

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEL BURKETT, A/K/A RAYMOND
HAIRE,

Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Electronically Filed
Jan 20 2022 10:48 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-19-800052-W
Related Case A-19-788633-W
Docket No: 83743

RECORD ON APPEAL

ATTORNEY FOR APPELLANT
JOEL BURKETT #16111,
PROPER PERSON
P.O. BOX 7000
CARSON CITY, NV 89702

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

I N D E X

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1 JOEL BURKEIT

(Name)

2 16111

(I.D. Number)

3 Northern Nevada Correctional Center
4 Post Office Box 7000
5 Carson City, NV 89702

6
7 Petitioner, In Proper Person

FILED 1

AUG 05 2019

Alvin L. Johnson
CLERK OF COURT

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

9 IN AND FOR THE COUNTY OF CLARK

10 JOEL BURKEIT

11 Petitioner,

12 vs.

13 TSIDBO BACA

14 Respondent.

Case No. **A-19-800052-W**
Dept. XII

Dept. No

15 **PETITION FOR WRIT OF HABEAS**
CORPUS ~~DEATH PENALTY~~

(Non Death Penalty)

PURSUANT TO N.R.S
34.500(2)(9)

16 **INSTRUCTIONS:**

- 17 1. This petition must be legibly handwritten or typewritten, signed by the petitioner and
18 verified.
- 19 2. Additional pages are not permitted except where noted or with respect to the facts which
20 you rely upon to support your grounds for relief. No citation of authorities need be furnished.
21 If briefs or arguments are submitted, they should be submitted in the form of a separate
22 memorandum.
- 23 3. If you want an attorney appointed, you must complete the Affidavit in Support of Motion
24 for Leave to Proceed In Forma Pauperis. You must have an authorized officer at the prison
25 complete the certificate as to the amount of money and securities on deposit to your credit in
26 any account in the institution.
- 27 4. You must name as Respondent the person by whom you are confined or restrained. If you
28 are in a specific institution of the department of corrections, name the warden or head of the

1 institution. If you are not in a specific institution of the department but within its custody, name the
2 director of the department of corrections.

3 (5) You must include all grounds or claims for relief which you may have regarding your
4 conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing
5 future petitions challenging your conviction and sentence.

6 (6) You must allege specific facts supporting the claims in the petition you file seeking
7 relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions
8 may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of
9 counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you
10 claim your counsel was ineffective.

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

17 PETITION

18 1. Name of institution and county in which you are presently imprisoned or where and
19 how you are presently restrained of you liberty: N.M.C.C. CARSON CITY, NV

20 2. Name and location of court which entered the judgment of conviction under attack:

21 EIGHTH JUD. DIST

22 3. Date of judgment of conviction: MAY 4, 1981

23 4. Case Number: C052190

24 5. (a) Length of sentence: 4 LIFE WITH POSSIBILITY
25 OF PAROLE, 3 YEARS

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: Robbery/
Kidnapping/, Sexual Assault

8. What was your plea? (check one)

(a) Not guilty ☒ (c) Guilty but mentally ill _____

(b) Guilty _____ (d) 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 of 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: DO NOT HAVE

(c) Result: REVERSED

(d) Date of result: April 21, 1983

(Attach copy of order or decision, if available)

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

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 you answer to No. 15 was "yes," give the following information:

- (a) (1) Name of court: FIRST JUD. DIST.
(2) Name of proceeding: HABEAS CORPUS PETITION
(3) Grounds raised: EFFECTIVE ASSISTANCE

OF COUNSEL

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

(5) Result: GRANTED

(6) Date of result: 1986

(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: 8TH JUD. DIST. COURT

(2) Nature of proceeding: HABEAS CORPUS

(3) Grounds raised: UNKNOWN

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

(5) Result: GRANTED

(6) Date of result: FEB 28 1994

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

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

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

7 (1) First petition, application or motion?

8 Yes _____ No _____

9 (2) Second petition, application or motion?

10 Yes _____ No _____

11 (3) Third or subsequent petitions, applications or motions?

12 Yes _____ No _____

13 Citation or date of decision.

14 (e) If you did not appeal from the adverse action on any petition, application or
15 motion, explain briefly why you did not. (You must relate specific facts in response to this question.
16 Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your
17 response may not exceed five handwritten or typewritten pages in length)

18 _____
19 _____
20 _____
21 17. Has any ground being raised in this petition been previously presented to this or any
22 other court by way of petition for habeas corpus, motion, application or any other post-conviction
23 proceeding? If so, identify:

24 (a) Which of the grounds is the same: None

25 _____
26 _____

27
28 (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 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

18. If any of the grounds listed in Nos. 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 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

Ground one, did not exist prior to June 17,
2019

19. Are you filing this petition more than 1 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 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

The issue did not exist prior
to June 17 2019

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 the case number: NEV. SUPREME COURT No. 78868

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: do not have

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack:

Yes ☒ No ☐

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:

BURKEIT'S SENTENCE HAS BECOME
UNCONSTITUTIONAL IN VIOLATION OF
THE EIGHTH AMENDMENT, U.S. CONST.

Supporting Facts:

IN JAN 2003, BURKEIT WAS PLACED IN
SOLITARY CONFINEMENT, WHERE HE
REMAINED FOR THE NEXT 16 YEARS
WITHOUT SOCIAL INTERACTIONS OR
ENVIRONMENTAL STIMULATION
(2) 3 YEARS INTO SOLITARY CONFINEMENT
BURKEIT IN 2005, BEGAN TO EXHIBIT
CLEAR SIGNS OF POST-TRAUMATIC
STRESS DISORDERS i.e. "OBSESSIVE
MISERABLENESS", "OBSESSIVE CLEANING",
"EXCESSIVE EXERCISE", "PANIC ATTACKS",
"CONSTANT PACING" UP TO 20 HR.
PER DAY; (SEE GROUND ONE
CONTINUED ON PAGE 15)

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(b) Ground Two:

Supporting Facts:

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(c) Ground Three:

Supporting Facts:

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(d) Ground Four:

Supporting Facts:

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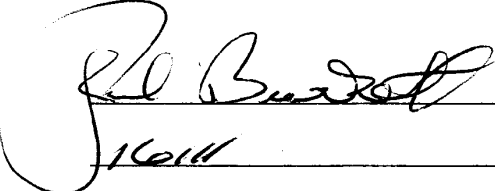
(e) Ground Five:

Supporting Facts:

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

EXECUTED at N.D.C.C., Nevada on the 31st
Day of July, 20 18.



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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document.

OF HABEAS CORPUS

(Title of Document)

filed in case number: _____

☒

Document does not contain the social security number of any person

-OR-

☐

Document contains the social security number of a person as required by:

☐

A specific state or federal law, to wit:

(State specific state or federal law)

-or-

☐

For the administration of a public program

-or-

☐

For an application for a federal or state grant

-or-

☐

Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS125B.055)

Date: 7-31-19

[Signature]
(Signature)

JOEL BURRILL
(Print Name)

(Attorney for)

(Ground One, Continued Fr. Pg. 7)

1.
2. (3) BURKETT HAS RECEIVED NUMEROUS
3. MISCONDUCT REPORTS FOR HIS (P.T.S.D.)
4. MISDETERMINATION STARTING IN 2005.
5. (4) OVER THE YEARS BURKETT HAS
6. REQUESTED MENTAL HEALTH CARE,
7. MENTAL HEALTH SIMPLY REFUSED TO
8. PROVIDE MENTAL HEALTH CARE TO
9. BURKETT (SEE N.D.A.C. GRIEVANCE #
10. 2006-30-60229).
11. (5) ON JUNE 17TH 2019 BURKETT
12. APPEARED BEFORE THE NEVADA PAROLE
13. BOARD ON COUNTS 2, 3 AND 4
14. OF HIS JUDGMENT OF CONVICTION.
15. (6) PURSUANT TO N.R.S. 213.1214
16. BURKETT WAS ASSESSED AS A
17. HIGH RISK TO RE-OFFEND BASED
18. SOLELY ON HIS (P.T.S.D.) AND
19. MISCONDUCT REPORTS THEREFROM.
20. (7) THE PAROLE BOARD ON JUNE 17, 2019
21. MADE SPECIFIC RECOMMENDATIONS
22. THAT BURKETT RECEIVE PSYCHOLOGICAL
23. HELP TO REDUCE HIS OVER
24. ALL RISK TO RE-OFFEND.

25.
26. (Continued on Pg 16)

27

28

(15)

(Continued from Pg. 15)

1.
2 (8) N.D.O.C. HAS PROVIDED LITTLE IF
3 ANY MENTAL HEALTH CARE TO BURKETT;
4.
5 (9) IT'S BURKETT'S CONTENTION THAT
6 THE NEV. DEPT OF CORRECTIONS CAN
7 NOT INFLICT PSYCHOLOGICAL HARM
8 UPON HIM IN VIOLATION OF THE
9 EIGHTH AMENDMENT U.S. CONSTITUTION
10 (10 YEARS IN SOLITARY CONFINEMENT
11 WITHOUT SOCIAL INTERACTION OR
12 ENVIRONMENTAL STIMULATION) THEN
13 USE THAT EIGHTH AMEND. VIOLATION/
14 HARM THEREFROM TO ASSESS AND
15 SCORE BURKETT PURSUANT TO
16 N.R.S. 213.1214 THE HIGHEST RISK
17 SCORE TO RE-ENTER, EFFECTIVELY
18 KILLING ANY POSSIBILITY OF PAROLE
19 AS GRANTED IN BURKETT'S SENTENCES
20 (10) BURKETT CONTENTS THAT HIS
21 SENTENCES IN COUNTS 2, 3 AND 4
22 HAVE BECOME UNCONSTITUTIONAL
23 IN VIOLATION OF THE EIGHTH AMEND.
24 U.S. CONST. AND THAT BURKETT
25
26 (Continued on Pg. 17)

27.

28.

(16)

(BRANDEN CONTINUED FR. PG. 16)

1.
2. IS SUFFERING "PSYCHOLOGICAL PAIN"
3. KNOWING HE IS AND CAN BE
4. INCARCERATED THE REST OF HIS
5. LIFE FOR PSYCHOLOGICAL HARM
6. INFLICTED UPON HIM IN VIOLATION
7. OF THE EIGHTH AMEND. U.S. CONST.
8. EVEN MORE SO WHEREAS HE
9. ISN'T RECEIVING PROPER MENTAL
10. HEALTH CARE

11.
12. (11) BURKEIT CONTENDS THAT HIS
13. SENTENCES IN COUNT 2, 3 AND 4
14. OF HIS JUDGMENT OF CONVICTION
15. HAVE BECOME UNCONSTITUTIONAL
16. IN VIOLATION OF THE EIGHTH
17. AMEND. U.S. CONST. AND THAT
18. HE IS ENTITLED TO BE RELEASED
19. OR RESENTENCED TO A "DETERMINATE
20. TERM OF IMPRISONMENT"
21. THE STATE MAY NOT KEEP BURKEIT
22. INCARCERATED THE REST OF HIS
23. LIFE BASED UPON ^{HARM} THE STATE
24. INFLICTED ON HIM IN VIOLATION
25. OF THE EIGHTH AMEND. U.S. CONST.

26.
27. (CONTINUED ON PG. 18)

28. (17)

(BRUNDAGE CONTINUED FR. PG 17)

1
2 IN ROBINSON V. CALIFORNIA 82 S. CT
3 1417 (1962) THE COURT STATED:
4 " IT IS UNLIKELY THAT ANY STATE
5 AT THIS MOMENT IN HISTORY WOULD
6 ATTEMPT TO MAKE IT A CRIMINAL
7 OFFENSE FOR A PERSON TO BE
8 MENTALLY ILL. BUT IN LIGHT
9 OF CONTEMPORARY HUMAN
10 KNOWLEDGE A LAW WHICH
11 MADE A CRIMINAL OFFENSE
12 OF SUCH DISEASE WOULD
13 DOUBTLESS BE UNIVERBALLY
14 THOUGHT TO BE AN INFLECTION
15 OF CRUEL AND UNUSUAL
16 PUNISHMENT IN VIOLATION
17 OF THE EIGHTH AND FOURTEENTH
18 AMENDMENTS".

19
20 THE COURT WENT ON TO INVALIDATE
21 A 90 DAY PRISON SENTENCE FOR
22 THE CRIME OF BEING ADDICTED
23 TO THE USE OF NARCOTICS

24
25
26 (CONTINUED ON PAGE 19)

27

28

(18)

(Grounds Continued Fr. pg 18)

1
2 THE OPINION REST UPON THE
3 PROPOSITION THAT "EVEN ONE DAY
4 IN PRISON WOULD BE A CRUEL AND
5 UNUSUAL PUNISHMENT FOR THE
6 "CRIME" OF HAVING A COMMON
7 COLD 370 U.S. AT 667
8
9 THE EIGHTH AMENDMENT PROTECTS NOT
10 ONLY INDIVIDUALS "PHYSICAL HEALTH, BUT
11 THEIR MENTAL HEALTH AS WELL, THE
12 SAME STANDARD THAT PROTECTS
13 AGAINST PHYSICAL TORTURE PROHIBIT
14 "MENTAL TORTURE" WILKERSON V.
15 STALDER 639 F. SUPP 25 654 (2007)
16
17 WHEREAS, DEFENDANT HAS AND
18 PSYCHOLOGICAL HARM INFLICTED UPON
19 IN VIOLATION OF THE EIGHTH AMEND.
20 TO CONTINUE HIS INCARCERATION
21 PURSUANT TO M.R.S. 213.1214 BASED
22 UPON A RISK SCORE FACTOR OF THAT HARM
23 IS IT'S SELF AN EIGHTH AMENDMENT
24 VIOLATION AND CONSTITUTES
25 MENTAL TORTURE

26

27

28

(19)

JOE BURKETT 1611

N.C.C.

P.O. BOX 7000

CHICAGO, ILL. 60602

89702

US POSTA



CLERK OF COURT
200 LEWIS AVE
3RD FLOOR
LAS VEGAS, NV
89155-2212

THIS SEALED
DOCUMENT,
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21 - 32
WILL FOLLOW VIA
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FILED

AUG 30 2019

Shirley L. Hume
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

Joel Burkett,

Petitioner,

vs.

Isidro Baca,

Respondent,

Case No: A-19-800052-W
Department 12

ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on August 05, 2019. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

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

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

Calendar on the 17th day of October, 2019, at the hour of

8:30 am o'clock for further proceedings.

[Signature]
District Court Judge

9.27.19

RECEIVED

AUG 29 2019

CLERK OF THE COURT

A-19-800052-W
OPWH
Order for Petition for Writ of Habeas Corp
4859818



-1-

RECEIVED

AUG 16 2019

DEPT. 12



1 **RSPN**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **TALEEN PANDUKHT**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #005734**
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 **THE STATE OF NEVADA,**
10 **Plaintiff,**

11 **-vs-**
12 **JOEL BURKETT, aka**
13 **Raymond Haire,**
14 **#609533**

15 **Defendant.**

CASE NO: A-19-800052-W

DEPT NO: XII

15 **STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS**
16 **CORPUS**

17 **DATE OF HEARING: OCTOBER 17, 2019**
18 **TIME OF HEARING: 8:30 AM**

19 **COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County**
20 **District Attorney, through TALEEN PANDUKHT, Chief Deputy District Attorney, and**
21 **hereby submits the attached Points and Authorities in Response to Defendant's Petition for**
22 **Writ of Habeas Corpus.**

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 **///**

27 **///**

28 **///**

///

W:\1900\1980F\051\26\80F05126-RSPN-(BURKETT_JOEL)-001.DOCX

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On January 19, 1981, the State of Nevada charged Joel Burkett by way if
4 Information with Count 1- Robbery and Use of a Deadly Weapon In Commission of a
5 Crime; Count 2- First Degree Kidnapping and Use of a Deadly Weapon In Commission
6 of a Crime.; Count 3- Sexual Assault; and Count 4- Sexual Assault. On May 4, 1981,
7 the jury found Defendant guilty on all counts.

8 On June 2, 1981, Defendant was sentenced to serve a term in the Nevada State
9 Prison as follows: Count 1, fifteen (15) years for Robbery and an additional fifteen (15)
10 for Use of a Deadly Weapon in Commission of a Crime, to be served consecutively.
11 Count 2 is to be served consecutive to Count 1; Counts 3 and 4 to be served concurrent
12 to the sentences imposed in Counts 1 and 2. Defendant granted credit for time served
13 of 165 days.

14 On July 19, 1981, the Judgement of Conviction was filed. On July 19, 1981,
15 Defendant filed a Notice of Appeal. On April 23, 1983, the Nevada Supreme Court
16 dismissed the Appeal. Remittitur issued on May 10, 1983. On February 28, 1994,
17 Defendant filed a Petition for Writ of Habeas Corpus (Post-Conviction). On February
18 28, 1994, the District Court granted in part and denied in part Defendant's petition. On
19 June 17, 1999, Defendant filed a second petition. On August 12, 1999, the District Court
20 denied Defendant's petition.

21 On August 31, 1999, Defendant filed a Notice of Appeal. On July 10, 2001, the
22 Nevada Supreme Court affirmed the judgment of the District Court. Remittitur issued
23 on August 7, 2001.

24 On November 19, 2001, Defendant filed a Third Petition for Writ of Habeas
25 Corpus. On January 24, 2002, the District Court denied Defendant's petition.

26 On March 20, 2002, Defendant filed a Notice of Appeal. On February 6, 2003,
27 the Nevada Supreme Court reversed the judgment of the District Court and remanded

28 ///

1 the matter for further proceedings consistent with their Order. Remittitur issued on
2 March 4, 2003.

3 On February 19, 2003, Defendant filed a Fourth Petition. On May 1, 2003, the
4 District Court denied Defendant's Third and Fourth Petitions.

5 On May 27, 2003, Defendant filed a Notice of Appeal. On March 5, 2004, the
6 Nevada Supreme Court affirmed the District Court's denial of Defendant's Fourth
7 Petition. Remittitur issued on March 30, 2004.

8 On September 1, 2004, Defendant filed a Fifth Petition. On October 19, 2004
9 the District Court denied Defendant's fifth Petition. The Findings of Fact and
10 Conclusions of Law were filed on November 1, 2004.

11 On May 13, 2005, Defendant filed a Sixth Petition. On July 5, 2005, the District
12 Court dismissed Defendant's Sixth Petition. On August 9, 2005, Defendant filed a
13 Notice of Appeal. On November 15, 2005, the Nevada Supreme Court affirmed the
14 judgment of the District Court. Remittitur issued on December 13, 2005.

15 On July 7, 2011, Defendant filed a Seventh Petition. On October 25, 2011, the
16 District Court granted the State's Motion to Dismiss and Ordered the Clerk of the Court
17 to transfer the Petition to the Seventh Judicial District. On June 14, 2013, Defendant
18 filed an Eighth Petition. On February 20, 2014, the Supreme Court of Nevada and
19 affirmed the judgment of the District Court.

20 On November 5, 2015, Defendant filed a Notice of Appeal. The Nevada Supreme
21 Court filed an Order of Reversal and Remand on July 12, 2017, transferring Defendant's
22 petition challenging the computation of time served to the Eighth Judicial District
23 Court.

24 On March 2, 2018, the District Court filed an Amended Judgment of Conviction
25 to reflect what was ordered by the Court at the time of sentencing.

26 On August 30, 2019 Burkett filed a Ninth Post-Conviction Petition for Writ of
27 Habeas Corpus. The State's response follows.

28 ///

1 **ARGUMENT**

2 **I. THE PETITION IS TIME-BARRED**

3 A petition challenging a judgment of conviction's validity must be filed within one year
4 of the judgment or within one year of the remittitur, unless there is good cause to excuse delay.
5 NRS 34.726(1). The Nevada Supreme Court has held that NRS 34.726 should be construed by
6 its plain meaning. Pellegrini v. State, 117 Nev. 860, 873–74, 34 P.3d 519, 528 (2001). The
7 one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of
8 conviction is filed or a remittitur from a timely direct appeal is issued. Dickerson v. State, 114
9 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998).

10 The one-year time limit for preparing petitions for post-conviction relief under NRS
11 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
12 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
13 evidence presented by the defendant that he purchased postage through the prison and mailed
14 the Notice within the one-year time limit.

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

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

24 Id. (quoting Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984)).
25 Additionally, the Court noted that procedural bars “cannot be ignored [by the district court]
26 when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
27 has granted no discretion to the district courts regarding whether to apply the statutory
28 procedural bars; the rules *must* be applied.

1 Entry of an Amended Judgment of Conviction does not automatically restart the
2 statutory time limit for post-conviction claims, Sullivan v. State, 120 Nev. 537, 540-1, 96 P.3d
3 761, 764 (2004), unless the prior Judgment of Conviction was statutorily deficient (e.g., failed
4 to fix an amount of restitution where restitution was contemplated), see Whitehead v. State,
5 128 Nev. 262, 263, 285 P.3d 1053, 1055 (2012). Otherwise, since the district court may amend
6 the judgment of conviction at any time to correct a clerical error, or to correct an illegal
7 sentence, restarting the one-year time period for all purposes every time an amendment occurs
8 would frustrate the spirit and purpose of NRS 34.726. Sullivan, 120 Nev. at 540, 96 P.3d at
9 764. “[This] would undermine the doctrine of finality of judgments by allowing petitioners to
10 file post-conviction habeas petitions in perpetuity.” Id. Where a defendant is not challenging
11 the proceedings related to an Amended Judgment of Conviction, the one-year time bar runs
12 from the date Remittitur issued from the affirmance of his Judgment of Conviction, or one
13 year from entry of his original Judgment of Conviction. Id. at 541, 96 P.3d at 764.

14 Here, Petitioner’s original Judgement of Conviction (“JOC”) was filed on July 29,
15 1981, an Amended Judgment of Conviction (“AJOC”) was filed on February 28, 1994. On
16 March 2, 2018, the District Court filed a secondary AJOC. However, Petitioner failed to file
17 his Ninth Petition for Writ of Habeas Corpus (“Petition”) until August 30, 2019. Therefore,
18 the Petition must be dismissed as it was filed well after the one-year time bar.

19 II. THE PETITION IS SUCCESSIVE

20 Defendant’s Petition is procedurally barred because it is successive. NRS 34.810(2)
21 reads:

22 A second or successive petition *must* be dismissed if the judge or
23 justice determines that it fails to allege new or different grounds
24 for relief and that the prior determination was on the merits or, if
25 new and different grounds are alleged, the judge or justice finds
that the failure of the petitioner to assert those grounds in a prior
petition constituted an abuse of the writ.

26 (emphasis added). Second or successive petitions are petitions that either fail to allege new or
27 different grounds for relief and the grounds have already been decided on the merits or that
28 allege new or different grounds, but a judge or justice finds that the petitioner’s failure to assert

1 those grounds in a prior petition would constitute an abuse of the writ. Second or successive
2 petitions will only be decided on the merits if the petitioner can show good cause and prejudice.
3 NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

4 The Nevada Supreme Court has stated: "Without such limitations on the availability of
5 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-
6 conviction remedies. In addition, meritless, successive and untimely petitions clog the court
7 system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950.
8 The Nevada Supreme Court recognizes that "[u]nlike initial petitions which certainly require
9 a careful review of the record, successive petitions may be dismissed based solely on the face
10 of the petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words,
11 if the claim or allegation was previously available with reasonable diligence, it is an abuse of
12 the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497-498 (1991).
13 Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

14 Here, Petitioner has filed his *ninth* petition asserting a violation of his Eighth
15 Amendment rights. Petitioner asserts he suffers "psychological pain" knowing he may be
16 incarcerated for life and due to his "risk factor score" given to Petitioner at his parole board
17 hearing. Petition for Writ of Habeas Corpus, at 19.

18 Prior petitions alleged: a 14th Amendment violation because Petitioner had been denied
19 the possibility of parole contrary to his sentence; that since Petitioner has been incarcerated
20 out of state, the parole panel has no authority to certify him; that there was a discrepancy
21 between the orally stated sentence by the trial court and the original JOC; an ex post facto
22 violation because he was entitled to the law in effect at the time of his conviction and the State
23 was required to treat Count II of his sentence as one continuous term for the purpose of good
24 time credits and parole eligibility; that Petitioner was never given a parole hearing in 1997
25 thus Petitioner's parole granted in 1998 should be counted from 1997; Petitioner claimed
26 ineffective assistance of counsel, a violation of his 6th Amendment rights and his 14th
27 Amendment rights of due process; Petitioner alleged the parole panel again lacked authority

28 ///

1 to sentence him, and that he is entitled to release from Count II of his JOC; and the computation
2 of his sentence, in which the Court agreed, reversed, and remanded to the District Court.

3 Therefore, the Petition should be dismissed because Defendant's present claims could
4 have been raised at any time in his eight past petitions. Moreover, Petitioner's issue with the
5 computation of his sentence has already been addressed when the Court Amended the original
6 JOC. Thus, this Court should dismiss the present petition because it fails to allege new grounds
7 for relief.

8 III. PETITIONER FAILS TO SHOW GOOD CAUSE

9 A showing of good cause and prejudice may overcome procedural bars. "To establish
10 good cause, appellants *must* show that an impediment external to the defense prevented their
11 compliance with the applicable procedural rule. A qualifying impediment might be shown
12 where the factual or legal basis for a claim was not reasonably available at the time of default."
13 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court
14 continued, "appellants cannot manufacture good cause[.]" Id. at 621, 81 P.3d at 526. To
15 establish prejudice, the defendant must show "not merely that the errors of [the proceedings]
16 created possibility of prejudice, but that they worked to his actual and substantial disadvantage,
17 in affecting the state proceedings with error of constitutional dimensions.'" Hogan v. Warden,
18 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152,
19 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there must be a "substantial reason;
20 one that affords a legal excuse." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506
21 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Clearly, any
22 delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

23 A petitioner raising good cause to excuse procedural bars must do so within a
24 reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869-70, 34 P.3d
25 at 525-26 (holding that the time bar in NRS 34.726 applies to successive petitions); see
26 generally Hathaway, 119 Nev. at 252-53, 71 P.3d at 506-07 (stating that a claim reasonably
27 available to the petitioner during the statutory time period did not constitute good cause to
28 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good

1 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,
2 453 120 S. Ct. 1587, 1592 (2000).

3 Here, Petitioner does not even attempt to argue good cause to overcome the procedural
4 bars. Petitioner fails to cite any reason as to why his petition was untimely. Petitioner's
5 disagreement with the parole panel's sentencing decision is not good cause. Moreover,
6 Petitioner's "psychological pain" due to the possibility of being incarcerated for life fails to
7 show good cause as Petitioner knew of this possibility when he was sentenced back in 1981.
8 Furthermore, the Court recently clarified the computation of Petitioner's sentencing.
9 Accordingly, this issue has not only been addressed by the Court, but lacks showing of good
10 cause. Thus, this Petition is barred and must be denied.

11 CONCLUSION

12 Based on the foregoing, the State respectfully requests that the Petition for Writ of
13 Habeas Corpus be denied.

14 DATED this 9th day of October, 2019.

15 Respectfully submitted,

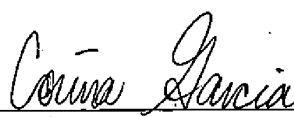
16 STEVEN B. WOLFSON
17 Clark County District Attorney
Nevada Bar #001565

18 BY BB
19 TALEEN PANDUKHT
20 Chief Deputy District Attorney
21 Nevada Bar #005734
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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 10th day of
October, 2019, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

JOEL BURKETT, BAC #16111
ELY STATE PRISON
P.O. BOX 1989
ELY, NV 89301-1989

BY 
C. Garcia
Secretary for the District Attorney's Office

TP/ec/cg/L2



1 ORDR

2
3 EIGHTH JUDICIAL DISTRICT
4 CLARK COUNTY, NEVADA

5 JOEL BURKETT,)	Case No.: A-19-800052-W
6 Petitioner,)	
7 vs.)	DEPT. No.: XII
8 ISIDRO BACA)	(Eleventh Petition)
9 Respondent)	

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

11 FINDINGS OF FACT

12
13 1. On January 19, 1981, the State of Nevada charged Joel Burkett ("Petitioner")
14 by way of Information with Count 1, ROBBERY & USE OF A DEADLY WEAPON IN
15 COMMISSION OF A CRIME (Felony – NRS 200.380, 193.165); Count 2, FIRST
16 DEGREE KIDNAPPING & USE OF A DEADLY WEAPON IN COMMISSION OF A
17 CRIME (Felony – NRS 200.310, 193.165); Count 3, SEXUAL ASSAULT (Felony – NRS
18 200.364, 200.366); and Count 4, SEXUAL ASSAULT (Felony – NRS 200.364, 200.366).

19 2. On May 4, 1981, the jury found the Petitioner guilty of Count 1, ROBBERY
20 WITH USE OF A DEADLY WEAPON; Count 2, FIRST DEGREE KIDNAPPING WITH
21 USE OF A DEADLY WEAPON; Count 3, SEXUAL ASSAULT; and Count 4, SEXUAL
22 ASSAULT.

23 3. On June 2, 1981, Petitioner was sentenced to serve a term in the Nevada State
24 Prison as follows: Count 1, Fifteen years for Robbery and a consecutive fifteen (15) years
25 for Use of a Deadly Weapon in Commission of a Crime; Count 2, Life with Possibility of
26 Parole and a consecutive term of Life with the Possibility of Parole for Use of a Deadly
27 Weapon in Commission of a Crime; Count 2 is to be served consecutive to Count 1; Count
28 3, Life with Possibility of Parole; Count 3 to run concurrent to count 2; and Count 4, Life
 with Possibility of Parole. Count 4 to be served consecutive to count 3.

 4. On June 19, 1981, Petitioner filed a direct appeal.

 5. On July 29, 1981, the District Court filed the Judgment of Conviction.

 6. On April 21, 1983, the Supreme Court of the State of Nevada dismissed the
 appeal. Remittitur issued on May 10, 1983.

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7. On February 2, 1994, Petitioner filed his first Petition for Writ of Habeas Corpus (Post-Conviction).

8. On February 28, 1994, the District Court filed an Amended Judgment of Conviction.

9. On June 7, 1999, Petitioner filed his second Petition for Writ of Habeas Corpus (Post-Conviction).

10. On August 18, 1999, the District Court filed the Findings of Fact, Conclusions of Law, and Order whereby the District Court denied Petitioner's second Petition for Writ of Habeas Corpus (Post-Conviction).

11. On August 31, 1999, Petitioner filed a Notice of Appeal of the District Court's denial of his second Petition for Writ of Habeas Corpus (Post-Conviction).

12. On August 21, 2001, the Supreme Court of the State of Nevada affirmed the District Court's denial of Petitioner's second Petition for Writ of Habeas Corpus (Post-Conviction).

13. On November 19, 2001, Petitioner filed his third Petition for Writ of Habeas Corpus (Post-Conviction).

14. On February 14, 2002, the District Court filed the Findings of Fact, Conclusions of Law, and Order whereby the District Court denied Petitioner's third Petition for Writ of Habeas Corpus (Post-Conviction).

15. On March 20, 2002, Petitioner filed a Notice of Appeal of the District Court's denial of his third Petition for Writ of Habeas Corpus (Post-Conviction).

16. On February 19, 2003, Petitioner filed his fourth Petition for Writ of Habeas Corpus (Post-Conviction).

17. On March 7, 2003, in response to Petitioner's Notice of Appeal of the District Court's denial of his third Petition for Writ of Habeas Corpus (Post-Conviction), the Nevada Supreme Court ordered "the judgment of the district court REVERSED AND REMANDED to the district court for proceedings consistent with this order."

18. On May 14, 2003, the District Court filed an Order whereby the District Court denied Petitioner's fourth petition for Writ of Habeas Corpus (Post-Conviction).

19. On May 27, 2003, Petitioner filed a Notice of Appeal of the District Court's denial of his fourth Petition for Writ of Habeas Corpus (Post-Conviction).

1 20. On April 2, 2004, the Supreme Court of the State of Nevada affirmed the
2 District Court's denial of Petitioner's fourth Petition for Writ of Habeas Corpus (Post-
3 Conviction).

4 21. On September 1, 2004, Petitioner filed his fifth Petition for Writ of Habeas
5 Corpus (Post-Conviction).

6 22. On November 1, 2004, the District Court filed the findings of Fact,
7 Conclusions of Law and Order whereby the District Court denied Petitioner's fifth Petition
8 for Writ of Habeas Corpus (Post-Conviction).

9 23. On May 13, 2005, Petitioner filed his sixth Petition for Writ of Habeas
10 Corpus (Post-Conviction).

11 24. On July 25, 2005, the District Court filed the Findings of Fact, Conclusions
12 of Law and Order whereby the District Court dismissed Petitioner's sixth Petition for Writ of
13 Habeas Corpus (Post-Conviction).

14 25. On August 9, 2005, Petitioner filed a Notice of Appeal of the district Court's
15 denial of his sixth Petition for Writ of Habeas Corpus (Post-Conviction).

16 26. On December 16, 2005, the Supreme Court of the State of Nevada affirmed
17 the District Court's denial of Petitioner's sixth Petition for Writ of Habeas Corpus (Post-
18 Conviction).

19 27. On July 7, 2011, Petitioner filed his seventh Petition for Writ of Habeas
20 Corpus (Post-Conviction).

21 28. On November 14, 2011, the District Court filed an Order Granting State's
22 Motion to Dismiss and Order Directing Clerk of Court to Transfer [the seventh] Petition for
23 Writ of Habeas Corpus to the Seventh Judicial District.

24 29. On June 14, 2013, Petitioner filed his eighth Petition for Writ of Habeas
25 Corpus (Post-Conviction).

26 30. On July 10, 2013, the District Court filed the Findings of Fact, Conclusions
27 of Law and Order whereby the District Court denied Petitioner's eighth Petition for Writ of
28 Habeas Corpus (Post-Conviction).

 31. On July 22, 2013, Petitioner filed a Notice of Appeal of the District Court's
denial of his eighth Petition for Writ of Habeas Corpus (Post-Conviction).

 32. On February 20, 2014, the Supreme Court of the State of Nevada affirmed
the District Court's denial of Petitioner's eighth Petition for Writ of Habeas Corpus (Post-
Conviction).

1 33. On September 7, 2016, Petitioner filed his ninth Petition for Writ of Habeas
2 Corpus (Post-Conviction).

3 34. On October 31, 2016, the District Court filed the Findings of Fact,
4 Conclusions of Law and Order whereby the District Court denied Petitioner's ninth Petition
5 for Writ of Habeas Corpus (Post-Conviction).

6 35. On November 10, 2016, Petitioner filed a Notice of Appeal of the District
7 Court's denial of his ninth Petition for Writ of Habeas Corpus (Post-Conviction).

8 36. On August 14, 2017, the Supreme Court of the State of Nevada reversed and
9 remanded the District Court's denial of Petitioner's ninth Petition for Writ of Habeas Corpus
10 (Post-Conviction) because the Petition was a time computation issue and should have been
11 filed in the county where the Petitioner is currently serving his prison term.

12 37. On March 2, 2018, the District Court filed an Amended Judgement of
13 Conviction clarifying that Count 3 was to run concurrent to Count 2, and Count 4 was to run
14 consecutive to Count 3.

15 38. On June 14, 2018, Petitioner filed a notice of appeal on the Amended
16 Judgement of Conviction and Writ of Mandamus seeking the Supreme Court of the State of
17 Nevada to direct the Nevada Department of Corrections to accurately calculate his sentence.

18 39. On January 17, 2019, the Appeals Court of the State of Nevada filed an Order
19 dismissing the appeal.

20 40. On February 1, 2019, Petitioner filed his tenth Petition for Writ of Habeas
21 Corpus (Post-Conviction).

22 41. On February 7, 2019, Petitioner filed a Motion to amend the Petition for Writ
23 of Habeas Corpus and supplemented his argument.

24 42. On April 18, 2019, the court issued Findings of Fact and Conclusions of Law
25 denying Petitioner's tenth Petition for Writ of Habeas Corpus (Post-Conviction). Notice of
26 Entry of Order was filed on April 22, 2019 and Petitioner thereafter filed a Notice of Appeal
27 on May 20, 2019.

28 43. While his appeal is still pending on the denial of his tenth Petition for Writ of
Habeas Corpus, Petitioner filed the instant eleventh Petition for Writ of Habeas Corpus
(Post-Conviction) on August 5, 2019.

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CONCLUSIONS OF LAW

1. NRS 34.726(1) governing “Limitations on time to file...,” requires that a petition for writ of habeas corpus “must be filed within 1 year after entry of judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of article 6 of the Nevada Constitution issues its remittitur.” Late filing of a petition may be excused from procedural default if the petitioner can establish good cause for delay in bringing the claim. *Id.* Good cause for late filing consists of showing that: (1) “delay is not the fault of the petitioner”; and (2) “dismissal of the petition as untimely will unduly prejudice the petitioner.” *Id.* at (1)(a)-(b).

2. A successive petition must be dismissed if the court determines that the petitioner failed to allege new or different grounds for relief and that the prior determination was on the merits or, if the court determines that the petitioner’s failure to assert those grounds in a prior petition constituted an abuse of the writ. NRS 34.810(2).

3. A petitioner may file a successive petition if he can demonstrate: (1) good cause for failure to present the claim or for presenting the claim again; and (2) actual prejudice. NRS 34.810(3)(a)(b).

4. Unlike initial petitions, which certainly require a careful review of the record, successive petitions may be dismissed based solely on the face of the petition. *Ford v. Warden*, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

5. Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory unless the petitioner can demonstrate good cause why the grounds were not raised in a prior petition or within the statutorily permitted time period. *State v. District Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). A court must dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both: (1) good cause for failing to present the claims earlier or for raising them again; and (2) actual prejudice to the petitioner. *Evans v. State*, 117 Nev. 609, 621-622, 28 P.3d 498, 507 (2001); NRS 34.810.

6. The court may excuse the failure to show good cause where the prejudice from a failure to consider the claim amounts to a fundamental miscarriage of justice. *Mazzan v. Whitley*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996); *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). To meet this standard, a petitioner “must show that it is more likely than not that no reasonable juror would have convicted him absent a constitutional violation.” *Id.*

7. This is Petitioner’s eleventh Petition for Writ of Habeas Corpus (post-conviction). He filed it on August 5, 2019 thirty six (36) years after issuance of the remittitur on direct appeal on May 10, 1983. Thus, the petition was untimely filed. *See* NRS 34.726(1). Moreover, the petition is successive because Petitioner previously filed ten

1 (10) petitions for relief. *See* NRS 34.810(2). The petition is procedurally barred absent a
2 showing of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

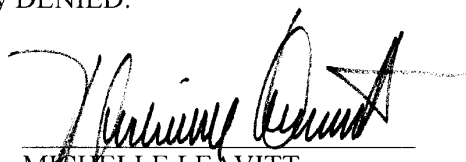
3 Petitioner attempts to establish good cause by alleging the grounds were not
4 previously available, and therefore, he can demonstrate good cause. Pursuant to his hearing
5 before the Parole Board, Petitioner underwent an evaluation pursuant to NRS 213.1214
6 which resulted in Petitioner being assessed as a high risk to reoffend. Petitioner believes
7 the high risk rating was the result of his PTSD and misconduct reports. Petitioner contends
8 he has PTSD as a result of spending sixteen (16) years in solitary confinement. *See* Petition,
9 pg. 15.

10 Petitioner alleges the parole board made specific recommendations that petitioner
11 receive mental health counseling to reduce his overall risk to reoffend, and that the Nevada
12 Department of Corrections failed to provide any mental health services for him. Further,
13 petitioner alleges the Nevada Department of Corrections violated his eighth amendment
14 rights by placing him in solitary confinement for sixteen (16) years which caused the PTSD.
15 He contends those same violations were used to score him the highest risk to reoffend
16 pursuant to NRS 213.1214 which has effectively denied him the right to parole on counts 2,
17 3 and 4 of the judgment of conviction. Accordingly, petitioner contends his sentence has
18 become unconstitutional and he is entitled to be released or resentenced to a determinant
19 amount of time on counts 2, 3 and 4. *See* Petition pg. 16-17.

20 The Nevada Supreme Court has previously held that a petition for writ of habeas
21 corpus may challenge the validity of current confinement, but not the conditions thereof.
22 *Bowen v. Warden*, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984); see also *Rogers v. Warden*,
23 84 Nev. 539, 445 P.2d 28 (1968). In *Rogers*, the court held that a claim of brutal treatment
24 at the hands of prison officials was not cognizable on a habeas petition because the claim
25 spoke to the conditions and not the validity of confinement. *Rogers* 84 Nev. at 540.
26 Petitioner's inability to challenge the conditions of his confinement does not provide the
27 good cause to overcome the mandatory procedural bar. Furthermore, petitioner failed to
28 demonstrate that an impediment external to the defense excused his procedural defects. *See*
Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas
Corpus (Post-Conviction) shall be, and it is, hereby DENIED.

Dated this 16 day of October, 2019.


MICHELLE LEAVITT
DISTRICT COURT JUDGE
DEPARTMENT XII
EIGHTH JUDICIAL DISTRICT

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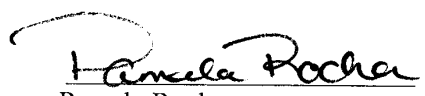
CERTIFICATE OF MAILING

I hereby certify that on the date filed, I placed a copy of the Order for
Petition for Writ of Habeas Corpus (Post-Conviction) in the U.S. Mail, postage
prepaid to:

Joel Burkett #16111
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301

Steven B. Wolfson
Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155

Aaron Ford
Nevada Attorney General
555 E. Washington, Suite 3900
Las Vegas, NV 89101-1068


Pamela Rocha
Judicial Executive Assistant
Department XII
Eighth Judicial District Court

C052190

Joel Burkett

vs.

Isidro Baca

(Eleventh Petition)



1 NEO

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 JOEL BURKETT,

6 Petitioner,

Case No: A-19-800052-W

Dept No: XII

7 vs.

8 ISIDRO BACA; ET AL,

9 Respondent,

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

10
11 PLEASE TAKE NOTICE that on October 16, 2019, 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
15 mailed to you. This notice was mailed on October 21, 2019.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Debra Donaldson

18 Debra Donaldson, Deputy Clerk

19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 21 day of October 2019, 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 Joel Burkett # 16111
26 P.O. Box 7000
Carson City, NV 89702

27 /s/ Debra Donaldson

28 Debra Donaldson, Deputy Clerk



1 ORDR

2
3 EIGHTH JUDICIAL DISTRICT
4 CLARK COUNTY, NEVADA

5 JOEL BURKETT,)
6 Petitioner,)
7 vs.)
8 ISIDRO BACA)
9 Respondent)

Case No.: A-19-800052-W

DEPT. No.: XII
(Eleventh Petition)

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

11 FINDINGS OF FACT

12
13 1. On January 19, 1981, the State of Nevada charged Joel Burkett ("Petitioner")
14 by way of Information with Count 1, ROBBERY & USE OF A DEADLY WEAPON IN
15 COMMISSION OF A CRIME (Felony – NRS 200.380, 193.165); Count 2, FIRST
16 DEGREE KIDNAPPING & USE OF A DEADLY WEAPON IN COMMISSION OF A
17 CRIME (Felony – NRS 200.310, 193.165); Count 3, SEXUAL ASSAULT (Felony – NRS
18 200.364, 200.366); and Count 4, SEXUAL ASSAULT (Felony – NRS 200.364, 200.366).

19 2. On May 4, 1981, the jury found the Petitioner guilty of Count 1, ROBBERY
20 WITH USE OF A DEADLY WEAPON; Count 2, FIRST DEGREE KIDNAPPING WITH
21 USE OF A DEADLY WEAPON; Count 3, SEXUAL ASSAULT; and Count 4, SEXUAL
22 ASSAULT.

23 3. On June 2, 1981, Petitioner was sentenced to serve a term in the Nevada State
24 Prison as follows: Count 1, Fifteen years for Robbery and a consecutive fifteen (15) years
25 for Use of a Deadly Weapon in Commission of a Crime; Count 2, Life with Possibility of
26 Parole and a consecutive term of Life with the Possibility of Parole for Use of a Deadly
27 Weapon in Commission of a Crime; Count 2 is to be served consecutive to Count 1; Count
28 3, Life with Possibility of Parole; Count 3 to run concurrent to count 2; and Count 4, Life
 with Possibility of Parole. Count 4 to be served consecutive to count 3.

4. On June 19, 1981, Petitioner filed a direct appeal.

5. On July 29, 1981, the District Court filed the Judgment of Conviction.

6. On April 21, 1983, the Supreme Court of the State of Nevada dismissed the
 appeal. Remittitur issued on May 10, 1983.

MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

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7. On February 2, 1994, Petitioner filed his first Petition for Writ of Habeas Corpus (Post-Conviction).

8. On February 28, 1994, the District Court filed an Amended Judgment of Conviction.

9. On June 7, 1999, Petitioner filed his second Petition for Writ of Habeas Corpus (Post-Conviction).

10. On August 18, 1999, the District Court filed the Findings of Fact, Conclusions of Law, and Order whereby the District Court denied Petitioner's second Petition for Writ of Habeas Corpus (Post-Conviction).

11. On August 31, 1999, Petitioner filed a Notice of Appeal of the District Court's denial of his second Petition for Writ of Habeas Corpus (Post-Conviction).

12. On August 21, 2001, the Supreme Court of the State of Nevada affirmed the District Court's denial of Petitioner's second Petition for Writ of Habeas Corpus (Post-Conviction).

13. On November 19, 2001, Petitioner filed his third Petition for Writ of Habeas Corpus (Post-Conviction).

14. On February 14, 2002, the District Court filed the Findings of Fact, Conclusions of Law, and Order whereby the District Court denied Petitioner's third Petition for Writ of Habeas Corpus (Post-Conviction).

15. On March 20, 2002, Petitioner filed a Notice of Appeal of the District Court's denial of his third Petition for Writ of Habeas Corpus (Post-Conviction).

16. On February 19, 2003, Petitioner filed his fourth Petition for Writ of Habeas Corpus (Post-Conviction).

17. On March 7, 2003, in response to Petitioner's Notice of Appeal of the District Court's denial of his third Petition for Writ of Habeas Corpus (Post-Conviction), the Nevada Supreme Court ordered "the judgment of the district court REVERSED AND REMANDED to the district court for proceedings consistent with this order."

18. On May 14, 2003, the District Court filed an Order whereby the District Court denied Petitioner's fourth petition for Writ of Habeas Corpus (Post-Conviction).

19. On May 27, 2003, Petitioner filed a Notice of Appeal of the District Court's denial of his fourth Petition for Writ of Habeas Corpus (Post-Conviction).

1 20. On April 2, 2004, the Supreme Court of the State of Nevada affirmed the
2 District Court's denial of Petitioner's fourth Petition for Writ of Habeas Corpus (Post-
3 Conviction).

4 21. On September 1, 2004, Petitioner filed his fifth Petition for Writ of Habeas
5 Corpus (Post-Conviction).

6 22. On November 1, 2004, the District Court filed the findings of Fact,
7 Conclusions of Law and Order whereby the District Court denied Petitioner's fifth Petition
8 for Writ of Habeas Corpus (Post-Conviction).

9 23. On May 13, 2005, Petitioner filed his sixth Petition for Writ of Habeas
10 Corpus (Post-Conviction).

11 24. On July 25, 2005, the District Court filed the Findings of Fact, Conclusions
12 of Law and Order whereby the District Court dismissed Petitioner's sixth Petition for Writ of
13 Habeas Corpus (Post-Conviction).

14 25. On August 9, 2005, Petitioner filed a Notice of Appeal of the district Court's
15 denial of his sixth Petition for Writ of Habeas Corpus (Post-Conviction).

16 26. On December 16, 2005, the Supreme Court of the State of Nevada affirmed
17 the District Court's denial of Petitioner's sixth Petition for Writ of Habeas Corpus (Post-
18 Conviction).

19 27. On July 7, 2011, Petitioner filed his seventh Petition for Writ of Habeas
20 Corpus (Post-Conviction).

21 28. On November 14, 2011, the District Court filed an Order Granting State's
22 Motion to Dismiss and Order Directing Clerk of Court to Transfer [the seventh] Petition for
23 Writ of Habeas Corpus to the Seventh Judicial District.

24 29. On June 14, 2013, Petitioner filed his eighth Petition for Writ of Habeas
25 Corpus (Post-Conviction).

26 30. On July 10, 2013, the District Court filed the Findings of Fact, Conclusions
27 of Law and Order whereby the District Court denied Petitioner's eighth Petition for Writ of
28 Habeas Corpus (Post-Conviction).

 31. On July 22, 2013, Petitioner filed a Notice of Appeal of the District Court's
denial of his eighth Petition for Writ of Habeas Corpus (Post-Conviction).

 32. On February 20, 2014, the Supreme Court of the State of Nevada affirmed
the District Court's denial of Petitioner's eighth Petition for Writ of Habeas Corpus (Post-
Conviction).

1 33. On September 7, 2016, Petitioner filed his ninth Petition for Writ of Habeas
2 Corpus (Post-Conviction).

3 34. On October 31, 2016, the District Court filed the Findings of Fact,
4 Conclusions of Law and Order whereby the District Court denied Petitioner's ninth Petition
5 for Writ of Habeas Corpus (Post-Conviction).

6 35. On November 10, 2016, Petitioner filed a Notice of Appeal of the District
7 Court's denial of his ninth Petition for Writ of Habeas Corpus (Post-Conviction).

8 36. On August 14, 2017, the Supreme Court of the State of Nevada reversed and
9 remanded the District Court's denial of Petitioner's ninth Petition for Writ of Habeas Corpus
10 (Post-Conviction) because the Petition was a time computation issue and should have been
11 filed in the county where the Petitioner is currently serving his prison term.

12 37. On March 2, 2018, the District Court filed an Amended Judgement of
13 Conviction clarifying that Count 3 was to run concurrent to Count 2, and Count 4 was to run
14 consecutive to Count 3.

15 38. On June 14, 2018, Petitioner filed a notice of appeal on the Amended
16 Judgement of Conviction and Writ of Mandamus seeking the Supreme Court of the State of
17 Nevada to direct the Nevada Department of Corrections to accurately calculate his sentence.

18 39. On January 17, 2019, the Appeals Court of the State of Nevada filed an Order
19 dismissing the appeal.

20 40. On February 1, 2019, Petitioner filed his tenth Petition for Writ of Habeas
21 Corpus (Post-Conviction).

22 41. On February 7, 2019, Petitioner filed a Motion to amend the Petition for Writ
23 of Habeas Corpus and supplemented his argument.

24 42. On April 18, 2019, the court issued Findings of Fact and Conclusions of Law
25 denying Petitioner's tenth Petition for Writ of Habeas Corpus (Post-Conviction). Notice of
26 Entry of Order was filed on April 22, 2019 and Petitioner thereafter filed a Notice of Appeal
27 on May 20, 2019.

28 43. While his appeal is still pending on the denial of his tenth Petition for Writ of
Habeas Corpus, Petitioner filed the instant eleventh Petition for Writ of Habeas Corpus
(Post-Conviction) on August 5, 2019.

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CONCLUSIONS OF LAW

1. NRS 34.726(1) governing “Limitations on time to file...,” requires that a petition for writ of habeas corpus “must be filed within 1 year after entry of judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of article 6 of the Nevada Constitution issues its remittitur.” Late filing of a petition may be excused from procedural default if the petitioner can establish good cause for delay in bringing the claim. *Id.* Good cause for late filing consists of showing that: (1) “delay is not the fault of the petitioner”; and (2) “dismissal of the petition as untimely will unduly prejudice the petitioner.” *Id.* at (1)(a)-(b).

2. A successive petition must be dismissed if the court determines that the petitioner failed to allege new or different grounds for relief and that the prior determination was on the merits or, if the court determines that the petitioner’s failure to assert those grounds in a prior petition constituted an abuse of the writ. NRS 34.810(2).

3. A petitioner may file a successive petition if he can demonstrate: (1) good cause for failure to present the claim or for presenting the claim again; and (2) actual prejudice. NRS 34.810(3)(a)(b).

4. Unlike initial petitions, which certainly require a careful review of the record, successive petitions may be dismissed based solely on the face of the petition. *Ford v. Warden*, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

5. Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory unless the petitioner can demonstrate good cause why the grounds were not raised in a prior petition or within the statutorily permitted time period. *State v. District Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). A court must dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both: (1) good cause for failing to present the claims earlier or for raising them again; and (2) actual prejudice to the petitioner. *Evans v. State*, 117 Nev. 609, 621-622, 28 P.3d 498, 507 (2001); NRS 34.810.

6. The court may excuse the failure to show good cause where the prejudice from a failure to consider the claim amounts to a fundamental miscarriage of justice. *Mazzan v. Whitley*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996); *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). To meet this standard, a petitioner “must show that it is more likely than not that no reasonable juror would have convicted him absent a constitutional violation.” *Id.*

7. This is Petitioner’s eleventh Petition for Writ of Habeas Corpus (post-conviction). He filed it on August 5, 2019 thirty six (36) years after issuance of the remittitur on direct appeal on May 10, 1983. Thus, the petition was untimely filed. See NRS 34.726(1). Moreover, the petition is successive because Petitioner previously filed ten

1 (10) petitions for relief. *See* NRS 34.810(2). The petition is procedurally barred absent a
2 showing of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).


3 Petitioner attempts to establish good cause by alleging the grounds were not
4 previously available, and therefore, he can demonstrate good cause. Pursuant to his hearing
5 before the Parole Board, Petitioner underwent an evaluation pursuant to NRS 213.1214
6 which resulted in Petitioner being assessed as a high risk to reoffend. Petitioner believes
7 the high risk rating was the result of his PTSD and misconduct reports. Petitioner contends
8 he has PTSD as a result of spending sixteen (16) years in solitary confinement. *See* Petition,
9 pg. 15.

10 Petitioner alleges the parole board made specific recommendations that petitioner
11 receive mental health counseling to reduce his overall risk to reoffend, and that the Nevada
12 Department of Corrections failed to provide any mental health services for him. Further,
13 petitioner alleges the Nevada Department of Corrections violated his eighth amendment
14 rights by placing him in solitary confinement for sixteen (16) years which caused the PTSD.
15 He contends those same violations were used to score him the highest risk to reoffend
16 pursuant to NRS 213.1214 which has effectively denied him the right to parole on counts 2,
17 3 and 4 of the judgment of conviction. Accordingly, petitioner contends his sentence has
18 become unconstitutional and he is entitled to be released or resentenced to a determinant
19 amount of time on counts 2, 3 and 4. *See* Petition pg. 16-17.

20 The Nevada Supreme Court has previously held that a petition for writ of habeas
21 corpus may challenge the validity of current confinement, but not the conditions thereof.
22 *Bowen v. Warden*, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984); see also *Rogers v. Warden*,
23 84 Nev. 539, 445 P.2d 28 (1968). In *Rogers*, the court held that a claim of brutal treatment
24 at the hands of prison officials was not cognizable on a habeas petition because the claim
25 spoke to the conditions and not the validity of confinement. *Rogers* 84 Nev. at 540.
26 Petitioner's inability to challenge the conditions of his confinement does not provide the
27 good cause to overcome the mandatory procedural bar. Furthermore, petitioner failed to
28 demonstrate that an impediment external to the defense excused his procedural defects. *See*
Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas
Corpus (Post-Conviction) shall be, and it is, hereby DENIED.

Dated this 16 day of October, 2019.


MICHELLE LEAVITT
DISTRICT COURT JUDGE
DEPARTMENT XII
EIGHTH JUDICIAL DISTRICT

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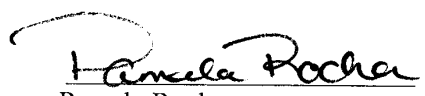
CERTIFICATE OF MAILING

I hereby certify that on the date filed, I placed a copy of the Order for
Petition for Writ of Habeas Corpus (Post-Conviction) in the U.S. Mail, postage
prepaid to:

Joel Burkett #16111
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301

Steven B. Wolfson
Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155

Aaron Ford
Nevada Attorney General
555 E. Washington, Suite 3900
Las Vegas, NV 89101-1068


Pamela Rocha
Judicial Executive Assistant
Department XII
Eighth Judicial District Court

C052190

Joel Burkett

vs.

Isidro Baca

(Eleventh Petition)

Electronically Filed
11/4/2019 11:24 AM
Steven D. Grierson
CLERK OF THE COURT

JOEL BURKETT

(Name)

16111

(I.D. No.)

Northern Nevada Correctional Center
Post Office Box 7000
Carson City, Nevada 89702

Steven D. Grierson

IN THE ~~EIGHTH~~ JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

JOEL BURKETT

Petitioner/Defendant,

vs.

ISIDRO BACA

Respondent/Plaintiff

Case No.: A-19-800052-W

Dept. No. 12

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that I, JOEL BURKETT appeal the
Judgment / Order entered on the 16th day of OCTOBER, 20 19 by this
court.

Dated this 30 day of OCT, 20 19.

Joel Burkett
(Signature)

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CLERK OF THE COURT

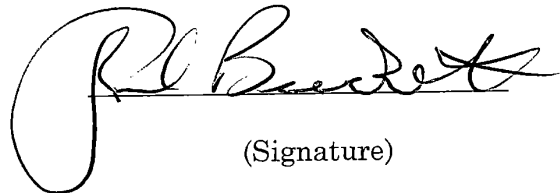
CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP Rule 5(b), I hereby certify that I am the Defendant named herein and that on this 30 day of OCT, 2019, I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the following:

CLARK County District Attorney

200 LEWIS AVE

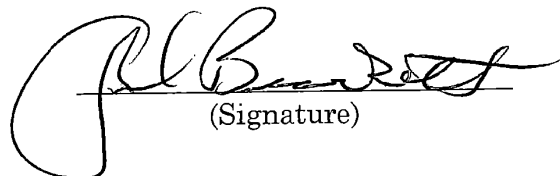
LAS VEGAS, NV 89155-2212


(Signature)

AFFIRMATION PURSUANT TO NRS 239B.030

** I certify that the foregoing document DOES NOT contain the social security number of any persons.

10-30-19
(Date)


(Signature)

JOE BURKITT 1611
PO BOX 7000
CHASSA CITY, MO
64703

Check of Court

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Bad Floor

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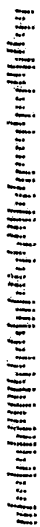


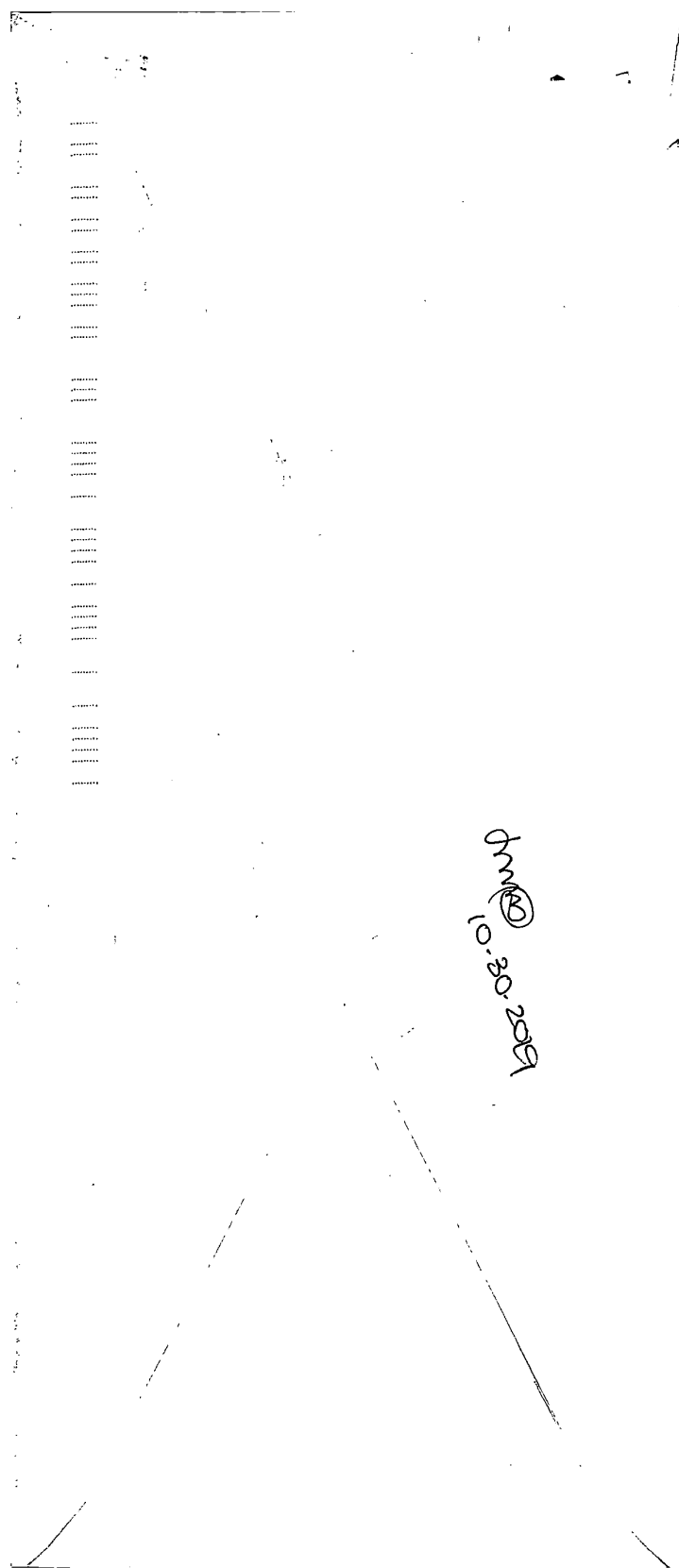
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JOEL BURKEETT 16111

10-30-19

NWCC

P.O. Box 7060

CARSON CITY, NV

89202

RE: JOEL BURKEETT V. ISIDRO BACA

CASE NO: A-19-800052-W

DEPT NO: 12

DEAR CLERK

PLEASE FIND ENCLOSED FOR FILING
IN THE ABOVE MATTER;
"NOTICE OF APPEAL" AND ONE
COPY THEREOF

Thank You

Joel Burkeett

RECEIVED
NOV 14 2019
CLERK OF THE COURT



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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 JOEL BURKETT,

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11 Petitioner(s),

12 vs.

13 ISIDRO BACA,

14 Respondent(s),

Case No: A-19-800052-W

Dept No: XII

15
16
17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): Joel Burkett

19 2. Judge: Michelle Leavitt

20 3. Appellant(s): Joel Burkett

21 Counsel:

22 Joel Burkett #16111
23 P.O. Box 7000
24 Carson City, NV 89702

25 4. Respondent (s): Isidro Baca

26 Counsel:

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

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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: August 5, 2019
9. Date Commenced in District Court: August 5, 2019
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 7 day of November 2019.

Steven D. Grierson, Clerk of the Court

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

cc: Joel Burkett

Steven D. Grierson

OSCC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JOEL BURKETT, PLAINTIFF(S)
VS.
ISIDRO BACA, DEFENDANT(S)

CASE NO.: A-19-800052-W
DEPARTMENT 12

CIVIL ORDER TO STATISTICALLY CLOSE CASE

Upon review of this matter and good cause appearing,
IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
statistically close this case for the following reason:

DISPOSITIONS:

- ☐ Default Judgment
- ☐ Judgment on Arbitration
- ☐ Stipulated Judgment
- ☒ Summary Judgment
- ☐ Involuntary Dismissal
- ☐ Motion to Dismiss by Defendant(s)
- ☐ Stipulated Dismissal
- ☐ Voluntary Dismissal
- ☐ Transferred (before trial)
- ☐ Non-Jury – Disposed After Trial Starts
- ☐ Non-Jury – Judgment Reached
- ☐ Jury – Disposed After Trial Starts
- ☐ Jury – Verdict Reached
- ☐ Other Manner of Disposition

DATED this 5 day of November, 2019.

Michelle Leavitt
MICHELLE LEAVITT
DISTRICT COURT JUDGE

MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEL BURKETT,
Appellant,
vs.
ISIDRO BACA, WARDEN,
Respondent.

Supreme Court No. 79999
District Court Case No. A800052

FILED

JUN 10 2020

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

Elizabeth A. Brown
CLERK OF COURT

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 15 day of May, 2020.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
June 09, 2020.

Elizabeth A. Brown, Supreme Court Clerk

By: Danielle Friend
Chief Assistant Clerk

A-19-800052-W
CCJA
NV Supreme Court Clerks Certificate/Judgm
4917178



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOEL BURKETT,
Appellant,
vs.
ISIDRO BACA, WARDEN,
Respondent.

No. 79999-COA

FILED

MAY 15 2020

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

ORDER OF AFFIRMANCE

Joel Burkett appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 5, 2019. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Burkett filed his petition more than 36 years after issuance of the remittitur on direct appeal on May 10, 1983, *see Burkett v. State*, Docket No. 13600 (Order Dismissing Appeal, April 21, 1983), and more than one year after his amended judgments of conviction were filed on February 28, 1994, and March 2, 2018.¹ Also, Burkett's petition was filed more than 26 years after the effective date of NRS 34.726. *See* 1991 Nev. Stat., ch. 44, § 33, at 92; *Pellegrini v. State*, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018). Burkett's petition was therefore untimely filed. *See* NRS 34.726(1). Burkett's petition was also successive insofar as

¹Burkett did not appeal from either amended judgment of conviction.

he could have raised his claims in a previous petition, and an abuse of the writ insofar as he raised claims new and different from those raised in his previous petitions.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Burkett's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

Burkett claimed he had good cause to excuse his procedural bars because his claim was not available to raise until June 2019. Burkett claimed his sentence has become unconstitutional because the conditions of his confinement have so affected his mental health that he will never be able to meet the requirements to become a good candidate for parole. Burkett failed to demonstrate actual prejudice. Burkett's ability or inability to meet the requirements to become a viable candidate for parole do not affect the validity of his judgment of conviction. Further, we note that challenges to the conditions of confinement are not cognizable in a petition for a writ of habeas corpus. See *Bowen v. Warden*, 100 Nev. 489, 686 P.2d 250 (1984); see also *Sandin v. Conner*, 515 U.S. 472, 486 (1995) (holding that liberty interest protected by the Due Process Clause will generally be

²See *Burkett v. State*, Docket No. 63661 (Order of Affirmance, January 16, 2014); *Burkett v. State*, Docket No. 45769 (Order of Affirmance, November 15, 2005); *Burkett v. State*, Docket No. 41504 (Order of Affirmance, March 5, 2004); *Burkett v. State*, Docket No. 34767 (Order of Affirmance, July 10, 2001). Burkett also filed postconviction petitions for a writ of habeas corpus on February 2, 1994, and on December 7, 2015. He was granted relief for those petitions and did not appeal the district court's decisions.

limited to restraint that imposes an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life). We therefore conclude the district court did not err by denying Burkett's petition as procedurally barred, and we


ORDER the judgment of the district court AFFIRMED.



Gibbons C.J.



Tao J.



Bulla J.

cc: Hon. Michelle Leavitt, District Judge
Joel Burkett
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEL BURKETT,
Appellant,
vs.
ISIDRO BACA, WARDEN,
Respondent.

Supreme Court No. 79999
District Court Case No. A800052

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: June 09, 2020

Elizabeth A. Brown, Clerk of Court

By: Danielle Friend
Chief Assistant Clerk

cc (without enclosures):

Hon. Michelle Leavitt, District Judge
Joel Burkett
Clark County District Attorney

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUN 10 2020.

HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED
APPEALS

JUN 10 2020

CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

October 17, 2019

A-19-800052-W Joel Burkett, Plaintiff(s)
vs.
Isidro Baca, Defendant(s)

**October 17, 2019 8:30 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Haly Pannullo

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT: Marland, Melanie H. Attorney

JOURNAL ENTRIES

- COURT STATED a Finding of Facts and Conclusions of Law was signed and ORDERED, Petition DENIED as it is time barred and successive; the Defendant raises issues that are not cognizable for post conviction relief. Court noted the Order has already been prepared and filed.

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated January 3, 2022, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 71.

JOEL BURKETT,

Plaintiff(s),

vs.

ISIDRO BACA,

Defendant(s),

Case No: A-19-800052-W
Related Case A-19-788633-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 20 day of January 2022.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk