

Ronny Pave #1173457
WSCC PO Box 7007
Carson City, NV 89702.
(Petitioner Proper Person).

FILED

MAR 21 2022

Electronically Filed
CLERK OF COURT
Mar 24 2022 09:54 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

District Court
Clark County Nevada

Ronny Pave
Petitioner,

Case No: A-21-845477-W
C-15-308371-1

vs-
The State of Nevada.
Respondents.

Dept No: X II (12).

"
Notice of Appeal
"

Comes now Ronny Pave the Petitioner in proper-person in the above pleading "Notice of Appeal", as the Petitioner wishes to appeal the decision rendered by the Clark County District Court on February 8th 2022 in which the Petitioners writ for Habeas Corpus was denied. This decision is an abuse of discretion and in violation of the protections of the Constitution, as such this Notice of Appeal is now given. This appeal is timely as the decision was not rendered until February 28th 2022.

Respectfully submitted this ~~16~~¹⁶ day of March 2022.

RECEIVED

MAR 21 2022

CLERK OF THE COURT

* R Pave

Ronny Pave #1173457
WSCC PO Box 7007
Carson City, NV 89702

Renny Powe 1173457
Wscd PO Box 7007
Carson City, NV 89702

quadrant
09/17/2002
FIRST-CLASS PACKAGE
Combined Price
USPS POSTAGE \$003.42
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Eight Judicial Dist Ct
Att. Court Clerk
200 Lewis Ave
Las Vegas, NV 89155

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LAS VEGAS, NV 89101

STATE OF NEVADA MAIL SERVICES
720 E FIFTH ST
CARSON CITY NV 89701

SHIP COURT CLERK
TO: 8 JUDICIAL DISTRICT COURT
200 LEWIS AVE
LAS VEGAS NV 89101-6300

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Certificate of Service

I Renny Powe hereby certify under the penalty of perjury that on this ~~16~~¹⁷ day of March 2022 I mailed a true and correct copy of the attached pleading Notice of Appeal, to the following parties postage pre paid by United States postal service.

Eighth Judicial Dist. Ct.

Attn: Court Clerk

200 Lewis Ave.

Las Vegas, NV 89155

Clark County District
Attorney

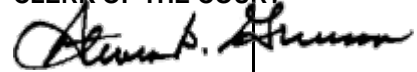
200 Lewis Ave

Las Vegas NV

89155.

Executed on this ~~16~~¹⁷ day of March 2022.

x R Powe
Renny Powe



1 ASTA
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5

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

10 RONNY POWE,

11 Plaintiff(s),

12 vs.

13 K. OLSEN, WARDEN (W.S.C.C.),

14 Defendant(s),
15

Case No: A-21-845477-W

Dept No: XII

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Ronny Powe

20 2. Judge: Michelle Leavitt

21 3. Appellant(s): Ronny Powe

22 Counsel:

23 Ronny Powe #1173457
24 P.O. Box 7007
Carson City, NV 89702

25 4. Respondent (s): K. Olsen, Warden (W.S.C.C.)

26 Counsel:

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

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

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

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

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

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

11 9. Date Commenced in District Court: December 15, 2021

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

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

14 11. Previous Appeal: No

15 Supreme Court Docket Number(s): N/A

16 12. Child Custody or Visitation: N/A

17 13. Possibility of Settlement: Unknown

18 Dated This 23 day of March 2022.

19 Steven D. Grierson, Clerk of the Court

20
21 /s/ Heather Ungermann

22 Heather Ungermann, Deputy Clerk
23 200 Lewis Ave
24 PO Box 551601
25 Las Vegas, Nevada 89155-1601
26 (702) 671-0512

27 cc: Ronny Powe
28

CASE SUMMARY

CASE NO. A-21-845477-W

Ronny Powe, Plaintiff(s)
vs.
K. Olsen, Warden (W.S.C.C.), Defendant(s)

§
§
§
§
§

Location: **Department 12**
 Judicial Officer: **Leavitt, Michelle**
 Filed on: **12/15/2021**
 Cross-Reference Case Number: **A845477**

CASE INFORMATION

Related Cases

C-15-308371-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus****Statistical Closures**

03/18/2022 Other Manner of Disposition

Case Status: **03/18/2022 Closed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-21-845477-W
Court	Department 12
Date Assigned	12/15/2021
Judicial Officer	Leavitt, Michelle

PARTY INFORMATION







Plaintiff	Powe, Ronny	<i>Lead Attorneys</i>
		Pro Se
Defendant	K. Olsen, Warden (W.S.C.C.)	
Other	State of Nevada	Wolfson, Steven B <i>Retained</i> 702-671-2700(W)

DATE


EVENTS & ORDERS OF THE COURT


INDEX

EVENTS

12/15/2021	 Inmate Filed - Petition for Writ of Habeas Corpus Party: Plaintiff Powe, Ronny <i>[1] Post Conviction</i>
12/27/2021	 Order for Petition for Writ of Habeas Corpus <i>[2] Order for Petition for Writ of Habeas Corpus</i>
02/03/2022	 Response <i>[3] State's Return to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction)</i>
03/06/2022	 Findings of Fact, Conclusions of Law and Order <i>[4] Findings of Fact, Conclusions of Law and Order</i>
03/07/2022	 Notice of Entry of Findings of Fact, Conclusions of Law <i>[5] Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
03/18/2022	 Answer Filed By: Plaintiff Powe, Ronny <i>[6] Petitioner's Answer to State's Return of Writ of Habeas Corpus</i>


CASE SUMMARY
CASE NO. A-21-845477-W

03/18/2022  Order to Statistically Close Case
[7] Order to Statistically Close Case

03/21/2022  Notice of Appeal
Filed By: Plaintiff Powe, Ronny
[8] Notice of Appeal

03/23/2022  Case Appeal Statement
Case Appeal Statement

HEARINGS

02/08/2022  **Petition for Writ of Habeas Corpus** (12:00 PM) (Judicial Officer: Ellsworth, Carolyn)
Denied;
Journal Entry Details:
COURT FINDS Petition for Writ of Habeas Corpus is time-barred; Petitioner failed to file within one year of remittitur, that was filed on 04/10/2020 and the said Petition was filed on 12/15/21. COURT ORDERED, State to prepare Findings of Facts and Conclusion of Law and Order.;

DISTRICT COURT CIVIL COVER SHEET

A-21-845477-W

Dept. 12

County, Nevada

Case No.

(Assigned by Clerk's Office)

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

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

Ronny Powe

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

K. Olsen, Warden (W.S.C.C.)

Attorney (name/address/phone):

Attorney (name/address/phone):

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

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

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

December 15, 2021

Date

PREPARED BY CLERK

Signature of initiating party or representative

See other side for family-related case filings.

Heaven S. Linn

CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #10539
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

RONNY POWE

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-21-845477-W
DEPT NO: C-15-308371-1
XII

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

DATE OF HEARING: February 8, 2022
TIME OF HEARING: 12:00 PM

THIS CAUSE having come on for hearing before the Honorable Carolyn Ellsworth, District Judge, on the 8th day of February 2022, Petitioner not being present and Respondent being represented by STEVEN WOLFSON, Clark County District Attorney, by and through HAGAR TRIPPIEDI, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, the Court makes the following findings of fact and conclusions of law:

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1 (emphasis added). “[T]he statutory rules regarding procedural default are mandatory and
2 cannot be ignored when properly raised by the State.” Riker, 121 Nev. at 233, 112 P.3d at
3 1075.

4 Accordingly, the one-year time bar prescribed by NRS 34.726 begins to run from the
5 date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
6 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998); see Pellegrini v.
7 State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001) (holding that NRS 34.726 should be
8 construed by its plain meaning).

9 In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada Supreme
10 Court affirmed the rejection of a habeas petition that was filed two days late, pursuant to the
11 “clear and unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the
12 importance of filing the petition with the district court within the one-year mandate, absent a
13 showing of “good cause” for the delay in filing. Gonzales, 118 Nev. at 593, 590 P.3d at 902.
14 The one-year time bar is therefore strictly construed. In contrast with the short amount of time
15 to file a notice of appeal, a prisoner has an ample full year to file a post-conviction habeas
16 petition, so there is no injustice in a strict application of NRS 34.726(1). Id. at 593, 53 P.3d at
17 903.

18 Here, the Judgment of Conviction was filed on February 17, 2017. Petitioner filed an
19 untimely notice of appeal and thus, the Nevada Supreme Court dismissed Petitioner’s appeal.
20 Petitioner then had one year from the Judgment of Conviction to file his petition. Petitioner’s
21 instant petition was filed on December 15, 2021, which was over three years after the Judgment
22 of Conviction was filed. As a matter of law, Petitioner is untimely on the filing of his petition.
23 Therefore, this petition is denied.

24 B. The procedural bars are mandatory

25 The Nevada Supreme Court has specifically found that the district court has a duty to
26 consider whether the procedural bars apply to a post-conviction petition and not arbitrarily
27 disregard them. In Riker, the Court held that “[a]pplication of the statutory procedural default
28 rules to post-conviction habeas petitions is mandatory,” and “cannot be ignored when properly

1 raised by the State.” 121 Nev. at 231–33, 112 P.3d at 1074–75. There, the Court reversed the
2 district court’s decision not to bar the petitioner’s untimely and successive petition:

3
4 Given the untimely and successive nature of [petitioner’s] petition,
5 the district court had a duty imposed by law to consider whether
6 any or all of [petitioner’s] claims were barred under NRS 34.726,
7 NRS 34.810, NRS 34.800, or by the law of the case . . . [and] the
8 court’s failure to make this determination here constituted an
9 arbitrary and unreasonable exercise of discretion.

10 Id. at 234, 112 P.3d at 1076. The Court justified this holding by noting that “[t]he necessity
11 for a workable system dictates that there must exist a time when a criminal conviction is final.”
12 Id. at 231, 112 P.3d 1074 (citation omitted); see also State v. Haberstroh, 119 Nev. 173, 180–
13 81, 69 P.3d 676, 681–82 (2003) (holding that parties cannot stipulate to waive, ignore or
14 disregard the mandatory procedural default rules nor can they empower a court to disregard
15 them).

16 In State v. Greene, the Nevada Supreme Court reaffirmed its prior holdings that the
17 procedural default rules are mandatory when it reversed the district court’s grant of a post-
18 conviction petition for writ of habeas corpus. See State v. Greene, 129 Nev. 559, 565–66, 307
19 P.3d 322, 326 (2013). There, the Court ruled that the petitioner’s petition was untimely and
20 successive, and that the petitioner failed to show good cause and actual prejudice. Id.
21 Accordingly, the Court reversed the district court and ordered the petitioner’s petition
22 dismissed pursuant to the procedural bars. Id. at 567, 307 P.3d at 327.

23 Petitioner does not set forth any good cause for his delayed filing in this matter. His
24 Judgment of Conviction was filed on February 17, 2017; thus, he should have filed his petition
25 by February 17, 2018. While he was able to file two Motions for Modification of Sentence,
26 Petitioner never filed a timely petition. He has not set forth any good cause as to why his filing
27 was untimely. Because the procedural bars are mandatory and Petitioner has failed to show
28 good cause to overcome the procedural defaults, this petition is denied.

II. PETITIONER CANNOT DEMONSTRATE THAT COUNSEL WAS INEFFECTIVE

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

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

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

Based on the above law, the role of a court in considering allegations of ineffective assistance of counsel is “not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711

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

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

16 Even if a Petitioner can demonstrate that his counsel's representation fell below an
17 objective standard of reasonableness, he must still demonstrate prejudice and show a
18 reasonable probability that, but for counsel's errors, the result of the trial would have been
19 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
20 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
21 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,
22 694, 104 S. Ct. at 2064-65, 2068). This portion of the test is slightly modified when the
23 convictions occurs due to a guilty plea. Hill v. Lockhart, 474 U.S. 52, 59 (1985); Kirksey v.
24 State, 112 Nev. 980, 988 (1996). For a guilty plea, a Petitioner “must show that there is a
25 reasonable probability that, but for counsel's errors, he would not have pleaded guilty and
26 would have insisted on going to trial.” Kirksey, 112 Nev. at 998 (quoting Hill, 474 U.S. at 59).
27 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the disputed
28 factual allegations underlying his ineffective-assistance claim by a preponderance of the

evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked” allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed.” (emphasis added).

A. Ground One – DNA evidence

Petitioner cannot show that but for a better investigation, he would not have accepted the plea and would have insisted on going to trial. Petitioner sets forth no explanation of what investigation should have been completed by his counsel. His first complaint is that the DNA evidence exonerates him. However, this is not a case where DNA evidence was relevant to the charges. The allegation was that the victim had been battered by her boyfriend, Petitioner. Much of the evidence rested on her injuries and her statement to police.

Even assuming that counsel had not gone over the DNA evidence with petitioner, the DNA itself would have done nothing to negate her statement that he was responsible, along with his daughter, for causing her injuries. Thus, there is no prejudice to Petitioner and this evidence would not have changed his desire to plea.

B. Ground Two – Desire for appeal and his attorney committing misconduct

Petitioner states that he wished to challenge his conviction, but this is belied by the record and is a bare claim. The record does not indicate that he was dissatisfied with his plea or with his sentence. Petitioner did not lodge an objection prior to or at his sentencing on February 14, 2017. There is no evidence that he wanted counsel to appeal his sentence. Thus, there is no grounds to grant him relief.

Petitioner also speculates about his attorney committing misconduct, but he presents no coherent argument to this claim. He states that his attorney lied and abandoned him without

1 supporting it with any argument or evidence. This is a bare claim and does not entitle him to
2 relief.

3 C. Ground Three – Prosecutorial misconduct

4 Petitioner argues that the State should not have proceeded with the case because of
5 DNA results and mental health issues of the victim. Even from Petitioner’s pleadings, the DNA
6 results were provided to his counsel, thus the State cannot be held in violation of Brady.

7 As for proceeding with charges, the victim’s testimony that the events happened, along
8 with her injuries and other evidence, were sufficient for the State to proceed. Petitioner cannot
9 show any misconduct by the prosecution.

10 D. Ground Four – Appeal and Post-conviction dismissals

11 Petitioner says that his rights were violated by the Nevada Courts because his appeals
12 were previously dismissed. In those cases, the appellate courts clearly stated why his appeal
13 was being dismissed. Moreover, he never filed a petition until now. Given that the record is
14 clear as to why his previous appeals were dismissed, this is not a basis to grant his petition.

15 **ORDER**

16 THEREFORE, IT IS HEREBY ORDERED that Petitioner’s Petition for Writ of
17 Habeas Corpus is DENIED.

18 Dated this 6th day of March, 2022

19 
20 _____
DISTRICT JUDGE

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

04B 9F5 E957 99D7
Michelle Leavitt
District Court Judge

23 BY /s/ Alexander Chen
24 ALEXANDER CHEN
25 Chief Deputy District Attorney
Nevada Bar #010539
26
27
28

1 CERTIFICATE OF SERVICE

2 I hereby certify that service of Findings of Fact and Conclusions of Law and Order, was
3 made this 28th day of February, 2022, by Mail via United States Postal Service to:

4
5 RONNY POWE #1173457
6 WARM SPRINGS CORRECTIONAL CENTER
7 P.O. BOX 7007
8 CARSON CITY, NV 89702

9 /s/ Kristian Falcon

10 Secretary for the District Attorney's Office
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27 ac/kf/dvu
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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Ronny Powe, Plaintiff(s)

CASE NO: A-21-845477-W

7 vs.

DEPT. NO. Department 12

8 K. Olsen, Warden (W.S.C.C.),
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

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

4
5 RONNY POWE,

6 Petitioner,

7 vs.

8 K. OLSEN, WARDEN (W.S.C.C.),

9 Respondent,

Case No: A-21-845477-W

Dept No: XII

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

11 **PLEASE TAKE NOTICE** that on March 6, 2022, the court entered a decision or order in this matter, a
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed
to you. This notice was mailed on March 7, 2022.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

17 Amanda Hampton, Deputy Clerk

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

20 I hereby certify that on this 7 day of March 2022, I served a copy of this Notice of Entry on the following:

21 ☒ By e-mail:

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

23
24 ☒ The United States mail addressed as follows:

25 Ronny Powe # 1173457
P.O. Box 7007
Carson City, NV 89702

26
27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #10539
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

RONNY POWE

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-21-845477-W
DEPT NO: C-15-308371-1
XII

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

DATE OF HEARING: February 8, 2022
TIME OF HEARING: 12:00 PM

THIS CAUSE having come on for hearing before the Honorable Carolyn Ellsworth, District Judge, on the 8th day of February 2022, Petitioner not being present and Respondent being represented by STEVEN WOLFSON, Clark County District Attorney, by and through HAGAR TRIPPIEDI, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, the Court makes the following findings of fact and conclusions of law:

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//

1 (emphasis added). “[T]he statutory rules regarding procedural default are mandatory and
2 cannot be ignored when properly raised by the State.” Riker, 121 Nev. at 233, 112 P.3d at
3 1075.

4 Accordingly, the one-year time bar prescribed by NRS 34.726 begins to run from the
5 date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
6 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998); see Pellegrini v.
7 State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001) (holding that NRS 34.726 should be
8 construed by its plain meaning).

9 In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada Supreme
10 Court affirmed the rejection of a habeas petition that was filed two days late, pursuant to the
11 “clear and unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the
12 importance of filing the petition with the district court within the one-year mandate, absent a
13 showing of “good cause” for the delay in filing. Gonzales, 118 Nev. at 593, 590 P.3d at 902.
14 The one-year time bar is therefore strictly construed. In contrast with the short amount of time
15 to file a notice of appeal, a prisoner has an ample full year to file a post-conviction habeas
16 petition, so there is no injustice in a strict application of NRS 34.726(1). Id. at 593, 53 P.3d at
17 903.

18 Here, the Judgment of Conviction was filed on February 17, 2017. Petitioner filed an
19 untimely notice of appeal and thus, the Nevada Supreme Court dismissed Petitioner’s appeal.
20 Petitioner then had one year from the Judgment of Conviction to file his petition. Petitioner’s
21 instant petition was filed on December 15, 2021, which was over three years after the Judgment
22 of Conviction was filed. As a matter of law, Petitioner is untimely on the filing of his petition.
23 Therefore, this petition is denied.

24 B. The procedural bars are mandatory

25 The Nevada Supreme Court has specifically found that the district court has a duty to
26 consider whether the procedural bars apply to a post-conviction petition and not arbitrarily
27 disregard them. In Riker, the Court held that “[a]pplication of the statutory procedural default
28 rules to post-conviction habeas petitions is mandatory,” and “cannot be ignored when properly

1 raised by the State.” 121 Nev. at 231–33, 112 P.3d at 1074–75. There, the Court reversed the
2 district court’s decision not to bar the petitioner’s untimely and successive petition:

3
4 Given the untimely and successive nature of [petitioner’s] petition,
5 the district court had a duty imposed by law to consider whether
6 any or all of [petitioner’s] claims were barred under NRS 34.726,
7 NRS 34.810, NRS 34.800, or by the law of the case . . . [and] the
8 court’s failure to make this determination here constituted an
9 arbitrary and unreasonable exercise of discretion.

10 Id. at 234, 112 P.3d at 1076. The Court justified this holding by noting that “[t]he necessity
11 for a workable system dictates that there must exist a time when a criminal conviction is final.”
12 Id. at 231, 112 P.3d 1074 (citation omitted); see also State v. Haberstroh, 119 Nev. 173, 180–
13 81, 69 P.3d 676, 681–82 (2003) (holding that parties cannot stipulate to waive, ignore or
14 disregard the mandatory procedural default rules nor can they empower a court to disregard
15 them).

16 In State v. Greene, the Nevada Supreme Court reaffirmed its prior holdings that the
17 procedural default rules are mandatory when it reversed the district court’s grant of a post-
18 conviction petition for writ of habeas corpus. See State v. Greene, 129 Nev. 559, 565–66, 307
19 P.3d 322, 326 (2013). There, the Court ruled that the petitioner’s petition was untimely and
20 successive, and that the petitioner failed to show good cause and actual prejudice. Id.
21 Accordingly, the Court reversed the district court and ordered the petitioner’s petition
22 dismissed pursuant to the procedural bars. Id. at 567, 307 P.3d at 327.

23 Petitioner does not set forth any good cause for his delayed filing in this matter. His
24 Judgment of Conviction was filed on February 17, 2017; thus, he should have filed his petition
25 by February 17, 2018. While he was able to file two Motions for Modification of Sentence,
26 Petitioner never filed a timely petition. He has not set forth any good cause as to why his filing
27 was untimely. Because the procedural bars are mandatory and Petitioner has failed to show
28 good cause to overcome the procedural defaults, this petition is denied.

II. PETITIONER CANNOT DEMONSTRATE THAT COUNSEL WAS INEFFECTIVE

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

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

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

Based on the above law, the role of a court in considering allegations of ineffective assistance of counsel is “not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711

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

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

16 Even if a Petitioner can demonstrate that his counsel's representation fell below an
17 objective standard of reasonableness, he must still demonstrate prejudice and show a
18 reasonable probability that, but for counsel's errors, the result of the trial would have been
19 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
20 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
21 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,
22 694, 104 S. Ct. at 2064-65, 2068). This portion of the test is slightly modified when the
23 convictions occurs due to a guilty plea. Hill v. Lockhart, 474 U.S. 52, 59 (1985); Kirksey v.
24 State, 112 Nev. 980, 988 (1996). For a guilty plea, a Petitioner “must show that there is a
25 reasonable probability that, but for counsel's errors, he would not have pleaded guilty and
26 would have insisted on going to trial.” Kirksey, 112 Nev. at 998 (quoting Hill, 474 U.S. at 59).
27 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the disputed
28 factual allegations underlying his ineffective-assistance claim by a preponderance of the

evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked” allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed.” (emphasis added).

A. Ground One – DNA evidence

Petitioner cannot show that but for a better investigation, he would not have accepted the plea and would have insisted on going to trial. Petitioner sets forth no explanation of what investigation should have been completed by his counsel. His first complaint is that the DNA evidence exonerates him. However, this is not a case where DNA evidence was relevant to the charges. The allegation was that the victim had been battered by her boyfriend, Petitioner. Much of the evidence rested on her injuries and her statement to police.

Even assuming that counsel had not gone over the DNA evidence with petitioner, the DNA itself would have done nothing to negate her statement that he was responsible, along with his daughter, for causing her injuries. Thus, there is no prejudice to Petitioner and this evidence would not have changed his desire to plea.

B. Ground Two – Desire for appeal and his attorney committing misconduct

Petitioner states that he wished to challenge his conviction, but this is belied by the record and is a bare claim. The record does not indicate that he was dissatisfied with his plea or with his sentence. Petitioner did not lodge an objection prior to or at his sentencing on February 14, 2017. There is no evidence that he wanted counsel to appeal his sentence. Thus, there is no grounds to grant him relief.

Petitioner also speculates about his attorney committing misconduct, but he presents no coherent argument to this claim. He states that his attorney lied and abandoned him without

1 supporting it with any argument or evidence. This is a bare claim and does not entitle him to
2 relief.

3 C. Ground Three – Prosecutorial misconduct

4 Petitioner argues that the State should not have proceeded with the case because of
5 DNA results and mental health issues of the victim. Even from Petitioner’s pleadings, the DNA
6 results were provided to his counsel, thus the State cannot be held in violation of Brady.

7 As for proceeding with charges, the victim’s testimony that the events happened, along
8 with her injuries and other evidence, were sufficient for the State to proceed. Petitioner cannot
9 show any misconduct by the prosecution.

10 D. Ground Four – Appeal and Post-conviction dismissals

11 Petitioner says that his rights were violated by the Nevada Courts because his appeals
12 were previously dismissed. In those cases, the appellate courts clearly stated why his appeal
13 was being dismissed. Moreover, he never filed a petition until now. Given that the record is
14 clear as to why his previous appeals were dismissed, this is not a basis to grant his petition.

15 **ORDER**

16 THEREFORE, IT IS HEREBY ORDERED that Petitioner’s Petition for Writ of
17 Habeas Corpus is DENIED.

18 Dated this 6th day of March, 2022

19 
20 _____
DISTRICT JUDGE

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

04B 9F5 E957 99D7
Michelle Leavitt
District Court Judge

23 BY /s/ Alexander Chen
24 ALEXANDER CHEN
25 Chief Deputy District Attorney
Nevada Bar #010539
26
27
28

1 CERTIFICATE OF SERVICE

2 I hereby certify that service of Findings of Fact and Conclusions of Law and Order, was
3 made this 28th day of February, 2022, by Mail via United States Postal Service to:

4
5 RONNY POWE #1173457
6 WARM SPRINGS CORRECTIONAL CENTER
P.O. BOX 7007
CARSON CITY, NV 89702

7
8 /s/ Kristian Falcon

9 Secretary for the District Attorney's Office
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1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 Ronny Powe, Plaintiff(s)

CASE NO: A-21-845477-W

7 vs.

DEPT. NO. Department 12

8 K. Olsen, Warden (W.S.C.C.),
9 Defendant(s)

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11 **AUTOMATED CERTIFICATE OF SERVICE**

12 Electronic service was attempted through the Eighth Judicial District Court's
13 electronic filing system, but there were no registered users on the case. The filer has been
14 notified to serve all parties by traditional means.
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A-21-845477-W Ronny Powe, Plaintiff(s)
vs.
K. Olsen, Warden (W.S.C.C.), Defendant(s)

February 08, 2022 12:00 PM Petition for Writ of Habeas Corpus

HEARD BY: Ellsworth, Carolyn COURTROOM: RJC Courtroom 14D

COURT CLERK: Burchfield, Pharan; Pannullo, Haly

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Hagar L Trippiedi Attorney for Other

JOURNAL ENTRIES

COURT FINDS Petition for Writ of Habeas Corpus is time-barred; Petitioner failed to file within one year of remittitur, that was filed on 04/10/2020 and the said Petition was filed on 12/15/21. COURT ORDERED, State to prepare Findings of Facts and Conclusion of Law and Order.

Certification of Copy

State of Nevada }
County of Clark } SS:

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

"NOTICE OF APPEAL"; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT MINUTES

RONNY POWE,

Plaintiff(s),

vs.

K. OLSEN, WARDEN (W.S.C.C.),

Defendant(s),


Case No: A-21-845477-W

Dept No: XII

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 23 day of March 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk