

Hykeem Weldon #1104578

In Propria Personam
Post Office Box 208 S.D.C.C.
Indian Springs, Nevada 89019

1200 Prison Rd
Love Lock NV 89419

FILED

MAR - 7 2022

Electronically Filed
Mar 10 2022 08:58 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

Hykeem Weldon 1104578

Plaintiff,

vs.

The State of Nevada
Defendant.

C-17-321763-1

Case No. A-20-821331-C

Dept. No. XXIV

Docket

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN, That the Petitioner/Defendant,
Hykeem Weldon, in and through his proper person, hereby
appeals to the Supreme Court of Nevada from the ORDER denying and/or
dismissing the

Petition for Post Conviction Relief

ruled on the 4 day of Jan, 2022.

Dated this 28 day of Feb, 2022

Respectfully Submitted,

[Signature]

RECEIVED

CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAILING

I, Hakeem Weldon, hereby certify, pursuant to NRCP 5(b), that on this 28
day of feb, 2022, I mailed a true and correct copy of the foregoing, "Notice
Of Appeal/Petition for Post Conviction Relief"
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

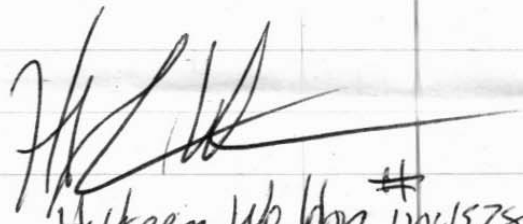
Steven D. Grierson
200 Lewis Ave 3rd floor
Las Vegas NV 89105

CC:FILE

DATED: this 28 day of feb, 2022

Hakeem Weldon #1104578
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

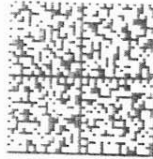
The Reason my Appeal was delayed
is because I Didn't ~~know~~ know
the results of my hearing dated Jan 4, 2022
till feb 8, 2022 see Doc. 115-~~117~~ 117
After I received said responds I
was transferred to LLCC. once I
was out of Quarantine I made copies
of the papers I needed and filed ASAP


Hykeem We Don #1101578
feb 28, 2022

STEVEN D. GRIERSON, Clerk of the Court
200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS NV 89155-1160

RETURN SERVICE REQUESTED

PRESORTED
FIRST CLASS



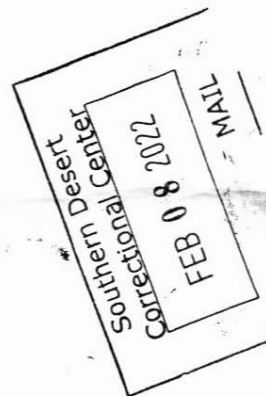
US POSTAGE
METTIE BOWEN
ZIP 89120 \$ 000.49⁴
02 4W
0000362065 FEB 03 2022

Hykeen Weldon #1104578
PO Box 208

Indian Springs, NV 89070

149 L 89070

116



117

NEVADA DEPARTMENT OF CORRECTIONS

LEGAL MAIL

NAME: WELDON, H. DOC#: 1104578 UNIT: 4C9

REPORT TO CONTROL AT ADMIN FOR THE FOLLOWING:

LEGAL MAIL: S. GRIFFIN

CERTIFIED MAIL: _____

REGISTERED MAIL: _____

DATE: _____ OFFICER: Bayan

INMATE SIGNATURE: [Signature] DOC#: 1104578 DATE: 8-8-02

A-20-821331-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

January 04, 2022

A-20-821331-C Hykeem Weldon, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

January 04, 2022 09:00 AM Petition for Writ of Habeas Corpus

HEARD BY: Ballou, Erika **COURTROOM:** RJC Courtroom 12C

COURT CLERK: Mason, Jessica

RECORDER: Schofield, Susan

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

Court noted no parties are present today and Deft. is in NDC. Court noted this request was time barred as well as the petition provide good cause or prejudice in the Court. Court gave further findings. Court ORDERED the Petition for Writ of Habeas Corpus is DENIED. Colloquy regarding if the State filed an opposition.
-State to prepare the Order.

CLERK S NOTE: This Minute Order was electronically served by Courtroom Clerk, Jessica Mason, to all registered parties for Odyssey File & Serve.//jm

Hekeem Weldon 1184578
200 Prison Rd
LCC

Love Lock NV 89419

RENO NV 895
01 MAR 2022 PM 3 T

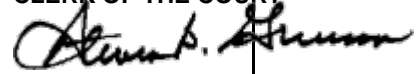


Steven D. Grier
Chief of Court
200 Lewis Ave 3rd Floor
Las Vegas NV 89155

9510136300



MAILED
MAR 01 2022
LOVELOCK CORRECTIONAL CENTER
LCC



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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 HYKEEM WELDON,

11 Plaintiff(s),

12 vs.

13 STATE OF NEVADA,

14 Defendant(s),
15

Case No: A-20-821331-C

Dept No: XXIV

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Hykeem Weldon

20 2. Judge: Erika Ballou

21 3. Appellant(s): Hykeem Weldon

22 Counsel:

23 Hykeem Weldon #1104578
24 1200 Prison Rd.
Lovelock, NV 89419

25 4. Respondent (s): State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.
Las Vegas, NV 89155-2212

- 1
2 5. Appellant(s)'s Attorney Licensed in Nevada: N/A
3 Permission Granted: N/A
4 Respondent(s)'s Attorney Licensed in Nevada: Yes
5 Permission Granted: N/A
6
7 6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No
8
9 7. Appellant Represented by Appointed Counsel On Appeal: N/A
10
11 8. Appellant Granted Leave to Proceed in Forma Pauperis**: Yes, September 20, 2020
12 **Expires 1 year from date filed (Expired)
13 Appellant Filed Application to Proceed in Forma Pauperis: No
14 Date Application(s) filed: N/A
15
16 9. Date Commenced in District Court: September 16, 2020
17
18 10. Brief Description of the Nature of the Action: Unknown
19
20 Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus
21
22 11. Previous Appeal: No
23
24 Supreme Court Docket Number(s): N/A
25
26 12. Child Custody or Visitation: N/A
27
28 13. Possibility of Settlement: Unknown

Dated This 8 day of March 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: Hykeem Weldon

Petitioner/In Propria Persona
Post Office Box 208, SDCC
Indian Springs, Nevada 89070-0208

FILED

MAR - 7 2022

Thomas A. Hoffman
CLERK OF COURT

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

Hakeem Weldon
Plaintiff,

vs.

The State of Nevada
Defendant.

C-17321763-1
CASE No. A-20-421331-C
DEPT. No. XXIV

DESIGNATION OF RECORD ON APPEAL

TO: Steven D Grice
Clerk of Court
208 Lewis Ave 3rd floor
Las Vegas NV 89155

The above-named Plaintiff hereby designates the entire record of the above-entitled case, to include all the papers, documents, pleadings, and transcripts thereof, as and for the Record on Appeal.

DATED this 28 Feb day of 28, 2022.

RESPECTFULLY SUBMITTED BY:

Hakeem Weldon # 1104578
Plaintiff/In Propria Persona

CASE SUMMARY**CASE NO. A-20-821331-C**

Hykeem Weldon, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

§
§
§
§
§

Location: **Department 24**
 Judicial Officer: **Ballou, Erika**
 Filed on: **09/16/2020**
 Case Number History:
 Cross-Reference Case Number: **A821331**

CASE INFORMATION**Statistical Closures**

02/17/2022 Motion to Dismiss by the Defendant(s)

Case Type: **Other Civil Matters**

Case Status: **02/17/2022 Dismissed**

DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number A-20-821331-C
 Court Department 24
 Date Assigned 01/04/2021
 Judicial Officer Ballou, Erika

PARTY INFORMATION

Plaintiff **Weldon, Hykeem**

Pro Se

Defendant **Nevada State of**

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

09/16/2020



Memorandum

Filed By: Plaintiff Weldon, Hykeem

[1] Memorandum of Law in Support of Petition for Post-Conviction Relief

09/16/2020



Motion

[2] Motion for Appointment of Counsel

09/16/2020



Notice

[3] Notice of Filing

09/16/2020



Petition

[4] Petition for Post Conviction Relief

09/16/2020



Application to Proceed in Forma Pauperis

Filed By: Plaintiff Weldon, Hykeem

[5] Application to Proceed in Forma Pauperis

09/20/2020



Order to Proceed In Forma Pauperis


[6] Order Granting Application to Proceed in Forma Pauperis

01/04/2021


Case Reassigned to Department 24

Judicial Reassignment to Judge Erika D. Ballou

CASE SUMMARY**CASE NO. A-20-821331-C**

05/12/2021	 Motion Filed By: Plaintiff Weldon, Hykeem <i>[7] Motion for Hearing Request</i>
05/12/2021	 Notice Filed By: Plaintiff Weldon, Hykeem <i>[8] Notice of Filing</i>
09/24/2021	 Order for Petition for Writ of Habeas Corpus <i>[9] Order For Petition For Writ Of Habeas Corpus</i>
12/10/2021	 Response <i>[10] State's Response to Petition for Post-Conviction Relief; Opposition to Motion for the Appointment of Counsel</i>
01/13/2022	 Reply Filed by: Plaintiff Weldon, Hykeem <i>[11] Petitioner's Reply to State's Response to Petition for Post Conviction</i>
02/04/2022	 Order <i>[12] Order For Transcript</i>
02/14/2022	 Recorders Transcript of Hearing <i>[13] Recorder's Transcript of Hearing Re: Petition for Writ of Habeas Corpus 01.04.22</i>
02/17/2022	 Findings of Fact, Conclusions of Law and Order <i>[14] Findings of Fact, Conclusions of Law and Order</i>
03/07/2022	 Designation of Record on Appeal <i>[15] Designation of Record on Appeal</i>
03/07/2022	 Notice of Appeal <i>[16] Notice of Appeal</i>
03/08/2022	 Notice of Entry of Findings of Fact, Conclusions of Law <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
03/08/2022	 Case Appeal Statement <i>Case Appeal Statement</i>

HEARINGS

01/04/2022	 Petition for Writ of Habeas Corpus (9:00 AM) (Judicial Officer: Ballou, Erika) Denied; Journal Entry Details: <i>Court noted no parties are present today and Deft. is in NDC. Court noted this request was time barred as well as the petition provide good cause or prejudice in the Court. Court gave further findings. Court ORDERED the Petition for Writ of Habeas Corpus is DENIED. Colloquy regarding if the State filed an opposition. -State to prepare the Order. CLERK S NOTE: This Minute Order was electronically served by Courtroom Clerk, Jessica Mason, to all registered parties for Odyssey File & Serve.//jm;</i>
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DATE

FINANCIAL INFORMATION

Plaintiff Weldon, Hykeem

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-20-821331-C

Total Charges	270.00
Total Payments and Credits	0.00
Balance Due as of 3/8/2022	270.00

DISTRICT COURT CIVIL COVER SHEET

CASE NO: A-20-821331-C
Department 23

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):

Hykeem Weldon #1104578

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

state of Nevada

P.O. BOX 650
Indian Springs NV 89070

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 Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input checked="" type="checkbox"/> Other Civil Matters

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

9/16/20

Date

Prepared by the Clerk

Signature of initiating party or representative

See other side for family-related case filings

Heather S. Lumin

CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

HYKEEM WELDON, aka,
Hykeem Tyrese Weldon, #2750525,

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-20-821331-C

C-17-321763-1

DEPT NO: XXIV

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

DATE OF HEARING: January 4, 2022

TIME OF HEARING: 9:00 AM

THIS CAUSE having come on for hearing before the Honorable Erika Ballou, District Judge, on the 4th day of January, 2022, the Petitioner being not present, not represented by counsel, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, being not present, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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//

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1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **PROCEDURAL HISTORY**

3 On December 27, 2016, The State charged Hykeem Weldon, aka Hykeem Tyrese
4 Weldon, (hereinafter "Petitioner"), with Count One – Burglary While in Possession of a
5 Firearm (Category B Felony – NRS 205.060); Count Two – Robbery With Use of a Deadly
6 Weapon, Victim 60 Years of Age or Older (Category B Felony – NRS 200.380, 193.165,
7 193.167); Count Three – Robbery With Use of a Deadly Weapon (Category B Felony – NRS
8 200.380, 193.165); Count Four – First Degree Kidnapping With Use of a Deadly Weapon,
9 Victim 60 Years of Age or Older (Category A Felony – NRS 200.310, 200.320, 193.165,
10 193.167); Count Five – First Degree Kidnapping With Use of a Deadly Weapon (Category A
11 Felony – NRS 200.310, 200.320, 193.165); Count Six – Ownership or Possession of Firearm
12 by Prohibited Person (Category B Felony – NRS 202.360).

13 On March 7, 2017, pursuant to negotiations, the State filed an Information charging
14 Petitioner with one count of Robbery (Category B felony – NRS 200.380).

15 On March 8, 2017, Petitioner pled guilty to the charge contained in the Information,
16 and a signed Guilty Plea Agreement ("GPA") was filed in open court. Pursuant to the GPA,
17 the State retained the right to argue. Petitioner stipulated to a sentence of six to fifteen years
18 in the Nevada Department of Corrections ("NDOC") if he were arrested for new felony
19 charges or failed to appear for his presentence interview or any court dates. He was released
20 on his own recognizance pending sentencing. See GPA, filed March 8, 2017, at 1.

21 On July 6, 2017, Petitioner failed to appear at his sentencing hearing and the Court
22 issued a bench warrant. He appeared pursuant to the warrant on July 25, 2017, and a new
23 sentencing date was set. On November 2, 2017, the District Court sentenced him to a minimum
24 of seventy-two months and a maximum of one hundred eighty months in the NDOC, in
25 accordance with the terms of the GPA. This sentence was suspended and Petitioner was placed
26 on probation for a period not to exceed five years. No direct appeal was taken.

27 The Division of Parole and Probation ("P&P") prepared a violation report on April 30,
28 2020, recommending Petitioner's probation be revoked based on a number of violations, most

1 notably his arrest on April 28, 2020, in Case No. 20F08394X. The charges included assault,
2 discharging a gun, and child abuse. See Violation Report, filed May 6, 2020, at 1-3. The Court
3 revoked his probation on July 30, 2020 and imposed the original sentence. Petitioner was given
4 one hundred fifty days credit for time served.

5 On August 3, 2020, an Order for Revocation of Probation and Amended Judgment of
6 Conviction was filed. On September 16, 2020, Petitioner filed the instant Petition for Post-
7 Conviction Relief, Motion for Appointment of Counsel, and Memorandum of Law in Support
8 of Petition for Post-Conviction Relief.

9 On January 4, 2022, this Court finds and concludes as follows:

10 ANALYSIS

11 This petition is time-barred, with no good cause or sufficient prejudice shown to evade
12 the mandatory procedural bars. Petitioner entered his plea intelligently, freely, and voluntarily.
13 Petitioner received the effective assistance of counsel.

14 **I. THE PETITION IS PROCEDURALLY BARRED**

15 **I. Application of the procedural bars is mandatory.**

16 The Nevada Supreme Court has held that courts have a *duty* to consider whether a
17 defendant's post-conviction petition claims are procedurally barred. State v. Eighth Judicial
18 Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The Riker Court found
19 that "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions
20 is mandatory," noting:

21 Habeas corpus petitions that are filed many years after conviction are an
22 unreasonable burden on the criminal justice system. The necessity for a
workable system dictates that there must exist a time when a criminal
conviction is final.

23 Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district court]
24 when properly raised by the State." Id. at 233, 112 P.3d at 1075. Ignoring these procedural
25 bars is an arbitrary and unreasonable exercise of discretion. Id. at 234, 112 P.3d at 1076. The
26 Nevada Supreme Court has granted no discretion to the district courts regarding whether to
27 apply the statutory procedural bars; the rules *must* be applied.
28

1 This position was reaffirmed in State v. Greene, 129 Nev. 559, 307 P.3d 322 (2013).
2 There the Court ruled that the defendant's petition was "untimely, successive, and an abuse of
3 the writ" and that the defendant failed to show good cause and actual prejudice. Id. at 324, 307
4 P.3d at 326. Accordingly, the Court reversed the district court and ordered the defendant's
5 petition dismissed pursuant to the procedural bars. Id. at 324, 307 P.3d at 322–23. The
6 procedural bars are so fundamental to the post-conviction process that they must be applied
7 by this Court even if not raised by the State. See Riker, 121 Nev. at 231, 112 P.3d at 1074.
8 Parties cannot stipulate to waive the procedural default rules. State v. Haberstroh, 119 Nev.
9 173, 180-81, 69 P.3d 676, 681-82 (2003).

10 **B. The Petition is time-barred.**

11 The Petition is time-barred pursuant to NRS 34.726(1):

12 Unless there is good cause shown for delay, a petition that challenges the
13 validity of a judgment or sentence must be filed within 1 year of the entry
14 of the judgment of conviction or, if an appeal has been taken from the
15 judgment, within 1 year after the Supreme Court issues its remittitur. For
the purposes of this subsection, good cause for delay exists if the petitioner
demonstrates to the satisfaction of the court:

- 16 (a) That the delay is not the fault of the petitioner; and
17 (b) That dismissal of the petition as untimely will unduly prejudice
the petitioner.

18 The Nevada Supreme Court has held that NRS 34.726 should be construed by its plain
19 meaning. Pellegrini v. State, 117 Nev. 860, 873–74, 34 P.3d 519, 528 (2001). As per the
20 language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from
21 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is issued.
22 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998).

23 The one-year time limit for preparing petitions for post-conviction relief under NRS
24 34.726 is strictly construed. In Gonzales v. State, the Nevada Supreme Court rejected a habeas
25 petition filed two (2) days late despite evidence presented by the defendant that he purchased
26 postage through the prison and mailed the petition within the one-year time limit. 118 Nev.
27 590, 596, 53 P.3d 901, 904 (2002). In contrast with the short amount of time to file a notice of
28 appeal, a prisoner has a full year to file a post-conviction habeas petition, so there is no

1 injustice in a strict application of NRS 34.726(1), despite any alleged difficulties with the
2 postal system. Id. at 595, 53 P.3d at 903.

3 Petitioner's Judgment of Conviction was filed on November 21, 2017. The restitution
4 amount of \$500 was fixed in the Judgment of Conviction and the Judgment of Conviction was
5 final. Petitioner had until November 21, 2018, to file a timely writ. Petitioner did not file until
6 September 16, 2020, almost two years too late.

7 To explain his delay in filing, Petitioner simply states his petition is *not* filed more than
8 a year after his Judgment of Conviction. Petition at 3. This is belied by the record, as his
9 Judgment of Conviction was filed on November 21, 2017, and his petition was filed almost
10 three years later, on September 16, 2020. Allegations that are belied and repelled by the record
11 do not suffice to entitle a Petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d
12 222, 225 (1984).

13 Petitioner points to the filing date of his Amended Judgment of Conviction, as if it
14 controls the necessary timing of his habeas petition:

15 [A] ruling was made on this case 3 years ago entering probation with a
16 suspended sentence of imprisonment of 6 to 15 years. The 6 to 15 year
17 imprisonment was entered on July 30, 2020.

18 Petition at 3. Petitioner himself recognizes that the sentence of three years ago is the same as
19 that in the Amended Judgment of Conviction, though it is no longer suspended.

20 The filing date of the Amended Judgment of Conviction does not control the timing of
21 his habeas petition, because Petitioner's claims of error do not relate to the amended portion
22 of the Judgment of Conviction. The Amended Judgment of Conviction merely parrots the
23 terms of the original Judgment of Conviction while acknowledging the sentence is no longer
24 suspended. Where a defendant is not challenging the proceedings related to an Amended
25 Judgment of Conviction, the one-year time bar runs from the date remittitur issued from the
26 affirmance of his Judgment of Conviction, or one year from entry of his original Judgment of
27 Conviction. Sullivan v. State, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

28 //

1 Absent a showing of good cause to excuse this two-year delay, this Court must deny
2 Defendant's Petition.

3 **C. Only good cause and actual prejudice can overcome the procedural bars**

4 To avoid procedural default under NRS 34.726, a defendant has the burden of pleading
5 and proving specific facts that demonstrate good cause for his failure to present his claim in
6 earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will be
7 unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a); see Hogan v. Warden, 109
8 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep't of Prisons, 104 Nev.
9 656, 659, 764 P.2d 1303, 1305 (1988). “A court *must* dismiss a habeas petition if it presents
10 claims that either were or could have been presented in an earlier proceeding, unless the court
11 finds both cause for failing to present the claims earlier or for raising them again and actual
12 prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646–47, 29 P.3d 498, 523 (2001)
13 (emphasis added).

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

24 The Nevada Supreme Court has clarified that a defendant cannot attempt to
25 manufacture good cause. See Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there
26 must be a “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251, 71
27 P.3d at 506; (quoting Colley v. State, 105 Nev. at 236, 773 P.2d at 1230). Excuses such as the
28 lack of assistance of counsel when preparing a petition, as well as the failure of trial counsel

1 to forward a copy of the file to a petitioner have been found not to constitute good cause. See
2 Phelps, 104 Nev. at 660, 764 P.2d at 1306, superseded by statute on other grounds as
3 recognized in Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145 (2004); Hood v. State,
4 111 Nev. 335, 890 P.2d 797 (1995).

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

13 To demonstrate prejudice to overcome the procedural bars, a defendant must show “not
14 merely that the errors of [the proceeding] created possibility of prejudice, but that they worked
15 to his actual and substantial disadvantage, in affecting the state proceedings with error of
16 constitutional dimensions.” Hogan v Warden, 109 Nev. at 960, 860 P.2d at 716 (internal
17 quotation omitted), Little v. Warden, 117 Nev. 845, 853, 34 P.3d 540, 545.

18 Claims that Petitioner’s counsel was ineffective or that Petitioner did not plead
19 voluntarily were reasonably available during the statutory time period for the filing of a habeas
20 petition. The Amended Judgment of Conviction cannot constitute good cause for failing to file
21 a petition on time. See Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07. This Court finds
22 Petitioner fails to demonstrate good cause.

23 **D. Petitioner fails to meet his burden to overcome the procedural bars**

24 Petitioner claims his counsel failed to ask if he wanted to file an appeal, his sentence
25 was not as he expected, his counsel was ineffective for failing to object to the sentence, and he
26 pled guilty without understanding the consequences. Petition at 2, 3-4, 6-8. Because Petitioner
27 entered his plea knowingly and voluntarily, and because he can show no good cause for his
28 //

1 delay in filing nor constitutional errors working to his actual disadvantage, his claims are
2 procedurally barred.

3 **II. PETITIONER ENTERED HIS PLEA KNOWINGLY AND VOLUNTARILY**

4 The law in Nevada establishes that a plea of guilty is presumptively valid, and the
5 burden is on a defendant to show that the plea was not voluntarily entered. Bryant, 102 Nev.
6 at 272, 721 P.2d at 368 (citing Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295
7 (1975)). Manifest injustice does not exist if the defendant entered his plea voluntarily. Baal v.
8 State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990).

9 To determine whether a guilty plea was voluntarily entered, the Court will review the
10 totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721
11 P.2d at 367. A proper plea canvass should reflect that:

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

16 Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev.
17 774, 476 P.2d 950 (1970)). The presence and advice of counsel is a significant factor in
18 determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d
19 107, 107 (1975). Petitioner is not, however, entitled to a particular relationship with counsel.
20 Morris v. Slappy, 461 U.S. 1, 13-14, 103 S. Ct. 1610, 1616 (1983).

21 This standard requires the court accepting the plea to personally address the defendant
22 at the time he enters his plea in order to determine whether he understands the nature of the
23 charges to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not
24 rely simply on a written plea agreement without some verbal interaction with a defendant. Id.
25 Thus, a “colloquy” is constitutionally mandated and a “colloquy” is but a conversation in a
26 formal setting, such as that occurring between an official sitting in judgment of an accused at
27 plea. Id. However, the court need not conduct a ritualistic oral canvass. State v. Freese, 116
28

1 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas “do not require
2 the articulation of talismanic phrases,” but only that the record demonstrates a defendant
3 entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev. 573, 575,
4 516 P.2d 1403, 1404 (1973); see also Brady v. United States, 397 U.S. 742, 747-48, 90 S. Ct.
5 1463, 1470 (1970).

6 Nevada precedent reflects “that where a guilty plea is not coerced and the defendant
7 [is] competently represented by counsel at the time it [is] entered, the subsequent conviction
8 is not open to collateral attack and any errors are superseded by the plea of guilty.” Powell v.
9 Sheriff, Clark County, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969) (citing Hall v. Warden, 83
10 Nev. 446, 434 P.2d 425 (1967)). In Woods v. State, the Nevada Supreme Court determined
11 that a defendant lacked standing to challenge the validity of a plea agreement because he had
12 “voluntarily entered into the plea agreement and accepted its attendant benefits.” 114 Nev.
13 468, 477, 958 P.2d 91, 96 (1998).

14 Further, the Nevada Supreme Court has explained:

15 [A] guilty plea represents a break in the chain of events which has preceded
16 it in the criminal process. When a criminal defendant has solemnly admitted
17 in open court that he is in fact guilty of the offense with which he is charged,
18 he may not thereafter raise independent claims relating to the deprivation of
constitutional rights that occurred prior to the entry of the guilty plea.

19 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollet v. Henderson, 411
20 U.S. 258, 267, 93 S. Ct. 1602, 1608 (1973)). Indeed, entry of a guilty plea “waive[s] all
21 constitutional claims based on events occurring prior to the entry of the plea[], except those
22 involving voluntariness of the plea[] [itself].” Lyons, 100 Nev. at 431, 683 P.2d 505; see also,
23 Kirksey, 112 Nev. at 999, 923 P.2d at 1114 (“Where the defendant has pleaded guilty, the only
24 claims that may be raised thereafter are those involving the voluntariness of the plea itself and
25 the effectiveness of counsel.”).

26 Here, the record demonstrates Petitioner entered his plea knowingly and voluntarily.
27 His GPA contained the following language:

28 //

VOLUNTARINESS OF PLEA

I have discussed the elements of all of the original charge(s) against me with my attorney and I understand the nature of the charge(s) against me.

I understand that the State would have to prove each element of the charge(s) against me at trial.

I have discussed with my attorney any possible defenses, defense strategies and circumstances which might be in my favor.

All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney.

I believe that pleading guilty and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest.

I am signing this agreement voluntarily, after consultation with my attorney, and I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.

I am not now under the influence of any intoxicating liquor, a controlled substance or other drug which would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea.

My attorney has answered all my questions regarding this guilty plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney.

GPA at 5.

By signing his GPA, Petitioner affirmed he knew the State would have to prove each element of each crime. GPA at 5. His attorney informed him of his rights, his options, and the best course of action. GPA at 5. Petitioner did not believe going to trial was in his best interest. GPA at 5. His attorney did not coerce him into signing the GPA. GPA at 5. Petitioner affirmed his counsel answered all his questions and he was satisfied with his attorney. GPA at 5.

Petitioner also made these assertions in court during the plea canvass the district court inevitably conducts when accepting a plea. The canvass requires the defendant to assert that no one could promise him "probation, leniency or any special treatment" and that the defendant understood the written plea agreement he signed. The court asks if the defendant has questions about the rights he gave up or the negotiations he undertook. The purpose of the plea canvass by the district court was to underscore Petitioner's knowledge and volition.

1 Petitioner decided, with the advice of counsel, that entering a plea was in his best
2 interest. Patton, 91 Nev. at 2, 530 P.2d at 107. He understood the nature of the charges to
3 which he pled. Bryant, 102 Nev. at 271, 721 P.2d at 367. That his plea in hindsight appears
4 unwise does not mean his counsel was ineffective at the time the plea was entered. Larson,
5 104 Nev. at 694, 766 P.2d at 263. The decision to accept the plea, knowing the potential
6 penalties that could be levied against him, belonged to Petitioner alone. Rhyne, 118 Nev. at 8,
7 38 P.3d at 163.

8 Petitioner alleges his agreed-upon sentence was for a probationable 2 to 15 years
9 sentence. Petition at 2, 3, 6. This claim is belied by the record. At his preliminary hearing,
10 Petitioner unconditionally waived his hearing so he could plead guilty in District Court. See
11 Reporter's Transcript of Waiver of Preliminary Hearing, filed November 9, 2017. Petitioner's
12 attorney outlined the deal for the court:

13 Um, the State retains the right to argue at sentencing, the State agrees to OR
14 release at entry of plea, um, and my client stipulates that if he picks up any
15 new case while he's out or if he fails to appear for his P & P interview or for
his sentencing, he stipulates to 6 to 15 in NDOC.

16 Id. at 3. This same 6-15 year stipulation was in the GPA. GPA at 1. This language was in the
17 original Judgment of Conviction, which sentenced Petitioner to a suspended sentence of
18 seventy-two to one hundred eighty months in the NDOC. This language was in the Amended
19 Judgment of Conviction, which sentenced Petitioner to seventy-two to one hundred eighty
20 months in the NDOC.

21 Petitioner's asserted 2-15 year sentence is nowhere articulated and was never
22 contemplated by the parties. Petitioner's claim that his plea is unknowing because he agreed
23 to a 2-15 year sentence is belied by the record and must be dismissed pursuant to Hargrove,
24 100 Nev. at 502, 686 P.2d at 225.

25 Petitioner claims the judge "deviated" from the agreed-upon sentence. Petition at 4. He
26 asserts the judge gave him a sentence of 6-15 years "just because" he suspended the sentence,
27 "as a consequence for granting probation." Petition at 3. The judge did deviate from the agreed-
28 upon terms of the GPA, but the deviation was in Petitioner's favor. Because Petitioner failed

1 to show up for sentencing, the plain language of the GPA stated he would *immediately* be
2 sentenced to 6-15 years in the NDOC. GPA at 1. Instead, the judge suspended this sentence
3 and allowed Petitioner to enter probation. Judgment of Conviction at 1. This deviation did not
4 prejudice Petitioner.

5 Petitioner states that if he had known the judge could impose a sentence of 6-15 years,
6 he would not have pled guilty. Petition at 4. This is belied by the record, as Petitioner signed
7 the GPA which specifically called for a sentence of 6-15 years and chose to plead guilty
8 anyway. Further, the GPA states probation is up to the discretion of the sentencing judge and
9 that Petitioner had not been promised any particular sentence. GPA at 2-3. He affirmed, "I
10 know that my sentence is to be determined by the Court within the limits prescribed by statute."
11 GPA at 3.

12 Even if Petitioner had appeared for sentencing, the State had the right to argue for any
13 legal sentence. GPA at 1. Under NRS 200.380(2), a sentence of 6-15 years is within the
14 statutory range for robbery. Since sentencing was left to the discretion of the sentencing court,
15 Petitioner could have received the sentence of 6-15 years without probation from the very
16 beginning. Instead, the court gave Petitioner probation. Judgment of Conviction at 1.

17 Petitioner violated probation only two weeks after his Judgment of Conviction was
18 filed. See Violation Report, prepared on April 30, 2020, at 2. Petitioner reported to his
19 probation officer with cocaine in his urine on December 7, 2017. Id. A couple months later,
20 he showed up with a knife. Id. at 1. The following month, he arrived at the probation office
21 with a blood alcohol level of .101. Id. In July 2018, Petitioner was cited by the police for
22 obstructing a sidewalk. Id. The following month, he was cited for driving without a license
23 and without insurance, resulting in an arrest warrant. Id. In November 2019, arrest warrants
24 were issued charging Petitioner with reckless driving, driving without a license, and driving
25 with an open container of alcohol. Id. at 2. In January 2020, the probation office cited Petitioner
26 for not living at his registered address. Id. For each violation, the probation officer chose to
27 work with Petitioner to encourage him to follow probation's rules, as well as the laws of
28 Nevada.

1 Despite these opportunities to learn from his mistakes, Petitioner was arrested on April
2 28, 2020, for six counts of assault with a deadly weapon, three counts of felony child
3 endangerment, discharging a gun, and possession of a gun by a prohibited person:

4 According to a police report of the incident, on April 26, 2020, at about 2111
5 hours, LVMPD officers responded to a residence where Mr. Weldon was
6 accused of starting an argument, pointing a firearm at people, and eventually
7 firing the gun into a wall inside the residence in close proximity to a male
8 adult and three juveniles; the youngest of which is three years old; two other
9 adults were also in the residence. According to the report, before leaving the
10 residence, Mr. Weldon stated that he would return to the residence and shoot
everybody. The report also indicates that Mr. Weldon sent a text message to
the victims advising he would be back and things would be worse.

11 Id. at 2. Petitioner has no one but himself to blame for not being on probation right now.

12 Petitioner alleges his sentence is “illegal,” but this claim is not cogent. “The sentence
13 is also illegal because the max sentence on a 2-15 year sentence is 66 to 180 months, category
14 B felony.” Petition at 4. Disregarding the fact that the parties never agreed to a 2-15 year
15 sentence, the maximum sentence for a 2-15 year term is 15 years. A party seeking review bears
16 the responsibility “to cogently argue, and present relevant authority” to support his assertions.
17 Edwards v. Emperor’s Garden Restaurant, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38
18 (2006); Dept. of Motor Vehicles and Public Safety v. Rowland, 107 Nev. 475, 479, 814 P.2d
19 80, 83 (1991) (defendant’s failure to present legal authority resulted in no reason for the district
20 court to consider defendant’s claim); Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987)
21 (an arguing party must support his arguments with relevant authority and cogent argument;
22 “issues not so presented need not be addressed”); Randall v. Salvation Army, 100 Nev. 466,
23 470-71, 686 P.2d 241, 244 (1984) (court may decline consideration of issues lacking citation
24 to relevant legal authority); Holland Livestock v. B & C Enterprises, 92 Nev. 473, 533 P.2d
25 950 (1976) (issues lacking citation to relevant legal authority do not warrant review on the
26 merits).

27 Finally, Petitioner asserts his plea was unintelligent because he did not know his
28 attorney was not going to file an appeal on her own initiative. Petition at 6. He appears to claim

1 that if he had known he would be held accountable for the agreement he entered into with the
2 State, he would not have made it. A plea agreement is a contract between parties, not a
3 placeholder to be discarded once the threat of trial has diminished. Whether Petitioner thought
4 his attorney would appeal *after* sentencing does not factor into whether his plea was knowing
5 or voluntary at the time, he entered the agreement.

6 Petitioner cites to NRS 178.556 for the proposition that he is entitled to withdraw his
7 plea and proceed to trial; however, this statute only concerns the speedy trial rights of a
8 defendant who has not pled guilty. Based on the totality of the circumstances, Petitioner's plea
9 was knowingly and voluntarily made at the time he entered it. He is not entitled to withdraw
10 his plea now just because he has to serve his agreed-upon sentence.

11 **II. PETITIONER DID NOT RECEIVE INEFFECTIVE ASSISTANCE OF** 12 **COUNSEL**

13 The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal
14 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
15 defense." The United States Supreme Court has long recognized that "the right to counsel is
16 the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686,
17 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
18 (1993).

19 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
20 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of
21 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865
22 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's
23 representation fell below an objective standard of reasonableness, and second, that but for
24 counsel's errors, there is a reasonable probability that the result of the proceedings would have
25 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison
26 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).
27 "[T]here is no reason for a court deciding an ineffective assistance claim to approach the
28 //

1 inquiry in the same order or even to address both components of the inquiry if the defendant
2 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

3 The court begins with the presumption of effectiveness and then must determine
4 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
5 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
6 does not mean errorless counsel, but rather counsel whose assistance is “[w]ithin the range of
7 competence demanded of attorneys in criminal cases.” Jackson v. Warden, 91 Nev. 430, 432,
8 537 P.2d 473, 474 (1975).

9 Counsel cannot be ineffective for failing to make futile objections or arguments. See
10 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
11 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
12 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
13 (2002).

14 The role of a court in considering allegations of ineffective assistance of counsel is “not
15 to pass upon the merits of the action not taken but to determine whether, under the particular
16 facts and circumstances of the case, trial counsel failed to render reasonably effective
17 assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). This analysis does
18 not mean that the court should “second guess reasoned choices between trial tactics nor does
19 it mean that defense counsel, to protect himself against allegations of inadequacy, must make
20 every conceivable motion no matter how remote the possibilities are of success.” Id. To be
21 effective, the constitution “does not require that counsel do what is impossible or unethical. If
22 there is no bona fide defense to the charge, counsel cannot create one and may disserve the
23 interests of his client by attempting a useless charade.” United States v. Cronin, 466 U.S. 648,
24 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

25 “There are countless ways to provide effective assistance in any given case. Even the
26 best criminal defense attorneys would not defend a particular client in the same way.”
27 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
28 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,

1 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
2 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's
3 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
4 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

5 Even if a defendant can demonstrate that his counsel's representation fell below an
6 objective standard of reasonableness, he must still demonstrate prejudice and show a
7 reasonable probability that, but for counsel's errors, the result of the trial would have been
8 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
9 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
10 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,
11 694, 104 S. Ct. at 2064-65, 2068).

12 When a conviction is the result of a guilty plea, a defendant must show that there is a
13 “reasonable probability that, but for counsel's errors, he would not have pleaded guilty and
14 would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370
15 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107
16 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

17 Ineffective assistance of counsel does not exist where a defense attorney makes “a
18 reasoned plea recommendation which hindsight reveals to be unwise” or where an attorney
19 relies “on an ultimately unsuccessful defense tactic.” Larson v. State, 104 Nev. 691, 694, 766
20 P.2d 261, 263 (1988).

21 Nevada precedent reflects “that where a guilty plea is not coerced and the defendant
22 [is] competently represented by counsel at the time it [is] entered, the subsequent conviction
23 is not open to collateral attack and any errors are superseded by the plea of guilty.” Powell v.
24 Sheriff, Clark County, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969) (citing Hall v. Warden, 83
25 Nev. 446, 434 P.2d 425 (1967)). In Woods v. State, the Nevada Supreme Court determined
26 that a defendant lacked standing to challenge the validity of a plea agreement because he had
27 “voluntarily entered into the plea agreement and accepted its attendant benefits.” 114 Nev.
28 468, 477, 958 P.2d 91, 96 (1998).

1 Further, the Nevada Supreme Court has explained:

2 [A] guilty plea represents a break in the chain of events which has
3 preceded it in the criminal process. When a criminal defendant has
4 solemnly admitted in open court that he is in fact guilty of the offense
5 with which he is charged, he may not thereafter raise independent
6 claims relating to the deprivation of constitutional rights that occurred
prior to the entry of the guilty plea.

7 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollet v. Henderson, 411
8 U.S. 258, 267, 93 S. Ct. 1602, 1608 (1973)). Indeed, entry of a guilty plea “waive[s] all
9 constitutional claims based on events occurring prior to the entry of the plea[], except those
10 involving voluntariness of the plea[] [itself].” Lyons, 100 Nev. at 431, 683 P.2d 505; see also,
11 Kirksey, 112 Nev. at 999, 923 P.2d at 1114 (“Where the defendant has pleaded guilty, the only
12 claims that may be raised thereafter are those involving the voluntariness of the plea itself and
13 the effectiveness of counsel.”).

14 To establish a claim of ineffective assistance of counsel for advice regarding a guilty
15 plea, a defendant must show “gross error on the part of counsel.” Turner v. Calderon, 281 F.3d
16 851, 880 (9th Cir. 2002). A plea of guilty is presumptively valid, particularly where it is entered
17 into on the advice of counsel, and the burden is on a defendant to show that the plea was not
18 voluntarily entered. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing
19 Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)); Jezierski v. State, 107
20 Nev. 395, 397, 812 P.2d 355, 356 (1991). Ultimately, while it is counsel’s duty to candidly
21 advise a defendant regarding a plea offer, the decision of whether or not to accept a plea offer
22 is the defendant’s. Rhyne, 118 Nev. at 8, 38 P.3d at 163.

23 A “habeas corpus petitioner must prove the disputed factual allegations underlying his
24 ineffective-assistance claim by a preponderance of the evidence.” Means, 120 Nev. at 1012,
25 103 P.3d at 33. Claims of ineffective assistance of counsel asserted in a petition for post-
26 conviction relief must be supported with specific factual allegations, which if true, would
27 entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. “Bare” and “naked”
28 allegations are not sufficient, nor are those belied and repelled by the record. Id. “[Petitioner]

1 must allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific
2 facts rather than just conclusions may cause your petition to be dismissed.” NRS 34.735(6).

3 Petitioner alleges his counsel was ineffective for allowing him to accept an illegal
4 sentence. As his sentence was not only legal, but agreed-upon, counsel cannot be deemed
5 ineffective for failing to object to it. Ennis, 122 Nev. at 706, 137 P.3d at 1103.

6 Petitioner also alleges his counsel was ineffective for failing to file an appeal without
7 being asked. Petition at 2. He complains his “attorney never asked Petitioner if he wanted to
8 appeal and the attorney denied Petitioner effective assistance of counsel by not filing a notice
9 of appeal.” Id.

10 “The burden is on the client to indicate to his attorney that he wishes to pursue an
11 appeal.” Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999). Counsel is only obligated
12 to file a notice of appeal or to consult with a defendant regarding filing a notice of appeal in
13 certain circumstances. Toston v. State, 127 Nev. 971, 267 P.3d 795 (2011). “[T]rial counsel
14 has a constitutional duty to file a direct appeal in two circumstances: when requested to do so
15 and when the defendant expresses dissatisfaction with his conviction, and that the failure to do
16 so in those circumstances is deficient for purposes of proving ineffective assistance of
17 counsel.” Id. at 977, 267 P.3d at 800

18 Counsel has no constitutional obligation to inform or consult with a defendant regarding
19 his right to a direct appeal when the defendant is convicted pursuant to a guilty plea. Id. Rather,
20 the duty arises “only when the defendant inquires about the right to appeal or in circumstances
21 where the defendant may benefit from receiving advice about the right to a direct appeal, ‘such
22 as the existence of a direct appeal claim that has reasonable likelihood of success.’ Id. (quoting
23 Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999)).

24 Courts should consider “all the information counsel knew or should have known” and
25 focus on the totality of the circumstances. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct.
26 1029, 1036 (2000). Importantly, whether the defendant’s conviction followed a guilty plea is
27 highly relevant to the inquiry “both because a guilty plea reduces the scope of potentially
28 appealable issues and because such a plea may indicate that the defendant seeks an end to

1 judicial proceedings.” Id. Thus, when a defendant who pled guilty claims, he was deprived of
2 the right to appeal, “the court must consider such factors as whether the defendant received
3 the sentence bargained for as part of the plea and whether the plea expressly reserved or waived
4 some or all appeal rights.” Id.

5 The United States Supreme Court requires courts to review three factors when
6 determining whether a defendant was deprived of his right to an appeal: whether the defendant
7 asked counsel to file an appeal; whether the conviction was the result of a trial or a guilty plea;
8 and whether the defendant had any non-frivolous issues to raise on appeal. Roe v. Ortega, 528
9 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000).

10 The GPA expressly waived appellate rights. In signing the Guilty Plea Agreement
11 (“GPA”), Petitioner confirmed he understood the rights he waived:

12 WAIVER OF RIGHTS

13 By entering my plea of guilty, I understand that I am waiving and *forever*
14 *giving up* the following rights and privileges:

- 15 1. The constitutional privilege against self-incrimination, including the right
16 to refuse to testify at trial, in which event the prosecution would not be
allowed to comment to the jury about my refusal to testify.
- 17 2. The constitutional *right to a speedy and public trial* by an impartial jury,
18 free of excessive pretrial publicity prejudicial to the defense, at which
trial I would be entitled to the assistance of an attorney, either appointed
19 or retained. At trial *the State would bear the burden* of proving beyond a
reasonable doubt each element of the offense(s) charged.
- 20 3. The constitutional right to confront and cross-examine any witnesses who
21 would testify against me.
- 22 4. The constitutional right to subpoena witnesses to testify on my behalf.
- 23 5. The constitutional right to testify in my own defense.

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1 6. *The right to appeal the conviction* with the assistance of an attorney,
2 either appointed or retained, *unless specifically reserved in writing* and
3 agreed upon as provided in NRS 174.035(3). I understand this means *I*
4 *am unconditionally waiving my right to a direct appeal* of this conviction,
5 including any challenge based upon reasonable constitutional,
6 jurisdictional, or other grounds that challenge the legality of the
7 proceedings as stated in NRS 177.015(4). However, I remain free to
8 challenge my conviction through other post-conviction remedies
9 including a habeas corpus petition pursuant to NRS Chapter 34.

10 GPA at 4 (emphasis added). Petitioner expressly waived his appeal rights and his counsel was
11 fully aware of this waiver.

12 Petitioner has provided no evidence he requested his attorney to file an appeal. Ford v.
13 Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995) (“The burden of production lies with
14 the petitioner in petitions for writ of habeas corpus”) (citing NRS 34.370(4)). As such, his
15 claim is a bare allegation suitable only for summary dismissal. Hargrove, 100 Nev. at 502, 686
16 P.2d at 225.

17 Petitioner received the benefit he bargained for. Despite the State having the right to
18 argue sentence, despite failing to appear for sentencing, and despite his numerous probation
19 violations, Petitioner is only serving 6-15 years, just as outlined in his GPA.

20 Petitioner has sat on his appellate rights for years. Since his Judgment of Conviction
21 was filed in 2017, it should have been obvious before now that his attorney did not appeal. His
22 habeas petition, let alone a direct appeal, is time-barred with no good cause shown for the
23 delay. Petitioner did not raise any issue in the Petition until after his probation was revoked
24 and he had to begin serving his sentence. Moreover, Petitioner cannot demonstrate prejudice,
25 as his individual contentions are without merit. His counsel was not ineffective for failing to
26 appeal when Petitioner received a legal, asked-for sentence.

27 **V. PETITIONER IS NOT ENTITLED TO APPOINTED COUNSEL**

28 Petitioner asks for appointed counsel, not to assist him with his habeas claims, but to
29 represent him at the speedy jury trial within sixty days he demands this Court award him. See

30 //

1 Motion for Appointment of Counsel. He further claims counsel is needed as he is serving an
2 illegal sentence. Id.

3 Under the United States Constitution, the Sixth Amendment provides no right to
4 counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S.Ct.
5 2546, 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the
6 Nevada Supreme Court similarly observed, “[t]he Nevada Constitution...does not guarantee a
7 right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right
8 to counsel provision as being coextensive with the Sixth Amendment to the United States
9 Constitution.” McKague specifically held that, with the exception of NRS 34.820(1)(a)
10 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
11 “any constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at
12 164, 912 P.2d at 258.

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

16 The Court has discretion in determining whether to appoint counsel. NRS 34.750 reads:

17 A petition may allege that the Defendant is unable to pay the costs of the
18 proceedings or employ counsel. If the court is satisfied that the allegation of
19 indigency is true and the petition is not dismissed summarily, the court may
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:

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

22 Recently, the Nevada Supreme Court examined whether a district court appropriately
23 denied a defendant’s request for appointment of counsel based upon the factors listed in NRS
24 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In Renteria-Novoa, the
25 petitioner had been serving a prison term of eighty-five (85) years to life. Id. at 75, 391 P.3d
26 at 760. After his judgment of conviction was affirmed on direct appeal, the petitioner filed a
27 pro se habeas corpus petition and requested counsel be appointed. Id. The district court
28 ultimately denied both the petition and the request for appointment of counsel. Id. In reviewing

1 the district court's decision, the Renteria-Novoa Court examined the NRS 34.750 factors and
2 concluded the district court's decision should be reversed and remanded. Id. The Court
3 explained the petitioner was indigent, his petition could not be summarily dismissed, and he
4 had, in fact, satisfied the statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor,
5 the Court concluded that because petitioner represented, he had issues with understanding the
6 English language—which was corroborated by his use of an interpreter at his trial—that was
7 enough to indicate the petitioner could not comprehend the proceedings. Id. Moreover, the
8 petitioner had demonstrated that the consequences he faced—a minimum eighty-five (85) year
9 sentence—were severe and his petition may have been the only vehicle for which he could
10 raise his claims. Id. at 76-77, 391 P.3d at 761-62. Finally, the petitioner's ineffective assistance
11 of counsel claims may have required additional discovery and investigation beyond the record.
12 Id.

13 Petitioner has not demonstrated counsel should be appointed, as he fails to meet *any* of
14 the additional statutory factors under NRS 34.750. The issues raised by Petitioner are not
15 difficult: he simply wants a better deal than the one he negotiated. NRS 34.750(a). Petitioner
16 is able to comprehend the proceedings. NRS 34.750(b). He has not argued he has difficulties
17 with the English language, unlike the petitioner in Renteria-Novoa. 133 Nev. at 76, 391 P.3d
18 at 760-61. Petitioner has not alleged further discovery is necessary. NRS 34.750(c). Since
19 habeas relief is procedurally barred, there is no need for additional discovery, let alone
20 counsel's assistance to conduct such investigation.

21 Appointing counsel to represent Petitioner at a trial within sixty days is premature. This
22 can wait until a court determines Petitioner is actually privileged to cast his plea bargain aside
23 now that he has had to start serving his sentence. Further, this is not the type of legal assistance
24 authorized under NRS 34.750. Because the statutory factors and the Renteria-Novoa analysis
25 weigh *against* the discretionary appointment of counsel, Petitioner is not entitled to the
26 appointment of counsel.

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FURTHER, IT IS HEREBY ORDERED that the Motion for Appointment of Counsel shall be, and it is, hereby denied.

DATED this day of February, 2022.

Dated this 17th day of February, 2022

Enikő Balázs

DISTRICT JUDGE

F89 352 EF9F 4E45
Erika Ballou
District Court Judge

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

BY

KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730

CERTIFICATE OF SERVICE

I certify that on the 16th day of February, 2022, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

HYKEEM TYRESE WELDON, BAC #1104578
LOVELOCK CORRECTIONAL CENTER
1200 PRISON ROAD
LOVELOCK, NV 89419

BY


Secretary for the District Attorney's Office

16F21196X/sr/KM/ckb/L3

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Hykeem Weldon, Plaintiff(s)

CASE NO: A-20-821331-C

7 vs.

DEPT. NO. Department 24

8 Nevada State of, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

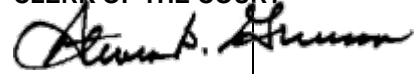
14 Service Date: 2/17/2022

15 D A motions@clarkcountyda.com

16 AG 1 rgarate@ag.nv.gov

17 AG 2 aherr@ag.nv.gov

18 AG AG wiznetfilings@ag.nv.gov
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1 NEFF

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

4
5 HYKEEM WELDON,

6 Petitioner,

7 vs.

8 STATE OF NEVADA,

9 Respondent,

Case No: A-20-821331-C

Dept No: XXIV

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

11 **PLEASE TAKE NOTICE** that on February 17, 2022, the court entered a decision or order in this matter,
12 a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed
to you. This notice was mailed on March 8, 2022.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Heather Ungermann

17 Heather Ungermann, Deputy Clerk

18
19 **CERTIFICATE OF E-SERVICE / MAILING**

20 I hereby certify that on this 8 day of March 2022, I served a copy of this Notice of Entry on the following:

21 ☒ By e-mail:

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

23
24 ☒ The United States mail addressed as follows:

25 Hykeem Weldon # 1104578
1200 Prison Rd.
26 Lovelock, NV 89419

27 /s/ Heather Ungermann

28 Heather Ungermann, Deputy Clerk

Heather S. Lumin

CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

HYKEEM WELDON, aka,
Hykeem Tyrese Weldon, #2750525,

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-20-821331-C

C-17-321763-1

DEPT NO: XXIV

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: January 4, 2022

TIME OF HEARING: 9:00 AM

THIS CAUSE having come on for hearing before the Honorable Erika Ballou, District Judge, on the 4th day of January, 2022, the Petitioner being not present, not represented by counsel, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, being not present, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **PROCEDURAL HISTORY**

3 On December 27, 2016, The State charged Hykeem Weldon, aka Hykeem Tyrese
4 Weldon, (hereinafter "Petitioner"), with Count One – Burglary While in Possession of a
5 Firearm (Category B Felony – NRS 205.060); Count Two – Robbery With Use of a Deadly
6 Weapon, Victim 60 Years of Age or Older (Category B Felony – NRS 200.380, 193.165,
7 193.167); Count Three – Robbery With Use of a Deadly Weapon (Category B Felony – NRS
8 200.380, 193.165); Count Four – First Degree Kidnapping With Use of a Deadly Weapon,
9 Victim 60 Years of Age or Older (Category A Felony – NRS 200.310, 200.320, 193.165,
10 193.167); Count Five – First Degree Kidnapping With Use of a Deadly Weapon (Category A
11 Felony – NRS 200.310, 200.320, 193.165); Count Six – Ownership or Possession of Firearm
12 by Prohibited Person (Category B Felony – NRS 202.360).

13 On March 7, 2017, pursuant to negotiations, the State filed an Information charging
14 Petitioner with one count of Robbery (Category B felony – NRS 200.380).

15 On March 8, 2017, Petitioner pled guilty to the charge contained in the Information,
16 and a signed Guilty Plea Agreement ("GPA") was filed in open court. Pursuant to the GPA,
17 the State retained the right to argue. Petitioner stipulated to a sentence of six to fifteen years
18 in the Nevada Department of Corrections ("NDOC") if he were arrested for new felony
19 charges or failed to appear for his presentence interview or any court dates. He was released
20 on his own recognizance pending sentencing. See GPA, filed March 8, 2017, at 1.

21 On July 6, 2017, Petitioner failed to appear at his sentencing hearing and the Court
22 issued a bench warrant. He appeared pursuant to the warrant on July 25, 2017, and a new
23 sentencing date was set. On November 2, 2017, the District Court sentenced him to a minimum
24 of seventy-two months and a maximum of one hundred eighty months in the NDOC, in
25 accordance with the terms of the GPA. This sentence was suspended and Petitioner was placed
26 on probation for a period not to exceed five years. No direct appeal was taken.

27 The Division of Parole and Probation ("P&P") prepared a violation report on April 30,
28 2020, recommending Petitioner's probation be revoked based on a number of violations, most

1 notably his arrest on April 28, 2020, in Case No. 20F08394X. The charges included assault,
2 discharging a gun, and child abuse. See Violation Report, filed May 6, 2020, at 1-3. The Court
3 revoked his probation on July 30, 2020 and imposed the original sentence. Petitioner was given
4 one hundred fifty days credit for time served.

5 On August 3, 2020, an Order for Revocation of Probation and Amended Judgment of
6 Conviction was filed. On September 16, 2020, Petitioner filed the instant Petition for Post-
7 Conviction Relief, Motion for Appointment of Counsel, and Memorandum of Law in Support
8 of Petition for Post-Conviction Relief.

9 On January 4, 2022, this Court finds and concludes as follows:

10 ANALYSIS

11 This petition is time-barred, with no good cause or sufficient prejudice shown to evade
12 the mandatory procedural bars. Petitioner entered his plea intelligently, freely, and voluntarily.
13 Petitioner received the effective assistance of counsel.

14 **I. THE PETITION IS PROCEDURALLY BARRED**

15 **I. Application of the procedural bars is mandatory.**

16 The Nevada Supreme Court has held that courts have a *duty* to consider whether a
17 defendant's post-conviction petition claims are procedurally barred. State v. Eighth Judicial
18 Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The Riker Court found
19 that "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions
20 is mandatory," noting:

21 Habeas corpus petitions that are filed many years after conviction are an
22 unreasonable burden on the criminal justice system. The necessity for a
workable system dictates that there must exist a time when a criminal
conviction is final.

23 Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district court]
24 when properly raised by the State." Id. at 233, 112 P.3d at 1075. Ignoring these procedural
25 bars is an arbitrary and unreasonable exercise of discretion. Id. at 234, 112 P.3d at 1076. The
26 Nevada Supreme Court has granted no discretion to the district courts regarding whether to
27 apply the statutory procedural bars; the rules *must* be applied.
28

1 This position was reaffirmed in State v. Greene, 129 Nev. 559, 307 P.3d 322 (2013).
2 There the Court ruled that the defendant's petition was "untimely, successive, and an abuse of
3 the writ" and that the defendant failed to show good cause and actual prejudice. Id. at 324, 307
4 P.3d at 326. Accordingly, the Court reversed the district court and ordered the defendant's
5 petition dismissed pursuant to the procedural bars. Id. at 324, 307 P.3d at 322–23. The
6 procedural bars are so fundamental to the post-conviction process that they must be applied
7 by this Court even if not raised by the State. See Riker, 121 Nev. at 231, 112 P.3d at 1074.
8 Parties cannot stipulate to waive the procedural default rules. State v. Haberstroh, 119 Nev.
9 173, 180-81, 69 P.3d 676, 681-82 (2003).

10 **B. The Petition is time-barred.**

11 The Petition is time-barred pursuant to NRS 34.726(1):

12 Unless there is good cause shown for delay, a petition that challenges the
13 validity of a judgment or sentence must be filed within 1 year of the entry
14 of the judgment of conviction or, if an appeal has been taken from the
15 judgment, within 1 year after the Supreme Court issues its remittitur. For
the purposes of this subsection, good cause for delay exists if the petitioner
demonstrates to the satisfaction of the court:

- 16 (a) That the delay is not the fault of the petitioner; and
17 (b) That dismissal of the petition as untimely will unduly prejudice
the petitioner.

18 The Nevada Supreme Court has held that NRS 34.726 should be construed by its plain
19 meaning. Pellegrini v. State, 117 Nev. 860, 873–74, 34 P.3d 519, 528 (2001). As per the
20 language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from
21 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is issued.
22 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998).

23 The one-year time limit for preparing petitions for post-conviction relief under NRS
24 34.726 is strictly construed. In Gonzales v. State, the Nevada Supreme Court rejected a habeas
25 petition filed two (2) days late despite evidence presented by the defendant that he purchased
26 postage through the prison and mailed the petition within the one-year time limit. 118 Nev.
27 590, 596, 53 P.3d 901, 904 (2002). In contrast with the short amount of time to file a notice of
28 appeal, a prisoner has a full year to file a post-conviction habeas petition, so there is no

1 injustice in a strict application of NRS 34.726(1), despite any alleged difficulties with the
2 postal system. Id. at 595, 53 P.3d at 903.

3 Petitioner's Judgment of Conviction was filed on November 21, 2017. The restitution
4 amount of \$500 was fixed in the Judgment of Conviction and the Judgment of Conviction was
5 final. Petitioner had until November 21, 2018, to file a timely writ. Petitioner did not file until
6 September 16, 2020, almost two years too late.

7 To explain his delay in filing, Petitioner simply states his petition is *not* filed more than
8 a year after his Judgment of Conviction. Petition at 3. This is belied by the record, as his
9 Judgment of Conviction was filed on November 21, 2017, and his petition was filed almost
10 three years later, on September 16, 2020. Allegations that are belied and repelled by the record
11 do not suffice to entitle a Petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d
12 222, 225 (1984).

13 Petitioner points to the filing date of his Amended Judgment of Conviction, as if it
14 controls the necessary timing of his habeas petition:

15 [A] ruling was made on this case 3 years ago entering probation with a
16 suspended sentence of imprisonment of 6 to 15 years. The 6 to 15 year
17 imprisonment was entered on July 30, 2020.

18 Petition at 3. Petitioner himself recognizes that the sentence of three years ago is the same as
19 that in the Amended Judgment of Conviction, though it is no longer suspended.

20 The filing date of the Amended Judgment of Conviction does not control the timing of
21 his habeas petition, because Petitioner's claims of error do not relate to the amended portion
22 of the Judgment of Conviction. The Amended Judgment of Conviction merely parrots the
23 terms of the original Judgment of Conviction while acknowledging the sentence is no longer
24 suspended. Where a defendant is not challenging the proceedings related to an Amended
25 Judgment of Conviction, the one-year time bar runs from the date remittitur issued from the
26 affirmance of his Judgment of Conviction, or one year from entry of his original Judgment of
27 Conviction. Sullivan v. State, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

28 //

1 Absent a showing of good cause to excuse this two-year delay, this Court must deny
2 Defendant's Petition.

3 **C. Only good cause and actual prejudice can overcome the procedural bars**

4 To avoid procedural default under NRS 34.726, a defendant has the burden of pleading
5 and proving specific facts that demonstrate good cause for his failure to present his claim in
6 earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will be
7 unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a); see Hogan v. Warden, 109
8 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep't of Prisons, 104 Nev.
9 656, 659, 764 P.2d 1303, 1305 (1988). "A court *must* dismiss a habeas petition if it presents
10 claims that either were or could have been presented in an earlier proceeding, unless the court
11 finds both cause for failing to present the claims earlier or for raising them again and actual
12 prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646–47, 29 P.3d 498, 523 (2001)
13 (emphasis added).

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

24 The Nevada Supreme Court has clarified that a defendant cannot attempt to
25 manufacture good cause. See Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there
26 must be a "substantial reason; one that affords a legal excuse." Hathaway, 119 Nev. at 251, 71
27 P.3d at 506; (quoting Colley v. State, 105 Nev. at 236, 773 P.2d at 1230). Excuses such as the
28 lack of assistance of counsel when preparing a petition, as well as the failure of trial counsel

1 to forward a copy of the file to a petitioner have been found not to constitute good cause. See
2 Phelps, 104 Nev. at 660, 764 P.2d at 1306, superseded by statute on other grounds as
3 recognized in Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145 (2004); Hood v. State,
4 111 Nev. 335, 890 P.2d 797 (1995).

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

13 To demonstrate prejudice to overcome the procedural bars, a defendant must show “not
14 merely that the errors of [the proceeding] created possibility of prejudice, but that they worked
15 to his actual and substantial disadvantage, in affecting the state proceedings with error of
16 constitutional dimensions.” Hogan v Warden, 109 Nev. at 960, 860 P.2d at 716 (internal
17 quotation omitted), Little v. Warden, 117 Nev. 845, 853, 34 P.3d 540, 545.

18 Claims that Petitioner’s counsel was ineffective or that Petitioner did not plead
19 voluntarily were reasonably available during the statutory time period for the filing of a habeas
20 petition. The Amended Judgment of Conviction cannot constitute good cause for failing to file
21 a petition on time. See Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07. This Court finds
22 Petitioner fails to demonstrate good cause.

23 **D. Petitioner fails to meet his burden to overcome the procedural bars**

24 Petitioner claims his counsel failed to ask if he wanted to file an appeal, his sentence
25 was not as he expected, his counsel was ineffective for failing to object to the sentence, and he
26 pled guilty without understanding the consequences. Petition at 2, 3-4, 6-8. Because Petitioner
27 entered his plea knowingly and voluntarily, and because he can show no good cause for his
28 //

1 delay in filing nor constitutional errors working to his actual disadvantage, his claims are
2 procedurally barred.

3 **II. PETITIONER ENTERED HIS PLEA KNOWINGLY AND VOLUNTARILY**

4 The law in Nevada establishes that a plea of guilty is presumptively valid, and the
5 burden is on a defendant to show that the plea was not voluntarily entered. Bryant, 102 Nev.
6 at 272, 721 P.2d at 368 (citing Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295
7 (1975)). Manifest injustice does not exist if the defendant entered his plea voluntarily. Baal v.
8 State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990).

9 To determine whether a guilty plea was voluntarily entered, the Court will review the
10 totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721
11 P.2d at 367. A proper plea canvass should reflect that:

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

16 Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev.
17 774, 476 P.2d 950 (1970)). The presence and advice of counsel is a significant factor in
18 determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d
19 107, 107 (1975). Petitioner is not, however, entitled to a particular relationship with counsel.
20 Morris v. Slappy, 461 U.S. 1, 13-14, 103 S. Ct. 1610, 1616 (1983).

21 This standard requires the court accepting the plea to personally address the defendant
22 at the time he enters his plea in order to determine whether he understands the nature of the
23 charges to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not
24 rely simply on a written plea agreement without some verbal interaction with a defendant. Id.
25 Thus, a “colloquy” is constitutionally mandated and a “colloquy” is but a conversation in a
26 formal setting, such as that occurring between an official sitting in judgment of an accused at
27 plea. Id. However, the court need not conduct a ritualistic oral canvass. State v. Freese, 116
28

1 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas “do not require
2 the articulation of talismanic phrases,” but only that the record demonstrates a defendant
3 entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev. 573, 575,
4 516 P.2d 1403, 1404 (1973); see also Brady v. United States, 397 U.S. 742, 747-48, 90 S. Ct.
5 1463, 1470 (1970).

6 Nevada precedent reflects “that where a guilty plea is not coerced and the defendant
7 [is] competently represented by counsel at the time it [is] entered, the subsequent conviction
8 is not open to collateral attack and any errors are superseded by the plea of guilty.” Powell v.
9 Sheriff, Clark County, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969) (citing Hall v. Warden, 83
10 Nev. 446, 434 P.2d 425 (1967)). In Woods v. State, the Nevada Supreme Court determined
11 that a defendant lacked standing to challenge the validity of a plea agreement because he had
12 “voluntarily entered into the plea agreement and accepted its attendant benefits.” 114 Nev.
13 468, 477, 958 P.2d 91, 96 (1998).

14 Further, the Nevada Supreme Court has explained:

15 [A] guilty plea represents a break in the chain of events which has preceded
16 it in the criminal process. When a criminal defendant has solemnly admitted
17 in open court that he is in fact guilty of the offense with which he is charged,
18 he may not thereafter raise independent claims relating to the deprivation of
constitutional rights that occurred prior to the entry of the guilty plea.

19 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollet v. Henderson, 411
20 U.S. 258, 267, 93 S. Ct. 1602, 1608 (1973)). Indeed, entry of a guilty plea “waive[s] all
21 constitutional claims based on events occurring prior to the entry of the plea[], except those
22 involving voluntariness of the plea[] [itself].” Lyons, 100 Nev. at 431, 683 P.2d 505; see also,
23 Kirksey, 112 Nev. at 999, 923 P.2d at 1114 (“Where the defendant has pleaded guilty, the only
24 claims that may be raised thereafter are those involving the voluntariness of the plea itself and
25 the effectiveness of counsel.”).

26 Here, the record demonstrates Petitioner entered his plea knowingly and voluntarily.
27 His GPA contained the following language:

28 //

VOLUNTARINESS OF PLEA

I have discussed the elements of all of the original charge(s) against me with my attorney and I understand the nature of the charge(s) against me.

I understand that the State would have to prove each element of the charge(s) against me at trial.

I have discussed with my attorney any possible defenses, defense strategies and circumstances which might be in my favor.

All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney.

I believe that pleading guilty and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest.

I am signing this agreement voluntarily, after consultation with my attorney, and I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.

I am not now under the influence of any intoxicating liquor, a controlled substance or other drug which would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea.

My attorney has answered all my questions regarding this guilty plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney.

GPA at 5.

By signing his GPA, Petitioner affirmed he knew the State would have to prove each element of each crime. GPA at 5. His attorney informed him of his rights, his options, and the best course of action. GPA at 5. Petitioner did not believe going to trial was in his best interest. GPA at 5. His attorney did not coerce him into signing the GPA. GPA at 5. Petitioner affirmed his counsel answered all his questions and he was satisfied with his attorney. GPA at 5.

Petitioner also made these assertions in court during the plea canvass the district court inevitably conducts when accepting a plea. The canvass requires the defendant to assert that no one could promise him "probation, leniency or any special treatment" and that the defendant understood the written plea agreement he signed. The court asks if the defendant has questions about the rights he gave up or the negotiations he undertook. The purpose of the plea canvass by the district court was to underscore Petitioner's knowledge and volition.

1 Petitioner decided, with the advice of counsel, that entering a plea was in his best
2 interest. Patton, 91 Nev. at 2, 530 P.2d at 107. He understood the nature of the charges to
3 which he pled. Bryant, 102 Nev. at 271, 721 P.2d at 367. That his plea in hindsight appears
4 unwise does not mean his counsel was ineffective at the time the plea was entered. Larson,
5 104 Nev. at 694, 766 P.2d at 263. The decision to accept the plea, knowing the potential
6 penalties that could be levied against him, belonged to Petitioner alone. Rhyne, 118 Nev. at 8,
7 38 P.3d at 163.

8 Petitioner alleges his agreed-upon sentence was for a probationable 2 to 15 years
9 sentence. Petition at 2, 3, 6. This claim is belied by the record. At his preliminary hearing,
10 Petitioner unconditionally waived his hearing so he could plead guilty in District Court. See
11 Reporter's Transcript of Waiver of Preliminary Hearing, filed November 9, 2017. Petitioner's
12 attorney outlined the deal for the court:

13 Um, the State retains the right to argue at sentencing, the State agrees to OR
14 release at entry of plea, um, and my client stipulates that if he picks up any
15 new case while he's out or if he fails to appear for his P & P interview or for
his sentencing, he stipulates to 6 to 15 in NDOC.

16 Id. at 3. This same 6-15 year stipulation was in the GPA. GPA at 1. This language was in the
17 original Judgment of Conviction, which sentenced Petitioner to a suspended sentence of
18 seventy-two to one hundred eighty months in the NDOC. This language was in the Amended
19 Judgment of Conviction, which sentenced Petitioner to seventy-two to one hundred eighty
20 months in the NDOC.

21 Petitioner's asserted 2-15 year sentence is nowhere articulated and was never
22 contemplated by the parties. Petitioner's claim that his plea is unknowing because he agreed
23 to a 2-15 year sentence is belied by the record and must be dismissed pursuant to Hargrove,
24 100 Nev. at 502, 686 P.2d at 225.

25 Petitioner claims the judge "deviated" from the agreed-upon sentence. Petition at 4. He
26 asserts the judge gave him a sentence of 6-15 years "just because" he suspended the sentence,
27 "as a consequence for granting probation." Petition at 3. The judge did deviate from the agreed-
28 upon terms of the GPA, but the deviation was in Petitioner's favor. Because Petitioner failed

1 to show up for sentencing, the plain language of the GPA stated he would *immediately* be
2 sentenced to 6-15 years in the NDOC. GPA at 1. Instead, the judge suspended this sentence
3 and allowed Petitioner to enter probation. Judgment of Conviction at 1. This deviation did not
4 prejudice Petitioner.

5 Petitioner states that if he had known the judge could impose a sentence of 6-15 years,
6 he would not have pled guilty. Petition at 4. This is belied by the record, as Petitioner signed
7 the GPA which specifically called for a sentence of 6-15 years and chose to plead guilty
8 anyway. Further, the GPA states probation is up to the discretion of the sentencing judge and
9 that Petitioner had not been promised any particular sentence. GPA at 2-3. He affirmed, "I
10 know that my sentence is to be determined by the Court within the limits prescribed by statute."
11 GPA at 3.

12 Even if Petitioner had appeared for sentencing, the State had the right to argue for any
13 legal sentence. GPA at 1. Under NRS 200.380(2), a sentence of 6-15 years is within the
14 statutory range for robbery. Since sentencing was left to the discretion of the sentencing court,
15 Petitioner could have received the sentence of 6-15 years without probation from the very
16 beginning. Instead, the court gave Petitioner probation. Judgment of Conviction at 1.

17 Petitioner violated probation only two weeks after his Judgment of Conviction was
18 filed. See Violation Report, prepared on April 30, 2020, at 2. Petitioner reported to his
19 probation officer with cocaine in his urine on December 7, 2017. Id. A couple months later,
20 he showed up with a knife. Id. at 1. The following month, he arrived at the probation office
21 with a blood alcohol level of .101. Id. In July 2018, Petitioner was cited by the police for
22 obstructing a sidewalk. Id. The following month, he was cited for driving without a license
23 and without insurance, resulting in an arrest warrant. Id. In November 2019, arrest warrants
24 were issued charging Petitioner with reckless driving, driving without a license, and driving
25 with an open container of alcohol. Id. at 2. In January 2020, the probation office cited Petitioner
26 for not living at his registered address. Id. For each violation, the probation officer chose to
27 work with Petitioner to encourage him to follow probation's rules, as well as the laws of
28 Nevada.

1 Despite these opportunities to learn from his mistakes, Petitioner was arrested on April
2 28, 2020, for six counts of assault with a deadly weapon, three counts of felony child
3 endangerment, discharging a gun, and possession of a gun by a prohibited person:

4 According to a police report of the incident, on April 26, 2020, at about 2111
5 hours, LVMPD officers responded to a residence where Mr. Weldon was
6 accused of starting an argument, pointing a firearm at people, and eventually
7 firing the gun into a wall inside the residence in close proximity to a male
8 adult and three juveniles; the youngest of which is three years old; two other
9 adults were also in the residence. According to the report, before leaving the
10 residence, Mr. Weldon stated that he would return to the residence and shoot
everybody. The report also indicates that Mr. Weldon sent a text message to
the victims advising he would be back and things would be worse.

11 Id. at 2. Petitioner has no one but himself to blame for not being on probation right now.

12 Petitioner alleges his sentence is “illegal,” but this claim is not cogent. “The sentence
13 is also illegal because the max sentence on a 2-15 year sentence is 66 to 180 months, category
14 B felony.” Petition at 4. Disregarding the fact that the parties never agreed to a 2-15 year
15 sentence, the maximum sentence for a 2-15 year term is 15 years. A party seeking review bears
16 the responsibility “to cogently argue, and present relevant authority” to support his assertions.
17 Edwards v. Emperor’s Garden Restaurant, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38
18 (2006); Dept. of Motor Vehicles and Public Safety v. Rowland, 107 Nev. 475, 479, 814 P.2d
19 80, 83 (1991) (defendant’s failure to present legal authority resulted in no reason for the district
20 court to consider defendant’s claim); Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987)
21 (an arguing party must support his arguments with relevant authority and cogent argument;
22 “issues not so presented need not be addressed”); Randall v. Salvation Army, 100 Nev. 466,
23 470-71, 686 P.2d 241, 244 (1984) (court may decline consideration of issues lacking citation
24 to relevant legal authority); Holland Livestock v. B & C Enterprises, 92 Nev. 473, 533 P.2d
25 950 (1976) (issues lacking citation to relevant legal authority do not warrant review on the
26 merits).

27 Finally, Petitioner asserts his plea was unintelligent because he did not know his
28 attorney was not going to file an appeal on her own initiative. Petition at 6. He appears to claim

1 that if he had known he would be held accountable for the agreement he entered into with the
2 State, he would not have made it. A plea agreement is a contract between parties, not a
3 placeholder to be discarded once the threat of trial has diminished. Whether Petitioner thought
4 his attorney would appeal *after* sentencing does not factor into whether his plea was knowing
5 or voluntary at the time, he entered the agreement.

6 Petitioner cites to NRS 178.556 for the proposition that he is entitled to withdraw his
7 plea and proceed to trial; however, this statute only concerns the speedy trial rights of a
8 defendant who has not pled guilty. Based on the totality of the circumstances, Petitioner's plea
9 was knowingly and voluntarily made at the time he entered it. He is not entitled to withdraw
10 his plea now just because he has to serve his agreed-upon sentence.

11 **II. PETITIONER DID NOT RECEIVE INEFFECTIVE ASSISTANCE OF** 12 **COUNSEL**

13 The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal
14 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
15 defense." The United States Supreme Court has long recognized that "the right to counsel is
16 the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686,
17 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
18 (1993).

19 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
20 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of
21 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865
22 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's
23 representation fell below an objective standard of reasonableness, and second, that but for
24 counsel's errors, there is a reasonable probability that the result of the proceedings would have
25 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison
26 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).
27 "[T]here is no reason for a court deciding an ineffective assistance claim to approach the
28 //

1 inquiry in the same order or even to address both components of the inquiry if the defendant
2 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

3 The court begins with the presumption of effectiveness and then must determine
4 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
5 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
6 does not mean errorless counsel, but rather counsel whose assistance is “[w]ithin the range of
7 competence demanded of attorneys in criminal cases.” Jackson v. Warden, 91 Nev. 430, 432,
8 537 P.2d 473, 474 (1975).

9 Counsel cannot be ineffective for failing to make futile objections or arguments. See
10 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
11 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
12 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
13 (2002).

14 The role of a court in considering allegations of ineffective assistance of counsel is “not
15 to pass upon the merits of the action not taken but to determine whether, under the particular
16 facts and circumstances of the case, trial counsel failed to render reasonably effective
17 assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). This analysis does
18 not mean that the court should “second guess reasoned choices between trial tactics nor does
19 it mean that defense counsel, to protect himself against allegations of inadequacy, must make
20 every conceivable motion no matter how remote the possibilities are of success.” Id. To be
21 effective, the constitution “does not require that counsel do what is impossible or unethical. If
22 there is no bona fide defense to the charge, counsel cannot create one and may disserve the
23 interests of his client by attempting a useless charade.” United States v. Cronin, 466 U.S. 648,
24 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

25 “There are countless ways to provide effective assistance in any given case. Even the
26 best criminal defense attorneys would not defend a particular client in the same way.”
27 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
28 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,

1 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
2 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's
3 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
4 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

5 Even if a defendant can demonstrate that his counsel's representation fell below an
6 objective standard of reasonableness, he must still demonstrate prejudice and show a
7 reasonable probability that, but for counsel's errors, the result of the trial would have been
8 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
9 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
10 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,
11 694, 104 S. Ct. at 2064-65, 2068).

12 When a conviction is the result of a guilty plea, a defendant must show that there is a
13 “reasonable probability that, but for counsel's errors, he would not have pleaded guilty and
14 would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370
15 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107
16 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

17 Ineffective assistance of counsel does not exist where a defense attorney makes “a
18 reasoned plea recommendation which hindsight reveals to be unwise” or where an attorney
19 relies “on an ultimately unsuccessful defense tactic.” Larson v. State, 104 Nev. 691, 694, 766
20 P.2d 261, 263 (1988).

21 Nevada precedent reflects “that where a guilty plea is not coerced and the defendant
22 [is] competently represented by counsel at the time it [is] entered, the subsequent conviction
23 is not open to collateral attack and any errors are superseded by the plea of guilty.” Powell v.
24 Sheriff, Clark County, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969) (citing Hall v. Warden, 83
25 Nev. 446, 434 P.2d 425 (1967)). In Woods v. State, the Nevada Supreme Court determined
26 that a defendant lacked standing to challenge the validity of a plea agreement because he had
27 “voluntarily entered into the plea agreement and accepted its attendant benefits.” 114 Nev.
28 468, 477, 958 P.2d 91, 96 (1998).

1 Further, the Nevada Supreme Court has explained:

2 [A] guilty plea represents a break in the chain of events which has
3 preceded it in the criminal process. When a criminal defendant has
4 solemnly admitted in open court that he is in fact guilty of the offense
5 with which he is charged, he may not thereafter raise independent
6 claims relating to the deprivation of constitutional rights that occurred
7 prior to the entry of the guilty plea.

8 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollet v. Henderson, 411
9 U.S. 258, 267, 93 S. Ct. 1602, 1608 (1973)). Indeed, entry of a guilty plea “waive[s] all
10 constitutional claims based on events occurring prior to the entry of the plea[], except those
11 involving voluntariness of the plea[] [itself].” Lyons, 100 Nev. at 431, 683 P.2d 505; see also,
12 Kirksey, 112 Nev. at 999, 923 P.2d at 1114 (“Where the defendant has pleaded guilty, the only
13 claims that may be raised thereafter are those involving the voluntariness of the plea itself and
14 the effectiveness of counsel.”).

15 To establish a claim of ineffective assistance of counsel for advice regarding a guilty
16 plea, a defendant must show “gross error on the part of counsel.” Turner v. Calderon, 281 F.3d
17 851, 880 (9th Cir. 2002). A plea of guilty is presumptively valid, particularly where it is entered
18 into on the advice of counsel, and the burden is on a defendant to show that the plea was not
19 voluntarily entered. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing
20 Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)); Jezierski v. State, 107
21 Nev. 395, 397, 812 P.2d 355, 356 (1991). Ultimately, while it is counsel’s duty to candidly
22 advise a defendant regarding a plea offer, the decision of whether or not to accept a plea offer
23 is the defendant’s. Rhyne, 118 Nev. at 8, 38 P.3d at 163.

24 A “habeas corpus petitioner must prove the disputed factual allegations underlying his
25 ineffective-assistance claim by a preponderance of the evidence.” Means, 120 Nev. at 1012,
26 103 P.3d at 33. Claims of ineffective assistance of counsel asserted in a petition for post-
27 conviction relief must be supported with specific factual allegations, which if true, would
28 entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. “Bare” and “naked”
allegations are not sufficient, nor are those belied and repelled by the record. Id. “[Petitioner]

1 must allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific
2 facts rather than just conclusions may cause your petition to be dismissed.” NRS 34.735(6).

3 Petitioner alleges his counsel was ineffective for allowing him to accept an illegal
4 sentence. As his sentence was not only legal, but agreed-upon, counsel cannot be deemed
5 ineffective for failing to object to it. Ennis, 122 Nev. at 706, 137 P.3d at 1103.

6 Petitioner also alleges his counsel was ineffective for failing to file an appeal without
7 being asked. Petition at 2. He complains his “attorney never asked Petitioner if he wanted to
8 appeal and the attorney denied Petitioner effective assistance of counsel by not filing a notice
9 of appeal.” Id.

10 “The burden is on the client to indicate to his attorney that he wishes to pursue an
11 appeal.” Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999). Counsel is only obligated
12 to file a notice of appeal or to consult with a defendant regarding filing a notice of appeal in
13 certain circumstances. Toston v. State, 127 Nev. 971, 267 P.3d 795 (2011). “[T]rial counsel
14 has a constitutional duty to file a direct appeal in two circumstances: when requested to do so
15 and when the defendant expresses dissatisfaction with his conviction, and that the failure to do
16 so in those circumstances is deficient for purposes of proving ineffective assistance of
17 counsel.” Id. at 977, 267 P.3d at 800

18 Counsel has no constitutional obligation to inform or consult with a defendant regarding
19 his right to a direct appeal when the defendant is convicted pursuant to a guilty plea. Id. Rather,
20 the duty arises “only when the defendant inquires about the right to appeal or in circumstances
21 where the defendant may benefit from receiving advice about the right to a direct appeal, ‘such
22 as the existence of a direct appeal claim that has reasonable likelihood of success.’ Id. (quoting
23 Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999)).

24 Courts should consider “all the information counsel knew or should have known” and
25 focus on the totality of the circumstances. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct.
26 1029, 1036 (2000). Importantly, whether the defendant’s conviction followed a guilty plea is
27 highly relevant to the inquiry “both because a guilty plea reduces the scope of potentially
28 appealable issues and because such a plea may indicate that the defendant seeks an end to

1 judicial proceedings.” Id. Thus, when a defendant who pled guilty claims, he was deprived of
2 the right to appeal, “the court must consider such factors as whether the defendant received
3 the sentence bargained for as part of the plea and whether the plea expressly reserved or waived
4 some or all appeal rights.” Id.

5 The United States Supreme Court requires courts to review three factors when
6 determining whether a defendant was deprived of his right to an appeal: whether the defendant
7 asked counsel to file an appeal; whether the conviction was the result of a trial or a guilty plea;
8 and whether the defendant had any non-frivolous issues to raise on appeal. Roe v. Ortega, 528
9 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000).

10 The GPA expressly waived appellate rights. In signing the Guilty Plea Agreement
11 (“GPA”), Petitioner confirmed he understood the rights he waived:

12 WAIVER OF RIGHTS

13 By entering my plea of guilty, I understand that I am waiving and *forever*
14 *giving up* the following rights and privileges:

- 15 1. The constitutional privilege against self-incrimination, including the right
16 to refuse to testify at trial, in which event the prosecution would not be
allowed to comment to the jury about my refusal to testify.
- 17 2. The constitutional *right to a speedy and public trial* by an impartial jury,
18 free of excessive pretrial publicity prejudicial to the defense, at which
trial I would be entitled to the assistance of an attorney, either appointed
19 or retained. At trial *the State would bear the burden* of proving beyond a
reasonable doubt each element of the offense(s) charged.
- 20 3. The constitutional right to confront and cross-examine any witnesses who
21 would testify against me.
- 22 4. The constitutional right to subpoena witnesses to testify on my behalf.
- 23 5. The constitutional right to testify in my own defense.

24 //

25 //

26 //

27 //

28 //

1 6. *The right to appeal the conviction* with the assistance of an attorney,
2 either appointed or retained, *unless specifically reserved in writing* and
3 agreed upon as provided in NRS 174.035(3). I understand this means *I*
4 *am unconditionally waiving my right to a direct appeal* of this conviction,
5 including any challenge based upon reasonable constitutional,
6 jurisdictional, or other grounds that challenge the legality of the
7 proceedings as stated in NRS 177.015(4). However, I remain free to
8 challenge my conviction through other post-conviction remedies
9 including a habeas corpus petition pursuant to NRS Chapter 34.

10 GPA at 4 (emphasis added). Petitioner expressly waived his appeal rights and his counsel was
11 fully aware of this waiver.

12 Petitioner has provided no evidence he requested his attorney to file an appeal. Ford v.
13 Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995) (“The burden of production lies with
14 the petitioner in petitions for writ of habeas corpus”) (citing NRS 34.370(4)). As such, his
15 claim is a bare allegation suitable only for summary dismissal. Hargrove, 100 Nev. at 502, 686
16 P.2d at 225.

17 Petitioner received the benefit he bargained for. Despite the State having the right to
18 argue sentence, despite failing to appear for sentencing, and despite his numerous probation
19 violations, Petitioner is only serving 6-15 years, just as outlined in his GPA.

20 Petitioner has sat on his appellate rights for years. Since his Judgment of Conviction
21 was filed in 2017, it should have been obvious before now that his attorney did not appeal. His
22 habeas petition, let alone a direct appeal, is time-barred with no good cause shown for the
23 delay. Petitioner did not raise any issue in the Petition until after his probation was revoked
24 and he had to begin serving his sentence. Moreover, Petitioner cannot demonstrate prejudice,
25 as his individual contentions are without merit. His counsel was not ineffective for failing to
26 appeal when Petitioner received a legal, asked-for sentence.

27 **V. PETITIONER IS NOT ENTITLED TO APPOINTED COUNSEL**

28 Petitioner asks for appointed counsel, not to assist him with his habeas claims, but to
29 represent him at the speedy jury trial within sixty days he demands this Court award him. See

30 //

1 Motion for Appointment of Counsel. He further claims counsel is needed as he is serving an
2 illegal sentence. Id.

3 Under the United States Constitution, the Sixth Amendment provides no right to
4 counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S.Ct.
5 2546, 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the
6 Nevada Supreme Court similarly observed, “[t]he Nevada Constitution...does not guarantee a
7 right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right
8 to counsel provision as being coextensive with the Sixth Amendment to the United States
9 Constitution.” McKague specifically held that, with the exception of NRS 34.820(1)(a)
10 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
11 “any constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at
12 164, 912 P.2d at 258.

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

16 The Court has discretion in determining whether to appoint counsel. NRS 34.750 reads:

17 A petition may allege that the Defendant is unable to pay the costs of the
18 proceedings or employ counsel. If the court is satisfied that the allegation of
19 indigency is true and the petition is not dismissed summarily, the court may
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:

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

22 Recently, the Nevada Supreme Court examined whether a district court appropriately
23 denied a defendant’s request for appointment of counsel based upon the factors listed in NRS
24 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In Renteria-Novoa, the
25 petitioner had been serving a prison term of eighty-five (85) years to life. Id. at 75, 391 P.3d
26 at 760. After his judgment of conviction was affirmed on direct appeal, the petitioner filed a
27 pro se habeas corpus petition and requested counsel be appointed. Id. The district court
28 ultimately denied both the petition and the request for appointment of counsel. Id. In reviewing

1 the district court's decision, the Renteria-Novoa Court examined the NRS 34.750 factors and
2 concluded the district court's decision should be reversed and remanded. Id. The Court
3 explained the petitioner was indigent, his petition could not be summarily dismissed, and he
4 had, in fact, satisfied the statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor,
5 the Court concluded that because petitioner represented, he had issues with understanding the
6 English language—which was corroborated by his use of an interpreter at his trial—that was
7 enough to indicate the petitioner could not comprehend the proceedings. Id. Moreover, the
8 petitioner had demonstrated that the consequences he faced—a minimum eighty-five (85) year
9 sentence—were severe and his petition may have been the only vehicle for which he could
10 raise his claims. Id. at 76-77, 391 P.3d at 761-62. Finally, the petitioner's ineffective assistance
11 of counsel claims may have required additional discovery and investigation beyond the record.
12 Id.

13 Petitioner has not demonstrated counsel should be appointed, as he fails to meet *any* of
14 the additional statutory factors under NRS 34.750. The issues raised by Petitioner are not
15 difficult: he simply wants a better deal than the one he negotiated. NRS 34.750(a). Petitioner
16 is able to comprehend the proceedings. NRS 34.750(b). He has not argued he has difficulties
17 with the English language, unlike the petitioner in Renteria-Novoa. 133 Nev. at 76, 391 P.3d
18 at 760-61. Petitioner has not alleged further discovery is necessary. NRS 34.750(c). Since
19 habeas relief is procedurally barred, there is no need for additional discovery, let alone
20 counsel's assistance to conduct such investigation.

21 Appointing counsel to represent Petitioner at a trial within sixty days is premature. This
22 can wait until a court determines Petitioner is actually privileged to cast his plea bargain aside
23 now that he has had to start serving his sentence. Further, this is not the type of legal assistance
24 authorized under NRS 34.750. Because the statutory factors and the Renteria-Novoa analysis
25 weigh *against* the discretionary appointment of counsel, Petitioner is not entitled to the
26 appointment of counsel.

27 //

28 //

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief
3 shall be, and it is, hereby denied,

4 FURTHER, IT IS HEREBY ORDERED that the Motion for Appointment of Counsel
5 shall be, and it is, hereby denied.

6 DATED this ____ day of February, 2022.

7 Dated this 17th day of February, 2022

8 

9 DISTRICT JUDGE

F89 352 EF9F 4E45
Erika Ballou
District Court Judge

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

12 BY

13 
14 KAREN MISHLER
15 Chief Deputy District Attorney
16 Nevada Bar #013730

17 **CERTIFICATE OF SERVICE**

18 I certify that on the 16th day of February, 2022, I mailed a copy of the foregoing
19 proposed Findings of Fact, Conclusions of Law, and Order to:

20 HYKEEM TYRESE WELDON, BAC #1104578
21 LOVELOCK CORRECTIONAL CENTER
22 1200 PRISON ROAD
LOVELOCK, NV 89419

23 BY

24 
25 Secretary for the District Attorney's Office

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 Hykeem Weldon, Plaintiff(s)

CASE NO: A-20-821331-C

7 vs.

DEPT. NO. Department 24

8 Nevada State of, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 2/17/2022

15 D A motions@clarkcountyda.com

16 AG 1 rgarate@ag.nv.gov

17 AG 2 aherr@ag.nv.gov

18 AG AG wiznetfilings@ag.nv.gov
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Other Civil Matters

COURT MINUTES

January 04, 2022

A-20-821331-C Hykeem Weldon, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

January 04, 2022 09:00 AM Petition for Writ of Habeas Corpus

HEARD BY: Ballou, Erika COURTROOM: RJC Courtroom 12C

COURT CLERK: Mason, Jessica

RECORDER: Schofield, Susan

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

Court noted no parties are present today and Deft. is in NDC. Court noted this request was time barred as well as the petition provide good cause or prejudice in the Court. Court gave further findings. Court ORDERED the Petition for Writ of Habeas Corpus is DENIED. Colloquy regarding if the State filed an opposition.

-State to prepare the Order.

CLERK S NOTE: This Minute Order was electronically served by Courtroom Clerk, Jessica Mason, to all registered parties for Odyssey File & Serve.//jm

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; DESIGNATION OF RECORD ON APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT MINUTES

HYKEEM WELDON,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

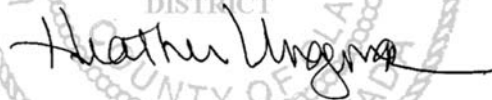
Case No: A-20-821331-C

Dept No: XXIV

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 8 day of March 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

