

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Mar 22 2022 02:44 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

HYKEEM TYRESE WELDON,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: A-20-821331-C

Docket No: 84351

RECORD ON APPEAL

ATTORNEY FOR APPELLANT
HYKEEM WELDON #1104578,
PROPER PERSON
P.O. BOX 208
INDIAN SPRINGS, NV 89070

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

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

I N D E X

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A-20-821331-C

Hykeem Weldon, Plaintiff(s)

vs.

Nevada State of, Defendant(s)

I N D E X

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44

Steven D. Grierson

1 Mr. Hykeem Weldon #1104578
2 HDSP PO Box 650
3 Las Vegas, NV 89070

4 Eighth Judicial District Court CASE NO: A-20-821331-C
5 CLARK County, Nevada Department 23

6 Mr. Hykeem Weldon
7 Petitioner

8 vs.

CASE NUMBER

9 The State of Nevada
10 Respondent.

11 Memorandum of LAW In Support of
12 Petition For Post-Conviction Relief

13 Now come Petitioner, MR. Hykeem Weldon, in support
14 of his Petition For Post-Conviction Relief stating the following
15 below:

16 A.
17 Facts

18 1.) In January of 2017, Petitioner Hykeem Weldon
19 was ARREST AT home and charged with Robbery And A bunch
20 of OTHER CHARGES under case number C-17-321736-1.

21 2.) On November 02, 2017 Petitioner was sentenced to
22 Probation Not to Exceed 5 years, 180 months AS A MAXIMUM
23 suspended sentence and 72 months AS A Minimum suspended
24 sentence. And Petitioner Attorney Ms. Melissa Oliver did not
25 object knowing the original PLEA Negotiation was for the
26 minimum suspended sentence of 24 months And A
27 MAXIMUM suspended 180 months.

28 3.) Petitioner Weldon unintelligently PLEA Guilty Not
knowing his Attorney was Not going to Appeal the Judges
sentence of 180 months MAXIMUM and A 72 month Minimum
And he was Not AWARE that his Attorney was not going to
Appeal the suspended sentence OR Move to Modify the
sentence to see if she could get the Judge to Reduce the
72 months to 24 months. Sentence is illegal Because on A
2-15 month Category "B" Felony the MAX is 66 to 180 months.

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4

1 4.) Had Petitioner been properly advised as to the
2 consequences of pleading guilty and that the judge could
3 sentence petitioner to 72 months as a minimum and not
4 24 months as a minimum. Petitioner would have not accepted
5 the plea and demanded trial. Sentence is illegal.

6 5.) Petitioner would feel that pursuant to NRS 176.165
7 he should be allowed to withdraw his guilty plea and
8 proceed to a 60-day speedy trial pursuant to NRS 178.556
9 because he was denied effective assistance of counsel in
10 violation of the 6th Amendment of the United States con-
11 stitution and Article 1, section 8 of Nevada constitution.

12 B.
13 PLEA WAS NOT KNOWINGLY MADE WITH
14 THE KNOWLEDGE OF THE CONSEQUENCES
15 RESULTING IN INEFFECTIVE ASSISTANCE OF
16 COUNSEL

17 6.) Petitioner agreed to plead guilty to a minimum
18 sentence of 24 months and a maximum sentence of 180
19 months as a suspended sentence. That was what he
20 understood at the time. And counsel failure to advocate
21 this cause after petitioner was sentenced denied him
22 effective assistance of counsel. And should therefore be
23 allowed to withdraw his guilty plea pursuant to NRS
24 178.556. On a 2 to 15 category "B" felony max is 66 to 180 months.

25 7.) According to Strickland v. Washington, 466 U.S. 668,
26 104 S.Ct. 2052, 80 Fed. 2d 674, 694 (1984) the United States Supreme
27 Court said:

28 "Representation of a criminal defendant
entails certain basic duties. Counsel's function
is to assist the defendant, and hence counsel
owes the client a duty of loyalty, a duty to
avoid conflicts of interest. From counsel's
function as assistant to the defendant
derives the overarching duty to advocate
the defendant's cause and the more particular
duties to consult with the defendant on
important decisions and to keep the defendant
informed of important developments in
the course of the prosecution. Counsel
also has a duty to bring to bear such skill
and knowledge as will render the trial
a reliable adversarial testing process."

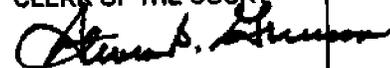
1 8.) The guidelines for voluntariness of Guilty Pleas
2 Require that the record affirmatively show that the defendant
3 entered his Guilty Plea understanding and voluntarily, Heffley
4 V. Warden, 89 Nev. 573, 574, 516 P.2d 1403, 1404 (1973). A
5 knowing Plea is one entered into with a full understanding
of the nature of the charge and all the consequences of the Plea.
Boykin V. ALABAMA 395 U.S. 238 (1969)

6 9.) Petitioner Weldon has a Sixth Amendment Constitutional
7 Right to effective assistance of counsel at all stages of his
8 criminal process as also guaranteed under Article 1, section
9 B of Nevada Constitution. And it is mandated by Article 6,
10 clause 2 of the United States Constitution that state courts
cannot refuse to apply Federal Law, Printz v. United States
11 521 U.S. 898, 117 S.Ct. 2365, 138 L.Ed.2d 914 (1997).

11 10.) If Petitioner Weldon was denied effective assistance
12 of counsel at the Plea Agreement in violation of his 6th
13 Amendment Rights, this court must allow Petitioner an
14 opportunity to withdraw his Plea pursuant to NRS 196.165
OR modify his sentence from a minimum of 72 months to
A minimum of 24 months. Sentence is illegal.

15 Wherefore, Petitioner Pray this court modify his
16 minimum sentence from 72 months to 24 months. OR
17 Allow him to withdraw his Guilty Plea, and set a date
for trial. (speedy trial) (sentence is illegal)

18 Respectfully Submitted
19 
20 _____
Petitioner Signature



1 NOW
2 JONELL THOMAS
3 SPECIAL PUBLIC DEFENDER
4 Nevada Bar #4771
5 MELISSA E. OLIVER ESQ.
6 Chief Deputy Special Public Defender
7 Nevada Bar #11232
8 330 So. Third Street, Suite #800
9 Las Vegas, Nevada 89155
10 (702) 455-6265
11 FAX: (702) 455-6273
12 EMAIL: melissa.oliver@clarkcountynv.gov
13 Attorneys for Hykeem Tyrese Weldon

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff

CASE NO. C-17-321763-1
DEPT. NO. 20

12 vs.

13 HYKEEM TYRESE WELDON,
14 Defendant.

15
16 NOTICE OF WITHDRAWAL OF COUNSEL

17 Pursuant to Nevada Supreme Court Rule 46, the Clark County Special Public
18 Defender's Office, by and through JoNell Thomas, Special Public Defender, and MELISSA E.
19 OLIVER ESQ., Chief Deputy Special Public Defender, hereby withdraws as attorneys of record
20 for HYKEEM TYRESE WELDON, the final determination or judgment having been made in
21 this matter. Judgment of Conviction amended on August 3, 2020 and the case closed.

22 DATED this 17th day of August, 2020.

23
24 Respectfully submitted by:

25 JoNELL THOMAS
26 SPECIAL PUBLIC DEFENDER
27 /s/ Melissa E. Oliver

28 By _____
MELISSA E. OLIVER ESQ.
Chief Deputy Special Public Defender
Attorneys for Hykeem Tyrese Weldon

Steven D. Grierson

Hykeem Weldon # 1104578
H.D.S.P
Po Box 650
LAS Vegas, NV 89070

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

Eighth Judicial District Court
CLARK County, Nevada

Hykeem Weldon
Petitioner

CASE NUMBER

State of Nevada
Respondent

Motion For Appointment of Counsel

Now come Petitioner, Hykeem Weldon, pursuant to NRS 171.188 moving this court for an order appointing him counsel on his Post-conviction Petition. And in support Petitioner states the following below:

1.) Petitioner is indigent and cannot afford to pay and hire an attorney, and petitioner is incarcerated serving an illegal sentence.

2.) Petitioner is looking to withdraw his plea and will need counsel to help him proceed to a 60-day speedy trial with a jury.

Wherefore, petitioner pray this court appoint him counsel.

Respectfully Submitted

Hykeem Weldon
Petitioner

 9-17-20
Date

MR. Hykeem Weldon
CLARK County Detention Center
330 S. Casino Center Blvd
LAS VEGAS, NEVADA 89101

#Steven D. Grierson
CLERK OF COURT

[Handwritten signature]

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9-7-20
DATE

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

CLERK of COURT
To: Steven D. GRIERSON
Eighth Judicial District Court
200 Lewis Avenue/3rd Floor
LAS VEGAS, NEVADA 89155
(702) 671-4554

CASE Number

NOTICE OF FILING

DEAR CLERK OF COURT

PLEASE Find the original and ~~two~~ copy of A
Petition FOR Post-Conviction Relief. PLEASE send me A
copy BACK showing me you stamped it AS received.
Thank You.

Respectfully submitted
[Handwritten signature]
PETITIONER

RECEIVED
SEP 14 2020
CLERK OF THE COURT

sf

Steven D. Grierson

1 Mr. Hykeem Weldon # 1104578
2 HDSP PO Box 650
3 LAS Vegas, NV 89070

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

4 Eighth Judicial District Court
5 CLARK County, Nevada

6 Mr. Hykeem Weldon
7 Petitioner,

8 vs.

CASE Number

9
10 State of Nevada
11 Respondent.

12 Petition For Post-Conviction Relief

13 Now come petitioner, Hykeem Weldon, Pursuant to
14 the Post Conviction Relief Act under NRS 34.720 to NRS 34.830
15 Moving this Court For Post-conviction Relief For the following
REASON Below:

16 1.) NAME OF Institution in which you ARE imprisoned
17 High Desert State Prison .

18 2.) NAME AND location of Court that entered the Judgment
19 of Conviction: Eighth Judicial District Court
20 200 LEWIS AVENUE / 3rd Floor
LAS VEGAS, Nevada 89155

21 3.) Date of Judgment of conviction: July 30, 2020

22 4.) CASE Number: C-17-321736-1

23 A.) Length of Sentence: 72 Months to 180 months

24 5.) ARE You Presently serving A sentence For A conviction
25 other than the conviction under Attack in this Petition?
26 NO . If Yes... whats the new CASE NO. _____

27
28 Pg. 1 of 8

1 6) NATURE OF OFFENSE involved in conviction being
2 challenged: Petitioner was charged with Robbery
3 PURSUANT to NRS 200.380(1)(A)

4 7.) WHAT WAS YOUR PLEA?

5 A.) Guilty

6
7 8.) IF YOU ENTERED A GUILTY PLEA, WHAT WAS THE
8 NEGOTIATED PLEA?

9 The Agreement WAS THAT IF PETITIONER
10 PLEAD GUILTY TO ROBBERY THE STATE
11 AGREED TO PETITIONER RECEIVING A
12 2 TO 15 PROBATIONABLE. BUT WHEN
13 PETITIONER WENT FOR SENTENCING IN FRONT
14 OF JUDGE ERIC JOHNSON, PETITIONER WAS
15 SENTENCED TO PROBATION NOT TO EXCEED 5
16 YEARS AND A SUSPENDED 6 TO 15 YEARS
17 AND NOT A SUSPENDED 2 TO 15 YEARS AS
18 AGREED UPON BY THE STATE AND PETITIONER.

19 9.) IF YOU DID NOT APPEAL FROM THE JUDGMENT
20 OF CONVICTION AND SENTENCE, EXPLAIN BRIEFLY WHY YOU
21 DID NOT:

22 Petitioner Attorney NEVER ASKED PETITIONER
23 ~~WHETHER~~ IF HE WANTED TO APPEAL AND THE
24 ATTORNEY DENIED PETITIONER EFFECTIVE
25 ASSISTANCE OF COUNSEL BY NOT FILING A
26 NOTICE OF APPEAL WHEN THE JUDGE GAVE
27 PETITIONER A SUSPENDED 6 TO 15 YEARS
28 OUTSIDE THE PLEA AGREEMENT WITHOUT
CONSIDERING PETITIONER CRIMINAL HISTORY
BACKGROUND.

10.) OTHER THAN A DIRECT APPEAL FROM THE JUDGMENT
OF CONVICTION AND SENTENCE, HAVE YOU PREVIOUSLY FILED
ANY PETITION, APPLICATIONS OR MOTIONS WITH RESPECT TO THIS
JUDGMENT IN ANY COURT, STATE OR FEDERAL? NO

Pg. 2 of 4

1 11.) ARE you Filing this Petition MORE than 1 year
2 Following the Filing of the Judgment of conviction OR the
3 Filing of A decision on Direct Appeal? NO. But A Ruling
4 WAS MADE on this case 3 years ago Entering Probation
5 with A suspended sentence of Imprisonment of 6 to 15
6 years, The 6 to 15 year imprisonment was entered on
7 July 30, 2020 which Resulted in this Post-conviction
8 Petition Being Filed Now.

9 12.) Do you HAVE Any Petition OR Appeal now Pending in
10 Any court Pertaining to the Judgment under ATTACK? NO

11 13.) Give the NAME of the Attorney who
12 Represented you in the Proceeding Resulting in your
13 conviction:

14 Melissa OLIVER
15 ATTORNEY AT LAW
16 330 S. 3RD STREET/SUITE 800
17 LAS VEGAS, NEVADA 89101

18 14.) Do You HAVE Any Future sentencing to SERVE
19 AFTER you complete the sentence imposed by the
20 Judgment under ATTACK? _____

21 15.) STATE concisely EVERY Ground which you intend
22 to RAISE to show You ARE entitle to An Evidentiary Hearing:

23 I Agreed to PLEAD Guilty For A suspended sentence
24 of 2 to 15 years. Once I Entered my PLEA the Judge
25 deviated From the 2 to 15 years, which is the minimum
26 And gave me 6 to 15 years AS A suspended sentence,
27 which is the MAXIMUM Penalty. And I thought the
28 Attorney Melissa Oliver was going to APPEAL the
6 to 15 years suspended sentence. But she didn't
And she NEVER Filed A sentence Modification
Motion Pursuant to NRS 176A.450 to Address the FACT
that the Judge GAVE me the MAXIMUM sentence AS
A suspended sentence Just because he was Giving me PB
And Not because my Criminal History Background
REQUIRED A MAXIMUM AS A suspended sentence.
Counsel Failure to APPEAL what the Judge did to
Address why the Judge Impose A MAXIMUM
sentence AS A suspended sentence AS A consequence
for Granting Probation when my Background did NOT
CAUSE For the maximum denied me effective

1 Assistance of Counsel in violation of Article 1, section
2 & of Nevada Constitution and the 6th Amendment of the
3 United States Constitution. And had I been made aware
4 that the Judge could deviate from the 2 to 15 years
5 I agreed to as a stipulated plea agreement I would
6 not had PLEAD Guilty. I was never told the Judge
7 could give me the maximum sentence if he gave me
8 probation. So I want to withdraw my plea. And I
9 demand a speedy trial pursuant to NRS 178.556. I
10 have a right to withdraw my plea pursuant to NRS 176.165.
11 The sentence is also illegal because the max sentence on a
12 2-15 year sentence is 66 to 180 months, category B felony.
13 Judge gave me 72 to 180 months as a max sentence.
14 Penalty of Perjury

15 wherefore, Petitioner pray that the court grant me
16 and evidentiary hearing and allow me to withdraw my
17 guilty plea and proceed to trial. NRS 53,250 to NRS 53,390.

18 Respectfully Submitted

19 
20 Petitioner Signature

21 7-11-20

22 DATE

23
24
25
26
27 Pg. 4 of 8

1
2 Certificate of Service

3 I, MR. Hykeem Weldon, depose and state
4 under OATH that I have served a copy of the Attach
5 Petition for Post-Conviction Relief to the following
6 Below:

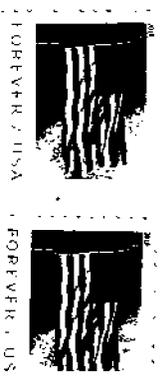
6 ~~Melissa Oliver~~
7 ~~Attorney of Record~~
8 ~~330 S. 3rd Street/suite~~
9 ~~LAS VEGAS, NV 89101 800~~

6 Steven Wolfson
7 District Attorney
8 200 Lewis Avenue
9 LAS VEGAS, NV 89155

10 By depositing a copy in the Mailbox on Sept 7
11 2020.

12 9-7-20
13 DATE

14 Respectfully Submitted
15 [Signature]
16 Petitioner



H. K. E. M. U. J. E. L. D. O. N. #1184578

High Desert State Prison
22010 Cold Creek Rd / PO Box 650

LAS VEGAS NV 89070

Steven D. Grierson
Clerk of Court
200 Lewis Ave. 3rd Floor

LAS VEGAS NV 89155

(LEGAL)
(MAIL)

HIGH DESERT STATE PRISON

SEP 08 2020

UNIT 1 A/B

**THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
14 - 17
WILL FOLLOW VIA
U.S. MAIL**

**THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
18 - 18
WILL FOLLOW VIA
U.S. MAIL**

27

Heena Amin
CLERK OF THE COURT

4-21-21

Date

Hykeem Weldon #1104578
HDSP
PO Box 650
Las Vegas NV 89070

Eighth Judicial District Court
Clark County, Nevada

Hykeem Weldon

Petitioner

A-20-821331-C
Dept. XXIV

State of Nevada

Respondent

Motion for Hearing Request

NOW Come Petitioner, Hykeem Weldon, Pursuant to NRS 171.155
moving this Court for Order Appointing him A Court Date for
Case Number A-20-821331-C Department 24 for Post
Conviction Relief in Support Petitioner States the following

1) Petitioner filed Post Conviction 9-16-20 and have yet to
Receive A Court Date Regarding this Matter.

2) Petitioner Also filed A Motion for Appointment of Counsel
9-16-20 And have yet to Receive any Action.

Wherefore, Petitioner PRAY This Court Assign his Counsel &
A Court Date

4-21-21
Date

Respectfully Submitted
Hykeem Weldon

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APR 27 2021

CLERK OF THE COURT

Acheem We don #1104578
HDSP
PO Box 650
Indian Springs NV 89070

LAS VEGAS NV 890
22 APR 2021 PM 5 L



HIGH DESERT STATE PRISON
APR 21 2021

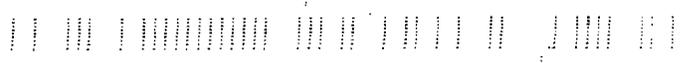
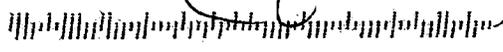
UNIT 8 C/D

Steven D Grierson
200 Lewis Ave 3rd floor
LAS Vegas NV 89155

(Legal Mail)

(Legal Mail)

89101-890000



Hykeem Welton

CLERK OF THE COURT

Hykeem Welton 1104578

High Desert State Prison

P.O. Box 650

Indian Springs NV 89070

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Steven D. Grierson

Eighth Judicial District Court

200 Lewis Avenue 13rd Floor

Las Vegas NV 89155

A-20-821331-C
Dept. XXIV

Notice of Filing

Dear Clerk of Court

Please find The Original motion for hearing
Request And Copy. Please Send me A Copy Back Showing
me you stamped it AS Received. Thank you

Respectfully Submitted

Hykeem Welton

CLERK OF THE COURT

APR 27 2021

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Hykeem Weldon #1104578
HDSP
PO Box 650
Indian Springs NV 89070

LAS VEGAS NV 890
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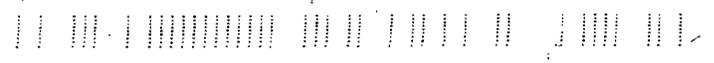
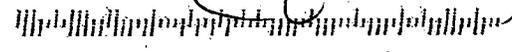
HIGH DESERT STATE PRISON
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UNIT 8 C/D

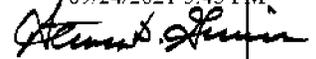
Steven D Grierson
200 Lewis Ave 3rd floor
Las Vegas NV 89155

(Legal Mail)

(Legal Mail)

89101-630000





CLERK OF THE COURT

1 OPWH

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

5 Hykeem Weldon,
6 Plaintiff(s)
7 vs.
8 Nevada State of,
9 Defendant(s)

Case No.: A-20-821331-C
Department XXIV

10 **ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS**
11 **(POST-CONVICTION)**

12 Petition filed for Writ of Habeas Corpus (Post-Conviction Relief) on September 16,
13 2020. The Court has review the Petition and has determined that a response would assist
14 the Court in determining whether the Petitioner is illegally imprisoned and restrained of
15 his/her liberty, and good cause appearing therefore.

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

19 **IT IS HEREBY FURTHER ORDERED** that this matter shall be placed on
20 this Court's Calendar on the 24th day of November, 2021, in chambers in District Court
21 Department XXIV at 8:30 am.

22
23 Dated this 24th day of September, 2021



24
25
26 **D68 657 071A DE9F**
27 **Erika Ballou**
28 **District Court Judge**

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CERTIFICATE OF SERVICE

The Undersigned hereby certifies that on the date of the filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

CLARK COUNTY DISTRICT ATTORNEY'S OFFICE
Motions@clarkcountyda.com

OFFICE OF THE ATTORNEY GENERAL
Wiznetfilings@ag.nv.gov

Chapri Wright
Judicial Executive Assistant

1 **CSERV**

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

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 Order for Petition for Writ of Habeas Corpus was served via the court's
13 electronic eFile system to all recipients registered for e-Service on the above entitled case as
14 listed below:

14 Service Date: 9/24/2021

15 D A motions@clarkcountyda.com

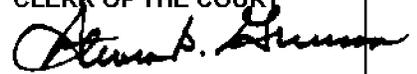
16 AG 1 rgarate@ag.nv.gov

17 AG 2 aherr@ag.nv.gov

18 AG AG wiznetfilings@ag.nv.gov

19
20 If indicated below, a copy of the above mentioned filings were also served by mail
21 via United States Postal Service, postage prepaid, to the parties listed below at their last
22 known addresses on 9/27/2021

23 Hykeem Weldon HDSP #1104578
24 Po Box 650
25 Indian Springs, NV, 89070
26
27
28



1 **RESP**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 KAREN MISHLER
6 Chief Deputy District Attorney
7 Nevada Bar #013730
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 HYKEEM WELDON,
10 #2750525

Petitioner,

CASE NO: A-20-821331-C

-vs-

C-17-321763-1

12 THE STATE OF NEVADA,

DEPT NO: XXIV

13 Respondent.
14

15 **STATE’S RESPONSE TO PETITION FOR POST-CONVICTION RELIEF;**
16 **OPPOSITION TO MOTION FOR THE APPOINTMENT OF COUNSEL**

17 **DATE OF HEARING:** January 4, 2022

18 **TIME OF HEARING:** 9:00 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through KAREN MISHLER, Chief Deputy District Attorney, and hereby
21 submits the attached Points and Authorities in Response to Petitioner’s Petition for Writ of
22 Habeas Corpus (Post-Conviction) and Petitioner’s Motion for the Appointment of Counsel.
23 This Response is made and based upon all the papers and pleadings on file herein, the attached
24 points and authorities in support hereof, and oral argument at the time of hearing, if deemed
25 necessary by this Honorable Court.

26 //

27 //

28 //

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. The State responds as follows.

9 **STATEMENT OF FACTS**

10 The District Court relied on the following when sentencing Petitioner:

11 Las Vegas Metropolitan Police Department (LVMPD) detectives
12 investigated a robbery with a deadly weapon that occurred on November 8,
13 2016 at Harrah's Casino. It was learned the defendant, Hykeem Tyrese
14 Weldon, broke into the victims' hotel room, pointed the gun at the victims,
15 threatened to shoot them and demanded money. The defendant threatened to
16 kill the victims if they told anyone about the robbery. Mr. Weldon took the
17 following: \$563.00 cash, a casino voucher in the amount of \$101.02, a Vizio
18 Laptop, a green iPod, debit card, a driver's license, a Galaxy Samsung phone,
19 and a LG Smart Phone. As he left the room, the defendant ripped the phone
20 cord out of the wall and took the phone.

21 Surveillance footage placed Mr. Hykeem at the hotel. Latent prints
22 recovered at the scene were determined to belong to the defendant.
23 Additionally, the defendant's prints were recovered from the stolen hotel
24 phone. Further, the defendant's physical characteristics closely matched
25 those described by the victims. Based on the investigation, detectives
26 obtained an arrest warrant for Mr. Weldon on December 29, 21016. The
27 defendant was arrested on January 16, 2017, transported to the Clark County
28 Detention Center (CCDC), and booked accordingly.

PSI at 6.

ARGUMENT

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

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

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

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

8 Habeas corpus petitions that are filed many years after conviction are an
9 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.

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

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

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

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

26 Unless there is good cause shown for delay, a petition that challenges the
27 validity of a judgment or sentence must be filed within 1 year of the entry
28 of the judgment of conviction or, if an appeal has been taken from the
judgment, within 1 year after the Supreme Court issues its remittitur. For

1 the purposes of this subsection, good cause for delay exists if the petitioner
2 demonstrates to the satisfaction of the court:

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

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

11 The one-year time limit for preparing petitions for post-conviction relief under NRS
12 34.726 is strictly construed. In Gonzales v. State, the Nevada Supreme Court rejected a habeas
13 petition filed two (2) days late despite evidence presented by the defendant that he purchased
14 postage through the prison and mailed the petition within the one-year time limit. 118 Nev.
15 590, 596, 53 P.3d 901, 904 (2002). In contrast with the short amount of time to file a notice of
16 appeal, a prisoner has a full year to file a post-conviction habeas petition, so there is no
17 injustice in a strict application of NRS 34.726(1), despite any alleged difficulties with the
18 postal system. Id. at 595, 53 P.3d at 903.

19 In this case, Petitioner’s Judgment of Conviction was filed on November 21, 2017. The
20 restitution amount of \$500 was fixed in the Judgment of Conviction and the Judgment of
21 Conviction was final. Petitioner had until November 21, 2018, to file a timely writ. Petitioner
22 did not file until September 16, 2020, almost two years too late.

23 To explain his delay in filing, Petitioner simply states his petition is *not* filed more than
24 a year after his Judgment of Conviction. Petition at 3. This is belied by the record, as his
25 Judgment of Conviction was filed on November 21, 2017, and his petition was filed almost
26 three years later, on September 16, 2020. Allegations that are belied and repelled by the record
27 do not suffice to entitle a Petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d
28 222, 225 (1984).

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

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

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

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

14 Absent a showing of good cause to excuse this two-year delay, Defendant's Petition
15 must be denied.

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

17 To avoid procedural default under NRS 34.726, a defendant has the burden of pleading
18 and proving specific facts that demonstrate good cause for his failure to present his claim in
19 earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will be
20 unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a); see Hogan v. Warden, 109
21 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep't of Prisons, 104 Nev.
22 656, 659, 764 P.2d 1303, 1305 (1988). "A court *must* dismiss a habeas petition if it presents
23 claims that either were or could have been presented in an earlier proceeding, unless the court
24 finds both cause for failing to present the claims earlier or for raising them again and actual
25 prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001)
26 (emphasis added).

27 "To establish good cause, appellants must show that an impediment external to the
28 defense prevented their compliance with the applicable procedural rule." Clem v. State, 119

1 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev.
2 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. Such an external
3 impediment could be “that the factual or legal basis for a claim was not reasonably available
4 to counsel, or that ‘some interference by officials’ made compliance impracticable.”
5 Hathaway, 119 Nev. at 251, 71 P.3d at 506 (quoting Murray v. Carrier, 477 U.S. 478, 488, 106
6 S. Ct. 2639, 2645 (1986)); see also Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing Harris v.
7 Warden, 114 Nev. 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)). Any delay in filing of the petition
8 must not be the fault of the petitioner. NRS 34.726(1)(a).

9 The Nevada Supreme Court has clarified that a defendant cannot attempt to
10 manufacture good cause. See Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there
11 must be a “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 251, 71
12 P.3d at 506; (quoting Colley v. State, 105 Nev. at 236, 773 P.2d at 1230). Excuses such as the
13 lack of assistance of counsel when preparing a petition, as well as the failure of trial counsel
14 to forward a copy of the file to a petitioner have been found not to constitute good cause. See
15 Phelps, 104 Nev. at 660, 764 P.2d at 1306, superseded by statute on other grounds as
16 recognized in Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145 (2004); Hood v. State,
17 111 Nev. 335, 890 P.2d 797 (1995).

18 A petitioner raising good cause to excuse procedural bars must do so within a
19 reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34
20 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see
21 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably
22 available to the petitioner during the statutory time period did not constitute good cause to
23 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good
24 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,
25 453 120 S. Ct. 1587, 1592 (2000).

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

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

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

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

8 Petitioner claims his counsel failed to ask if he wanted to file an appeal, his sentence
9 was not as he expected, his counsel was ineffective for failing to object to the sentence, and he
10 pled guilty without understanding the consequences. Petition at 2, 3-4, 6-8. All these claims
11 are rendered moot by Petitioner’s guilty plea, by his failure to appeal, and by his failure to file
12 a timely habeas petition. Because Petitioner entered his plea knowingly and voluntarily, and
13 because he can show no good cause for his delay in filing nor constitutional errors working to
14 his actual disadvantage, his claims are procedurally barred.

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

16 The law in Nevada establishes that a plea of guilty is presumptively valid, and the
17 burden is on a defendant to show that the plea was not voluntarily entered. Bryant, 102 Nev.
18 at 272, 721 P.2d at 368 (citing Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295
19 (1975)). Manifest injustice does not exist if the defendant entered his plea voluntarily. Baal v.
20 State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990).

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

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

1 Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev.
2 774, 476 P.2d 950 (1970)). The presence and advice of counsel is a significant factor in
3 determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d
4 107, 107 (1975). Petitioner is not, however, entitled to a particular relationship with counsel.
5 Morris v. Slappy, 461 U.S. 1, 13-14, 103 S. Ct. 1610, 1616 (1983).

6 This standard requires the court accepting the plea to personally address the defendant
7 at the time he enters his plea in order to determine whether he understands the nature of the
8 charges to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not
9 rely simply on a written plea agreement without some verbal interaction with a defendant. Id.
10 Thus, a “colloquy” is constitutionally mandated, and a “colloquy” is but a conversation in a
11 formal setting, such as that occurring between an official sitting in judgment of an accused at
12 plea. Id. However, the court need not conduct a ritualistic oral canvass. State v. Freese, 116
13 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas “do not require
14 the articulation of talismanic phrases,” but only that the record demonstrates a defendant
15 entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev. 573, 575,
16 516 P.2d 1403, 1404 (1973); see also Brady v. United States, 397 U.S. 742, 747-48, 90 S. Ct.
17 1463, 1470 (1970).

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

26 Further, the Nevada Supreme Court has explained:

27 [A] guilty plea represents a break in the chain of events which has preceded
28 it in the criminal process. When a criminal defendant has solemnly admitted
in open court that he is in fact guilty of the offense with which he is charged,

1 he may not thereafter raise independent claims relating to the deprivation of
2 constitutional rights that occurred prior to the entry of the guilty plea.

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

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

12 VOLUNTARINESS OF PLEA

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

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

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

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

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

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

26 I am not now under the influence of any intoxicating liquor, a controlled
27 substance or other drug which would in any manner impair my ability to
28 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.

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

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

12 Petitioner decided, with the advice of counsel, that entering a plea was in his best
13 interest. Patton, 91 Nev. at 2, 530 P.2d at 107. He understood the nature of the charges to
14 which he pled. Bryant, 102 Nev. at 271, 721 P.2d at 367. That his plea in hindsight appears
15 unwise does not mean his counsel was ineffective at the time the plea was entered. Larson,
16 104 Nev. at 694, 766 P.2d at 263. The decision to accept the plea, knowing the potential
17 penalties that could be levied against him, belonged to Petitioner alone. Rhyne, 118 Nev. at 8,
18 38 P.3d at 163.

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

24 Um, the State retains the right to argue at sentencing, the State agrees to OR
25 release at entry of plea, um, and my client stipulates that if he picks up any
26 new case while he’s out or if he fails to appear for his P & P interview or for
27 his sentencing, he stipulates to 6 to 15 in NDOC.
28

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

6 Petitioner’s asserted 2-15 year sentence is nowhere articulated and was never
7 contemplated by the parties. Petitioner’s claim that his plea is unknowing because he agreed
8 to a 2–15-year sentence is belied by the record and must be dismissed pursuant to Hargrove,
9 100 Nev. at 502, 686 P.2d at 225.

10 Petitioner claims the judge “deviated” from the agreed-upon sentence. Petition at 4. He
11 asserts the judge gave him a sentence of 6-15 years “just because” he suspended the sentence,
12 “as a consequence for granting probation.” Petition at 3. The judge did deviate from the agreed-
13 upon terms of the GPA, but the deviation was in Petitioner’s favor. Because Petitioner failed
14 to show up for sentencing, the plain language of the GPA stated he would *immediately* be
15 sentenced to 6-15 years in the NDOC. GPA at 1. Instead, the judge suspended this sentence
16 and allowed Petitioner to enter probation. Judgment of Conviction at 1. This deviation did not
17 prejudice Petitioner.

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

25 Even if Petitioner had appeared for sentencing, the State had the right to argue for any
26 legal sentence. GPA at 1. Under NRS 200.380(2), a sentence of 6-15 years is within the
27 statutory range for robbery. Since sentencing was left to the discretion of the sentencing court,
28

1 Petitioner could have received the sentence of 6-15 years without probation from the very
2 beginning. Instead, the court gave Petitioner probation. Judgment of Conviction at 1.

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

15 Despite these opportunities to learn from his mistakes, Petitioner was arrested on April
16 28, 2020, for six counts of assault with a deadly weapon, three counts of felony child
17 endangerment, discharging a gun, and possession of a gun by a prohibited person:

18 According to a police report of the incident, on April 26, 2020, at about 2111
19 hours, LVMPD officers responded to a residence where Mr. Weldon was
20 accused of starting an argument, pointing a firearm at people, and eventually
21 firing the gun into a wall inside the residence in close proximity to a male
22 adult and three juveniles; the youngest of which is three years old; two other
23 adults were also in the residence. According to the report, before leaving the
24 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.

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

26 Petitioner alleges his sentence is “illegal,” but this claim is not cogent. “The sentence
27 is also illegal because the max sentence on a 2–15-year sentence is 66 to 180 months, category
28 B felony.” Petition at 4. Disregarding the fact that the parties never agreed to a 2–15-year

1 sentence, the State takes the position that the maximum sentence for a 2-15 year term is 15
2 years. A party seeking review bears the responsibility “to cogently argue, and present relevant
3 authority” to support his assertions. Edwards v. Emperor’s Garden Restaurant, 122 Nev. 317,
4 330 n.38, 130 P.3d 1280, 1288 n.38 (2006); Dept. of Motor Vehicles and Public Safety v.
5 Rowland, 107 Nev. 475, 479, 814 P.2d 80, 83 (1991) (defendant’s failure to present legal
6 authority resulted in no reason for the district court to consider defendant’s claim); Maresca v.
7 State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (an arguing party must support his arguments
8 with relevant authority and cogent argument; “issues not so presented need not be addressed”);
9 Randall v. Salvation Army, 100 Nev. 466, 470-71, 686 P.2d 241, 244 (1984) (court may
10 decline consideration of issues lacking citation to relevant legal authority); Holland Livestock
11 v. B & C Enterprises, 92 Nev. 473, 533 P.2d 950 (1976) (issues lacking citation to relevant
12 legal authority do not warrant review on the merits).

13 Finally, Petitioner asserts his plea was unintelligent because he did not know his
14 attorney was not going to file an appeal on her own initiative. Petition at 6. He appears to claim
15 that if he had known he would be held accountable for the agreement he entered into with the
16 State, he would not have made it. A plea agreement is a contract between parties, not a
17 placeholder to be discarded once the threat of trial has diminished. Whether Petitioner thought
18 his attorney would appeal *after* sentencing does not factor into whether his plea was knowing
19 or voluntary at the time he entered the agreement.

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

25 **II. PETITIONER DID NOT RECEIVE INEFFECTIVE ASSISTANCE OF**
26 **COUNSEL**

27 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
28 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his

1 defense.” The United States Supreme Court has long recognized that “the right to counsel is
2 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
3 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
4 (1993).

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

16 The court begins with the presumption of effectiveness and then must determine
17 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
18 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
19 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
20 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
21 537 P.2d 473, 474 (1975).

22 Counsel cannot be ineffective for failing to make futile objections or arguments. See
23 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
24 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
25 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
26 (2002).

27 The role of a court in considering allegations of ineffective assistance of counsel is “not
28 to pass upon the merits of the action not taken but to determine whether, under the particular

1 facts and circumstances of the case, trial counsel failed to render reasonably effective
2 assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). This analysis does
3 not mean that the court should “second guess reasoned choices between trial tactics nor does
4 it mean that defense counsel, to protect himself against allegations of inadequacy, must make
5 every conceivable motion no matter how remote the possibilities are of success.” Id. To be
6 effective, the constitution “does not require that counsel do what is impossible or unethical. If
7 there is no bona fide defense to the charge, counsel cannot create one and may disserve the
8 interests of his client by attempting a useless charade.” United States v. Cronin, 466 U.S. 648,
9 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

10 “There are countless ways to provide effective assistance in any given case. Even the
11 best criminal defense attorneys would not defend a particular client in the same way.”
12 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
13 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
14 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
15 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s
16 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s
17 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

18 Even if a defendant can demonstrate that his counsel’s representation fell below an
19 objective standard of reasonableness, he must still demonstrate prejudice and show a
20 reasonable probability that, but for counsel’s errors, the result of the trial would have been
21 different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
22 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
23 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,
24 694, 104 S. Ct. at 2064–65, 2068).

25 When a conviction is the result of a guilty plea, a defendant must show that there is a
26 “reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and
27 would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370
28

1 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107
2 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

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

7 Nevada precedent reflects “that where a guilty plea is not coerced and the defendant
8 [is] competently represented by counsel at the time it [is] entered, the subsequent conviction
9 is not open to collateral attack and any errors are superseded by the plea of guilty.” Powell v.
10 Sheriff, Clark County, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969) (citing Hall v. Warden, 83
11 Nev. 446, 434 P.2d 425 (1967)). In Woods v. State, the Nevada Supreme Court determined
12 that a defendant lacked standing to challenge the validity of a plea agreement because he had
13 “voluntarily entered into the plea agreement and accepted its attendant benefits.” 114 Nev.
14 468, 477, 958 P.2d 91, 96 (1998).

15 Further, the Nevada Supreme Court has explained:

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

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

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

10 A “habeas corpus petitioner must prove the disputed factual allegations underlying his
11 ineffective-assistance claim by a preponderance of the evidence.” Means, 120 Nev. at 1012,
12 103 P.3d at 33. Claims of ineffective assistance of counsel asserted in a petition for post-
13 conviction relief must be supported with specific factual allegations, which if true, would
14 entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. “Bare” and “naked”
15 allegations are not sufficient, nor are those belied and repelled by the record. Id. “[Petitioner]
16 must allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific
17 facts rather than just conclusions may cause your petition to be dismissed.” NRS 34.735(6).

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

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

25 “The burden is on the client to indicate to his attorney that he wishes to pursue an
26 appeal.” Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999). Counsel is only obligated
27 to file a notice of appeal or to consult with a defendant regarding filing a notice of appeal in
28 certain circumstances. Toston v. State, 127 Nev. 971, 267 P.3d 795 (2011). “[T]rial counsel

1 has a constitutional duty to file a direct appeal in two circumstances: when requested to do so
2 and when the defendant expresses dissatisfaction with his conviction, and that the failure to do
3 so in those circumstances is deficient for purposes of proving ineffective assistance of
4 counsel.” Id. at 977, 267 P.3d at 800

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

11 Courts should consider “all the information counsel knew or should have known” and
12 focus on the totality of the circumstances. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct.
13 1029, 1036 (2000). Importantly, whether the defendant’s conviction followed a guilty plea is
14 highly relevant to the inquiry “both because a guilty plea reduces the scope of potentially
15 appealable issues and because such a plea may indicate that the defendant seeks an end to
16 judicial proceedings.” Id. Thus, when a defendant who pled guilty claims he was deprived of
17 the right to appeal, “the court must consider such factors as whether the defendant received
18 the sentence bargained for as part of the plea and whether the plea expressly reserved or waived
19 some or all appeal rights.” Id.

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

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

WAIVER OF RIGHTS

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

1. The constitutional privilege against self-incrimination, including the right 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.
2. The constitutional *right to a speedy and public trial* by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial *the State would bear the burden* of proving beyond a reasonable doubt each element of the offense(s) charged.
3. The constitutional right to confront and cross-examine any witnesses who would testify against me.
4. The constitutional right to subpoena witnesses to testify on my behalf.
5. The constitutional right to testify in my own defense.
6. *The right to appeal the conviction* with the assistance of an attorney, either appointed or retained, *unless specifically reserved in writing* and agreed upon as provided in NRS 174.035(3). I understand this means *I am unconditionally waiving my right to a direct appeal* of this conviction, including any challenge based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4). However, I remain free to challenge my conviction through other post-conviction remedies including a habeas corpus petition pursuant to NRS Chapter 34.

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

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

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

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

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

9 Petitioner asks for appointed counsel, not to assist him with his habeas claims, but to
10 represent him at the speedy jury trial within sixty days he demands this Court award him. See
11 Motion for Appointment of Counsel. He further claims counsel is needed as he is serving an
12 illegal sentence. Id.

13 Under the United States Constitution, the Sixth Amendment provides no right to
14 counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S.Ct.
15 2546, 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the
16 Nevada Supreme Court similarly observed, “[t]he Nevada Constitution...does not guarantee a
17 right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right
18 to counsel provision as being coextensive with the Sixth Amendment to the United States
19 Constitution.” McKague specifically held that, with the exception of NRS 34.820(1)(a)
20 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
21 “any constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at
22 164, 912 P.2d at 258.

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

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

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

1 appoint counsel at the time the court orders the filing of an answer and a return.
2 In making its determination, the court may consider whether:

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

6 Recently, the Nevada Supreme Court examined whether a district court appropriately
7 denied a defendant's request for appointment of counsel based upon the factors listed in NRS
8 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In Renteria-Novoa, the
9 petitioner had been serving a prison term of eighty-five (85) years to life. Id. at 75, 391 P.3d
10 at 760. After his judgment of conviction was affirmed on direct appeal, the petitioner filed a
11 pro se habeas corpus petition and requested counsel be appointed. Id. The district court
12 ultimately denied both the petition and the request for appointment of counsel. Id. In reviewing
13 the district court's decision, the Renteria-Novoa Court examined the NRS 34.750 factors and
14 concluded the district court's decision should be reversed and remanded. Id. The Court
15 explained the petitioner was indigent, his petition could not be summarily dismissed, and he
16 had, in fact, satisfied the statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor,
17 the Court concluded that because petitioner represented, he had issues with understanding the
18 English language—which was corroborated by his use of an interpreter at his trial—that was
19 enough to indicate the petitioner could not comprehend the proceedings. Id. Moreover, the
20 petitioner had demonstrated that the consequences he faced—a minimum eighty-five (85) year
21 sentence—were severe and his petition may have been the only vehicle for which he could
22 raise his claims. Id. at 76-77, 391 P.3d at 761-62. Finally, the petitioner's ineffective assistance
23 of counsel claims may have required additional discovery and investigation beyond the record.
24 Id.

25 Petitioner has not demonstrated counsel should be appointed, as he fails to meet *any* of
26 the additional statutory factors under NRS 34.750. The issues raised by Petitioner are not
27 difficult: he simply wants a better deal than the one he negotiated. NRS 34.750(a). Petitioner
28 is able to comprehend the proceedings. NRS 34.750(b). He has not argued he has difficulties
with the English language, unlike the petitioner in Renteria-Novoa. 133 Nev. at 76, 391 P.3d

1 at 760-61. Petitioner has not alleged further discovery is necessary. NRS 34.750(c). Since
2 habeas relief is procedurally barred, there is no need for additional discovery, let alone
3 counsel's assistance to conduct such investigation.

4 Appointing counsel to represent Petitioner at a trial within sixty days is premature. This
5 can wait until a court determines Petitioner is actually privileged to cast his plea bargain aside
6 now that he has had to start serving his sentence. Further, this is not the type of legal assistance
7 authorized under NRS 34.750.

8 Because the statutory factors and the Renteria-Novoa analysis weigh *against* the
9 discretionary appointment of counsel, the State requests that this Court deny Petitioner's
10 Motion for the Appointment of Counsel.

11 **CONCLUSION**

12 For the foregoing reasons, the State respectfully requests that the instant Petition for
13 Writ of Habeas Corpus be summarily DENIED. The State further requests that Petitioner's
14 contemporaneous Motion for Appointment of Counsel and Request for Evidentiary Hearing
15 likewise be DENIED.

16 DATED this 10th day of December, 2021.

17
18 Respectfully submitted,

19 STEVEN B. WOLFSON
20 Clark County District Attorney
21 Nevada Bar #1565

22 BY /s/ *Karen Mishler*
23 KAREN MISHLER
24 Chief Deputy District Attorney
25 Nevada Bar #013730
26
27
28

Andrew J. Linn
CLERK OF THE COURT

Hykeem Weldon ID NO. 1104578

SOUTHERN DESERT CORRECTIONAL CTN.
20825 COLD CREEK RD.
P.O. BOX 208
INDIAN SPRINGS, NV 89070

District Court
CLARK County, Nevada

Hykeem Weldon
Petitioner

v.

THE STATE of NEVADA

CASE NO.: A-20-821331-C/C-17-321763-1

DEPT. NO.: XXIV

DOCKET: _____

Petitioner's Reply to State's Response To Petition for
Post Conviction Relief And Motion for Appointment
Of Counsel

COMES NOW, Weldon Hykeem (Petitioner), herein above respectfully
moves this Honorable Court for an Order That Grants the instant
Petition for Post Conviction Relief And Motion for
Appantment of Counsel

This Motion is made and based upon the accompanying Memorandum of Points and
Authorities,

DATED: this 27 day of December, 2021

BY: *Hykeem Weldon*
Hykeem Weldon # 1104578
Defendant In Proper Personam

RECEIVED

JAN 03 2022

CLERK OF THE COURT

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ADDITIONAL FACTS OF THE CASE:

1 April 28, 2020 Petitioner WAS in fact Arrested
2 for A number of charges. Also Petitioner's Probation was
3 Revoked on May 6 2020, Because of these charges
4 Petitioner was Never convicted of Any of the charges
5 on the Arrest Report. Petitioner's Probation was Revoked
6 Before he was found Guilty of Any charge violating his Due
7 Process.

8 State Mentioned on Pg 12 Line 13: "The Judge's Deviation
9 was in Petitioner's favor. Petitioner Does Not Believe this for
10 two reasons: ① if he was sentence correctly in 2017 petitioner
11 would have Never been charged of Any crime That may or
12 May not have occurred on April 26, 2020. ② Also if
13 Petitioner was sentenced correctly There would not be Any
14 Grounds to file "Post conviction Relief."

15
16 At Pg 13 line 15-17 petitioner was not ~~convicted of~~ ^{convicted of} Any
17 of the charges the state mentioned. _{HW}

18
19 Also the State Admits The Judge's Deviation from Petitioner's
20 GPA And Ask that his "Post conviction" be Granted Solely
21 Because The State Admitted the Judge's Deviation from original
22 GPA, And Petitioner's Counsel Never notified Petitioner
23 That he was intitled to A Appeal Due to this Deviation.
24

25 Also Judge Never said he was going to Deviate from
26 Petitioner GPA. Had Petitioner Been informed of this
27

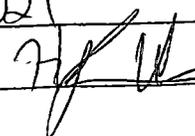
1 Deviation. Petitioner would have pulled his GPA and
2 Proceeded to trial.

3
4 Ineffective Assistance of Counsel is Proved when Judge
5 Deviated from original Plea Agreement and Petitioner's
6 Counsel ~~was~~ ^{did} Did nothing nor did she notify
7 Petitioner he was entitled to An Appeal because of this
8 Deviation.

9 *
10 At Page 146 Line 25-28 He state mention: "Petitioner's
11 Counsel is only obligated to file A notice of Appeal or to
12 Consult with A Defendent Regarding filing A notice of Appeal
13 in certain Circumstances". When The Judge Deviated from
14 original GPA Petitioner's Counsel should have notified
15 Petitioner of Any Legal Action (Appeal) And Did not
16 Therefore Proves Ineffective Assistance of Counsel.

17
18 Conclusion - Remedy
19 Requested

20 For the foregoing Reasons Petitioner Respectfully Request
21 That the Instant Petition for writ of Habeas Corpus
22 Be summarily Granted. Petitioner further Request that
23 Motion for Appointment of counsel and Request for Evidentiary
24 Hearing Also Be GRANTED.

25 Dated: This 27 Day of December 2021
26 
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CERTIFICATE OF SERVICE BY MAILING

I, Hakeem Weldon, hereby certify, pursuant to NRCP 5(b), that on this 27 day of December, 2021, I mailed a true and correct copy of the foregoing, "Petitioner's Reply to State's Response to Petition for Post Conviction Relief and motion for Appointment of Counsel"

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

Steve D. Geierlson
Clerk of the Court
200 Lewis Ave 3rd floor
LAS VEGAS NV ~~89101~~ 89155-1100

CC:FILE

DATED: this 27 day of December, 2021.


Hakeem Weldon # 1109578
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Petitioner's
Reply to State's Response to Petition for Post
Conviction Relief And Motion for Appointment of Counsel
(Title of Document)

filed in District Court Case number A-20-821331-C/C-17-321763-1

Does not contain the social security number of any person.

-OR-

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

A. A specific state or federal law, to wit:

(State specific law)

-or-

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

[Signature]
Signature

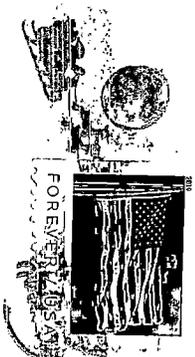
12/27/21
Date

Hykeem Weldon
Print Name

Petitioner
Title

HuKeem Weldon 1104576
SPDC
PO Box 208
Indian Springs NV 89070

LAS VEGAS NV 890
28 DEC 2021 PM 4 L

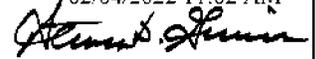


Steven D. Grierson
Clerk of Court
200 Lewis Ave 3rd Floor
Las Vegas NV 89155-1168

89101-830000



Southern Desert
Correctional Center
DEC 28 2021
OUTGOING MAIL



CLERK OF THE COURT

ORDR
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

THE STATE OF NEVADA,

Plaintiff,

-vs-

HYKEEM WELDON,
#2750525

Defendant.

CASE NO: A-20-821331-C

DEPT NO: XXIV

ORDER FOR TRANSCRIPT

Upon the ex-parte application of the State of Nevada, represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through, KAREN MISHLER, Chief Deputy District Attorney, in order to create a full and accurate record on appeal and incorporate the court's stated findings into its Findings of Fact, Conclusions of Law, and Order, good cause appearing therefor,

IT IS HEREBY ORDERED that a transcript of the Petition for Writ of Habeas Corpus heard on the 4 day of January, 2022, be prepared by Susan Schofield, Court Recorder for the above-entitled Court.

DATED this _____ day of February, 2022. Dated this 4th day of February, 2022



DISTRICT JUDGE

778 790 7A35 1D67
Erika Ballou
District Court Judge

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

BY /s/ Karen Mishler
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730

jh/CAU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

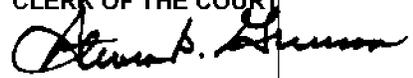
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6	Hykeem Weldon, Plaintiff(s)	CASE NO: A-20-821331-C
7	vs.	DEPT. NO. Department 24
8	Nevada State of, Defendant(s)	
9		

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 2/4/2022

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



1 RTRAN
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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 HYKEEM WELDON,
8 Plaintiff,
9 vs.
10 STATE OF NEVADA,
11 Defendant.
12

CASE NO: A-20-821331-C
DEPT. XXIV

13
14 BEFORE THE HONORABLE ERIKA BALLOU, DISTRICT COURT JUDGE
15 TUESDAY, JANUARY 4, 2022

16
17 **RECORDER'S TRANSCRIPT OF HEARING RE:
18 PETITION FOR WRIT OF HABEAS CORPUS**

19 APPEARANCES:

NO PARTIES PRESENT

20
21
22
23
24
25 RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

1 Las Vegas, Nevada; Tuesday, January 4, 2022

2 *****

3 [Proceeding commenced at 9:49 A.M.]

4 THE COURT: Page Number 5 is Hykeem Weldon versus
5 State of Nevada, Case Number A-20-821331-C. This matter is a Writ
6 for – Petition for Writ of Habeas Corpus, and Mr. Weldon is in the
7 Nevada Department of Corrections.

8 I'm going to deny this request to modify his sentence or allow
9 him to allow his guilty plea. First, the petition is time barred, and I don't
10 believe Mr. Weldon's petition provided good cause or prejudice in the
11 Court. Following the procedural bar, the petition – I'm sorry, it doesn't
12 provide good cause for not following the procedural bar for the petition,
13 so this is procedurally barred.

14 However, even if this wasn't the case, the record supports that
15 Mr. Weldon knowingly and voluntarily entered into the guilty plea and
16 that his attorney, Melissa Oliver, was not ineffective as his counsel.

17 Here, Mr. Weldon voluntarily entered into the plea agreement
18 and accepted its intended benefits rendering the guilty plea agreement
19 valid under the Wood decision, 114 Nev. 468, from 1998. Additionally, I
20 don't believe Ms. Oliver was ineffective because of the failure to directly
21 appeal a sentence that was bargained for.

22 So that motion is going to be denied. I'm sorry, his petition is
23 denied and it looks as if we need to prepare an Order. JerMara, can you
24 prepare an Order for that? We did have an opposition from the State,
25 right? JerMara, can you – yeah, we do have an opposition from the

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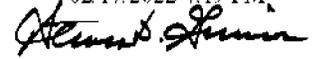
State so the State is to prepare an Order, and so we need to notify them.

[Proceeding concluded at 9:51 A.M.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



SUSAN SCHOFIELD
Court Recorder/Transcriber



CLERK OF THE COURT

1 **FCL**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **KAREN MISHLER**
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7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **HYKEEM WELDON, aka,**
10 **Hykeem Tyrese Weldon, #2750525,**

11 **Petitioner,**

CASE NO: A-20-821331-C

12 **-vs-**

C-17-321763-1

13 **THE STATE OF NEVADA,**

DEPT NO: XXIV

14 **Respondent.**

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

17 **DATE OF HEARING: January 4, 2022**

TIME OF HEARING: 9:00 AM

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

24 **//**

25 **//**

26 **//**

27 **//**

28 **//**

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).

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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
16 range of punishments; and (4) the defendant understood the nature of the
17 charge, i.e., the elements of the crime.

18 Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev.
19 774, 476 P.2d 950 (1970)). The presence and advice of counsel is a significant factor in
20 determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d
21 107, 107 (1975). Petitioner is not, however, entitled to a particular relationship with counsel.
22 Morris v. Slappy, 461 U.S. 1, 13-14, 103 S. Ct. 1610, 1616 (1983).

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

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

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

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

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

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

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

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

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

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

21 GPA at 5.

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

27 Petitioner also made these assertions in court during the plea canvass the district court
28 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)); Jeziarski 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. Rhync, 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
17 allowed to comment to the jury about my refusal to testify.
- 18 2. The constitutional *right to a speedy and public trial* by an impartial jury,
19 free of excessive pretrial publicity prejudicial to the defense, at which
20 trial I would be entitled to the assistance of an attorney, either appointed
21 or retained. At trial *the State would bear the burden* of proving beyond a
22 reasonable doubt each element of the offense(s) charged.
- 23 3. The constitutional right to confront and cross-examine any witnesses who
24 would testify against me.
- 25 4. The constitutional right to subpoena witnesses to testify on my behalf.
- 26 5. The constitutional right to testify in my own defense.

23 //
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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
22 (c) Counsel is necessary to proceed with discovery.

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

ORDER

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

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

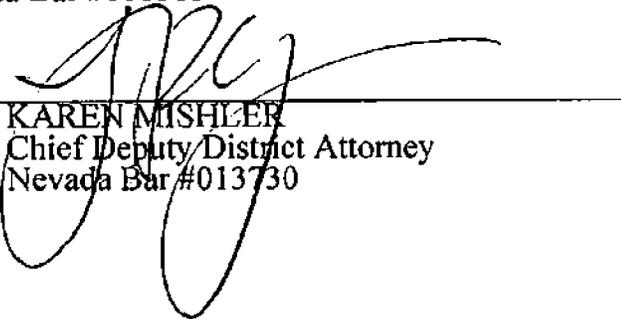


DISTRICT JUDGE

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

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

FILED

MAR - 7 2022

Thomas A. Blinn
CLERK OF COURT

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

Hykeem Wolton
Plaintiff,

vs.

The State of Nevada
Defendant.

C-17321763-1
CASE No. A-20-521331-C
DEPT.No. XXIV

DESIGNATION OF RECORD ON APPEAL

TO: *Steven D Grier*
Clerk of Court
20 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 28th day of Feb, 2022.

RESPECTFULLY SUBMITTED BY:

Hykeem Wolton
Hykeem Wolton # 1109578
Plaintiff/In Propria Persona

Hykeem Welton # 1104578

In Propra Personam

Post Office Box 2087 S. D. C.

~~Indian Springs~~ 1200 Prison Rd

Love Lock NV 89419

FILED

MAR - 7 2022

Steven A. Blinn
CLERK OF COURT

IN THE 341 JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Clark

Hykeem Welton 1104578

Plaintiff,

vs.

The State of Nevada

Defendant.

C-17-321763-1

Case No. A-20-821531-C

Dept. No. XXIV

Docket _____

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN, That the Petitioner/Defendant,
Hykeem Welton, 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,

Hykeem Welton

RECEIVED

CLERK OF THE COURT

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CERTIFICATE OF SERVICE BY MAILING

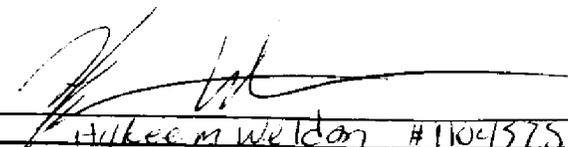
I, Hykeem Weldon, hereby certify, pursuant to NRCP 5(b), that on this 28
day of feb, 2022, I mailed a true and correct copy of the foregoing, "Notice
of Appeal/Petition for Post Conviction Relief"

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

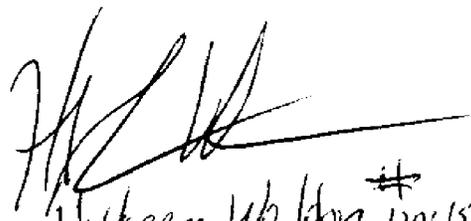
Steven D Grierson
200 Lewis Ave 3rd Floor
Las Vegas NV 89105

CC:FILE

DATED: this 28 day of feb, 2022


Hykeem Weldon #1104575
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

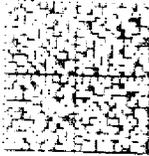
The reason my Appeal was delayed
is because I didn't ~~know~~ know
the results of my hearing dated Jan 4, 2022
till Feb 8, 2022 see Doc. 115-~~117~~ 117
After I received said responds I
was transferred to LLCC. once I
was out of Quarantine I made copies
of the papers I needed and filed ASAP


Hykeem Wekron #
Feb 28, 2022

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

RETURN SERVICE REQUESTED

PERMISSION TO REPRODUCE THIS POSTAGE AND RETURN SERVICE REQUESTED



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PO Box 208

Indian Springs, NY 18907-0208

149 4 89070

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MAY 11 2022
FEB 08 2022
Corrections Center
Southern Desert

117

NEVADA DEPARTMENT OF CORRECTIONS

LEGAL MAIL

NAME: WELDON, H. DOC#: 1104678 UNIT: 4C9

REPORT TO CONTROL AT ADMIN FOR THE FOLLOWING:

LEGAL MAIL: S. CARPSON

CERTIFIED MAIL: _____

REGISTERED MAIL: _____

DATE: _____ OFFICER: Bejan

INMATE SIGNATURE: [Signature] DOC#: 1104678 DATE: 1-8-22

DOC - 3020 (REV. 7/01)

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

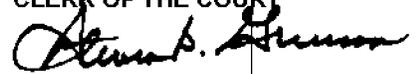
Helkeem Wilson 1184578
1250 Pearson Rd
WV
Love Lock WV 89419

RENO NV 895
01 MAR 2022 PM 9 T

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

8910186300





1 NEFF

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

4
5 HYKEEM WELDON,

6 Petitioner,

Case No: A-20-821331-C

Dept No: XXIV

7 vs.

8 STATE OF NEVADA,

9 Respondent,

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

10
11 **PLEASE TAKE NOTICE** that on 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
15 to you. This notice was mailed on March 8, 2022.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk

17
18
19 CERTIFICATE OF E-SERVICE / MAILING

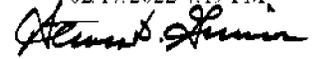
20 I hereby certify that on this 8 day of March 2022, I served a copy of this Notice of Entry on the following:

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

24 The United States mail addressed as follows:
25 Hykeem Weldon # 1104578
26 1200 Prison Rd.
27 Lovelock, NV 89419

28 /s/ Heather Ungermann

Heather Ungermann, Deputy Clerk



CLERK OF THE COURT

1 **FCL**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **KAREN MISHLER**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #013730**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **HYKEEM WELDON, aka,**
10 **Hykeem Tyrese Weldon, #2750525,**

11 **Petitioner,**

CASE NO: A-20-821331-C

12 **-vs-**

C-17-321763-1

13 **THE STATE OF NEVADA,**

DEPT NO: XXIV

14 **Respondent.**

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

17 **DATE OF HEARING: January 4, 2022**

TIME OF HEARING: 9:00 AM

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

24 **//**

25 **//**

26 **//**

27 **//**

28 **//**

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

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

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

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

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

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

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

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

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

21 GPA at 5.

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

27 Petitioner also made these assertions in court during the plea canvass the district court
28 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
11 everybody. The report also indicates that Mr. Weldon sent a text message to
12 the victims advising he would be back and things would be worse.

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

14 Petitioner alleges his sentence is “illegal,” but this claim is not cogent. “The sentence
15 is also illegal because the max sentence on a 2-15 year sentence is 66 to 180 months, category
16 B felony.” Petition at 4. Disregarding the fact that the parties never agreed to a 2-15 year
17 sentence, the maximum sentence for a 2-15 year term is 15 years. A party seeking review bears
18 the responsibility “to cogently argue, and present relevant authority” to support his assertions.
19 Edwards v. Emperor’s Garden Restaurant, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38
20 (2006); Dept. of Motor Vehicles and Public Safety v. Rowland, 107 Nev. 475, 479, 814 P.2d
21 80, 83 (1991) (defendant’s failure to present legal authority resulted in no reason for the district
22 court to consider defendant’s claim); Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987)
23 (an arguing party must support his arguments with relevant authority and cogent argument;
24 “issues not so presented need not be addressed”); Randall v. Salvation Army, 100 Nev. 466,
25 470-71, 686 P.2d 241, 244 (1984) (court may decline consideration of issues lacking citation
26 to relevant legal authority); Holland Livestock v. B & C Enterprises, 92 Nev. 473, 533 P.2d
27 950 (1976) (issues lacking citation to relevant legal authority do not warrant review on the
28 merits).

 Finally, Petitioner asserts his plea was unintelligent because he did not know his
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)); Jeziarski 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. Rhync, 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
17 allowed to comment to the jury about my refusal to testify.
- 18 2. The constitutional *right to a speedy and public trial* by an impartial jury,
19 free of excessive pretrial publicity prejudicial to the defense, at which
20 trial I would be entitled to the assistance of an attorney, either appointed
21 or retained. At trial *the State would bear the burden* of proving beyond a
22 reasonable doubt each element of the offense(s) charged.
- 23 3. The constitutional right to confront and cross-examine any witnesses who
24 would testify against me.
- 25 4. The constitutional right to subpoena witnesses to testify on my behalf.
- 26 5. The constitutional right to testify in my own defense.

23 //
24 //
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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
22 (c) Counsel is necessary to proceed with discovery.

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

ORDER

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

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

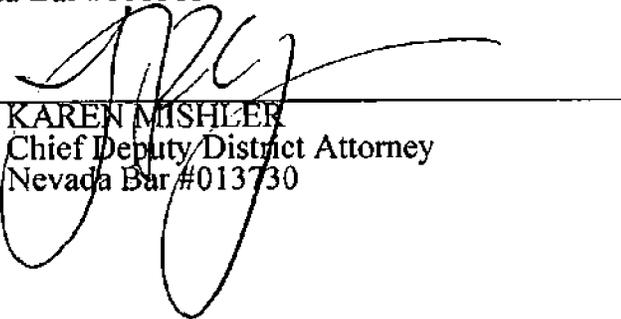


DISTRICT JUDGE

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
4 CLARK COUNTY, NEVADA

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
14 listed below:

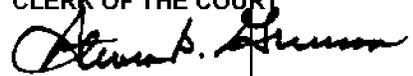
14 Service Date: 2/17/2022

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



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

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 1. Appellant(s): Hykeem Weldon

19 2. Judge: Erika Ballou

20 3. Appellant(s): Hykeem Weldon

21 Counsel:

22 Hykeem Weldon #1104578
23 1200 Prison Rd.
24 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 Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus
20
21 11. Previous Appeal: No
22 Supreme Court Docket Number(s): N/A
23
24 12. Child Custody or Visitation: N/A
25
26 13. Possibility of Settlement: Unknown

27 Dated This 8 day of March 2022.

28 Steven D. Grierson, Clerk of the Court

29 /s/ Heather Ungermann

30 Heather Ungermann, Deputy Clerk
31 200 Lewis Ave
32 PO Box 551601
33 Las Vegas, Nevada 89155-1601
34 (702) 671-0512

35 cc: Hykeem Weldon
36
37
38

**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 9:00 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Ballou, Erika

COURTROOM: RJC Courtroom 12C

COURT CLERK: Jessica Mason

RECORDER: Susan Schofield

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 and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated March 16, 2022, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 121.

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 22 day of March 2022.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk

