

# IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed  
Mar 14 2022 01:03 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

FRANK HEARRING, JR.,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Case No: A-19-790102-W

Docket No: 84258

# RECORD ON APPEAL

**ATTORNEY FOR APPELLANT**  
FRANK HEARRING #1006445,  
PROPER PERSON  
P.O. BOX 1989  
ELY, NV 89301

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

A-19-790102-W Frank Herring, Plaintiff(s) vs. State of Nevada, Defendant(s)

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1 Frank Herring, #1000445  
2 Warm Springs Correctional Center  
3 P.O. Box 7007  
4 Carson City, Nevada 89702

FILED

FEB 25 2019 7

*Ann S. Blum*  
CLERK OF COURT

PETITIONER IN PROPER PERSON

6 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF  
7 NEVADA IN AND FOR THE COUNTY OF Clark

10 Frank Herring

11 Petitioner,

Case No.: A-19-790102-W

Dept. XII

12 v.

Dept. No.

13 State of Nevada

14 Respondent

17 PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)

18 INSTRUCTIONS:

19  
20 (1) This petition must be legibly handwritten or typewritten, signed by the  
petitioner and verified.

21 (2) Additional pages are not permitted except where noted or with respect to the  
22 facts which you rely upon to support your grounds for relief. No citation of  
23 authorities need be furnished. If briefs or arguments are submitted, they should be  
submitted in the form of a separate memorandum.

24 (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  
25 prison complete the certificate as to the amount of money and securities on deposit to  
your credit in any account in the institution.

26 (4) You must name as respondent the person by whom you are confined or  
27 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  
28 of the Department but within its custody, name the Director of the Department of  
Corrections.

A-19-790102-W  
IPWHC  
Inmate Filed - Petition for Writ of Habeas  
4819192



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CLERK OF THE COURT

19

1 (5) You must include all grounds or claims for relief which you may have  
2 regarding your conviction or sentence. Failure to raise all grounds in this petition  
3 may preclude you from filing future petitions challenging your conviction and sentence.

4 (6) You must allege specific facts supporting the claims in the petition you file  
5 seeking relief from any conviction or sentence. Failure to allege specific facts  
6 rather than just conclusions may cause your petition to be dismissed. If your petition  
7 contains a claim of ineffective assistance of counsel, that claim will operate to waive  
8 the attorney-client privilege for the proceeding in which you claim your counsel was  
9 ineffective.

10 (7) When the petition is fully completed, the original and one copy must be filed  
11 with the clerk of the state district court for the county in which you were convicted.  
12 One copy must be mailed to the respondent, one copy to the Attorney General's Office,  
13 and one copy to the district attorney of the county in which you were convicted or to  
14 the original prosecutor if you are challenging your original conviction or sentence.  
15 Copies must conform in all particulars to the original submitted for filing.

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**PETITION**

1. Name of institution and county in which you are presently  
imprisoned or where and how you are presently restrained of your  
liberty: Warm Springs Correctional Center, Carson County.

2. Name and location of court which entered the judgment of  
conviction under attack:  
The Eighth Judicial District Court of Clark County,  
Nevada

3. Date of judgment of conviction: December 30, 2013-~~2014~~

4. Case number: C-13-291159-1

5. (a) Length of sentence: 10 yrs to Life, Consecutive with 8+20yrs

1 (b) If sentence is death, state any date upon which  
2 execution is scheduled: \_\_\_\_\_  
3

4 6. Are you presently serving a sentence for a conviction  
5 other than the conviction under attack in this motion?

6 Yes \_\_\_\_\_ No  X

7 If "yes," list crime, case number and sentence being  
8 served at this time: \_\_\_\_\_  
9

10 7. Nature of offense involved in conviction being  
11 challenged:  Murder (Second Degree) w/ the use of a Deadly Weapon  
12  Category A Felony.  
13

14 8. What was your plea? (check one)

15 (a) Not guilty \_\_\_\_\_

16 (b) Guilty  X

17 (c) Guilty but mentally ill \_\_\_\_\_

18 (d) Nolo contendere \_\_\_\_\_  
19

20 9. If you entered a plea of guilty to one count of an  
21 indictment or information, and a plea of not guilty to another  
22 count of an indictment or information, or if a plea of guilty was  
23 negotiated, give details:  The Plea of guilty was unknowingly and  
24  Unintelligently made as well as involuntarily entered due to  
25  defense attorney's ineffective OF Attorney  
26

27 10. If you were found guilty after a plea of not guilty, was  
28 the finding made by: (check one)

1 (a) Jury \_\_\_\_\_

2 (b) Judge without a jury \_\_\_\_\_

3  
4 11. Did you testify at the trial? Yes \_\_\_\_\_ No ✓

5  
6 12. Did you appeal from the judgment of conviction?

7 Yes \_\_\_\_\_ No ✓

8  
9 13. If you did appeal, answer the following:

10 (a) Name of court: \_\_\_\_\_

11 (b) Case number or citation: \_\_\_\_\_

12 (c) Result: \_\_\_\_\_

13  
14  
15 (d) Date of result: \_\_\_\_\_

16 (Attach copy of order or decision, if available.)

17  
18 14. If you did not appeal, explain briefly why you did not:

19 The reason(s) was because I negotiated plea agreement with  
20 states attorney by the Coersion of Incompetent trial  
21 Counsel.

22  
23 15. Other than a direct appeal from the judgment of  
24 conviction and sentence, have you previously filed any petitions,  
25 applications or motions with respect to this judgment in any  
26 court, state or federal? Yes ✓ No \_\_\_\_\_

1 16. If your answer to No. 15 was "yes," give the following  
2 information:

3 (a) (1) Name of court: Eighth Judicial District

4 (2) Nature of proceeding: \_\_\_\_\_  
5

6 (3) Grounds raised: Motion to withdraw guilty plea which  
7 was denied by trial court, and United States Supreme Court  
8 affirmed the trial court's decision.

9 (4) Did you receive an evidentiary hearing on your  
10 petition, application or motion? Yes \_\_\_\_\_ No X

11 (5) Result: \_\_\_\_\_  
12

13 (6) Date of result: \_\_\_\_\_

14 (7) If known, citations of any written opinion or date of  
15 orders entered pursuant to such result: \_\_\_\_\_  
16

17 (b) As to any second petition, application or motion, give  
18 the same information:

19 (1) Name of court: N/A

20 (2) Nature of proceeding: N/A

21 (3) Grounds raised: N/A  
22

23  
24 (4) Did you receive an evidentiary hearing on your petition,  
25 application or motion? Yes \_\_\_\_\_ No X

26 (5) Result: N/A

27 (6) Date of result: N/A  
28

1 (7) If known, citations of any written opinion or date of  
2 orders entered pursuant to such result: \_\_\_\_\_  
3 \_\_\_\_\_  
4 \_\_\_\_\_

5 (c) As to any third or subsequent additional applications or  
6 motions, give the same information as above, list them on a  
7 separate sheet and attach.

8 (d) Did you appeal to the highest state or federal court  
9 having jurisdiction, the result or action taken on any petition,  
10 application or motion?

11 (1) First petition, application or motion?

12 Yes   X   No \_\_\_\_\_

13 Citation or date of decision:   December 1, 2016  

14 (2) Second petition, application or motion?

15 Yes   N/A   No \_\_\_\_\_

16 Citation or date of decision: \_\_\_\_\_

17  
18 (3) Third or subsequent petitions, applications or motions?

19 Yes \_\_\_\_\_ No \_\_\_\_\_

20 Citation or date of decision: \_\_\_\_\_

21 (e) If you did not appeal from the adverse action on any  
22 petition, application or motion, explain briefly why you did not.

23 (You must relate specific facts in response to this question.

24 Your response may be included on paper which is 8 1/2 by 11

25 inches attached to the petition. Your response may not exceed

26 five handwritten or typewritten pages in length.)  
27  
28

1 17. Has any ground being raised in this petition been  
2 previously presented to this or any other court by way of  
3 petition for habeas corpus, motion, application or any other  
4 post-conviction proceeding? If so, identify:

5  
6 (a) Which of the grounds is the same: petitioners plea negotia-  
7 tions unliking and unintelligent, Petitioners trial Counsel failed to properly in-  
8 terview potential witnesses, Ineffective assistance, Failure to interview state witness (key)  
9 (see attached)

10 (b) The proceedings in which these grounds were raised:  
11 In petitioners (First) writ of Habeas Corpus (Post-Conviction)  
12 Petition.

13 (c) Briefly explain why you are again raising these grounds.  
14 I am again raising these ground because I believe they are  
15 relevant to these proceedings.

16 (You must relate specific facts in response to this  
17 question. Your response may be included on paper which is 8 1/2  
18 by 11 inches attached to the petition. Your response may not  
19 exceed five handwritten or typewritten pages in length.) .....

20  
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24 18. If any of the grounds listed in Nos. 23(a), (b), (c) and  
25 (d), or listed on any additional pages you have attached, were  
26 not previously presented in any other court, state or federal,  
27 list briefly what grounds were not so presented, and give your  
28 reasons for not presenting them. (You must relate specific facts

1 in response to this question. Your response may be included on  
2 paper which is 8 1/2 by 11 inches attached to the petition. Your  
3 response may not exceed five handwritten or typewritten pages in  
4 length.)

5 (See Attached)  
6  
7

8  
9 19. Are you filing this petition more than 1 year following  
10 the filing of the judgment of conviction or the filing of a  
11 decision on direct appeal? If so, state briefly the reasons for  
12 the delay. (You must relate specific facts in response to this  
13 question. Your response may be included on paper which is 8 1/2  
14 by 11 inches attached to the petition. Your response may not  
15 exceed five handwritten or typewritten pages in length.)

16 Petitioner has been attempting to receive (All) documents (Court  
17 Case documents) from retained Counsel and/or records related  
18 to Case # C-13-291159-1. Received Sept 7, 2018 (on or about.)

19 20. Do you have any petition or appeal now pending in any  
20 court, either state or federal, as to the judgment under attack?  
21 Yes \_\_\_\_\_ No X If yes, state what court and the case number:  
22  
23

24 21. Give the name of each attorney who represented you in  
25 the proceeding resulting in your conviction and on direct appeal:  
26  
27

28 22. Do you have any future sentences to serve after you  
complete the sentence imposed by the judgment under attack?

Yes \_\_\_\_\_ No X

# Continuation From question #17

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ground #4 - Retained Counsel failure to interview

states Key witness.

ground #5 - Retained seasoned Counsel's failure to present

mitigating evidence during sentencing.

ground six - Retained Seasoned Counsel's failure to

file motion for psychological evaluation for

states Key witness.

ground #7 Retained Seasoned Counsel rendered ineff-

ective assistance when Counsel advised petitioner to

accept revised plea

1 Continuation From question #18 of Habeas Petition:

2 ground # 8 - Petitioner(s) alleges retained seasoned Counsel

3 ~~acted~~ intentionally withheld knowledge of material

4 information.

5 ground # 9 - Petitioner alleges trial Court erred when

6 court(s) did not construe petitioners Motion to Withdraw

7 guilty plea.

8 ground # 10 - Petitioner alleges ~~acted~~ <sup>retained</sup> seasoned Counsel

9 failed to seek out and/or disclose exculpatory evidence.

10 ground # 11 Petitioner alleges retained seasoned Counsel

11 rendered ineffective assistance when seasoned Counsel

12 failed to make reasonable investigations on behalf of

13 petitioner.

14 ground # 12 - Petitioner alleges the Detectives and/or Crime

15 Scene Analyst Experts failed to conduct a thorough

16 investigation of crime scene by failing to perform forensic

17 testing investigative duties on spent 9mm Cartridge Casings.

18 ground # 13 - Petitioner alleges retained seasoned Counsel

19 rendered ineffective assistance to petitioner when Counsel

20 failed to conduct a proper and thorough investigation of

21 crime scene.

22

23 Petitioner was in ~~the~~ the process of awaiting for (All)

24 relevant Court Case/records and documents to be turned

25 over and received.

26

27

1 23. (a) GROUND ONE: Petitioner Alleges Crime Scene Analyst Ex-  
2 erts and detectives failed to conduct a thorough investiga-  
3 tion of crime scene by performing forensic testing  
4 in violation of petitioners 6<sup>th</sup> and 14<sup>th</sup> Amendment rights.

5 23. (a) SUPPORTING FACTS (tell your story briefly without citing  
6 cases or law): Petitioner alleges crime scene Analyst Ex-  
7 erts and detectives failed to thoroughly and properly per-  
8 form forensic testing investigative duties such as locate,  
9 test and process potential mitigating evidence, which if  
10 done such evidence would show that someone else  
11 committed the charged crime and exonerate petitioner  
12 from doing such criminal activity. This failure by  
13 Crime Scene analyst experts and detectives to collect  
14 and perform forensic testing thoroughly process Crime  
15 scene evidence denied petitioner a Constitutional right  
16 to an appropriate investigation these elements are  
17 instrumental in proving a defendants guilt and/or in-  
18 nocentance. This failure to perform these forensic testing  
19 investigative duties, mishandling potential evidence that  
20 could have exonerated petitioner this failure to per-  
21 form these duties violates petitioners due process rights  
22 and furthermore impeaches Crime scene experts, Anal-  
23 ysist and detectives credibility, furthermore there ex-  
24 ist a reasonable probability sufficient to under-  
25 mine confidence in the outcome of these pro-  
26 ceeding(s) and investigative duties, in violation of  
27 petitioners 6<sup>th</sup> and 14<sup>th</sup> Amendment rights.

1 23. (b) GROUND TWO: Petitioner Alleges trial Court erred when trial  
2 Court failed to Construe petitioners Motion to Withdraw Guilty Plea  
3 petition as post-Conviction writ for Habeas Corpus, in vio-  
4 lation of petitioners 6<sup>th</sup> and 14<sup>th</sup> Amendment rights.

5 23. (b) SUPPORTING FACTS (tell your story briefly without citing  
6 cases or law): Petitioner Alleges that trial Court failed to  
7 Construe petitioners Motion To Withdraw Guilty Plea as  
8 Post-Conviction writ. Petitioner further states that on  
9 December 10, 2014, petitioners Motion To withdraw Guilty Plea petition  
10 was filed 20 days prior to the 1yr deadline, which  
11 does not time bar petitioner from seeking post-Conviction  
12 relief. Petitioner alleges that this failure to comply would  
13 constitute a miscarriage of justice, prejudice and/or a manifest  
14 injustice because petitioner filed Motion to withdraw guilty  
15 plea in a timely manner within the 1yr timeline and  
16 there fore should be decided on its merits, there fore pro-  
17 cedural defaults) should be excused under this standard  
18 and petitioners petition should be heard on its merits  
19 failure to do so would violate petitioners due process  
20 rights) 6<sup>th</sup> and 14<sup>th</sup> Amendment rights.

1 23. (b) GROUND <sup>3</sup> petitioner alleges seasoned retained trial  
2 counsel rendered ineffective assistance when seasoned  
3 trial counsel failed to make reasonable investigations on be-  
4 half of petitioner in violation of petitioners 6<sup>th</sup> and 14<sup>th</sup> Amendment <sup>rights</sup>

5 23. (b) SUPPORTING FACTS (tell your story briefly without citing  
6 cases or law) : Petitioner alleges retained seasoned trial Coun-  
7 sel rendered ineffective assistance when trial Counsel  
8 failed to make a reasonable decision that would  
9 make investigations and/or using private investiga-  
10 tor unnecessary given the gravity of the charges  
11 of: Murder w/ the use of a deadly weapon, Attempted  
12 Murder w/ the use of a deadly weapon, and prohibited per-  
13 son in possession of a deadly weapon, petitioner  
14 further alleges prejudice ensued when seasoned  
15 trial counsel failed to seek out on yielding reasonable  
16 doubt on behalf of petitioner seasoned Counsel  
17 would have found doubt as to petitioners guilty and/or  
18 innocense to the alleged crimes. in violation of  
19 petitioners 6<sup>th</sup> and 14<sup>th</sup> Amendment rights.

1 23. (c) GROUND 4 : Petitioner alleges seasoned retained trial  
2 Counsel intentionally withheld knowledge of favorable, material  
3 information from petitioner which denied petitioner a Constitu-  
4 tional right to effective assistance of Counsel in violation of petitioners  
5 5<sup>th</sup> and 14<sup>th</sup> Amendment rights.

6 23. (c) SUPPORTING FACTS (tell your story briefly without citing  
7 cases or law): Petitioner alleges seasoned retained Counsel  
8 intentionally withheld knowledge of favorable evidence  
9 from petitioner, retained seasoned Counsel withheld mat-  
10 erial evidence until petitioners request for records/Court  
11 case documents motion was filed and/or after petitioner receiv-  
12 ed records/Court case documents. Seasoned retained trial Counsel  
13 Coersing petitioner into believing pleading guilty would be in  
14 his best interest, Seasoned retained Counsel withheld exculpatory  
15 material evidence from petitioner that could have exonerated  
16 petitioner from the crimes of; Murder w/the use of a Dead-  
17 ly weapon, Attempted Murder w/the use of a Deadly Weapon, and  
18 Prohibited person in possession of a dangerous weapon. Petitioner  
19 did not have notice of this due process violation until after  
20 he had plead guilty, been sentenced and after conviction  
21 had been affirmed. Petitioners seasoned trial Counsel intent-  
22 ionally withheld favorable evidence after petitioners rep-  
23 eated request for Court case documents in violation of  
24 petitioners 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendment rights. Petitioner  
25 alleges that the above stated issue was withheld by seasoned  
26 Counsel either intentionally or inadvertently, and prejudice  
27 ensued.

1 Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating  
2 additional grounds and facts supporting same.

3 23. (a) GROUND 5 : petitioner Alleges seasoned retained Counsel  
4 failed to seek out and/or disclose exculpatory evidence to pet-  
5 itioner in violation of petitioners 6<sup>th</sup> and 14<sup>th</sup> Amendment  
6 right(s).

7 23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law): \_\_\_\_\_  
8 Petitioner alleges retained Counsel failed to perform duties  
9 imposed by ethical principles as well as Constitutional one's  
10 when seasoned retained Counsel failed to seek out excul-  
11 patory evidence, mitigating evidence on behalf of petitioner  
12 to the crimes) of: Murder w/the use of a deadly weapon,  
13 Attempted Murder w/the use of a deadly weapon, and a  
14 prohibited person in possession of a deadly weapon  
15 which denied petitioner a Constitutional right to a Comp-  
16 ulsory process and to have the assistance of Counsel  
17 for defense during a serious criminal proceedings in  
18 violation of standards for criminal justice, in vio-  
19 lation of petitioners 6<sup>th</sup> and 14<sup>th</sup> Amendment rights.

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1 23. (d) GROUND : 6 :: Petitioner alleges that retained trial Counsel  
2 rendered ineffective assistance when retained seasoned Counsel  
3 failure to seek out exculpatory, mitigating evidence when  
4 seasoned Counsel failed to conduct a thorough investigation of crime scene  
in violation of petitioner's 6<sup>th</sup> and 14<sup>th</sup> Amendment rights.

5 23. (d) SUPPORTING FACTS (tell your story briefly without citing  
6 cases or law): Petitioner's seasoned trial counsel never paid a visit  
7 to the crime scene, seasoned Counsel neglected to use any  
8 investigator to fully comprehend and properly assess the sit-  
9 uation and circumstances surrounding the crime scene related  
10 to petitioner's alleged crimes) of: Murder w/ the use of Deadly wea-  
11 pon, Attempted Murder w/ the use of a Deadly weapon, and pro-  
12 hibited person in possession of a Deadly weapon a serious  
13 Criminal proceedings. Seasoned Counsel has a duty to make reason-  
14 able investigations or make reasonable decisions that make these  
15 particular investigations unnecessary. Had seasoned retained  
16 Counsel and/or investigator properly used in investigative measures  
17 took a tactical and reasonable approach in properly and  
18 thoroughly investigating and assessing the crime scene  
19 then seasoned Counsel would have found strong evidence  
20 that would've provided unyielding reasonable doubt  
21 as to the petitioner's guilty or innocence to the alleged  
22 crimes. When Crime scene Analyst experts and detectives state  
23 in Application and Affidavit for search warrant that based  
24 solely on (witnesses) hearing 5-7 shot Affinate believes  
25 spent 9mm casings were from a previous shooting with-  
26 out forensic testing. In violation of petitioner's 6<sup>th</sup> and  
27 14<sup>th</sup> Amendment rights.

1 23. (d) GROUND 7: Petitioner alleges that his plea negotiation  
2 was unknowing and unintelligently as well as involuntarily  
3 made due to trial counsel's ineffective assistance in violation of the  
4 petitioner's 6<sup>th</sup> Amendment and 14<sup>th</sup> Amendment rights).

5 23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The  
6 defense attorney purposely lead petitioner to believe he  
7 (petitioner) would get the death by withholding the  
8 results to the grand jury's indictment seeking the  
9 death penalty until after petitioner's plea negotiation  
10 agreement, causing petitioner to plea negotiate with  
11 state's attorney. Petitioner was coerced into accept-  
12 ing a lesser charge from First degree Murder to  
13 avoid the death penalty because of trial counsel's  
14 coersion and this deception (forced) petitioner to  
15 plead guilty to avoid the death penalty which  
16 petitioner contends that due to trial counsel's  
17 performance of misrepresentation, petitioner  
18 would've preferred to go to trial instead of plea  
19 negotiations.

20 \_\_\_\_\_  
21 \_\_\_\_\_  
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24 \_\_\_\_\_  
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27 \_\_\_\_\_

1 Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating  
2 additional grounds and facts supporting same.

3 23. (a) GROUND 8: petitioner alleges trial counsel failed to  
4 properly interview potential witnesses and make Indep-  
5 endent investigation of the facts and circumstances of  
6 the case rendering ineffective assistance of counsel in viol of 6<sup>th</sup> Amend

7 23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law): Re-  
8 tained Counsel Carl Arnold (Seasoned Counsel) re-  
9 presented petitioner Frank bearing in a Murder  
10 case in the first degree which carried a penalty  
11 of death. Trial counsel failed to properly interview  
12 witnesses that petitioner presented to him by  
13 way of visitation in the Clark County detention  
14 center. Petitioner alleges that seasoned Counsels  
15 failure to interview potential witnesses that could  
16 have exonerated petitioner from the crime(s) cons-  
17 tituted bad performance of a reasonable trial  
18 attorney in violation of the 6<sup>th</sup> and 14<sup>th</sup> Amend-  
19 ment rights to effective assistance of Counsel  
20 and due process rights to life and liberty.

1 23. (b) GROUND <sup>9</sup>: Petitioner alleges seasoned Counsel rendered  
2 ineffective assistance of Counsel when he failed to use  
3 private investigator of the office to conduct tho-  
4 rough investigation in violation of 6<sup>th</sup> and 14<sup>th</sup> Amendment.

5 23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): Peti-  
6 tioner alleges trial counsel failed to use the law off-  
7 ice's private investigator to perform investigative  
8 duties such as locate friends and family of  
9 petitioner who would have made statements on  
10 behalf of petitioner's alibi to the crime of  
11 Murder w/ the use of a deadly weapon and  
12 exonerate him from doing such criminal act-  
13 ivity. This failure of the use of a private in-  
14 vestigator that seasoned trial counsel has chosen  
15 to do denied petitioner a constitutional right to  
16 a fair trial proceedings, which lead to petitioner's  
17 plea negotiations) because of ineffective  
18 assistance of Counsel, in violation of petif-  
19 ioner's 6<sup>th</sup> and 14<sup>th</sup> Amendment rights) to  
20 effective assistance of counsel during a serious  
21 Criminal proceedings.  
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1 23. (d) GROUND 10: Petitioner alleges that seasoned  
2 Counsel failed to properly interview state's attorney  
3 Key witness.  
4

5 23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law):  
6 Petitioner contends seasoned trial Counsel failed to  
7 properly interview the state's witness (Key witness)  
8 to receive the witness point of the investiga-  
9 tion which rendered(s) Competent seasoned Coun-  
10 sel and this prejudiced petitioner because  
11 Key witness pursued a course of misidenti-  
12 fication (with certainty) until coercion took  
13 place. A proper interview would have given season-  
14 ed Counsel a better view of the state's witnesses  
15 demeanor however trial Counsel fail to perform  
16 such critical duties which lead to petitioners  
17 6th and 14th Amendment rights constitutional  
18 right(s) to effective assistance of Counsel guar-  
19 anteed under the state and federal Constitution.  
20  
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1 23. (d) GROUND <sup>11</sup>: Petitioner alleges seasoned trial Counsel  
2 rendered ineffective assistance when Counsel advised peti-  
3 tioners) to accept revised plea despite petitioners protesta-  
4 tions of innocence.

5 23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): \_\_\_\_\_  
6 Season trial Counsel purposely advised petitioner to  
7 accept plea negotiations based solely on petitioners  
8 inability to pay retained counsels fees of 10,000.00,  
9 Petitioner alleges seasoned Counsel was improperly  
10 motivated. Trial counsel induced guilty plea(s) based  
11 solely on petitioners inability to pay Counsel's fee  
12 because counsels Coersion and deception forced  
13 petitioner to plead guilty, which violates petitioners  
14 6<sup>th</sup> and 14<sup>th</sup> Amendment rights).

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16 \_\_\_\_\_  
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26 \_\_\_\_\_  
27 \_\_\_\_\_

1 Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating  
2 additional grounds and facts supporting same.

3 23. (a) GROUND <sup>12</sup>: Petitioner alleges seasoned Counsel failed  
4 to file motion for a psychological evaluation for states Key  
5 witness knowing witnesses inconsistent statements testimony  
6 during preliminary hearing.

7 23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law):  
8 Petitioner alleges seasoned Counsel failed to file motion for a  
9 psychological evaluation for states Key witness once it was  
10 discovered that states Key witness testimony during the Pre-  
11 liminary hearing showed inconsistencies which seasoned trial  
12 Counsel failed to Investigate and petitioner requested for  
13 this evaluation to be conducted by filing a motion with  
14 the courts however was told "No" by trial Counsel. This  
15 rendered ineffectiveness on behalf of Counsel on the  
16 petitioners seasoned trial Counsel's part because this Key  
17 witness was states only witness to a Murder and petitioner  
18 was not allowed to Confront this witness by questioning in  
19 violation of petitioners 6<sup>th</sup> and 14<sup>th</sup> Amendment right(s)  
20 to Confrontation of the accuser and also in violation of  
21 petitioners state and Federal Constitutional due process  
22 and related to Counsel's performance rendered ineff-  
23 ectiveness denying petitioner of his Federal, Constitu-  
24 tional rights.

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1 23. (b) GROUND: 13: Petitioner alleges trial Counsel failed to  
2 present mitigating evidence during sentencing hearing  
3 which would have rendered a more lenient sentence  
4 from trial Judge and show good character of petitioner.

5 23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): \_\_\_\_\_  
6 Petitioner alleges seasoned trial counsel failed to present  
7 mitigating evidence during sentencing which petitioner  
8 had advised counsel to do and seasoned Counsel re-  
9 fused to present Mitigating testimony from petitioners  
10 church members, school mentors, youth Counselor, par-  
11 ents, Fiance, Childhood friends and petitioners Super-  
12 visors) as well as past Employer so trial judge can  
13 show lenency toward petitioner's sentencing because  
14 State's attorney presented evidence to show petitioner  
15 's Bad character which rendered unfairness, in violation  
16 of petitioners Constitutional rights to state and fed-  
17 eral Constitution, in violation of 14<sup>th</sup> and 14<sup>th</sup> Amend-  
18 ment to effectiveness of Counsel.

19 \_\_\_\_\_  
20 \_\_\_\_\_  
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25 \_\_\_\_\_  
26 \_\_\_\_\_  
27 \_\_\_\_\_

1 WHEREFORE, petitioner prays that the court grant petitioner  
2 relief to which he may be entitled in this proceeding.

3  
4 EXECUTED at Warm Springs Correctional Center  
5 on the 21<sup>st</sup> day of the month of February of the  
6 year 2019

7  
8   
9 Signature of petitioner

10 W.S.C.C, P.O. Box 7007  
11 Carson City, NV 89702  
12 \_\_\_\_\_

13 Address  
14 \_\_\_\_\_

15 Signature of attorney (if any)  
16 \_\_\_\_\_

17 Attorney for petitioner  
18 \_\_\_\_\_  
19 \_\_\_\_\_  
20 \_\_\_\_\_

21 Address  
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VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

  
Petitioner

\_\_\_\_\_  
Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I, Frank Herring, hereby certify pursuant to N.R.C.P. 5(b), that on this 21<sup>st</sup> day of the month of February of the year 2019, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

State of Nevada

Respondent prison or jail official

P.O. Box 7007 3301 E. 5th St  
Carson City, NV 89702

Address

Attorney General's Office

100 North Carson Street

Carson City, Nevada 89701-4717

Steve Wolfson

District Attorney of County of Conviction

200 Lewis Avenue 3rd floor  
Las Vegas, NV 89155-1160

Address

[Signature]  
Signature of Petitioner

P.O. Box 7007

Warm Springs Correctional Center

Carson City, Nevada 89702

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

Post-Conviction Writ For Habeas Corpus  
(Title of Document)

filed in District Court Case number C-13-291159-1

Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:  
Charles B. Harris v. State of Nevada, 329 P.3d 619, 2014  
(State specific law)

-or-

B. For the administration of a public program or for an application for a federal or state grant.

Frank Herring  
Signature

2/21/19  
Date

Frank Herring  
Print Name

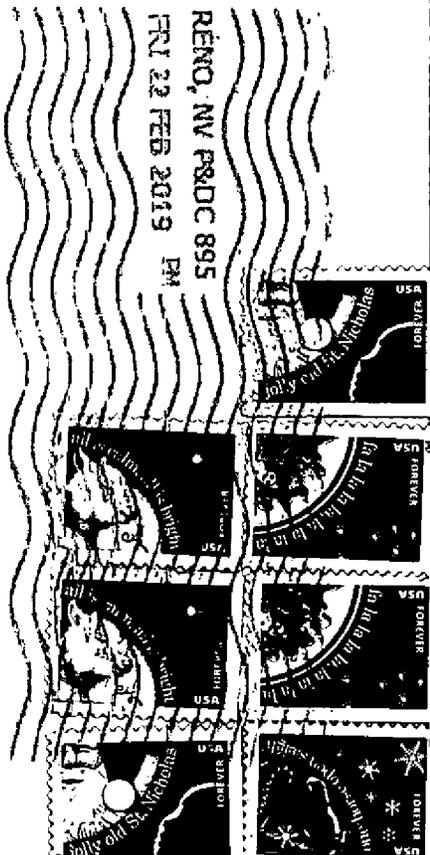
\_\_\_\_\_  
Title

FRANK HEARRING # 1006445 1006445-

U.S.C.C.

P.O. Box 7007

Carson City, NV 89702



STEVEN D. GRIERSON  
Clerk of the Court

200 Lewis Avenue, 3rd Floor  
Las Vegas, NV 89155-1160

1006445-



develop and adequately present the claims without the assistance of counsel. Counsel is unable to adequately present the claims without an evidentiary hearing.

Petitioner hereby respectfully requests that the Court appoint counsel and set a date for an evidentiary hearing for the reasons stated above.

Dated this 1<sup>st</sup> day of April, 2019.

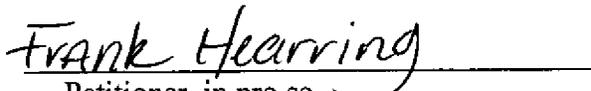
Respectfully submitted,

  
Warm Springs Correctional Center  
P.O. Box 7007  
Carson City, Nevada 89702

AFFIRMATION  
PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding REQUEST FOR APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING does NOT contain the social security number of any person.

Dated this 1<sup>st</sup> day of April, 2019.

  
Petitioner, in pro se

**CERTIFICATE OF SERVICE BY MAIL**

I, Frank Herring, hereby certify pursuant to N.R.C.P. 5(b), that on this 1<sup>st</sup> day of April, 2019, I handed to a prison official for mailing a true and correct copy of the foregoing REQUEST FOR APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING addressed as following:

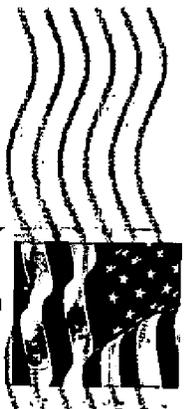
Steven B. Wolfson  
200 Lewis Avenue  
3rd Floor LV, NV  
89155-1160

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

  
Warm Springs Correctional Center  
P.O. Box 7007  
Carson City, Nevada 89702

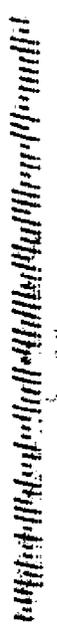
Mr. Frank Hearing #10010445  
N.S.C.C  
P.O. Box 7007  
Carson City, NV 89702

RENO NV 895  
02 APR 2019 PM 2 T



Steven D. Grierson  
200 Lewis Avenue 3rd  
Floor Las Vegas, NV 89155

9910136300



**OUTGOING MAIL**  
APR 02 2019  
NEVADA DEPARTMENT OF CORRECTIONS  
WARM SPRINGS CORRECTIONAL CENTER



DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

1  
2  
3 Frank Herring, Plaintiff(s)

Case No.: A-19-790102-W

4 vs.

5 State of Nevada, Defendant(s)

Department 12

6 **NOTICE OF HEARING**

7  
8 Please be advised that the Ex Parte Motion for Appointment of Counsel and Request  
9 for Evidentiary Hearing in the above-entitled matter is set for hearing as follows:

10 **Date:** May 30, 2019

11 **Time:** 8:30 AM

12 **Location:** RJC Courtroom 14D  
13 Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

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

17 STEVEN D. GRIERSON, CEO/Clerk of the Court

18  
19 By: /s/ Michelle McCarthy  
20 Deputy Clerk of the Court

21 **CERTIFICATE OF SERVICE**

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

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



1 ORDR

2  
3 EIGHTH JUDICIAL DISTRICT  
4 CLARK COUNTY, NEVADA  
5

6	FRANK HEARRING,	)	Case No.: A-19-790102-W
7		)	
8	Petitioner,	)	DEPT. No.: XII
9	vs.	)	(Second Petition)
10	STATE OF NEVADA,	)	
11		)	
12	Respondent	)	

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

13  
14 FINDINGS OF FACT

15 1. On July 15, 2013, the State charged Frank Hearing by way of information  
16 with Murder With Use of a Deadly Weapon, Attempt Murder With Use of a Deadly  
17 Weapon, Discharging Firearm At or Into Structure, Vehicle, Aircraft or Watercraft, and  
18 Possession of Firearm by Ex-Felon.

19 2. On October 7, 2013, pursuant to negotiations, Petitioner entered into a  
20 Guilty Plea Agreement ("GPA") with the State, wherein, he agreed to plead guilty to one  
21 count of Murder (Second Degree) With Use of a Deadly Weapon. The same day, the  
22 court conducted a plea canvass on the record and thereafter accepted Petitioner's plea. An  
23 Amended Information was filed in open court reflecting the charge contained in the GPA.

24 3. On December 10, 2013, Petitioner was sentenced to life imprisonment in  
25 the Nevada Department of Corrections with parole eligibility after ten years, plus a  
26 consecutive sentence of a maximum of 240 months and a minimum of 96 months for the  
27 deadly weapon enhancement. Petitioner received 293 days credit for time served.  
28 Judgment of Conviction was filed on December 30, 2013. Petitioner did not file a direct  
29 appeal.

30 4. On May 15, 2014, Petitioner filed a Motion to Withdraw Counsel. On  
31 June 12, 2014, the Motion was granted.

32 5. On November 12, 2014, Petitioner filed a Motion for Appointment of  
33 Counsel and Request for Evidentiary Hearing. The State filed its response on November  
34

1 25, 2014. On December 4, 2014, the court denied the motion, finding the request for  
2 evidentiary hearing was made prematurely and could be renewed in a Petition for Writ of  
3 Habeas Corpus (post-conviction).

4 6. On December 10, 2014, Petitioner filed a Motion to Withdraw Plea. On  
5 December 22, 2014, the State filed an opposition. On January 6, 2015, the district court  
6 denied Petitioner's motion. The district court filed its order on January 16, 2015.

7 7. On March 30, 2015, Petitioner filed a Petition for Writ of Habeas Corpus  
8 (post-conviction). On July 31, 2015, the State filed its response. A hearing was held on  
9 August 4, 2015 and the Petition was denied. The court's Findings of Fact, Conclusions of  
10 Law and Order was filed on September 14, 2015.

11 8. On October 6, 2015, Petitioner filed a Notice of Appeal. On April 14,  
12 2016, the Supreme Court of Nevada affirmed the district court's denial of the Petition for  
13 Writ of Habeas Corpus (post-conviction). Remittitur issued on May 9, 2016.

14 9. On October 28, 2015, Petitioner filed a Motion for Records/Court Case  
15 Documents. A hearing was held on November 19, 2015 and the motion was granted in  
16 part. The district court filed its order on December 3, 2015.

17 10. On January 21, 2016, Petitioner filed a Motion for Records/Court Case  
18 Documents. On February 17, 2016, the State filed its response. A hearing was held on  
19 February 23, 2016 and the motion was denied. The district court filed its order on March  
20 2, 2016.

21 11. On March 8, 2016, Petitioner filed a Motion for Withdrawal of Attorney  
22 of Record or in the Alternative, Request for Records/Court Case Documents. On March  
23 11, 2016, the State filed its reply. A hearing was held on March 29, 2016 and the motion  
24 was denied. The district court filed its order on April 12, 2016.

25 12. On October 6, 2017, Petitioner filed a Motion to Withdraw Counsel. A  
26 hearing was held on October 31, 2017 and the motion was granted. The district court  
27 filed its order on November 14, 2017.

28 13. On December 11, 2017, Petitioner filed a Motion to Modify Sentence. On  
December 26, 2017, the State filed its opposition. A hearing was held on January 2, 2018  
and the motion was denied. The district court filed its order on January 8, 2018.

14. On December 29, 2017, Petitioner filed a Motion to Compel. A hearing  
was held on January 23, 2018 and the motion was granted. The district court filed its  
order on February 2, 2018.

15. On June 6, 2018, Petitioner filed a Motion to Compel. A hearing was held  
on June 28, 2018 and the court ordered a show cause hearing. A show cause hearing was  
held on July 31, 2018, August 2, 2018 and September 4, 2018 and were all continued for

1 counsel to appear. On September 11, 2018, counsel appeared and confirmed the file was  
2 turned over to the Petitioner.

3 16. On October 10, 2018, Petitioner filed a Motion for Order to Show Cause  
4 Contempt of Court and Monetary Sanctions. A hearing was held on November 6, 2018  
5 and the court ordered the motion taken off calendar because the file was turned over. On  
6 November 26, 2018, Petitioner filed a Notice of Appeal. On December 17, 2018, the  
7 Supreme Court of Nevada dismissed the appeal. Remittitur issued on January 11, 2019.

8 17. On February 25, 2019, Petitioner filed the instant (second) Petition for  
9 Writ of Habeas Corpus (post-conviction).

10 18. Absent good cause for the failure to present the claim in a prior petition or  
11 for presenting the claim again, and actual prejudice, the petition must be dismissed.

### 12 CONCLUSIONS OF LAW

13 1. NRS 34.726(1), governing "Limitations on time to file..." requires that a  
14 petition for a writ of habeas corpus "must be filed within 1 year after entry of the  
15 judgment of conviction or, if an appeal has been taken from the judgment, within 1 year  
16 after the Supreme Court issues its remittitur." Late-filing of a petition may be excused  
17 from procedural default if the Petitioner can establish good cause for delay in bringing  
18 the claim. *Id.* Good cause for late-filing consists of a showing that: (1) "delay is not the  
19 fault of the petitioner"; and (2) "dismissal of the petition as untimely will unduly  
20 prejudice the petitioner." *Id.* at (1)(a)-(b).

21 2. To avoid dismissal, the petitioner must plead and prove specific facts that  
22 demonstrate good cause for his failure to present claims before and actual prejudice. *See*  
23 *State v. District Court*, 121 Nev. 225, 232, 112 P.3d 1070, 1074 (2005).

24 3. In order to demonstrate good cause, a petitioner must show that an  
25 impediment external to the defense prevented him or her from complying with the state  
26 procedural default rules. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

27 4. The court may excuse the failure to show good cause where the prejudice  
28 from a failure to consider the claim amounts to a fundamental miscarriage of justice.  
*Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

1 An impediment external to the defense may be demonstrated by a showing  
2 "that the factual or legal basis for a claim was not reasonably available to counsel, or that  
3 'some interference by officials,' made compliance impracticable." *Hathaway v. State*,  
4 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting *Murray v. Carrier*, 477 U.S. 478,  
5 488 (1986)).

6 6. NRS 34.810(2), governing "Additional reasons for dismissal of petition,"  
7 requires that "[a] second or successive petition must be dismissed if the judge or justice

1 determines that it fails to allege new or different grounds for relief and that the prior  
2 determination was on the merits or, if new and different grounds are alleged, the judge or  
3 justice finds that the failure of the petitioner to assert those grounds in a prior petition  
constituted an abuse of the writ.”

4 7. The petitioner has the burden of pleading and proving specific facts that  
5 demonstrate both good cause for failing to present a claim or for presenting a claim again  
6 and actual prejudice. NRS 34.810(3). *See also State v. Haberstroh*, 119 Nev. 173, 181, 69  
P.3d 676, 681 (2003).

7 8. A court must dismiss a habeas petition if it presents claims that either were  
8 presented in an earlier proceeding or could have been presented in an earlier proceeding,  
9 unless the court finds both cause for failing to present the claims earlier or for raising  
10 them again and actual prejudice to the petitioner. *Evans v. State*, 117 Nev. 609, 621-622,  
28 P.3d 498, 507 (2001).

11 9. Unlike initial petitions which certainly require a careful review of the  
12 record, successive petitions may be dismissed based solely on the face of the petition.  
*Ford v. Warden*, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

13 10. Application of the statutory procedural default rules to post-conviction  
14 habeas petitions is mandatory. *State v. District Court (Riker)*, 121 Nev. 225, 231, 112  
P.3d 1070, 1074 (2005).

15 11. Meritless, successive and untimely petitions clog the court system and  
16 undermine the finality of convictions. *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d 944,  
950 (1994).

17 12. Petitioner had one year from December 30, 2013, the date the Judgement  
18 of Conviction was filed, to file a Petition for Writ of Habeas Corpus (post-conviction).  
19 The instant Petition was filed over five years after the Judgement of Conviction was filed.  
20 The instant petition is untimely. Absent good cause and prejudice, the instant petition is  
time barred and must be dismissed.

21 13. The instant petition is a successive petition, and therefore is also subject  
22 to dismissal pursuant to NRS 34.810(1)(b)(2); NRS 34.810(2). The petition must be  
23 dismissed if petitioner failed to allege new or different grounds for relief and the prior  
24 determination was on the merits or, if new and different grounds are raised in the petition  
25 and the court determines the failure of the petitioner to assert those grounds in a prior  
petition constituted an abuse of the writ. Absent good cause for the failure to present the  
claim in a prior petition or for presenting the claim again, and actual prejudice, the  
petition must be dismissed.



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CERTIFICATE OF MAILING

I hereby certify that on the date filed, I placed a copy of the Order for Petition for Writ of Habeas Corpus (Post-Conviction) in the U.S. Mail, postage prepaid to:

Frank Herring #1006445  
Warm Springs Correctional Center  
P.O. Box 7007  
Carson City, NV 89702

Steven B. Wolfson  
Clark County District Attorney  
200 Lewis Avenue  
Las Vegas, Nevada 89155

Aaron Ford  
Nevada Attorney General  
555 E. Washington, Suite 3900  
Las Vegas, NV 89101-1068

  
Pamela Rocha  
Judicial Executive Assistant  
Department XII  
Eighth Judicial District Court

A-19-790102-W  
Frank Herring  
vs.  
The State of Nevada



1 NEO

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

4  
5 FRANK HEARRING,

6 Petitioner,

Case No: A-18-790102-W

Dept No: XII

7 vs.

8 STATE OF NEVADA,

9 Respondent,

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

10  
11 **PLEASE TAKE NOTICE** that on April 12, 2019, 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  
15 mailed to you. This notice was mailed on April 15, 2019.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

*/s/ Debra Donaldson*

Debra Donaldson, Deputy Clerk

17  
18  
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 15 day of April 2019, I served a copy of this Notice of Entry on the following:

21  By e-mail:  
22 Clark County District Attorney's Office  
23 Attorney General's Office – Appellate Division-

24  The United States mail addressed as follows:  
25 Frank Hearing # 1006445  
26 P.O. Box 7007  
27 Carson City, NV 89702

28 */s/ Debra Donaldson*

Debra Donaldson, Deputy Clerk



1 ORDR

2  
3 EIGHTH JUDICIAL DISTRICT  
4 CLARK COUNTY, NEVADA  
5

6	FRANK HEARRING,	)	Case No.: A-19-790102-W
7		)	
8	Petitioner,	)	DEPT. No.: XII
9	vs.	)	(Second Petition)
10	STATE OF NEVADA,	)	
		)	
	Respondent	)	

11  
12 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

13  
14 FINDINGS OF FACT

15 1. On July 15, 2013, the State charged Frank Hearing by way of information  
16 with Murder With Use of a Deadly Weapon, Attempt Murder With Use of a Deadly  
17 Weapon, Discharging Firearm At or Into Structure, Vehicle, Aircraft or Watercraft, and  
18 Possession of Firearm by Ex-Felon.

19 2. On October 7, 2013, pursuant to negotiations, Petitioner entered into a  
20 Guilty Plea Agreement ("GPA") with the State, wherein, he agreed to plead guilty to one  
21 count of Murder (Second Degree) With Use of a Deadly Weapon. The same day, the  
22 court conducted a plea canvass on the record and thereafter accepted Petitioner's plea. An  
23 Amended Information was filed in open court reflecting the charge contained in the GPA.

24 3. On December 10, 2013, Petitioner was sentenced to life imprisonment in  
25 the Nevada Department of Corrections with parole eligibility after ten years, plus a  
26 consecutive sentence of a maximum of 240 months and a minimum of 96 months for the  
27 deadly weapon enhancement. Petitioner received 293 days credit for time served.  
28 Judgment of Conviction was filed on December 30, 2013. Petitioner did not file a direct  
appeal.

4. On May 15, 2014, Petitioner filed a Motion to Withdraw Counsel. On  
June 12, 2014, the Motion was granted.

5. On November 12, 2014, Petitioner filed a Motion for Appointment of  
Counsel and Request for Evidentiary Hearing. The State filed its response on November

1 25, 2014. On December 4, 2014, the court denied the motion, finding the request for  
2 evidentiary hearing was made prematurely and could be renewed in a Petition for Writ of  
3 Habeas Corpus (post-conviction).

4 6. On December 10, 2014, Petitioner filed a Motion to Withdraw Plea. On  
5 December 22, 2014, the State filed an opposition. On January 6, 2015, the district court  
6 denied Petitioner's motion. The district court filed its order on January 16, 2015.

7 7. On March 30, 2015, Petitioner filed a Petition for Writ of Habeas Corpus  
8 (post-conviction). On July 31, 2015, the State filed its response. A hearing was held on  
9 August 4, 2015 and the Petition was denied. The court's Findings of Fact, Conclusions of  
10 Law and Order was filed on September 14, 2015.

11 8. On October 6, 2015, Petitioner filed a Notice of Appeal. On April 14,  
12 2016, the Supreme Court of Nevada affirmed the district court's denial of the Petition for  
13 Writ of Habeas Corpus (post-conviction). Remittitur issued on May 9, 2016.

14 9. On October 28, 2015, Petitioner filed a Motion for Records/Court Case  
15 Documents. A hearing was held on November 19, 2015 and the motion was granted in  
16 part. The district court filed its order on December 3, 2015.

17 10. On January 21, 2016, Petitioner filed a Motion for Records/Court Case  
18 Documents. On February 17, 2016, the State filed its response. A hearing was held on  
19 February 23, 2016 and the motion was denied. The district court filed its order on March  
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21 11. On March 8, 2016, Petitioner filed a Motion for Withdrawal of Attorney  
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on June 28, 2018 and the court ordered a show cause hearing. A show cause hearing was  
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1 counsel to appear. On September 11, 2018, counsel appeared and confirmed the file was  
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4 Contempt of Court and Monetary Sanctions. A hearing was held on November 6, 2018  
5 and the court ordered the motion taken off calendar because the file was turned over. On  
6 November 26, 2018, Petitioner filed a Notice of Appeal. On December 17, 2018, the  
7 Supreme Court of Nevada dismissed the appeal. Remittitur issued on January 11, 2019.

8 17. On February 25, 2019, Petitioner filed the instant (second) Petition for  
9 Writ of Habeas Corpus (post-conviction).

10 18. Absent good cause for the failure to present the claim in a prior petition or  
11 for presenting the claim again, and actual prejudice, the petition must be dismissed.

### 12 CONCLUSIONS OF LAW

13 1. NRS 34.726(1), governing "Limitations on time to file..." requires that a  
14 petition for a writ of habeas corpus "must be filed within 1 year after entry of the  
15 judgment of conviction or, if an appeal has been taken from the judgment, within 1 year  
16 after the Supreme Court issues its remittitur." Late-filing of a petition may be excused  
17 from procedural default if the Petitioner can establish good cause for delay in bringing  
18 the claim. *Id.* Good cause for late-filing consists of a showing that: (1) "delay is not the  
19 fault of the petitioner"; and (2) "dismissal of the petition as untimely will unduly  
20 prejudice the petitioner." *Id.* at (1)(a)-(b).

21 2. To avoid dismissal, the petitioner must plead and prove specific facts that  
22 demonstrate good cause for his failure to present claims before and actual prejudice. *See*  
23 *State v. District Court*, 121 Nev. 225, 232, 112 P.3d 1070, 1074 (2005).

24 3. In order to demonstrate good cause, a petitioner must show that an  
25 impediment external to the defense prevented him or her from complying with the state  
26 procedural default rules. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

27 4. The court may excuse the failure to show good cause where the prejudice  
28 from a failure to consider the claim amounts to a fundamental miscarriage of justice.  
*Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

1 An impediment external to the defense may be demonstrated by a showing  
"that the factual or legal basis for a claim was not reasonably available to counsel, or that  
'some interference by officials,' made compliance impracticable." *Hathaway v. State*,  
119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting *Murray v. Carrier*, 477 U.S. 478,  
488 (1986)).

6. NRS 34.810(2), governing "Additional reasons for dismissal of petition,"  
requires that "[a] second or successive petition must be dismissed if the judge or justice

1 determines that it fails to allege new or different grounds for relief and that the prior  
2 determination was on the merits or, if new and different grounds are alleged, the judge or  
3 justice finds that the failure of the petitioner to assert those grounds in a prior petition  
constituted an abuse of the writ.”

4 7. The petitioner has the burden of pleading and proving specific facts that  
5 demonstrate both good cause for failing to present a claim or for presenting a claim again  
6 and actual prejudice. NRS 34.810(3). *See also State v. Haberstroh*, 119 Nev. 173, 181, 69  
P.3d 676, 681 (2003).

7 8. A court must dismiss a habeas petition if it presents claims that either were  
8 presented in an earlier proceeding or could have been presented in an earlier proceeding,  
9 unless the court finds both cause for failing to present the claims earlier or for raising  
10 them again and actual prejudice to the petitioner. *Evans v. State*, 117 Nev. 609, 621-622,  
28 P.3d 498, 507 (2001).

11 9. Unlike initial petitions which certainly require a careful review of the  
12 record, successive petitions may be dismissed based solely on the face of the petition.  
*Ford v. Warden*, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

13 10. Application of the statutory procedural default rules to post-conviction  
14 habeas petitions is mandatory. *State v. District Court (Riker)*, 121 Nev. 225, 231, 112  
P.3d 1070, 1074 (2005).

15 11. Meritless, successive and untimely petitions clog the court system and  
16 undermine the finality of convictions. *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d 944,  
950 (1994).

17 12. Petitioner had one year from December 30, 2013, the date the Judgement  
18 of Conviction was filed, to file a Petition for Writ of Habeas Corpus (post-conviction).  
19 The instant Petition was filed over five years after the Judgement of Conviction was filed.  
20 The instant petition is untimely. Absent good cause and prejudice, the instant petition is  
time barred and must be dismissed.

21 13. The instant petition is a successive petition, and therefore is also subject  
22 to dismissal pursuant to NRS 34.810(1)(b)(2); NRS 34.810(2). The petition must be  
23 dismissed if petitioner failed to allege new or different grounds for relief and the prior  
24 determination was on the merits or, if new and different grounds are raised in the petition  
25 and the court determines the failure of the petitioner to assert those grounds in a prior  
petition constituted an abuse of the writ. Absent good cause for the failure to present the  
claim in a prior petition or for presenting the claim again, and actual prejudice, the  
petition must be dismissed.



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**CERTIFICATE OF MAILING**

I hereby certify that on the date filed, I placed a copy of the Order for Petition for Writ of Habeas Corpus (Post-Conviction) in the U.S. Mail, postage prepaid to:

Frank Herring #1006445  
Warm Springs Correctional Center  
P.O. Box 7007  
Carson City, NV 89702

Steven B. Wolfson  
Clark County District Attorney  
200 Lewis Avenue  
Las Vegas, Nevada 89155

Aaron Ford  
Nevada Attorney General  
555 E. Washington, Suite 3900  
Las Vegas, NV 89101-1068

  
Pamela Rocha  
Judicial Executive Assistant  
Department XII  
Eighth Judicial District Court

A-19-790102-W  
Frank Herring  
vs.  
The State of Nevada

A-19-1002-W

Electronically Filed  
5/10/2019 10:44 AM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

State of Nevada  
PLAINTIFF

case no: A-18-790102-W

VS.

NOTICE OF APPEAL

Frank Herring  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DEFENDANT

Notice is hereby given that Frank Herring, In Pro Se, proper person  
In the above named case, hereby appeals to the United States Court of Appeals for the Ninth  
Circuit from a judgment in writ of Habeas Corpus (Post Conviction).  
On 11<sup>th</sup> day of April, 2019, which was received by Frank Herring  
On 15<sup>th</sup> day of April, 2019.

Frank Herring respectfully requests on this 6<sup>th</sup> day of May  
2019, that this Honorable Court enter this Notice of Appeal.

*[Signature]*  
RESPECTFULLY  
Warm Springs Correctional Center  
P.O. Box 7007  
Carson City, Nevada 89702

RECEIVED  
MAY 10 2019  
CLERK OF THE COURT

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

**DESIGNATION OF TRANSCRIPTS  
TO BE USED IN RECORD ON APPEAL**

District Court Case Number: C-13-291159-1

Court of Appeals Case Number: A-18-790102-W

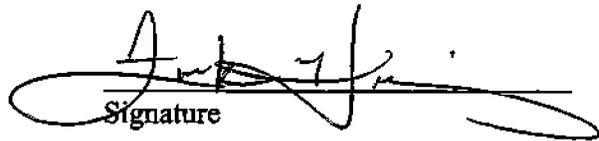
Case Caption: Motion For Writ of Habeas Corpus.

\_\_\_\_\_ Transcripts are NOT required for this appeal.

The undersigned hereby designates the following transcripts to be used in the record on appeal for the above listed case and appeal:

Date of Hearing	Docket Number	Proceeding	Recorder/ Reporter	Transcript Filed Yes/No
5/21/13	13F08177X	Criminal Complaint		
7/11/13	13F08177X	Transcript Preliminary <sup>Hearing</sup>		<del>Yes</del>
12/10/14	C-13-291159-1	Notice of Motion to Withdrawal Plea		
5/26/15	C-13-291159-1	Notice of Motion; Request for Records/Court case Documents		
12/3/15	C-13-291159-1	order granted in part and being in part defend Records/Court case doc.		
3/8/16	C-13-291159-1	Motion for withdrawal of Attorney of Record for Records/Court case Documents		
1/23/18	C-13-291159-1	Pro Per Motion to Compel		
10/31/17	C-13-291159-1	Motion to withdraw counsel (Order granted)		

Date: May 6, 2019

  
Signature

Frank Hearing  
Print Name

Frank Hearing  
Appellant/Appellee

Mr. Frank Hearing # 1006445  
W.S.C.C  
P.O. Box 7007  
Carson City, NV 89702

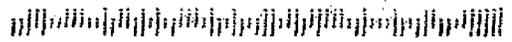
REND NV 895

OUTGOING MAIL  
MAY 07 2019  
NEVADA DEPARTMENT OF CORRECTIONS  
WARM SPRINGS CORRECTIONAL CENTER



Steven D. Grierson  
200 Lewis Avenue 3rd floor  
Las Vegas, NV 89155-1160

0093810188





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**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF CLARK**

7

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10 FRANK HEARRING,

11 Plaintiff(s),

12 vs.

13 STATE OF NEVADA,

14 Defendant(s),

Case No: A-19-790102-W

Dept No: XII

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**CASE APPEAL STATEMENT**

18

1. Appellant(s): Frank Hearing

19

2. Judge: Michelle Leavitt

20

3. Appellant(s): Frank Hearing

21

Counsel:

22

Frank Hearing #1006445

23

P.O. Box 7007

24

Carson City, NV 89702

25

4. Respondent (s): State of Nevada

26

Counsel:

27

Steven B. Wolfson, District Attorney

28

200 Lewis Ave.

Las Vegas, NV 89155-2212

Aaron D. Ford, Attorney General

555 E. Washington Ave., Ste. 3900

Las Vegas, NV 89101-1068

- 1 5. Appellant(s)'s Attorney Licensed in Nevada: N/A  
2 Permission Granted: N/A  
3 Respondent(s)'s Attorney Licensed in Nevada: Yes  
4 Permission Granted: N/A  
5 6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No  
6 7. Appellant Represented by Appointed Counsel On Appeal: N/A  
7 8. Appellant Granted Leave to Proceed in Forma Pauperis\*\*: N/A  
8 \*\*Expires 1 year from date filed  
9 Appellant Filed Application to Proceed in Forma Pauperis: No  
10 Date Application(s) filed: N/A  
11 9. Date Commenced in District Court: February 25, 2019  
12 10. Brief Description of the Nature of the Action: Civil Writ  
13 Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus  
14 11. Previous Appeal: No  
15 Supreme Court Docket Number(s): N/A  
16 12. Child Custody or Visitation: N/A  
17 13. Possibility of Settlement: Unknown

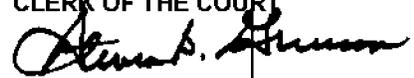
18 Dated This 14 day of May 2019.

19 Steven D. Grierson, Clerk of the Court

20 /s/ Heather Ungermann

21 Heather Ungermann, Deputy Clerk  
22 200 Lewis Ave  
23 PO Box 551601  
24 Las Vegas, Nevada 89155-1601  
25 (702) 671-0512

26 cc: Frank Hearing  
27  
28



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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\*\*\*\*\*

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FRANK HEARRING, PLAINTIFF(S)  
VS.

CASE NO.: A-19-790102-W

7

STATE OF NEVADA, DEFENDANT(S)

DEPARTMENT 12

8

**CIVIL ORDER TO STATISTICALLY CLOSE CASE**

9

Upon review of this matter and good cause appearing,

10

IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to  
statistically close this case for the following reason:

11

**DISPOSITIONS:**

12

Default Judgment

13

Judgment on Arbitration

14

Stipulated Judgment

15

Summary Judgment

16

Involuntary Dismissal

17

Motion to Dismiss by Defendant(s)

18

Stipulated Dismissal

19

Voluntary Dismissal

20

Transferred (before trial)

21

Non-Jury – Disposed After Trial Starts

22

Non-Jury – Judgment Reached

23

Jury – Disposed After Trial Starts

24

Jury – Verdict Reached

25

Other Manner of Disposition

26

DATED this 6 day of June, 2019.

27



MICHELLE LEAVITT  
DISTRICT COURT JUDGE

**MICHELLE LEAVITT**  
DISTRICT JUDGE

DEPARTMENT TWELVE  
LAS VEGAS, NEVADA 89155



1 CSERV

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5 **DISTRICT COURT**  
6 **CLARK COUNTY, NEVADA**

7  
8 FRANK HEARRING,

9 Plaintiff(s),

10 vs.

11 STATE OF NEVADA,

12 Defendant(s).

Case No: A-19-790102-W

Dept No: XII

13  
14  
15 **CERTIFICATE OF RE-SERVICE**

16 I HEREBY CONFIRM that the Notice of Entry of Findings of Fact Conclusions of Law  
17 and Order originally filed on April 15, 2019 has been served on the Office of the Clark County  
18 District Attorney and the Office of the Attorney General via electronic service.  
19

20 All other respective party(ies) and their counsel(s), if any, have already received copies  
21 via U.S. Mail when initially filed.  
22

23 Steven D. Grierson, Clerk of the Court

24 s/Debra Donaldson

25 Debra Donaldson, Deputy Clerk  
26  
27  
28

## Ungermann, Heather

---

**From:** Donaldson, Debra  
**Sent:** Wednesday, July 24, 2019 10:16 AM  
**To:** 'motions@clarkcountyda.com'; 'wiznetfilings@ag.nv.gov'; Ungermann, Heather  
**Subject:** FW: Filing Accepted for Case: A-19-790102-W; Frank Hearing, Plaintiff(s)vs.State of Nevada, Defendant(s); Envelope Number: 4146782

**From:** [efilingmail@tylerhost.net](mailto:efilingmail@tylerhost.net) [mailto:[efilingmail@tylerhost.net](mailto:efilingmail@tylerhost.net)]  
**Sent:** Monday, April 15, 2019 3:20 PM  
**To:** Donaldson, Debra  
**Subject:** Filing Accepted for Case: A-19-790102-W; Frank Hearing, Plaintiff(s)vs.State of Nevada, Defendant(s); Envelope Number: 4146782



## Filing Accepted

Envelope Number: 4146782  
Case Number: A-19-790102-W  
Case Style: Frank Hearing, Plaintiff(s)vs.State of Nevada, Defendant(s)

The filing below was accepted through the eFiling system. You may access the file stamped copy of the document filed by clicking on the below link.

### Filing Details

<b>Court</b>	Clark District Criminal/Civil
<b>Case Number</b>	A-19-790102-W
<b>Case Style</b>	Frank Hearing, Plaintiff(s)vs.State of Nevada, Defendant(s)
<b>Date/Time Submitted</b>	4/15/2019 3:17 PM PST
<b>Date/Time Accepted</b>	4/15/2019 3:19 PM PST
<b>Accepted Comments</b>	Auto Review Accepted
<b>Filing Type</b>	Notice of Entry - NEO (CIV)
<b>Filing Description</b>	Notice of Entry of Findings of Fact, Conclusions of Law and Order
<b>Activity Requested</b>	EFile
<b>Filed By</b>	Debra Donaldson
<b>Filing Attorney</b>	

### Document Details

<b>Lead Document</b>	A790102.041519_neo_dd.pdf
<b>Lead Document Page</b>	7

**Count**

**File Stamped Copy**

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**Please Note:** If you have not already done so, be sure to add yourself as a service contact on this case in order to receive eService.

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(800) 297-5377

Please do not reply to this email. It was automatically generated.

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

FRANK HEARRING, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 78791**  
District Court Case No. A790102

**FILED**

**JAN 22 2020**

**CLERK'S CERTIFICATE**

STATE OF NEVADA, ss.

*Elizabeth A. Brown*  
CLERK OF COURT

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 20th day of December, 2019.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this January 14, 2020.

Elizabeth A. Brown, Supreme Court Clerk

By: Monique Mercier  
Administrative Assistant

A-19-790102-W  
CCJA  
NV Supreme Court Clerks Certificate/Judgn  
4889129



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

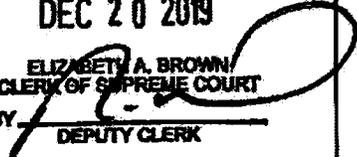
FRANK HEARRING, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78791-COA

**FILED**

DEC 20 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT

BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Frank Hearing, Jr., appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 25, 2019. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Hearing, who did not appeal his conviction, filed his petition more than five years after entry of the judgment of conviction on December 30, 2013. Hearing's petition was therefore untimely filed. See NRS 34.726(1). Because he raised claims new and different from those raised in his prior petition, Hearing's petition was also an abuse of the writ.<sup>1</sup> See NRS 34.810(2). Hearing's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

"In order to demonstrate good cause, 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

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<sup>1</sup>See *Hearing v. State*, Docket No. 68968 (Order of Affirmance, April 14, 2016).

Nev. 248, 252, 71 P.3d 503, 506 (2003). And the good cause claim must explain the entire delay. *See id.* (a good cause claim must itself not be procedurally barred). To warrant an evidentiary hearing on his good cause claims, Herring's claims could not be bare but had to allege specific facts that, if true and not belied by the record, would have entitled him to relief. *See Berry v. State*, 131 Nev. 957, 967, 363 P.3d 1148, 1155 (2015).

Herring first claimed he had good cause because the district court should have construed his motion to withdraw his guilty plea, filed in 2014, as a postconviction petition for a writ of habeas corpus. Herring did not appeal the district court's denial of his motion, and he has not explained the four-year delay between the denial of the motion and the filing of the instant petition.

Herring next claimed he had been waiting on his documents and records and he did not learn of the alleged due process violations until after his conviction was affirmed. Herring's bare claims did not identify what documents or records he needed or why they were necessary to his petition. They also failed to specify when he learned of the alleged violations or how an impediment external to the defense prevented his learning of them.

To the extent Herring claimed he had good cause to reraise claims because they are relevant to these proceedings, he failed to explain why mere relevance should allow him to overcome the procedural bars. And to the extent Herring claimed his actual innocence should overcome a procedural bar, he did not demonstrate actual innocence because he failed to show that "in light of all the evidence, it is more likely than not that no reasonable juror would have convicted him." *Bousley v. United States*, 523 U.S. 614, 623 (1998) (internal quotation marks omitted); *see also Mazzan v.*

*Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). For the foregoing reasons, we conclude the district court did not err by denying Herring's petition as procedurally barred.

Finally, the district court denied Herring's motion to appoint postconviction counsel. The issues Herring presented were not difficult, he appeared able to comprehend the proceedings, and it does not appear counsel was necessary to proceed with any discovery. We therefore conclude the district court did not abuse its discretion by denying Herring's motion for the appointment of postconviction counsel. See NRS 34.750(1); see generally *Renteria-Novoa v. State*, 133 Nev. 75, 391 P.3d 760 (2017). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

cc: Hon. Michelle Leavitt, District Judge  
Frank Herring, Jr.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

<sup>2</sup>The Honorable Jerome T. Tao did not participate in the decision in this matter.

**CERTIFIED COPY**  
This document is a full, true and correct copy of  
the original on file and of record in my office.  
DATE: January 14, 2020  
Supreme Court Clerk, State of Nevada  
By: [Signature] Deputy

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

FRANK HEARRING, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 78791**  
District Court Case No. A790102

**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: January 14, 2020

Elizabeth A. Brown, Clerk of Court

By: Monique Mercier  
Administrative Assistant

cc (without enclosures):

Hon. Michelle Leavitt, District Judge  
Frank Hearing, Jr.  
Clark County District Attorney \ Alexander G. Chen, Chief Deputy District  
Attorney

**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 JAN 22 2020.

**HEATHER UNGERMANN**

**Deputy** \_\_\_\_\_  
District Court Clerk

**RECEIVED  
APPEALS**

**JAN 21 2020**

**CLERK OF THE COURT**

1 Frank Hearing  
2 #1006445

**FILED**  
**DEC 02 2021**  
*Ann K. Johnson*  
**CLERK OF COURT**

3 Northern Nevada Correctional Center  
4 Post Office Box 700  
5 Carson City, NV 89702

6 Petitioner, In Proper Person

7 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
8  
9 IN AND FOR THE COUNTY OF Clark

10 Frank Hearing  
11 Petitioner,  
12 vs.  
13 State of Nevada  
14 Respondent.

Case No.: A-19-790102-W  
Dept. 12  
Dept. No.: Evidentiary Hearing Req  
**PETITION FOR WRIT OF HABEAS  
CORPUS (POST-CONVICTION)**  
(Non Death Penalty)

15 **INSTRUCTIONS:**

- 16 1. This petition must be legibly handwritten or typewritten, signed by the petitioner and  
17 verified.
- 18 2. Additional pages are not permitted except where noted or with respect to the facts which  
19 you rely upon to support your grounds for relief. No citation of authorities need be furnished.  
20 If briefs or arguments are submitted, they should be submitted in the form of a separate  
21 memorandum.
- 22 3. If you want an attorney appointed, you must complete the Affidavit in Support of Motion  
23 for Leave to Proceed In Forma Pauperis. You must have an authorized officer at the prison  
24 complete the certificate as to the amount of money and securities on deposit to your credit in  
25 any account in the institution.
- 26 4. You must name as Respondent the person by whom you are confined or restrained. If you  
27 Are in a specific institution of the department of corrections, name the warden or head of the  
28

RECEIVED  
NOV 22 2021  
CLERK OF THE COURT

1 23. (d) GROUND 10 || Petitioner Alleges that trial Counsel Failed  
2 to Present Mitigating Evidence during the sentencing hearing  
3 which would have rendered a more lenient sentence from  
4 trial Judge and to show Good Character of Petitioner.

5 23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The  
6 Petitioner Alleges that trial counsel Failed to present Mitigating  
7 Evidence during sentencing which he had advised Counsel  
8 to do and Trial Counsel Refused to present Mitigating Test-  
9 imony from the Petitioner's Church members, School Mentors,  
10 youth Counselor, Parents (Mother & Father) Fiancée, child hood  
11 friends, and Petitioner's Supervisor's as well as Employer so  
12 that Trial Judge can show Leniency towards Petitioner's  
13 sentencing because State's Attorney presented Evidence to  
14 show Petitioner's Bad Character which rendered unfair-  
15 ness in violation of the Petitioner's Constitutional Rights to  
16 the State & Federal Constitution in violation of the 6th & 14th  
17 Amendment to Effectiveness of Counsel.

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1 Grov 11 || Petitioner Alleges that trial counsel ren-  
2 dered Ineffective Assistance of counsel, when counsel  
3 advised him to accept the revised plea, despite his pro-  
4 testations of innocence on advice of an attorney who was  
5 improperly motivated ~~due to~~ Petitioners inability to pay retained attorney.

6 Supporting FACTS (Tell your story briefly without citing cases or law.):  
7 The defense Attorney purposely advised petitioner to  
8 accept plea negotiations based on petitioners inability  
9 to pay retained fees(s) of 10,000. Petitioner alleges  
10 that defense counsel was improperly motivated. Defense  
11 Counsel induced guilty plea(s) based solely defend-  
12 ants inability to pay counsels fee, because of counsels  
13 coercion and this deception forced petitioner to plead  
14 guilty which is a violation of petitioners Sixth Amend-  
15 ment and fourteenth Amendment right(s).

1 (b) Ground 12 //

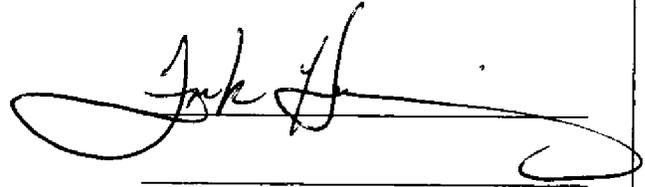
2 Petitioner Alleges trial Counsel rendered Ineffective Ass-  
3 istance of Counsel when he failed to use private invest-  
4 igator of office to conduct a thorough investigation,  
5 in violation of Petitioners 6<sup>th</sup> and 14<sup>th</sup> Amendment rights.

6 Supporting Facts:

7 Petitioner alleges trial counsel failed to use law office's Pri-  
8 ivate investigator to perform investigative duties; such as  
9 locate friends and family of petitioner who would have  
10 made statements on behalf of petitioner's alibi to the  
11 Crime of Murder with the use of A Deadly weapon and  
12 exonerate him from doing such Criminal Activity. Peti-  
13 tioner alleges trial Counsel was ineffective and notwit-  
14 hin range of competence demanded of attorney's in  
15 criminal cases by failing to perform duties imposed by  
16 ethical principles as well as Constitutional when Coun-  
17 sel failed to seek out exculpatory evidence, which  
18 denied petitioner a Constitutional right to a fair trial  
19 proceedings during a Serious criminal proceedings for-  
20 ther violating petitioners due process rights in viola-  
21 tion of petitioners 6<sup>th</sup> and 14<sup>th</sup> Amendment rights),  
22 this failure of the use of private investigator that sea-  
23 soned, competent trial Counsel denied petitioner a funda-  
24 mental Constitutional right.

1                    WHEREFORE, petitioner prays that the court grant petitioner  
2 Relief to which he may be entitled in this proceeding.

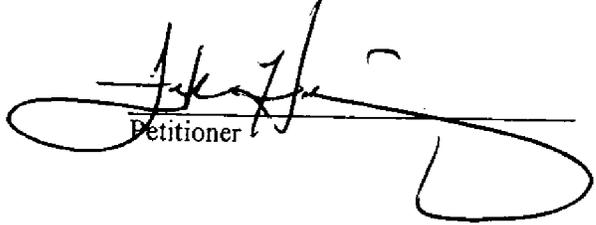
3                    EXECUTED at N.N.C.C, Carson City, NV 89702 Nevada on the 11<sup>th</sup>  
4 Day of November, 20 21.

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VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

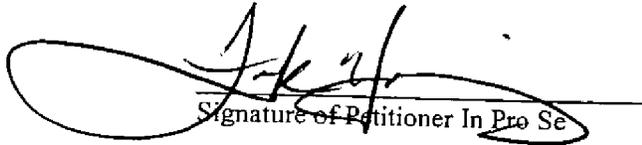
  
Petitioner

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS to the below addresses on this 11<sup>th</sup> day of November 2021, by placing the same into the hands or prison law library staff for posting in the U.S. Mail, pursuant to N.R.C.P. 5:

Steven B. Wolfson  
200 Lewis Avenue 3rd Floor  
Las Vegas, NV

Las Vegas, Nevada 89 155

  
Signature of Petitioner In Pro Se

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document For A (Motion)  
Petition For Writ of Habeas Corpus (Post Conviction)  
Relief  
(Title of Document)

filed in case number: C-13-291159-1

Document does not contain the social security number of any person

-OR-

Document contains the social security number of a person as required by:

A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific state or federal law)

-or-

For the administration of a public program

-or-

For an application for a federal or state grant

-or-

Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS125B.055)

Date: Nov 11, 2021

[Signature]  
(Signature)

Frank Hearing  
(Print Name)

[Signature]  
(Attorney for)

Frank Hearnings #1006445

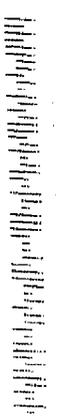
Box 7000

San City, NV 89702

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Steven D. Emerson  
Clerk of the Court  
200 Lewis Avenue, 3rd Floor  
Las Vegas, NV 89155

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Mr Frank Hearnings # 10016445  
N.N.C.C

P.O. Box 7000

Carson City, NV 89702

Steven D. Emerson  
Clerk of the Court  
200 Lewis Avenue, 3rd Floor  
Las Vegas, NV 89155

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Clark of the Court<sup>3rd</sup>

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Las Vegas, NV 89155

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1 institution. If you are not in a specific institution of the department but within its custody, name the  
2 director of the department of corrections.

3 (5) You must include all grounds or claims for relief which you may have regarding your  
4 conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing  
5 future petitions challenging your conviction and sentence.

6 (6) You must allege specific facts supporting the claims in the petition you file seeking  
7 relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions  
8 may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of  
9 counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you  
10 claim your counsel was ineffective.

11 (7) When the petition is fully completed, the original and copy must be filed with the  
12 clerk of the state district court for the county in which you were convicted. One copy must be mailed  
13 to the respondent, one copy to the attorney general's office, and one copy to the district attorney of  
14 the county in which you were convicted or to the original prosecutor if you are challenging your  
15 original conviction or sentence. Copies must conform in all particulars to the original submitted for  
16 filing.

17 PETITION

- 18 1. Name of institution and county in which you are presently imprisoned or where and  
19 how you are presently restrained of you liberty: Northern Nevada Correctional Center,  
Carson County, Restrained by Perry Russell
- 20 2. Name and location of court which entered the judgment of conviction under attack:  
21 8th Judicial District Court of Clark County, Nevada
- 22 3. Date of judgment of conviction: Dec 10, 2013
- 23 4. Case Number: C-13-291159-1
- 24 5. (a) Length of sentence: 10 yrs to life w/ consecutive 8 to  
25 20 yrs.
- 26 \_\_\_\_\_  
27 \_\_\_\_\_  
28 \_\_\_\_\_

1 6. Are you presently serving a sentence for a conviction other than the conviction under  
2 attack in this motion? Yes \_\_\_\_\_ No

3 If "yes", list crime, case number and sentence being served at this time:  
4 \_\_\_\_\_

5 7. Nature of offense involved in conviction being challenged: Murder (second  
6 degree) with the use of a Deadly Weapon, (Category A) Felony  
7 \_\_\_\_\_

8 8. What was your plea? (check one)

9 (a) Not guilty \_\_\_\_\_ (c) Guilty but mentally ill \_\_\_\_\_

10 (b) Guilty  (d) Nolo contendere \_\_\_\_\_

11 9. If you entered a plea of guilty to one count of an indictment or information, and a  
12 plea of not guilty to another count of an indictment of information, or if a plea of guilty was  
13 negotiated, give details: The Plea of guilty was unknowingly and unintell-  
14 igently made as well as involuntarily Entered due to Defense  
15 Attorneys Ineffectiveness (Assistance.)  
16 \_\_\_\_\_

17 10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

18 (a) Jury \_\_\_\_\_

19 (b) Judge without a jury \_\_\_\_\_

20 11. Did you testify at the trial? Yes \_\_\_\_\_ No \_\_\_\_\_

21 12. Did you appeal from the judgment of conviction?

22 Yes \_\_\_\_\_ No

23 13. If you did appeal, answer the following:

24 (a) Name of court: \_\_\_\_\_

25 (b) Case number or citation: \_\_\_\_\_

26 (c) Result: \_\_\_\_\_

27 (d) Date of result: \_\_\_\_\_

28 (Attach copy of order or decision, if available)

14. If you did not appeal, explain briefly why you did not:

The Reason(s) was because I Negotiate A Plea Agree-  
ment with States Attorney by the Coersion of Incompet-  
ent trial Counsel.

15. Other than a direct appeal from the judgment of conviction and sentence, have you  
previously filed any petitions, applications or motions with respect to this judgment in any court,  
state or federal? Yes  No

16. If you answer to No. 15 was "yes," give the following information:

(a) (1) Name of court: 8th Judicial Distict Court

(2) Name of proceeding: \_\_\_\_\_

(3) Grounds raised: Motion to withdraw guilty plea, which was  
denied, Ineffective Assist, Crime Scene Analysis Experts and Detectives fail-  
ure to Conduct thorough Investigative duties.

(4) Did you receive an evidentiary hearing on your petition, application  
or motion? Yes  No

(5) Result: \_\_\_\_\_

(6) Date of result: \_\_\_\_\_

(7) If known, citations of any written opinion or date of orders entered  
pursuant to such result:

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: 8th - Judicial Dist Court

(2) Nature of proceeding: \_\_\_\_\_

(3) Grounds raised: Crime Scene Analysis Experts Failure to Con-  
duct Investigative duties.

(4) Did you receive an evidentiary hearing on your petition, application  
or motion? Yes  No

(5) Result: \_\_\_\_\_

(6) Date of result: \_\_\_\_\_

1 (7) If known, citations of any written opinion or date of orders entered  
2 pursuant to such result: \_\_\_\_\_

3 (c) As to any third or subsequent additional applications or motions, give the  
4 same information as above, list them on a separate sheet and attach.

5 (d) Did you appeal to the highest state or federal court having jurisdiction, the  
6 result or action taken on any petition, application or motion?

7 (1) First petition, application or motion?

8 Yes \_\_\_\_\_ No ✓

9 (2) Second petition, application or motion?

10 Yes \_\_\_\_\_ No ✓

11 (3) Third or subsequent petitions, applications or motions?

12 Yes \_\_\_\_\_ No \_\_\_\_\_

13 Citation or date of decision.

14 (e) If you did not appeal from the adverse action on any petition, application or  
15 motion, explain briefly why you did not. (You must relate specific facts in response to this question.  
16 Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your  
17 response may not exceed five handwritten or typewritten pages in length)

18 \_\_\_\_\_  
19 \_\_\_\_\_  
20 \_\_\_\_\_  
21 17. Has any ground being raised in this petition been previously presented to this or any  
22 other court by way of petition for habeas corpus, motion, application or any other post-conviction  
23 proceeding? If so, identify:

24 (a) Which of the grounds is the same: Ineffective Assist, Crime Scene  
25 Analyst failure to investigate,  
26 \_\_\_\_\_

27  
28 (b) The proceedings in which these grounds were raised:

1 Ineffective Assistance of Counsel, In motion to withdraw  
2 draw guilty plea

3 (c) Briefly explain why you are again raising these grounds. (You must relate  
4 specific facts in response to this question. Your response may be included on paper which is 8 1/2 by  
5 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten  
6 pages in length.)

7 Because Negotiations of Plea Agreement was Coerced by  
8 Defense Attorney when I wanted to go to Jury trial.

9 18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional  
10 pages you have attached, were not previously presented in any other court, state or federal, list  
11 briefly what grounds were not so presented, and give your reasons for not presenting them. (You  
12 must relate specific facts in response to this question. Your response may be included on paper  
13 which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or  
14 typewritten pages in length.)

15 See Attached: (Subject Matter Jurisdiction, vio-  
16 lation of Equal Protection, and Due Process.)

17 19. Are you filing this petition more than 1 year following the filing of the judgment of  
18 conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay.  
19 (You must relate specific facts in response to this question. Your response may be included on paper  
20 which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or  
21 typewritten pages in length.)

22 Reasons for delays after 1yr deadline was  
because a Motion to withdraw Guilty Plea was late filed.

23 20. Do you have any petition or appeal now pending in any court, either state or federal,  
24 as to the judgment under attack? Yes \_\_\_\_\_ No X

25 If yes, state what court and the case number:

26 21. Give the name of each attorney who represented you in the proceeding resulting in  
27 your conviction and on direct appeal: Defense Attorney: Carl Arnold

①

Continuation, (page #18)

(State Habeas Corpus Relief)

i.) Trial court proceeded for want of Subject Matter Jurisdiction in prosecution of Non-Existent Offense, (See ~~000~~ Below)

A.) Information charges "Murder with the Use of a Deadly Weapon." No such offense exists within The Nev Statutes, Nev Revised Statutes, nor in Common Law. "Use of a Deadly Weapon" is not an offense, but rather is a predicate fact which if proven beyond a reasonable doubt, permits the enhancement of the sentence of "Murder." The information should have charged (Only Murder.) As the instant offense and in fact the text alleged that the offense was committed with the use of a deadly weapon, which would then allow an enhanced penalty.

Trial court lacked jurisdiction subject Matter because the charging document failed to state a legitimate offense. Information charges "Murder with the Use of a Deadly Weapon," No such offense is defined by Statute nor by Common Law.

which constitutes a violation of Equal Protection, And Due Process.

## Subject Matter Jurisdiction

Holding subject-matter jurisdiction (Never) forfeited or waived, defects require correction regardless of whether errors raised in District Court. "Subject-Matter Jurisdiction can 'Never' be waived or forfeited. The objections may be resurrected at Anytime, or point in the litigation, and a valid objection may lead a Court midway through briefing to dismiss a Complaint in it's entirety.

The use of a firearm or other deadly weapons in the commission of a Crime, (NRS 193.193) is Not a Separate — Criminal offense, rather it's an additional penalty. This section does not create any separate offense but provides an additional penalty for the primary offense, whose imposition is contingent upon the finding of the prescribed fact. (NRS 193.165) (2), as it reads at the time of defendant Hearing's alleged crime in (2013). The Nevada Supreme Courts, observed that the additional penalty imposed for "Use of A Deadly Weapon" is Not an offense at all, (NRS 193.165) clearly evidence exist where legislative intent to impose separate penalties for a primary offense and in this case, the "Use of a Deadly Weapon" in the Commission of the offense, this section does not create "Any" Separate offense, but rather provides an additional penalty for the primary ... (Emp, added) indicating that "Use of a Deadly weapon is (Not) the offense, but rather is a penalty. Defendant Hearing alleges that since "Use of a Deadly Weapon" was made an essential element of the Murder charge, imposition of two separate Sentences for that use violates the rule that when the same evidence is required <sup>80</sup> then there is but one offense.

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2  
3 22. Do you have any future sentences to serve after you complete the sentence imposed  
4 by the judgment under attack:

5 Yes \_\_\_\_\_ No

6 23. State concisely every ground on which you claim that you are being held unlawfully.  
7 Summarize briefly the facts supporting each ground. If necessary you may attach pages stating  
8 additional grounds and facts supporting same.

9 (a) Ground One:

10  
11 SEE  
12  
13

14 Supporting Facts:

15  
16 Attached  
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18

19  
20 Ground  
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23 ONE  
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1 (b) Ground 111

2 Petitioner Alleges crime scene Analyst Experts  
3 And Detectives Failed to Conduct a thorough Investiga-  
4 tion of Crime Scene, a violation of petitioners 6<sup>th</sup>  
5 and 14<sup>th</sup> Amendment rights.

6 Supporting Facts:

7 Petitioner alleges crime scene analyst experts and Detectives of  
8 the Metropolitan Police Department failed to thoroughly and properly  
9 perform investigative duties, forensic testing such as locate, test and  
10 process mitigating evidence, which if done of course traditionally  
11 exculpatory evidence such as that which could show that some-  
12 one else committed the charged crime and exonerate petitioner  
13 from doing such criminal activity. This fact creates a reasonable  
14 probability sufficient to undermine confidence in the outcome  
15 of these proceedings, this failure of crime scene analyst exp-  
16 erts and detectives to collect and/or test or thoroughly process cri-  
17 mescene evidence denied petitioner a constitutional right to  
18 an appropriate investigation, which were not followed up on  
19 and/or completed by law enforcement which lead to petitioners  
20 plea negotiations because of detectives and crime scene analy-  
21 sist experts bias which otherwise impeach their credibility in  
22 violation of petitioners 6<sup>th</sup> and 14<sup>th</sup> Amendment rights during  
23 a serious criminal proceedings.

1 (c) Ground 2||

2 Petitioner Alleges trial Court erred when trial Court did not  
3 construe petitioners Motion to Withdraw Guilty Plea  
4 as petitioners post-conviction writ for Habeas Corpus  
5 in violation of petitioners 6<sup>th</sup> and 14<sup>th</sup> Amendment rights.

6 Supporting Facts:

7 Petitioner alleges trial Court failed to construe petitioners Motion  
8 to Withdraw guilty plea as post-conviction writ. Petitioner also  
9 states that on December 10, 2014 petitioners Motion to Withdraw  
10 Guilty Plea was filed at least 20 days prior to the 1 year dead-  
11 line which does not time bar petitioner from seeking post-  
12 conviction relief. Petitioner alleges this bias to comply would  
13 constitute prejudice and a miscarriage of justice because  
14 petitioner filed Motion to Withdraw guilty plea in a timely  
15 manner and within the 1yr timeline and should  
16 be heard and/or decided on its merits, failure to do  
17 so would violate petitioners due process rights to  
18 the 6<sup>th</sup> and 14<sup>th</sup> Amendment(s).

1 (d) Ground 3||

2 Petitioner Alleges seasoned trial Counsel intentionally withheld  
3 knowledge of material information from petitioner which  
4 denied petitioners rights to 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendments  
5 to effective assistance of Counsel.

6 Supporting Facts:

7 Petitioner alleges seasoned trial Counsel withheld favorable evidence  
8 from petitioner, retained trial Counsel withheld knowledge of ma-  
9 terial evidence from petitioner until petitioner's request for  
10 records/court case documents was received, after Coercing petitioner  
11 into believing pleading guilty would be in petitioners best inter-  
12 est. Seasoned retained Counsel withheld exculpatory material evidence  
13 from petitioner that could have exonerated petitioner from the  
14 crimes of Murder w/use of a deadly weapon, petitioner did not  
15 have knowledge of this due process violation until after guilty  
16 plea, filing Motion for Court + Case records and after petitioners  
17 conviction had been affirmed. Seasoned retained trial Counsel  
18 intentionally withheld favorable evidence from petitioner  
19 after petitioners repeated request for records/court case doc-  
20 uments in violation of petitioners 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amend-  
21 ment rights.

1 (e) Ground 4||

2 From records, respondent's Counsel failed to seek  
3 mitigating evidence, mitigating evi-  
4 dence, in violation of petitioner's 6<sup>th</sup> and 14<sup>th</sup> Amend-  
5 ment rights.

6 Supporting Facts:

7 Petitioner alleges respondent retained Counsel failed to per-  
8 form duties imposed by ethical principles, as well as Constitu-  
9 tional when retained respondent Counsel failed to seek out  
10 exculpatory evidence, mitigating evidence on behalf of peti-  
11 tioner to the crime(s) of; Murder w/ the Use of a De-  
12 adly weapon, a prohibited person in possession of a dead-  
13 ly weapon, a Fire Arm, which denied petitioner a Consti-  
14 tutional right to a Compulsory process and to have  
15 the assistance of counsel for defense during a ser-  
16 ious criminal proceedings, in violation of standards  
17 for Criminal justice, in violation of petitioner's  
18 6<sup>th</sup> and 14<sup>th</sup> Amendment rights.

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23. a. GROUND 5 || Petitioner Alleges that his Plea Negotiation was UNknowing and unintelligently as well as involuntarily made Due to TRIAL Counsel's INEFFECTIVE Assistance in Violation of the Petitioner's Sixth Amendment and Fourteenth Amendment Right

23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The Defense Attorney Purposely lead Petitioner to believe he was getting the Death Penalty by withholding the Results to the Grand Jury's Indictment Seeking the Death Penalty until After Petitioner's Plea Negotiation Agreement, CAusing Petitioner to Plea Negotiate with the States Attorney. Petitioner WAS COERSED into Accepting A lesser charge From First degree Murder to Second degree Murder because of TRIAL Counsel's Coersion and this deception [forced] Petitioner to Plead Guilty to AVOID the Death Penalty which he contend that due to TRIAL Counsel's Performance of Misrepresentation, he would've Preferred to go to trial instead of Plea bargaining.

17

23. (b) GROUNDS 6 || Petitioner Alleges that TRIAL Counsel Failed to properly Interview potential witnesses and make Independent Investigation of the Facts and Circumstances of the Case Rendering Ineffectiveness Assistance of Counsel in Viol of 6th Amend.

23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The Court Appointed Defense Attorney: CARL ARNOLD to Represent Petitioner: FRANK HEARRING in a Murder Case in the First Degree which carried a penalty of Death. TRIAL Counsel Failed to properly Interview witnesses that Petitioner Presented to him by way of Visitation in the Clark County Detention Center. Petitioner Alleges that Counsel's Failure to interview Potential witnesses that could've exonerated him from the crime constituted bad Performance of a Reasonable Trial Attorney in Violation of the 6th Amendment and 14th Amendment Right To Effectiveness Assistance of Counsel and Due Process Rights to Life & Liberty

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1 23. (c) GROUND 1 ||: Petitioner Alleges that the Trial Counsel  
2 Rendered Ineffective Assistance of Counsel when he Failed to  
3 Use the Private Investigator of the Office to conduct A thorough  
4 Investigation in violation of his 6th Amendment to Effective Counsel.

5 23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The  
6 Petitioner Alleges that Trial Counsel Failed to use the Law Office's  
7 Private Investigator to perform Investigative duties such as  
8 Locate friend & Family of Petitioner who would have made  
9 Statements on behalf of Petitioner's Alibi to the Crime of  
10 Murder with the Use of a deadly Weapon and Exonerate him  
11 From doing such Criminal Activity. This Failure of the Use  
12 of a Private Investigator that Trial Counsel has choosing  
13 to do, denied Petitioner a Constitutional Right to a Fair  
14 Trial Proceeding, which lead to Petitioner's Plea Negotiation  
15 because of Ineffective Assistance from Counsel in violation  
16 of His 6th Amendment to Effectiveness of Counsel during A  
17 Serious Criminal Proceeding.

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1 23. | GROUND 8 || Petitioner alleges that Trial Counsel Failed  
2 to properly Interview States Attorney Key Witness,

3  
4  
5 23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The  
6 Petitioner contend that Trial Counsel Failed to properly Interview  
7 the States Attorney Key Witness to Recieve the witness Point  
8 of the Investigation which Renders Competent Trial Counsel and  
9 this Prejudiced the Petitioner because this Key Witness pursued  
10 A course of MisIdentification until they were shown A photograph  
11 that was of Petitioner and other black males which Petitioner's  
12 Picturee WAS EXPOSE in size much bigger then the rest of the  
13 black males. A proper Interview would have given Trial Coun-  
14 sel A better view of the States witness demeanor, but trial  
15 Counsel Failed to perform such critical duties which had  
16 violated Petitioner's 6th Amendment Constitutional Right to  
17 Effective Assistance of Counsel guaranteed under the State  
18 and Federal Constitution.

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1 23. F GROUND 9 || Petitioner Alleges that Trial Counsel Failed  
2 to File a Motion for a Psychological Evaluation for the States Key  
3 Witness After Knowing witness had a inconsistent statement  
4 Testimony during Preliminary hearing.

5 23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The  
6 Petitioner Alleges that trial Counsel Failed to File a Motion for a  
7 psychological Evaluation for the states key witness once it was  
8 discovered that the states witness Testimony during the Preliminary  
9 Hearing showed inconsistency which Trial Counsel Failed to Invest-  
10 igate and Petitioner Requested for this Evaluation to be conducted  
11 by Filing a Motion with the Courts but was told "No" by Trial  
12 Counsel. This Rendered Ineffectiveness of Counsel on the  
13 Trial Attorney's Part because this key witness was the State's  
14 only witness to a Murder Conviction and Petitioner was not  
15 Allowed to Confront this witness by Questioning in violation  
16 of Petitioner's 6<sup>th</sup> Amendment Right to Confrontation of the  
17 Accuser and the 14<sup>th</sup> Amendment to the State & Federal Const.  
18 to Due Process and Counsel's Performance Rendered Ineffect-  
19 iveness, denying Petitioner of his Federal Constitutional Right.

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*Alanna Shuman*  
CLERK OF THE COURT

1 ORDR

2  
3 EIGHTH JUDICIAL DISTRICT  
4 CLARK COUNTY, NEVADA

6 FRANK HEARRING,	)	Case No.: A-19-790102-W
	)	
7                   Petitioner,	)	DEPT. No.: XII
8                   vs.	)	(Third Petition)
	)	
9 STATE OF NEVADA,	)	
	)	
10                   Respondent.	)	

11  
12 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

13  
14 FINDINGS OF FACT

15 1. On July 15, 2013, the State charged Frank Hearing ("Petitioner") by way  
16 of Information with Murder With Use of a Deadly Weapon, Attempt Murder With Use of  
17 a Deadly Weapon, Discharging Firearm At or Into Structure, Vehicle, Aircraft or  
Watercraft, and Possession of Firearm by Ex-Felon.

18 2. On October 7, 2013, pursuant to negotiations, Petitioner entered into a  
19 Guilty Plea Agreement ("GPA") with the State, wherein, he agreed to plead guilty to one  
20 count of Murder (Second Degree) With Use of a Deadly Weapon. The same day, the  
court conducted a plea canvass on the record and thereafter accepted Petitioner's plea. An  
Amended Information was filed in open court reflecting the charge contained in the GPA.

21 3. On December 10, 2013, Petitioner was sentenced to life imprisonment in  
22 the Nevada Department of Corrections with parole eligibility after ten years, plus a  
consecutive sentence of a maximum of 240 months and a minimum of 96 months for the  
23 deadly weapon enhancement. Petitioner received 293 days credit for time served.  
Judgment of Conviction was filed on December 30, 2013. Petitioner did not file a direct  
24 appeal.

25 4. On May 15, 2014, Petitioner filed a Motion to Withdraw Counsel. On  
26 June 12, 2014, the Motion was granted.

27 5. On November 12, 2014, Petitioner filed a Motion for Appointment of  
28 Counsel and Request for Evidentiary Hearing. The State filed its response on November

1 25, 2014. On December 4, 2014, the court denied the motion, finding the request for  
2 evidentiary hearing was made prematurely and could be renewed in a Petition for Writ of  
3 Habeas Corpus (Post-Conviction).

4 6. On December 10, 2014, Petitioner filed a Motion to Withdraw Plea. On  
5 December 22, 2014, the State filed an opposition. On January 6, 2015, the district court  
6 denied Petitioner's motion. The district court filed its order on January 16, 2015.

7 7. On March 30, 2015, Petitioner filed a Petition for Writ of Habeas Corpus  
8 (Post-Conviction). On July 31, 2015, the State filed its response. A hearing was held on  
9 August 4, 2015 and the Petition was denied. The court's Findings of Fact, Conclusions of  
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3 16. On October 1, 2018, Petitioner filed a Motion for Order to Show Cause  
4 Contempt of Court and Monetary Sanctions. A hearing was held on November 6, 2018  
5 and the court ordered the motion taken off calendar because the file was turned over.

6 17. On November 26, 2018, Petitioner filed a Notice of Appeal. On December  
7 17, 2018, the Supreme Court of Nevada dismissed the appeal. Remittitur issued on  
8 January 11, 2019.

9 18. On February 25, 2019, Petitioner filed a second Petition for Writ of  
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11 Fact, Conclusions of Law, and Order denying the Petition as successive and time-barred.

12 19. On May 10, 2019, Petitioner filed a Notice of Appeal. On December 20,  
13 2019, the Supreme Court of Nevada affirmed the district court's denial of the second  
14 Petition for Writ of Habeas Corpus (Post-Conviction). Remittitur issued on January 14,  
15 2020.

16 20. On December 2, 2021, Petitioner filed the instant (third) Petition for Writ  
17 of Habeas Corpus (Post-Conviction).

18 21. Absent good cause for the failure to present the claim in a prior petition or  
19 for presenting the claim again, and actual prejudice, the petition must be dismissed.

### 20 CONCLUSIONS OF LAW

21 1. NRS 34.726(1), governing "Limitations on time to file..." requires that a  
22 petition for a writ of habeas corpus "must be filed within 1 year after entry of the  
23 judgment of conviction or, if an appeal has been taken from the judgment, within 1 year  
24 after the Supreme Court issues its remittitur." Late-filing of a petition may be excused  
25 from procedural default if the Petitioner can establish good cause for delay in bringing  
26 the claim. *Id.* Good cause for late-filing consists of a showing that: (1) "delay is not the  
27 fault of the petitioner"; and (2) "dismissal of the petition as untimely will unduly  
28 prejudice the petitioner." *Id.* at (1)(a)-(b).

2. To avoid dismissal, the petitioner must plead and prove specific facts that  
demonstrate good cause for his failure to present claims before and actual prejudice. *See*  
*State v. District Court*, 121 Nev. 225, 232, 112 P.3d 1070, 1074 (2005).

3. In order to demonstrate good cause, a petitioner must show that an  
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8 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting *Murray v. Carrier*, 477 U.S. 478,  
9 488 (1986)).

10 6. NRS 34.810(2), governing "Additional reasons for dismissal of petition,"  
11 requires that "[a] second or successive petition must be dismissed if the judge or justice  
12 determines that it fails to allege new or different grounds for relief and that the prior  
13 determination was on the merits or, if new and different grounds are alleged, the judge or  
14 justice finds that the failure of the petitioner to assert those grounds in a prior petition  
15 constituted an abuse of the writ."

16 7. The petitioner has the burden of pleading and proving specific facts that  
17 demonstrate both good cause for failing to present a claim or for presenting a claim again  
18 and actual prejudice. NRS 34.810(3). *See also State v. Haberstroh*, 119 Nev. 173, 181, 69  
19 P.3d 676, 681 (2003).

20 8. A court must dismiss a habeas petition if it presents claims that either were  
21 presented in an earlier proceeding or could have been presented in an earlier proceeding,  
22 unless the court finds both cause for failing to present the claims earlier or for raising  
23 them again and actual prejudice to the petitioner. *Evans v. State*, 117 Nev. 609, 621-622,  
24 28 P.3d 498, 507 (2001).

25 9. Unlike initial petitions which certainly require a careful review of the  
26 record, successive petitions may be dismissed based solely on the face of the petition.  
27 *Ford v. Warden*, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

28 10. Application of the statutory procedural default rules to post-conviction  
habeas petitions is mandatory. *State v. District Court (Riker)*, 121 Nev. 225, 231, 112  
P.3d 1070, 1074 (2005).

11. Meritless, successive and untimely petitions clog the court system and  
undermine the finality of convictions. *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d 944,  
950 (1994).

12. Petitioner had one year from December 30, 2013, the date the Judgment  
of Conviction was filed, to file a Petition for Writ of Habeas Corpus (Post-Conviction).  
The instant Petition was filed over seven years after the Judgment of Conviction was  
filed. As such, the instant petition is untimely. Absent good cause and prejudice, the  
instant petition is time barred and must be dismissed.

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13. The instant petition is a successive petition, and therefore is also subject to dismissal pursuant to NRS 34.810(2). The petition must be dismissed if petitioner failed to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are raised in the petition and the court determines the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ. Absent good cause for the failure to present the claim in a prior petition or for presenting the claim again, and actual prejudice, the petition must be dismissed.

14. Petitioner failed to establish good cause for filing the instant Petition more than seven years after the Judgment of Conviction was filed. Further, the Petition raises some new or different claims; however, the court finds the failure to assert those claims in a previous petition constitutes an abuse of the writ.

15. Petitioner failed to demonstrate prejudice to the petitioner which would amount to a fundamental miscarriage of justice. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

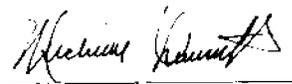
16. Accordingly, the Petition is time barred. The Petition is a successive petition and constitutes an abuse of the writ.

**ORDER**

THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus (Post-Conviction) shall be, and it is, hereby DENIED.

Dated this \_\_\_\_ day of December 2021.

Dated this 17th day of December, 2021



MICHELLE LEAVITT  
DISTRICT JUDGE  
MICHELLE LEAVITT XII  
DISTRICT

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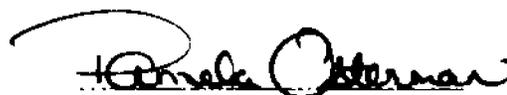
**CERTIFICATE OF MAILING**

I hereby certify that on the date filed, I placed a copy of the Order for Petition for Writ of Habeas Corpus (Post-Conviction) in the U.S. Mail, postage prepaid to:

Frank Herring #1006445  
Norther Nevada Correctional Center  
P.O. Box 700  
Carson City, NV 89702

Steven B. Wolfson  
Clark County District Attorney  
200 Lewis Avenue  
Las Vegas, Nevada 89155

Aaron Ford  
Nevada Attorney General  
555 E. Washington, Suite 3900  
Las Vegas, NV 89101-1068



Pamela Osterman  
Judicial Executive Assistant  
Department XII  
Eighth Judicial District Court

A-19-790102-W  
Frank Herring  
vs.  
The State of Nevada

1 **CSERV**

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

5  
6 Frank Herring, Plaintiff(s)

CASE NO: A-19-790102-W

7 vs.

DEPT. NO. Department 12

8 State of Nevada, Defendant(s)

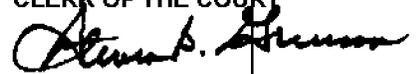
9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's  
12 electronic filing system, but there were no registered users on the case.

13  
14 If indicated below, a copy of the above mentioned filings were also served by mail  
15 via United States Postal Service, postage prepaid, to the parties listed below at their last  
16 known addresses on 12/20/2021

16 Frank Herring

WSCC  
P.O. Box 7007  
Carson City, NV, 89702



1 NEFF

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

4  
5 FRANK HEARRING,

Petitioner,

Case No: A-19-790102-W

Dept No: XII

6  
7 vs.

8 STATE OF NEVADA,

Respondent,

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

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10  
11 **PLEASE TAKE NOTICE** that on December 17, 2021, the court entered a decision or order in this matter,  
12 a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you  
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed  
15 to you. This notice was mailed on December 20, 2021.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

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18  
19 CERTIFICATE OF E-SERVICE / MAILING

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

22  By e-mail:  
Clark County District Attorney's Office  
23 Attorney General's Office – Appellate Division-

24  The United States mail addressed as follows:  
25 Frank Hearing # 1006445  
P.O. Box 7000  
26 Carson City, NV 89702

27  
28 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

*Alanna Shuman*  
CLERK OF THE COURT

1 ORDR

2  
3 EIGHTH JUDICIAL DISTRICT  
4 CLARK COUNTY, NEVADA

6 FRANK HEARRING,	)	Case No.: A-19-790102-W
	)	
7                   Petitioner,	)	DEPT. No.: XII
8                   vs.	)	(Third Petition)
	)	
9 STATE OF NEVADA,	)	
	)	
10                   Respondent.	)	

11  
12 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

13  
14 FINDINGS OF FACT

15 1. On July 15, 2013, the State charged Frank Hearing ("Petitioner") by way  
16 of Information with Murder With Use of a Deadly Weapon, Attempt Murder With Use of  
17 a Deadly Weapon, Discharging Firearm At or Into Structure, Vehicle, Aircraft or  
Watercraft, and Possession of Firearm by Ex-Felon.

18 2. On October 7, 2013, pursuant to negotiations, Petitioner entered into a  
19 Guilty Plea Agreement ("GPA") with the State, wherein, he agreed to plead guilty to one  
20 count of Murder (Second Degree) With Use of a Deadly Weapon. The same day, the  
court conducted a plea canvass on the record and thereafter accepted Petitioner's plea. An  
Amended Information was filed in open court reflecting the charge contained in the GPA.

21 3. On December 10, 2013, Petitioner was sentenced to life imprisonment in  
22 the Nevada Department of Corrections with parole eligibility after ten years, plus a  
23 consecutive sentence of a maximum of 240 months and a minimum of 96 months for the  
24 deadly weapon enhancement. Petitioner received 293 days credit for time served.  
Judgment of Conviction was filed on December 30, 2013. Petitioner did not file a direct  
appeal.

25 4. On May 15, 2014, Petitioner filed a Motion to Withdraw Counsel. On  
26 June 12, 2014, the Motion was granted.

27 5. On November 12, 2014, Petitioner filed a Motion for Appointment of  
28 Counsel and Request for Evidentiary Hearing. The State filed its response on November

1 25, 2014. On December 4, 2014, the court denied the motion, finding the request for  
2 evidentiary hearing was made prematurely and could be renewed in a Petition for Writ of  
3 Habeas Corpus (Post-Conviction).

4 6. On December 10, 2014, Petitioner filed a Motion to Withdraw Plea. On  
5 December 22, 2014, the State filed an opposition. On January 6, 2015, the district court  
6 denied Petitioner's motion. The district court filed its order on January 16, 2015.

7 7. On March 30, 2015, Petitioner filed a Petition for Writ of Habeas Corpus  
8 (Post-Conviction). On July 31, 2015, the State filed its response. A hearing was held on  
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### 20 CONCLUSIONS OF LAW

21 1. NRS 34.726(1), governing "Limitations on time to file..." requires that a  
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The instant Petition was filed over seven years after the Judgment of Conviction was  
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14. Petitioner failed to establish good cause for filing the instant Petition more than seven years after the Judgment of Conviction was filed. Further, the Petition raises some new or different claims; however, the court finds the failure to assert those claims in a previous petition constitutes an abuse of the writ.

15. Petitioner failed to demonstrate prejudice to the petitioner which would amount to a fundamental miscarriage of justice. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

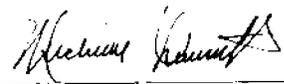
16. Accordingly, the Petition is time barred. The Petition is a successive petition and constitutes an abuse of the writ.

**ORDER**

THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus (Post-Conviction) shall be, and it is, hereby DENIED.

Dated this \_\_\_\_ day of December 2021.

Dated this 17th day of December, 2021



MICHELLE LEAVITT  
DISTRICT JUDGE  
MICHELLE LEAVITT XII  
DISTRICT

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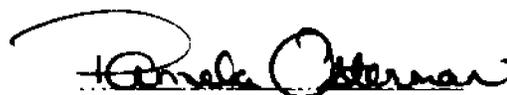
**CERTIFICATE OF MAILING**

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Frank Herring #1006445  
Norther Nevada Correctional Center  
P.O. Box 700  
Carson City, NV 89702

Steven B. Wolfson  
Clark County District Attorney  
200 Lewis Avenue  
Las Vegas, Nevada 89155

Aaron Ford  
Nevada Attorney General  
555 E. Washington, Suite 3900  
Las Vegas, NV 89101-1068



Pamela Osterman  
Judicial Executive Assistant  
Department XII  
Eighth Judicial District Court

A-19-790102-W  
Frank Herring  
vs.  
The State of Nevada

1 **CSERV**

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

5  
6 Frank Herring, Plaintiff(s)

CASE NO: A-19-790102-W

7 vs.

DEPT. NO. Department 12

8 State of Nevada, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's  
12 electronic filing system, but there were no registered users on the case.

13  
14 If indicated below, a copy of the above mentioned filings were also served by mail  
15 via United States Postal Service, postage prepaid, to the parties listed below at their last  
16 known addresses on 12/20/2021

16 Frank Herring

WSCC  
P.O. Box 7007  
Carson City, NV, 89702

Frank Herring # 1006445  
(Name / Prisoner I.D. Number)  
Northern Nevada Correctional Center  
Post Office Box 7000  
Carson City, NV 89702  
In Proper Person

Electronically Filed  
02/16/2022

Heaven S. Lewis  
CLERK OF THE COURT

In The Eighth Judicial District Court

Frank Herring

Plaintiff/Petitioner,

vs.

State of Nevada

Defendant/Respondent.

Case No.: A-19-790102-w

Dept No.: XII

**NOTICE OF MOTION**

DATE OF HEARING: \_\_\_\_\_

TIME OF HEARING: \_\_\_\_\_

TO: Appeal to the Supreme Court from  
decision or order of this Court

**NOTICE** is hereby given that Frank Herring, Movant in  
the above entitled action, will bring the attached motion for hearing before this  
court on \_\_\_\_\_ (date), at:

\_\_\_\_\_ (time), or as soon after that time as the matter can be  
heard, in court room \_\_\_\_\_ of the \_\_\_\_\_  
Courthouse located at \_\_\_\_\_

Dated \_\_\_\_\_

**RECEIVED**

**JAN 24 2022**

Submitted by: \_\_\_\_\_

**CLERK OF THE COURT**

**Notice:** You are required to file a written response to this motion with the Clerk of the Court within ten (10) days of receipt and to serve a copy of the filed response on the other party. Failure to do so may result in the requested relief being granted by the Court without hearing prior to the scheduled hearing.

**CERTIFICATE OF SERVICE BY MAIL**

Pursuant to Frank Hearing

I hereby certify that I am the Movant named herein and that on this 17<sup>th</sup> day of

January, 20 22, I mailed a true and correct copy of the foregoing:

Appeal to Eighth Judicial Court (for Appeal) to Supreme via first class mail, postage being fully prepaid, by submitting same to the prison legal mail system for delivery through the U.S. Postal Service, to the following address(es):

<u>Fr: Frank Hearing #1006445</u>	<u>Steven B. Wolfson</u>
<u>Ely State Prison</u>	<u>Clark County Dist Attorney</u>
<u>P.O. Box 1989</u>	<u>200 Lewis Ave</u>
<u>Ely, NV 89301</u>	<u>Las Vegas, NV 89155</u>

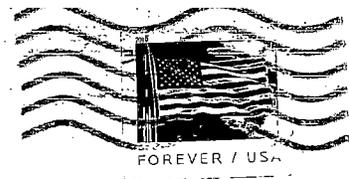
<u>Aaron Ford</u>	_____
<u>Nevada Att General, 555</u>	_____
<u>E. Washington, Ste 3900</u>	_____
<u>Las Vegas, NV 89101-1005</u>	_____

Frank Hearing #1006445

Movant, In Proper Person

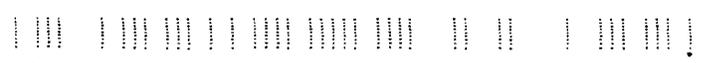
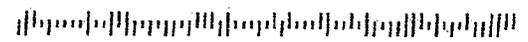
Mr. Frank Herring # 100645  
Ely State Prison  
P.O. Box 1989  
Ely, NV 89301

LAS VEGAS NV 890  
18 JAN 2022 PM 5 L

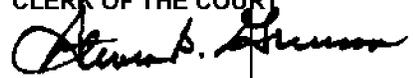


Steven D. Grierson  
(Clerk of the Court)  
200 Lewis Ave, 3rd floor  
Las Vegas, NV 89155-1160

000069-10168



ELY STATE PRISON  
JAN 17 2022



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**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF CLARK**

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10 FRANK HEARRING,

Case No: A-19-790102-W

11 Plaintiff(s),

Dept No: XII

12 vs.

13

14 STATE OF NEVADA,

15 Defendant(s),

16

17

**CASE APPEAL STATEMENT**

18

19 1. Appellant(s): Frank Hearing

20

21 2. Judge: Michelle Leavitt

22

23 3. Appellant(s): Frank Hearing

24

25 Counsel:

26 Frank Hearing #1006445  
27 P.O. Box 1989  
28 Ely, NV 89301

4. Respondent (s): State of Nevada

Counsel:

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

Aaron D. Ford, Attorney General  
555 E. Washington Ave., Ste. 3900  
Las Vegas, NV 89101-1068

- 1 5. Appellant(s)'s Attorney Licensed in Nevada: N/A  
2 Permission Granted: N/A  
3 Respondent(s)'s Attorney Licensed in Nevada: Yes  
4 Permission Granted: N/A  
5 6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No  
6 7. Appellant Represented by Appointed Counsel On Appeal: N/A  
7 8. Appellant Granted Leave to Proceed in Forma Pauperis\*\*: N/A  
8 \*\*Expires 1 year from date filed  
9 Appellant Filed Application to Proceed in Forma Pauperis: No  
10 Date Application(s) filed: N/A  
11 9. Date Commenced in District Court: February 25, 2019  
12 10. Brief Description of the Nature of the Action: Civil Writ  
13 Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus  
14 11. Previous Appeal: Yes  
15 Supreme Court Docket Number(s): 78791  
16 12. Child Custody or Visitation: N/A  
17 13. Possibility of Settlement: Unknown

18 Dated This 17 day of February 2022.

19 Steven D. Grierson, Clerk of the Court

20 /s/ Heather Ungermann

21 Heather Ungermann, Deputy Clerk  
22 200 Lewis Ave  
23 PO Box 551601  
24 Las Vegas, Nevada 89155-1601  
25 (702) 671-0512

26  
27 cc: Frank Herring  
28

# Certification of Copy and Transmittal of Record

State of Nevada }  
County of Clark } SS:

Pursuant to the Supreme Court order dated March 3, 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 one volume with pages numbered 1 through 110.

FRANK HEARRING,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

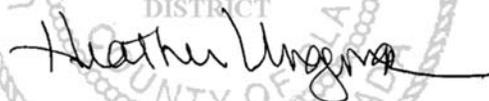
Case No: A-19-790102-W

Dept. No: XII

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 14 day of March 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

