

# IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES HOWARD HAYES, JR.,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Electronically Filed  
Feb 22 2022 03:33 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No: A-19-793315-W  
*Consolidated with A-21-831979-W*  
*Related Case C-16-315718-1*  
Docket No: 84169

# RECORD ON APPEAL VOLUME 4

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A-19-793315-W James Hayes, Plaintiff(s) vs. Nevada State of, Defendant(s)

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justice and equity and craft an appropriate remedy.

3. The related federal action (1983) challenging the actions of the Nevada Department of Corrections does not lessen this honorable court's authority, and duty, to provide effective habeas corpus relief.

4. If this honorable court finds the 8th Amendment subjective and objective requirements satisfied, it must grant appropriate injunctive relief.

5. NDOC's acting or failing to act with deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of reckless disregard for that risk (COVID-19). The U.S. Supreme Court has said, state courts "have the duty and competence to vindicate rights secured by the Constitution in state criminal proceedings and provide any necessary relief" (*Williams v. Taylor* 529 U.S. 420 (2000)).

6. This petition is NOT a post-conviction writ challenging a sentence or conviction. The petition before this court is concerned with the population of the prison and the problem it presents is very specific: the containment in the dilapidated prison of a highly contagious and deadly virus that has already led to the death of inmates. Moreover, the measures petitioner seeks are not permanent but only for as long as the pandemic continues.

7. Petitioner contends that habeas corpus is an appropriate vehicle to present issues related to the

1 conditions of confinement in a state prison, and to  
2 vindicate the rights of prison inmates generally (IN RE  
3 Head 42 (21.3d 223) and there is ample authority to mandate  
4 such broad systemic relief in order to redress this  
5 massive ongoing infringement of the inmates' constitutional  
6 rights to freedom from his current life-threatening  
7 confinement conditions (IN RE Loretan 244 Cal. App. 4th 1025)

8 8. The manner in which the writ of habeas  
9 corpus has been employed to enhance the rights of  
10 prisoners similarly situated to the petitioner is illustrated  
11 by Supreme Court given the gravity of the emergency in  
12 which the spread of the transmission of the coronavirus  
13 may take place. ~~and~~

14 Finally, in the light most favorable to the state,  
15 FRCP 15(c)(1) exception to 1 year deadline allowed to later present  
16 new claims in an amended petition filed after the deadline  
17 presumes the new claims relate back to the date of the  
18 original petition if the new claims share a common core of  
19 operative facts with the original petition as the state contended  
20 in its filed opposition. (Cowan v. Steel 645 F.3d 815) (Mayer v.  
21 Felix 125 S.Ct. 2562). Mayer expressly cited as a case where  
22 relation back was proper, thus, even if one assumes that  
23 the original petition did not state 8th Amendment claim and  
24 unusual claim it did share a common core of operative  
25 facts with the original petition, and that means the claim  
26 would relate back to the date of the original petition per  
27 state's contentions in its opposition

**CERTIFICATE OF SERVICE BY MAILING**

I, James H. Houles, hereby certify, pursuant to NRCP 5(b), that on this 11<sup>th</sup>  
day of August, 2021, I mailed a true and correct copy of the foregoing, "Petition  
for Reconsideration/Rehearing"  
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

Clark County District Courts  
Office of the Clerk  
200 LEVINE AVE, 310 91  
LEAS VEGAS, NV  
89155-1160

Clark County District Attorney  
200 LEVINE AVE  
LEAS VEGAS, NV  
89155-2212

Attorney General of Nevada  
100 NORTH WHEAT  
CARSON CITY, NV  
89701

CC:FILE

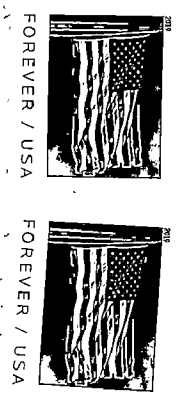
DATED: this 11<sup>th</sup> day of August, 2021.

James H. Houles  
JAMES H. HOULES #1175077  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
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IN FORMA PAUPERIS:

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Clark County District Courts  
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200 Lewis Ave, 3rd Floor  
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LEBEL  
MAY





*Heather S. Hume*

CLERK OF THE COURT

**FCL**  
**STEVEN B. WOLFSON**  
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Nevada Bar #001565  
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**JAMES HOWARD HAYES,**  
aka James Howard Hayes Jr.,  
#2796708

Petitioner,

-vs-

**THE STATE OF NEVADA,**

Respondent.

CASE NO: A-19-793315-W  
A-21-831979-W

DEPT NO: III

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

DATE OF HEARING: JULY 19, 2021  
TIME OF HEARING: 8:30 AM

THIS CAUSE having come before the Honorable MONICA TRUJILLO, District Court Judge, on the 19th day of July, 2021, the Petitioner not being present, not being represented by counsel, and the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, through MORGAN THOMAS, 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.

**FINDINGS OF FACT, CONCLUSIONS OF LAW**

**STATEMENT OF THE CASE**

On or about July 23, 2013, James H. Hayes (hereinafter, "Petitioner") was charged by way of Criminal Complaint with one count of BURGLARY (Category B Felony – NRS

205.060) and one count of ATTEMPT GRAND LARCENY (Category D Felony/Gross Misdemeanor – NRS 205.220.1, 205.222.2, 193.330). Following a Preliminary Hearing in Justice Court, Las Vegas Township on June 14, 2016, the charge of BURGLARY was bound over to District Court, and the charge of ATTEMPT GRAND LARCENY was dismissed.

On June 17, 2016, the State filed an Information with the District Court, charging Petitioner with one count of BURGLARY. On August 29, 2017, the State filed an Amended Notice of Intent to Seek Punishment as a Habitual Criminal. On November 7, 2018, pursuant to a Guilty Plea Agreement (“GPA”), Petitioner entered a plea of Guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970) to one count of ATTEMPT GRAND LARCENY.

The terms of the GPA are as follows:

The State has agreed to make no recommendation at the time of sentencing. The State has no opposition to probation with the only condition being thirty (30) days in the Clark County Detention Center (CCDC), with thirty (30) days credit for time served.

GPA at 1:22-24.

The GPA further includes, in pertinent part, the following acknowledgement:

I understand and agree that, if...an independent magistrate, by affidavit review, confirms probable cause against me for new criminal charges including reckless driving or DUI, but excluding minor traffic violations, the State will have the unqualified right to argue for any legal sentence and term of confinement allowable for the crime(s) to which I am pleading guilty, including the use of any prior convictions I may have to increase my sentence as a habitual criminal to five (5) to twenty (20) years, Life without the possibility of parole, Life with the possibility of parole after ten (10) years, or a definite twenty-five (25) year term with the possibility of parole after ten (10) years.

GPA at 2: 1-9.

An Amended Information reflecting the new charge of ATTEMPT GRAND LARCENY was filed in conjunction with the GPA. Petitioner was adjudged Guilty pursuant to Alford that same day, and the sentencing hearing was scheduled for March 6, 2019.

On January 31, 2019, the State filed a State’s Notice of Motion and Motion to Revoke Bail, asserting that in Las Vegas Justice Court case number 19F01534X, a Justice of the Peace had found probable cause to charge Petitioner with Burglary for acts committed on or around

1 January 26, 2019. The State's Motion to Revoke Bail was granted after a hearing on February  
2 4, 2019.

3 At the sentencing hearing on March 6, 2019, the State argued that it had regained the  
4 right to argue pursuant to the terms of the GPA. The Court agreed, and the State argued that  
5 Petitioner should be punished under NRS 207.010 (the "Small Habitual Statute"). The Court  
6 agreed, and Petitioner was sentenced to sixty (60) to one hundred seventy-four (174) months  
7 in the Nevada Department of Corrections (NDOC), consecutive to Petitioner's sentence in  
8 another case (C315125). The Court also awarded Petitioner ten (10) days credit for time  
9 served. The Judgment of Conviction in this case was filed on March 12, 2019.

10 Petitioner filed a Notice of Appeal on March 28, 2019. Petitioner's Case Appeal  
11 Statement was filed on August 9, 2019 (SCN 78590).

12 On April 15, 2019, Petitioner filed a Petition for Writ of Habeas Corpus ("Petition").  
13 Pursuant to Court order, the State filed its Response on June 26, 2019. At the hearing on the  
14 Petition on August 19, 2019, the Court noted that Petitioner filed two Addenda to his original  
15 Petition (the first on May 7, 2019, and the second on May 9, 2019). Pursuant to the Court's  
16 order, the State filed a Response to the Addenda on October 10, 2019. Petitioner filed a Reply  
17 to the State's Response on November 4, 2019. On November 18, 2019, Petitioner's Petition  
18 came before the Court, at which time the Court took the matter OFF CALENDAR due to  
19 Petitioner's pending appeal.

20 On November 19, 2019, Petitioner filed another Notice of Appeal, appealing the denial  
21 of his Coram Nobis motion. His Case Appeal Statement was filed on December 11, 2019 (SCN  
22 80222). On August 31, 2020, the Nevada Court of Appeals affirmed the Court's denial of his  
23 Coram Nobis motion. Remittitur issued on October 12, 2020.

24 On January 14, 2020, the Nevada Supreme Court AFFIRMED Petitioner's Judgment  
25 of Conviction in SCN 78590. Remittitur issued on February 25, 2020.

26 On February 12, 2020, Petitioner filed an "Amended Petition for Writ of Habeas  
27 Corpus" (his "Amended Petition"). This Court ordered a Response to that Amended Petition  
28 on March 4, 2020. Thereafter, on March 6, 2020, Petitioner filed a "Petition: Expeditious

1 Judicial Examination NRS 34.360-34.830” (his “Petition: EJE”). Pursuant to this Court’s  
2 order, the State filed its Response to both filings on April 17, 2020. Petitioner replied to the  
3 State’s Response on May 15, 2020.

4 On May 15, 2020, Petitioner also filed an “Affidavit of Actual Innocence not Mere  
5 Legal Insufficiency but ‘Factual Innocence.’” On May 27, 2020, Petitioner filed a  
6 Supplemental Petition. While Petitioner’s numerous pleadings were pending, Petitioner filed  
7 a Motion for Peremptory Challenge of Judge and to Disqualify Judge William Bill Kephart.  
8 Thereafter, the State filed its Responses to Petitioner’s Affidavit of Actual Innocence and  
9 Petitioner’s Supplemental Petition on June 10, 2020. As a result of Petitioner’s Peremptory  
10 Challenge, Petitioner’s pending matters were taken off calendar on June 15, 2020. On June  
11 29, 2020, Petitioner filed his Reply to the State’s Response to Petitioner’s Affidavit of Actual  
12 Innocence.

13 On July 7, 2020, Chief Judge Linda Bell considered, and denied, Petitioner’s Motion  
14 for Peremptory Challenge of Judge Kephart. Chief Judge Bell’s Decision and Order was filed  
15 on July 8, 2020.

16 On July 23, 2020, Petitioner filed his Reply to the State’s Response to Petitioner’s  
17 Supplemental Petition. Petitioner, that same day, filed a Motion for Ruling for Rule 60b  
18 Motion for Relief; Motion to Vacate; Amended Petition for Writ of Habeas Corpus. The State  
19 filed its Reponse to Petitioner’s Motion for Ruling on September 2, 2020. Petitioner’s Motion  
20 for Ruling was denied on September 9, 2020.

21 On September 25, 2020, Petitioner filed a Motion for Expeditious Ruling for “Amended  
22 Petition for Writ of Habeas Corpus” 3rd Request. On October 7, 2020, he filed a Motion to  
23 Set Evidentiary Hearing and Issue Transport Order. On October 14, 2020, Petitioner filed a  
24 Motion to Reconsider Order Denying Motion for Ruling for Rule 60b Motion for Relief;  
25 Motion to Vacate; Amended Petition for Writ of Habeas Corpus. The State filed responsive  
26 pleadings to each of Petitioner’s respective filings on November 10, 2020. On November 16,  
27 2020, the Court considered, and denied, Petitioner’s three Motions. The Court’s Order was  
28 filed on November 21, 2020.

1 On December 22, 2020, Petitioner filed a “Motion to Compel Judgment Pursuant to  
2 Nevada Revised Statutes Chapter 34 FRCP Rule 12(c) for Amended Petition for Writ of  
3 Habeas Corpus.” The State filed its Response to that Motion on January 27, 2021. On February  
4 1, 2021, the Court denied Petitioner’s Motion to Compel. The Court also noted that no order  
5 had been filed regarding Petitioner’s Amended Petition for Writ of Habeas Corpus; therefore,  
6 the Court denied the Amended Petition as well. After the Court’s ruling on the matter,  
7 Petitioner filed an “Opposition to State’s Response to Petitioner’s Motion to Compel  
8 Judgment” on February 18, 2021. The Court issued its Findings of Fact, Conclusions of Law  
9 and Order reflecting its denial of Petitioner’s Motion to Compel on March 17, 2021. Notice of  
10 Entry of that Order was filed on March 19, 2021.

11 On February 2, 2021, Petitioner filed a “Reply Motion to Compel Judgment Pursuant  
12 to Nevada Revised Statutes Chapter 34...FRCP Rule 12(c) for Amended Petition for Writ of  
13 Habeas Corpus.” The State filed its Opposition to that “Reply Motion” on April 16, 2021. On  
14 May 12, 2021, the Court denied Petitioner’s “Reply Motion.”

15 On March 9, 2021, the Court filed its Findings of Fact, Conclusions of Law and Order  
16 denying Petitioner’s Amended Petition. That entry was noticed on March 10, 2021. On March  
17 11, 2021, Petitioner filed a Petition to Reconsider that Order. He filed a subsequent Petition to  
18 Reconsider on March 17, 2021. On March 18, 2021, Petitioner filed a Notice of Appeal from  
19 the Court’s denial of his Amended Petition. As of the date of the instant Opposition, no  
20 remittitur has issued from that appeal. On April 7, 2021, Petitioner filed a “Supplemental  
21 Petition for Writ of Habeas Corpus” Petition (NRS 34.360-34.830). Petitioner filed a  
22 “Supplemental ‘Addendum’” on April 14, 2021.

23 The State filed its Opposition to Petitioner’s various Petitions to Reconsider on April  
24 9, 2021. On April 12, 2021, the Court denied Petitioner’s Petitions to Reconsider. Again, well  
25 after the Court’s ruling, Petitioner filed a Reply to the State’s Opposition on May 6, 2021. On  
26 May 12, 2021, the Court issued its Order Denying Petitioner’s Petition to Reconsider.

27 In the interim, Petitioner also filed the instant “Petition for Writ of Habeas Corpus  
28 COVID-19 (Coronavirus)” (his “instant Petition”). The State filed an Opposition and Motion

1 to Consolidate on June 24, 2021. On July 19, 2021, this matter came before this Court. This  
2 Court did not accept argument at the time of hearing, but made the following findings and  
3 conclusions:

## 4 ANALYSIS

### 5 I. THE POST-CONVICTION CASES SHOULD BE CONSOLIDATED

6 NRS 34.780(1), explains that, to the extent they are not inconsistent with habeas  
7 statutes, the Nevada Rules of Civil Procedure apply to post-conviction proceedings. Directly  
8 on point, the Nevada Supreme Court has determined:

9  
10 NRCP 42(a) allows consolidation of pending actions that involve “a common  
11 question of law or fact.” Like under its identical federal counterpart, a district  
court enjoys “broad, but not unfettered, discretion in ordering consolidation.”

12 Nalder v. Eighth Judicial Dist. Court, 136 Nev. 200, 206-07, 462 P.3d 677, 684 (2020)  
13 (quoting Marcuse v. Del Webb Cmty., Inc., 123 Nev. 278, 286, 163 P.3d 462, 468 (2007)).

14 Petitioner’s original post-conviction habeas proceeding was filed under Case No. A-  
15 19-793315-W. In that proceeding, Petitioner raised a number of challenges to his judgment of  
16 conviction in Case No. C315718, including allegations of Double Jeopardy, violations of Due  
17 Process, and Cruel and Unusual Punishment. See, Petition for Writ of Habeas Corpus, filed  
18 on April 15, 2019 (in Case No. A793315).

19 Upon review of the instant Petition, this Court finds that Petitioner again claims that  
20 his sentence amounts to Cruel and Unusual Punishment under the Eighth Amendment. See  
21 Instant Petition at 5. Therefore, because this action, and Petitioner’s separate post-conviction  
22 action, each involve a common question – whether Petitioner’s judgment of conviction and  
23 sentence are constitutional – this Court concludes that the two actions should be consolidated.

24 Moreover, this Court finds that judicial economy supports consolidation of the two  
25 actions. Petitioner continues to file pleadings – with or without permission of this Court –  
26 raising the same (or substantially similar) claims against his judgment of conviction. This  
27 Court has determined that these numerous pleadings should be contained within the same

28 //

1 action, so as to allow for uniform consideration and treatment, as they all center around the  
2 same underlying criminal case.

3 Therefore, this Court concludes that the instant actions should be consolidated into the  
4 pre-existing post-conviction case, A793315.

## 5 **II. THE INSTANT PETITION DOES NOT WARRANT RELIEF**

6 Petitioner's instant Petition raises a single claim – that the COVID-19 pandemic has  
7 rendered Petitioner's sentence of imprisonment cruel and unusual in violation of the Eighth  
8 Amendment. See Instant Petition at 5. However, this Court finds that this claim is not  
9 cognizable on habeas review. Further, this Court finds that the claim itself is procedurally  
10 defaulted pursuant to the time-bar of NRS 34.726. As such, this Court concludes that Petitioner  
11 is not entitled to relief.

### 12 **A. Petitioner's Claim is Not Cognizable in Habeas Review**

13 The Nevada Supreme Court has expressly excluded claims of cruel and unusual  
14 punishment from consideration in post-conviction habeas review. See Bowen v. Warden,  
15 Nevada State Prison, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984). The Bowen Court  
16 explained:

17 We have repeatedly held that a petition for writ of habeas corpus may challenge  
18 the validity of current confinement, but not the conditions thereof. See Director,  
19 Dep't Prisons v. Arndt, 98 Nev. 84, 640 P.2d 1318 (1982); Rogers v. Warden,  
20 84 Neb. [sic] 539, 445 P.2d 28 (1968); Rainsberger v. Leypoldt, 77 Nev. 399,  
21 365 P.2d 489 (1961), cert. denied, 368 U.S. 516, 82 S.Ct. 530, 7 L.Ed.2d 522  
22 (1962). In Rogers, we held that a claim of brutal treatment at the hands of prison  
23 officials was not cognizable on a habeas petition, because the claim spoke to the  
24 conditions and not the validity of confinement. In Arndt, we left open the  
specific question raised by this appeal, whether the imposition of a qualitatively  
more restrictive type of confinement within the prison, such as punitive  
segregation, may be challenged by a petition for writ of habeas corpus. We now  
hold that such a challenge speaks only to the conditions of confinement and  
therefore may not be raised by a habeas corpus petition. See Rogers v. Warden,  
*supra*.

25 Id. Thereafter, the Bowen Court affirmed the dismissal of a habeas petition challenging only  
26 the conditions of confinement. Id.

27 The United States Supreme Court has discussed a litany of claims alleging cruel and  
28 unusual punishments. In Wilson v. Seiter, 501 U.S. 294, 111 S.Ct. 2321 (1991), the Court

1 dealt with claims alleging “overcrowding, excessive noise, insufficient locker storage space,  
2 inadequate heating and cooling, improper ventilation, unclean and inadequate restrooms,  
3 unsanitary dining facilities and food preparation, and housing with mentally and physically ill  
4 inmates.” At 296, 111 S.Ct. at 2323. The Wilson Court characterized such claims as  
5 “conditions of confinement” claims, which required an allegation of “deliberate indifference”  
6 by prison officials. Id. at 297, 111 S.Ct. at 2323.

7 Petitioner raises one claim – which he labels as “Violation of United States Constitution  
8 8<sup>th</sup> Amendment ‘Cruel and Unusual Punishment’ (*Deliberate Indifference*). Instant Petition  
9 at 2 (emphasis added). Therefore, this Court finds that Petitioner acknowledges he is not  
10 challenging the validity of his judgment of conviction; rather, he is challenging the *conditions*  
11 *of his confinement*. See Wilson, 501 U.S. at 297, 111 S.Ct. at 2323. Indeed, Petitioner  
12 specifically alleges:

13 Petitioner’s “Deliberate Indifference” claim is established where the challenged  
14 deficiency is sufficiently serious and prison officials know that petitioner face a  
15 substantial risk of serious harm and disregard that risk by failing to take  
reasonable measures to abate it as describe herein, and the target of the petition  
is not what respondents have done but what they have refused to do.

16 Instant Petition at 4-5. Petitioner also includes a claim that the COVID-19 pandemic renders  
17 his sentence cruel and unusual because of his risk of contracting the virus in prison. Id. As  
18 such, this Court finds that Petitioner’s claim is not cognizable in habeas proceedings, and  
19 concludes that the same must be dismissed. See Farmer v. Brennan, 511 U.S. 825, 832, 114  
20 S.Ct. 1970, 1976 (1994) (holding that the proper way to raise a claim that one’s lawful  
21 incarceration has exposed them to harm while incarcerated is to challenge the *conditions of*  
22 *confinement* under the Eighth Amendment); see also Bowen, 100 Nev. at 490, 686 P.2d at 250  
23 (conditions of confinement claims are not cognizable in habeas review).

24 Because the Nevada Supreme Court has clearly and expressly precluded conditions of  
25 confinement claims from post-conviction habeas proceedings, this Court finds that the instant  
26 Petition is not the proper legal vehicle within which to raise Petitioner’s claim. As such, this  
27 Court concludes that it lacks the jurisdiction to grant habeas relief on the instant Petition, and  
28 therefore, the same must be dismissed.



1           **B.       Petitioner’s Instant Petition is Time-Barred**

2           The mandatory provision of NRS 34.726(1) states:

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

- 7                   (a)     That the delay is not the fault of the petitioner; and  
8                   (b)     That dismissal of the petition as untimely will unduly prejudice the  
                    petitioner.

9           (emphasis added). “[T]he statutory rules regarding procedural default are mandatory and  
10          cannot be ignored when properly raised by the State.” State v. Dist. Court (Riker), 121 Nev.  
11          225, 233, 112 P.3d 1070, 1075 (2005).

12          Per the language, the one-year time bar prescribed by NRS 34.726 begins to run from  
13          the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.  
14          Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998); see Pellegrini v.  
15          State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001) (holding that NRS 34.726 should be  
16          construed by its plain meaning).

17          In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada  
18          Supreme Court rejected a habeas petition that was filed two days late, pursuant to the “clear  
19          and unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the  
20          importance of filing the petition with the District Court within the one-year mandate, absent a  
21          showing of “good cause” for the delay in filing. Gonzales, 118, Nev. at 593, 590 P.3d at 902.  
22          The one-year time bar is therefore strictly construed. In contrast with the short amount of time  
23          to file a notice of appeal, a prisoner has a full year to file a post-conviction habeas petition, so  
24          there is no injustice in a strict application of NRS 34.726(1), despite any alleged difficulties  
25          with the postal system. Id. at 595, 53 P.3d at 903.

26          The Nevada Supreme Court has held that courts have a *duty* to consider whether a  
27          defendant’s post-conviction petition claims are procedurally barred, noting:

28          //

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

4 Riker, 121 Nev. at 231, 112 P.3d at 1074. The Nevada Supreme Court has granted no  
5 discretion to the district courts regarding whether to apply the statutory procedural bars; the  
6 rules *must* be applied.

7 This Court notes that Remittitur from the affirmance of Petitioner's Judgment of  
8 Conviction was filed on February 25, 2020. Therefore, Petitioner had until February 25, 2021,  
9 to file a timely post-conviction habeas petition. Dickerson, 114 Nev. at 1087, 967 P.2d at 1133-  
10 34. Petitioner's instant Petition was not filed until March 30, 2021, over a month past the  
11 statutory deadline. Therefore, this Court finds that, absent a showing of good cause and  
12 prejudice, Petitioner's instant Petition must be dismissed as untimely. Riker, 121 Nev. at 233,  
13 112 P.3d at 1075. This Court further finds that Petitioner does not attempt to demonstrate good  
14 cause or prejudice. See generally, Instant Petition. Indeed, this Court finds that Petitioner could  
15 not successfully do so, as Petitioner's contention is without merit.

16 Because Petitioner's instant Petition is time-barred, with no good cause shown for the  
17 delay, this Court concludes that Petitioner's instant Petition must be dismissed pursuant to  
18 NRS 34.726(1).

19 **C. Petitioner Fails to Demonstrate Good Cause to Overcome His Procedural**  
20 **Defaults**

21 To avoid procedural default, under NRS 34.726, a defendant has the burden of pleading  
22 and proving specific facts that demonstrate good cause for his failure to present his claim in  
23 earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will  
24 be unduly prejudiced if the petition is dismissed. See Hogan v. Warden, 109 Nev. 952, 959-  
25 60, 860 P.2d 710, 715-16 (1993); Phelps v. Nevada Dep't of Prisons, 104 Nev. 656, 659, 764  
26 P.2d 1303, 1305 (1988).

27 Specifically, under NRS 34.726, a petitioner must demonstrate: (1) "[t]hat the delay is  
28 not the fault of the petitioner" and (2) that the petitioner will be "unduly prejudice[d]" if the

petition is dismissed as untimely. NRS 34.726. To meet the first requirement, “a petitioner *must* show that an impediment external to the defense prevented him or her from complying with the state procedural default rules.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (emphasis added). “A qualifying impediment might be shown where the factual or legal basis for a claim was not reasonably available *at the time of default*.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Clem Court continued, “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d at 526. To find good cause there must be a “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 252, 71 P.3d at 506 (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Examples of good cause include interference by State officials and the previous unavailability of a legal or factual basis. See State v. Huebler, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012). Clearly, any delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

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

This Court finds that Petitioner does not attempt to address good cause. See generally, Instant Petition. However, even if Petitioner attempted to raise a “good cause” argument, this Court finds that Petitioner could not succeed, as COVID-19 is not a recently-arisen situation. Rather, the national emergency declared due to the COVID-19 pandemic was declared on March 13, 2020. Petitioner’s instant PWHC was filed on March 30, 2021, over a year after the national emergency was declared. As such, this Court finds that Petitioner could not successfully assert that his claim was raised within any “reasonable” time after the good cause

1 arose. See Hathaway, 119 Nev. at 252-53, 71 P.3d at 506-07. Instead, this Court finds that the  
2 COVID-19 pandemic was prevalent at the time Petitioner could have filed a *timely* petition;  
3 therefore, it is not a “qualifying impediment” sufficient to overcome the procedural bars. See  
4 Clem, 119 Nev. at 621, 81 P.3d at 525.

5 As the COVID-19 pandemic cannot constitute good cause, and as Petitioner fails to  
6 assert any other instance of good cause, this Court concludes that Petitioner cannot  
7 demonstrate the requisite good cause to overcome the time-bar to his instant Petition.

8 **D. Petitioner Fails to Demonstrate Prejudice Sufficient to Overcome His**  
9 **Procedural Defaults**

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

15 As previously found *supra*, this Court finds that the instant Petition does not allege that  
16 “the state proceedings” were infected with any constitutional error. See Instant Petition at 4-  
17 5; Hogan, 109 Nev. at 960, 860 P.2d at 716. Instead, this Court finds that Petitioner simply  
18 alleges that prison officials have improperly and/or insufficiently responded to the COVID-19  
19 pandemic. Id. Because Petitioner’s claim is clearly not cognizable in habeas review, this Court  
20 finds that it does not suffice to demonstrate prejudice sufficient to overcome Petitioner’s  
21 procedural default. Hogan, 109 Nev. at 960, 860 P.2d at 716.

22 Because Petitioner does not allege any cognizable claim, much less any claim that could  
23 demonstrate prejudice, this Court concludes that Petitioner fails to overcome the time-bar to  
24 the instant Petition, and as such, the instant Petition must be dismissed.

25 //

26 //

27 //

28 //

1 **CONCLUSION**

2 THEREFORE, Court ORDERED, Petitioner James H. Hayes's Petition for Writ of  
3 Habeas Corpus (COVID-19) shall be, and is, DENIED

4 FURTHER, Court ORDERED, the instant action, A-21-831979-W, shall be, and is,  
5 CONSOLIDATED with Petitioner's original post-conviction action, A-19-793315-W.

6 DATED this \_\_\_\_\_ day of August, 2021.


7 Dated this 23rd day of August, 2021

8   
9 DISTRICT COURT JUDGE

10 Respectfully submitted,

D29 CC6 B7EB 27C9  
Monica Trujillo  
District Court Judge

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

13 BY  for  
14 JONATHAN VANBOSKERCK  
15 Chief Deputy District Attorney  
Nevada Bar # 06528

16  
17  
18 **CERTIFICATE OF MAILING**

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

21 JAMES H. HAYES, BAC #1175077  
22 SOUTHERN DESERT CORRECTIONAL CENTER  
23 P.O. BOX 208  
INDIAN SPRINGS, NV, 89018

24  
25 BY \_\_\_\_\_  
26 C. Garcia  
27 Secretary for the District Attorney's Office

28 cg/L2

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 James Hayes, Plaintiff(s)

CASE NO: A-19-793315-W

7 vs.

DEPT. NO. Department 3

8 Nevada State of, 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 Findings of Fact, Conclusions of Law and Order was served via the  
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
case as listed below:

14 Service Date: 8/23/2021

15 Melissa Boudreaux

mezama@clarkcountynv.gov



1 NEFF

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

4  
5 JAMES HAYES,

6 Petitioner,

7 vs.

8 STATE OF NEVADA,

9 Respondent,

Case No: A-19-793315-W

*Consolidated with A-21-831979-W*

Dept No: III

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

11 **PLEASE TAKE NOTICE** that on August 23, 2021, the court entered a decision or order in this matter, a  
12 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 August 25, 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 25 day of August 2021, I served a copy of this Notice of Entry on the  
21 following:

22 ☒ By e-mail:

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

24 ☒ The United States mail addressed as follows:

25 James Hayes # 1175077  
26 P.O. Box 208  
Indian Springs, NV 89070

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

*Heather S. Hume*

CLERK OF THE COURT

**FCL**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
JONATHAN VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #06528  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

JAMES HOWARD HAYES,  
aka James Howard Hayes Jr.,  
#2796708

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-19-793315-W  
A-21-831979-W

DEPT NO: III

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

DATE OF HEARING: JULY 19, 2021  
TIME OF HEARING: 8:30 AM

THIS CAUSE having come before the Honorable MONICA TRUJILLO, District Court Judge, on the 19th day of July, 2021, the Petitioner not being present, not being represented by counsel, and the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, through MORGAN THOMAS, 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.

**FINDINGS OF FACT, CONCLUSIONS OF LAW**

**STATEMENT OF THE CASE**

On or about July 23, 2013, James H. Hayes (hereinafter, "Petitioner") was charged by way of Criminal Complaint with one count of BURGLARY (Category B Felony – NRS



1 205.060) and one count of ATTEMPT GRAND LARCENY (Category D Felony/Gross  
2 Misdemeanor – NRS 205.220.1, 205.222.2, 193.330). Following a Preliminary Hearing in  
3 Justice Court, Las Vegas Township on June 14, 2016, the charge of BURGLARY was bound  
4 over to District Court, and the charge of ATTEMPT GRAND LARCENY was dismissed.

5 On June 17, 2016, the State filed an Information with the District Court, charging  
6 Petitioner with one count of BURGLARY. On August 29, 2017, the State filed an Amended  
7 Notice of Intent to Seek Punishment as a Habitual Criminal. On November 7, 2018, pursuant  
8 to a Guilty Plea Agreement (“GPA”), Petitioner entered a plea of Guilty pursuant to North  
9 Carolina v. Alford, 400 U.S. 25 (1970) to one count of ATTEMPT GRAND LARCENY.

10 The terms of the GPA are as follows:

11 The State has agreed to make no recommendation at the time of sentencing. The  
12 State has no opposition to probation with the only condition being thirty (30)  
13 days in the Clark County Detention Center (CCDC), with thirty (30) days credit  
for time served.

14 GPA at 1:22-24.

15 The GPA further includes, in pertinent part, the following acknowledgement:

16 I understand and agree that, if...an independent magistrate, by affidavit review,  
17 confirms probable cause against me for new criminal charges including reckless  
18 driving or DUI, but excluding minor traffic violations, the State will have the  
19 unqualified right to argue for any legal sentence and term of confinement  
20 allowable for the crime(s) to which I am pleading guilty, including the use of  
21 any prior convictions I may have to increase my sentence as a habitual criminal  
to five (5) to twenty (20) years, Life without the possibility of parole, Life with  
the possibility of parole after ten (10) years, or a definite twenty-five (25) year  
term with the possibility of parole after ten (10) years.

22 GPA at 2: 1-9.

23 An Amended Information reflecting the new charge of ATTEMPT GRAND  
24 LARCENY was filed in conjunction with the GPA. Petitioner was adjudged Guilty pursuant  
25 to Alford that same day, and the sentencing hearing was scheduled for March 6, 2019.

26 On January 31, 2019, the State filed a State’s Notice of Motion and Motion to Revoke  
27 Bail, asserting that in Las Vegas Justice Court case number 19F01534X, a Justice of the Peace  
28 had found probable cause to charge Petitioner with Burglary for acts committed on or around

1 January 26, 2019. The State's Motion to Revoke Bail was granted after a hearing on February  
2 4, 2019.

3 At the sentencing hearing on March 6, 2019, the State argued that it had regained the  
4 right to argue pursuant to the terms of the GPA. The Court agreed, and the State argued that  
5 Petitioner should be punished under NRS 207.010 (the "Small Habitual Statute"). The Court  
6 agreed, and Petitioner was sentenced to sixty (60) to one hundred seventy-four (174) months  
7 in the Nevada Department of Corrections (NDOC), consecutive to Petitioner's sentence in  
8 another case (C315125). The Court also awarded Petitioner ten (10) days credit for time  
9 served. The Judgment of Conviction in this case was filed on March 12, 2019.

10 Petitioner filed a Notice of Appeal on March 28, 2019. Petitioner's Case Appeal  
11 Statement was filed on August 9, 2019 (SCN 78590).

12 On April 15, 2019, Petitioner filed a Petition for Writ of Habeas Corpus ("Petition").  
13 Pursuant to Court order, the State filed its Response on June 26, 2019. At the hearing on the  
14 Petition on August 19, 2019, the Court noted that Petitioner filed two Addenda to his original  
15 Petition (the first on May 7, 2019, and the second on May 9, 2019). Pursuant to the Court's  
16 order, the State filed a Response to the Addenda on October 10, 2019. Petitioner filed a Reply  
17 to the State's Response on November 4, 2019. On November 18, 2019, Petitioner's Petition  
18 came before the Court, at which time the Court took the matter OFF CALENDAR due to  
19 Petitioner's pending appeal.

20 On November 19, 2019, Petitioner filed another Notice of Appeal, appealing the denial  
21 of his Coram Nobis motion. His Case Appeal Statement was filed on December 11, 2019 (SCN  
22 80222). On August 31, 2020, the Nevada Court of Appeals affirmed the Court's denial of his  
23 Coram Nobis motion. Remittitur issued on October 12, 2020.

24 On January 14, 2020, the Nevada Supreme Court AFFIRMED Petitioner's Judgment  
25 of Conviction in SCN 78590. Remittitur issued on February 25, 2020.

26 On February 12, 2020, Petitioner filed an "Amended Petition for Writ of Habeas  
27 Corpus" (his "Amended Petition"). This Court ordered a Response to that Amended Petition  
28 on March 4, 2020. Thereafter, on March 6, 2020, Petitioner filed a "Petition: Expeditious

1 Judicial Examination NRS 34.360-34.830” (his “Petition: EJE”). Pursuant to this Court’s  
2 order, the State filed its Response to both filings on April 17, 2020. Petitioner replied to the  
3 State’s Response on May 15, 2020.

4 On May 15, 2020, Petitioner also filed an “Affidavit of Actual Innocence not Mere  
5 Legal Insufficiency but ‘Factual Innocence.’” On May 27, 2020, Petitioner filed a  
6 Supplemental Petition. While Petitioner’s numerous pleadings were pending, Petitioner filed  
7 a Motion for Peremptory Challenge of Judge and to Disqualify Judge William Bill Kephart.  
8 Thereafter, the State filed its Responses to Petitioner’s Affidavit of Actual Innocence and  
9 Petitioner’s Supplemental Petition on June 10, 2020. As a result of Petitioner’s Peremptory  
10 Challenge, Petitioner’s pending matters were taken off calendar on June 15, 2020. On June  
11 29, 2020, Petitioner filed his Reply to the State’s Response to Petitioner’s Affidavit of Actual  
12 Innocence.

13 On July 7, 2020, Chief Judge Linda Bell considered, and denied, Petitioner’s Motion  
14 for Peremptory Challenge of Judge Kephart. Chief Judge Bell’s Decision and Order was filed  
15 on July 8, 2020.

16 On July 23, 2020, Petitioner filed his Reply to the State’s Response to Petitioner’s  
17 Supplemental Petition. Petitioner, that same day, filed a Motion for Ruling for Rule 60b  
18 Motion for Relief; Motion to Vacate; Amended Petition for Writ of Habeas Corpus. The State  
19 filed its Reponse to Petitioner’s Motion for Ruling on September 2, 2020. Petitioner’s Motion  
20 for Ruling was denied on September 9, 2020.

21 On September 25, 2020, Petitioner filed a Motion for Expeditious Ruling for “Amended  
22 Petition for Writ of Habeas Corpus” 3rd Request. On October 7, 2020, he filed a Motion to  
23 Set Evidentiary Hearing and Issue Transport Order. On October 14, 2020, Petitioner filed a  
24 Motion to Reconsider Order Denying Motion for Ruling for Rule 60b Motion for Relief;  
25 Motion to Vacate; Amended Petition for Writ of Habeas Corpus. The State filed responsive  
26 pleadings to each of Petitioner’s respective filings on November 10, 2020. On November 16,  
27 2020, the Court considered, and denied, Petitioner’s three Motions. The Court’s Order was  
28 filed on November 21, 2020.

1 On December 22, 2020, Petitioner filed a “Motion to Compel Judgment Pursuant to  
2 Nevada Revised Statutes Chapter 34 FRCP Rule 12(c) for Amended Petition for Writ of  
3 Habeas Corpus.” The State filed its Response to that Motion on January 27, 2021. On February  
4 1, 2021, the Court denied Petitioner’s Motion to Compel. The Court also noted that no order  
5 had been filed regarding Petitioner’s Amended Petition for Writ of Habeas Corpus; therefore,  
6 the Court denied the Amended Petition as well. After the Court’s ruling on the matter,  
7 Petitioner filed an “Opposition to State’s Response to Petitioner’s Motion to Compel  
8 Judgment” on February 18, 2021. The Court issued its Findings of Fact, Conclusions of Law  
9 and Order reflecting its denial of Petitioner’s Motion to Compel on March 17, 2021. Notice of  
10 Entry of that Order was filed on March 19, 2021.

11 On February 2, 2021, Petitioner filed a “Reply Motion to Compel Judgment Pursuant  
12 to Nevada Revised Statutes Chapter 34...FRCP Rule 12(c) for Amended Petition for Writ of  
13 Habeas Corpus.” The State filed its Opposition to that “Reply Motion” on April 16, 2021. On  
14 May 12, 2021, the Court denied Petitioner’s “Reply Motion.”

15 On March 9, 2021, the Court filed its Findings of Fact, Conclusions of Law and Order  
16 denying Petitioner’s Amended Petition. That entry was noticed on March 10, 2021. On March  
17 11, 2021, Petitioner filed a Petition to Reconsider that Order. He filed a subsequent Petition to  
18 Reconsider on March 17, 2021. On March 18, 2021, Petitioner filed a Notice of Appeal from  
19 the Court’s denial of his Amended Petition. As of the date of the instant Opposition, no  
20 remittitur has issued from that appeal. On April 7, 2021, Petitioner filed a “Supplemental  
21 Petition for Writ of Habeas Corpus” Petition (NRS 34.360-34.830). Petitioner filed a  
22 “Supplemental ‘Addendum’” on April 14, 2021.

23 The State filed its Opposition to Petitioner’s various Petitions to Reconsider on April  
24 9, 2021. On April 12, 2021, the Court denied Petitioner’s Petitions to Reconsider. Again, well  
25 after the Court’s ruling, Petitioner filed a Reply to the State’s Opposition on May 6, 2021. On  
26 May 12, 2021, the Court issued its Order Denying Petitioner’s Petition to Reconsider.

27 In the interim, Petitioner also filed the instant “Petition for Writ of Habeas Corpus  
28 COVID-19 (Coronavirus)” (his “instant Petition”). The State filed an Opposition and Motion

1 to Consolidate on June 24, 2021. On July 19, 2021, this matter came before this Court. This  
2 Court did not accept argument at the time of hearing, but made the following findings and  
3 conclusions:

## 4 ANALYSIS

### 5 I. THE POST-CONVICTION CASES SHOULD BE CONSOLIDATED

6 NRS 34.780(1), explains that, to the extent they are not inconsistent with habeas  
7 statutes, the Nevada Rules of Civil Procedure apply to post-conviction proceedings. Directly  
8 on point, the Nevada Supreme Court has determined:

9  
10 NRCP 42(a) allows consolidation of pending actions that involve “a common  
11 question of law or fact.” Like under its identical federal counterpart, a district  
court enjoys “broad, but not unfettered, discretion in ordering consolidation.”

12 Nalder v. Eighth Judicial Dist. Court, 136 Nev. 200, 206-07, 462 P.3d 677, 684 (2020)  
13 (quoting Marcuse v. Del Webb Cmtys., Inc., 123 Nev. 278, 286, 163 P.3d 462, 468 (2007)).

14 Petitioner’s original post-conviction habeas proceeding was filed under Case No. A-  
15 19-793315-W. In that proceeding, Petitioner raised a number of challenges to his judgment of  
16 conviction in Case No. C315718, including allegations of Double Jeopardy, violations of Due  
17 Process, and Cruel and Unusual Punishment. See, Petition for Writ of Habeas Corpus, filed  
18 on April 15, 2019 (in Case No. A793315).

19 Upon review of the instant Petition, this Court finds that Petitioner again claims that  
20 his sentence amounts to Cruel and Unusual Punishment under the Eighth Amendment. See  
21 Instant Petition at 5. Therefore, because this action, and Petitioner’s separate post-conviction  
22 action, each involve a common question – whether Petitioner’s judgment of conviction and  
23 sentence are constitutional – this Court concludes that the two actions should be consolidated.

24 Moreover, this Court finds that judicial economy supports consolidation of the two  
25 actions. Petitioner continues to file pleadings – with or without permission of this Court –  
26 raising the same (or substantially similar) claims against his judgment of conviction. This  
27 Court has determined that these numerous pleadings should be contained within the same

28 //

1 action, so as to allow for uniform consideration and treatment, as they all center around the  
2 same underlying criminal case.

3 Therefore, this Court concludes that the instant actions should be consolidated into the  
4 pre-existing post-conviction case, A793315.

## 5 **II. THE INSTANT PETITION DOES NOT WARRANT RELIEF**

6 Petitioner's instant Petition raises a single claim – that the COVID-19 pandemic has  
7 rendered Petitioner's sentence of imprisonment cruel and unusual in violation of the Eighth  
8 Amendment. See Instant Petition at 5. However, this Court finds that this claim is not  
9 cognizable on habeas review. Further, this Court finds that the claim itself is procedurally  
10 defaulted pursuant to the time-bar of NRS 34.726. As such, this Court concludes that Petitioner  
11 is not entitled to relief.

### 12 **A. Petitioner's Claim is Not Cognizable in Habeas Review**

13 The Nevada Supreme Court has expressly excluded claims of cruel and unusual  
14 punishment from consideration in post-conviction habeas review. See Bowen v. Warden,  
15 Nevada State Prison, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984). The Bowen Court  
16 explained:

17 We have repeatedly held that a petition for writ of habeas corpus may challenge  
18 the validity of current confinement, but not the conditions thereof. See Director,  
19 Dep't Prisons v. Arndt, 98 Nev. 84, 640 P.2d 1318 (1982); Rogers v. Warden,  
20 84 Neb. [sic] 539, 445 P.2d 28 (1968); Rainsberger v. Leypoldt, 77 Nev. 399,  
21 365 P.2d 489 (1961), cert. denied, 368 U.S. 516, 82 S.Ct. 530, 7 L.Ed.2d 522  
22 (1962). In Rogers, we held that a claim of brutal treatment at the hands of prison  
23 officials was not cognizable on a habeas petition, because the claim spoke to the  
24 conditions and not the validity of confinement. In Arndt, we left open the  
specific question raised by this appeal, whether the imposition of a qualitatively  
more restrictive type of confinement within the prison, such as punitive  
segregation, may be challenged by a petition for writ of habeas corpus. We now  
hold that such a challenge speaks only to the conditions of confinement and  
therefore may not be raised by a habeas corpus petition. See Rogers v. Warden,  
*supra*.

25 Id. Thereafter, the Bowen Court affirmed the dismissal of a habeas petition challenging only  
26 the conditions of confinement. Id.

27 The United States Supreme Court has discussed a litany of claims alleging cruel and  
28 unusual punishments. In Wilson v. Seiter, 501 U.S. 294, 111 S.Ct. 2321 (1991), the Court

1 dealt with claims alleging “overcrowding, excessive noise, insufficient locker storage space,  
2 inadequate heating and cooling, improper ventilation, unclean and inadequate restrooms,  
3 unsanitary dining facilities and food preparation, and housing with mentally and physically ill  
4 inmates.” At 296, 111 S.Ct. at 2323. The Wilson Court characterized such claims as  
5 “conditions of confinement” claims, which required an allegation of “deliberate indifference”  
6 by prison officials. Id. at 297, 111 S.Ct. at 2323.

7 Petitioner raises one claim – which he labels as “Violation of United States Constitution  
8 8<sup>th</sup> Amendment ‘Cruel and Unusual Punishment’ (*Deliberate Indifference*). Instant Petition  
9 at 2 (emphasis added). Therefore, this Court finds that Petitioner acknowledges he is not  
10 challenging the validity of his judgment of conviction; rather, he is challenging the *conditions*  
11 *of his confinement*. See Wilson, 501 U.S. at 297, 111 S.Ct. at 2323. Indeed, Petitioner  
12 specifically alleges:

13 Petitioner’s “Deliberate Indifference” claim is established where the challenged  
14 deficiency is sufficiently serious and prison officials know that petitioner face a  
15 substantial risk of serious harm and disregard that risk by failing to take  
reasonable measures to abate it as describe herein, and the target of the petition  
is not what respondents have done but what they have refused to do.

16 Instant Petition at 4-5. Petitioner also includes a claim that the COVID-19 pandemic renders  
17 his sentence cruel and unusual because of his risk of contracting the virus in prison. Id. As  
18 such, this Court finds that Petitioner’s claim is not cognizable in habeas proceedings, and  
19 concludes that the same must be dismissed. See Farmer v. Brennan, 511 U.S. 825, 832, 114  
20 S.Ct. 1970, 1976 (1994) (holding that the proper way to raise a claim that one’s lawful  
21 incarceration has exposed them to harm while incarcerated is to challenge the *conditions of*  
22 *confinement* under the Eighth Amendment); see also Bowen, 100 Nev. at 490, 686 P.2d at 250  
23 (conditions of confinement claims are not cognizable in habeas review).

24 Because the Nevada Supreme Court has clearly and expressly precluded conditions of  
25 confinement claims from post-conviction habeas proceedings, this Court finds that the instant  
26 Petition is not the proper legal vehicle within which to raise Petitioner’s claim. As such, this  
27 Court concludes that it lacks the jurisdiction to grant habeas relief on the instant Petition, and  
28 therefore, the same must be dismissed.

1           **B.       Petitioner’s Instant Petition is Time-Barred**

2           The mandatory provision of NRS 34.726(1) states:

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

- 7                   (a)     That the delay is not the fault of the petitioner; and  
8                   (b)     That dismissal of the petition as untimely will unduly prejudice the  
                    petitioner.

9           (emphasis added). “[T]he statutory rules regarding procedural default are mandatory and  
10          cannot be ignored when properly raised by the State.” State v. Dist. Court (Riker), 121 Nev.  
11          225, 233, 112 P.3d 1070, 1075 (2005).

12          Per the language, the one-year time bar prescribed by NRS 34.726 begins to run from  
13          the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.  
14          Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998); see Pellegrini v.  
15          State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001) (holding that NRS 34.726 should be  
16          construed by its plain meaning).

17          In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada  
18          Supreme Court rejected a habeas petition that was filed two days late, pursuant to the “clear  
19          and unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the  
20          importance of filing the petition with the District Court within the one-year mandate, absent a  
21          showing of “good cause” for the delay in filing. Gonzales, 118, Nev. at 593, 590 P.3d at 902.  
22          The one-year time bar is therefore strictly construed. In contrast with the short amount of time  
23          to file a notice of appeal, a prisoner has a full year to file a post-conviction habeas petition, so  
24          there is no injustice in a strict application of NRS 34.726(1), despite any alleged difficulties  
25          with the postal system. Id. at 595, 53 P.3d at 903.

26          The Nevada Supreme Court has held that courts have a *duty* to consider whether a  
27          defendant’s post-conviction petition claims are procedurally barred, noting:

28          //



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

4 Riker, 121 Nev. at 231, 112 P.3d at 1074. The Nevada Supreme Court has granted no  
5 discretion to the district courts regarding whether to apply the statutory procedural bars; the  
6 rules *must* be applied.

7 This Court notes that Remittitur from the affirmance of Petitioner's Judgment of  
8 Conviction was filed on February 25, 2020. Therefore, Petitioner had until February 25, 2021,  
9 to file a timely post-conviction habeas petition. Dickerson, 114 Nev. at 1087, 967 P.2d at 1133-  
10 34. Petitioner's instant Petition was not filed until March 30, 2021, over a month past the  
11 statutory deadline. Therefore, this Court finds that, absent a showing of good cause and  
12 prejudice, Petitioner's instant Petition must be dismissed as untimely. Riker, 121 Nev. at 233,  
13 112 P.3d at 1075. This Court further finds that Petitioner does not attempt to demonstrate good  
14 cause or prejudice. See generally, Instant Petition. Indeed, this Court finds that Petitioner could  
15 not successfully do so, as Petitioner's contention is without merit.

16 Because Petitioner's instant Petition is time-barred, with no good cause shown for the  
17 delay, this Court concludes that Petitioner's instant Petition must be dismissed pursuant to  
18 NRS 34.726(1).

19 **C. Petitioner Fails to Demonstrate Good Cause to Overcome His Procedural**  
20 **Defaults**

21 To avoid procedural default, under NRS 34.726, a defendant has the burden of pleading  
22 and proving specific facts that demonstrate good cause for his failure to present his claim in  
23 earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will  
24 be unduly prejudiced if the petition is dismissed. See Hogan v. Warden, 109 Nev. 952, 959-  
25 60, 860 P.2d 710, 715-16 (1993); Phelps v. Nevada Dep't of Prisons, 104 Nev. 656, 659, 764  
26 P.2d 1303, 1305 (1988).

27 Specifically, under NRS 34.726, a petitioner must demonstrate: (1) "[t]hat the delay is  
28 not the fault of the petitioner" and (2) that the petitioner will be "unduly prejudice[d]" if the

petition is dismissed as untimely. NRS 34.726. To meet the first requirement, “a petitioner *must* show that an impediment external to the defense prevented him or her from complying with the state procedural default rules.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (emphasis added). “A qualifying impediment might be shown where the factual or legal basis for a claim was not reasonably available *at the time of default*.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Clem Court continued, “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d at 526. To find good cause there must be a “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 252, 71 P.3d at 506 (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Examples of good cause include interference by State officials and the previous unavailability of a legal or factual basis. See State v. Huebler, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012). Clearly, any delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

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

This Court finds that Petitioner does not attempt to address good cause. See generally, Instant Petition. However, even if Petitioner attempted to raise a “good cause” argument, this Court finds that Petitioner could not succeed, as COVID-19 is not a recently-arisen situation. Rather, the national emergency declared due to the COVID-19 pandemic was declared on March 13, 2020. Petitioner’s instant PWHC was filed on March 30, 2021, over a year after the national emergency was declared. As such, this Court finds that Petitioner could not successfully assert that his claim was raised within any “reasonable” time after the good cause

1 arose. See Hathaway, 119 Nev. at 252-53, 71 P.3d at 506-07. Instead, this Court finds that the  
2 COVID-19 pandemic was prevalent at the time Petitioner could have filed a *timely* petition;  
3 therefore, it is not a “qualifying impediment” sufficient to overcome the procedural bars. See  
4 Clem, 119 Nev. at 621, 81 P.3d at 525.

5 As the COVID-19 pandemic cannot constitute good cause, and as Petitioner fails to  
6 assert any other instance of good cause, this Court concludes that Petitioner cannot  
7 demonstrate the requisite good cause to overcome the time-bar to his instant Petition.

8 **D. Petitioner Fails to Demonstrate Prejudice Sufficient to Overcome His**  
9 **Procedural Defaults**

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

15 As previously found *supra*, this Court finds that the instant Petition does not allege that  
16 “the state proceedings” were infected with any constitutional error. See Instant Petition at 4-  
17 5; Hogan, 109 Nev. at 960, 860 P.2d at 716. Instead, this Court finds that Petitioner simply  
18 alleges that prison officials have improperly and/or insufficiently responded to the COVID-19  
19 pandemic. Id. Because Petitioner’s claim is clearly not cognizable in habeas review, this Court  
20 finds that it does not suffice to demonstrate prejudice sufficient to overcome Petitioner’s  
21 procedural default. Hogan, 109 Nev. at 960, 860 P.2d at 716.

22 Because Petitioner does not allege any cognizable claim, much less any claim that could  
23 demonstrate prejudice, this Court concludes that Petitioner fails to overcome the time-bar to  
24 the instant Petition, and as such, the instant Petition must be dismissed.

25 //

26 //

27 //

28 //

1 **CONCLUSION**

2 THEREFORE, Court ORDERED, Petitioner James H. Hayes's Petition for Writ of  
3 Habeas Corpus (COVID-19) shall be, and is, DENIED

4 FURTHER, Court ORDERED, the instant action, A-21-831979-W, shall be, and is,  
5 CONSOLIDATED with Petitioner's original post-conviction action, A-19-793315-W.

6 DATED this \_\_\_\_\_ day of August, 2021.


7 Dated this 23rd day of August, 2021

8   
9 DISTRICT COURT JUDGE

10 Respectfully submitted,

D29 CC6 B7EB 27C9  
Monica Trujillo  
District Court Judge

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

14 BY  for  
15 JONATHAN VANBOSKERCK  
16 Chief Deputy District Attorney  
17 Nevada Bar # 06528

18 **CERTIFICATE OF MAILING**

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

21 JAMES H. HAYES, BAC #1175077  
22 SOUTHERN DESERT CORRECTIONAL CENTER  
23 P.O. BOX 208  
24 INDIAN SPRINGS, NV, 89018

25 BY \_\_\_\_\_  
26 C. Garcia  
27 Secretary for the District Attorney's Office

28 cg/L2

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 James Hayes, Plaintiff(s)

CASE NO: A-19-793315-W

7 vs.

DEPT. NO. Department 3

8 Nevada State of, 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 Findings of Fact, Conclusions of Law and Order was served via the  
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
case as listed below:

14 Service Date: 8/23/2021

15 Melissa Boudreaux

mezama@clarkcountynv.gov



**EIGHTH JUDICIAL DISTRICT COURT  
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER  
200 LEWIS AVENUE, 3<sup>rd</sup> FL.  
LAS VEGAS, NEVADA 89155-1160  
(702) 671-4554

Steven D. Grierson  
Clerk of the Court

Anntoinette Naumec-Miller  
Court Division Administrator

---

**INMATE CORRESPONDENCE**

October 04, 2021

**Re: A-19-793315-W / Department 3**

**James Hayes, Plaintiff(s)**

**vs.**

**Nevada State of, Defendant(s)**

- ☐ A court order is required to complete the request.
- ☐ Documents are sealed. A court order is required to reproduce. (PSI)
- ☐ Documents requested are not in the court file at this time.
- ☐ Transcripts have not been filed. A court order is required.
- ☒ Copies are \$.50 per page or by court order.
- ☐ Consult your law library for this information.
- ☐ District Court does/does not show any outstanding District Court warrants under the above referenced defendant name.
- ☒ Other: Multiple Notice of Appeals filed in this case (See attached Case Summary) – this case is no longer in the Jurisdiction of the Eighth Judicial District Court – it resides in the Supreme Court of Appeals and therefore all filings need to be filed in the Supreme Court case.

Cordially yours,

DC Criminal Desk #27

Deputy Clerk of the Court

1 HALES, JAMES #1175077  
2 / In Propria Personam  
3 Post Office Box 208 S.D.C.C.  
4 Indian Springs, Nevada 89018

5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 James H. Hales  
8 Petitioner

9 v.

10 State of Nevada  
11 Respondent

"HEARING REQUESTED"

Case No. A-19-793315-W

Dept No. 3

Docket \_\_\_\_\_

13  
14 NOTICE OF MOTION

15 YOU WILL PLEASE TAKE NOTICE, that \_\_\_\_\_

16  
17 will come on for hearing before the above-entitled Court on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
18 at the hour of \_\_\_\_ o'clock \_\_\_\_ M. In Department \_\_\_\_, of said Court.

19  
20 CC:FILE

21  
22 DATED: this 1<sup>st</sup> day of September, 2021.

23  
24 BY: James H. Hales # 1175077  
25 /In Propria Personam

26  
27 RECEIVED  
28 SEP 09 2021  
CLERK OF THE COURT

1 HALES, JAMES H ID NO. 1175077

2 SOUTHERN DESERT CORRECTIONAL CTN.  
3 20825 COLD CREEK RD.  
4 P.O. BOX 208  
5 INDIAN SPRINGS, NV 89070

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

8 JAMES H. HALES

9 PETITIONER

10 v.

11 STATE OF NEVADA

12 RESPONDENT

13 "HEARING REQUESTED"

14 CASE NO.: A-19-793315-IN

15 DEPT. NO.: 3

16 DOCKET: \_\_\_\_\_

17 Motion for consideration of the merits of the court  
18 ordered supplemental petition for writ of Habeas Corpus

19 COMES NOW, PETITIONER, JAMES H. HALES, herein above respectfully

20 moves this Honorable Court for an GOOD FAITH ruling on the merits  
21 of petitioner's supplemental pleadings that this court so  
22 ordered on March 8, 2021 to address this miscarriage of "JUSTICE"

23 This Motion is made and based upon the accompanying Memorandum of Points and  
24 Authorities,

25 DATED: this 1st day of September, 2021

26 CLERK OF THE COURT

27 RECEIVED  
28 SEP 09 2021

BY: James H. Hales

JAMES H. HALES

# 1175077

Defendant In Proper Personam



ADDITIONAL FACTS OF THE CASE:

Memorandum of Points and Authorities:

I. The Court should consider the merits of petitioner's claims contained in his supplemental pleadings because he overcome the successive and abuse of petition statutes, and any argument on this claim by the state fails:

During petitioner's proceedings on his Amended petition for writ of habeas corpus, the court found potential merit to petitioner's claims regarding his conviction and sentence. The court then took the affirmative action of ordering petitioner to supplement his Amended petition with specificity and set the briefing schedule and decision date for the specific issue to determine whether granting petitioner's writ is appropriate solely as to the issues in petitioner's Amended and supplemental petitions. When the court ordered specificity to address the merits of the claims the court already knew of the prior petition that had been filed by petitioner. With that knowledge, the court still found it necessary to order supplemental pleadings to address the claims in petitioner's petitions. Therefore, "GOOD CAUSE" exists to address the merits of petitioner's claims as the court previously ordered.

II GOOD CAUSE to Address Claims:

Petitioner followed the court's instructions and filed a supplemental petition for writ of habeas corpus

1 to address the specificity issue ordered by this Honorable  
2 court on 2 March 8, 2021 minute order, that petitioner  
3 complied with and filed supplemental pleadings on  
4 April 7, 2021 and Addendum April 14, 2021.

5 Accordingly, the court found it necessary to  
6 the issues. Therefore, "GOOD CAUSE" exists to address  
7 the claims. Additionally, failure to consider the merits  
8 of the supplemental petitions will result in prejudice  
9 to petitioner. The court has already determined that  
10 the issues has potential merit. Thus, the court has  
11 already recognized the potential prejudice. If the  
12 court denies the claims without considering the  
13 merits, the court will effectively force petitioner to  
14 continue his unconstitutional incarceration that  
15 violates Norfolk law, Norfolk and United States  
16 Constitutions.

17 III The court ordered Mr. Hayes to supplement  
18 his petition for writ of Habeas corpus specifically  
19 to address the issues in an effort to avoid a  
20 continued miscarriage of Justice and prejudice to  
21 Mr. Hayes.

22 In sum, if the court declines to address the  
23 issues, the court will undermine its own rationale  
24 for ordering petitioner to supplement his petition and  
25 issue briefing schedule and set for decision on  
26 May 10, 2021.

27 Therefore, the court should and must consider

1 the merits of the claims in the supplemental petitions  
2 to redress this manifest injustice. Moreover, the state  
3 failed to file an opposition to supplemental pleadings  
4 as ordered by this honorable court, so the state will  
5 not suffer or will it prejudice the state as there  
6 failure to oppose means petitioner's claims are meritor-  
7 ous and the granting thereof is a must by this  
8 honorable court in consideration of claims.

9 NRS 34.724 expressly permits a petitioner to  
10 challenge a conviction that violates the constitution  
11 of the United States or the constitution of Nevada.

### 12 Conclusion:

13 MR. HAYES respectfully requests that the  
14 court consider the merits of the supplemental petition  
15 and vacate the unconstitutional judgment of  
16 conviction... As Justice so Demands!!  
17  
18  
19  
20  
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28

**CERTIFICATE OF SERVICE BY MAILING**

I, JAMES H. HAYES, hereby certify, pursuant to NRCP 5(b), that on this 15<sup>th</sup> day of September, 2021, I mailed a true and correct copy of the foregoing, "Motion for consideration of the merits of the court ordered..." by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

Clark County Dist. Courts  
Office of the Clerk  
205 LOUIS AVE. 3RD FL  
LAS VEGAS NEVADA  
89135-1160

Clark County District Atty  
200 LOUIS AVE  
LAS VEGAS, NV  
89135-2712

Attorney General of NV  
105 N. CAHILL ST  
CARSON CITY, NV  
89701

CC:FILE

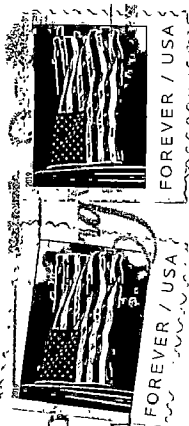
DATED: this 15<sup>th</sup> day of September, 2021.

James H. Hayes  
James H. Hayes #1175672  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

James # 1175077  
50cc  
P.O. Box 208  
Indian Springs, NV  
89020

LAS VEGAS NV 890

2 SEP 2021 PM 3



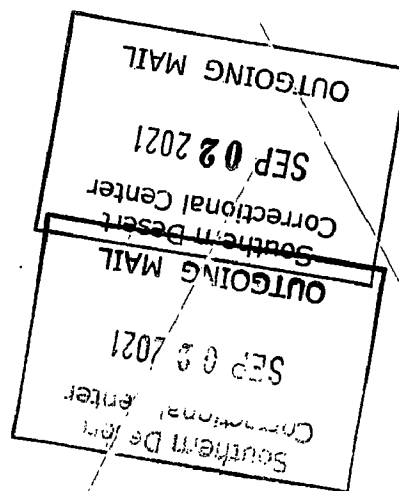
Clark County District Courts  
"Office of the Clerk"

200 LEWIS AVE, 3RD FLOOR

LAS VEGAS, NEVADA

89155-1160

Legal Mail



**ORDR**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
BERNARD ZADROWSKI  
Chief Deputy District Attorney  
Nevada Bar #00645  
200 Lewis Avenue  
Las Vegas, NV 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

JAMES HOWARD HAYES, aka  
James Howard Hayes, Jr.,  
#2796708

Defendant.

CASE NO: A-19-793315-W

DEPT NO: III

**ORDER DENYING PLAINTIFF'S MOTION FOR TRANSCRIPTS AT STATE  
EXPENSE**

DATE OF HEARING: October 7, 2021  
TIME OF HEARING: 03:00 A.M.

THIS MATTER having come on for review before the above-entitled Court on the  
October 7, 2021 Chamber Calendar, without argument, based on the pleadings and good cause  
appearing therefor,

///

///

///

///

///

///

1 IT IS HEREBY ORDERED that the Plaintiff's Motion for Transcripts at State  
2 Expense, shall be, and it is DENIED.

3 DATED this \_\_\_\_\_ day of October, 2021.

Dated this 4th day of November, 2021

4   
5 \_\_\_\_\_  
6 DISTRICT JUDGE

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

72A C03 BC2A E1EB  
Monica Trujillo  
District Court Judge

10 BY   
11 \_\_\_\_\_

12 BERNARD ZADROWSKI  
13 Chief Deputy District Attorney  
14 Nevada Bar #00645

15 CERTIFICATE OF SERVICE

16 I certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2021, I mailed a copy of the foregoing Order  
17 to:

18 JAMES HAYES, BAC #1175077  
19 SOUTHERN DESERT CORRECTIONAL CENTER  
20 P.O. BOX 208  
21 INDIAN SPRINGS, NV 89018

22 BY \_\_\_\_\_

23 C. Garcia  
24 Secretary for the District Attorney's Office  
25  
26  
27  
28

cg/L2

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 James Hayes, Plaintiff(s)

CASE NO: A-19-793315-W

7 vs.

DEPT. NO. Department 3

8 Nevada State of, 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 Order Denying Motion was served via the court's electronic eFile  
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 11/4/2021

15 Melissa Boudreaux

mezama@clarkcountynv.gov



DISTRICT COURT  
CLARK COUNTY, NEVADA  
\*\*\*\*

Electronically Filed  
11/12/2021 3:08 PM  
Steven D. Grierson  
CLERK OF THE COURT



James Hayes, Plaintiff(s)

vs.

Nevada State of, Defendant(s)

Case No.: A-19-793315-W

A-21-831979-W

Department 3

**NOTICE OF HEARING**

Please be advised that the Plaintiff's Supplemental Petition "Addendum 2" in the above-entitled matter is set for hearing as follows:

**Date:** December 13, 2021

**Time:** 8:30 AM

**Location:** RJC Courtroom 11C  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

**NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.**

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Michelle McCarthy  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Michelle McCarthy  
Deputy Clerk of the Court

*Alvin S. Amin*  
CLERK OF THE COURT

JAMES H. HOLMES, 1175077  
Petitioner/In Propria Persona  
Post Office Box 208, SDCC  
Indian Springs, Nevada 89070

IN THE 8<sup>th</sup> JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF CLARK

JAMES H. HOLMES  
Petitioner,

vs.

STATE OF NEVADA et al

Respondent(s).

"HEARING REQUESTED"

Case No. A-19-793315-W

Dept. No. 3

Docket

SUPPLEMENTAL PETITION  
"ADDENDUM 2"

PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of corrections, name the warden or head of the institution. If you are not in a specific institution of the department within its custody, name the director of the department of corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction and sentence.

CLERK OF THE COURT

OCT 18 2021

RECEIVED

As a house cleaning matter, this honorable court has not entered a written order nor findings of facts and conclusions of law to petitioner's supplemental pleadings, as this honorable court retains jurisdiction until written order is entered for the limited purpose.

### "Statement of the Facts":

On or about March 8, 2021, this honorable court ordered supplemental pleadings, after reviewing petitioner's Amended petition for writ of habeas corpus.

On or about April 7, 2021, petitioner filed his supplemental petition for writ of habeas corpus following the instructions of this honorable court.

On or about April 14, 2021, petitioner filed an "ADDENDUM" to his supplemental petition for writ of habeas corpus.

NRS 34.700 does not provide any relevant time periods for supplemental briefing ordered by the court. (Maresca v. State 103 Nev. 669)

ADDITIONAL FACTS OF THE CASE:

"Memorandum of Points and Authorities":

I, the Court should consider the merits of petitioner's claims contained in his supplemental pleadings because he overcome the successive and abuse of petition statutes, and only argument on this claim by the state fails: NRS 34.700

During petitioner's proceedings on his Amended petition for writ of habeas corpus, the court found potential merit to petitioner's claims regarding his conviction and sentence. The court then took the affirmative action of ordering petitioner to supplement his Amended petition with specificity and set the briefing schedule and decision date for the specific issue to determine whether granting petitioner's writ is appropriate solely as to the issues in petitioner's ~~amended~~ ~~and~~ supplemental petitions. When the court ordered specificity to address the merits of the claims the court already knew of the prior petition that had been filed by petitioner. With that knowledge, the court still found it necessary to order supplemental pleadings to address the claims in petitioner's petitions. Therefore, "GOOD CAUSE" exists to address the merits of petitioner's claims as the court previously ordered.

II GOOD CAUSE to Address Claims:

Petitioner followed the court's instructions and filed a supplemental petition for writ of habeas corpus

1 to address the specificity issue ordered by this honorable  
2 court on 2 March 8, 2021 minute order, that petitioner  
3 complied with and filed supplemental pleadings on  
4 April 7, 2021 and Addendum April 14, 2021.

5 Accordingly, the court found it necessary to  
6 the issues. Therefore, "GOOD CAUSE" exists to address  
7 the claims. Additionally, failure to consider the merits  
8 of the supplemental petitions will result in prejudice  
9 to petitioner. The court has already determined that  
10 the issues has potential merit. Thus, the court has  
11 already recognized the potential prejudice. If the  
12 court denies the claims without considering the  
13 merits, the court will effectively force petitioner to  
14 continue his unconstitutional incarceration that  
15 violates Narada law, Narada and United States  
16 Constitutions.

17 III the court ordered Mr. Hayes to supplement  
18 his petition for writ of Habeas corpus specifically  
19 to address the issues in an effort to avoid a  
20 continued miscarriage of Justice and prejudice to  
21 Mr. Hayes.

22 In sum, if the court declines to address the  
23 issues the court will undermine its own rationale  
24 for ordering petitioner to supplement his petition and  
25 issue briefing schedule and set for decision on  
26 May 10, 2021.

27 Therefore, the court should and must consider

1 the merits of the claims in the supplemented petitions  
2 to redress this manifest injustice. Moreover, the state  
3 failed to file an opposition to supplemented pleadings  
4 as ordered by this honorable court, so the state will  
5 not suffer or will it prejudice the state as there  
6 failure to oppose means petitioner's claims are merit-  
7 orious and the granting thereof is a must by this  
8 honorable court in consideration of claims.

9 IV. It is evident from the record that petitioner  
10 has never received an opportunity to develop his claims.  
11 The issues were raised on habeas and the district court  
12 has not allowed petitioner an evidentiary hearing (Earp v.  
13 Onoski 431 F.3d 1158). Petitioner is entitled to an evidentiary  
14 hearing to develop the facts of his claims as he has presented  
15 a colorable claim for relief. Petitioner claim is colorable  
16 as he has alleged specific facts that are true, and entitle  
17 him to relief.

18 V. Nothing strategic by trial counsel about  
19 failing to object at sentencing to categorically non-qualifying  
20 convictions that would prevent a petitioner from being  
21 eligible for sentencing under a habitual criminal statute.  
22 The prosecution alleges that petitioner is a habitual criminal  
23 on the basis of non-qualifying convictions, the petitioner  
24 has everything to gain and nothing to lose by objecting.  
25 (deficiency prong)

26 The facts alleged by petitioner trial counsel had provided  
27 ineffective assistance of counsel by failing to object to  
28 the proffered non-qualifying convictions, and thereby

the trial court's consideration to non-qualifying convictions. Petitioner would have been ineligible for sentencing as a habitual criminal under NRS 207.010. In other words, the trial court could not sentence petitioner to 5 to 15 years, instead petitioner would have faced a statutory maximum of 19 to 48 months. (Prejudice prong) (Tilcock v. Rodge 538 F.3d 1138).

VI. In RE BEN 684 P.2d 712, petitioner could plead to a factually unsupported lesser charge if a factual basis exists to support the original charge. Here there was no factual basis for petitioner's "Alford" plea to the completed crime of Burglary nor Attempted grand larceny. As the burglary charge was fatal when the state's infant in its filed criminal factual synopsis was dismissed at conclusion of preliminary hearing and no evidence of unlawful entry was proven by evidence presented at preliminary hearing and the attempted grand larceny charge was without probable cause as no evidence was presented to satisfy the elements of the crime per statute. It therefore, was ineffective assistance of counsel for trial counsel to advise him to enter "Alford" plea to the charge when there was no factual basis for such a charge on the undisputed facts (Alford v. Schomig 2016 U.S. Dist. LEXIS 66711). The advice petitioner received from counsel was constitutionally inadequate (Toilet v. Henderson 411 U.S. 258).

VII. Trial court violated petitioner's due process rights "PSI Mistakes" failure to rule on objections was prejudicial because scores are incorrect, they will follow

1 petitioner to prison, and used to determine his parole  
2 eligibility, classification, and eligibility for programs  
3 (Bress v. State 2020 Nev. App. Unpub. LEXIS 867).

4 VIII. Trial counsel was ineffective for failing to  
5 challenge state's breach of guilty plea agreement on  
6 impeachable and highly suspect evidence, as the victim was  
7 unable to identify petitioner as the perpetrator of the  
8 crime in open court rendering the evidence false, and rise  
9 to irreparable misidentification (Danham v. Deeds 954 F.2d 1501;  
10 Simmons v. United States 390 U.S. 377). Here, petitioner was  
11 entitled to "specific performance" where the state intentionally  
12 breached the plea agreement based on a change in circumstances  
13 insufficient to deprive petitioner of the benefit of his bargain.  
14 Although there was arguable change of circumstances between  
15 the entry of the plea and the time of sentencing the change of  
16 circumstances was not a sufficient reason to deprive petitioner  
17 of the benefit of his bargain as state violated the terms or  
18 "the spirit" of the plea bargain on a misplaced ruling of probable  
19 cause and requires reversal.

20 IX. State argue that where the sentence derive from  
21 a guilty plea, petitioner waive any challenge to defects in their  
22 respective judgment and sentence, such an argument is un-  
23 persuasive. Petitioner does not forego the substantive right  
24 to challenge the jurisdictional validity of his sentence by  
25 pleading "Alford". (U.S. vs. Campbell 938 F.2d 975)

26 X. Category E felony offense for which the punishment  
27 was mandatory probation was not a felony offense for  
28 sentencing enhancement purposes. Petitioner's Texas conviction(s)



1 was one point and petitioner could not be sent to prison  
2 for the offense, so discretion of offenses as felonies was  
3 entitled to deference.

4 Mr. Hayes, (petitioner) respectfully requests that  
5 the honorable court consider the merits of the supplemental  
6 pleadings and vacate the unconstitutional judgment of  
7 conviction. As Justice so demands...

1 WHEREFORE, PETITIONER, prays that the court grant Mr. James H. Hayes  
2 relief to which he may be entitled in this proceeding.

3 EXECUTED at Southern Desert Correctional Center  
4 on the 13 day of October, 2021.

5  
6 James H. Hayes  
7 Signature of Petitioner

8 VERIFICATION

9 Under penalty of perjury, pursuant to N.R.S. 208.165 et seq., the undersigned declares that he is  
10 the Petitioner named in the foregoing petition and knows the contents thereof; that the pleading is  
11 true and correct of his own personal knowledge, except as to those matters based on information and  
12 belief, and to those matters, he believes them to be true.

13  
14 James H. Hayes  
15 Signature of Petitioner

16  
17 DRAPER PARSONS  
18 Attorney for Petitioner

19  
20  
21  
22  
23  
24  
25  
26  
27  
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-8-

CERTIFICATE OF SERVICE BY MAILING

I, James H. Hayes, hereby certify, pursuant to NRCP 5(b), that on this 13<sup>th</sup>  
day of October, 2021, I mailed a true and correct copy of the foregoing, "Supplemental  
Petition for writ of habeas corpus "ADDENDUM 2""

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

Clark County District Courts  
Office of the Clerk  
200 LAKE AVE. 34041  
Las Vegas, NV  
89765-1160

Clark County District Atty  
200 LAKE AVE  
Las Vegas, NV  
89155-2212

Attorney General of Nevada  
100 N. Carson St  
Carson City, NV  
89701

CC:FILE

DATED: this 13 day of October, 2021.

James H. Hayes  
James H. Hayes #1175072  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

-9-  


Albuquerque, James #11750222  
50cc  
P.O. Box 2208  
Indian Springs, NV  
89107-0208

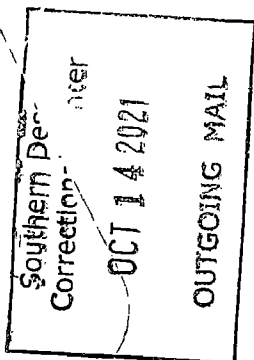
Clerk County District Courts  
"Office of the Clerk"

200 LEWIS AVE, 3RD FLOOR

LAS VEGAS, NEVADA

89155-1160

LEWIS  
MAY



DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

Electronically Filed  
12/7/2021 2:53 PM  
Steven D. Grierson  
CLERK OF THE COURT



James Hayes, Plaintiff(s)

vs.

Nevada State of, Defendant(s)

Case No.: A-19-793315-W

A-21-831979-W

Department 3

**NOTICE OF HEARING**

Please be advised that the Plaintiff's Motion for Discovery and Reconsideration of Motion for Transcripts at State Expense in the above-entitled matter is set for hearing as follows:

**Date:** January 10, 2022

**Time:** 8:30 AM

**Location:** RJC Courtroom 11C  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

**NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.**

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Michelle McCarthy  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Michelle McCarthy  
Deputy Clerk of the Court

*Heather Shuman*  
CLERK OF THE COURT

HAYES, James H ID NO. 1175077

SOUTHERN DESERT CORRECTIONAL CTN.  
20825 COLD CREEK RD.  
P.O. BOX 208  
INDIAN SPRINGS, NV 89070

IN the 8<sup>th</sup> Judicial District Court of the  
STATE of Nevada in and for the County of  
Clark.

JAMES H. HAYES  
(Petitioner)

v.

State of Nevada  
(Respondent)

"HEARING REQUESTED"

CASE NO.: A-19-793315-W

DEPT. NO.: 3

DOCKET: \_\_\_\_\_

Motion for Discovery and Reconsideration of Motion  
for transcripts of state's expense

COMES NOW, ~~petitioner~~, James H. Hayes, herein above respectfully  
moves this Honorable Court for an opportunity to fully develop petitioner's  
claims alleged in his court ordered "Supplemental  
Briefing"

This Motion is made and based upon the accompanying Memorandum of Points and  
Authorities,

DATED: this 10<sup>th</sup> day of November, 2021

BY: James H. Hayes  
James H. Hayes # 1175077  
Defendant In Proper Personam

RECEIVED

NOV 22 2021

CLERK OF THE COURT

ADDITIONAL FACTS OF THE CASE:

Memorandum of Points and Authorities

Comes now, James H. Hayes, petitioner, in necessity moves this honorable court to grant the instant motion "Motion for Discovery and Reconsideration of Motion for Transcripts at State's Expense. In support, petitioner shows the court the following:

1.) This honorable court and state claims it would be inappropriate for the court to allow discovery/transcripts. This position is unconvincing.

2.) Whether petitioner's claims were adjudicated isn't relevant to the "GOOD CAUSE" standard. The governing standard for granting discovery turns on whether the requested discovery could support a constitutional claim for relief (Bray v. Greenley 520 U.S. 899) stating "discovery is warranted when petitioner's specific allegations... show reason to believe that the petitioner may if the facts are fully developed be able to demonstrate that he is entitled to relief." Neither Bray nor the federal or state rules condition discovery on whether the state has a colorable adjudication defense (High v. Nations 2:11-cv-00891-MMD). "There is no inflexible requirement that it must be conclusively established beforehand that a claim(s) is not adjudicated before habeas discovery may be allowed."

3.) It is evident from the record that petitioner has never received an opportunity to develop his claim(s). The issue(s) was raised on habeas and the

1 state court allowed petitioner an evidentiary hearing  
2 (EARD V. ORNOCK 431 F.3d 1158).

3 4.) This court's concerns about adjudication is  
4 therefore misplaced. Petitioner's claim in state court may  
5 be adjudicated, but learns additional facts through  
6 discovery, the new facts might strengthen the claim so  
7 much that the claim(s) becomes new. If so, a return to  
8 district court would be in order (DICKENS V. RYAN 240  
9 F.3d 1302).

10 5.) That possibility shouldn't prevent this honorable  
11 court from authorizing discovery in the first place.  
12 (GONZALEZ V. WONG 667 F.3d 965). Likewise, the possibility  
13 a claim(s) is adjudicated shouldn't deter a court from  
14 allowing discovery. In the first, it would not be futile  
15 to allow discovery to support a claim(s) because the court  
16 might be required to revisit the adjudication and  
17 change its decision, so this court's decision isn't  
18 persuasive.

19 6.) Petitioner has raised substantial allegations  
20 of non-qualifying convictions allowed to adjudicate  
21 petitioner a habitual criminal (i.e. Texas convictions)  
22 is one after one trial based on one information that  
23 can only be considered one conviction and the conviction  
24 is trivial as it does not carry a prison term; No factual  
25 basis for acceptance of "Alford" plea no probable cause for  
26 attempted grand larceny charge and Burglary charge as  
27 stated with essential element of intent that the state



1 based on the dismissed charge of attempted grand larceny;  
2 INEFFECTIVE ASSISTANCE OF COUNSEL PETITIONER NEVER HAD  
3 APPELLATE COUNSEL ON DIRECT APPEAL ONLY TRIAL COUNSEL TO  
4 PREPARE JUDICIALIZED FACT TRACK STATEMENT, ETC) AND SEEKS TO  
5 DEVELOP THE FACTUAL BASIS FOR THE CLAIMS PETITIONER WOULD  
6 RETURN TO DISTRICT COURT WITH FULLY DEVELOPED CLAIMS OF  
7 RELIEF THAT HE WAS DENIED BY NOT ALLOWING AVOIDABLE  
8 HEARING THAT WAS WARRANTED, AS IT MAKES LITTLE SENSE  
9 TO FORCE PETITIONER INTO ANOTHER ROUND OF COURT LITIGATION,  
10 WHEN THE FACTUAL RECORD REMAINS UNDEVELOPED.

11 7.) IT WOULD BE MORE EFFICIENT TO AUTHORIZE  
12 DISCOVERY NOW BEFORE THE ADJUDICATION OF THIS COURT'S  
13 ORDERED "SUPPLEMENTAL BRIEFING" AND LET THE PARTIES  
14 CONTINUE LITIGATION DEPENDING ON THE INFORMATION OBTAINED  
15 THROUGH DISCOVERY.

16 8.) IF THE COURT GRANTS DISCOVERY NOW, THEN  
17 PETITIONER CAN LITIGATE WITH A FULL FACTUAL RECORD AND  
18 THE COURT CAN EVENTUALLY CONSIDER THE TRUE FACTS. IT'S  
19 FAR BETTER TO ALLOW FACTUAL DEVELOPMENT NOW, WHICH  
20 WOULD ALLOW THE COURT TO CONSIDER A FULLY DEVELOPED RECORD.  
21 THIS COURT NONETHELESS RETAINS AUTHORITY TO AUTHORIZE  
22 DISCOVERY WHEN PETITIONER LIKE MR. HAYES HAS PLACED CREDIBLE  
23 CLAIMS FOR RELIEF AND FURTHER FACTUAL DEVELOPMENT OF THE  
24 CLAIMS IS APPROPRIATE.

25 9.) THIS IS NOT A FISHING EXPEDITION BASED  
26 ON SUPPOSITION AND MANUEVRO, PETITIONER HAS ALREADY  
27 PUT FORWARD SUBSTANTIAL EVIDENCE REGARDING CLAIMS.

1 which supplemented petition surveys in detail, this petition  
2 provides substantial support for petitioner's claims).

3 10.) Petitioner should have access to all the  
4 relevant material, regardless. In sum, petitioner has presented  
5 a colorable claim and the claims warrants further  
6 factual development in this honorable court.

7 11.) Nothing strategic about failing to object at  
8 sentencing to categorically non-qualifying convictions that  
9 would prevent petitioner from being eligible for sentencing  
10 under a habitual criminal statute (I.E. Class E felony in  
11 Nevada where punishment is mandatory probation, *Miller v.*  
12 *State* 113 Nev. 722). The prosecution alleges that a defendant is  
13 a habitual criminal on the basis of non-qualifying convictions  
14 the ~~defendant~~ petitioner has ~~everything~~ to gain and nothing  
15 to lose by objecting (deficiency prong). The facts alleged by  
16 petitioner trial counsel had provided effective assistance of  
17 counsel by objecting to the proffered non-qualifying convictions,  
18 and thereby limited the trial court's consideration to three  
19 qualifying convictions. Petitioner would have been ineligible for  
20 sentencing as a habitual criminal under NRS 207.010, in other  
21 words the trial court could not have sentence petitioner to  
22 5 to 15 years. Instead, petitioner would have faced a statutory  
23 maximum of 19 to 48 months (Prejudice Prong) (*Tilcock v. Bodge*  
24 *338 F.3d. 1138*)

25 12.) NRS 34.700 does not provide any relevant time  
26 periods for supplemental briefing ordered by the court. (*Merriter v. State*  
27 *103 Nev. 669*)

28 Mr. Hayes respectfully requests that the court grant motion and  
offer relief deemed necessary.

**CERTIFICATE OF SERVICE BY MAILING**

I, JAMES H. HAYES, hereby certify, pursuant to NRCP 5(b), that on this 10<sup>th</sup> day of November, 2021, I mailed a true and correct copy of the foregoing, "Motion for Discovery and Reconsideration of Motion for transcripts..." by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

Clerk County District Court  
OFFICE OF THE CLERK  
200 LEWIS AVE. 3RD FLOOR  
LAS VEGAS, NV  
89155-1110

Clerk County District Atty  
200 LEWIS AVE  
LAS VEGAS, NV 89102  
89155-2212

CC:FILE

DATED: this 10<sup>th</sup> day of November, 2021.

James H. Hayes  
JAMES H. HAYES #1145072  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
**IN FORMA PAUPERIS:**

4415, J# 1135872  
50cc  
P.O. Box 208  
Indian Springs, NV  
89470

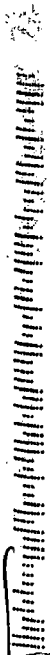
Clark County District Courts  
"Office of the Clerk"

200 Lewis Ave, 3rd Floor

Las Vegas, Nevada

89155-1160

00155555



18201

quadrant  
FIRST-CLASS MAIL  
11/17/2021  
USPS # 000073  
25126453  
ZIP 89101  
041M12254121

!! sorry "January" error. sorry for a squiggle

9773421147

Southern Desert  
Correctional Center  
NOV 12 2021  
OUTGOING MAIL

*Heather L. Linn*  
CLERK OF THE COURT

1 James H. #1175077

2 / In Propria Personam  
3 Post Office Box 208 S.D.C.C.  
4 Indian Springs, Nevada 89018

5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 James H. Hayes  
8 v. (petitioner)

9  
10 State of Nevada  
11 (Respondent)

HEARING REQUESTED!!

Case No. A-19-793315-W

Dept No. 3

Docket \_\_\_\_\_

13  
14 NOTICE OF MOTION

15 YOU WILL PLEASE TAKE NOTICE, that \_\_\_\_\_

16  
17 will come on for hearing before the above-entitled Court on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
18 at the hour of \_\_\_\_ o'clock \_\_\_\_ M. In Department \_\_\_\_, of said Court.

19  
20 CC:FILE

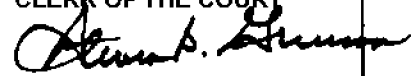
21  
22 DATED: this 10<sup>th</sup> day of November, 2021.

23  
24 BY: James H. Hayes # 1175077  
25 / In Propria Personam

CLERK OF THE COURT

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OPPS  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
JONATHAN E. VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #006528  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
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Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES HOWARD HAYES,  
aka James Howard Hayes Jr.,  
#2796708

Defendant.

CASE NO: A-19-793315-W

DEPT NO: III

**STATE'S OPPOSITION TO DEFENDANT'S  
MOTION FOR DISCOVERY AND RECONSIDERATION OF MOTION FOR  
TRANSCRIPTS AT STATE'S EXPENSE**

**DATE OF HEARING:** January 10, 2022

**TIME OF HEARING:** 8:30 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JONATHAN E. VANBOSKERCK, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Withdraw Plea.

This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 The following has been gathered from the filings in C-16-315718-1, A-19-793315-W,  
4 and A-21-831979-W. The relevant Nevada Supreme Court case numbers are 75173, 73436,  
5 77151, 78590, 78622, 80222, 81076, 82202, 82734, 82962, 83151, 83274, 83368. This is not  
6 an exhaustive list of all filings in this case.

7 The events are organized around motions rather than chronologically, as Defendant has  
8 filed replies after the Court's orders, new motions before the resolution of previous motions,  
9 and duplicative motions. The notations after each heading are to aid the Court in finding the  
10 relevant events under the various case numbers.

11 **Conviction (C-16-315718-1)**

12 On or about July 23, 2013, James H. Hayes (hereinafter, "Defendant") was charged by  
13 way of Criminal Complaint with one count of BURGLARY (Category B Felony – NRS  
14 205.060) and one count of ATTEMPT GRAND LARCENY (Category D Felony/Gross  
15 Misdemeanor – NRS 205.220.1, 205.222.2, 193.330).

16 Following a Preliminary Hearing in Justice Court, Las Vegas Township on June 14,  
17 2016, the charge of BURGLARY was bound over to District Court, and the charge of  
18 ATTEMPT GRAND LARCENY was dismissed. See Reporter's Transcript of Proceedings  
19 ("Preliminary Transcript"), filed July 29, 2016. The State called Joshua Jeremiah Jarvis.  
20 Preliminary Transcript at 4. Jarvis heard Defendant in his hotel room, rustling through the  
21 luggage in the room without permission to be in the room. Id. at 9, 11, 20. The State chose to  
22 strike the Attempt Grand Larceny charge without stating a reason for this decision. Id. at 33.  
23 Though defense counsel argued insufficient evidence to prove intent of burglary when  
24 Defendant rummaged through someone else's luggage in someone else's hotel room, the  
25 magistrate did not agree and the defendant was bound over. Id. at 34-36.

26 On June 17, 2016, the State filed an Information with the District Court, charging  
27 Defendant with one count of Burglary. On November 21, 2016, the State filed a Notice of  
28 Intent to Seek Punishment as a Habitual Criminal. On August 29, 2017, the State filed an

1 Amended Notice of Intent to Seek Punishment as a Habitual Criminal. (Hereinafter "Amended  
2 Notice").

3 On November 7, 2018, Defendant entered a Guilty Plea Agreement ("GPA") pursuant  
4 to North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160 (1970), to one count of Attempt Grand  
5 Larceny. The State filed an Amended Information to reflect that charge the same day. The  
6 Defendant's Presentence Investigation Report ("PSI") was filed on December 18, 2018.

7 On January 31, 2019, the State filed a State's Notice of Motion and Motion to Revoke  
8 Bail, asserting that in Las Vegas Justice Court case number 19F01534X, a Justice of the Peace  
9 had found probable cause to charge Defendant with Burglary for acts committed on or around  
10 January 26, 2019. The State's Motion to Revoke Bail was granted after a hearing on February  
11 4, 2019.

12 At sentencing on March 6, 2019, the Court found the State had regained the right to  
13 argue pursuant to the terms of the GPA. Further, the Court agreed Defendant should be  
14 punished under NRS 207.010 (the "Small Habitual Statute"). Defendant was sentenced to sixty  
15 (60) to one hundred seventy-four (174) months in the Nevada Department of Corrections  
16 (NDOC), consecutive to Defendant's sentence in another case (C315125). The Court awarded  
17 Defendant ten (10) days credit for time served. The Judgment of Conviction was filed March  
18 12, 2019.

19 **Pretrial Petitions for Writ of Habeas Corpus (C-16-315718-1, SCN 73436, 75173,**  
20 **77151)**

21 SCN 73436 – On July 11, 2017, Defendant filed a pretrial Petition for Writ of Habeas  
22 Corpus in the Nevada Supreme Court, contending the evidence at the preliminary hearing was  
23 insufficient since the State did not bring all occupants of the hotel room to testify. On August  
24 30, 2017, defense counsel informed the court the defendant had filed an unknown "something"  
25 in the Nevada Supreme Court. Defendant said his petition challenged probable cause.  
26 Defendant filed an Addendum on September 26, 2017, asserting the State had produced no  
27 proof he had entered the victims' hotel room "wrongfully." On September 27, 2017, defense  
28 counsel announced there was a deal Defendant wanted to accept but there was an outstanding



1 appeal that had not been decided. The court continued the matter pending the Supreme Court  
2 decision. The petition was denied on October 12, 2017, as it should have been made to the  
3 district court. On October 6, 2017, Defendant filed a letter asking the Supreme Court clerk to  
4 tell the district court and district attorney that they no longer had jurisdiction as his case was  
5 in the Nevada Court of Appeals. Counsel announced on October 25, 2017, that the Court of  
6 Appeals had dismissed the pro per writ. The Supreme Court decided on October 31, 2017, that  
7 it would take no action on this letter. Notice in lieu of remittitur issued on November 8, 2017.

8 C-16-315718-1 – On January 29, 2018, Defendant filed a pretrial Petition for Writ of  
9 Habeas Corpus in the district court, which was “courtesy filed” on March 1, 2018. Defense  
10 counsel refiled the petition on April 6, 2018, as Amended Courtesy Filing of Defendant’s Pro  
11 Per Petition for Writ of Habeas Corpus. On April 23, 2018, the district court asked the State  
12 to respond to the petition. The State asked the filing to be dismissed as untimely on April 25,  
13 2018. On August 29, 2018, the district court denied Defendant’s Pro Per Petition for Writ of  
14 Habeas Corpus as untimely, as it was filed years after the preliminary hearing transcript was  
15 filed. The court’s order was filed on September 18, 2018.

16 SCN 75173 – On February 23, 2018, Defendant filed a pro per Petition for Writ of  
17 Habeas Corpus in the Nevada Supreme Court, contending the evidence at the preliminary  
18 hearing was insufficient since the State did not bring all occupants of the hotel room to testify  
19 and that the State had produced no proof he had entered the victims’ hotel room “wrongfully.”  
20 On April 5, 2018, Defendant filed a letter asking the 21-day deadline to file a pretrial habeas  
21 petition after the preliminary hearing transcript is filed to not be applied in his case, as he had  
22 begged counsel to file this petition for him and they had refused to do so. On May 9, 2018,  
23 defense counsel said an appeal was pending, so the trial date was vacated. Both the petition  
24 and the letter were denied on May 15, 2018, as the Court of Appeals held the district court  
25 should decide the matter first. On June 6, 2018, counsel advised the Supreme Court denied the  
26 defendant’s petition. Defendant filed a motion for rehearing on June 11, 2018, which was  
27 denied on July 27, 2018. On July 11, 2018, counsel informed the court that there were

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1 outstanding motions Defendant filed on his own. Notice in lieu of remittitur issued on August  
2 21, 2018.

3 SCN 77151 – On September 26, 2018, Defendant filed a notice of appeal regarding the  
4 district court's denial of his Petition for Writ of Habeas Corpus. The Nevada Supreme Court  
5 denied the appeal on December 12, 2018, finding that no appeal is available from the denial  
6 of a pretrial petition for writ of habeas corpus. Remittitur issued January 11, 2019.

7 **Direct Appeal (C-16-315718-1, SCN 78590)**

8 Defendant filed a Notice of Appeal on March 28, 2019. On April 29, 2019, Defendant  
9 filed a *pro per* motion to withdraw counsel. On June 3, 2019, defense counsel argued the  
10 motion could not be granted as the Supreme Court had ordered him to file an appeal. Finding  
11 remittitur from the Nevada Supreme Court had been filed, the district court granted the motion  
12 to withdraw counsel on July 15, 2019.

13 Defendant filed a second Notice of Appeal on July 31, 2019, this time *pro per*. On  
14 January 14, 2020, the Nevada Supreme Court affirmed Defendant's Judgment of Conviction,  
15 finding that because Defendant's sentence of five to fifteen years in prison was within the  
16 parameters of the range of punishment for his offense, and given Defendant's history of  
17 recidivism, his sentence was not disproportionate to his crime, nor was it cruel or unusual.  
18 Remittitur issued on February 25, 2020 (hereinafter "Direct Appeal Remittitur").

19 **Post-Conviction Petition for Writ of Habeas Corpus (A-19-793315-W)**

20 On April 15, 2019, Defendant filed a Petition for Writ of Habeas Corpus. Addendum  
21 One was filed May 7, 2019, and Addendum Two on May 9, 2019. The court ordered the State  
22 to respond on May 2, 2019.

23 The State filed its Response on June 26, 2019. Defendant filed a Motion for Judgment  
24 of Default Against the Respondents and Enforce Procedural Default on July 5, 2019.  
25 Defendant replied to the State's opposition the same day. He filed an Affidavit of Issuance of  
26 Habeas Corpus on July 12, 2019, and an Affidavit of Facial Legality on August 9, 2019. At  
27 the hearing on the Petition on August 19, 2019, the district court ordered the State to respond  
28 to the Addenda. The State filed a Response to the Addenda on October 10, 2019.

1 On November 18, 2019, Defendant's Petition came before the Court, at which time the  
2 Court took the matter off calendar due to Defendant's pending appeal. As Defendant filed a  
3 new, also timely, habeas petition, see infra, this Petition was not addressed on the merits. See  
4 Affirmance, filed September 17, 2021, docket number 82734 (hereinafter "Affirmance"),  
5 finding Defendant's first habeas petition had not been resolved on the merits but raised the  
6 same issues as the later petition. As shown below, the Court of Appeals affirmed the denial of  
7 his later petition on the merits.

8 Defendant filed a Reply to the State's Response to the petition on November 4, 2019,  
9 and another in reply to the State's response to the Addenda on December 20, 2019.

10 **Writ of Mandamus/Prohibition (SCN 78622)**

11 On April 23, 2019, Defendant filed a Petition for Writ of Mandamus/Prohibition with  
12 the Nevada Supreme Court, asserting he was subjected to double jeopardy. The Court denied  
13 the petition on May 2, 2019, as Defendant had not included an appendix. The Court returned  
14 unfiled the appendix Defendant sent on May 16, 2019. He filed a Motion for Reconsideration  
15 of Order Denying Petition on May 22, 2019. His PSI was returned unfiled on the same date.

16 Rehearing was denied on June 6, 2019, and Notice in Lieu of Remittitur issued on July  
17 1, 2019.

18 **Peremptory Challenge of Judge (A-19-793315-W)**

19 On May 20, 2019, Defendant filed a Motion for Peremptory Challenge of Judge and to  
20 Disqualify Judge William Bill Kephart. He filed this again on June 4, 2020. Judge Kephart  
21 filed an affidavit in response on July 2, 2020. On July 7, 2020, Chief Judge Linda Bell  
22 considered, and denied, Defendant's Motion for Peremptory Challenge of Judge Kephart.  
23 Chief Judge Bell's Decision and Order was filed on July 8, 2020.

24 **Coram Nobis (C-16-315718-1, SCN 80222)**

25 Defendant filed a Motion in the Nature of a Writ of Coram Nobis on September 9, 2019,  
26 and an Affidavit of Granting Motion in the Nature of a Writ of Coram Nobis on September  
27 26, 2019. The State filed its opposition on October 1, 2019. The district court denied the  
28 Motion on October 7, 2019, finding the State was not properly served and an appeal was

1 pending in the Supreme Court. Defendant filed his reply to the State's opposition on October  
2 17, 2019. He accompanied his reply with an Affidavit of No Material Dispute as to the Mistake  
3 of Fact Motion in the Nature of a Writ of Coram Nobis, filed October 28, 2019.

4 On November 19, 2019, Defendant filed a Notice of Appeal regarding the denial of his  
5 coram nobis writ. On August 31, 2020, the Nevada Court of Appeals affirmed the district  
6 court's denial of his Coram Nobis motion, finding Defendant had the remedy of habeas corpus  
7 available to him, so the writ of Coram Nobis was unavailable. Remittitur issued on September  
8 28, 2020.

9 **Motion to Modify (C-16-315718-1, SCN 81076)**

10 Defendant filed a Motion to Correct an Illegal Sentence on December 16, 2019. The  
11 State filed its opposition on December 30, 2019. On January 6, 2020, the court took the matter  
12 off calendar as there was an outstanding appeal.

13 Defendant filed an Affidavit of Granting Motion to Correct an Illegal Sentence of the  
14 Wrongfully Convicted on January 6, 2020. Defendant replied to the State's opposition on  
15 January 27, 2020.

16 On February 24, 2020, Defendant filed a Motion for Ruling for Motion to Correct an  
17 Illegal Sentence. On March 18, 2020, the court denied his Motion for Ruling. On May 12,  
18 2020, the court denied his Motion to Correct Illegal Sentence. The court found Defendant's  
19 claims were similar to those in his appeal, he provided no statutory basis or authority to support  
20 his motion, and his other claims were substantive and waived as they were not raised on appeal.

21 Defendant filed a Notice of Appeal on March 30, 2020. On October 2, 2020, he  
22 voluntarily dismissed his appeal as the district court would not consider his habeas petition  
23 while the appeal was outstanding.

24 **Amended Writ of Habeas Corpus (A-19-793315-W, SCN 83151, 83368, 82734)**

25 On February 12, 2020, Defendant filed an "Amended Petition for Writ of Habeas  
26 Corpus." On March 4, 2020, the court ordered the State to respond. The State filed its response  
27 on April 17, 2020. On May 15, 2020, Defendant filed a document titled "Petition for Writ of  
28 Habeas Corpus," which was a reply to the State's response.

1 On March 6, 2020, Defendant filed a Petition: Expeditious Judicial Examination. The  
2 State filed its response on April 17, 2020. Defendant replied to the State's response on May  
3 15, 2020. No ruling on the petition appears in the record.

4 On May 15, 2020, Defendant filed an Affidavit of Actual Innocence not Mere Legal  
5 Insufficiency but 'Factual Innocence.' On June 10, 2020, the State responded and moved to  
6 strike the affidavit. Defendant replied to the State's response on June 29, 2020. No ruling on  
7 the affidavit appears in the record.

8 On May 27, 2020, Defendant filed a Supplemental Petition for Writ of Habeas Corpus  
9 (hereinafter "First Supplemental"). On June 10, 2020, the State responded. On July 23, 2020,  
10 Defendant replied to the State's response.

11 On June 15, 2020, the court took the matter off calendar until the Defendant's motion  
12 to disqualify the judge was decided.

13 On September 25, 2020, Defendant filed a Motion for Expeditious Ruling for  
14 "Amended Petition for Writ of Habeas Corpus" 3rd Request!! On October 7, 2020, Defendant  
15 filed a Motion to Set Evidentiary Hearing and Issue Transport Order. The State responded to  
16 both motions on November 10, 2020. On November 16, 2020, the Court denied both motions.

17 On December 22, 2020, Defendant filed a Motion to Compel Judgment Pursuant to  
18 Nevada Revised Statutes Chapter 34 FRCP Rule 12(c) for Amended Petition for Writ of  
19 Habeas Corpus. The State filed its response on January 27, 2021. The court denied the motion  
20 to compel on February 1, 2021. Defendant filed his reply the next day, and on February 18,  
21 2021, he filed an Opposition to State's Response to Petitioner's Motion to Compel Judgment.  
22 On March 17, 2021, the Court issued its Findings of Fact, Conclusions of Law, and Order  
23 (hereinafter "FOFCOL 3/17/21").

24 The court told Defendant to supplement his motion to compel with specificity on March  
25 8, 2021. The State filed its opposition to Defendant's reply on April 16, 2021. Defendant  
26 replied to this opposition on May 6, 2021. The court denied the motion to compel again on  
27 May 12, 2021. The same day, Defendant filed his opposition to the State's opposition, as well

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1 as a Memorandum to the Court asking for the court's briefing schedule. He filed another  
2 opposition to the State's opposition on June 14, 2021.

3 The Amended Petition for Writ of Habeas Corpus was denied on February 1, 2021. The  
4 Court issued its Findings of Fact, Conclusions of Law, and Order on March 9, 2021  
5 (hereinafter "FOFCOL 3/9/21").

6 On March 11 and 17, 2021, Defendant filed Petitions to Reconsider the Court's  
7 Findings of Fact, Conclusions of Law, and Order. On April 9, 2021, the State filed its  
8 Opposition to both. On April 12, 2021, the Court denied both. Defendant filed a reply to the  
9 State's opposition on May 6, 2021. The court's order was entered on May 12, 2021.  
10 Defendant's reply was denied on June 21, 2021.

11 On August 11, 2021, Defendant filed a request for transcripts at the State's expense,  
12 accompanied by a memorandum in support. The Court denied the request on October 7, 2021.  
13 He filed a Petition for Reconsideration/Rehearing on August 18, 2021. The court denied this  
14 on September 23, 2021.

15 On March 18, 2021, Defendant filed a Notice of Appeal from the Court's denial of his  
16 Amended Petition in SCN 82734. On June 9, 2021, Defendant filed a Motion for Leave of  
17 Appeal to Obtain Favorable Ruling in the 8<sup>th</sup> Judicial District Court, Clark County, asking for  
18 favorable rulings on his motion to modify, his supplemental to amended habeas petition, and  
19 his writ of prohibition. This motion was denied on June 16, 2021, with the Supreme Court  
20 holding he may appeal these matters as they became ripe. Defendant filed a Motion to Expedite  
21 Appeal on August 23, 2021, which was granted. On September 17, 2021, the Court of Appeals  
22 affirmed the district court's decision on the Amended Petition. See Affirmance. The Court  
23 noted its affirmance encompassed Defendant's "February 12, 2020, petition and later-filed  
24 supplements." Affirmance at 1. This included Defendant's Amended Petition, filed February  
25 12, 2020, his First Supplemental, filed May 27, 2020, and the filings related to those.  
26 Defendant filed a Petition for Rehearing on October 4, 2021, and an Addendum on October 8,  
27 2021. Rehearing was denied on November 17, 2021. On December 2, 2021, he filed a Petition  
28 for Review. This is pending.

1 On June 29, 2021, Defendant filed a Notice of Appeal from the denial of Supplemental  
2 Petition for Writ of Habeas Corpus in SCN 83151. This is believed to refer to the First  
3 Supplemental, as the Second Supplemental has not yet been decided. See infra. The First  
4 Supplemental was incorporated in the Nevada Court of Appeals' Affirmance. The Supreme  
5 Court combined this docket with SCN 83368, his COVID habeas appeal. See infra. On  
6 October 19, 2021, Defendant filed a Motion to Expedite Appeal. The motion was granted "to  
7 the extent that this court's docket will permit" on November 15, 2021. These appeals are  
8 pending.

9 **Rule 60b Motion (C-16-315718-1, A-19-793315-W)**

10 On May 4, 2020, Defendant filed a "Rule 60b Motion for Relief from the March 18,  
11 2020, Order Which Denied Mr. Hayes Motion to Correct an Illegal Sentence." The court  
12 continued the matter on June 1, 2020, as there was an appeal outstanding. The State filed its  
13 opposition on June 10, 2020. On June 22, 2020, the court took the matter off calendar as  
14 Defendant had filed a motion to disqualify the judge.

15 On July 23, 2020, Defendant filed a Motion for Ruling for Rule 60b Motion for Relief;  
16 Motion to Vacate; Amended Petition for Writ of Habeas Corpus. The State filed its Response  
17 to Defendant's Motion for Ruling on September 2, 2020. Defendant's Motion was denied on  
18 September 9, 2020. Defendant replied to the State's opposition on November 2, 2020.

19 On February 18, 2021, Defendant filed a Motion to Compel Judgment for Rule 60b  
20 Motion for Relief and Motion to Vacate (Conviction Invalid). The court found the motions  
21 moot on March 29, 2021.

22 On October 14, 2020, Defendant filed a Motion to Reconsider Order Denying Motion  
23 for Ruling for Rule 60b Motion for Relief; Motion to Vacate; Amended Petition for Writ of  
24 Habeas Corpus. The State responded on November 10, 2020. The motion for reconsideration  
25 was denied November 16, 2020.

26 Defendant filed a Notice of Appeal on April 16, 2021. This appeal does not appear on  
27 the Supreme Court docket.

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1 **Motion to Vacate (C-16-315718-1)**

2 On June 1, 2020, Defendant filed a Motion to Vacate Sentence (Conviction Invalid).  
3 The State filed an opposition on June 10, 2020. On June 22, 2020, the court took the matter  
4 off-calendar until the defendant's motion to disqualify the court was heard.

5 Defendant replied to the State's opposition, possibly filed in response to Defendant's  
6 Rule 60b Motion, on June 26, 2020. Defendant filed an Affidavit of Jurisdiction of the Subject  
7 Matter Is Derived from the Law; It Neither Can Be Waived Nor Conferred by Consent of the  
8 Accused Motion to Vacate Sentence (Conviction Invalid) on July 31, 2020.

9 The court took the matter off calendar on August 24, 2020, as the denial of Defendant's  
10 previous motion was pending on appeal. The Motion was denied on September 9, 2020.

11 **Emergency Writ of Mandamus/Prohibition (SCN 82202)**

12 On December 11, 2020, Defendant filed an Emergency Petition for Writ of  
13 Mandamus/Prohibition in the Nevada Supreme Court, asking for a decision on his amended  
14 habeas petition and motion to vacate. His appendix was filed the same day.

15 The Court denied the writ, stating the district court would respond to his filings as  
16 promptly as its docket and the pandemic would allow. Defendant filed a Petition for Rehearing  
17 on January 1, 2021, which was denied on March 12, 2021. Notice in lieu of remittitur issued  
18 on April 6, 2021.

19 **Second Motion to Modify (C-16-315718-1, A-19-793315-W, SCN 83274)**

20 On March 25, 2021, Defendant filed a Motion to Modify and/or Correct Illegal  
21 Sentence. On April 21, 2021, Defendant filed a "Reply" without having received the State's  
22 opposition, contending the State's failure to oppose his motion was an admission of its merits.  
23 The State filed its opposition on April 22, 2021, and amended it the same day. Defendant filed  
24 an Opposition to State's Amended Opposition to Defendant's Motion to Modify and/or  
25 Correct Illegal Sentence on May 12, 2021. The motion to modify was denied on July 14, 2021,  
26 when the district court found Defendant's sentence was legal.

27 Defendant filed an Affidavit of the District Court Acted in Excess of Its Jurisdiction on  
28 June 3, 2021. A ruling on this affidavit does not appear in the record.



1 Defendant filed a Request for Submission for Motion to Modify and/or Correct Illegal  
2 Sentence on June 23, 2021. The State filed its opposition to the motion to modify on July 7,  
3 2021. Defendant filed Defendant's Opposition to State's Opposition to Defendant's Motion to  
4 Modify and/or Correct Illegal Sentence on July 19, 2021. The request for submission was  
5 denied July 14, 2021.

6 Defendant filed a Request for Submission Addendum on July 20, 2021, in which he  
7 asked the court to consider his motion to modify and respond on the merits. The State filed an  
8 opposition on August 6, 2021. The Request for Submission Addendum was denied on August  
9 11, 2021, under the doctrine of res judicata. The Findings of Fact, Conclusions of Law, and  
10 Order were filed August 13, 2021 (hereinafter "FOFCOL 8/13/21").

11 On August 9, 2021, Defendant filed a Motion for a Rehearing on Defendant's Motion  
12 to Modify and/or Correct Illegal Sentence that Was Denied on July 14, 2021 Improperly;  
13 Hearing Requested. The State filed its opposition to rehearing on August 19, 2021. The motion  
14 for rehearing was denied August 30, 2021. The Findings of Fact, Conclusions of Law, and  
15 Order were filed on August 13, 2021 (hereinafter "FOFCOL 8/20/21").

16 Defendant filed a Notice of Appeal on July 21, 2021. He filed his brief on November  
17 5, 2021. This appeal is pending.

18 **Writ of Habeas Corpus (COVID) (A-19-793315-W, A-21-831979-W, SCN 83368, 83151 )**

19 Defendant filed a "Petition for Writ of Habeas Corpus COVID-19 (Coronavirus)" on  
20 March 30, 2021. On May 17, 2021, the court learned the State had not received the petition.  
21 The State filed its Opposition on June 24, 2021, and this was filed again on July 19, 2021. On  
22 May 4, 2021, the district court consolidated A-21-831979-W with A-19-793315-W. The court  
23 denied the petition on July 19, 2021, as cruel and unusual punishment due to COVID is not an  
24 appropriate claim for a habeas petition. Defendant filed his Opposition to State's Opposition  
25 on July 22, 2021.

26 He filed a Notice of Appeal on August 12, 2021. This matter was combined with SCN  
27 83151, *supra*, and is pending.

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1 **Second Supplemental Petition (A-19-793315-W)**

2 On April 7, 2021, Defendant filed a "Supplemental Petition for Writ of Habeas Corpus"  
3 Petition (NRS 34.360-34.830) (hereinafter "Second Supplemental"). On April 14, 2021,  
4 Defendant filed a Supplemental 'Addendum.' On June 6, 2021, Defendant filed an Affidavit  
5 of "The State of Nevada Knowingly, Intelligently, Categorically Acted in Bad Faith." On July  
6 8, 2021, Defendant filed a Request for Submission of his Supplemental Petition for Writ of  
7 Habeas Corpus.

8 **Emergency Writ of Prohibition (SCN 82962)**

9 On May 27, 2021, Defendant filed an Emergency Petition for Writ of Prohibition,  
10 asserting the district court abused its discretion in deciding his case without subject matter  
11 jurisdiction. The Nevada Supreme Court transferred the matter to the Court of Appeals on June  
12 14, 2021. The writ was denied on June 25, 2021, as the Court of Appeals found Defendant's  
13 challenge to his conviction must be raised on habeas. Defendant filed a Letter, a Question Is  
14 Reviewed De Novo on June 28, 2021, and a Petition for Rehearing on July 7, 2021. The  
15 petition was denied on August 19, 2021. The Supreme Court issued notice in lieu of remittitur  
16 on September 14, 2021.

17 **Motion to Refer (C-16-315718-1)**

18 On July 7, 2021, the State filed a Motion to Refer Defendant to Department of  
19 Corrections for Forfeiture of Statutory Credits. The court denied this motion on July 19, 2021.

20 **Motion to Withdraw Plea (C-16-315718-1)**

21 Defendant filed a Motion to Withdraw Plea on November 16, 2021. This was denied  
22 on December 8, 2021.

23 **Motion to Refer (C-16-315718-1)**

24 On December 6, 2021, the State filed a Second Motion to Refer Defendant to  
25 Department of Corrections for Forfeiture of Statutory Credits. This Motion will be heard on  
26 December 20, 2021.

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1 **Supplemental Petition Addendum 2 (A-19-793315-W)**

2 Defendant filed a Supplemental Petition Addendum 2 on November 12, 2021, in which  
3 he claimed this Court has not responded to his April 7, 2021, Supplemental Petition. The  
4 matter was continued on December 13, 2021, but the new hearing date has not been set. The  
5 State's response is due January 24, 2022, and will be filed separately.

6 **Motion for Discovery (C-16-315718-1, A-19-793315-W)**

7 On December 7, 2021, Defendant filed the instant Motion for Discovery and  
8 Reconsideration of Motion for Transcripts at State's Expense (hereinafter "Motion"). This is  
9 set before the Court on January 10, 2022.

10 **STATEMENT OF THE FACTS**

11 The district court relied on the Presentence Investigation Report ("PSI") for the facts of  
12 the case at sentencing:

13 On April 9, 2013, the victim was staying at the Excalibur Hotel when  
14 he awoke due to a strange sound. He saw a man, later identified as the  
15 defendant James Howard Hayes, aka, James Howard Hayes Jr., next to  
16 the bed. Mr. Hayes was going through some of the belongings of the  
17 people staying in the room. The victim jumped out of bed and  
18 confronted the defendant. He blocked Mr. Hayes from exiting the room  
19 and had him empty his pockets and instructed Mr. Hayes to sit on the  
20 bed. He then had Mr. Hayes hand over his Nevada identification and  
21 the victim took a picture of it with his phone. The victim asked what he  
22 was doing and Mr. Hayes just kept stating he was sorry. He told Mr.  
23 Hayes if he took anything he would call the police and at that time Mr.  
24 Hayes fled. Security was called and spoke to two of the other room  
25 occupants who noticed they were missing a total of \$130.00 dollars. Las  
26 Vegas Metropolitan Police Department officers arrived and the victim  
27 gave them photos of Mr. Hayes and his identification. A review of hotel  
28 records showed the hotel room was left unlocked for about two and a  
half hours before Mr. Hayes was seen in the room, and it was believed  
he just pushed the door open. A warrant was issued for the arrest of Mr.  
Hayes.

On April 2, 2016, police were dispatched to a room robbery at Harrah's  
casino and discovered the suspect, Mr. Hayes, had outstanding warrants  
for the instant offense. He was placed under arrest and transported to  
the Clark County Detention Center where he was booked accordingly.

1 PSI at 5.

## 2 ARGUMENT

3 Petitioner requests discovery and reconsideration of his motion for transcripts at the  
4 State's expense. See generally Motion. In his earlier motion for transcripts, Petitioner asserted  
5 he required them in order "to adequately prepare a post-conviction petition or a direct appeal."  
6 See Motion for Transcripts at State Expense, filed August 11, 2021, at 2. In the instant motion,  
7 Petitioner finds the Court's denial of his earlier request to be "unconvincing." Motion at 2.  
8 The fact that his habeas and appellate claims have been adjudicated and are now the law of the  
9 case is irrelevant, in Petitioner's opinion, to the issue of whether good cause exists to grant his  
10 request. Motion at 2. In Petitioner's view, if he can drum up any constitutional attack on his  
11 conviction, the fact that the conviction has been deemed constitutional does not matter.

12 Petitioner admits his issues were raised on habeas, but claims he has not had an  
13 opportunity to develop his claims. Motion at 2-3. This, despite an evidentiary hearing. Motion  
14 at 3. He asserts that though his claim may be adjudicated, he might learn something new  
15 through discovery that would make his claims new again. Motion at 3. "[I]t would not be futile  
16 to allow discovery to support a claim(s) because the court might be required to revisit the  
17 adjudication and change its decision, so this court's decision isn't persuasive." Motion at 3.  
18 Petitioner threatens that if he does not receive what he wants, the Court will "force Petitioner  
19 into another round of court litigations." Motion at 4. He feels it would be "more efficient" to  
20 "let the parties continue litigation depending on the information obtained through discovery."  
21 Motion at 4.

22 This Court denied Petitioner's earlier motion for transcripts at the State's expense on  
23 November 4, 2021, citing its denial of Petitioner's habeas petition as eliminating Petitioner's  
24 need for the transcripts. To the extent this motion asks the Court to reconsider its earlier  
25 decision, that is within the Court's discretion. The State takes no position on Petitioner's  
26 demands on this Court or on his former counsel.

27 Regarding Petitioner's substantive claims, raised again in the instant Motion, the State  
28 refers this honorable Court to its replies filed most recently in the State's Opposition to

1 Defendant's Supplemental Petition "Addendum 2" in A-19-793315-W, filed concurrently with  
2 this Motion, or the State's Opposition to Defendant's Motion to Withdraw "Alford" (Guilty)  
3 Plea, filed in C-16-315718-1 on December 6, 2021.

4 Other than transcripts, the Motion is silent as to what other discovery materials  
5 Petitioner feels exist in the State's possession. To the extent this motion requests discovery  
6 from the District Attorney's office, the State points out Petitioner is not entitled to any  
7 discovery in post-conviction review. See DA's Office v. Osborne, 557 U.S. 52, 69-70, 129  
8 S.Ct. 2308, 2320-21 (2009). "[A habeas petitioner's] right to due process is not parallel to a  
9 trial right, but rather must be analyzed in light of the fact that he has already been found guilty  
10 at a fair trial, and has only a limited interest in postconviction relief." Id. By pleading guilty,  
11 Petitioner waived his trial right and is not entitled to one now, more than eight years after he  
12 committed his crime.

13 Post-conviction discovery is available only after a court has determined the need for an  
14 evidentiary hearing, and has further found that each specific discovery request is supported by  
15 good cause:

16 *After the writ has been granted and a date set for the hearing, a party may*  
17 *invoke any method of discovery available under the Nevada Rules of Civil*  
18 *Procedure if, and to the extent that, the judge or justice for good cause*  
*shown grants leave to do so.*

19 NRS 34.780(2) (emphasis added). A writ is not "granted" for discovery purposes until a court  
20 determines that an evidentiary hearing is necessary. NRS 34.770(3).

21 This Court has yet to grant any petition or set an evidentiary hearing in this matter. As  
22 such, any request to conduct discovery is premature. Therefore, this Court should deny  
23 Petitioner's untimely demand for the privilege of discovery.

24 The Nevada Supreme Court has yet to address the meaning of good cause in the context  
25 of discovery in a post-conviction habeas proceeding. Under the federal rule, good cause exists  
26 to allow discovery only where specific allegations provide reason to believe that the petitioner  
27 may, if the facts are fully developed, be able to demonstrate that he is entitled to relief. Rule  
28 6 of the Federal Rules Governing § 2254 Cases; McDaniel v. U.S. District Court (Jones), 127

1 F. 3d 886, 888 (9<sup>th</sup> Cir. 1997). However, "*courts should not allow prisoners to use federal*  
2 *discovery for fishing expeditions to investigate mere speculation.*" Calderon v. U.S. District  
3 Court (Nicolaus), 98 F. 3d 1102, 1106 (9<sup>th</sup> Cir. 1996) (emphasis added), cert. denied, 520 U.S.  
4 1233, 117 S. Ct. 1830 (1997); see also, Stanford v. Parker, 266 F. 3d 442, 460 (6<sup>th</sup> Cir. 2001);  
5 Murphy v. Johnson, 205 F.3d 809, 814 (5<sup>th</sup> Cir. 2000), cert. denied, 531 U.S. 957, 121 S. Ct.  
6 380 (2000).

7 Here, Petitioner does not demonstrate good cause exists to justify his discovery  
8 demands, as his claims have been adjudicated. Petitioner makes no showing that he is entitled  
9 to another direct appeal or another habeas petition. Because the Nevada Supreme Court has  
10 affirmed both his conviction and the denials of several of his habeas petitions, Petitioner's  
11 failure to assert any legitimate need for additional discovery is fatal to his request. He asserts  
12 he hopes to find something through discovery that will persuade this Court and the Nevada  
13 Supreme Court to reverse their decisions in his case. This hopeful fishing trip is not authorized  
14 by statute and would place an undue burden on the District Attorney's office.

15 **CONCLUSION**

16 For the above reasons, the State respectfully requests that this Court deny Defendant's  
17 Motion.

18 DATED this 16<sup>th</sup> day of December, 2021.

19 Respectfully submitted,

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

23 BY

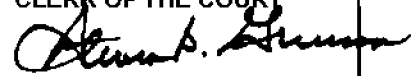
  
24 JONATHAN E. VANBOSKERCK for  
25 Chief Deputy District Attorney  
26 Nevada Bar #006528  
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JAMES H. HAYES, BAC #1175077  
SOUTHERN DESERT CORRECTIONAL CENTER  
20825 COLD CREEK RD.  
P.O. BOX 208  
INDIAN SPRINGS, NV, 89070

BY Corina Garcia  
C. Garcia  
Secretary for the District Attorney's Office

JEV/sr/cg/L2



1 **OPPS**  
2 STEVEN B. WOLFSON  
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4 Nevada Bar #001565  
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7 Nevada Bar #006528  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 DISTRICT COURT  
8  
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

CASE NO: A-19-793315-W

13 JAMES HOWARD HAYES,  
14 aka James Howard Hayes Jr.,  
#2796708

Defendant.

DEPT NO: III

15  
16 **STATE'S OPPOSITION TO DEFENDANT'S**  
17 **SUPPLEMENTAL PETITION "ADDENDUM 2"**

18 **DATE OF HEARING:** January 10, 2022  
19 **TIME OF HEARING:** 8:30 A.M.

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
21 District Attorney, through JONATHAN E. VANBOSKERCK, Chief Deputy District  
22 Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's  
23 Motion to Withdraw Supplemental Petition "Addendum 2."

24 This Opposition is made and based upon all the papers and pleadings on file herein, the  
25 attached points and authorities in support hereof, and oral argument at the time of hearing, if  
26 deemed necessary by this Honorable Court.

27 //

28 //



1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 The following has been gathered from the filings in C-16-315718-1, A-19-793315-W,  
4 and A-21-831979-W. The relevant Nevada Supreme Court case numbers are 75173, 73436,  
5 77151, 78590, 78622, 80222, 81076, 82202, 82734, 82962, 83151, 83274, 83368. This is not  
6 an exhaustive list of all filings in this case.

7 The events are organized around motions rather than chronologically, as Defendant has  
8 filed replies after the Court's orders, new motions before the resolution of previous motions,  
9 and duplicative motions. The notations after each heading are to aid the Court in finding the  
10 relevant events under the various case numbers.

11 **Conviction (C-16-315718-1)**

12 On or about July 23, 2013, James H. Hayes (hereinafter, "Defendant") was charged by  
13 way of Criminal Complaint with one count of BURGLARY (Category B Felony – NRS  
14 205.060) and one count of ATTEMPT GRAND LARCENY (Category D Felony/Gross  
15 Misdemeanor – NRS 205.220.1, 205.222.2, 193.330).

16 Following a Preliminary Hearing in Justice Court, Las Vegas Township on June 14,  
17 2016, the charge of BURGLARY was bound over to District Court, and the charge of  
18 ATTEMPT GRAND LARCENY was dismissed. See Reporter's Transcript of Proceedings  
19 ("Preliminary Transcript"), filed July 29, 2016. The State called Joshua Jeremiah Jarvis.  
20 Preliminary Transcript at 4. Jarvis heard Defendant in his hotel room, rustling through the  
21 luggage in the room without permission to be in the room. Id. at 9, 11, 20. The State chose to  
22 strike the Attempt Grand Larceny charge without stating a reason for this decision. Id. at 33.  
23 Though defense counsel argued insufficient evidence to prove intent of burglary when  
24 Defendant rummaged through someone else's luggage in someone else's hotel room, the  
25 magistrate did not agree and the defendant was bound over. Id. at 34-36.

26 On June 17, 2016, the State filed an Information with the District Court, charging  
27 Defendant with one count of Burglary. On November 21, 2016, the State filed a Notice of  
28 Intent to Seek Punishment as a Habitual Criminal. On August 29, 2017, the State filed an

1 Amended Notice of Intent to Seek Punishment as a Habitual Criminal. (Hereinafter “Amended  
2 Notice”).

3 On November 7, 2018, Defendant entered a Guilty Plea Agreement (“GPA”) pursuant  
4 to North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160 (1970), to one count of Attempt Grand  
5 Larceny. The State filed an Amended Information to reflect that charge the same day. The  
6 Defendant’s Presentence Investigation Report (“PSI”) was filed on December 18, 2018.

7 On January 31, 2019, the State filed a State’s Notice of Motion and Motion to Revoke  
8 Bail, asserting that in Las Vegas Justice Court case number 19F01534X, a Justice of the Peace  
9 had found probable cause to charge Defendant with Burglary for acts committed on or around  
10 January 26, 2019. The State’s Motion to Revoke Bail was granted after a hearing on February  
11 4, 2019.

12 At sentencing on March 6, 2019, the Court found the State had regained the right to  
13 argue pursuant to the terms of the GPA. Further, the Court agreed Defendant should be  
14 punished under NRS 207.010 (the “Small Habitual Statute”). Defendant was sentenced to sixty  
15 (60) to one hundred seventy-four (174) months in the Nevada Department of Corrections  
16 (NDOC), consecutive to Defendant’s sentence in another case (C315125). The Court awarded  
17 Defendant ten (10) days credit for time served. The Judgment of Conviction was filed March  
18 12, 2019.

19 **Pretrial Petitions for Writ of Habeas Corpus (C-16-315718-1, SCN 73436, 75173, 77151)**

20 SCN 73436 – On July 11, 2017, Defendant filed a pretrial Petition for Writ of Habeas  
21 Corpus in the Nevada Supreme Court, contending the evidence at the preliminary hearing was  
22 insufficient since the State did not bring all occupants of the hotel room to testify. On August  
23 30, 2017, defense counsel informed the court the defendant had filed an unknown “something”  
24 in the Nevada Supreme Court. Defendant said his petition challenged probable cause.  
25 Defendant filed an Addendum on September 26, 2017, asserting the State had produced no  
26 proof he had entered the victims’ hotel room “wrongfully.” On September 27, 2017, defense  
27 counsel announced there was a deal Defendant wanted to accept but there was an outstanding  
28 appeal that had not been decided. The court continued the matter pending the Supreme Court

1 decision. The petition was denied on October 12, 2017, as it should have been made to the  
2 district court. On October 6, 2017, Defendant filed a letter asking the Supreme Court clerk to  
3 tell the district court and district attorney that they no longer had jurisdiction as his case was  
4 in the Nevada Court of Appeals. Counsel announced on October 25, 2017, that the Court of  
5 Appeals had dismissed the pro per writ. The Supreme Court decided on October 31, 2017, that  
6 it would take no action on this letter. Notice in lieu of remittitur issued on November 8, 2017.

7 C-16-315718-1 – On January 29, 2018, Defendant filed a pretrial Petition for Writ of  
8 Habeas Corpus in the district court, which was “courtesy filed” on March 1, 2018. Defense  
9 counsel refiled the petition on April 6, 2018, as Amended Courtesy Filing of Defendant’s Pro  
10 Per Petition for Writ of Habeas Corpus. On April 23, 2018, the district court asked the State  
11 to respond to the petition. The State asked the filing to be dismissed as untimely on April 25,  
12 2018. On August 29, 2018, the district court denied Defendant’s Pro Per Petition for Writ of  
13 Habeas Corpus as untimely, as it was filed years after the preliminary hearing transcript was  
14 filed. The court’s order was filed on September 18, 2018.

15 SCN 75173 – On February 23, 2018, Defendant filed a pro per Petition for Writ of  
16 Habeas Corpus in the Nevada Supreme Court, contending the evidence at the preliminary  
17 hearing was insufficient since the State did not bring all occupants of the hotel room to testify  
18 and that the State had produced no proof he had entered the victims’ hotel room “wrongfully.”  
19 On April 5, 2018, Defendant filed a letter asking the 21-day deadline to file a pretrial habeas  
20 petition after the preliminary hearing transcript is filed to not be applied in his case, as he had  
21 begged counsel to file this petition for him and they had refused to do so. On May 9, 2018,  
22 defense counsel said an appeal was pending, so the trial date was vacated. Both the petition  
23 and the letter were denied on May 15, 2018, as the Court of Appeals held the district court  
24 should decide the matter first. On June 6, 2018, counsel advised the Supreme Court denied the  
25 defendant’s petition. Defendant filed a motion for rehearing on June 11, 2018, which was  
26 denied on July 27, 2018. On July 11, 2018, counsel informed the court that there were  
27 outstanding motions Defendant filed on his own. Notice in lieu of remittitur issued on August  
28 21, 2018.

1           SCN 77151 – On September 26, 2018, Defendant filed a notice of appeal regarding the  
2 district court's denial of his Petition for Writ of Habeas Corpus. The Nevada Supreme Court  
3 denied the appeal on December 12, 2018, finding that no appeal is available from the denial  
4 of a pretrial petition for writ of habeas corpus. Remittitur issued January 11, 2019.

5 **Direct Appeal (C-16-315718-1, SCN 78590)**

6           Defendant filed a Notice of Appeal on March 28, 2019. On April 29, 2019, Defendant  
7 filed a *pro per* motion to withdraw counsel. On June 3, 2019, defense counsel argued the  
8 motion could not be granted as the Supreme Court had ordered him to file an appeal. Finding  
9 remittitur from the Nevada Supreme Court had been filed, the district court granted the motion  
10 to withdraw counsel on July 15, 2019.

11           Defendant filed a second Notice of Appeal on July 31, 2019, this time *pro per*. On  
12 January 14, 2020, the Nevada Supreme Court affirmed Defendant's Judgment of Conviction,  
13 finding that because Defendant's sentence of five to fifteen years in prison was within the  
14 parameters of the range of punishment for his offense, and given Defendant's history of  
15 recidivism, his sentence was not disproportionate to his crime, nor was it cruel or unusual.  
16 Remittitur issued on February 25, 2020 (hereinafter "Direct Appeal Remittitur").

17 **Post-Conviction Petition for Writ of Habeas Corpus (A-19-793315-W)**

18           On April 15, 2019, Defendant filed a Petition for Writ of Habeas Corpus. Addendum  
19 One was filed May 7, 2019, and Addendum Two on May 9, 2019. The court ordered the State  
20 to respond on May 2, 2019.

21           The State filed its Response on June 26, 2019. Defendant filed a Motion for Judgment  
22 of Default Against the Respondents and Enforce Procedural Default on July 5, 2019.  
23 Defendant replied to the State's opposition the same day. He filed an Affidavit of Issuance of  
24 Habeas Corpus on July 12, 2019, and an Affidavit of Facial Legality on August 9, 2019. At  
25 the hearing on the Petition on August 19, 2019, the district court ordered the State to respond  
26 to the Addenda. The State filed a Response to the Addenda on October 10, 2019.

27           On November 18, 2019, Defendant's Petition came before the Court, at which time the  
28 Court took the matter off calendar due to Defendant's pending appeal. As Defendant filed a

1 new, also timely, habeas petition, see infra, this Petition was not addressed on the merits. See  
2 Affirmance, filed September 17, 2021, docket number 82734 (hereinafter "Affirmance  
3 9/17/21"), finding Defendant's first habeas petition had not been resolved on the merits but  
4 raised the same issues as the later petition. As shown below, the Court of Appeals affirmed the  
5 denial of his later petition on the merits.

6 Defendant filed a Reply to the State's Response to the petition on November 4, 2019,  
7 and another in reply to the State's response to the Addenda on December 20, 2019.

8 **Writ of Mandamus/Prohibition (SCN 78622)**

9 On April 23, 2019, Defendant filed a Petition for Writ of Mandamus/Prohibition with  
10 the Nevada Supreme Court, asserting he was subjected to double jeopardy. The Court denied  
11 the petition on May 2, 2019, as Defendant had not included an appendix. The Court returned  
12 unfiled the appendix Defendant sent on May 16, 2019. He filed a Motion for Reconsideration  
13 of Order Denying Petition on May 22, 2019. His PSI was returned unfiled on the same date.

14 Rehearing was denied on June 6, 2019, and Notice in Lieu of Remittitur issued on July  
15 1, 2019.

16 **Peremptory Challenge of Judge (A-19-793315-W)**

17 On May 20, 2019, Defendant filed a Motion for Peremptory Challenge of Judge and to  
18 Disqualify Judge William Bill Kephart. He filed this again on June 4, 2020. Judge Kephart  
19 filed an affidavit in response on July 2, 2020. On July 7, 2020, Chief Judge Linda Bell  
20 considered, and denied, Defendant's Motion for Peremptory Challenge of Judge Kephart.  
21 Chief Judge Bell's Decision and Order was filed on July 8, 2020.

22 **Coram Nobis (C-16-315718-1, SCN 80222)**

23 Defendant filed a Motion in the Nature of a Writ of Coram Nobis on September 9, 2019,  
24 and an Affidavit of Granting Motion in the Nature of a Writ of Coram Nobis on September  
25 26, 2019. The State filed its opposition on October 1, 2019. The district court denied the  
26 Motion on October 7, 2019, finding the State was not properly served and an appeal was  
27 pending in the Supreme Court. Defendant filed his reply to the State's opposition on October

28 //

1 17, 2019. He accompanied his reply with an Affidavit of No Material Dispute as to the  
2 Mistake of Fact Motion in the Nature of a Writ of Coram Nobis, filed October 28, 2019.

3 On November 19, 2019, Defendant filed a Notice of Appeal regarding the denial of his  
4 coram nobis writ. On August 31, 2020, the Nevada Court of Appeals affirmed the district  
5 court's denial of his Coram Nobis motion, finding Defendant had the remedy of habeas corpus  
6 available to him, so the writ of Coram Nobis was unavailable. Remittitur issued on September  
7 28, 2020.

8 **Motion to Modify (C-16-315718-1, SCN 81076)**

9 Defendant filed a Motion to Correct an Illegal Sentence on December 16, 2019. The  
10 State filed its opposition on December 30, 2019. On January 6, 2020, the court took the matter  
11 off calendar as there was an outstanding appeal.

12 Defendant filed an Affidavit of Granting Motion to Correct an Illegal Sentence of the  
13 Wrongfully Convicted on January 6, 2020. Defendant replied to the State's opposition on  
14 January 27, 2020.

15 On February 24, 2020, Defendant filed a Motion for Ruling for Motion to Correct an  
16 Illegal Sentence. On March 18, 2020, the court denied his Motion for Ruling. On May 12,  
17 2020, the court denied his Motion to Correct Illegal Sentence. The court found Defendant's  
18 claims were similar to those in his appeal, he provided no statutory basis or authority to support  
19 his motion, and his other claims were substantive and waived as they were not raised on appeal.

20 Defendant filed a Notice of Appeal on March 30, 2020. On October 2, 2020, he  
21 voluntarily dismissed his appeal as the district court would not consider his habeas petition  
22 while the appeal was outstanding.

23 **Amended Writ of Habeas Corpus (A-19-793315-W, SCN 83151, 83368, 82734)**

24 On February 12, 2020, Defendant filed an "Amended Petition for Writ of Habeas  
25 Corpus." On March 4, 2020, the court ordered the State to respond. The State filed its response  
26 on April 17, 2020. On May 15, 2020, Defendant filed a document titled "Petition for Writ of  
27 Habeas Corpus," which was a reply to the State's response.

28 //

1 On March 6, 2020, Defendant filed a Petition: Expeditious Judicial Examination. The  
2 State filed its response on April 17, 2020. Defendant replied to the State's response on May  
3 15, 2020. No ruling on the petition appears in the record.

4 On May 15, 2020, Defendant filed an Affidavit of Actual Innocence not Mere Legal  
5 Insufficiency but 'Factual Innocence.' On June 10, 2020, the State responded and moved to  
6 strike the affidavit. Defendant replied to the State's response on June 29, 2020. No ruling on  
7 the affidavit appears in the record.

8 On May 27, 2020, Defendant filed a Supplemental Petition for Writ of Habeas Corpus  
9 (hereinafter "First Supplemental"). On June 10, 2020, the State responded. On July 23, 2020,  
10 Defendant replied to the State's response.

11 On June 15, 2020, the court took the matter off calendar until the Defendant's motion  
12 to disqualify the judge was decided.

13 On September 25, 2020, Defendant filed a Motion for Expeditious Ruling for  
14 "Amended Petition for Writ of Habeas Corpus" 3rd Request!! On October 7, 2020, Defendant  
15 filed a Motion to Set Evidentiary Hearing and Issue Transport Order. The State responded to  
16 both motions on November 10, 2020. On November 16, 2020, the Court denied both motions.

17 On December 22, 2020, Defendant filed a Motion to Compel Judgment Pursuant to  
18 Nevada Revised Statutes Chapter 34 FRCP Rule 12(c) for Amended Petition for Writ of  
19 Habeas Corpus. The State filed its response on January 27, 2021. The court denied the motion  
20 to compel on February 1, 2021. Defendant filed his reply the next day, and on February 18,  
21 2021, he filed an Opposition to State's Response to Petitioner's Motion to Compel Judgment.  
22 On March 17, 2021, the Court issued its Findings of Fact, Conclusions of Law, and Order  
23 (hereinafter "FOFCOL 3/17/21").

24 The court told Defendant to supplement his motion to compel with specificity on March  
25 8, 2021. The State filed its opposition to Defendant's reply on April 16, 2021. Defendant  
26 replied to this opposition on May 6, 2021. The court denied the motion to compel again on  
27 May 12, 2021. The same day, Defendant filed his opposition to the State's opposition, as well

28 //

1 as a Memorandum to the Court asking for the court's briefing schedule. He filed another  
2 opposition to the State's opposition on June 14, 2021.

3 The Amended Petition for Writ of Habeas Corpus was denied on February 1, 2021. The  
4 Court issued its Findings of Fact, Conclusions of Law, and Order on March 9, 2021  
5 (hereinafter "FOFCOL 3/9/21").

6 On March 11 and 17, 2021, Defendant filed Petitions to Reconsider the Court's  
7 Findings of Fact, Conclusions of Law, and Order. On April 9, 2021, the State filed its  
8 Opposition to both. On April 12, 2021, the Court denied both. Defendant filed a reply to the  
9 State's opposition on May 6, 2021. The court's order was entered on May 12, 2021.  
10 Defendant's reply was denied on June 21, 2021.

11 On August 11, 2021, Defendant filed a request for transcripts at the State's expense,  
12 accompanied by a memorandum in support. The Court denied the request on October 7, 2021.  
13 He filed a Petition for Reconsideration/Rehearing on August 18, 2021. The court denied this  
14 on September 23, 2021.

15 On March 18, 2021, Defendant filed a Notice of Appeal from the Court's denial of his  
16 Amended Petition in SCN 82734. On June 9, 2021, Defendant filed a Motion for Leave of  
17 Appeal to Obtain Favorable Ruling in the 8<sup>th</sup> Judicial District Court, Clark County, asking for  
18 favorable rulings on his motion to modify, his supplemental to amended habeas petition, and  
19 his writ of prohibition. This motion was denied on June 16, 2021, with the Supreme Court  
20 holding he may appeal these matters as they became ripe. Defendant filed a Motion to Expedite  
21 Appeal on August 23, 2021, which was granted. On September 17, 2021, the Court of Appeals  
22 affirmed the district court's decision on the Amended Petition. See Affirmance 9/17/21. The  
23 Court noted its affirmance encompassed Defendant's "February 12, 2020, petition and later-  
24 filed supplements." Affirmance 9/17/21 at 1. This included Defendant's Amended Petition,  
25 filed February 12, 2020, his First Supplemental, filed May 27, 2020, and the filings related to  
26 those. Defendant filed a Petition for Rehearing on October 4, 2021, and an Addendum on  
27 October 8, 2021. Rehearing was denied on November 17, 2021. On December 2, 2021, he  
28 filed a Petition for Review. This is pending.



1 On June 29, 2021, Defendant filed a Notice of Appeal from the denial of Supplemental  
2 Petition for Writ of Habeas Corpus in SCN 83151. This is believed to refer to the First  
3 Supplemental, as the Second Supplemental has not yet been decided. *See infra*. The First  
4 Supplemental was incorporated in the Nevada Court of Appeals' Affirmance. The Supreme  
5 Court combined this docket with SCN 83368, his COVID habeas appeal. *See infra*. On  
6 October 19, 2021, Defendant filed a Motion to Expedite Appeal. The motion was granted "to  
7 the extent that this court's docket will permit" on November 15, 2021. These appeals are  
8 pending.

9 **Rule 60b Motion (C-16-315718-1, A-19-793315-W)**

10 On May 4, 2020, Defendant filed a "Rule 60b Motion for Relief from the March 18,  
11 2020, Order Which Denied Mr. Hayes Motion to Correct an Illegal Sentence." The court  
12 continued the matter on June 1, 2020, as there was an appeal outstanding. The State filed its  
13 opposition on June 10, 2020. On June 22, 2020, the court took the matter off calendar as  
14 Defendant had filed a motion to disqualify the judge.

15 On July 23, 2020, Defendant filed a Motion for Ruling for Rule 60b Motion for Relief;  
16 Motion to Vacate; Amended Petition for Writ of Habeas Corpus. The State filed its Response  
17 to Defendant's Motion for Ruling on September 2, 2020. Defendant's Motion was denied on  
18 September 9, 2020. Defendant replied to the State's opposition on November 2, 2020.

19 On February 18, 2021, Defendant filed a Motion to Compel Judgment for Rule 60b  
20 Motion for Relief and Motion to Vacate (Conviction Invalid). The court found the motions  
21 moot on March 29, 2021.

22 On October 14, 2020, Defendant filed a Motion to Reconsider Order Denying Motion  
23 for Ruling for Rule 60b Motion for Relief; Motion to Vacate; Amended Petition for Writ of  
24 Habeas Corpus. The State responded on November 10, 2020. The motion for reconsideration  
25 was denied November 16, 2020.

26 Defendant filed a Notice of Appeal on April 16, 2021. This appeal does not appear on  
27 the Supreme Court docket.

28 //

**Motion to Vacate (C-16-315718-1)**

On June 1, 2020, Defendant filed a Motion to Vacate Sentence (Conviction Invalid). The State filed an opposition on June 10, 2020. On June 22, 2020, the court took the matter off-calendar until the defendant's motion to disqualify the court was heard.

Defendant replied to the State's opposition, possibly filed in response to Defendant's Rule 60b Motion, on June 26, 2020. Defendant filed an Affidavit of Jurisdiction of the Subject Matter Is Derived from the Law; It Neither Can Be Waived Nor Conferred by Consent of the Accused Motion to Vacate Sentence (Conviction Invalid) on July 31, 2020.

The court took the matter off calendar on August 24, 2020, as the denial of Defendant's previous motion was pending on appeal. The Motion was denied on September 9, 2020.

**Emergency Writ of Mandamus/Prohibition (SCN 82202)**

On December 11, 2020, Defendant filed an Emergency Petition for Writ of Mandamus/Prohibition in the Nevada Supreme Court, asking for a decision on his amended habeas petition and motion to vacate. His appendix was filed the same day.

The Court denied the writ, stating the district court would respond to his filings as promptly as its docket and the pandemic would allow. Defendant filed a Petition for Rehearing on January 1, 2021, which was denied on March 12, 2021. Notice in lieu of remittitur issued on April 6, 2021.

**Second Motion to Modify (C-16-315718-1, A-19-793315-W, SCN 83274)**

On March 25, 2021, Defendant filed a Motion to Modify and/or Correct Illegal Sentence. On April 21, 2021, Defendant filed a "Reply" without having received the State's opposition, contending the State's failure to oppose his motion was an admission of its merits. The State filed its opposition on April 22, 2021, and amended it the same day. Defendant filed an Opposition to State's Amended Opposition to Defendant's Motion to Modify and/or Correct Illegal Sentence on May 12, 2021. The motion to modify was denied on July 14, 2021, when the district court found Defendant's sentence was legal.

Defendant filed an Affidavit of the District Court Acted in Excess of Its Jurisdiction on June 3, 2021. A ruling on this affidavit does not appear in the record.

1 Defendant filed a Request for Submission for Motion to Modify and/or Correct Illegal  
2 Sentence on June 23, 2021. The State filed its opposition to the motion to modify on July 7,  
3 2021. Defendant filed Defendant's Opposition to State's Opposition to Defendant's Motion to  
4 Modify and/or Correct Illegal Sentence on July 19, 2021. The request for submission was  
5 denied July 14, 2021.

6 Defendant filed a Request for Submission Addendum on July 20, 2021, in which he  
7 asked the court to consider his motion to modify and respond on the merits. The State filed an  
8 opposition on August 6, 2021. The Request for Submission Addendum was denied on August  
9 11, 2021, under the doctrine of res judicata. The Findings of Fact, Conclusions of Law, and  
10 Order were filed August 13, 2021 (hereinafter "FOFCOL 8/13/21").

11 On August 9, 2021, Defendant filed a Motion for a Rehearing on Defendant's Motion  
12 to Modify and/or Correct Illegal Sentence that Was Denied on July 14, 2021 Improperly;  
13 Hearing Requested. The State filed its opposition to rehearing on August 19, 2021. The motion  
14 for rehearing was denied August 30, 2021. The Findings of Fact, Conclusions of Law, and  
15 Order were filed on August 13, 2021 (hereinafter "FOFCOL 8/20/21").

16 Defendant filed a Notice of Appeal on July 21, 2021. He filed his brief on November  
17 5, 2021. This appeal is pending.

18 **Writ of Habeas Corpus (COVID) (A-19-793315-W, A-21-831979-W, SCN 83368, 83151)**

19 Defendant filed a "Petition for Writ of Habeas Corpus COVID-19 (Coronavirus)" on  
20 March 30, 2021. On May 17, 2021, the court learned the State had not received the petition.  
21 The State filed its Opposition on June 24, 2021, and this was filed again on July 19, 2021. On  
22 May 4, 2021, the district court consolidated A-21-831979-W with A-19-793315-W. The court  
23 denied the petition on July 19, 2021, as cruel and unusual punishment due to COVID is not an  
24 appropriate claim for a habeas petition. Defendant filed his Opposition to State's Opposition  
25 on July 22, 2021.

26 He filed a Notice of Appeal on August 12, 2021. This matter was combined with SCN  
27 83151, *supra*, and is pending.

28 //

1 **Second Supplemental Petition (A-19-793315-W)**

2 On April 7, 2021, Defendant filed a "Supplemental Petition for Writ of Habeas Corpus"  
3 Petition (NRS 34.360-34.830) (hereinafter "Second Supplemental"). On April 14, 2021,  
4 Defendant filed a Supplemental 'Addendum.' On June 6, 2021, Defendant filed an Affidavit  
5 of "The State of Nevada Knowingly, Intelligently, Categorically Acted in Bad Faith." On July  
6 8, 2021, Defendant filed a Request for Submission of his Supplemental Petition for Writ of  
7 Habeas Corpus.

8 **Emergency Writ of Prohibition (SCN 82962)**

9 On May 27, 2021, Defendant filed an Emergency Petition for Writ of Prohibition,  
10 asserting the district court abused its discretion in deciding his case without subject matter  
11 jurisdiction. The Nevada Supreme Court transferred the matter to the Court of Appeals on June  
12 14, 2021. The writ was denied on June 25, 2021, as the Court of Appeals found Defendant's  
13 challenge to his conviction must be raised on habeas. Defendant filed a Letter, a Question Is  
14 Reviewed De Novo on June 28, 2021, and a Petition for Rehearing on July 7, 2021. The  
15 petition was denied on August 19, 2021. The Supreme Court issued notice in lieu of remittitur  
16 on September 14, 2021.

17 **Motion to Refer (C-16-315718-1)**

18 On July 7, 2021, the State filed a Motion to Refer Defendant to Department of  
19 Corrections for Forfeiture of Statutory Credits. The court denied this motion on July 19, 2021.

20 **Motion to Withdraw Plea (C-16-315718-1)**

21 Defendant filed a Motion to Withdraw Plea on November 16, 2021. This was denied  
22 on December 8, 2021.

23 **Motion to Refer (C-16-315718-1)**

24 On December 6, 2021, the State filed a Second Motion to Refer Defendant to  
25 Department of Corrections for Forfeiture of Statutory Credits. This Motion will be heard on  
26 December 20, 2021.

27 **Supplemental Petition Addendum 2 (A-19-793315-W)**

28 //

1 Defendant filed the instant Supplemental Petition Addendum 2 (hereinafter "Add. 2")  
2 on November 12, 2021, in which he claimed this Court has not responded to his April 7, 2021,  
3 Supplemental Petition. The matter was continued on December 13, 2021, but the new hearing  
4 date has not been set. The State's response is due January 24, 2022, and is set forth below.

5 **Motion for Discovery (C-16-315718-1, A-19-793315-W)**

6 On December 7, 2021, Defendant filed a Motion for Discovery and Reconsideration of  
7 Motion for Transcripts at State's Expense. This is set before the Court on January 10, 2022.  
8 The State's opposition will be filed separately.

9 **STATEMENT OF THE FACTS**

10 The district court relied on the Presentence Investigation Report ("PSI") for the facts of  
11 the case at sentencing:

12 On April 9, 2013, the victim was staying at the Excalibur Hotel when  
13 he awoke due to a strange sound. He saw a man, later identified as the  
14 defendant James Howard Hayes, aka, James Howard Hayes Jr., next to  
15 the bed. Mr. Hayes was going through some of the belongings of the  
16 people staying in the room. The victim jumped out of bed and  
17 confronted the defendant. He blocked Mr. Hayes from exiting the room  
18 and had him empty his pockets and instructed Mr. Hayes to sit on the  
19 bed. He then had Mr. Hayes hand over his Nevada identification and  
20 the victim took a picture of it with his phone. The victim asked what he  
21 was doing and Mr. Hayes just kept stating he was sorry. He told Mr.  
22 Hayes if he took anything he would call the police and at that time Mr.  
23 Hayes fled. Security was called and spoke to two of the other room  
24 occupants who noticed they were missing a total of \$130.00 dollars. Las  
25 Vegas Metropolitan Police Department officers arrived and the victim  
26 gave them photos of Mr. Hayes and his identification. A review of hotel  
27 records showed the hotel room was left unlocked for about two and a  
28 half hours before Mr. Hayes was seen in the room, and it was believed  
he just pushed the door open. A warrant was issued for the arrest of Mr.  
Hayes.

On April 2, 2016, police were dispatched to a room robbery at Harrah's  
casino and discovered the suspect, Mr. Hayes, had outstanding warrants  
for the instant offense. He was placed under arrest and transported to  
the Clark County Detention Center where he was booked accordingly.

PSI at 5.

**ARGUMENT**

Petitioner's claims are without merit. All have been addressed before, by this Court and the Nevada Supreme Court. The State respectfully requests this Court order Defendant's Supplemental Petition "Addendum 2" be DENIED.

**I. THIS SECOND SUPPLEMENT IS NOT PROPERLY BEFORE THE COURT  
PURSUANT TO NRS 34.750(5)**

NRS 34.750(5) expressly states that "[n]o further pleadings may be filed except as ordered by the court." The Nevada Supreme Court has held that leave can be granted only on a showing of good cause, and that leave can be denied if the delay in raising a claim is not explained. Barnhart v. State, 122 Nev. 301, 303-304, 130 P.3d 650, 652 (2006). A finding of good cause to expand the issues should be made "explicitly on the record" and should enumerate "the additional issues which are to be considered." Id. at 303, 130, P.3d at 652. In Barnhart, the Nevada Supreme Court affirmed a district court's decision to deny leave to expand the issue because "[c]ounsel for petitioner provided no reason why that claim could not have been pleaded in the supplemental petition." Id. at 304, 130 P.3d at 652.

There is no indication in the record that Defendant sought leave of the court to file this Supplemental Petition Addendum 2. As such, this Court should strike this filing.

Petitioner claims this Court still has jurisdiction over his Amended Petition for Writ of Habeas Corpus, filed February 12, 2020, because the Court has yet to file its Findings of Fact, Conclusions of Law, and Order. Add. 2 at 1. He claims the court has authorized him to continue filing in this matter. Add. 2 at 1. Petitioner claims the State has not responded to each of his supplemental petitions. Add. 2 at 4.

In A-19-793315-W, the Court denied the Amended Habeas Petition on February 1, 2021, noting no order had been filed yet. See Court Minutes, February 1, 2021, and FOFCOL 3/9/21. The Court denied the Motion to Compel the same day. See Court Minutes, February 1, 202, and FOFCOL 3/17/21.

There is a separate Motion to Compel in C-16-315718-1, filed on February 18, 2021. The State's response to the C-16-315178-1 Motion, on April 16, 2021, was filed in A-19-

1 793315-W, rather than in C-16-315718-1. The court denied the motion in C-16-315718-1 on  
2 March 29, 2021. The motion was denied in A-19-793315-W on May 12, 2021. After denying  
3 the amended petition and the motion to compel in A-19-793315-W, the Court instructed  
4 Petitioner to plead his Motion to Compel with more specificity on March 8, 2021. See Court  
5 Minutes, filed March 8, 2021, in A-19-793315-W. This order could conceivably have been  
6 filed in the wrong case number and perhaps refers to the Motion to Compel in C-16-315718-  
7 1. At any rate, after the court's order to plead his Motion to Compel with more specificity,  
8 Petitioner filed:

- 9 • On March 11 and 17, 2021, in A-19-793315-W, a Petition to Reconsider the FOFCOL.  
10 The State responded and the court denied both filings.
- 11 • On March 25, 2021, in C-16-315718-1, a Motion to Modify Sentence. The State  
12 responded and the court denied the filing.
- 13 • On March 30, 2021, in A-21-831979-W, a Petition for Writ of Habeas Corpus COVID-  
14 19. The State responded and the court denied the filing.
- 15 • On April 4, 2021, in A-19-793315-W, a Supplemental Petition for Writ of Habeas  
16 Corpus
- 17 • April 14, 2021, in A-19-793315-W, a Supplemental Addendum
- 18 • On May 27, 2021, in Docket No. 82962, an Emergency Petition for Writ of Prohibition.  
19 The Nevada Supreme Court denied the writ.
- 20 • On July 20, 2021, in C-16-315718-1, a Request for Submission Addendum. The State  
21 responded and the Court denied the filing.
- 22 • On August 9, 2021, in C-16-315718-1, a Motion for Rehearing. The State responded  
23 and the court denied the filing.
- 24 • On August 11, 2021, in A-19-793315-W, a Motion for transcripts and a memorandum  
25 in support. The court denied the filing.
- 26 • On August 18, 2021, in A-19-793315-W, a Petition for Reconsideration. The court  
27 denied the filing.

28 //

- 1 • On November 12, 2021, in A-19-793315-W, the instant Supplemental Petition
- 2 Addendum 2.
- 3 • On November 16, 2021, in C-16-315718-1, a Motion to Withdraw Guilty Plea. The
- 4 State responded and the court denied the filing.
- 5 • On December 7, 2021, in A-19-793315-W, a Motion for Discovery.

6 Since Petitioner alleges the same claims in each filing, and since his claims have been  
7 adjudicated numerous times, Petitioner is not privileged to file yet another supplement to his  
8 amended habeas petition of February 12, 2020, without leave of the court. This Court's order  
9 to supplement one of his motions to compel does not serve as justification for yet another  
10 habeas filing, as both motions to compel have been addressed and rejected.

11 Petitioner appears to assert, "as a house-keeping matter," that his April 4, 2021,  
12 Supplemental Petition and April 14, 2021, Supplemental Addendum have not been answered  
13 by the State or resolved by the court. Add. 2 at 1. However, on September 17, 2021, the Nevada  
14 Supreme Court affirmed the denial of his amended petition, noting its affirmance encompassed  
15 Defendant's "February 12, 2020, petition and later-filed supplements." Affirmance 9/17/21 at  
16 1. Defendant filed a Petition for Rehearing on October 4, 2021, and an Addendum on October  
17 8, 2021. Rehearing was denied on November 17, 2021. Those pleadings have been  
18 adjudicated.

19 Petitioner makes no showing he has this Court's indulgence to further supplement his  
20 motion to compel pursuant to NRS 34.750(5). The instant filing supplements yet again his  
21 amended petition for habeas corpus, not his motion to compel. Add. 2 at 2. Petitioner never  
22 had this Court's permission to supplement the amended petition, only one of his motions to  
23 compel.

24 As the claims raised in the instant filing could have been, and in fact were, raised in his  
25 each of his previous filings, Petitioner can show no good cause for raising them separately and  
26 repeatedly in this instant Supplemental Petition Addendum 2. Barnhart precludes Petitioner  
27 from filing supplemental petitions in perpetuity without good cause. 122 Nev. at 303-304, 130  
28 P.3d at 652.



1 The record is void of any explicit findings of this court to allow for the rogue filings.  
2 Because Petitioner was not entitled to supplement his many filings and never sought this  
3 Court's leave, his rogue instant filing should be dismissed.

4 **II. PETITIONER FAILS TO DEMONSTRATE GOOD CAUSE TO SUPPLEMENT**  
5 **HIS FILINGS**

6 If this Court were inclined to treat this filing as a request for leave to supplement his  
7 earlier filings, the Court should find Petitioner has failed to demonstrate good cause for failing  
8 to raise his claims in his earlier pleadings. Petitioner cannot do so, as his claims have been  
9 raised, addressed, rejected, appealed, and rejected on their merits time and time again, by this  
10 Court and by the Nevada Supreme Court. Because the Supreme Court rejected the claims in  
11 the amended petition and the later-filed supplements, this Court lacks jurisdiction to overrule  
12 its holding.

13 Petitioner asserts without support that he overcame the statutes that bar successive and  
14 abusive habeas petitions and that the State's argument to the contrary "fails." Add. 2 at 2. He  
15 claims that since the Court ordered him to file a supplement to his motion to compel, good  
16 cause to supplement his amended habeas petition automatically exists. Add. 2 at 2. He admits  
17 he responded to the Court's invitation to supplement with filings on April 4 and 14, 2021. Add.  
18 2 at 2. Petitioner asserts this Court admits his habeas issues have merit since he was permitted  
19 to supplement his motion to compel. Add. 2 at 3. Petitioner claims that because he is able to  
20 out-file the State, which has not matched him with a response tied directly to each and every  
21 one of his filings, the State therefore concedes his claims are meritorious. Add. 2 at 4. With a  
22 straight face, Petitioner states, "[i]t is evident from the record that petitioner has never received  
23 an opportunity to develop his claims." Add. 2 at 4. The record repeatedly belies this risible  
24 contention.

25 In this particular filing, Petitioner complains counsel was ineffective for not objecting  
26 to his being sentenced as a habitual offender. Add. 2 at 4. He complains there was no factual  
27 basis for his plea. Add. 2 at 5. Petitioner complains the State breached the plea agreement just  
28 because he burglarized another hotel room while awaiting sentencing, and "the change of

1 circumstances was not a sufficient reason to deprive petitioner of the benefit of his bargain.”  
2 Add. 2 at 6. Petitioner finds “unpersuasive” the argument that his guilty plea waives his  
3 challenge to defects in his charging documents. Add. 2 at 6. Finally, he claims a Category E  
4 Felony is not a felony. Add. 2 at 6-7.

5 These claims and more have been adjudicated.

6 **A. Voluntariness of plea**

7 Defendant entered into his Alford plea knowingly, intelligently, and voluntarily.  
8 FOFCOL 3/9/21 at 16. “[T]he Court thoroughly canvassed Petitioner and determined that  
9 Petitioner understood the terms of the GPA.” Id. “Further, this Court finds that Defendant’s  
10 guilty plea was knowingly and voluntarily entered, as was ensured by the Court’s canvass of  
11 Defendant prior to accepting the GPA.” FOFCOL 8/13/21 at 7. “Thus, the totality of the  
12 circumstances demonstrated that Hayes understood the consequences he faced from entry of  
13 his plea and from violating the FTA clause.” Affirmance 9/17/21 at 8.

14 **B. Effectiveness of Trial Counsel**

15 The signed GPA confirmed his attorney answered all his questions, as did the plea  
16 colloquy. FOFCOL 3/9/21 at 10. Defendant demonstrated he understood the charges and  
17 potential consequences at his colloquy. Id. at 11. Petitioner waived constitutional defects in  
18 the charges by entering his guilty plea. Id. at 13. Defendant asked the district court to accept  
19 the filing of the Amended Information and to his plea of guilty to that charge. FOFCOL  
20 3/17/21 at 5. He specifically stated he had no objection to the Amended Information. Id. at 6.  
21 Defendant has “waived any alleged defects relating to his conviction for Attempt Grand  
22 Larceny.” FOFCOL 8/13/21 at 7.

23 The GPA and plea colloquy show Defendant understood the potential sentences he  
24 faced by entering his plea and the consequences if he picked up another case. Affirmance  
25 9/17/21 at 3. He felt the plea agreement was in his best interests. Id. at 4. The magistrate found  
26 probable cause for burglary. Id. The reduction to attempt grand larceny was by agreement of  
27 the parties. Id.

28 //

1 Next, Hayes claimed the State breached the plea agreement, presented  
2 impalpable evidence at the sentencing hearing, amended the  
3 information in bad faith, violated his right to equal protection, and  
4 should have been barred from prosecuting him. Hayes also asserted that  
5 the trial level court lacked jurisdiction to convict him and the  
6 presentence investigation report contained mistakes concerning his  
7 criminal record. These claims were not based on an allegation that his  
8 plea was involuntarily or unknowingly entered or that his plea was  
9 entered without the effective assistance of counsel, and therefore, these  
10 claims were not permissible in Hayes postconviction petition for a writ  
11 of habeas corpus.

12 Affirmance 9/17/21 at 8-9.

### 13 C. Plea and Sentencing Hearings

14 "We conclude the sentence imposed is not grossly disproportionate to the crime and  
15 Hayes' history of recidivism." Direct Appeal Affirmance at 1-2. Defendant's breach of the  
16 GPA was actual and material. FOFCOL 3/9/21 at 12. "Therefore, pursuant to the express  
17 language of the GPA, this Court agrees that the State regained the *unqualified* right to argue  
18 for any legal sentence." *Id.* Probable cause in the other case is evidenced by the fact there was  
19 no dismissal or acquittal on those charges. *Id.* at 12-13.

20 Defendant failed to raise his claim of mistakes in the PSI at sentencing, so it is waived.  
21 FOFCOL 3/9/21 at 14-15. "[T]he analysis of prior convictions occurs at the time of conviction,  
22 not at the time the crime was alleged." *Id.* at 15.

23 "Defendant's sentence was within the statutory range of punishment." FOFCOL  
24 8/13/21 at 7. Further:

25 On February 4, 2019, the Court determined that Defendant had violated  
26 the terms of his GPA by committing a new offense pending his  
27 sentencing in this case. As such, the Court determined that the State had  
28 regained its right to seek punishment as a habitual criminal pursuant to  
the GPA. Therefore, this Court concludes that Defendant's sentence is  
legal, pursuant to Defendant's GPA and applicable Nevada statutes.

Id.

### D. Habitual Treatment

1 "Hayes' sentence pursuant to the habitual criminal enhancement was in accordance with  
2 Hayes' plea agreement." Affirmance 9/17/21 at 4. "Because an independent magistrate  
3 confirmed there was probable cause to support the new burglary charge, Hayes failed to  
4 demonstrate his counsel's performance fell below an objective standard of reasonableness by  
5 failing to assert he did not violate the FTA clause." Id. at 5. The State supported his conviction  
6 under the habitual criminal act according to the dictates of the law. Id. at 5-6.

7 **CONCLUSION**

8 For the above reasons, the State respectfully requests that this Court strike the rogue  
9 filing Supplemental Petition Addendum 2 from the record.

10 DATED this 16<sup>th</sup> day of December, 2021.

11 Respectfully submitted,

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

15 BY

BB

for

16 JONATHAN E. VANBOSKERCK  
17 Chief Deputy District Attorney  
18 Nevada Bar #006528

19 **CERTIFICATE OF MAILING**

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

22 JAMES H. HAYES, BAC #1175077  
23 SOUTHERN DESERT CORRECTIONAL CENTER  
24 20825 COLD CREEK RD.  
25 P.O. BOX 208  
26 INDIAN SPRINGS, NV, 89070

27 BY

C. Garcia

28 C. Garcia  
Secretary for the District Attorney's Office

JEV/sr/cg/L2

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES HOWARD HAYES, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 82734  
District Court Case No. A793315;C315718

FILED

DEC 20 2021

*Elizabeth A. Brown*  
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 17th day of September, 2021.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Rehearing Denied."

Judgment, as quoted above, entered this 17th day of November, 2021.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Review denied."

Judgment, as quoted above, entered this 17th day of December, 2021.

A-19-793315-W  
CCJA  
NV Supreme Court Clerks Certificate/Judgm  
4977122



IN WITNESS WHEREOF, I have subscribed  
my name and affixed the seal of the Supreme  
Court at my Office in Carson City, Nevada this  
December 17, 2021.

Elizabeth A. Brown, Supreme Court Clerk

By: Andrew Lococo  
Deputy Clerk

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES HOWARD HAYES, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 82734-COA

**FILED**

SEP 17 2021

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

*ORDER OF AFFIRMANCE*

James Howard Hayes, Jr., appeals from orders of the district court denying a postconviction petition for a writ of habeas corpus and a motion to compel judgment. Eighth Judicial District Court, Clark County; Monica Trujillo, Judge.

*Postconviction petition for a writ of habeas corpus*

In his February 12, 2020, petition<sup>1</sup> and later-filed supplements, Hayes claimed that his trial-level counsel was ineffective. To demonstrate ineffective assistance of counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of

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<sup>1</sup>Hayes filed an "amended petition," and due to the nature of the claims raised, the district court construed it as a postconviction petition for a writ of habeas corpus. See NRS 34.724(2)(b). The district court also found that Hayes' petition was successive and procedurally barred pursuant to NRS 34.810(2) because he had previously filed a postconviction petition for a writ of habeas corpus. However, Hayes' first petition has not yet been resolved by the district court. Because the petition was not denied on the merits, the district court erred by concluding Hayes' petition was successive. See NRS 34.810(2).

reasonableness, and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). To demonstrate prejudice regarding the decision to enter an *Alford*<sup>2</sup> plea, a petitioner must show a reasonable probability that, but for counsel's errors, petitioner would not have entered an *Alford* plea and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry—deficiency and prejudice—must be shown, *Strickland*, 466 U.S. at 687, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

First, Hayes claimed counsel was ineffective for failing to assert that his prosecution was barred by NRS 174.085(3) and NRS 178.562 because a count of attempted grand larceny was dismissed during the preliminary hearing. NRS 174.085(3) bars re-prosecution of a defendant for a charge after that defendant has been convicted, acquitted, or placed in jeopardy for that charge. NRS 178.562 bars re-prosecution of an offense under certain situations when a criminal action is dismissed and bars the filing of another complaint against a person for an offense that had previously been discharged following a preliminary hearing.

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<sup>2</sup>*North Carolina v. Alford*, 400 U.S. 25 (1970).



During the preliminary hearing in this matter, the State moved to strike a count of attempted grand larceny, and the justice court granted its request. The justice court later found probable cause to believe that Hayes committed burglary and bound Hayes over to district court. Before the district court, the burglary charge was reduced to a charge of attempted grand larceny as a result of the plea agreement reached between the parties. Because the justice court found probable cause to support the burglary charge, and at no point was that charge dismissed or was Hayes discharged, NRS 178.562 did not bar Hayes' prosecution. In addition, because the preliminary hearing proceedings did not convict, acquit, or place Hayes in jeopardy, NRS 174.085(3) did not bar Hayes' prosecution.

Accordingly, Hayes did not demonstrate that his counsel's performance fell below an objective standard of reasonableness by failing to argue that Hayes' prosecution was barred by the application of NRS 174.085(3) or NRS 178.562. Hayes also failed to demonstrate a reasonable probability of a different outcome had counsel done so. Therefore, we conclude the district court did not err by denying this claim.

Second, Hayes claimed counsel was ineffective for failing to ensure he fully understood the plea agreement and potential consequences he faced from entry of an *Alford* plea. The written plea agreement, which Hayes acknowledged having read and understood, informed Hayes of the potential sentences he faced by entry of his plea. The written plea agreement also informed Hayes of the potential sentences he faced due to the habitual criminal enhancement if he violated the failure-to-appear (FTA) clause. At the plea canvass, Hayes informed the trial-level court that he read the written plea agreement and his counsel was available to answer any of his questions concerning the agreement. At the canvass, Hayes also

asserted he understood the plea agreement and believed entry of an *Alford* was in his best interests.

In light of the record concerning Hayes' understanding of the plea agreement and the consequences he faced from entry of his plea, Hayes failed to demonstrate his counsel's performance fell below an objective standard of reasonableness. Hayes also failed to demonstrate a reasonable probability he would have refused to enter an *Alford* plea and would have insisted on proceeding to trial had counsel done a more thorough job of explaining the plea agreement and potential consequences to him or discussed the plea agreement in a different manner. Therefore, we conclude the district court did not err by denying this claim.

Third, Hayes claimed counsel was ineffective for failing to move to withdraw his plea after it became clear he would not receive a sentence in accordance with the plea agreement. In the plea agreement, the State agreed not to oppose probation in exchange for Hayes' *Alford* plea. However, the written plea agreement also contained the FTA clause and explained the potential consequences Hayes faced if he violated that clause, including a sentence pursuant to the habitual criminal enhancement. Accordingly, Hayes' sentence pursuant to the habitual criminal enhancement was in accordance with Hayes' plea agreement. Thus, Hayes did not demonstrate that his counsel's performance fell below an objective standard of reasonableness by failing to assert that Hayes should be permitted to withdraw his plea or a reasonable probability of a different outcome had counsel done so. Therefore, we conclude the district court did not err by denying this claim.

Fourth, Hayes claimed counsel was ineffective for failing to argue that Hayes did not violate the FTA clause contained within the plea

agreement. The written plea agreement contained a clause that permitted the State to argue for any legal sentence, including one under the habitual criminal enhancement, if an independent magistrate confirmed probable cause against Hayes for new criminal charges. After entry of his plea, Hayes was charged with committing a new burglary offense and a justice court found probable cause to support that charge. Because an independent magistrate confirmed there was probable cause to support the new burglary charge, Hayes failed to demonstrate his counsel's performance fell below an objective standard of reasonableness by failing to assert he did not violate the FTA clause. Hayes also failed to demonstrate a reasonable probability of a different outcome had counsel done so. Therefore, we conclude the district court did not err by denying this claim.

Fifth, Hayes claimed counsel was ineffective for failing to assert he was not eligible for sentencing under the habitual criminal enhancement as his two Texas convictions should not have been considered felonies for sentencing purposes because he did not serve prison terms for those convictions. Hayes also appeared to assert that his prior felony convictions should have only been considered as a single prior conviction for enhancement purposes because they arose out of one event.

The State provided the sentencing court with two judgments of conviction from the state of Texas demonstrating that Hayes was convicted of two separate felony convictions in that state and sentenced to serve two years in prison for each conviction. See NRS 207.016(5) ("For the purposes of NRS 207.010, 207.012 and 207.014, a certified copy of a felony conviction is prima facie evidence of conviction of a prior felony."). Because Hayes had at least two prior convictions "which under the laws of the situs of the crime" were felonies, he was eligible to be sentenced pursuant to the small habitual

criminal enhancement. 2009 Nev. Stat., ch. 156, § 1, at 567 (NRS 207.010(1)(a)). In addition, the State filed two separate judgments of conviction from Texas containing different criminal case numbers for each conviction. Hayes thus did not demonstrate the Texas convictions were prosecuted in the same indictment or information. Therefore, Hayes did not demonstrate his prior convictions should have been considered as a single prior conviction for purposes of enhancing his sentence pursuant to the habitual criminal statute. See *Rezin v. State*, 95 Nev. 461, 462, 596 P.2d 226, 227 (1979) ("[W]here two or more convictions grow out of the same act, transaction or occurrence, and are prosecuted in the same indictment or information, those several convictions may be utilized only as a single 'prior conviction' for purposes of applying the habitual criminal statute."). Accordingly, Hayes did not demonstrate that his counsel's performance fell below an objective standard of reasonableness by failing to raise Hayes' underlying arguments or a reasonable probability of a different outcome had counsel done so. Therefore, we conclude the district court did not err by denying this claim.

Next, Hayes claimed his appellate counsel was ineffective. To demonstrate ineffective assistance of appellate counsel, a petitioner must show that counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that the omitted issue would have a reasonable probability of success on appeal. *Kirksey*, 112 Nev. at 998, 923 P.2d at 1114. Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 687, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means*, 120 Nev. at 1012, 103 P.3d at 33. Appellate counsel is not required to raise every non-frivolous issue on appeal. *Jones v. Barnes*, 463 U.S. 745,

751 (1983). Rather, appellate counsel will be most effective when every conceivable issue is not raised on appeal. *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

First, Hayes claimed his appellate counsel was ineffective for failing to investigate meritorious claims because Hayes asserted counsel would have discovered that the State did not properly file a notice of its intent to request sentencing under the habitual criminal enhancement. The State filed a notice of its intent as required by NRS 207.016(2) to request the sentencing court to sentence Hayes pursuant to the habitual criminal enhancement, and did so prior to entry of Hayes' *Alford* plea. Hayes failed to demonstrate that his counsel's performance fell below an objective standard of reasonableness by failing to argue the State did not properly file the notice or a reasonable likelihood of success on appeal had counsel done so. Therefore, we conclude the district court did not err by denying this claim.

Second, Hayes claimed his appellate counsel was ineffective for failing to file a notice of appeal or inform him of his right to an appeal. Hayes filed a pro se notice of appeal and this court considered his direct appeal. See *Hayes v. State*, Docket No. 78590-COA (Order of Affirmance, January 14, 2020). Because Hayes pursued a direct appeal, Hayes does not demonstrate that any failure by counsel to perform these actions caused him to suffer prejudice. Therefore, we conclude the district court did not err by denying this claim.

Third, Hayes appeared to claim his appellate counsel was ineffective for withdrawing after issuance of the remittitur on appeal. Hayes filed a pro se motion requesting the withdrawal of his counsel and the district court granted that motion. Hayes did not demonstrate that

withdrawal by counsel under these circumstances was objectively unreasonable. Hayes also failed to demonstrate a reasonable probability of a different outcome had counsel declined to withdraw from Hayes' case. Therefore, we conclude the district court did not err by denying this claim.

Next, Hayes appeared to claim that his plea was not knowing and voluntary because the trial-level court failed to explain the consequences he faced by violating the FTA clause. "This court will not invalidate a plea as long as the totality of the circumstances, as shown by the record, demonstrates that the plea was knowingly and voluntarily made and that the defendant understood the nature of the offense and the consequences of the plea." *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). As explained previously, the written plea agreement explained to Hayes the consequences he faced by violating the FTA clause and Hayes acknowledged that he read and understood the written plea agreement. Thus, the totality of the circumstances demonstrated that Hayes understood the consequences he faced from entry of his plea and from violating the FTA clause. Therefore, we conclude that Hayes is not entitled to relief based upon this claim.


Next, Hayes claimed the State breached the plea agreement, presented palpable evidence at the sentencing hearing, amended the information in bad faith, violated his right to equal protection, and should have been barred from prosecuting him. Hayes also asserted that the trial-level court lacked jurisdiction to convict him and the presentence investigation report contained mistakes concerning his criminal record. These claims were not based on an allegation that his plea was involuntarily or unknowingly entered or that his plea was entered without the effective assistance of counsel, and therefore, these claims were not permissible in

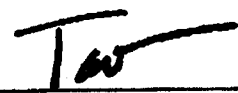
Hayes' postconviction petition for a writ of habeas corpus. See NRS 34.810(1)(a). Accordingly, we conclude the district court properly denied relief for these claims.


*Motion to compel judgment*

Hayes also appealed from an order denying his motion to compel judgment. However, no statute or court rule permits an appeal from an order denying a motion to compel judgment. Therefore, we lack jurisdiction to consider this portion of Hayes' appeal. See *Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Monica Trujillo, District Judge  
James Howard Hayes, Jr.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES HOWARD HAYES, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 82734-COA

**FILED**


NOV 17 2021


ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

**ORDER DENYING REHEARING**

Rehearing denied. NRAP 40(c).<sup>1</sup>

It is so ORDERED.

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

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

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

cc: Hon. Monica Trujillo, District Judge  
James Howard Hayes, Jr.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

<sup>1</sup>We have reviewed all documents Hayes has filed in this matter, and we conclude no relief based upon those submissions is warranted.



IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES HOWARD HAYES, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 82734

**FILED**

DEC 17 2021

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

**ORDER DENYING PETITION FOR REVIEW**

Review denied. NRAP 40B.

It is so ORDERED.<sup>1</sup>

*[Signature]* C.J.  
Hardesty

*[Signature]* J.  
Parraguirre

*[Signature]* J.  
Stiglich

*[Signature]* J.  
Cadish

*[Signature]* J.  
Pickering

*[Signature]* J.  
Herndon

cc: Hon. Monica Trujillo, District Judge  
James Howard Hayes, Jr.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

<sup>1</sup> The Honorable Abbi Silver, Justice, did not participate in the decision of this matter.

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

JAMES HOWARD HAYES, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 82734**  
District Court Case No. A793315;C315718

**REMITTITUR**

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.  
Receipt for Remittitur.

DATE: December 17, 2021

Elizabeth A. Brown, Clerk of Court

By: Andrew Lococo  
Deputy Clerk

cc (without enclosures):

James Howard Hayes, Jr.  
Clark County District Attorney \ Alexander G. Chen  
Attorney General/Carson City \ Aaron D. Ford, Attorney General  
Hon. Monica Trujillo, District Judge

**RECEIPT FOR REMITTITUR**

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on DEC 20 2021.

HEATHER UNGERMANN  
Deputy District Court Clerk

RECEIVED  
APPEALS

DEC 20 2021

CLERK OF THE COURT

*Heather L. Smith*  
CLERK OF THE COURT

Hayes, James H ID NO. 1175077

SOUTHERN DESERT CORRECTIONAL CTN.  
20825 COLD CREEK RD.  
P.O. BOX 208  
INDIAN SPRINGS, NV 89070

IN the 8th Judicial District Court of the  
State of Nevada IN and for the County  
of Clark

James H. Hayes  
(Petitioner)

v.

State of Nevada  
(Respondent)

"HEARING REQUESTED"

CASE NO.: A-19-793315-JW

DEPT. NO.: 3

DOCKET:

HEARING Date: 1-10-2021  
8:30AM

Opposition to State's Opposition to Petitioner's Motion  
for Discovery and Reconsideration of Motion for Transcripts  
at State's Expense...

COMES NOW, ~~petitioner~~ James H. Hayes, herein above respectfully  
moves this Honorable Court for an GOOD FAITH ruling in favor of  
petitioner for his legitimate need for discovery that will  
be fatal to state's argument and Court of Appeals Affirmance!!

This Motion is made and based upon the accompanying Memorandum of Points and  
Authorities,

DATED: this 23<sup>rd</sup> day of December, 2021

BY: James H. Hayes  
JAMES H. HAYES # 1175077  
Defendant In Proper Personam

ADDITIONAL FACTS OF THE CASE:

Memorandum of Points and Authorities:

Comes Now, James H. Hayes Petitioner, in Necessity,  
"MOVES" this Honorable Court to GRANT the instant motion  
in petitioner's favor. In support, petitioner shows the  
court the following:

1. Petitioner's constitutional attack on his  
conviction undoubtedly is meritorious and supported  
by law.

2. Through discovery petitioner would have the  
factual support that his TEXAS conviction(s) was ONE  
EVENT, ONE trial, arising out of ONE information, even  
though the state with a straight face produced two  
judgment of convictions in its many deceptive practices  
to rob lady liberty of justice. So it is evident from  
the record that petitioner has NEVER RECEIVED AN opportunity  
to develop his claim that he does not qualify to be  
adjudicated a habitual offender, according to the  
dictates of the law. Whereas, had the true and correct  
factual record <sup>BEEN</sup> ~~been~~ before the Court of Appeals that would  
not had any factual support in their position that  
petitioner had two prior felony convictions arising out  
of the TEXAS conviction, as the state produced two judgment  
of convictions. In light of the court of appeals order  
of affirmance through discovery this evidence would  
make petitioner's claim against habitual adjudication  
"NEW" and <sup>COURT</sup> required to reverse the adjudication and  
change its decision. Moreover, as petitioner has put forth

1 this honorable court, that petitioner is not qualified  
2 to be adjudicated a habitual offender when the state  
3 used non-qualifying convictions 2016 Burglary and 2010  
4 Class E felony and Taxes conviction as two felonies  
5 that's clear and convincing through the Court of Appeals  
6 order of Affirmance, petitioner would not have been  
7 sentenced under the habitual statute (see Walker v. Dads  
8 50 F.3d 670; Hughes v. State 116 Nev. 327; Tilcock v. Bodge 538 F.  
9 3d 1138; Miller v. State 113 Nev. 722) Furthermore, Nichols v. United  
10 States 511 U.S. 738 Noting that repeat offender laws  
11 penalize only the last offense committed by the petitioner.  
12 Thus, the Nevada Court of Appeals concluded in its  
13 order of Affirmance that there was insufficient  
14 evidence that petitioner suffered qualifying prior felony  
15 conviction(s) within the meaning of the habitual  
16 criminal statute.

17 3. Double jeopardy clause of the federal constitutional  
18 5th Amendment is applicable to the state's through the  
19 Constitution's 14th Amendment. The double jeopardy clause  
20 prevents state's from making a repeated attempt to  
21 convict an individual for an alleged offense and thereby  
22 subjecting the petitioner to embarrassment, expense, and  
23 ordeal, compelling the petitioner to live in a continuing  
24 state of anxiety and insecurity and enhancing the  
25 possibility that the petitioner even though innocent, may  
26 be found guilty. Thus, the Double jeopardy clause forbids  
27 affording the prosecution another opportunity to supply

1 EVIDENCE which it failed to muster in the preliminary  
2 hearing proceeding (MAYBE V. CALDWELL 524 U.S. 721;  
3 GREEN V. U.S. 355 U.S. 184)

4 4. The state contends that the attempted  
5 grand larceny was a NEW NEARLY identical charge fails  
6 under "same elements" test for determining whether  
7 two offenses are the same (Blockburger v. United States  
8 284 U.S. 299) SEE ALSO Factual synopsis in criminal complaint  
9 and amended information

10 5. Error of law that affects a sentence may  
11 be corrected on habeas and appeal. Enhancement should  
12 not be additional penalty for the earlier crime (Attempted  
13 Grand Larceny 2013, Burglary 2016) but as a stiffened  
14 penalty for the latest crime, BECAUSE a REPETITIVE  
15 commission. (GURLEY V. BURKE 334 U.S. 738; MAYBE V. MISSOURI  
16 159 U.S. 673) Nor have sentence enhancements been  
17 construed as additional punishment for the previous  
18 offense (Nichols v. U.S. 511 U.S. 738)

19 6. Claims regarding petitioner's PSI are  
20 not barred because the issue was not raised on  
21 direct appeal or not challenged under ineffective  
22 assistance of counsel and petitioner has not shown  
23 cause for failing to do so or prejudice. NRS 34.810  
24 does not impose such requirements challenging a  
25 conviction based on a "Affid" plea. (Hodges v. State 78 P.3d 67)

26 7. Petitioner refers this honorable court to his  
27 supplemental petitions ordered by this court filed 4-22-21;  
28 4-14-21 and 11-12-21.

8. With 2 straight faces the state argues that this honorable Judge Mrs Monica Trujillo is incompetent in her court order dated March 8, 2021 when she ordered more specificity in supplemental proceedings for petitioner's writ of Habeas Corpus and set briefing schedule. State's position that she ordered briefing for a motion to compel is draconian and far fetch. In other words, out right ridiculous and a slap in the face of one of the most superlative Judges in the 8th Judicial District Courts. State further criticizes that the Judge is sloppy in her work when stated "this order conceivably have been filed in the wrong case" (see state's opposition to petitioner's supplemental petition p. 16)

9. Discovery materials that exists in the state's possession that would make claims new is as follow:

- 1) Judgment of conviction for Texas conviction that was one about one trial, one information and not crimes petitioner could of been sent to prison for.
- 2) Judgment of conviction for Class E felony in 2010 in Clark County that was by statute mandatory probation and does not qualify for prior conviction for purpose of adjudication for habitual criminal.
- 3) Any of the states alleged Burglary convictions outside of the 2016 conviction in Clark County
- 4) Calculation of credit for time served that petitioner is due from the date bond was exonerated at conclusion of preliminary hearing to date of sentencing for the charge offense of attempted grand larceny, to name a few materials in state's possession that would further factual basis.

**CERTIFICATE OF SERVICE BY MAILING**

I, James N. Hayes, hereby certify, pursuant to NRCP 5(b), that on this 23<sup>rd</sup>  
day of December, 2021, I mailed a true and correct copy of the foregoing, "Opposition  
to State's Opposition to Petitioner's Motion for Discovery,"  
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

Clark County District Courts  
Office of the Clerk  
200 Louis Ave. 31041  
Las Vegas, NV  
89155-1160

Clark County District Attorney  
200 Louis Ave  
Las Vegas, NV  
89155-2212

CC:FILE

DATED: this 23<sup>rd</sup> day of December, 2021.

James N. Hayes  
James N. Hayes #1175077  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:



44252411 # 5' 21347  
5 DEC  
PO BOX 208  
TAMPA FL 33601  
94070

Clerk County District Courts  
"Office of the Clerk"  
200 Lewis Ave, 3rd Floor  
Las Vegas, Nevada 89155-1160

89155-1160

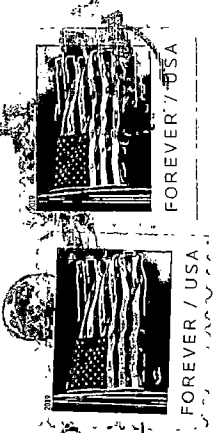
Legal Mail

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Southern Desert  
Correctional Center  
DEC 27 2021  
OUTGOING MAIL



*Heather L. Lamin*  
CLERK OF THE COURT

HALES, James H ID NO. 1175077

SOUTHERN DESERT CORRECTIONAL CTN.  
20825 COLD CREEK RD.  
P.O. BOX 208  
INDIAN SPRINGS, NV 89070

In the 8<sup>th</sup> Judicial District Court of the  
State of Nevada as and for the County  
of Clark

JAMES H. HALES  
(Petitioner)

v.

State of Nevada  
(Respondent)

CASE NO.: A-19-793315-W

DEPT. NO.: 3

DOCKET: \_\_\_\_\_

Opposition to State's Opposition to Petitioner's  
Supplemental Petition

COMES NOW, ~~petitioner~~, JAMES H. HALES, herein above respectfully  
moves this Honorable Court for an "GOOD FAITH" ruling to attain the  
requested relief. Wherein, petitioner's right to issuance of the  
writ is "CLEAR and Indisputable".

This Motion is made and based upon the accompanying Memorandum of Points and  
Authorities,

DATED: this 21<sup>st</sup> day of December, 2021

BY: James H. Hales  
JAMES H. HALES # 1175077  
Defendant In Proper Personam

RECEIVED

JAN 10 2022

CLERK OF THE COURT

ADDITIONAL FACTS OF THE CASE:

1) The state's attorney has by his assertions of waiver to appeal premised upon ineffective assistance of counsel has effectively withdrawn negotiated considerations of plea agreement and thereby voided the binding contract.

2) In the state's opposition to petitioner's supplemental pleadings, the state's attorney states that "petitioner waived his right to assert one claim of ineffective assistance of counsel prior to the plea." "petitioner waived his right to assert these ineffective assistance claims when he elected to plead guilty to the charge of attempted grand larceny"

3) These contentions by the state's attorney have required the petitioner to purchase additional research materials and furthered his injury. Petitioner has been deprived of essential rights under agreed upon contract previous resources, time, sleep, peace of mind that the state would honor its own contract and has suffered other irreparable damages and harms that are better particularized in the ensuing supplemental pleadings. Furthermore state's act has further burdened the petitioner beyond his obligations of stricken by requiring petitioner to first litigate for an agreed upon right of a contractual agreement.

4) Plea agreement in question clearly states under "waiver of rights" that petitioner reserves the right to contest in post-conviction proceedings any and all jurisdictional and constitutional defects including the following:

- a. Due Process of law
- b. Ineffective assistance of counsel

1 C. ANY SENTENCE IMPOSED IN EXCESS OF THE GUIDELINE  
2 SENTENCING RANGE DETERMINED BY THE COURT AT THE TIME  
3 SENTENCE IS IMPOSED.

4 5.) A collateral attack waiver created a conflict  
5 of interest between trial counsel and the petitioner because  
6 it was unethical for trial counsel to advise petitioner to  
7 enter into a contract (plea agreement) when the contract  
8 has a waiver preventing petitioner from later challenging  
9 trial counsel advice and unconstitutional conviction.

10 6.) Petitioner hereby avers that the state's constitution  
11 that entering the plea agreement serves as waiver to the  
12 agreed upon right to challenge the conviction, IS TANTAM-  
13 OUNT TO CONCLUSIVE "NEW" EVIDENCE OF INEFFECTIVE  
14 ASSISTANCE OF COUNSEL DURING PLEA NEGOTIATIONS. THE  
15 STATE'S RESPONSE (OPPOSITION) SERVES AS AN UNCONDITIONAL  
16 stipulation that court appointed counsel was IN FACT  
17 constitutionally ineffective and THIS ISSUE ALONE SERVES  
18 AS SUFFICIENT GROUNDS FOR THE COURT TO EXERCISE SOUND  
19 JUDICIAL PRUDENCE BY ISSUING A WRIT OF HABEAS CORPUS TO  
20 HAVE PETITIONER BROUGHT BEFORE IT TO THE END THAT PETITIONER  
21 WOULD BE DISCHARGED FROM HIS UNCONSTITUTIONAL CONFINEMENT AND RESTRAINT.

22 7.) Petitioner hereby avers that the state's attorney  
23 has by its contention concerning waiver provided "NEW"  
24 EVIDENCE OF INEFFECTIVE ASSISTANCE OF COUNSEL. Petitioner  
25 therefore, re-alleges and incorporates supplemental  
26 pleadings ordered by this honorable court March 8, 2021.

8.) State's contentions in its opposition are "CLEARLY" made "IN BAD FAITH" to once again deprive this court of its ability to make judgment based on accurate facts and Nevada laws, although filing a lengthy and overly verbose opposition.

9.) State's attorneys has admitted to several aspects of the petitioner's claim of ineffective assistance of counsel in various responses and then denies them in another. That contradicts state's claim that petitioner does not present any new evidence.

10.) This honorable court in consideration of supplemental proceedings should and could set aside, vacate the void judgment in the interest of justice, issue a writ of habeas corpus to have petitioner relieved of his unconstitutional sentence.

Wherefore now, above premises considered, the petitioner moves this honorable court to issue its ruling "GRANTING" the petitioner's supplemental pleadings for relief under the writ of habeas corpus.

11.) Petitioner objects to the finding of facts based solely on the PSI report, the opinion of the Court of appeals, and the state's opposition to petitioner's Amended and Supplemental Pleading in his writ of habeas corpus. Petitioner asserted facts throughout his habeas, which would have changed the outcome of the petitioner's criminal case, and those facts warrant relief. State fails to address the facts set forth in the petitioner's filings that warrant relief, as claims not waived nor barred...

**CERTIFICATE OF SERVICE BY MAILING**

I, JAMES H. HAYES, hereby certify, pursuant to NRCP 5(b), that on this 21<sup>ST</sup> day of DECEMBER, 2021, I mailed a true and correct copy of the foregoing, "Opposition to State's Opposition to Petitioner's Supplemental Petition" by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

Clerk County District Courts  
OFFICE OF THE CLERK  
201 LAUIS AVE, 3RD FLOOR  
LAS VEGAS, NV 89155-1160

Clerk County District Attorney  
200 LAUIS AVE  
LAS VEGAS, NV  
89155-2212

Attorney General of Nevada  
100 N. CARSON STREET  
CARSON CITY, NV  
89701

CC:FILE

DATED: this 21<sup>ST</sup> day of DECEMBER, 2021.

James H. Hayes  
JAMES H. HAYES # 1175077  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

Subscribe and share "YOUTUBE" channel? Thanks!!

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Correctional Center

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Heles, James #1175072  
SDCC  
P.O. Box 208  
Indian Springs, NV  
89070

LAS VEGAS NV 890  
5 JAN 2022 PM 4 L

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01/05/2022  
USPS # 261321 \$000.53  
ZIP 89101  
041M12254121

Clerk County District Courts  
"Office of the Clerk"  
200 LEAVES AVE; 3rd Floor  
Las Vegas, Nevada  
89155-1160

CONFIDENTIAL

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JAN 10 2022  
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L. G. G. Mail

*Steven B. Wolfson*

MTN  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
JONTHAN VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #006528  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES HOWARD HAYES,  
aka James Howard Hayes Jr.,  
#2796708

Defendant.

CASE NO:

C-16-315718-1

A-19-793315-W

DEPT NO: III

**NOTICE OF COMPLIANCE WITH JANURY 6, 2022, ORDER**

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JONATHAN VANBOSKERCK, Chief Deputy District Attorney, and hereby submits the State's Notice of Compliance with January 6, 2022, Order.

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1 This notice is offered pursuant to this Court's January 6, 2022, Order directing the State  
2 to provide a written account of the outcome of the referral made pursuant to NRS  
3 209.451(1)(d).

4 DATED this 4<sup>th</sup> day of February, 2022.

5 Respectfully submitted,

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

9 BY

BB  
JONTHAN VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #006528

for

11  
12  
13 **NOTICE PURSUANT TO SEPTEMBER 27, 2016, ORDER**

14 This Court ordered that "the Director of the Department of Corrections shall provide  
15 the Clark County District Attorney's Office a written account of the outcome of the [NRS  
16 209.451(1)(d)] referral in case a motion under Jones[v. Eighth Judicial District Court, 130  
17 Nev. \_\_, 330 P.3d 475 (2014),] to restrict Defendant's access to this Court becomes  
18 necessary." Findings of Fact, Conclusions of Law and Order, filed January 6, 2022, p. 17.  
19 Pursuant to this Court's referral, Petitioner received a warning regarding his frivolous filings.  
20 Exhibit 1 (February 4, 2022, Letter from Warden William Hutchings).

21 DATED this 4<sup>th</sup> day of February, 2022.

22 Respectfully submitted,

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

26 BY


BB  
JONTHAN VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #006528

for

1 **CERTIFICATE OF MAILING**

2 I hereby certify that service of Notice of Compliance with January 6, 2022, Order, was  
3 made this 4<sup>th</sup> day of February, 2022, by Mailing to:

4  
5 JAMES H. HAYES, BAC #1175077  
6 SOUTHERN DESERT CORRECTIONAL CENTER  
7 P.O. BOX 208  
8 INDIAN SPRINGS, NV 89070

9   
10 C. Garcia  
11 Secretary for the District Attorney's Office  
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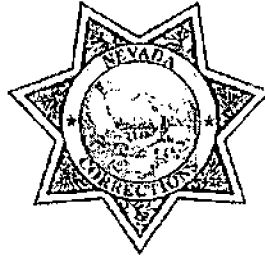
28 JV/fl/cg/L2

**“EXHIBIT 1”**

Steve Sisolak  
Governor

Charles Daniels  
Director

William Hutchings  
Warden



Southern Desert  
Correctional Center  
20825 Cold Creek Rd.  
P.O. Box 208  
Indian Springs, NV, 89018  
Phone: (725) 216-6500  
Fax: (725) 216-6412

STATE OF NEVADA  
Department of Corrections

---

February 4, 2022

Jonathan E. VanBoskerck  
Chief Deputy District Attorney  
200 Lewis Avenue  
Las Vegas, NV, 89155-2212

Re: Court Order Inmate Hayes, James ID#1175077

Dear: Mr. VanBoskerck,

This letter is to inform you and your office that after careful consideration it was decided that there would be no Forfeiture of Statutory Good Time Credits. Offender Hayes, James has been advised of the order your office provided and that any further abusive filings may result in disciplinary action.

*W. Hutchings*

---

William Hutchings, Warden  
Southern Desert Correctional Center

*Heather S. Hume*

CLERK OF THE COURT

**ORDR**

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
BERNARD ZADROWSKI  
Chief Deputy District Attorney  
Nevada Bar #006545  
200 Lewis Avenue  
Las Vegas, NV 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES HOWARD HAYES, aka  
James Howard Hayes, Jr.,  
#2796708

Defendant.

CASE NO: A-19-793315-W

DEPT NO: III

**ORDER DENYING DEFENDANT'S MOTION FOR DISCOVERY AND  
RECONSIDERATION OF MOTION FOR TRANSCRIPTS AT STATE EXPENSE**

DATE OF HEARING: January 10, 2022  
TIME OF HEARING: 08:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 10th day of January, 2022, the Defendant not being present, in proper person, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through BERNARD ZADROWSKI, Chief Deputy District Attorney, and the Court having heard the arguments of counsel / without argument, based on the pleadings and good cause appearing therefor,

//

//

//

//

1 Court FINDS Defendant is not entitled discovery for post-conviction review because  
2 discovery is only available after the Court determines a need for an evidentiary hearing and  
3 that has not happened.

4 IT IS HEREBY ORDERED that the Defendant's Motion for Discovery and  
5 Reconsideration of Motion for Transcripts at State Expense, shall be, and it is DENIED.

6 DATED this \_\_\_\_\_ day of February, 2022.

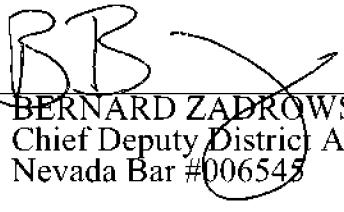
Dated this 9th day of February, 2022

7  
8   
DISTRICT JUDGE

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

3F9 4DA 310B 8E3B  
James Bixler  
District Court Judge

11  
12 BY

  
BERNARD ZADROWSKI  
13 Chief Deputy District Attorney  
14 Nevada Bar #006543

15  
16  
17 CERTIFICATE OF SERVICE

18 I certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2022, I mailed a copy of the foregoing Order  
19 to:

20 JAMES H. HAYES, BAC #1175077  
21 SOUTHERN DESERT CORRECTIONAL CENTER  
22 20825 COLD CREEK RD.  
P.O. BOX 208  
INDIAN SPRINGS, NV 8970

23  
24  
25 BY

  
26 C. Garcia  
27 Secretary for the District Attorney's Office

28 cg/L2

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 James Hayes, Plaintiff(s)

CASE NO: A-19-793315-W

7 vs.

DEPT. NO. Department 3

8 Nevada State of, 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 Order Denying Motion was served via the court's electronic eFile  
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 2/9/2022

15 Melissa Boudreaux

mezama@clarkcountynv.gov

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**August 19, 2019**

---

A-19-793315-W      James Hayes, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

---

**August 19, 2019      8:30 AM      Petition for Writ of Habeas  
Corpus**

**HEARD BY:** Kephart, William D.      **COURTROOM:** RJC Courtroom 16B

**COURT CLERK:** Tia Everett

**RECORDER:** Christine Erickson

**REPORTER:**

**PARTIES**

**PRESENT:**      Zadrowski, Bernard B.      Attorney

**JOURNAL ENTRIES**

- Court noted Defendant not present and in custody with the Nevada Department of Corrections. Further, Court noted State filed a response to Defendant's petition; however, Defendant has filed two addendums and ORDERED, matter CONTINUED for the State to file a response to the addendums. FURTHER ORDERED, State's response shall be due on or before 10/21/2019 and Defendant's reply shall be due on or before 11/04/2019.

NDC

CONTINUED TO: 11/18/2019 8:30 AM



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**November 18, 2019**

---

A-19-793315-W      James Hayes, Plaintiff(s)  
   vs.  
   Nevada State of, Defendant(s)

---

**November 18, 2019      8:30 AM      Petition for Writ of Habeas  
Corpus**

**HEARD BY:**    Kephart, William D.                      **COURTROOM:**    RJC Courtroom 16B

**COURT CLERK:**    Tia Everett

**RECORDER:**    Christine Erickson

**REPORTER:**

**PARTIES**

**PRESENT:**      Marland, Melanie H.                      Attorney

**JOURNAL ENTRIES**

- Court noted Defendant not present and in custody with the Nevada Department of Corrections. Court stated the matter has been fully briefed; however, this matter is still pending appeal with the Supreme Court and COURT ORDERED, matter OFF CALENDAR as the Court lacks jurisdiction at this time.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Writ of Habeas Corpus

COURT MINUTES

**June 15, 2020**

A-19-793315-W      James Hayes, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

June 15, 2020      10:15 AM      **Petition for Writ of Habeas Corpus**

**HEARD BY:** Kephart, William D. **COURTROOM:** RJC Courtroom 16B

**COURT CLERK:** Tia Everett

**RECORDER:** Christine Erickson

**REPORTER:**

## PARTIES

**PRESENT:** Waters, Steven L Attorney

## JOURNAL ENTRIES

- Court noted Defendant not present and in custody with the Nevada Department of Corrections. Further, Court stated Defendant has filed a motion to disqualify him from the matter; therefore, COURT ORDERED, matter OFF CALENDAR pending decision.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Writ of Habeas Corpus

## COURT MINUTES

July 07, 2020

A-19-793315-W      James Hayes, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

**July 07, 2020                      11:00 AM                      Motion**

**HEARD BY:** Bell, Linda Marie

**COURTROOM:** RJC Courtroom 10C

**COURT CLERK:** Kimberly Estala

**RECORDER:** Renee Vincent

**REPORTER:**

**PARTIES  
PRESENT:**

## JOURNAL ENTRIES

- No parties present.

COURT FINDS, there is no evidence to support Mr. Hayes's allegations. The Judgement of Conviction was affirmed on appeal and Judge Kephart denied having any bias or prejudice. Therefore, COURT ORDERED, motion DENIED. Court to prepare the order.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Writ of Habeas Corpus

## COURT MINUTES

September 09, 2020

A-19-793315-W      James Hayes, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

**September 09, 2020      10:15 AM      Motion**

**HEARD BY:** Kephart, William D. **COURTROOM:** RJC Courtroom 16B

**COURT CLERK:** Tia Everett

**RECORDER:** Christine Erickson

**REPORTER:**

## PARTIES

**PRESENT:** Marland, Melanie H. Attorney

## JOURNAL ENTRIES

- Court noted Defendant not present and in custody with the Nevada Department of Corrections. COURT ORDERED, Motion DENIED pursuant to EDCR 2.20.

NDC

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

## Writ of Habeas Corpus

## COURT MINUTES

November 16, 2020

A-19-793315-W      James Hayes, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

**November 16, 2020      8:30 AM      All Pending Motions**

**HEARD BY:** Kephart, William D. **COURTROOM:** RJC Courtroom 16B

**COURT CLERK:** Tia Everett

**RECORDER:** Christine Erickson

**REPORTER:**

## PARTIES

**PRESENT:** Iscan, Ercan E Attorney

## JOURNAL ENTRIES

- PLAINTIFF'S MOTION FOR EXPEDITIOUS RULING FOR "AMENDED PETITION FOR WRIT OF HABEAS CORPUS" 3RD REQUEST:

Court noted Defendant not present and in custody with the Nevada Department of Corrections. COURT ORDERED, Motion DENIED.

PLAINTIFF'S MOTION TO SET EVIDENTIARY HEARING AND ISSUE TRANSPORT ORDER:

COURT ORDERED, Motion DENIED.

PRINT DATE: 02/22/2022

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Minutes Date: August 19, 2019

PLAINTIFF'S MOTION TO RECONSIDER ORDER DENYING MOTION FOR RULING FOR RULE 60 (B) MOTION FOR RELIEF; MOTION TO VACATE; AMENDED PETITION FOR WRIT OF HABEAS CORPUS:

COURT ORDERED, Motion DENIED as a reconsideration is not warranted.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**February 01, 2021**

---

A-19-793315-W	James Hayes, Plaintiff(s)
	vs.
	Nevada State of, Defendant(s)

---

**February 01, 2021      8:30 AM      Motion to Compel**

**HEARD BY:** Trujillo, Monica **COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Grecia Snow

**RECORDER:** Rebeca Gomez

**REPORTER:**

**PARTIES**

**PRESENT:**      Waters, Steven L Attorney

**JOURNAL ENTRIES**

- COURT ORDERED, Motion to Compel DENIED for the reasons stated in the State's response. State to prepare the order. Court noted as to the prior Amended Petition for Writ no order had been filed. COURT FURTHER ORDERED, Amended Petition for Writ DENIED. State to prepare the order as to findings of fact and conclusion of law consistent with the State's response.

NDC

CLERK'S NOTE: The above minute order has been distributed to: James Hayes #1175077, P.O. BOX 208, Indian Springs, Nevada 89070. /// 2/16/21 gs

PRINT DATE: 02/22/2022

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Minutes Date: August 19, 2019

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**March 08, 2021**

---

A-19-793315-W	James Hayes, Plaintiff(s)
	vs.
	Nevada State of, Defendant(s)

---

**March 08, 2021      8:30 AM      Motion to Compel**

**HEARD BY:** Trujillo, Monica      **COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Alan Castle

**RECORDER:** Rebeca Gomez

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Iskan, Ercan E	Attorney
	Nevada State of	Defendant

**JOURNAL ENTRIES**

- After reviewing petition, Court determined Defendant needs to supplement his petition with specificity. Further, Court directed State to respond to Defendant's petition. Supplemental briefing schedule set and matter continued for decision. Defendant has until April 4, 2021 to supplement his petition; State has until May 5, 2021 to file a response.

5/10/21 8:30 a.m. Decision



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**April 12, 2021**

---

A-19-793315-W      James Hayes, Plaintiff(s)  
                                 vs.  
                                 Nevada State of, Defendant(s)

---

**April 12, 2021      8:30 AM      Motion to Reconsider**

**HEARD BY:** Trujillo, Monica      **COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Natalie Ortega

**RECORDER:** Rebeca Gomez

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Defendant not present; incarcerated in the Nevada Department of Corrections (NDC). COURT ORDERED, motion DENIED for the reasons set forward in the State's opposition; State to prepare the Order.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Writ of Habeas Corpus

## COURT MINUTES

April 29, 2021

A-19-793315-W      James Hayes, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

**April 29, 2021**                      **3:00 AM**                      **Motion**

**HEARD BY:** Trujillo, Monica **COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Grecia Snow

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

## JOURNAL ENTRIES

- The Plaintiff's Petition for Reconsider Findings of Fact and Conclusion of Law came before this Court on the April 29, 2021 Chamber Calendar. The issues raised in this Petition were adjudicated when the Court issued its decision at the April 12, 2021 hearing on the Petition to Reconsider Findings of Fact Conclusion of Law Addendum. Therefore, COURT ORDERED, matter OFF CALENDAR.

CLERKS NOTE: This Minute Order was electronically served by Courtroom Clerk, Grecia Snow, to all registered parties for Odyssey File & Serve. 4/30/21 gs

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**May 12, 2021**

---

A-19-793315-W	James Hayes, Plaintiff(s)
	vs.
	Nevada State of, Defendant(s)

---

May 12, 2021	8:30 AM	Decision
--------------	---------	----------

HEARD BY: Trujillo, Monica	COURTROOM: RJC Courtroom 11C
----------------------------	------------------------------

COURT CLERK: Nylasia Packer

RECORDER: Rebeca Gomez

REPORTER:

**PARTIES**

PRESENT:	Iskan, Ercan E	Attorney
----------	----------------	----------

**JOURNAL ENTRIES**

- COURT ORDERED, matter DENIED based on States opposition. State to prepare order.

NDC

**June 09, 2021**

A-19-793315-W      James Hayes, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

**PARTIES  
PRESENT:**

## JOURNAL ENTRIES

- Petitioner James Hayes Opposition To State s Opposition to Petitioner s Reply Motion to Compel Judgment Pursuant to Nevada Revise Statute Chapter 34 FRCP Rule 12(c) for Amended Petition for Writ of Habeas Corpus was to come before the Court for a hearing on June 14, 2021. Petitioner s Reply Motion to Compel Judgment Pursuant to Nevada Revised Statutes Chapter 34 FRCP Rule 12(c) for Amended Petition for Writ of Habeas Corpus was DENIED on May 12, 2021 and the above referenced filing is a rogue document. As a result the hearing on June 14, 2021 is VACATED.

CLERKS NOTE: This Minute Order was electronically served by Courtroom Clerk, Grecia Snow, to all registered parties for Odyssey File & Serve and mailed to James Hayes #115077, PO Box 208, Indian Springs NV 89070. 6/9/21 gs

Minutes Date: August 19, 2019

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**July 19, 2021**

---

A-19-793315-W	James Hayes, Plaintiff(s)
	vs.
	Nevada State of, Defendant(s)

---

July 19, 2021	8:30 AM	<b>Opposition and Counter motion</b>
---------------	---------	--

**HEARD BY:** Trujillo, Monica

**COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Grecia Snow

**RECORDER:** Rebeca Gomez

**REPORTER:**

**PARTIES**

**PRESENT:** Thomas, Morgan B.A. Attorney

**JOURNAL ENTRIES**

- COURT FINDS the Petition is not an appropriate vehicle to challenge his conditions of confinement, cruel and unusual punishment is not appropriate for a post conviction Petition, and it is time barred, therefore, FURTHER ORDERED, Petition DENIED. State to prepare the Order consistent with the Opposition.

NDC

CLERK'S NOTE: The above minute order has been distributed to: James Hayes #1175077, P.O. Box 208, SDCC, Indian Springs, Nevada 89070. 8/4/21 gs

PRINT DATE: 02/22/2022

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Minutes Date: August 19, 2019

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**August 09, 2021**

---

A-19-793315-W	James Hayes, Plaintiff(s)
	vs.
	Nevada State of, Defendant(s)

---

**August 09, 2021      8:30 AM      Motion**

**HEARD BY:** Trujillo, Monica **COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Grecia Snow

**RECORDER:** Rebeca Gomez

**REPORTER:**

**PARTIES**

**PRESENT:** Sullivan, Skyler L Attorney

**JOURNAL ENTRIES**

- Court ADVISED it was not sure what this was on for, therefore, ORDERED, matter OFF CALENDAR.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**September 13, 2021**

---

A-19-793315-W	James Hayes, Plaintiff(s)
	vs.
	Nevada State of, Defendant(s)

---

**September 13, 2021     8:30 AM             Motion**

**HEARD BY:** Trujillo, Monica **COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Grecia Snow

**RECORDER:** Rebeca Gomez

**REPORTER:**

**PARTIES**

**PRESENT:**             Sullivan, Skyler L Attorney

**JOURNAL ENTRIES**

- Upon Court's inquiry, Ms. Sullivan requested a 30 day continuance for the appellant office to respond to the Motion. COURT ORDERED, State's Opposition DUE 10/11/21, Plaintiff's Reply DUE 10/25/21; matter CONTINUED.

NDC

11/1/21 8:30 AM - PLAINTIFF'S MOTION FOR TRANSCRIPTS AT STATE EXPENSE

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Writ of Habeas Corpus

## COURT MINUTES

September 23, 2021

A-19-793315-W      James Hayes, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

**September 23, 2021      3:00 AM      Motion to Reconsider**

**HEARD BY:** Trujillo, Monica **COURTROOM:** Chambers

**COURT CLERK:** Kathryn Hansen-McDowell

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

## JOURNAL ENTRIES

- Plaintiff's Petition for Reconsideration/Rehearing came before this Court on September 23, 2021 Chamber Calendar. The Court filed its Findings of Fact, Conclusions of Law and Order on after the filing of the instant Petition. There, the Court found that the Petition for Writ of Habeas Corpus was not the proper legal vehicle within which to raise Petitioner's Claim. Additionally, Petitioner's issues were adjudicated when the Court issued its Findings of Fact, Conclusions of Law and Order. Accordingly, after reviewing issues raised in Plaintiff's Petition, Plaintiff's Petition for Reconsideration/Rehearing is DENIED. State to prepare an Order and submit the same to Chambers.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. Copy US mailed to: James Hayes, #1175077, Southern Desert Correctional Center, PO Box 208, Indian Springs, NV 89070. 9/23/21khn

PRINT DATE: 02/22/2022

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Minutes Date: August 19, 2019



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**October 07, 2021**

---

A-19-793315-W	James Hayes, Plaintiff(s)
	vs.
	Nevada State of, Defendant(s)

---

**October 07, 2021      3:00 AM      Motion**

**HEARD BY:** Trujillo, Monica      **COURTROOM:** Chambers

**COURT CLERK:** Grecia Snow

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Plaintiff s Motion for Transcripts at State Expense came before the Court on October 7, 2021 Chamber Calendar. The Court filed its Findings of Fact, Conclusions of Law and Order after the filing of the instant Motion. As such, Petitioner s issues were adjudicated when the Court issued its Findings of Fact, Conclusions of Law and Order, particularly Petitioner s request of transcripts for Petitioner s post-conviction petition or direct appeal. After reviewing the issues raised in Plaintiff s Motion, COURT ORDERED, Plaintiff s Motion for Transcripts at State Expense is DENIED. State to prepare an Order and submit the same to Chambers.

CLERK'S NOTE: The above minute order has been distributed to: James Hayes #1175077, P.O. Box 208, Indian Springs, Nevada 89018 and Deputy District Attorney Skyler Sullivan at skyler.sullivan@clarkcountyda.com. 10/22/21 gs

PRINT DATE: 02/22/2022

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Minutes Date: August 19, 2019

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**December 13, 2021**

---

A-19-793315-W	James Hayes, Plaintiff(s) vs. Nevada State of, Defendant(s)
---------------	---

---

December 13, 2021	8:30 AM	Hearing	Plaintiff's Supplemental Petition "Addendum 2"
-------------------	---------	---------	---

**HEARD BY:** Cherry, Michael A.

**COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** April Watkins

**RECORDER:** Rebeca Gomez

**REPORTER:**

**PARTIES**

**PRESENT:** Zadrowski, Bernard B. Attorney

**JOURNAL ENTRIES**

- Mr. Zadrowski advised the Appellate Division was not advised of latest pleading and is requesting 45 days. COURT ORDERED, matter CONTINUED.

NDC

CONTINUED TO: 2/7/2021 8:30 AM

CLERK'S NOTE: The above minute order has been distributed to: James H. Hayes, BAC #1175077, Southern Desert Correctional Center, 20825 Cold Creek Rd., P.O. Box 208, Indian Springs, NV 89070.  
aw

PRINT DATE: 02/22/2022

Page 19 of 21

Minutes Date: August 19, 2019

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**January 10, 2022**

---

A-19-793315-W	James Hayes, Plaintiff(s)
	vs.
	Nevada State of, Defendant(s)

---

**January 10, 2022      8:30 AM      Motion**

**HEARD BY:** Barker, David      **COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Grecia Snow

**RECORDER:** Rebeca Gomez

**REPORTER:**

**PARTIES**

**PRESENT:**      Zadrowski, Bernard B.      Attorney

**JOURNAL ENTRIES**

- COURT ORDERED, motion DENIED as premature and untimely. Court FINDS Deft is not entitled discovery for post conviction review because discovery is only available after the Court determines a need for an evidentiary hearing and that has not happened. State to prepare Findings of Fact and Conclusions of Law.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**February 07, 2022**

---

A-19-793315-W      James Hayes, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

---

**February 07, 2022      8:30 AM      Hearing**

**HEARD BY:** Bixler, James      **COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Grecia Snow

**RECORDER:** Rebeca Gomez

**REPORTER:**

**PARTIES**

**PRESENT:** Scarborough, Michael J.      Attorney

**JOURNAL ENTRIES**

- State submitted on the pleadings. COURT ORDERED, motion DENIED. State to prepare the Order.

NDC

# Certification of Copy and Transmittal of Record

State of Nevada }  
County of Clark } SS:

Pursuant to the Supreme Court order dated February 11, 2022, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises three volumes with pages numbered 1 through 871.

JAMES H. HAYES,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

Case No: A-19-793315-W  
*Consolidated with A-21-831979-W*  
*Related Case C-16-315718-1*  
Dept. No: III

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 22 day of February 2022.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk