

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON JEROME BOLEN, A/K/A
JASON J. BOLDEN,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Electronically Filed
Mar 16 2022 11:05 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-21-842092-W

Docket No: 84293

RECORD ON APPEAL

ATTORNEY FOR APPELLANT
JASON BOLEN #1032099,
PROPER PERSON
P.O. BOX 208
INDIAN SPRINGS, NV 89070

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

A-21-842092-W Jason Bolen, Plaintiff(s) vs. Nevada Department of Correction,
Defendant(s)

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Case No. A-21-842092-W
Dept. 15
Dept. No.

FILED
OCT 04 2021
Alvin J. Blum
CLERK OF COURT

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

JASON BOKEN #1032099
Petitioner,

NEVADA DEPT OF CORRECTIONS;
ELY STATE PRISON
William Gittere, WARDEN
Respondent.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

MEMORANDUM OF POINTS & AUTHORITIES
IN SUPPORT OF WRIT OF HABEAS CORPUS
Post-Conviction Relief, Attached.

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you're not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

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

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: ELY STATE PRISON, P.O. BOX 1989, ELY NEVADA 89301.

2. Name and location of court which entered the judgment of conviction under attack: THE EIGHTH JUDICIAL DISTRICT COURT OF CLARK COUNTY LAS VEGAS NEVADA 200 LEWIS AVENUE, LAS VEGAS NV 89155-1601

3. Date of judgment of conviction: MAY 30th, 2018.

4. Case number: C-18-334635-1

5. (a) Length of sentence: SENTENCE WAS STRUCTURED TO 336 TO 1920 MONTHS TO SERVE CONSECUTIVELY WITH PAROLE ELIGIBILITY AFTER THREE (3) YEARS.

(b) If sentence is death, state any date upon which execution is scheduled: _____

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes _____ No X

If "yes", list crime, case number and sentence being served at this time: _____

7. Nature of offense involved in conviction being challenged: Attempted Murder, AND DEADLY WEAPON ENHANCEMENT.

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

(a) Not guilty X (b) Guilty _____ (c) Nolo contendere _____

9. If you entered a plea of guilty to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty was negotiated, give details: _____

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

(a) Jury X (b) Judge without a jury _____

11. Did you testify at the trial? Yes _____ No X

12. Did you appeal from the judgment of conviction? Yes X No _____

13. If you did appeal, answer the following:

(a) Name of Court: NEVADA SUPREME COURT "Appellate Division"

(b) Case number or citation: 79715

(c) Result: AFFIRMED

(d) Date of result: July 8th, 2021
(Attach copy of order or decision, if available.)

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

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 X

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

(a)(1) Name of court: _____

(2) Nature of proceeding: _____

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes _____ No X

(5) Result: N/A

(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: N/A

(2) Nature of proceeding: _____

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes _____ No X

(5) Result: N/A

(6) Date of result: _____

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

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

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

(1) First petition, application or motion? Yes _____ No X

Citation or date of decision: _____

(2) Second petition, application or motion? Yes _____ No X

Citation or date of decision: _____

(3) Third or subsequent petitions, applications or motions? Yes _____ No X

Citation or date of decision: _____

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

N/A

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

(a) Which of the grounds is the same: N/A

(b) The proceedings in which these grounds were raised: N/A

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

N/A

18. If any of the grounds listed in No.'s 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

N/A

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

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes _____ No ☒

If yes, state what court and case number:

N/A

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: MR. BENJAMIN NADIG, CHTD OF LAW OFFICE OF BENJAMIN NADIG, 228 S. 4th Street, # 300 LAS VEGAS NV 89101

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes _____ No ☒

If yes, specify where and when it is to be served, if you know:

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

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

EXECUTED at Ely State Prison, on the 22th day of the month of August of the year 2001.

Jason Bolen
Signature of petitioner

Ely State Prison
Post Office Box 1989
Ely, Nevada 89301-1989

Jamal D. Hendrix
Signature of Attorney (if any)
Jamal Damon Hendrix Pro Se Litigant
Attorney for petitioner
Ely State Prison
P.O. Box 1989, Ely, NV 89301
Address

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.

Jason Bolen
Petitioner

Jamal D. Hendrix Pro Se Litigant
Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I, JASON BOLEN, hereby certify pursuant to N.R.C.P. 5(b), that on this 22nd day of the month of AUGUST, of the year 2021 I mailed a true and correct copy of the foregoing **PETITION FOR WRIT OF HABEAS CORPUS** addressed to:

Respondent prison or jail official

Address

Attorney General
Heroes' Memorial Building
100 North Carson Street
Carson City, Nevada 89710-4717

STEVEN B. WOLFSON
District Attorney of County of Conviction
200 LEWIS AVE, 3rd FLOOR
LAS VEGAS NV 89155-1601
Address

JASON BOLEN
Signature of Petitioner

AFFIRMATION PURSUANT TO NRS 239B.030

I, JASON Bolen, NDOC# 1032099

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE
ATTACHED DOCUMENT ENTITLED WRIT OF Habeas Corpus
"Post-Conviction Relief"

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 22th DAY OF August, 2021.

SIGNATURE:

Jason Bolen

INMATE PRINTED NAME: JASON Bolen

INMATE NDOC # 1032099

INMATE ADDRESS: ELY STATE PRISON
P. O. BOX 1989
ELY, NV 89301

Jason Bolden #1032099

P.O. Box 1989 ESP

Elko, Nevada 89301



STEVEN D. GRIERSON, Clerk of the Court
200 LEWIS AVE. 3rd Floor
LAS VEGAS, NV. 89155-1160

JASON Bolen #1032099

ELY STATE PRISON

P.O. BOX 1989

Ely, NV 89301

IN Proper Person.

#1032099

FILED

OCT 04 2021

CLERK OF COURT

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

JASON Bolen #1032099

Petitioner

Case No. - A-21-842092-W
Dept. 15

Dept No.

VS.

Nevada Dept of Corrections

William Gittere, Warden

Defendant(s)

MEMORANDUM OF POINTS & AUTHORITIES

IN Support of Writ of Habeas Corpus

POST-CONVICTION RELIEF

Comes Now, Petitioner, JASON Bolen, in proper person, who respectfully
present to this Honorable Court, Memorandum of Points & Authorities
in Support of Writ of Habeas Corpus for Post-Conviction Relief.
PURSUANT to NRS 34.724.

This Motion is made and based pursuant to NRS. 34.726 and NRS.
34.800 and other NRS's for Post-Conviction Relief as well as all
papers, pleadings, and documents on file herein and grounds for
Relief as follows:

1. That the Petitioner is currently residing in Ely State Prison
White Pine County, Ely Nevada and had his Liberty Restrained,

1.

SEE NEXT PAGE # 2.

1. by virtue of his conviction in the above styled AND CASE
2. Number.

3. 2. THAT the Petitioner is restrained by virtue of a judgment of
4. conviction in the Eighth Judicial District Court, County of Clark
5. ON MAY 30th, 2018, where he is serving a 336 to 1920 MONTH SENT-
6. ence in the NEVADA Department of Corrections for four(4) counts
7. of Attempted Murder with the Use of a deadly Weapon; One (1) count
8. of ownership or possession of a FIREARM by a prohibited person;
9. seven (7) counts of discharging FIREARM at or into occupied STR-
10. ucture, vehicle, AIRCRAFT or WATERCRAFT; AND ONE COUNT of battery
11. with the Use of a deadly Weapon.

12.
13. 3. THAT the CONFINEMENT of Petitioner is UNLAWFUL FOR
14. the following REASONS;

15. a. The Petitioner is FACTUALLY INNOCENT.

16. b. The Petitioner received ineffective Assistance
17. OF TRIAL COUNSEL.

18. c. There is Newly Discovered Evidence such that
19. with the use of it, a different Result will have
20. BEEN DIFFERENT AT TRIAL.

21. FACTUAL BACKGROUND.

22.
23. Petitioner, JASON Bolen Allegedly approached two(2) brothers, Bry-
24. son MARTINEZ, AND BRENTON MARTINEZ ON the Morning of July 1st,
25. 2018 AT A LAS VEGAS Apartment complex around 8:00 AM AND dis-
26. charged seven(?) rounds from a FIREARM into a building, occupied
27. with people AND ONE (1) round into BRENTON MARTINEZ. BRANDI
28. COLEMAN, the girlfriend of BRYSON MARTINEZ had identified

1. the petitioner when investigating officers questioned her AND
2. she showed them a picture of petitioner, who has a daughter
3. with him. The officer showed petitioners picture to brenton
4. while at the hospital AND under the influence of pain Medic-
5. ation, Alcohol, AND MARIJUANA, who could not I.D. petitioner.

6. The State Filed A CRIMINAL COMPLAINT AGAINST petitioner;
7. JASON Bolen AND charged him with FOUR (4) counts of Attempt
8. Murder with the USE OF A DEADLY WEAPON; ONE COUNT OF BATTERY
9. with the USE OF A deadly WEAPON; WEAPON ENHANCEMENT AND A
10. prohibited person with A FIREARM, AND the MATTER proceeded
11. to the Justice COURT FOR A PRELIMINARY hearing, where AS the
12. Justice COURT questioned the EVIDENCE AGAINST petitioner
13. AND Found none, dismissing the indictment charged.

14.
15. The State sought permission AND Filed AN Amended information
16. against the petitioner in district COURT AND Attached preliminary
17. transcripts AS Exhibits.

18.
19. The petitioner Received ineffective Assistance of Counsel
20. when trial Counsel Failed to oppose the State's Motion FOR
21. Leave to Amend INFORMATION by Affidavit, Abandoning petitioners
22. opportunity when he Filed Motion FOR CONTINUANCE to do so.

23. GROUNDS FOR RELIEF

24.
25.
26. This petition SEEKS Relief pursuant to NRS. 34.724 AND other
27. post-conviction statutes;

28.

Ground ONE

Petitioner JASON Bolden Alleges that he receive ineffective Assistance of Counsel in Violation of his State and Federal 5th, 6th and 14th Amendment to U.S. Const. when Counsel Fail to oppose the Fail bindover.

ON AUGUST 22nd 2018 in the LAS VEGAS Justice Court the prosecutor Fail to Support the Criminal Complaint with Sufficient Evidence Causing the Magistrate to dismiss on the grounds of INSUFFICIENT EVIDENCE.

Evidence failure include the State's Victim eye witness testified in open Court under oath and examination that Petitioner Bolden WASN'T the Shooter (see preliminary hearing Page 11, 12 and 13) AS WELL AS CROSS-EXAMINE Victim witness Brenton Martinez was ASK by defense Counsel to Identify Petitioner SUSPECT while Petitioner SAT AT the table. The Victim stated he NEVER SEEN him before. (Preliminary hearing Page 17 Line 67) ON direct AND CROSS-EXAMINATION he Victim INFORM the Court AS to his Condition while heavily Medicated at the hospital he could NOT recall ANY interview with the detective (see Preliminary hearing page 16 line 28). The prosecutor presented an OUT OF COURT Statement give by Officer ALEXANDER Jegg from the Victim who denied giving ANY Statement of Identification (see preliminary hearing Page 22 line 5-8). Officer Jegg was question AS to the Victim Condition AND Officer Jegg admitted he Officer WAS NOT train in identifying people who ARE under the influence. (see Preliminary hearing Page 23-25 and Page 24).

The Magistrate stated A Statement GIVEN under the influence Create A problem and the Magistrate stated that he would put more weight to the

In Court Statement and testimony the witness Victim gave today in open Court under oath and subject to cross examination well within the Magistrate Authority (see Wrenn v. Sheriff, 87 Nev. 85, 482 P.2d 289 (1971) which states,

"this Court has held that it is the function of the Magistrate to determine the weight to be accorded to the testimony of the witnesses." Wrenn, 87 Nev. at 87, 482 P.2d at 290.

Defense Counsel cited this Authority in his opening brief filed with the Nevada Supreme Court as well as the prosecutor informing the Court and defense Counsel that the Magistrate was within its Authority to apply evidence (see preliminary hearing Page 78 line 14-16 and Page 77, 78, 79 and 80). The District Court issue several Notices to Counsel to oppose the motion to amend the filing and Counsel refusal is evidence of a breakdown in the Adversary process which is guaranteed by the 6th Amendment of the U.S. Const.

Clearly this is deficient performance which fell below an objective standard cited in Strickland v. Washington 466 U.S. at 697. Nor could it be said to be strategic decision when Counsel consented to the filing of an information in which the criminal Complaint was ruled on by a Court of jurisdiction that determined the Complaint was without evidence.

Without a bindover the prosecutor was without Authority to summon an appearance by the Petitioner to answer to charges "Case dismissed" Counsel reasoning for failure to oppose the filing of an amend motion was that he had a heavy case load and in trial on other cases (see Case Summary 1-31-19)

Petitioner was clearly prejudiced by Counsel deficient performance when the district Court decision to grant the motion was based solely on Counsel failure to oppose (see case summary 9-18-18 Court ordered motion granted as unopposed) Nor did Counsel stop the filing of the motion to amend but he also fail to preserve the magistrate ruling for any appeal causing Petitioner grounds to be review on a lesser standard plain error standard, denying Petitioner a meaningful review. And not for Counsel error the outcome would have been different in District Court as well as any appeal. (see Luce v. U.S. 469 U.S. 38, 41 (1984) which state "Attorneys have a duty to make pretrial motions, particularly motions to suppress evidence when adequate foundation for the motion exists", "failure to pursue such matters would be considered representation which falls below the minimum standard of professional competence required of defense counsel" State v. Watson 653 P.2d 351 (Ariz 1982). The Nevada Supreme Court reviews claims of ineffective assistance of Counsel under the "reasonably effective assistance test of Strickland v. Washington - U.S. 104 S.Ct. 2052 (1984) see Sanborn v. State 812 P.2d 1279 (Nev. 1991). Adopted in Warden v. Lyon 683 P.2d 504 (1984 Nev.).

This method of filing an information doesn't allow the prosecutor to correct deficiencies in evidence at a preliminary hearing. State v. Sixth Judicial Dist. Ct. 114 Nev. 739, 741-42 964 P.2d 48, 49 (1998). Petitioner was greatly prejudiced by Counsel error and had not Counsel error the information couldn't be filed and new evidence allowed.

FOUNDATIONS FOR RELIEF cont. . .

Two

1. GROUND TWO:

2. Petitioner; JASON Bolen Alleges that trial court ERRED when it
3. GRANTED the States Motion for Leave to File a Amended Informa-
4. tion by A Affidavit using preliminary Transcripts which had
5. Resulted in A UNLAWFUL conviction of someone who is Actually
6. And Factually innocent in violation of his 5th, 6th, and 14th Amend-
7. ment Rights to the U.S. CONST. See, Petitioners Preliminary Transcript
8. Exhibit-A.

10. Supporting Facts:

12. Around 8:00 AM on July 1st, 2018, Las Vegas Metro Police Officers:
13. Kevin Shackelford responded to a Report of a shooting at 2883
14. Wheelwright in Las Vegas Clark County Nevada, AND detective: Ken
15. Kempotich had testified that officers recovered Eight (8) spent
16. Shell casings.
17. Bryson Martinez testified at the preliminary hearing but
18. NOT at trial AS he was one of the witnesses AND his transcript
19. WAS read into the district court Record AND he testified that
20. he WAS at his ex-girlfriends house along with his brother Bre-
21. nton Martinez AND Brandi's young daughter AND they were
22. drinking Alcohol AND smoking MARIJUANA. Bryson Martinez WAS
23. inside AND his brother Brenton Martinez, WAS outside when Bre-
24. nton WAS shot AND he heard Multiple gunshots but WASN'T sure if
25. they were coming into the house.
27. Bryson gave a statement to police that he Fabricated, AND there
28. WAS another eyewitness, Joshua Knowlton, who testified, that on

GROUND'S FOR RELIEF

1. July 1st, 2018, he was in his apartment near Wheelwright around 8
2. or 9 o'clock in the morning when he allegedly heard a couple of gun-
3. shots and then saw a black male running across the apartment com-
4. plex, and Brenton Martinez testified on July 1st, 2018 that he
5. was outside with his brother Bryson when Bryson got shot and
6. Brenton identified petitioner; Jason Bolen as the shooter, but
7. not at the preliminary hearing.

8.
9. On August 20th, 2018, the Las Vegas Township Justice Court dismissed
10. a criminal complaint against petitioner; Jason Bolen after finding
11. insufficient evidence to support an identification of petitioner;
12. Jason Bolen as the shooter and the state filed a Motion for Leave
13. to Amend Information by Affidavit in District Court on Decem-
14. ber 6th, 2018 with preliminary transcripts as exhibits, recharg-
15. ing petitioner with ~~four~~ (4) counts of Attempted Murder with the
16. use of a deadly weapon and other related charges in violation of
17. his Due Process Rights.

"POINTS AND AUTHORITIES"

18.
19.
20.
21. Nevada Revised Statute 173.035(2) allows for filing of an inform-
22. ation by the state's motion "upon Affidavit of any person who has
23. knowledge of the commission of an offense, and who is a compet-
24. ent witness to testify in the case". An information by Affidavit
25. may be filed to correct a magistrate's egregious error in disch-
26. arging a defendant, but not to correct deficiencies in evidence at
27. a preliminary hearing. See, State vs. Sixth Judicial Dist. Ct. 114 Nev.
28. 739, 741-42, 924 P.2d. 48, 49 (1998). Despite the state's argument

GROUNDAS FOR RELIEF CONT...

1. to the contrary in its motion, Nevada case law does not clearly
2. hold that "the ultimate question of credibility of witnesses must
3. be left to the trier of fact and not the magistrate; Wrenn, Vs, Sher-
4. iff, 87 Nev. 85, 482 P.2d, 289 (1971), but this isn't the case here.

- 5.
6. Trial court committed "plain" error when it allowed the state to file
7. A Amended Information by Affidavit, in who's preliminary hearing
8. transcripts was used as exhibits in violation of the Nevada Revised
9. Statute, NRS 173.035(2), which only allows for "Affidavit" require-
10. ment, as the district attorney must file a motion in district court
11. "upon Affidavit" of any person who has knowledge of the comm-
12. ission of an offense, and who is competent witness to testify
13. in the case, setting forth the offense and the name of the
14. person... charged with the commission thereof.

- 15.
16. The Nevada Supreme Court affirmed the petitioners conviction
17. in which he challenged the legality of NRS. 173.035(2) require-
18. ments which should be "plain" error reviewed for a reversal as a
19. threshold was crossed.

- 20.
21. A reviewing court may grant relief for "plain" error, even
22. if the error was not raised and preserved at trial or sentencing.
23. FED R. CRIM. P. 52(b), See also, Tuckett, Vs, U.S. 556 U.S. 129, 133
24. (2009); U.S. Vs, Olano, 507 U.S. 725, 731 (1993) and deviation from
25. A legal rule is "error" unless the rule has been "waived", Olano, 507
26. U.S. @ 732-33, and a Nevada Revised Statute (NRS) is a legal rule
27. binding on the constituents and the likes thereof but the error
28. is and was "clear and obvious". U.S. Vs, Slade, 631 F.3d 185, 191 (4th
Cir. 2012).

1. Such "plain" error affected the petitioner's "substantial Rights"
2. And those rights the petitioner has is a defendant in a criminal
3. action is entitled to due process of law as guaranteed by the 5th
4. And 14th Amendment to the U.S. Constitution.

5. The Constitution prohibits the criminal conviction of any
6. person except upon proof of guilt beyond a reasonable doubt; See,
7. In Re Winship, 397 U.S. 358, 364 (1970); Edwards, Vs, State, 90 Nev.
8. 255, 258-59, 524 P.2d 328, 331 (1974), And this court should review
9. "plain" error by the district court which affected petitioners substa-
10. tial Rights pursuant to Fed. R. Crim. P. 52(b), even if it was not bro-
11. ught to the courts attention; See, Johnson, Vs. U.S. 520 U.S. 461, 465
12. (1997); See also, U.S., Vs, Gallegos-Galindo, 704 F.3d 1269, 1272 (9th Cir.
13. 2013), And this court should find in favor of the Petitioner, that his
14. constitutional Rights was violated by the district court, when the
15. states Motion for leave to file information by Affidavit in the
16. district court did not comport with the plain reading of the NRS
17. statute governing "Filing an Information by Affidavit" and the
18. district court erred in granting the Motion even when the Justice
19. Court committed no egregious error by dismissing petitioners
20. charges.

- 21.
22. The petitioner deserves relief of a "New Trial" or an "Evidentiary
23. hearing to resolve the disputed facts of such error which prejudice
24. the petitioner of a fair and impartial trial.

25. THREE

26. GROUND

27. Petitioner; Jason Bolen alleges that he received ineffective
28. Assistance of Counsel in violation of his state and Federal 6th

GROUND'S FOR RELIEF CONT. . .

1. AND 14th Amendment Rights guaranteed to him under the U.S. cons
2. when trial counsel failed to suppress Identification Evidence
3. before trial. See, Exhibit-B "Preliminary Transcripts"

4.

Supporting Facts:

6.

7. Petitioner's trial counsel, Ben NADIG, was court appointed for
8. his defense against criminal charges of four (4) counts of Atten
9. pted Murder with the Use of a Deadly Weapon, one (1) count of
10. ownership or possession of a Firearm by a prohibited person; &
11. Seven (7) counts of discharging Firearm at or into occupied str-
12. ucture, vehicle, Aircraft, or Watercraft and one count of battery
13. with Use of deadly Weapon.

14. Petitioner; Jason Bolen was accused of shooting Brenton
15. Martinez at a Las Vegas housing complex on July 1st, 2018 in the
16. morning hours and made a statement to the Las Vegas Metro Pol-
17. ice which placed the petitioner; Jason Bolen as the shooter but
18. such accusations was inconsistent testimony during the preli-
19. minary hearing and statements made on the scene of the
20. crime from witnesses of the state and victims and petitioner's
21. trial counsel failed to object to such Identification and sup-
22. press such evidence before trial, rendering his performance
23. ineffective below ordinary standards of effective Assistance
24. of Counsel guaranteed to petitioner under the 6th Amendment
25. to the U.S. Constitution.

26.

27.

28.

"POINTS AND AUTHORITIES"

8.

SEE NEXT PAGE #9.

GROUND'S FOR RELIEF CONT...

1. The Sixth Amendment guarantees the Right effective ASSIST
2. ANCE OF Counsel in criminal prosecutions. See, Yarborough, Vs,
3. GENTRY, 540 U.S. 1, 5(2003) (per curiam); See also, Padilla, Vs, Ky, 559 U.S.
4. 356, 364(2010) And the Right to Counsel Applies to both Retainee
5. AND Appointed Counsel; See, Cuyler, Vs, Sullivan, 446 U.S. 335, 34
6. -45(1980). To obtain Reversal of a conviction, the defendant mu
7. st prove that (1) Counsel's performance "fell below an objective st-
8. andard of Reasonableness" Strickland, Vs, Washington, 466 U.S. 668,
9. 688(1984); Hibler, Vs, Benedetti, 693 F.3d 1140, 1150(9th Cir. 2012) And
10. (2) Counsel's deficient performance prejudice the defendant
11. Resulting in an Unreliable or Fundamentally Unfair Outcome
12. in the proceeding. Strickland, 466 U.S. @ 687, 691-92;
13. See also: Glover, Vs, U.S. 531 U.S. 198, 201, 204(2001) And
14. When Petitioner's Trial Counsel Failed to File a Motion
15. to Suppress the Identification Evidence of the peti-
16. tioner before trial, prejudice the petitioner because
17. NO other Facts on Record could have convicted the pet
18. itioner of the crime of Attempted Murder with the
19. USE of a Deadly weapon; See; Gentry, Vs, Sevier, 592 F.3d
20. 838, 851-52(7th Cir, 2010) Also; Jones, Vs, Ryan, 583 F.3d 686
21. 646-47(9th Cir. 2009). As such evidence of identification placed
22. the petitioner at the crime scene AND a Evidentiary hearing
23. must be conducted to determine such prejudice by trial
24. Counsel's performance.
25. The victim, Brenton Martinez, did not recognized the petition
26. er photo while in the hospital showed to him by the Las Vegas
27. Metro Police officer due to Allegedly being under the influence of
28. Drugs AND Alcohol along with pain Medications but was shown

GROUND'S FOR Relief cont...

1. the petitioner's photo Later singly with no other suspects in
2. the photo array and while alone with the district Attorney and
3. trial Counsel failed to suppress such "Suggestive" identifica-
4. tion during pre-trial, trial, and Appellate proceedings in viol-
5. ation of petitioners Due Process Rights.

6.

7. A defendant must rely on due process principles to challenge
8. unnecessary "Suggestive" procedures that occur at noncritical
9. pre-trial stages. See, Kirby, Vs, Ill, 406 U.S. 682, 690-91 (1972).

10. The Supreme Court recognized A defendant's due Process
11. Rights to exclude identification testimony resulting from unn-
12. necessarily "Suggestive" procedures that might lead to an irreparably
13. mistaken identification. See, Stovall, Vs, Deno, 388 U.S. 293, 302 (1967).
14. And the Court further explained that "It is the likelihood of misiden-
15. tification which violates A defendant's Rights to due Process. See,
16. Neil, Vs, Biggers, 409 U.S. 188, 198 (1972).

17.

18. The petitioner was prejudice by Trial Counsel's performance
19. when he failed to object to the "Suggestive" identification by the
20. victim and suppress such evidence at trial as this was not a
21. trial strategy and it affected the minds of the jury and trial
22. counsel's tactics was not functioning as counsel guaranteed the
23. defendant under the Sixth Amendment and requires a Evidentiary
24. hearing to determine such performance is unconstitutional and
25. deprived petitioner of a fair trial.

26.

GROUND FOUR

27. Petitioner; Jason Boken alleges that he had recieved ineffective
28. Assistance of Counsel in violation of his 6th and 14th Amendment

10.

SEE NEXT PAGE # 11.

GROUND'S FOR RELIEF

1. Rights guaranteed to him under the State AND Federal Constit-
2. ution when trial Counsel Failed to investigate the petitioner's
3. Alibi and Alibi witness. See, Exhibit-C, Affidavit of Shareese
4. Grisby.

5. Supporting Facts:

- 6.
7. Petitioner; JASON Bolen was arrested and charged with Four
8. (4) counts of Attempted Murder with the Use of a deadly Weapon,
9. one (1) count of ownership or possession of a Firearm by a
10. prohibited person; Seven (7) counts of discharging a Firearm at
11. or into occupied structure, Vehicle, Aircraft or Watercraft,
12. and one (1) count of battery with the Use of a deadly Weapon
13. on August 23rd, 2018 by Las Vegas Metro Police Department.
- 14.
15. Petitioner was appointed defense Attorney: Benjamin NADIG, to
16. defend him of those charges as he pleaded not guilty and the
17. petitioner told his court appointed Attorney of his Alibi defense
18. which was, he was at his girlfriend house during the time of
19. the shooting then left after 10:30 AM for his friends house, and
20. received a call from the girlfriend saying the police had stopped
21. her while she was driving and took her back to her house to see
22. if petitioner was in her house but trial counsel failed to investi-
23. gate petitioners Alibi defense, despite being told to do so, as his
24. girlfriend: Ms. Shareese Grisby, continued to make herself avail-
25. able by making petitioners court appearances during pre-trial,
26. trial, and sentencing phase and trial Counsel's failure to interview
27. and call Alibi witness who put the petitioner in another part of
28. town at the time of the crime, constitutes performance below an

GROUND FOR RELIEF

1. 1st, 2018, AND would be able to establish on the stand, cross-ex
2. amine her testimony, AND the truthfulness thereof AND such deni
3. AL by trial Counsel, is ineffective Assistance of Counsel guarantee
4. to petitioner under the 6th Amendment Right to the U.S. Constitution
5. See, RAVGOZA, Vs, Hulick, 474 F.3d 958, 964-65 (7th Cir. 2007) See Also,
6. REYNOSO, Vs, Giurbino, 462 F.3d 1099, 1110-20 (9th Cir. 2006) AS trial Coun-
7. sel has a duty to "elicit impeachment evidence through cross-ex
8. AMINATION, AND A Evidentiary hearing must be conducted to deter
9. mine such prejudice exists by trial Counsel's performance be-
10. CAUSE such rejection of petitioners Alibi Witness through invest
11. igation AFTER petitioner had rendered AND told trial Counsel of
12. his Alibi defense AND witness, ability to perform like A AVER-
13. AGE trial Counsel AND this WAS NOT trial strategy AND A REASON-
14. ABLE probability that the outcome of the trial would have been
15. different but for Counsel's error. See, Wiggin, Vs, Smith, 539
16. U.S. 510, 534-38 (2008); See Also. CANNEDY, Vs, Adams, 706 F.3d
17. 1148, 1166 (9th Cir. 2013) AND IF Counsel Fails, it requires A REVERSAL
18. See, BROWN, Vs, Myers, 137 F.3d 1154 (9th Cir. 1998)
- 19.

20. The petitioner Request Relief for such denial of his 6th Amend-

21. ment Right to Effective Assistance of Counsel by trial Counsel

22. ERROR with A Evidentiary hearing OR NEW TRIAL.

23. Five

24. GROUND Five

25. Petitioner; Jason Bolen Alleges that he recieved ineffective Ass-

26. istance of Counsel in violation of his 6th AND 14th Amendment Rights

27. guaranteed to him under the state AND Federal Constitution when

28. trial Counsel Failed to interview the states key Witnesses.

GROUND FOR RELIEF CONT.

1. See, Exhibit-D "Petitioner's Affidavit."

2.

3. Supporting Facts:

4.

5. Petitioner; JASON Bolen was arrested and charged with Four (4)
6. counts of Attempted Murder with the Use of a deadly Weapon,
7. one (1) count of ownership or possession of a Firearm by a proh-
8. ibited person; Seven (7) counts of discharging a Firearm at
9. or into occupied structure, Vehicle, Aircraft or Watercraft, and
10. One (1) count of battery with the Use of a deadly Weapon on Au-
11. gust 23rd, 2018 by Las Vegas Metro Police Department.

12.

13. Petitioner was appointed defense Attorney: Benjamin NADIG to
14. defend him of those charges as he pleaded not guilty and petition-
15. er told his court appointed Attorney of his Alibi defense and
16. Counsel knew or should have known the states key witnesses,
17. such as petitioner's EX-girlfriend, "BRANDI COLEMAN, and her New
18. boyfriend, "BRYSON MARTINEZ", and his brother "BRENTON MARTINEZ", all
19. should have been interviewed because they said the petitioner
20. was the shooter, placing him at the scene of the crime of shoot-
21. ing the victim: BRENTON MARTINEZ, and thoroughly investigate
22. and interview them.

23. Trial Counsel: Benjamin NADIG, Failed to interview prosecution
24. witnesses and prevented the petitioner from doing so, and to effec-
25. tively cross-examine the state's witnesses that provided the
26. Evidence of petitioners involvement in the crime nor did he
27. employ his investigator to do such or visited the crime scene
28. which constitutes ineffective Assistance of Counsel and the

GROUND FOR RELIEF CONT...

1. petitioner is entitled to a Evidentiary hearing to resolve his
2. ineffective Assistance of counsel claim because such error is pre-
3. judicial to the petitioner and such error rendered counsel's
4. ability to perform like a AVERAGE Trial Counsel which fell below
5. the deficiency standards and was not trial strategy and the out-
6. come of the trial would be different but for counsel's error.

"POINTS AND AUTHORITIES"

10. The Sixth Amendment guaranteed the Right to effective Assist-
11. ance of Counsel in criminal prosecution. See, Yarborough, Vs, Gent
12. Y, 540 U.S. 1, 5 (2003) (Per Curiam); See also, Padilla, Vs, Ky, 559 U.S. 356,
13. 364 (2010) and the Right to Counsel applies to both Retained and
14. Appointed Counsel; See, Cuyler, Vs, Sullivan, 446 U.S. 335, 344-45
15. (1980). The petitioner must obtain Reversal of a conviction and
16. must prove that (1) counsel's performance "fell below an objective
17. standard of Reasonableness", Strickland, Vs, Washington, 466 U.S. 668,
18. 688 (1984); Hibler, Vs, Benedetti, 693 F.3d 1140, 1150 (9th Cir. 2012) and (2)
19. counsel's deficient performance prejudiced the defendant, result-
20. ing in an unreliable or fundamentally unfair outcome in the proceed-
21. ing. Strickland, Vs, Wash, 466 U.S. @ 687, 691-92; See also, Glover, Vs, U.S.
22. 531 U.S. 198, 201, 204 (2001). It is well known trial Counsel has a
23. duty to perform owed to his client in a criminal proceeding. See
24. Strickland, Vs, Washington, 466 U.S. @ 680 (1984) and Counsel, however
25. can also deprive a defendant of the Right to effective Assistance
26. simply by failing to render "Adequate Legal Assistance", Cuyler,
27. Vs, Sullivan, 446 U.S. @ 344, and Counsel owes a duty of Loyalty.
28. Here, the petitioner's Trial Counsel rendered prejudice to his

GROUND FOR RELIEF

1. defense when he did not interview the states "key" witnesses,
2. who placed the petitioner at the crime scene as the "shooter", and
3. failed to effectively cross-examine two witnesses that provided
4. the evidence of petitioner's involvement, constitutes ineffective
5. assistance of counsel. See, BAUMANN, Vs. United States, 692 F.2d 565
6. (9th Cir. 1982) and interviewing the states "key" witnesses is a critical
7. stage of the proceeding of trial, which should be fair. See also,
8. Mickens, Vs. Taylor, 535 U.S. 162, 166, (2002) so prejudice is presu-
9. med and a evidentiary hearing is needed to determine ineffective
10. assistance of counsel because that wasn't sound trial strategy.
- 11.

12. Ground Five:

13. Petitioner; Jason Bolen alleges that he received ineffective
14. assistance of counsel in violation of his state and federal 6th
15. and 14th Amendment Rights guaranteed to him under the U.S. Con-
16. stitution when trial counsel failed to object to the exclusion
17. of African-Americans from jury selection. See, Jury Selection
18. Transcripts @ Exhibits "E".
- 19.

20. Supporting Facts:

- 21.
22. Petitioner; Jason Bolen was arrested and charged with four
23. (4) counts of Attempted Murder with the use of a deadly weapon,
24. one (1) count of ownership or possession of a firearm by a
25. prohibited person;; Seven (7) counts of discharging a firearm at
26. or into occupied structure, vehicle, aircraft or watercraft,
27. and one (1) count of battery with the use of a deadly weapon
28. on August 23rd, 2018 by Las Vegas Metro Police Department.

15.

SEE NEXT PAGE # 16.

GROUND'S FOR RELIEF CONT...

1. Petitioner was appointed defense Attorney: Benjamin NADIG, to
2. defend him of those charges as he pleaded not guilty and the
3. Eighth Judicial District Court of Clark County Nevada, held a
4. Jury Trial Selection, which consisted of other Ethnic groups ex-
5. cept African-Americans, the same ethnic background as the
6. petitioner and trial counsel failed to object to the exclusion
7. of "Blacks" as Jurors selected by himself and by the prosecution
8. rendering his trial unfair by trial counsel's error in violation of
9. petitioners 6th Amendment and 14th Amendment Due Process Right.

"POINTS AND AUTHORITIES"

13. The Sixth Amendment guaranteed the Right to effective
14. Assistance of Counsel in criminal prosecution. Yarborough,
15. Vs. Gentry, 540 U.S. 1, 5 (2003) (per curiam); See Also, Padilla, Vs. Ky.
16. 559 U.S. 356, 364 (2010) and the Right to counsel applies to both
17. Retained and Appointed Counsel; See, Cuyler, Vs. Sullivan, 446
18. U.S. 335, 344-45 (1980). The petitioner must obtain Reversal
19. of a conviction and must prove that (1) counsel's performance
20. "fell below an objective standard of reasonableness," Strickland,
21. Vs. Washington, 466 U.S. 668, 688 (1984); Hibler, Vs. Benedetti, 693
22. F.3d 1140, 1150 (9th Cir. 2012) and (2) counsel's deficient performance pre-
23. judiced the defendant, resulting in an unreliable or fundamentally
24. unfair outcome in the proceeding, See, Strickland, Vs. Washington, 466
25. U.S. @ 680 (1984) and counsel however, can also deprive a defend-
26. ant of a right to effective Assistance by simply failing to render
27. "Adequate Legal Assistance," Cuyler, Vs. Sullivan, 446 U.S. @ 344, and

16. SEE NEXT PAGE # 18

GROUND FOR RELIEF CONT...

1. Counsel owes a duty of Loyalty. See Also, Fitzpatrick, Vs, McCormick,
2. 869 F.2d 1247 (9th Cir. 1989)
3. Jury selection procedures implicate due Process, the Sixth Amen-
4. dment, and Equal protection principles. In limited situations,
5. A defendant may challenge the jury selection process on the
6. ground that it violates fundamental fairness under the Due
7. Process clause. See, U.S. Vs, Harbin, 250 F.3d 532, 541-42 (9th
8. Cir. 2001). The Sixth Amendment forbids racial discrimination in
9. the selection of jurors and requires that the jury venire from
10. which the petit jury, is selected represents a fair cross-section
11. of the community, Duren, Vs, Mo. 439 U.S. 357, 364-65 (1979). Here,
12. the petitioner's jury selection consisted of one or two African-
13. Americans but was quickly excluded and trial counsel failed to
14. object to such exclusion. See, "Petitioner's Jury Selection Transcripts"
15. as Exhibit-E, and this selection was done in an intentionally
16. discriminatory fashion in violation of petitioner's equal protection
17. clause under the U.S. Constitution, and trial counsel failure to
18. discover instructional error and raise due process claim was
19. ineffective assistance of counsel because one juror was un-
20. certain about defendant/petitioner's guilt. See, Carter, Vs, Bow-
21. erson, 265 F.3d 705, 715-16 (8th Cir. 2001).
- 22.
23. The petitioner was prejudice by trial counsel's performance
24. when he allowed the exclusion of African-American jurors lea-
25. ving the petitioner without a opportunity to receive a fair
26. trial when he failed to object to a unfair jury selection
27. which would have preserved appellate review. See, Puckett,
28. Vs, U.S. 556 U.S. 129, 133 (2009) and should've been reviewed for

1. PLAIN "error, U.S. Vs, Doe, 705 F.3d 1134, 1147-48 (9th cir. 2013) And
2. Such Rejection of Not objecting, shows counsels performance
3. which "Fell below" Reasonable trial strategy and A Evidentiary
4. hearing should be issued to determine 6th Amendment violation
5. by trial counsel.

6. SEVEN

7. GROUND [REDACTED]:

8. Petitioner; JASON Bolen Alleges that he had recieved ineffective
9. Assistance of Counsel in violation of 6th and 14th Amendment Rights
10. guaranteed to him under the State and Federal Constitution when
11. trial counsel failed to subject the prosecution case to a meaning
12. ful Adversary testing process. See Exhibit-F "Petitioner's
13. TRIAL TRANSCRIPTS"

14. SUPPORTING FACTS:

- 15.
16. Petitioner; JASON Bolen WAS ARRESTED AND charged with four (4)
17. counts of Attempted Murder with the use of a deadly Weapon, one
18. (1) count of ownership or possession of a FIREARM by a prohibited
19. person; seven (7) counts of discharging a FIREARM at or into occu-
20. pied structure, vehicle, AIRCRAFT OR WATER, AND one (1) count
21. of battery with the use of a deadly Weapon on August 23rd, 2018
22. by Las Vegas Metro Police Department.

- 23.
24. Petitioner was appointed defense Attorney: Benjamin NADIG, to
25. defend him of those charges as he pleaded not guilty and the
26. trial counsel failed to conduct any meaningful Adversarial chal-
27. lenge testing process such as Failure to hold the State to the
28. burden of proof, when he failed to object to the introduction

18.

SEE NEXT PAGE #19.

GROUND'S FOR RELIEF CONT...

1. Identification Evidence, inconsistent statements, by the States
2. Witnesses, Forensic expert testimony, Failure of presenting Mitigating evidence and objecting to Sentencing structure.
- 3.
- 4.

"POINTS AND AUTHORITIES"

- 5.
- 6.
7. The Sixth Amendment guaranteed the Right to effective Assist-
8. ANCE of Counsel in criminal prosecution. Yarborough, Vs, Gentry,
9. 540 U.S. 1, 5 (2003) (per curiam); See Also, Padilla, Vs, Ky, 559 U.S. 356,
10. 364 (2010) and the Right to counsel applies to both Retained
11. And Appointed Counsel; See, Cuyler, Vs, Sullivan, 446 U.S. 335,
12. 344-45 (1980). The petitioner must obtain Reversal of a conviction
13. and must prove that (1) counsel's "performance" fell below an obje-
14. ctive standard of Reasonableness, Strickland, Vs, Washington, 466
15. U.S. 668, 688 (1984) and counsel however, can also deprive a defen-
16. dant of a Right to effective Assistance; Hibler, Vs, Benedetti, 693
17. F.3d 1140, 1150 (9th Cir. 2012) and (2) counsel's deficient performance
18. prejudiced the defendant, Resulting in an unreliable or funda-
19. mentally unfair outcome in the proceeding, See, Strickland, Vs,
20. Washington, 466 U.S. @ 680 (1984) and counsel can deprive a defen-
21. dant of effective Assistance by simply failing to render "Adequate
22. Legal Assistance" Cuyler, Vs, Sullivan, 446 U.S. @ 344, and counsel
23. owes a duty of Loyalty.
24. Similarly, if counsel "entirely fails to subject the prosecution's
25. case to meaningful Adversarial testing," the Adversarial process
26. itself becomes presumptively unreliable. See, U.S. Vs, Cronis,
27. 466 U.S. 648, 658 (1984) and 466 U.S. @ 659. And trial Counsel
28. here, prejudice the petitioner when he failed to oppose the pro-

Grounds For Relief cont.:

1. Prosecution At specific points of the case. See; Bell, Vs, Cone,
2. 535 U.S. 685, 697-98 (2002) as prejudice is not presumed for ineff-
3. ectiveness of Counsel, but defective performance by Trial Coun-
4. sel was prejudicial in petitioner's sentencing, rendered his trial
5. unfair, See, Glover, Vs, U.S., 531 U.S. 198, 202-04 (2001); See Also
6. Patraso, Vs. Nelson, 121 F.3d 297 (7th Cir. 1997) and trial counsel's ab-
7. andonement, the required duty of loyalty to his client, See, Also
8. Osborn, Vs, Shillinger, 861 F.2d 612, (10th Cir. 1988) and the conceding
9. of petitioner's guilt by trial counsel during sentencing phase,
10. See Also, U.S. Vs, Swanson, 943 F.2d 1070 (9th Cir. 1991) and petitioner
11. requests a evidentiary hearing to determine trial counsel's
12. performance as it prejudice the petitioner and deprived him
13. of a fair trial.

14.

EIGHT

15. Grounds

16. Petitioner; Jason Bolen Alleges that he received ineffective Ass-
17. istance of Counsel in violation of his 6th and 14th Amendment Rights
18. guaranteed to him under the state and federal constitution
19. when trial counsel failed to present mitigating evidence
20. for petitioner during sentencing phase. See Exhibit-G "petitioner's
21. sentencing transcripts.

Supporting Facts:

23.

24. Petitioner; Jason Bolen was arrested and charged with four
25. (4) counts of Attempted Murder with the use of a deadly weapon,
26. one (1) count of ownership or possession of a firearm by a
27. prohibited person; seven (7) counts of discharging a firearm
28. at or into occupied structure, vehicle, aircraft, or water-

1. CRAFT, AND ONE(1) COUNT OF battery with the use of a deadly wea-
2. pon on August 23rd, 2018 by Las Vegas Metro Police Department.

3.
4. Petitioner was appointed defense Attorney: Benjamin Nadia to
5. defend him of those charges as he pleaded not guilty and after
6. A jury found petitioner guilty of the charges above, he was
7. later sentence to 336 to 1920 months in Nevada Department
8. of Corrections by the trial Judge and the trial Counsel failed
9. to present mitigating evidence for the petitioner during
10. Sentencing and call family members to testify to good cha-
11. racter of petitioner as counsel's conduct was not a tactical
12. or trial strategy which violated petitioners right to the effe-
13. ctive Assistance of Counsel under the 6th Amendment gua-
14. ranteed under the U.S. Constitution.

15.
16. "POINTS AND AUTHORITIES"

17.
18. The Sixth Amendment guaranteed the Right to effective Assistance
19. of Counsel in criminal prosecution. See, Yarborough, Vs, Gentry, 540
20. U.S. 1, 5 (2003) (Per curiam); See also, Padilla, Vs, Ky, 559 U.S. 356, 364
21. (2010) and the Right to Counsel applies to both Retained and Appoi-
22. nted Counsel.; See, Cuyler, Vs, Sullivan, 446 U.S. 335, 344-45,
23. (1980). The petitioner must obtain reversal of a conviction and
24. must prove that (1) counsel's performance "fell below an objective
25. standard of reasonableness, Strickland, Vs, Washington, 466 U.S. 668,
26. 688 (1984); Hibler, Vs, Benedetti, 693 F.3d 1140, 1150 (9th Cir. 2012) and (2)
27. Counsel's deficient performance prejudiced the defendant, re-
28. sulting in an unreliable or fundamentally unfair outcome in

21.

SEE NEXT PAGE # 22.

GROUND'S FOR RELIEF

1. the proceeding. Strickland, Vs, Wash, 466 U.S. @ 687, 691-92, See Also
2. Glover, Vs, U.S., 531 U.S. 198, 201, 204 (2001). It is well known trial
3. Counsel has a duty to perform owed to his client in a criminal
4. proceeding. See, Strickland, Vs, Washington, 466 U.S. @ 680 (1984) and
5. Counsel however, can also deprive a defendant of the Right to Eff-
6. ective Assistance simply by failing to render "Adequate Legal Assis-
7. tance" simply by failing to render also investigations, Cuyler, Vs,
8. Sullivan, 446 U.S. @ 344, and Counsel owes a duty of Loyalty to
9. his client.
10. Here, Petitioner was Facing excessive amount of years in prison
11. for his Alleged crimes of Attempted Murder with the use of a
12. deadly Weapon and Seven (7) counts thereof, and could have
13. used Mitigating Evidence in his Favor and Counsel's Error
14. At Sentencing, by NOT presenting Mitigating Factors, had
15. Resulted in a Increase in the Sentencing of an Excessive
16. Sentence which was prejudicial to the Petitioner and
17. constituted Ineffective Assistance of Counsel; See, Also
18. Glover, Vs, U.S. 531 U.S. 198, 203-04 (2001) and Counsel's Failure
19. to confront jury with considerable Mitigating Evidence
20. was Ineffective Assistance of Counsel, Wiggin, Vs, Smith
21. 539 U.S. 510, 534-38 (2003) SEE, Exhibit-G "Petitioner's Senten-
22. cing transcripts.
23. The petitioner was prejudiced by trial Counsel's performance be-
24. cause jury would have voted differently if given Mitigating Evi-
25. dence by trial Counsel. See, Stankewitz, Vs, Wong, 698 F.3d 1163,
26. 1174-76 (9th Cir. 2012), but for trial Counsel's error, the trial of
27. Petitioner's would have been different and deserves Relief
28. but for Counsel's error in violation of the petitioners
- 6th Amendment Rights to the U.S. Const.

GROUND S FOR RELIEF cont. . .

1. GROUND NINE:

2. Petitioner; Jason Bolen Alleges that he had recieved ineffective
3. Assistance of Counsel in violation of his state AND Federal 6th AND
4. 14th Amendment Rights guaranteed to him under the U.S. Constitution
5. when trial counsel conceded his guilt during sentencing. See,
6. Exhibit - G, "Petitioner's Sentencing Transcripts."

7. Supporting facts:

8.
9. Petitioner; Jason Bolen was arrested and charged with Four (4)
10. Counts of Attempted Murder with the Use of A deadly Weapon, One
11. (1) count of ownership or possession of A FIREARM by A prohibited
12. person; Seven (7) counts of discharging A FIREARM AT OR INTO OCC-
13. upied structure, Vehicle, AIRCRAFT OR WATERCRAFT, AND ONE (1) COUNT
14. OF battery with the Use of A deadly Weapon ON August 23rd, 2018
15. by LAS Vegas Metro Police Department.
16.
17. Petitioner WAS Appointed defense Attorney: Benjamin NADIG to
18. defend him of those charges AS he pleaded NOT guilty, he WAS then
19. given A preliminary hearing AND bounded over AFTER FOR trial by
20. Jury in which he WAS convicted OF FOUR Counts OF Attempted
21. Murder with the Use of A deadly Weapon AND Sentence to 336
22. to 1920 MONTHS in the Nevada Department of Corrections AND
23. during Sentencing, the trial counsel conceded the petition-
24. ers guilt in violation of his 6th AND 14th Amendment Rights to
25. the U.S. Constitution.
26.
27.
28.

"POINTS AND AUTHORITIES"

GROUND FOR RELIEF CONT...

1. The Sixth Amendment guaranteed the Right to Effective Assist-
2. ANCE OF COUNSEL IN CRIMINAL prosecution. See, YARBOROUGH, Vs,
3. GENTRY, 540 U.S. 1, 5 (2003) (PER CURIAM); See Also, Padilla, Vs, Ky. 559
4. U.S. 356, 364 (2010) And the Right to counsel Applies to both Re-
5. trained And Appointed Counsel; See, Cuyler, Vs, Sullivan, 446 U.S. 33
6. 344-45 (1980). The petitioner must obtain REVERSAL OF A CONVICT-
7. ION AND must prove that (1) counsel's performance "fell below an
8. objective standard of reasonableness," See, STRICKLAND, Vs, Washing
9. TON, 466 U.S. 668, 688 (1984); Hibler Vs, Benedetti, 693 F. 3d 1140, 1150
10. (9th Cir. 2012) And (2) counsel's deficient performance prejudiced the
11. defendant, Resulting in an UNRELIABLE OR FUNDAMENTALLY UNFAIR
12. outcome in the proceeding. STRICKLAND, Vs, Wash, 466 U.S. @ 687, 691
13. -92; See Also, Glover, Vs, U.S. 531 U.S. 198, 201, 204 (2001). It is
14. well establish that trial counsel has a duty to perform owed to
15. his client in a criminal proceeding. See, STRICKLAND, Vs, Washing-
16. TON, 466 U.S. @ 680 (1984) And counsel, however, CAN ALSO deprive
17. A defendant of the Right to effective Assistance simply by failing to
18. Render "Adequate Legal Assistance," Cuyler, Vs, Sullivan, 446 U.S. @
19. 344, And counsel owes A duty of Loyalty to his client. See, Fitzpatrick
20. Vs, McCormick, 869 F.2d 1247 (9th Cir. 1989)
21. Under the Due Process Clause of the Fifth Amendment, the pros-
22. ecution is Required to prove beyond A Reasonable doubt every ele-
23. ment of the crime with which A defendant is charged. In Re Win-
24. ship, 397 U.S. 358, 364 (1970); And the government's Failure to meet
25. its burden of proof Results in the defendant's Acquittal At trial OR
26. Reversal of the conviction on Appeal; See, Winship, 397 U.S. @ 363
27. See Also, U.S. Vs, Leguire, 672 F.3d 724, 728-32 (9th Cir 2012). During
28. Sentencing, trial Counsel Asked the Courts For leniency of A

GROUND FOR RELIEF cont. ...

1. A Sentencing upon his ~~defendant~~ when petitioner maintain his INN-
2. ocent's since his arrest, as this presented a guilt in the minds
3. of the Judge and Jury. when that was the prosecution's Job;
4. See, U.S. Vs, SWANSON, 943 F.2d 1070 (9th Cir. 1991); and A writ of ha-
5. beas Corpus should be issued as this prejudiced the petitioners
6. due Process Rights; See, McCoy, Vs, Louisiana, 138 S.Ct 1500 (2018)
7. because the petitioner alone can maintain his innocence with
8. other rights and he alone can waive them.

9.

10. Petitioner should be given Relief with a Evidentiary hearing to
11. determine the trial Counsel's performance which violated the
12. petitioners 6th and 14th Amendment Rights to Effective Assistance.

13.

TEN:

14. GROUND ~~XXXXXXXXXX~~

15. Petitioner; Jason Bolen Alleges that he had recieved ineffective
16. Assistance of Counsel in violation of his ~~State~~ and Federal 6th and
17. 14th Amendment Rights guaranteed to him under the U.S. Constitut-
18. ion when trial Counsel failed to be effective during the first
19. Appeal process. See, Petitioner's Appellate Brief @ Exhibit-H

20.

21. Supporting Facts:

22.

23. Petitioner; Jason Bolen was arrested and charged with Four (4)
24. counts of Attempted Murder with the Use of a deadly Weapon, One
25. (1) count of ownership or possession of a Firearm by a prohibit-
26. ed person; Seven (7) counts of discharging a Firearm at or into
27. occupied structure, Vehicle, Aircraft, or Watercraft, and One (1)
28. count of battery with the Use of a deadly Weapon on August

GROUND FOR RELIEF CONT...

1. 23rd 2018 by Las Vegas Metro Police Department.

2.

3. Petitioner was appointed defense Attorney: Benjamin NADIG to
4. defend him of those charges as he pleaded not guilty. He then
5. was given A TRIAL by Jury and was convicted of the crimes ch-
6. arged and sentence to 336 to 1920 months by the Eighth Judicial
7. District Court to be spent in the Nevada Department of Correct-
8. ions, and the petitioner's Trial Counsel; Benjamin NADIG, had file
9. A Notice of Appeal and only filed two (2) Appellate grounds in-
10. stead of challenging the petitioner's conviction, and other
11. errors caused. See, Exhibit-H, "Petitioner's Appellate brief."

12.

"POINTS AND AUTHORITIES"

13.

14.

15. The Sixth Amendment guaranteed the Right to effective Assistance
16. of Counsel in criminal prosecutions. See, Yarborough, Vs, Gentry,
17. 540 U.S. 1, 5 (2003) (Per curiam); See also, Padilla, Vs, Ky, 559 U.S. 356, 364
18. (2010) and the Right to Counsel applies to both Retained and the
19. Appointed Counsel; See, Cuyler Vs, Sullivan, 446 U.S. 335, 344 (1980).

20. To obtain Reversal of A conviction, the defendant must prove
21. that (1) Counsel's performance "fell below an objective standard of
22. Reasonableness," Strickland, Vs, Washington, 466 U.S. 668, 688 (1984) See,
23. Also, Hibler, Vs, Benedetti, 693 F.3d 1140, 1150 (9th Cir. 2012) and (2) Counsel's
24. deficient performance prejudice the defendant resulting in an un-
25. reliable or fundamentally unfair outcome in the proceedings, Strick-
26. land, 466 U.S. @ 687, 691-92; See also, Glover, Vs, U.S. 531 U.S. 198, 201,
27. 204 (2001) and when "critical stages" of criminal prosecution is involved,
28. Petitioner have A Right to undivided Loyalty; See, Fitzpatrick, Vs,

26. SEE NEXT PAGE # 27

GROUND'S FOR RELIEF CONT...

1. McCormick, 869 F.2d 1247 (9th Cir. 1989). During trial, petitioner's
2. trial Counsel allowed the prosecution's lead way on numerous
3. "errors", and failed to perfect Appellate process which he failed
4. to raise arguments for mistrial; Ramchair, Vs, Conway, 601 F.3d 66, 72
5. 77 (2nd Cir. 2010), Counsel's failure on appeal to renew objection; U.S. Vs, MAN
6. NINO, 212 F.3d 835, 845 (3rd Cir. 2000): Counsel's failure to raise trial
7. court's sentencing error; U.S. Vs, Reinhardt, 357 F.3d 521, 530-31 (5th
8. Cir. 2004) and trial Counsel's failure on appeal to raise any arguable
9. issues in Appellate brief; Delgado, Vs, Lewis, 223 F.3d 976 (9th Cir. 2000)
10. (9th Cir. 2000) and failure of trial Counsel to argue on appeal of
11. Batson violation by prosecutor; See; Eagle, Vs, Linahan, 279 F.3d
12. 926, 943-44 (11th Cir. 2001).
- 13.
14. Here, trial Counsel failed to properly file an Appellate brief for
15. the petitioner, as a criminal defendant must provide all issues
16. on appeal for proper Appellate review and petitioner is entitled
17. to Appellate Counsel, see, Evitts, Vs, Lucey, 469 U.S. 387, (1985)
18. and since Appellate Counsel had failed to raise a significant and
19. obvious issue such as the exclusion of African-Americans from the
20. jury selection, the failure could be viewed as "deficient performance"
21. and such issue, if not raised, may result in a reversal of the con-
22. viction, the failure was prejudicial, see, Strickland, 104 S.Ct@2064
23. as such performance renders trial Counsel's strategy ineffective in
24. violation of petitioner's 6th and 14th Amendment rights to effective
25. assistance of Counsel guaranteed to him under the U.S. Const.
26. and a evidentiary hearing is required to determine trial Counsel's
27. performance.
- 28.

ELEVEN GROUND FOR RELIEF CONT....

1. GROUND [REDACTED]:

2. Petitioner; JASON Bolen alleges that he had received ineffective
3. Assistance of Counsel in violation of his state and federal 6th and 14th
4. Amendment Rights guaranteed to him under the U.S. Constitution when
5. trial Counsel failed to object to the introduction of Pre-Sentence
6. Report which had numerous inaccuracies that caused excessive
7. Sentencing by trial Judge. See, Exhibit-G "Petitioner's Sentencing
8. Transcripts.

9. Supporting Facts:

10.
11. Petitioner; JASON Bolen was arrested and charged with Four (4)
12. counts of Attempted Murder with the Use of a deadly Weapon, One (1)
13. count of ownership or possession of a Firearm by a prohibited per-
14. son; Seven (7) counts of discharging a Firearm at or into occupied st-
15. ructure, Vehicle, Aircraft or Watercraft and One (1) count of battery
16. with the Use of a deadly Weapon on August 23rd, 2018 by the LAS
17. Vegas Metro Police Department.
18.
19. Petitioner was appointed defense Attorney: Benjamin NADIG, to defend
20. him of those charges as he pleaded not guilty, and the petitioner
21. was found guilty on all charges by a Jury Trial in the Eighth
22. Judicial District Court in Clark County Nevada and was sentence
23. to 336 to 1920 months in the Nevada Department of Corrections
24. by the trial Judge, and trial Counsel failed to discuss the
25. Presentence Report with the petitioner, which would have det-
26. ected inaccuracies, bringing to the Courts Attention those in-
27. accuracies, which enhanced the sentence because of and trial
28. Counsel's failure to object to such inaccuracies, constitut

GROUND'S FOR RELIEF CONT...

1. d ineffective Assistance of Counsel in violation of petitioners
2. 6th and 14th Amendment Rights to the U.S. Constitution.

"POINTS AND AUTHORITIES"

- 3.
- 4.
- 5.
6. The Sixth Amendment guaranteed the Right to effective Assist-
7. ance of Counsel in criminal prosecution. See, Yarborough, Vs, Gentry
8. 540 U.S. 1, 5 (2003) (Per Curiam); See Also, Padilla, Vs, Ky, 559 U.S. 356,
9. 364 (2010) AND the Right to counsel applies to both Retained AND
10. Appointed Counsel; See, Cuyler, Vs, Sullivan, 446 U.S. 335, 344-4
11. (1980). The petitioner must obtain REVERSAL of a conviction AND
12. must prove that (1) counsel's performance "fell below an objective
13. standard of Reasonableness", Strickland, Vs, Washington, 466 U.S. 668,
14. 688 (1984); Hibler, Vs, Benedetti, 693 F.3d 1140, 1150 (9th Cir. 2012) AND (2) the
15. counsel's deficient performance prejudiced the defendant, res-
16. ulting in an UNRELIABLE OR FUNDAMENTALLY UNFAIR outcome in the
17. proceeding. Strickland, Vs, WASH, 466 U.S. @ 687, 691-92; See Also,
18. Glover, Vs, U.S., 531 U.S. 198, 201, 204 (2001). It is well known
19. trial counsel has a duty to perform owed to his client in a
20. criminal proceeding. See, Strickland, Vs, Washington, 466 U.S. @ 680
21. (1984) AND counsel however can also deprive a defendant of the
22. Right to effective Assistance simply by failing to render "Adequ-
23. ate Legal Assistance", Cuyler, Vs, Sullivan, 446 U.S. @ 344 AND the
24. counsel owes a duty of Loyalty. See, Fitzpatrick, Vs, McCormick,
25. 869 F.2d 1247 (9th Cir. 1989).

- 26.
27. Prior to sentencing, the court's probation officer must invest-
28. igate the defendant AND file a pre-sentence investigation Re-

GROUND FOR RELIEF

1. port ("PSR") with the court. FED. R. CRIM. P. 32(c)(1)(A). See Also
2. U.S. Vs. Hernandez-Arias, 745 F.3d 1275, 1285 (9th Cir. 2014). The PSR
3. must contain: (1) the history and characteristics of the defendant;
4. including prior criminal record, financial condition, and any circum-
5. stances affecting the defendant's behavior that may be helpful
6. in sentencing; FED. R. CRIM. P. 32(d)(1)-(2); See Also. United State
7. vs. Booker, 543 U.S. 220 (2005) and before imposing a sentence, the
8. court must give the defendant, defense counsel and the attorney
9. for the government an opportunity to comment on the PSR acc-
10. ording to strict timetables. See, FED. R. CRIM. P. 32(F) and if the
11. defendant alleges that the PSR contains factual inaccuracies,
12. the court may choose to hold an evidentiary hearing, allowing
13. the defendant to introduce evidence related to the alleged in-
14. accuracies. Sentencing court ~~off~~ the petitioner's error when it
15. adopted PSR findings; U.S. vs. Showalter, 569 F.3d 1150, 1159 (9th
16. circ. 2009) and when trial counsel fails to object to such inacc-
17. uracies of the PSR, during sentencing, effective assistance of
18. counsel is violated, ~~see~~ U.S. vs. Sustaita, 1 F.3d 950 (9th Cir.
19. 1993) and the Fifth Amendment Due Process Clause requires the
20. defendant not be sentenced on basis of "materially untrue" ass-
21. umptions or "misinformation." See, Exhibit-G.
- 22.
23. The petitioner was prejudice by trial counsel's performance which
24. fell below professional standards as a trial attorney at a "critical -
25. stage" of the proceedings. As trial judge based his sentencing
26. decision and excessive sentence on the PSR and counsel
27. was the reason its inaccuracies was not challenged in violation
28. of petitioners 6th and 14th Amendment Rights to the U.S. Const.

30.

SEE NEXT PAGE ~~30~~ 31

TWELVE

1. GROUND [REDACTED]:

2. Petitioner; JASON Bolen Alleges that he received ineffective
3. Assistance of Counsel in violation of his state and federal 6th and
4. 14th Amendment Rights guaranteed to him under the U.S. Constitution
5. when trial failed to present a Adequate Argument or evidence at
6. sentencing that might have persuaded the trial Judge to temper the
7. severity of sentence. See, Exhibit-G, Petitioner's Sentencing Trans-
8. cripts.

9. Supporting Facts:

10.
11. Petitioner; JASON Bolen was arrested and charged with Four (4) coun-
12. ts of Attempted Murder with the Use of a deadly Weapon, One (1) coun-
13. nt of ownership or possession ~~of~~ A FIREARM by a prohibited per-
14. son; Seven (7) counts of discharging A FIREARM at or into occupied
15. structure, vehicle, aircraft, or watercraft, and One (1) count of
16. battery with the Use of a deadly Weapon on August 23rd, 2018 by
17. Las Vegas Metro Police Department.

18.
19. Petitioner was appointed defense Attorney: Benjamin Nagid to
20. defend him of those charges as he pleaded not guilty and after
21. a jury found petitioner guilty of the charges above, and he was
22. later sentence to 336 to 1920 months in the Nevada Department
23. of Corrections by the trial Judge and trial Counsel failed to pre-
24. sent a Adequate Argument and evidence during sentencing that
25. would have persuaded the trial Judge to temper the severity
26. of the sentence which was too harsh nor did trial Counsel
27. object to such sentence to preserve for Appellate Review,
28. constituting ineffective Assistance of Counsel and prejudicial

GROUND FOR RELIEF CONT...

1. to the petitioner's defense and but for counsel's error the
2. Result of the sentence would be different; see, Exhibit-G
3. "Petitioner's Sentencing Transcripts."

"POINTS AND AUTHORITIES"

- 4.
- 5.
6. The Sixth Amendment guaranteed the right to effective assist-
7. ance of counsel in a criminal prosecution. Yarborough, Vs. Gentry, 54
8. U.S. 1, 5 (2003) (PER CURIAM); See also, Padilla, Vs. Ky, 559 U.S. 356, 364
9. (2010) and the right to counsel applies to both retained and appoin-
10. ted counsel; see, Cuyler, Vs. Sullivan, 446 U.S. 335, 344-45 (1980)
11. The petitioner must obtain reversal of a conviction and must
12. prove that (1) counsel's performance "fell below an objective
13. standard of reasonableness", Strickland, Vs. Washington, 466 U.S.
14. 668, 688 (1984); Hibler, Vs. Benedetti, 693 F.3d 1140, 1150 (9th Cir. 2012)
15. and (2) counsel's deficient performance prejudiced the defendant,
16. resulting in an unreliable or fundamentally unfair outcome in the
17. proceeding, see, Strickland, Vs. Washington, 466 U.S. @ 680 (1984)
18. and counsel however can also deprive a defendant of a right to
19. effective assistance by simply failing to render "adequate legal
20. assistance", Cuyler, Vs. Sullivan, 446 U.S. @ 344, and counsel
21. owes a duty of loyalty to his client. See also, Fitzpatrick, Vs. Mc-
22. Cormick, 868 F.2d 1247, (9th Cir. 1989).
- 23.
24. The Sixth Amendment right to counsel also applies to all federal and
25. state criminal prosecutions. See, Gideon, Vs. Wainwright, 372
26. U.S. 335, 342 (1963) in which the defendant is accused of a
27. felony, Baldasar, Vs. Ill. 446 U.S. 222, 224-25 (1980) and petiti-
28. oner was denied this when trial counsel failed to present-

32. SEE NEXT PAGE # 33.

GROUND FOR RELIEF

1. Evidence to temper the severity of the sentence by the trial
2. judge as he received 336 to 1920 months for an attempted
3. murder with the use of a deadly weapon when there was no
4. gun recovered, as the Fifth and Fourteenth Amendments require the government to disclose specific types of evidence to the
5. defendants. See, Kyles, Vs. Whitley, 514 U.S. 419, 433 (1995) See Also
6. Brady, Vs. Maryland, 373 U.S. 83, 87 (1963). And the trial counsel
7. was suppose to provide evidence in favor of the petitioner's
8. innocence, See, Patraso, Vs. Nelson, 969 F.2d 155 (5th Cir. 1992) and
9. his failure to confront jury with mitigating evidence, prejudice
10. the petitioner, See, Wiggins, Vs. Smith, 539 U.S. 510, 534-38 (2003)
11. and failure to do so, increased petitioner's sentence. U.S. Vs.
12. Granados, 168 F.3d 343, 346 (8th Cir. 1999) and because of trial
13. counsel's failure to present evidence to temper the severity
14. of the trial judge's sentence, violated petitioner's 6th Amendment right to effective assistance of counsel; Hendricks, Vs.
15. Vasquez, 974 F.2d 1099 (9th Cir. 1992) and petitioner's writ of habeas
16. corpus should be granted because of counsel's error, See Also,
17. Butler, Vs. Summer, 783 F.Supp. 519 (S. Nev. 1991) because petitioner trial was unfair as he was deprived of his 6th Amendment
18. right to effective assistance of counsel.

THIRTEEN:

GROUND [REDACTED]:

24. Petitioner, Jason Bolen alleges that he had received ineffective
25. assistance of counsel in violation of his state and federal 6th and 14th
26. Amendment rights guaranteed to him under the U.S. Constitution
27. when trial counsel allow trial court to err when it applied an
28. excessive sentence based on multiple punishments for same crime.

33. SEE NEXT PAGE #34.

GROUND FOR RELIEF CONT...

Supporting Facts:

2.

3. Petitioner, Jason Bolen was arrested and charged with four (4) count
4. of Attempted Murder with the Use of a deadly Weapon, One (1) count
5. of ownership or possession of a Firearm by a prohibited person; seven
6. (7) counts of discharging a Firearm at or into occupied structure,
7. Vehicle, Aircraft, or Watercraft, and one (1) count of battery with
8. the Use of a deadly Weapon on August 23rd, 2018 by Las Vegas
9. Metro Police Department.

10.

11. Petitioner was appointed defense Attorney: Benjamin Nagid to
12. defend him of those charges as he pleaded not guilty and after
13. a jury found petitioner guilty of the charges above and he was
14. later sentence to 336 to 1920 months in the Nevada Department
15. of Corrections by the trial Judge and trial Counsel failed to ob-
16. ject to Trial Courts Error when it applied an excessive sentence that
17. was based on Multiple Punishments for the same crime.

18.

"POINTS AND AUTHORITIES"

19.

20.

21. The Sixth Amendment guarantees the Right to Effective Assistance
22. of Counsel in criminal prosecutions. Yarborough, Vs, Gentry, 540
23. U.S. 1, 5 (2003) (Per Curiam); See also, Pandilla, Vs, Ky, 559 U.S. 356, 364
24. (2010) and the Right to Counsel applies to both Retained and Appointed
25. Counsel; See, Cuyler, Vs, Sullivan, 446 U.S. 335, 344-42 (1980).
26. To obtain Reversal of a conviction, the defendant must prove
27. that (1) Counsel's performance "fell below an objective standard
28. of Reasonableness," Strickland, Vs, Washington, 466 U.S. 668, 688.

GROUND FOR RELIEF cont. . .

1. (1984); Hibler, Vs, Benedetti, 693 F.3d 1140, 1150 (9th Cir. 2012) AND (2)
2. Counsel's deficient performance prejudice the defendant resulting
3. in an unreliable or fundamentally unfair outcome in the proceed-
4. ing. Strickland, 466 U.S. @ 687, 691-92; See Also, Glover, Vs,
5. U.S. 531 U.S. 198, 201, 204 (2001). It is well known trial counsel
6. has a duty to perform owed to his client in a criminal proceed-
7. ing. See, Strickland, Vs, Washington, 466 U.S. @ 680 (1984) and counsel
8. however, can also deprive a defendant of the right to effective "
9. Assistance simply by failing to render "Adequate Legal Assistance"
10. simply by failing to render also investigations. Cuyler, Vs, Sullivan,
11. 446 U.S. @ 334, and counsel owes a duty of loyalty to his client,
12. See, Fitzpatrick, Vs, McCormick, 869 F.2d 1247 (9th Cir. 1989)
- 13.
14. The Eighth Amendment prohibits the infliction of cruel and
15. unusual punishment, "Eighth Amendment provides that "excessive bail
16. shall not be required, nor excessive fines imposed
17. nor cruel and unusual punishment inflicted."
18. U.S. CONST. AMEND. VIII.
19. See Also, Robinson, Vs, Cal, 370 U.S. 660, 666-67 (1962). →
20. upon persons convicted of a crime. See, Ingraham, Vs, Wright, 430
21. U.S. 651, 671-72 N. 40 (1977), the 8th Amendment is concerned with
22. punishment imposed after "state" has secured formal adjudication
23. of guilt. The cruel and unusual punishment clause limits cri-
24. minal punishment in three ways: (1) it "imposes substantive lim-
25. its on what can be made criminal and punished as such." U.S. Vs,
26. Hall, 952 F.2d 1170, 1171 (9th Cir 1991), (2) it prohibits certain kinds of
27. punishment; See, Ingraham, 430 U.S. @ 667, See Also, Miller, Vs Ala,
28. 132 S.Ct. 2455, 2475 (2012); AND, (3), it prohibits punishment "gross-

35. SEE NEXT PAGE # 36.

GROUND'S FOR RELIEF CONT....

1. Ingraham, 430 U.S. @ 667, And the petitioner; JASON BOKEN WAS
2. given 336 to 1920 months in the NDOC For Attempted Murder With
3. the Use of A deadly Weapon AS the State had "NO weapons Recov
4. ered, AND A "Alibi Witness", who was NOT called upon by defense/
5. Trial Counsel AND such Sentence was "grossly disproportionate"
6. to the severity of the crime; See, Gonzalez, Vs, Duncan, 551 F.3d
7. 875, 891 (9th Cir. 2008) See Also, Solem, Vs, Helm, 463 U.S. 277, 292
8. (1983), AND the due Process Clause For the petitioner under
9. the Fourteenth Amendment is Violated AS such sentencing
10. is outside the Statutes Sentencing Guidelines AND is very
11. excessive. See, Benton, Vs, Maryland, 395 U.S. 785 (1969). Trial
12. Counsel Failed to object to such sentencing denying Appell-
13. ate Review, constituting ineffective Assistance of Counsel AND
14. Also, his Failure to file A Motion to "Reduce Sentence" Pursuant
15. to FED. R. CRIM. P. 35 constituted ineffective Assistance of
16. Counsel; See, U.S. Vs, Golden, 854 F.2d 31 (3rd 1988).

17. Petitioner was prejudice by counsel performance which "fell
18. below AN objective standard of Reasonableness", Strickland, Vs,
19. Washington, 466 U.S. 668, 688 (1984); especially when he Failed to
20. object to such excessive sentence for the severity of the crime
21. AND petitioner deserves A Evidentiary hearing to resolve the
22. dispute.

23. **FOURTEEN:**

24. **Ground [REDACTED]:**

25. Petitioner; JASON BOKEN Alleges that he recieved Trial COURT ERR
26. when it continued the sentencing of A person who is Actually
27. Innocent of Attempted Murder After the State's "key" Witness
28. Recanted her Testimony At the Sentencing Phase in Violation

GROUND FOR RELIEF CONT...

1. of his 5th Amendment Rights AND Trial Counsel's Failure to object
2. to such sentence in violation of his 6th Amendment Rights to the
3. State AND Federal Constitution. See, Exhibit-G. Petitioner's Sentence
4. Transcripts.

5. Supporting Facts:

6.

7. Petitioner; Jason Bolen was arrested and charged with four (4)
8. counts of Attempted Murder with the use of a deadly weapon,
9. one (1) count of ownership or possession of a firearm by a pro-
10. hibited person; seven (7) counts of discharging a firearm at or
11. into occupied structure, vehicle, aircraft, or watercraft, and
12. one (1) count of battery with the use of a deadly weapon on
13. August 23rd, 2018 by Las Vegas Metro Police Department.

14.

15. Petitioner was appointed defense attorney: Benjamin Nadig
 16. to defend him of those charges as he pleaded not guilty and
 17. the trial counsel failed to object to the petitioner's senten-
 18. cing when trial court allowed the continuance thereof when
 19. the state's "key" witness; Brandi Coleman, recanted her tes-
 20. timony during the sentencing phase of the petitioner as
 21. the petitioner not the one who did the shooting of the
 22. victim: Brenton Martinez at her housing complex on July
 23. 1st, 2018 at around 8:00 AM., proving to the trial court of
 24. his "Actual Innocence". See, Affidavit of "Brandi Coleman"
 25. @ "Petitioner's Exhibit-H", and his Factual Innocence becau-
 26. se Ms. Coleman was the state's key witness and the 911 caller,
 27. as trial court erred and trial counsel failure to object to
 28. such of a sentencing; See, Exhibit-G, "Petitioner's Sentencing
- Transcripts.

36.

SEE NEXT PAGE # 37.

Grounds for Relief cont. ...

"POINTS AND AUTHORITIES"

1. The Sixth Amendment guaranteed the right to effective assistance
2. of counsel in criminal prosecution. Yarborough, Vs. Gentry, 540 U.S.
3. 1,5 (2003) (per curiam); See also Padilla, Vs. Ky, 559 U.S. 356, 364 (2010)
4. and the right to counsel applies to both retained and appointed
5. counsel; See Cuyler, Vs. Sullivan, 446 U.S. 335, 344-45 (1980). The
6. petitioner must obtain reversal of a conviction, and must prove that
7. (1) counsel's performance "fell below an objective standard of
8. reasonableness," Strickland, Vs. Washington, 466 U.S. 668 (1984); See
9. Hibler, Vs. Benedetti, 693 F.3d 1140, 1150, (9th Cir 2012) and (2) counsel's
10. deficient performance prejudice the defendant, resulting in an
11. unreliable or fundamentally unfair outcome in the proceeding. See
12. Strickland, Vs. Washington, 466 U.S. @ 680 (1984) and counsel's
13. however can also deprive a defendant of a right to effective
14. assistance by simply failing to render "adequate legal assistance,"
15. Cuyler, Vs. Sullivan, 446 U.S. @ 344, and counsel owes a
16. duty of loyalty to his client. See also, Fitzpatrick, Vs. McCormick
17. 869 F.2d 1247 (9th Cir. 1989).

ACTUAL INNOCENCE:

(a) "Factual Innocence"

1. A four-justice plurality of the Supreme Court suggested
2. that the ends of justice will demand consideration of
3. the merits of claims only where there is "a colorable
4. showing of 'factual innocence.'" Kuhlmann, Vs. Wilson,
5. 477 U.S. 436, 106 S.Ct. 2616 (1986). And this case was

GROUND'S FOR RELIEF CONT...

1. Remanded for determination of whether the district Court
2. should review the merits of the challenge to closure of the
3. courtroom and the "ends of Justice" would be served and
4. in making such determination. It also may consider whether
5. her changes in the law have occurred and the petitioner
6. made a "colorable" showing of factual innocence, See Jones
7. Vs. Henderson, 809 F.2d 946 (2nd Cir. 1987). The Court should
8. see the petitioner is actually innocent of the "Attempted
9. Murder", "Battery with the Use of a deadly Weapon" and
10. All other Related charges pertaining to the Shooting of the
11. Victim; BRENTON MARTINEZ, as the STATE's key Witness
12. BRANDI COLEMAN, and 911 caller, recanted her testimony at
13. the petitioner's Sentencing, understanding proper person
14. at Identification of the petitioner, in a district Court
15. Room, allowed viewing under lighting when she appeared
16. for the first time since the Alleged July 1st, 2018 Shooting
17. in her housing complex. The witness; Ms. BRANDI COLEMAN,
18. was subpoenaed by the district Attorney office and defense
19. Attorney's: BENJAMIN NAGID, the petitioner's Trial Counsel,
20. because she was unavailable and could not be found via
21. the Investigator of State and defense. See, Exhibit-G.
22. "Petitioner's Sentencing" Transcripts.
23. Trial Counsel's Failure to call "critical" witness requires an
24. Evidentiary hearing. See, U.S. Vs. JOHNSON, 995 F.Supp. 1259 (D.
25. KAN, 1998); See also, CRANDALL Vs. BUNNELL, 144 F.3d 1213 (9th Cir.
26. 1998), and he also failed to interview the witness, constituting
27. ineffective assistance, BAUMANN Vs. United States, 692 F.2d
28. 505 (9th Cir. 1982). The "State" made changes to the Law of

GROUND'S FOR RELIEF CONT...

1. the Nevada Revised Statute: NRS 173.035(2), to obtain such
2. OF A CONVICTION AND the Nevada Supreme Court Affirmed the
3. CONVICTION AFTER A challenge to the CONSTITUTIONALITY OF such
4. NRS change of the law, shows LEGAL Innocence.
5. The TRIAL Counsel Failed to interview petitioners's only
6. Alibi witness AFTER urging to do so by the witness; "Shareese
7. Grisby," See, Exhibit-C, Affidavit of "Shareese Grisby," which could
8. NOT be obtained before trial AS TRIAL Counsel would not get
9. in contact with the witness despite having her contact infor
10. MATION, AS she was with the petitioner from 8:00 AM until 10:30
11. AM which she WAS pulled over in traffic in search of the
12. Petitioner by LAS Vegas Metro Police, and it is more likely
13. ~~than~~ NOT THAT NO REASONABLE juror would have convicted
14. the petitioner in light of the New Evidence, which was the
15. "Testimony" of Ms. Shareese Grisby, See, Schlup, Vs, Delo, 513 U.S.
16. 298, 327 (1995) AND since petitioner made the Required "prima facie"
17. Showing FOR at least one claim within this Post-conviction,
18. the Ninth Circuit should certify the entire Petition; See Also,
19. Cooper, Vs, Woodford, 358 F.3d 1117, 1123 (9th Cir. 2004), AND ANY
20. Failure to consider the claim would Result in A Fundamental
21. MISCARRIAGE OF justice, See, Perry, Vs, Lynaugh, 492 U.S. 302, 109
22. S.Ct. 2934 (1989)
23. The petitioner; Jason Bolen, has such evidence on the "Rec-
24. ord" to support AN innocent man has been convicted which de-
25. serves habeas Relief. See, Smith, Vs, Dahn, 779 F.2d 1045 (D. Neb
26. 1991). The petitioner should be granted habeas Relief AS his crim
27. inal conviction WAS obtain in violation of his 6th, 8th AND 14th
28. Amendment Rights to the state AND Federal Constitution of the United States.

39. END OF GROUND'S FOR Relief.

CONCLUSION

1.
2.
3. Wherefore, Petitioner; Jason Bolen wishes this honorable court
4. to "GRANT" Relief to the petitioner with an "Evidentiary hearing"
5. AND/OR A New TRIAL based on "Newly discovered" Evidence
6. AS it would AVOID A "MISARRANGE of Justice" upon A "Actual
7. INNOCENT" person.

8.
9. Dated this 22nd day of August, 2021
10.

11.
JASON Bolen #1032099
ELY STATE PRISON
P.O. BOX 1989
ELY, NV 89301

Respectfully Submitted by:
x Jason Bolen
Petitioner #1032099

1 JASON Bolen #1032099
2 ELY STATE PRISON
3 P.O. Box 1989
4 Ely, Nevada 89301
IN PROPER PERSON.

FILED
OCT 04 2021

CLERK OF COURT

5
6
7
8 IN THE EIGHTH DISTRICT COURT OF THE
9 STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

10
11 JASON Bolen #1032099

12 Petitioner,

13 vs.

14 NEVADA DEPT OF CORRECTIONS
15 William Gittere;
Warden; State of Nevada,

16 Respondents.

CASE NUMBER A-21-842092-W

Dept. No. Dept. 15

EX PARTE MOTION FOR
APPOINTMENT OF COUNSEL AND
REQUEST FOR EVIDENTIARY
HEARING

17
18 COMES NOW, JASON Bolen the Petitioner, in proper person, and moves this Court
19 for its order allowing the appointment of counsel for Petitioner and for an evidentiary hearing. This
20 motion is made and based in the interest of justice.

21 Pursuant to NRS 34.750(1):

22 A petition may allege that the petitioner is unable to pay the costs of the
23 proceedings or to employ counsel. If the court is satisfied that the
24 allegation of indigency is true and the petitioner is not dismissed
25 summarily, the court may appoint counsel to represent the petitioner. In
26 making its determination, the court may consider, among other things, the
27 severity of the consequences facing the petitioner and whether:

- 28 (a) The issues presented are difficult;
(b) The petitioner is unable to comprehend the proceedings, or

RECEIVED

SEP 30 2021

CLERK OF THE COURT

1 (c) Counsel is necessary to proceed with discovery. P.O. Box #1989
2 Petitioner is presently incarcerated at ELY STATE PRISON, ELY, NV 89301, is
3 indigent and unable to retain private counsel to represent him.

4 Petitioner is unlearned and unfamiliar with the complexities of Nevada state law, particularly
5 state post-conviction proceedings. Further, Petitioner alleges that the issues in this case are complex and
6 require an evidentiary hearing. Petitioner is unable to factually develop and adequately present the
7 claims without the assistance of counsel. Counsel is unable to adequately present the claims without an
8 evidentiary hearing. 23

9 Dated this 23rd day of August, 2021.

10 JASON BOLEN #1032099
11

12 *In Proper Person*

13
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28

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is a person of such age and discretion as to be competent to serve papers.

That on August 23th, 20 21, he served a copy of the foregoing Ex Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing by personally mailing said copy to:

STEVEN B. WOLFSON
District Attorney's Office
Address: 200 Lewis Ave, 3rd Floor
LAS VEGAS NV 89155

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 N. CARSON ST
CARSON CITY, NV 89701-4717

Warden William Gittere
Address: Nevada Dept of Corrections
P.O. BOX #7011
CARSON CITY NV 8970

#1032099
JASON BOKEN
Petitioner

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding AN

Ex parte Motion For Appointment of Counsel & Request For Evidentiary
(Title of Document) Hearing.

filed in District Court Case number C-18-334635-1

☒ 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:

(State specific law)

-OR-

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

#1032099

Jason Bolen
Signature

8/11/2021
Date

JASON Bolen
Print Name

Petitioner
Title

Heather A. Smith
CLERK OF THE COURT

1 PPOW
2

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

5 Jason Bolen,

6 Petitioner,

7 vs.

8 Nevada Department of Correction; Ely State
Prison; William Gittere, Warden,

9 Respondent,
10

Case No: A-21-842092-W
Department 15

**ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS**

11 Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on
12 October 04, 2021. The Court has reviewed the Petition and has determined that a response would assist
13 the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and
14 good cause appearing therefore,

15 **IT IS HEREBY ORDERED** that Respondent shall, within 45 days after the date of this Order,
16 answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS
17 34.360 to 34.830, inclusive.

18 **IT IS HEREBY FURTHER ORDERED** that this matter shall be placed on this Court's

19 December 7, 2021 at 8:30 am

20 Calendar on the _____ day of _____, 20____, at the hour of _____

21 ~~_____ o'clock for further proceedings~~
22

23 Dated this 5th day of October, 2021

24 *Joe Hardy*

25 District Court Judge

26 769 EBC E59E 28D2
27 Joe Hardy
28 District Court Judge

1 **CSERV**

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

5
6 Jason Bolen, Plaintiff(s)

CASE NO: A-21-842092-W

7 vs.

DEPT. NO. Department 15

8 Nevada Department of
9 Correction, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

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 10/6/2021

17 Jason Bolen

#1032099

ESP

P.O. Box 1989

Ely, NV, 89301

DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
10/6/2021 10:08 AM
Steven D. Grierson
CLERK OF THE COURT



Jason Bolen, Plaintiff(s)
vs.
Nevada Department of Correction,
Defendant(s)

Case No.: A-21-842092-W
Department 15

NOTICE OF HEARING

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

Date: December 07, 2021
Time: 8:30 AM
Location: RJC Courtroom 11D
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

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

CERTIFICATE OF SERVICE

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

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

Case No. A-21-842092-W
Dept. No. Dept. 15

FILED

OCT 25 2021

Alvin L. Johnson
CLERK OF COURT

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

Jason Bolen #1032099
Petitioner,

NEVADA DEPT OF CORRECTIONS;
ELY STATE PRISON
William Gilbre, Warden
Respondent.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

MEMORANDUM OF POINTS & AUTHORITIES
IN SUPPORT OF WRIT OF HABEAS CORPUS
POST-CONVICTION RELIEF, ATTACHED.

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you're not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

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

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: ELY STATE PRISON, P.O. BOX 1989, ELY NEVADA 89301.

2. Name and location of court which entered the judgment of conviction under attack: THE EIGHTH JUDICIAL DISTRICT COURT OF CLARK COUNTY LAS VEGAS NEVADA 200 LEWIS AVENUE, LAS VEGAS NV 89155-1601

3. Date of judgment of conviction: MAY 30th, 2018.

4. Case number: C-18-334635-1

5. (a) Length of sentence: SENTENCE WAS STRUCTURED TO 336 TO 1920 MONTHS TO SERVE CONSECUTIVELY WITH PAROLE. ELIGIBILITY AFTER THREE (3) YEARS.

(b) If sentence is death, state any date upon which execution is scheduled: _____

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes _____ No X

If "yes", list crime, case number and sentence being served at this time: _____

7. Nature of offense involved in conviction being challenged: Attempted Murder, AND DEADLY WEAPON ENHANCEMENT.

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

(a) Not guilty X (b) Guilty _____ (c) Nolo contendere _____

9. If you entered a plea of guilty to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty was negotiated, give details: _____

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

(a) Jury X (b) Judge without a jury _____

11. Did you testify at the trial? Yes _____ No X

12. Did you appeal from the judgment of conviction? Yes X No _____

13. If you did appeal, answer the following:

(a) Name of Court: NEVADA SUPREME COURT "Appellate Division"

(b) Case number or citation: 79715

(c) Result: AFFIRMED

(d) Date of result: July 8th, 2021
(Attach copy of order or decision, if available.)

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

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 X

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

(a)(1) Name of court: _____

(2) Nature of proceeding: _____

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes _____ No X

(5) Result: N/A

(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: N/A

(2) Nature of proceeding: _____

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes _____ No X

(5) Result: N/A

(6) Date of result: _____

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

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

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

(1) First petition, application or motion? Yes _____ No X
Citation or date of decision: _____

(2) Second petition, application or motion? Yes _____ No X
Citation or date of decision: _____

(3) Third or subsequent petitions, applications or motions? Yes _____ No X
Citation or date of decision: _____

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) _____

N/A

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

(a) Which of the grounds is the same:

N/A

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

N/A

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

N/A

18. If any of the grounds listed in No.'s 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

N/D

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

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes ☐ No ☒

If yes, state what court and case number:

N/A

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: MR. BENJAMIN NADIG, CHTD OF LAW OFFICE OF BENJAMIN NADIG, 228 S. 4th Street, # 300 LAS VEGAS NV 89101

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes ☐ No ☒

If yes, specify where and when it is to be served, if you know:

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

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

EXECUTED at Ely State Prison, on the 13 day of the month of 10 of the year 2021.

Jason Bolen
Signature of petitioner

Ely State Prison
Post Office Box 1989
Ely, Nevada 89301-1989

Jamal D. Hendrix
Signature of Attorney (if any)
Jamal, Damon, Hendrix Pro Se Litigant
Attorney for petitioner
Ely State Prison
P.O. Box 1989, Ely, NV 89301
Address

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.

Jason Bolen
Petitioner

Jamal D. Hendrix Pro Se Litigant
Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I, JASON Bolen, hereby certify pursuant to N.R.C.P. 5(b), that on this 13 day of the month of 10 of the year 2001 I mailed a true and correct copy of the foregoing **PETITION FOR WRIT OF HABEAS CORPUS** addressed to:

Respondent prison or jail official

Address

Attorney General
Heroes' Memorial Building
100 North Carson Street
Carson City, Nevada 89710-4717

STEVEN B. WOLFSON
District Attorney of County of Conviction
200 Lewis Ave, 3rd Floor
LAS VEGAS NV 89155-1601
Address

Jason Bolen
Signature of Petitioner

AFFIRMATION PURSUANT TO NRS 239B.030

I, JASON Bolen, NDOC# 1032099,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE
ATTACHED DOCUMENT ENTITLED WRIT OF HABEAS CORPUS
"POST-CONVICTION RELIEF"

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 13 DAY OF 10, 2021.

SIGNATURE:

JASON Bolen

INMATE PRINTED NAME: JASON Bolen

INMATE NDOC # 1032099

INMATE ADDRESS: ELY STATE PRISON
P. O. BOX 1989
ELY, NV 89301

JASON Bolen #1032099

1. ELY STATE PRISON
2. P.O. Box 1989
3. Ely, NV 89301
4. IN Proper Person.
5. #1032099

FILED
OCT 25 2021
Clerk of Court

7. IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE
8. OF NEVADA IN AND FOR THE COUNTY OF CLARK

10. JASON Bolen #1032099
11. Petitioner

Case No. - A-21-842092-W
Dept. No. Dept. 15

12. VS.

13. Nevada Dept of Corrections

14. William Gittere, Warden

15. Defendant(s)

MEMORANDUM OF POINTS & AUTHORITIES
IN Support of Writ of Habeas Corpus
Post-Conviction Relief

17. Comes Now, Petitioner, JASON Bolen, in proper person, who respectfully
18. present to this Honorable Court, Memorandum of Points & Authorities
19. in Support of Writ of Habeas Corpus for Post-Conviction Relief.
20. Pursuant to NRS 34.724.

22. This Motion is made and based pursuant to NRS. 34.726 and NRS.
23. 34.800 and other NRS's for Post-Conviction Relief as well as all
24. papers, pleadings, and documents on file herein and grounds for
25. Relief as follows:

1. That the Petitioner is currently residing in Ely State Prison
White Pine County, Ely Nevada and had his Liberty Restrained,

1.

SEE NEXT PAGE # 2.

CLERK OF THE COURT

OCT 18 2021

RECEIVED

1. by virtue of his conviction in the above styled AND CASE
2. Number.
3. 2. THAT the Petitioner is restrained by virtue of a judgment of
4. conviction in the Eighth Judicial District Court, County of Clark
5. ON MAY 30th 2018, where he is serving a 336 to 1920 MONTH SENT-
6. ence in the Nevada Department of Corrections for four (4) counts
7. of Attempted Murder with the Use of a deadly Weapon; One (1) count
8. of ownership or possession of a Firearm by a prohibited person;
9. seven (7) counts of discharging Firearm at or into occupied Str-
10. ucture, Vehicle, Aircraft or Watercraft; AND one count of battery
11. with the Use of a deadly Weapon.

12.
13. 3. THAT the CONFINEMENT of Petitioner is UNLAWFUL FOR
14. the following Reasons;

15. a. The Petitioner is Factually INNOCENT.

16. b. The Petitioner received ineffective Assistance
17. OF TRIAL COUNSEL.

18. c. There is Newly Discovered Evidence such that
19. with the use of it, a different Result will have
20. been different at TRIAL.

21. FACTUAL BACKGROUND.

22.
23. Petitioner; JASON Bolen Allegedly approached two (2) brothers, Bry-
24. son Martinez, and Brenton Martinez on the Morning of July 1st,
25. 2018 at a Las Vegas Apartment complex around 8:00 AM and dis-
26. charged seven (?) rounds from a Firearm into a building, occupied
27. with people and one (1) round into Brenton Martinez. Brandi
28. Coleman, the girlfriend of Bryson Martinez had identified

2.

SEE NEXT PAGE #3.

1. the petitioner when investigating officers questioned her and
2. she showed them a picture of petitioner, who has a daughter
3. with him. The officer showed petitioners picture to brenton
4. while at the hospital and under the influence of pain Medic-
5. ation, Alcohol, and MARIJUANA, who could not I.D. petitioner.
6. The state filed a criminal complaint against petitioner;
7. Jason Bolen and charged him with FOUR (4) counts of Attempt
8. Murder with the use of a Deadly Weapon; one count of Battery
9. with the use of a deadly Weapon; Weapon Enhancement and a
10. prohibited person with a Firearm, and the matter proceeded
11. to the Justice Court for a Preliminary hearing, where as the
12. Justice Court questioned the evidence against petitioner
13. and found none, dismissing the indictment charged.

14.
15. The state sought permission and filed an Amended information
16. against the petitioner in district court and attached preliminary
17. transcripts as exhibits.

18.
19. The petitioner received ineffective assistance of counsel
20. when trial counsel failed to oppose the state's Motion for
21. leave to amend information by Affidavit, abandoning petitioners
22. opportunity when he filed Motion for continuance to do so.

23. GROUND FOR RELIEF

24.
25.
26. This petition seeks relief pursuant to NRS. 34.724 and other
27. post-conviction statutes;

28.

Ground ONE

Petitioner JASON Bolden Alleges that he receive ineffective Assistance of Counsel in Violation of his state and federal 5th, 6th and 14th Amendment to U.S. Const. when Counsel Fail to oppose the Fail bindover.

ON AUGUST 22nd 2018 in the LAS VEGAS Justice Court the prosecutor Fail to Support the Criminal Complaint with Sufficient Evidence Causing the Magistrate to dismiss on the grounds of INSUFFICIENT EVIDENCE.

Evidence failure include the State's Victim eye witness testified in open Court under oath and examination that Petitioner Bolden WASN'T the shooter (see preliminary hearing Page 11, 12 and 13) AS WELL AS CROSS-EXAMINE Victim witness Brenton Martinez was ASK by defense Counsel to Identify Petitioner SUSPECT while Petitioner SAT AT the table. The Victim stated he NEVER SEEN him before. (Preliminary hearing Page 17 Line 67) ON direct AND CROSS-EXAMINATION he Victim inform the Court AS to his Condition while heavily medicated at the hospital he could NOT recall ANY interview with the detective (see Preliminary hearing page 16 line 20). The prosecutor presented an OUT OF Court Statement give by officer ALEXANDER Jegg from the Victim who denied giving ANY Statement of Identification (see preliminary hearing Page 22 line 5-8). Officer Jegg was question AS to the Victim Condition and officer Jegg admitted he officer was NOT train in identifying people who are under the influence. (see Preliminary hearing Page 23-25 and Page 24).

The magistrate stated a statement given under the influence create A problem and the magistrate stated that he would put more weight to the

In Court Statement and testimony the witness Victim gave today in open Court under oath and subject to cross examination well within the Magistrate Authority (see Wrenn v. Sheriff, 87 Nev. 85, 482 P.2d 289 (1971) which states.

"this Court has held that it is the function of the Magistrate to determine the weight to be accorded to the testimony of the witnesses." Wrenn, 87 Nev. at 87, 482 P.2d at 290.

Defense Counsel cited this Authority in his opening brief filed with the Nevada Supreme Court as well as the prosecutor informing the Court and defense Counsel that the Magistrate was within its Authority to apply evidence (see preliminary hearing Page 78 line 14-16 and Page 77, 78, 79 and 80). The district Court issue several Notices to Counsel to oppose the motions to amend the filing and Counsel refusal is evidence of a breakdown in the Adversary process which is guaranteed by the 6th Amendment of the U.S. Const.

Clearly this is deficient performance which fell below an objective Standard cited in Strickland v. Washington 466 U.S. at 697. Nor could it be said to be strategic decision when Counsel consented to the filing of an information in which the criminal Complaint was ruled on by a Court of Jurisdiction that determine the Complaint was without evidence.

Without a bindover the prosecutor was without Authority to summon an appearance by the Petitioner to answer to charges "Case dismissed" Counsel reasoning for failure to oppose the filing of an amend motion was that he had a heavy Case load and in trial on other Cases (see Case Summary 131-19)

Petitioner was clearly prejudiced by Counsel deficient performance when the district Court decision to grant the motion was based solely on Counsel failure to oppose (see case summary 9-18-18 Court ordered motion granted as unopposed) Nor did Counsel stop the filing of the motion to amend but he also fail to preserve the magistrate ruling for any appeal causing Petitioner grounds to be review on a lesser standard plain error standard, denying Petitioner a meaningful review. And not for Counsel error the outcome would have been different in District Court as well as any appeal. (see Luce v. U.S. 469 U.S. 38, 41 (1984) which state "Attorneys have a duty to make pretrial motions, particularly motions to suppress evidence when adequate foundation for the motion exists", "Failure to pursue such matters would be considered representation which falls below the minimum standard of professional competence required of defense Counsel" State v. Watson 653 P.2d 351 (Ariz 1982). The Nevada Supreme Court reviews claims of ineffective assistance of Counsel under the "reasonably effective assistance test of Strickland v. Washington - U.S. 104 S.Ct. 2052 (1984) see Sanborn v. State 812 P.2d 1279 (Nev. 1991). Adopted in Warden v. Lyon 683 P.2d 504 (1984 Nev.).

This method of filing an information doesn't allow the prosecutor to correct deficiencies in evidence at a preliminary hearing. State v. Sixth Judicial Dist. Ct. 114 Nev. 739, 741-42 964 P.2d 48, 49 (1998). Petitioner was greatly prejudiced by Counsel error and had not Counsel error the information couldn't be filed and new evidence allowed.

GROUND TWO

1. GROUND TWO:

2. Petitioner; JASON Bolen Alleges that trial court ERRED when it
3. GRANTED the States Motion for Leave to File a Amended Infor-
4. MATION by A Affidavit using preliminary TRANSCRIPTS which had
5. Resulted in A UNLAWFUL conviction of someone who is Actually
6. AND Factually INNOCENT in violation of his 5th, 6th, AND 14th Amend-
7. ment Rights to the U.S. CONST. See, Petitioners Preliminary Transcript
8. Exhibit-A.

10. Supporting Facts:

12. Around 8:00 AM on July 1st, 2018, Las Vegas Metro Police Officers:
13. Kevin Shackelford responded to a Report of a shooting at 2883
14. Wheelwright in Las Vegas Clark County Nevada, AND detective: Ken
15. Kempotich had testified that officers recovered Eight (8) spent
16. Shell casings.

17. Bryson Martinez testified at the preliminary hearing but
18. NOT at trial AS he was one of the witnesses AND his transcript
19. WAS read into the district court record AND he testified that
20. he WAS at his ex-girlfriends house along with his brother Bre-
21. nton Martinez AND Brandi's young daughter AND they were
22. drinking Alcohol AND smoking MARIJUANA. Bryson Martinez WAS
23. inside AND his brother Brenton Martinez, WAS outside when Bre-
24. nton WAS shot AND he heard Multiple gunshots but wasn't sure if
25. they were coming into the house.

27. Bryson gave a statement to police that he fabricated, AND there
28. WAS another eyewitness, Joshua Knowlton, who testified, that on

GROUND'S FOR RELIEF

1. July 1st, 2018, he was in his apartment near Wheelwright around 8
2. or 9 o'clock in the morning when he allegedly heard a couple of gun-
3. shots and then saw a black male running across the apartment com-
4. plex, and Brenton Martinez testified on July 1st, 2018 that he
5. was outside with his brother Bryson when Bryson got shot and
6. Brenton identified petitioner; Jason Bolen as the shooter, but
7. not at the preliminary hearing.

8.
9. On August 20th, 2018, the Las Vegas Township Justice Court dismissed
10. a criminal complaint against petitioner; Jason Bolen after finding
11. insufficient evidence to support an identification of petitioner;
12. Jason Bolen as the shooter and the state filed a motion for leave
13. to amend information by affidavit in District Court on Decem-
14. ber 6th, 2018 with preliminary transcripts as exhibits, recharg-
15. ing petitioner with ~~four~~ (4) counts of Attempted Murder with the
16. use of a deadly weapon and other related charges in violation of
17. his Due Process Rights.

"POINTS AND AUTHORITIES"

18.
19.
20.
21. Nevada Revised Statute 173.035(2) allows for filing of an inform-
22. ation by the state's motion "upon affidavit of any person who has
23. knowledge of the commission of an offense, and who is a compet-
24. ent witness to testify in the case". An information by affidavit
25. may be filed to correct a magistrate's egregious error in disch-
26. arging a defendant, but not to correct deficiencies in evidence at
27. a preliminary hearing. See, State vs. Sixth Judicial Dist. Ct. 114 Nev.
28. 739, 741-42, 924 P.2d. 48, 49 (1998). Despite the state's argument

GROUND'S FOR RELIEF CONT...

1. to the contrary in its motion, Nevada case law does not clearly
2. hold that "the ultimate question of credibility of witnesses must
3. be left to the trier of fact and not the Magistrate; Wrenn, Vs, Sher-
4. iff, 87 Nev. 85, 482 P.2d, 289 (1971), but this isn't the case here.

- 5.
6. Trial Court committed "plain" error when it allowed the state to file
7. A Amended Information by Affidavit, in who's preliminary hearing
8. transcripts was used as exhibits in violation of the Nevada Revised
9. Statute, NRS 173.035(2), which only allows for "Affidavit" require-
10. ment, as the district attorney must file a motion in district court
11. "upon Affidavit" of any person who has knowledge of the comm-
12. ission of an offense, and who is competent witness to testify
13. in the case, setting forth the offense and the name of the
14. person... charged with the commission thereof.

- 15.
16. The Nevada Supreme Court affirmed the petitioners conviction
17. in which he challenged the legality of NRS. 173.035(2) require-
18. ments which should be "plain" error reviewed for a reversal as a
19. threshold was crossed.

- 20.
21. A reviewing court may grant relief for "plain" error, even
22. if the error was not raised and preserved at trial or sentencing.
23. FED R. CRIM. P. 52(b), See also, Puckett, Vs, U.S. 556 U.S. 129, 133
24. (2009); U.S. Vs, Olano, 507 U.S. 725, 731 (1993) and deviation from
25. a legal rule is "error" unless the rule has been "waived", Olano, 507
26. U.S. @ 732-33, and a Nevada Revised Statute (NRS) is a legal rule
27. binding on the constituents and the likes thereof but the error
28. is and was "clear and obvious". U.S. Vs, Slade, 631 F.3d 185, 191 (11th
Cir 2010).

1. Such "plain" error affected the petitioner's "Substantial Rights"
2. And those rights the petitioner has as a defendant in a criminal
3. action is entitled to due process of law as guaranteed by the 5th
4. and 14th Amendment to the U.S. Constitution.

5. The Constitution prohibits the criminal conviction of any

6. person except upon proof of guilt beyond a reasonable doubt; See,

7. In Re Winship, 397 U.S. 358, 364 (1970); Edwards, Vs, State, 90 Nev.

8. 255, 258-59, 524 P.2d 328, 331 (1974), and this court should review

9. "plain" error by the district court which affected petitioners substa-

10. ntial Rights" pursuant to Fed. R. Crim. P. 52(b), even if it was not bro-

11. ught to the court's attention; See, Johnson, Vs, U.S. 520 U.S. 461, 465

12. (1997); See also, U.S. Vs, Gallegos-Galindo, 704 F.3d 1269, 1272 (9th Cir.

13. 2013), and this court should find in favor of the petitioner, that his

14. constitutional rights was violated by the district court, when the

15. states motion for leave to file information by affidavit in the

16. district court did not comport with the plain reading of the NRS

17. statute governing "filing an information by affidavit" and the

18. district court erred in granting the motion even when the justice

19. court committed no egregious error by dismissing petitioners

20. charges.

21.

22. The petitioner deserves relief of a "New Trial" or an "Evidentiary

23. hearing to resolve the disputed facts of such error which prejudice

24. the petitioner of a fair and impartial trial.

25. THREE

26. GROUND [REDACTED]

27. Petitioner; Jason Boken alleges that he received ineffective

28. assistance of counsel in violation of his state and federal 6th

1. AND 14th Amendment Rights guaranteed to him under the U.S. cons
2. when trial counsel failed to suppress Identification Evidence
3. before trial. See, Exhibit-B "Preliminary Transcripts"

4.
5. Supporting Facts:

- 6.
7. Petitioner's trial counsel, BEN NADIG, WAS COURT Appointed for
8. his defense AGAINST criminal charges of Four (4) counts of Atten
9. pted Murder with the Use of A Deadly Weapon, one (1) count of
10. ownership or possession of A Firearm by A prohibited person; &
11. Seven (7) counts of discharging Firearm At or into occupied str-
12. ucture, Vehicle, Aircraft, OR WATERCRAFT AND one count of battery
13. with Use of deadly Weapon.
14. Petitioner; JASON Boken WAS Accused of shooting BRENTON
15. MARTINEZ AT A LAS Vegas housing complex ON July 1st, 2018 in the
16. morning hours AND MADE A statement to the LAS Vegas Metro Pol-
17. ice which placed the petitioner; JASON Boken AS the shooter but
18. such accusations WAS INCONSISTANT testimony during the preli-
19. minary hearing AND statements made ON the scene of the
20. crime from witnesses of the state AND victims AND petitioner's
21. trial counsel failed to object to such Identification AND sup-
22. press such evidence before trial, rendering his performance
23. ineffective below ordinary standards of effective Assistance
24. OF counsel guaranteed to petitioner under the 6th Amendment
25. to the U.S. Constitution.

26.
27. "POINTS AND AUTHORITIES"

GROUND'S FOR RELIEF CONT...

1. The Sixth Amendment guarantees the right effective Assist
2. ANCE OF Counsel in criminal prosecutions. See, Yarborough, Vs,
3. Gentry, 540 U.S. 1, 5(2003) (per curiam); See Also, Padilla, Vs, Ky, 559 U.S
4. 356, 364(2010) And the Right to Counsel Applies to both Retainee
5. And Appointed Counsel; See, Cuyler, Vs, Sullivan, 446 U.S. 335, 34
6. -45(1980). To obtain Reversal of a conviction, the defendant mu-
7. st prove that (1) counsel's performance "fell below an objective st-
8. andard of Reasonableness" Strickland, Vs, Washington, 466 U.S. 668,
9. 688(1984); Hibler, Vs, Benedetti, 693 F.3d 1140, 1150(9th Cir. 2012) And
10. (2) Counsel's deficient performance prejudice the defendant
11. Resulting in an Unreliable or Fundamentally Unfair Outco-
12. me in the proceeding. Strickland, 466 U.S. @ 687, 691-92;
13. See Also; Glover, Vs, U.S. 531 U.S. 198, 201, 204(2001) And
14. When Petitioner's Trial Counsel Failed to File a Motion
15. to Suppress the Identification Evidence of the peti-
16. tioner before trial, prejudice the petitioner because
17. NO other Facts on Record could have convicted the pet-
18. itioner of the crime of Attempted Murder with the
19. USE of a Deadly weapon; See; Gentry, Vs, Sevier, 597 F.3d
20. 838, 851-52(7th Cir, 2010) Also; Jones, Vs, Ryan, 583 F.3d 684
21. 646-47(9th Cir. 2009). As such evidence of identification placed
22. the petitioner at the crime scene And a Evidentiary hearing
23. must be conducted to determine such prejudice by trial
24. Counsel's performance.

25. The victim, Brenton Martinez, did not Recognized the petition
26. er photo while in the hospital showed to him by the Las Vegas
27. Metro Police officer due to Allegedly being under the influence of
28. Drugs And Alcohol Along with pain Medication but was shown

1. the petitioner's photo Later singly with no other suspects in
2. the photo array AND while alone with the district Attorney AND
3. trial Counsel failed to suppress such "Suggestive" identifica-
4. tion during pre-trial, Trial, AND Appellate proceedings in Viol-
5. ation of petitioners Due Process Rights.

6.
7. A defendant must rely on due process principles to challenge
8. unnecessary "Suggestive" procedures that occur at noncritical
9. pre-trial stages. See, Kirby, Vs, Ill, 406 U.S. 682, 690-91 (1972).

10. The Supreme Court recognized A defendant's due Process
11. Rights to exclude identification testimony resulting from unn-
12. necessarily "Suggestive" procedures that might lead to an irreparably
13. mistaken identification. See, Stovall, Vs, Deno, 388 U.S. 293, 302 (1967).
14. And the Court further explained that "It is the likelihood of misiden-
15. tification which violates a defendant's Rights to due Process. See,
16. Neil, Vs, Biggers, 409 U.S. 188, 198 (1972).

17.
18. The petitioner was prejudice by Trial Counsel's performance
19. when he failed to object to the "Suggestive" identification by the
20. victim AND suppress such evidence At trial AS this was NOT A
21. trial strategy AND it affected the minds of the jury AND Trial
22. Counsel's tactics was not functioning AS counsel guaranteed the
23. defendant under the Sixth Amendment AND Requires A Evidentiary
24. hearing to determine such performance is unconstitutional AND
25. deprived petitioner of A fair trial.

26. GROUND FOUR:

27. Petitioner; Jason Boken alleges that he had recieved ineffective
28. Assistance of Counsel in violation of his 6th AND 14th Amendment

10.

SEE NEXT PAGE # 11.

GROUND'S FOR RELIEF

1. Rights guaranteed to him under the State AND Federal Constit-
2. ution when trial Counsel Failed to investigate the petitioner's
3. Alibi and Alibi witness. See, Exhibit-C, Affidavit of Shareese
4. Grisby.

5. Supporting Facts:

- 6.
7. Petitioner; JASON Bolen WAS ARRESTED AND CHARGED WITH FOUR
8. (4) counts of Attempted Murder with the Use of a deadly Weapon,
9. one (1) count of ownership or possession of a FIREARM by a
10. prohibited person; Seven (7) counts of discharging a FIREARM AT
11. OR INTO occupied structure, Vehicle, AIRCRAFT OR WATERCRAFT,
12. AND one (1) count of battery with the Use of a deadly Weapon
13. ON August 23rd, 2018 by Las Vegas Metro Police Department.
- 14.
15. Petitioner WAS Appointed defense Attorney: Benjamin NADIG, to
16. defend him of those charges AS he pleaded NOT guilty AND the
17. petitioner told his court Appointed Attorney of his Alibi defense
18. Which WAS, he WAS AT his girlfriend house during the time of
19. the shooting then LEFT AFTER 10:30 AM FOR his friends house, AND
20. RECEIVED A call FROM the girlfriend SAYING the police had stopped
21. her while she WAS driving AND took her back to her house to see
22. if petitioner WAS in her house but trial Counsel Failed to investi-
23. gate petitioners Alibi defense, despite being told to do so, AS his
24. girlfriend: Ms. Shareese Grisby, continued to make herself AVAI-
25. lable by MAKING petitioners court Appearances during pre-trial,
26. trial, AND Sentencing phase AND trial Counsel's Failure to interview
27. AND call Alibi Witness who put the petitioner in ANOTHER part of
28. town AT the time of the crime, constitutes performance below AN

1. • 1st, 2018, AND would be able to establish on the stand, cross-ex
 2. amine her testimony, AND the truthfulness thereof AND such deni
 3. AL by trial Counsel, is ineffective Assistance of Counsel guaranteed
 4. to petitioner under the 6th Amendment Right to the U.S. Constitution
 5. See, Rangoza, Vs, Hulick, 474 F.3d 958, 964-65 (7th Cir. 2007) See Also,
 6. Reynoso, Vs, Giurbino, 462 F.3d 1099, 1110-20 (9th Cir. 2006) AS trial Coun-
 7. sel has a duty to "elicit impeachment evidence through cross-ex
 8. amination, AND a Evidentiary hearing must be conducted to deter
 9. mine such prejudice exists by trial Counsel's performance be-
 10. cause such rejection of petitioners Alibi witness through invest
 11. igation after petitioner had rendered AND told trial Counsel of
 12. his Alibi defense AND witness, ability to perform like A AVER-
 13. AGE trial Counsel AND this WAS NOT trial strategy AND A REASON-
 14. ABLE probability that the outcome of the trial would have been
 15. different but for Counsel's error. See, Wiggin, Vs, Smith, 539
 16. U.S. 510, 534-38 (2008); See Also, Cannedy, Vs, Adams, 706 F.3d
 17. 1148, 1166 (9th Cir. 2013) AND IF Counsel Fails, it Requires A Reversal
 18. See, Brown, Vs, Myers, 137 F.3d 1154 (9th Cir. 1998)
 19.

20. The petitioner Request Relief ~~for~~ such denial of his 6th Amend-
 21. ment Right to Effective Assistance of Counsel by trial Counsel
 22. ERROR with A Evidentiary hearing OR New Trial.
 23.

24. Five
GROUND 5:

25. Petitioner; Jason Bolen Alleges that he recieved ineffective Ass-
 26. istance of Counsel in violation of his 6th AND 14th Amendment Rights
 27. guaranteed to him under the state AND Federal Constitution when
 28. trial Counsel Failed to interview the states key Witnesses.

GROUND FOR RELIEF CONT.

1. See, Exhibit-D "Petitioner's Affidavit."

2.

3. Supporting Facts:

4.

5. Petitioner; JASON Bolen was arrested and charged with Four (4)
6. counts of Attempted Murder with the Use of a deadly Weapon,
7. one (1) count of ownership or possession of a Firearm by a proh-
8. ibited person; Seven (7) counts of discharging a Firearm at
9. or into occupied structure, Vehicle, Aircraft or Watercraft, and
10. one (1) count of battery with the Use of a deadly Weapon on Au-
11. gust 23rd, 2018 by Las Vegas Metro Police Department.

12.

13. Petitioner was appointed defense Attorney: Benjamin NADIG to
14. defend him of those charges as he pleaded not guilty and petition-
15. er told his court appointed Attorney of his Alibi defense and
16. counsel knew or should have known the states key witnesses,
17. such as petitioner's ex-girlfriend, "BRANDI COLEMAN, and her new
18. boyfriend, "BRYSON MARTINEZ", and his brother "BRENTON MARTINEZ", all
19. should have been interviewed because they said the petitioner
20. was the shooter, placing him at the scene of the crime of shoot-
21. ing the victim: "BRENTON MARTINEZ", and thoroughly investigate
22. and interview them.

23. Trial Counsel: Benjamin NADIG, Failed to interview prosecution
24. witnesses and prevented the petitioner from doing so, and to effec-
25. tively cross-examine the state's witnesses that provided the
26. Evidence of petitioners involvement in the crime nor did he
27. employ his investigator to do such or visited the crime scene
28. which constitutes ineffective Assistance of Counsel and the

GROUND FOR RELIEF CONT...

1. petitioner is entitled to a Evidentiary hearing to resolve his
2. ineffective Assistance of Counsel claim because such error is pre-
3. judicial to the petitioner and such error rendered Counsel's
4. Ability to perform like a Average Trial Counsel which fell below
5. the deficiency standards and was not trial strategy and the out-
6. come of the trial would be different but for Counsel's error.

"POINTS AND AUTHORITIES"

10. The Sixth Amendment guaranteed the Right to effective Assist-
11. ance of Counsel in criminal prosecution. See, Yarborough, Vs, Gent
12. y, 540 U.S. 1, 5 (2003) (Per Curiam); See Also, Padilla, Vs, Ky, 559 U.S. 356,
13. 364 (2010) and the Right to Counsel applies to both Retained and
14. Appointed Counsel; See, Cuyler, Vs, Sullivan, 446 U.S. 335, 344-45
15. (1980). The petitioner must obtain Reversal of a conviction and
16. must prove that (1) Counsel's performance "fell below an objective
17. standard of Reasonableness", Strickland, Vs, Washington, 466 U.S. 668,
18. 688 (1984); Hibler, Vs, Benedetti, 693 F.3d 1140, 1150 (9th Cir. 2012) and (2)
19. Counsel's deficient performance prejudiced the defendant, result-
20. ing in an unreliable or fundamentally unfair outcome in the proceed-
21. ing. Strickland, Vs, Wash, 466 U.S. @ 687, 691-92; See Also, Glover, Vs, U.S.
22. 531 U.S. 198, 201, 204 (2001). It is well known trial Counsel has a
23. duty to perform owed to his client in a criminal proceeding. See
24. Strickland, Vs, Washington, 466 U.S. @ 680 (1984) and Counsel, However
25. can also deprive a defendant of the Right to effective Assistance
26. simply by failing to render "Adequate Legal Assistance", Cuyler,
27. Vs, Sullivan, 446 U.S. @ 344, and Counsel owes a duty of Loyalty.
28. Here, the petitioner's Trial Counsel rendered prejudice to his

GROUND'S FOR RELIEF

1. defense when he did not interview the states "key" witnesses,
2. who placed the petitioner at the crime scene as the "shooter", and
3. Failed to effectively cross-examine two witnesses that provided
4. the evidence of petitioner's involvement, constitutes ineffective
5. Assistance of Counsel. See, BAUMANN, Vs, United States, 692 F.2d 565
6. (9th Cir. 1982) and interviewing the states "key" witnesses is a critical
7. stage of the proceeding of trial, which should be fair. See also,
8. Mickens, Vs, Taylor, 535 U.S. 162, 166, (2002) so prejudice is presu-
9. med and a evidentiary hearing is needed to determine ineffective
10. Assistance of Counsel because that wasn't sound trial strategy.
- 11.

GROUND FIVE:

13. Petitioner; Jason Bolen alleges that he received ineffective
14. Assistance of Counsel in violation of his state and federal 6th
15. and 14th Amendment Rights guaranteed to him under the U.S. Con-
16. stitution when trial counsel failed to object to the exclusion
17. of African-Americans from jury selection. See, Jury Selection
18. Transcripts @ Exhibits "E".
- 19.

SUPPORTING FACTS:

22. Petitioner; Jason Bolen was arrested and charged with four
23. (4) counts of Attempted Murder with the use of a deadly weapon,
24. one (1) count of ownership or possession of a firearm by a
25. prohibited person; seven (7) counts of discharging a firearm at
26. or into occupied structure, vehicle, aircraft or watercraft,
27. and one (1) count of battery with the use of a deadly weapon
28. on August 23rd, 2018 by Las Vegas Metro Police Department.

15.

SEE NEXT PAGE # 16.

1. Petitioner was appointed defense Attorney: Benjamin NADIG, to
2. defend him of those charges as he pleaded not guilty and the
3. Eighth Judicial District Court of Clark County Nevada, held a
4. Jury Trial Selection, which consisted of other Ethnic groups ex-
5. cept African-Americans, the same ethnic background as the
6. petitioner and trial counsel failed to object to the exclusion
7. of "Blacks" as Jurors selected by himself and by the prosecution
8. rendering his trial unfair by trial counsel's error in violation of
9. petitioners 6th Amendment and 14th Amendment Due Process Right.

11. "POINTS AND AUTHORITIES"

13. The Sixth Amendment guaranteed the Right to effective
14. Assistance of Counsel in criminal prosecution. Yarborough,
15. Vs, Gentry, 540 U.S. 1, 5 (2003) (per curiam); See also, Padilla, Vs, Ky,
16. 559 U.S. 356, 364 (2010) and the Right to counsel applies to both
17. Retained and Appointed Counsel; See, Cuyler, Vs. Sullivan, 446
18. U.S. 335, 344-45 (1980). The petitioner must obtain Reversal
19. of a conviction and must prove that (1) counsel's performance
20. "fell below an objective standard of Reasonableness," Strickland,
21. Vs, Washington, 466 U.S. 668, 688 (1984); Hipler, Vs, Benedetti, 693
22. F.3d 1140, 1150 (9th Cir. 2012) and (2) counsel's deficient performance pre-
23. judiced the defendant, resulting in an unreliable or fundamentally
24. unfair outcome in the proceeding, See, Strickland, Vs, Washington, 466
25. U.S. @ 680 (1984) and counsel however, can also deprive a defend-
26. ant of a right to effective Assistance by simply failing to render
27. "Adequate Legal Assistance," Cuyler, Vs, Sullivan, 446 U.S. @ 344, and

GROUND'S FOR RELIEF CONT. . .

1. Counsel owes a duty of Loyalty. See Also, Fitzpatrick, Vs, McCormick,
2. 869 F.2d 1247 (9th Cir. 1989)
3. Jury selection procedures implicate due Process, the Sixth Amen
4. dment, and Equal protection principles. In limited situations,
5. A defendant may challenge the jury selection process on the
6. ground that it violates fundamental fairness under the Due
7. Process clause. See, U.S. Vs, Harbin, 250 F.3d 532, 541-42 (9th
8. Cir. 2001). The Sixth Amendment forbids racial discrimination in
9. the selection of jurors and requires that the jury venire from
10. which the petit jury, is selected represents a fair cross-section
11. of the community, Duren, Vs, Mo. 439 U.S. 357, 364-65 (1979). Here,
12. the petitioner's jury selection consisted of one or two African-
13. Americans but was quickly excluded and trial counsel failed to
14. object to such exclusion. See, "Petitioner's Jury Selection Transcripts"
15. as Exhibit-E," and this selection was done in an intentionally
16. discriminatory fashion in violation of petitioner's equal protection
17. clause under the U.S. Constitution, and trial counsel failure to
18. discover instructional error and raise due process claim was
19. ineffective assistance of counsel because one juror was un-
20. certain about defendant/petitioner's guilt. See, Carter, Vs, Bow-
21. erson, 265 F.3d 705, 715-16 (8th Cir. 2001).

- 22.
23. The petitioner was prejudice by trial counsel's performance
24. when he allowed the exclusion of African-American jurors lea-
25. ving the petitioner without a opportunity to receive a fair
26. trial when he failed to object to a unfair jury selection
27. which would have preserved appellate review. See, Puckett,
28. Vs, U.S. 556 U.S. 129, 133 (2009) and should've been reviewed for

1. "PLAIN" error, U.S. Vs. Doe, 705 F.3d 1134, 1147-48 (9th Cir. 2013) AND
2. Such Rejection of Not objecting, shows counsels performance
3. which "Fell below" Reasonable trial strategy and a Evidentiary
4. hearing should be issued to determine 6th Amendment violation
5. by trial counsel.

6. SEVEN

7. GROUND :

8. Petitioner; JASON Bolen Alleges that he had recieved ineffective
9. Assistance of Counsel in violation of 6th and 14th Amendment Rights
10. guaranteed to him under the State and Federal Constitution when
11. Trial Counsel failed to subject the prosecution case to a meaning
12. ful Adversary testing process. See, Exhibit-F "Petitioner's
13. Trial Transcripts"

14. Supporting Facts:

- 15.
16. Petitioner; JASON Bolen WAS ARRESTED AND charged with four (4)
17. counts of Attempted Murder with the use of a deadly Weapon, one
18. (1) count of ownership or possession of a FIREARM by a prohibited
19. person; seven (7) counts of discharging a FIREARM AT OR INTO OCCU-
20. pied structure, vehicle, AIRCRAFT OR WATER, AND one (1) count
21. of battery with the use of a deadly Weapon on August 23rd, 2018
22. by Las Vegas Metro Police Department.

- 23.
24. Petitioner WAS Appointed defense Attorney: Benjamin NADIS, to
25. defend him of those charges AS he pleaded Not guilty AND the
26. trial Counsel failed to conduct ANY meaningful Adversarial chal-
27. lenge testing process such AS Failure to hold the State to the
28. burden of proof, when he failed to object to the introduction

18.

SEE NEXT PAGE #19.

GROUND'S FOR RELIEF CONT...

1. Identification Evidence, inconsistent statements, by the States
2. Witnesses, Forensic expert testimony, Failure of presenting Mitigating evidence and objecting to Sentencing structure.
- 3.
- 4.

"POINTS AND AUTHORITIES"

- 5.
- 6.
7. The Sixth Amendment guaranteed the Right to effective Assistance of Counsel in criminal prosecution. Yarborough, Vs, Gentry,
8. 540 U.S. 1, 5 (2003) (per curiam); See also, Padilla, Vs, Ky, 559 U.S. 356,
9. 364 (2010) and the Right to counsel applies to both Retained
10. and Appointed Counsel; See, Cuyler, Vs, Sullivan, 446 U.S. 335,
11. 344-45 (1980). The petitioner must obtain Reversal of a conviction
12. and must prove that (1) counsel's performance "fell below an objective standard of Reasonableness," Strickland, Vs, Washington, 466
13. U.S. 668, 688 (1984) and counsel however, can also deprive a defendant of a Right to effective Assistance; Hibler, Vs, Benedetti, 693
14. F.3d 1140, 1150 (9th Cir. 2012) and (2) counsel's deficient performance
15. prejudiced the defendant, Resulting in an unreliable or Funda-
16. mentally unfair outcome in the proceeding, See, Strickland, Vs,
17. Washington, 466 U.S. @ 680 (1984) and counsel can deprive a defendant of Effective Assistance by simply Failing to Render "Adequate
18. Legal Assistance" Cuyler, Vs, Sullivan, 446 U.S. @ 344, and counsel
19. owes a duty of Loyalty.
20. Similarly, if counsel "entirely Fails to subject the prosecution's
21. case to meaningful Adversarial testing," the Adversarial process
22. itself becomes presumptively unreliable. See, U.S. Vs, Cronk,
23. 466 U.S. 648, 658 (1984) and 466 U.S. @ 659. And trial Counsel
24. here, prejudice the petitioner when he Failed to oppose the pro-

GROUND'S FOR RELIEF CONT...

1. secution At specific points OF the CASE. See; Bell, Vs, Cone,
2. 535 U.S. 685, 697-98 (2002) AS prejudice is NOT presumed FOR ineff
3. ectiveness OF Counsel, but defective performance by TRIAL COUN
4. NSEL WAS prejudicial in petitioners sentencing, Rendered his trial
5. UNFAIR, See, Glover, Vs, U.S., 531 U.S. 198, 202-04 (2001); See Also
6. Patrasso, Vs. Nelson, 121 F.3d 297 (7th cir. 1997) AND trial counsel's Ab-
7. ANDERMENT, the Required duty OF Loyalty to his client, See, Also
8. Osborn, Vs, Shillinger, 861 F.2d 612, (10th cir. 1988) AND the conceding
9. OF petitioner's guilt by trial Counsel during sentencing Phase,
10. See Also, U.S. Vs, Swanson, 943 F.2d 1070 (9th cir. 1991) AND petitioner
11. Requests A Evidentiary hearing to determine trial counsel's
12. PERFORMANCE AS it prejudice the petitioner AND deprived him
13. OF A FAIR TRIAL.

14. EIGHT 15. GROUND'S [REDACTED]:

16. Petitioner; JASON Bolen Alleges that he received ineffective Ass-
17. istance OF Counsel in violation OF his 6th AND 14th Amendment Rights
18. guaranteed to him under the state AND federal Constitution
19. when trial Counsel Failed to present Mitigating Evidence
20. FOR petitioner during sentencing Phase. See Exhibit-G: "petition
21. er's sentencing transcripts.

22. Supporting Facts:

- 23.
24. Petitioner; JASON Bolen WAS ARRESTED AND charged with four
25. (4) counts OF Attempted Murder with the Use OF A deadly Weapon,
26. One (1) count OF ownership OR possession OF A FIREARM by A
27. prohibited person; Seven (7) counts OF discharging A FIREARM
28. At OR into occupied structure, Vehicle, Aircraft, OR WATER-

1. CRAFT, AND ONE(1) COUNT OF battery with the Use of A deadly WEAPON ON August 23rd, 2018 by LAS Vegas Metro Police Department.

3.

4. Petitioner WAS Appointed defense Attorney: Benjamin Nadio to
5. defend him of those charges AS he pleaded NOT guilty AND AFTER
6. A jury Found petitioner guilty of the charges Above, he WAS
7. Later sentence to 336 to 1920 MONTHS in Nevada Department
8. OF Corrections by the trial Judge AND the trial Counsel Failed
9. to present mitigating evidence For the petitioner during
10. Sentencing AND call Family members to testify to good CHARACTER OF petitioner AS counsel's conduct WAS NOT A tactical
11. OR trial strategy which violated petitioners Right to the Effective Assistance OF Counsel under the 6th Amendment guaranteed under the U.S. Constitution.

15.

16.

"POINTS AND AUTHORITIES"

17.

18. The Sixth Amendment guaranteed the Right to effective Assistance
19. OF COUNSEL IN CRIMINAL prosecution. See, Yarborough, Vs, Gentry, 540
20. U.S. 1, 5 (2003) (Per curiam); See Also, Padilla, Vs, Ky, 559 U.S. 356, 364
21. (2010) AND the Right to Counsel Applies to both Retained AND Appointed Counsel.; See, Cuyler, Vs, Sullivan, 446 U.S. 335, 344-45, (1980). The petitioner must obtain REVERSAL OF A CONVICTION AND
22. Must prove that (1) counsel's performance "fell below AN objective
23. STANDARD OF REASONABLENESS", Strickland, Vs, Washington, 466 U.S. 668, 688 (1984); Hilder, Vs, Benedetti, 693 F.3d 1140, 1150 (9th Cir. 2012) AND (2).
24. counsel's deficient performance prejudiced the defendant, resulting in AN UNRELIABLE OR FUNDAMENTALLY UNFAIR outcome in

21.

SEE NEXT PAGE # 22.

GROUND FOR RELIEF

1. the proceeding. Strickland, Vs, Wash, 466 U.S. @ 687, 691-92, See Also
2. Glover, Vs, U.S., 531 U.S. 198, 201, 204 (2001). It is well known trial
3. Counsel has a duty to perform owed to his client in a criminal
4. proceeding. See, Strickland, Vs, Washington, 466 U.S. @ 680 (1984) and
5. Counsel however, can also deprive a defendant of the right to eff
6. ective assistance simply by failing to render "Adequate Legal Assis
7. tance" simply by failing to render also investigations, Cuyler, Vs,
8. Sullivan, 446 U.S. @ 344, and Counsel owes a duty of loyalty to
9. his client.
10. Here, Petitioner was facing excessive amount of years in prison
11. for his alleged crimes of Attempted Murder with the use of a
12. deadly weapon and seven (7) counts thereof, and could have
13. used mitigating evidence in his favor and Counsel's error
14. at sentencing, by not presenting mitigating factors, had
15. resulted in a increase in the sentencing of an excessive
16. sentence which was prejudicial to the petitioner and
17. constituted ineffective assistance of Counsel; See, also
18. Glover, Vs, U.S. 531 U.S. 198, 203-04 (2001) and Counsel's failure
19. to confront jury with considerable mitigating evidence
20. was ineffective assistance of Counsel, Wiggin, Vs, Smith
21. 539 U.S. 510, 534-38 (2003) See, Exhibit-G "Petitioner's Senten
22. cing transcripts.
23. The petitioner was prejudiced by trial Counsel's performance be
24. cause jury would have voted differently if given mitigating evi
25. dence by trial Counsel. See, Stankewitz, Vs, Wong, 698 F.3d 1163,
26. 1174-76 (9th Cir. 2012), but for trial Counsel's error, the trial of
27. Petitioner's would have been different and deserves relief
28. but for Counsel's error in violation of the petitioners
29. 6th Amendment Rights to the U.S. Const.

GROUND'S FOR RELIEF CONT. ...

NINE:

1. GROUND [REDACTED]:

2. Petitioner; Jason Bolen Alleges that he had received ineffective
3. Assistance of Counsel in violation of his state and Federal 6th and
4. 14th Amendment Rights guaranteed to him under the U.S. Constitution
5. when trial counsel conceded his guilt during sentencing. See,
6. Exhibit - G, "Petitioner's Sentencing Transcripts."

7. Supporting facts:

8.
9. Petitioner; Jason Bolen was arrested and charged with Four (4)
10. counts of Attempted Murder with the Use of a deadly Weapon, One
11. (1) count of ownership or possession of a Firearm by a prohibited
12. person; Seven (7) counts of discharging a Firearm at or into occ-
13. upied structure, Vehicle, Aircraft or Watercraft, and one (1) count
14. of battery with the Use of a deadly Weapon on August 23rd, 2018
15. by Las Vegas Metro Police Department.

16.
17. Petitioner was appointed defense Attorney: Benjamin NADIG to
18. defend him of those charges as he pleaded not guilty, he was then
19. given a preliminary hearing and bounded over after for trial by
20. Jury in which he was convicted of Four counts of Attempted
21. Murder with the Use of a deadly Weapon and Sentence to 336
22. to 1920 months in the Nevada Department of Corrections and
23. during sentencing, the trial counsel conceded the petition-
24. er's guilt in violation of his 6th and 14th Amendment Rights to
25. the U.S. Constitution.

26.
27. "POINTS AND AUTHORITIES"

GROUNDS FOR RELIEF cont...

1. The Sixth Amendment guaranteed the Right to Effective Assist-
2. ANCE OF COUNSEL in CRIMINAL prosecution. See, YARBOROUGH, Vs,
3. GENTRY, 540 U.S. 1, 5 (2003) (PER CURIAM); See Also, Padilla, Vs, Ky. 559
4. U.S. 356, 364 (2010) AND the Right to counsel Applies to both Re-
5. trainted AND Appointed Counsel; See, Cuyler, Vs, Sullivan, 446 U.S. 33
6. 344-45 (1980). The petitioner must obtain REVERSAL OF A CONVICT-
7. ion AND must prove that (1) counsel's performance "fell below AN
8. objective STANDAND OF REASONABLENESS," See, STRICKLAND, Vs, Washing
9. TON, 466 U.S. 668, 688 (1984); Hibler, Vs, Benedetti, 693 F. 3d 1140, 1150
10. (9th Cir. 2012) AND (2) counsel's deficient performance prejudiced the
11. defendant, Resulting in AN UNRELIABLE OR FUNDAMENTALLY UNFAIR
12. outcome in the proceeding. STRICKLAND, Vs, Wash, 466 U.S. @ 687, 691
13. -92; See Also, Glover, Vs, U.S. 531 U.S. 198, 201, 204 (2001). It is
14. well establish that trial counsel has a duty to perform owed to
15. his client in A CRIMINAL proceeding. See, STRICKLAND, Vs, Washing-
16. TON, 466 U.S. @ 680 (1984) AND counsel, however, CAN ALSO deprive
17. A defendant of the Right to effective Assistance simply by failing to
18. Render "Adequate Legal Assistance," Cuyler, Vs, Sullivan, 446 U.S. @
19. 344, AND counsel owes A duty OF LOYALTY to his client. See, Fitzpatrick
20. Vs, McCormick, 869 F.2d 1247 (9th Cir. 1989)
21. Under the Due Process Clause of the Fifth Amendment, the pros-
22. ecution is Required to prove beyond A REASONABLE doubt every ele-
23. ment of the crime with which A defendant is charged. In Re Win-
24. ship, 397 U.S. 358, 364 (1970); AND the government's Failure to meet
25. its burden of proof results in the defendant's Acquittal At trial OR
26. Reversal of the conviction on Appeal; See, Winship, 397 U.S. @ 363
27. See Also, U.S. Vs, Leguire, 672 F.3d 724, 728-32 (9th Cir 2012). During
28. Sentencing, trial Counsel Asked the Courts FOR LIEVANCY OF A

24.

SEE NEXT PAGE # 25

GROUND FOR RELIEF CONT...

1. A Sentencing upon his ~~present~~ when petitioner maintain his INN-
2. nocents since his arrest, as this presented a guilt in the minds
3. of the Judge and Jury. when that was the prosecution's Job;
4. See, U.S. Vs, SWANSON, 943 F.2d 1070 (9th Cir. 1991); AND A WRIT OF ha-
5. beas Corpus should be issued as this prejudiced the petitioners
6. due Process Rights; See, McCoy, Vs, LOUISIANA, 138 S.Ct 1500 (2018)
7. because the petitioner alone can maintain his innocence with
8. other Rights and he alone can waive them.

9.

10. Petitioner should be given Relief with a Evidentiary hearing to
11. determine the trial Counsel's performance which violated the
12. petitioners 6th and 14th Amendment Rights to Effective Assistance.

13.

TEN:

14. GROUND ~~XXXXXXXXXX~~

15. Petitioner; Jason Bolen Alleges that he had recieved ineffective
16. Assistance of Counsel in violation of his State and Federal 6th and
17. 14th Amendment Rights guaranteed to him under the U.S. Constituit-
18. ion when trial Counsel failed to be effective during the first
19. Appeal process. See, Petitioner's Appellate Brief @ Exhibit-H

20.

21. Supporting Facts:

22.

23. Petitioner; Jason Bolen was arrested and charged with Four (4)
24. counts of Attempted Murder with the Use of a deadly Weapon, One
25. (1) count of ownership or possession of a Firearm by a prohibit-
26. ed person; Seven (7) counts of discharging a Firearm at or into
27. occupied structure, Vehicle, Aircraft, or Watercraft, and One (1)
28. count of battery with the Use of a deadly Weapon on August

GROUND'S FOR RELIEF CONT...

1. 23rd 2018 by LAS Vegas Metro Police Department.

2.
3. Petitioner was Appointed defense Attorney: Benjamin NADIG to
4. defend him of those charges as he pleaded not guilty. He then
5. was given A TRIAL by Jury AND WAS CONVICTED of the crimes ch-
6. arged AND Sentence to 336 to 1920 MONTHS by the Eighth Judicial
7. District Court to be spent in the NEVADA Department of Correct
8. ions, AND the petitioner's Trial Counsel; Benjamin NADIG, had file
9. A NOTICE OF APPEAL AND only filed two (2) Appellet grounds in
10. stead of challenging the petitioner's conviction, AND other
11. errors caused. See, Exhibit-H, "Petitioner's Appellet brief."

"POINTS AND AUTHORITIES"

15. The Sixth Amendment guaranteed the Right to effective Assistance
16. OF Counsel in criminal prosecutions. See, Yarborough, Vs, Gentry,
17. 540 U.S. 1, 5 (2003) (PER CURIAM); See Also, Padilla, Vs, Ky, 559 U.S. 356, 364
18. (2010) AND the Right to Counsel applies to both Retained AND the
19. Appointed Counsel; See, Cuyler Vs, Sullivan, 446 U.S. 335, 344 (1980).
20. To obtain Reversal of A conviction, the defendant must prove
21. that (1) counsel's performance "fell below AN objective standard of
22. Reasonableness," Strickland, Vs, Washington, 466 U.S. 668, 688 (1984) See,
23. Also, Hibler, Vs, Benedetti, 693 F.3d 1140, 1150 (9th Cir 2012) AND (2) counsel's
24. deficient performance prejudice the defendant resulting in AN UN-
25. reliable OR Fundamentally UNFAIR outcome in the proceedings, Strick
26. LAND, 466 U.S. @ 687, 691-92; See Also, Glover, Vs, U.S. 531 U.S. 198, 201,
27. 204 (2001) AND when "critical stages" of criminal prosecution is involved,
28. petitioner have A Right to undivided Loyalty; See, Fitzpatrick, Vs,

26. SEE NEXT PAGE #27.

GROUND'S FOR RELIEF CONT...

1. McCormick, 869 F.2d 1247 (9th Cir. 1989). During trial, petitioner's
2. Trial Counsel Allowed the prosecution's Lead way on numerous
3. "errors", and failed to perfect Appellate process which he failed
4. to raise arguments for mistrial; Ramchar, Vs, Conway, 601 F.3d 66, 72
5. 77 (2nd Cir. 2010), Counsel's Failure on Appeal to Renew objection; U.S. Vs, MAN
6. NINO, 212 F.3d 835, 845 (3rd Cir. 2000): Counsel's Failure to raise trial
7. COURT's sentencing error; U.S. Vs, Reinhardt, 357 F.3d 521, 530-31 (5th
8. Cir. 2004) and trial Counsel's Failure on Appeal to raise any arguable
9. issues in Appellate brief; Delgado, Vs, Lewis, 223 F.3d 976 (9th Cir. 2000)
10. (9th Cir. 2000) and Failure of Trial Counsel to argue on Appeal of
11. Batson violation by prosecutor; See; Eagle, Vs, Linahan, 279 F.3d
12. 926, 943-44 (11th Cir. 2001).
- 13.
14. Here, trial Counsel failed to properly file an Appellate brief for
15. the petitioner, as a criminal defendant must provide all issues
16. on Appeal for proper Appellate Review and petitioner is entitled
17. to Appellate Counsel, see, Evitts, Vs, Lucey, 469 U.S. 387, (1985)
18. and since Appellate Counsel had failed to raise a significant and
19. obvious issue such as the exclusion of African-Americans from the
20. Jury selection, the failure could be viewed as "deficient performance"
21. and such issue, if not raised, may result in a reversal of the con-
22. viction, the failure was prejudicial, see, Strickland, 104 S.Ct@2064
23. as such performance renders Trial Counsel's strategy ineffective in
24. violation of petitioner's 6th and 14th Amendment Rights to effective
25. assistance of Counsel guaranteed to him under the U.S. Const.
26. and a evidentiary hearing is required to determine Trial Counsel's
27. performance.
- 28.

GROUND S FOR RELIEF CONT. ...

ELEVEN

GROUND

1. Petitioner; JASON Bolen Alleges that he had received ineffective
2. Assistance of Counsel in violation of his state and federal 6th and 14th
3. Amendment Rights guaranteed to him under the U.S. Constitution when
4. trial counsel failed to object to the introduction of Pre-Sentence
5. Report which had numerous inaccuracies that caused excessive
6. sentencing by trial Judge. See, Exhibit-G "Petitioner's Sentencing
7. Transcripts.
- 8.

Supporting Facts:

- 9.
- 10.
11. Petitioner; JASON Bolen was arrested and charged with Four (4)
12. counts of Attempted Murder with the Use of a deadly Weapon, One (1)
13. count of ownership or possession of a Firearm by a prohibited per
14. son; Seven (7) counts of discharging a Firearm at or into occupied st-
15. ructure, vehicle, aircraft or watercraft and One (1) count of battery
16. with the Use of a deadly Weapon on August 23rd, 2018 by the LAS
17. Vegas Metro Police Department.
- 18.
19. Petitioner was appointed defense Attorney: Benjamin NADIG, to defend
20. him of those charges as he pleaded not guilty, and the petitioner
21. was found guilty on all charges by a Jury Trial in the Eighth
22. Judicial District Court in Clark County Nevada and was sentence
23. to 336 to 1920 months in the Nevada Department of Corrections
24. by the trial Judge, and trial counsel failed to discuss the
25. Presentence Report with the petitioner, which would have det
26. ected inaccuracies, bringing to the Courts Attention those in-
27. accuracies, which enhanced the sentence because of and trial
28. counsel's failure to object to such inaccuracies, constitut

28.

SEE NEXT PAGE #29.

GROUND FOR RELIEF CONT...

1. d ineffective Assistance of Counsel in violation of petitioners
2. 6th and 14th Amendment Rights to the U.S. Constitution.

"POINTS AND AUTHORITIES"

- 3.
- 4.
- 5.
6. The Sixth Amendment guaranteed the Right to effective Assist-
7. ance of Counsel in criminal prosecution. See, Yarborough, Vs, Gentry
8. 540 U.S. 1, 5 (2003) (PER CURIAM); See also, Padilla, Vs, Ky, 559 U.S. 356,
9. 3d (2010) AND the Right to counsel applies to both Retained AND
10. Appointed Counsel; See, Cuyler, Vs, Sullivan, 446 U.S. 335, 344-4
11. (1980). The petitioner must obtain REVERSAL of a conviction AND
12. must prove that (1) counsel's performance "fell below an objective
13. standard of reasonableness", Strickland, Vs, Washington, 466 U.S. 668,
14. 688 (1984); Hibler, Vs, Benedetti, 693 F.3d 1140, 1150 (9th Cir. 2012) AND (2) the
15. counsel's deficient performance prejudiced the defendant, Res-
16. ulting in an UNRELIABLE OR FUNDAMENTALLY UNFAIR outcome in the
17. proceeding. Strickland, Vs, Wash, 466 U.S. @ 687, 691-92; See Also,
18. Glover, Vs, U.S., 531 U.S. 198, 201, 204 (2001). It is well known
19. trial counsel has a duty to perform owed to his client in a
20. criminal proceeding. See, Strickland, Vs, Washington, 466 U.S. @ 680
21. (1984) AND counsel however can also deprive a defendant of the
22. Right to effective Assistance simply by failing to render "Adequ-
23. ate Legal Assistance", Cuyler, Vs, Sullivan, 446 U.S. @ 344 AND the
24. counsel owes a duty of Loyalty. See, Fitzpatrick, Vs, McCormick,
25. 869 F.2d 1247 (9th Cir. 1989).

- 26.
27. Prior to sentencing, the court's probation officer must invest-
28. igate the defendant AND file a pre-sentence investigation Re-

29. SEE NEXT PAGE # 30

GROUND'S FOR RELIEF

1. port ("PSR") with the court. FED. R. CRIM. P. 32(c)(1)(A). See Also
2. U.S. Vs, Hernandez-Arias, 745 F.3d 1275, 1285 (9th Cir. 2014). The PSR
3. Must contain: (1) the history and characteristics of the defendant;
4. including prior criminal record, financial condition, and any circum-
5. stances affecting the defendant's behavior that may be helpful
6. in sentencing; FED. R. CRIM. P. 32(d)(1)-(2); See Also. United State
7. vs, Booker, 543 U.S. 220 (2005) and before imposing a sentence, the
8. court must give the defendant, defense counsel and the attorney
9. for the government an opportunity to comment on the PSR acc-
10. ording to strict timetables. See, FED. R. CRIM. P. 32(F) and if the
11. defendant alleges that the PSR contains factual inaccuracies,
12. the court may choose to hold an evidentiary hearing, allowing
13. the defendant to introduce evidence related to the alleged in-
14. accuracies. Sentencing Court ~~of~~ the petitioner ~~err~~ when it
15. adopted PSR findings; U.S. vs, Showalter, 569 F.3d 1150, 1159 (9th
16. cir. 2009) and when trial counsel fails to object to such inacc-
17. uracies of the PSR, during sentencing, effective assistance of
18. counsel is violated, See, U.S. vs, Sustaita, 1 F.3d 950 (9th Cir.
19. 1993) and the Fifth Amendment Due Process Clause requires the
20. defendant not be sentenced on basis of "materially untrue" ass-
21. umptions or "misinformation." See, Exhibit-G.
- 22.
23. The petitioner was prejudice by trial counsel's performance which
24. fell below professional standards as a trial attorney at a "critical-
25. stage" of the proceedings. As trial judge based his sentencing
26. decision and excessive sentence on the PSR and counsel
27. was the reason its inaccuracies was not challenged in violation
28. of petitioners 6th and 14th Amendment Rights to the U.S. Const.

30. SEE NEXT PAGE # 31

4. TWELVE

1. GROUND [REDACTED]:

2. Petitioner; Jason Bolen Alleges that he received ineffective
3. Assistance of Counsel in violation of his state and federal 6th and
4. 14th Amendment Rights guaranteed to him under the U.S. Constitution
5. when trial failed to present a Adequate Argument or evidence at
6. sentencing that might have persuaded the trial Judge to temper the
7. severity of sentence. See, Exhibit-G, Petitioner's Sentencing Trans-
8. cripts.

9. Supporting Facts:

10.
11. Petitioner; Jason Bolen was arrested and charged with Four (4) cou-
12. nts of Attempted Murder with the Use of a deadly Weapon, One (1) cou-
13. nt of ownership or possession of a Firearm by a prohibited per-
14. son; Seven (7) counts of discharging a Firearm at or into occupied
15. structure, Vehicle, Aircraft, or Watercraft, and One (1) count of
16. battery with the Use of a deadly Weapon on August 23rd, 2018 by
17. Las Vegas Metro Police Department.

18.
19. Petitioner was appointed defense Attorney; Benjamin Nagid to
20. defend him of those charges as he pleaded not guilty and after
21. a jury found petitioner guilty of the charges above, and he was
22. later sentence to 336 to 1920 months in the Nevada Department
23. of Corrections by the trial Judge and trial Counsel failed to pre-
24. sent a Adequate Argument and evidence during sentencing that
25. would have persuaded the trial Judge to temper the severity
26. of the sentence which was too harsh nor did trial Counsel
27. object to such sentence to preserve for Appellate Review,
28. constituting ineffective Assistance of Counsel and prejudicial

GROUND FOR RELIEF CONT...

1. to the petitioner's defense and but for counsel's error the
2. Result of the sentence would be different; see, Exhibit-G
3. "Petitioner's Sentencing Transcripts."

"POINTS AND AUTHORITIES"

- 4.
- 5.
6. The Sixth Amendment guaranteed the right to effective Assist-
7. ance of counsel in a criminal prosecution. Yarborough, Vs, Gentry, 54
8. U.S. 1, 5 (2003) (PER CURIAM); See also, Padilla, Vs, Ky, 559 U.S. 356, 364
9. (2010) and the right to counsel applies to both retained and appoint-
10. ed counsel; see, Cuyler, Vs, Sullivan, 446 U.S. 335, 344-45 (1980)
11. The petitioner must obtain reversal of a conviction and must
12. prove that (1) counsel's performance "fell below an objective
13. standard of reasonableness," Strickland, Vs, Washington, 466 U.S.
14. 668, 688 (1984); Hibler, Vs, Benedetti, 693 F.3d 1140, 1150 (9th Cir. 2012)
15. and (2) counsel's deficient performance prejudiced the defendant,
16. resulting in an unreliable or fundamentally unfair outcome in the
17. proceeding, see, Strickland, Vs, Washington, 466 U.S. @ 680 (1984)
18. and counsel however can also deprive a defendant of a right to
19. effective assistance by simply failing to render "adequate legal
20. assistance," Cuyler, Vs, Sullivan, 446 U.S. @ 344, and counsel
21. owes a duty of loyalty to his client. See also, Fitzpatrick, Vs, Mc-
22. Cormick, 868 F.2d 1247, (9th Cir. 1989).
- 23.
24. The Sixth Amendment right to counsel also applies to all federal and
25. state criminal prosecutions. See, Gideon, Vs, Wainwright, 372
26. U.S. 335, 342 (1963) in which the defendant is accused of a
27. felony, Baldasar, Vs, Ill. 446 U.S. 222, 224-25 (1980) and petiti-
28. oner was denied this when trial counsel failed to present-

32. SEE NEXT PAGE # 33.

GROUND FOR RELIEF

1. Evidence to temper the severity of the sentence by the trial
2. judge as he received 336 to 1920 months for an attempted
3. murder with the use of a deadly weapon when there was no
4. gun recovered, as the Fifth and Fourteenth Amendments require
5. the government to disclose specific types of evidence to the
6. defendants. See, Kyles, Vs, Whitley, 514 U.S. 419, 433 (1995) See Also
7. Brady, Vs, Maryland, 373 U.S. 83, 87 (1963). And the trial counsel
8. was suppose to provide evidence in favor of the petitioner's
9. innocence, See, Patraso, Vs, Nelson, 969 F.2d 155 (5th Cir. 1992) and
10. his failure to confront jury with mitigating evidence, prejudice
11. the petitioner, See, Wiggins, Vs, Smith, 539 U.S. 510, 534-38 (2003)
12. and failure to do so, increased petitioner's sentence. U.S., Vs,
13. Granados, 168 F.3d 343, 346 (8th Cir. 1999) and because of trial
14. counsel's failure to present evidence to temper the severity
15. of the trial judge's sentence, violated petitioner's 6th Amend-
16. ment Right to Effective Assistance of Counsel; Hendricks, Vs,
17. Vasquez, 974 F.2d 1099 (9th Cir. 1992) and petitioner's Writ of habeas
18. corpus should be granted because of counsel's error, See Also,
19. Butter, Vs, Summer, 783 F.Supp. 519 (S. Nev. 1991) because petit-
20. ioner trial was unfair as he was deprived of his 6th Amendment
21. Right to Effective Assistance of Counsel.

THIRTEEN:

GROUND [REDACTED]:

24. Petitioner; Jason Bolen alleges that he had received ineffective
25. assistance of counsel in violation of his state and federal 6th and 14th
26. Amendment rights guaranteed to him under the U.S. Constitution
27. when trial counsel allow trial court to err when it applied an
28. excessive sentence based on multiple punishments for same crime.

33. SEE NEXT PAGE #34.

GROUND'S FOR RELIEF CONT...

1. Supporting Facts:

2.
3. Petitioner; Jason Bolen was arrested and charged with four (4) counts
4. of Attempted Murder with the Use of a deadly Weapon, One (1) count
5. of ownership or possession of a Firearm by a prohibited person; seven
6. (7) counts of discharging a Firearm at or into occupied structure,
7. Vehicle, Aircraft, or Watercraft, and one (1) count of battery with
8. the Use of a deadly Weapon on August 23rd, 2018 by Las Vegas
9. Metro Police Department.

10.
11. Petitioner was appointed defense Attorney: Benjamin Nagid to
12. defend him of those charges as he pleaded not guilty and after
13. a jury found petitioner guilty of the charges above and he was
14. later sentence to 336 to 1920 months in the Nevada Department
15. of Corrections by the trial Judge and trial counsel failed to ob-
16. ject to trial courts error when it applied an excessive sentence that
17. was based on multiple punishments for the same crime.

"POINTS AND AUTHORITIES"

18.
19.
20.
21. The Sixth Amendment guarantees the Right to Effective Assistance
22. of Counsel in criminal prosecutions. Yarborough, Vs, Gentry, 540
23. U.S. 1, 5 (2003) (PER CURIAM); See also, Pandilla, Vs, Ky, 559 U.S. 356, 364
24. (2010) and the Right to Counsel applies to both retained and appointed
25. Counsel; See, Cuyler, Vs, Sullivan, 446 U.S. 335, 344-42 (1980).
26. To obtain Reversal of a conviction, the defendant must prove
27. that (1) Counsel's performance "fell below an objective standard
28. of Reasonableness, Strickland, Vs, Washington, 466 U.S. 668, 688.

1. (1984); Hibbe, Vs, Benedetti, 693 F.3d 1140, 1150 (9th Cir. 2012) AND (2)
2. Counsel's deficient performance prejudice the defendant resulting
3. in an UNRELIABLE OR FUNDAMENTALLY UNFAIR outcome in the proce-
4. eeding. Stickland, 416 U.S. @ 687, 691-92; See Also, Glover, Vs,
5. U.S. 531 U.S. 198, 201, 204 (2001). It is well known trial counsel
6. HAS A duty to perform owed to his client in A CRIMINAL proceed-
7. ing. See, Stickland, Vs, Washington, 416 U.S. @ 680 (1984) AND counsel
8. however, CAN ALSO deprive A defendant of the Right to effective
9. Assistance simply by failing to render "Adequate Legal Assistance"
10. simply by failing to render also investigations. Cuyler, Vs, Sullivan,
11. 446 U.S. @ 334, AND counsel owes A duty of Loyalty to his client,
12. See, Fitzpatrick, Vs, McCormick, 869 F.2d 1247 (9th Cir. 1989)

13.

14. The Eighth Amendment prohibits the infliction of CRUEL AND

15. UNUSUAL Punishment, "EIGHT Amendment provides that "excessive bail

16. SHALL NOT be required, NOR excessive Fines imposed

NOR CRUEL AND UNUSUAL punishment inflicted."

U.S. CONST. Amend. VIII.

17. See Also, Robinson, Vs, Cal, 370 U.S. 660, 666-67 (1962). →

18. upon persons convicted of a crime. See, Ingraham, Vs, Wright, 430

19. U.S. 651, 671-72 U.S. 40 (1977), the 8th Amendment is concerned with

20. punishment imposed AFTER "state" HAS secured formal Adjudication

21. of guilt. The CRUEL AND UNUSUAL Punishment Clause Limits cri-

22. MINAL punishment in three ways: (1) it "imposes substantive Lim-

23. its ON what CAN be made criminal AND punished AS such." U.S. Vs,

24. Hall, 952 F.2d 1170, 1171 (9th Cir. 1991), (2) it prohibits certain kinds of

25. punishment; See, Ingraham, 430 U.S. @ 667, See Also, Miller, Vs ALA,

26. 132 S.Ct. 2455, 2475 (2012); AND, (3), it prohibits punishment "gross-

27. sly disproportionate" to the severity of the offense. See,

28.

35. SEE NEXT PAGE # 36.

GROUND'S FOR RELIEF cont....

1. INGRAHAM, 430 U.S. @ 667. And the petitioner; JASON BOKEN WAS
2. given 336 to 1920 months in the NDOC For Attempted Murder With
3. the Use of A deadly Weapon AS the state had "NO weapon" Recov-
4. ered, AND A "Alibi Witness", who was NOT called upon by defense/
5. Trial Counsel AND such Sentence was ~~grossly~~ "disproportionate"
6. to the severity of the crime; See, GONZALEZ, Vs, DUNCAN, 551 F.3d
7. 875, 891 (9th Cir. 2008) See Also, Solem, Vs, Helm, 463 U.S. 277, 292
8. (1983), AND the due Process Clause For the petitioner under
9. the Fourteenth Amendment is Violated AS such sentencing
10. is outside the Statutes Sentencing Guidelines AND is very
11. excessive. See, BENTON, Vs, MARYLAND, 395 U.S. 785 (1969). Trial
12. Counsel Failed to object to such sentencing denying Appell-
13. ate Review, constituting ineffective Assistance of Counsel AND
14. Also, his Failure to file A Motion to "Reduce Sentence" Pursuant
15. to FED. R. CRIM. P. 35 constituted ineffective Assistance of
16. Counsel; See, U.S. Vs, Golden, 854 F.2d 31 (3rd 1988).
17. Petitioner WAS prejudice by counsel performance which "fell
18. below AN objective standard of Reasonableness", STRICKLAND, Vs,
19. WASHINGTON, 466 U.S. 668, 688 (1984); especially when he Failed to
20. object to such excessive sentence for the severity of the crime
21. AND petitioner deserves A Evidentiary hearing to Resolve the
22. dispute.

23. FOURTEEN:

24. Ground [REDACTED]:

25. Petitioner; JASON BOKEN Alleges that he received TRIAL COURT ERR
26. when it continued the sentencing of A person who is Actually
27. INNOCENT of Attempted Murder After the state's "key" Witness
28. Recanted her Testimony At the sentencing Phase in Violation

GROUND FOR RELIEF CONT...

1. of his 5th Amendment Rights and Trial Counsel's Failure to object
2. to such sentence in violation of his 6th Amendment Rights to the
3. State and Federal Constitution. See, Exhibit-G, Petitioner's Sentence
4. Transcripts.

5. Supporting Facts:

- 6.
 7. Petitioner; Jason Bolen was arrested and charged with four (4)
 8. counts of Attempted Murder with the Use of a deadly Weapon,
 9. One (1) count of ownership or possession of a Firearm by a pro-
 10. hibited person; Seven (7) counts of discharging a Firearm at or
 11. into occupied structure, Vehicle, Aircraft, or Watercraft, and
 12. One (1) count of battery with the Use of a deadly Weapon on
 13. August 23rd, 2018 by Las Vegas Metro Police Department.
 - 14.
 15. Petitioner was appointed defense Attorney: Benjamin Nadig
 16. to defend him of those charges as he pleaded not guilty and
 17. the trial Counsel failed to object to the petitioner's Senten-
 18. cing when trial Court allowed the continuance thereof when
 19. the State's "key" witness; Brandi Coleman, recanted her tes-
 20. timony during the Sentencing Phase of the petitioner as
 21. the petitioner not the one who did the shooting of the
 22. victim: Brenton Martinez at her housing complex on July
 23. 1st, 2018 at around 8:00 AM., proving to the Trial Court of
 24. his "Actual Innocence". See, Affidavit of "Brandi Coleman".
 25. @ "Petitioner's Exhibit-H", and his Factual Innocence becau-
 26. se Ms. Coleman was the State's key witness and the 911 caller,
 27. as Trial Court erred and Trial Counsel Failure to object to
 28. such of a Sentencing; See, Exhibit-G, "Petitioner's Sentencing
- Transcripts.

"POINTS AND AUTHORITIES"

1. The Sixth Amendment guaranteed the right to effective assistance
2. of counsel in criminal prosecution. Yarborough, Vs. Gentry, 540 U.S.
3. 1, 5 (2003) (per curiam); See also, Padilla, Vs. Ky, 559 U.S. 356, 364 (2010)
4. And the right to counsel applies to both retained and appointed
5. counsel; See, Cuyler, Vs. Sullivan, 446 U.S. 335, 344-45 (1980). The
6. petitioner must obtain reversal of a conviction, and must prove that
7. (1) counsel's performance "fell below an objective standard of
8. reasonableness," Strickland, Vs. Washington, 466 U.S. 668 (1984); See,
9. Hibler, Vs. Benedetti, 693 F.3d 1140, 1150, (9th Cir 2012) AND (2) counsel's
10. deficient performance prejudice the defendant, resulting in an
11. unreliable or fundamentally unfair outcome in the proceeding, See
12. Strickland, Vs. Washington, 466 U.S. @ 680 (1984) AND counsel's
13. however can also deprive a defendant of a right to effective
14. assistance by simply failing to render "adequate legal assistance"
15. Cuyler, Vs. Sullivan, 446 U.S. @ 344, AND counsel owes a
16. duty of loyalty to his client. See also, Fitzpatrick, Vs. McCormick
17. 869 F.2d 1247 (9th Cir. 1989).

ACTUAL INNOCENCE:

(a) "FACTUAL INNOCENCE"

24. A four-justice plurality of the Supreme Court suggested
25. that the ends of justice will demand consideration of
26. the merits of claims only where there is "a colorable
27. showing of factual innocence." Kuhlmann, Vs. Wilson,
28. 477 U.S. 436, 106 S.Ct. 861 (1986). AND this case was

GROUND'S FOR RELIEF CONT...

1. Remanded for determination of whether the district court
2. should review the merits of the challenge to closure of the
3. courtroom and the "ends of Justice" would be served and
4. in making such determination. It also may consider whether
5. her changes in the law have occurred and the petitioner
6. made a "colorable" showing of Actual Innocence, See JONE
7. VS. HENDERSON, 809 F.2d 946 (2nd Cir. 1987). The court should
8. see the petitioner is actually innocent of the "Attempted
9. Murder", "Battery with the Use of a deadly Weapon" and
10. All other Related charges pertaining to the Shooting of the
11. Victim; BRENTON MARTINEZ, AS THE STATE'S key Witness
12. BRANDI COLEMAN, and 911 caller, recanted her testimony at
13. the petitioner's sentencing, understanding proper person
14. at identification of the petitioner, in a district court
15. room, allowed viewing under lighting when she appeared
16. for the first time since the alleged July 1st, 2018 shooting
17. in her housing complex. The witness; Ms. BRANDI COLEMAN,
18. was subpoenaed by the district attorney office and defense
19. attorney's; BENJAMIN NAGID, the petitioner's Trial Counsel,
20. because she was unavailable and could not be found via
21. the investigator of state and defense. See, Exhibit-G.
22. "Petitioner's Sentencing" Transcripts.
23. Trial Counsel's Failure to call "critical" witness requires an
24. Evidentiary hearing. See, U.S. VS. JOHNSON, 995 F.Supp. 1259 (D.
25. KAN, 1998). See also, CRANDALL VS. BUNNELL, 144 F.3d 1213 (9th Cir.
26. 1998), and he also failed to interview the witness, constituting
27. ineffective assistance, BAUMANN VS. UNITED STATES, 692 F.2d
28. 565 (9th Cir. 1982). The "State" made changes to the Law of

GROUND'S FOR RELIEF CONT...

1. the Nevada Revised Statute: NRS 173.035(2), to obtain such
2. OF A CONVICTION AND the Nevada Supreme Court Affirmed the
3. CONVICTION AFTER A challenge to the CONSTITUTIONALITY OF such
4. NRS change of the law, should Legal Innocence.
5. The TRIAL Counsel Failed to interview petitioners's only
6. Alibi witness AFTER urging to do so by the witness; "Shareese
7. Grisby," See, EXHIBIT-C, Affidavit of "Shareese Grisby," which could
8. NOT be obtained before trial AS TRIAL Counsel would NOT get
9. in contact with the witness despite having her contact infor
10. MATION, AS she was with the petitioner from 8:00 AM until 10:30
11. AM which she WAS pulled over in traffic in search of the
12. Petitioner by LAS Vegas Metro Police, AND it is more likely
13. ~~then~~ NOT THAT NO REASONABLE juror would have convicted
14. the petitioner in light of the New Evidence, which was the
15. "Testimony" of Ms. Shareese Grisby. See, Schlup, Vs, Delo, 513 U.S.
16. 298, 327 (1995) AND since petitioner made the Required "prima Facie"
17. Showing FOR at least one claim within this Post-Conviction,
18. the Ninth Circuit should certify the entire Petition; See Also,
19. Cooper, Vs, Woodford, 358 F.3d 1117, 1123 (9th Cir. 2004), AND ANY
20. Failure to consider the claim would Result in A Fundamental
21. MISCARRIAGE OF justice, See, Perry, Vs, Lynaugh, 492 U.S. 302, 109
22. S.Ct. 2934 (1989)
23. The petitioner; Jason Bolen, has such evidence on the "Rec-
24. ord" to support AN innocent man has been convicted which de-
25. serves habeas Relief. See, Smith, Vs, Dahn, 779 F.2d 1045 (D. Neb
26. 1991). The petitioner should be granted habeas Relief AS his crim
27. inal conviction WAS obtain in violation of his 6th, 8th AND 14th
28. Amendment Rights to the state AND Federal Constitution of the United States.

39. END OF GROUND'S FOR RELIEF.

CONCLUSION

Wherefore, Petitioner; Jason Bolen wishes this honorable court to "GRANT" Relief to the petitioner with an "Evidentiary hearing" AND/OR A NEW TRIAL based on "Newly discovered" Evidence AS it would AVOID A "MISCARriage of Justice" upon A "Actual INNOCENT" person.

Dated this 13th day of 10 -2021

JASON Bolen #1032099
ELY STATE PRISON
P.O. BOX 1989
ELY, NV 89301

Respectfully Submitted by:
x Jason Bolen
Petitioner #1032099

1 JASON Bolen #1032099
2 ELV STATE PRISON
3 P.O. Box 1989
4 ELV, Nevada 89301
IN Proper Person.

FILED
OCT 25 2021
Clerk of Court

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8 IN THE EIGHTH DISTRICT COURT OF THE
9 STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

10
11 JASON Bolen #1032099
12 Petitioner,
13 vs.
14 Nevada Dept of Corrections
15 William Gittere;
16 Warden, State of Nevada,
17 Respondents.

CASE NUMBER: A-21-842092-W
Dept No. Dept. 15

EX PARTE MOTION FOR
APPOINTMENT OF COUNSEL AND
REQUEST FOR EVIDENTIARY
HEARING

18 COMES NOW, JASON Bolen the Petitioner, in proper person, and moves this Court
19 for its order allowing the appointment of counsel for Petitioner and for an evidentiary hearing. This
20 motion is made and based in the interest of justice.

21 Pursuant to NRS 34.750(1):

22 A petition may allege that the petitioner is unable to pay the costs of the
23 proceedings or to employ counsel. If the court is satisfied that the
allegation of indigency is true and the petitioner is not dismissed
summarily, the court may appoint counsel to represent the petitioner. In
making its determination, the court may consider, among other things, the
severity of the consequences facing the petitioner and whether:

- 28
- (a) The issues presented are difficult;
 - (b) The petitioner is unable to comprehend the proceedings, or

CLERK OF THE COURT
OCT 18 2021
RECEIVED

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(c) Counsel is necessary to proceed with discovery.

Petitioner is presently incarcerated at Ely State Prison, Ely, NV 89301 ^{P.O. Box #1989}, is indigent and unable to retain private counsel to represent him.

Petitioner is unlearned and unfamiliar with the complexities of Nevada state law, particularly state post-conviction proceedings. Further, Petitioner alleges that the issues in this case are complex and require an evidentiary hearing. Petitioner is unable to factually develop and adequately present the claims without the assistance of counsel. Counsel is unable to adequately present the claims without an evidentiary hearing

Dated this 13 day of May, 2021.

JASON Bolen ^{#1032099}

In Proper Person

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is a person of such age and discretion as to be competent to serve papers.

That on 10-13 2021, he served a copy of the foregoing Ex Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing by personally mailing said copy to:

Steven B. Wolfson
District Attorney's Office
Address: 200 Lewis Ave, 3rd Floor
LAS VEGAS NV 89155

STATE OF NEVADA
Office of the Attorney General
100 N. CARSON ST
CARSON CITY, NV 89701-4217

Warden William Gittere
Address: Nevada Dept of Corrections
P.O. Box #7011
CARSON City NV 8970

#1032099
Jason Bolen
Petitioner

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding AN

Ex parte Motion For Appointment of Counsel & Request for Evidentiary
(Title of Document) Hearing.

filed in District Court Case number C-18-334635-1

☒ 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:

(State specific law)

-OF-

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

#10320

Jason Bolen

Signature

10/13/2024
Date

Jason Bolen
Print Name

Petitioner
Title



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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JASON J. BOLEN, aka
Jason Jerome Bolden, #1891927

Petitioner

-vs-

THE STATE OF NEVADA,
Respondent.

CASE NO: A-21-842092-W

C-18-334635-1

DEPT NO: XV

STATE'S OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

DATE OF HEARING: December 7, 2021
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JONATHAN VANBOSKERCK, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in opposition to Petition for Writ of Habeas Corpus.

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

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STATEMENT OF THE CASE

On July 1, 2018, Jason Bolen (hereinafter "Petitioner") was charged by way of Criminal Complaint as follows: Count 1 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165); Count 2 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165); Count 3 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165) Count 4 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165); Count 5 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165); Count 6 – OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony-NRS 202.360); Count 7 – DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (Category B Felony - NRS 202.285); Count 8 – DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (Category B Felony - NRS 202.285); Count 9 – DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (Category B Felony- NRS 202.285); Count 10 – DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (Category B Felony - NRS 202.285); Count 11 – DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (Category B Felony - NRS 202.285); Count 12 – DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (Category B Felony - NRS 202.285); Count 13 – DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (Category B Felony - NRS 202.285); and Count 14 – DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE,

1 AIRCRAFT, OR WATERCRAFT (Category B Felony - NRS 202.285); and Count 15 –
2 BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony- NRS 200.481).¹

3 On July 25, 2018, Petitioner was arraigned in Justice Court, and a preliminary hearing
4 was scheduled for August 8, 2018. The preliminary hearing was ultimately continued to
5 August 22, 2018. On August 22, 2018, a preliminary hearing was held before Judge Diana
6 Sullivan. Following the hearing, the State amended the complaint and struck Count 4 –
7 Attempted Murder with use of Deadly Weapon and Count 14 – Discharging Firearm at or into
8 Occupied Structure. After defense counsel submitted to the Court on all but two (2) counts of
9 Attempted Murder, the Court heard argument from the state and dismissed all fourteen (14)
10 remaining counts against Petitioner.

11 The State filed a Motion for Leave to Amend Information by Affidavit (“Motion to
12 Amend”) on September 5, 2018. On September 18, 2018, the district court noted Bolen had
13 not yet filed an opposition to the Motion and granted a continuance to give Bolen more time
14 to file an opposition. Bolen did not oppose the Motion. On October 30, 2018, the district court
15 granted the Motion.

16 Petitioner was arraigned on December 6, 2018, pled not guilty, and invoked the sixty
17 day rule. The Information was filed the same day and included the original charges without
18 Counts 4 and 14. An Amended Information was filed May 28, 2019, on the day of trial, which
19 included four counts of Attempted Murder with Use of a Deadly Weapon, seven counts of
20 Discharging a Firearm at or into an Occupied Structure, Vehicle, Aircraft, or Watercraft, and
21 one count of Battery with Use of a Deadly Weapon. A separate Second Amended Information,
22 filed on May 29, 2019, charged Petitioner with Ownership or Possession of Firearm by
23 Prohibited Person.

24 Jury trial began on May 28, 2019, and ended on May 30, 2019. Petitioner was found
25 guilty of all charges. He was sentenced on July 23, 2019, to serve time in the Nevada
26 Department of Corrections (“NDOC”) as follows: COUNT 1 – four to twenty years plus a
27 consecutive term of three to twenty years for the use of a deadly weapon; COUNT 2 – four to

28 ¹ The record in Odyssey begins on September 5, 2018, so the history of the case before this date is taken from documents in the record.

1 twenty years plus a consecutive term of three to twenty years for the use of a deadly weapon,
2 to be served consecutive to count one; COUNT 3 – four to twenty years plus a consecutive
3 term of three to twenty years for the use of a deadly weapon, to be served consecutive to count
4 one and two; COUNT 4 – four to twenty years plus a consecutive term of three to twenty years
5 for the use of a deadly weapon, to be served consecutive to count one, two, and three; COUNT
6 5 – two to six years; COUNT 6 – two to six years, concurrent to count five; COUNT 7 – two
7 to six years, concurrent to count five and six; COUNT 8 – two to six years, concurrent to count
8 five, six, and seven; COUNT 9 – two to six years, concurrent to count five, six, seven, and
9 eight; COUNT 10 – two to six years, concurrent to count five, six, seven, eight, and nine;
10 COUNT 11 – two to six years, concurrent to count five, six, seven, eight, nine, and ten;
11 COUNT 12 – three to ten years, concurrent to count five, six, seven, eight, nine, ten, and
12 eleven; and COUNT 13 – two to six years, concurrent to count five, six, seven, eight, nine,
13 ten, eleven, and twelve. The aggregate total sentence was 336 to 1,920 months, with 87 days
14 credit for time served.

15 The Judgment of Conviction was filed on August 27, 2019. On September 24, 2019,
16 Petitioner filed a Notice of Appeal.² The Nevada Supreme Court affirmed his conviction on
17 July 8, 2021. Bolden v. State, 137 Nev. Adv. Op. 28, 491 P.3d 19 (2021). A Petition for
18 Rehearing was filed on July 21, 2021. The State answered on August 11, 2021. The Nevada
19 Supreme Court issued an Order Denying Rehearing and Amending Opinion on September 23,
20 2021. A Petition for En Banc Reconsideration was filed October 21, 2021.³

21 On October 9, 2020, Petitioner filed a Notice of Appeal to challenge the denial of his
22 Motion to Modify Sentence. The Nevada Supreme Court dismissed this appeal, stating “a
23 review of the district court docket and minute entries does not indicate that a motion to modify
24 sentence was filed in the underlying case.” Order Dismissing Appeal, filed November 25,
25 2020, at 1. Remittitur issued December 23, 2020. Petitioner again filed a Notice of Appeal to
26 challenge the denial of his Motion to Modify Sentence on January 6, 2021. The Nevada
27

28 ² The results of his appeal do not appear in Odyssey.

³ This Petition is still before the Nevada Supreme Court.

1 Supreme Court denied this second appeal on February 2, 2021, for the same reason. Remittitur
2 issued March 2, 2021.

3 The instant Petition for Writ of Habeas Corpus ("Petition") was filed on October 4,
4 2021, together with a Memorandum of Points & Authorities in Support of Writ of Habeas
5 Corpus Post-Conviction Relief ("Memo") and a Motion for Appointment of Counsel and
6 Request for Evidentiary Hearing. These documents were filed again on October 25, 2021.⁴

7 STATEMENT OF FACTS

8 On July 1, 2018, Jason Bolden, aka Jason Bolen ("Petitioner") approached two brothers,
9 Bryson Martinez ("Bryson") and Brenton Martinez ("Brenton") outside a Las Vegas apartment
10 located at 2883 Wheelwright Drive. The brothers were visiting Bryson's ex-girlfriend, Brandi
11 Coleman ("Coleman"). Coleman's four-year-old daughter Sanyleh Bolen was at the apartment
12 as well. Petitioner is the father of Sanyleh.

13 When Petitioner arrived, he shook hands with the brothers, then announced he was there
14 to fight Coleman's new boyfriend. Bryson said he was her new boyfriend. Petitioner got into
15 a verbal altercation with Brenton and drew a gun from his rear pants pocket. The gun jammed
16 and the brother ran towards the apartment. Petitioner fired multiple shots at Brenton, who was
17 struck in his side. The victims ran into the house as Petitioner continued to fire off rounds
18 through the kitchen window. Petitioner then fled the scene in a gold/bronze sedan with an
19 unknown out-of-state plate.

20 Responding officers found Brenton lying on the ground. He was transported to Sunrise
21 Trauma in critical condition. Brenton identified Petitioner as the shooter to a police officer
22 shortly after the shooting but was unable to confidently identify him at the preliminary hearing.
23 Brenton stated he was on pain medications at the time of the first identification. The State
24 called Officer Jegge to testify at the preliminary hearing as to Brenton's identification of
25 Petitioner. Officer Jegge said he showed Brenton a photo of Petitioner and asked if he were
26

27
28 ⁴ The documents appear to be identical, though the first Petition is dated August 22, 2021, and the second is dated 13 day
of the month of 10 of the year 2021. The filing dates stamped on the documents differs as well. Neither document
contains the exhibits alluded to in the Memo.

1 the shooter. Brenton said he was. Officer Jegge testified at the preliminary hearing that Brenton
2 was aware and coherent when he made the identification.

3 Officers recovered two live ammunition rounds and eight shell casings by the front
4 window, and observed multiple bullet holes through the glass and inside the residence. They
5 also located a blooded towel used to dress Brenton's gunshot wound until medical help arrived.

6 Coleman told officers Petitioner had been calling and threatening her for the past couple
7 of days. Prior to the shooting, Petitioner said he was going to fight her new boyfriend.

8 Bryson testified at the preliminary hearing that he was indoors during the shooting,
9 together with Coleman, Sanyleh, and Coleman's cousin, and never saw the shooter. Bryson
10 said several bullets entered the apartment and the people inside had to dive to the floor for
11 cover. Detective Krmpotich testified at the preliminary hearing to impeach Bryson, saying he
12 had described the shooter's hair to him. Bryson said he lied to the detective because he felt
13 coerced to do so if he wanted to see his brother.

14 Detective Krmpotich was shown the photo of Petitioner at the preliminary hearing. He
15 testified that he had seen the photo's subject personally, that the subject matched the
16 description given by Bryson as the shooter, and that the subject was Petitioner. He then
17 identified Petitioner in court. He also testified that Bryson was aware and coherent when
18 interviewed after the shooting.

19 On July 23, 2018, Petitioner was arrested and lodged in the Clark County Detention
20 Center.

21 ARGUMENT

22 Petitioner argues he is factually innocent, he received ineffective assistance of counsel
23 at trial, and newly discovered evidence would have led to a different result at trial. Memo at
24 2. These claims fail upon a thorough review of the record.

25 I. PETITIONER'S SUBSTANTIVE CLAIMS ARE BARRED

26 Two of Petitioner's claims are substantive and must be raised on direct appeal. NRS
27 34.724(2)(a); NRS 34.810(1)(b)(1); Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523
28 (2001); Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), disapproved on

1 other grounds, Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). The Nevada Supreme
2 Court has held that courts have a *duty* to consider whether a defendant's post-conviction
3 petition claims are procedurally barred. State v. Eighth Judicial Dist. Court (Riker), 121 Nev.
4 225, 231, 112 P.3d 1070, 1074 (2005). Ignoring these procedural bars is an arbitrary and
5 unreasonable exercise of discretion. Id. at 234, 112 P.3d at 1076. The Nevada Supreme Court
6 has granted no discretion to the district courts regarding whether to apply the statutory
7 procedural bars; the rules *must* be applied.

8 To avoid procedural default under NRS 34.726, a defendant has the burden of pleading
9 and proving specific facts that demonstrate good cause for his failure to present his claim in
10 earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will be
11 unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a); see Hogan v. Warden, 109
12 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep't of Prisons, 104 Nev.
13 656, 659, 764 P.2d 1303, 1305 (1988). "A court *must* dismiss a habeas petition if it presents
14 claims that either were or could have been presented in an earlier proceeding, unless the court
15 finds both cause for failing to present the claims earlier or for raising them again and actual
16 prejudice to the petitioner." Evans, 117 Nev. at 646–47, 29 P.3d at 523 (emphasis added).

17 "To establish good cause, appellants must show that an impediment external to the
18 defense prevented their compliance with the applicable procedural rule." Clem v. State, 119
19 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev.
20 248, 251, 71 P.3d 503, 506 (2003); Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537
21 (2001). Such an external impediment could be "that the factual or legal basis for a claim was
22 not reasonably available to counsel, or that 'some interference by officials' made compliance
23 impracticable." Hathaway, 119 Nev. at 251, 71 P.3d at 506 (quoting Murray v. Carrier, 477
24 U.S. 478, 488, 106 S. Ct. 2639, 2645 (1986)); see also Gonzales v. State, 118 Nev. 590, 595,
25 53 P.3d 901, 904 (2002) (citing Harris v. Warden, 114 Nev. 956, 959–60 n.4, 964 P.2d 785 n.4
26 (1998)). Any delay in filing of the petition must not be the fault of the petitioner. NRS
27 34.726(1)(a).
28

1 The Nevada Supreme Court has clarified that a defendant cannot attempt to
2 manufacture good cause. See Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there
3 must be a “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251, 71
4 P.3d at 506; (quoting Colley v. State, 105 Nev. at 236, 773 P.2d at 1230). Excuses such as the
5 lack of assistance of counsel when preparing a petition, as well as the failure of trial counsel
6 to forward a copy of the file to a petitioner have been found not to constitute good cause. See
7 Phelps, 104 Nev. at 660, 764 P.2d at 1306, superseded by statute on other grounds as
8 recognized in Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145 (2004); Hood v. State,
9 111 Nev. 335, 890 P.2d 797 (1995).

10 A petitioner raising good cause to excuse procedural bars must do so within a
11 reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34
12 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see
13 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably
14 available to the petitioner during the statutory time period did not constitute good cause to
15 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good
16 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,
17 453 120 S. Ct. 1587, 1592 (2000).

18 Petitioner cannot show good cause justifying his failure to raise these claims on direct
19 appeal. All the facts and law necessary to raise these claims were available at the time he
20 appealed his conviction. There was no impediment external to the defense preventing these
21 claims from being raised at the appropriate time. They were, in fact, raised at the appropriate
22 time and rejected. This is now the law of the case. Because these claims were reviewed and
23 dismissed by the Nevada Supreme Court, they cannot now demonstrate sufficient prejudice to
24 permit him to elude the procedural bars.

25 To demonstrate prejudice to overcome the procedural bars, a defendant must show “not
26 merely that the errors of [the proceeding] created possibility of prejudice, but that they worked
27 to his actual and substantial disadvantage, in affecting the state proceedings with error of
28

1 constitutional dimensions.” Hogan, 109 Nev. at 960, 860 P.2d at 716 (internal quotation
2 omitted), Little v. Warden, 117 Nev. 845, 853, 34 P.3d 540, 545 (2001).

3 Here, Petitioner alleges no good cause for raising substantive claims in a petition for
4 writ of habeas corpus. He shows no errors of constitutional dimensions that affected the state
5 proceedings and worked to his actual and substantial disadvantage. Also, because his claims
6 were addressed on appeal, they are successive and an abuse of the writ.

7 NRS 34.810(2) reads:

8 A second or successive petition *must be dismissed* if the judge or justice
9 determines that it fails to allege new or different grounds for relief and that
10 the prior determination was on the merits or, if new and different grounds are
11 alleged, the judge or justice finds that the failure of the petitioner to assert
those grounds in a prior petition constituted an abuse of the writ.

12 (emphasis added).

13 Second or successive petitions are petitions that either fail to allege new or different
14 grounds for relief and the grounds have already been decided on the merits or that allege new
15 or different grounds but a judge or justice finds that the petitioner’s failure to assert those
16 grounds in a prior petition would constitute an abuse of the writ. Second or successive petitions
17 will only be decided on the merits if the petitioner can show good cause and prejudice. NRS
18 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994); see also Hart v.
19 State, 116 Nev. 558, 563–64, 1 P.3d 969, 972 (2000) (holding that “where a defendant
20 previously has sought relief from the judgment, the defendant’s failure to identify all grounds
21 for relief in the first instance should weigh against consideration of the successive motion.”)

22 The Nevada Supreme Court has stated: “Without such limitations on the availability of
23 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-
24 conviction remedies. In addition, meritless, successive and untimely petitions clog the court
25 system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d at 950.
26 The Nevada Supreme Court recognizes that “[u]nlike initial petitions which certainly require
27 a careful review of the record, successive petitions may be dismissed based solely on the face
28 of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words,

1 if the claim or allegation was previously available with reasonable diligence, it is an abuse of
2 the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497–98 (1991).
3 Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

4 Petitioner’s claims were addressed on direct appeal. Bolden, 137 Nev. Adv. Op. 28,
5 491 P.3d 19 (2021). He alleges no good cause and cannot show sufficient prejudice to permit
6 him to raise them again.

7 **A. Ground Two, Alleging the Trial Court Erred in Granting the State’s Motion**
8 **to Amend**

9 Petitioner alleges the district court erred by granting the Motion to Amend. Memo at 5.
10 He alleges this “resulted in a unlawful conviction of someone who is actually and factually
11 innocent.” Memo at 5. He objects to the testimony of the preliminary hearing transcripts being
12 used as exhibits in the Motion to Amend. Memo at 5.⁵ He states without evidence Bryson
13 fabricated his statement to police. Memo at 5. Petitioner disputes that Nevada law reserves
14 evaluating the credibility of witnesses to the trier of fact rather than to the magistrate. Memo
15 at 5. He acknowledges the Nevada Supreme Court affirmed on this issue. Memo at 5.

16 Petitioner’s claim about the district court’s error in granting the Motion to Amend was
17 resolved on direct appeal and is now the law of the case. Hall, 91 Nev. at 315, 535 P.2d at 798.
18 The Nevada Supreme Court held a preliminary hearing transcript can satisfy the affidavit
19 requirement of NRS 173.035(2). Bolden, 137 Nev. Adv. Op. No. 28, 491 P.3d 19. The Court
20 also held in this case that the “justice court committed egregious error in ... preventing a jury
21 from making the ultimate credibility determination at trial.” Id. at 12.

22 “The law of a first appeal is law of the case on all subsequent appeals in which the facts
23 are substantially the same.” Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting
24 Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). “The doctrine of the law of the
25 case cannot be avoided by a more detailed and precisely focused argument subsequently made
26 after reflection upon the previous proceedings.” Id. at 316, 535 P.2d at 799. Under the law of
27 the case doctrine, issues previously decided on direct appeal may not be reargued in a habeas
28

⁵ The memo contains two “page 5.”

1 petition. Pellegrini, 117 Nev. at 879, 34 P.3d at 532 (citing McNelson v. State, 115 Nev. 396,
2 414-15, 990 P.2d 1263, 1275 (1999)). Further, this Court cannot overrule the Nevada Supreme
3 Court or Court of Appeals. Nev. Const. Art. VI § 6.

4 Therefore, Petitioner's claim is barred by law of the case doctrine and should be denied.
5 Since this issue has been resolved, it cannot demonstrate prejudice sufficient to allow
6 Petitioner to elude the procedural bars.

7 **B. Ground Fourteen, Alleging the Trial Court Erred by Sentencing Petitioner**
8 **Despite his Actual Innocence**

9 Petitioner alleges the trial court erred when it sentenced him even though he was
10 "actually innocent" of the crimes. Memo at 36. Petitioner cites to three exhibits, though he
11 does not include them for review. Memo at 36-37. He claims the State's "key witness" recanted
12 her testimony at sentencing, and that this "proves" his actual innocence. Memo at 35-36. He
13 claims his counsel failed to object to sentencing after Ms. Coleman spoke. Memo at 36. He
14 next claims his counsel was ineffective for failing to call Ms. Coleman as a witness at trial and
15 that this entitles him to an evidentiary hearing. Memo at 38. He then repeats the substance of
16 Ground Four, addressed below, in which he claims counsel was ineffective for failing to call
17 his alibi witness. Memo at 39.

18 Even when a petitioner cannot show good cause sufficient to overcome the procedural
19 bars, habeas relief may still be granted if he can demonstrate a fundamental miscarriage of
20 justice. Pellegrini, 117 Nev. at 887, 34 P.3d at 537. In order to prove a fundamental miscarriage
21 of justice, a petitioner must make "a colorable showing he is actually innocent of the crime or
22 is ineligible for the death penalty." Id. (citation omitted). Actual innocence means factual
23 innocence, not mere legal insufficiency. Bousley v. United States, 523 U.S. 614, 623, 118 S.Ct.
24 1604, 1611 (1998); Sawyer v. Whitley, 505 U.S. 333, 338-39, 112 S.Ct. 2514, 2518-19 (1992).
25 To establish actual innocence of a crime, a petitioner "must show that it is more likely than
26 not that no reasonable juror would have convicted him absent a constitutional violation."
27 Pellegrini, 117 Nev. at 887, 34 P.3d at 537. However, "[w]ithout any new evidence of
28 innocence, even the existence of a concededly meritorious constitutional violation is not itself

1 sufficient to establish a miscarriage of justice that would allow a habeas court to reach the
2 merits of the barred claim.” Schlup v. Delo, 513 U.S. 298, 316, 115 S. Ct. 851, 861 (1995)
3 (emphasis added).

4 Actual innocence is a stringent standard designed to be applied only in the most
5 extraordinary situations. Id.; Pellegrini, 117 Nev. at 876, 34 P.3d at 530. The Eighth Circuit
6 Court of Appeals has “rejected free-standing claims of actual innocence as a basis for habeas
7 review stating, ‘[c]laims of actual innocence based on newly discovered evidence have never
8 been held to state a ground for federal habeas relief absent an independent constitutional
9 violation occurring in the underlying state criminal proceeding.’” Meadows v. Delo, 99 F.3d
10 280, 283 (8th Cir. 1996) (citing Herrera v. Collins, 506 U.S. 390, 400, 113 S. Ct. 853, 860
11 (1993)). A defendant claiming actual innocence must demonstrate that it is more likely than
12 not that *no reasonable juror* would have convicted him absent a constitutional violation.
13 Pellegrini, 117 Nev. at 887, 34 P.3d at 537. Once a defendant has made such a showing, he
14 may then use the claim of actual innocence as a “gateway” to present his constitutional
15 challenges to the court and require the court to decide them on the merits. Schlup, 513 U.S. at
16 315, 115 S. Ct. at 861. Furthermore, the newly discovered evidence suggesting the defendant’s
17 innocence must be “so strong that a court cannot have confidence in the outcome of the trial.”
18 Id. at 316, 115 S.Ct. at 861.

19 Here, the only witness to speak at sentencing was Ms. Coleman. Recorder’s Transcript
20 of Hearing: Sentencing (“Sentencing”), filed March 4, 2020. She could not have recanted her
21 testimony since she refused to testify previously. Ms. Coleman failed to respond to subpoenas,
22 so there is no reason to believe she would have responded to a defense subpoena. Since she
23 did not appear at trial, she certainly was not the State’s key witness. Ms. Coleman told the
24 police one version of events at the time of the shooting and another version at the sentencing
25 hearing. Regardless, her truthfulness is immaterial as she did not testify at trial. Her
26 “recantation” cannot be said to prove Petitioner innocent. Callier v. Warden, Nev. Women’s

1 Corr. Ctr., 111 Nev. 976, 989-90, 901 P.2d 619, 627 (1995) (a recanting victim is inherently
2 unreliable).

3 Defense counsel cannot be deemed ineffective for failing to object to Petitioner's
4 sentencing in light of Ms. Coleman's testimony, as this would have been futile. Counsel cannot
5 be deemed ineffective for failing to make futile objections. Ennis v. State, 122 Nev. 694, 706,
6 137 P.3d 1095, 1103 (2006). Nor can counsel be ineffective for failing to make Ms. Coleman
7 appear at trial when she avoided subpoenas.

8 Her convenient presence now does not entitle Petitioner to an evidentiary hearing, as
9 he already had an evidentiary hearing in the form of a three-day trial. At the scene, Brenton,
10 Bryson, and Ms. Coleman all identified Petitioner as the shooter. At trial, Brenton testified
11 Petitioner was the shooter. The 9-1-1 call by Ms. Coleman identified Petitioner as the shooter.

12 When Petitioner raised the issue of his actual innocence on direct appeal, the Nevada
13 Supreme Court dismissed this claim as meritless, holding sufficient evidence was presented at
14 trial to support Petitioner's conviction. Bolden, 137 Nev. Adv. Op. No. 28, 491 P.3d 19. This
15 dismissal is now the law of the case. As Petitioner's claim of actual innocence was adjudicated,
16 this issue cannot suffice as prejudice permitting Petitioner to elude the procedural bars.

17 **II. PETITIONER DID NOT SUFFER INEFFECTIVE ASSISTANCE OF** 18 **COUNSEL**

19 The remainder of Petitioner's claims allege ineffective assistance of trial counsel. For
20 the reasons stated below, these claims are without merit.

21 The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal
22 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
23 defense." The United States Supreme Court has long recognized that "the right to counsel is
24 the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686,
25 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
26 (1993). To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
27 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of
28 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64; see also Love, 109 Nev. at 1138, 865

1 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's
2 representation fell below an objective standard of reasonableness and second, that but for
3 counsel's errors, there is a reasonable probability that the result of the proceedings would have
4 been different. Strickland, 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada
5 State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland
6 two-part test). "[T]here is no reason for a court deciding an ineffective assistance claim to
7 approach the inquiry in the same order or even to address both components of the inquiry if
8 the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct.
9 at 2069.

10 The court begins with the presumption of effectiveness and then must determine
11 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
12 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel
13 does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of
14 competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432,
15 537 P.2d 473, 474 (1975).

16 "There are countless ways to provide effective assistance in any given case. Even the
17 best criminal defense attorneys would not defend a particular client in the same way."
18 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. In essence, the court must "judge the
19 reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as
20 of the time of counsel's conduct." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

21 Strickland does not enact Newton's third law for the presentation of evidence, requiring
22 for every prosecution expert an equal and opposite expert from the defense. In many instances
23 cross-examination will be sufficient to expose defects in an expert's presentation. When
24 defense counsel does not have a solid case, the best strategy can be to say that there is too
25 much doubt about the State's theory for a jury to convict. Harrington v. Richter, 131 S.Ct. 770,
26 791, 578 F.3d. 944 (2011).

27 A defendant who contends his attorney was ineffective because he did not adequately
28 investigate must show how a better investigation would have rendered a more favorable

1 outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). To satisfy
2 the Strickland standard and establish ineffectiveness for failure to investigate, a defendant must
3 allege *in the pleadings* what information would have resulted from a better investigation or the
4 substance of the missing witness' testimony. Molina, 120 Nev. at 192, 87 P.3d at 538; State v.
5 Haberstroh, 119 Nev. 173, 185, 69 P.3d 676, 684 (2003). It must be clear from the "record
6 what it was about the defense case that a more adequate investigation would have uncovered."
7 Id. A defendant must also show how a better investigation probably would have rendered a
8 more favorable outcome. Id.

9 "A petitioner for post-conviction relief cannot rely on conclusory claims for relief but
10 must make specific factual allegations that if true would entitle him to relief. The petitioner is
11 not entitled to an evidentiary hearing if the record belies or repels the allegations." Colwell v.
12 State, 118 Nev. Adv. 807, 813, 59 P.3d 463, 467 (2002) (citing Evans, 117 Nev. at 621, 28
13 P.3d at 507). "Bare" and "naked" allegations are not sufficient to warrant post-conviction
14 relief, nor are those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502,
15 686 P.2d 222, 225 (1984). "A claim is 'belied' when it is contradicted or proven to be false by
16 the record as it existed at the time the claim was made." Mann v. State, 118 Nev. 351, 354, 46
17 P.3d 1228, 1230 (2002). A habeas corpus petitioner must prove disputed factual allegations
18 by a preponderance of the evidence. Means, 120 Nev. at 1011, 103 P.3d at 32. The burden
19 rests on Petitioner to "allege specific facts supporting the claims in the petition." NRS
20 34.735(6).

21 Because defense counsel was not ineffective, Petitioner's claims fail.

22 **A. Ground One, Alleging Counsel Failed to Oppose Petitioner's Bindover**

23 Petitioner alleges his counsel was ineffective for failing "to oppose the fail bindover."
24 Memo at 4. Petitioner appears to argue his counsel was ineffective for failing to oppose the
25 State's Motion to Amend. Memo at 4. He asserts the district court's decision to grant the
26 motion "was base solely on counsel failure to oppose." Memo at 4. Further, this alleged failure
27 caused the issue to be evaluated using a lesser "plain error" standard on appeal. Memo at 4.
28

1 He alleges the outcome of the case would have been different if counsel had opposed the
2 State's motion. Memo at 4.

3 When the accused has been discharged at the preliminary examination, the State may
4 seek leave of the court to file an amended information "upon affidavit of any person who has
5 knowledge of the commission of an offense, and who is a competent witness to testify in the
6 case." NRS 173.035(2). The Nevada Supreme Court held the magistrate committed egregious
7 error when she invaded the province of the jury by determining the credibility of the witnesses,
8 and therefore, the district court's granting of the State's Motion to Amend was proper. Bolden,
9 137 Nev. Adv. Op. No. 28, 491 P.3d 19; see also Miner v. Lamb, 86 Nev. 54, 58, 464 P.2d
10 451, 453 (1970); Bryant v. Sheriff, 86 Nev. 622, 624, 472 P.2d 345, 346 (1970). The Motion
11 to Amend would have been granted on the merits even if the defense had opposed it, as both
12 the district court and the Nevada Supreme Court held the magistrate erred in dismissing the
13 case.

14 This issue was addressed on appeal and is now the law of the case. The district court
15 lacks jurisdiction to overturn a Nevada Supreme Court decision. Nev. Const. Art. VI § 6.

16 Further, Petitioner cannot demonstrate he was prejudiced by any alleged errors of
17 counsel in failing to oppose bindover, as he was found guilty at trial. See United States
18 v. Mechanik, 475 U.S. 66, 70, 106 S. Ct. 938. 941-42 (1986) ("jury's ... guilty verdict means
19 not only that there was probable cause to believe that the defendants were guilty as charged,
20 but also that they are in fact guilty as charged beyond a reasonable doubt ... [therefore,] any
21 error in the grand jury proceedings connected with the charging decision was harmless beyond
22 a reasonable doubt."); Lisle v. State, 114 Nev. 221, 224-25, 954 P.2d 744, 746-47 (1998).

23 The standard at bindover is whether the State has presented "slight or marginal"
24 evidence that a crime was committed and that the defendant committed it, because it does not
25 involve a determination of guilt or innocence of the accused. Sheriff, Clark Cty. v. Crockett,
26 102 Nev. 359, 361, 724 P.2d 203, 204 (1986). The standard at trial is much higher; the State
27 must prove its case beyond a reasonable doubt. See In re Winship, 397 U.S. 358 (1970).

1 The Nevada Supreme Court has previously held a conviction of guilty on a verdict cures
2 any earlier error in the initial charging process. See Echavaria v. State, 108 Nev. 734, 745, 839
3 P.2d 589, 596 (1992); Detloff v. State, 120 Nev. 588, 596, 97 P.3d 586, 591 (2004); United
4 States v. Mechanik, 475 U.S. 66, 70, 106 S.Ct. 938, 941-42 (1986). Here, Petitioner was
5 convicted on all charges following his trial. Therefore, counsel cannot be deemed ineffective
6 for failing to oppose his inevitable bindover.

7 **B. Ground Three, Alleging Counsel Failed to Move to Suppress Identification**

8 **Evidence Prior to Trial**

9 Petitioner asserts his counsel was ineffective for failing to suppress identification
10 evidence before trial. Memo at 8. He references an exhibit purporting to contain the transcript
11 of the preliminary hearing, though he does not include the exhibit, address any particular
12 portion of the transcript, or make any argument about it. Memo at 8. He states the testimony
13 of victim Brenton Martinez should have been suppressed as inconsistent because Brenton
14 identified Petitioner as the shooter to police in the immediate aftermath of the shooting, then
15 was unable to positively identify Petitioner in court at the preliminary hearing. Memo at 8. He
16 claims Brenton's identification of him based on the photograph provided to police by Ms.
17 Coleman was unnecessarily suggestive. Memo at 10.

18 The Nevada Supreme Court has held that before a denial of due process based on trial
19 counsel's failure to object to an allegedly suggestive line-up will be declared, the trial must
20 have been a sham, a farce, or a pretense. Lovell v. State, 92 Nev. 128, 132, 546 P.2d 1301,
21 1304 (1976). Petitioner's trial was not a sham, a farce, or a pretense. The Nevada Supreme
22 Court held substantial evidence supported the verdict. Therefore, the analysis should end here.

23 Admission of Brenton's initial identification of Petitioner based on the single
24 photograph was appropriate because it was not so suggestive, given the totality of the
25 circumstances, to be unduly prejudicial as to fatally taint Petitioner's conviction. Valdez v.
26 State, 124 Nev. 1019, 1190 145 P.3d 465, 477 (2006). "In reviewing the propriety of a pretrial
27 identification, a court considers '(1) whether the procedure is unnecessarily suggestive, and
28 (2) if so, whether, under all the circumstances, the identification is reliable despite an

unnecessarily suggestive identification procedure.” Thompson v. State, 125 Nev. 807, 813, 221 P.3d 708, 713 (2009) (quoting Bias v. State, 105 Nev. 869, 871, 784 P.2d 963, 964 (1989)). The police showed only one picture to the victim because the victim risked dying of a gunshot wound to the chest before a more neutral lineup could be prepared. Recorder’s Transcript of Hearing Jury Trial – Day 3 (“Day Three”), filed March 4, 2020, at 29-30.

Pretrial identifications will be set aside, “only if the photographic identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.” Odoms v. State, 102 Nev. 27, 31, 714 P.2d 568, 570 (1986) (citing Coats v. State, 98 Nev. 179, 643 P.2d 1225 (1982)). “Short of that, it is for the jury to weigh the evidence and assess the credibility of the eyewitnesses.” Gehrke v. State, 96 Nev. 581, 584, 613 P.2d 1028, 1029 (1980).

To determine the corrupting effect of a suggestive identification, a court examines the witness’s opportunity to view the criminal at the time of the crime, how much attention the witness paid at the time, the accuracy of his description of the criminal, the level of his certainty of his identification, and the time between the crime and the identification. Neil v. Biggers, 409 U.S. 188 (1972); Gehrke, 96 Nev. at 584, 613 P.2d at 1030. Here, Brenton spoke with the man who shot him. He suspected the man had a gun so he was motivated to pay attention. He positively identified the subject of the photo as his shooter, and he saw the photograph shortly after the shooting. Recorder’s Transcript of Hearing Jury Trial – Day 2 (“Day Two”), filed March 4, 2020, at 107. At trial, Brenton identified Petitioner as the person who shot him. Id. Brenton testified that he did not identify Petitioner at the preliminary hearing because he intended to let the situation just blow over. Id. at 108.

Defense counsel did object to this identification evidence. In fact, during the preliminary hearing, counsel had the entire case thrown out based on the magistrate’s opinion of the credibility of the identification. At trial, Petitioner’s attorney performed an excellent cross-examination of Brenton’s identification. Id. at 111. He spoke of Brenton’s marijuana and alcohol use on the day of the shooting, the painkillers he received for his wounds, the fact Brenton only testified because he kept receiving subpoenas, and the fact he changed his story.

1 Id. at 109-112. Counsel pointed out Petitioner was a stranger to the victim and they did not
2 spend much time together before the shooting. Id. at 112-13. Rather than choosing to suppress
3 Brenton's identification evidence, trial counsel may have made the strategic choice to take the
4 opportunity to cast doubt on the State's entire case by focusing on Brenton's conflicting
5 testimony. This type of strategic decision is virtually unchallengeable. Rhyne v. State, 118
6 Nev. 1, 8, 38 P.3d 163, 167 (2002).

7 The issue of the identification was properly presented at trial and left to the jury's
8 determination as the finder of fact. Brenton's identification was corroborated by the mother of
9 Petitioner's child, Ms. Coleman, and the other eyewitness, Bryson. Petitioner fails to show
10 prejudice in light of the other identifications. The Nevada Supreme Court's determination that
11 sufficient evidence was presented at trial to support Petitioner's conviction also precludes a
12 finding of prejudice. See Gordon v. United States, 518 F.3d 1291, 1300 (11th Cir. 2008) ("It
13 is true that the 'substantial rights' standard of plain error review is identical to the 'prejudice'
14 standard of an ineffective assistance claim").

15 Therefore, any objection or motion to exclude the photographic lineup identification
16 would have been futile and trial counsel did not provide ineffective assistance of counsel.
17 Ennis, 122 Nev. at 706, 137 P.3d at 1103.

18 **C. Ground Four, Alleging Counsel Failed to Investigate an Alibi Defense**

19 Petitioner next alleges counsel was ineffective for not investigating his alibi. Memo at
20 11. He alludes to Exhibit C, the affidavit of a Shareese Grisby, but the affidavit is not included
21 in the Petition or Memo, nor are these exhibits filed in Odyssey. He claims he told his attorney
22 he was at his girlfriend's house at the time of the shooting, leaving after 10:30 a.m. Memo at
23 11. He alleges his alibi witness appeared at the preliminary, trial, and sentencing hearings.
24 Memo at 11. He claims the outcome of the trial would have been different if the alibi witness
25 testified. Memo at 12.

26 The defense strategy was to attack the witnesses' credibility. Day Three at 20-26. He
27 attacked Ms. Coleman's ability to see what happened. Id. at 21. He attacked Brenton's
28 coherency. Id. at 21-22. He attacked Bryson's identification. Id. at 23. He attacked evidence

1 the State did *not* introduce. Id. at 25. The theory of defense was the State had not met its
2 burden. Id. at 26.

3 Because the alleged Grisby affidavit was not included in the Petition, it is impossible
4 to know what evidence she may have presented or whether she would even have testified on
5 Petitioner's behalf. A defendant who contends his attorney was ineffective because he did not
6 adequately investigate must show how a better investigation would have rendered a more
7 favorable outcome probable. Molina, 120 Nev. at 192, 87 P.3d at 538.

8 Further, Petitioner's claim that Grisby waited in the wings at every court appearance is
9 belied by the record. For example, at sentencing, Petitioner said, "Like, I really didn't commit
10 this crime, like—this crime is just really messed up. I don't see how a man can just get up
11 there and just say that I did it after he said I didn't do it, that is weird, like." Sentencing at 4.
12 He did not take advantage of this opportunity at sentencing, after knowing he was convicted,
13 to mention Grisby.

14 Brandi Coleman, the witness who called 9-1-1, said Petitioner was the shooter, and then
15 evaded service and a warrant for her arrest as a material witness, also spoke at Petitioner's
16 sentencing. She said, "I just ask that you guys take in consideration my child because he would
17 never do nothing to hurt me or my child, ever." Id. at 6. Notably, Ms. Coleman did not say she
18 mistakenly identified the wrong person or that she knew Petitioner was elsewhere at the time.

19 If defense counsel felt Grisby was a weak alibi, or if her testimony could have been
20 impeached based on other evidence or her criminal history, or if counsel felt the original
21 defense strategy was stronger, these are all decisions entrusted to the trained advocate. This
22 type of strategic decision is virtually unchallengeable. Rhyne, 118 Nev. at 8, 38 P.3d at 167.
23 Defense counsel, who had allegedly heard about Grisby all along and made a decision not to
24 pursue her as an alibi, did not retreat from that position at sentencing. Counsel pointed out a
25 nine year period in Petitioner's life during which he had not been caught breaking any laws.
26 Id. at 5. He asked for leniency for his client based on this proof that he could go years without
27 being caught in a crime. Id. What defense counsel did not do was present Grisby.

1 **D. Ground Five, Alleging Counsel Failed to Investigate and Interview**

2 **Prosecution Witnesses**

3 Petitioner alleges his counsel failed to interview Brandi Coleman, Bryson Martinez,
4 and Brenton Martinez, and prevented him from doing so himself. Memo at 12-13. He alleges
5 his counsel failed to “effectively cross-examine” two of these witnesses. Memo at 15. He refers
6 to Exhibit D, which purports to be Petitioner’s Affidavit. Memo at 13. Not only is this exhibit
7 not attached, an affidavit from Petitioner himself is of questionable value.

8 Coleman, Brenton, and Bryson evaded the process servers. Day Two at 66, 68-69. The
9 State issued a material witness warrant for Coleman, which remained outstanding at the time
10 of trial. Day Two at 69. Coleman never testified at trial, as she could not be located. There is
11 no evidence trial counsel, the defense investigator, or Petitioner himself would have been able
12 to locate her either. Counsel cannot be ineffective for failing to effectively cross-examine
13 someone who does not testify.

14 Bryson testified at trial because he was under arrest on another matter. Bryson denied
15 seeing the shooter at all, contradicting his statement to police. Recorder’s Transcript of
16 Hearing Jury Trial – Day 1 (“Day One”), filed March 4, 2020, at 135. He claimed the police
17 forced him to make up a description of the shooter so he could see his injured brother. Id. at
18 138. Defense counsel emphasized that Bryson refused to identify Petitioner. Id. at 141-42.
19 Bryson denied any knowledge of the shooter’s identity. Petitioner fails to allege what
20 additional information counsel could have obtained from this witness if he had interviewed
21 him in advance. He also fails to allege what a more effective cross-examination could have
22 shown.

23 Brenton evaded the process server until right before trial. Petitioner makes no showing
24 Brenton would have been willing to speak with the attorney representing the man who shot
25 him in the chest and left him for dead. On cross-examination of Brenton, defense counsel
26 questioned him closely about gaps in his memory. Day Two at 108-16. He discussed Brenton’s
27 drug and alcohol use, id. at 109, that he was shot in the back, id. at 110, that he does not
28 remember what the shooter wore, id. at 110, that he was on painkillers afterwards, id. at 110,

1 that he avoided speaking to authorities, id. at 111, that he lied, id. at 112, and that he only saw
2 Petitioner briefly, id. at 113. Petitioner does not allege what other admissions counsel could
3 have elicited if he had had the opportunity to interview the witness in advance. He also fails
4 to allege what a more effective cross-examination could have shown.

5 A defendant who contends his attorney was ineffective because he did not adequately
6 investigate must show how a better investigation would have rendered a more favorable
7 outcome probable. Molina, 120 Nev. at 192, 87 P.3d at 538. Here, Petitioner makes no
8 allegation of what interviewing the witnesses, if they could have been found and persuaded to
9 be interviewed, would have shown.

10 Because Petitioner does not show what a better investigation of the witnesses could
11 have revealed, or that the witnesses would have spoken to defense counsel, or that the result
12 would have been different if he had spoken to the witnesses in advance, this claim fails
13 pursuant to Hargrove and Molina.

14 **E. Ground Five, Alleging Counsel Failed to Object to the Exclusion of African**
15 **Americans from the Jury⁶**

16 Petitioner alleges his counsel was ineffective for failing to object to the exclusion of
17 African-Americans from the jury. Memo at 15. He states without evidence the venire
18 “consisted of one or two African-Americans but was quickly excluded and trial counsel failed
19 to object to such exclusion... and this selection was done in an intentionally discriminatory
20 fashion.” Memo at 17.

21 In Batson v. Kentucky, 476 U.S. 79 (1986), the United States Supreme Court held the
22 use of peremptory challenges to remove potential jurors on the basis of race is unconstitutional
23 under the Equal Protection Clause of the United States Constitution. Id. at 89. Adjudicating a
24 Batson challenge is a three step process: (1) the defendant must make a prima facie showing
25 that racial discrimination has occurred based upon the totality of the circumstances, (2) the
26 prosecution then must provide a race-neutral explanation for its peremptory challenges, and
27

28

⁶ There are two Ground Fives but no Ground Six in the Petition.

1 (3) the district court must determine whether the defendant in fact demonstrated purposeful
2 discrimination. Batson, 476 U.S. at 94.

3 In step one, a defendant alleging members of a cognizable group “have been
4 impermissibly excluded from the venire may make out a prima facie case of purposeful
5 discrimination by showing that the totality of the relevant facts give rise to an inference of
6 discriminatory purpose.” Batson, 476 U.S. at 94-95. In deciding whether or not the requisite
7 prima facie case has been made, a court may consider the “pattern of strikes” exercised or the
8 questions and statements made by counsel during the voir dire examination. Id. at 96-97.

9 Only after the movant has established a prima facie case of intentional discrimination
10 is the proponent of the strike compelled to proffer a race-neutral explanation. “The second step
11 of this process does not demand an explanation that is persuasive, or even plausible.” Purkett
12 v. Elem, 514 U.S. 765, 767-68 (1995). The neutral explanation “is not a reason that makes
13 sense, but a reason that does not deny equal protection.” Id. at 769. “Unless a discriminatory
14 intent is inherent in the State’s explanation, the reason offered will be deemed race neutral.”
15 Id. at 768 (internal citations omitted).

16 Step three comes down to credibility: “the district court must determine whether the
17 explanation was a mere pretext and whether the opponent successfully proved racial
18 discrimination.” King v. State, 116 Nev. 349, 353, 998 P.2d 1172, 1175 (2000). This can be
19 measured by “how reasonable, or how improbable, the explanations are; and by whether the
20 proffered rationale has some basis in accepted trial strategy.” Miller-El v. Cockrell, 537 U.S.
21 322, 324, 123 S.Ct. 1029, 1032 (2003). The burden is on the opponent of the strike in step
22 three to develop a pretext for the explanation at the district court level. Hawkins v. State, 127
23 Nev. 575, 578, 256 P.3d 965, 967 (2011).

24 Petitioner does not provide any information about the race of the jurors excused for
25 cause versus by peremptory challenge. Petitioner does not show the State exercised its
26 peremptory challenges on the “one or two” African-Americans, rather than the defense. He
27 does not state how many African-Americans were in the venire versus the petit jury. He does
28

1 not show the prosecution had a pattern of excluding African-Americans. The State was not
2 given an opportunity to offer race-neutral reasons for its peremptory challenges.

3 Each side received five peremptory challenges. Day One at 6. Prospective jurors who
4 did not speak English were dismissed before voir dire. Day One at 16-22. The court then
5 dismissed jurors with hardships. Day One at 26-39. One juror said she did not feel she could
6 presume Petitioner innocent, so both sides asked to dismiss her for cause. Day One at 61-62.
7 Both sides then passed for cause. Day One at 88, 95. To exercise peremptory challenges, the
8 two sides passed a paper back and forth until all were written down. Day One at 6, 96. After
9 the process, neither side expressed concern about the other's use of challenges. Day One at 96.
10 The record does not show the race of the jurors seated or the jurors excused.

11 Petitioner's evidence-free claim of racial discrimination is suitable only for summary
12 dismissal under Hargrove.

13 **F. Ground Seven, Alleging Counsel Failed to Subject the Prosecution's Case to**
14 **Meaningful Testing**

15 In this assignment of error, Petitioner complains his counsel did not engage in the
16 adversarial process by holding the State to its burden of proof. Memo at 18. Specifically,
17 counsel failed to object to the identification evidence, inconsistent statements by the State's
18 witnesses, or the forensic expert testimony. Memo at 18-19. Petitioner also argues about
19 mitigation evidence and sentencing structure, but those claims are addressed below in Section
20 II.G.

21 Petitioner's claim that counsel did not hold the State to its burden of proof is belied by
22 the record, as the trial transcripts show counsel cross-examined the witnesses. Petitioner points
23 to no specific evidence his counsel failed to challenge. He makes no claim as to what a different
24 defense tactic would have accomplished. Counsel objected to the identification evidence, as
25 discussed above in Section II.B. Counsel challenged the victims' inconsistent testimony, as
26 discussed above in Section in II.D. Petitioner does not allege what his counsel should have
27 asked the forensic expert, nor does he even identify which expert witness was not challenged.
28

1 These unsubstantiated assertions are suitable only for summary denial pursuant to
2 Hargrove.

3 **G. Ground Eight, Alleging Counsel Failed to Present Mitigating Evidence at**
4 **Sentencing**

5 Petitioner claims counsel also failed to present mitigating evidence or object to the
6 sentencing structure. Memo at 19, 20. Because Petitioner faced “excessive amount of years in
7 prison for his alleged crimes,” he “could have used mitigating evidence in his favor.” Memo
8 at 22. He claims his counsel’s failure to confront the jury with “considerable mitigating
9 evidence” resulted in his receiving “an excessive sentence.” Memo at 22. He asserts the “jury
10 would have voted differently if given mitigating evidence by trial counsel.” Memo at 22. At
11 sentencing, counsel failed to “call family members to testify to good character of Petitioner.”
12 Memo at 21.

13 That Petitioner could have used mitigating evidence in his favor does not prove such
14 evidence existed. He makes no showing that any evidence in mitigation of his crimes exists,
15 much less “considerable” evidence. He does not show he actually has family members, that
16 these members would have been willing to testify on his behalf, or that they had evidence of
17 his good character they could have testified about.

18 Petitioner appears to operate under the assumption his counsel could have presented
19 evidence of his good character before the jury at trial. He says they would have voted on his
20 guilt differently if they had heard about his character. However, if defense counsel had opened
21 the door to Petitioner’s character, the State would have been able to refute evidence of his
22 good character with evidence of his prior convictions, previous allegations of domestic
23 violence, etc. Sentencing at 2-3. Defense counsel’s decision not to call character witnesses is
24 a virtually unchallengeable strategic judgment call. Rhyne, 118 Nev. at 8, 38 P.3d at 167.

25 At sentencing, trial counsel presented mitigating evidence as best he could. He said
26 Petitioner had not been arrested for nine years and was gainfully employed. Sentencing at 5.
27 “[F]or a large part of his adult life, he stayed out of trouble.” Sentencing at 5. The victim spoke
28

1 on Petitioner's behalf at sentencing as well. Sentencing at 6. Petitioner fails to name anyone
2 else who would have been willing to do so.

3 Regarding his claim counsel should have objected to the sentencing structure, Petitioner
4 does not explain what he means by this. Ground Eight is another naked assertion suitable only
5 for summary denial under Hargrove.

6 **H. Ground Nine, Alleging Counsel Conceded Petitioner's Guilt at Sentencing**

7 Petitioner claims the prosecution is required to prove every element of the crime, but
8 counsel conceded his guilt at sentencing. Memo at 20, 23, 24. "During sentencing, trial counsel
9 asked the courts for leniency of a sentencing upon his client when Petitioner maintain his
10 innocents since his arrest, as this presented a guilt in the minds of the judge and jury when that
11 was the prosecution's job." Memo at 24-25. Habeas must issue because "the petitioner alone
12 can maintain his innocence with other rights and he alone can waive them." Memo at 25.

13 Counsel never conceded Petitioner's guilt. Counsel did concede he was convicted, an
14 objective fact. Counsel cannot be ineffective for admitting reality. At sentencing, counsel said,
15 "Obviously, as Mr. Bolden represented, he denies doing this crime. He wishes to appeal this
16 crime." Sentencing at 5. Defense counsel said, "There are arguments as to what occurred, but
17 he was convicted of the charges." Sentencing at 5. The Court reiterated that Petitioner still
18 denied his guilt. "So the Defendant is now denying that he committed the crime, but the jury
19 found otherwise, and I have to accept the verdict of the jury. And I do accept the verdict of the
20 jury." Sentencing at 7.

21 This claim is belied by the record and must be dismissed under Hargrove, as counsel
22 never conceded Petitioner's guilt. Further, asking the court for leniency is effective, not
23 ineffective, assistance of counsel.

24 **I. Ground Ten, Alleging Ineffective Assistance of Counsel on Appeal**

25 Petitioner complains his appellate counsel only raised two grounds on direct appeal.
26 Memo at 25. He claims the appellate brief did not challenge his conviction and other errors.
27 Memo at 26. His counsel failed to raise arguments for mistrial, then failed to renew objections
28 on appeal. Memo at 27. Counsel followed the prosecution's "lead way on numerous errors."

1 Memo at 27. Counsel failed to raise the trial court's "sentencing error," a Batson violation, or
2 "any arguable issues." Memo at 27.

3 There is a strong presumption that appellate counsel's performance was reasonable and
4 fell within "the wide range of reasonable professional assistance." See United States v.
5 Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990); citing Strickland, 466 U.S. at 689, 104 S. Ct. at
6 2065. The United States Supreme Court has held that there is a constitutional right to effective
7 assistance of counsel in a direct appeal from a judgment of conviction. Evitts v. Lucey, 469
8 U.S. 387, 396-97, 105 S. Ct. 830, 835-37 (1985); see also Burke v. State, 110 Nev. 1366, 1368,
9 887 P.2d 267, 268 (1994). This Court has held that all appeals must be "pursued in a manner
10 meeting high standards of diligence, professionalism and competence." Burke, 110 Nev. at
11 1368, 887 P.2d at 268.

12 A claim of ineffective assistance of appellate counsel must satisfy the two-prong test
13 set forth by Strickland. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). To
14 satisfy Strickland's second prong, the defendant must show the omitted issue would have had
15 a reasonable probability of success on appeal. Duhamel v. Collins, 955 F.2d 962, 967 (5th Cir.
16 1992); Heath, 941 F.2d at 1132; Lara v. State, 120 Nev. 177, 184, 87 P.3d 528, 532 (2004);
17 Kirksey, 112 Nev. at 498, 923 P.2d at 1114.

18 Appellate counsel is not required to raise every issue Petitioner felt was pertinent to the
19 case. The professional diligence and competence required on appeal involves "winnowing out
20 weaker arguments on appeal and focusing on one central issue if possible, or at most on a few
21 key issues." Jones v. Barnes, 463 U.S. 745, 751-52, 103 S. Ct. 3308, 3313 (1983). In particular,
22 a "brief that raises every colorable issue runs the risk of burying good arguments . . . in a verbal
23 mound made up of strong and weak contentions." Id. at 753, 103 S. Ct. at 3313. For judges to
24 second-guess reasonable professional judgments and impose on appointed counsel a duty to
25 raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous
26 and effective advocacy." Id. at 754, 103 S. Ct. at 3314. The Nevada Supreme Court has
27 similarly concluded that appellate counsel may well be more effective by not raising every
28 conceivable issue on appeal. Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

1 The defendant has the ultimate authority to make fundamental decisions regarding his
2 case. Jones, 463 U.S. at 751, 103 S. Ct. at 3312. However, the defendant does not have a
3 constitutional right to “compel appointed counsel to press nonfrivolous points requested by
4 the client, if counsel, as a matter of professional judgment, decides not to present those points.”
5 Id.

6 On appeal, counsel asserted the district court erred by allowing the State to file an
7 Information by Affidavit, when the State used preliminary hearing transcripts in place of
8 affidavits. See Appellant’s Opening Brief, filed August 10, 2020, at 4. Counsel also attacked
9 the entire conviction, asserting Brenton’s conflicting testimony meant no reasonable juror
10 could have found Petitioner guilty. Id. at 6. Petitioner’s claim to the contrary is belied by the
11 record.

12 Other than a Batson violation, Petitioner fails to explain what issues effective appellate
13 counsel should have raised. As discussed above in Section II.E, the Batson claim is wholly
14 without merit, so appellate counsel cannot be ineffective for failing to raise it. Alleging counsel
15 followed the prosecution’s “lead way on numerous errors” is not explained sufficiently to
16 enable the reviewing court to evaluate the contention’s merits. A bare and naked assertion that
17 the trial court committed a “sentencing error” is suitable for summary dismissal under
18 Hargrove, as is a claim that other arguable issues were available for inclusion in his appellate
19 brief.

20 **J. Ground Eleven, Alleging Counsel Failed to Object to Inaccuracies in the**
21 **Presentence Investigation Report (“PSI”)**

22 In his next assertion of error, Petitioner says trial counsel was ineffective because he
23 failed to object to inaccuracies in the PSI. Memo at 28. He claims counsel failed to review the
24 PSI with him so he could bring these inaccuracies to counsel’s attention. Memo at 28.

25 Even with the luxury of hindsight, Petitioner fails to identify a single inaccuracy in his
26 PSI, much less assert there were materially untrue assumptions or misinformation. His
27 assertion his counsel did not discuss the PSI is not supported by any evidence. When the State
28 discussed Petitioner’s previous criminal history at sentencing, Petitioner failed to inquire as to

1 what charges appeared on his PSI. Sentencing at 2-3. Counsel cannot be ineffective for failing
2 to object to errors in the PSI when no actual errors are alleged. This bare and naked assertion
3 is suitable only for summary dismissal under Hargrove.

4 **K. Ground Twelve, Alleging Counsel Failed to Present an Adequate Argument**
5 **or Evidence at Sentencing and Failed to Preserve a Challenge to the Sentence**

6 Petitioner now reproaches his counsel for failing to ask the court for mercy at
7 sentencing, though in Section II.H, he complained because counsel did ask for leniency. Memo
8 at 31. He says counsel failed to present an adequate argument or evidence at sentencing that
9 would have persuaded the judge "to temper the severity of the sentence which was too harsh."
10 Memo at 31. He further argues trial counsel failed to object to the sentence and so did not
11 preserve the issue for appellate review. Memo at 31. He claims if counsel had objected to the
12 sentence, the sentence would have been different. Memo at 31-32. He asserts his sentence for
13 attempted murder was too severe because "there was no gun recovered." Memo at 33. He again
14 claims his counsel had a duty to present mitigating evidence to the jury "in favor of the
15 petitioner's innocence." Memo at 33.

16 As an initial matter, trial counsel did not need to object to the sentence imposed in order
17 to preserve the issue for appellate review. Secondly, as discussed above, mitigating evidence
18 cannot be presented at trial without opening the door to Petitioner's character and criminal
19 history. Counsel had no basis to object to the sentence imposed, as it was within the statutory
20 limits. Counsel did urge a more lenient sentence at the sentencing hearing. The severity of a
21 sentence is not based on whether the gun is ultimately recovered. At sentencing, evidence of
22 Petitioner's innocence is immaterial, as the jury has already found him guilty. Finally,
23 Petitioner fails to assert what argument or evidence could have been presented that would have
24 tempered the severity of the sentence. This naked assertion must be summarily dismissed
25 under Hargrove.

1 **L. Ground Thirteen, Alleging Counsel Allowed the Trial Court to Err When It**
2 **Imposed an Excessive Sentence**

3 Petitioner asserts the trial court imposed a sentence that was excessive considering the
4 charges. Memo at 33. He states that since he only shot up one apartment, he should not be
5 charged with multiple crimes for this one action. Memo at 33. Further, the sentence is "grossly
6 disproportionate" since the State never found the gun and his attorney did not call his alibi.
7 Memo at 35. Counsel also failed to file a Motion to Reduce Sentence. Memo at 35.

8 Petitioner offers no facts or legal authority to support his contention that he was charged
9 multiple times for the same offense. He was convicted of four counts of attempted murder
10 because he shot at four people who could have been killed by his actions. He was convicted
11 of seven counts of discharging a firearm at an occupied structure because he fired seven bullets
12 at an occupied structure. He was convicted of one count of felon in possession because, as a
13 felon, he possessed one gun. Finally, he was convicted of one count of battery with a deadly
14 weapon because his seven bullets only hit one person, one time. None of these charges show
15 he was convicted more than once for the same offense. As such, this naked assertion is belied
16 by the record and should be summarily dismissed under Hargrove.

17 **III. PETITIONER IS NOT ENTITLED TO APPOINTED COUNSEL**

18 Petitioner requests this Court appoint counsel for his habeas petition. Ex Parte Motion
19 for Appointment of Counsel and Request for Evidentiary Hearing, filed October 4, 2021
20 ("Motion") at 1.

21 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-
22 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566
23 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada
24 Supreme Court similarly observed that "[t]he Nevada Constitution... does not guarantee a right
25 to counsel in post-conviction proceedings, as we interpret the Nevada Constitution's right to
26 counsel provision as being coextensive with the Sixth Amendment to the United States
27 Constitution." McKague specifically held that with the exception of NRS 34.820(1)(a)
28 (entitling appointed counsel when petitioner is under a sentence of death), one does not have

1 “any constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at
2 164, 912 P.2d at 258.

3 The Nevada Legislature has, however, given courts the discretion to appoint post-
4 conviction counsel so long as “the court is satisfied that the allegation of indigency is true and
5 the petition is not dismissed summarily.” NRS 34.750, which reads:

6 A petition may allege that the Defendant is unable to pay the costs of the
7 proceedings or employ counsel. If the court is satisfied that the allegation of
8 indigency is true and the petition *is not dismissed summarily*, the court may
9 appoint counsel at the time the court orders the filing of an answer and a
return. In making its determination, the court may consider whether:

- 10 (a) The issues are difficult;
11 (b) The Defendant is unable to comprehend the proceedings; or
(c) Counsel is necessary to proceed with discovery.

12 (emphasis added). Accordingly, under NRS 34.750, it is clear that the court has discretion in
13 determining whether to appoint counsel.

14 More recently, the Nevada Supreme Court examined whether a district court
15 appropriately denied a defendant’s request for appointment of counsel based upon the factors
16 listed in NRS 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In Renteria-
17 Novoa, the petitioner had been serving a prison term of eighty-five (85) years to life. Id. at 75,
18 391 P.3d at 760. After his judgment of conviction was affirmed on direct appeal, the defendant
19 filed a *pro se* postconviction petition for writ of habeas corpus and requested counsel be
20 appointed. Id. The district court ultimately denied the petitioner’s petition and his appointment
21 of counsel request. Id. In reviewing the district court’s decision, the Nevada Supreme Court
22 examined the statutory factors listed under NRS 34.750 and concluded that the district court’s
23 decision should be reversed and remanded. Id. The Court explained that the petitioner was
24 indigent, his petition could not be summarily dismissed, and he had in fact satisfied the
25 statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor, the Court concluded that
26 because petitioner had represented he had issues with understanding the English language
27 which was corroborated by his use of an interpreter at his trial, that was enough to indicate that
28 the petitioner could not comprehend the proceedings. Id. Moreover, the petitioner had

1 demonstrated that the consequences he faced—a minimum eighty-five (85) year sentence—
2 were severe and his petition may have been the only vehicle for which he could raise his
3 claims. Id. at 76-77, 391 P.3d at 761-62. Finally, his ineffective assistance of counsel claims
4 may have required additional discovery and investigation beyond the record. Id.

5 Petitioner fails to meet any of the statutory factors under NRS 34.750. Although the
6 consequences Petitioner faces are severe, as he is serving a lengthy sentence, that fact alone
7 does not require the appointment of counsel.

8 The issues in this Petition are not complex. Petitioner was able to articulate all fourteen
9 of them in the instant Petition, and demonstrates a clear understanding of the errors he asserts.

10 There has been no indication Petitioner is unable to comprehend the proceedings.
11 Unlike the petitioner in Renteria-Novoa who faced difficulties understanding the English
12 language, here Petitioner has failed to demonstrate any inability to understand these
13 proceedings. He does not allege difficulties with communicating in English, nor does he allege
14 he has not understood the proceedings to date. He did not utilize the services of a translator at
15 trial.

16 Finally, counsel is not necessary to proceed with further discovery in this case.
17 Petitioner has not alleged any claim requiring additional discovery and investigation beyond
18 the record, let alone the necessity for counsel's assistance to conduct such investigation.

19 IV. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING

20 Petitioner further asks this Court conduct an evidentiary hearing, though he does not
21 articulate the purpose or necessity for an evidentiary hearing. Motion at 2.

22 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

- 23 1. The judge or justice, upon review of the return, answer and all supporting
24 documents which are filed, shall determine whether an evidentiary hearing
25 is required. A petitioner must not be discharged or committed to the custody
26 of a person other than the respondent *unless an evidentiary hearing is held.*
- 27 2. If the judge or justice determines that the petitioner is not entitled to relief
28 and an evidentiary hearing is not required, he shall dismiss the petition
without a hearing.
3. If the judge or justice determines that an evidentiary hearing is required,
he shall grant the writ and shall set a date for the hearing.

1 The Nevada Supreme Court has held that if a petition can be resolved without
2 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
3 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A
4 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual
5 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
6 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100
7 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking post-conviction
8 relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the
9 record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it
10 existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is
11 improper to hold an evidentiary hearing simply to make a complete record. See State v. Eighth
12 Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court
13 considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as
14 complete a record as possible.’ This is an incorrect basis for an evidentiary hearing.”).

15 Further, the United States Supreme Court has held that an evidentiary hearing is not
16 required simply because counsel’s actions are challenged as being unreasonable strategic
17 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge
18 post hoc rationalization for counsel’s decision making that contradicts the available evidence
19 of counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis
20 for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain
21 issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (citing
22 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the
23 *objective* reasonableness of counsel’s performance, not counsel’s *subjective* state of mind. 466
24 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

25 Here, as all of Petitioner’s claims lack merit, there is no need to expand the record.
26 Petitioner has failed to establish that an evidentiary hearing is warranted.

27 ///

28 ///

1 **CONCLUSION**

2 For the foregoing reasons, the State respectfully requests this petition be DENIED.
3 DATED this _day of November, 2021.

4 Respectfully submitted,

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

8 BY /s/JONATHAN VANBOSKERCK

9 JONATHAN VANBOSKERCK
10 Chief Deputy District Attorney
11 Nevada Bar #006528
12
13

14 **CERTIFICATE OF ELECTRONIC FILING**

15 I hereby certify that service of STATE'S OPPOSITION TO PETITION FOR WRIT OF
16 HABEAS CORPUS, was made this 8th day of November, 2021, by Electronic Filing to:

17 BEN NADIG, ESQ.
18 ben@lasvegasdefenselawfirm.com

19 
20 Secretary for the District Attorney's Office
21
22
23
24
25
26
27
28

JV/cj/L1

ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
DENA RINETTI
Chief Deputy District Attorney
Nevada Bar #009897
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JASON J. BOLEN, aka,
Jason Jerome Bolden, #1891927

Defendant.

CASE NO: A-21-842092-W
C-18-334635-1

DEPT NO: XV

**ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS; AND ORDER
DENYING MOTION FOR APPOINTMENT OF COUNSEL AND REQUEST FOR
EVIDENTIARY HEARING**

DATE OF HEARING: January 13, 2022
TIME OF HEARING: 8:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the
13th day of January, 2022, the Defendant not being present, represented by In Pro Per Person,
the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through DENA
RINETTI, Chief Deputy District Attorney, and the Court without argument, based on the
pleadings and good cause appearing therefor,

///

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///

1 IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus and the
2 Motion for Appointment of Counsel and Request for Evidentiary Hearing, shall be, and it is
3 DENIED for all of the reasons set forth in the State's Opposition, FINDING the following:

- 4 (1) the substantive claims were barred;
5 (2) the Petitioner did not suffer ineffective assistance of counsel;
6 (3) the State went through each claim in its Opposition, and the Court agreed with the
7 State's arguments; and
8 (4) the Petitioner was not entitled to the appointment of counsel, or an Evidentiary
9 Hearing.

10 DATED this 27th day of January, 2022.

Dated this 27th day of January, 2022



12 DISTRICT JUDGE

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

C99 C39 6B7D 88C3
Joe Hardy
District Court Judge

15
16 BY /s/DENA RINETTI
17 DENA RINETTI
18 Chief Deputy District Attorney
19 Nevada Bar #009897

20 **CERTIFICATE OF MAILING**

21 I hereby certify that service of the above and foregoing was made this 27th day of
22 January, 2022, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

23 JASON BOLDEN #1032099
24 ELY STATE PRISON
25 P.O. BOX 1989
ELY, NV 89301

26
27 BY _____
28 Secretary for the District Attorney's Office

L1

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Jason Bolen, Plaintiff(s)

CASE NO: A-21-842092-W

7 vs.

DEPT. NO. Department 15

8 Nevada Department of
9 Correction, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 Electronic service was attempted through the Eighth Judicial District Court's
13 electronic filing system, but there were no registered users on the case. The filer has been
14 notified to serve all parties by traditional means.
15
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

JASON BOLEN,

Petitioner,

Case No: A-21-842092-W

Dept. No: XV

vs.

NEVADA DEPARTMENT OF CORRECTION;
ET.AL.,

Respondent,

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on January 27, 2022, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on February 1, 2022.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 1 day of February 2022, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

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

☒ The United States mail addressed as follows:

Jason Bolden # 1032099
P.O. Box 208
Indian Springs, NV 89070

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
DENA RINETTI
Chief Deputy District Attorney
Nevada Bar #009897
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JASON J. BOLEN, aka,
Jason Jerome Bolden, #1891927

Defendant.

CASE NO: A-21-842092-W
C-18-334635-1

DEPT NO: XV

**ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS; AND ORDER
DENYING MOTION FOR APPOINTMENT OF COUNSEL AND REQUEST FOR
EVIDENTIARY HEARING**

DATE OF HEARING: January 13, 2022
TIME OF HEARING: 8:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the
13th day of January, 2022, the Defendant not being present, represented by In Pro Per Person,
the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through DENA
RINETTI, Chief Deputy District Attorney, and the Court without argument, based on the
pleadings and good cause appearing therefor,

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1 IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus and the
2 Motion for Appointment of Counsel and Request for Evidentiary Hearing, shall be, and it is
3 DENIED for all of the reasons set forth in the State's Opposition, FINDING the following:

- 4 (1) the substantive claims were barred;
5 (2) the Petitioner did not suffer ineffective assistance of counsel;
6 (3) the State went through each claim in its Opposition, and the Court agreed with the
7 State's arguments; and
8 (4) the Petitioner was not entitled to the appointment of counsel, or an Evidentiary
9 Hearing.

10 DATED this 27th day of January, 2022.

Dated this 27th day of January, 2022



12 DISTRICT JUDGE

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

C99 C39 6B7D 88C3
Joe Hardy
District Court Judge

15
16 BY /s/DENA RINETTI
17 DENA RINETTI
18 Chief Deputy District Attorney
19 Nevada Bar #009897

20 **CERTIFICATE OF MAILING**

21 I hereby certify that service of the above and foregoing was made this 27th day of
22 January, 2022, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

23 JASON BOLDEN #1032099
24 ELY STATE PRISON
25 P.O. BOX 1989
ELY, NV 89301

26
27 BY _____
28 Secretary for the District Attorney's Office

L1

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 Jason Bolen, Plaintiff(s)

CASE NO: A-21-842092-W

7 vs.

DEPT. NO. Department 15

8 Nevada Department of
9 Correction, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 Electronic service was attempted through the Eighth Judicial District Court's
13 electronic filing system, but there were no registered users on the case. The filer has been
14 notified to serve all parties by traditional means.
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1 Jason J. Bolen
2 Petitioner, In Propria Personam
3 Post Office Box 208, S.D.C.C.
4 Indian Springs, Nevada 89018

FILED

FEB 23 2022

Sharon A. Hoffman
CLERK OF COURT

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

9 THE STATE OF NEVADA,

10 Plaintiff, /Respondent,

11 vs.

12 JASON J. BOLEN

13 Defendant /Petitioner.

A-21-842092-W
Case No. C-18-334635-1

Dept. No. XV

Docket _____

16 **NOTICE OF APPEAL**

17 NOTICE IS HEREBY GIVEN, That the Petitioner/Defendant,

18 Jason J. Bolen

19 , in and through his proper person, hereby
20 appeals to the Supreme Court of Nevada from the ORDER denying and/or
21 dismissing the

Order Denying Petition For Writ of Habeas Corpus; ...

22 _____
23 ruled on the 27 day of January, 2022.

24 _____
25 Dated this 16th day of February, 2022.

26 Respectfully Submitted,

27 [Signature] #1032699
28

CERTIFICATE OF SERVICE BY MAILING

I, Jason J. Bolen, hereby certify, pursuant to NRCP 5(b), that on this 16th day of February, 2022, I mailed a true and correct copy of the foregoing, "

NOTICE OF APPEAL

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

District Attorney
Clark County Nevada
200 Lewis Ave.
PO Box 552212
Las Vegas NV 89155-2212

CC:FILE

DATED: this 16th day of February, 2022.

Jason J. Bolen
Jason J. BOLEN #1032049
Petitioner /In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

NOTICE OF APPEAL

(Title of Document)

filed in District Court Case number A-21-842092-W
C-18-334635-1

☒ 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:

(State specific law)

-or-

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

[Signature]
Signature

2-16-2022
Date

JASON J. BOLEN
Print Name

PETITIONER TROSE
Title

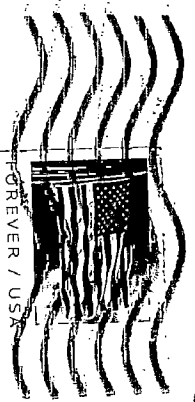
ROSON J. BOLEN
SNCC # 1032094
PO Box 208
Indian Springs NV 89070-0208
MAILED:
2022-02-16

ATTN:
CRIMINAL DESK

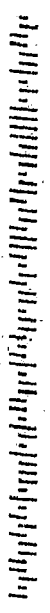
Clerk of the Court
Eighth Judicial Dist. Court
200 Lewis Ave.
3rd Floor
Las Vegas NV 89155-1160

LAS VEGAS NV 890

17 FEB 2022 PM 5 L



69101-630000



Southern Desert
Correctional Center
FEB 17 2022
OUTGOING MAIL



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6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**
9

10 JASON BOLEN,

11 Plaintiff(s),

12 vs.

13 NEVADA DEPT OF CORRECTIONS; ELY
14 STATE PRISON; WILLIAM GITTERE,
15 WARDEN,

16 Defendant(s),

Case No: A-21-842092-W

Dept No: XV

17
18 **CASE APPEAL STATEMENT**
19

20 1. Appellant(s): Jason Bolen

21 2. Judge: Joe Hardy

22 3. Appellant(s): Jason Bolen

23 Counsel:

24 Jason Bolen #1032099
25 P.O. Box 208
Indian Springs, NV 89070

26 4. Respondent (s): Nevada Dept of Corrections; Ely State Prison; William Gittere, Warden

27 Counsel:

28 Steven B. Wolfson, District Attorney

200 Lewis Ave.
Las Vegas, NV 89155-2212

5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A
***Expires 1 year from date filed*
Appellant Filed Application to Proceed in Forma Pauperis: No
Date Application(s) filed: N/A

9. Date Commenced in District Court: October 4, 2021

10. Brief Description of the Nature of the Action: Civil Writ

Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 24 day of February 2022.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann

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

cc: Jason Bolen

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

December 07, 2021

A-21-842092-W Jason Bolen, Plaintiff(s)
vs.
Nevada Department of Correction, Defendant(s)

December 07, 2021 8:30 AM All Pending Motions

HEARD BY: Hardy, Joe **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Kristin Duncan

RECORDER: Matt Yarbrough

REPORTER:

PARTIES

PRESENT: Thomson, Megan Attorney

JOURNAL ENTRIES

- PETITION FOR WRIT OF HABEAS CORPUS...MOTION FOR APPOINTMENT OF COUNSEL
AND REQUEST FOR EVIDENTIARY HEARING

The State present via Blue Jeans.

Having been unable to thoroughly review the instant Petition and Motion, as well as the Opposition,
COURT ORDERED the Petition and Motion were hereby CONTINUED.

NDC

1/13/22 8:30 AM PETITION FOR WRIT OF HABEAS CORPUS...MOTION FOR APPOINTMENT OF
COUNSEL AND REQUEST FOR EVIDENTIARY HEARING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

January 13, 2022

A-21-842092-W Jason Bolen, Plaintiff(s)
vs.
Nevada Department of Correction, Defendant(s)

January 13, 2022 8:30 AM All Pending Motions

HEARD BY: Hardy, Joe **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Kristin Duncan

RECORDER: Matt Yarbrough

REPORTER:

PARTIES

PRESENT: Rinetti, Dena I. Attorney

JOURNAL ENTRIES

- PETITION FOR WRIT OF HABEAS CORPUS...MOTION FOR APPOINTMENT OF COUNSEL
AND REQUEST FOR EVIDENTIARY HEARING

The State present via Blue Jeans.

Having reviewed the Petition for Writ of Habeas Corpus, the Motion for Appointment of Counsel, as well as the State's Opposition, and FINDING it appropriate to rule on the pleadings without hearing any oral arguments, COURT ORDERED the Petition for Writ of Habeas Corpus, as well as the Motion for Appointment of Counsel and Request for Evidentiary Hearing, were hereby DENIED for all of the reasons set forth in the State's Opposition, FINDING the following: (1) the substantive claims were barred; (2) the Petitioner did not suffer ineffective assistance of counsel; (3) the State went through each claim in its Opposition, and the Court agreed with the State's arguments; and (4) the Petitioner was not entitled to the appointment of counsel, or an Evidentiary Hearing.

The State to prepare the written Order. COURT ORDERED a status check regarding the submittal of the written Order, was hereby SET on this department's chambers calendar.

PRINT DATE: 03/16/2022

Page 2 of 3

Minutes Date: December 07, 2021

NDC

1/27/22 (CHAMBERS) STATUS CHECK: SUBMITTAL OF THE WRITTEN ORDER

CLERK'S NOTE: A copy of this minute order forwarded to the Petitioner through U.S. Mail: Jason Bolen #1032099 [Ely State Prison P.O. Box 1989 Ely, NV 89301]. (KD 1/13/2022)

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated March 4, 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 165.

JASON BOLEN,

Plaintiff(s),

vs.

NEVADA DEPT OF CORRECTIONS; ELY
STATE PRISON; WILLIAM GITTERE,
WARDEN,

Defendant(s),

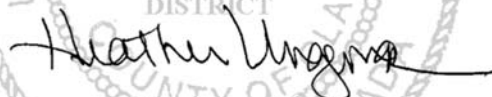
Case No: A-21-842092-W

Dept. No: XV

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 16 day of March 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk