

FILED

JAN 31 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

Tatiana Leibel # 1137908
Florence McClure Women's Correctional Center
4370 Smiley Road
Las Vegas, NV 89115

SUPREME COURT of the State of Nevada

In the matter of:

Tatiana Leibel)
Plaintiff/Petitioner)
V.)
The State of Nevada)
Defendant/Respondent)

Case No: 82584

Dept. No: _____

MOTION a Petition for a writ of Certiorari

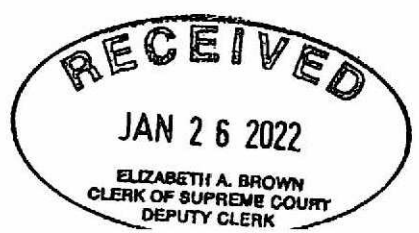
Now Comes Petitioner, Tatiana Leibel, a prose litigant in the above-captioned matter and submits to this Honorable Court a Motion a Petition for a writ of Certiorari.

This Motion is made and based upon all papers and pleadings on file herein, and Petitioner attached Points and Authorities, and Certificate of Compliance.

Dated this 21 day of January, 2022

Respectfully submitted,

[Signature]
Tatiana Leibel



Ground

Petitioner alleges a violation of the Eighth Amendment, as Petitioner is factually innocent, serves as the "actually innocent gateway" against the abused district court discretion by denying Petitioner an evidentiary hearing and/or new trial was obtained in violation of the Nevada Constitution.

The district court did not consider, concerning a habeas petitioner's innocence in light of all the evidence supported by the grounds and affidavits. Including, both the reliability of new evidence and its materiality to the conviction being challenged, which in turn requires an examination of the quality of the evidence that produced the original conviction.

Petitioner did demonstrate actual innocence to overcome the procedural bars by identifying new evidence, not by the record, when demonstrated that no reasonable juror would have convicted beyond a reasonable doubt given the new evidences.

The district court issued an order denies that second post conviction petition for a writ of habeas corpus, the petition for genetic marker analysis, and the petition to establish factual innocence on January 22, 2021. An order the judgment of the district court affirmed by appeal on December 17, 2021 and

Points and Authorities

1 denied a suggestion for rehearing en banc on January
2 13, 2022.

3 In February 25, 2014 Petitioner was arrested. In 2015,
4 a jury convicted Petitioner and the court sentenced of
5 second-degree murder with the use of a deadly wea-
6 pon. Petitioner's direct appeal *Leibel v State*, Docket No 68113
7 order was affirmed on December 18, 2015. Petitioner's
8 first post conviction petition for a writ of habeas
9 corpus *Leibel v State*, Docket No 77989 order was affirmed
10 on June 24, 2020.

11
12 Based on the Supreme Court of Nevada a modified
13 version of the "STANDARD" (*Lisle v State*, *Mitchell v*
14 *State*, and *Berry v State*) a clearly show which a district
15 court might exercise its discretion to hold an eviden-
16 tiary hearing and/or new trial.

17
18 Petitioner has focused on the actual innocence gate-
19 way, but maintains merits by showing good cause
20 and actual prejudice supported by the following caselaw.
21 *Lisle v State*, 131 Nev. 356, 361, 351 P.3d 725, 729-30 (2015):

22 "Where a petition is procedurally barred and the petitioner
23 cannot demonstrate good cause, the district court may
24 never the less reach the merits of any constitutional
25 claims if the petitioner demonstrates that failure
26 to consider those constitutional claims would re-
27 sult in a fundamental miscarriage of justice. A
28 fundamental miscarriage of justice requires a

Points and Authorities

1 colorable showing that the petitioner is actually
2 innocent of the crime".

3
4 Petitioner's second petition was show a fundamental
5 miscarriage of justice has occurred in the proceedings
6 resulting in the judgment of conviction when funda-
7 mental miscarriage of justice similarly implicates
8 Petitioner successful actual innocence gateway suppor-
9 ted by the following easelaw.

10 Mitchell v State, 122 Nev. 1269, 1273-74, 149 P. 3d 33, 36 (2006):

11 "...a fundamental miscarriage of justice required
12 to overcome the procedural bars to an untimely or
13 successive petition and to rebut the presumption
14 of prejudice to the state in conducting a retrial
15 can be satisfied with a showing of actual innocence".

16
17 Additionally, the Petitioner declares no forensic evidence
18 directly connects the Petitioner to the crime and these
19 undisclosures has mislead the Jury. Petitioner main-
20 taining only for information purposes examples of new
21 evidence, "not by the record", collectively as a whole, under
22 the multiple conflicting evidence that was presented
23 by the State at the trial.

24
25 - Four unknown samples of DNA were collected by the
26 State, by a swabing of the hammer trigger and strap
27 of the weapon including one unknown print.

28 Petitioner declares new evidence, not by the record,

Points and Authorities

1 of ~~four~~ undisclosed photographs of the weapon in
2 ~~four~~ different positions.

3
4 - The trajectory analysis presented by the State was
5 unsubstantive.

6 Petitioner declares new evidence, not by the record, of
7 additional undisclosed photographs demonstrating
8 the State's investigators moved an end table in
9 order to provide the space necessary for a person
10 to stand between the end table and the steps,
11 to meet their trajectory theory.

12
13 - A manual record of telephone activity was produced
14 and used by the State (open and close argument),
15 negating the actual use records, which resulted
16 in the loss of one hour has mislead the Jury.

17
18 Petitioner has demonstrated actual innocence
19 supported by the following caselaw.

20 Berry v State, 131 Nev. 957; 363 P. 3d 1148; 2015 Nev. LEMS
21 117; 131 Nev. Adv. Rep. 96 (2015):

22 "...he is actually innocent so that he may pass
23 through the Schlup gateway and his procedurally
24 defaulted claims heard on the merits...

25 After determining that Berry has presented
26 specific factual allegations of his innocence that
27 are not belied by the record and assuming
28 that the new evidence is credible...

1 A district court should examine the evidence that
2 led to the original conviction and especially
3 whether the new evidence diminishes the strength
4 of the evidence presented at trial"

5
6 In conclusion Petitioner, a prose litigant
7 declares the substantiation of an Eighth Amendment
8 claim has merit as this ground is based on the sa-
9 me underlying premise as the actual innocence
10 gateway claim. Including, request for the review
11 based on a modified version of the "STANDARD" of
12 the sufficiency of the evidence according consti-
13 tutional requirement of proof beyond a reasonable
14 doubt, with a clearly show which a district court
15 might exercise its discretion to hold an evidentiary
16 hearing and/or new trial.

17
18 "The U.S. Supreme Court has not read the
19 Speedy Trial Clause to call for a flexible OR
20 failed remedy. Instead, violation of the right
21 demands termination of the prosecution"

Certificate of Compliance

1. I hereby certify that this petition for a writ of Certiorari complies with the formatting requirements of NRAP 32 prose because:

It has been using contains no more than 433 lines of text.

2. I further certify that this brief/ground complies with the page limitations of NRAP because it is either:

Does not exceed 10 pages.

This document does not contain the personal information of any person as defined by NRS 603A.40.

DECLARATION UNDER PENALTY OF PERJURY

I, the undersigned, understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury.

I declare, under the penalty of perjury under the laws of the United States of America, that the above and/or foregoing information is accurate, correct and true to the best of my knowledge, executed within the terms of ¹NRS 171.102 and ²NRS 208.165. See ³28 U.S.C. 1746 and 18 U.S.C. 1621.

Dated this 21 day of January, 2022

[Signature]
Signature

1137908
Nevada Department of Corrections #

¹ NRS 171.102

² NRS 208.165

³ 28 U.S.C.

§1746. Unsworn declarations under penalty of perjury

18 U.S.C.

§ 1621. Perjury generally

CERTIFICATE OF MAILING

STATE OF NEVADA

COUNTY OF SUPREME Court of Nevada

I am the ☒ Plaintiff/Petitioner ☐ Defendant/Respondent

Tatiana Leibel for Case No: 82594

On this 21 day of January, 2022, I mailed a copy of the following document(s):

1. Motion a Petition for a writ of Certiorari
2. _____
3. _____
4. _____
5. _____

By United States First Class Mail, to the following addresses:

- | | |
|--|-------------------------------------|
| 1. <u>Clerk of Court</u> | 2. <u>Attorney General - Nevada</u> |
| <u>Supreme Court of Nevada</u> | <u>100 N. Carson St.</u> |
| <u>201 S. Carson Street, Suite 201</u> | <u>Carson City, NV 89701</u> |
| <u>Carson City, NV 89701</u> | _____ |
| 3. <u>Clerk of Court & DA</u> | 4. <u>Tatiana Leibel</u> |
| <u>Douglas County District Court</u> | <u>prose litigant</u> |
| <u>P.O. Box 218</u> | <u>1137908, FMWCC</u> |
| <u>Minden, NV 89423</u> | <u>4370 Smiley Road</u> |
| | <u>Las Vegas, NV 89115</u> |

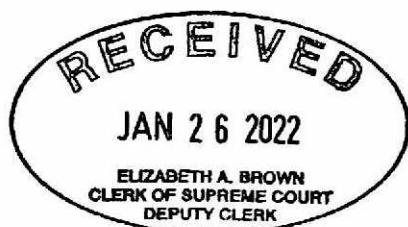
Dated this 21 day of January, 2022.

Respectfully submitted,

Signature

Tatiana Leibel

Printed Name



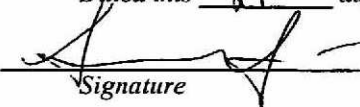
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9 Dated this 21 day of January, 20 22

10 
Signature

11 1137908
Nevada Department of Corrections ID #

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26 ¹ NRS 171.102

27 ² NRS 208.165

28 ³ 28 U.S.C.

§1746. Unsworn declarations under penalty of perjury
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