

BENNETT G. GRIMES, 1098810
HIGH DESERT STATE PRISON
POST OFFICE BOX 650
INDIAN SPRINGS, NEVADA 89010.

PURSUANT TO
N.R.S. 208.165
ET. SEQ.

FILED

MAY -9-2022

EIGHTH JUDICIAL
DISTRICT COURT
CLARK COUNTY, NEVADA

Elizabeth A. Brown
CLERK OF COURT
Electronically Filed
May 26 2022 04:56 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

BENNETT G. GRIMES,
PETITIONER,

CASE NO. :
A-20-815590-W
DEPT. No. :

~~XIT~~ (12)

VS.

CALVIN JOHNSON, WARDEN,
RESPONDENT,

NOTICE OF APPEAL
FROM A DENIAL
CHALLENGING THE
COMPUTATION OF
TIME (N.D.O.C.)

COMES NOW, BENNETT G. GRIMES,
PETITIONER, RESPECTFULLY DOES APPEAL HIS
DENIAL OF THE FOREGOING HABEAS CORPUS
"CHALLENGING THE COMPUTATION OF TIME", FROM
THIS EIGHTH JUDICIAL DISTRICT COURT.

DATED ON THIS 3RD DAY OF MAY 2022.

RESPECTFULLY SUBMITTED,

Bennett G. Grimes
BENNETT G. GRIMES,
1098810

A-20-815590-W
NOAS
Notice of Appeal
4993322



RECEIVED
MAY 09 2022
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

RECEIVED
APPEALS

MAY 24 2022

CLERK OF THE COURT

[H.D.S.P.] HIGH DESERT STATE PRISON

POST OFFICE BOX 650

INDIAN SPRINGS, NEVADA

CERTIFICATE OF SERVICE BY MAILING

I, BENNETT G. GRUBBS, HEREBY CERTIFY, PURSUANT TO NRCOP 5(b), THAT ON THIS 3RD DAY OF MAY, 2022, I MAILED A TRUE AND CORRECT COPY OF THE FORGOING "NOTICE OF APPEAL FROM THE DENIAL CHALLENGING THE COMPUTATION OF TIME" (N.D.O.C.) BY DEPOSITING IT IN THE HIGH DESERT STATE PRISON, LEGAL LIBRARY, FIRST-CLASS POSTAGE, FULLY PREPAID, ADDRESSED AS FOLLOWS:

STEVEN B. WOLFSON
DISTRICT ATTORNEY
200 LEWIS AVE.
P.O. BOX 552212
LAS VEGAS, NEVADA 89155.

CLERK OF THE COURT
200 LEWIS AVE 3RD FLOOR,
LAS VEGAS, NEVADA
89155-1160.

OFFICE OF ATTORNEY GENERAL
100 NORTH CARSON STREET.
CARSON CITY, NEVADA.
89701-4717.

DATED: THIS 3RD DAY OF MAY, 2022.

[H.D.S.P.] IN PRESENCE OF PERSON *Bennett G. Grubbs*
Residence: 3450 Independence Street, Las Vegas, NV 89100
NEVADA 89100.

BERNARD G. GRIMES, 1098810
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NEVADA
89070-

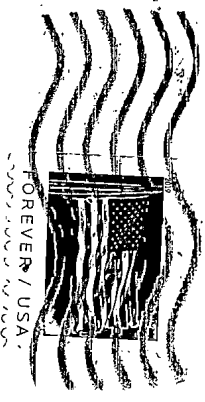
HIGH DESERT STATE PRISON

MAY 04 2022

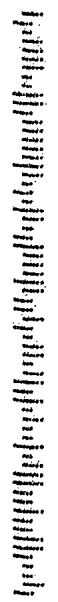
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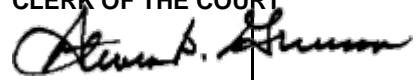
99701-475725

LAS VEGAS NV 890
5 MAY 2022 PM 4 L



CLERK OF THE COURT
SUPERIOR COURT OF NEVADA
201 SOUTH CARSON STREET
CARSON CITY, NEVADA 89701.





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

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BENNETT GRIMES,

Case No: A-20-815590-W

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Plaintiff(s),

Dept No: XII

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vs.

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STATE OF NEVADA; BRIAN WILLIAMS
WARDEN,

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Defendant(s),

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CASE APPEAL STATEMENT

18

1. Appellant(s): Bennett G. Grimes

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2. Judge: Michelle Leavitt

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3. Appellant(s): Bennett G. Grimes

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Counsel:

22

Bennett G. Grimes #1098810

P.O. Box 650

Indian Springs, NV 89070

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4. Respondent (s): State of Nevada; Brian Williams Warden

26

Counsel:

27

Steven B. Wolfson, District Attorney

200 Lewis Ave.

28

Las Vegas, NV 89155-2212

5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A
- Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A
6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No
7. Appellant Represented by Appointed Counsel On Appeal: N/A
8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A
***Expires 1 year from date filed*
Appellant Filed Application to Proceed in Forma Pauperis: No
Date Application(s) filed: N/A
9. Date Commenced in District Court: May 27, 2020
10. Brief Description of the Nature of the Action: Civil Writ
Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus
11. Previous Appeal: Yes
Supreme Court Docket Number(s): 81697
12. Child Custody or Visitation: N/A
13. Possibility of Settlement: Unknown

Dated This 24 day of May 2022.

Steven D. Grierson, Clerk of the Court

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

cc: Bennett G. Grimes

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY
CASE NO. A-20-815590-W

Bennett Grimes, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

§
§
§
§
§
§

Location: **Department 12**
 Judicial Officer: **Leavitt, Michelle**
 Filed on: **05/27/2020**
 Cross-Reference Case Number: **A815590**
 Supreme Court No.: **81697**

CASE INFORMATION

Related Cases

C-11-276163-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Statistical Closures

08/10/2020 Other Manner of Disposition

Case Status: **08/10/2020 Closed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-20-815590-W
Court	Department 12
Date Assigned	05/27/2020
Judicial Officer	Leavitt, Michelle

PARTY INFORMATION

Plaintiff

Grimes, Bennett

Pro Se

Defendant







Brian Williams, Warden
State of Nevada

DATE

EVENTS & ORDERS OF THE COURT

INDEX

EVENTS

- | | |
|------------|--|
| 05/27/2020 |  Inmate Filed - Petition for Writ of Habeas Corpus
Party: Plaintiff Grimes, Bennett
<i>[1] Petition for Writ of Habeas Corpus (Postconviction)</i> |
| 07/21/2020 |  Findings of Fact, Conclusions of Law and Order
<i>[2] Findings of Fact, Conclusions of Law, and Order</i> |
| 07/23/2020 |  Notice of Entry of Findings of Fact, Conclusions of Law
Filed By: Defendant State of Nevada
<i>[3] Notice of Entry of Findings of Fact, Conclusions of Law and Order</i> |
| 08/10/2020 |  Order to Statistically Close Case
<i>[4] Civil Order to Statistically Close Case</i> |
| 08/21/2020 |  Notice of Appeal
Filed By: Plaintiff Grimes, Bennett
<i>[5] Notice of Appeal</i> |
| 08/24/2020 |  Case Appeal Statement
Filed By: Plaintiff Grimes, Bennett |

CASE SUMMARY
CASE NO. A-20-815590-W

[6] Case Appeal Statement

07/21/2021



NV Supreme Court Clerks Certificate/Judgment - Affirmed

[7] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed; Petition Denied

01/10/2022



Petition for Writ of Habeas Corpus

Filed by: Plaintiff Grimes, Bennett

[8] Petition for Writ of Habeas Corpus (Postconviction)

03/18/2022



Memorandum

Filed By: Plaintiff Grimes, Bennett

[9] Memorandum to 1 st Amended Petition

04/27/2022



Findings of Fact, Conclusions of Law and Order

[10] Findings of Fact, Conclusions of Law and Order

05/05/2022



Notice of Entry of Findings of Fact, Conclusions of Law

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

05/09/2022



Notice of Appeal

[12] Notice of Appeal from a Denial Challenging the Computation of Time (N.D.O.C.)

05/16/2022



Notice of Appeal

[13] Notice of Appeal from a Denial Challenging the Computation of Time in the N.D.O.C. NRS 34.500(1),(3),(8),(9).

05/24/2022



Case Appeal Statement

[14] Case Appeal Statement

05/24/2022



Case Appeal Statement

[15] Case Appeal Statement

DISPOSITIONS

07/21/2021

Clerk's Certificate (Judicial Officer: Leavitt, Michelle)

Debtors: Bennett Grimes (Plaintiff)

Creditors: State of Nevada (Defendant), Brian Williams, Warden (Defendant)

Judgment: 07/21/2021, Docketed: 07/21/2021

Comment: Supreme Court No. 81697 " Appeal Affirmed"

DISTRICT COURT CIVIL COVER SHEET

A-20-815590-W
Dept. 12

County, Nevada

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

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

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

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

May 27, 2020

Date

PREPARED BY CLERK

Signature of initiating party or representative

See other side for family-related case filings.

Alvin S. Lewis

CLERK OF THE COURT

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ORDR

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

BENNETT GRIMES,)	Case No.: A-20-815590-W
)	
Petitioner,)	DEPT. No.: XII
vs.)	(Third Petition)
)	
CALVIN JOHNSON, WARDEN ,)	
)	
Respondent.)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

FINDINGS OF FACT

1. On September 14, 2011, the Petitioner was charged by way of Information as follows: Count 1: ATTEMPT MURDER WITH USE OF A DEADLY WEAPON IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (NRS 200.010, 200.030, 193.330, 193.165, 193.166), Count 2: BURGLARY WHILE IN POSSESSION OF A FIREARM IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (NRS 205.060, 193.166), and Count 3: BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL BODILY HARM IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (NRS 200.481.2e; 193.166).

2. On October 25, 2011, a Second Amended Information was filed amending Count 2 to reflect: BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (NRS 205.060, 193.166)

3. On October 15, 2012, Petitioner was found guilty, as to all three counts, by way of jury verdict.

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4. On February 12, 2013, the Court sentenced Petitioner on Count 1 to eight (8) to twenty (20) years in the Nevada Department of Corrections, plus a consecutive five (5) to fifteen (15) years for use of a deadly weapon; on Count 2, Petitioner was sentenced under the Small Habitual Criminal Statute to eight (8) to twenty (20) years in the Nevada Department of Corrections to run concurrent with Count 1; on Count 3, Petitioner was sentenced under the Small Habitual Criminal Statute to eight (8) to twenty (20) years in the Nevada Department of Corrections, to run consecutive to Counts 1 and 2.

5. The Court entered its Judgment of Conviction on February 21, 2013.

6. On March 18, 2013, Petitioner filed a Notice of Appeal. On February 27, 2014, the Nevada Supreme Court affirmed Petitioner's conviction.

7. Remittitur issued on March 24, 2014.

8. On February 20, 2015, Petitioner filed his first Petition for Writ of Habeas Corpus (Post-Conviction).

9. On October 5, 2017, the Court conducted an evidentiary hearing and denied Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction).

10. On November 20, 2017, the Court issued Findings of Facts, Conclusions of Law and Order.

11. Petitioner filed a Notice of Appeal on November 2, 2017.

12. On April 5, 2019, the Supreme Court of Nevada affirmed the judgment of the District Court denying Petitioner's first Petition for Writ of Habeas Corpus (Post-Conviction).

13. On May 27, 2020, Petitioner filed his second Petition for Writ of Habeas Corpus (Post-Conviction).

14. On July 21, 2020, the Court issued Findings of Facts, Conclusions of Law and Order denying the second Petition for Writ of Habeas Corpus (Post-Conviction) as time-barred and successive.

15. Petitioner filed a Notice of Appeal on August 21, 2020.

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16. On June 17, 2021, the Supreme Court of Nevada affirmed the judgment of the District Court denying Petitioner’s second Petition for Writ of Habeas Corpus (Post-Conviction).

17. On January 10, 2022, Petition filed the instant (third) Petition for Writ of Habeas Corpus (Post-Conviction).

18. The instant petition is untimely. Absent good cause and prejudice, the petition is procedurally barred, and must be denied.

CONCLUSIONS OF LAW

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

2. To avoid dismissal the petitioner must plead and prove specific facts that demonstrate good cause for his failure to present claims before and prejudice. *See State v. District Court (Riker)*, 121 Nev. 225, 232, 112 P.3d 1070, 1074 (2005).

3. In order to demonstrate good cause, a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

4. An impediment external to the defense may be demonstrated by a showing “that the factual or legal basis for a claim was not reasonably available to counsel, or that ‘some interference by officials,’ made compliance impracticable.” *Hathaway*, 119 Nev. at 252, 71 P.3d at 506 (quoting *Murray v. Carrier*, 477 U.S. 478, 488 (1986)).

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5. The Court may excuse the failure to show good cause where the prejudice from a failure to consider the claim amounts to a fundamental miscarriage of justice. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

6. NRS 34.810 (2), governing “Additional reasons for dismissal of petition,” requires that “[a] second or successive petition must be dismissed if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are alleged, the judge or justice finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.”

7. The petitioner has the burden of pleading and proving specific facts that demonstrate both good cause for failing to present a claim or for presenting a claim again and actual prejudice. NRS 34.810(3); *see also State v. Haberstroh*, 119 Nev. 173, 181, 69 P.3d 676, 681 (2003).

8. A court must dismiss a habeas petition if it presents claims that either were presented in an earlier proceeding or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner. *Evans v. State*, 117 Nev. 609, 621-622, 28 P.3d 498, 507 (2001).

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

10. Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory. *Riker*, 121 Nev. at 231, 112 P.3d at 1074.

11. Meritless, successive, and untimely petitions clog the court system and undermine the finality of convictions. *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

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12. NRS 34.745 (4), governing “Summary dismissal of successive petitions,” requires that “if the petition is a second or successive petition challenging the validity of a judgment of conviction or sentence and if it plainly appears from the face of the petition or an amended petition and documents and exhibits that are annexed to it, or from records of the court that the petitioner is not entitled to relief based on any of the grounds set forth in subsection 2 of NRS 34.810, the judge or justice shall enter an order for its summary dismissal and cause the petitioner to be notified of the entry of the order.” *See* NRS 34.745(4).

13. Petitioner filed his third petition on January 10, 2022, more than seven years after the Nevada Supreme Court issued remittitur on March 24, 2014. Therefore, the instant petition is untimely. NRS 34.726 (1).

14. Moreover, the instant petition is a successive petition and may constitute an abuse of the writ. NRS 34.810 (1)(b)(2). Therefore, the instant petition is also subject to dismissal pursuant to NRS 34.745 (4); *Evans*, 117 Nev. at 621-22, 28 P.3d at 507. Absent good cause for the failure to present the claim in a prior petition or for presenting the claim again, and actual prejudice, the petition must be dismissed.

15. Petitioner failed to address the issue of good cause or allege any impediment external to the defense prevented him from filing a timely petition.

16. Petitioner failed to demonstrate prejudice which would amount to a fundamental miscarriage of justice. *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537.

17. Accordingly, the petition is time barred. The petition is also a successive petition constituting an abuse of the writ.

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ORDER

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

Dated this 27th day of April, 2022



**04A EA1 83A8 FCB0
Michelle Leavitt
District Court Judge**

CERTIFICATE OF MAILING

I hereby certify that on the date filed, I placed a copy of the Findings of Fact, Conclusions of Law, and Order in the U.S. Mail, postage prepaid to:

Bennett Grimes #1098810
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

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

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



Pamela Osterman
Judicial Executive Assistant
Department XII
Eighth Judicial District Court

A-20-815590-W
C-11-276163-1
Bennett Grimes
v.
State of Nevada.

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1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 Bennett Grimes, Plaintiff(s)

CASE NO: A-20-815590-W

7 vs.

DEPT. NO. Department 12

8 State of Nevada, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

13
14 If indicated below, a copy of the above mentioned filings were also served by mail
15 via United States Postal Service, postage prepaid, to the parties listed below at their last
known addresses on 4/28/2022

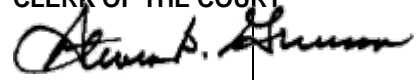
16 Bennett Grimes

#1098810

P.O. Box 650

Indian Springs, NV, 89070

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1 NEFF

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

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5 BENNETT GRIMES,

6 Petitioner,

Case No: A-20-815590-W

Dept No: XII

7 vs.

8 STATE OF NEVADA; ET AL.,

9 Respondent,

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

10
11 **PLEASE TAKE NOTICE** that on April 27, 2022, the court entered a decision or order in this matter, a
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed
15 to you. This notice was mailed on May 5, 2022.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Heather Ungermann
Heather Ungermann, Deputy Clerk

18
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 5 day of May 2022, I served a copy of this Notice of Entry on the following:

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

23
24 The United States mail addressed as follows:
25 Bennett Grimes # 1098810
26 P.O. Box 650
Indian Springs, NV 89070

27 /s/ Heather Ungermann
28 Heather Ungermann, Deputy Clerk

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ORDR

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

BENNETT GRIMES,)	Case No.: A-20-815590-W
)	
Petitioner,)	DEPT. No.: XII
vs.)	(Third Petition)
)	
CALVIN JOHNSON, WARDEN ,)	
)	
Respondent.)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

FINDINGS OF FACT

1. On September 14, 2011, the Petitioner was charged by way of Information as follows: Count 1: ATTEMPT MURDER WITH USE OF A DEADLY WEAPON IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (NRS 200.010, 200.030, 193.330, 193.165, 193.166), Count 2: BURGLARY WHILE IN POSSESSION OF A FIREARM IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (NRS 205.060, 193.166), and Count 3: BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL BODILY HARM IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (NRS 200.481.2e; 193.166).

2. On October 25, 2011, a Second Amended Information was filed amending Count 2 to reflect: BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (NRS 205.060, 193.166)

3. On October 15, 2012, Petitioner was found guilty, as to all three counts, by way of jury verdict.

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4. On February 12, 2013, the Court sentenced Petitioner on Count 1 to eight (8) to twenty (20) years in the Nevada Department of Corrections, plus a consecutive five (5) to fifteen (15) years for use of a deadly weapon; on Count 2, Petitioner was sentenced under the Small Habitual Criminal Statute to eight (8) to twenty (20) years in the Nevada Department of Corrections to run concurrent with Count 1; on Count 3, Petitioner was sentenced under the Small Habitual Criminal Statute to eight (8) to twenty (20) years in the Nevada Department of Corrections, to run consecutive to Counts 1 and 2.

5. The Court entered its Judgment of Conviction on February 21, 2013.

6. On March 18, 2013, Petitioner filed a Notice of Appeal. On February 27, 2014, the Nevada Supreme Court affirmed Petitioner's conviction.

7. Remittitur issued on March 24, 2014.

8. On February 20, 2015, Petitioner filed his first Petition for Writ of Habeas Corpus (Post-Conviction).

9. On October 5, 2017, the Court conducted an evidentiary hearing and denied Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction).

10. On November 20, 2017, the Court issued Findings of Facts, Conclusions of Law and Order.

11. Petitioner filed a Notice of Appeal on November 2, 2017.

12. On April 5, 2019, the Supreme Court of Nevada affirmed the judgment of the District Court denying Petitioner's first Petition for Writ of Habeas Corpus (Post-Conviction).

13. On May 27, 2020, Petitioner filed his second Petition for Writ of Habeas Corpus (Post-Conviction).

14. On July 21, 2020, the Court issued Findings of Facts, Conclusions of Law and Order denying the second Petition for Writ of Habeas Corpus (Post-Conviction) as time-barred and successive.

15. Petitioner filed a Notice of Appeal on August 21, 2020.

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16. On June 17, 2021, the Supreme Court of Nevada affirmed the judgment of the District Court denying Petitioner’s second Petition for Writ of Habeas Corpus (Post-Conviction).

17. On January 10, 2022, Petition filed the instant (third) Petition for Writ of Habeas Corpus (Post-Conviction).

18. The instant petition is untimely. Absent good cause and prejudice, the petition is procedurally barred, and must be denied.

CONCLUSIONS OF LAW

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

2. To avoid dismissal the petitioner must plead and prove specific facts that demonstrate good cause for his failure to present claims before and prejudice. *See State v. District Court (Riker)*, 121 Nev. 225, 232, 112 P.3d 1070, 1074 (2005).

3. In order to demonstrate good cause, a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

4. An impediment external to the defense may be demonstrated by a showing “that the factual or legal basis for a claim was not reasonably available to counsel, or that ‘some interference by officials,’ made compliance impracticable.” *Hathaway*, 119 Nev. at 252, 71 P.3d at 506 (quoting *Murray v. Carrier*, 477 U.S. 478, 488 (1986)).

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5. The Court may excuse the failure to show good cause where the prejudice from a failure to consider the claim amounts to a fundamental miscarriage of justice. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

6. NRS 34.810 (2), governing “Additional reasons for dismissal of petition,” requires that “[a] second or successive petition must be dismissed if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are alleged, the judge or justice finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.”

7. The petitioner has the burden of pleading and proving specific facts that demonstrate both good cause for failing to present a claim or for presenting a claim again and actual prejudice. NRS 34.810(3); *see also State v. Haberstroh*, 119 Nev. 173, 181, 69 P.3d 676, 681 (2003).

8. A court must dismiss a habeas petition if it presents claims that either were presented in an earlier proceeding or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner. *Evans v. State*, 117 Nev. 609, 621-622, 28 P.3d 498, 507 (2001).

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

10. Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory. *Riker*, 121 Nev. at 231, 112 P.3d at 1074.

11. Meritless, successive, and untimely petitions clog the court system and undermine the finality of convictions. *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

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12. NRS 34.745 (4), governing “Summary dismissal of successive petitions,” requires that “if the petition is a second or successive petition challenging the validity of a judgment of conviction or sentence and if it plainly appears from the face of the petition or an amended petition and documents and exhibits that are annexed to it, or from records of the court that the petitioner is not entitled to relief based on any of the grounds set forth in subsection 2 of NRS 34.810, the judge or justice shall enter an order for its summary dismissal and cause the petitioner to be notified of the entry of the order.” See NRS 34.745(4).

13. Petitioner filed his third petition on January 10, 2022, more than seven years after the Nevada Supreme Court issued remittitur on March 24, 2014. Therefore, the instant petition is untimely. NRS 34.726 (1).

14. Moreover, the instant petition is a successive petition and may constitute an abuse of the writ. NRS 34.810 (1)(b)(2). Therefore, the instant petition is also subject to dismissal pursuant to NRS 34.745 (4); *Evans*, 117 Nev. at 621-22, 28 P.3d at 507. Absent good cause for the failure to present the claim in a prior petition or for presenting the claim again, and actual prejudice, the petition must be dismissed.

15. Petitioner failed to address the issue of good cause or allege any impediment external to the defense prevented him from filing a timely petition.

16. Petitioner failed to demonstrate prejudice which would amount to a fundamental miscarriage of justice. *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537.

17. Accordingly, the petition is time barred. The petition is also a successive petition constituting an abuse of the writ.

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ORDER

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

Dated this 27th day of April, 2022



**04A EA1 83A8 FCB0
Michelle Leavitt
District Court Judge**

CERTIFICATE OF MAILING

I hereby certify that on the date filed, I placed a copy of the Findings of Fact, Conclusions of Law, and Order in the U.S. Mail, postage prepaid to:

Bennett Grimes #1098810
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

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

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Nevada Attorney General
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Las Vegas, NV 89101-1068



Pamela Osterman
Judicial Executive Assistant
Department XII
Eighth Judicial District Court

A-20-815590-W
C-11-276163-1
Bennett Grimes
v.
State of Nevada.

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1 **CSERV**

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

5
6 **Bennett Grimes, Plaintiff(s)**

CASE NO: A-20-815590-W

7 **vs.**

DEPT. NO. Department 12

8 **State of Nevada, Defendant(s)**

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

13
14 If indicated below, a copy of the above mentioned filings were also served by mail
15 via United States Postal Service, postage prepaid, to the parties listed below at their last
16 known addresses on 4/28/2022

16 **Bennett Grimes**

#1098810

P.O. Box 650

Indian Springs, NV, 89070

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Certification of Copy

State of Nevada }
County of Clark } SS:

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

NOTICE OF APPEAL FROM A DENIAL CHALLENGING THE COMPUTATION OF TIME (N.D.O.C.); CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

BENNETT GRIMES,

Plaintiff(s),

vs.

STATE OF NEVADA; BRIAN WILLIAMS
WARDEN,

Defendant(s),

Case No: A-20-815590-W

Dept No: XII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 24 day of May 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

