Electronically Filed
2/28/2022 12:11 PM
Steven D. Grierson
CLERK OF THE COURT

NOASC
MONIQUE MCNEILL, ESQ.
Nevada State Bar No. 009862
P.O. Box 2451
Las Vegas, Nevada 89125
Tel: (702) 497-9734
Email: monique.mcneill@yahoo.com

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Mar 03 2022 09:06 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA Plaintiff, vs. JOSE MONAY-PINA, Defendant.	)	**CASE NO:** A-20-810899-W **DEPT. NO:** **VII**

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Defendant, JOSE MONAY-PINA, appeals to the Supreme Court of Nevada from the judgment entered against said Defendant on February 15, 2022 whereby the district court denied his Petition for Writ of Habeas Corpus.

DATED this 22nd day of February, 2022.

By: */s/ Monique McNeill*
MONIQUE A. MCNEILL, ESQ.
Nevada Bar No. 009862
P.O. Box 2451
Las Vegas, Nevada 89125
Phone: (702) 497-9734
Email: monique.mcneill@yahoo.com

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED by the undersigned that on 22nd day of Feb., 2022, I served a true and correct copy of the foregoing **Notice of Appeal** on the parties listed on the attached service list via one or more of the methods of service described below as indicated next to the name of the served individual or entity by a checked box:

VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada.

VIA FACSIMILE: by transmitting to a facsimile machine maintained by the attorney or the party who has filed a written consent for such manner of service.

BY PERSONAL SERVICE: by personally hand-delivering or causing to be hand delivered by such designated individual whose particular duties include delivery of such on behalf of the firm, addressed to the individual(s) listed, signed by such individual or his/her representative accepting on his/her behalf. A receipt of copy signed and dated by such an individual confirming delivery of the document will be maintained with the document and is attached.

BY E-MAIL: by transmitting a copy of the document in the format to be used for attachments to the electronic-mail address designated by the attorney or the party who has filed a written consent for such manner of service.

DATED this 22nd day of February, 2022.

By: */s/ Monique McNeill*
MONIQUE A. MCNEILL, ESQ.
Nevada Bar No. 009862
P.O. Box 2451
Las Vegas, Nevada 89125
Phone: (702) 497-9734
Email: monique.mcneill@yahoo.com

SERVICE LIST

ATTORNEYS OF RECORD	PARTIES REPRESENTED	METHOD OF SERVICE
CLARK COUNTY DISTRICT ATTORNEY'S OFFICE 200 E. Lewis Ave Las Vegas, NV 89101 pdmotions@clarkcountyda.com	State of Nevada	☐ Personal service ☒ Email service ☐ Fax service ☐ Mail service

Electronically Filed
2/28/2022 12:11 PM
Steven D. Grierson
CLERK OF THE COURT

ASTA
MONIQUE MCNEILL, ESQ.
Nevada State Bar No. 009862
P.O. Box 2451
Las Vegas, Nevada 89125
Tel: (702) 497-9734
Email: monique.mcneill@yahoo.com

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA Plaintiff, vs. JOSE MONAY-PINA, Defendant.	**CASE NO:** A-20-810899-W **DEPT. NO:** **VII**

CASE APPEAL STATEMENT

1. **Name of appellant filing this case appeal statement:** Jose Monay-Pina.

2. **Identify the judge issuing the decision, judgment, or order appealed from:** Linda Bell, District Court 7;

3. **Identify all parties to the proceedings in the district court (the use of et al. to denote parties is prohibited):** The State of Nevada, Respondent; Jose Monay-Pina, Petitioner.

4. **Identify all parties involved in this appeal (the use of et al. to denote parties is prohibited):** The State of Nevada, Respondent; Jose Monay-Pina, Petitioner.

5. **Set forth the name, law firm, address and telephone number of all counsel on appeal and identify the party or parties whom they represent:** Counsel for Respondent, Clark County District Attorney's Office, Regional Justice Center, 200 Lewis Ave., 3rd Floor, Las Vegas, NV 89101, (702) 671-2500; Counsel for Defense, Monique McNeill, P.O. Box 2451, Las Vegas, Nevada 89125.

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

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

8. **Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:** Appellant has appointed counsel as he is indigent.

9. **Indicate the date the proceedings commenced in the District Court (e.g., date complaint, indictment, information, or petition was filed):** A Petition for Writ of Habeas Corpus, post-conviction, was filed on February 18, 2020.

10. **A brief description of the nature of the action and result in the District Court, including the type of judgment or order being appealed and the relief granted by the District Court:** This is an appeal of a denial of a post-conviction petition for writ of habeas corpus.

11. **Whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:** Yes, Monay-Pina v. State, 74199

12. **Whether the appeal involves child custody or visitation:** No;

DATED this 28th day of February, 2022.

By: */s/Monique McNeill*
MONIQUE MCNEILL, ESQ.
Nevada Bar No. 9862
P.O. Box 2451
Las Vegas, Nevada 89125

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED by the undersigned that on 28th day of February, 2022, I served a true and correct copy of the foregoing **Case Appeal Statement** on the parties listed on the attached service list via one or more of the methods of service described below as indicated next to the name of the served individual or entity by a checked box:

VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada.

VIA FACSIMILE: by transmitting to a facsimile machine maintained by the attorney or the party who has filed a written consent for such manner of service.

BY PERSONAL SERVICE: by personally hand-delivering or causing to be hand delivered by such designated individual whose particular duties include delivery of such on behalf of the firm, addressed to the individual(s) listed, signed by such individual or his/her representative accepting on his/her behalf. A receipt of copy signed and dated by such an individual confirming delivery of the document will be maintained with the document and is attached.

BY E-MAIL: by transmitting a copy of the document in the format to be used for attachments to the electronic-mail address designated by the attorney or the party who has filed a written consent for such manner of service.

DATED this 28th day of February, 2022.

By: */s/Monique McNeill*
MONIQUE MCNEILL, ESQ.
Nevada Bar No. 9862
P.O. Box 2451
Las Vegas, Nevada 89125

SERVICE LIST

ATTORNEYS OF RECORD	PARTIES REPRESENTED	METHOD OF SERVICE
CLARK COUNTY DISTRICT ATTORNEY'S OFFICE 200 E. Lewis Ave Las Vegas, NV 89101 pdmotions@clarkcountyda.com	State of Nevada	☐ Personal service ☒ Email service ☐ Fax service ☐ Mail service

Electronically Filed
2/28/2022 12:44 PM
Steven D. Grierson
CLERK OF THE COURT

REQT
MONIQUE MCNEILL, ESQ.
Nevada State Bar No. 009862
P.O. Box 2451
Las Vegas, Nevada 89125
Tel: (702) 497-9734
Email: monique.mcneill@yahoo.com

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA Plaintiff, vs. JOSE MONAY-PINA, Defendant.	))))))))))	**CASE NO:** A-20-810899-W **DEPT. NO: VII**

APPELLANT'S REQUEST FOR TRANSCRIPT OF PROCEEDINGS

TO: De'Awna Takas,
Court Recorder

Appellant requests preparation, at State expense, of a transcript of the proceedings before the District Court, as follows:

Judge or officer hearing the proceeding: **Honorable Linda Bell**

Date or dates of proceeding: December 21, 2021.

Number of copies required: One.

Specific portions requested of trial: Appellant requests transcription of the evidentiary hearing on the date listed above.

I hereby certify that on this date I ordered this transcript from the court recorders named above.

DATED this 28th day of February, 2022.

By: */s/ Monique McNeill*
MONIQUE MCNEILL, ESQ.
Nevada Bar No.9862
P.O. Box 2451
Las Vegas, Nevada 89125

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2021, I personally served, via email, a copy of the foregoing **Request for Transcripts** to:

De'Awna Takas at CrewsD@clarkcountycourts.us

By: /s/ Monique McNeill

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-20-810899-W

Jose Monay-Pina, Plaintiff(s)	§	Location:	**Department 7**
vs.	§	Judicial Officer:	**Bell, Linda Marie**
State of Nevada, Defendant(s)	§	Filed on:	**02/18/2020**
	§	Cross-Reference Case Number:	**A810899**
	§		

CASE INFORMATION

Related Cases
C-16-313118-2 (Writ Related Case)

Statistical Closures
02/15/2022 Other Manner of Disposition

Case Type: **Writ of Habeas Corpus**

Case Status: **02/15/2022 Closed**

DATE — CASE ASSIGNMENT

Current Case Assignment

Case Number	A-20-810899-W
Court	Department 7
Date Assigned	02/18/2020
Judicial Officer	Bell, Linda Marie

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**Monay-Pina, Jose Fernando**	**McNeill, Monique A.** *Court Appointed* 702-497-9734(W)
Defendant	**State of Nevada**	**Wolfson, Steven B** *Retained* 702-455-5320(W)
	Warden Howell	**Wolfson, Steven B** *Retained* 702-455-5320(W)
Other	**Cellemme, Dree**	

DATE — EVENTS & ORDERS OF THE COURT — INDEX

EVENTS

02/18/2020 Inmate Filed - Petition for Writ of Habeas Corpus
Party: Plaintiff Monay-Pina, Jose Fernando
[1] Post Conviction

02/18/2020 Motion for Appointment of Attorney
Filed By: Plaintiff Monay-Pina, Jose Fernando
[2]

02/18/2020 Application to Proceed in Forma Pauperis
Filed By: Plaintiff Monay-Pina, Jose Fernando
[3]

03/03/2020 Order
[4] Order for Petition for Writ of Habeas Corpus

04/14/2020

Response
Filed by: Defendant State of Nevada; Defendant Warden Howell
[5] State's Response to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction) and Opposition for Motion to Appoint Counsel

04/28/2020 Order to Proceed In Forma Pauperis
[6] Order Granting Application to Proceed in Forma Pauperis

04/30/2020 Decision and Order
[7] Decision and Order

05/06/2020 Notice of Entry of Order
Filed By: Defendant State of Nevada
[8] Notice of Entry of Order

06/16/2020 Order
[9] Order

12/16/2020 Ex Parte
Filed By: Plaintiff Monay-Pina, Jose Fernando
[10] Ex Parte Application to Appoint Expert

12/16/2020 Order
Filed By: Plaintiff Monay-Pina, Jose Fernando
[11] Order

03/11/2021 Ex Parte Application
Party: Plaintiff Monay-Pina, Jose Fernando
[12] Ex Parte Application for Additional Hours for Investigator

03/12/2021 Order
Filed By: Plaintiff Monay-Pina, Jose Fernando
[13] Order

03/29/2021 Supplement
Filed by: Plaintiff Monay-Pina, Jose Fernando
[14] SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

06/24/2021 Response
Filed by: Defendant State of Nevada
[15] State's Response to Petitioner's Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)

10/13/2021 Order for Production of Inmate
[16] Order for Production of Inmate - Jose Fernando Monay-Pina

02/15/2022 Decision and Order
[17] Decision and Order

02/16/2022 Notice of Entry of Order
[18] Notice of Entry of Order

02/28/2022 Notice of Appeal (Criminal)
Party: Plaintiff Monay-Pina, Jose Fernando
[19] Notice of Appeal

02/28/2022 Case Appeal Statement
Filed By: Plaintiff Monay-Pina, Jose Fernando
[20] Case Appeal Statement

02/28/2022 Request
Filed by: Plaintiff Monay-Pina, Jose Fernando
[21] Request for Transcripts

HEARINGS

04/14/2020 **Petition for Writ of Habeas Corpus** (10:30 AM) (Judicial Officer: Bell, Linda Marie)
04/14/2020, 12/21/2021
Denied in Part;
Matter Heard;

MINUTES
Denied in Part;
Matter Heard;
Journal Entry Details:
John Niman, Deputy District Attorney present on behalf of State. Upon Court's inquiry, Mr. Niman advised a response was drafted and should have been filed. Court noted it does not have a response as well as the motion to appoint counsel was not calendared by Master Calendar however both will be taken into consideration in the Court ruling. COURT ORDERED, DECISION TO ISSUE. Matter set for status check however parties do not need to appear. 04/28/20 10:30 AM STATUS CHECK: DECISION;

SCHEDULED HEARINGS
Status Check (04/28/2020 at 10:30 AM) (Judicial Officer: Bell, Linda Marie)
STATUS CHECK: DECISION

04/28/2020 **Status Check** (10:30 AM) (Judicial Officer: Bell, Linda Marie)
STATUS CHECK: DECISION

MINUTES
Denied in Part;
Journal Entry Details:
After review of the petition and the State s response, Mr. Monay-Pina's petition is denied in part. A written decision shall issue. The remaining grounds of Mr. Monay-Pina's petition shall be set for an evidentiary hearing. Therefore, the Court orders the appointment of counsel for Mr. Monay-Pina. A status check on the appointment of counsel is set for May 19, 2020, at 9:00 AM. ;

SCHEDULED HEARINGS
Appointment of Counsel (05/12/2020 at 10:30 AM) (Judicial Officer: Bell, Linda Marie)
05/12/2020, 05/26/2020
Appointment of Counsel: Monique McNeil to appear

05/12/2020 **Appointment of Counsel** (10:30 AM) (Judicial Officer: Bell, Linda Marie)
05/12/2020, 05/26/2020
Appointment of Counsel: Monique McNeil to appear
Continued;
Counsel Confirmed;
Journal Entry Details:
Ms. McNeill CONFIRMED as counsel and requested a 90 day status check. COURT SO ORDERED. 08/25/20 10:30 AM STATUS CHECK: SET HEARING;

Continued;
Counsel Confirmed;
Journal Entry Details:
No parties present. COURT ORDERED, matter CONTINUED for Mr. Hart to appear. CONTINUED TO: 05/19/20 10:30 AM;

08/25/2020 **Status Check** (11:00 AM) (Judicial Officer: Bell, Linda Marie)
08/25/2020, 12/03/2020, 06/24/2021, 07/01/2021
STATUS CHECK: SET HEARING
Continued;
Continued;
Continued;
Hearing Set;
Journal Entry Details:
Counsel appeared via Bluejeans. Ms. McNeill not present. Colloquy regarding Mr. Staton's scheduled Court appearances that morning. MATTER TRAILED MATTER RECALLED, Ms. McNeill now present, all other parties present as before. COURT NOTED, it appears all of the Briefing has been submitted; parties need to find a date for an Evidentiary Hearing. Following colloquy regarding scheduling, COURT ORDERED, an Evidentiary Hearing SET. Upon Court's inquiry, Ms. McNeill estimated the Hearing should take approximately 3-4 hours. 09/13/21 1:30 P.M. EVIDENTIARY HEARING...PETITION FOR WRIT OF HABEAS CORPUS CLERK'S NOTE: Subsequent to Court, COURT ADVISED, due to transport scheduling, the hearing is RESET to 1:30 P.M. A copy of this minute order was electronically served upon the parties. // yo 07.25.21;
Continued;
Continued;
Continued;
Hearing Set;
Journal Entry Details:
Parties present via BlueJeans. COURT NOTED, Mr.Turner appeared the matter. The State filed their Response this morning. COURT ORDERED, matter CONTINUED to allow Court the opportunity to review State's Response to determine what, if anything, should be set for an Evidentiary Hearing.. CONTINUED TO 07/01/21 10:30 AM;
Continued;
Continued;
Continued;
Hearing Set;
Journal Entry Details:
Ms. Mcneill requested a continuance as she needs more time to file her brief. COURT SO ORDERED. CONTINUED TO: 04/01/21 10:30 AM;
Continued;
Continued;
Continued;
Hearing Set;
Journal Entry Details:
Ms. McNeill advised she has received the file and requested time to supplement the briefing. COURT ORDERED, matter CONTINUED. CONTINUED TO: 11/24/20 11:30 AM;

04/07/2021 **Minute Order** (3:15 PM) (Judicial Officer: Bell, Linda Marie)
Minute Order - No Hearing Held;
Journal Entry Details:
Counsel for Mr. Monay-Pina has filed a supplement to his petition. The state will have 60 days to file any response. The current status check set for April 8, 2021 will be vacated and reset for June 24, 2021 at 10:30 a.m. to ensure the state's response has been filed and to set an evidentiary hearing. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Dauriana Simpson, to all registered parties for Odyssey File and Serve. 4/7/2021/ds;

12/21/2021 **Evidentiary Hearing** (1:30 PM) (Judicial Officer: Bell, Linda Marie)
Matter Heard;

12/21/2021	**All Pending Motions** (1:30 PM) (Judicial Officer: Bell, Linda Marie) Under Advisement;
01/19/2022	**Minute Order** (3:00 AM) (Judicial Officer: Bell, Linda Marie) Minute Order - No Hearing Held; Journal Entry Details: *As a Decision and Order remains pending in this matter, the January 20, 2022 Status Check: Written Decision is RESET to February 3, 2022. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. // yo 01/19/22;*
02/02/2022	**Minute Order** (3:00 AM) (Judicial Officer: Bell, Linda Marie) Minute Order - No Hearing Held; Journal Entry Details: *As a Decision and Order remains pending in this matter, the Status Check: Written Decision is RESET one week to February 10, 2022. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. // yo 02.02.22;*
02/10/2022	**Minute Order** (3:00 AM) (Judicial Officer: Bell, Linda Marie) Minute Order - No Hearing Held; Journal Entry Details: *A Decision and Order is pending signature. The Status Check: Written Decision is RESET one week, to February 17, 2022 at 10:30 a.m., and will be vacated upon issuance of the Decision. No appearance will be necessary. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. // yo 02.10.22;*
02/17/2022	*CANCELED* **Status Check** (10:30 AM) (Judicial Officer: Bell, Linda Marie) *Vacated - per Law Clerk* *Status Check: Written Decision*

DISTRICT COURT CIVIL COVER SHEET

A-20-810899-W
Dept. VII

.....County, Nevada

Case No. .....
(Assigned by Clerk's Office)

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
Jose Monay-Pina	State of Nevada
Attorney (name/address/phone):	Attorney (name/address/phone):

II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

Real Property	Torts	
Landlord/Tenant	**Negligence**	**Other Torts**
☐ Unlawful Detainer	☐ Auto	☐ Product Liability
☐ Other Landlord/Tenant	☐ Premises Liability	☐ Intentional Misconduct
Title to Property	☐ Other Negligence	☐ Employment Tort
☐ Judicial Foreclosure	**Malpractice**	☐ Insurance Tort
☐ Other Title to Property	☐ Medical/Dental	☐ Other Tort
Other Real Property	☐ Legal	
☐ Condemnation/Eminent Domain	☐ Accounting	
☐ Other Real Property	☐ Other Malpractice	

Probate	Construction Defect & Contract	Judicial Review/Appeal
Probate *(select case type and estate value)*	**Construction Defect**	**Judicial Review**
☐ Summary Administration	☐ Chapter 40	☐ Foreclosure Mediation Case
☐ General Administration	☐ Other Construction Defect	☐ Petition to Seal Records
☐ Special Administration	**Contract Case**	☐ Mental Competency
☐ Set Aside	☐ Uniform Commercial Code	**Nevada State Agency Appeal**
☐ Trust/Conservatorship	☐ Building and Construction	☐ Department of Motor Vehicle
☐ Other Probate	☐ Insurance Carrier	☐ Worker's Compensation
Estate Value	☐ Commercial Instrument	☐ Other Nevada State Agency
☐ Over $200,000	☐ Collection of Accounts	**Appeal Other**
☐ Between $100,000 and $200,000	☐ Employment Contract	☐ Appeal from Lower Court
☐ Under $100,000 or Unknown	☐ Other Contract	☐ Other Judicial Review/Appeal
☐ Under $2,500		

Civil Writ		Other Civil Filing
Civil Writ		**Other Civil Filing**
☒ Writ of Habeas Corpus	☐ Writ of Prohibition	☐ Compromise of Minor's Claim
☐ Writ of Mandamus	☐ Other Civil Writ	☐ Foreign Judgment
☐ Writ of Quo Warrant		☐ Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

February 18, 2020
Date

PREPARED BY CLERK
Signature of initiating party or representative

See other side for family-related case filings.

Electronically Filed
02/15/2022 9:20 AM
CLERK OF THE COURT

DAO

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JOSE FERNANDO MONAY-PINA, Petitioner, *vs.* THE STATE OF NEVADA, et al., Respondents.	Case No. A-20-810899-W Dept. No. VII

DECISION AND ORDER

A jury convicted Mr. Monay-Pina of conspiracy to commit robbery; burglary while in possession of a firearm; robbery with use of a deadly weapon; battery with use of a deadly weapon resulting in substantial bodily harm; attempt murder with use of a deadly weapon; battery with use of a deadly weapon; aiming a firearm at a human being; coercion with use of a deadly weapon; and battery with intent to commit a crime. Following the conviction, the Nevada Supreme Court denied Mr. Monay-Pina's direct appeal. Thereafter, he filed a post-conviction Petition for Writ of Habeas Corpus. On April 30, 2020, this Court denied Grounds One, Three, Five, Nine, and Ten (in part) of the Petition. On December 21, 2021, the Court held an evidentiary hearing on the remaining claims, Two, Four, Six, Seven, Eight and Eleven. After review of the petition, the State's response, and oral argument, the Court denies the remaining claims.

Grounds Two and Six claim that counsel was ineffective for failing to hire an investigator, and failing to investigate the case, and for not being prepared to cross examine witnesses. Ground Four claims that trial counsel was ineffective for failing to file a motion to sever the trial from the co-defendant. Ground Seven claims that trial counsel was ineffective for failing to determine if Mr. Monay-Pina was mentally fit to understand the charges against him. Ground Eight claims that trial counsel was ineffective for failing to review video evidence and failing to make the State prove its case beyond a reasonable doubt. Ground Eleven claims that Mr. Monay-Pina's Sixth and Fourteenth

Statistically closed: USJR - CV - Other Manner of Disposition (USJROT)

Amendment rights were violated when trial counsel admitted Mr. Monay-Pina's guilt at trial. Ground Ten asserts cumulative error.

Mr. Monay-Pina presented evidence regarding these remaining grounds at the December 21, 2021 evidentiary hearing. The Court now finds as follows.

I. Factual and Procedural Background

On January 12, 2016 at 3:00 a.m., two masked men carrying guns entered a local 7-Eleven convenience store. Both masked men were dressed in dark clothing and wore dark puffy-style jackets. The masked men pointed their guns at the sole employee, Richard DeCamp, and ordered Mr. DeCamp to empty two cash registers. After taking $139.00 from the registers, the masked men fled the store.

At the time of the 7-Eleven robbery, Javier Colon was sleeping in his sister's converted garage less than a mile away from the 7-Eleven. Minutes later, two armed men opened the garage door and began attacking Mr. Colon. The attackers beat Mr. Colon with their guns. One of the attackers grabbed an axe from inside the garage. The attacker swung at Mr. Colon's head with the axe, but Mr. Colon deflected the axe with his hand. Mr. Colon's family woke because of the commotion. After seeing the two attackers, Mr. Colon's family called the police. When police cars neared the house, the attackers fled.

A responding officer found two men in the middle of a nearby backyard. Both men attempted to hide but were taken into custody. The men were later identified as Mr. Monay-Pina and Casimiro Venegas. In the backyard, police recovered: $138.00 in cash; Mr. Colon's wallet; a replica firearm; and a knife with sheath. When the men were apprehended, Mr. Monay-Pina was wearing a stocking cap on his head and a dark puffy jacket, and Mr. Venegas was wearing a black ski mask and a black puffy jacket. The men matched the description of the men who robbed the 7-Eleven.

Mr. Monay-Pina and Mr. Venegas were charged with multiple felony and gross misdemeanor counts related to the 7-Eleven robbery and the attack on Mr. Colon. Mr. Monay-Pina and Mr. Venegas were tried together in March of 2017. Thomas D. Boley, Esq. represented Mr. Monay-Pina. On March 15, 2017, the jury returned a verdict finding both men guilty on all counts. Mr. Monay-Pina subsequently appealed, asserting that the State's arguments during rebuttal closing

denied Mr. Monay-Pina the right to a fair trial. On March 28, 2019, the Nevada Supreme Court affirmed Mr. Monay-Pina's conviction.

On February 18, 2020, Mr. Monay-Pina filed his Petition for Writ of Habeas Corpus in pro per. On April 14, 2020, the State filed its Response. On April 30, 2020, this Court granted Mr. Monay-Pina's motion to appoint counsel, and denied Grounds One, Three, Five, Nine, and Ten of the Petition. The Court set the remaining claims for an evidentiary hearing.

On March 29, 2021, Mr. Monay-Pina's counsel filed a Supplemental Memorandum of Points and Authorities in Support of the Petition. On June 24, 2021, the State filed its Response. On December 21, 2021, parties appeared for the stated evidentiary hearing on the remaining claims.

II. Discussion

A. Legal Standard

A claim of ineffective assistance of counsel is analyzed under the two-part test laid out in Strickland v. Washington, 466 U.S. 668 (1984). Under Strickland, a defendant alleging ineffective assistance of counsel must show (1) that their counsel's performance was deficient, and (2) that the deficient performance prejudiced the defense. Id. at 687. The Court may consider the two test elements in any order and need not consider both prongs if the defendant makes an insufficient showing on either one. Id. at 697.

Counsel's performance is deficient when their representation amounted to incompetence under prevailing professional norms, "not whether it deviated from best practices or most common custom." Harrington v. Richter, 563 U.S. 86, 88 (2011). To find prejudice to the defense in the second half of the Strickland test, the defendant must show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

Effectiveness is presumed. The defendant must demonstrate by a preponderance of the evidence that counsel was ineffective. Means v. State, 103 P.3d 25, 32-33 (Nev. 2004). A post-conviction petition's claims of ineffective assistance of counsel must be supported with specific factual allegations which would entitle a petitioner to relief if true; "bare" or "naked" allegations are

not sufficient to show ineffectiveness of counsel. Hargrove v. State, 686 P.2d 222, 225 (Nev. 1984).

B. Mr. Monay-Pina is not entitled to relief on Grounds Two and Six (failure to hire an investigator or conduct a pre-trial investigation), Ground Four (failure to move to sever trial), Ground Seven (failure to determine competency), Ground Eight (failure to review video evidence and make the State prove its case beyond a reasonable doubt), and Ground Eleven (counsel allegedly admitting Mr. Monay-Pina's guilt at trial).

Mr. Monay-Pina argued that trial counsel was ineffective on eleven grounds. This Court previously denied five grounds, leaving six remaining grounds for determination. The Court finds that Mr. Monay-Pina is not entitled to relief on Grounds Two, Four, Six, Seven, Eight, and Eleven of the petition. Further, this Court reviews the remainder of Ground Ten (previously denied in part), and finds no error to accumulate.

1. Grounds Two and Six: Failure to hire investigator or conduct pre-trial investigation

In both Grounds Two and Six, Mr. Monay-Pina alleges trial counsel failed to hire an investigator, and failed to conduct a pre-trial investigation. Mr. Monay-Pina alleges that trial counsel did not hire an investigator, did not sufficiently investigate the matter, and that such investigation would have shown Mr. Monay-Pina had no motive to commit the crimes in question. The State asserts that evidence presented at trial identified Mr. Monay-Pina as the person who committed the crimes as alleged, and thus investigation into motive as suggested would not have changed the outcome.

The Court finds that trial counsel's performance was not deficient on these grounds because Mr. Monay-Pina has not established that hiring an investigator or otherwise investigating the suggested witness statements would have altered the outcome of the trial. Mr. Monay-Pina alleges that an investigation as suggested would have revealed "no motive for Monay-Pina," however, no sufficient facts or arguments are alleged to show the outcome of the trial would have been different here. The Court therefore denies Grounds Two and Six of Mr. Monay-Pina's petition.

2. Ground Four: Failure to move to sever the trial from co-defendant

In Ground Four, Mr. Monay-Pina argues that trial counsel was ineffective because counsel should have moved to sever from his co-defendant, and severance was warranted. The State responds that such a motion would have been futile.

A motion to sever is at a court's discretion, and should be granted "only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." Marshall v. State, 118 Nev. 642, 647 (2002). Further, an argument of antagonistic defenses is not, alone, "sufficient grounds for concluding that joinder of defendants is prejudicial." Id. at 648.

Petitioner's reliance on Chartier does not prove that severance would have been necessary here. In Chartier, the Court distinguished those facts from Marshall v. State, wherein, "because the prosecution presented ample evidence against both defendants and the State's case was not dependent upon testimony from either defendant, there was 'no indication that anything in this joint trial undermined the jury's ability to render a reliable judgment'" as to the defendant's guilt. Chartier, 124 Nev. 760, 766 (2008) (quoting Marshall v. State, 118 Nev. 642, 648 (2002)). Here, like Marshall and unlike Chartier, the State presented ample evidence against both defendants and did not rely upon testimony from either defendant. Mr. Monay-Pina's trial counsel testified at the evidentiary hearing that he believed a motion to sever would have been futile, and this Court does not find that a motion to sever would have necessarily been granted based on the standards for such a motion, in addition to the ample evidence presented against both defendants at trial.

The Court finds that Mr. Monay-Pina's trial counsel was not deficient in failing to file a motion to sever. Trial counsel cannot be deemed ineffective for failing to make futile objections, file futile motions, or for failing to make futile arguments. Ennis v. State, 137 P.3d 1095, 1103 (Nev. 2006). The Court denies Ground Four of Mr. Monay-Pina's petition.

3. Ground Seven: Failure to determine competency

In Ground Seven, Mr. Monay-Pina alleges that trial counsel failed to have Mr. Monay-Pina tested by a psychiatrist as to whether he was mentally fit to understand trial and the charges against him. Mr. Monay-Pina argues that because he was potentially facing the rest of his life in prison, a competency assessment was necessary. The State responds that no specific factual allegations pertaining to doubts of Mr. Monay-Pina's competency are alleged, nor appear in the record.

No doubts as to Mr. Monay-Pina's competency were raised at any time, and trial counsel testified that he did not have doubts as to Mr. Monay-Pina's competency. No specific facts are

alleged in support of this claim, and as such, the allegations are insufficient to show ineffectiveness of counsel. The Court denies Ground Seven of Mr. Monay-Pina's petition.

4. Ground Eight: Failure to review video evidence with Petitioner

In Ground Eight, Mr. Monay-Pina argues that trial counsel was ineffective for not reviewing video evidence prior to trial. Petitioner's Supplement states that while Mr. Monay-Pina is unaware if counsel reviewed the video, he did not review the video with Petitioner. The State responds that Mr. Monay-Pina fails to show how counsel reviewing the video evidence with him prior to trial would have changed the outcome of trial.

At the evidentiary hearing, trial counsel testified that Mr. Monay-Pina's description of events were echoed by the video evidence, and as a result, he did not review the video with Petitioner. Failing to review video surveillance which comported with the client's version of events does not meet the high burden in showing a reasonable probability that the result of the trial would have changed. The Court denies Ground Eight of Mr. Monay-Pina's petition.

5. Ground Ten Remaining Claims: Cumulative error

This Court previously denied Ground Ten in part, as it related to Mr. Monay-Pina's claim that he was entitled to two attorneys at trial. The Court now addresses the remaining claims. In Ground Ten, Mr. Monay-Pina makes several arguments. Mr. Monay-Pina argues that there was cumulative error by trial counsel, that trial counsel failed to visit Mr. Monay-Pina at the jail, and that trial counsel failed to work on a defense with Petitioner.

The Nevada Supreme Court has held that factors to consider in a cumulative error analysis are: 1) whether the issue of guilt is close; 2) the quantity and character of the error; and 3) the gravity of the crime charged. Mulder v. State, 116 Nev. 1, 17 (2000). However, for cumulative error to apply, there must be error to accumulate. Pascua v. State, 122 Nev. 1001, 1008 n.16 (2006) (rejecting the argument of cumulative error where the "errors were insignificant or nonexistent"); Talley v. State, 496 P.3d 970, 2021 WL 4853419 (Nev. 2021) (unpublished disposition). Moreover, the issue of guilt here was not close due to the evidence presented against him, and the jury quickly returned its guilty verdict against Mr. Monay-Pina; further, this Court has not found error of trial counsel to accumulate. Therefore, the Court denies the remainder of Ground Ten.

6. Ground Eleven: Counsel admitting Petitioner's guilt at trial

In Ground Eleven, Mr. Monay-Pina argues that trial counsel was ineffective because he conceded Petitioner's guilt at trial. The State argues that Mr. Monay-Pina's claim is belied by the record, as no such concession was made, and no specific facts are alleged as to where Petitioner believes such a concession was made.

A review of the record does not show that trial counsel conceded or admitted Petitioner's guilt. The allegation appears to be naked and insufficient as it pertains to showing ineffectiveness of trial counsel. The Court denies Ground Eleven of Mr. Monay-Pina's petition.

III. Conclusion

Mr. Monay-Pina's petition is denied as to all remaining Grounds. Grounds Two and Six are denied because no sufficient facts are alleged to show how an investigation as suggested would have changed the outcome here. Ground Four is denied because trial counsel cannot be deemed ineffective for failing to make futile objections, file futile motions, or for failing to make futile arguments, including a motion to sever in this matter. Ground Seven is denied because no concerns relating to Mr. Monay-Pina's competency were ever raised, and therefore his mental fitness was not in question. Ground Eight is denied because Mr. Monay-Pina fails to assert how reviewing video surveillance would have a reasonable probability of changing the outcome, as the video evidence echoed Mr. Monay-Pina's version of events to trial counsel. Ground Ten is denied because no meritorious errors are alleged. Finally, Ground Eleven is denied because the record belies that trial counsel conceded Mr. Monay-Pina's guilt.

As a result of this Order, the Status Check set for February 17 at 10:30 a.m. is VACATED.

Dated this 15th day of February, 2022

04A 13F AA85 C19D
Linda Marie Bell
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Jose Monay-Pina, Plaintiff(s)	CASE NO: A-20-810899-W
vs.	DEPT. NO. Department 7
State of Nevada, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 2/15/2022

Wesley Su	dept07lc@clarkcountycourts.us
John Niman	John.Niman@clarkcountyda.com
Karen Mishler	karen.mishler@clarkcountyda.com
Monique McNeill	monique.mcneill@yahoo.com

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 2/16/2022

Steven Wolfson	Juvenile Division - District Attorney's Office 601 N Pecos Road Las Vegas, NV, 89101

Electronically Filed
2/16/2022 1:17 PM
Steven D. Grierson
CLERK OF THE COURT

NEOJ

DISTRICT COURT
CLARK COUNTY, NEVADA

JOSE MONAY-PINA, Petitioner, vs. STATE OF NEVADA; ET,AL., Respondent,	Case No: A-20-810899-W Dept. No: VII **NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that on February 15, 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 16, 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 16 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:

Jose Monay-Pina # 1185276 P.O. Box 208 Indian Springs, NV 89070	Monique McNeill, Esq. P.O. Box 2451 Las Vegas, NV 89125

/s/ Amanda Hampton
Amanda Hampton, Deputy Clerk

Electronically Filed
02/15/2022 9:20 AM
CLERK OF THE COURT

DAO

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JOSE FERNANDO MONAY-PINA, Petitioner, *vs.* THE STATE OF NEVADA, et al., Respondents.	Case No. A-20-810899-W Dept. No. VII

DECISION AND ORDER

A jury convicted Mr. Monay-Pina of conspiracy to commit robbery; burglary while in possession of a firearm; robbery with use of a deadly weapon; battery with use of a deadly weapon resulting in substantial bodily harm; attempt murder with use of a deadly weapon; battery with use of a deadly weapon; aiming a firearm at a human being; coercion with use of a deadly weapon; and battery with intent to commit a crime. Following the conviction, the Nevada Supreme Court denied Mr. Monay-Pina's direct appeal. Thereafter, he filed a post-conviction Petition for Writ of Habeas Corpus. On April 30, 2020, this Court denied Grounds One, Three, Five, Nine, and Ten (in part) of the Petition. On December 21, 2021, the Court held an evidentiary hearing on the remaining claims, Two, Four, Six, Seven, Eight and Eleven. After review of the petition, the State's response, and oral argument, the Court denies the remaining claims.

Grounds Two and Six claim that counsel was ineffective for failing to hire an investigator, and failing to investigate the case, and for not being prepared to cross examine witnesses. Ground Four claims that trial counsel was ineffective for failing to file a motion to sever the trial from the co-defendant. Ground Seven claims that trial counsel was ineffective for failing to determine if Mr. Monay-Pina was mentally fit to understand the charges against him. Ground Eight claims that trial counsel was ineffective for failing to review video evidence and failing to make the State prove its case beyond a reasonable doubt. Ground Eleven claims that Mr. Monay-Pina's Sixth and Fourteenth

Statistically closed: USJR - CV - Other Manner of Disposition (USJROT)

Amendment rights were violated when trial counsel admitted Mr. Monay-Pina's guilt at trial. Ground Ten asserts cumulative error.

Mr. Monay-Pina presented evidence regarding these remaining grounds at the December 21, 2021 evidentiary hearing. The Court now finds as follows.

I. Factual and Procedural Background

On January 12, 2016 at 3:00 a.m., two masked men carrying guns entered a local 7-Eleven convenience store. Both masked men were dressed in dark clothing and wore dark puffy-style jackets. The masked men pointed their guns at the sole employee, Richard DeCamp, and ordered Mr. DeCamp to empty two cash registers. After taking $139.00 from the registers, the masked men fled the store.

At the time of the 7-Eleven robbery, Javier Colon was sleeping in his sister's converted garage less than a mile away from the 7-Eleven. Minutes later, two armed men opened the garage door and began attacking Mr. Colon. The attackers beat Mr. Colon with their guns. One of the attackers grabbed an axe from inside the garage. The attacker swung at Mr. Colon's head with the axe, but Mr. Colon deflected the axe with his hand. Mr. Colon's family woke because of the commotion. After seeing the two attackers, Mr. Colon's family called the police. When police cars neared the house, the attackers fled.

A responding officer found two men in the middle of a nearby backyard. Both men attempted to hide but were taken into custody. The men were later identified as Mr. Monay-Pina and Casimiro Venegas. In the backyard, police recovered: $138.00 in cash; Mr. Colon's wallet; a replica firearm; and a knife with sheath. When the men were apprehended, Mr. Monay-Pina was wearing a stocking cap on his head and a dark puffy jacket, and Mr. Venegas was wearing a black ski mask and a black puffy jacket. The men matched the description of the men who robbed the 7-Eleven.

Mr. Monay-Pina and Mr. Venegas were charged with multiple felony and gross misdemeanor counts related to the 7-Eleven robbery and the attack on Mr. Colon. Mr. Monay-Pina and Mr. Venegas were tried together in March of 2017. Thomas D. Boley, Esq. represented Mr. Monay-Pina. On March 15, 2017, the jury returned a verdict finding both men guilty on all counts. Mr. Monay-Pina subsequently appealed, asserting that the State's arguments during rebuttal closing

denied Mr. Monay-Pina the right to a fair trial. On March 28, 2019, the Nevada Supreme Court affirmed Mr. Monay-Pina's conviction.

On February 18, 2020, Mr. Monay-Pina filed his Petition for Writ of Habeas Corpus in pro per. On April 14, 2020, the State filed its Response. On April 30, 2020, this Court granted Mr. Monay-Pina's motion to appoint counsel, and denied Grounds One, Three, Five, Nine, and Ten of the Petition. The Court set the remaining claims for an evidentiary hearing.

On March 29, 2021, Mr. Monay-Pina's counsel filed a Supplemental Memorandum of Points and Authorities in Support of the Petition. On June 24, 2021, the State filed its Response. On December 21, 2021, parties appeared for the stated evidentiary hearing on the remaining claims.

II. Discussion

A. Legal Standard

A claim of ineffective assistance of counsel is analyzed under the two-part test laid out in Strickland v. Washington, 466 U.S. 668 (1984). Under Strickland, a defendant alleging ineffective assistance of counsel must show (1) that their counsel's performance was deficient, and (2) that the deficient performance prejudiced the defense. Id. at 687. The Court may consider the two test elements in any order and need not consider both prongs if the defendant makes an insufficient showing on either one. Id. at 697.

Counsel's performance is deficient when their representation amounted to incompetence under prevailing professional norms, "not whether it deviated from best practices or most common custom." Harrington v. Richter, 563 U.S. 86, 88 (2011). To find prejudice to the defense in the second half of the Strickland test, the defendant must show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

Effectiveness is presumed. The defendant must demonstrate by a preponderance of the evidence that counsel was ineffective. Means v. State, 103 P.3d 25, 32-33 (Nev. 2004). A post-conviction petition's claims of ineffective assistance of counsel must be supported with specific factual allegations which would entitle a petitioner to relief if true; "bare" or "naked" allegations are

not sufficient to show ineffectiveness of counsel. Hargrove v. State, 686 P.2d 222, 225 (Nev. 1984).

B. Mr. Monay-Pina is not entitled to relief on Grounds Two and Six (failure to hire an investigator or conduct a pre-trial investigation), Ground Four (failure to move to sever trial), Ground Seven (failure to determine competency), Ground Eight (failure to review video evidence and make the State prove its case beyond a reasonable doubt), and Ground Eleven (counsel allegedly admitting Mr. Monay-Pina's guilt at trial).

Mr. Monay-Pina argued that trial counsel was ineffective on eleven grounds. This Court previously denied five grounds, leaving six remaining grounds for determination. The Court finds that Mr. Monay-Pina is not entitled to relief on Grounds Two, Four, Six, Seven, Eight, and Eleven of the petition. Further, this Court reviews the remainder of Ground Ten (previously denied in part), and finds no error to accumulate.

1. Grounds Two and Six: Failure to hire investigator or conduct pre-trial investigation

In both Grounds Two and Six, Mr. Monay-Pina alleges trial counsel failed to hire an investigator, and failed to conduct a pre-trial investigation. Mr. Monay-Pina alleges that trial counsel did not hire an investigator, did not sufficiently investigate the matter, and that such investigation would have shown Mr. Monay-Pina had no motive to commit the crimes in question. The State asserts that evidence presented at trial identified Mr. Monay-Pina as the person who committed the crimes as alleged, and thus investigation into motive as suggested would not have changed the outcome.

The Court finds that trial counsel's performance was not deficient on these grounds because Mr. Monay-Pina has not established that hiring an investigator or otherwise investigating the suggested witness statements would have altered the outcome of the trial. Mr. Monay-Pina alleges that an investigation as suggested would have revealed "no motive for Monay-Pina," however, no sufficient facts or arguments are alleged to show the outcome of the trial would have been different here. The Court therefore denies Grounds Two and Six of Mr. Monay-Pina's petition.

2. Ground Four: Failure to move to sever the trial from co-defendant

In Ground Four, Mr. Monay-Pina argues that trial counsel was ineffective because counsel should have moved to sever from his co-defendant, and severance was warranted. The State responds that such a motion would have been futile.

A motion to sever is at a court's discretion, and should be granted "only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." Marshall v. State, 118 Nev. 642, 647 (2002). Further, an argument of antagonistic defenses is not, alone, "sufficient grounds for concluding that joinder of defendants is prejudicial." Id. at 648.

Petitioner's reliance on Chartier does not prove that severance would have been necessary here. In Chartier, the Court distinguished those facts from Marshall v. State, wherein, "because the prosecution presented ample evidence against both defendants and the State's case was not dependent upon testimony from either defendant, there was 'no indication that anything in this joint trial undermined the jury's ability to render a reliable judgment'" as to the defendant's guilt. Chartier, 124 Nev. 760, 766 (2008) (quoting Marshall v. State, 118 Nev. 642, 648 (2002)). Here, like Marshall and unlike Chartier, the State presented ample evidence against both defendants and did not rely upon testimony from either defendant. Mr. Monay-Pina's trial counsel testified at the evidentiary hearing that he believed a motion to sever would have been futile, and this Court does not find that a motion to sever would have necessarily been granted based on the standards for such a motion, in addition to the ample evidence presented against both defendants at trial.

The Court finds that Mr. Monay-Pina's trial counsel was not deficient in failing to file a motion to sever. Trial counsel cannot be deemed ineffective for failing to make futile objections, file futile motions, or for failing to make futile arguments. Ennis v. State, 137 P.3d 1095, 1103 (Nev. 2006). The Court denies Ground Four of Mr. Monay-Pina's petition.

3. Ground Seven: Failure to determine competency

In Ground Seven, Mr. Monay-Pina alleges that trial counsel failed to have Mr. Monay-Pina tested by a psychiatrist as to whether he was mentally fit to understand trial and the charges against him. Mr. Monay-Pina argues that because he was potentially facing the rest of his life in prison, a competency assessment was necessary. The State responds that no specific factual allegations pertaining to doubts of Mr. Monay-Pina's competency are alleged, nor appear in the record.

No doubts as to Mr. Monay-Pina's competency were raised at any time, and trial counsel testified that he did not have doubts as to Mr. Monay-Pina's competency. No specific facts are

alleged in support of this claim, and as such, the allegations are insufficient to show ineffectiveness of counsel. The Court denies Ground Seven of Mr. Monay-Pina's petition.

4. Ground Eight: Failure to review video evidence with Petitioner

In Ground Eight, Mr. Monay-Pina argues that trial counsel was ineffective for not reviewing video evidence prior to trial. Petitioner's Supplement states that while Mr. Monay-Pina is unaware if counsel reviewed the video, he did not review the video with Petitioner. The State responds that Mr. Monay-Pina fails to show how counsel reviewing the video evidence with him prior to trial would have changed the outcome of trial.

At the evidentiary hearing, trial counsel testified that Mr. Monay-Pina's description of events were echoed by the video evidence, and as a result, he did not review the video with Petitioner. Failing to review video surveillance which comported with the client's version of events does not meet the high burden in showing a reasonable probability that the result of the trial would have changed. The Court denies Ground Eight of Mr. Monay-Pina's petition.

5. Ground Ten Remaining Claims: Cumulative error

This Court previously denied Ground Ten in part, as it related to Mr. Monay-Pina's claim that he was entitled to two attorneys at trial. The Court now addresses the remaining claims. In Ground Ten, Mr. Monay-Pina makes several arguments. Mr. Monay-Pina argues that there was cumulative error by trial counsel, that trial counsel failed to visit Mr. Monay-Pina at the jail, and that trial counsel failed to work on a defense with Petitioner.

The Nevada Supreme Court has held that factors to consider in a cumulative error analysis are: 1) whether the issue of guilt is close; 2) the quantity and character of the error; and 3) the gravity of the crime charged. Mulder v. State, 116 Nev. 1, 17 (2000). However, for cumulative error to apply, there must be error to accumulate. Pascua v. State, 122 Nev. 1001, 1008 n.16 (2006) (rejecting the argument of cumulative error where the "errors were insignificant or nonexistent"); Talley v. State, 496 P.3d 970, 2021 WL 4853419 (Nev. 2021) (unpublished disposition). Moreover, the issue of guilt here was not close due to the evidence presented against him, and the jury quickly returned its guilty verdict against Mr. Monay-Pina; further, this Court has not found error of trial counsel to accumulate. Therefore, the Court denies the remainder of Ground Ten.

6. Ground Eleven: Counsel admitting Petitioner's guilt at trial

In Ground Eleven, Mr. Monay-Pina argues that trial counsel was ineffective because he conceded Petitioner's guilt at trial. The State argues that Mr. Monay-Pina's claim is belied by the record, as no such concession was made, and no specific facts are alleged as to where Petitioner believes such a concession was made.

A review of the record does not show that trial counsel conceded or admitted Petitioner's guilt. The allegation appears to be naked and insufficient as it pertains to showing ineffectiveness of trial counsel. The Court denies Ground Eleven of Mr. Monay-Pina's petition.

III. Conclusion

Mr. Monay-Pina's petition is denied as to all remaining Grounds. Grounds Two and Six are denied because no sufficient facts are alleged to show how an investigation as suggested would have changed the outcome here. Ground Four is denied because trial counsel cannot be deemed ineffective for failing to make futile objections, file futile motions, or for failing to make futile arguments, including a motion to sever in this matter. Ground Seven is denied because no concerns relating to Mr. Monay-Pina's competency were ever raised, and therefore his mental fitness was not in question. Ground Eight is denied because Mr. Monay-Pina fails to assert how reviewing video surveillance would have a reasonable probability of changing the outcome, as the video evidence echoed Mr. Monay-Pina's version of events to trial counsel. Ground Ten is denied because no meritorious errors are alleged. Finally, Ground Eleven is denied because the record belies that trial counsel conceded Mr. Monay-Pina's guilt.

As a result of this Order, the Status Check set for February 17 at 10:30 a.m. is VACATED.

Dated this 15th day of February, 2022

04A 13F AA85 C19D
Linda Marie Bell
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Jose Monay-Pina, Plaintiff(s)	CASE NO: A-20-810899-W
vs.	DEPT. NO. Department 7
State of Nevada, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 2/15/2022

Wesley Su	dept07lc@clarkcountycourts.us
John Niman	John.Niman@clarkcountyda.com
Karen Mishler	karen.mishler@clarkcountyda.com
Monique McNeill	monique.mcneill@yahoo.com

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 2/16/2022

Steven Wolfson	Juvenile Division - District Attorney's Office 601 N Pecos Road Las Vegas, NV, 89101

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus **COURT MINUTES** **April 14, 2020**

A-20-810899-W Jose Monay-Pina, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

April 14, 2020 **10:30 AM** **Petition for Writ of Habeas Corpus**

HEARD BY: Bell, Linda Marie **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Kimberly Estala

RECORDER: Renee Vincent

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- John Niman, Deputy District Attorney present on behalf of State.

Upon Court's inquiry, Mr. Niman advised a response was drafted and should have been filed. Court noted it does not have a response as well as the motion to appoint counsel was not calendared by Master Calendar however both will be taken into consideration in the Court ruling. COURT ORDERED, DECISION TO ISSUE. Matter set for status check however parties do not need to appear.

04/28/20 10:30 AM STATUS CHECK: DECISION

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus **COURT MINUTES** **April 28, 2020**

A-20-810899-W Jose Monay-Pina, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

April 28, 2020 **10:30 AM** **Status Check**

HEARD BY: Bell, Linda Marie **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Kimberly Estala

RECORDER: Renee Vincent

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- After review of the petition and the State s response, Mr. Monay-Pina's petition is denied in part. A written decision shall issue.

The remaining grounds of Mr. Monay-Pina's petition shall be set for an evidentiary hearing. Therefore, the Court orders the appointment of counsel for Mr. Monay-Pina.

A status check on the appointment of counsel is set for May 19, 2020, at 9:00 AM.

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	**COURT MINUTES**	**May 12, 2020**

A-20-810899-W Jose Monay-Pina, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

May 12, 2020 **10:30 AM** **Appointment of Counsel**

HEARD BY: Bell, Linda Marie **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Kimberly Estala

RECORDER: Renee Vincent

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- No parties present.

COURT ORDERED, matter CONTINUED for Mr. Hart to appear.

CONTINUED TO: 05/19/20 10:30 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	**COURT MINUTES**	**May 26, 2020**

A-20-810899-W Jose Monay-Pina, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

May 26, 2020 **10:30 AM** **Appointment of Counsel**

HEARD BY: Bell, Linda Marie **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Kimberly Estala

RECORDER: Renee Vincent

REPORTER:

PARTIES PRESENT: McNeill, Monique A. Attorney

JOURNAL ENTRIES

- Ms. McNeill CONFIRMED as counsel and requested a 90 day status check. COURT SO ORDERED.

08/25/20 10:30 AM STATUS CHECK: SET HEARING

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus **COURT MINUTES** **August 25, 2020**

A-20-810899-W Jose Monay-Pina, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

August 25, 2020 **11:00 AM** **Status Check**

HEARD BY: Bell, Linda Marie **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Kimberly Estala

RECORDER: Nancy Maldonado

REPORTER:

PARTIES PRESENT: McNeill, Monique A. Attorney

JOURNAL ENTRIES

- Ms. McNeill advised she has received the file and requested time to supplement the briefing. COURT ORDERED, matter CONTINUED.

CONTINUED TO: 11/24/20 11:30 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	**COURT MINUTES**	**December 03, 2020**

A-20-810899-W Jose Monay-Pina, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

December 03, 2020 **10:30 AM** **Status Check**

HEARD BY: Bell, Linda Marie **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Kimberly Estala

RECORDER: De'Awna Takas

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Ms. Mcneill requested a continuance as she needs more time to file her brief. COURT SO ORDERED.

CONTINUED TO: 04/01/21 10:30 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	**COURT MINUTES**	**April 07, 2021**

A-20-810899-W Jose Monay-Pina, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

April 07, 2021 **3:15 PM** **Minute Order**

HEARD BY: Bell, Linda Marie **COURTROOM:** No Location

COURT CLERK: Dauriana Simpson

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Counsel for Mr. Monay-Pina has filed a supplement to his petition. The state will have 60 days to file any response. The current status check set for April 8, 2021 will be vacated and reset for June 24, 2021 at 10:30 a.m. to ensure the state's response has been filed and to set an evidentiary hearing.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Dauriana Simpson, to all registered parties for Odyssey File and Serve. 4/7/2021/ds

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus **COURT MINUTES** **June 24, 2021**

A-20-810899-W Jose Monay-Pina, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

June 24, 2021 **10:30 AM** **Status Check**

HEARD BY: Bell, Linda Marie **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Yolanda Orpineda

RECORDER: Kimberly Estala

REPORTER:

PARTIES PRESENT: McNeill, Monique A. Attorney

JOURNAL ENTRIES

- Parties present via BlueJeans.

COURT NOTED, Mr.Turner appeared the matter. The State filed their Response this morning. COURT ORDERED, matter CONTINUED to allow Court the opportunity to review State's Response to determine what, if anything, should be set for an Evidentiary Hearing..

CONTINUED TO 07/01/21 10:30 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	**COURT MINUTES**	**July 01, 2021**

A-20-810899-W Jose Monay-Pina, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

July 01, 2021 **10:30 AM** **Status Check**

HEARD BY: Bell, Linda Marie **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Yolanda Orpineda

RECORDER: Kimberly Estala

REPORTER:

PARTIES PRESENT:
McNeill, Monique A. Attorney
Stanton, David L. Attorney

JOURNAL ENTRIES

- Counsel appeared via Bluejeans.

Ms. McNeill not present. Colloquy regarding Mr. Staton's scheduled Court appearances that morning. MATTER TRAILED

MATTER RECALLED, Ms. McNeill now present, all other parties present as before. COURT NOTED, it appears all of the Briefing has been submitted; parties need to find a date for an Evidentiary Hearing. Following colloquy regarding scheduling,
COURT ORDERED, an Evidentiary Hearing SET. Upon Court's inquiry, Ms. McNeill estimated the Hearing should take approximately 3-4 hours.

09/13/21 1:30 P.M. EVIDENTIARY HEARING...PETITION FOR WRIT OF HABEAS CORPUS

CLERK'S NOTE: Subsequent to Court, COURT ADVISED, due to transport scheduling, the hearing is RESET to 1:30 P.M. A copy of this minute order was electronically served upon the parties. // yo 07.25.21

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	**COURT MINUTES**	**January 19, 2022**

A-20-810899-W Jose Monay-Pina, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

January 19, 2022 **3:00 AM** **Minute Order**

HEARD BY: Bell, Linda Marie **COURTROOM:** Chambers

COURT CLERK:
Yolanda Orpineda

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- As a Decision and Order remains pending in this matter, the January 20, 2022 Status Check: Written Decision is RESET to February 3, 2022.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. // yo 01/19/22

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	**COURT MINUTES**	**February 02, 2022**

A-20-810899-W Jose Monay-Pina, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

February 02, 2022 **3:00 AM** **Minute Order**

HEARD BY: Bell, Linda Marie **COURTROOM:** Chambers

COURT CLERK:
Yolanda Orpineda

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- As a Decision and Order remains pending in this matter, the Status Check: Written Decision is RESET one week to February 10, 2022.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. // yo 02.02.22

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	**COURT MINUTES**	**February 10, 2022**

A-20-810899-W Jose Monay-Pina, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

February 10, 2022 **3:00 AM** **Minute Order**

HEARD BY: Bell, Linda Marie **COURTROOM:** Chambers

COURT CLERK:
Yolanda Orpineda

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- A Decision and Order is pending signature. The Status Check: Written Decision is RESET one week, to February 17, 2022 at 10:30 a.m., and will be vacated upon issuance of the Decision. No appearance will be necessary.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. // yo 02.10.22

EXHIBIT(S) LIST

Case No.: A-20-810899-W

Hearing / Trial Date: 12-21-21

Dept. No.: VII

Judge: Linda Marie Bell

Court Clerk: Yolanda Orpineda

Plaintiff: Jose Monay-Pina

Recorder / Reporter: Kimberly Estala

Counsel for Plaintiff: Monique McNeill

vs.

Defendant: State of Nevada

Counsel for Defendant: Madilyn Cole

HEARING / TRIAL BEFORE THE COURT

State **EXHIBITS**

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
1	Receipt of Copy	12-21-21	N	12-21-21

Rev. 03/2016

Certification of Copy

State of Nevada
County of Clark } **SS:**

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; APPELLANT'S REQUEST FOR TRANSCRIPT OF PROCEEDINGS; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; DECISION AND ORDER; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST

JOSE FERNANDO MONEY-PINA, Plaintiff(s), vs. STATE OF NEVADA; WARDEN HOWELL, Defendant(s),	Case No: A-20-810899-W Dept No: VII

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 1 day of March 2022.

Steven D. Grierson, Clerk of the Court

Heather Ungermann, Deputy Clerk

EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT
REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd Fl.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

March 1, 2022

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

RE: JOSE FERNANDO MONEY-PINA vs. STATE OF NEVADA; WARDEN HOWELL
D.C. CASE: A-20-810899-W

Dear Ms. Brown:

Please find enclosed a Notice of Appeal packet, filed March 1, 2022. Due to extenuating circumstances minutes from the date(s) listed below have not been included:

December 21, 2021

We do not currently have a time frame for when these minutes will be available.

If you have any questions regarding this matter, please contact me at (702) 671-0512.

Sincerely,
STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Heather Ungermann
Heather Ungermann, Deputy Clerk