

Kenneth Cizek

(Name)

1734275

(I.D. No.)

Northern Nevada Correctional Center

Post Office Box 7000

Carson City, Nevada 89702

REC'D & FILED

2021 JUL 12 PM 4:45

AUBREY ROSS ATT
CLERK

Electronically Filed
BY Jul 16 2021 07:51 a.m.

Elizabeth A. Brown

Clerk of Supreme Court

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CARSON CITY

Kenneth Robert Cizek

Petitioner/Defendant,

vs.

CHARLES DANIELS, NDOC DIRECTOR

Respondent/Plaintiff

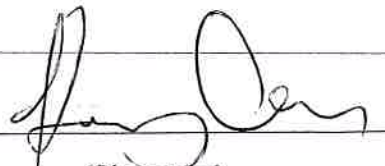
Case No.: 21 EW 00017 IB

Dept. No: II

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that I, Kenneth Robert Cizek appeal the
Judgment / Order entered on the 17 day of JUNE, 2021 by this
court.

Dated this 7th day of Jun, 2021.


(Signature)

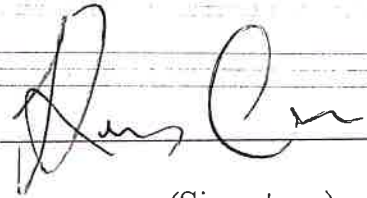
CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP Rule 5(b), I hereby certify that I am the Defendant named herein and that on this 7th day of July, 2021, I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the following:

County District Attorney

GEORDAN GOEBEL / DEPUTY ATTORNEY GENERAL

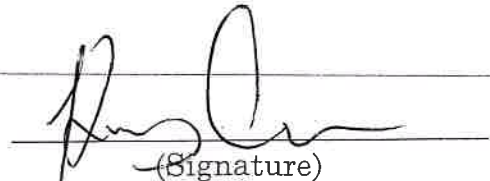
100 N. CARSON ST, CARSON CITY, NV 89701


(Signature)

AFFIRMATION PURSUANT TO NRS 239B.030

** I certify that the foregoing document DOES NOT contain the social security number of any persons.

July 7th 2021
(Date)


(Signature)

REC'D & FILED

2021 JUL 13 PM 4:25

AUDREY HOSLATT
CLERK

BY  DEPUTY

**In The First Judicial District Court of the State of Nevada
In and for Carson City**

KENNETH ROBERT CIZEK,

Petitioner(s),

vs.

CHARLES DANIELS, NDOC DIRECTOR,
Respondent(s).

Case No.: 21 EW 00017 1B

Dept. No.: II

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:
- KENNETH ROBERT CIZEK
2. Identify the judge issuing the decision, judgment, or order appealed from:
- HONORABLE JAMES E. WILSON, JR.
3. Identify each appellant and the name and address of counsel for each appellant:
- KENNETH ROBERT CIZEK # 1234275 (PROPER PERSON)
P.O. BOX 7000
CARSON CITY, NV 89702
4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):
- CHARLES DANIELS, NDOC DIRECTOR (RESPONDENT)
AARON FORD, ATTORNEY GENERAL
100 NORTH CARSON STREET
CARSON CITY, NV 89701-4717
5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that

attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

- NOT APPLICABLE

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

- APPELLANT IN PROPER PERSON IN DISTRICT COURT

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

- APPELLANT IN PROPER PERSON ON APPEAL

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

- NOT APPLICABLE (WRIT OF HABEAS CORPUS

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed):

- WRIT OF HABEAS CORPUS INJUNCTION FILED APRIL 27, 2021

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

- ORDER DENYING CIZEK'S PETITION FOR WRIT OF HABEAS CORPUS
FILED JUNE 17, 2021

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

- NOT APPLICABLE

12. Indicate whether this appeal involves child custody or visitation:

- NOT APPLICABLE

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

- NOT APPLICABLE.

1 Dated this 13th day of July, 2021.

2 AUBREY ROWLATT, Carson City Clerk
3 885 E. Musser St., #3031
4 Carson City, NV 89701

5 By , Deputy
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Judge: WILSON JR, JAMES E

Case No. 21 EW 00017 1B
Ticket No.
CTN:

CIZEK, KENNETH ROBERT

By:

DANIELS, CHARLES

DRSPND

-vs-

By: ATTORNEY GENERAL OFFICE
HEROE'S MEMORIAL BLDG.
CAPITOL COMPLEX
CARSON CITY, NV 89710Dob: Sex:
Lic: Sid:Plate#:
Make:
Year: Accident:
Type:
Venue:
Location:CIZEK, KENNETH ROBERT PLNTPET Bond: Set:
Type: Posted:

Charges:

Ct. Offense Dt: Cvr:
Arrest Dt:
Comments:

Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
1	07/13/21	CASE APPEAL STATEMENT	1BVANESSA	0.00	0.00
2	07/12/21	NOTICE OF APPEAL FILED	1BPETERSON	24.00	0.00
3	06/21/21	NOTICE OF ENTRY OF DECISION OR ORDER	1BPETERSON	0.00	0.00
4	06/21/21	CASE CLOSED	1BPETERSON	0.00	0.00
5	06/17/21	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BPETERSON	0.00	0.00
6	06/17/21	ORDER DENYING CIZEK'S PETITION FOR WRIT OF HABEAS CORPUS	1BPETERSON	0.00	0.00
7	06/09/21	NDOC DIRECTOR DANIEL'S RESPONSE TO PETITION	1BSBARAJAS	0.00	0.00
8	06/01/21	MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO PETITION FOR WRIT OF HABEAS CORPUS (FIRST REQUEST) AND MOTION TO CONTINUE STATUS CHECK HEARING	1BJULIEH	0.00	0.00
9	06/01/21	CHARLES DANIELS, NDOC DIRECTOR'S RETURN FOR PETITIONER KENNETH ROBERT CIZEK	1BJULIEH	0.00	0.00
10	05/27/21	ORDER GRANTING WARDEN RUSSELL'S MOTION TO DISMISS CASTRO'S PETITION FOR WRIT OF HABEAS CORPUS CHALLENGING COMPUTATION OF TIME	1BSBARAJAS	0.00	0.00
11	05/07/21	NDOC DIRECTOR DANIELS' NOTICE OF APPEARANCE FOR RESPONDENTS	1BPETERSON	0.00	0.00
12	05/04/21	AMENDED ORDER REQUIRING ANSWER OR RESPONSE AND RETURN TO POSTCONVICTION PETITION FOR WRIT OF HABEAS CORPUS AND SETTING STATUS CONFERENCE RE TIMELY FILING	1BJULIEH	0.00	0.00
13	04/30/21	ORDER REQUIRING ANSWER OR RESPONSE AND RETURN TO POSTCONVICTION PETITION FOR WRIT OF HABEAS CORPUS AND SETTING STATUS CONFERENCE RE TIMELY FILING	1BJULIEH	0.00	0.00
14	04/27/21	MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS (KENNETH CIZEK)	1BPETERSON	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
15	04/27/21	WRIT OF HABEAS CORPUS INJUNCTION	1BPETERSON	0.00	0.00
Total:				24.00	0.00
Totals By: COST				24.00	0.00
INFORMATION				0.00	0.00
*** End of Report ***					

REC'D & FILED

2021 JUN 17 PM 4:21

AUDREY SCHLATT
CLERK

BY

DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

KENNETH ROBERT CIZEK,

Petitioner,

vs.

CHARLES DANIELS, NDOC DIRECTOR,

Respondent.

Case No.: 21 EW 00017 1B

Dept. No. 1

ORDER DENYING CIZEK'S PETITION FOR WRIT OF HABEAS CORPUS

THIS MATTER comes before the Court on Kenneth Robert Cizek's ("Cizek") petition for writ of habeas corpus, and Respondent Daniel's answer thereto. This Court has reviewed all pleadings, documents and exhibits on file in the above-entitled matter. Based on this review, the Court makes the following findings of fact, conclusions of law, and order.

Cizek is currently incarcerated with the Nevada Department of Corrections ("NDOC") pursuant to a judgment of conviction and probation revocation order entered by the Second Judicial District Court in case number CR 20-0120. Cizek was convicted of Attempted Battery With Use of a Deadly Weapon, a Category C Felony. The Court sentenced Cizek to 18-60 months.

On April 27, 2021 Cizek filed a habeas petition challenging NDOC's computation of time served against his sentence. Respondent answered Cizek's petition.

Cizek claims that NRS 209.4465 is unconstitutional as applied to him as Cizek is in administrative segregation which prevents him from working. He is mistaken. Prisoners have no vested liberty interest in being released on parole, and no entitlement to time credits for work they do not perform. The State providing prisoners with estimated parole-eligibility, mandatory-release, and sentence-expiration dates based on an assumption that inmates will earn the maximum credits, creates

1 no liberty interest. *Anselmo v. Bisbee*, 133 Nev. 317, 320 (2017) (“[The Nevada Supreme Court] has
2 consistently held that given its discretionary language, Nevada’s parole statute creates no protectable
3 liberty interest sufficient to invoke the Due Process Clause.”) (internal quotation marks omitted).
4 “Because a prisoner has no due process rights to clemency, a change in the method of determining how
5 a statutory grant of clemency will be administered does not implicate a constitutionally protected
6 interest.” *Niergarth v. State*, 105 Nev. 26, 28 (1989).

7 The Nevada Court of Appeals has held that it is not unconstitutional to decline to grant work
8 credits under NRS 209.4465 to individuals who are willing to work. *Vickers v. Dzurenda*, 134 Nev.
9 747 (Nev. App. 2018). Cizek provides no argument warranting a different conclusion in this case.
10 Cizek’s claim that NDOC discriminates against him by restricting his work opportunities based on his
11 administrative segregation status is not a challenge to his judgment of conviction or to NDOC’s
12 computation of his time served. This type of claim is not properly raised in a petition for a writ of
13 habeas corpus. NRS 34.724(1); NRS 209.4465(1), (2); NRS 209.461(8); *Cooper v. Sumner*, 672
14 F.Supp. 1361, 1367 (D. Nev. 1987).

15 Cizek’s contention that NDOC is “deducting” work time credits from Cizek’s account is
16 factually incorrect, as the work time credits are only awarded for work performed, not deducted for
17 work not performed. *Vickers*, supra. Cizek’s claim that the work time credits he seeks would shorten
18 his sentence is also inaccurate. NRS 209.4465(7)(b) provides that time credits earned pursuant to NRS
19 209.4465 “[a]pply to eligibility for parole, they do not shorten the inmate’s sentence. *Williams v. State*
20 *Dep’t of Corr.*, 133 Nev. 594; 402 P.3d 1260, 1262 (Nev. 2017).

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1 The Court deeming itself fully informed,

2 **IT IS HEREBY ORDERED** that Cizek's petition for writ of habeas corpus is DENIED.

3 ORDERED this 17 day of June, 2021.

4 James Wilson
5 DISTRICT JUDGE

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8 Submitted by:

9 Dated this 9th day of June, 2021.

10 Geordan Goebel

11 Deputy Attorney General

12 State of Nevada

13 Office of the Attorney General

14 100 North Carson Street

15 Carson City, NV 89701-4717

16 (775) 684-1200 (phone)

17 (775) 684-1108 (fax)

18 ggoebel@ag.nv.gov

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 9th day of June, 2021, I caused to be deposited for mailing a true and correct copy of the foregoing **(PROPOSED)** **ORDER DENYING CIZEK'S PETITION FOR WRIT OF HABEAS CORPUS**, to the following:

Kenneth Cizek, #1234275
NNCC
P.O. Box 7000
Carson City, NV 89702


Lisa M. Clark

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CLERK & FILED

2021 JUN 21 AM 8:58

AUBREY ROWLATT
CLERK

BY [Signature] DEPUTY

**In The First Judicial District Court of the State of Nevada
In and for Carson City**

KENNETH ROBERT CIZEK,
Petitioner,

Case No.: 21 EW 00017 1B

Dept. No.: II

vs

CHARLES DANIELS, NDOC DIRECTOR,
Respondent.

**NOTICE OF ENTRY OF DECISION OR
ORDER**

PLEASE TAKE NOTICE that on June 17, 2021, the Court entered a decision or order in this matter, a true and correct copy of which is attached to this Notice.

You may appeal to the Supreme Court from the decision or order of this Court. If you wish to appeal, you must file a Notice of Appeal with the Clerk of this Court within 33 days after the date this Notice is mailed to you. This Notice was mailed on June 21, 2021.

DATED this 21st day of June, 2021.

Aubrey Rowlatt
AUBREY ROWLATT, Clerk

By [Signature], Deputy

cc: KENNETH ROBERT CIZEK
CHARLES DANIELS, NDOC DIRECTOR
GEORDAN GOEBEL, DEPUTY ATTORNEY GENERAL
Aaron Ford, Attorney General
CHRISTOPHER J. HICKS, District Attorney

REC'D & FILED

2021 JUN 17 PM 4:21

AUBREY SCHLATT
CLERK

BY

DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

KENNETH ROBERT CIZEK,

Petitioner,

vs.

CHARLES DANIELS, NDOC DIRECTOR,

Respondent.

Case No.: 21 EW 00017 1B

Dept. No. 1

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20 *Dep’t of Corr.*, 133 Nev. 594; 402 P.3d 1260, 1262 (Nev. 2017).

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1 The Court deeming itself fully informed,

2 **IT IS HEREBY ORDERED** that Cizek's petition for writ of habeas corpus is DENIED.

3 ORDERED this 17 day of June, 2021.

4 James Wilson
5 DISTRICT JUDGE

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7
8 Submitted by:

9 Dated this 9th day of June, 2021.

10 Geordan Goebel

11 Deputy Attorney General

12 State of Nevada

13 Office of the Attorney General

14 100 North Carson Street

15 Carson City, NV 89701-4717

16 (775) 684-1200 (phone)

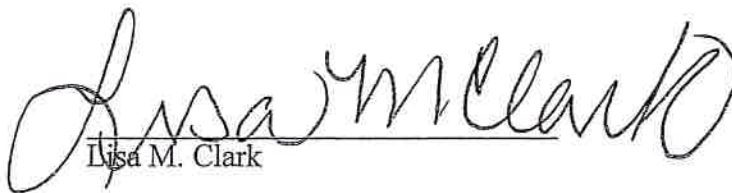
17 (775) 684-1108 (fax)

18 ggoebel@ag.nv.gov

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 9th day of June, 2021, I caused to be deposited for mailing a true and correct copy of the foregoing **(PROPOSED)** **ORDER DENYING CIZEK'S PETITION FOR WRIT OF HABEAS CORPUS**, to the following:

Kenneth Cizek, #1234275
NNCC
P.O. Box 7000
Carson City, NV 89702


Lisa M. Clark

CIVIL COVER SHEET

Carson County, Nevada

Case No. _____

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone):

Kenneth Cizek #1234275
P.O. Box 7000
Carson City, NV 89702

Attorney (name/address/phone):

Defendant(s) (name/address/phone):

Charles Daniels N. Carson
P.O. Box 7011
Carson City, NV 89702

Attorney (name/address/phone):

AL
100 N. Carson St
Carson City, NV 89701

REC'D & FILED

2021 APR 27 PM 2:17

AUSLEY ROWLATT
CLERK

BY

DEPUTY

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ Arbitration Requested

Civil Cases

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	Negligence <input type="checkbox"/> Negligence - Auto <input type="checkbox"/> Negligence - Medical/Dental <input type="checkbox"/> Negligence - Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence - Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair competition
Probate <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	Other Civil Filing Types <input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Employer's Insurance of Nevada	
	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment - Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recover of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters	

III. Business Court Requested (Please check applicable category for Clark and Washoe Counties only.)

- | | | |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104B) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

April 11th 2021

Date

[Signature]

Signature of initiating party or representative