EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT

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Steven D. Grierson
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November 2, 2021

Elizabeth A. Brown
Clerk of the Court
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

RE: DENZEL DORSEY vs. BRIAN E. WILLIAMS
S.C. CASE: 83644
D.C. CASE: A-21-839313-W related case C-17-323324-1

Dear Ms. Brown:

In response to the e-mail dated November 2, 2021, enclosed is a certified copy of the Findings of Fact, Conclusions of Law, and Order filed October 20, 2021 in the above referenced case. If you have any questions regarding this matter, please do not hesitate to contact me at (702) 671-0512.

Sincerely,
STEVEN D. GRIERSON, CLERK OF THE COURT

Heather Ungermann, Deputy Clerk

FFCO
STEVEN B. WOLFSON
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DENZEL DORSEY,
#2845569

Defendant.

CASE NO: A-21-839313-W
C-17-323324-1

DEPT NO: VI

FINDINGS OF FACT, CONCLUSION OF LAW, AND ORDER

DATE OF HEARING: September 23, 2021
TIME OF HEARING: 11:00 AM

THIS CAUSE having come on for hearing before the Honorable JOE HARDY, District Judge, on the 23rd day of September 2021, the Petitioner not present, and representing himself, the Respondent being represented by STEVEN B. WOLFSON, District Attorney, by and through ALICIA ALBRITTON, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and/or documents on file herein, now, therefore, the Court makes the following findings of fact, conclusions of law and order

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PROCEDURAL HISTORY

On November 28, 2016, Denzel Dorsey ("Petitioner") was arrested for Attempt Invasion of the Home and Malicious Destruction of Property. On December 19, 2016, Petitioner arraigned in justice court — case number 16FH2022X. On December 19, 2016, and justice court scheduled a preliminary hearing for February 15, 2017. Preliminary hearing continued to March 30, 2017. On May 2, 2017, after the preliminary hearing, Petitioner bound over to district court.

On May 9, 2017, State charged Petitioner by way of information. State charge Petitioner with, count one (1) Invasion of the Home (Category B Felony – NRS 205.067 – NOC 50435); and count two (2) Malicious Destruction of Property (Gross Misdemeanor – NRS 206.310, 193155 – NOC 50905). On May 9, 2017, State filed A Notice of Intent to Seek Punishment as a Habitual Criminal under NRS 207.010(1).

On May 15, 2017, Petitioner pled not guilty and waived his speedy trial right. District court set trial for September 11, 2017. On September 7, 2017, district court reset the trial to December 4, 2017. On November 29, 2017, Petitioner's counsel — Keith Brower — filed a Motion to Withdraw Due to Conflict. On November 30, 2017, district court granted said motion.

On January 16, 2018, Caitlyn McAmis ("McAmis") confirmed as counsel. District court reset trial to April 23, 2018. On March 13, 2018, Petitioner entered a guilty plea to count one (1) Invasion of the Home (Category B Felony – NRS 205.067 – NOC 50435). Defendant signed the guilty plea agreement, which stated *inter alia* :

> The State will retain the right to argue. Additionally, the State agrees not to seek habitual criminal treatment. Further, the State will not oppose dismissal of Count 2 and Case no. 17F21598X after rendition of sentence. The State will not oppose standard bail after entry of plea. However, if I fail to go to the Division of Parole and Probation, fail to appear at any future court date or am arrested for any new offenses, I will stipulate to habitual criminal treatment, to the fact that I have the requisite priors and to a sentence of sixty (60) to one hundred fifty (150) months in the

> Nevada Department of Corrections. Additionally, I agree to pay full restitution including for cases and counts dismissed.

On March 13, 2018, pursuant to the terms of the agreement, district court released Petitioner on standard bail. District Court set sentencing for July 17, 2018. On April 26, 2018, Petitioner filed a Motion to Place on Calendar to Address Custody Status and Hold. On May 8, 2018, district court reset sentencing to June 5, 2018; district court did not remand Petitioner.

On June 5, 2018, at the time of sentencing, Petitioner notified district court that he wished to withdraw his guilty plea and dismiss McAmis as counsel. On June 6, 2018, Petitioner filed a *pro per* Motion to Dismiss Counsel and a Motion to Withdraw Plea. On June 12, 2018, district court granted Petitioner's Motion to Dismiss Counsel. On June 28, 2018, district court continued all matters to July 17, 2018. On July 3, 2018, State filed an Opposition to Petitioner's Motion to Withdraw Plea.

On July 17, 2018, district court issued a bench warrant. Petitioner failed to appear because Petitioner had been arrested in California for Receiving Stolen Property. On July 24, 2018, Petitioner's newly retained counsel — Carl Arnold — filed a Motion to Quash Bench Warrant. On July 31, 2018, district court denied Petitioner's motion.

On November 8, 2018, Petitioner appeared in custody on the bench warrant return. District court reset the sentencing hearing on November 27, 2018. On November 27, 2018, newly retained counsel — Gary Modafferi — appear for Petitioner. District Court reset the sentencing hearing on December 13, 2018.

On December 5, 2018, Petitioner filed Motion for Expert Services (Investigator) pursuant to *Widdis*. On January 9, 2019, district court granted the motion. On January 17, 2019, district court confirmed the investigator would only be working on information related to a Motion to Withdraw Guilty Plea. District court reset the sentencing hearing to February 19, 2019.

On February 15, 2019, Petitioner filed a Motion to Withdraw Guilty Plea. On February 19, 2019, district court reset sentencing to March 26, 2019, so that State could file an opposition to Petitioner's Motion to Withdraw Guilty Plea. On February 21, 2019, State filed

a Notice of Intent to Seek Punishment as a Habitual Criminal. On March 19, 2019, State filed an Opposition to Petitioner's Motion to Withdraw Guilty Plea. On March 28, 2019, Petitioner filed a Reply to State's Opposition to Motion to Withdraw Guilty Plea.

On May 28, 2019, and July 11, 2019, district court held an evidentiary hearing on Petitioner's Motion to Withdraw his Plea. On August 6, 2019, district court denied Petitioner's Motion to Withdraw Plea. On August 7, 2019, district court issued Notice of Entry of Order.

On October 3, 2019, district court sentenced Petitioner pursuant to small habitual status. District court sentenced Petitioner to count one (1) sixty (60) to one-hundred-fifty (150) months in the Nevada Department of Corrections. Petitioner received four-hundred-twenty-three (423) days for credit time served. District court further ordered count two (2) dismissed. On October 9, 2019, district court filed the Judgement of Conviction ("JOC").

On October 15, 2019, Petitioner filed Notice of Appeal — through Terrance Jackson. On January 8, 2021, the Nevada Court of Appeals Affirmed Petitioner's conviction. On February 3, 2021, the Nevada Supreme Court issued the Remittitur. On August 11, 2021, Petitioner filed the instant *pro per* Petition for Writ of Habeas Corpus.

STATEMENT OF FACTS

Defendant's Supplemental Pre-Sentence Investigation Report ("PSI") filed September 23, 2019, provided a recitation of the facts of the subject offenses:

> On November 28, 2016, an officer responded to a local residence in reference to a *home invasion*. Upon arrival, the officer met the one of the residents of the house, who advised the officer that a male, later identified as the defendant, Denzel Dorsey, punched a hole in the glass door window. Mr. Dorsey proceeded to place his hand through the hole and unlock the deadbolt on the door. The resident then ran to the door and locked the deadbolt back. Mr. Dorsey, realized someone was home, fled the scene in a vehicle parked in front of the residence. The officer spoke made contact with the owner of the residence, the victim, who advised that she would like to press charges against Mr. Dorsey.
>
> A records of the vehicle revealed that it had been rented from a local car rental agency. A detective responded to the rental agency and was advised that the vehicle was equipped with a GPS

> Tracker. The travel history of the vehicle confirmed that [the] vehicle was present at the time of the aforementioned incident. Detectives located the vehicle and made contact with Mr. Dorsey, the driver, and another male as they exited the vehicle. The detective attempted to speak with Mr. Dorsey and the male. Both were uncooperative, denied being in the vehicle, and provided fictitious names. When Mr. Dorsey was advised that he was being charged with home invasion, Mr. Dorsey looked down and stated[,] "Ah shit." Mr. Dorsey was observed to be wearing a coat with fresh tears on it, and he had fresh cuts on his right hand. A search incident to arrest located the key to the vehicle in Mr. Dorsey's right pocket along with a glove with fresh blood on it. A search of the vehicle located three prescription muscle relaxers, a package of ziplock baggies, a prescription bottle for Oxycodone with another individual's name imprinted on it, [] several pieces of miscellaneous jewelry, and a glove matching the one retrieved from Mr. Dorsey's pocket.
>
> Based on the above facts, Mr. Dorsey was arrested, transported to the Henderson Detention Center [,]and booked accordingly.

DECISION

I. Petitioner Claims are Outside the Scope of Writ, and Petitioner Failed to Establish Good Cause and a Showing of Prejudice

Petitioner makes a series of claims, listed in his petition, that are outside the scope of habeas review. *See* Petition, at 6-12. Additionally, Petitioner failed to establish good cause and a showing of prejudice to overcome the mandatory procedural bars.

Pursuant to NRS 34.810, "[t]he court shall dismiss a petition if the court determines that [the] *conviction was upon a plea of guilty* . . . and the petition is not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel." NRS 34.810(1)(a). Petitioner may only escape these procedural bars if he meets the burden of establishing good cause and prejudice. *See* NRS 34.810(3). Where a petitioner does not show good cause for failure to raise claims of error upon direct appeal, the district court is not obliged to consider them in post-conviction proceedings. Jones v. State, 91 Nev. 416, 536 P.2d 1025 (1975).

Additionally, "challenges to the validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must first be pursued in post-conviction

proceedings…. [A]ll other claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings." Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). "A court *must dismiss* a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001).

To avoid procedural default, under NRS 34.810(3)(a), Petitioner has the burden of pleading and proving specific facts that demonstrate good cause for his failure to present his claim in an earlier proceedings or to otherwise comply with the statutory requirements, and that Petitioner will be unduly prejudiced if the petition is dismissed. *See* Hogan v. Warden, 109 Nev. 952, 959-60, 860 P.2d 710, 715-16 (1993); Phelps v. Nevada Dep't of Prisons, 104 Nev. 656, 659, 764 P .2d 1303, 1305 (1988). "A court *must* dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001) (emphasis added).

"To establish good cause, appellants must show that an impediment external to the defense prevented their compliance with the applicable procedural rule." Clem v. State, 119 Nev. 615,621, 81 P.3d 521,525 (2003) (emphasis added); *See also* Hathaway v. State, 119 Nev. 248, 25 I, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. "A qualifying impediment might be shown where the factual or legal basis for a claim was not reasonably available at the time of default." Clem, 119 Nev. at 621, 81 P.3d at 525. The Court continued, "appellants cannot attempt to manufacture good cause." Id. at 621, 81 P.3d at 526. Examples of good cause include interference by State officials and the previous unavailability of a legal or factual basis. *See* State v. Huebler, 128 Nev. Adv. Op. 19,275 P.3d 91, 95 (2012). Any delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

To establish prejudice, a Petitioner must show "'not merely that the errors of [the proceedings] created [the] possibility of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the State's proceedings with [an] error of constitutional dimensions.'" Hogan v. Warden, 109 Nev. 952,960, 860 P.2d 710,716 (1993) (quoting United States v. Frady. 456 U.S. 152, 170, 102 S. Ct. I 584, I 596 (1982)). Bare and naked allegations are insufficient to warrant post-conviction relief, nor are those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "A claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

Petitioner failed to address good cause to overcome the mandatory procedural bar. Indeed, Petitioner cannot, since the applicable law and facts were all available when he pled guilty. Additionally, Petitioner failed to show that an impediment external to the defense prevented him from raising these claims in an earlier proceeding and offers no excuse for his failure to raise said issues there. As such, Petitioner does not show good cause, or show any prejudice to overcome the procedural bars. Therefore, the instant Petition is DENIED.

a. Petitioner's In-Court Identification Claim is Outside the Scope of Habeas Review

Petitioner claims the justice court erred in allowing the Kevin Narazeno ("Victim") of the home invasion to make an in-court identification of Petitioner — during the preliminary hearing — after State allegedly engaged in witness tampering by suggesting to Victim that Petitioner was the suspect of the home invasion. *See* Petition, at 6-6A. However, pursuant to NRS 34.810, Petitioner's claim is outside the scope of habeas review.

On March 13, 2018, Petitioner plead guilty pursuant to a guilty plea agreement. On August 6, 2019, district court held the guilty plea agreement to be valid.

Petitioner raised various claims on direct appeal. None of which was the claim that State improperly suggested to Victim that the home invasion suspect was the Petitioner. Petitioner's claim that without the allegedly improper in-court identification, there would not have been enough evidence to establish probable cause to bind Petitioner over to district court

should have been raised in a pre-trial petition of writ of habeas corpus. However, Petitioner did not file a pre-trial writ.

In any event, Petitioner misconstrues the facts surrounding the alleged witness tampering. During the preliminary hearing, State asked several times if the Victim noticed anyone in court like the description given of the suspect. Preliminary Hearing ("PH"), at 11-13. Victim was not sure. PH, at 12. Only after Petitioner removed his glasses and the State direct the witness if "he look[ed] familiar," did Victim respond, "Yes, I think so . . . Yes. Without the glasses." PH, at 12-13. At no time did State inform Victim to answer in the affirmative or informed Victim that the Petitioner was the suspect from the home invasion.

Additionally, all the facts were available to Petitioner at the time of appeal. Petitioner failed to raise said claim and does not explain why. Therefore, Petitioner's claim is outside the scope of habeas review and is DENIED.

b. Petitioner's Brady Claim is Outside the Scope of Habeas Review

Petitioner claims State failed to hand over the clothing apparel described in the incident report. *See* Petition, at 7. According to Petitioner, this failure amounts to a Brady violation. Petitioner's claim is outside the scope of habeas review.

Brady and its progeny require a prosecutor to disclose evidence favorable to the defense when that evidence is material either to guilt or to punishment. *See* Mazzan v. Warden, 116 Nev. 48, 66, 993 P.2d 25 (2000); *See also* Jimenez v. State, 112 Nev. 610, 618-19, 918 P.2d 687 (1996). "[T]here are three components to a Brady violation: (1) the evidence at issue is favorable to the accused; (2) the evidence was withheld by the state, either intentionally or inadvertently; and (3) prejudice ensued, i.e., the evidence was material." Mazzan 116 Nev. at 67. "Where the state fails to provide evidence which the defense did not request or requested generally, it is constitutional error if the omitted evidence creates a reasonable doubt which did not otherwise exist. In other words, evidence is material if there is a reasonable probability that the result would have been different if the evidence had been disclosed." Id. at 66 (internal citations omitted). "In Nevada, after a specific request for evidence, a Brady violation is material if there is a reasonable *possibility* that the omitted evidence would have affected the

outcome. Id. (citing Jimenez v. State, 112 Nev. 610, 618-19, 918 P.2d 687, 692 (1996)); *See also* Roberts v. State, 110 Nev. 1121, 1132, 881 P.2d 1, 8 (1994).

"The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense." United States v. Agurs, 427 U.S. 97, 108, 96 S.Ct. 2392, 2399-400 (1976). Favorable evidence is material, and constitutional error results, "if there is a reasonable probability that the result of the proceeding would have been different." Kyles v. Whitley, 514 U.S. 419, 433-34, 115 S.Ct. 1555, 1565 (1995) (citing U.S. v. Bagley, 473 U.S. 667, 682, 105 S.Ct. 3375, 3383 (1985)). A reasonable probability is shown when the nondisclosure undermines confidence in the outcome of the trial. Kyles at 434, 115 S.Ct. at 1565.

Due Process does not require simply the disclosure of "exculpatory" evidence. Evidence must also be disclosed if it provides grounds for the defense to attack the reliability, thoroughness, and good faith of the police investigation or to impeach the credibility of the State's witnesses. *See* Kyles 514 U.S. at 442, 445-51, 1115 S. Ct. 1555 n. 13. Evidence cannot be regarded as "suppressed" by the government when the defendant has access to the evidence before trial by the exercise of reasonable diligence. United States v. White, 970 F.2d 328, 337 (7th Cir. 1992). "Regardless of whether the evidence was material or even exculpatory, when information is fully available to a defendant at the time of trial and his only reason for not obtaining and presenting the evidence to the Court is his lack of reasonable diligence, the defendant has no Brady claim." United States v. Brown, 628 F.2d 471, 473 (5th Cir. 1980).

"While the [United States] Supreme Court in Brady held that the [g]overnment may not properly conceal exculpatory evidence from a defendant, it does not place any burden upon the [g]overnment to conduct a defendant's investigation or assist in the presentation of the defense's case." United States v. Marinero, 904 F.2d 251, 261 (5th Cir. 1990); *accord* United States v. Pandozzi, 878 F.2d 1526, 1529 (1st Cir. 1989); United States v. Meros, 866 F.2d 1304, 1309 (11th Cir. 1989). When defendants miss the exculpatory nature of documents in their

possession or to which they have access, they cannot miraculously resuscitate their defense after conviction by invoking Brady. White 970 F.2d at 337.

The Nevada Supreme Court has followed the federal line of cases in holding that Brady does not require the State to disclose evidence available to the defendant from other sources or defense counsel could have independently obtained through a diligent investigation. *See* Steese v. State, 114 Nev. 479, 495, 960 P.2d 321, 331 (1998). In Steese, the undisclosed information stemmed from collect calls that the defendant made.

Here, on March 13, 2018, Petitioner plead guilty pursuant to a guilty plea agreement. On August 6, 2019, district court held the guilty plea agreement to be valid. Petitioner raised various claims on direct appeal. None of which was the claim State allegedly withheld Brady material. All of the alleged facts were available to Petitioner at the time of appeal. However, Petitioner failed to raise said claim and does not explain why.

Additionally, the apparel worn by the suspect — a torn dress coat — described in the incident report is not Brady material. There is nothing regarding the dress coat that would explain away the charge of a home invasion. Additionally, Petitioner does not explain how the dress coat is exculpatory or how it would have affected the negations. If anything, the lack of the dress coat would hamper State's presentation of the case — if that.

In any event, Victim identified Petitioner as the person who tried to gain entrance to his residence, and State could place Petitioner at the crime scene via GPS. Thus, the dress coat is an insignificant piece of identification evidence.

Lastly, when Petitioner entered the guilty plea agreement, he knew what he was wearing during the home invasion; thus, Petitioner's claim is irrelevant. Therefore, Petitioner's claim is outside the scope of habeas review and is DENIED.

c. Petitioner's Claim of Ineffective Assistance of Counsel Claims is Outside the Scope of Habeas Review and are Meritless

Petitioner claims (i) Keith Brower ("Brower") provided ineffective assistance counsel by failing to object to State's alleged witness tampering of Victim and failure to obtain inculpatory photos and physical evidence during the preliminary hearing, (ii) McAmis

provided ineffective assistance of counsel by failing to investigate Petitioner's case properly, and (iii) Terrence Jackson ("Jackson") provided ineffective assistance of counsel on appeal by failing to raise a series of claims. *See* Petition, at 8D.

The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The United States Supreme Court has long recognized that "the right to counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); *See also* State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

To prevail on a claim of ineffective assistance of trial counsel, a petitioner must prove they were denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063–64. *See also* Love, 109 Nev. at 1138, 865 P.2d at 323. Under the Strickland test, a petitioner must show first that his counsel's representation fell below an objective standard of reasonableness and second, that, but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. 466 U.S. at 687–88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). "[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the [petitioner] makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

The court begins with the presumption of effectiveness and then must determine whether the petitioner has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975).

Moreover, the role of the court is "not to pass upon the merits of the action[s] not taken [by trial counsel] but to determine whether, under the particular facts and circumstances of the

case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). Further, the court should not "second guess reasoned choices between trial tactics *nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success*." Donovan, 94 Nev. at 675 (emphasis added) (quoting Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)). To be effective, the Constitution "does not require that [trial] counsel do what is impossible or unethical. If there is no bona fide defense to the charge, counsel cannot create one and may disserve the interests of his client by attempting a useless charade." U.S. v. Cronic, 466 U.S. 648, 657, 104 S. Ct. 2039, 2046 (1984). Additionally, counsel cannot be ineffective for failing to make futile objections or arguments. *See* Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

"There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." Strickland, 466 U.S. at 689, 104 S. Ct. at 689. "Strategic choices made by [trial] counsel after thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); *See also* Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). Therefore, the court must "judge the reasonableness of [trial] counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

When a conviction is the result of a guilty plea, a defendant must show that there is a "*reasonable probability* that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370 (1985) (emphasis added); *See also* Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004). Additionally, a petitioner who contends his attorney was ineffective because he did not *investigate adequately* must show how a better investigation would have resulted in a more favorable outcome. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Moreover, bare and naked

allegations are insufficient to warrant post-conviction relief, nor are those belied and repelled by the record. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

Additionally, "[P]etitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must be supported with specific factual allegations, which would entitle the petitioner to relief if true. *See* Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Bare and naked allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant part, "[petitioner] *must* allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed." (emphasis added). "A claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

i. Petitioner's Claim of Ineffective Assistance of Counsel regarding Keith Brower is Outside the Scope of Habeas Review and is Meritless

Petitioner claims Brower failed to object at the preliminary hearing when State allegedly directing Victim to identify Petitioner as the suspect of the home invasion. Additionally, Petitioner claims Brower failed to obtain "any of the inculpatory evidence" used during the preliminary hearing. Petitioner's claims are outside the scope of habeas review and are meritless.

Petitioner fails to demonstrate how counsel's failure to object during the preliminary hearing shows with a reasonable probability that Petitioner would not have plead guilty pursuant to his guilty plea agreement. Additionally, in so far as Petitioner's inculpatory evidence claims. Petitioner does not explain how having the physical *inculpatory* evidence would have shown with a reasonable probability that Petitioner would have asserted his right to trial.

Also, Petitioner — without meaningful delineation — fails to describe what *inculpatory* evidence he is referencing. Petitioner makes a meritless — and convoluted — assertion that

somehow the *inculpatory* evidence could have been used to Petitioner's benefit during cross-examination. Thus, it would have acted as exculpatory evidence that somehow shows with a *reasonable probability* that Petitioner would not have plead guilty.

However, such a claim is meritless and counterintuitive. *Inculpatory* evidence does not act on mathematic principles of multiplication where multiple pieces of *inculpatory* evidence multiplied by each other somehow converts to exculpatory evidence, which then demonstrates with a *reasonable probability* that Petitioner would have asserted his right to trial. If anything, it supports the conclusion that Petitioner would have been incentivized to enter negotiations and ultimately enter into a guilty plea agreement —which is what occurred here.

Petitioner's claim is outside the scope of habeas review and is meritless. Therefore, Petitioner's claim is DENIED.

ii. Petitioner's Claim of Ineffective Assistance of Counsel regarding Caitlyn McAmis is Outside the Scope of Habeas Review and is Meritless

Petitioner claims McAmis failed to investigate Petitioner's case properly. Petitioner's claim is outside the scope of habeas review and is meritless.

Here, Petitioner does not provide sufficient facts to support his claims that counsel failed to investigate the case adequately. If anything, Petitioner provides sufficient facts showing McAmis effectively investigated Petitioner's case via working on a global resolution for Petitioner — which was ultimately successful. *See* Petition, at 8C.

In any event, Petitioner does not show what the investigation could have discovered that would have prevented him, with a *reasonable probability*, from entering into the GPA, nor what an investigation would have produced. *See* Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

As indicated above, Petitioner cannot demonstrate he would have plead not guilty but for McAmis failing to conduct a proper pre-trial investigation. Here the district court thoroughly canvassed Petitioner. At no point during the canvass did Petitioner claim Counsel was coercing Petitioner into accepting the GPA. Additionally, McAmis withdrew from Petitioner's case before Petitioner plead guilty — Gary Modafferi was the attorney on record

when Petitioner plead guilty. Moreover, the GPA — signed by Petitioner — indicated that he was "satisfied with the services provided by my attorney." GPA, at 5.

Petitioner's claim is outside the scope of habeas review and is meritless. Therefore, Petitioner's claim is DENIED.

iii. Petitioner's Claim of Ineffective Assistance of Appellate Counsel is outside the Scope of Habeas Review

Petitioner claims Jackson failed to raise the above claims on appeal, including "the courts abuse of discretion in denying [Petitioner's] motion to withdraw plea, and excluding . . . statement given by [Petitioner's] witnesses," and counsel not properly investigating Petitioner's case. *See* Petition, at 8D, 11. However, Petitioner claims are meritless and belied by the record.

There is a strong presumption that appellate counsel's performance was reasonable and fell within "the wide range of reasonable professional assistance." United States v. Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990) (citing Strickland v. Washington, 466 U.S. 668, 686, 689, 104 S. Ct. 2052, 2065 (1984)). A claim of ineffective assistance of appellate counsel must satisfy the two-prong test set forth by Strickland. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). In order to satisfy Strickland's second prong, the petitioner must show that the omitted issue would have had a reasonable probability of success on appeal. Id.

The professional diligence and competence required on appeal involve "winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues." Jones v. Barnes, 463 U.S. 745, 751-52, 103 S. Ct. 3308, 3313 (1983). In particular, a "brief that raises every colorable issue runs the risk of burying good arguments . . . in a verbal mound made up of strong and weak contentions." Jones, 463 U.S. at 753. Additionally, appointed counsel does not have a duty to "raise every "colorable" claim suggested by a client." Jones, 463 U.S. at 754.

Appellate lawyers are not ineffective when they refuse to follow a "kitchen sink" approach to the issues on appeals. Howard v. Gramley, 225 F.3d 784, 791 (7th Cir. 2000). On the contrary, one of the most critical parts of appellate advocacy is selecting the proper claims to argue on appeal. Schaff v. Snyder, 190 F.3d 513, 526–27 (7th Cir. 1999). Arguing every

conceivable point is distracting to appellate judges, consumes space that should be devoted to developing the arguments with some promise, inevitably clutters the brief with issues that have no chance because of doctrines like harmless error or the standard of review of jury verdicts, and is overall bad appellate advocacy. Howard, 225 F.3d at 791.

An appellate counsel deciding not to *raise a meritless issue* on appeal is not ineffective. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). To establish prejudice based on the deficient assistance of appellate counsel, the petitioner must show that the omitted issue would have had a reasonable probability of success on appeal. *See* Duhamel v. Collins, 955 F.2d 962, 967 (5th Cir.1992); *See also* Heath v. Jones, 941 F.2d 1126, 1132 (11th Cir.1991). In making this determination, a court must review the merits of the omitted claim. Heath, 941 F.2d at 1132.

Appellate counsel may not simply raise appeal issues that have *no support in the record*; unsupported arguments and baseless assertions are suitable for summary dismissal. Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court."); *See also* NRAP 28(e). Further, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must be supported with specific factual allegations, which, if true, would entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Id.

Petitioner was informed of his limited right to appeal in his Guilty Plea Agreement. In relevant part, the Petitioner's guilty plea agreement stated:

> WAIVER OF RIGHTS
>
> By entering my plea of guilty, I understand that I am waiving and forever giving up the following rights and privileges:
>
> . . .
>
> 6. The right to appeal the conviction with the assistance of an attorney, either appointed or retained, unless specifically reserved in writing and agreed upon as provided in NRS 174.035(3). I understand this means I am unconditionally waiving my right to a direct appeal of this conviction, including any challenge based upon reasonable constitutional, jurisdictional, or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4). However, I

> remain free to challenge my conviction through other post-conviction remedies including a habeas corpus petition pursuant to RNS Chapter 34.
>
> . . .
>
> VOLUNTARINESS OF PLEA
>
> All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney.

Guilty Plea Agreement ("GPA"), at 4-5

Petitioner knew of his limited rights to appeal. The guilty plea agreement demonstrates said rights were articulated to Petitioner. Petitioner acknowledged that the waiver of rights was adequately explained to him by counsel. Additionally, Petitioner fails to show that the claims he sought to appeal even had a reasonable likelihood of success on appeal. In fact, the ineffective assistance of counsel claims Petitioner argues should have been raised on appeal are explicitly not permitted to be raised on appeal. "[C]hallenges to the validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must first be pursued in post-conviction proceedings." Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). Therefore, Petitioner's claims are outside the scope of habeas review.

In any event, Petitioner claims appellate counsel was ineffective because appellate counsel failed to raise the issue on appeal that district court abused its discretion in not allowing Petitioner to withdraw his plea. However, appellate counsel did raise this issue on appeal. On appeal, the Nevada Court of Appeals held the district court "did not abuse its discretion by denying this claim." Dorsey v. State, Docket No. 79845-COA (Order of Affirmance, January 8, 2021). Therefore, Petitioner's claim is belied by the record.

Moreover, Petitioner claims regarding the alleged Brady violation and State allegedly engaging in witness tampering. *See* Petition, at 8D. Appellate counsel is not required to *raise a meritless issue* on appeal. *See* Kirksey, 112 Nev. at 998, 923 P.2d at 1114. Additionally, Petitioner does not show the probability of success on appeal. Petitioner only asserts that such claims would have shown he was innocent without providing any facts to support such a claim.

As discussed above, the chance of these claims being brought successfully on appeal is unlikely. First, the Petitioner does not provide what evidence State allegedly withheld. However, Petitioner claims that a torn dress coat he was wearing while being taken into custody is somehow exculpatory. As discussed above, the dress coat Petitioner wore at the time of the home invasion is not exculpatory — there is no rational analysis to be made showing Petitioner's dress coat explains away the charges. Therefore, this claim is without merit.

Additionally, Petitioner's claim of witness tampering is not supported by the record. *See* PH, at 11-13. The State only asked open-ended questions. Id. At no point did State direct the witness to respond in a particular way. Id. In any event, it was only after Petitioner removed his glasses that Victim could make a positive identification. Id, at 12-13. Therefore, this claim is without merit.

Lastly, Petitioner does not show what an investigation could have discovered, or the investigation would have prevented him, with a *reasonable probability*, from entering into the GPA. *See* Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Neither has Petitioner shown what an investigation would have produced. Id. As shown above, Petitioner's claim is meritless and belied by the record. Therefore, Petitioner's claim is DENIED.

d. Petitioner's Claim Counsel Coerced Him into Entering a Guilty Plea Agreement is Belied by Record

Petitioner claims Yi Zheng coerced Petitioner into entering a GPA. However, Petitioner's claim is belied by the record. Bare and naked allegations are insufficient to warrant post-conviction relief, nor are those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "A claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

Under NRS 176.165, after sentencing, a defendant's guilty plea can only be withdrawn to correct "manifest injustice." *See also* Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990). Manifest injustice does not exist if the defendant entered his plea voluntarily. Baal,

106 Nev. at 72, 787 P.2d at 394. Additionally, a plea of guilty is presumptively valid, and the burden is on the defendant to show defendant did not voluntarily enter into the plea. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citation omitted). A district court may grant a presentence motion to withdraw a guilty plea for any "substantial reason" if it is "fair and just." Molina v. State, 120 Nev. 185, 191, 87 P.3d 533, 537 (2004); *See also* NRS 176.165.

To determine whether a guilty plea was voluntarily entered, the court will review the totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721 P.2d at 367. Under Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983), a proper plea canvass should reflect that:

> [T]he defendant knowingly waived his privilege against self-incrimination, the right to trial by jury, and the right to confront his accusers; (2) the plea was voluntary, was not coerced, and was not the result of a promise of leniency; (3) the defendant understood the consequences of his plea and the range of punishments; and (4) the defendant understood the nature of the charge, i.e., the elements of the crime.

Additionally, the presence and advice of counsel is a significant factor in determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d 107, 107 (1975).

This standard requires the court accepting the plea to personally address the defendant when he enters his plea to determine whether he understands the nature of the charges to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not rely simply on a written plea agreement without some verbal interaction with a defendant. Id. Thus, a "colloquy" is constitutionally mandated, and a "colloquy" is but a conversation in a formal setting, such as that occurring between an official sitting in judgment of an accused at plea. *See* Id. However, the court need not conduct a ritualistic oral canvass. State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas "do not require the articulation of talismanic phrases," but only that the record demonstrates a defendant entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev. 573, 575,

516 P.2d 1403, 1404 (1973); *See also* Brady v. United States, 397 U.S. 742, 747-48, 90 S. Ct. 1463, 1470 (1970).

Here, Petitioner fails to provide sufficient factual support to show that Yi Zheng coerced him into entering the GPA. Petitioner only makes the naked assertion that Yi Zheng manipulated him into entering the GPA. *See* Petition, at 9.

However, the record belies Petitioner's claim. On November 9, 2020, Petitioner was canvassed and entered a guilty plea. At no time did Petitioner raise his allegation that counsel was supposedly coercing him into entering a guilty plea.

Moreover, on November 17, 2020, the district court thoroughly canvassed Petitioner:

> THE COURT: Okay. I do have a guilty plea agreement which was filed in open court just a few seconds ago indicating that you had agreed to plead guilty to committing the crime of Count 1, Invasion of the Home, a Category B Felony in violation of NRS 205.061. Sir, did you sign this agreement?
> DEFENDANT: Yes, Your Honor.
> THE COURT: Prior to signing the agreement, did you have an opportunity to review the agreement? Did you review it and understand the terms?
> DEFENDANT: Yes, Your Honor.
> *THE COURT: Is anyone forcing you to plead guilty?*
> *DEFENDANT: No, Your Honor.*
> *THE COURT: You're pleading guilty of your own free will?*
> *DEFENDANT: Yes, Your Honor*.
> . . .
> THE COURT: Okay. And just so that I am clear because we couldn't hear that well, sir, did you have an opportunity to review the guilty plea agreement? Did you review it and understand the terms?
> DEFENDANT: Yes, Your Honor.
> *THE COURT: All right. Is anyone forcing you to plead guilty?*
> *DEFENDANT: No, Your Honor.*
> *THE COURT: You're pleading guilty of your own free will?*
> *DEFENDANT: Yes, Your Honor.*

Hearing Transcript March 13, 2018, at 3-5.

As indicated above, the district court specifically inquired if Petitioner was giving his plea freely and voluntarily. Petitioner replied in the affirmative and failed to claim Yi Zheng manipulated Petitioner into accepting the GPA. District court specifically inquired *if anyone* made any threats to force him into entering the GPA. Petitioner replied in the negative and again failed to claim Yi Zheng manipulated Petitioner into accepting the GPA.

Additionally, at no time did Yi Zheng represent Petitioner. Petitioner's claim stems from his justice court case — 17F21598X — where John Momot, not Yi Zheng, represented Petitioner. The only time Yi Zheng interacted with Petitioner regarded his justice court case, is on January 10, 2018, when Yi Zheng appeared for John Momot to confirm John Momot as attorney of record and appeared for initial appearance. *See* Memorandum, at 86.

Also, McAmis represented Petitioner during entry of plea in the instant case. McAmis was the attorney on record that engaged in negations and helped form the plea agreement, not Yi Zheng. Petitioner admits this in his petition. *See* Petition, at 8A-8B.

Lastly, on March 13, 2018, Petitioner plead guilty pursuant to a guilty plea agreement. On August 6, 2019, district court held the guilty plea agreement to be valid. Petitioner raised various claims on direct appeal. None of which was the claim Petitioner did not enter into the GPA freely, knowingly, and voluntarily. All the alleged facts were available to Petitioner at the time of appeal. However, Petitioner failed to raise said claim and does not explain why. Petitioner's claim is belied by the record. Therefore, Petitioner's claim is DENIED.

e. Petitioner's Claim that District Court Abused its Discretion by Denying Petitioner's Motion to Withdraw Plea is Barred Under Law of the Case Doctrine

Petitioner claims district court abused its discretion when the court denied Petitioner's motion to withdraw plea. However, Petitioner's claim is barred under the Law of the Case Doctrine.

Under the doctrine of the law of the case, issues previously decided by an appellate court may not be reargued in a habeas petition. *See* George v. State, 125 Nev. 1038, 281 P.3d 1175 (2009) (citing Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975)). When the appellate court rules on the merits of a matter, the ruling becomes the law of the case, and the issue will not

be revisited. *See* Hall v. State, 91 Nev. 314, 315–16, 535 P.2d 797, 798–99 (1975); *See also* Valerio v. State, 112 Nev. 383, 386, 915 P.2d 874, 876 (1996); Hogan v. Warden, 109 Nev. 952, 860 P.2d 710 (1993).

A petitioner cannot avoid the doctrine of the law of the case by a more detailed and precisely focused argument. Hall, 91 Nev. at 316, 535 P.2d at 798–99. *See also* Pertgen v. State, 110 Nev. 557, 557–58, 875 P.2d 316, 362 (1994). However, the "doctrine of the law of the case is not absolute," and the appellate court has the discretion to revisit the wisdom of its legal conclusions if the court "determines that such action is warranted." Bejarano v. State, 122 Nev. 1066, 1074, 146 P.3d 265, 271 (2006).

Petitioner brought this same claim on direct appeal. Here, the Nevada Court of Appeals held that district court "did not abuse its discretion by denying this claim." Dorsey v. State, Docket No. 79845-COA (Order of Affirmance, January 8, 2021). The above ruling is the law of the case and Petitioner may not reargue this claim in his habeas petition. Therefore, Petitioner's claim is DENIED.

II. PETITIONER FAILED TO ESTABLISH CUMULATIVE ERROR

Petitioner argues that the cumulative effect of all the errors entitles Petitioner to reversal. *See* Petition, at 12. Petitioner's claim fails.

The Nevada Supreme Court has not endorsed applying its direct appeal cumulative error standard to the post-conviction Strickland context. McConnell v. State, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009). Nor should cumulative error apply on post-conviction review. Middleton v. Roper, 455 F.3d 838, 851 (8th Cir. 2006), cert. denied, 549 U.S. 1134, 1275 S. Ct. 980 (2007) ("a habeas petitioner cannot build a showing of prejudice on series of errors, none of which would by itself meet the prejudice test.").

Even if applicable, a finding of cumulative error in the context of a Strickland claim is extraordinarily rare and requires an extensive aggregation of errors. *See*, e.g., Harris By and through Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995). In fact, logic dictates that there can be no cumulative error where the petitioner fails to demonstrate any single violation of Strickland. *See* Turner v. Quarterman, 481 F.3d 292, 301 (5th Cir. 2007) ("where individual

allegations of error are not of constitutional stature or are not errors, there is 'nothing to cumulate.'") (quoting Yohey v. Collins, 985 F.2d 222, 229 (5th Cir. 1993)); Hughes v. Epps, 694 F.Supp.2d 533, 563 (N.D. Miss. 2010) (citing Leal v. Dretke, 428 F.3d 543, 552-53 (5th Cir. 2005)). Since Petitioner has not demonstrated any claim warranting relief under Strickland, there are no errors to cumulate.

Under the doctrine of cumulative error, "although individual errors may be harmless, the cumulative effect of multiple errors may deprive a defendant of the constitutional right to a fair trial." Pertgen v. State, 110 Nev. 554, 566, 875 P.2d 361, 368 (1994) (citing Sipsas v. State, 102 Nev. 119, 716 P.2d 231 (1986)); *See also* Big Pond v. State, 101 Nev. 1, 3, 692 P.2d 1288, 1289 (1985). The relevant factors to consider in determining "whether error is harmless or prejudicial include whether 'the issue of innocence or guilt is close, the quantity and character of the error, and the gravity of the crime charged.'" Id., 101 Nev. at 3, 692 P.2d at 1289.

Here, Petitioner failed to show cumulative error because there were no errors to cumulate. Petitioner failed to show how any of the above claims constituted ineffective assistance of counsel. Instead, all of Petitioner's claims are either belied by the record, meritless, or otherwise outside the scope of habeas review. Additionally, given the evidence of Petitioner's guilt, any claim that he would have been acquitted had these "errors" not occurred fails. Therefore, Petitioner's claim is DENIED.

III. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING

Petitioner requests an evidentiary hearing in his memorandum of point and authorities. *See* memorandum, at 37-38. However, Petitioner is not entitled to an evidentiary hearing.

Under NRS 34.770, a petitioner is entitled to an evidentiary hearing when a judge reviews all supporting documents filed and determines that a hearing is necessary to explore the specific facts alleged in the petition. An evidentiary hearing is unnecessary if a petition can be resolved without expanding the record. Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A petitioner is entitled to an evidentiary hearing if his petition is supported by specific factual allegations, which if

true, would entitle him to relief unless the factual allegations are repelled by the record. *See* Marshall, 110 Nev. at 1331, 885 P.2d at 605; *See also* Hargrove, 100 Nev. at 503, 686 P.2d at 225 (holding that "[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record"). It is improper to hold an evidentiary hearing simply to make a complete record. *See* State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) ("The district court considered itself the 'equivalent of . . . the trial judge' and consequently wanted 'to make as complete a record as possible.' This is an incorrect basis for an evidentiary hearing.").

Further, the United States Supreme Court has held that an evidentiary hearing is not required simply because counsel's actions are challenged as being unreasonable strategic decisions. Harrington v. Richter, 562, U.S. 86, 105, 131 S. Ct. 770, 788 (2011). Although courts may not indulge post hoc rationalization for counsel's decision-making that contradicts the available evidence of counsel's actions, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. Id. There is a "strong presumption" that counsel's attention to specific issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Id. (citing Yarborough, 540 U.S. 1, 124 S. Ct. 1). Strickland calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind. 466 U.S. at 688, 104 S. Ct. at 2065.

Here, Petitioner is not entitled to an evidentiary hearing. Petitioner's claims are belied by the record, meritless, or capable of being addressed by the current record. There is no need to expand the record, and an evidentiary hearing is not warranted in the instant case. Therefore, Petitioner's request for an evidentiary hearing is DENIED

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ORDER

Therefore, it is HEREBY ORDERED that Petitioner's Petition for Post-conviction Relief shall be, and it is, hereby DENIED.

~~DATED this _____ day of October, 2021~~.

Dated this 20th day of October, 2021

DISTRICT JUDGE

NH

DB8 25B D072 98FB
Jacqueline M. Bluth
District Court Judge

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

BY

/s/ John Niman
JOHN NIMAN
Deputy District Attorney
Nevada Bar #14408

November 2, 2021

UNITED STATES OF AMERICA
DISTRICT COURT
OF THE
EIGHTH
JUDICIAL
DISTRICT
COUNTY OF CLARK
STATE OF NEVADA

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ELECTRONIC SEAL (NRS 1.190(3))

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada	CASE NO: C-17-323324-1
vs	DEPT. NO. Department 6
Denzel Dorsey	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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