

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY TERRELL BARR,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Electronically Filed
Nov 16 2021 11:24 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-21-835125-W

Docket No: 83575

RECORD ON APPEAL

ATTORNEY FOR APPELLANT
ANTHONY BARR #1212761,
PROPER PERSON
P.O. BOX 1989
ELY, NV 89301

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

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A-21-835125-W

Anthony Barr, Plaintiff(s)
vs.
Gittere William, Defendant(s)

I N D E X

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Case No. C-18-335500-2

Dept. No. XXI

FILED

MAY 24 2021

John J. Blum
CLERK OF COURT

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

Anthony BARR
Petitioner

A-21-835125-W
Dept. 23

Gittere William
The State of Nevada
Respondent

**PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)**

INSTRUCTIONS:

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

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

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: Fly State Prison PO Box 1989
Fly Nevada, 89301

2. Name and location of court which entered the judgment of conviction under attack: 8th
Judicial District Court Clark County Nevada

3. Date of judgment of conviction: February 25-2019

4. Case number: C-18-335500-2

5. (a) Length of sentence: 8 - consecutive Life sentence's
With out parole

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

N/A

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

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

7. Nature of offense involved in conviction being challenged: All 22-Counts
that I ~~was~~ went to trial on

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

(a) Not guilty ☒ (b) Guilty ☐ (c) Nolo contendere ☐

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

N/A

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

(a) Jury ☒ (b) Judge without a jury ☐

11. Did you testify at the trial? Yes ☐ No ☒

12. Did you appeal from the judgment of conviction? Yes ☒ No ☐

13. If you did appeal, answer the following:

(a) Name of Court: Nevada Supreme Court

(b) Case number or citation: 78295

(c) Result: Appointed

(d) Date of result: 9-18-2020
(Attach copy of order or decision, if available.)

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

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal?

Yes _____ No ☒

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

(a)(1) Name of court: _____

(2) Nature of proceeding: _____

(3) Grounds raised: _____ N/A _____

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

Yes _____ No ☒

(5) Result: _____

(6) Date of result: _____

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

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: _____

(2) Nature of proceeding: _____

(3) Grounds raised: _____ N/A _____

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

Yes _____ No ☒

(5) Result: _____

(6) Date of result: _____

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

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

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

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

Citation or date of decision: _____

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

Citation or date of decision: _____

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

Citation or date of decision: _____

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

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

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

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

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

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

This is my first U.S. Chapter 34 petition and all grounds are newly raised

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

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes _____ No ✓
If yes, state what court and case number: N/A

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: Lead Counsel - Edward B. Hughes,
Direct Appeal Counsel - Jeanne N. Hue

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes _____ No ✓
If yes, specify where and when it is to be served, if you know: _____

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY TERRELL BARR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78295

FILED

SEP 18 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit burglary, conspiracy to commit robbery, five counts of burglary while in possession of a deadly weapon, eight counts of robbery with the use of a deadly weapon, three counts of assault with a deadly weapon, assault with a deadly weapon of a victim 60 years of age or older, and carrying a concealed pneumatic gun. The district court adjudicated appellant Anthony Barr as a habitual criminal with respect to the burglary while in possession of a deadly weapon and robbery with the use of a deadly weapon counts, imposing an aggregate sentence of life without the possibility of parole. Eighth Judicial District Court, Clark County; Douglas Smith,¹ Judge. Barr raises seven main contentions on appeal.²

First, Barr contends that the evidence presented at trial was insufficient to support deadly weapon enhancements because no weapon was either seen by a witness or found at the crime scenes. But the totality of the evidence supports the deadly weapon enhancements because it showed Barr and/or his codefendant threatened the victims with the use of

¹Judge Valerie Adair presided over the trial.

²Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

a weapon, see NRS 193.165(6)(b) (including in the deadly weapon definition weapons "threatened to be used"); *Bartle v. Sheriff*, 92 Nev. 459, 460, 552 P.2d 1099, 1099 (1976) (explaining that a deadly weapon enhancement is warranted if the evidence suggests the defendant used a deadly weapon to facilitate the crime, even if witnesses never actually saw a weapon), and guns were found in Barr's and his codefendant's cars. Additionally, an officer observed a bulge at Barr's waistline immediately preceding the final set of crimes and surveillance video thereafter captured Barr pulling a gun from his waistband while committing the final bank heist. Accordingly, there was sufficient evidence by which a rational juror could find Barr guilty beyond a reasonable doubt on the deadly weapon enhancements. See *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (recognizing that it is for the jury to weigh evidence and determine witness credibility, and when reviewing a challenge to the sufficiency of the evidence this court will consider "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt" (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979))); *Wilkins v. State*, 96 Nev. 367, 374-75, 609 P.2d 309, 313-14 (1980) (providing that a jury can rely on both direct and circumstantial evidence in returning its verdict).

Second, Barr argues that the district court erred by not severing the four robbery charges. After reviewing for plain error, we disagree. See *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008) (reviewing unpreserved claims for plain error, defined as one affecting a defendant's substantial rights by causing actual prejudice, a miscarriage of justice, or a grossly unfair outcome). The crimes occurred over the span of a few months, involved Barr or his codefendant entering banks while disguised, and involved threats of using a weapon against the tellers when demanding

money. Thus, the offenses were connected together and joinder was appropriate. See NRS 173.115(1)(b) (allowing for joinder of charges that are “connected together” or “constituting parts of a common scheme or plan”); *Farmer v. State*, 133 Nev. 693, 699-700, 405 P.3d 114, 120-21 (2017) (defining common scheme and explaining that the offenses are not required to be identical to be joined under NRS 173.115). The evidence relating to the robberies also would have been admissible for relevant, nonpropensity purposes in separate trials, negating that any prejudice resulted from the joinder. See NRS 48.045(2) (providing that evidence of other crimes may be admissible for nonpropensity purposes such as proof of opportunity, preparation, plan, or identity); *Middleton v. State*, 114 Nev. 1089, 1108, 968 P.2d 296, 309 (1998) (pointing to the cross-admissibility of evidence as indicative of the lack of undue prejudice resulting from joinder). Further, the issue of guilt was not close—victim eyewitness testimony, testimony from witnesses who knew Barr and identified him as one of the perpetrators, and video surveillance all supported the jury’s verdict. Cf. *Weber v. State*, 121 Nev. 554, 575, 119 P.3d 107, 122 (2005) (explaining that close cases are “more likely” to require reversal “because [joinder] may prevent jurors from making a reliable judgment about guilt”), *overruled on other grounds by Farmer*, 133 Nev. 693, 405 P.3d 114.

Third, Barr argues that the district court erred in not severing his case from his codefendant’s, whose defense was antagonistic to his and against whom there was more evidence. We disagree as Barr has not demonstrated plain error because he offers no argument as to how the

codefendant's *trial*³ defenses were antagonistic to his. *See Valdez*, 124 Nev. at 1190, 196 P.3d at 477 (addressing plain error); *see also* NRS 173.135 (providing that defendants may be charged in the same charging document when they participated in the same criminal conduct); NRS 174.165 (providing discretion to the district court to sever where prejudice results from joining defendants). And a defendant is not entitled to severance merely because the evidence against a codefendant is more damaging. *Lisle v. State*, 113 Nev. 679, 690, 941 P.2d 459, 466 (1997), *limited on other grounds by Middleton*, 114 Nev. 1089, 968 P.2d 296.

Fourth, Barr argues that the district court committed plain error by admitting character evidence—several previous traffic stops—and by doing so without first conducting a *Petrocelli* hearing. We conclude that Barr has not demonstrated plain error because the detective had to explain the circumstances surrounding the traffic stops in order to explain how he identified Barr as the perpetrator (the robbery perpetrators were seen getting into the same vehicle) and ultimately apprehended him after having placed a tracker on Barr's vehicle. *See* NRS 48.035(3) ("Evidence of another act or crime which is so closely related to an act in controversy or a crime charged that an ordinary witness cannot describe the act in controversy or the crime charged without referring to the other act or crime shall not be excluded."); *State v. Shade*, 111 Nev. 887, 894, 900 P.2d 327, 331 (1995)

³Barr only references antagonistic defenses that he claims affected him at sentencing, which the jury would not have been privy to and is irrelevant to a codefendant-severance analysis. *See Marshall v. State*, 118 Nev. 642, 646, 56 P.3d 376, 378 (2002) (explaining that antagonistic defenses only require severance when the defenses are so irreconcilable that the jury accepting the codefendant's theory would prohibit the defendant's acquittal).

(determining "whether witnesses can describe the crime charged without referring to related uncharged acts" to decide whether to admit evidence under NRS 48.035(3)); *see also Bellon v. State*, 121 Nev. 436, 444, 117 P.3d 176, 180 (2005) (indicating that the district court is not required to hold a *Petrocelli* hearing when it admits evidence under NRS 48.035(3)).

Fifth, Barr argues that the district court violated his right to confrontation when it limited his cross-examination of detectives regarding the aforementioned tracking device.⁴ We disagree, as the district court properly excluded irrelevant questions regarding the tracker's size or location on the vehicle, but allowed all other questions about the tracker's accuracy and how it ultimately led detectives to Barr.⁵ *See* NRS 48.015

⁴Relatedly, Barr argues that the district court erred in admitting unqualified and unnoticed expert testimony regarding the car tracker and Google maps. But Barr neither identifies which State witness(es) his argument applies to nor cites to the record to support his argument. *See* NRAP 28(e)(1) (requiring citations to the record to support assertions in briefs); *Skinner v. State*, 83 Nev. 380, 384, 432 P.2d 675, 677 (1967) (recognizing that this court can decline to consider assertions that are not supported by record citations). And State law enforcement witnesses did not testify as experts because their testimony did not go beyond relaying facts regarding their use of the tracker and Google maps to locate Barr. *See Abbott v. State*, 122 Nev. 715, 728, 138 P.3d 462, 471 (2006) (explaining when a witness's testimony constitutes expert testimony).

⁵To the extent Barr argues that the information outputted from the tracker amounted to an improper testimonial statement of an unavailable witness in violation of hearsay rules, we conclude that he has not demonstrated plain error where the data retrieved was machine-based and was not a "statement" that could be considered hearsay. *See* NRS 51.045 (defining a statement for hearsay purposes as "[a]n oral or written assertion" or "[n]onverbal conduct of a person, if it is intended as an assertion" (emphasis added)); *Valdez*, 124 Nev. at 1190, 196 P.3d at 477 (reviewing unpreserved errors for plain error); *see also Commonwealth v.*

(defining relevant evidence as that which makes a material fact at issue more or less probable); *Mendoza v. State*, 122 Nev. 267, 277, 130 P.3d 176, 182 (2006) (“Determinations of whether a limitation on cross-examination infringes upon the constitutional right of confrontation are reviewed de novo.”).⁶

Sixth, Barr argues that the district court erred in not continuing his sentencing hearing once he took issue with information in his presentence investigation report (PSI). We review a district court’s decision on a motion to continue for an abuse of discretion, which will only be found if a defendant demonstrates that the denial prejudiced him. *Higgs v. State*, 126 Nev. 1, 9, 222 P.3d 648, 653 (2010). Barr requested a continuance due to alleged inaccuracies and missing information in his PSI, and claimed that he needed additional time and counsel’s help to identify any further inaccuracies because he only had a third-grade education.⁷ The district court abused its discretion when it declined to continue Barr’s sentencing because that prevented him from thoroughly reviewing the PSI for all potential errors in order to lodge an objection. See *Sasser v. State*, 130 Nev. 387, 390, 324 P.3d 1221, 1223 (2014) (reiterating a defendant’s right to object to factual errors in the PSI, but requiring any such objection to be made before sentencing); *Shields v. State*, 97 Nev. 472, 473, 634 P.2d

Thissell, 928 N.E.2d 932, 937 n.13 (Mass. 2010) (explaining that, “[b]ecause computer-generated records, by definition, do not contain a statement from a person, they do not necessarily implicate hearsay concerns”).

⁶The record shows that Barr objected, so we review de novo despite both parties arguing for plain error review.

⁷Although Barr’s counsel initially indicated that he had not yet gone over the “massive PSI” with Barr, he acknowledged that they discussed it after the court passed the case while waiting for codefendant’s counsel.

468, 469 (1981) (“NRS 176.156 contemplates that persons convicted of crimes should have the opportunity to make informed comments on, and response to, all factual assertions contained in presentence investigation reports.”). The district court further erred in not addressing all of Barr’s assertions. See *Sasser*, 130 Nev. at 390-91, 324 P.3d at 1223-24 (requiring the district court to determine whether challenged PSI information is erroneous); *Stockmeier v. State, Bd. of Parole Comm’rs*, 127 Nev. 243, 250, 255 P.3d 209, 214 (2011) (emphasizing that regardless of whether an error impacts a defendant’s sentence, the Department of Corrections could rely on significant inaccuracies in determining a defendant’s “classification, placement in certain programs, and eligibility for parole,” necessitating an avenue to immediately seek correction of a faulty PSI to prevent reliance on a PSI that cannot be subsequently changed). But we conclude these errors do not warrant reversal because Barr has not demonstrated prejudice—the alleged errors were insignificant⁸ or irrelevant to sentencing and Barr utilized the PSI’s recommendation of concurrent time to argue for a lesser sentence than his maximum exposure. See *Blankenship v. State*, 132 Nev. 500, 509, 375 P.3d 407, 413 (2016) (explaining that an error in a sentencing form does not amount to “impalpable or highly suspect evidence” unless it tainted the PSI sentencing recommendation considered by the district court). And the record as a whole supports that the district court’s sentencing was based on the accurate information presented at sentencing—the circumstances surrounding the crimes and prior felony convictions that Barr agreed were accurately reflected in the PSI. See *Thomas v. State*, 88 Nev. 382, 385, 498 P.2d 1314, 1316 (1972) (explaining

⁸At one point, Barr conceded that the errors were “small.”

that a district court can impose a legally sound sentence even when there are inadequacies in sentencing forms produced by the Division).

Barr next argues, for the first time on appeal, that the district court erred in basing its sentencing decision on facts not in the record, weighing Barr's speedy-trial-right invocation in making its sentencing decision, and altering his sentence at a subsequent hearing. After plain error review, we disagree. See *Rodriguez v. State*, 134 Nev. 780, 781, 431 P.3d 45, 46 (2018) (reviewing for plain or clear error affecting substantial rights when a defendant fails to lodge a contemporaneous objection or argument on a sentencing issue). The record shows that the district court did not consider Barr's speedy-trial invocation or rely on highly suspect or impalpable information, but rather made its sentencing decision after considering arguments by defense counsel and the State, Barr's statement, a victim impact statement, and Barr's prior felonies that formed the basis for his habitual criminal treatment.⁹ See *Smith v. State*, 112 Nev. 871, 873, 920 P.2d 1002, 1003 (1996) (explaining that this court will not disturb a sentence that is within statutory limits unless the district court relied on "highly suspect or impalpable information"). Additionally, at the second sentencing hearing, which occurred before the judgment of conviction was filed and while Barr's case was still within the district court's jurisdiction, the district court appropriately vacated illegal sentences on counts Barr was

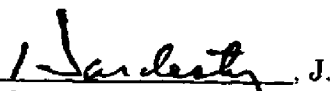
⁹Barr's sentence was within the prescribed statutory range for his convictions, enhancements, and treatment as a habitual criminal. See NRS 193.130 (punishment for felonies); NRS 193.165 (deadly weapon enhancement); NRS 193.167 (crimes committed against persons 60 years of age or older); NRS 199.480 (conspiracy); NRS 200.380 (robbery); NRS 200.471 (assault); NRS 202.350 (carrying a concealed weapon); NRS 205.060 (burglary); NRS 207.010 (habitual criminal penalties).

not charged with; sentenced Barr to concurrent time on a count he was not previously sentenced for; and sentenced him as a habitual criminal on the burglary while in possession of a deadly weapon counts, none of which increased his overall aggregate sentence. See NRS 176.555 ("The court may correct an illegal sentence at any time."); NRS 176.565 ("Clerical mistakes in judgments . . . and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders."); *Bradley v. State*, 109 Nev. 1090, 1095, 864 P.2d 1272, 1275 (1993) (explaining that an oral pronouncement of a sentence does not divest the district court's jurisdiction over the defendant, and it can modify a sentence before the clerk enters the signed judgment of conviction).

Seventh, Barr argues that cumulative error warrants reversal. We disagree because the errors identified above occurred during sentencing and therefore could not have impacted the jury's verdict.¹⁰ See *Valdez*, 124 Nev. at 1196, 196 P.3d at 481 (assessing cumulative error claims by first considering if the errors prejudiced the jury's verdict). We therefore

ORDER the judgment of conviction AFFIRMED.


Parraguirre, J.


Hardesty, J.


Cadish, J.

¹⁰We decline to address the preservation-of-evidence and amended information claims that Barr references but does not cogently argue. See *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.").

cc: Chief Judge, The Eighth Judicial District Court
Eighth Judicial District Court, Dept. 8
Jeannie N. Hua
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

(a) Ground One: Ineffective Assistance of counsel
A violation of my 6th and 14th Amendment Right of
the U.S. Constitution

Supporting FACTS (Tell your story briefly without citing cases or law.):

(b) Ground Two: Manifest Injustice A Violation of
my 9th and 5th and 14th Amendment of the US
Constitution

Supporting FACTS (Tell your story briefly without citing cases or law.):

unreasonable
(c) Ground Three: Excessive Search and seizure A Violation
of my 4th and 14th Amendment under the United States Constitution
and Article 1, Section 1, of the Nevada Constitution

Supporting FACTS (Tell your story briefly without citing cases or law.):

(d) Ground Four:

Supporting FACTS (Tell your story briefly without citing cases or law.):

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

EXECUTED at Ely State Prison, on the _____ day of the month of _____ of the year 201__.

Signature of petitioner

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

~~_____
Signature of Attorney (if any)~~

~~_____
Attorney for petitioner~~

~~_____
Address~~

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

BARR ANTHONY
Petitioner

Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I, BARR Anthony, hereby certify pursuant to N.R.C.P. 5(b), that on this 6th day of the month of May, of the year 2008, I mailed a true and correct copy of the foregoing **PETITION FOR WRIT OF HABEAS CORPUS** addressed to:

Gettner William
Respondent prison or jail official
P.O. Box 1989
Elko Nevada 89301
Address

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

Steven B Wolfson
District Attorney of County of Conviction
200 Lewis Ave
Las Vegas NV 89155
Address


Signature of Petitioner

AFFIRMATION PURSUANT TO NRS 239B.030

I, Anthony BARR, NDOC# 1212761

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE
ATTACHED DOCUMENT ENTITLED Motion For Leave to
proceed in forma pauperis

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

DATED THIS 6th DAY OF May, 2021.

SIGNATURE: 

INMATE PRINTED NAME: Anthony BARR

INMATE NDOC # 1212761

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



U.S. POSTAGE PITNEY BOWES

ZIP 89301 \$ 002.00⁰
02 4W
0000349227 MAY 06 2021

STEVEN D. GRIERSON
CLERK OF THE COURTS
200 LEWIS AVE 3RD FLOOR
LAS VEGAS NV 89155

al mail

BARR Anthony #1217761

Ely State Prison

PO Box 1989

Ely NV 89301

110

1 BARR Anthony #120761
2 PO ROK 1989
3 Ely State Prison
4 Ely Nevada 89301-1989
5 Petitioner, PRO SE

FILED
MAY 24 2021

John H. Hines
CLERK OF COURT

6
7
8 IN THE Eighth DISTRICT COURT OF THE
9 STATE OF NEVADA IN AND FOR THE COUNTY OF Clark

10 BARR Anthony

11
12 Petitioner,

13 vs.

14 The State of Nevada,
15 William Gittere,
16 Warden, State of Nevada,

17 Respondents.

CASE NUMBER: C-18-335500-2

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

**A-21-835125-W
Dept. 23**

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

21 Pursuant to NRS 34.750(1):

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

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

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(c) Counsel is necessary to proceed with discovery.

Petitioner is presently incarcerated at Ely State Prison, is indigent and unable to retain private counsel to represent him.

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

Dated this 6th day of May, 2021.

Brian Anthony
In Proper Person

CERTIFICATE OF SERVICE

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


That on May 6th, 2021, he served a copy of the foregoing Ex Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing by personally mailing said copy to:

District Attorney's Office

Address: 200 Lewis Ave 3rd Floor
Las Vegas, NV, 89155-1160

Warden
Address:

Warden William Gittere
P.O. Box 1989
Ely, NV, 89301


Petitioner

THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
24
WILL FOLLOW VIA
U.S. MAIL

THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
25 - 31
WILL FOLLOW VIA
U.S. MAIL

Case No. C-18-335500-2

Dept. No. XXI

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

A-21-835125-W
Dept. 23

Anthony BARR
Petitioner

Gittere William
The State of Nevada
Respondent

**PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)**

INSTRUCTIONS:

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

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

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: Fly State Prison PO Box 1989
Fly Nevada, 89301

2. Name and location of court which entered the judgment of conviction under attack: 8th
Judicial District Court Clark County Nevada

3. Date of judgment of conviction: February 25-2019

4. Case number: C-18-335500-2

5. (a) Length of sentence: 8 - consecutive Life Sentence's
With out parole

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

N/A

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

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

7. Nature of offense involved in conviction being challenged: All 20 counts
that 2 counts went to trial on

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

(a) Not guilty ☒ (b) Guilty ☐ (c) Nolo contendere ☐

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

N/A

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

(a) Jury ☒ (b) Judge without a jury ☐

11. Did you testify at the trial? Yes ☐ No ☒

12. Did you appeal from the judgment of conviction? Yes ☒ No ☐

13. If you did appeal, answer the following:

(a) Name of Court: Nevada Supreme Court

(b) Case number or citation: 78295

(c) Result: Appirmed

(d) Date of result: 9-18-2020
(Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not: N/A

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal?
Yes ☐ No ☒

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

(a)(1) Name of court: _____

(2) Nature of proceeding: _____

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒

(5) Result: _____

(6) Date of result: _____

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

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: _____

(2) Nature of proceeding: _____

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒

(5) Result: _____

(6) Date of result: _____

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

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

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

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

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

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

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY TERRELL BARR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78295

FILED

SEP 18 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit burglary, conspiracy to commit robbery, five counts of burglary while in possession of a deadly weapon, eight counts of robbery with the use of a deadly weapon, three counts of assault with a deadly weapon, assault with a deadly weapon of a victim 60 years of age or older, and carrying a concealed pneumatic gun. The district court adjudicated appellant Anthony Barr as a habitual criminal with respect to the burglary while in possession of a deadly weapon and robbery with the use of a deadly weapon counts, imposing an aggregate sentence of life without the possibility of parole. Eighth Judicial District Court, Clark County; Douglas Smith,¹ Judge. Barr raises seven main contentions on appeal.²

First, Barr contends that the evidence presented at trial was insufficient to support deadly weapon enhancements because no weapon was either seen by a witness or found at the crime scenes. But the totality of the evidence supports the deadly weapon enhancements because it showed Barr and/or his codefendant threatened the victims with the use of

¹Judge Valerie Adair presided over the trial.

²Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

a weapon, *see* NRS 193.165(6)(b) (including in the deadly weapon definition weapons "threatened to be used"); *Bartle v. Sheriff*, 92 Nev. 459, 460, 552 P.2d 1099, 1099 (1976) (explaining that a deadly weapon enhancement is warranted if the evidence suggests the defendant used a deadly weapon to facilitate the crime, even if witnesses never actually saw a weapon), and guns were found in Barr's and his codefendant's cars. Additionally, an officer observed a bulge at Barr's waistline immediately preceding the final set of crimes and surveillance video thereafter captured Barr pulling a gun from his waistband while committing the final bank heist. Accordingly, there was sufficient evidence by which a rational juror could find Barr guilty beyond a reasonable doubt on the deadly weapon enhancements. *See McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (recognizing that it is for the jury to weigh evidence and determine witness credibility, and when reviewing a challenge to the sufficiency of the evidence this court will consider "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt" (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979))); *Wilkins v. State*, 96 Nev. 367, 374-75, 609 P.2d 309, 313-14 (1980) (providing that a jury can rely on both direct and circumstantial evidence in returning its verdict).

Second, Barr argues that the district court erred by not severing the four robbery charges. After reviewing for plain error, we disagree. *See Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008) (reviewing unpreserved claims for plain error, defined as one affecting a defendant's substantial rights by causing actual prejudice, a miscarriage of justice, or a grossly unfair outcome). The crimes occurred over the span of a few months, involved Barr or his codefendant entering banks while disguised, and involved threats of using a weapon against the tellers when demanding

money. Thus, the offenses were connected together and joinder was appropriate. See NRS 173.115(1)(b) (allowing for joinder of charges that are “connected together” or “constituting parts of a common scheme or plan”); *Farmer v. State*, 133 Nev. 693, 699-700, 405 P.3d 114, 120-21 (2017) (defining common scheme and explaining that the offenses are not required to be identical to be joined under NRS 173.115). The evidence relating to the robberies also would have been admissible for relevant, nonpropensity purposes in separate trials, negating that any prejudice resulted from the joinder. See NRS 48.045(2) (providing that evidence of other crimes may be admissible for nonpropensity purposes such as proof of opportunity, preparation, plan, or identity); *Middleton v. State*, 114 Nev. 1089, 1108, 968 P.2d 296, 309 (1998) (pointing to the cross-admissibility of evidence as indicative of the lack of undue prejudice resulting from joinder). Further, the issue of guilt was not close—victim eyewitness testimony, testimony from witnesses who knew Barr and identified him as one of the perpetrators, and video surveillance all supported the jury’s verdict. Cf. *Weber v. State*, 121 Nev. 554, 575, 119 P.3d 107, 122 (2005) (explaining that close cases are “more likely” to require reversal “because [joinder] may prevent jurors from making a reliable judgment about guilt”), *overruled on other grounds by Farmer*, 133 Nev. 693, 405 P.3d 114.

Third, Barr argues that the district court erred in not severing his case from his codefendant’s, whose defense was antagonistic to his and against whom there was more evidence. We disagree as Barr has not demonstrated plain error because he offers no argument as to how the

codefendant's *trial*³ defenses were antagonistic to his. *See Valdez*, 124 Nev. at 1190, 196 P.3d at 477 (addressing plain error); *see also* NRS 173.135 (providing that defendants may be charged in the same charging document when they participated in the same criminal conduct); NRS 174.165 (providing discretion to the district court to sever where prejudice results from joining defendants). And a defendant is not entitled to severance merely because the evidence against a codefendant is more damaging. *Lisle v. State*, 113 Nev. 679, 690, 941 P.2d 459, 466 (1997), *limited on other grounds by Middleton*, 114 Nev. 1089, 968 P.2d 296.

Fourth, Barr argues that the district court committed plain error by admitting character evidence—several previous traffic stops—and by doing so without first conducting a *Petrocelli* hearing. We conclude that Barr has not demonstrated plain error because the detective had to explain the circumstances surrounding the traffic stops in order to explain how he identified Barr as the perpetrator (the robbery perpetrators were seen getting into the same vehicle) and ultimately apprehended him after having placed a tracker on Barr's vehicle. *See* NRS 48.035(3) ("Evidence of another act or crime which is so closely related to an act in controversy or a crime charged that an ordinary witness cannot describe the act in controversy or the crime charged without referring to the other act or crime shall not be excluded."); *State v. Shade*, 111 Nev. 887, 894, 900 P.2d 327, 331 (1995)

³Barr only references antagonistic defenses that he claims affected him at sentencing, which the jury would not have been privy to and is irrelevant to a codefendant-severance analysis. *See Marshall v. State*, 118 Nev. 642, 646, 56 P.3d 376, 378 (2002) (explaining that antagonistic defenses only require severance when the defenses are so irreconcilable that the jury accepting the codefendant's theory would prohibit the defendant's acquittal).

(determining “whether witnesses can describe the crime charged without referring to related uncharged acts” to decide whether to admit evidence under NRS 48.035(3)); *see also Bellon v. State*, 121 Nev. 436, 444, 117 P.3d 176, 180 (2005) (indicating that the district court is not required to hold a *Petrocelli* hearing when it admits evidence under NRS 48.035(3)).

Fifth, Barr argues that the district court violated his right to confrontation when it limited his cross-examination of detectives regarding the aforementioned tracking device.⁴ We disagree, as the district court properly excluded irrelevant questions regarding the tracker’s size or location on the vehicle, but allowed all other questions about the tracker’s accuracy and how it ultimately led detectives to Barr.⁵ *See* NRS 48.015

⁴Relatedly, Barr argues that the district court erred in admitting unqualified and unnoticed expert testimony regarding the car tracker and Google maps. But Barr neither identifies which State witness(es) his argument applies to nor cites to the record to support his argument. *See* NRAP 28(e)(1) (requiring citations to the record to support assertions in briefs); *Skinner v. State*, 83 Nev. 380, 384, 432 P.2d 675, 677 (1967) (recognizing that this court can decline to consider assertions that are not supported by record citations). And State law enforcement witnesses did not testify as experts because their testimony did not go beyond relaying facts regarding their use of the tracker and Google maps to locate Barr. *See Abbott v. State*, 122 Nev. 715, 728, 138 P.3d 462, 471 (2006) (explaining when a witness’s testimony constitutes expert testimony).

⁵To the extent Barr argues that the information outputted from the tracker amounted to an improper testimonial statement of an unavailable witness in violation of hearsay rules, we conclude that he has not demonstrated plain error where the data retrieved was machine-based and was not a “statement” that could be considered hearsay. *See* NRS 51.045 (defining a statement for hearsay purposes as “[a]n oral or written assertion” or “[n]onverbal conduct of a *person*, if it is intended as an assertion” (emphasis added)); *Valdez*, 124 Nev. at 1190, 196 P.3d at 477 (reviewing unpreserved errors for plain error); *see also Commonwealth v.*

(defining relevant evidence as that which makes a material fact at issue more or less probable); *Mendoza v. State*, 122 Nev. 267, 277, 130 P.3d 176, 182 (2006) (“Determinations of whether a limitation on cross-examination infringes upon the constitutional right of confrontation are reviewed de novo.”).⁶

Sixth, Barr argues that the district court erred in not continuing his sentencing hearing once he took issue with information in his presentence investigation report (PSI). We review a district court’s decision on a motion to continue for an abuse of discretion, which will only be found if a defendant demonstrates that the denial prejudiced him. *Higgs v. State*, 126 Nev. 1, 9, 222 P.3d 648, 653 (2010). Barr requested a continuance due to alleged inaccuracies and missing information in his PSI, and claimed that he needed additional time and counsel’s help to identify any further inaccuracies because he only had a third-grade education.⁷ The district court abused its discretion when it declined to continue Barr’s sentencing because that prevented him from thoroughly reviewing the PSI for all potential errors in order to lodge an objection. See *Sasser v. State*, 130 Nev. 387, 390, 324 P.3d 1221, 1223 (2014) (reiterating a defendant’s right to object to factual errors in the PSI, but requiring any such objection to be made before sentencing); *Shields v. State*, 97 Nev. 472, 473, 634 P.2d

Thissell, 928 N.E.2d 932, 937 n.13 (Mass. 2010) (explaining that, “[b]ecause computer-generated records, by definition, do not contain a statement from a person, they do not necessarily implicate hearsay concerns”).

⁶The record shows that Barr objected, so we review de novo despite both parties arguing for plain error review.

⁷Although Barr’s counsel initially indicated that he had not yet gone over the “massive PSI” with Barr, he acknowledged that they discussed it after the court passed the case while waiting for codefendant’s counsel.

468, 469 (1981) ("NRS 176.156 contemplates that persons convicted of crimes should have the opportunity to make informed comments on, and response to, all factual assertions contained in presentence investigation reports."). The district court further erred in not addressing all of Barr's assertions. See *Sasser*, 130 Nev. at 390-91, 324 P.3d at 1223-24 (requiring the district court to determine whether challenged PSI information is erroneous); *Stockmeier v. State, Bd. of Parole Comm'rs*, 127 Nev. 243, 250, 255 P.3d 209, 214 (2011) (emphasizing that regardless of whether an error impacts a defendant's sentence, the Department of Corrections could rely on significant inaccuracies in determining a defendant's "classification, placement in certain programs, and eligibility for parole," necessitating an avenue to immediately seek correction of a faulty PSI to prevent reliance on a PSI that cannot be subsequently changed). But we conclude these errors do not warrant reversal because Barr has not demonstrated prejudice—the alleged errors were insignificant⁸ or irrelevant to sentencing and Barr utilized the PSI's recommendation of concurrent time to argue for a lesser sentence than his maximum exposure. See *Blankenship v. State*, 132 Nev. 500, 509, 375 P.3d 407, 413 (2016) (explaining that an error in a sentencing form does not amount to "impalpable or highly suspect evidence" unless it tainted the PSI sentencing recommendation considered by the district court). And the record as a whole supports that the district court's sentencing was based on the accurate information presented at sentencing—the circumstances surrounding the crimes and prior felony convictions that Barr agreed were accurately reflected in the PSI. See *Thomas v. State*, 88 Nev. 382, 385, 498 P.2d 1314, 1316 (1972) (explaining

⁸At one point, Barr conceded that the errors were "small."



that a district court can impose a legally sound sentence even when there are inadequacies in sentencing forms produced by the Division).

Barr next argues, for the first time on appeal, that the district court erred in basing its sentencing decision on facts not in the record, weighing Barr's speedy-trial-right invocation in making its sentencing decision, and altering his sentence at a subsequent hearing. After plain error review, we disagree. See *Rodriguez v. State*, 134 Nev. 780, 781, 431 P.3d 45, 46 (2018) (reviewing for plain or clear error affecting substantial rights when a defendant fails to lodge a contemporaneous objection or argument on a sentencing issue). The record shows that the district court did not consider Barr's speedy-trial invocation or rely on highly suspect or impalpable information, but rather made its sentencing decision after considering arguments by defense counsel and the State, Barr's statement, a victim impact statement, and Barr's prior felonies that formed the basis for his habitual criminal treatment.⁹ See *Smith v. State*, 112 Nev. 871, 873, 920 P.2d 1002, 1003 (1996) (explaining that this court will not disturb a sentence that is within statutory limits unless the district court relied on "highly suspect or impalpable information"). Additionally, at the second sentencing hearing, which occurred before the judgment of conviction was filed and while Barr's case was still within the district court's jurisdiction, the district court appropriately vacated illegal sentences on counts Barr was

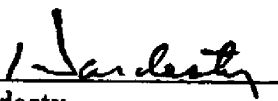
⁹Barr's sentence was within the prescribed statutory range for his convictions, enhancements, and treatment as a habitual criminal. See NRS 193.130 (punishment for felonies); NRS 193.165 (deadly weapon enhancement); NRS 193.167 (crimes committed against persons 60 years of age or older); NRS 199.480 (conspiracy); NRS 200.380 (robbery); NRS 200.471 (assault); NRS 202.350 (carrying a concealed weapon); NRS 205.060 (burglary); NRS 207.010 (habitual criminal penalties).

not charged with; sentenced Barr to concurrent time on a count he was not previously sentenced for; and sentenced him as a habitual criminal on the burglary while in possession of a deadly weapon counts, none of which increased his overall aggregate sentence. See NRS 176.555 ("The court may correct an illegal sentence at any time."); NRS 176.565 ("Clerical mistakes in judgments . . . and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders."); *Bradley v. State*, 109 Nev. 1090, 1095, 864 P.2d 1272, 1275 (1993) (explaining that an oral pronouncement of a sentence does not divest the district court's jurisdiction over the defendant, and it can modify a sentence before the clerk enters the signed judgment of conviction).

Seventh, Barr argues that cumulative error warrants reversal. We disagree because the errors identified above occurred during sentencing and therefore could not have impacted the jury's verdict.¹⁰ See *Valdez*, 124 Nev. at 1196, 196 P.3d at 481 (assessing cumulative error claims by first considering if the errors prejudiced the jury's verdict). We therefore

ORDER the judgment of conviction AFFIRMED.


Parraguirre, J.


Hardesty, J.


Cadish, J.

¹⁰We decline to address the preservation-of-evidence and amended information claims that Barr references but does not cogently argue. See *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.").

cc: Chief Judge, The Eighth Judicial District Court
Eighth Judicial District Court, Dept. 8
Jeannie N. Hua
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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

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

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

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

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

This is my first U.S. Chapter 34 petition and all grounds are newly raised

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

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes _____ No ✓
If yes, state what court and case number: N/A

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: Lead Counsel - Edward B. Hughes,
Direct Appeal Counsel - Jeanne N. Hue

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes _____ No ✓
If yes, specify where and when it is to be served, if you know: _____

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

(a) Ground One: Ineffective Assistance of Counsel
A violation of my 6th and 14th Amendment Right of
the U.S. Constitution

Supporting FACTS (Tell your story briefly without citing cases or law.):

(b) Ground Two: Manifest Injustice A Violation of
my 4th and 5th and 14th Amendment of the US
Constitution

Supporting FACTS (Tell your story briefly without citing cases or law.):

UNREASONABLE
(c) Ground Three: Unreasonable Search and Seizure A Violation
of my 4th and 14th Amendment under the United States Constitution
and Article I, Section 1, of the Nevada Constitution

Supporting FACTS (Tell your story briefly without citing cases or law.):

(d) Ground Four:

Supporting FACTS (Tell your story briefly without citing cases or law.):

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

EXECUTED at Ely State Prison, on the ____ day of the month of _____ of the year 201__.

Signature of petitioner

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

Signature of Attorney (if any)

Attorney for petitioner

Address

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof, that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

BARR Anthony
Petitioner

Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I, BARR Anthony, hereby certify pursuant to N.R.C.P. 5(b), that on this 6th day of the month of May, of the year 2021 I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

Giffere William
Respondent prison or jail official
P.O. Box 1989
Elko Nevada 89301
Address

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

Steven B Wolfson
District Attorney of County of Conviction
200 Lewis Ave
Las Vegas NV 89155
Address


Signature of Petitioner

AFFIRMATION PURSUANT TO NRS 239B.030

I, Anthony BARR, NDOC# 1212761,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE
ATTACHED DOCUMENT ENTITLED Motion For Leave to
proceed in forma pauperis

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

DATED THIS 6th DAY OF May, 2021.

SIGNATURE: 

INMATE PRINTED NAME: Anthony BARR

INMATE NDOC# 1212761

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

1 BARR Anthony #120761
2 PO ROK 1989
3 Ely State Prison
4 Ely Nevada 89301-1989
5 Petitioner, PRO SE

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CASE NUMBER: C-18-335500-2

EX PARTE MOTION FOR
APPOINTMENT OF COUNSEL AND
REQUEST FOR EVIDENTIARY
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25 summarily, the court may appoint counsel to represent the petitioner. In
26 making its determination, the court may consider, among other things, the
27 severity of the consequences facing the petitioner and whether:

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

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(c) Counsel is necessary to proceed with discovery.

Petitioner is presently incarcerated at Ely State Prison, is indigent and unable to retain private counsel to represent him.

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

Dated this 6th day of May, 2021.

BARR Anthony
In Proper Person

CERTIFICATE OF SERVICE

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

That on May 6th, 2021, he served a copy of the foregoing Ex Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing by personally mailing said copy to:

District Attorney's Office

Address: 200 Lewis Ave 3rd Floor
Las Vegas, NV, 89155-1160

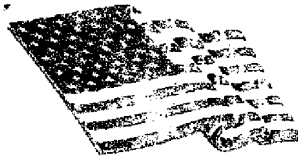
Warden
Address:

Warden William Gittare
P.O. Box 1989
Ely, NV, 89301

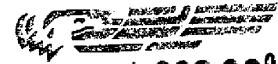

Petitioner

BARR Anthony #1717761
ELY State Prison
PO Box 1989
ELY NV 89301

leg



U.S. POSTAGE PITNEY BOWES



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02 4W
0000349227 MAY 06 2021

STEVEN D. GRIERSON
CLERK OF THE COURTS
200 LEWIS AVE 3RD FLOOR
LAS VEGAS NV 89155

al mail

1 PPOW

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

5 Anthony Barr,

6 Petitioner,

7 vs.

8 Gittere William; State of Nevada,

9 Respondent,

Case No: A-21-835125-W
Department 23

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

10
11 Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on
12 May 24, 2021. The Court has reviewed the Petition and has determined that a response would assist the
13 Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good
14 cause appearing therefore,

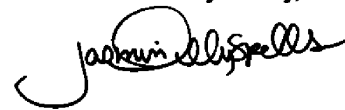
15 **IT IS HEREBY ORDERED** that Respondent shall, within 45 days after the date of this Order,
16 answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS
17 34.360 to 34.830, inclusive.

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

19 July 26, 2021 at 12:30 p.m.
20 Calendar on the _____ day of _____, 20____, at the hour of

21 _____ o'clock for further proceedings.

22 Dated this 25th day of May, 2021

23 

24
25 **Jasmin Lilly-Spells**
26 **District Court Judge**
27
28

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Anthony Barr, Plaintiff(s)

CASE NO: A-21-835125-W

7 vs.

DEPT. NO. Department 23

8 Gittere William, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

13
14 If indicated below, a copy of the above mentioned filings were also served by mail
15 via United States Postal Service, postage prepaid, to the parties listed below at their last
16 known addresses on 5/26/2021

16 Anthony Barr

#1212761

ESP

17 P.O. Box 1989

18 Ely, NV, 89301
19
20
21
22
23
24
25
26
27
28

1 DISTRICT COURT

CLARK COUNTY, NEVADA

Electronically Filed
6/1/2021 11:35 AM
Steven D. Grierson
CLERK OF THE COURT



3 Anthony Barr, Plaintiff(s)

4 vs.

Gittere William, Defendant(s)

Case No.: A-21-835125-W

Department 23

6 **NOTICE OF HEARING**

8 Please be advised that the Plaintiff's Ex Parte Motion for Appointment of Counsel and
9 Request for Evidentiary Hearing in the above-entitled matter is set for hearing as follows:

10 **Date:** July 26, 2021

11 **Time:** 12:30 PM

12 **Location:** RJC Courtroom 12D
Regional Justice Center
200 Lewis Ave.
13 Las Vegas, NV 89101

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

17 STEVEN D. GRIERSON, CEO/Clerk of the Court

18
19 By: /s/ Michelle McCarthy
20 Deputy Clerk of the Court

21 **CERTIFICATE OF SERVICE**

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

24
25 By: /s/ Michelle McCarthy
26 Deputy Clerk of the Court



1 **RSPN**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 ALEXANDER CHEN
6 Chief Deputy District Attorney
7 Nevada Bar #10539
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7
8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

9 ANTHONY BARR, #8437104,

10 Petitioner,

11 -vs-

12 THE STATE OF NEVADA,

13 Respondent.

CASE NO: A-21-835125-W

DEPT NO: XXIII

14
15 **STATE'S RESPONSE TO PETITIONER'S PETITION FOR WRIT OF HABEAS**
16 **CORPUS (POST-CONVICTION) AND MOTION TO APPOINT COUNSEL**

17 DATE OF HEARING: July 26, 2021

18 TIME OF HEARING: 12:30 PM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through ALEXANDER CHEN, 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 Motion to Appoint Counsel.

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

26 **POINTS AND AUTHORITIES**

27 **STATEMENT OF THE CASE**

28 On October 23, 2018, ANTHONY BARR (hereinafter "Petitioner") was charged by
way of Information with CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor -

1 NRS 205.060, 199.480); CONSPIRACY TO COMMIT ROBBERY (Category B Felony -
2 NRS 200.380, 199.480); BURGLARY WHILE IN POSSESSION OF A DEADLY
3 WEAPON (Category B Felony – NRS 205.060); ROBBERY WITH USE OF A DEADLY
4 WEAPON (Category B Felony – NRS 200.380, 193.165); ASSAULT WITH A DEADLY
5 WEAPON (Category B Felony – NRS 200.471); and ASSAULT WITH A DEADLY
6 WEAPON, VICTIM 60 YEARS OF AGE OR OLDER (Category B Felony – NRS 200.471,
7 193.167); CARRYING CONCEALED PNEUMATIC GUN (Category C Felony – NRS
8 202.350); and PREVENTING OR DISSUADING WITNESS OR VICTIM FROM
9 REPORTING CRIME OR COMMENCING PROSECUTION (Category D Felony – NRS
10 199.305) for actions on or between July 17, 2018 and August 6, 2018.

11 On December 3, 2018, Petitioner’s case proceeded to trial before a jury. Petitioner was
12 tried with one of his co-defendants, Damien Phillips. After eight (8) days of trial, the jury its
13 Verdict as follows: Count 1 – Guilty of Conspiracy to Commit Burglary; Count 2 – Guilty of
14 Conspiracy to Commit Robbery; Count 4, 8, 11, 14, and 15 – Guilty of Burglary While in
15 Possession of a Deadly Weapon; Counts 6, 7, 9, 10, 12, 13, 16, and 17 – Guilty of Robbery
16 with Use of a Deadly Weapon; Counts 5, 8, 11, 14, and 15 – Guilty of Burglary While in
17 Possession of a Deadly Weapon; Counts 18, 19, and 20 – Guilty of Assault with a Deadly
18 Weapon; Count 21 – Guilty of Assault with a Deadly Weapon, Victim 60 Years of Age or
19 Older; and Count 22 – Guilty of Carrying Concealed Pneumatic Gun.

20 On January 29, 2019, Petitioner was sentenced. The court adjudged him guilty of the
21 violent habitual statute and applied a violent habitual mandatory sentencing penalty to Counts
22 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17. Defendant’s Judgment of Conviction has him
23 sentenced as follows:

24 **Count 1** – 364 days in the Clark County Detention Center;

25 **Count 2** – 12 to 48 months concurrent with Count 1;

26 **Count 5** – 36 to 120 months concurrent with Count 2;

27 **Count 6** – Life without the possibility of parole plus a consecutive term of 36 months to 120
28 months for the deadly weapon enhancement;

1 **Count 7** – Life without the possibility of parole plus a consecutive term of 36 months to 120
2 months for the deadly weapon enhancement consecutive to Count 6;
3 **Count 8** – 36 months to 120 months concurrent with Count 5;
4 **Count 9** – Life without the possibility of parole plus a consecutive term of 36 months to 120
5 months for the deadly weapon enhancement consecutive to Count 7;
6 **Count 10** – Life without the possibility of parole plus a consecutive term of 36 months to 120
7 months for the deadly weapon enhancement consecutive to Count 9;
8 **Count 11** – 36 months to 120 months concurrent with Count 8;
9 **Count 12** – Life without the possibility of parole plus a consecutive term of 36 months to 120
10 months for the deadly weapon enhancement consecutive to Count 10;
11 **Count 13** - Life without the possibility of parole plus a consecutive term of 36 months to 120
12 months for the deadly weapon enhancement consecutive to Count 12;
13 **Count 14** – 36 months to 120 months concurrent with Count 11;
14 **Count 15** – 36 months to 120 months concurrent with Count 14
15 **Count 16** - Life without the possibility of parole plus a consecutive term of 36 months to 120
16 months for the deadly weapon enhancement consecutive to Count 13;
17 **Count 17** - Life without the possibility of parole plus a consecutive term of 36 months to 120
18 months for the deadly weapon enhancement consecutive to Count 16;
19 **Count 18** – 12 months to 48 months concurrent with Count 15;
20 **Count 19** – 12 months to 48 months concurrent with Count 18;
21 **Count 20** – 12 months to 48 months concurrent with Count 19;
22 **Count 21** – 12 months to 48 months plus a consecutive 12 months to 48 months for the deadly
23 weapon enhancement concurrent with Count 17;
24 **Count 22** – 12 months to 48 months concurrent with Count 21.
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The aggregate total sentence imposed was life without parole eligibility.

On March 5, 2019, Petitioner filed a Notice of Appeal from his Judgment of Conviction. On September 18, 2020, the Nevada Supreme Court filed its Order of Affirmance. Remittitur issued on October 15, 2020.

On May 24, 2021, Petitioner filed the instant Petition for Writ of Habeas Corpus (Postconviction), and a Motion to Appoint Counsel.

POINTS AND AUTHORITIES

I. PETITIONER'S PETITION SHOULD BE DISMISSED

“Habeas corpus is a unique remedy that is governed by its own statutes regarding procedure and appeal.” Mazzan v. State, 109 Nev. 1067 (1993). NRS 34.720 through NRS 34.830 are the statutory requirements for filing a petition for writ of habeas corpus (Postconviction). NRS 34.735 governs the form of the petition. The instructions of NRS 34.735 are also on the cover page of the petition that Petitioner filed in this case. According to NRS 34.735, an individual is required to set forth specific facts supporting the claim, and not just conclusions, or else that individual risks having the petition dismissed.

Petitioner has set forth three separate grounds for his petition, but he has failed to support any of his grounds with specific facts supporting his claims. In it, he raises the following broad issues:

Ground 1: Ineffective Assistance of Counsel A violation of my 6th and 14th Amendment Right of the U.S. Constitution

Ground 2: Manifest Injustice A violation of my 4th and 5th and 14th Amendment of the US Constitution

Ground 3: Unreasonable search and seizure A violation of my 4th and 14th Amendment under the United States constitution and Article 1, Section 1, of the Nevada Constitution

Given that this petition is defective, and that Petitioner has failed to set forth any factual allegations, this Petition should be dismissed.

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1 **II. PETITIONER IS NOT ENTITLED TO THE APPOINTMENT OF COUNSEL**

2 Petitioner also filed a boilerplate Motion to Appoint Counsel to accompany his petition.
3 Petitioner’s Motion to Appoint does not specifically address Petitioner’s case, much less
4 specifically assert *why* counsel is necessary.

5 While Petitioner’s Motion to Appoint references the standard for appointment of
6 counsel in postconviction cases, this Court finds that Petitioner’s quotation is incomplete. NRS
7 34.750 reads:

8 A petition may allege that the Defendant is unable to pay the costs of the
9 proceedings or employ counsel. If the court is satisfied that the allegation of
10 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:

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

13 Under NRS 34.750, it is clear that the court has discretion in determining whether to
14 appoint counsel. The Nevada Supreme Court has observed that a petitioner “must show that
15 the requested review is not frivolous before he may have an attorney appointed.” Peterson v.
16 Warden, Nevada State Prison, 87 Nev. 134, 136, 483 P.2d 204, 205 (1971) (citing former
17 statute NRS 177.345(2)).

18 Indeed, under the United States Constitution, the Sixth Amendment provides no right
19 to counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111
20 S.Ct. 2546, 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258
21 (1996), the Nevada Supreme Court similarly observed, “[t]he Nevada Constitution...does not
22 guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada
23 Constitution’s right to counsel provision as being coextensive with the Sixth Amendment to
24 the United States Constitution.” McKague specifically held that, with the exception of NRS

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1 34.820(1)(a) (entitling appointed counsel when petitioner is under a sentence of death), one
2 does not have “any constitutional or statutory right to counsel at all” in post-conviction
3 proceedings. Id. at 164, 912 P.2d at 258.

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

23 Petitioner has not made any claims that would warrant appointment of counsel.¹ Unlike
24 Renteria-Novoa, this is not an individual that does not speak the English language. There is no

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¹ Petitioner’s co-defendant, Damien Phillips, was also denied appointment of counsel by this Court in A831976.

1 allegation that this is a particularly difficult case. Although Petitioner received a lengthy prison
2 sentence, this was the result of his past convictions as a violent habitual criminal, not because
3 necessarily because the charges or case were complex.

4 **CONCLUSION**

5 Based upon the fact that Petitioner has failed to allege specific facts in his Petition, and
6 that he has made no showing as to why he should have counsel appointment, Petitioner's
7 petition should be dismissed, and the Motion to Appoint counsel should be denied.

8 DATED this 7th day of July, 2021.

9 Respectfully submitted,
10 STEVEN B. WOLFSON
11 Clark County District Attorney
12 Nevada Bar #001565

13 BY /s/ Alexander Chen
14 ALEXANDER CHEN
15 Chief Deputy District Attorney
16 Nevada Bar #10539

17 **CERTIFICATE OF ELECTRONIC TRANSMISSION**

18 I hereby certify that service of the above and foregoing was made this 7th day of July,
19 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

20 Anthony Barr, BAC#1212761
21 Ely State Prison
22 P.O. Box 1989
23 Ely, NV 89301

24 BY /s/ Zem Martinez
25 Zem Martinez,
26 Secretary for the District Attorney's Office
27
28

ORDER
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #010539
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ANTHONY BARR, #8437104,

Defendant.

CASE NO: A-21-835125-W
DEPT NO: XXIII

ORDER DENYING DEFENDANT'S MOTION TO APPOINT COUNSEL

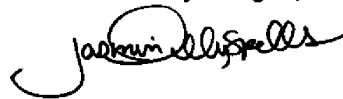
DATE OF HEARING: 07/26/2021
TIME OF HEARING: 12:30 P.M.

THIS MATTER having come on for hearing before the above entitled Court on the 26th day of July, 2021, the Defendant being present, IN PROPER PERSON, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through ALEXANDER CHEN, Chief Deputy District Attorney, and the Court having heard the arguments of counsel and good cause appearing therefor,

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1 IT IS HEREBY ORDERED that the Defendant's Motion to Appoint Counsel, shall be,
2 and it is Denied.

3 DATED this _____ day of July, 2021. Dated this 17th day of August, 2021

4 

5 DISTRICT JUDGE

6 5C9 8F8 E2E6 8FB9
7 Jasmin Lilly-Spells
8 District Court Judge

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

12 BY /s/ Alexander Chen
13 ALEXANDER CHEN
14 Chief Deputy District Attorney
15 Nevada Bar #010539

16 CERTIFICATE OF ELECTRONIC TRANSMISSION

17 I hereby certify that service of the above and foregoing was made this 30th day of July,
18 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

19 Anthony Barr, BAC#1212761
20 Ely State Prison
21 P.O. Box 1989
22 Ely, NV 89301

23 BY /s/ Zem Martinez
24 Zem Martinez,
25 Secretary for the District Attorney's
26 Office

27
28 zm/L5

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Anthony Barr, Plaintiff(s)

CASE NO: A-21-835125-W

7 vs.

DEPT. NO. Department 23

8 Gittere William, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

ANTHONY BARR #121276
P.O. Box 1989 - ESP
ELY, NV. 89301

ORIGINAL

Electronically Filed
09/20/2021

Heather J. Smith
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

ANTHONY BARR

PETITIONER;

THE STATE OF NEVADA

Respondent;

CASE No. A-21-835125-W

DEPT. No. XXIII

MOTION

FOR CLARIFICATION

AND STATUS CHECK

NOW COMES PETITIONER BARR AND MOVES THIS COURT WITH A
MOTION FOR CLARIFICATION AND STATUS CHECK - ON MAY 24, 2021
PETITIONER FILED A WRIT OF HABEAS CORPUS AND A MOTION TO
APPOINT COUNSEL - ON OR ABOUT JULY 7, 2021 THE RESPONDENT(S)
FILED THEIR RESPONSE TO PETITIONER'S PETITION - THE RESPONDENT
I.E. STATE OF NEVADA. ALSO STIPULATED IN WRITING THE DATE OF
THE HEARING WOULD BE JULY 26TH 2021 TIME 12:30 PM.

TO THIS DATE AUGUST 23, 2021 - PETITIONER HAS
NOT RECEIVED ANY TYPE OF RESPONSE FROM THE COURT, NOR
HAS PETITIONER BEEN NOTIFIED FROM THIS COURT OF ANY
TYPE OF RULING - PETITIONER REQUEST OF THIS COURT TO CLARIFY
IF A RULING HAS OR HAS NOT BEEN HANDLED DOWN ON THIS MATTER.

Submitted this 23 day of August 2021

CERTIFICATE OF SERVICE

PETITIONER BARR

I HEREBY CERTIFY THAT I AM THE PETITIONER IN THE FOREGOING MOTION.
ON THIS 23 DAY OF AUGUST 2021 I DID SERVE A TRUE AND CORRECT
OF THE FOREGOING MOTION BY DEPOSITING IT IN THE INSTITUTIONAL MAIL
ADDRESSED TO: STEVEN B. WOLFSON

RECEIVED

301 E. CLARK AVE.

AUG 30 2021

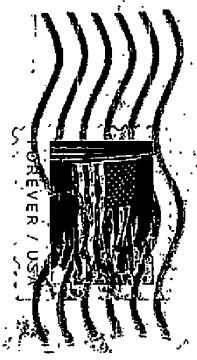
LAS VEGAS, NV 89101

[Signature]
PETITIONER BARR #1212761
P.O. Box 1989 - ESP
ELY, NV 89301

CLERK OF THE COURT

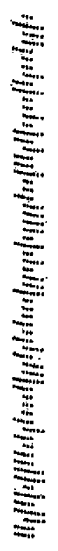
Barry Anthony Ayala
P.O. Box 1989
Elko NV 89301

LAS VEGAS, NV 890
24 AUG 2021 PM 5 L



Clark of Courts
301 E. Clark Ave
Las Vegas NV 89101

Legal Mail 691015531



ELI STATE OF NV

AUG 23 2021

U5

Steven D. Grierson

Anthony Barr
#1212761
E.S.P.
P.O.-Box 1989
Ely Nevada, 89301

DISTRICT COURT
CLARK COUNTY, NEVADA

Anthony Barr
Petitioner

Case No: A-21-835125-W

vs-

Dept NO: 23

State of Nevada,
Respondent

Motion for Notice
of Appeal

Comes Now, Petitioner Anthony Barr, Respectfully
moves this Court to file this motion for
an Appeal on the Denial of the Court's
hearing on 7-26-2021 for Petition for
writ of Habeas Corpus, Motion to Appointment
Counsel, Motion for leave to proceed
In forma Pauperis

RECEIVED
SEP 27 2021
CLERK OF THE COURT

This Motion is made and based

upon all papers and pleadings on file herein and the Attached points and Authorities in Support herein.

Points And Authorities

On 5-24-2021, Petitioner filed an Motion to Appoint Counsel, Petition for Writ of Habeas Corpus, Motion for leave to proceed In Re Pauperis Pursuant to NRS 34.750

In Ford v. State, 281 P.3d 1172 (Nev, 2009) the Nevada Supreme Court found the District Court's failure to Appoint post-Conviction Counsel Deprived the Defendant of a Meaningful opportunity to litigate where Defendant was serving a lengthy sentence and the issues raised in the Defendants petition were complex.

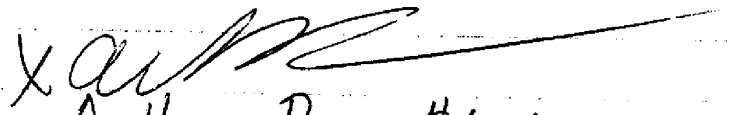
The issues necessitated in Defendants Petition are likely complex given the Seriousness of Defendants offense and that Defendants Conviction was the result of a Jury trial...

Conclusion

For the reasons stated above petitioner

Respectfully prays this Honorable Court
Grant his request ~~to~~ to file his Motion
for Notice of Appeal

Dated this 14th Day of Sept. 2021

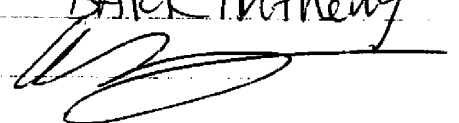
X 
Anthony Barr #1212761
E.S.F
P.O. Box 1989
Ely Nevada 89301

Clerk of the courts.

9-19-21

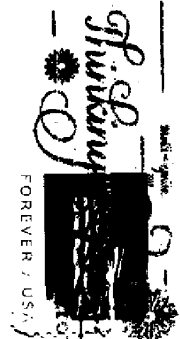
I'm writing this to
State for the Record that I AM NOT
WRITING MY Habeas ON MY OWN AND THAT
I AM GETTING HELP FROM ANOTHER INMATE
WHO I AM PLAYING WITH TOOD ITEMS OFF OF
MY TRAYS TO HELP ME BECAUSE I'M BROKE,
INNOCENT AND DO NOT UNDERSTAND THE
HABEAS BOOK IN THE LAW LIBRARY, PLUS I HAVE
NO CLUE HOW TO FILE MY APPEAL PROCESS
CORRECTLY DO TO THE GUIDELINES I'M SUPPOSE TO
FOLLOW. I AM PLACING MYSELF TO THE MERCY
OF THE COURTS ASKING FOR HELP, MY P.S. I
SHOWS THAT I ONLY HAVE A 6 GRADE EDUCATION
AND I BEEN IN SPECIAL ADD SO HOW I'M
GUNNA UNDERSTAND THIS LEGAL STUFF BY MY
SELF, I ALSO HAVE MENTAL HEALTH ISSUES ON
RECORD STATING THAT I'M SUFFERING MULTIPLE
PERSONALITY DISORDERS AND IS SUFFERING
FROM ABUSE SUBSTANCES. THE INMATE WHO
IS HELPING ME IS SOON TO BE TRANSPORTED
TO ANOTHER PRISON. I'M ASKING COULD I PLEASE
GET APPOINTED COUNSEL TO HELP ME FIGHT
FOR MY FREEDOM?

(GOD) Bless

BARR Anthony


BARBARA ANDREW # 1210-76
QDO 1308 18022
ELY NV 89301

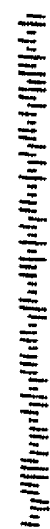
LAS VEGAS NV 890
21 SEP 2021 PM 5 1



CERT OF THE COURT
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LAS VEGAS NV 89155-1160

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

10 ANTHONY BARR,

11 Plaintiff(s),

12 vs.

13 GITTERE WILLIAM; STATE OF NEVADA,

14 Defendant(s),
15

Case No: A-21-835125-W

Dept No: IX

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Anthony Barr

20 2. Judge: Jasmin Lilly-Spells

21 3. Appellant(s): Anthony Barr

22 Counsel:

23 Anthony Barr #1212761
24 P.O. Box 1989
Ely, NV 89301

25 4. Respondent (s): Gittere William; State of Nevada

26 Counsel:

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

A-21-835125-W

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5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A
- Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A
6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No
7. Appellant Represented by Appointed Counsel On Appeal: N/A
8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A
***Expires 1 year from date filed*
Appellant Filed Application to Proceed in Forma Pauperis: Yes,
Date Application(s) filed: May 24, 2021
9. Date Commenced in District Court: May 24, 2021
10. Brief Description of the Nature of the Action: Civil Writ
- Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus
11. Previous Appeal: No
- Supreme Court Docket Number(s): N/A
12. Child Custody or Visitation: N/A
13. Possibility of Settlement: Unknown

Dated This 29 day of September 2021.

Steven D. Grierson, Clerk of the Court

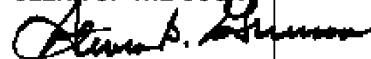
/s/ Heather Ungermann
Heather Ungermann, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: Anthony Barr

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**DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
9/30/2021 7:46 AM
Steven D. Grierson
CLERK OF THE COURT



Anthony Barr, Plaintiff(s)

vs.

Gittere William, Defendant(s)

Case No.: A-21-835125-W

Department 9

NOTICE OF HEARING

Please be advised that the [10] Plaintiff Motion for Notice of Appeal in the above-entitled matter is set for hearing as follows:

Date: October 11, 2021

Time: 11:00 AM

Location: RJC Courtroom 11B
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Kadir Beckom
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

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

By: /s/ Kadir Beckom
Deputy Clerk of the Court

Case No. A-21-835125-w

Dept. No. 23

FILED

OCT 07 2021

John J. Blum
CLERK OF COURT

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

Anthony BARR
Petitioner,

v.

Gittere William
The State of Nevada
Respondent

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

INSTRUCTIONS:

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

RECEIVED

OCT 06 2021

CLERK OF THE COURT

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

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: ELY State Prison PO Box 1989

ELY NEVADA, 89301

2. Name and location of court which entered the judgment of conviction under attack: 8th Judicial District Court Clark County Nevada

3. Date of judgment of conviction: February 25 2019

4. Case number: A-21-835125-W

5. (a) Length of sentence: 8 consecutive life sentences with out parole

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

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

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

7. Nature of offense involved in conviction being challenged: All 22 counts that went to trial on

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

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

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

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

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

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

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

13. If you did appeal, answer the following:

(a) Name of Court: NEVADA Supreme Court

(b) Case number or citation: 75725

(c) Result: AFFIRMED

(d) Date of result: 9-18-2020

(Attach copy of order or decision, if available.)

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

N/A

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal?

Yes ☐ No ☒

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

(a)(1) Name of court:

(2) Nature of proceeding:

(3) Grounds raised:

N/A

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

Yes ☐ No ☒

(5) Result:

(6) Date of result:

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

(b) As to any second petition, application or motion, give the same information:

(1) Name of court:

(2) Nature of proceeding:

(3) Grounds raised:

N/A

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

Yes ☐ No ☒

(5) Result:

(6) Date of result:

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

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

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

(1) First petition, application or motion? Yes ☐ No ☒

Citation or date of decision:

(2) Second petition, application or motion? Yes ☐ No ☒

Citation or date of decision:

(3) Third or subsequent petitions, applications or motions? Yes ☐ No ☒

Citation or date of decision:

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

N/A

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

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

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

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

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

This is my first U.S. Chapter 34 Petition and all grounds are newly raised

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

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes No 1
If yes, state what court and case number: N/A

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: Lead Counsel - Edmund R. Hughes,
Direct Appeal Counsel - Jeannie A. Hue

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes No 1
If yes, specify where and when it is to be served, if you know:

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY TERRELL BARR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78295

FILED

SEP 18 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit burglary, conspiracy to commit robbery, five counts of burglary while in possession of a deadly weapon, eight counts of robbery with the use of a deadly weapon, three counts of assault with a deadly weapon, assault with a deadly weapon of a victim 60 years of age or older, and carrying a concealed pneumatic gun. The district court adjudicated appellant Anthony Barr as a habitual criminal with respect to the burglary while in possession of a deadly weapon and robbery with the use of a deadly weapon counts, imposing an aggregate sentence of life without the possibility of parole. Eighth Judicial District Court, Clark County; Douglas Smith,¹ Judge. Barr raises seven main contentions on appeal.²

First, Barr contends that the evidence presented at trial was insufficient to support deadly weapon enhancements because no weapon was either seen by a witness or found at the crime scenes. But the totality of the evidence supports the deadly weapon enhancements because it showed Barr and/or his codefendant threatened the victims with the use of

¹Judge Valerie Adair presided over the trial.

²Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

a weapon, *see* NRS 193.165(6)(b) (including in the deadly weapon definition weapons “threatened to be used”); *Bartle v. Sheriff*, 92 Nev. 459, 460, 552 P.2d 1099, 1099 (1976) (explaining that a deadly weapon enhancement is warranted if the evidence suggests the defendant used a deadly weapon to facilitate the crime, even if witnesses never actually saw a weapon), and guns were found in Barr’s and his codefendant’s cars. Additionally, an officer observed a bulge at Barr’s waistline immediately preceding the final set of crimes and surveillance video thereafter captured Barr pulling a gun from his waistband while committing the final bank heist. Accordingly, there was sufficient evidence by which a rational juror could find Barr guilty beyond a reasonable doubt on the deadly weapon enhancements. *See McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (recognizing that it is for the jury to weigh evidence and determine witness credibility, and when reviewing a challenge to the sufficiency of the evidence this court will consider “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt” (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979))); *Wilkins v. State*, 96 Nev. 367, 374-75, 609 P.2d 309, 313-14 (1980) (providing that a jury can rely on both direct and circumstantial evidence in returning its verdict).

Second, Barr argues that the district court erred by not severing the four robbery charges. After reviewing for plain error, we disagree. *See Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008) (reviewing unpreserved claims for plain error, defined as one affecting a defendant’s substantial rights by causing actual prejudice, a miscarriage of justice, or a grossly unfair outcome). The crimes occurred over the span of a few months, involved Barr or his codefendant entering banks while disguised, and involved threats of using a weapon against the tellers when demanding

money. Thus, the offenses were connected together and joinder was appropriate. See NRS 173.115(1)(b) (allowing for joinder of charges that are “connected together” or “constituting parts of a common scheme or plan”); *Farmer v. State*, 133 Nev. 693, 699-700, 405 P.3d 114, 120-21 (2017) (defining common scheme and explaining that the offenses are not required to be identical to be joined under NRS 173.115). The evidence relating to the robberies also would have been admissible for relevant, nonpropensity purposes in separate trials, negating that any prejudice resulted from the joinder. See NRS 48.045(2) (providing that evidence of other crimes may be admissible for nonpropensity purposes such as proof of opportunity, preparation, plan, or identity); *Middleton v. State*, 114 Nev. 1089, 1108, 968 P.2d 296, 309 (1998) (pointing to the cross-admissibility of evidence as indicative of the lack of undue prejudice resulting from joinder). Further, the issue of guilt was not close—victim eyewitness testimony, testimony from witnesses who knew Barr and identified him as one of the perpetrators, and video surveillance all supported the jury’s verdict. Cf. *Weber v. State*, 121 Nev. 554, 575, 119 P.3d 107, 122 (2005) (explaining that close cases are “more likely” to require reversal “because [joinder] may prevent jurors from making a reliable judgment about guilt”), *overruled on other grounds by Farmer*, 133 Nev. 693, 405 P.3d 114.

Third, Barr argues that the district court erred in not severing his case from his codefendant’s, whose defense was antagonistic to his and against whom there was more evidence. We disagree as Barr has not demonstrated plain error because he offers no argument as to how the

codefendant's *trial*³ defenses were antagonistic to his. See *Valdez*, 124 Nev. at 1190, 196 P.3d at 477 (addressing plain error); see also NRS 173.135 (providing that defendants may be charged in the same charging document when they participated in the same criminal conduct); NRS 174.165 (providing discretion to the district court to sever where prejudice results from joining defendants). And a defendant is not entitled to severance merely because the evidence against a codefendant is more damaging. *Lisle v. State*, 113 Nev. 679, 690, 941 P.2d 459, 466 (1997), *limited on other grounds by Middleton*, 114 Nev. 1089, 968 P.2d 296.

Fourth, Barr argues that the district court committed plain error by admitting character evidence—several previous traffic stops—and by doing so without first conducting a *Petrocelli* hearing. We conclude that Barr has not demonstrated plain error because the detective had to explain the circumstances surrounding the traffic stops in order to explain how he identified Barr as the perpetrator (the robbery perpetrators were seen getting into the same vehicle) and ultimately apprehended him after having placed a tracker on Barr's vehicle. See NRS 48.035(3) ("Evidence of another act or crime which is so closely related to an act in controversy or a crime charged that an ordinary witness cannot describe the act in controversy or the crime charged without referring to the other act or crime shall not be excluded."); *State v. Shade*, 111 Nev. 887, 894, 900 P.2d 327, 331 (1995)

³Barr only references antagonistic defenses that he claims affected him at sentencing, which the jury would not have been privy to and is irrelevant to a codefendant-severance analysis. See *Marshall v. State*, 118 Nev. 642, 646, 56 P.3d 376, 378 (2002) (explaining that antagonistic defenses only require severance when the defenses are so irreconcilable that the jury accepting the codefendant's theory would prohibit the defendant's acquittal).

(determining “whether witnesses can describe the crime charged without referring to related uncharged acts” to decide whether to admit evidence under NRS 48.035(3)); *see also Bellon v. State*, 121 Nev. 436, 444, 117 P.3d 176, 180 (2005) (indicating that the district court is not required to hold a *Petrocelli* hearing when it admits evidence under NRS 48.035(3)).

Fifth, Barr argues that the district court violated his right to confrontation when it limited his cross-examination of detectives regarding the aforementioned tracking device.⁴ We disagree, as the district court properly excluded irrelevant questions regarding the tracker’s size or location on the vehicle, but allowed all other questions about the tracker’s accuracy and how it ultimately led detectives to Barr.⁵ *See* NRS 48.015

⁴Relatedly, Barr argues that the district court erred in admitting unqualified and unnoticed expert testimony regarding the car tracker and Google maps. But Barr neither identifies which State witness(es) his argument applies to nor cites to the record to support his argument. *See* NRAP 28(e)(1) (requiring citations to the record to support assertions in briefs); *Skinner v. State*, 83 Nev. 380, 384, 432 P.2d 675, 677 (1967) (recognizing that this court can decline to consider assertions that are not supported by record citations). And State law enforcement witnesses did not testify as experts because their testimony did not go beyond relaying facts regarding their use of the tracker and Google maps to locate Barr. *See Abbott v. State*, 122 Nev. 715, 728, 138 P.3d 462, 471 (2006) (explaining when a witness’s testimony constitutes expert testimony).

⁵To the extent Barr argues that the information outputted from the tracker amounted to an improper testimonial statement of an unavailable witness in violation of hearsay rules, we conclude that he has not demonstrated plain error where the data retrieved was machine-based and was not a “statement” that could be considered hearsay. *See* NRS 51.045 (defining a statement for hearsay purposes as “[a]n oral or written assertion” or “[n]onverbal conduct of a *person*, if it is intended as an assertion” (emphasis added)); *Valdez*, 124 Nev. at 1190, 196 P.3d at 477 (reviewing unpreserved errors for plain error); *see also Commonwealth v.*

(defining relevant evidence as that which makes a material fact at issue more or less probable); *Mendoza v. State*, 122 Nev. 267, 277, 130 P.3d 176, 182 (2006) (“Determinations of whether a limitation on cross-examination infringes upon the constitutional right of confrontation are reviewed de novo.”).⁶

Sixth, Barr argues that the district court erred in not continuing his sentencing hearing once he took issue with information in his presentence investigation report (PSI). We review a district court’s decision on a motion to continue for an abuse of discretion, which will only be found if a defendant demonstrates that the denial prejudiced him. *Higgs v. State*, 126 Nev. 1, 9, 222 P.3d 648, 653 (2010). Barr requested a continuance due to alleged inaccuracies and missing information in his PSI, and claimed that he needed additional time and counsel’s help to identify any further inaccuracies because he only had a third-grade education.⁷ The district court abused its discretion when it declined to continue Barr’s sentencing because that prevented him from thoroughly reviewing the PSI for all potential errors in order to lodge an objection. See *Sasser v. State*, 130 Nev. 387, 390, 324 P.3d 1221, 1223 (2014) (reiterating a defendant’s right to object to factual errors in the PSI, but requiring any such objection to be made before sentencing); *Shields v. State*, 97 Nev. 472, 473, 634 P.2d

Thissell, 928 N.E.2d 932, 937 n.13 (Mass. 2010) (explaining that, “[b]ecause computer-generated records, by definition, do not contain a statement from a person, they do not necessarily implicate hearsay concerns”).

⁶The record shows that Barr objected, so we review de novo despite both parties arguing for plain error review.

⁷Although Barr’s counsel initially indicated that he had not yet gone over the “massive PSI” with Barr, he acknowledged that they discussed it after the court passed the case while waiting for codefendant’s counsel.

468, 469 (1981) (“NRS 176.156 contemplates that persons convicted of crimes should have the opportunity to make informed comments on, and response to, all factual assertions contained in presentence investigation reports.”). The district court further erred in not addressing all of Barr’s assertions. *See Sasser*, 130 Nev. at 390-91, 324 P.3d at 1223-24 (requiring the district court to determine whether challenged PSI information is erroneous); *Stockmeier v. State, Bd. of Parole Comm’rs*, 127 Nev. 243, 250, 255 P.3d 209, 214 (2011) (emphasizing that regardless of whether an error impacts a defendant’s sentence, the Department of Corrections could rely on significant inaccuracies in determining a defendant’s “classification, placement in certain programs, and eligibility for parole,” necessitating an avenue to immediately seek correction of a faulty PSI to prevent reliance on a PSI that cannot be subsequently changed). But we conclude these errors do not warrant reversal because Barr has not demonstrated prejudice—the alleged errors were insignificant⁸ or irrelevant to sentencing and Barr utilized the PSI’s recommendation of concurrent time to argue for a lesser sentence than his maximum exposure. *See Blankenship v. State*, 132 Nev. 500, 509, 375 P.3d 407, 413 (2016) (explaining that an error in a sentencing form does not amount to “impalpable or highly suspect evidence” unless it tainted the PSI sentencing recommendation considered by the district court). And the record as a whole supports that the district court’s sentencing was based on the accurate information presented at sentencing—the circumstances surrounding the crimes and prior felony convictions that Barr agreed were accurately reflected in the PSI. *See Thomas v. State*, 88 Nev. 382, 385, 498 P.2d 1314, 1316 (1972) (explaining

⁸At one point, Barr conceded that the errors were “small.”

that a district court can impose a legally sound sentence even when there are inadequacies in sentencing forms produced by the Division).

Barr next argues, for the first time on appeal, that the district court erred in basing its sentencing decision on facts not in the record, weighing Barr's speedy-trial-right invocation in making its sentencing decision, and altering his sentence at a subsequent hearing. After plain error review, we disagree. See *Rodriguez v. State*, 134 Nev. 780, 781, 431 P.3d 45, 46 (2018) (reviewing for plain or clear error affecting substantial rights when a defendant fails to lodge a contemporaneous objection or argument on a sentencing issue). The record shows that the district court did not consider Barr's speedy-trial invocation or rely on highly suspect or impalpable information, but rather made its sentencing decision after considering arguments by defense counsel and the State, Barr's statement, a victim impact statement, and Barr's prior felonies that formed the basis for his habitual criminal treatment.⁹ See *Smith v. State*, 112 Nev. 871, 873, 920 P.2d 1002, 1003 (1996) (explaining that this court will not disturb a sentence that is within statutory limits unless the district court relied on "highly suspect or impalpable information"). Additionally, at the second sentencing hearing, which occurred before the judgment of conviction was filed and while Barr's case was still within the district court's jurisdiction, the district court appropriately vacated illegal sentences on counts Barr was

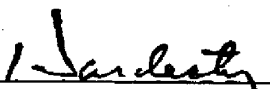
⁹Barr's sentence was within the prescribed statutory range for his convictions, enhancements, and treatment as a habitual criminal. See NRS 193.130 (punishment for felonies); NRS 193.165 (deadly weapon enhancement); NRS 193.167 (crimes committed against persons 60 years of age or older); NRS 199.480 (conspiracy); NRS 200.380 (robbery); NRS 200.471 (assault); NRS 202.350 (carrying a concealed weapon); NRS 205.060 (burglary); NRS 207.010 (habitual criminal penalties).

not charged with; sentenced Barr to concurrent time on a count he was not previously sentenced for; and sentenced him as a habitual criminal on the burglary while in possession of a deadly weapon counts, none of which increased his overall aggregate sentence. See NRS 176.555 ("The court may correct an illegal sentence at any time."); NRS 176.565 ("Clerical mistakes in judgments . . . and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders."); *Bradley v. State*, 109 Nev. 1090, 1095, 864 P.2d 1272, 1275 (1993) (explaining that an oral pronouncement of a sentence does not divest the district court's jurisdiction over the defendant, and it can modify a sentence before the clerk enters the signed judgment of conviction).

Seventh, Barr argues that cumulative error warrants reversal. We disagree because the errors identified above occurred during sentencing and therefore could not have impacted the jury's verdict.¹⁰ See *Valdez*, 124 Nev. at 1196, 196 P.3d at 481 (assessing cumulative error claims by first considering if the errors prejudiced the jury's verdict). We therefore

ORDER the judgment of conviction AFFIRMED.


Parraguirre


Hardesty


Cadish

¹⁰We decline to address the preservation-of-evidence and amended information claims that Barr references but does not cogently argue. See *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.").

cc: Chief Judge, The Eighth Judicial District Court
Eighth Judicial District Court, Dept. 8
Jeannie N. Hua
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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- Petitioner hereby Swears, And States That The Following Is True And Correct To His own personal knowledge And Belief, And As To Any matter(s) Stated upon Belief Petitioner Sincerely Believes Them To Be True

- Further, Petitioner would incorporate Here-in As If Fully Stated Here-in, The Supporting Facts of The Grounds of This Petition In Support here-of

- Petitioner Brings Forth Grounds And Supporting Facts, To prove That (One) Pretrial, And Trial Counsels Assistance fail Below The Standard Granted By The U.S Constitution And Is Therefore unreasonable Considering All The Circumstances of The Case And (Two) That There Is A Reasonable Probability That Absent The Errors Here-in, The fact finder would Have Returned A Not Guilty Verdict

GROUND ONE, Ineffective Assistance of Counsel.

A) Pretrial Counsel had Been Ineffective By Their Failure To Suppress Any Evidence of A G.P.S Tracker Secured To His Vehicle, (Illegally), Detectives Had no probable Cause warrant, violating Petitioners Right To Due Process.

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3) Pretrial Counsel had Been Ineffective, By Their Failure To Bring Forth Evidence, of Intimidation As well As Harassment of Petitioner, Seeing Detectives Had Enough Probable Cause To Secure A warrant To Arrest Petitioner's Codefendant

C). Pretrial Counsel had Been Ineffective, By failing To Investigate, And Record The Investigative Errors As Detectives failed To Prevent A Crime. where They had cause To Arrest Petitioner's Codefendants, having Evidence of A finger print found At The scene of one of The Crimes. An Arrest could Have Been made preventing lives Being In-Dangered. Its Never procedure To Take Such A Calculated Risk, Further victimizing Innocent People

D). Pretrial Counsel failed To properly Impeach Detectives on Their Investigative Misconduct which Resulted in The Arrest of petitioner.

E). Pretrial Counsel failed To Properly Review Documents Dislosed By The Government, As There Existed Exculpatory Evidence, or Proof Proving The State has No Evidence Against Petitioner.

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(2)

Pg 3

Time

1

2 F). Pretrial Counsel Failed To Defend Petitioner
3 By Allowing petitioner To Be confronted
4 with Prejudicial Hearsay Derived from
5 Detectives leading Tactics As Detectives
6 corroborated And manipulated Petitioners
7 Codefendants in Interrogations making Their
8 statements A Clear Tact to Implicate
9 Petitioner in Crimes where There Exist no
10 Evidence Against petitioner, There fore The
11 statements used As Hearsay Evidence Becomes
12 Highly Prejudicial - Preventing Petitioner
13 From (From Having A fair Trial) violating
14 petitioners Right To Confrontation As well As
15 petitioners Right To A fair Trial

16 G). Pretrial Counsel Failed To Suppress Evidence
17 That Had Been obtained Illegally, Evidence
18 That had Been obtained outside of procedure
19 Given Due process

20 H). Pretrial Counsel Failed To Bring forth
21 Evidence That Contradicts The States Theory
22 of Petitioners Involvement in Any Crime.
23 Beyond Errand Arrest, There Exist no
24 Evidence Against petitioner - up until The
25 point of Arrest.

26

27

four

- 1 I). Pretrial Counsel failed To properly
- 2 Sever Codefendants From Petitioners Trial,
- 3 Results In petitioner Being Confronted with
- 4 Theory As The standard of Evidence Is not
- 5 met, And The 40 Clauses That hearsay Are
- 6 Required To meet Are Not Satisfied. where
- 7 The hearsay Is Actually The product of
- 8 manipulation. Here we Evaluate fact,
- 9 Petitioner would like To Consult with
- 10 A lawyer To further understand Evidence
- 11 of Entrapment
- 12 J). Pretrial Counsel failed To Construct
- 13 A Defence Theory To Contradict The
- 14 States Theory of Petitioners Involvement
- 15 In Crimes
- 16 K). Pretrial Counsel failed To Consult with
- 17 petitioner About An Alibi on The Days
- 18 of Crimes
- 19 L). Pretrial Counsel failed To Properly Defend
- 20 petitioner By not having An Alibi Defence
- 21 To Contradict The States Theory And The
- 22 Codefendants Statements
- 23 M). Pretrial Counsel failed To Subject petitioner
- 24 To Be proven Competant To Stand Trial
- 25 or To Establish mens Re or The Guilty
- 26 State of mind. Petitioner suffers multiple
- 27 Personality Disorders And Is Educated on

Pg.
5
Five

Pg 5

1 Not To Have Passed The Third Grade.
2 Petitioner Also Suffers Battered Child
3 Syndrome, And Has Abused substances.
4 Petitioner's Education level proves petitioner
5 Does Not have The Skill or Education To
6 Conspire A String of Bank Hist, petitioner
7 Does not have The Ability To Construct An
8 Elaborate plan To manipulate others or
9 To conspire where As petitioner's level of
10 Education suggest He has Been manipulated
11 Into Being (The fall Guy?) of Greater Criminal
12 minds -- making petitioner A victim of Circumstances
13 M). Pretrial Counsel failed To Bring forth Evidence
14 of Distasteful Activities which Are Actually
15 Criminal,
16 G). Pretrial Counsel failed To Bring forth
17 Expert witnesses To Support A Theory
18 Any Reasonable lawyer Could have put
19 Together As A Result of Hastening A Defence
20 Investigation
21 R). The Defence Has No Theory, Pretrial
22 Counsel had Been Ineffective For Not
23 Constructing A Defence
24
25 Ground Two
26 Prosecutorial misconduct
27 Petitioner would like To consult with

Pg 6

P96

Six

1 An Attorney To find factual Base To Support
2 The Record And This Ground

3
4 Ground Three

5 Investigative misconduct

6 petitioner would like to consult with A Attorney
7 As petitioner Has less Than A Third Grade
8 Education And multiple personallity Disorders
9 A.D.H.D, Bipolar Disorder And Schizophrenia —
10 petitioner would Have This Court Recognize
11 That petitioner Could Not Properly Research
12 write And Argue Any legal Argument
13 Also That The Issues And matters of post
14 Conviction Relief Are far Too Difficult for
15 petitioner TO understand And Argue —

16 Ground four

17 Petitioners Arrest, Conviction, And Sentence
18 Are Invalid And Should Be Seen As Illegal
19 As petitioners Rights To Confrontation, To Counsel,
20 To A fair trial By An Impartial Jury, Equal protection
21 And Due process Has Been violated Subsequently.

22 Again petitioner Has less Than A Third grade
23 Education And Should Therefore Be Awarded
24 Counsel As The proceedings Are far
25 To Difientlt for petitioner TO Research write
26 Argue —

27

Pg.

7

7

Front Page

Serial

Pg 7

1 Co-Defendants Counsels Ineffectiveness
2 is Along with Petitioners Counsel Being
3 ineffective in not formulating A Combined
4 Defense Theory is Actually fundamentally
5 unfair, As The Defendants Are Then Seen
6 As Adversaries ~~unwillingly~~ ~~unwillingly~~ Becoming
7 witnesses Against one Another whereas In
8 Separate Trials Defendants would Have A
9 Choice To Either Testify or Not To Testify
10 Against one Another. A Joiner In This Case
11 Is There fore Seen As A Tact To force
12 Defendants To Be Confronted with one Another
13 which violates Due Process, Confrontation And
14 The Right To The Effective Assistance of Counsel
15 petitioners Counsel couldnot properly defend
16 Counsel In Such A Circumstance. where
17 There Are Separate Defense Theories or No
18 Defense Theories. Both Defendants Are Therefore
19 Tricked into Being witnesses of The State
20 And No Separate Theory is Able To Be
21 formed Therefore Prejudicing petitioners
22 Ability To Have A fair trial, Also preventing
23 Counsel From Becoming Effective where
24 A Separate Theory could Not Be formed &
25 Counsel Had Therefore Been Ineffective for
26 Not, Submitting A writ of Prohibition
27 And Mandamus To Halt All Proceedings

Pg
7

BACK PAGE

Seven

- 1 To Correct manifest Error, Extreme prejudice
- 2 And Cumulative Error - with Results here
- 3 From The Courts Ruling Not To Sever -
- 4
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Eight

Agg Front Page

By not granting A Severance Defendants
 Are forced to become witnesses Against
 one Another And The Term Co Defendant Is
 There fore lost Because petitioner Is Not
 Represented By The Same Theory or Counsel
 Petitioners Counsel Is There fore Ineffective
 By Not Meritoriously Arguing A Severance
 From Codefendant pretrial - A Co defendant
 Shares The Same Theory A witness of The
 State Comes Against The Accused. By The
 Error with Two Trials Happening with In The
 Same Time where Petitioner Is Confronted
 with A witness who Assumes The Role As A
 Codefendant violates petitioners Right To
 Due process And Confrontation Harmful Error
 And Extreme prejudice Has Accused, The process
 of The law Here Is Conclusive And not
 Accusatory, which Is Extremely Harmful, Seeing
 The factfinder Doesnt have A Choice As No
 Theory Can Defend Either petitioner or Codefendant.
 The Chances of Gaining A Conviction Is perfect
 where The Defense Is Rendered from formulating
 A Separate Theory - Prejudice Is Extreme And
 Harmful, Petitioner There fore Is Entitled To
 A New Trial Due To manifest Error Extreme
 prejudice And Extremely Harmful practices.

- Pg
8

Back Page

Eight

1 petitioner would further have This court
2 Recognize That he Has submitted A motion
3 To For Appointment of Counsel And Request
4 For Evidentiary hearing
5 Counsel is needed To proceed with
6 Discovery And To Extend The Record
7 - The Issues presented are To Difficult
8 For petitioner
9 Counsel is needed To Assist petitioner
10 In Statelizing The grounds of This petition
11 - And To Further Create factual
12 And legal Grounds To Be Considered
13 By This Court
14 Petitioner Has No knowledge of The law
15 And is mentally Incompetent with less
16 Than A Third grade Education, with
17 multiple personality Disorders. Petitioner
18 Does not understand The proceedings
19 And Could Not Stand Pro Se.
20 Petitioner would Respectfully Request
21 Counsel In Submitting His Petition
22
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9
Nine
~~Seven~~

pg 9

1

Ground Five

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prosecutorial misconduct

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Ground Six

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Abuse of Discretion By Judge

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Petitioner would further stress he

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is under educated, petitioner can not

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fully understand beyond his level of

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Education And needs Counsel

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Petitioner Has proven he can not afford

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counsel And Has Respectfully Submitted

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And Resubmitted His Request for Counsel

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And To Have An Evidence Hearing

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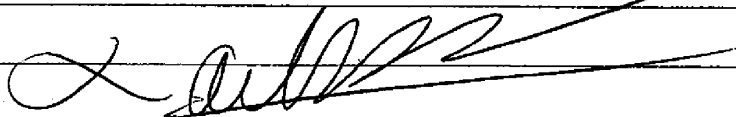
15

Respectfully Submitted By petitioner

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Pg
10

Front Page

Pg 10

- 1 no weapon seen or found At The Crime/By victim
- 2 (Controlled Demonstration)
- 3 Gun Pulled At last Crime, Found In Car (Buried)
- 4 "The Trial of fact never had the chance to view the
- 5 complete Record" only The States Theory The
- 6 Defense Never Reviewed Documents -
- 7 The Elements of The Crime Not proven -
- 8 Any reasonable Juror,
- 9 Circumstantial Evidence / Direct Evidence,
- 10 Effecting Substantial Rights / Causing Actual prejudice
- 11 miscarriage
- 12 A Timely, Non Violent,
- 13 * Co-Defendants Actions were Antagonistic Because
- 14 Petitioner is therefore seen As A Co-conspirator
- 15 of The Co-Defendants Actions therefore A Joiner
- 16 is prejudiced - By Separate Actions, As The
- 17 Jury Evaluates The Robbery As A whole And
- 18 Cant Separate Elemental Actions In Charging
- 19 one or The other. Here we Have Spill over
- 20 of Character Evidence which is Plain
- 21 Error
- 22 * Co-Defendants Theory prohibited The Petitioner's
- 23 Acquittal
- 24 Trial Counsel Ineffective By not
- 25 * what's not Recorded Can Be mistakenly Quoted
- 26
- 27

Pg

10

Back Page

1 Failed To properly Crossexamine Co-Defendant on
 2 ~~the~~ On Statements That were A Result of Detectives
 3 manipulation -- This failure Resulted in prejudicial
 4 Identification Evidence which had Been fundamentally
 5 unfair -- Prejudice Had Been Caused By A Joint
 6 Saying Co Defendants Miranda Rights had Been
 7 violated, in pretrial Interrogation --

8 * Prejudice Had Accrued when Co Defendants
 9 Counsel Had Become Ineffective when Not
 10 Suppressing Statements To Detectives given under
 11 Duress, Coercion, And manipulation ~~the~~

12 * Prejudice Had Accrued when Co Defendants
 13 Counsel failed To Cross Examine witnesses
 14 Separately As to Defend his Client, with out
 15 implicating petitioner, There fore Co defendants
 16 Counsel And Co defendant There fore Became
 17 Antagonistic To petitioners Defense, Supporting
 18 The prosecutions Theory -- And Not using
 19 Documents Disclosed By The government To
 20 Create A Separate Defense Theory

21 * Co Defendants Counsels Ineffective Assistance
 22 To petitioners Co defendants -- Rendered Petitioners
 23 Trial fundamentally unfair -- when They failed To
 24 Suppress Co Defendants Statements, Also when They
 25 failed To Sever Their own Client from Petitioners Trial
 26
 27

Pg

11

Pg 11

- 1 - Failed to make meritorious objections to tainted
- 2 Evidence forming Basis of States Case
- 3 - Counsel was ineffective in failing to investigate
- 4 medical psychological evidence, failed to explore
- 5 A strategy that would have yielded Exculpatory
- 6 Evidence
- 7 - Failed to Investigate Defense of Extreme
- 8 Emotional Disturbance which could have
- 9 Reduced (Charges)
- 10 - Counsel ineffective in failing to enlist expert
- 11 witnesses to Rebut prosecution Expert on key
- 12 Issue And Relying Instead on Ill-Informed
- 13 Cross-examination of prosecutions Experts
- 14 - Counsel was ineffective in failing to file meritorious
- 15 motion to suppress identification Evidence
- 16 - Trial Counsel ineffective by failing to Adequately
- 17 Investigate prepare And present mental health
- 18 in support of A Diminished Capacity Defense
- 19 - Counsel was ineffective when failing to file motion
- 20 For pretrial Competence hearing.
- 21 - Failed to Contract Potential witnesses
- 22 - Failed to suppress eye witness testimony when
- 23 when the Record clearly shows Detectives Tactfully
- 24 Coaching witnesses to ID petitioner in crimes
- 25 where ID could not Be made fundamentally fair -
- 26 - Failed to properly Argue pretrial Hearings -
- 27

Pg
12

Pg 12

- 1 - Counsel's Failure To Investigate Adequately
- 2 Resulted In Failure To Discover Documented History
- 3 of schizophrenia And Treatment
- 4 - Failure To Request Hearing To Determine Competency
- 5 To stand Trial
- 6 - Failed To Investigate Theory of mistaken
- 7 Identity As Defense
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(a) Ground One: _____

Supporting FACTS (Tell your story briefly without citing cases or law.): _____

(b) Ground Two: _____

Supporting FACTS (Tell your story briefly without citing cases or law.): _____

(c) Ground Three: _____

Supporting FACTS (Tell your story briefly without citing cases or law.): _____

(d) Ground Four: _____

Supporting FACTS (Tell your story briefly without citing cases or law.): _____

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

EXECUTED at Ely State Prison, on the 12 day of the month of 3 of the year 2013.

Signature of petitioner

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

Signature of Attorney (if any)

Attorney for petitioner

Address

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

BARR ANTHONY
Petitioner

Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I, BART Anthony, hereby certify pursuant to N.R.C.P. 5(b), that on this 27th day of the month of September, of the year 2021 I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

Gittere William
Respondent prison or jail official

PO Box 1989
FLY IN 89301
Address

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

Steven B Wolfson
District Attorney of County of Conviction

700 Lewis Ave.
LAS Vegas NV 89155
Address


Signature of Petitioner

AFFIRMATION PURSUANT TO NRS 239B.030

I, BARR Anthony, NDOC# 1212761

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE
ATTACHED DOCUMENT ENTITLED Motion For leave to
proceed in forma pauperis

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

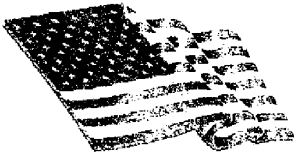
DATED THIS 27th DAY OF September, 2021.

SIGNATURE: 

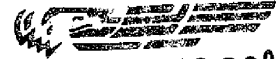
INMATE PRINTED NAME: BARR Anthony

INMATE NDOC # 1212761

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



U.S. POSTAGE PITNEY BOWES



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Clerk of The Court

Steven D. GRIERSON

LEWIS AVE 3RD FLOOR

VEGAS NV 89155-1160

NA 91

30-21

BARR. Anthony # 1210461

PO BOX 1989

ELY NV 89301

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LEGAL N

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1 BARR Anthony # 1217761
2 901301-1989
3 ELY State Prison
4 ELY NV 89301-1989

FILED
OCT 07 2021
Clerk of Court

5
6
7
8 IN THE Eight DISTRICT COURT OF THE
9 STATE OF NEVADA IN AND FOR THE COUNTY OF Clark

10 BARR Anthony
11
12 Petitioner,

CASE NUMBER: A-21-83575W
Deft NO 03

13 vs.

14 The State of Nevada,
15 William Githere,
16 Warden; State of Nevada,
17 Respondents.

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

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

21 Pursuant to NRS 34.750(1):

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

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

9-27-21

To the courts

I'm writing this letter asking for help from an appointed attorney?

I Don't understand what im doing at all and i am placing myself to the mercy of the court by Filing this appeal, im innocent but doesn't know how to find the resources to prove that. IM indigent and is getting help from different inmates who i am playing with food items or what i can come up off of my trays. I have a 6 grade Education and i've sent a copy of my P.S.I to clarify that, also i am mental health and have no clue on how to file an habeas in the correct way. I can't understand the legal books in law library, The courts knows i can Barely Read and write and i didn't graduate high school and i've been in special Education all my life. Its not funny at all if the courts keep Avoidin these special needs i have and wouldn't give me the help im asking for. The inmate that is helping me rewrite my habeas is ^{#1190580} ~~1009080~~ MARCUS CAIN And he's about to get transferred soon. All im asking is could the courts please give me an attorney so i can get the help im asking for
- Thanks and God Bless

BARK MURRAY
90 Box 1981
EV AL 81501
Cain

PRESENTENCE INVESTIGATION REPORT
ANTHONY TERRELL BARR
CC#: C-18-335500-2

Page 4

Assets: None reported

Debts: None reported

Education: He completed the 6th grade, never receiving his diploma or GED. No further education was reported beyond this level.

Military Service: None reported

Health and Medical History: He reported his health as fair stating he has acid reflux and takes Zantac to ease the symptoms.

Mental Health History: While incarcerated in Texas, he participated in mental health counseling. The defendant was diagnosed with Attention Deficit Hyperactivity Disorder, Bipolar Disorder and Schizophrenia. He is not currently receiving treatment and is not taking medication. He believes his mental health has contributed to problems in his life and affects his ability to gain and maintain employment stating he does not like being around other people and feels they are "out to get" him.

Gambling History: He believes gambling to be problematic, spending \$1,200.00 per week trying to achieve monetary gain.

Substance Abuse History: The defendant began smoking marijuana at the age of 14, smoking eight times per year until his last use in 2008. He used ecstasy once at the age of 16 then began consuming alcohol at the age of 17 drinking five times per year with his last reported drink in 2016. While incarcerated, he attended mandatory substance abuse treatment and received a certificate of completion.

Gang Activity/Affiliation: None reported

IV. CRIMINAL RECORD

As of December 28, 2018, records of the Las Vegas Metropolitan Police Department, the National Crime Information Center and the Federal Bureau of Investigation reflect the following information:

CONVICTIONS- FEL: 4

GM: 0

MISD: 1

INCARCERATIONS-

PRISON: 4

JAIL: 1

SUPERVISION HISTORY:

CURRENT- Probation Terms: 0

Parole Terms: 0

PRIOR TERMS:

Probation- Revoked: 0

Discharged: Honorable: 0 Other: 0

Parole- Revoked: 0

Discharged: Honorable: 0 Other: 0

PRESENTENCE INVESTIGATION REPORT
ANTHONY TERRELL BARR
CC#: C-18-335500-2

Page 3

III. DEFENDANT INFORMATION**Address:** Homeless
City/State/Zip: Texas
NV Resident: No**SSN:** [REDACTED]**POB:** Chicago, Illinois**Date of Birth:** 03-11-90**Age:** 28**Phone:** (504) 300-2342 (message)**Driver's License:** 41865545 (Identification Card)**State:** Texas**Status:** Valid**FBI:** 807657EC4**SID:** NV04619819**Aliases:** Anthony Barr, Anthony Terrell Barr, Jr.,
Gregory Reynolds, Arthur Lord Fields, Gregory
Montreal Reynolds**Additional SSNs:** 321-64-3155**Additional DOBs:** 03-19-88, 02-24-90**Additional POB:** None**Alien Registration:** N/A**US Citizen:** Yes**Notification Required per NRS 630.307:** No**Identifiers:****Sex:** M **Race:** B **Height:** 5'9" (SCOPE reflects: 5'10")**Weight:** 150 (SCOPE reflects: 170)**Hair:** Black **Eyes:** Brown**Scars:** Both ears pierced once (unverified); (NLETS reflects: Scar on left arm)**Tattoos (type and location):** Heart, cards, gambling items, naked lady, portrait of lady on right arm;
"Somona" on right hand; "Anthony" on left hand; portrait of mother, "Amber" on chest; graffiti design on
neck (all unverified); five teardrops on face; dollar symbol on bridge of nose (all verified)**Social History:** The following social history is as related by the defendant on December 28, 2018, and is
unverified unless otherwise noted:**Childhood/Family:** The defendant reported his childhood as poor stating he was abused by his parents at a
very young age, was removed from the home by social services and placed with his grandmother. He was
periodically placed into group homes as his elderly grandmother was raising twelve children. There was no
abuse or neglect while in his grandmother's care and substance abuse was not present in the home.**Marital Status:** Single**Children:** None reported**Custody Status of Children:** N/A**Monthly Child Support Obligation:** N/A**Employment Status:** The defendant was employed with a temporary agency as a porter from April 2018 to
June 2018. He also worked as a mover from February 2018 to June 2018. He reported past employment in
Texas as a porter, a fruit chopper and crate assembler.**Number of Months Employed Full Time in 12 months Prior to Commission of Instant Offense:** 4 months**Age at first arrest:** 19 or younger ☒20- 23 ☐24 or older ☐**Income:** None reported**Other Sources:** None reported

1 (c) Counsel is necessary to proceed with discovery.

2 Petitioner is presently incarcerated at ELY State Prison, is
3 indigent and unable to retain private counsel to represent him.

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

9 Dated this 27th day of September, 2021.

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BARR Anthony

12

In Proper Person

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CERTIFICATE OF SERVICE

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

That on September 27th, 2021, he served a copy of the foregoing Ex Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing by personally mailing said copy to:

District Attorney's Office
Address:

200 Lewis Ave 3rd Floor
Las Vegas, NV 89155-1160

Warden
Address:

Warden William Gillette
PO Box 1989
ELY NV 89301


Petitioner

THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
119
WILL FOLLOW VIA
U.S. MAIL

THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
120 - 126
WILL FOLLOW VIA
U.S. MAIL

1 ORDD
Judge Cristina D. Silva
2 Eighth Judicial District Court
Department IX
3 Regional Justice Center
200 Lewis Avenue
4 Las Vegas, Nevada 89155

5 EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

7 ANTHONY TERREL BARR,

8 Petitioner,

9 -vs-

10 GITTERE WILLIAM,

11 Respondent.
12

CASE NO: A-21-835125-W

DEPT NO: IX

13 ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

14 THIS MATTER having presented before Judge Jasmin Lilly-Spells on the 26th day of
15 July, 2021; Petitioner ANTHONY BARR not present; Respondent represented by STEVEN B.
16 WOLFSON, District Attorney, through JAY RAMAN Deputy District Attorney; and having
17 heard the arguments of counsel and good cause appearing,
18

19 The Court finds that the petition is naked and bare, only indicating the grounds for the
20 writ without any underlying facts to support the allegations. A petition for post-conviction
21 relied must be supported with factual allegations, which if true, would entitle the petitioner
22 to relief. *Hangrove v. State*, 100 Nev. 498. 686 P.2d 222 (1984).

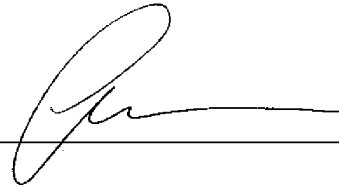
23 There is no sixth amendment constitutional right to counsel in post-conviction
24 proceedings. *Coleman v. Thompson*, 501 U.S. 722. 111 S. Ct 2546 (1991). Nevada courts have ruled
25

1 that the Nevada constitution does not provide a right to post-conviction counsel either.
2 *McKague v. Warden*, 112 Nev. 159, 912 P.2d (1996). Nevada courts have discretion to appoint
3 post-conviction counsel if the Court is satisfied that the individual is indigent and the petition
4 cannot be dismissed summarily. *See* NRS 34.750. In making this determination, the Court can
5 consider: (1) whether the issues are difficult; (2) whether the defendant is unable to
6 comprehend the proceedings; and (3) whether counsel is necessary to proceed with discovery.
7

8 Here, the Court finds that although the Petitioner is indigent the petition can be
9 dismissed summarily and thus petitioner is not entitled to counsel. Additionally, the request
10 for an evidentiary hearing is DENIED as there is no basis to grant the hearing at this time.

11 **IT IS HEREBY ORDERED** that Petitioner's Post-Conviction Writ for Habeas Corpus,
12 is DENIED.

Dated this 26th day of October, 2021

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14
15


16 **64B 13E 96A2 89B0**
17 **Cristina D. Silva**
18 **District Court Judge**
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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Anthony Barr, Plaintiff(s)

CASE NO: A-21-835125-W

7 vs.

DEPT. NO. Department 9

8 Gittere William, 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 Denying 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: 10/26/2021

15 Steven Wolfson

motions@clarkcountyda.com

16 If indicated below, a copy of the above mentioned filings were also served by mail
17 via United States Postal Service, postage prepaid, to the parties listed below at their last
18 known addresses on 10/27/2021

19 Alexander Chen

200 Lewis Avenue
Las Vegas, NV, 89155

21 Anthony Barr

#1212761
ESP
P.O. Box 1989
Ely, NV, 89301
22
23
24
25
26
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28



1 NEOJ

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 ANTHONY BARR,

6 Petitioner,

Case No: A-21-835125-W

Dept. No: IX

7 vs.

8 GITTERE WILLIAM; ET AL.,

9 Respondent,

10 NOTICE OF ENTRY OF ORDER

11 PLEASE TAKE NOTICE that on October 26, 2021, 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 October 27, 2021.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Heather Ungermann

18 Heather Ungermann, Deputy Clerk

19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 27 day of October 2021, I served a copy of this Notice of Entry on the
21 following:

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

24 ☒ The United States mail addressed as follows:
25 Anthony Barr # 1212761
26 P.O. Box 1989
Ely, NV 89301

27 /s/ Heather Ungermann

28 Heather Ungermann, Deputy Clerk

ORDD
Judge Cristina D. Silva
Eighth Judicial District Court
Department IX
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

ANTHONY TERREL BARR,

Petitioner,

-vs-

GITTERE WILLIAM,

Respondent.

CASE NO: A-21-835125-W

DEPT NO: IX

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

THIS MATTER having presented before Judge Jasmin Lilly-Spells on the 26th day of July, 2021; Petitioner ANTHONY BARR not present; Respondent represented by STEVEN B. WOLFSON, District Attorney, through JAY RAMAN Deputy District Attorney; and having heard the arguments of counsel and good cause appearing,

The Court finds that the petition is naked and bare, only indicating the grounds for the writ without any underlying facts to support the allegations. A petition for post-conviction relied must be supported with factual allegations, which if true, would entitle the petitioner to relief. *Hangrove v. State*, 100 Nev. 498. 686 P.2d 222 (1984).

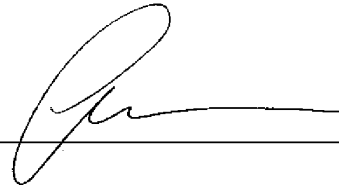
There is no sixth amendment constitutional right to counsel in post-conviction proceedings. *Coleman v. Thompson*, 501 U.S. 722. 111 S. Ct 2546 (1991). Nevada courts have ruled

1 that the Nevada constitution does not provide a right to post-conviction counsel either.
2 *McKague v. Warden*, 112 Nev. 159, 912 P.2d (1996). Nevada courts have discretion to appoint
3 post-conviction counsel if the Court is satisfied that the individual is indigent and the petition
4 cannot be dismissed summarily. *See* NRS 34.750. In making this determination, the Court can
5 consider: (1) whether the issues are difficult; (2) whether the defendant is unable to
6 comprehend the proceedings; and (3) whether counsel is necessary to proceed with discovery.
7

8 Here, the Court finds that although the Petitioner is indigent the petition can be
9 dismissed summarily and thus petitioner is not entitled to counsel. Additionally, the request
10 for an evidentiary hearing is DENIED as there is no basis to grant the hearing at this time.

11 **IT IS HEREBY ORDERED** that Petitioner's Post-Conviction Writ for Habeas Corpus,
12 is DENIED.

Dated this 26th day of October, 2021

13
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15


16 **64B 13E 96A2 89B0**
17 **Cristina D. Silva**
18 **District Court Judge**
19
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22
23
24
25

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Anthony Barr, Plaintiff(s)

CASE NO: A-21-835125-W

7 vs.

DEPT. NO. Department 9

8 Gittere William, 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 Denying 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: 10/26/2021

15 Steven Wolfson

motions@clarkcountyda.com

16 If indicated below, a copy of the above mentioned filings were also served by mail
17 via United States Postal Service, postage prepaid, to the parties listed below at their last
18 known addresses on 10/27/2021

19 Alexander Chen

200 Lewis Avenue
Las Vegas, NV, 89155

21 Anthony Barr

22 #1212761
ESP
P.O. Box 1989
Ely, NV, 89301

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

July 26, 2021

A-21-835125-W Anthony Barr, Plaintiff(s)
vs.
Gittere William, Defendant(s)

July 26, 2021 12:30 AM All Pending Motions

HEARD BY: Lilly-Spells, Jasmin **COURTROOM:** RJC Courtroom 12D

COURT CLERK: Alice Jacobson

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- DA- JAY RAMAN

The Court finds that the petition is naked and bare, only indicating the grounds for the Writ without any underlying facts to support the allegations. A petition for post-conviction relief must be supported with factual allegations, which if true, would entitle the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 686 P.2d 222 (1984).

There is no 6th amendment constitutional right to counsel in post-conviction proceedings. *Coleman v. Thompson* 501 U.S. 722, 111 S.Ct. 2546 (1991). NV courts have ruled that the NV constitution does not provide a right to post-conviction counsel either. *McKague v. Warden*, 112 Nev. 159, 912 P.2d (1996). NV courts have discretion to appoint post-conviction counsel if the court is satisfied that the individual is indigent and the petition cannot be dismissed summarily. NRS 34.750. In making this determination the court can consider: (1) whether the issues are difficult; (2) whether the defendant is unable to comprehend the proceedings and (3) whether counsel is necessary to proceed with discovery.

PRINT DATE: 11/16/2021

Page 1 of 4

Minutes Date: July 26, 2021

The court finds here that although the defendant is indigent that the petition can be dismissed summarily and thus petitioner is not entitled to counsel.

The request for an evidentiary hearing is also denied as there is no basis.

State to prepare the order.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

October 08, 2021

A-21-835125-W	Anthony Barr, Plaintiff(s)
	vs.
	Gittere William, Defendant(s)

October 08, 2021	10:30 AM	Motion
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HEARD BY: Silva, Cristina D.

COURTROOM: Chambers

COURT CLERK:

Kory Schlitz

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Pending before the Court is Petitioner Antony Barr s Motion For Notice Of Appeal. Petitioner Anthony Barr moves this Court to appeal the denial of his Petition for Writ of Habeas Corpus and Motion to Appointment Counsel and Motion for Leave to Proceed in Forma Pauperis. This Court finds that Petitioner Anthony Barr s Motion for Notice of Appeal does not include a basis for appeal and therefore DENIES the Motion for Notice of Appeal without prejudice.

CLERK S NOTE: Counsel are to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was distributed to the registered service recipients via Odyssey eFileNV E-Service (10-8-2021 ks).

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

October 26, 2021

A-21-835125-W Anthony Barr, Plaintiff(s)
vs.
Gittere William, Defendant(s)

October 26, 2021 10:00 AM Minute Order

HEARD BY: Silva, Cristina D.

COURTROOM: Chambers

COURT CLERK: Kory Schlitz

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Pending before the Court is Petitioner Anthony Barr s Petition for Writ of Habeas Corpus. This Court has reviewed the Petition and has determined that a response would not assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his liberty as this matter has previously been briefed. Petitioner previously filed the same Petition on May 24, 2021 which was denied on July 26, 2021. This Court adopts Judge Lilly-Spells decision for denial on this matter on July 26, 2021. Therefore, COURT ORDERED Petition for Writ of Habeas Corpus DENIED without prejudice.

CLERK'S NOTE: A copy of this Minute Order has been mailed to: Anthony Barr #1212761, PO BO 1989, Ely, Nevada 89301. (10-26-2021 ks)

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated November 2, 2021, 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 volumes with pages numbered 1 through 137.

ANTHONY BARR,

Plaintiff(s),

vs.

GITTERE WILLIAM; STATE OF NEVADA,

Defendant(s),

Case No: A-21-835125-W

Dept. No: IX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 16 day of November 2021.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk