or an abuse of the Writ, this Court need
10 not reach the merits of the instant Petition and summarily dismisses the same.

11 **B. Petitioner's Claims are Subject to the Law of the Case Doctrine**

12 "The law of a first appeal is law of the case on all subsequent appeals in which the facts
13 are substantially the same." Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting
14 Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). "The doctrine of the law of the
15 case cannot be avoided by a more detailed and precisely focused argument subsequently made
16 after reflection upon the previous proceedings." Id. at 316, 535 P.2d at 799. Under the law of
17 the case doctrine, issues previously decided on direct appeal may not be reargued in a Habeas
18 Petition. Pellegrini v. State, 117 Nev. at 879, 34 P.3d at 532 (citing McNelson v. State, 115
19 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)).

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1 In the instant Petition, Petitioner raises a number of claims that have previously been
2 rejected. First, Petitioner raises a claim under Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194
3 (1963), alleging that the State withheld the record of Victim's civil proceeding against
4 Petitioner. See Third Petition at "3"- "4".¹ However, this claim is substantially the same as
5 Petitioner's claim raised in his second Petition. See Second Petition at 2-7 (quoting transcripts
6 from Victim's civil proceeding against Petitioner, and alleging that Petitioner was unaware of
7 the same at the time he agreed to the GPA). Therefore, as this substantive claim has already
8 been rejected, it is barred by the law of the case doctrine and is dismissed here.

9 Petitioner proceeds to include various allegations of ineffective assistance of – and
10 irreconcilable differences with – plea counsel. Third Petition at "8." However, these
11 allegations have previously been raised, and have been rejected. See, e.g., Second Petition at
12 11-12. As those claims were previously adjudicated, they cannot be re-raised in the instant
13 Petition, merely couched in a different way. Hall, 91 Nev. at 316, 535 P.2d at 799.

14 Petitioner also includes a claim of a "fundamental miscarriage of justice." Third Petition
15 at "12." However, that phrase is exclusive to claims of actual innocence – which Petitioner has
16 expressly raised, and which has been rejected, as part of Petitioner's Second Petition. See
17 Second Petition at 8-10. Therefore, this claim is likewise barred by the law of the case doctrine
18 and res judicata.²

19 C. Petitioner's Claims Fall Outside the Scope of Habeas Review

20 Under NRS 34.810(1),

21 The Court *shall* dismiss a Petition if the Court determines that:

22 (a) The Petitioner's conviction was upon a plea of guilty or guilty but
23 mentally ill and the Petition is not based upon an allegation that the plea was
involuntarily or unknowingly entered or that the plea was entered without
effective assistance of counsel.

24 ...
25 unless the Court finds both cause for the failure to present the grounds and actual
prejudice to the Petitioner.

26 ¹ The Court references the pages as labeled by Petitioner, as the organization of the instant Petition renders
27 citation to the actual page numbers unreliable.

28 ² Petitioner fails to demonstrate actual innocence, as a claim of actual innocence requires "new evidence";
however, the evidence upon which Petitioner relies is not new. Compare Third Petition at "16" with Second
Petition at 8-10.

1 (emphasis added).

2 Furthermore, the Nevada Supreme Court has held that “challenges to the validity of a
3 guilty plea and claims of ineffective assistance of trial and appellate counsel must first be
4 pursued in post-conviction proceedings.... [A]ll other claims that are appropriate for a direct
5 appeal must be pursued on direct appeal, or they will be *considered waived in subsequent*
6 *proceedings.*” Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis
7 added) (disapproved of on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222
8 (1999)). “A Court must dismiss a Habeas Petition if it presents claims that either were or could
9 have been presented in an earlier proceeding, unless the Court finds both cause for failing to
10 present the claims earlier or for raising them again and actual prejudice to the Petitioner.”
11 Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001), overruled on other grounds by
12 Lisle v. State, 131 Nev. 356, 351 P.3d 725 (2015). Additionally, substantive claims are beyond
13 the scope of Habeas and waived. NRS 34.724(2)(a); see also Evans, 117 Nev. at 646-47, 29
14 P.3d 498 at 523; Franklin, 110 Nev. at 752, 877 P.2d 1058 at 1059.

15 Petitioner readily acknowledges that he pled guilty. See, e.g., Third Petition at 2.
16 Therefore, pursuant to statute, the only claims available for post-conviction review include
17 allegations that the guilty plea was not knowingly and voluntarily entered into, and ineffective
18 assistance of plea counsel. NRS 34.810(1)(a). However, Petitioner raises a number of claims
19 that do not fall under these categories: first, Petitioner alleges prosecutorial misconduct
20 throughout the plea process. See Third Petition at “4.” He also alleges Court error and/or bias.
21 See id. at “7.” Petitioner includes a claim of a “fundamental miscarriage of justice.” See id. at
22 “12.” Petitioner also lists claims of “further misconduct by the State,” “manufacturing
23 evidence,” and “three false documents.” Id. at “16.” Petitioner finally makes a claim of “new
24 evidence.” Id. at “18.” None of these claims deal with the validity of the guilty plea, nor do
25 they touch upon plea counsel’s effectiveness.³

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27
28 ³ Moreover, Petitioner’s guilty plea has already been expressly upheld on review. See Findings of Fact,
Conclusions of Law, and Order, filed on November 20, 2019 (in Case No. C-18-336184-1) at 2-4.

1 Because Petitioner's claims fall outside the limited scope of Habeas review, they are
2 summarily dismissed.

3 **II. PETITIONER FAILS TO DEMONSTRATE GOOD CAUSE**

4 To establish good cause to overcome the procedural bars, a Petitioner must show that
5 an impediment external to the defense prevented his compliance with the applicable procedural
6 rule. Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003). An example of a qualifying
7 impediment might be where the factual or legal basis for the claim was not reasonably
8 available at the time of the procedural default. Id. The Clem Court explained that Petitioners
9 "cannot attempt to manufacture good cause[.]" Id. at 621, 81 P.3d at 526. Other examples of
10 good cause include interference by State officials and the previous unavailability of a legal or
11 factual basis. See State v. Huebler, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012). To find good
12 cause there must be a "substantial reason; one that affords a legal excuse." Hathaway v. State,
13 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (internal quotation omitted).

14 Petitioner does not attempt to substantively argue good cause according to the legal
15 standard. Instead, Petitioner merely interjects the words "good cause" when labeling his
16 various claims. See, e.g., Third Petition at "12." To the extent that Petitioner seeks to rely on
17 his allegedly "new evidence" to establish good cause, the evidence is not new and has been
18 referenced in Petitioner's previous pleadings. Furthermore, Petitioner does not assert *that* this
19 evidence was not reasonably available at the time he filed any of his earlier proceedings, much
20 less does he specify *how* it was unavailable. See generally, Third Petition.

21 Because Petitioner cannot demonstrate good cause, Petitioner cannot overcome the
22 procedural bar to the instant Petition, and the Petition is dismissed.

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1 **III. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

2 The Nevada Supreme Court has held that if a Petition can be resolved without
3 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
4 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231. A
5 Defendant is entitled to an evidentiary hearing if his Petition is supported by specific factual
6 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
7 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100
8 Nev. 498, 503, 686 P.2d 222, 225 (holding that “[a] Defendant seeking post-conviction relief
9 is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record”).
10 “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it existed at
11 the time the claim was made.” Mann at 354, 46 P.3d at 1230 (2002). It is improper to hold an
12 evidentiary hearing simply to make a complete record. See Riker, 121 Nev. at 234, 112 P.3d
13 at 1076 (2005) (“The District Court considered itself the ‘equivalent of . . . the trial Judge’ and
14 consequently wanted ‘to make as complete a record as possible.’ This is an incorrect basis for
15 an evidentiary hearing.”).

16 The instant Petition is procedurally barred for the reasons previously stated. Petitioner
17 has failed to demonstrate good cause to overcome the procedural bars. Because the instant
18 Petition is procedurally barred under various statutory rules, there is no reason to conduct an
19 evidentiary hearing.

20 **IV. DEFENDANT’S AMENDED MOTION IS STRIKEN**

21 After a Defendant files a Petition for Writ of Habeas Corpus, if the Petition is not
22 summarily dismissed, the Court may order the State to respond to the Petition. NRS 34.745. If
23 a Petitioner requests counsel, and the Court appoints counsel, counsel may file a supplement
24 to the Petition within 30 days. NRS 34.750(3) The State may file a response to the
25 supplemental Petition within 15 days. Id. A Petitioner may respond if the State files a motion
26 to dismiss within 15 days of service of the motion to dismiss. NRS 34.750(4). No further
27 pleadings may be filed except as ordered by the Court. NRS 34.750(5).

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1 Petitioner filed his Petition on May 24, 2021. The State responded on July 6, 2021.
2 Counsel has not been appointed in this matter, and the State did not file a motion to dismiss
3 the action. Therefore, no further pleadings may be filed except as ordered by this Court. The
4 Court has not ordered, and Petitioner has neither sought nor been granted permission to file,
5 any responsive pleading to the State's response to the Petition.

6 Even assuming the State's invocation of the procedural bars in its Response were
7 construed as a motion to dismiss, the pleading was mailed to Petitioner on July 6, 2021, and
8 he did not respond until August 16, 2021 (at the earliest). State's Response at 12 (Certificate
9 of Mailing); Amended Motion at 1 (Dated August 16, 2021 but filed August 27, 2021.)
10 Assuming the earlier date controls, Petitioner "responded" 41 days after the State's Response
11 was mailed, well outside of the 15 days permitted by statute.

12 Accordingly, the Amended Motion is stricken as it is not permitted pursuant to statute.

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ORDER

THEREFORE, IT IS HEREBY ORDERED that the Third Petition for Post-Conviction Relief shall be, and it is, hereby dismissed. FURTHER, the State's Motion to Strike the Amended Motion shall be, and it is, hereby granted, and the Amended Motion is STRICKEN.

DATED this ____ day of September, 2021.

Dated this 20th day of September, 2021


DISTRICT JUDGE

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

28B 778 BD1B 3237
Tara Clark Newberry
District Court Judge

BY /s/ John Niman
JOHN NIMAN
Deputy District Attorney
Nevada Bar #014408

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 17th day of September, 2021 by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

SAMMIE NUNN, BAC# 1226304
SOUTHERN DESERT CORRECTIONAL CENTER
P. O. BOX 208
INDIAN SPRINGS, NV 89070

BY /s/ E. Goddard
E. Goddard
Secretary - District Attorney's Office

18F09747X/erg/L-4

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Sammie Nunn, Plaintiff(s)

CASE NO: A-21-835110-W

7 vs.

DEPT. NO. Department 21

8 State of Nevada, Defendant(s)
9

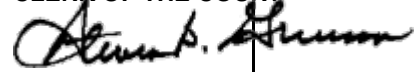
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 9/20/2021

15 Department XXI

Dept21LC@clarkcountycourts.us
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1 NEFF

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

4
5 SAMMIE NUNN,

6 Petitioner,

7 vs.

8 STATE OF NEVADA,

9 Respondent,

Case No: A-21-835110-W

Dept No: XXI

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

11 **PLEASE TAKE NOTICE** that on September 20, 2021, the court entered a decision or order in this matter,
12 a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed
to you. This notice was mailed on September 23, 2021.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

17 Amanda Hampton, Deputy Clerk

18
19 **CERTIFICATE OF E-SERVICE / MAILING**

20 I hereby certify that on this 23 day of September 2021, I served a copy of this Notice of Entry on the
21 following:

22 ☒ By e-mail:

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

24 ☒ The United States mail addressed as follows:

25 Sammie Nunn # 1226304
26 P.O. Box 509
27 Pioche, NV 89043

28 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SAMMIE NUNN,
#2751864

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-21-835110-W

DEPT NO: XXI

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

DATE OF HEARING: SEPTEMBER 7, 2021
TIME OF HEARING: 1:30 PM

THIS CAUSE having come on for hearing before the Honorable TARA CLARK-NEWBERRY, District Judge, on the 7th day of September, 2021, the Petitioner not being present, proceeding in pro per, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through LAURA GOODMAN, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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PROCEDURAL HISTORY

On November 14, 2018, Sammie Nunn (hereinafter "Petitioner") was charged by way of Indictment with one count of BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony – NRS 200.481) and one count of BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.481) for his actions on or between May 27, 2018 and June 3, 2018.

On June 6, 2019, pursuant to a Guilty Plea Agreement ("GPA"), Petitioner pled guilty to one count of BATTERY WITH USE OF A DEADLY WEAPON. As part of the GPA, the parties agreed that the State would not oppose probation and would not oppose Petitioner's release on house arrest after the entry of Petitioner's plea. The parties also stipulated to an underlying sentence of two (2) to five (5) years in the Nevada Department of Corrections ("NDOC"). GPA at 1. The Court canvassed Petitioner and accepted Petitioner's guilty plea.

On June 11, 2019, Petitioner was adjudged guilty and was sentenced to a minimum of forty-eight (48) to one hundred twenty (120) months in NDOC. Petitioner's sentence was suspended, and Petitioner was placed on probation for a term not to exceed five (5) years. Petitioner was also placed on house arrest.

On July 10, 2019, a Violation Report was filed, indicating Petitioner had violated the terms of his probation by failing to abide by the curfew restrictions and by consuming controlled substances. While the revocation proceedings were ongoing, on July 15, 2019, Petitioner filed a Motion to Dismiss Counsel and Appoint Alternate Counsel. Petitioner's Motion to Dismiss Counsel was granted, for the limited purpose of having alternate counsel to determine whether there were grounds to withdraw Petitioner's guilty plea.

On October 10, 2019, Petitioner filed a Post-Conviction Petition for Writ of Habeas Corpus (his "first Petition"). In his first Petition, Petitioner raised a single argument: a new witness, E. McKonnen, could testify to Petitioner's actual innocence. First Petition at 5-6. The State filed its Response to Petitioner's first Petition on October 16, 2019. The Court denied Petitioner's first Petition on November 5, 2019.

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1 On November 14, 2019, the Court conducted a hearing regarding the revocation of
2 Petitioner's probation. Following arguments by the parties, the Court found that Petitioner
3 violated his probation and revoked the same. The Court modified Petitioner's sentence of
4 imprisonment to thirty-six (36) to one hundred twenty (120) months in NDOC. The Court gave
5 Petitioner five hundred ten (510) days credit for time served. Petitioner's Amended Judgment
6 of Conviction was filed on November 18, 2019.

7 On November 21, 2019, Petitioner noticed his appeal from his Amended Judgment of
8 Conviction. On March 5, 2021, the Nevada Court of Appeals affirmed Petitioner's Amended
9 Judgment of Conviction. Remittitur issued on March 31, 2021.

10 On January 24, 2020 (while his direct appeal was pending), Petitioner filed his second
11 Post-Conviction Petition for Writ of Habeas Corpus (his "second Petition"). The State filed its
12 Response and Motion to Dismiss that second Petition on February 25, 2020. On March 10,
13 2020, Petitioner – through counsel – filed a "Supplementary Motion for Evidentiary Hearing."
14 The State filed its Response to that Supplementary Motion on March 31, 2020.

15 On April 29, 2021, Petitioner filed a Notice of Appeal, referencing the Court's denial
16 of Petitioner's first Petition on November 5, 2019. The Nevada Supreme Court dismissed
17 Petitioner's appeal as untimely on May 21, 2021. Remittitur issued on June 17, 2021.

18 On May 10, 2021, Petitioner filed another Notice of Appeal, alleging that he had
19 expired his sentence, and asking the Nevada Supreme Court to release him from custody. The
20 Nevada Supreme Court dismissed that appeal on May 26, 2021, citing a lack of any appealable
21 order. Remittitur issued on June 22, 2021.

22 On May 24, 2021, Petitioner filed his third Post-Conviction Petition for Writ of Habeas
23 Corpus (his "Third Petition"). The State responded on July 6, 2021.

24 On August 27th, 2021, Defendant filed the instant Amended Motion. The
25 State's responded, and moved to strike the Amended Motion, on September 1, 2021. On
26 September 7, 2021, this Court decided the Third Petition and Amended Motion as follows.

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FACTUAL FINDINGS

On May 27, 2018, Prince Alidu (the "Victim") was at Your Stop Liquor, a convenience store, when he was approached by Petitioner, who asked Victim for fifty (50) cents. Grand Jury Transcript, Tuesday, November 6, 2018 ("GJT") at 16. Victim told Petitioner he did not have the money, after which Petitioner's female friend angrily approached Victim. Id. Petitioner then came back to Victim and called him names. Id. at 17. Victim asked Petitioner to leave him alone, and Petitioner left to the nearby apartment complex. Id. A few minutes later, however, Petitioner came back with a tool in his hand. Id. Victim described the tool as being approximately one foot long. Id. at 17-18. Petitioner hit Victim in the face with the tool, resulting in significant bleeding and an eventual scar. Id.

Officer Vesperas was in the area of Your Stop Liquor on May 27, 2018, when he was flagged down by a pedestrian. GJT at 6-7. That pedestrian directed Vesperas's attention to another individual down the street. Id. at 7. The individual to which Vesperas was directed had a foot-long wrench in his hand. Id. Vesperas identified that individual as Petitioner. Id. at 8.

Petitioner told Vesperas that he had been attacked and had hit an attacker with the wrench. GJT at 8. However, Vesperas did not notice any injuries that would require medical attention, and Petitioner did not complain of any such injuries. Id. at 9.

Officer Hawkins also responded to the area of Your Stop Liquor on May 27, 2018. GJT at 11. Hawkins came into contact with Victim, who was bleeding from his head. Id. at 12. Victim identified Petitioner to Hawkins at the scene of the interaction. Id.

On June 3, 2018, Victim was again outside Your Stop Liquor when he was approached by Petitioner. GJT at 20. At this encounter, Petitioner pulled out a handgun and again hit the Victim over the head. Id. at 21.

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ANALYSIS

I. THE THIRD PETITION IS PROCEDURALLY BARRED

Pursuant to NRS 34.726(1), "a Petition that challenges the validity of a judgment or sentence must be filed *within 1 year of the entry of the judgment of conviction...*" (Emphasis added). The Supreme Court of Nevada 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). As per the language of the statute, 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 filed. 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. Additionally, that 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.

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1 Petitioner's Judgment of Conviction was filed on June 20, 2019. While Petitioner *did*
2 challenge his Amended Judgment of Conviction via appeal, that challenge dealt with the
3 propriety of Petitioner's revocation from probation – it did not challenge the validity of
4 Petitioner's conviction – therefore, the one-year time-bar began to run at the time Petitioner's
5 original Judgment of Conviction was filed. As such, Petitioner had until June 20, 2020, to file
6 a timely post-conviction Habeas Petition. NRS 34.726. The instant Petition was not filed until
7 May 24, 2021, nearly a full year after Petitioner's time had expired. Therefore, pursuant to
8 NRS 34.726, Petitioner's Third Petition is untimely, and should be dismissed absent a showing
9 of good cause and prejudice.

10 **A. Petitioner's Claims are Successive, or Constitute an Abuse of the Writ**

11 NRS 34.810(2) explains:

12 A second or successive Petition *must* be dismissed if the Judge or Justice
13 determines that it fails to allege new or different grounds for relief and that the
14 prior determination was on the merits or, if new and different grounds are
15 alleged, the Judge or Justice finds that the failure of the Petitioner to assert those
16 grounds in a prior Petition constituted an abuse of the Writ.

17 (emphasis added). Second or successive Petitions are Petitions that either fail to allege new or
18 different grounds for relief and the grounds have already been decided on the merits or that
19 allege new or different grounds, but a Judge or Justice finds that the Petitioner's failure to
20 assert those grounds in a prior Petition would constitute an abuse of the Writ. Second or
21 successive Petitions will only be decided on the merits if the Petitioner can show good cause
22 and prejudice. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

23 The Nevada Supreme Court has stated: "Without such limitations on the availability of
24 post-conviction remedies, prisoners could Petition for relief in perpetuity and thus abuse post-
25 conviction remedies. In addition, meritless, successive and untimely Petitions clog the Court
26 system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950.
27 The Nevada Supreme Court recognizes that "[u]nlike initial Petitions which certainly require
28 a careful review of the record, successive Petitions may be dismissed based solely on the face
of the Petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words,

1 if the claim or allegation was previously available with reasonable diligence, it is an abuse of
2 the Writ to wait to assert it in a later Petition. McClesky v. Zant, 499 U.S. 467, 497-498 (1991).
3 Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

4 As stated *supra*, this is Petitioner's *third* post-conviction Habeas Petition. Each of
5 Petitioner's first two Petitions were previously adjudicated on the merits; therefore, the instant
6 Petition is successive, and must be dismissed. NRS 34.810(2). Further, to the extent that
7 Petitioner raises new claims that were not raised in Petitioner's earlier Petitions, Petitioner's
8 third Petition amount to an abuse of the Writ and must likewise be dismissed. Id.

9 Because the instant Petition is successive and/or an abuse of the Writ, this Court need
10 not reach the merits of the instant Petition and summarily dismisses the same.

11 **B. Petitioner's Claims are Subject to the Law of the Case Doctrine**

12 "The law of a first appeal is law of the case on all subsequent appeals in which the facts
13 are substantially the same." Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting
14 Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). "The doctrine of the law of the
15 case cannot be avoided by a more detailed and precisely focused argument subsequently made
16 after reflection upon the previous proceedings." Id. at 316, 535 P.2d at 799. Under the law of
17 the case doctrine, issues previously decided on direct appeal may not be reargued in a Habeas
18 Petition. Pellegrini v. State, 117 Nev. at 879, 34 P.3d at 532 (citing McNelson v. State, 115
19 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)).

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1 In the instant Petition, Petitioner raises a number of claims that have previously been
2 rejected. First, Petitioner raises a claim under Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194
3 (1963), alleging that the State withheld the record of Victim's civil proceeding against
4 Petitioner. See Third Petition at "3"- "4".¹ However, this claim is substantially the same as
5 Petitioner's claim raised in his second Petition. See Second Petition at 2-7 (quoting transcripts
6 from Victim's civil proceeding against Petitioner, and alleging that Petitioner was unaware of
7 the same at the time he agreed to the GPA). Therefore, as this substantive claim has already
8 been rejected, it is barred by the law of the case doctrine and is dismissed here.

9 Petitioner proceeds to include various allegations of ineffective assistance of – and
10 irreconcilable differences with – plea counsel. Third Petition at "8." However, these
11 allegations have previously been raised, and have been rejected. See, e.g., Second Petition at
12 11-12. As those claims were previously adjudicated, they cannot be re-raised in the instant
13 Petition, merely couched in a different way. Hall, 91 Nev. at 316, 535 P.2d at 799.

14 Petitioner also includes a claim of a "fundamental miscarriage of justice." Third Petition
15 at "12." However, that phrase is exclusive to claims of actual innocence – which Petitioner has
16 expressly raised, and which has been rejected, as part of Petitioner's Second Petition. See
17 Second Petition at 8-10. Therefore, this claim is likewise barred by the law of the case doctrine
18 and res judicata.²

19 C. Petitioner's Claims Fall Outside the Scope of Habeas Review

20 Under NRS 34.810(1),

21 The Court *shall* dismiss a Petition if the Court determines that:

22 (a) The Petitioner's conviction was upon a plea of guilty or guilty but
23 mentally ill and the Petition is not based upon an allegation that the plea was
involuntarily or unknowingly entered or that the plea was entered without
effective assistance of counsel.

24 ...
25 unless the Court finds both cause for the failure to present the grounds and actual
prejudice to the Petitioner.

26 ¹ The Court references the pages as labeled by Petitioner, as the organization of the instant Petition renders
27 citation to the actual page numbers unreliable.

28 ² Petitioner fails to demonstrate actual innocence, as a claim of actual innocence requires "new evidence";
however, the evidence upon which Petitioner relies is not new. Compare Third Petition at "16" with Second
Petition at 8-10.

1 (emphasis added).

2 Furthermore, the Nevada Supreme Court has held that “challenges to the validity of a
3 guilty plea and claims of ineffective assistance of trial and appellate counsel must first be
4 pursued in post-conviction proceedings.... [A]ll other claims that are appropriate for a direct
5 appeal must be pursued on direct appeal, or they will be *considered waived in subsequent*
6 *proceedings.*” Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis
7 added) (disapproved of on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222
8 (1999)). “A Court must dismiss a Habeas Petition if it presents claims that either were or could
9 have been presented in an earlier proceeding, unless the Court finds both cause for failing to
10 present the claims earlier or for raising them again and actual prejudice to the Petitioner.”
11 Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001), overruled on other grounds by
12 Lisle v. State, 131 Nev. 356, 351 P.3d 725 (2015). Additionally, substantive claims are beyond
13 the scope of Habeas and waived. NRS 34.724(2)(a); see also Evans, 117 Nev. at 646-47, 29
14 P.3d 498 at 523; Franklin, 110 Nev. at 752, 877 P.2d 1058 at 1059.

15 Petitioner readily acknowledges that he pled guilty. See, e.g., Third Petition at 2.
16 Therefore, pursuant to statute, the only claims available for post-conviction review include
17 allegations that the guilty plea was not knowingly and voluntarily entered into, and ineffective
18 assistance of plea counsel. NRS 34.810(1)(a). However, Petitioner raises a number of claims
19 that do not fall under these categories: first, Petitioner alleges prosecutorial misconduct
20 throughout the plea process. See Third Petition at “4.” He also alleges Court error and/or bias.
21 See id. at “7.” Petitioner includes a claim of a “fundamental miscarriage of justice.” See id. at
22 “12.” Petitioner also lists claims of “further misconduct by the State,” “manufacturing
23 evidence,” and “three false documents.” Id. at “16.” Petitioner finally makes a claim of “new
24 evidence.” Id. at “18.” None of these claims deal with the validity of the guilty plea, nor do
25 they touch upon plea counsel’s effectiveness.³

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28 ³ Moreover, Petitioner’s guilty plea has already been expressly upheld on review. See Findings of Fact, Conclusions of Law, and Order, filed on November 20, 2019 (in Case No. C-18-336184-1) at 2-4.

1 Because Petitioner's claims fall outside the limited scope of Habeas review, they are
2 summarily dismissed.

3 **II. PETITIONER FAILS TO DEMONSTRATE GOOD CAUSE**

4 To establish good cause to overcome the procedural bars, a Petitioner must show that
5 an impediment external to the defense prevented his compliance with the applicable procedural
6 rule. Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003). An example of a qualifying
7 impediment might be where the factual or legal basis for the claim was not reasonably
8 available at the time of the procedural default. Id. The Clem Court explained that Petitioners
9 "cannot attempt to manufacture good cause[.]" Id. at 621, 81 P.3d at 526. Other examples of
10 good cause include interference by State officials and the previous unavailability of a legal or
11 factual basis. See State v. Huebler, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012). To find good
12 cause there must be a "substantial reason; one that affords a legal excuse." Hathaway v. State,
13 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (internal quotation omitted).

14 Petitioner does not attempt to substantively argue good cause according to the legal
15 standard. Instead, Petitioner merely interjects the words "good cause" when labeling his
16 various claims. See, e.g., Third Petition at "12." To the extent that Petitioner seeks to rely on
17 his allegedly "new evidence" to establish good cause, the evidence is not new and has been
18 referenced in Petitioner's previous pleadings. Furthermore, Petitioner does not assert *that* this
19 evidence was not reasonably available at the time he filed any of his earlier proceedings, much
20 less does he specify *how* it was unavailable. See generally, Third Petition.

21 Because Petitioner cannot demonstrate good cause, Petitioner cannot overcome the
22 procedural bar to the instant Petition, and the Petition is dismissed.

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1 **III. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

2 The Nevada Supreme Court has held that if a Petition can be resolved without
3 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
4 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231. A
5 Defendant is entitled to an evidentiary hearing if his Petition is supported by specific factual
6 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
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8 Nev. 498, 503, 686 P.2d 222, 225 (holding that “[a] Defendant seeking post-conviction relief
9 is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record”).
10 “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it existed at
11 the time the claim was made.” Mann at 354, 46 P.3d at 1230 (2002). It is improper to hold an
12 evidentiary hearing simply to make a complete record. See Riker, 121 Nev. at 234, 112 P.3d
13 at 1076 (2005) (“The District Court considered itself the ‘equivalent of . . . the trial Judge’ and
14 consequently wanted ‘to make as complete a record as possible.’ This is an incorrect basis for
15 an evidentiary hearing.”).

16 The instant Petition is procedurally barred for the reasons previously stated. Petitioner
17 has failed to demonstrate good cause to overcome the procedural bars. Because the instant
18 Petition is procedurally barred under various statutory rules, there is no reason to conduct an
19 evidentiary hearing.

20 **IV. DEFENDANT’S AMENDED MOTION IS STRIKEN**

21 After a Defendant files a Petition for Writ of Habeas Corpus, if the Petition is not
22 summarily dismissed, the Court may order the State to respond to the Petition. NRS 34.745. If
23 a Petitioner requests counsel, and the Court appoints counsel, counsel may file a supplement
24 to the Petition within 30 days. NRS 34.750(3) The State may file a response to the
25 supplemental Petition within 15 days. Id. A Petitioner may respond if the State files a motion
26 to dismiss within 15 days of service of the motion to dismiss. NRS 34.750(4). No further
27 pleadings may be filed except as ordered by the Court. NRS 34.750(5).

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1 Petitioner filed his Petition on May 24, 2021. The State responded on July 6, 2021.
2 Counsel has not been appointed in this matter, and the State did not file a motion to dismiss
3 the action. Therefore, no further pleadings may be filed except as ordered by this Court. The
4 Court has not ordered, and Petitioner has neither sought nor been granted permission to file,
5 any responsive pleading to the State's response to the Petition.

6 Even assuming the State's invocation of the procedural bars in its Response were
7 construed as a motion to dismiss, the pleading was mailed to Petitioner on July 6, 2021, and
8 he did not respond until August 16, 2021 (at the earliest). State's Response at 12 (Certificate
9 of Mailing); Amended Motion at 1 (Dated August 16, 2021 but filed August 27, 2021.)
10 Assuming the earlier date controls, Petitioner "responded" 41 days after the State's Response
11 was mailed, well outside of the 15 days permitted by statute.

12 Accordingly, the Amended Motion is stricken as it is not permitted pursuant to statute.

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ORDER

THEREFORE, IT IS HEREBY ORDERED that the Third Petition for Post-Conviction Relief shall be, and it is, hereby dismissed. FURTHER, the State's Motion to Strike the Amended Motion shall be, and it is, hereby granted, and the Amended Motion is STRICKEN.

DATED this ____ day of September, 2021.

Dated this 20th day of September, 2021


DISTRICT JUDGE

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

28B 778 BD1B 3237
Tara Clark Newberry
District Court Judge

BY /s/ John Niman
JOHN NIMAN
Deputy District Attorney
Nevada Bar #014408

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 17th day of September, 2021 by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

SAMMIE NUNN, BAC# 1226304
SOUTHERN DESERT CORRECTIONAL CENTER
P. O. BOX 208
INDIAN SPRINGS, NV 89070

BY /s/ E. Goddard
E. Goddard
Secretary - District Attorney's Office

18F09747X/erg/L-4

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Sammie Nunn, Plaintiff(s)

CASE NO: A-21-835110-W

7 vs.

DEPT. NO. Department 21

8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 9/20/2021

15 Department XXI

Dept21LC@clarkcountycourts.us
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

September 07, 2021

A-21-835110-W	Sammie Nunn, Plaintiff(s)
	vs.
	State of Nevada, Defendant(s)

September 07, 2021 1:30 PM Petition for Writ of Habeas Corpus

HEARD BY: Clark Newberry, Tara **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Carina Bracamontez-Munguia/cbm

RECORDER: Robin Page

PARTIES

PRESENT: Goodman, Laura Attorney for State of Nevada

JOURNAL ENTRIES

Court noted the Deft. was in the custody of the Nevada Department of Corrections (NDC) and Advised the matter would be decided without oral argument. Court noted this was a Pro Per filing and Advised it procedurally concurred with the State's position that the Petition for Writ of Habeas Corpus was denied as it was procedurally barred. Therefore, COURT ORDERED petition DENIED. COURT FINDS pursuant to NRS 34.726-1 a petition that challenges the Judgment of Conviction or sentence must be filed within one year; COURT FINDS the operative Judgment of Conviction was filed on June 20, 2021, an Amended Judgment of Conviction was filed on November 18, 2021 and the Writ was filed on May 24, 2021, thus the writ is barred. Court DIRECTED the State to prepare the order. Court additionally noted for the record there was a procedural work around when leave was requested, however, in this case the Court did not grant leave nor was it requested prior to the Petitioner providing a supplement, therefore, COURT FURTHER ORDERED, the August 27, 2021 Amended Supplementary Motion to Amended Second Habeas Corpus Filed within One Year of JOC on January 24th, 2020 hereby STRICKEN from the record.

NDC

CLERK'S NOTE: Subsequent to hearing, COURT ORDERED, the State's Motion to Strike Amended Supplementary Motion to Amended Second Habeas Corpus filed within One Year of Judgment of Conviction on January 24, 2020 GRANTED; thus the September 28, 2021 hearing VACATED. // cbm 09-15-2021

CLERK S NOTE: A copy of this minute order has been mailed to: Sammie Nunn, #1226304, Pioche Conservation Camp, 1 Hardtimes Road, P.O. Box 509, Pioche, Nevada 89043. // cbm 09-15-2021

Certification of Copy

State of Nevada }
County of Clark } SS:

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

NOTICE OF APPEAL; 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

SAMMIE NUNN, III,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

Case No: A-21-835110-W

Dept No: XXI

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 15 day of October 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk