

NOASC
TERRENCE M. JACKSON, ESQ.
Nevada Bar No. 00854
Law Office of Terrence M. Jackson
624 South Ninth Street
Las Vegas, NV 89101
T: 702-386-0001 / F: 702-386-0085
Terry.jackson.esq@gmail.com

Counsel for Defendant, *Richard A. Newsome*

Electronically Filed
Sep 09 2021 09:19 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

RICHARD A. NEWSOME, JR.,
ID#1194269,

Defendant.

District Case No.: C-17-321043-1

Dept.: IX

NOTICE OF APPEAL

NOTICE is hereby given that the Defendant, RICHARD A. NEWSOME, JR., by and through his attorney, TERRENCE M. JACKSON, ESQ., hereby appeals to the Nevada Supreme Court, from the Notice of Entry of Findings of Fact, Conclusions of Law and Order, file-stamped and dated August 24, 2021, denying his Petition for Post-Conviction Relief.

Defendant, RICHARD A. NEWSOME, JR., further states he is indigent and requests that the filing fees be waived.

Respectfully submitted this 2nd day of September, 2021.

/s/ Terrence M. Jackson
Terrence M. Jackson, Esquire
Nevada Bar No. 00854
Law Office of Terrence M. Jackson
624 South Ninth Street
Las Vegas, NV 89101
T: 702-386-0001 / F: 702-386-0085
Terry.jackson.esq@gmail.com

Counsel for Richard A. Newsome, Jr.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify I am an assistant to Terrence M. Jackson, Esq., not a party to this action,
3 and on the 2nd day of September, 2021, I served a true, correct and e-filed stamped copy of the
4 foregoing: Defendant, Richard A. Newsome Jr.'s, NOTICE OF APPEAL as follows:
5

- 6 [X] Via Odyssey eFile and Serve to the Eighth Judicial District Court;
7 [X] Via the NSC Drop Box on the 1st floor of the Nevada Court of Appeals, located at 408
8 E. Clark Avenue in Las Vegas, Nevada;
9 [X] and by United States first class mail to the Nevada Attorney General and the Defendant
10 as follows:
11

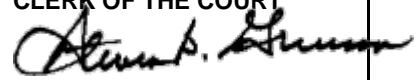
12 STEVEN B. WOLFSON
13 Clark County District Attorney
14 steven.wolfson@clarkcountyda.com

KAREN MISHLER
Chief Deputy District Attorney
karen.mishler@clarkcountyda.com

15
16 RICHARD A. NEWSOME, JR.
17 ID# 1194269
18 H. D. S. P.
19 P. O. Box 650
Indian Springs, NV 89070-0650

AARON D. FORD
Nevada Attorney General
100 North Carson Street
Carson City, NV 89701

20
21
22
23 By: /s/ Ila C. Wills
24 Assistant to T. M. Jackson, Esq.
25
26
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28



1 **ASTA**
2 **TERRENCE M. JACKSON, ESQ.**
3 Nevada Bar No. 00854
4 Law Office of Terrence M. Jackson
5 624 South Ninth Street
6 Las Vegas, NV 89101
7 T: 702-386-0001 / F: 702-386-0085
8 Terry.jackson.esq@gmail.com
9 *Counsel for Richard A. Newsome, Jr.*

6 IN THE EIGHTH JUDICIAL DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,)
9)

10 Plaintiff,)

v.)

11 RICHARD A. NEWSOME, JR.,)
12 ID #1194269,)

13 Defendant.)
14)

District Case No.: C-17-321043-1

Dept.: **IX**

CASE APPEAL STATEMENT

15 1. Appellant(s): RICHARD A. NEWSOME, JR.

16 2. Judge: CRISTINA D. SILVA

17 3. Appellant(s): RICHARD A. NEWSOME, JR.

18 Counsel:

19 Terrence M. Jackson
20 624 South Ninth Street
21 Las Vegas, NV 89101
22 (702) 386-0001

23 4. Respondent: STATE OF NEVADA

24 Counsel:

25 Steven B. Wolfson, District Attorney
26 200 Lewis Avenue
27 Las Vegas, NV 89101
28 (702) 671-2700

1 5. Appellant(s)'s Attorney Licensed in Nevada: YES
2 Permission Granted: N/A
3 Respondent(s)'s Attorney Licensed in Nevada: YES
4 Permission Granted: N/A
5 6. Appellant Represented by Appointed Counsel in District Court: YES
6 7. Appellant Represented by Appointed Counsel on Appeal: YES
7 8. Appellant Granted Leave to Proceed in Forma Pauperis: YES
8 9. Date Commenced in District Court: February 2, 2017.
9 10. Brief Description of the Nature of the Action: Criminal
10 Type of Judgment or Order Being Appealed:
11 Denial of Post-Conviction Petition Writ of Habeas Corpus.
12 11. NO.
13 Supreme Court Docket Number(s): N/A
14 12. Child Custody or Visitation: N/A
15 Dated this 2nd day of September, 2021.
16
17 /s/ Terrence M. Jackson
18 Terrence M. Jackson, Esquire
19 Nevada Bar No. 00854
20 Law Office of Terrence M. Jackson
21 624 South Ninth Street
22 Las Vegas, NV 89101
23 T: 702-386-0001 / F: 702-386-0085
24 Terry.jackson.esq@gmail.com
25 Counsel for Richard A. Newsome, Jr.
26 ...
27 ...
28 ...

1 **CERTIFICATE OF SERVICE**

2 I hereby certify I am an assistant to Terrence M. Jackson, Esq., not a party to this action, and
3 on the 2nd day of September, 2021, I served a true, correct and e-filed stamped copy of the
4 foregoing: Defendant, Richard A. Newsome Jr.'s, CASE APPEAL STATEMENT as follows:
5

6 [X] Via Odyssey eFile and Serve to the Eighth Judicial District Court;

7 [X] Via the NSC Drop Box on the 1st floor of the Nevada Court of Appeals, located at 408 E.
8 Clark Avenue in Las Vegas, Nevada;

9 [X] and by United States first class mail to the Nevada Attorney General and the Defendant as
10 follows:
11

12 STEVEN B. WOLFSON

13 Clark County District Attorney
14 steven.wolfson@clarkcountynyda.com

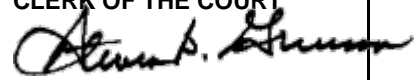
KAREN MISHLER

Chief Deputy District Attorney
karen.mishler@clarkcountynyda.com

15 RICHARD A. NEWSOME, JR.
16 #1194269
17 H. D. S. P.
18 P. O. BOX 650
19 Indian Springs, NV 89070-0650

AARON D. FORD
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701

20
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REQT
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Las Vegas, NV 89101
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Terry.jackson.esq@gmail.com

Counsel for Defendant, Richard A. Newsome, Jr.

IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	District Case No.: C-17-321043-1
)	
Plaintiff,)	Dept.: IX
)	
v.)	
)	
RICHARD A. NEWSOME, JR.,)	<u>REQUEST FOR TRANSCRIPTS</u>
#1194269,)	
Defendant.)	

TO: Gina Villani, Court Recorder
District Court, Department No.: IX
Courtroom 11B

Richard A. Newsome, Jr., Defendant named above, requests preparation of the transcript entered below, before the District Court, Department IX, Judge Cristina .D. Silva, as follows:

Argument with Hearing, held on **August 4, 2021.**

Gina Villani - Please prepare a transcript of any and all proceedings.

This Notice requests a transcript of only those portions of the District Court proceedings which Counsel reasonably and in good faith believes are necessary to determine whether Appellate issues are present. Voir dire examination of jurors, opening statements and closing arguments of trial counsel and reading of jury instructions shall not be transcribed unless specifically requested above.

I recognize that I must personally serve a copy of this form on the above-named court recorder and opposing counsel.

That the above-named court recorder shall have thirty (30) days from the date of service of this document to prepare an original plus two copies at State expense and file with the District Court Clerk the original transcript(s) requested herein.

Further, pursuant to NRAP 9(a)(3)(iii), the court recorder shall also deliver copies of the transcript to Appellate's counsel and Respondent counsel no more than thirty (30) days after the date of the Appellate's request.

Dated this 2nd day of September, 2021.

/s/ Terrence M. Jackson
Terrence M. Jackson, Esquire
Terry.jackson.esq@gmail.com
Counsel for Richard A. Newsome, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd of September, 2021, I served a true and correct copy of the foregoing Request for Transcripts on:

TO: Gina Villani, Court Recorder
District Court, Department No.: IX, cr 11B
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89101

By: /s/ Ila C. Wills
Assistant to Terrence M. Jackson, Esq.

CERTIFICATE OF ELECTRONIC FILING

The undersigned hereby certifies that she is an assistant in the office of Terrence M. Jackson, Esquire, and a person of such age and discretion as to be competent to serve papers and that on this 2nd day of September, 2021, she served the Transcript Request upon the parties to this action:

[X] Via Electronic Service (*Odyssey* eFile and Serve) to the Eighth Judicial District Court;
[X] Via the NSC Drop Box on the 1st floor of the Nevada Court of Appeals, located at 408 E. Clark Avenue in Las Vegas, Nevada;
[X] Via the email address of Court Recorder Gina Villani

STEVEN B. WOLFSON
Clark County District Attorney
steven.wolfson@clarkcountynyda.com

KAREN MISHLER
Chief Deputy District Attorney
karen.mishler@clarkcountynyda.com

Gina Villani
Court Recorder
@ email address:
villanig@clarkcountycourts.us

By: /s/ Ila C. Wills
Assistant to T. M. Jackson, Esq.

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY
CASE NO. C-17-321043-1

State of Nevada
vs
Richard Newsome, Jr.

§ Location: Department 9
§ Judicial Officer: Silva, Cristina D.
§ Filed on: 02/02/2017
§ Case Number History:
§ Cross-Reference Case Number: C321043
§ Defendant's Scope ID #: 5437116
§ Grand Jury Case Number: 16BGJ059X
§ ITAG Case ID: 1853041
§ Supreme Court No.: 79044

CASE INFORMATION

Offense	Statute	Deg	Date	Case Type:	Felony/Gross Misdemeanor
1. MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON	200.030.2	F	01/14/2017	Case Status:	03/05/2018 Closed
Filed As: MURDER WITH USE OF A DEADLY WEAPON	F	2/2/2017			
2. ASSAULT WITH A DEADLY WEAPON	200.471.2b	F	01/14/2017		

Related Cases

A-19-788618-W (Writ Related Case)
C-17-321043-2 (Multi-Defendant Case)

Statistical Closures

03/05/2018 Guilty Plea with Sentence (before trial) (CR)

Warrants

Indictment Warrant - Newsome, Richard Allan, Jr. (Judicial Officer: Johnson, Eric)
02/09/2017 11:45 AM Returned - Served
Hold Without Bond

Indictment Warrant - Newsome, Richard Allan, Jr. (Judicial Officer: Gonzalez, Elizabeth)
02/09/2017 11:45 AM Returned - Served
Hold Without Bond

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	C-17-321043-1
Court	Department 9
Date Assigned	01/04/2021
Judicial Officer	Silva, Cristina D.

PARTY INFORMATION


Defendant	Newsome, Richard Allan, Jr.	<i>Lead Attorneys</i> Jackson, Terrence Michael <i>Retained</i> 702-386-0001(W)
Plaintiff	State of Nevada	Wolfson, Steven B 702-671-2700(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

EVENTS

02/02/2017  Indictment
[1]

In
#1

CASE SUMMARY

CASE NO. C-17-321043-1

02/02/2017	 Warrant <i>[2] Indictment Warrant; Warrant for Arrest</i>	In #2
02/03/2017	 Bench Warrant Return <i>[3]</i>	In #3
02/08/2017	 Transcript of Proceedings <i>[4] Transcript of Hearing Held on February 1, 2017</i>	In #4
02/09/2017	 Warrant <i>[5] Superseding Indictment Warrant; Warrant for Arrest</i>	In #5
02/09/2017	 Superseding Indictment <i>[6]</i>	In #6
02/15/2017	 Media Request and Order <i>[7] Media Request and Order for Camera Access to Court Proceedings</i>	In #7
02/15/2017	 Media Request and Order <i>[8] Media Request and Order for Camera Access to Court Proceedings</i>	In #8
02/16/2017	 Waiver <i>[9] Waiver of Potential and/or Actual Conflict</i>	In #9
02/28/2017	 Transcript of Proceedings <i>[10] Transcript of Hearing Held on February 8, 2017</i>	In #1
03/20/2017	 Ex Parte Application <i>[11] Ex Parte Application for Court Approval of Payment of Specific Categories of Ancillary Defense Costs</i>	In #1
04/04/2017	 Order <i>[12] Order Declaring the Defendant Indigent for Purpose of Authorizing Payment of Specific Categories of Ancillary Defense Costs</i>	In #1
05/12/2017	 Notice of Witnesses and/or Expert Witnesses <i>[13] Notice of Witnesses and/or Expert Witnesses [NRS 174.234]</i>	In #1
05/12/2017	 Motion to Continue Trial Filed By: Defendant Newsome, Richard Allan, Jr. <i>[14] Defendant's Motion to Continue Trial Date</i>	In #1
09/15/2017	 Motion to Continue Trial Filed By: Defendant Newsome, Richard Allan, Jr. <i>[16] Defendant's Motion to Continue Trial Date</i>	In #1
12/14/2017	 Guilty Plea Agreement	In #1

CASE SUMMARY
CASE NO. C-17-321043-1

	[17]	
12/14/2017	 Superseding Indictment [18] <i>Second Amended Superseding Indictment</i>	In #1
01/10/2018	 PSI [19] <i>Pre-Sentence Investigation Report (Unfiled) Confidential</i>	In #1
01/25/2018	 PSI - Victim Impact Statements [20]	In #2
02/05/2018	 Memorandum Filed By: Plaintiff State of Nevada [21] <i>Sentencing Memorandum</i>	In #2
02/07/2018	 Memorandum Filed By: Defendant Newsome, Richard Allan, Jr. [22] <i>Defendant's Sentencing Memorandum and Exhibits in Aid of Sentencing</i>	In #2
03/05/2018	 Judgment of Conviction [23] <i>Judgment of Conviction (Plea of Guilty)</i>	In #2
03/05/2018	 Criminal Order to Statistically Close Case [24]	In #2
09/17/2018	 Motion to Dismiss Counsel Party: Defendant Newsome, Richard Allan, Jr. [25] <i>Motion to Withdraw Counsel</i>	In #2
09/17/2018	 Notice of Motion Filed By: Defendant Newsome, Richard Allan, Jr. [26]	In #2
04/05/2019	 Recorders Transcript of Hearing [27] <i>Transcript of Hearing Held on February 8, 2018</i>	In #2
04/12/2019	 Order Filed By: Plaintiff State of Nevada [28] <i>Order for Transcript</i>	In #2
05/16/2019	 Recorders Transcript of Hearing [29] <i>Transcript of Hearing Held on December 14, 2017</i>	In #2
06/17/2019	 Notice of Appeal (Criminal) Party: Defendant Newsome, Richard Allan, Jr. [30] <i>Notice of Appeal</i>	In #2
06/18/2019	 Case Appeal Statement	In #2

CASE SUMMARY
CASE NO. C-17-321043-1

	[31]	
08/11/2020	 NV Supreme Court Clerks Certificate/Judgment - Affirmed [32] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed	In #2
01/04/2021	Case Reassigned to Department 9 Judicial Reassignment to Judge Cristina Silva	
03/09/2021	 Motion for Appointment of Attorney Filed By: Defendant Newsome, Richard Allan, Jr. [33]	In #2
03/09/2021	 Motion Filed By: Defendant Newsome, Richard Allan, Jr. [34] Motion to Correct Illegal Sentence	In #2
04/20/2021	 Opposition to Motion Filed By: Plaintiff State of Nevada [35] State's Opposition to Defendant's Motion to Correct Illegal Sentence	In #2
06/02/2021	 Supplemental Filed by: Defendant Newsome, Richard Allan, Jr. [36] Supplemental Points and Authorities in Support of Writ of Habeas Corpus for Post-Conviction Relief	In #2
07/07/2021	 Response Filed by: Plaintiff State of Nevada [37] State's Response to Defendant's Supplemental Points and Authorities in Support of Writ of Habeas Corpus for Post Conviction Relief	In #2
07/23/2021	 Reply Filed by: Defendant Newsome, Richard Allan, Jr. [38] Reply to State's Response	In #2
08/20/2021	 Findings of Fact, Conclusions of Law and Order [39] Findings of Fact, Conclusions of Law and Order	In #2
08/24/2021	 Notice of Entry Filed By: Plaintiff State of Nevada [40] Notice of Entry of Findings of Fact, Conclusions of Law and Order	In #4
09/02/2021	 Notice of Appeal (Criminal) Party: Defendant Newsome, Richard Allan, Jr. [41] Notice of Appeal	In #4
09/02/2021	 Case Appeal Statement Filed By: Defendant Newsome, Richard Allan, Jr. [42] Case Appeal Statement	In #4
09/02/2021	 Request Filed by: Defendant Newsome, Richard Allan, Jr.	In #4

CASE SUMMARY

CASE NO. C-17-321043-1

[43] Request for Transcripts

DISPOSITIONS


12/14/2017	Plea (Judicial Officer: Adair, Valerie) 1. MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON Guilty PCN: Sequence:																		
12/19/2017	Disposition (Judicial Officer: Adair, Valerie) 2. ASSAULT WITH A DEADLY WEAPON Amended Information Filed/Charges Not Addressed PCN: Sequence:																		
02/08/2018	Disposition (Judicial Officer: Adair, Valerie) 1. MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON Guilty PCN: Sequence:																		
02/08/2018	Adult Adjudication (Judicial Officer: Adair, Valerie) 1. MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON 01/14/2017 (F) 200.030.2 (DC50011) PCN: Sequence:																		
<hr/> Sentenced to Nevada Dept. of Corrections Term: Life with the possibility of parole after:10 Years Consecutive Enhancement: Minimum:96 Months, Maximum:240 Months Other Fees 1. , \$864.61 To Victim's of Crime 2. , \$20,612.47 To the victim's family Fee Totals: <table> <tr><td>Administrative</td><td></td></tr> <tr><td>Assessment Fee</td><td>25.00</td></tr> <tr><td>\$25</td><td></td></tr> <tr><td>DNA Analysis Fee</td><td>150.00</td></tr> <tr><td>\$150</td><td></td></tr> <tr><td>Genetic Marker</td><td></td></tr> <tr><td>Analysis AA Fee</td><td>3.00</td></tr> <tr><td>\$3</td><td></td></tr> <tr><td>Fee Totals \$</td><td>178.00</td></tr> </table>		Administrative		Assessment Fee	25.00	\$25		DNA Analysis Fee	150.00	\$150		Genetic Marker		Analysis AA Fee	3.00	\$3		Fee Totals \$	178.00
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Fee Totals \$	178.00																		
02/15/2018	Amended Adult Adjudication (Judicial Officer: Adair, Valerie) Reason: Amended 1. MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON 01/14/2017 (F) 200.030.2 (DC50011) PCN: Sequence:																		
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Analysis AA Fee	3.00																		

CASE SUMMARY

CASE NO. C-17-321043-1

\$3
 Fee Totals \$ 178.00
 Comment (2/15/18 - Defendant to receive 394 Days Credit for Time Served)

HEARINGS

02/02/2017  **Grand Jury Indictment** (11:45 AM) (Judicial Officer: Gonzalez, Elizabeth)

MINUTES

Warrant

Inactive Indictment Warrant

Matter Heard;

Journal Entry Details:

John Blackwell, Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. State presented Grand Jury Case Number 16BGJ059X to the Court. COURT ORDERED, the Indictment may be filed and is assigned Case Number C-17-321043-1, Department XXI. Ms. Jones requested a warrant, no bail, and advised Deft is in custody on a no bail hold. COURT ORDERED, INDICTMENT WARRANT ISSUED, NO BAIL, and matter SET for Arraignment. COURT FURTHER ORDERED, Exhibits 1 - 16 to be lodged with the Clerk of the Court. At request of the State, Las Vegas Justice Court Case No. 17F00941X DISMISSED. I.W. (CUSTODY) 2-9-17 9:30 AM INITIAL ARRAIGNMENT (DEPT XXI) ;

SCHEDULED HEARINGS


Initial Arraignment (02/09/2017 at 9:30 AM) (Judicial Officer: Adair, Valerie)

02/09/2017 **Initial Arraignment** (9:30 AM) (Judicial Officer: Adair, Valerie)

Matter Heard;

02/09/2017 **Indictment Warrant Return** (9:30 AM) (Judicial Officer: Adair, Valerie)


Matter Heard;

02/09/2017  **All Pending Motions** (9:30 AM) (Judicial Officer: Adair, Valerie)

Matter Heard;

Journal Entry Details:

INITIAL ARRAIGNMENT...INDICTMENT WARRANT RETURN Mr. Momot requested the Court pass the matter for confirmation of counsel and the initial arraignment. Mr. Pesci made no objection and noted that a file-stamped copy of the Indictment and the Grand Jury transcripts were provided to the defense. Court CONTINUED MATTER. CUSTODY CONTINUED TO: 2/16/17 9:30 AM;

02/09/2017  **Grand Jury Indictment** (11:45 AM) (Judicial Officer: Johnson, Eric)

MINUTES

Warrant

Inactive Indictment Warrant

Matter Heard;

Journal Entry Details:

John Blackwell, Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. State presented Grand Jury Case Number 16BGJ059A to the Court. COURT ORDERED, the Indictment may be filed and is assigned Case Number C-17-321043-1, Department XXI. Ms. Jones requested a warrant, argued no bail be set for Mr. Newsome, and advised he is in custody. COURT ORDERED, INDICTMENT WARRANT ISSUED, NO BAIL, and matter SET for Arraignment. State advised Exhibits 1 - 16 were previously lodged with the Clerk of the Court. COURT FURTHER ORDERED, Exhibits 1a and 2a to be lodged with the Clerk of the Court. I.W. (CUSTODY) 2-16-17 9:30 AM INITIAL ARRAIGNMENT (DEPT XXI - Adair);

SCHEDULED HEARINGS

Initial Arraignment (02/16/2017 at 9:30 AM) (Judicial Officer: Adair, Valerie)

02/16/2017 **Initial Arraignment** (9:30 AM) (Judicial Officer: Adair, Valerie)

MINUTES


Plea Entered;

Journal Entry Details:


CASE SUMMARY
CASE NO. C-17-321043-1

Mr. Momot CONFIRMED as counsel. DEFT. NEWSOME ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. COURT ORDERED, matter set for trial. CUSTODY 6/1/17 9:30 AM CALENDAR CALL 6/5/17 9:30 AM JURY TRIAL;


SCHEDULED HEARINGS

 **All Pending Motions** (02/16/2017 at 9:30 AM) (Judicial Officer: Adair, Valerie)

02/16/2017 **Confirmation of Counsel** (9:30 AM) (Judicial Officer: Adair, Valerie)
Counsel Confirmed;

02/16/2017  **All Pending Motions** (9:30 AM) (Judicial Officer: Adair, Valerie)
Matter Heard;

04/04/2017 **CANCELED Motion** (9:30 AM) (Judicial Officer: Adair, Valerie)
Vacated - Moot
Defendant's Ex Parte Application for Court Approval of Payment of Specific Categories of Ancillary Defense Costs

05/30/2017  **Motion to Continue Trial** (9:30 AM) (Judicial Officer: Adair, Valerie)
Defendant's Motion to Continue Trial Date

MINUTES


Granted;
Journal Entry Details:
Ms. Zheng requested the trial date be continued as there is an on-going exchange of discovery. Mr. Pesci made no objection. COURT CONTINUED TRIAL DATE. CUSTODY 10/12/17 9:30 AM CALENDAR CALL 10/16/17 9:30 AM JURY TRIAL;

SCHEDULED HEARINGS

CANCELED Calendar Call (10/12/2017 at 9:30 AM) (Judicial Officer: Adair, Valerie)
Vacated
CANCELED Jury Trial (10/16/2017 at 9:30 AM) (Judicial Officer: Adair, Valerie)
Vacated

06/01/2017 **CANCELED Calendar Call** (9:30 AM) (Judicial Officer: Adair, Valerie)
Vacated


06/05/2017 **CANCELED Jury Trial** (9:30 AM) (Judicial Officer: Adair, Valerie)
Vacated

09/26/2017  **Motion to Continue Trial** (9:30 AM) (Judicial Officer: Adair, Valerie)
Defendant's Motion to Continue Trial Date

MINUTES

Granted;
Journal Entry Details:
Colloquy regarding trial readiness. Ms. Zheng stated she was not going to be ready for trial because she was preparing for other trials. Upon inquiry of the Court, Ms. Zheng stated there were no offers extended, only discussion. Court directed the State to extend an offer within two weeks and Ms. Zheng to meet with the Deft's. Court CONTINUED matter. BOND CONTINUED TO: 10/17/17 9:30 AM 1/11/18 9:30 AM CALENDAR CALL 1/16/18 9:00 AM JURY TRIAL - FIRM;

SCHEDULED HEARINGS


 **Status Check: Trial Readiness** (10/17/2017 at 9:30 AM) (Judicial Officer: Adair, Valerie)
10/17/2017, 10/31/2017, 11/14/2017, 11/30/2017, 12/14/2017
Trial Readiness/Negotiations
CANCELED Calendar Call (01/11/2018 at 9:30 AM) (Judicial Officer: Adair, Valerie)
Vacated
CANCELED Jury Trial - FIRM (01/16/2018 at 9:00 AM) (Judicial Officer: Adair, Valerie)
Vacated

10/12/2017 **CANCELED Calendar Call** (9:30 AM) (Judicial Officer: Adair, Valerie)

CASE SUMMARY
CASE NO. C-17-321043-1

Vacated

10/16/2017 **CANCELED Jury Trial** (9:30 AM) (Judicial Officer: Adair, Valerie)
Vacated

10/17/2017  **Status Check: Trial Readiness** (9:30 AM) (Judicial Officer: Adair, Valerie)
10/17/2017, 10/31/2017, 11/14/2017, 11/30/2017, 12/14/2017
Trial Readiness/Negotiations

MINUTES

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Plea Entered;

Journal Entry Details:

Second Amended Superseding Indictment FILED IN OPEN COURT. NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. NEWSOME ARRAIGNED AND PLED GUILTY TO MURDER (SECOND DEGREE) WITH US OF A DEADLY WEAPON (F). Court ACCEPTED plea and ORDERED, matter referred to the Division of Parole and Probation (P & P) and set for SENTENCING. Ms. Zheng made an oral motion to allow the Deft's mother to visit him while he's incarcerated adding that she sent Mr. Pesci a text message and he replied that he would submit to the Court's decision. Court GRANTED the oral motion for visitation. NIC (COC-NDC) 2/8/18 9:30 AM SENTENCING;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Plea Entered;

Journal Entry Details:

Ms. Zheng stated the Guilty Plea Agreements were being prepared and requested the matter be continued to give her the opportunity to review them with the Defts. COURT ORDERED, MATTER CONTINUED. CUSTODY CONTINUED TO: 12/14/17 9:30 AM;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Plea Entered;

Journal Entry Details:

Upon inquiry of the Court, Ms. Zheng stated that the case was resolved and requested a continuance to execute the plea agreement. COURT ORDERED, MATTER CONTINUED. NIC (COC-NDC) CONTINUED TO: 11/30/17 9:30 AM;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Plea Entered;

Journal Entry Details:

Ms. Zheng stated she received an offer yesterday and requested additional time to review with the Defts. COURT ORDERED, MATTER CONTINUED. NIC (COC-NDC) CONTINUED TO: 11/14/17 9:30 AM;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Plea Entered;

Journal Entry Details:

Ms. Zheng stated that Mr. Pesci was working on an offer and intends on meeting with the victim's family to see if the offer is sufficient. Ms. Bluth stated that Mr. Pesci would be meeting with the family the following day. COURT ORDERED, MATTER CONTINUED. NIC (COC-NDC) CONTINUED TO: 10/31/17 9:30 AM;

SCHEDULED HEARINGS








Sentencing (02/08/2018 at 9:30 AM) (Judicial Officer: Adair, Valerie)

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY


CASE NO. C-17-321043-1

01/11/2018	CANCELED Calendar Call (9:30 AM) (Judicial Officer: Adair, Valerie) <i>Vacated</i>
01/16/2018	CANCELED Jury Trial - FIRM (9:00 AM) (Judicial Officer: Adair, Valerie) <i>Vacated</i>
02/08/2018	 Sentencing (9:30 AM) (Judicial Officer: Adair, Valerie) Defendant Sentenced; Journal Entry Details: <i>Court noted a sentencing memorandum was received from the State and reviewed. Ms. Zheng stated she also provided one for the Court. Court TRAILED MATTER to review it. MATTER RECALLED. Following a conference at the bench, Court advised parties that all sentencing memorandums were reviewed. Argument by counsel. Statement by Deft. Statement by victim speakers. DEFT NEWSOME ADJUDGED GUILTY of MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON (F). COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$20,612.47 in restitution payable jointly and severally with the co-Deft. to the victim's family and \$864.61 to Victim's of Crime, a \$150.00 DNA Analysis fee including testing to determine genetic markers, and \$3.00 DNA Collection fee, Deft. SENTENCED to LIFE with the possibility of parole after TEN (10) YEARS in the Nevada Department of Corrections (NDC) with a CONSECUTIVE TERM of a MINIMUM of NINETY-SIX (96) MONTHS and a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS in the Nevada Department of Corrections (NDC). BOND, if any, EXONERATED. NDC CLERK'S NOTE: Matter placed back on calendar to have credit for time served ordered. jmc 2/8/18;</i>
02/15/2018	 Further Proceedings (9:30 AM) (Judicial Officer: Adair, Valerie) <i>Add CTS to the Sentence</i> Matter Heard; Journal Entry Details: <i>Ms. Zheng stated the Deft. was in custody for 394 days. Mr. Pesci agreed. COURT ORDERED, DEFT. to receive THREE HUNDRED NINETY-FOUR (394) DAYS credit for time served. NDC;</i>
10/18/2018	 Motion to Withdraw as Counsel (9:30 AM) (Judicial Officer: Adair, Valerie) <i>Defendant's Pro Per Motion to Withdraw Counsel</i> Granted; Journal Entry Details: <i>COURT ORDERED, MOTION GRANTED. NDC;</i>
03/31/2021	Motion for Appointment of Attorney (11:00 AM) (Judicial Officer: Silva, Cristina D.) <i>Motion for Appointment/Confirmation of Counsel</i> Matter Heard; Motion for Appointment/Confirmation of Counsel
03/31/2021	Motion (11:00 AM) (Judicial Officer: Silva, Cristina D.) <i>Motion to Correct Illegal Sentence</i> Set Status Check; Motion to Correct Illegal Sentence
03/31/2021	 All Pending Motions (11:00 AM) (Judicial Officer: Silva, Cristina D.) Matter Heard; Journal Entry Details: <i>MOTION FOR APPOINTMENT / CONFIRMATION OF COUNSEL... MOTION TO CORRECT ILLEGAL SENTENCE... Defendant not present and in custody in the Nevada Department of Corrections; Deputy District Attorney Jory Scarborough present on behalf of the State. Upon Court's inquiry, Mr. Jackson stated he can confirm as counsel of record, and requested a status check in thirty days before setting a briefing schedule. COURT ORDERED, status check SET on the out of custody calendar and the Defendant's presence will be WAIVED. Mr. Scarborough informed the Court the State was never served with the Motion to Correct Illegal Sentence and the State was going to request more time to respond. COURT STATED additional time will be provided to the State as the Motion can be construed as Motion for New Trial as well. NIC (COC-NDC) 4/28/2021 12:30 P.M. STATUS CHECK: MOTION TO CORRECT ILLEGAL SENTENCE;</i>
04/28/2021	 Status Check (12:30 PM) (Judicial Officer: Silva, Cristina D.) <i>Status Check: Motion to Correct Illegal Sentence</i> Briefing Schedule Set; Status Check: Motion to Correct Illegal Sentence Journal Entry Details:

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. C-17-321043-1

08/04/2021	<p><i>Defendant not present and in custody in the Nevada Department of Corrections; Deputy District Attorney Ann Dunn present on behalf of the State. Upon Court's inquiry, Mr. Jackson requested time to file a supplemental brief, adding he just got the file and he is reviewing it, requesting forty-five days. Upon Court's inquiry, Ms. Dunn stated no objection. COURT ORDERED, briefing schedule SET as follows: Defendant's Supplemental Brief shall be filed on or before June 16, 2021; State's Supplemental Opposition shall be filed on or before July 14, 2021; Defendant's Supplemental Reply shall be filed on or before July 28, 2021; matter SET for hearing. NIC (COC-NDC) 8/4/2021 12:30 P.M. HEARING RE: MOTION TO CORRECT ILLEGAL SENTENCE;</i></p> <p> Hearing (12:30 PM) (Judicial Officer: Silva, Cristina D.)</p> <p><i>Hearing Re: Motion to Correct Illegal Sentence</i></p> <p><i>Denied; Hearing Re: Motion to Correct Illegal Sentence</i></p> <p><i>Journal Entry Details:</i></p> <p><i>Defendant not present and in custody in the Nevada Department of Corrections; Deputy District Attorney Dena Rinetti present on behalf of the State. COURT ORDERED, Defendant's presence waived. Mr. Jackson argued the previous attorney on this case made a mistake representing both Defendants, adding they were a mother and a son, and the Defendant NEWSOME was prejudiced since it was plea bargained. Mr. Jackson argued this is an issue of fundamental fairness since the Defendant got a life sentence, when the Co-Defendant got almost credit for time served. Mr. Jackson requested the Court consider the argument on the merits. Upon Court's inquiry, Mr. Jackson stated he does not know why this issue was not raised in the first Petition. Ms. Rinetti stated they would submit on the Opposition, as there is no legal or factual basis to support the plea for relief. COURT ORDERED Petition DENIED; the Petition is successive and the COURT DOES NOT FIND good cause to overcome the procedural time bars; whether or not the plea was knowingly or voluntarily entered was already addressed and the Court of Appeals affirmed the conviction. COURT FURTHER FINDS the Defendant is not entitled to an Evidentiary Hearing. COURT DIRECTED the State to prepare a Findings of Fact and Conclusions of Law and to submit it to the Court within thirty days. NIC (COC-NDC);</i></p>
DATE	FINANCIAL INFORMATION

Defendant Newsome, Richard Allan, Jr.

Total Charges

194.50

Total Payments and Credits

16.50

Balance Due as of 9/3/2021

178.00

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,
Plaintiff,

-vs-

RICHARD NEWSOME, JR.,
#5437116
Defendant.

CASE NO: C-17-321043-1

DEPT NO: IX

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

DATE OF HEARING: AUGUST 4, 2021
TIME OF HEARING: 12:30 PM

THIS CAUSE having come on for hearing before the Honorable CRISTINA D. SILVA, District Judge, on the 4th day of August, 2021, the Petitioner not being present, represented by TERRENCE JACKSON, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through KAREN MISHLER, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On February 2, 2017, Defendant Richard Newsome, Jr. ("Defendant") was charged with the following: Count 1 – Murder With Use of a Deadly Weapon (Category A Felony –

1 NRS 200.010, 200.030, 193.165); Count 2 – Assault With Use of a Deadly Weapon (Category
2 B Felony – NRS 200.471).

3 On December 14, 2017, Defendant pled guilty to one count of Second-Degree Murder
4 With Use of a Deadly Weapon. Pursuant to the negotiations as contained in the Guilty Plea
5 Agreement (“GPA”), the State would retain the right to argue at sentencing.

6 On February 8, 2018, Defendant received a sentence of 10 years to life in the Nevada
7 Department of Corrections. The Judgment of Conviction was filed on March 5, 2018.
8 Defendant did not file a direct appeal.

9 On February 1, 2019, Defendant filed a Petition for Writ of Habeas Corpus (“First
10 Petition”), Supplemental Petition for Writ of Habeas Corpus (“Supplement”), Motion for
11 Appointment of Counsel (“Motion”), and Request for an Evidentiary Hearing (“Request”). On
12 May 1, 2019, the State filed a response to Defendant’s First Petition, Supplement, Motion, and
13 Request. On May 28, 2019, this Court denied Defendant’s First Petition, Supplement, Motion,
14 and Request. The Findings of Fact, Conclusions of Law were filed on June 26, 2019. On July
15 13, 2020, the Nevada Court of Appeals affirmed the district court’s denial of Defendant’s First
16 Petition. Newsome v. State, No. 79044-COA (Order of Affirmance, Jul. 13, 2020). Remittitur
17 issued on August 10, 2020.

18 On October 9, 2020, Defendant filed another Petition for Writ of Habeas Corpus
19 (“Second Petition”). On November 23, 2020, the State filed its Response. On December 17,
20 2020, this Court denied Defendant’s Second Petition. The Findings of Fact, Conclusions of
21 Law and Order were filed on April 5, 2021.

22 On March 9, 2021, Defendant filed a Motion to Correct Illegal Sentence. On March 31,
23 2021, Terrence Jackson, Esq. confirmed as counsel. On April 20, 2021, the State filed its
24 Opposition to Defendant’s Motion to Correct Illegal Sentence.

25 On June 2, 2021, Defendant, through counsel, filed a Supplemental Points and
26 Authorities in Support of Writ of Habeas Corpus for Post-Conviction Relief (“Third Petition”).
27 On July 7, 2021, the State filed its Response. On July 23, 2021, Defendant filed a Reply. On
28 August 4, 2021, this Court denied the Third Petition, finding as follows:

1 **ANALYSIS**

2 **I. THE THIRD PETITION IS PROCEDURALLY BARRED**

3 The Third Petition is untimely and successive, and Defendant fails to present claims of
4 good cause and prejudice. Defendant also fails to substantiate his allegation that a fundamental
5 miscarriage of justice would result if his claims are not heard. Accordingly, his claims are
6 barred from consideration.

7 **a. The Third Petition is Untimely**

8 The Third Petition is untimely under NRS 34.726, and therefore its claims cannot be
9 considered in the absence of a showing of good cause and prejudice. NRS 34.726(1) requires
10 a petitioner to challenge the validity of his judgment or sentence within one year from the entry
11 of judgment of conviction or the issuance of remittitur from his direct appeal.

12 This one-year time limit is strictly applied and begins to run from the date the judgment
13 of conviction is filed or remittitur issues from a timely filed direct appeal. Pellegrini v. State,
14 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001); Dickerson v. State, 114 Nev. 1084, 1087, 967
15 P.2d 1132, 1133-34 (1998). “Application of the statutory procedural default rules to post-
16 conviction habeas petitions is mandatory,” and “cannot be ignored [by the district court] when
17 properly raised by the State.” State v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231
18 & 233, 112 P.3d 1070, 1074–75 (2005). For example, in Gonzales v. State, the Nevada
19 Supreme Court rejected a habeas petition filed two days late despite evidence presented by the
20 defendant that he purchased postage through the prison and mailed the Notice within the one-
21 year time limit. 118 Nev. 590, 596, 53 P.3d 901, 904 (2002). Absent a showing of good cause
22 and prejudice, courts have no discretion regarding whether to apply the statutory procedural
23 bars.

24 Here, Defendant’s Judgment of Conviction was filed on March 5, 2018, and Defendant
25 did not file a direct appeal. Defendant then had until March 5, 2019 to timely file a petition for
26 writ of habeas corpus. The Third Petition was filed on June 2, 2021, two years after the one-
27 year deadline of NRS 34.726. Accordingly, absent a showing of good cause and prejudice, the
28 Third Petition must be dismissed as untimely.

1 **b. The Third Petition is Successive**

2 Defendant has twice previously sought post-conviction relief, and therefore the Third
3 Petition is successive. NRS 34.810(1)(b)(2); 34.810(2). “Successive petitions may be
4 dismissed based solely on the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901
5 P.2d 123, 129 (1995). Courts are required to dismiss successive post-conviction petitions if a
6 prior petition was decided on the merits and a petitioner fails to raise new grounds for relief,
7 or if a petitioner does raise new grounds for relief but failure to assert those grounds in any
8 prior petition was an abuse of the writ. NRS 34.810(2); See Riker, 121 Nev. at 231, 112 P.3d
9 at 1074. Successive petitions will only be decided on the merits if the petitioner can show good
10 cause and prejudice for failing to raise the new grounds in their first petition. NRS 34.810(3);
11 Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994). If a claim or allegation was
12 previously available with reasonable diligence, it is an abuse of the writ to wait to assert it in
13 a later petition. McClesky v. Zant, 499 U.S. 467, 497-98, 111 S.Ct. 1454, 1472 (1991).

14 The Third Petition must be denied as successive. Defendant raises three substantive
15 claims: that his plea counsel was conflicted, that his plea counsel rendered ineffective
16 assistance through insufficient investigation and preparation, and that his guilty plea was not
17 entered voluntarily. The first two claims were previously available to Defendant to be raised
18 in his previous petitions, and therefore his failure to assert these claims previously is an abuse
19 of the writ. NRS 34.810(2). Because these claims could have been raised in either of his
20 previous petitions, these claims must be summarily dismissed in the absence of good cause
21 and prejudice. NRS 34.810(b)(1)(2). Further, Defendant’s claim that his guilty plea was not
22 voluntarily entered was also raised in his First Petition, and this claim was denied on its merits.
23 Accordingly, this claim must be summarily dismissed. NRS 34.810(2).

24 **c. Defendant Has Not Demonstrated Good Cause and Prejudice to Overcome**
25 **the Procedural Bars**

26 Defendant has failed to demonstrate the requisite good cause and prejudice to overcome
27 the procedural bars to his Petition. This Court may only consider the merits of the Third
28 Petition if Defendant establishes both good cause and prejudice for the delay in filing and the

1 successive nature of his claims. NRS 34.726(1)(a)-(b); NRS 34.810(3). Accordingly, the Third
2 Petition must be summarily denied.

3 Simply put, good cause is a “substantial reason; one that affords a legal excuse.”
4 Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105
5 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Defendant has the burden of pleading and proving
6 specific facts that demonstrate good cause for his failure to comply with the statutory
7 requirements, *and* that he will be unduly prejudiced if the petition is dismissed. NRS
8 34.726(1)(a); *see* Hogan v. Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993);
9 Phelps v. Nevada Dep’t of Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). “A court
10 *must* dismiss a habeas petition if it presents claims that either were or could have been
11 presented in an earlier proceeding, unless the court finds both cause for failing to present the
12 claims earlier or for raising them again and actual prejudice to the petitioner.” Evans v. State,
13 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001) (emphasis added).

14 To show good cause, a petitioner must demonstrate the following: (1) “[t]hat the delay
15 is not the fault of the petitioner” and (2) that the petitioner will be “unduly prejudice[d]” if the
16 petition is dismissed as untimely. NRS 34.726. To meet the first requirement, “a petitioner
17 *must* show that an impediment external to the defense prevented him or her from complying
18 with the state procedural default rules.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503,
19 506 (2003) (emphasis added). “A qualifying impediment might be shown where the factual or
20 legal basis for a claim was not reasonably available *at the time of default*.” Clem v. State, 119
21 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). To find good cause there must be
22 a “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 252, 71 P.3d at
23 506 (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Any delay in
24 the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

25 As the Third Petition is both untimely and successive, Defendant must overcome the
26 procedural bars under both NRS 34.726 and NRS 34.810. “In terms of a procedural time-bar,
27 an adequate allegation of good cause would sufficiently explain why a petition was filed
28 beyond the statutory time period.” Harris v. State, 133 Nev. 683, 687, 407 P.3d 348, 352 (Nev.

1 App. 2017) (quoting Hathaway v. State, 119 Nev. 248, 252-5371 P.3d 503, 506 (2003). To
2 overcome the procedural bars against successive petitions, “NRS 34.810(3) requires the
3 petitioner to plead and prove specific facts demonstrating good cause for a “failure to present
4 the claim or for presenting the claim again” and actual prejudice.” Nika v. State, 120 Nev. 600,
5 607, 97 P.3d 1140, 1145 (2004).

6 Further, a petitioner raising good cause to excuse procedural bars must do so within a
7 reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34
8 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see
9 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably
10 available to the petitioner during the statutory time period did not constitute good cause to
11 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good
12 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,
13 453 120 S. Ct. 1587, 1592 (2000).

14 In order to establish prejudice, the defendant must show ““not merely that the errors of
15 [the proceedings] created possibility of prejudice, but that they worked to his actual and
16 substantial disadvantage, in affecting the state proceedings with error of constitutional
17 dimensions.”” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United
18 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). As discussed more fully
19 *infra* in Section II, Defendant’s claims are without merit. Accordingly, he has failed entirely
20 to establish prejudice.

21 A petitioner “cannot rely on conclusory claims for relief but must plead and prove
22 specific facts demonstrating good cause and actual prejudice.” State v. Haberstroh, 119 Nev.
23 173, 184, 69 P.3d 676, 684 (2003), as modified (June 9, 2003). See also NRS 34.810(3); Evans
24 v. State, 117 Nev. 609, 621, 28 P.3d 498, 507 (2001); Bejarano v. Warden, 112 Nev. 1466,
25 1471, 929 P.2d 922, 925 (1996). Defendant has failed to meet his burden to plead and prove
26 specific facts that would establish good cause. In his Third Petition, Defendant attempts to
27 establish good cause by referencing factors that have been repeatedly rejected by Nevada
28 courts as good cause claims. Defendant claims his delay in filing resulted from “his lack of

1 legal sophistication and his inability to obtain counsel immediately after conviction.” Third
2 Petition, at 14. A lack of legal training does not constitute good cause for filing a procedurally
3 defaulted petition. Such a claim does not demonstrate an impediment external to the defense
4 that prevented Defendant from complying with the procedural bars. See Phelps v. Dir., Nev.
5 Dep’t of Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding that petitioner’s
6 claim of organic brain damage, borderline mental retardation and poor legal assistance from
7 inmate law clerks did not constitute good cause for the filing of a successive post-conviction
8 petition). See also State v. Williams, 120 Nev. 473, 478, 93 P.3d 1258, 1261 (2004) (finding
9 no good cause where petitioner claimed she could not have raised a post-conviction claim
10 previously due to “its highly complex, esoteric, and scientific nature”). Further, Defendant’s
11 lack of legal sophistication did not prevent him from filing a timely First Petition, and thus
12 Defendant’s claim that his ignorance of the law caused the delay in filing is highly suspect.

13 Similarly, Defendant’s lack of post-conviction counsel does not constitute good cause
14 for filing an untimely and successive petition, because he had no statutory right to post-
15 conviction counsel. NRS 34.750(1). As such, the absence of post-conviction counsel cannot
16 provide good cause for filing an untimely and successive petition. See Brown v. McDaniel,
17 130 Nev. 565, 569, 331 P.3d 867, 870 (2014) (concluding that claims of ineffective assistance
18 of postconviction counsel in noncapital cases do not constitute good cause for a successive
19 petition because there is no statutory entitlement to postconviction counsel).

20 Defendant’s complaints about the prison library also do not establish good cause. Third
21 Petition, at 15. See Navarrette v. Williams, 461 P.3d 898, No. 79147, 2020 WL 2042695, at
22 *2 (Nev. App. 2020) (unpublished disposition). See also Monroe v. State, 422 P.3d 711, No.
23 72944, 2018 WL 3545167, at *1 (Nev. 2018) (unpublished disposition) (finding petitioner’s
24 arguments that he was not provided discovery, had a limited education, did not have access to
25 the law library, and was kept in isolation did not constitute good cause). The alleged
26 inadequacy of the prison law library did not prevent Defendant from filing two previous
27 petitions, and one of the claims he raises in the instant Third Petition (the voluntariness of his
28 guilty plea) was previously raised in his timely First Petition. Defendant also fails to explain

1 how the alleged limitations of the prison law library prevented him from raising his claims in
2 his First Petition, or why it necessitates re-raising already litigated claims. He merely makes a
3 general claim that the prison's law library is inadequate. "[A]n inmate cannot establish relevant
4 actual injury simply by establishing that his prison's law library or legal assistance program is
5 subpar in some theoretical sense." Lewis v. Casey, 518 U.S. 343, 351, 116 S. Ct. 2174, 2180
6 (1996).

7 Defendant ignores the fact that it is his burden to plead specific factual allegations that
8 would amount to good cause if they were established as true. His assurances that if an
9 evidentiary hearing is held, he will be able to establish "numerous impediments" that
10 prevented him from filing a timely petition is not sufficient. Third Petition, at 14. "[A
11 petitioner] must plead and prove specific facts that demonstrate good cause for his failure to
12 present claims before or for presenting claims again and actual prejudice." State v. Eighth Jud.
13 Dist. Ct. ex rel. Cty. of Clark (Riker), 121 Nev. 225, 232, 112 P.3d 1070, 1075 (2005). See
14 also Berry v. State, 131 Nev. 957, 967, 363 P.3d 1148, 1154 (2015). Additionally, "a party
15 cannot force the district court to hold an evidentiary hearing by withholding information about
16 a claim." Moore v. State, 134 Nev. 262, 264, 417 P.3d 356, 359 (2018). See also Means v.
17 State, 120 Nev. 1001, 1016, 103 P.3d 25, 35 (2004) ("A post-conviction
18 habeas petitioner is entitled to an evidentiary hearing "only if he supports his claims with
19 specific factual allegations that if true would entitle him to relief."); Hargrove v. State, 100
20 Nev. 498, 502, 686 P.2d 222, 225 (1984) (recognizing that a petitioner is entitled to
21 an evidentiary hearing regarding his claim if it is not belied by the record and, if true, would
22 warrant relief). In a feeble attempt to demonstrate good cause, Defendant claims only that he
23 lacks legal sophistication, did not have post-conviction counsel initially, and that the prison
24 law library is generally inadequate. These claims are not impediments external to the defense,
25 and the courts have repeatedly rejected them as good cause claims. Defendant has presented
26 no specific factual allegations that, if true, would excuse his untimely and successive filings.
27 He has failed entirely to establish good cause.

28 ///

1 **d. Defendant Has Not Established a Fundamental Miscarriage of Justice**

2 Defendant’s fundamental miscarriage of justice claim is a bare and naked claim entirely
3 devoid of factual specificity, and thus must be summarily denied. Hargrove, 100 Nev. at 502,
4 686 P.2d at 225. Defendant fails to explain precisely what fundamental miscarriage of justice
5 would result—he simply cites some of the law pertaining to fundamental miscarriage of justice
6 claims, then concludes with the entirely unsupported assertion that “any procedural default
7 should be excused in this case.” Third Petition, at 16.

8 It is true that even when a petitioner cannot demonstrate good cause, the court may
9 nonetheless excuse a procedural bar if the petitioner demonstrates that failure to consider the
10 petition would result in a fundamental miscarriage of justice. Pellegrini v. State, 117 Nev. 860,
11 887, 34 P.3d 519, 537 (2001). “The conviction of a petitioner who was actually innocent
12 would be a fundamental miscarriage of justice sufficient to overcome the procedural bars to
13 an untimely or successive petition.” Mitchell v. State, 122 Nev. 1269, 1273, 149 P.3d 33, 36
14 (2006). A fundamental miscarriage of justice requires “a colorable showing” that the petitioner
15 is “actually innocent of the crime.” Pellegrini, 117 Nev. at 887, 34 P.3d at 537.

16 To be entitled to a hearing on a fundamental miscarriage of justice claim, a petitioner
17 must plead “specific factual allegations that, if true, and not belied by the record, would show
18 that it is more likely than not that no reasonable juror would have convicted him beyond a
19 reasonable doubt given the new evidence.” Berry, 131 Nev. at 968, 363 P.3d at 1155.
20 Defendant has not met this burden. It is not entirely clear if he is even raising an actual
21 innocence claim, as he merely states that “factual innocence is an exception to the procedural
22 bar of NRS 34.726.1.” Third Petition, at 14. He makes no factual allegations of any kind.
23 Accordingly, he has not made specific factual allegations that, if true, would establish a
24 fundamental miscarriage of justice to overcome the procedural bars to his Petition. He has not
25 plead a fundamental miscarriage of justice claim that would warrant relief, and therefore he is
26 not entitled to an evidentiary hearing on this issue. Defendant has failed to overcome the
27 procedural bars to his Third Petition. Accordingly, the Third Petition is denied.

1 **II. DEFENDANT’S CLAIM THAT HIS GUILTY PLEA WAS**
2 **INVOLUNTARILY ENTERED IS BARRED UNDER THE LAW OF THE**
3 **CASE DOCTRINE**

4 The doctrine of the law of the case bars relitigation of this issue. “[T]he law of a prior
5 appeal is the law of the case in later proceedings in which the facts are substantially the same;
6 this doctrine cannot be avoided by more detailed and precisely focused argument.” State v.
7 Eighth Jud. Dist. Ct. ex rel. Cty. of Clark (Riker), 121 Nev. 225, 232–33, 112 P.3d 1070, 1075
8 (2005) (citing Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975)). Furthermore,
9 this Court cannot overrule either of Nevada’s appellate courts. NEV. CONST. Art. VI § 6. “The
10 law of the case doctrine holds that the law of a first appeal is the law of the case on all
11 subsequent appeals in which the facts are substantially the same.” Clem v. State, 119 Nev.
12 615, 620, 81 P.3d 521, 525 (2003) (citing Hall, 91 Nev. at 315, 535 P.2d at 798).

13 In his First Petition, Defendant claimed that his guilty plea was not entered knowingly
14 and voluntarily. The district court considered this claim, reviewed the record, and found that
15 Defendant’s guilty plea was entered freely and voluntarily. This conclusion was affirmed on
16 appeal. Newsome v. State, No. 79044-COA (Order of Affirmance, Jul. 13, 2020). This
17 conclusion is now law of the case. The facts considered by the district court and the Nevada
18 Court of Appeals in considering this claim consisted of the Guilty Plea Agreement signed by
19 Defendant and the plea canvass. Thus, the relevant facts remain the same. Accordingly,
20 Defendant’s attempt to resuscitate his claim that his guilty plea was not voluntary cannot be
21 considered by this Court.

22 **III. DEFENDANT IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

23 Defendant is not entitled to an evidentiary hearing on his claims because no expansion
24 of the record is necessary to resolve his claims. He had failed to plead specific facts that, if
25 true, would establish good cause and prejudice to overcome the procedural bars to the Petition.
26 His substantive claims are similarly plead in a vague and conclusive manner insufficient to
27 warrant post-conviction relief.

28 ///

1 NRS 34.770 provides the manner in which the district court decides whether an
2 evidentiary hearing is required. It reads:

- 3 1. The judge or justice, upon review of the return, answer and all
4 supporting documents which are filed, shall determine whether
5 an evidentiary hearing is required. A petitioner must not be
6 discharged or committed to the custody of a person other than the
7 respondent unless an evidentiary hearing is held.
- 8 2. If the judge or justice determines that the petitioner is not
9 entitled to relief and an evidentiary hearing is not required, he
10 shall dismiss the petition without a hearing.
- 11 3. If the judge or justice determines that an evidentiary hearing
12 is required, he shall grant the writ and shall set a date for the
13 hearing.

14 (Emphasis added).

15 The Nevada Supreme Court has held that if a petition can be resolved without
16 expanding the record, then no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351,
17 356, 46 P.3d 1228, 1231 (2002); Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605
18 (1994). A defendant is entitled to an evidentiary hearing if his petition is supported by specific
19 factual allegations, which, if true, would entitle him to relief unless the factual allegations are
20 repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; Hargrove, 100 Nev. at
21 502, 686 P.2d at 225 ("[a] defendant seeking post-conviction relief is not entitled to an
22 evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is
23 'belied' when it is contradicted or proven to be false by the record as it existed at the time the
24 claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

25 In this instance, Defendant is not entitled to an evidentiary hearing because there is no
26 need to expand the record. All of the law and facts necessary to dispose of Defendant's claims
27 are already available. It is clear from the record that the Third Petition is untimely and
28 successive. Defendant has not demonstrated the requisite good cause and prejudice to
overcome these defects. His mere promise that he could demonstrate such good cause if
granted an evidentiary hearing is insufficient. He is required to plead specific facts as to good
cause; he is not entitled to an evidentiary hearing simply because he maintains he can
demonstrate good cause at such a hearing. See, e.g., Riker, 121 Nev. at 232, 112 P.3d at 1075.
Additionally, his claim that his guilty plea was involuntarily entered is barred under the law

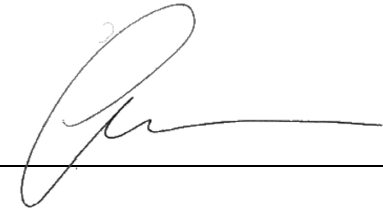
1 of the case doctrine. Finally, even if the Third Petition were not procedurally barred,
2 Defendant's vague and speculative claims are not specific factual allegations that, if true,
3 would entitle him to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Accordingly, his
4 request for an evidentiary hearing is denied.

5 **ORDER**

6 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus
7 shall be, and it is, hereby denied.

8 ~~DATED this 17th day of August, 2021.~~

Dated this 20th day of August, 2021

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11 
12

EC

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

38A 7AF 110F F3AA
Cristina D. Silva
District Court Judge

15 BY /s/ KAREN MISHLER
16 KAREN MISHLER
17 Chief Deputy District Attorney
Nevada Bar #013730

18 **CERTIFICATE OF ELECTRONIC FILING**

19 I hereby certify that service of the foregoing, was made this 17th day of August, 2021,
20 by Electronic Filing to:

21 TERRENCE JACKSON, ESQ.

22 E-mail Address: Terry.jackson.esq@gmail.com

23
24 /s/ Janet Hayes
25 Secretary for the District Attorney's Office
26
27
28

1 CERTIFICATE OF SERVICE

2 I certify that on the 17th day of August, 2021, I mailed a copy of the foregoing proposed
3 Findings of Fact, Conclusions of Law, and Order to:

4 RICHARD NEWSOME, BAC #1194269
5 HIGH DESERT STATE PRISON
6 P. O. BOX 650
7 INDIAN SPRINGS, NEVADA 89701

8 BY /s/ J. HAYES
9 Secretary for the District Attorney's Office
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28 17F00941X/km/jh/MVU

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 State of Nevada

CASE NO: C-17-321043-1

7 vs

DEPT. NO. Department 9

8 Richard Newsome, Jr.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

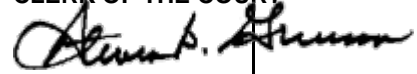
14 Service Date: 8/20/2021

15 Eileen Davis

eileen.davis@clarkcountyda.com

16 Dept 09 Law Clerk

dept09lc@clarkcoutycourts.us



NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

RICHARD NEWSOME, JR.,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C-17-321043-1

Dept No: IX

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

PLEASE TAKE NOTICE that on August 20, 2021, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you 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 August 24, 2021.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 24 day of August 2021, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

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

☒ The United States mail addressed as follows:

Richard Newsome, Jr. # 1194269
P.O. Box 1989
Ely, NV 89301

Terrence M. Jackson, Esq.
624 S. Ninth St.
Las Vegas, NV 89101

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,
Plaintiff,

-vs-

RICHARD NEWSOME, JR.,
#5437116
Defendant.

CASE NO: C-17-321043-1

DEPT NO: IX

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

DATE OF HEARING: AUGUST 4, 2021
TIME OF HEARING: 12:30 PM

THIS CAUSE having come on for hearing before the Honorable CRISTINA D. SILVA, District Judge, on the 4th day of August, 2021, the Petitioner not being present, represented by TERRENCE JACKSON, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through KAREN MISHLER, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On February 2, 2017, Defendant Richard Newsome, Jr. ("Defendant") was charged with the following: Count 1 – Murder With Use of a Deadly Weapon (Category A Felony –

1 NRS 200.010, 200.030, 193.165); Count 2 – Assault With Use of a Deadly Weapon (Category
2 B Felony – NRS 200.471).

3 On December 14, 2017, Defendant pled guilty to one count of Second-Degree Murder
4 With Use of a Deadly Weapon. Pursuant to the negotiations as contained in the Guilty Plea
5 Agreement (“GPA”), the State would retain the right to argue at sentencing.

6 On February 8, 2018, Defendant received a sentence of 10 years to life in the Nevada
7 Department of Corrections. The Judgment of Conviction was filed on March 5, 2018.
8 Defendant did not file a direct appeal.

9 On February 1, 2019, Defendant filed a Petition for Writ of Habeas Corpus (“First
10 Petition”), Supplemental Petition for Writ of Habeas Corpus (“Supplement”), Motion for
11 Appointment of Counsel (“Motion”), and Request for an Evidentiary Hearing (“Request”). On
12 May 1, 2019, the State filed a response to Defendant’s First Petition, Supplement, Motion, and
13 Request. On May 28, 2019, this Court denied Defendant’s First Petition, Supplement, Motion,
14 and Request. The Findings of Fact, Conclusions of Law were filed on June 26, 2019. On July
15 13, 2020, the Nevada Court of Appeals affirmed the district court’s denial of Defendant’s First
16 Petition. Newsome v. State, No. 79044-COA (Order of Affirmance, Jul. 13, 2020). Remittitur
17 issued on August 10, 2020.

18 On October 9, 2020, Defendant filed another Petition for Writ of Habeas Corpus
19 (“Second Petition”). On November 23, 2020, the State filed its Response. On December 17,
20 2020, this Court denied Defendant’s Second Petition. The Findings of Fact, Conclusions of
21 Law and Order were filed on April 5, 2021.

22 On March 9, 2021, Defendant filed a Motion to Correct Illegal Sentence. On March 31,
23 2021, Terrence Jackson, Esq. confirmed as counsel. On April 20, 2021, the State filed its
24 Opposition to Defendant’s Motion to Correct Illegal Sentence.

25 On June 2, 2021, Defendant, through counsel, filed a Supplemental Points and
26 Authorities in Support of Writ of Habeas Corpus for Post-Conviction Relief (“Third Petition”).
27 On July 7, 2021, the State filed its Response. On July 23, 2021, Defendant filed a Reply. On
28 August 4, 2021, this Court denied the Third Petition, finding as follows:

1 **ANALYSIS**

2 **I. THE THIRD PETITION IS PROCEDURALLY BARRED**

3 The Third Petition is untimely and successive, and Defendant fails to present claims of
4 good cause and prejudice. Defendant also fails to substantiate his allegation that a fundamental
5 miscarriage of justice would result if his claims are not heard. Accordingly, his claims are
6 barred from consideration.

7 **a. The Third Petition is Untimely**

8 The Third Petition is untimely under NRS 34.726, and therefore its claims cannot be
9 considered in the absence of a showing of good cause and prejudice. NRS 34.726(1) requires
10 a petitioner to challenge the validity of his judgment or sentence within one year from the entry
11 of judgment of conviction or the issuance of remittitur from his direct appeal.

12 This one-year time limit is strictly applied and begins to run from the date the judgment
13 of conviction is filed or remittitur issues from a timely filed direct appeal. Pellegrini v. State,
14 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001); Dickerson v. State, 114 Nev. 1084, 1087, 967
15 P.2d 1132, 1133-34 (1998). “Application of the statutory procedural default rules to post-
16 conviction habeas petitions is mandatory,” and “cannot be ignored [by the district court] when
17 properly raised by the State.” State v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231
18 & 233, 112 P.3d 1070, 1074–75 (2005). For example, in Gonzales v. State, the Nevada
19 Supreme Court rejected a habeas petition filed two days late despite evidence presented by the
20 defendant that he purchased postage through the prison and mailed the Notice within the one-
21 year time limit. 118 Nev. 590, 596, 53 P.3d 901, 904 (2002). Absent a showing of good cause
22 and prejudice, courts have no discretion regarding whether to apply the statutory procedural
23 bars.

24 Here, Defendant’s Judgment of Conviction was filed on March 5, 2018, and Defendant
25 did not file a direct appeal. Defendant then had until March 5, 2019 to timely file a petition for
26 writ of habeas corpus. The Third Petition was filed on June 2, 2021, two years after the one-
27 year deadline of NRS 34.726. Accordingly, absent a showing of good cause and prejudice, the
28 Third Petition must be dismissed as untimely.

1 **b. The Third Petition is Successive**

2 Defendant has twice previously sought post-conviction relief, and therefore the Third
3 Petition is successive. NRS 34.810(1)(b)(2); 34.810(2). “Successive petitions may be
4 dismissed based solely on the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901
5 P.2d 123, 129 (1995). Courts are required to dismiss successive post-conviction petitions if a
6 prior petition was decided on the merits and a petitioner fails to raise new grounds for relief,
7 or if a petitioner does raise new grounds for relief but failure to assert those grounds in any
8 prior petition was an abuse of the writ. NRS 34.810(2); See Riker, 121 Nev. at 231, 112 P.3d
9 at 1074. Successive petitions will only be decided on the merits if the petitioner can show good
10 cause and prejudice for failing to raise the new grounds in their first petition. NRS 34.810(3);
11 Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994). If a claim or allegation was
12 previously available with reasonable diligence, it is an abuse of the writ to wait to assert it in
13 a later petition. McClesky v. Zant, 499 U.S. 467, 497-98, 111 S.Ct. 1454, 1472 (1991).

14 The Third Petition must be denied as successive. Defendant raises three substantive
15 claims: that his plea counsel was conflicted, that his plea counsel rendered ineffective
16 assistance through insufficient investigation and preparation, and that his guilty plea was not
17 entered voluntarily. The first two claims were previously available to Defendant to be raised
18 in his previous petitions, and therefore his failure to assert these claims previously is an abuse
19 of the writ. NRS 34.810(2). Because these claims could have been raised in either of his
20 previous petitions, these claims must be summarily dismissed in the absence of good cause
21 and prejudice. NRS 34.810(b)(1)(2). Further, Defendant’s claim that his guilty plea was not
22 voluntarily entered was also raised in his First Petition, and this claim was denied on its merits.
23 Accordingly, this claim must be summarily dismissed. NRS 34.810(2).

24 **c. Defendant Has Not Demonstrated Good Cause and Prejudice to Overcome**
25 **the Procedural Bars**

26 Defendant has failed to demonstrate the requisite good cause and prejudice to overcome
27 the procedural bars to his Petition. This Court may only consider the merits of the Third
28 Petition if Defendant establishes both good cause and prejudice for the delay in filing and the

1 successive nature of his claims. NRS 34.726(1)(a)-(b); NRS 34.810(3). Accordingly, the Third
2 Petition must be summarily denied.

3 Simply put, good cause is a “substantial reason; one that affords a legal excuse.”
4 Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105
5 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Defendant has the burden of pleading and proving
6 specific facts that demonstrate good cause for his failure to comply with the statutory
7 requirements, *and* that he will be unduly prejudiced if the petition is dismissed. NRS
8 34.726(1)(a); *see* Hogan v. Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993);
9 Phelps v. Nevada Dep’t of Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). “A court
10 *must* dismiss a habeas petition if it presents claims that either were or could have been
11 presented in an earlier proceeding, unless the court finds both cause for failing to present the
12 claims earlier or for raising them again and actual prejudice to the petitioner.” Evans v. State,
13 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001) (emphasis added).

14 To show good cause, a petitioner must demonstrate the following: (1) “[t]hat the delay
15 is not the fault of the petitioner” and (2) that the petitioner will be “unduly prejudice[d]” if the
16 petition is dismissed as untimely. NRS 34.726. To meet the first requirement, “a petitioner
17 *must* show that an impediment external to the defense prevented him or her from complying
18 with the state procedural default rules.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503,
19 506 (2003) (emphasis added). “A qualifying impediment might be shown where the factual or
20 legal basis for a claim was not reasonably available *at the time of default*.” Clem v. State, 119
21 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). To find good cause there must be
22 a “substantial reason; one that affords a legal excuse.” Hathaway, 119 Nev. at 252, 71 P.3d at
23 506 (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Any delay in
24 the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

25 As the Third Petition is both untimely and successive, Defendant must overcome the
26 procedural bars under both NRS 34.726 and NRS 34.810. “In terms of a procedural time-bar,
27 an adequate allegation of good cause would sufficiently explain why a petition was filed
28 beyond the statutory time period.” Harris v. State, 133 Nev. 683, 687, 407 P.3d 348, 352 (Nev.

1 App. 2017) (quoting Hathaway v. State, 119 Nev. 248, 252-5371 P.3d 503, 506 (2003). To
2 overcome the procedural bars against successive petitions, “NRS 34.810(3) requires the
3 petitioner to plead and prove specific facts demonstrating good cause for a “failure to present
4 the claim or for presenting the claim again” and actual prejudice.” Nika v. State, 120 Nev. 600,
5 607, 97 P.3d 1140, 1145 (2004).

6 Further, a petitioner raising good cause to excuse procedural bars must do so within a
7 reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34
8 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see
9 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably
10 available to the petitioner during the statutory time period did not constitute good cause to
11 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good
12 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,
13 453 120 S. Ct. 1587, 1592 (2000).

14 In order to establish prejudice, the defendant must show ““not merely that the errors of
15 [the proceedings] created possibility of prejudice, but that they worked to his actual and
16 substantial disadvantage, in affecting the state proceedings with error of constitutional
17 dimensions.”” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United
18 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). As discussed more fully
19 *infra* in Section II, Defendant’s claims are without merit. Accordingly, he has failed entirely
20 to establish prejudice.

21 A petitioner “cannot rely on conclusory claims for relief but must plead and prove
22 specific facts demonstrating good cause and actual prejudice.” State v. Haberstroh, 119 Nev.
23 173, 184, 69 P.3d 676, 684 (2003), as modified (June 9, 2003). See also NRS 34.810(3); Evans
24 v. State, 117 Nev. 609, 621, 28 P.3d 498, 507 (2001); Bejarano v. Warden, 112 Nev. 1466,
25 1471, 929 P.2d 922, 925 (1996). Defendant has failed to meet his burden to plead and prove
26 specific facts that would establish good cause. In his Third Petition, Defendant attempts to
27 establish good cause by referencing factors that have been repeatedly rejected by Nevada
28 courts as good cause claims. Defendant claims his delay in filing resulted from “his lack of

1 legal sophistication and his inability to obtain counsel immediately after conviction.” Third
2 Petition, at 14. A lack of legal training does not constitute good cause for filing a procedurally
3 defaulted petition. Such a claim does not demonstrate an impediment external to the defense
4 that prevented Defendant from complying with the procedural bars. See Phelps v. Dir., Nev.
5 Dep’t of Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding that petitioner’s
6 claim of organic brain damage, borderline mental retardation and poor legal assistance from
7 inmate law clerks did not constitute good cause for the filing of a successive post-conviction
8 petition). See also State v. Williams, 120 Nev. 473, 478, 93 P.3d 1258, 1261 (2004) (finding
9 no good cause where petitioner claimed she could not have raised a post-conviction claim
10 previously due to “its highly complex, esoteric, and scientific nature”). Further, Defendant’s
11 lack of legal sophistication did not prevent him from filing a timely First Petition, and thus
12 Defendant’s claim that his ignorance of the law caused the delay in filing is highly suspect.

13 Similarly, Defendant’s lack of post-conviction counsel does not constitute good cause
14 for filing an untimely and successive petition, because he had no statutory right to post-
15 conviction counsel. NRS 34.750(1). As such, the absence of post-conviction counsel cannot
16 provide good cause for filing an untimely and successive petition. See Brown v. McDaniel,
17 130 Nev. 565, 569, 331 P.3d 867, 870 (2014) (concluding that claims of ineffective assistance
18 of postconviction counsel in noncapital cases do not constitute good cause for a successive
19 petition because there is no statutory entitlement to postconviction counsel).

20 Defendant’s complaints about the prison library also do not establish good cause. Third
21 Petition, at 15. See Navarrette v. Williams, 461 P.3d 898, No. 79147, 2020 WL 2042695, at
22 *2 (Nev. App. 2020) (unpublished disposition). See also Monroe v. State, 422 P.3d 711, No.
23 72944, 2018 WL 3545167, at *1 (Nev. 2018) (unpublished disposition) (finding petitioner’s
24 arguments that he was not provided discovery, had a limited education, did not have access to
25 the law library, and was kept in isolation did not constitute good cause). The alleged
26 inadequacy of the prison law library did not prevent Defendant from filing two previous
27 petitions, and one of the claims he raises in the instant Third Petition (the voluntariness of his
28 guilty plea) was previously raised in his timely First Petition. Defendant also fails to explain

1 how the alleged limitations of the prison law library prevented him from raising his claims in
2 his First Petition, or why it necessitates re-raising already litigated claims. He merely makes a
3 general claim that the prison's law library is inadequate. "[A]n inmate cannot establish relevant
4 actual injury simply by establishing that his prison's law library or legal assistance program is
5 subpar in some theoretical sense." Lewis v. Casey, 518 U.S. 343, 351, 116 S. Ct. 2174, 2180
6 (1996).

7 Defendant ignores the fact that it is his burden to plead specific factual allegations that
8 would amount to good cause if they were established as true. His assurances that if an
9 evidentiary hearing is held, he will be able to establish "numerous impediments" that
10 prevented him from filing a timely petition is not sufficient. Third Petition, at 14. "[A
11 petitioner] must plead and prove specific facts that demonstrate good cause for his failure to
12 present claims before or for presenting claims again and actual prejudice." State v. Eighth Jud.
13 Dist. Ct. ex rel. Cty. of Clark (Riker), 121 Nev. 225, 232, 112 P.3d 1070, 1075 (2005). See
14 also Berry v. State, 131 Nev. 957, 967, 363 P.3d 1148, 1154 (2015). Additionally, "a party
15 cannot force the district court to hold an evidentiary hearing by withholding information about
16 a claim." Moore v. State, 134 Nev. 262, 264, 417 P.3d 356, 359 (2018). See also Means v.
17 State, 120 Nev. 1001, 1016, 103 P.3d 25, 35 (2004) ("A post-conviction
18 habeas petitioner is entitled to an evidentiary hearing "only if he supports his claims with
19 specific factual allegations that if true would entitle him to relief."); Hargrove v. State, 100
20 Nev. 498, 502, 686 P.2d 222, 225 (1984) (recognizing that a petitioner is entitled to
21 an evidentiary hearing regarding his claim if it is not belied by the record and, if true, would
22 warrant relief). In a feeble attempt to demonstrate good cause, Defendant claims only that he
23 lacks legal sophistication, did not have post-conviction counsel initially, and that the prison
24 law library is generally inadequate. These claims are not impediments external to the defense,
25 and the courts have repeatedly rejected them as good cause claims. Defendant has presented
26 no specific factual allegations that, if true, would excuse his untimely and successive filings.
27 He has failed entirely to establish good cause.

28 ///

1 **d. Defendant Has Not Established a Fundamental Miscarriage of Justice**

2 Defendant’s fundamental miscarriage of justice claim is a bare and naked claim entirely
3 devoid of factual specificity, and thus must be summarily denied. Hargrove, 100 Nev. at 502,
4 686 P.2d at 225. Defendant fails to explain precisely what fundamental miscarriage of justice
5 would result—he simply cites some of the law pertaining to fundamental miscarriage of justice
6 claims, then concludes with the entirely unsupported assertion that “any procedural default
7 should be excused in this case.” Third Petition, at 16.

8 It is true that even when a petitioner cannot demonstrate good cause, the court may
9 nonetheless excuse a procedural bar if the petitioner demonstrates that failure to consider the
10 petition would result in a fundamental miscarriage of justice. Pellegrini v. State, 117 Nev. 860,
11 887, 34 P.3d 519, 537 (2001). “The conviction of a petitioner who was actually innocent
12 would be a fundamental miscarriage of justice sufficient to overcome the procedural bars to
13 an untimely or successive petition.” Mitchell v. State, 122 Nev. 1269, 1273, 149 P.3d 33, 36
14 (2006). A fundamental miscarriage of justice requires “a colorable showing” that the petitioner
15 is “actually innocent of the crime.” Pellegrini, 117 Nev. at 887, 34 P.3d at 537.

16 To be entitled to a hearing on a fundamental miscarriage of justice claim, a petitioner
17 must plead “specific factual allegations that, if true, and not belied by the record, would show
18 that it is more likely than not that no reasonable juror would have convicted him beyond a
19 reasonable doubt given the new evidence.” Berry, 131 Nev. at 968, 363 P.3d at 1155.
20 Defendant has not met this burden. It is not entirely clear if he is even raising an actual
21 innocence claim, as he merely states that “factual innocence is an exception to the procedural
22 bar of NRS 34.726.1.” Third Petition, at 14. He makes no factual allegations of any kind.
23 Accordingly, he has not made specific factual allegations that, if true, would establish a
24 fundamental miscarriage of justice to overcome the procedural bars to his Petition. He has not
25 plead a fundamental miscarriage of justice claim that would warrant relief, and therefore he is
26 not entitled to an evidentiary hearing on this issue. Defendant has failed to overcome the
27 procedural bars to his Third Petition. Accordingly, the Third Petition is denied.

1 **II. DEFENDANT’S CLAIM THAT HIS GUILTY PLEA WAS**
2 **INVOLUNTARILY ENTERED IS BARRED UNDER THE LAW OF THE**
3 **CASE DOCTRINE**

4 The doctrine of the law of the case bars relitigation of this issue. “[T]he law of a prior
5 appeal is the law of the case in later proceedings in which the facts are substantially the same;
6 this doctrine cannot be avoided by more detailed and precisely focused argument.” State v.
7 Eighth Jud. Dist. Ct. ex rel. Cty. of Clark (Riker), 121 Nev. 225, 232–33, 112 P.3d 1070, 1075
8 (2005) (citing Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975)). Furthermore,
9 this Court cannot overrule either of Nevada’s appellate courts. NEV. CONST. Art. VI § 6. “The
10 law of the case doctrine holds that the law of a first appeal is the law of the case on all
11 subsequent appeals in which the facts are substantially the same.” Clem v. State, 119 Nev.
12 615, 620, 81 P.3d 521, 525 (2003) (citing Hall, 91 Nev. at 315, 535 P.2d at 798).

13 In his First Petition, Defendant claimed that his guilty plea was not entered knowingly
14 and voluntarily. The district court considered this claim, reviewed the record, and found that
15 Defendant’s guilty plea was entered freely and voluntarily. This conclusion was affirmed on
16 appeal. Newsome v. State, No. 79044-COA (Order of Affirmance, Jul. 13, 2020). This
17 conclusion is now law of the case. The facts considered by the district court and the Nevada
18 Court of Appeals in considering this claim consisted of the Guilty Plea Agreement signed by
19 Defendant and the plea canvass. Thus, the relevant facts remain the same. Accordingly,
20 Defendant’s attempt to resuscitate his claim that his guilty plea was not voluntary cannot be
21 considered by this Court.

22 **III. DEFENDANT IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

23 Defendant is not entitled to an evidentiary hearing on his claims because no expansion
24 of the record is necessary to resolve his claims. He had failed to plead specific facts that, if
25 true, would establish good cause and prejudice to overcome the procedural bars to the Petition.
26 His substantive claims are similarly plead in a vague and conclusive manner insufficient to
27 warrant post-conviction relief.

28 ///

1 NRS 34.770 provides the manner in which the district court decides whether an
2 evidentiary hearing is required. It reads:

- 3 1. The judge or justice, upon review of the return, answer and all
4 supporting documents which are filed, shall determine whether
5 an evidentiary hearing is required. A petitioner must not be
6 discharged or committed to the custody of a person other than the
7 respondent unless an evidentiary hearing is held.
- 8 2. If the judge or justice determines that the petitioner is not
9 entitled to relief and an evidentiary hearing is not required, he
10 shall dismiss the petition without a hearing.
- 11 3. If the judge or justice determines that an evidentiary hearing
12 is required, he shall grant the writ and shall set a date for the
13 hearing.

14 (Emphasis added).

15 The Nevada Supreme Court has held that if a petition can be resolved without
16 expanding the record, then no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351,
17 356, 46 P.3d 1228, 1231 (2002); Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605
18 (1994). A defendant is entitled to an evidentiary hearing if his petition is supported by specific
19 factual allegations, which, if true, would entitle him to relief unless the factual allegations are
20 repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; Hargrove, 100 Nev. at
21 502, 686 P.2d at 225 ("[a] defendant seeking post-conviction relief is not entitled to an
22 evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is
23 'belied' when it is contradicted or proven to be false by the record as it existed at the time the
24 claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

25 In this instance, Defendant is not entitled to an evidentiary hearing because there is no
26 need to expand the record. All of the law and facts necessary to dispose of Defendant's claims
27 are already available. It is clear from the record that the Third Petition is untimely and
28 successive. Defendant has not demonstrated the requisite good cause and prejudice to
overcome these defects. His mere promise that he could demonstrate such good cause if
granted an evidentiary hearing is insufficient. He is required to plead specific facts as to good
cause; he is not entitled to an evidentiary hearing simply because he maintains he can
demonstrate good cause at such a hearing. See, e.g., Riker, 121 Nev. at 232, 112 P.3d at 1075.
Additionally, his claim that his guilty plea was involuntarily entered is barred under the law

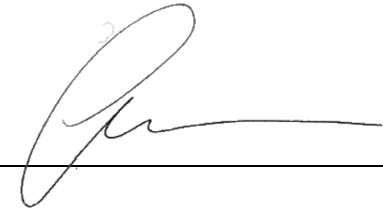
1 of the case doctrine. Finally, even if the Third Petition were not procedurally barred,
2 Defendant's vague and speculative claims are not specific factual allegations that, if true,
3 would entitle him to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Accordingly, his
4 request for an evidentiary hearing is denied.

5 **ORDER**

6 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus
7 shall be, and it is, hereby denied.

8 ~~DATED this 17th day of August, 2021.~~

Dated this 20th day of August, 2021

9
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11 
12

EC

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

38A 7AF 110F F3AA
Cristina D. Silva
District Court Judge

15 BY /s/ KAREN MISHLER
16 KAREN MISHLER
17 Chief Deputy District Attorney
Nevada Bar #013730

18 **CERTIFICATE OF ELECTRONIC FILING**

19 I hereby certify that service of the foregoing, was made this 17th day of August, 2021,
20 by Electronic Filing to:

21 TERRENCE JACKSON, ESQ.

22 E-mail Address: Terry.jackson.esq@gmail.com

23
24 /s/ Janet Hayes
25 Secretary for the District Attorney's Office
26
27
28

1 CERTIFICATE OF SERVICE

2 I certify that on the 17th day of August, 2021, I mailed a copy of the foregoing proposed
3 Findings of Fact, Conclusions of Law, and Order to:

4 RICHARD NEWSOME, BAC #1194269
5 HIGH DESERT STATE PRISON
6 P. O. BOX 650
7 INDIAN SPRINGS, NEVADA 89701

8 BY /s/ J. HAYES
9 Secretary for the District Attorney's Office
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28 17F00941X/km/jh/MVU

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 State of Nevada

CASE NO: C-17-321043-1

7 vs

DEPT. NO. Department 9

8 Richard Newsome, Jr.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 8/20/2021

15 Eileen Davis

eileen.davis@clarkcountyda.com

16 Dept 09 Law Clerk

dept09lc@clarkcoutycourts.us

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 02, 2017

C-17-321043-1 State of Nevada
vs
Richard Newsome, Jr.

February 02, 2017 11:45 AM Grand Jury Indictment

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 10B

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: Cooper, Jonathan Attorney
 Jones, Tierra D. Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- John Blackwell, Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. State presented Grand Jury Case Number 16BGJ059X to the Court. COURT ORDERED, the Indictment may be filed and is assigned Case Number C-17-321043-1, Department XXI.

Ms. Jones requested a warrant, no bail, and advised Deft is in custody on a no bail hold. COURT ORDERED, INDICTMENT WARRANT ISSUED, NO BAIL, and matter SET for Arraignment. COURT FURTHER ORDERED, Exhibits 1 - 16 to be lodged with the Clerk of the Court.

At request of the State, Las Vegas Justice Court Case No. 17F00941X DISMISSED.

I.W. (CUSTODY)

2-9-17 9:30 AM INITIAL ARRAIGNMENT (DEPT XXI)

PRINT DATE: 09/03/2021

Page 1 of 21

Minutes Date: February 02, 2017

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 09, 2017

C-17-321043-1 State of Nevada
 vs
 Richard Newsome, Jr.

February 09, 2017 9:30 AM All Pending Motions

HEARD BY: Adair, Valerie **COURTROOM:** RJC Courtroom 11C

COURT CLERK: Jill Chambers

RECORDER: Susan Schofield

REPORTER:

PARTIES

PRESENT:	Momot, John Joseph	Attorney
	Newsome, Richard Allan, Jr.	Defendant
	Pesci, Giancarlo	Attorney
	State of Nevada	Plaintiff
	Zheng, Yi Lin	Attorney

JOURNAL ENTRIES

- INITIAL ARRAIGNMENT...INDICTMENT WARRANT RETURN

Mr. Momot requested the Court pass the matter for confirmation of counsel and the initial arraignment. Mr. Pesci made no objection and noted that a file-stamped copy of the Indictment and the Grand Jury transcripts were provided to the defense. Court CONTINUED MATTER.

CUSTODY

CONTINUED TO: 2/16/17 9:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****February 09, 2017**

C-17-321043-1 State of Nevada
vs
Richard Newsome, Jr.

February 09, 2017 11:45 AM Grand Jury Indictment

HEARD BY: Johnson, Eric **COURTROOM:** RJC Courtroom 10B

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Cooper, Jonathan	Attorney
	Jones, Tierra D.	Attorney
	Pesci, Giancarlo	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- John Blackwell, Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. State presented Grand Jury Case Number 16BGJ059A to the Court. COURT ORDERED, the Indictment may be filed and is assigned Case Number C-17-321043-1, Department XXI.

Ms. Jones requested a warrant, argued no bail be set for Mr. Newsome, and advised he is in custody. COURT ORDERED, INDICTMENT WARRANT ISSUED, NO BAIL, and matter SET for Arraignment. State advised Exhibits 1 - 16 were previously lodged with the Clerk of the Court. COURT FURTHER ORDERED, Exhibits 1a and 2a to be lodged with the Clerk of the Court.

I.W. (CUSTODY)

2-16-17 9:30 AM INITIAL ARRAIGNMENT (DEPT XXI - Adair)

PRINT DATE: 09/03/2021

Page 3 of 21

Minutes Date: February 02, 2017

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

February 16, 2017

C-17-321043-1 State of Nevada
vs
Richard Newsome, Jr.

February 16, 2017 9:30 AM Initial Arraignment

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Jill Chambers

RECORDER: Susan Schofield

REPORTER:

PARTIES

PRESENT: Jones, Tierra D. Attorney
Momot, John Joseph Attorney
Newsome, Richard Allan, Jr. Defendant
State of Nevada Plaintiff
Zheng, Yi Lin Attorney

JOURNAL ENTRIES

- Mr. Momot CONFIRMED as counsel. DEFT. NEWSOME ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. COURT ORDERED, matter set for trial.

CUSTODY

6/1/17 9:30 AM CALENDAR CALL
6/5/17 9:30 AM JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

May 30, 2017

C-17-321043-1 State of Nevada
vs
Richard Newsome, Jr.

May 30, 2017 9:30 AM Motion to Continue Trial

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Jill Chambers

RECORDER: Susan Schofield

REPORTER:

PARTIES

PRESENT:	Newsome, Richard Allan, Jr.	Defendant
	Pesci, Giancarlo	Attorney
	State of Nevada	Plaintiff
	Zheng, Yi Lin	Attorney

JOURNAL ENTRIES

- Ms. Zheng requested the trial date be continued as there is an on-going exchange of discovery. Mr. Pesci made no objection. COURT CONTINUED TRIAL DATE.

CUSTODY

10/12/17 9:30 AM CALENDAR CALL

10/16/17 9:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 26, 2017

C-17-321043-1 State of Nevada
 vs
 Richard Newsome, Jr.

September 26, 2017 9:30 AM Motion to Continue Trial

HEARD BY: Adair, Valerie **COURTROOM:** RJC Courtroom 11C

COURT CLERK: Jill Chambers

RECORDER: Susan Schofield

REPORTER:

PARTIES

PRESENT:	Newsome, Richard Allan, Jr.	Defendant
	Overly, Sarah	Attorney
	State of Nevada	Plaintiff
	Zheng, Yi Lin	Attorney

JOURNAL ENTRIES

- Colloquy regarding trial readiness. Ms. Zheng stated she was not going to be ready for trial because she was preparing for other trials. Upon inquiry of the Court, Ms. Zheng stated there were no offers extended, only discussion. Court directed the State to extend an offer within two weeks and Ms. Zheng to meet with the Deft's. Court CONTINUED matter.

BOND

CONTINUED TO: 10/17/17 9:30 AM

1/11/18 9:30 AM CALENDAR CALL
1/16/18 9:00 AM JURY TRIAL - FIRM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 17, 2017

C-17-321043-1	State of Nevada
	vs
	Richard Newsome, Jr.

October 17, 2017	9:30 AM	Status Check: Trial Readiness
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HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Jill Chambers

RECORDER: Susan Schofield
Gail Reiger

REPORTER:

PARTIES

PRESENT:	Bluth, Jacqueline	Attorney
	Newsome, Richard Allan, Jr.	Defendant
	State of Nevada	Plaintiff
	Zheng, Yi Lin	Attorney

JOURNAL ENTRIES

- Ms. Zheng stated that Mr. Pesci was working on an offer and intends on meeting with the victim's family to see if the offer is sufficient. Ms. Bluth stated that Mr. Pesci would be meeting with the family the following day. COURT ORDERED, MATTER CONTINUED.

NIC (COC-NDC)

CONTINUED TO: 10/31/17 9:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 31, 2017

C-17-321043-1	State of Nevada
	vs
	Richard Newsome, Jr.

October 31, 2017	9:30 AM	Status Check: Trial Readiness
------------------	---------	----------------------------------

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Jill Chambers

RECORDER: Susan Schofield

REPORTER:

PARTIES

PRESENT:	Newsome, Richard Allan, Jr.	Defendant
	Pesci, Giancarlo	Attorney
	State of Nevada	Plaintiff
	Zheng, Yi Lin	Attorney

JOURNAL ENTRIES

- Ms. Zheng stated she received an offer yesterday and requested additional time to review with the Defts. COURT ORDERED, MATTER CONTINUED.

NIC (COC-NDC)

CONTINUED TO: 11/14/17 9:30 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

November 14, 2017

C-17-321043-1 State of Nevada
vs
Richard Newsome, Jr.

November 14, 2017 9:30 AM Status Check: Trial
Readiness

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Jill Chambers

RECORDER: Susan Schofield

REPORTER:

PARTIES

PRESENT: Bluth, Jacqueline Attorney
Newsome, Richard Allan, Jr. Defendant
State of Nevada Plaintiff
Zheng, Yi Lin Attorney

JOURNAL ENTRIES

- Upon inquiry of the Court, Ms. Zheng stated that the case was resolved and requested a continuance to execute the plea agreement. COURT ORDERED, MATTER CONTINUED.

NIC (COC-NDC)

CONTINUED TO: 11/30/17 9:30 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

November 30, 2017

C-17-321043-1 State of Nevada
vs
Richard Newsome, Jr.

**November 30, 2017 9:30 AM Status Check: Trial
Readiness**

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Jill Chambers

RECORDER: Susan Schofield

REPORTER:

PARTIES

PRESENT: Newsome, Richard Allan, Jr. Defendant
Pesci, Giancarlo Attorney
State of Nevada Plaintiff
Zheng, Yi Lin Attorney

JOURNAL ENTRIES

- Ms. Zheng stated the Guilty Plea Agreements were being prepared and requested the matter be continued to give her the opportunity to review them with the Defts. COURT ORDERED, MATTER CONTINUED.

CUSTODY

CONTINUED TO: 12/14/17 9:30 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

December 14, 2017

C-17-321043-1 State of Nevada
vs
Richard Newsome, Jr.

**December 14, 2017 9:30 AM Status Check: Trial
Readiness**

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Jill Chambers

RECORDER: Susan Schofield

REPORTER:

PARTIES

PRESENT:	Newsome, Richard Allan, Jr.	Defendant
	Pesci, Giancarlo	Attorney
	State of Nevada	Plaintiff
	Zheng, Yi Lin	Attorney

JOURNAL ENTRIES

- Second Amended Superseding Indictment FILED IN OPEN COURT. NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. NEWSOME ARRAIGNED AND PLED GUILTY TO MURDER (SECOND DEGREE) WITH US OF A DEADLY WEAPON (F). Court ACCEPTED plea and ORDERED, matter referred to the Division of Parole and Probation (P & P) and set for SENTENCING.

Ms. Zheng made an oral motion to allow the Deft's mother to visit him while he's incarcerated adding that she sent Mr. Pesci a text message and he replied that he would submit to the Court's decision. Court GRANTED the oral motion for visitation.

NIC (COC-NDC)

2/8/18 9:30 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****February 08, 2018**

C-17-321043-1 State of Nevada
vs
Richard Newsome, Jr.

February 08, 2018 9:30 AM Sentencing

HEARD BY: Adair, Valerie **COURTROOM:** RJC Courtroom 11C

COURT CLERK: Jill Chambers

RECORDER: Susan Schofield

REPORTER:

PARTIES

PRESENT:	Newsome, Richard Allan, Jr.	Defendant
	Pesci, Giancarlo	Attorney
	State of Nevada	Plaintiff
	Zheng, Yi Lin	Attorney

JOURNAL ENTRIES

- Court noted a sentencing memorandum was received from the State and reviewed. Ms. Zheng stated she also provided one for the Court. Court TRAILED MATTER to review it.

MATTER RECALLED.

Following a conference at the bench, Court advised parties that all sentencing memorandums were reviewed. Argument by counsel. Statement by Deft. Statement by victim speakers.

DEFT NEWSOME ADJUDGED GUILTY of MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON (F). COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$20,612.47 in restitution payable jointly and severally with the co-Deft. to the victim's family and \$864.61 to Victim's of Crime, a \$150.00 DNA Analysis fee including testing to determine genetic markers, and \$3.00 DNA Collection fee, Deft. SENTENCED to LIFE with the possibility of parole

after TEN (10) YEARS in the Nevada Department of Corrections (NDC) with a CONSECUTIVE TERM of a MINIMUM of NINETY-SIX (96) MONTHS and a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS in the Nevada Department of Corrections (NDC).

BOND, if any, EXONERATED.

NDC

CLERK'S NOTE: Matter placed back on calendar to have credit for time served ordered. jmc 2/8/18

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

February 15, 2018

C-17-321043-1 State of Nevada
vs
Richard Newsome, Jr.

February 15, 2018 9:30 AM Further Proceedings

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Jill Chambers

RECORDER: Susan Schofield

REPORTER:

PARTIES

PRESENT:	Newsome, Richard Allan, Jr.	Defendant
	Pesci, Giancarlo	Attorney
	State of Nevada	Plaintiff
	Zheng, Yi Lin	Attorney

JOURNAL ENTRIES

- Ms. Zheng stated the Deft. was in custody for 394 days. Mr. Pesci agreed. COURT ORDERED, DEFT. to receive THREE HUNDRED NINETY-FOUR (394) DAYS credit for time served.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 18, 2018

C-17-321043-1 State of Nevada
 vs
 Richard Newsome, Jr.

**October 18, 2018 9:30 AM Motion to Withdraw as
 Counsel**

HEARD BY: Adair, Valerie

COURTROOM: RJC Courtroom 11C

COURT CLERK: Jill Chambers

RECORDER: Susan Schofield

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT ORDERED, MOTION GRANTED.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 31, 2021

C-17-321043-1 State of Nevada
 vs
 Richard Newsome, Jr.

March 31, 2021 11:00 AM All Pending Motions

HEARD BY: Silva, Cristina D. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Kory Schlitz

RECORDER: Gina Villani

REPORTER:

PARTIES

PRESENT: Jackson, Terrence Michael Attorney

JOURNAL ENTRIES

- MOTION FOR APPOINTMENT / CONFIRMATION OF COUNSEL... MOTION TO CORRECT ILLEGAL SENTENCE...

Defendant not present and in custody in the Nevada Department of Corrections; Deputy District Attorney Jory Scarborough present on behalf of the State.

Upon Court's inquiry, Mr. Jackson stated he can confirm as counsel of record, and requested a status check in thirty days before setting a briefing schedule. COURT ORDERED, status check SET on the out of custody calendar and the Defendant's presence will be WAIVED. Mr. Scarborough informed the Court the State was never served with the Motion to Correct Illegal Sentence and the State was going to request more time to respond. COURT STATED additional time will be provided to the State as the Motion can be construed as Motion for New Trial as well.

NIC (COC-NDC)

4/28/2021 12:30 P.M. STATUS CHECK: MOTION TO CORRECT ILLEGAL SENTENCE

PRINT DATE: 09/03/2021

Page 17 of 21

Minutes Date: February 02, 2017

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 28, 2021

C-17-321043-1	State of Nevada
	vs
	Richard Newsome, Jr.

April 28, 2021	12:30 AM	Status Check	Status Check: Motion to Correct Illegal Sentence
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HEARD BY: Silva, Cristina D.

COURTROOM: RJC Courtroom 11B

COURT CLERK: Kory Schlitz

RECORDER: Gina Villani

REPORTER:

PARTIES

PRESENT: Jackson, Terrence Michael Attorney

JOURNAL ENTRIES

- Defendant not present and in custody in the Nevada Department of Corrections; Deputy District Attorney Ann Dunn present on behalf of the State.

Upon Court's inquiry, Mr. Jackson requested time to file a supplemental brief, adding he just got the file and he is reviewing it, requesting forty-five days. Upon Court's inquiry, Ms. Dunn stated no objection. COURT ORDERED, briefing schedule SET as follows: Defendant's Supplemental Brief shall be filed on or before June 16, 2021; State's Supplemental Opposition shall be filed on or before July 14, 2021; Defendant's Supplemental Reply shall be filed on or before July 28, 2021; matter SET for hearing.

NIC (COC-NDC)

8/4/2021 12:30 P.M. HEARING RE: MOTION TO CORRECT ILLEGAL SENTENCE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****August 04, 2021**

C-17-321043-1 State of Nevada
vs
Richard Newsome, Jr.

**August 04, 2021 12:30 AM Hearing Hearing Re: Motion
to Correct Illegal
Sentence**

HEARD BY: Silva, Cristina D.**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** Kory Schlitz**RECORDER:** Gina Villani**REPORTER:****PARTIES****PRESENT:** Jackson, Terrence Michael Attorney**JOURNAL ENTRIES**

- Defendant not present and in custody in the Nevada Department of Corrections; Deputy District Attorney Dena Rinetti present on behalf of the State.

COURT ORDERED, Defendant's presence waived. Mr. Jackson argued the previous attorney on this case made a mistake representing both Defendants, adding they were a mother and a son, and the Defendant NEWSOME was prejudiced since it was plea bargained. Mr. Jackson argued this is an issue of fundamental fairness since the Defendant got a life sentence, when the Co-Defendant got almost credit for time served. Mr. Jackson requested the Court consider the argument on the merits. Upon Court's inquiry, Mr. Jackson stated he does not know why this issue was not raised in the first Petition. Ms. Rinetti stated they would submit on the Opposition, as there is no legal or factual basis to support the plea for relief. COURT ORDERED Petition DENIED; the Petition is successive and the COURT DOES NOT FIND good cause to overcome the procedural time bars; whether or not the plea was knowingly or voluntarily entered was already addressed and the Court of Appeals affirmed the conviction. COURT FURTHER FINDS the Defendant is not entitled to an Evidentiary Hearing.

COURT DIRECTED the State to prepare a Findings of Fact and Conclusions of Law and to submit it to the Court within thirty days.

NIC (COC-NDC)

GRAND JURY INDICTMENTS RETURNED IN OPEN COURT FEBRUARY 2, 2017
(From Grand Jury sessions held on February 1, 2017)

JUDGE ELIZABETH GONZALEZ
FOREPERSON JOHN BLACKWELL

CHIEF DEPUTY DISTRICT ATTORNEY GIANCARLO PESCI (007135)
DEPUTY DISTRICT ATTORNEY TIERRA JONES (010094)
CHIEF DEPUTY DISTRICT ATTORNEY CHRISTOPHER HAMNER (011390)
CHIEF DEPUTY DISTRICT ATTORNEY STACEY KOLLINS (005391)

CASE NO. C-17-321043-1
DEPT. NO. XXI
CDDA GIANCARLO PESCI (MVU)

Defendant(s): RICHARD ALLAN NEWSOME, JR., aka, Richard Newsome, #5437116

Case No(s): 16BGJ059X (RANDOMLY TRACKS TO DC V & XXI)

Charge(s): (1) CT - MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001) and
(1) CT - ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471 - NOC 50201)

Def. Counsel(s): WILLIAM TERRY

WARRANT (1 WEEK): NO BAIL 2/9 930 DL21

DEFT IS IN CUSTODY @ CCDC (17F00941X - PH 2/6 IN JC 12)

LVJC CASE TO BE DISM'D: 17F00941X

Exhibits:

- | | |
|-------------------------------|-------------------------|
| 1. Proposed Indictment | 9. Photo |
| 2. Jury Instructions | 10. Photo |
| 3. Photo | 11. Photo |
| 4. Photo | 12. Photo |
| 5. Photo | 13. Photo |
| 6. Photo | 14. Photo lineup |
| 7. Photo | 15. Photo Lineup |
| 8. Photo | 16. Photo |

Exhibits 1 - 16 to be lodged with the Clerk of the Court.

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Exhibits:

- 1. Proposed Indictment**
- 1a. Proposed Superseding Ind**
- 2. Jury Instructions**
- 2a. Jury Instructions**
- 3. Photo**
- 4. Photo**
- 5. Photo**
- 6. Photo**
- 7. Photo**
- 8. Photo**
- 9. Photo**
- 10. Photo**
- 11. Photo**
- 12. Photo**
- 13. Photo**
- 14. Photo lineup**
- 15. Photo Lineup**
- 16. Photo**

Exhibits 1 – 16 were previously lodged with the Clerk of the Court.
Exhibits 1a & 2a to be lodged with the Clerk of the Court.

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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; REQUEST FOR
TRANSCRIPTS; DISTRICT COURT DOCKET ENTRIES; FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST

STATE OF NEVADA,

Plaintiff(s),

vs.

RICHARD NEWSOME
aka RICHARD ALLAN NEWSOME, JR.,

Defendant(s).

Case No: C-17-321043-1

Dept No: IX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 3 day of September 2021.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk