

# IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMMIE NUNN,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Electronically Filed  
Nov 15 2021 02:24 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No: A-21-835110-W

Docket No: 83660

# RECORD ON APPEAL VOLUME 2

**ATTORNEY FOR APPELLANT**  
SAMMIE NUNN #1226304,  
PROPER PERSON  
P.O. BOX 509  
PIOCHE, NV 89043

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

**I N D E X**

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**I N D E X**

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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".<sup>1</sup> 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.<sup>2</sup>

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

26 <sup>1</sup> 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 <sup>2</sup> 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.<sup>3</sup>

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28 <sup>3</sup> 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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1 **ORDER**

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

5 DATED this \_\_\_\_ day of September, 2021.

Dated this 20th day of September, 2021

6  
7   
DISTRICT JUDGE

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

28B 778 BD1B 3237  
Tara Clark Newberry  
District Court Judge

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

13  
14 **CERTIFICATE OF MAILING**

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

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

20 BY /s/ E. Goddard  
21 E. Goddard  
22 Secretary - District Attorney's Office  
23  
24  
25  
26

27 18F09747X/erg/L-4  
28

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  
14 listed below:

15 Service Date: 9/20/2021

16 Department XXI	Dept21LC@clarkcountycourts.us
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*Steven D. Grierson*

District Court  
Clark County, Nevada

Sammye Nunn  
Appellant

v.

State of Nevada  
Respondent

Case No: A-21-835110-W

Dept No: XXI

Notice of Appeal

Comes Now Appellant, Sammye 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 1:30 pm 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 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> 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



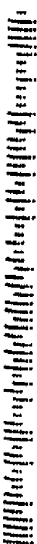
Signature.

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

LAS VEGAS NV 890  
12 OCT 2021PM 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

A-21-835110-W

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5. Appellant(s)'s Attorney Licensed in Nevada: N/A  
Permission Granted: N/A
- Respondent(s)'s Attorney Licensed in Nevada: Yes  
Permission Granted: N/A
6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No
7. Appellant Represented by Appointed Counsel On Appeal: N/A
8. Appellant Granted Leave to Proceed in Forma Pauperis\*\*: N/A  
*\*\*Expires 1 year from date filed*  
Appellant Filed Application to Proceed in Forma Pauperis: 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



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**September 07, 2021**

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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

**RECORDER:** Robin Page

**REPORTER:**

**PARTIES**

**PRESENT:** Goodman, Laura      Attorney

**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

PRINT DATE: 11/15/2021

Page 1 of 2

Minutes Date: September 07, 2021

**A-21-835110-W**

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 and Transmittal of Record

State of Nevada }  
County of Clark } SS:

Pursuant to the Supreme Court order dated November 3, 2021, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises two volumes with pages numbered 1 through 255.

SAMMIE NUNN, III,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

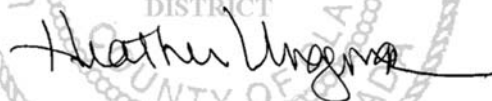
Case No: A-21-835110-W

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 November 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

