

1 **NTC**
2 **BETSY ALLEN, ESQ**
3 Nevada Bar No. 6878
4 Law Office of Betsy Allen
5 P.O. Box 46991
6 Las Vegas, Nevada 89114
7 (702) 386-9700

Electronically Filed
Aug 06 2021 04:07 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

DISTRICT COURT
CLARK COUNTY, NEVADA

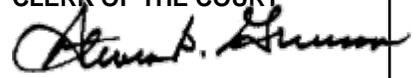
7 LARENZO PINKEY,)
8)
9 Petitioner,) Case No.: A-19-806862-W
10) Dept. No. XXVIII
11 v.)
12)
13 THE STATE OF NEVADA,)
14)
15 Respondent.)

NOTICE OF APPEAL

16 COMES NOW, Petitioner, LARENZO PINKEY, by and through his counsel of
17 record, BETSY ALLEN ESQ, and hereby files this Notice of Appeal, appealing the denial of
18 Petitioner's Post-Conviction Writ of Habeas Corpus.

19 DATED this 4TH day of August, 2021

20 By: /s/ Betsy Allen
21 BETSY ALLEN, ESQ.
22 Nevada Bar No. 6878
23 Law Office of Betsy Allen
24 P.O. Box 46991
25 Las Vegas, Nevada 89114
26 (702) 386-9700



A-19-806862-WETSY ALLEN, ESQ
Nevada Bar No. 6878
P.O. Box 46991
Las Vegas, Nevada 89114
(702) 386-9700
fax: (702) 386-4723
betsyallenesq@yahoo.com
Attorney for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

LARENZO PINKEY,)	Case No.: A-19-806862-W
)	
Petitioner,)	Dept. No. XXVIII
)	
vs.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement: LARENZO PINKEY
2. Identify the judge issuing the decision, judgment, or order appealed from:
Ronald Isreal
3. Identify all parties to the proceedings in the district court:

Betsy Allen, Esq
Nevada Bar No. 006878
P.O. Box 46991
Las Vegas, Nevada 89114
(702) 386-9700
Fax: (702) 386-4723
betsyallenesq@yahoo.com
Attorney for Petitioner

Steven Wolfson
Clark County District Attorney
Nevada Bar No. 001565
200 Lewis Avenue
Attorney for Respondent

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4. Identify all parties involved in this appeal:

Betsy Allen, Esq
Nevada Bar No. 006878
P.O. Box 46991
Las Vegas, Nevada 89114
Attorney for Petitioner

Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155
Attorney for Respondent

5. Set forth the name, law firm, address, and telephone number of all counsel on appeal and identify the party or parties whom they represent:

Betsy Allen, Esq
Nevada Bar No. 006878
P.O. Box 46991
Las Vegas Nevada 89114
Attorney for Petitioner

Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155
Attorney for Respondent

6. Indicate whether the appellant was represented by appointment or retained counsel in the district court: Appointed

7. Indicate whether the appellant is represented by appointed or retained counsel on appeal: Appointed

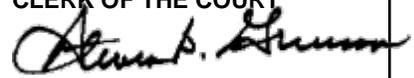
8. Indicate whether the appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:
N/A

9. Indicate the date the proceedings commenced in the district court:
11/8/17

DATED this 4th day of August, 2021.

Respectfully Submitted,

/s/ Betsy Allen
BETSY ALLEN, ESQ
Nevada Bar No. 6878



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betsyallenesq@yahoo.com
Attorney for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

LARENZO PINKEY,)	
)	
Petitioner,)	Case No.: A-19-806862-W
)	
vs.)	Dept No.: XXVIII
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	

REQUEST FOR TRANSCRIPT OF PROCEEDINGS

TO: Court Recorder for District Court Department 18.

Petitioner requests preparation of a transcript of the proceedings before the district court, as follows:

Judge or officer hearing the proceeding: Judge Ronald Isreal

Date or dates of the proceeding: 7/12/21

Portions of the transcript requested: All

Number of copies required: 1

///

///

1 I hereby certify that on this date, I ordered this transcript from the court
2 recorder named above.

3
4 DATED this _4th_ day of August, 2021.

5
6 Respectfully Submitted,

7
8 /s/ Betsy Allen

9 **BETSY ALLEN, ESQ**
10 Nevada Bar No. 6878
11 Law Office of Betsy Allen
12 P.O. Box 46991
13 Las Vegas, NV 89114
14 (702) 386-9700
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EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY
CASE NO. A-19-806862-W

Lorenzo Pinkey, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

§
§
§
§
§

Location: **Department 28**
 Judicial Officer: **Israel, Ronald J.**
 Filed on: **11/21/2019**
 Cross-Reference Case Number: **A806862**

CASE INFORMATION

Related Cases

C-17-327767-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Statistical Closures

07/12/2021 Summary Judgment

Case Status: **07/12/2021 Closed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-19-806862-W
Court	Department 28
Date Assigned	11/21/2019
Judicial Officer	Israel, Ronald J.

PARTY INFORMATION

Plaintiff

Pinkey, Lorenzo

Allen, Betsy

Retained

702-386-9700(W)

Defendant

State of Nevada

Lamanna, Brianna K.

Retained

702-671-4354(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

EVENTS

- | | |
|------------|---|
| 11/21/2019 |  Inmate Filed - Petition for Writ of Habeas Corpus
Party: Plaintiff Pinkey, Lorenzo
<i>[1] Post Conviction</i> |
| 12/27/2019 |  Order for Petition for Writ of Habeas Corpus
<i>[2] Order for Petition for Writ of Habeas Corpus</i> |
| 03/31/2020 |  Order
Filed By: Plaintiff Pinkey, Lorenzo
<i>[3] Order</i> |
| 05/14/2020 |  Stipulation and Order
Filed by: Defendant State of Nevada
<i>[4] Stipulation And Order</i> |
| 07/23/2020 |  Order
<i>[5] ORDER</i> |
| 09/30/2020 |  Stipulation and Order
Filed by: Plaintiff Pinkey, Lorenzo |

CASE SUMMARY
CASE NO. A-19-806862-W

[6] Stipulation And Order

01/18/2021



Supplemental

Filed by: Plaintiff Pinkey, Lorenzo

[7] Supplemental Memorandum in Support of Petition for Writ of Habeas Corpus

03/24/2021



Response

Filed by: Defendant State of Nevada

[8] State's Response to Defendant's Petition for Writ of Habeas Corpus (Post Conviction) and Supplemental Memorandum of Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction)

05/12/2021



Order for Production of Inmate

[9] Order For Production Of Inmate Lorenzo Pinkney, BACK #1217414 - June 7, 2021

05/20/2021



Reply

Filed by: Plaintiff Pinkey, Lorenzo

[10] Reply to State's Respnse to Supplemental Memorandum in Support of Petition for Writ of Habeas Corpus

07/29/2021



Findings of Fact, Conclusions of Law and Order

[11] Findings Of Fact, Conclusions Of Law And Order

08/03/2021



Notice of Entry of Findings of Fact, Conclusions of Law

Filed By: Defendant State of Nevada

[12] Notice of Entry of Findings of Fact, Conclusions of Law and Order

08/05/2021



Notice of Appeal (Criminal)

Party: Plaintiff Pinkey, Lorenzo

Notice of Appeal

08/05/2021



Case Appeal Statement

Filed By: Plaintiff Pinkey, Lorenzo

Case Appeal Statement

08/05/2021



Request

Filed by: Plaintiff Pinkey, Lorenzo

Request for Transcripts

HEARINGS

01/06/2020



Appointment of Counsel (10:00 AM) (Judicial Officer: Israel, Ronald J.)

Appointment of Counsel - Betsy Allen

Counsel Confirmed; Appointment of Counsel - Betsy Allen

Journal Entry Details:

Deft. PINKEY, in the related criminal case, not present, in the Nevada Department of Corrections (NDC). Betsy Allen, Appointed Counsel, Confirmed as counsel. Ms. Allen noted she was notified by Mr. Christiansen to appear and would request 60 days to obtain and review the file. COURT ORDERED, Matter set for a Status Check to set briefing schedule for Petition for Writ of Habeas Corpus. FURTHER, Petition, VACATED. NDC 03/04/2020 9:00 AM STATUS CHECK: RESET BRIEFING SCHEDULE & PETITION;

02/19/2020

CANCELED Petition for Writ of Habeas Corpus (9:00 AM) (Judicial Officer: Israel, Ronald J.)

Vacated

03/04/2020



Status Check (9:00 AM) (Judicial Officer: Israel, Ronald J.)

CASE SUMMARY
CASE NO. A-19-806862-W

Status Check: Set Briefing Sched & PTN

Hearing Set;

Journal Entry Details:

Colloquy regarding scheduling briefing schedule. COURT ORDERED, Briefing schedule set; Brief by 06/03/2020, State's Opposition by 08/05/2020, Deft's Reply by 09/09/2020 and hearing SET. 10/07/2020 9:00 AM PETITION FOR WRIT OF HABEAS CORPUS;

05/10/2021



Petition for Writ of Habeas Corpus (11:00 AM) (Judicial Officer: Israel, Ronald J.)

05/10/2021, 06/07/2021, 07/12/2021

Matter Continued;

Matter Continued;

Denied;

Journal Entry Details:

Petitioner / Deft. LARENZO present, in custody. Court noted the Court received and reviewed the reply. Ms. Allen submitted on everything except this issue of discovery that was not made available prior the Deft. entering his plea. Court referred to the Marcom Notice and that the State argued the Deft. was noticed 20 days before the hearing. Ms. Allen noted that was not part of her supplement it was raised by the Deft. and noted her biggest issue was discovery. State submitted and referred to the Marcom Notice. COURT ORDERED, Petition For Writ of Habeas Corpus, DENIED. Court addressed all the findings of both the Deft's Petition and Ms. Allen's Supplemental Petition/brief. Court noted regarding the in-effective assistant, the Deft. makes a bare naked allegation, without any substance and therefore, DENIED. Court referred to the Marcom Notice that was done 20 days prior and therefore there was no grounds to set aside, based on the Deft. having notice. Court referred to the supplemental petition; Court noted there were 10 other cases and the State did take life off the table and an additional concession not to charge the Deft. on the new cases. Court noted the Deft. at trial knew he committed the crimes in the other cases. Court finds it's a bare and naked allegation. Court further referred to the request for a hearing and noted they had a hearing with testimony on the record and there was cross-examination, COURT ORDERED, Request for Hearing, DENIED. Court cited findings under Evans and Strickland. Court concluded findings and noted the discovery would have not made a difference in the Deft's plea. Court directed the State to prepare the order, pass it by counsel and the Court will review the order.;

Matter Continued;

Matter Continued;

Denied;

Journal Entry Details:

Deft. PINKEY present, in custody, in the Nevada Department of Corrections (NDC). Ms. Strand standing in for Ms. Allen. Ms. Strand noted Ms. Allen was present earlier and had to leave for another matter. Court noted this was the second time and the Court had read everything. Court finds no grounds for an evidentiary hearing to be set and therefore, COURT ORDERED, Petition, CONTINUED. Court directed the State to prepare an order to transport. NDC 07/12/2021 11:00 AM PETITION FOR WRIT OF HABEAS CORPUS;

Matter Continued;

Matter Continued;

Denied;

Journal Entry Details:

Deft. PINKEY not present, in custody in the Nevada Department of Corrections (NDC). Ms. Allen noted the Deft. was not transported. Upon Court's inquiry, State noted they saw no order and the last hearing was from March. COURT ORDERED, Matter CONTINUED and State to prepare the order to transport. NDC 06/07/2021 PETITION FOR WRIT OF HABEAS CORPUS;

DISTRICT COURT CIVIL COVER SHEET

A-19-806862-W
Dept. XXVIII

County, Nevada

Case No. _____
(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone): <p style="text-align: center;">Lorenzo Pinkey</p>	Defendant(s) (name/address/phone): <p style="text-align: center;">State of Nevada</p>
Attorney (name/address/phone):	Attorney (name/address/phone):

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

Civil Case Filing Types

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

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

November 21, 2019

Date

PREPARED BY CLERK

Signature of initiating party or representative

See other side for family-related case filings.

1 **FCL**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 TALEEN PANDUKHT
6 Chief Deputy District Attorney
7 Nevada Bar #5734
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 LARENZO PINKEY,
13 #895438
14 Defendant.

CASE NO: A-19-806862-W

DEPT NO: XXVIII

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

17 DATE OF HEARING: JULY 12, 2021
18 TIME OF HEARING: 11:00 AM

19 THIS CAUSE having come on for hearing before the Honorable RONALD ISRAEL,
20 District Judge, on the 12 day of July, 2021, the Petitioner being present, being represented by
21 Betsy Allen, the Respondent being represented by STEVEN B. WOLFSON, Clark County
22 District Attorney, by and through BERNARD ZADROWSKI, Chief Deputy District Attorney,
23 and the Court having considered the matter, including briefs, transcripts, arguments of counsel,
24 and documents on file herein, now therefore, the Court makes the following findings of fact
25 and conclusions of law:

26 //

27 //

28 //

1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **PROCEDURAL HISTORY**

3 On November 8, 2017, an Indictment was filed charging Petitioner Lorenzo Pinkey aka,
4 Lorenzo Pinkney (hereinafter “Petitioner”), and Co-Defendant Adrian Powell (“Co-defendant
5 Powell”) with two (2) counts of Conspiracy To Commit Robbery (Category B Felony - NRS
6 200.380, 199.480), two (2) counts of Burglary While In Possession Of A Deadly Weapon
7 (Category B Felony - NRS 205.060), three (3) counts of First Degree Kidnapping With Use
8 Of A Deadly Weapon (Category A Felony - NRS 200.310, 200.320, 193.165), seven (7) counts
9 of Robbery With Use Of A Deadly Weapon (Category B Felony - NRS 200.380, 193.165) and
10 one (1) count of Unlawful Taking Of Vehicle (Gross Misdemeanor - NRS 205.2715). All
11 charges stemmed from robberies that occurred at a Pepe’s Tacos restaurant and a Walgreens
12 store in Las Vegas, Nevada on September 28, 2017.

13 The case ultimately proceeded to jury trial on July 30, 2018. Voir Dire commenced on
14 July 30, 2018. The Court concluded for the day, and the parties returned the following day to
15 resume jury selection. On July 31, 2018, the parties negotiated for hours, and the State
16 ultimately agreed to allow both Petitioner and his Co-Defendant to plead guilty. Petitioner
17 pled guilty to Counts 1 and 8 - Conspiracy to Commit Robbery, Counts 2 and 9 - Burglary
18 While in Possession of a Deadly Weapon, Counts 3 and 13 - First Degree Kidnapping With
19 Use of a Deadly Weapon, Counts 4, 5, 6, 7, 10, 11 and 14 - Robbery With Use of a Deadly
20 Weapon, and Count 12 - Unlawful Taking of Vehicle (GM). The terms of the Guilty Plea
21 Agreement (hereinafter “GPA”) were as follows:

22 The Defendants agree to plead guilty to all counts in the
23 Amended Indictment. The State will maintain the full right to
24 argue, including for consecutive time between the counts,
25 however, the State agrees to not seek a Life sentence on any count.
The State retains the full right to argue the facts and circumstances,
but agrees to not file charges, for the following events:

- 26 1. LVMPD Event No. 170605-0220: Armed robbery at 7-
Eleven located at 4800 West Washington, Las Vegas, Clark
27 2. LVMPD Event No. 170614-0524: Armed robbery at
Roberto's/Mangos located at 6650 Vegas Drive, Las Vegas,
28 Clark County, Nevada, on June 14, 2017.

3. LVMPD Event No. 170618-0989: Armed robbery at Pepe's Tacos located at 1401 North Decatur, Las Vegas, Clark County, Nevada, on June 18, 2017.
4. LVMPD Event No. 170701-0545: Armed robbery at Roberto's located at 2685 South Eastern Avenue, Las Vegas, Clark County, Nevada, on July 1, 2017.
5. LVMPD Event No. 170812-3809: Armed robbery at Pizza Bakery located at 6475 West Charleston Boulevard, Las Vegas, Clark County, Nevada, on August 12, 2017.
6. LVMPD Event No. 170817-0241: Armed robbery at Terrible Herbst located at 6380 West Charleston Boulevard, Las Vegas, Clark County, Nevada, on August 17, 2017.
7. LVMPD Event No. 170817-0470: Armed robbery at Rebel located at 6400 West Lake Mead Boulevard, Las Vegas, Clark County, Nevada, on August 17, 2017.
8. LVMPD Event No. 170824-0521: Armed robbery at Roberto's located at 6820 West Flamingo Road, Las Vegas, Clark County, Nevada, on August 24, 2017.
9. LVMPD Event No. 170824-0645: Armed robbery at Roberto's located at 907 North Rainbow Boulevard, Las Vegas, Clark County, Nevada, on August 24, 2017.
10. LVMPD Event No. 170825-0589: Armed robbery at Pepe's Tacos located at 1401 North Decatur, Las Vegas, Clark County, Nevada, on August 25, 2017.

The Defendants agree to take no position at sentencing regarding the aforementioned ten (10) armed-robbery events. This Agreement is contingent upon the co-defendant's acceptance and adjudication on his respective Agreement.

On January 30, 2019, Petitioner filed a Motion to Withdraw Guilty Plea through newly appointed counsel Lucas Gaffney, Esq. The State filed an Opposition on February 12, 2019. On April 24, 2019, an evidentiary hearing was held, and Petitioner's plea counsel, Ben Durham, Esq., and Petitioner testified. At the conclusion of the evidentiary hearing, the Court made verbal findings that Mr. Durham's testimony was credible, he knew Petitioner's condition before the plea, he spoke to him about all the charges and involving potential sentencing, he read the entire GPA to him, discussed concurrent and consecutive time, and Petitioner stated he understood everything. The Court further found Petitioner was examined and found competent and he knowingly and voluntarily entered his plea. The Court also found no evidence under Strickland that Mr. Durham failed to render reasonable effective assistance. The Court then denied Petitioner's Motion to Withdraw Guilty Plea.

On May 20, 2019, Mr. Gaffney filed a Sentencing Memorandum. On May 22, 2019, Petitioner was ordered to pay Restitution in the total amount of \$3,942.00, jointly and severally

1 with the Co-Defendant (\$1,100.00 to Pepe's Tacos; \$2,342.00 to Rebel Oil Co; and \$500.00
2 to Roberto's on Rainbow). Petitioner was sentenced as follows: Count 1 - twelve (12) to forty-
3 eight (48) months in the Nevada Department of Corrections (“NDC”); Count 2 - twenty-four
4 (24) to one hundred twenty (120) months in the NDC, concurrent with Count 1; Count 3 - sixty
5 (60) to one hundred eighty (180) months, plus a consecutive term of twelve (12) to sixty (60)
6 months in the NDC for the use of a deadly weapon, consecutive to Count 2; Count 4 - twenty-
7 four (24) to one hundred twenty (120) months, plus a consecutive term of twelve (12) to one
8 hundred twenty (120) months in the NDC for the use of a deadly weapon, consecutive to Count
9 3; Count 5 - twenty-four (24) to one hundred twenty (120) months, plus a consecutive term of
10 twelve (12) to one hundred twenty (120) months in the NDC for the use of a deadly weapon,,
11 concurrent with Count 4; Count 6 - twenty-four (24) to one hundred twenty (120) months, plus
12 a consecutive term of twelve (12) to one hundred twenty (120) months in the NDC for the use
13 of a deadly weapon, concurrent with Count 5; Count 7 - twenty-four (24) to one hundred
14 twenty (120) months, plus a consecutive term of twelve (12) to one hundred twenty (120)
15 months in the NDC for the use of a deadly weapon, concurrent with Count 6; Count 8 - a
16 twelve (12) to forty-eight (48) months in the NDC, concurrent with Count 1; Count 9 - thirty-
17 six (36) to one hundred twenty (120) months in the NDC, concurrent with Count 3; Count 10
18 - twenty-four (24) to one hundred twenty (120) months, plus a consecutive term of twelve (12)
19 to one hundred twenty (120) months in the NDC for the use of a deadly weapon, concurrent
20 with Count 7; Count 11 - twenty-four (24) to one hundred twenty (120) months, plus a
21 consecutive term of twelve (12) to one hundred twenty (120) months in the NDC for the use
22 of a deadly weapon, concurrent with Count 10; Count 12 - three hundred sixty-four days (364)
23 in the Clark County Detention Center (“CCDC”), concurrent with Count 11; Count 13 - sixty
24 (60) to one hundred eighty (180) months, plus a consecutive term of twelve (12) to sixty (60)
25 months in the NDC for the use of a deadly weapon, concurrent with Count 3; and Count 14 -
26 twenty-four (24) to one hundred twenty (120) months, plus a consecutive term of twelve (12)
27 to one hundred twenty (120) months in the NDC for the use of a deadly weapon, concurrent
28

1 with Count 11. Petitioner’s aggregate total sentence was one hundred thirty-two (132) to six
2 hundred (600) months in the NDC.

3 The Judgment of Conviction was filed on May 24, 2019.

4 On November 21, 2019, Petitioner filed a Pro Per Petition for Writ of Habeas Corpus
5 (Post-Conviction) (“Petition”). On January 6, 2020, the Court appointed Betsy Allen, Esq. On
6 January 18, 2021, Petitioner filed a Supplemental Memorandum of Points and Authorities in
7 Support of Petitioner’s Writ of Habeas Corpus (Post-Conviction) (“Supplemental Petition”).
8 On March 24, 2021, the State filed a Response to Petitioner’s Petition and Supplemental
9 Petition. On May 20, 2021, Petitioner filed a Reply to the State’s Response. On July 12, 2021,
10 the district court heard arguments from Petitioner and counsel.

11 **STATEMENT OF FACTS**

12 **A. Testimony of Jose Chavarria**

13 Jose Alfredo Chavarria Valenzuela was working as a cook at Pepe’s Tacos located at
14 2490 Fremont Street, Las Vegas, Nevada on September 28, 2017. Reporter’s Transcript of
15 Proceedings, October 17, 2017, (“RT1”) at 32-33. At approximately 2:40 AM, Chavarria was
16 in the kitchen area when two (2) gunmen entered the restaurant. RT1 at 35. Chavarria ran
17 toward the back refrigerator where his co-worker was located, when one of the gunman jumped
18 the counter, followed Chavarria and pointed a gun at him. RT1 at 35. The gunman told
19 Chavarria to get on the ground and that he “wanted the money.” Id. The gunman then forced
20 Chavarria at gunpoint from the back of the store to the front cash registers. RT1 35-36.

21 At the cash registers, the gunman began jabbing Chavarria in his side, but Chavarria
22 was unable to open the till because he did not have the correct passcode. RT1 at 36. The
23 second gunman then retrieved Chavarria’s coworker from the back of the store and forced her
24 to open the cash registers at the front of the store. RT1 at 37. One of the gunmen then took
25 Chavarria to the second cash register, threw him on the ground, and pointed a gun to
26 Chavarria’s head. Id. The gunmen took the money from the cash registers but did not take
27 any property from Chavarria. RT1 at 37-38.

28 //

1 **B. Testimony of Yenir Hessing**

2 Yenir Hessing works as the shift lead at the Walgreens located at 4470 East Bonanza,
3 Las Vegas, Nevada. RT1 at 7. On September 28, 2017, Hessing was working the graveyard
4 shift with four (4) other Walgreens employees when, at approximately 4:05 AM, two (2)
5 masked gunmen entered the store. RT1 at 8-10.

6 Hessing was stocking the shelves in the food aisle when one of the gunmen pointed a
7 gun to her stomach and demanded she move to the front of the store. RT1 at 10. The food
8 aisle is located near the store’s photo section, away from the registers and store entrance. RT1
9 at 14. While pushing her to the front of the store, the gunman told Hessing to go to the cash
10 registers in the front of the store, passing the cash register in the photo section. RT1 at 14. As
11 the gunman pushed Hessing, he told her this is “not a game and I'm going to kill you.” RT1
12 at 10.

13 At the front of the store, the gunman told her to open the three (3) cash registers, which
14 Hessing did. Id. At that moment, another Walgreens employee, Tifnie Bobbitt, was returning
15 from lunch and, upon seeing Bobbitt, the gunman ordered her to the front of the store too. Id.
16 Hessing testified that the gunman was “swearing and saying like really bad things ... grabbed
17 both of us and he asked me where is the big money, where is the safe, and I tell him it was in
18 the office.” RT1. The gunman then used the gun to again push Hessing, this time toward the
19 office located at the back of the store. RT1 at 10 .

20 While the gunman pushed Hessing toward the back of the store, Hessing saw down an
21 aisle that the Walgreen’s pharmacist, Darlene Orat, was being held up by another gunman in
22 the pharmacy. RT1 at 9, 12. As the gunman pushed Hessing toward the back office at
23 gunpoint, he told Hessing “I'm going to kill you.” RT1 at 14:15. Hessing responded to the
24 gunman, telling him “please don't hurt me, I'm nine weeks pregnant, don't do anything to me.”
25 RT1 at 15-17. To which the gunman responded, “I don't give a [fuck] I'm going to kill you if
26 you do the wrong code or ... try to call [police].” RT1 at 14:17-19.

27 Upon reaching the back office, which is behind two doors that each have a different pin
28 code, Hessing entered the code and the gunman forced Hessing and Bobbitt into the office.

1 RT1 at 15-16. The door to the office closed behind them, leaving Hessing, Bobbitt and the
2 gunman isolated from the rest of the store. RT1 at 17-18. In the office, the gunman began
3 hitting Hessing in the ribs with the gun and demanding that she open the safe. RT1 at 17.
4 Hessing opened the first of two safes and the gunman grabbed everything. Id. The gunman
5 then demanded Hessing open the second safe, which she did. The gunman grabbed the
6 contents from the second safe and fled from the office. Id.

7 **C. Testimony of Tifnie Bobbitt.**

8 Tifnie Bobbitt was working as a cashier at the Walgreens located at 4470 East Bonanza,
9 Las Vegas, Nevada, on September 28, 2017. Reporter’s Transcript of Proceedings, November
10 7, 2017, (“RT2”) 8. Around 4:00 AM, Bobbitt was headed to breakroom to take her lunch
11 break when she heard a man “say the F word.” RT2 9-10:1. Bobbitt looked over to see the
12 man crouching and walking behind Yenir Hessing. RT2 at 1. Bobbitt entered the code to the
13 breakroom, entered the room and approached the second code-locked door to the office, which
14 she knocked on to alert the Walgreen’s manager. RT2 at 10-11. Bobbitt’s manager left and
15 did not return, so Bobbitt, thinking the situation was taken care of, walked out of the breakroom
16 into the store. RT2 at 11. At that moment, the gunman saw her and yelled at her “Where the
17 fuck do you think you’re going, bitch?” RT2 at 11.

18 The gunman then ordered Bobbitt to the front of the store where Hessing was opening
19 the cash registers for the gunman. RT2 at 13. From there, the gunman forced Bobbitt and
20 Hessing from the front of the store to the back office, pushing Bobbitt while telling the women
21 they were walking too slowly. RT2 at 13-14. At the breakroom door, they entered the code
22 and entered the breakroom. RT2 at 14. From there, Hessing entered the code to the office
23 door and the gunman forced the women into the office. RT2 at 14-15. In the office, the
24 gunman “kept jabbing the gun” into Hessing’s side as he was forcing her to open the safes.
25 RT2 at 15. Once the safes were open, the gunman took the money from the safes and fled. Id.

26 //

27 //

28 //

1 ANALYSIS

2 NRS 34.810(1) reads:

3 The court shall dismiss a petition if the court determines that:

4 (a) The petitioner’s conviction was upon a plea of guilty or guilty
5 but mentally ill and the petition is not based upon an allegation
6 that the plea was involuntarily or unknowingly or that the plea was
7 entered without effective assistance of counsel.

8 (b) The petitioner’s conviction was the result of a trial and the
9 grounds for the petition could have been:

10 [. . .]

11 (2) Raised in a direct appeal or a prior petition for a writ of habeas
12 corpus or postconviction relief.

13 The Nevada Supreme Court has held that “challenges to the validity of a guilty plea and
14 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-
15 conviction proceedings.... [A]ll other claims that are appropriate for a direct appeal must be
16 pursued on direct appeal, or they will be *considered waived in subsequent proceedings.*”
17 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)
18 (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). “A
19 court must dismiss a habeas petition if it presents claims that either were or could have been
20 presented in an earlier proceeding, unless the court finds both cause for failing to present the
21 claims earlier or for raising them again and actual prejudice to the petitioner.” Evans v. State,
22 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001).

23 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
24 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
25 defense.” The United States Supreme Court has long recognized that “the right to counsel is
26 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
27 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
28 (1993).

To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of
Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063–64. See also Love, 109 Nev. at 1138, 865
P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's

1 representation fell below an objective standard of reasonableness, and second, that but for
2 counsel's errors, there is a reasonable probability that the result of the proceedings would have
3 been different. 466 U.S. at 687–88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison
4 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).
5 “[T]here is no reason for a court deciding an ineffective assistance claim to approach the
6 inquiry in the same order or even to address both components of the inquiry if the defendant
7 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

8 The court begins with the presumption of effectiveness and then must determine
9 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
10 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
11 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
12 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
13 537 P.2d 473, 474 (1975).

14 Counsel cannot be ineffective for failing to make futile objections or arguments. See
15 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
16 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
17 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
18 (2002).

19 Based on the above law, the role of a court in considering allegations of ineffective
20 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
21 whether, under the particular facts and circumstances of the case, trial counsel failed to render
22 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
23 (1978). This analysis does not mean that the court should “second guess reasoned choices
24 between trial tactics nor does it mean that defense counsel, to protect himself against
25 allegations of inadequacy, must make every conceivable motion no matter how remote the
26 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel
27 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
28

1 cannot create one and may disserve the interests of his client by attempting a useless charade.”
2 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

3 “There are countless ways to provide effective assistance in any given case. Even the
4 best criminal defense attorneys would not defend a particular client in the same way.”
5 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
6 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
7 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
8 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's
9 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
10 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

11 When a conviction is the result of a guilty plea, a defendant must show that there is a
12 “reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and
13 would have *insisted* on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370
14 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107
15 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

16 Even if a defendant can demonstrate that his counsel's representation fell below an
17 objective standard of reasonableness, he must still demonstrate prejudice and show a
18 reasonable probability that, but for counsel’s errors, the result of the trial would have been
19 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
20 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
21 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,
22 694, 104 S. Ct. at 2064–65, 2068).

23 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the
24 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
25 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
26 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
27 be supported with specific factual allegations, which if true, would entitle the petitioner to
28 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”

1 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
2 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims
3 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your
4 petition to be dismissed.” (emphasis added).

5 In his Petition, Petitioner claims that “counsel failed to show muster in his duty” and
6 that the prosecution did not serve a proper Marcum notice. Petition at 5-6. In his Supplemental
7 Petition, Petitioner raises four (4) other claims: (1) that trial counsel was ineffective when
8 moving to withdraw Petitioner’s guilty plea because counsel did not argue that Petitioner was
9 induced to plead guilty by the State’s agreement not to seek criminal charges against Petitioner
10 for crimes they never could have tied to Petitioner; (2) that counsel was ineffective for failing
11 to appeal the district court’s denial of his Motion to Withdraw Guilty Plea; (3) that cumulative
12 error warrants reversing Petitioner’s conviction; and (4) that Petitioner is entitled to an
13 evidentiary hearing. Supplemental Petition at 14-17. All of Petitioner’s claims fail.

14 **I. PETITIONER’S PETITION IS DENIED**

15 Petitioner raises two (2) claims within Ground One of his Petition. Specifically,
16 Petitioner claims that “counsel failed to show muster in his duty” and that the prosecution did
17 not serve a proper Marcum notice. Petition at 5-6. Petitioner alleges that the State did not
18 provide him with a notice of his right to testify at Grand Jury and that the Indictment was
19 void because it was issued the day after the second grand jury hearing. Id. at 6. Petitioner
20 claims that this is what caused him to plead guilty and that counsel was ineffective for not
21 taking notice of this violation. Petitioner’s claims fail.

22 As an initial matter, Petitioner waived these claims when he pled guilty. NRS
23 34.810(1)(a). Nothing about Petitioner’s claim that counsel did not show enough muster
24 alleges that counsel actions rendered his plea invalid or that counsel was ineffective in the plea
25 process. Additionally, Petitioner’s claim that the Marcum notice was not timely served is not
26 even a claim of ineffective assistance of counsel and thus should have been raised on direct
27 appeal. Therefore, both claims are beyond the scope of habeas proceedings and therefore
28 denied.

1 Moreover, Petitioner’s claim that counsel did not show “muster” during his
2 representation of Petitioner is nothing but a bare and naked claim suitable only for summary
3 denial. Petitioner does not explain specifically what counsel should have done or how those
4 actions would have caused him to reject any plea deal and proceed to trial. Hargrove, 100 Nev.
5 at 502, 686 P.2d at 225. As such, his claim is denied.

6 Next, Petitioner’s claim that the Marcum notice was not timely served is belied by the
7 record. NRS 172.241(2) provides that a district attorney “shall serve reasonable notice” to a
8 defendant that a grand jury indictment is being sought. The Nevada Supreme Court has held
9 that even five (5) days’ notice is reasonable. Sheriff v. Marcum, 105 Nev. 824, 825-269, 783
10 P.2d 1389, 1390-91 (1989).

11 In this case, the Marcum notice was served on defense counsel on October 18, 2017.
12 Exhibit A. While the grand jury first convened on October 17, 2017, the grand jury met a
13 second time on November 7, 2017, and subsequently returned a true bill against that same day,
14 twenty (20) days after Petitioner was informed of his right to testify before the grand jury.
15 Twenty (20) days is more than “reasonable notice” for Petitioner to decide whether he wished
16 to testify or present evidence at the hearing. NRS 172.241. Despite Petitioner’s belief that his
17 Indictment is invalid because it was issued a day after the grand jury met, that does not change
18 the fact that Marcum was served twenty (20) days before the grand jury met. As such,
19 Petitioner’s claim is belied by the record.

20 Additionally, Petitioner cannot show prejudice. Petitioner does not even that he would
21 have testified at the grand jury, much less what he would have testified to or how that would
22 have impacted the outcome at the grand jury. Despite Petitioner’s claim that this is what caused
23 him to plead guilty, Petitioner failed to articulate specific facts or evidence supporting this
24 allegation. As such, this is nothing but a bare and naked allegation suitable for summary denial.
25 Hargrove, 100 Nev. at 502, 686 P.2d at 225. For these same reasons, Petitioner’s claim that
26 counsel was ineffective for not taking notice of this alleged violation of his rights fails.
27 Petitioner failed to show a reasonable probability that, but for counsel's errors, he would not
28 have pleaded guilty and would have insisted on going to trial. Molina, 120 Nev. at 190-91, 87

1 P.3d at 537. Thus, Petitioner cannot show that counsel was ineffective. Accordingly, this Court
2 denies Petitioner's Petition.

3 **II. PETITIONER'S SUPPLEMENTAL PETITION IS DENIED**

4 **A. Trial counsel was not ineffective when moving to withdraw Petitioner's** 5 **guilty plea.**

6 Petitioner argues that trial counsel was ineffective when moving to withdraw
7 Petitioner's guilty plea. Supplemental Petition at 14-16. Specifically, Petitioner claims that
8 counsel should have argued that his plea was invalid because part of his inducement to plead
9 guilty was that the State agreed not to file criminal charges against Petitioner and his Co-
10 defendant for ten (10) additional armed robberies. Id. Petitioner claims that because he was
11 not given the opportunity to review discovery related to the other possible criminal charges
12 and because there was no way that the State could have proved that Petitioner was guilty of
13 the other robberies, counsel was ineffective for telling Petitioner to accept the State's plea
14 offer. Id. Petitioner's claim fails.

15 As an initial matter, Petitioner's claim is nothing but a bare and naked claim suitable
16 only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225; Maresca v. State, 103
17 Nev. 669, 673, 748 P.2d 3, 6 (1987). Indeed, a party seeking review bears the responsibility
18 "to cogently argue, and present relevant authority" to support his assertions. Edwards v.
19 Emperor's Garden Restaurant, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006);
20 Dept. of Motor Vehicles and Public Safety v. Rowland, 107 Nev. 475, 479, 814 P.2d 80, 83
21 (1991) (defendant's failure to present legal authority resulted in no reason for the district court
22 to consider defendant's claim); Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (an
23 arguing party must support his arguments with relevant authority and cogent argument; "issues
24 not so presented need not be addressed"); Randall v. Salvation Army, 100 Nev. 466, 470-71,
25 686 P.2d 241, 244 (1984) (court may decline consideration of issues lacking citation to
26 relevant legal authority); Holland Livestock v. B & C Enterprises, 92 Nev. 473, 533 P.2d 950
27 (1976) (issues lacking citation to relevant legal authority do not warrant review on the merits).
28 Claims for relief devoid of specific factual allegations are "bare" and "naked," and are

1 insufficient to warrant relief, as are those claims belied and repelled by the record. Hargrove,
2 100 Nev. at 502, 686 P.2d at 225. “[Petitioner] *must* allege specific facts supporting the claims
3 in the petition[.]...Failure to allege specific facts rather than just conclusions may cause [the]
4 petition to be dismissed.” NRS 34.735(6) (emphasis added).

5 Regardless, Petitioner failed to demonstrate ineffective assistance of counsel. First,
6 Petitioner’s claim that “the only reason he entered into this agreement was due to the
7 assurances that the State would not pursue charge [sic] in approximately 8 other robberies” is
8 belied by the record. Supplemental Petition at 15. Not only did the State agree not to seek
9 charges against Petitioner in ten (10), not eight (8), additional robberies, but Petitioner also
10 forgets that in exchange for his guilty plea, the State agreed not to seek a potential life sentence
11 on the two (2) First Degree Kidnapping With Use of Deadly Weapon counts in the instant
12 case. Guilty Plea Agreement, at 1-2 (filed July 31, 2018). Based on this agreement and the
13 evidence against Petitioner, counsel cannot be deemed ineffective for recommending that
14 Petitioner plead guilty. Specifically, during the evidentiary hearing on Petitioner’s Motion to
15 Withdraw Guilty Plea, counsel for Petitioner testified that he knew there were several
16 witnesses prepared to testify as well as DNA evidence linking Petitioner to all of the crimes
17 charged:

18 Q I want to go briefly into the evidence that you are aware of
19 once we started the trial essentially. Do you recall there being a
20 series of multiple victims -- or multiple victims per event in this
21 case?

22 A Yes.

23 Q Meaning several people at the Walgreen’s and then several
24 people at the Pepe’s Tacos that were robbed?

25 A Right.

26 Q And do you recall there being DNA evidence and
27 fingerprints implicating both Mr. Pinkney and Mr. Powell in this
28 case?

29 A Yes.

30 Q Did that type of evidence and the other evidence that you’re
31 aware of factor into your determination on to advising whether to
32 take a plea or not to take a plea?

33 A **It wasn’t just that. It was also the fact that they were**
34 **apparently under other events under investigation.**

35 Q Understood. With regard to these charges that are just for
36 now, --

37 A Uh-huh.

38 Q -- when you -- when you come in to start a trial day of,
 you’re aware of the evidence in the case, is what I’m asking.

1 A Yes.

2 Q And based upon the evidence, if the evidence is strong
against him, you might advise someone to take a plea. Is that fair?

3 A That's fair.

4 Recorder's Transcript of Hearing Evidentiary Hearing Re: Motion to Withdraw Guilty Plea
5 Deft. Lorenzo Pinkey's Motion to Withdraw Guilty Plea, at 15-16 (April 24, 2019).

6 Additionally, Petitioner's claim that he was not satisfied with counsel's representation
7 and advice fails. When Petitioner pled guilty, he affirmed that he had spoken with counsel,
8 that counsel answered all of his questions, and he was satisfied with counsel's representation:

9 THE COURT: Have you discussed this case with your attorney?

10 DEFENDANT PINKNEY: Yes.

11 THE COURT: Are you satisfied with his representation and the advice
12 given to you by your attorney?

13 DEFENDANT PINKNEY: Yes, I have. Or, yes, I am. Sorry.

14 [...]

15 THE COURT: And do you understand everything contained in the guilty
16 plea agreement?

17 DEFENDANT PINKNEY: Yes.

18 THE COURT: And you had an opportunity to discuss this with your
19 attorney?

20 DEFENDANT PINKNEY: Yes.

21 THE COURT: And if you had any questions, did he answer your questions?

22 DEFENDANT PINKNEY: Yes, he did.

23 THE COURT: Do you have any questions of me regarding that at this time?

24 DEFENDANT PINKNEY: No, Your Honor.

25 Recorder's Transcript of Jury Trial – Day 2 Guilty Plea Agreements, 5-6 (November 2, 2018).

26 Next, Petitioner has not demonstrated that he was entitled to review the evidence tying
27 him to the ten (10) other armed robberies prior to pleading guilty here. Petitioner knew what
28 he had and had not reviewed when he pled guilty and he knew whether he committed the other
robberies when he did so. If Petitioner was so concerned about whether he could really be tied
to these ten (10) other robberies, Petitioner could have asked to review that evidence prior to
pleading guilty. Petitioner has not alleged that he did so and as that evidence was irrelevant to
the weight of evidence in the instant case, Petitioner cannot demonstrate that counsel was
ineffective.

1 Further, Petitioner failed to show prejudice. Despite Petitioner’s claim that the State
2 could not have proved that Petitioner was guilty of the ten (10) crimes enumerated in the Guilty
3 Plea Agreement, Petitioner offers no evidence in support of that claim. Petitioner has not
4 pointed to any specific information or fact that establishes that he would not have pled guilty
5 and proceeded to trial had he reviewed the evidence regarding the other ten (10) robberies.
6 Rather, he simply claims that if he had been apprised of the actual evidence against, “there is
7 no possibility he would have entered the plea [because] the other robberies were lacking in
8 any real evidence against him.” Supplemental Petition at 15. While counsel may personally
9 believe that the evidence in the ten (10) additional cases was not as strong as the evidence in
10 the instant case, that is not a basis to grant this Petition. Petitioner provides no specific
11 information about any of the ten (10) additional armed robberies, and therefore cannot say the
12 other robberies were lacking in any real evidence against him and that there is no way the State
13 could have taken those additional cases to trial. Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.,
14 123 Nev. 598, 603, 172 P.3d 131, 134-35 (2007) (noting appellant has the burden of providing
15 this court with an adequate appellate record, and when the appellant “fails to include necessary
16 documentation in the record, [this court] necessarily presume[s] that the missing portion
17 supports the district court's decision”).

18 Moreover, Petitioner’s claim that counsel did not review the evidence pertaining to the
19 ten (10) other robberies prior to advising Petitioner to plead guilty fails. While Petitioner’s
20 counsel did not challenge the validity of his guilty plea based on the State’s agreement not to
21 seek additional criminal charges on other armed robberies, Co-defendant Powell did via a pre-
22 sentence Motion to Withdraw Plea. State v. Adrian Powell, C-17-327767-2, Motion to
23 Withdraw Guilty Plea, (filed January 4, 2019). Like Petitioner’s Motion to Withdraw Guilty
24 Plea, the district court denied Co-defendant Powell’s Motion to Withdraw Plea. However,
25 unlike Petitioner, the district court did so without an evidentiary hearing. State v. Adrian
26 Powell, C-17-327767-2, Court Minutes: Hearing: RE: Withdrawal of Plea, February 27, 2019.
27 Co-defendant Powell appealed that denial, and the Nevada Court of Appeals reversed the
28 district court’s decision, holding that the court erred in denying Co-defendant Powell’s Motion

1 to Withdraw Guilty Plea without first holding an evidentiary hearing. Order of Reversal and
2 Remand, Docket No. 79037-COA, at 2 (filed May 11, 2020).

3 On August 13, 2020, the district court held an evidentiary hearing regarding whether
4 counsel for Petitioner or Co-defendant Powell had reviewed any evidence regarding the ten
5 (10) other armed robberies. There, counsel for Co-defendant Powell confirmed that both
6 himself and counsel for Petitioner, Benjamin Durham, reviewed the evidence regarding the
7 other cases prior to pleading guilty:

8 Q Understood. One last little area of questioning and I'll be done. Do
9 you recall while we had the jury in the hallway on the second day of
10 jury selection and prior to the deals being entered, you, Mr. Nelson,
11 and Mr. Durham and my co-counsel and I sitting out in the ante room
discussing the negotiation for an extended period of time?

12 A Yes. Yes.

13 Q You were shown photographs in the detective's wall on the quote
14 Jumping Jack Robbery series which included our trial and then ten
15 uncharged acts, right?

16 A Yeah, I don't know what it was called but there -- ten, allegedly ten
17 uncharged acts that were --

18 Q Right. And you were shown some discovery on those other uncharged
19 acts like photographs -- still shots of photographs from surveillance
20 videos in the uncharged cases, correct?

21 A Correct.

22 Q And we kind of pointed out, look, you can see the shoes are the exact
23 same in some of the events and the way they all jumped, the MO is
24 the same. Do you recall those conversations?

25 A I don't recall specifics. I recall that -- that you guys, the DA's office,
26 you know, thought they had evidence to file.

27 Q Okay. And you recall going through some of it or at least having some
28 understanding of there are ten other events that are potentially related
and potentially could be charged after this trial occurs, correct?

A Yeah, that's correct. And then, in fact, after that discussion, we -- Mr.
Powell and, I don't know Pinkney or Pinkey, they wanted to have a
conversation with all the attorneys together. And so we went back for
an extended period of time. And I forgot about Ben, but with Ben, co-
defendant, Mr. Powell, Mr. Nelson.

Exhibit B, at 21-22 (August 13, 2020).

1 Accordingly, Petitioner’s claim that his counsel did not review the discovery in the ten
2 (10) other armed robberies fails.

3 **B. Petitioner cannot show that counsel was ineffective for not filing an appeal.**

4 Petitioner argues that after the district court denied his Motion to Withdraw Guilty Plea,
5 counsel should have appealed the decision and that counsel was ineffective for failing to do
6 so. Supplemental Petition at 16-17. Petitioner’s claim fails.

7 Counsel is only obligated to file a notice of appeal or to consult with a defendant
8 regarding filing a notice of appeal in certain circumstances. Toston v. State, 127 Nev. 971, 267
9 P.3d 795 (2011). “[T]rial counsel has a constitutional duty to file a direct appeal in two
10 circumstances: when requested to do so and when the defendant expresses dissatisfaction with
11 his conviction, and that the failure to do so in those circumstances is deficient for purposes of
12 proving ineffective assistance of counsel.” Id. at 977, 267 P.3d at 800. Moreover, trial counsel
13 has no constitutional obligation to always inform or consult with a defendant regarding his
14 right to a direct appeal when the defendant is convicted pursuant to a guilty plea. Id. Rather,

15 [t]hat duty arises in the guilty-plea context only when the defendant inquires
16 about the right to appeal or in circumstances where the defendant may benefit
17 from receiving advice about the right to a direct appeal, ‘such as the existence
18 of a direct appeal claim that has reasonable likelihood of success.’

19 Id. (quoting Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999)).

20 Courts should consider “all the information counsel knew or should have known” and
21 focus on the totality of the circumstances. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct.
22 1029, 1036 (2000). Importantly, whether the defendant’s conviction followed a guilty plea is
23 highly relevant to the inquiry “both because a guilty plea reduces the scope of potentially
24 appealable issues and because such a plea may indicate that the defendant seeks an end to
25 judicial proceedings.” Id. Thus, when a defendant who pleaded guilty claims that he was
26 deprived of the right to appeal, “the court must consider such factors as whether the defendant
27 received the sentence bargained for as part of the plea and whether the plea expressly reserved
28 or waived some or all appeal rights.” Id.

1 In this case, Petitioner has not alleged, and there is no indication in the record, that he
2 reserved his appeal rights, asked counsel to file an appeal on his behalf, or otherwise wished
3 to challenge his conviction, denial of his Motion to Withdraw Guilty Plea, or sentence. Instead,
4 Petitioner simply makes a broad claim that if counsel had appealed the district court’s decision,
5 it would have been reversed. However, Petitioner does not explain precisely what error the
6 district court made when denying his Motion to Withdraw Guilty Plea or why it would have
7 been reversed. Indeed, as Petitioner is claiming that counsel was ineffective when arguing that
8 Petitioner should be allowed to withdraw his plea—which the State does not concede—it
9 would be difficult to also argue that appealing the district court’s decision would have been
10 successful. Accordingly, Petitioner’s claim is nothing but a bare and naked assertion and
11 therefore denied. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

12 **C. Petitioner’s claim of cumulative error fails.**

13 Petitioner argues that the cumulation of all of the above errors warrants relief.
14 Supplemental Petition at 17. However, the Nevada Supreme Court has not endorsed
15 application of its direct appeal cumulative error standard to the post-conviction Strickland
16 context. McConnell v. State, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009). Nor should
17 cumulative error apply on post-conviction review. Middleton v. Roper, 455 F.3d 838, 851 (8th
18 Cir. 2006), cert. denied, 549 U.S. 1134, 1275 S. Ct. 980 (2007) (“a habeas petitioner cannot
19 build a showing of prejudice on series of errors, none of which would by itself meet the
20 prejudice test.”).

21 Even if applicable, a finding of cumulative error in the context of a Strickland claim is
22 extraordinarily rare and requires an extensive aggregation of errors. See, e.g., Harris By and
23 through Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995). In fact, logic dictates that
24 there can be no cumulative error where the petitioner fails to demonstrate any single violation
25 of Strickland. Turner v. Quarterman, 481 F.3d 292, 301 (5th Cir. 2007) (“where individual
26 allegations of error are not of constitutional stature or are not errors, there is ‘nothing to
27 cumulate.’”) (quoting Yohey v. Collins, 985 F.2d 222, 229 (5th Cir. 1993)); Hughes v. Epps,
28 694 F.Supp.2d 533, 563 (N.D. Miss. 2010) (citing Leal v. Dretke, 428 F.3d 543, 552-53 (5th

1 Cir. 2005)). Since Petitioner has not demonstrated any claim warranting relief under
2 Strickland, there are no errors to cumulate.

3 Under the doctrine of cumulative error, “although individual errors may be harmless,
4 the cumulative effect of multiple errors may deprive a defendant of the constitutional right to
5 a fair trial.” Pertgen v. State, 110 Nev. 554, 566, 875 P.2d 361, 368 (1994) (citing Sipsas v.
6 State, 102 Nev. 119, 716 P.2d 231 (1986)); see also Big Pond v. State, 101 Nev. 1, 3, 692 P.2d
7 1288, 1289 (1985). The relevant factors to consider in determining “whether error is harmless
8 or prejudicial include whether ‘the issue of innocence or guilt is close, the quantity and
9 character of the error, and the gravity of the crime charged.’” Id., 101 Nev. at 3, 692 P.2d at
10 1289.

11 Here, Petitioner failed to show cumulative error because there are no errors to cumulate.
12 Petitioner failed to show how any of the above claims constituted ineffective assistance of
13 counsel. Instead, all of Petitioner’s claims are either belied by the record or otherwise
14 meritless. As such, Petitioner fails to establish cumulative error.

15 **D. Petitioner is not entitled to an evidentiary hearing.**

16 The Nevada Supreme Court has held that if a petition can be resolved without
17 expanding the record, then no evidentiary hearing is necessary. NRS 34.770; Marshall v. State,
18 110 Nev. 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231
19 (2002). A defendant is entitled to an evidentiary hearing if his petition is supported by specific
20 factual allegations, which, if true, would entitle him to relief unless the factual allegations are
21 repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State,
22 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking post-
23 conviction relief is not entitled to an evidentiary hearing on factual allegations belied or
24 repelled by the record”). “A claim is ‘belied’ when it is contradicted or proven to be false by
25 the record as it existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at
26 1230 (2002).

27 It is improper to hold an evidentiary hearing simply to make a complete record. See
28 State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The

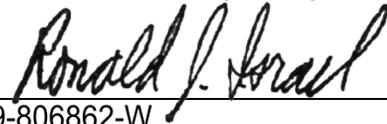
1 district court considered itself the ‘equivalent of . . .the trial judge’ and consequently wanted
2 ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary
3 hearing.”).

4 At this stage, there is no need for an evidentiary hearing because all of the claims are
5 either waived, without merit, or bare and naked allegations that are belied by the record.
6 Evans, 117 Nev. at 646-47, 29 P.3d at 523. Strickland, 466 U.S. at 686, 104 S. Ct. at 2063.
7 As none of Petitioner’s claims would entitle him to relief and there is no need to expand the
8 record, the request for another evidentiary hearing is denied.

9 **ORDER**

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

13 Dated this 29th day of July, 2021

14 

15 A-19-806862-W

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

19 6AB B59 FD0F BF99
20 Ronald J. Israel
21 District Court Judge

22 SC

23 BY /s/ Taleen Pandukht
24 TALEEN PANDUKHT
25 Chief Deputy District Attorney
26 Nevada Bar #5734
27
28

CERTIFICATE OF MAILING

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

LARENZO PINKEY, #1217414
HIGH DESERT STATE PRISON
PO BOX 650
INDIAN SPRINGS, NV 89070

BY /s/ E. Del Padre
E. DEL PADRE
Secretary for the District Attorney's Office

ed/jb/GCU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Lorenzo Pinkey, Plaintiff(s)

CASE NO: A-19-806862-W

7 vs.

DEPT. NO. Department 28

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 Findings of Fact, Conclusions of Law and Order 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: 7/29/2021

15 Alexander Chen

Alexander.Chen@ClarkCountyDA.com

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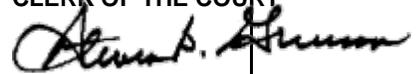
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1 NEFF

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

4
5 LARENZO PINKEY,

Petitioner,

Case No: A-19-806862-W

Dept No: XXVIII

6
7 vs.

8 STATE OF NEVADA,

Respondent,

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

9
10
11 **PLEASE TAKE NOTICE** that on July 29, 2021, the court entered a decision or order in this matter, a true
12 and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed
15 to you. This notice was mailed on August 3, 2021.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

17
18
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 3 day of August 2021, I served a copy of this Notice of Entry on the
21 following:

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

24 The United States mail addressed as follows:
25 Lorenzo Pinkey # 1217414 Betsy Allen, Esq.
P.O. Box 208 P.O. Box 46991
26 Indian Springs, NV 89070 Las Vegas, NV 89114

27
28 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

1 **FCL**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 TALEEN PANDUKHT
6 Chief Deputy District Attorney
7 Nevada Bar #5734
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 LARENZO PINKEY,
13 #895438
14 Defendant.

CASE NO: A-19-806862-W

DEPT NO: XXVIII

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

17 DATE OF HEARING: JULY 12, 2021
18 TIME OF HEARING: 11:00 AM

19 THIS CAUSE having come on for hearing before the Honorable RONALD ISRAEL,
20 District Judge, on the 12 day of July, 2021, the Petitioner being present, being represented by
21 Betsy Allen, the Respondent being represented by STEVEN B. WOLFSON, Clark County
22 District Attorney, by and through BERNARD ZADROWSKI, Chief Deputy District Attorney,
23 and the Court having considered the matter, including briefs, transcripts, arguments of counsel,
24 and documents on file herein, now therefore, the Court makes the following findings of fact
25 and conclusions of law:

26 //

27 //

28 //

1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **PROCEDURAL HISTORY**

3 On November 8, 2017, an Indictment was filed charging Petitioner Lorenzo Pinkey aka,
4 Lorenzo Pinkney (hereinafter “Petitioner”), and Co-Defendant Adrian Powell (“Co-defendant
5 Powell”) with two (2) counts of Conspiracy To Commit Robbery (Category B Felony - NRS
6 200.380, 199.480), two (2) counts of Burglary While In Possession Of A Deadly Weapon
7 (Category B Felony - NRS 205.060), three (3) counts of First Degree Kidnapping With Use
8 Of A Deadly Weapon (Category A Felony - NRS 200.310, 200.320, 193.165), seven (7) counts
9 of Robbery With Use Of A Deadly Weapon (Category B Felony - NRS 200.380, 193.165) and
10 one (1) count of Unlawful Taking Of Vehicle (Gross Misdemeanor - NRS 205.2715). All
11 charges stemmed from robberies that occurred at a Pepe’s Tacos restaurant and a Walgreens
12 store in Las Vegas, Nevada on September 28, 2017.

13 The case ultimately proceeded to jury trial on July 30, 2018. Voir Dire commenced on
14 July 30, 2018. The Court concluded for the day, and the parties returned the following day to
15 resume jury selection. On July 31, 2018, the parties negotiated for hours, and the State
16 ultimately agreed to allow both Petitioner and his Co-Defendant to plead guilty. Petitioner
17 pled guilty to Counts 1 and 8 - Conspiracy to Commit Robbery, Counts 2 and 9 - Burglary
18 While in Possession of a Deadly Weapon, Counts 3 and 13 - First Degree Kidnapping With
19 Use of a Deadly Weapon, Counts 4, 5, 6, 7, 10, 11 and 14 - Robbery With Use of a Deadly
20 Weapon, and Count 12 - Unlawful Taking of Vehicle (GM). The terms of the Guilty Plea
21 Agreement (hereinafter “GPA”) were as follows:

22 The Defendants agree to plead guilty to all counts in the
23 Amended Indictment. The State will maintain the full right to
24 argue, including for consecutive time between the counts,
25 however, the State agrees to not seek a Life sentence on any count.
The State retains the full right to argue the facts and circumstances,
but agrees to not file charges, for the following events:

- 26 1. LVMPD Event No. 170605-0220: Armed robbery at 7-
27 Eleven located at 4800 West Washington, Las Vegas, Clark
28 County, Nevada, on June 5, 2017.
2. LVMPD Event No. 170614-0524: Armed robbery at
Roberto's/Mangos located at 6650 Vegas Drive, Las Vegas,
Clark County, Nevada, on June 14, 2017.

3. LVMPD Event No. 170618-0989: Armed robbery at Pepe's Tacos located at 1401 North Decatur, Las Vegas, Clark County, Nevada, on June 18, 2017.
4. LVMPD Event No. 170701-0545: Armed robbery at Roberto's located at 2685 South Eastern Avenue, Las Vegas, Clark County, Nevada, on July 1, 2017.
5. LVMPD Event No. 170812-3809: Armed robbery at Pizza Bakery located at 6475 West Charleston Boulevard, Las Vegas, Clark County, Nevada, on August 12, 2017.
6. LVMPD Event No. 170817-0241: Armed robbery at Terrible Herbst located at 6380 West Charleston Boulevard, Las Vegas, Clark County, Nevada, on August 17, 2017.
7. LVMPD Event No. 170817-0470: Armed robbery at Rebel located at 6400 West Lake Mead Boulevard, Las Vegas, Clark County, Nevada, on August 17, 2017.
8. LVMPD Event No. 170824-0521: Armed robbery at Roberto's located at 6820 West Flamingo Road, Las Vegas, Clark County, Nevada, on August 24, 2017.
9. LVMPD Event No. 170824-0645: Armed robbery at Roberto's located at 907 North Rainbow Boulevard, Las Vegas, Clark County, Nevada, on August 24, 2017.
10. LVMPD Event No. 170825-0589: Armed robbery at Pepe's Tacos located at 1401 North Decatur, Las Vegas, Clark County, Nevada, on August 25, 2017.

The Defendants agree to take no position at sentencing regarding the aforementioned ten (10) armed-robbery events. This Agreement is contingent upon the co-defendant's acceptance and adjudication on his respective Agreement.

On January 30, 2019, Petitioner filed a Motion to Withdraw Guilty Plea through newly appointed counsel Lucas Gaffney, Esq. The State filed an Opposition on February 12, 2019. On April 24, 2019, an evidentiary hearing was held, and Petitioner's plea counsel, Ben Durham, Esq., and Petitioner testified. At the conclusion of the evidentiary hearing, the Court made verbal findings that Mr. Durham's testimony was credible, he knew Petitioner's condition before the plea, he spoke to him about all the charges and involving potential sentencing, he read the entire GPA to him, discussed concurrent and consecutive time, and Petitioner stated he understood everything. The Court further found Petitioner was examined and found competent and he knowingly and voluntarily entered his plea. The Court also found no evidence under Strickland that Mr. Durham failed to render reasonable effective assistance. The Court then denied Petitioner's Motion to Withdraw Guilty Plea.

On May 20, 2019, Mr. Gaffney filed a Sentencing Memorandum. On May 22, 2019, Petitioner was ordered to pay Restitution in the total amount of \$3,942.00, jointly and severally

1 with the Co-Defendant (\$1,100.00 to Pepe's Tacos; \$2,342.00 to Rebel Oil Co; and \$500.00
2 to Roberto's on Rainbow). Petitioner was sentenced as follows: Count 1 - twelve (12) to forty-
3 eight (48) months in the Nevada Department of Corrections (“NDC”); Count 2 - twenty-four
4 (24) to one hundred twenty (120) months in the NDC, concurrent with Count 1; Count 3 - sixty
5 (60) to one hundred eighty (180) months, plus a consecutive term of twelve (12) to sixty (60)
6 months in the NDC for the use of a deadly weapon, consecutive to Count 2; Count 4 - twenty-
7 four (24) to one hundred twenty (120) months, plus a consecutive term of twelve (12) to one
8 hundred twenty (120) months in the NDC for the use of a deadly weapon, consecutive to Count
9 3; Count 5 - twenty-four (24) to one hundred twenty (120) months, plus a consecutive term of
10 twelve (12) to one hundred twenty (120) months in the NDC for the use of a deadly weapon,,
11 concurrent with Count 4; Count 6 - twenty-four (24) to one hundred twenty (120) months, plus
12 a consecutive term of twelve (12) to one hundred twenty (120) months in the NDC for the use
13 of a deadly weapon, concurrent with Count 5; Count 7 - twenty-four (24) to one hundred
14 twenty (120) months, plus a consecutive term of twelve (12) to one hundred twenty (120)
15 months in the NDC for the use of a deadly weapon, concurrent with Count 6; Count 8 - a
16 twelve (12) to forty-eight (48) months in the NDC, concurrent with Count 1; Count 9 - thirty-
17 six (36) to one hundred twenty (120) months in the NDC, concurrent with Count 3; Count 10
18 - twenty-four (24) to one hundred twenty (120) months, plus a consecutive term of twelve (12)
19 to one hundred twenty (120) months in the NDC for the use of a deadly weapon, concurrent
20 with Count 7; Count 11 - twenty-four (24) to one hundred twenty (120) months, plus a
21 consecutive term of twelve (12) to one hundred twenty (120) months in the NDC for the use
22 of a deadly weapon, concurrent with Count 10; Count 12 - three hundred sixty-four days (364)
23 in the Clark County Detention Center (“CCDC”), concurrent with Count 11; Count 13 - sixty
24 (60) to one hundred eighty (180) months, plus a consecutive term of twelve (12) to sixty (60)
25 months in the NDC for the use of a deadly weapon, concurrent with Count 3; and Count 14 -
26 twenty-four (24) to one hundred twenty (120) months, plus a consecutive term of twelve (12)
27 to one hundred twenty (120) months in the NDC for the use of a deadly weapon, concurrent
28

1 with Count 11. Petitioner’s aggregate total sentence was one hundred thirty-two (132) to six
2 hundred (600) months in the NDC.

3 The Judgment of Conviction was filed on May 24, 2019.

4 On November 21, 2019, Petitioner filed a Pro Per Petition for Writ of Habeas Corpus
5 (Post-Conviction) (“Petition”). On January 6, 2020, the Court appointed Betsy Allen, Esq. On
6 January 18, 2021, Petitioner filed a Supplemental Memorandum of Points and Authorities in
7 Support of Petitioner’s Writ of Habeas Corpus (Post-Conviction) (“Supplemental Petition”).
8 On March 24, 2021, the State filed a Response to Petitioner’s Petition and Supplemental
9 Petition. On May 20, 2021, Petitioner filed a Reply to the State’s Response. On July 12, 2021,
10 the district court heard arguments from Petitioner and counsel.

11 **STATEMENT OF FACTS**

12 **A. Testimony of Jose Chavarria**

13 Jose Alfredo Chavarria Valenzuela was working as a cook at Pepe’s Tacos located at
14 2490 Fremont Street, Las Vegas, Nevada on September 28, 2017. Reporter’s Transcript of
15 Proceedings, October 17, 2017, (“RT1”) at 32-33. At approximately 2:40 AM, Chavarria was
16 in the kitchen area when two (2) gunmen entered the restaurant. RT1 at 35. Chavarria ran
17 toward the back refrigerator where his co-worker was located, when one of the gunman jumped
18 the counter, followed Chavarria and pointed a gun at him. RT1 at 35. The gunman told
19 Chavarria to get on the ground and that he “wanted the money.” Id. The gunman then forced
20 Chavarria at gunpoint from the back of the store to the front cash registers. RT1 35-36.

21 At the cash registers, the gunman began jabbing Chavarria in his side, but Chavarria
22 was unable to open the till because he did not have the correct passcode. RT1 at 36. The
23 second gunman then retrieved Chavarria’s coworker from the back of the store and forced her
24 to open the cash registers at the front of the store. RT1 at 37. One of the gunmen then took
25 Chavarria to the second cash register, threw him on the ground, and pointed a gun to
26 Chavarria’s head. Id. The gunmen took the money from the cash registers but did not take
27 any property from Chavarria. RT1 at 37-38.

28 //

1 **B. Testimony of Yenir Hessing**

2 Yenir Hessing works as the shift lead at the Walgreens located at 4470 East Bonanza,
3 Las Vegas, Nevada. RT1 at 7. On September 28, 2017, Hessing was working the graveyard
4 shift with four (4) other Walgreens employees when, at approximately 4:05 AM, two (2)
5 masked gunmen entered the store. RT1 at 8-10.

6 Hessing was stocking the shelves in the food aisle when one of the gunmen pointed a
7 gun to her stomach and demanded she move to the front of the store. RT1 at 10. The food
8 aisle is located near the store’s photo section, away from the registers and store entrance. RT1
9 at 14. While pushing her to the front of the store, the gunman told Hessing to go to the cash
10 registers in the front of the store, passing the cash register in the photo section. RT1 at 14. As
11 the gunman pushed Hessing, he told her this is “not a game and I'm going to kill you.” RT1
12 at 10.

13 At the front of the store, the gunman told her to open the three (3) cash registers, which
14 Hessing did. Id. At that moment, another Walgreens employee, Tifnie Bobbitt, was returning
15 from lunch and, upon seeing Bobbitt, the gunman ordered her to the front of the store too. Id.
16 Hessing testified that the gunman was “swearing and saying like really bad things ... grabbed
17 both of us and he asked me where is the big money, where is the safe, and I tell him it was in
18 the office.” RT1. The gunman then used the gun to again push Hessing, this time toward the
19 office located at the back of the store. RT1 at 10 .

20 While the gunman pushed Hessing toward the back of the store, Hessing saw down an
21 aisle that the Walgreen’s pharmacist, Darlene Orat, was being held up by another gunman in
22 the pharmacy. RT1 at 9, 12. As the gunman pushed Hessing toward the back office at
23 gunpoint, he told Hessing “I'm going to kill you.” RT1 at 14:15. Hessing responded to the
24 gunman, telling him “please don't hurt me, I'm nine weeks pregnant, don't do anything to me.”
25 RT1 at 15-17. To which the gunman responded, “I don't give a [fuck] I'm going to kill you if
26 you do the wrong code or ... try to call [police].” RT1 at 14:17-19.

27 Upon reaching the back office, which is behind two doors that each have a different pin
28 code, Hessing entered the code and the gunman forced Hessing and Bobbitt into the office.

1 RT1 at 15-16. The door to the office closed behind them, leaving Hessing, Bobbitt and the
2 gunman isolated from the rest of the store. RT1 at 17-18. In the office, the gunman began
3 hitting Hessing in the ribs with the gun and demanding that she open the safe. RT1 at 17.
4 Hessing opened the first of two safes and the gunman grabbed everything. Id. The gunman
5 then demanded Hessing open the second safe, which she did. The gunman grabbed the
6 contents from the second safe and fled from the office. Id.

7 **C. Testimony of Tifnie Bobbitt.**

8 Tifnie Bobbitt was working as a cashier at the Walgreens located at 4470 East Bonanza,
9 Las Vegas, Nevada, on September 28, 2017. Reporter’s Transcript of Proceedings, November
10 7, 2017, (“RT2”) 8. Around 4:00 AM, Bobbitt was headed to breakroom to take her lunch
11 break when she heard a man “say the F word.” RT2 9-10:1. Bobbitt looked over to see the
12 man crouching and walking behind Yenir Hessing. RT2 at 1. Bobbitt entered the code to the
13 breakroom, entered the room and approached the second code-locked door to the office, which
14 she knocked on to alert the Walgreen’s manager. RT2 at 10-11. Bobbitt’s manager left and
15 did not return, so Bobbitt, thinking the situation was taken care of, walked out of the breakroom
16 into the store. RT2 at 11. At that moment, the gunman saw her and yelled at her “Where the
17 fuck do you think you’re going, bitch?” RT2 at 11.

18 The gunman then ordered Bobbitt to the front of the store where Hessing was opening
19 the cash registers for the gunman. RT2 at 13. From there, the gunman forced Bobbitt and
20 Hessing from the front of the store to the back office, pushing Bobbitt while telling the women
21 they were walking too slowly. RT2 at 13-14. At the breakroom door, they entered the code
22 and entered the breakroom. RT2 at 14. From there, Hessing entered the code to the office
23 door and the gunman forced the women into the office. RT2 at 14-15. In the office, the
24 gunman “kept jabbing the gun” into Hessing’s side as he was forcing her to open the safes.
25 RT2 at 15. Once the safes were open, the gunman took the money from the safes and fled. Id.

26 //

27 //

28 //

1 ANALYSIS

2 NRS 34.810(1) reads:

3 The court shall dismiss a petition if the court determines that:

4 (a) The petitioner’s conviction was upon a plea of guilty or guilty
5 but mentally ill and the petition is not based upon an allegation
6 that the plea was involuntarily or unknowingly or that the plea was
7 entered without effective assistance of counsel.

8 (b) The petitioner’s conviction was the result of a trial and the
9 grounds for the petition could have been:

10 [. . .]

11 (2) Raised in a direct appeal or a prior petition for a writ of habeas
12 corpus or postconviction relief.

13 The Nevada Supreme Court has held that “challenges to the validity of a guilty plea and
14 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-
15 conviction proceedings.... [A]ll other claims that are appropriate for a direct appeal must be
16 pursued on direct appeal, or they will be *considered waived in subsequent proceedings.*”
17 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)
18 (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). “A
19 court must dismiss a habeas petition if it presents claims that either were or could have been
20 presented in an earlier proceeding, unless the court finds both cause for failing to present the
21 claims earlier or for raising them again and actual prejudice to the petitioner.” Evans v. State,
22 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001).

23 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
24 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
25 defense.” The United States Supreme Court has long recognized that “the right to counsel is
26 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
27 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
28 (1993).

To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of
Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063–64. See also Love, 109 Nev. at 1138, 865
P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's

1 representation fell below an objective standard of reasonableness, and second, that but for
2 counsel's errors, there is a reasonable probability that the result of the proceedings would have
3 been different. 466 U.S. at 687–88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison
4 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).
5 “[T]here is no reason for a court deciding an ineffective assistance claim to approach the
6 inquiry in the same order or even to address both components of the inquiry if the defendant
7 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

8 The court begins with the presumption of effectiveness and then must determine
9 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
10 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
11 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
12 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
13 537 P.2d 473, 474 (1975).

14 Counsel cannot be ineffective for failing to make futile objections or arguments. See
15 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
16 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
17 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
18 (2002).

19 Based on the above law, the role of a court in considering allegations of ineffective
20 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
21 whether, under the particular facts and circumstances of the case, trial counsel failed to render
22 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
23 (1978). This analysis does not mean that the court should “second guess reasoned choices
24 between trial tactics nor does it mean that defense counsel, to protect himself against
25 allegations of inadequacy, must make every conceivable motion no matter how remote the
26 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel
27 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
28

1 cannot create one and may disserve the interests of his client by attempting a useless charade.”
2 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

3 “There are countless ways to provide effective assistance in any given case. Even the
4 best criminal defense attorneys would not defend a particular client in the same way.”
5 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
6 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
7 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
8 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's
9 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
10 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

11 When a conviction is the result of a guilty plea, a defendant must show that there is a
12 “reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and
13 would have *insisted* on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370
14 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107
15 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

16 Even if a defendant can demonstrate that his counsel's representation fell below an
17 objective standard of reasonableness, he must still demonstrate prejudice and show a
18 reasonable probability that, but for counsel’s errors, the result of the trial would have been
19 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
20 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
21 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,
22 694, 104 S. Ct. at 2064–65, 2068).

23 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the
24 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
25 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
26 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
27 be supported with specific factual allegations, which if true, would entitle the petitioner to
28 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”

1 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
2 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims
3 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your
4 petition to be dismissed.” (emphasis added).

5 In his Petition, Petitioner claims that “counsel failed to show muster in his duty” and
6 that the prosecution did not serve a proper Marcum notice. Petition at 5-6. In his Supplemental
7 Petition, Petitioner raises four (4) other claims: (1) that trial counsel was ineffective when
8 moving to withdraw Petitioner’s guilty plea because counsel did not argue that Petitioner was
9 induced to plead guilty by the State’s agreement not to seek criminal charges against Petitioner
10 for crimes they never could have tied to Petitioner; (2) that counsel was ineffective for failing
11 to appeal the district court’s denial of his Motion to Withdraw Guilty Plea; (3) that cumulative
12 error warrants reversing Petitioner’s conviction; and (4) that Petitioner is entitled to an
13 evidentiary hearing. Supplemental Petition at 14-17. All of Petitioner’s claims fail.

14 **I. PETITIONER’S PETITION IS DENIED**

15 Petitioner raises two (2) claims within Ground One of his Petition. Specifically,
16 Petitioner claims that “counsel failed to show muster in his duty” and that the prosecution did
17 not serve a proper Marcum notice. Petition at 5-6. Petitioner alleges that the State did not
18 provide him with a notice of his right to testify at Grand Jury and that the Indictment was
19 void because it was issued the day after the second grand jury hearing. Id. at 6. Petitioner
20 claims that this is what caused him to plead guilty and that counsel was ineffective for not
21 taking notice of this violation. Petitioner’s claims fail.

22 As an initial matter, Petitioner waived these claims when he pled guilty. NRS
23 34.810(1)(a). Nothing about Petitioner’s claim that counsel did not show enough muster
24 alleges that counsel actions rendered his plea invalid or that counsel was ineffective in the plea
25 process. Additionally, Petitioner’s claim that the Marcum notice was not timely served is not
26 even a claim of ineffective assistance of counsel and thus should have been raised on direct
27 appeal. Therefore, both claims are beyond the scope of habeas proceedings and therefore
28 denied.

1 Moreover, Petitioner’s claim that counsel did not show “muster” during his
2 representation of Petitioner is nothing but a bare and naked claim suitable only for summary
3 denial. Petitioner does not explain specifically what counsel should have done or how those
4 actions would have caused him to reject any plea deal and proceed to trial. Hargrove, 100 Nev.
5 at 502, 686 P.2d at 225. As such, his claim is denied.

6 Next, Petitioner’s claim that the Marcum notice was not timely served is belied by the
7 record. NRS 172.241(2) provides that a district attorney “shall serve reasonable notice” to a
8 defendant that a grand jury indictment is being sought. The Nevada Supreme Court has held
9 that even five (5) days’ notice is reasonable. Sheriff v. Marcum, 105 Nev. 824, 825-269, 783
10 P.2d 1389, 1390-91 (1989).

11 In this case, the Marcum notice was served on defense counsel on October 18, 2017.
12 Exhibit A. While the grand jury first convened on October 17, 2017, the grand jury met a
13 second time on November 7, 2017, and subsequently returned a true bill against that same day,
14 twenty (20) days after Petitioner was informed of his right to testify before the grand jury.
15 Twenty (20) days is more than “reasonable notice” for Petitioner to decide whether he wished
16 to testify or present evidence at the hearing. NRS 172.241. Despite Petitioner’s belief that his
17 Indictment is invalid because it was issued a day after the grand jury met, that does not change
18 the fact that Marcum was served twenty (20) days before the grand jury met. As such,
19 Petitioner’s claim is belied by the record.

20 Additionally, Petitioner cannot show prejudice. Petitioner does not even that he would
21 have testified at the grand jury, much less what he would have testified to or how that would
22 have impacted the outcome at the grand jury. Despite Petitioner’s claim that this is what caused
23 him to plead guilty, Petitioner failed to articulate specific facts or evidence supporting this
24 allegation. As such, this is nothing but a bare and naked allegation suitable for summary denial.
25 Hargrove, 100 Nev. at 502, 686 P.2d at 225. For these same reasons, Petitioner’s claim that
26 counsel was ineffective for not taking notice of this alleged violation of his rights fails.
27 Petitioner failed to show a reasonable probability that, but for counsel's errors, he would not
28 have pleaded guilty and would have insisted on going to trial. Molina, 120 Nev. at 190-91, 87

1 P.3d at 537. Thus, Petitioner cannot show that counsel was ineffective. Accordingly, this Court
2 denies Petitioner's Petition.

3 **II. PETITIONER'S SUPPLEMENTAL PETITION IS DENIED**

4 **A. Trial counsel was not ineffective when moving to withdraw Petitioner's** 5 **guilty plea.**

6 Petitioner argues that trial counsel was ineffective when moving to withdraw
7 Petitioner's guilty plea. Supplemental Petition at 14-16. Specifically, Petitioner claims that
8 counsel should have argued that his plea was invalid because part of his inducement to plead
9 guilty was that the State agreed not to file criminal charges against Petitioner and his Co-
10 defendant for ten (10) additional armed robberies. Id. Petitioner claims that because he was
11 not given the opportunity to review discovery related to the other possible criminal charges
12 and because there was no way that the State could have proved that Petitioner was guilty of
13 the other robberies, counsel was ineffective for telling Petitioner to accept the State's plea
14 offer. Id. Petitioner's claim fails.

15 As an initial matter, Petitioner's claim is nothing but a bare and naked claim suitable
16 only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225; Maresca v. State, 103
17 Nev. 669, 673, 748 P.2d 3, 6 (1987). Indeed, a party seeking review bears the responsibility
18 "to cogently argue, and present relevant authority" to support his assertions. Edwards v.
19 Emperor's Garden Restaurant, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006);
20 Dept. of Motor Vehicles and Public Safety v. Rowland, 107 Nev. 475, 479, 814 P.2d 80, 83
21 (1991) (defendant's failure to present legal authority resulted in no reason for the district court
22 to consider defendant's claim); Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (an
23 arguing party must support his arguments with relevant authority and cogent argument; "issues
24 not so presented need not be addressed"); Randall v. Salvation Army, 100 Nev. 466, 470-71,
25 686 P.2d 241, 244 (1984) (court may decline consideration of issues lacking citation to
26 relevant legal authority); Holland Livestock v. B & C Enterprises, 92 Nev. 473, 533 P.2d 950
27 (1976) (issues lacking citation to relevant legal authority do not warrant review on the merits).
28 Claims for relief devoid of specific factual allegations are "bare" and "naked," and are

1 insufficient to warrant relief, as are those claims belied and repelled by the record. Hargrove,
2 100 Nev. at 502, 686 P.2d at 225. “[Petitioner] *must* allege specific facts supporting the claims
3 in the petition[.]...Failure to allege specific facts rather than just conclusions may cause [the]
4 petition to be dismissed.” NRS 34.735(6) (emphasis added).

5 Regardless, Petitioner failed to demonstrate ineffective assistance of counsel. First,
6 Petitioner’s claim that “the only reason he entered into this agreement was due to the
7 assurances that the State would not pursue charge [sic] in approximately 8 other robberies” is
8 belied by the record. Supplemental Petition at 15. Not only did the State agree not to seek
9 charges against Petitioner in ten (10), not eight (8), additional robberies, but Petitioner also
10 forgets that in exchange for his guilty plea, the State agreed not to seek a potential life sentence
11 on the two (2) First Degree Kidnapping With Use of Deadly Weapon counts in the instant
12 case. Guilty Plea Agreement, at 1-2 (filed July 31, 2018). Based on this agreement and the
13 evidence against Petitioner, counsel cannot be deemed ineffective for recommending that
14 Petitioner plead guilty. Specifically, during the evidentiary hearing on Petitioner’s Motion to
15 Withdraw Guilty Plea, counsel for Petitioner testified that he knew there were several
16 witnesses prepared to testify as well as DNA evidence linking Petitioner to all of the crimes
17 charged:

18 Q I want to go briefly into the evidence that you are aware of
19 once we started the trial essentially. Do you recall there being a
20 series of multiple victims -- or multiple victims per event in this
21 case?

22 A Yes.

23 Q Meaning several people at the Walgreen’s and then several
24 people at the Pepe’s Tacos that were robbed?

25 A Right.

26 Q And do you recall there being DNA evidence and
27 fingerprints implicating both Mr. Pinkney and Mr. Powell in this
28 case?

29 A Yes.

30 Q Did that type of evidence and the other evidence that you’re
31 aware of factor into your determination on to advising whether to
32 take a plea or not to take a plea?

33 A **It wasn’t just that. It was also the fact that they were
34 apparently under other events under investigation.**

35 Q Understood. With regard to these charges that are just for
36 now, --

37 A Uh-huh.

38 Q -- when you -- when you come in to start a trial day of,
39 you’re aware of the evidence in the case, is what I’m asking.

1 A Yes.

2 Q And based upon the evidence, if the evidence is strong
against him, you might advise someone to take a plea. Is that fair?

3 A That's fair.

4 Recorder's Transcript of Hearing Evidentiary Hearing Re: Motion to Withdraw Guilty Plea
5 Deft. Lorenzo Pinkey's Motion to Withdraw Guilty Plea, at 15-16 (April 24, 2019).

6 Additionally, Petitioner's claim that he was not satisfied with counsel's representation
7 and advice fails. When Petitioner pled guilty, he affirmed that he had spoken with counsel,
8 that counsel answered all of his questions, and he was satisfied with counsel's representation:

9 THE COURT: Have you discussed this case with your attorney?

10 DEFENDANT PINKNEY: Yes.

11 THE COURT: Are you satisfied with his representation and the advice
12 given to you by your attorney?

13 DEFENDANT PINKNEY: Yes, I have. Or, yes, I am. Sorry.

14 [...]

15 THE COURT: And do you understand everything contained in the guilty
16 plea agreement?

17 DEFENDANT PINKNEY: Yes.

18 THE COURT: And you had an opportunity to discuss this with your
19 attorney?

20 DEFENDANT PINKNEY: Yes.

21 THE COURT: And if you had any questions, did he answer your questions?

22 DEFENDANT PINKNEY: Yes, he did.

23 THE COURT: Do you have any questions of me regarding that at this time?

24 DEFENDANT PINKNEY: No, Your Honor.

25 Recorder's Transcript of Jury Trial – Day 2 Guilty Plea Agreements, 5-6 (November 2, 2018).

26 Next, Petitioner has not demonstrated that he was entitled to review the evidence tying
27 him to the ten (10) other armed robberies prior to pleading guilty here. Petitioner knew what
28 he had and had not reviewed when he pled guilty and he knew whether he committed the other
robberies when he did so. If Petitioner was so concerned about whether he could really be tied
to these ten (10) other robberies, Petitioner could have asked to review that evidence prior to
pleading guilty. Petitioner has not alleged that he did so and as that evidence was irrelevant to
the weight of evidence in the instant case, Petitioner cannot demonstrate that counsel was
ineffective.

1 Further, Petitioner failed to show prejudice. Despite Petitioner’s claim that the State
2 could not have proved that Petitioner was guilty of the ten (10) crimes enumerated in the Guilty
3 Plea Agreement, Petitioner offers no evidence in support of that claim. Petitioner has not
4 pointed to any specific information or fact that establishes that he would not have pled guilty
5 and proceeded to trial had he reviewed the evidence regarding the other ten (10) robberies.
6 Rather, he simply claims that if he had been apprised of the actual evidence against, “there is
7 no possibility he would have entered the plea [because] the other robberies were lacking in
8 any real evidence against him.” Supplemental Petition at 15. While counsel may personally
9 believe that the evidence in the ten (10) additional cases was not as strong as the evidence in
10 the instant case, that is not a basis to grant this Petition. Petitioner provides no specific
11 information about any of the ten (10) additional armed robberies, and therefore cannot say the
12 other robberies were lacking in any real evidence against him and that there is no way the State
13 could have taken those additional cases to trial. Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.,
14 123 Nev. 598, 603, 172 P.3d 131, 134-35 (2007) (noting appellant has the burden of providing
15 this court with an adequate appellate record, and when the appellant “fails to include necessary
16 documentation in the record, [this court] necessarily presume[s] that the missing portion
17 supports the district court's decision”).

18 Moreover, Petitioner’s claim that counsel did not review the evidence pertaining to the
19 ten (10) other robberies prior to advising Petitioner to plead guilty fails. While Petitioner’s
20 counsel did not challenge the validity of his guilty plea based on the State’s agreement not to
21 seek additional criminal charges on other armed robberies, Co-defendant Powell did via a pre-
22 sentence Motion to Withdraw Plea. State v. Adrian Powell, C-17-327767-2, Motion to
23 Withdraw Guilty Plea, (filed January 4, 2019). Like Petitioner’s Motion to Withdraw Guilty
24 Plea, the district court denied Co-defendant Powell’s Motion to Withdraw Plea. However,
25 unlike Petitioner, the district court did so without an evidentiary hearing. State v. Adrian
26 Powell, C-17-327767-2, Court Minutes: Hearing: RE: Withdrawal of Plea, February 27, 2019.
27 Co-defendant Powell appealed that denial, and the Nevada Court of Appeals reversed the
28 district court’s decision, holding that the court erred in denying Co-defendant Powell’s Motion

1 to Withdraw Guilty Plea without first holding an evidentiary hearing. Order of Reversal and
2 Remand, Docket No. 79037-COA, at 2 (filed May 11, 2020).

3 On August 13, 2020, the district court held an evidentiary hearing regarding whether
4 counsel for Petitioner or Co-defendant Powell had reviewed any evidence regarding the ten
5 (10) other armed robberies. There, counsel for Co-defendant Powell confirmed that both
6 himself and counsel for Petitioner, Benjamin Durham, reviewed the evidence regarding the
7 other cases prior to pleading guilty:

8 Q Understood. One last little area of questioning and I'll be done. Do
9 you recall while we had the jury in the hallway on the second day of
10 jury selection and prior to the deals being entered, you, Mr. Nelson,
11 and Mr. Durham and my co-counsel and I sitting out in the ante room
12 discussing the negotiation for an extended period of time?

12 A Yes. Yes.

13 Q You were shown photographs in the detective's wall on the quote
14 Jumping Jack Robbery series which included our trial and then ten
15 uncharged acts, right?

16 A Yeah, I don't know what it was called but there -- ten, allegedly ten
17 uncharged acts that were --

18 Q Right. And you were shown some discovery on those other uncharged
19 acts like photographs -- still shots of photographs from surveillance
20 videos in the uncharged cases, correct?

21 A Correct.

22 Q And we kind of pointed out, look, you can see the shoes are the exact
23 same in some of the events and the way they all jumped, the MO is
24 the same. Do you recall those conversations?

25 A I don't recall specifics. I recall that -- that you guys, the DA's office,
26 you know, thought they had evidence to file.

27 Q Okay. And you recall going through some of it or at least having some
28 understanding of there are ten other events that are potentially related
and potentially could be charged after this trial occurs, correct?

A Yeah, that's correct. And then, in fact, after that discussion, we -- Mr.
Powell and, I don't know Pinkney or Pinkey, they wanted to have a
conversation with all the attorneys together. And so we went back for
an extended period of time. And I forgot about Ben, but with Ben, co-
defendant, Mr. Powell, Mr. Nelson.

Exhibit B, at 21-22 (August 13, 2020).

1 Accordingly, Petitioner’s claim that his counsel did not review the discovery in the ten
2 (10) other armed robberies fails.

3 **B. Petitioner cannot show that counsel was ineffective for not filing an appeal.**

4 Petitioner argues that after the district court denied his Motion to Withdraw Guilty Plea,
5 counsel should have appealed the decision and that counsel was ineffective for failing to do
6 so. Supplemental Petition at 16-17. Petitioner’s claim fails.

7 Counsel is only obligated to file a notice of appeal or to consult with a defendant
8 regarding filing a notice of appeal in certain circumstances. Toston v. State, 127 Nev. 971, 267
9 P.3d 795 (2011). “[T]rial counsel has a constitutional duty to file a direct appeal in two
10 circumstances: when requested to do so and when the defendant expresses dissatisfaction with
11 his conviction, and that the failure to do so in those circumstances is deficient for purposes of
12 proving ineffective assistance of counsel.” Id. at 977, 267 P.3d at 800. Moreover, trial counsel
13 has no constitutional obligation to always inform or consult with a defendant regarding his
14 right to a direct appeal when the defendant is convicted pursuant to a guilty plea. Id. Rather,

15 [t]hat duty arises in the guilty-plea context only when the defendant inquires
16 about the right to appeal or in circumstances where the defendant may benefit
17 from receiving advice about the right to a direct appeal, ‘such as the existence
of a direct appeal claim that has reasonable likelihood of success.’

18 Id. (quoting Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999)).

19 Courts should consider “all the information counsel knew or should have known” and
20 focus on the totality of the circumstances. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct.
21 1029, 1036 (2000). Importantly, whether the defendant’s conviction followed a guilty plea is
22 highly relevant to the inquiry “both because a guilty plea reduces the scope of potentially
23 appealable issues and because such a plea may indicate that the defendant seeks an end to
24 judicial proceedings.” Id. Thus, when a defendant who pleaded guilty claims that he was
25 deprived of the right to appeal, “the court must consider such factors as whether the defendant
26 received the sentence bargained for as part of the plea and whether the plea expressly reserved
27 or waived some or all appeal rights.” Id.

1 In this case, Petitioner has not alleged, and there is no indication in the record, that he
2 reserved his appeal rights, asked counsel to file an appeal on his behalf, or otherwise wished
3 to challenge his conviction, denial of his Motion to Withdraw Guilty Plea, or sentence. Instead,
4 Petitioner simply makes a broad claim that if counsel had appealed the district court’s decision,
5 it would have been reversed. However, Petitioner does not explain precisely what error the
6 district court made when denying his Motion to Withdraw Guilty Plea or why it would have
7 been reversed. Indeed, as Petitioner is claiming that counsel was ineffective when arguing that
8 Petitioner should be allowed to withdraw his plea—which the State does not concede—it
9 would be difficult to also argue that appealing the district court’s decision would have been
10 successful. Accordingly, Petitioner’s claim is nothing but a bare and naked assertion and
11 therefore denied. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

12 **C. Petitioner’s claim of cumulative error fails.**

13 Petitioner argues that the cumulation of all of the above errors warrants relief.
14 Supplemental Petition at 17. However, the Nevada Supreme Court has not endorsed
15 application of its direct appeal cumulative error standard to the post-conviction Strickland
16 context. McConnell v. State, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009). Nor should
17 cumulative error apply on post-conviction review. Middleton v. Roper, 455 F.3d 838, 851 (8th
18 Cir. 2006), cert. denied, 549 U.S. 1134, 1275 S. Ct. 980 (2007) (“a habeas petitioner cannot
19 build a showing of prejudice on series of errors, none of which would by itself meet the
20 prejudice test.”).

21 Even if applicable, a finding of cumulative error in the context of a Strickland claim is
22 extraordinarily rare and requires an extensive aggregation of errors. See, e.g., Harris By and
23 through Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995). In fact, logic dictates that
24 there can be no cumulative error where the petitioner fails to demonstrate any single violation
25 of Strickland. Turner v. Quarterman, 481 F.3d 292, 301 (5th Cir. 2007) (“where individual
26 allegations of error are not of constitutional stature or are not errors, there is ‘nothing to
27 cumulate.’”) (quoting Yohey v. Collins, 985 F.2d 222, 229 (5th Cir. 1993)); Hughes v. Epps,
28 694 F.Supp.2d 533, 563 (N.D. Miss. 2010) (citing Leal v. Dretke, 428 F.3d 543, 552-53 (5th

1 Cir. 2005)). Since Petitioner has not demonstrated any claim warranting relief under
2 Strickland, there are no errors to cumulate.

3 Under the doctrine of cumulative error, “although individual errors may be harmless,
4 the cumulative effect of multiple errors may deprive a defendant of the constitutional right to
5 a fair trial.” Pertgen v. State, 110 Nev. 554, 566, 875 P.2d 361, 368 (1994) (citing Sipsas v.
6 State, 102 Nev. 119, 716 P.2d 231 (1986)); see also Big Pond v. State, 101 Nev. 1, 3, 692 P.2d
7 1288, 1289 (1985). The relevant factors to consider in determining “whether error is harmless
8 or prejudicial include whether ‘the issue of innocence or guilt is close, the quantity and
9 character of the error, and the gravity of the crime charged.’” Id., 101 Nev. at 3, 692 P.2d at
10 1289.

11 Here, Petitioner failed to show cumulative error because there are no errors to cumulate.
12 Petitioner failed to show how any of the above claims constituted ineffective assistance of
13 counsel. Instead, all of Petitioner’s claims are either belied by the record or otherwise
14 meritless. As such, Petitioner fails to establish cumulative error.

15 **D. Petitioner is not entitled to an evidentiary hearing.**

16 The Nevada Supreme Court has held that if a petition can be resolved without
17 expanding the record, then no evidentiary hearing is necessary. NRS 34.770; Marshall v. State,
18 110 Nev. 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231
19 (2002). A defendant is entitled to an evidentiary hearing if his petition is supported by specific
20 factual allegations, which, if true, would entitle him to relief unless the factual allegations are
21 repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State,
22 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking post-
23 conviction relief is not entitled to an evidentiary hearing on factual allegations belied or
24 repelled by the record”). “A claim is ‘belied’ when it is contradicted or proven to be false by
25 the record as it existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at
26 1230 (2002).

27 It is improper to hold an evidentiary hearing simply to make a complete record. See
28 State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The

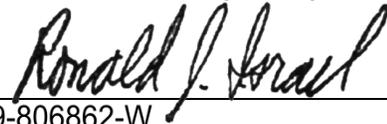
1 district court considered itself the ‘equivalent of . . .the trial judge’ and consequently wanted
2 ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary
3 hearing.”).

4 At this stage, there is no need for an evidentiary hearing because all of the claims are
5 either waived, without merit, or bare and naked allegations that are belied by the record.
6 Evans, 117 Nev. at 646-47, 29 P.3d at 523. Strickland, 466 U.S. at 686, 104 S. Ct. at 2063.
7 As none of Petitioner’s claims would entitle him to relief and there is no need to expand the
8 record, the request for another evidentiary hearing is denied.

9 **ORDER**

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

13 Dated this 29th day of July, 2021

14 

15 A-19-806862-W

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

19 6AB B59 FD0F BF99
20 Ronald J. Israel
21 District Court Judge

22 SC

23 BY /s/ Taleen Pandukht
24 TALEEN PANDUKHT
25 Chief Deputy District Attorney
26 Nevada Bar #5734
27
28

CERTIFICATE OF MAILING

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

LARENZO PINKEY, #1217414
HIGH DESERT STATE PRISON
PO BOX 650
INDIAN SPRINGS, NV 89070

BY /s/ E. Del Padre
E. DEL PADRE
Secretary for the District Attorney's Office

ed/jb/GCU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Lorenzo Pinkey, Plaintiff(s)

CASE NO: A-19-806862-W

7 vs.

DEPT. NO. Department 28

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 Findings of Fact, Conclusions of Law and Order 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: 7/29/2021

15 Alexander Chen

Alexander.Chen@ClarkCountyDA.com

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

January 06, 2020

A-19-806862-W Lorenzo Pinkey, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

**January 06, 2020 10:00 AM Appointment of Counsel Appointment of
Counsel - Betsy Allen**

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Kathy Thomas

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT: Allen, Betsy Attorney
 Lamanna, Brianna K. Attorney

JOURNAL ENTRIES

- Deft. PINKEY, in the related criminal case, not present, in the Nevada Department of Corrections (NDC). Betsy Allen, Appointed Counsel, Confirmed as counsel. Ms. Allen noted she was notified by Mr. Christiansen to appear and would request 60 days to obtain and review the file. COURT ORDERED, Matter set for a Status Check to set briefing schedule for Petition for Writ of Habeas Corpus. FURTHER, Petition, VACATED.

NDC

03/04/2020 9:00 AM STATUS CHECK: RESET BRIEFING SCHEDULE & PETITION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

March 04, 2020

A-19-806862-W Lorenzo Pinkey, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

March 04, 2020 9:00 AM Status Check

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Kathy Thomas

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT: Allen, Betsy Attorney
Marland, Melanie H. Attorney

JOURNAL ENTRIES

- Colloquy regarding scheduling briefing schedule. COURT ORDERED, Briefing schedule set; Brief by 06/03/2020, State's Opposition by 08/05/2020, Deft's Reply by 09/09/2020 and hearing SET.

10/07/2020 9:00 AM PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

May 10, 2021

A-19-806862-W Lorenzo Pinkey, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

**May 10, 2021 11:00 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Kathy Thomas

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT: Allen, Betsy Attorney
 Marland, Melanie H. Attorney

JOURNAL ENTRIES

- Deft. PINKEY not present, in custody in the Nevada Department of Corrections (NDC). Ms. Allen noted the Deft. was not transported. Upon Court's inquiry, State noted they saw no order and the last hearing was from March. COURT ORDERED, Matter CONTINUED and State to prepare the order to transport.

NDC

06/07/2021 PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

June 07, 2021

A-19-806862-W Lorenzo Pinkey, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

**June 07, 2021 11:00 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Kathy Thomas

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT: Pinkey, Lorenzo Plaintiff
Strand, Emily Katherine Attorney
Zadrowski, Bernard B. Attorney

JOURNAL ENTRIES

- Deft. PINKEY present, in custody, in the Nevada Department of Corrections (NDC). Ms. Strand standing in for Ms. Allen. Ms. Strand noted Ms. Allen was present earlier and had to leave for another matter. Court noted this was the second time and the Court had read everything. Court finds no grounds for an evidentiary hearing to be set and therefore, COURT ORDERED, Petition, CONTINUED. Court directed the State to prepare an order to transport.

NDC

07/12/2021 11:00 AM PETITION FOR WRIT OF HABEAS CORPUS

cited findings under Evans and Strickland. Court concluded findings and noted the discovery would have not made a difference in the Deft's plea. Court directed the State to prepare the order, pass it by counsel and the Court will review the order.

Certification of Copy

State of Nevada }
County of Clark } SS:

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

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

LARENZO PINKEY,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

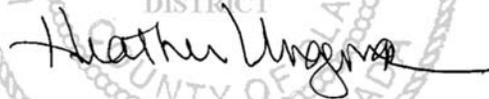
Case No: A-19-806862-W

Dept No: XXVIII

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 5 day of August 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

