

# IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO LEE MIXON,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Electronically Filed  
May 24 2022 02:46 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No: A-22-847754-W

Docket No: 84677

## RECORD ON APPEAL

**ATTORNEY FOR APPELLANT**

ANTONIO MIXON #1019828,  
PROPER PERSON  
P.O. BOX 1989  
ELY, NV 89301

**ATTORNEY FOR RESPONDENT**

AARON D. FORD,  
ATTORNEY GENERAL  
555 E. WASHINGTON AVE., STE. 3900  
LAS VEGAS, NV 89101-1068

A-22-847754-W Antonio Mixon, Plaintiff(s) vs. State of Nevada, Defendant(s)

**I N D E X**

**VOLUME:**      **PAGE NUMBER:**

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I N D E X

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FILED  
FEB 03 2022  
CLERK OF COURT

Eighth Judicial  
District Court

NAME, STATE OF Nevada  
Plaintiff(s),  
-VS-  
NAME, Antonio Milton  
Defendant(s).

CASE NO.  
A-22-847754-W  
Dept. 19

Petition (Post-Conviction) for Habeas Corpus

COMES NOW, Antonio M. Milton, in PRO PER and herein above respectfully  
Moves this Honorable Court for a order granting habeas corpus

The above is made and based on the following Memorandum of Points and Authorities.

RECEIVED  
JAN 31 2022  
CLERK OF THE COURT

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

### GROUND 1

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my Nevada's Drop process Amendment right to effective appellate-counsel based on these facts:

Inspecting the evidence the rationale inference can be made that the victim was stabbed but the injury was to no severity because he had on a big coat and vest. Photographed is defendant, victim, and weapon in same photo all in a close proximity. The situation here is that the battery charged was dismissed. The latter can't be committed without the former. The former being the possession of the weapon. The former and latter being the same altercation. The latter being the battery. Since the battery was dismissed the possession of the weapon shouldn't have been pled guilty to. The whole of the altercation was battery with a weapon the inchoate is the attempt possession of a weapon. The Double jeopardy clause is offended. This is a substantial claim, the cause for the default is Petitioner had no counsel during negotiations and ineffective appellate-counsel on direct appeal and state collateral proceedings. This is the "initial" review in respect to this claim. I would have refused to plead guilty and proceeding to trial had I known then what I know now.

Exhaustion of state court remedies regarding Ground 1:

CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP Rule 5 (b), I hereby certify that I am the Petitioner/Defendant named herein  
and that on this 4<sup>th</sup> day of MAY, 2011, I mailed a true and correct copy of this  
foregoing Petition for Writ of Habeas Corpus to the following:

Charles W. Smith, Esq.

State of Washington, Dept. of Corrections

1000 1<sup>st</sup> Ave.

1700 1<sup>st</sup> Ave., 1000 1<sup>st</sup> Ave.

200 1<sup>st</sup> Ave., 1000 1<sup>st</sup> Ave.

LV, NV 89155-1160

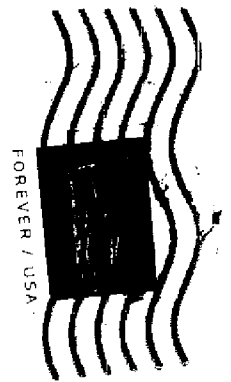
BY: Charles W. Smith, Esq.



Handwritten notes and stamps at the top of the page, including a date stamp that appears to read "JAN 25 2022".

**RECEIVED**  
JAN 31 2022  
CLERK OF THE COURT

LAS VEGAS NV 890  
25 JAN 2022 PM 4 L



STEVEN D. ERIKSON  
1100 N. LAS VEGAS BLVD  
SUITE 1000  
LAS VEGAS NV 89101



*Heather Shuman*  
CLERK OF THE COURT

1 PPOW

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

5 Antonio Mixon,

6 Petitioner,

7 vs.

8 State of Nevada,

9 Respondent,

Case No: A-22-847754-W  
Department 19

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

HEARING REQUIRED

Date: March 24, 2022

Time: 11:00 AM

BMT

11 Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on  
12 February 03, 2022. The Court has reviewed the Petition and has determined that a response would assist  
13 the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and  
14 good cause appearing therefore,

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

18 **IT IS HEREBY FURTHER ORDERED** that this matter shall be placed on this Court's  
19 Calendar on the 24th day of March, 2022, at the hour of  
20

21 11AM ~~o'clock for further proceedings.~~

22 IT IS FURTHER ORDERED that Respondent (State) shall ensure that the necessary  
23 Transport/Production Order is prepared and submitted for Petitioner's appearance at the above  
hearing.

Dated this 4th day of February, 2022

*Crystal Eller*

District Court Judge

2D9 396 4F6C 4FCB

Crystal Eller

District Court Judge

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA


5	Antonio Mixon, Plaintiff(s)	CASE NO: A-22-847754-W
6	vs.	DEPT. NO. Department 19
7	State of Nevada, Defendant(s)	

8  
9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

13  
14 If indicated below, a copy of the above mentioned filings were also served by mail  
15 via United States Postal Service, postage prepaid, to the parties listed below at their last  
known addresses on 2/7/2022

16 Antonio Mixon	#1019828
	ESP
	P.O. Box 1989
	Ely, NV, 89301



1 **NOTA**  
2 AARON D. FORD  
3 Attorney General  
4 Allison L. Herr (Bar No. 5383)  
5 Senior Deputy Attorney General  
6 State of Nevada  
7 Office of the Attorney General  
8 555 E. Washington Ave., Ste. 3900  
9 Las Vegas, NV 89101-1068  
10 (702) 486-3107 (telephone)  
11 (702) 486-2377 (fax)  
12 AHerr@ag.nv.gov  
13 Attorney for Respondent

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

10 ANTONIO MIXON,

11 Petitioner,

12 vs.

13 STATE OF NEVADA,

14 Respondent.

Case No.: A-22-847754-W

Dept. No.: XXIV

**NOTICE OF APPEARANCE  
FOR RESPONDENT**

15  
16 The State of Nevada, by and through counsel, Aaron D. Ford, Attorney General of the State of  
17 Nevada, hereby notifies the Court and respective parties to this action that Senior Deputy Attorney General  
18 Allison L. Herr, has assumed responsibility for representing the interests of the named respondent, the  
19 Attorney General of the State of Nevada, and the interests of the State of Nevada in the above-entitled action.

20 RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of February 2022.

21  
22 AARON D. FORD  
23 Attorney General

24 By: /s/ Allison L. Herr  
25 Allison L. Herr (Bar No. 5383)  
26 Senior Deputy Attorney General

27 ///

28 ///

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## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing *Notice of Appearance for Respondent* with the Clerk of the Court by using the electronic filing system on the 25<sup>th</sup> day of February 2022.

I certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or via facsimile transmission or e-mail; or have dispatched it to a third-party commercial carrier for delivery within three (3) calendar days to the following unregistered participants:

**Mr. Antonio Lee Mixon, Inmate #: 1019828**  
c/o Ely State Prison  
P.O. Box 1989  
Ely, NV 89301

/s/ D. Allegra  
An Employee of the Office of the Attorney General



AARON D. FORD  
Attorney General  
Robert Whitney (Bar No. 008726)  
Senior Deputy Attorney General  
State of Nevada  
Office of the Attorney General  
555 E. Washington Ave., Ste. 3900  
Las Vegas, NV 89101-1068  
(702) 486-3825 (telephone)  
(702) 486-2377 (fax)  
Rwhitney@ag.nv.gov  
*Attorneys for Respondent*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

ANTONIO MIXON

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

Case No.: A-22-847754-W  
Dept. No.: XIX

**NOTICE OF ASSOCIATION  
OF COUNSEL FOR RESPONDENT**

The State of Nevada, by and through counsel, Aaron D. Ford, Attorney General of the State of Nevada, hereby notifies the Court and respective parties to this action that Senior Deputy Attorney General ROBERT WHITNEY has joined in the responsibility for representing the interests of the named respondent, and the Attorney General of the State of Nevada, and the interests of the State of Nevada in the above-entitled action with Senior Deputy Attorney General ALLISON L. HERR.

RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of February, 2022.

AARON D. FORD  
Attorney General

By: /s/ Allison L. Herr  
Allison L. Herr (Bar No. 5383)  
Senior Deputy Attorney General

AARON D. FORD  
Attorney General

By: /s/ Robert Whitney  
Robert Whitney (Bar No. 008726)  
Senior Deputy Attorney General

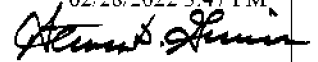
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I electronically filed the foregoing *Notice of Association of Counsel for*  
3 *Respondent* with the Clerk of the Court by using the electronic filing system on the 25<sup>th</sup> day of February  
4 2022.

5 I certify that some of the participants in the case are not registered electronic filing system users.  
6 I have mailed the foregoing document by First-Class Mail, postage prepaid, or via facsimile transmission  
7 or e-mail; or have dispatched it to a third-party commercial carrier for delivery within three (3) calendar  
8 days to the following unregistered participants:

9 **Mr. Antonio Lee Mixon, Inmate #: 1019828**  
10 c/o Ely State Prison  
11 P.O. Box 1989  
Ely, NV 89301

12 /s/ D. Allegra  
An Employee of the Office of the Attorney General

  
CLERK OF THE COURT

**ORDR**

AARON D. FORD

Attorney General

Allison L. Herr (Bar No. 5383)

Senior Deputy Attorney General

State of Nevada

Office of the Attorney General

555 E. Washington Ave., Ste. 3900

Las Vegas, NV 89101-1068

(702) 486-3107 (telephone)

(702) 486-2377 (fax)

AHerr@ag.nv.gov

*Attorneys for Respondents*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ANTONIO MIXON,

Defendant/Petitioner,

vs.

STATE OF NEVADA,

Plaintiff/Respondents.

Case No. A-22-847754-W

Dept. No. XIX

Date of Hearing: March 24, 2022

Time of Hearing: 11:00 am

**ORDER TO PRODUCE INMATE**

**TO: NEVADA DEPARTMENT OF CORRECTIONS**

**WILLIAM GITTERE, WARDEN, ELY STATE PRISON:**

THE COURT HEREBY FINDS that the Defendant is presently in the custody of the Nevada Department of Corrections, incarcerated at **ELY STATE PRISON**;

IT IS HEREBY ORDERED that the Warden of **ELY STATE PRISON**, or his designee, shall transport the Defendant/Petitioner, **ANTONIO MIXON, #1019828**, from **ELY STATE PRISON**, Ely, Nevada, to the Clark County Detention Center, on Thursday, March 24, 2022 at 11:00 a.m. for a hearing regarding argument on the pending habeas corpus petition and arrange for his appearance on video which this Court would make available for him to accept a BlueJeans invitation from the Court.

**DATED** this 25<sup>th</sup> day of February, 2022.

///

///



1            THEREFORE, IT IS HEREBY ORDERED that Mr. Mixon be present by video conference for  
2 the hearing set on March 24, 2022 at 11:00 am.

3            IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

5            \_\_\_\_\_  
6 THE HONORABLE CRYSTAL ELLER  
DISTRICT COURT JUDGE

Dated this 28th day of February, 2022



BE9 5A2 1F27 E6F1  
Crystal Eller  
District Court Judge

7 Respectfully submitted by:

8 AARON D. FORD  
9 Attorney General

10 By: /s/ Allison L. Herr  
11 Allison L. Herr (Bar No. 5383)  
Senior Deputy Attorney General

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4	5	6 Antonio Mixon, Plaintiff(s)	CASE NO: A-22-847754-W
7	8	vs.	DEPT. NO. Department 19
8	9	State of Nevada, Defendant(s)	

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 2/28/2022

15 Allison Herr	aherr@ag.nv.gov
16 Robert Whitney	rwhitney@ag.nv.gov
17 Marsha Landreth	mlandreth@ag.nv.gov
18 Rikki Garate	rgarate@ag.nv.gov
19 Cheryl Martinez	cjmartinez@ag.nv.gov
20 Tiffany DiBari	tdibari@ag.nv.gov
21 Deanna Allegra	dallegra@ag.nv.gov



AARON D. FORD  
Attorney General  
GEORDAN GOEBEL (Bar No. 13132)  
Deputy Attorney General  
State of Nevada  
Office of the Attorney General  
100 N. Carson St.  
Carson City, NV 89701  
(775) 684-1134 (phone)  
(775) 684-1108 (fax)  
ggoebel@ag.nv.gov  
*Attorneys for Respondent*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

ANTONIO MIXON,

Case No. A-22-847754-W

Petitioner,

Dept. No. 19

vs.

STATE OF NEVADA,

Respondents.

**NOTICE OF ASSOCIATION OF COUNSEL FOR RESPONDENTS**

The State of Nevada, by and through counsel, Aaron D. Ford, Attorney General of the State of Nevada, hereby notifies the Court and respective parties to this action that Deputy Attorney General Geordan Goebel has joined in the responsibility for representing the interests of the named respondent, and the Attorney General of the State of Nevada, and the interests of the State of Nevada in the above-entitled action with Senior Attorney General Allison Herr and Senior Attorney General Robert Whitney.

RESPECTFULLY SUBMITTED this 21st day of March, 2022.

AARON D. FORD  
Attorney General

By: /s/ Geordan Goebel  
GEORDAN GOEBEL (Bar No. 13132)  
Deputy Attorney General

**AFFIRMATION**  
**(Pursuant to NRS 239B.030)**

The undersigned does hereby affirm that the foregoing document does not contain the social security number of any person.

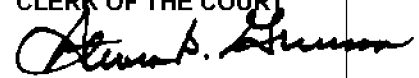
DATED this 21st day of March, 2022.

By: /s/ Geordan Goebel  
GEORDAN GOEBEL (Bar No. 13132)  
Deputy Attorney General

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Mr. Antonio Lee Mixon, #1019828  
Ely State Prison  
P.O. Box 1989  
Ely, NV 89301

/s/ Lisa M. Clark



RSPN  
AARON D. FORD  
Attorney General  
GEORDAN GOEBEL (Bar No. 13132)  
Deputy Attorney General  
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*Attorneys for Respondent*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

ANTONIO MIXON,	Case No. A-22-847754-W
Petitioner,	Dept. No. 19
vs.	
STATE OF NEVADA,	
Respondents.	

**RESPONSE TO HABEAS CORPUS PETITION**

Respondent<sup>1</sup>, Ely State Prison Warden William Gittere ("Warden Gittere")<sup>2</sup> responds to Inmate Antonio Mixon's (Mixon) writ of habeas corpus filed on February 3, 2022. This Court should deny Mixon's petition, as he is not entitled to the relief he seeks.

RESPECTFULLY SUBMITTED this 21st day of March, 2022.

AARON D. FORD  
Attorney General

By: /s/ Geordan Goebel  
GEORDAN GOEBEL (Bar No. 13132)  
Deputy Attorney General

---

<sup>1</sup> Mixon erroneously identifies himself as the defendant in the case caption of his petition. Nevertheless, Respondent Gittere is properly appearing herein as the respondent, as Mixon should be properly identified as the petitioner.

<sup>2</sup> Mixon identified the State of Nevada as plaintiff (should be respondent) in his petition. Under NRS 34.370(2), the proper respondent in a state post-conviction habeas petition is the "officer or other person by whom the petitioner is confined or restrained." The State of Nevada is not "an officer or other person." Thus, Respondent requests that Warden Gittere be substituted as respondent in this action.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTS AND PROCEDURAL HISTORY.**

3 Antonio Mixon<sup>3</sup> is currently serving an aggregated sentence of 8 to 20 years for voluntary  
4 manslaughter with use of a deadly weapon. In December 2015, while in prison, Mixon attempted to  
5 shank a corrections officer using a makeshift weapon.

6 Mixon started by throwing rocks at two guards, striking one of the guards in the abdomen. The  
7 guards under attack called for assistance while ordering the inmates in the area to get on the ground. As  
8 Mixon crouched down, he pulled a prison-made weapon from his shoe. Fortunately, the guard saw the  
9 weapon before Mixon could use it. Instead, the guard sprayed Mixon with pepper spray, causing Mixon  
10 to drop the weapon. Mixon told the guard, "You lucky you had that OC (Oleoresin Capsicum spray,  
11 commonly known as pepper spray), or I woulda stuck your bitch ass!"

12 Mixon was later charged with Battery of a Peace Officer and Possession or control of a dangerous  
13 weapon or facsimile. Mixon was appointed counsel but almost immediately moved to represent himself.  
14 Justice Court Judge Karen Bennett-Haron conducted a *Faretta*<sup>4</sup> canvas and determined that Mixon could  
15 not represent himself. At the District Court calendar call, Mixon again requested self-representation,  
16 and asserted his speedy trial rights. Judge Michael Villani denied the request after Mixon acknowledged  
17 he could not be ready for trial if he represented himself. Despite this ruling, Mixon filed another motion  
18 seeking to represent himself.

19 On the morning of trial, Judge Villani entertained the motion, but Mixon withdraw his claim,  
20 announcing he would proceed with the public defender. The January, 2018 trial ended in a mistrial. The  
21 Court then scheduled a new trial date. Mixon's attorney used the rescheduled trial to file several motions  
22 including two motions to dismiss the charges, and a motion to disqualify the attorney general from  
23 prosecuting the case.

24 ///

25 ///

26 ///

27 \_\_\_\_\_  
28 <sup>3</sup> Factual and procedural background taken from State's opposition to Mixon's motions to dismiss with prejudice,  
motion to withdraw guilty plea, and court trial transcripts of Jury Trial, February 2, 2018.

<sup>4</sup> *Faretta v. California*, 422 U.S. 806 (1975)

1           Mixon used the opportunity to file a fourth request to represent himself. A *Faretta* hearing was  
2 held on April 6, 2018, after which the Court granted his request. Mixon was also granted use of a private  
3 investigator.

4           After filing several motions related to discovery and witnesses, Mixon entered into a plea  
5 agreement with the State, agreeing to plead guilty to a reduced charge of Attempt Possession or Control  
6 of Dangerous Weapon or Facsimile by an Incarcerated Person on March 26, 2019. However, 10 days  
7 after entering his guilty plea, Mixon moved to withdraw that plea. Following a hearing on May 21,  
8 2019, the Court found Mixon's guilty plea was entered into freely and voluntarily and denied his motion.

9           The Court then proceeded with sentencing, adjudicating Mixon guilty, and imposing a term of  
10 12 to 30 months to be served consecutively to his current sentence for voluntary manslaughter. A  
11 judgment of conviction was entered on May 28, 2019. The public defenders office timely filed a notice  
12 of appeal on behalf of Mixon.

13           Mixon was represented by attorney Howard Brooks on appeal. Attorney Brooks raised one  
14 claim, whether the district court abused its discretion by denying Mixon's motion to withdraw his guilty  
15 plea. On March 19, 2020, the Nevada Court of Appeals affirmed the district court's denial order. Exhibit  
16 1. Remittitur issued on April 13, 2020. Exhibit 2.

17           Mixon now brings a petition for writ of habeas corpus with a single claim of post-conviction  
18 ineffective assistance of appellate counsel. Mixon vigorously litigated the underlying case, filing  
19 voluminous motions, interlocutory appeals, and an appeal from the denial of his motion to withdraw his  
20 guilty plea. The court's docket sheet shows 39 pages of proceedings in this case. 8<sup>th</sup> Judicial District  
21 Court case no. C-17-327439-1.

22           Mixon's petition is untimely, vague, conclusory, and fails on the merits. The court should deny  
23 Mixon's petition.

## 24 **II. MIXON'S PETITION IS UNTIMELY.**

25           The State of Nevada requires habeas corpus petitions to be filed within one year of the state  
26 Supreme Court's remittitur in an appeal taken from a judgment. NRS. 34.726(1) The two triggers for  
27 the timely filing of a postconviction petition for a writ of habeas corpus are the entry of the original

28 ///



1 judgment of conviction or issuance of the remittitur from a timely direct appeal. NRS 34.726(1); *Rippo*  
2 *v. State*, 134 Nev. 411, 419, 423 P.3d 1084, 1095 (2018).

3 Here, Mixon's judgment of conviction was dated May 28, 2019. The Nevada Supreme Court  
4 issued its remittitur on the Nevada Court of Appeals' affirmance of Mixon's conviction on April 13,  
5 2020. Exhibit 2, Remittitur. Mixon's habeas petition was filed February 3, 2022, nearly two years later.  
6 Mixon's petition is facially untimely, with no showing of any cause for equitable or statutory tolling.

7 Mixon's petition should be dismissed as untimely.

### 8 **III. MIXON'S PETITION IS VAGUE AND CONCLUSORY.**

9 Mixon makes a confusing assertion that the evidence and charges against him are somehow  
10 inconsistent. "The cohate (sic) of the altercation was battery with the weapon the inchoate is the attempt  
11 possession of a weapon." Petition, at 2. This allegation is made without any specificity or analysis  
12 which would in any manner state a cause of action for ineffective assistance of appellate counsel.

13 Mixon seems to be contending that the weapon charge against him cannot stand without the  
14 dismissed battery charge. Left unsaid is that Mixon agreed to a guilty plea agreement for attempted  
15 possession of a dangerous weapon by an incarcerated person. He cannot now contend that because he  
16 obtained the benefit of the guilty plea agreement bargain that the remaining charge against him is  
17 somehow legally improper.

18 A defendant seeking post-conviction relief cannot rely on conclusory claims for relief but must  
19 support any claims with specific factual allegations that if true would entitle him or her to relief. *Evans*  
20 *v. State*, 117 Nev. 609, 621, 28 P.2d 498, 507 (2001); *See also Hargrove v. State*, 100 Nev. 498, 502-03  
21 (1984). Mixon's allegations, even if construed liberally, do not state any cause for relief relative to any  
22 putative ineffective assistance of counsel.

23 The Court should deny Mixon's petition.

### 24 **IV. EVEN IF CONSIDERED ON THE MERITS, MIXON IS NOT ENTITLED TO RELIEF.**

25 Mixon entitles his Ground 1 claim as an ineffective assistance of appellate counsel claim.  
26 Petition, at 2. The law on ineffective assistance of counsel claims is very well established.

27 For a habeas petitioner to prevail on a claim of ineffective assistance of counsel, he must  
28 demonstrate that his counsel's representation fell below an objective standard of reasonableness and that,

1 but for any errors, the results would have been different. *Strickland v. Washington*, 466 U.S. 668, 687  
2 (1984). A defendant is required to prove both prongs of the *Strickland* test before relief can be granted.  
3 *Bell*, 535 U.S. at 695.

4 A Court must strongly presume that counsel’s conduct was within the wide range of reasonable  
5 assistance and that counsel exercised acceptable judgment in all significant respects. *Beardslee v.*  
6 *Woodford*, 358 F.3d 560, 569 (9th Cir. 2004) (citation omitted). It is inappropriate to focus on what  
7 could have been done rather than focusing on the reasonableness of what counsel did. *Babbitt v.*  
8 *Calderon*, 151 F.3d 1170, 1174 (9th Cir. 1998).

9 When the legal claim underlying the ineffective assistance contention is meritless, it is axiomatic  
10 that there is no ineffective assistance of counsel. Appellate counsel is not required to raise meritless,  
11 “untenable” issues on appeal. *Rogovich v. Ryan*, 694 F.3d 1094, 1106 (9th Cir. 2012). Failure to raise  
12 meritless issues on appeal does *not* establish ineffective assistance counsel. *Martinez v. Ryan*, 926 F.3d  
13 1215, 1226 (9th Cir. 2019). Appellate counsel has an ethical obligation to refrain from raising meritless  
14 arguments that would waste the court’s time. *See, e.g., McCoy v. Court of Appeals of Wis., Dist. 1*, 486  
15 U.S. 429, 436 (1988).

16 By pleading guilty, Mixon waived all errors arising prior to the plea. *Warden, Nevada State*  
17 *Prison v. Lyons*, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984), cert. denied, 471 U.S. 1004, 105 S.Ct.  
18 1865, 85 L.Ed.2d 159 (1985); *Webb v. State*, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975). Where the  
19 defendant has pleaded guilty, the only claims that may be raised thereafter are those involving the  
20 voluntariness of the plea itself and the effectiveness of counsel. NRS 34.810(1); *Lyons*, 100 Nev. at 432,  
21 683 P.2d at 505. Mixon’s complaining about the evidence, the charges, and pre-guilty plea proceedings  
22 are all barred due to his guilty plea.

23 Lastly, the Nevada Court of Appeals found that Mixon’s underlying contentions regarding his  
24 guilty plea claims were meritless. Exhibit 3, Order of Affirmance. With no viable claim relating to his  
25 appellate counsel’s (in)effectiveness, Mixon cannot prove either deficient performance nor prejudice  
26 from any actions or inactions of appellate counsel. Mixon’s claim fails.

27 ///

28 ///

1 **CONCLUSION**

2       Mixon's petition is untimely, vague and conclusory, and fails to establish any basis for any relief.  
3 His petition should not be granted.

4 **AFFIRMATION**  
5 **(Pursuant to NRS 239B.030)**

6       The undersigned does hereby affirm that the foregoing document does not contain the social  
7 security number of any person.

8       DATED this 21st day of March, 2022.

9                               AARON D. FORD  
10                              Attorney General

11                           By: /s/ Geordan Goebel  
12                               GEORDAN GOEBEL (Bar No. 13132)  
13                               Deputy Attorney General  
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**INDEX OF EXHIBITS**

<b>EXHIBIT No.</b>	<b>EXHIBIT DESCRIPTION</b>	<b>NUMBER OF PAGES</b>
1.	Order of Affirmance, NCOA Case No. 78900-COA	3
2.	Remittitur, NSC Case No. 78900	2
3.	Order and Decision on Defendant's Motion to Withdraw Plea, District Court No. C-17-327439-1	1

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Mr. Antonio Lee Mixon, #1019828  
Ely State Prison  
P.O. Box 1989  
Ely, NV 89301

/s/ Lisa M. Clark

# **EXHIBIT 1**

# **EXHIBIT 1**

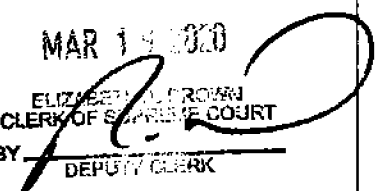
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTONIO LEE MIXON, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78900-COA

**FILED**

MAR 14 2020

ELIZABETH L. CROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Antonio Lee Mixon, Jr. appeals from a judgment of conviction entered pursuant to a guilty plea of attempted possession or control of a dangerous weapon or facsimile by an incarcerated person. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Mixon argues the district court abused its discretion by denying his presentence motion to withdraw his guilty plea. Mixon contends the district court erred because it did not specifically address his claim that he was coerced into entering a guilty plea when it denied the motion.

A defendant may move to withdraw a guilty plea before sentencing, NRS 176.165, and “a district court may grant a defendant’s motion to withdraw his guilty plea before sentencing for any reason where permitting withdrawal would be fair and just,” *Stevenson v. State*, 131 Nev. 598, 604, 354 P.3d 1277, 1281 (2015). In considering the motion, “the district court must consider the totality of the circumstances to determine whether permitting withdrawal of a guilty plea before sentencing would be fair and just.” *Id.* at 603, 354 P.3d at 1281.


In his motion to withdraw his guilty plea, Mixon contended he was coerced into entering a guilty plea because the State requested a bail

increase. At the hearing concerning the motion, Mixon asserted his plea was not voluntarily entered because he had been unable to examine the weapon. The district court stated that it read Mixon's motion and reviewed the record. The district court found Mixon acknowledged at the plea canvass that he entered his guilty plea knowingly, voluntarily, and freely. The district court also found the record demonstrated Mixon was aware of any evidentiary issues prior to entry of his plea.

The district court found, based on the totality of the circumstances, Mixon did not demonstrate a fair and just reason to permit withdrawal of his guilty plea. After review of the record, we conclude Mixon has not demonstrated the district court failed to address his claims or abused its discretion by denying his motion to withdraw his guilty plea. See *Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994) (reviewing the district court's denial of a motion to withdraw guilty plea for an abuse of discretion). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla



cc: Hon. Valerie Adair, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Attorney General/Las Vegas  
Eighth District Court Clerk

# **EXHIBIT 2**

# **EXHIBIT 2**

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO LEE MIXON, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 78900  
District Court Case No. C327439

**FILED**

APR 27 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

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

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

DATE: April 13, 2020

Elizabeth A. Brown, Clerk of Court

By: Danielle Friend  
Chief Assistant Clerk

cc (without enclosures):

Hon. Valerie Adair, District Judge  
Clark County Public Defender  
Attorney General/Las Vegas  
Clark County District Attorney

**RECEIPT FOR REMITTITUR**

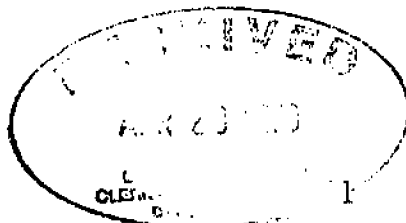
Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on APR 15 2020.

*[Signature]*  
Deputy District Court Clerk

RECEIVED  
APPEALS

APR 15 2020

CLERK OF THE COURT



20-13894

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

ANTONIO LEE MIXON, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 78900**  
District Court Case No. C327439

**CLERK'S CERTIFICATE**

STATE OF NEVADA, ss.

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

**JUDGMENT**

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

“ORDER the judgment of conviction AFFIRMED.”

Judgment, as quoted above, entered this 19 day of March, 2020.

IN WITNESS WHEREOF, I have subscribed  
my name and affixed the seal of the Supreme  
Court at my Office in Carson City, Nevada this  
April 13, 2020.

Elizabeth A. Brown, Supreme Court Clerk

By: Danielle Friend  
Chief Assistant Clerk

# **EXHIBIT 3**

# **EXHIBIT 3**



ORIGINAL

*Steven D. Grierson*

**ORDR**  
AARON D. FORD  
Attorney General  
CHELSEA KALLAS (Bar No. 13902)  
Deputy Attorney General  
Office of the Attorney General  
555 E. Washington Ave., Ste. 3900  
Las Vegas, Nevada 89101-1068  
P: (702) 486-5707  
F: (702) 486-0660  
Ckallas@ag.nv.gov  
*Attorneys for the State of Nevada*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff,

v.

ANTONIO LEE MIXON, ID #1968172

Defendant.

Case No.: C-17-327439-1

Dept. No.: 17

**ORDER AND DECISION ON DEFENDANT'S MOTION TO WITHDRAW PLEA**

The above-entitled matter having come on for hearing on the original Motion to Withdraw Plea filed, by Defendant ANTONIO MIXON; and the Court having considered the responsive points and authorities filed by the Office of the Attorney General represented by Deputy Attorney General, CHELSEA KALLAS; the Court makes the following order:

Defendant's Motion to Withdraw Plea is DENIED.

IT IS SO ORDERED.

DATED this 6 day of June, 2019. *GRACIELA VILLAN*

*Linda Bell*

DISTRICT COURT JUDGE *Linda Bell*

Respectfully Submitted By:

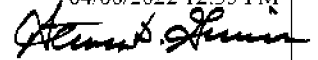
AARON D. FORD  
Attorney General

By: *Chelsea Kallas*  
CHELSEA KALLAS  
Deputy Attorney General

*San*

RECEIVED BY  
DEPT 17 ON

JUN 04 2019

  
CLERK OF THE COURT

1 **DAO**

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

8 ANTONIO MIXON,

Case No. A-22-847754-W

9 Petitioner,

Dept. No. XIX

10 vs.

11 STATE OF NEVADA,

12 Respondent.

13 **DECISION AND ORDER FROM THE HEARING OF MARCH 24, 2022**

14 This matter having come before the Court on the 24<sup>th</sup> day of March, 2022; the Court having  
15 reviewed Antonio Mixon's *Petition for Writ of Habeas* filed on February 3, 2022, and the response  
16 thereto, both parties were present and the Court entertained oral argument, and makes its decision as  
17 follows:

18 THE COURT FINDS that Antonio Mixon is currently incarcerated with the Nevada Department  
19 of Corrections.

20 THE COURT FURTHER FINDS that Mixon is serving an aggregated sentence of 8 to 20 years  
21 for voluntary manslaughter with use of a deadly weapon.

22 THE COURT FURTHER FINDS that in Case No. C-17-327439-1, pursuant to Mixon's guilty  
23 plea agreement, the Eighth Judicial District Court adjudicated Mixon guilty of Attempt Possession Or  
24 Control Of Dangerous Weapon Or Facsimile By An Incarcerated Person. The Court sentenced Mixon  
25 to 12 months to 30 months.

26 THE COURT FURTHER FINDS that Mixon is alleging ineffective assistance of counsel  
27 regarding his guilty plea.

28 ///

1 THE COURT FURTHER FINDS that Mixon filed his habeas petition on February 3, 2022. The  
2 Nevada Supreme Court issued its remittitur on the Nevada Court of Appeals' affirmance of Mixon's  
3 conviction on April 13, 2020. Mixon's current petition is untimely pursuant to NRS 34.726(1), having  
4 been filed more than one year after the remittitur was issued on the Nevada Court of Appeals' affirmation  
5 of his conviction. The Court denies Mixon's petition on this ground.

6 THE COURT FURTHER FINDS that even if Mixon's petition were considered on the merits,  
7 his ineffective assistance of counsel claims does not substantiate a claim under the requirements of  
8 *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

9 THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED that Antonio Mixon'  
10 petition for writ of habeas corpus is DENIED.

11 IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

12 Dated this 6th day of April, 2022

13 District Court Judge



14 Submitted by:

15 /s/ Geordan Goebel \_\_\_\_\_

16 Geordan Goebel

17 Deputy Attorney General

2BB 5C8 9949 0115

Crystal Eller

District Court Judge



1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Antonio Mixon, Plaintiff(s) CASE NO: A-22-847754-W  
7 vs. DEPT. NO. Department 19  
8 State of Nevada, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 4/6/2022

15 Allison Herr	aherr@ag.nv.gov
16 Robert Whitney	rwhitney@ag.nv.gov
17 Marsha Landreth	mlandreth@ag.nv.gov
18 Rikki Garate	rgarate@ag.nv.gov
19 Cheryl Martinez	cjmartinez@ag.nv.gov
20 Geordan Goebel	ggoebel@ag.nv.gov
21 Amanda White	awhite@ag.nv.gov
22 Tiffany DiBari	tdibari@ag.nv.gov
23 Deanna Allegra	dallegra@ag.nv.gov



NEOJ

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

ANTONIO MIXON,

Petitioner,

Case No: A-22-847754-W

Dept. No: XIX

vs.

STATE OF NEVADA,

Respondent,

**NOTICE OF ENTRY OF ORDER**

**PLEASE TAKE NOTICE** that on April 6, 2022, 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 April 11, 2022.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

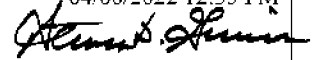
**CERTIFICATE OF E-SERVICE / MAILING**

I hereby certify that on this 11 day of April 2022, 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:  
Antonio Mixon # 1019828  
P.O. Box 1989  
Ely, NV 89301

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

  
CLERK OF THE COURT

1 **DAO**

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

8 ANTONIO MIXON,

Case No. A-22-847754-W

9 Petitioner,

Dept. No. XIX

10 vs.

11 STATE OF NEVADA,

12 Respondent.

13 **DECISION AND ORDER FROM THE HEARING OF MARCH 24, 2022**

14 This matter having come before the Court on the 24<sup>th</sup> day of March, 2022; the Court having  
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20 THE COURT FURTHER FINDS that Mixon is serving an aggregated sentence of 8 to 20 years  
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4 been filed more than one year after the remittitur was issued on the Nevada Court of Appeals' affirmation  
5 of his conviction. The Court denies Mixon's petition on this ground.

6 THE COURT FURTHER FINDS that even if Mixon's petition were considered on the merits,  
7 his ineffective assistance of counsel claims does not substantiate a claim under the requirements of  
8 *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

9 THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED that Antonio Mixon'  
10 petition for writ of habeas corpus is DENIED.

11 IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

12 Dated this 6th day of April, 2022

13 District Court Judge



14 Submitted by:

15 /s/ Geordan Goebel \_\_\_\_\_

16 Geordan Goebel

17 Deputy Attorney General

2BB 5C8 9949 0115

Crystal Eller

District Court Judge

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Antonio Mixon, Plaintiff(s) CASE NO: A-22-847754-W  
7 vs. DEPT. NO. Department 19  
8 State of Nevada, Defendant(s)  
9

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19 Cheryl Martinez	cjmartinez@ag.nv.gov
20 Geordan Goebel	ggoebel@ag.nv.gov
21 Amanda White	awhite@ag.nv.gov
22 Tiffany DiBari	tdibari@ag.nv.gov
23 Deanna Allegra	dallegra@ag.nv.gov

Case No. A-22-847754-W

Dept. No. 19

*Steven D. Grierson*

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

ANTONIO L. MIXON Petitioner/Plaintiff,  
vs.

NOTICE OF APPEAL

STATE OF NEVADA, Respondent/Defendant.  
William Gittere

Notice is hereby given that <sup>MIXON</sup> ~~Antonio L. Mixon~~, Petitioner/Defendant  
above named, hereby appeals to the Court of Appeals for the State of Nevada from the final  
judgment / order Decision And Order From The Hearing Of  
March, 2022

Entered in this action on the 25<sup>th</sup> day of Apr, 2022.

Dated this 25<sup>th</sup> day of Apr, 2022.

a. l. m. Jr.

NDOC # 1019828

Appellant - Pro Per  
Ely State Prison  
P.O. Box 1989  
Ely, Nevada 89301-1989

RECEIVED

I Antonio L. Mixon Declare Under penalty  
and perjury that to the best of my knowledge  
the contents of this document is true and correct. 04/25/22 a. l. m. Jr.

**CERTIFICATE OF SERVICE BY MAIL**

I, Mixon, Antonio, hereby certify pursuant to Rule 5(b) of the NRCP, that on this 25<sup>th</sup> day of Apr, 2022 I served a true and correct copy of the above-entitled Notice of Appeal postage prepaid and addressed as follows:

Geordan Goebel  
Deputy Attorney General  
State of Nevada  
Office of Attorney General  
100 N. Carson St., Carson -

City, NV 89701.  
STEVEN O. Grierson,  
Clerk of the Court, 200  
Lewis Ave. 3<sup>rd</sup> Floor, LV, NV  
89155-1160

Signature A. Z. [Signature] Zr.

Print Name MIXON, ANTONIO  
Ely State Prison  
P.O. Box 1989  
Ely, Nevada 89301-1989

**AFFIRMATION PURSUANT TO NRS 239B.030**

I, Antonio Mixon, NDOC# 1019828,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE  
ATTACHED DOCUMENT ENTITLED Notice of Appeal

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

DATED THIS 25<sup>th</sup> DAY OF Apr, 2022.

SIGNATURE: A. Mixon

INMATE PRINTED NAME: Mixon, Antonio

INMATE NDOC # 1019828

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



LAS VEGAS NV 890  
27 APR 2022 PM 4 1

Steven D. Grierson  
Clerk of the Court  
200 Lewis Ave. 3rd Floor  
LV, NV 89155-1160

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

10 ANTONIO MIXON,

11 Plaintiff(s),

12 vs.

13 STATE OF NEVADA,

14 Defendant(s),  
15

Case No: A-22-847754-W

Dept No: XIX

16  
17 **CASE APPEAL STATEMENT**  
18

19 1. Appellant(s): Antonio L. Mixon

20 2. Judge: Crystall Eller

21 3. Appellant(s): Antonio L. Mixon

22 Counsel:

23 Antonio L. Mixon #1019828  
24 P.O. Box 1989  
Ely, NV 89301-1989

25 4. Respondent (s): State of Nevada

26 Counsel:

27 Aaron D. Ford, Attorney General  
28 555 E. Washington Ave., Ste. 3900  
Las Vegas, NV 89101-1068

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

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

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

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

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

9. Date Commenced in District Court: February 3, 2022

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

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

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 3 day of May 2022.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann

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

cc: Antonio L. Mixon

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**March 24, 2022**

---

A-22-847754-W      Antonio Mixon, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

---

**March 24, 2022      11:00 AM      Petition for Writ of Habeas  
Corpus**

**HEARD BY:** Eller, Crystal      **COURTROOM:** RJC Courtroom 05A

**COURT CLERK:** Cynthia Moleres

**RECORDER:** Brittany Amoroso

**REPORTER:**

**PARTIES**

**PRESENT:**      Goebel, Geordan M      Attorney  
Mixon, Antonio      Plaintiff

**JOURNAL ENTRIES**

- Parties appeared via BlueJeans.

Arguments by Plaintiff Mixon. Mr. Goebel submitted. COURT stated its findings and ORDERED, Petition DENIED. Mr. Goebel to prepare the order.

# Certification of Copy and Transmittal of Record

State of Nevada }  
County of Clark } SS:

Pursuant to the Supreme Court order dated May 16, 2022, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 49.

ANTONIO MIXON,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

Case No: A-22-847754-W

Dept. No: XIX

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 24 day of May 2022.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk