

FILED

MAY 16 2022

IN AND FOR THE SUPREME
COURT OF NEVADA

Electronically Filed
May 26 2022 04:58 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

BENNETT G. GRIMES
DEFENDANT,

CASE NO. A-20-815590-V
8TH JUDICIAL DISTRICT COURT

VS.

CALVIN JOHNSON, WARDEN,
RESPONDENT.

NOTICE OF APPEAL FROM A DENIAL
CHALLENGING THE COMPUTATION OF
TIME IN THE U.D.O.C.
NRS 31.500(1)(3)(8)(9).

COMES NOW, BENNETT G. GRIMES,
DEFENDANT IN THE CUSTODY OF NEVADA
DEPT. OF CORRECTIONS, RESPECTFULLY
DOES NOW FILE THIS APPEAL FROM HIS
DENIAL OF THE FOREGOING HABEAS CORPUS
"CHALLENGING THE COMPUTATION OF TIME IN
THE U.D.O.C." FROM AN ORDER ISSUED
BY THE 8TH JUDICIAL DISTRICT COURT
JUDGE MICHELLE LEAVITT, DEPT. XII,
APRIL 27, 2022.

A-20-815590-W
NOAS
Notice of Appeal
4993324



MAY 16 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

A PRO SE LITIGANT WITH NO
FORMAL TRAINING. —

(1)

CHALLENGING COMPUTATION OF TIME (N.D.O.C.)

BECAUSE OF N.D. 34.726(1),
GOVERNING "LIMITATIONS ON TIME TO FILE",
APPELLANT HAS WENT BEYOND THE ONE(1)
YEAR AFTER ENTRY OF THE JUDGMENT OF
CONVICTION OR THE SUPREME COURT'S ISSUED
REMITTAL. ^{#74419,} 4130119; (LAST REASON) ^{SEE: (9th CIR 2000)} SHACKLEFORD V. HUBBARD, 234 F.3d 1072.

GOOD CAUSE TO CONSIDER CLAIMS

APPELLANT ESTABLISHES GOOD CAUSE
FOR DELAY IN BRINGING THE CLAIM BY:

(1) FACTUAL PREDICATE: THAT THE CLAIM
WAS DISCOVERED BY THE PRO SE LITIGANT
AND THAT ALL PRIOR DEFENSE COUNSEL
APPOINTED BY THE STATE FAILED TO
"EXERCISE DUE DILIGENCE". THE UNITED
STATES SUPREME COURT HELD THAT "THE
RIGHT TO COUNSEL IS THE RIGHT TO
EFFECTIVE ASSISTANCE OF COUNSEL" OBSERVED
IN STRICKLAND V. WASHINGTON, 466 U.S. 668 (1994)
(2) DUE DILIGENCE: THAT THE FAILURE
TO RAISE THE CLAIM AFFECTED SUBSTANTIAL
RIGHTS, FAIRNESS, INTEGRITY, OR PUBLIC
REPUTATION OF JUDICIAL PROCEEDINGS.
THAT "DISMISSAL OF THE PETITION AS UNTIMELY
WILL UNDULY PREJUDICE THE PETITIONER."

HOLLAND V. FLORIDA, 560 U.S. 63 (2010);

JOHNSON V. UNITED STATES, 544 U.S.
295 (2005 4TH PROV.) 1d AT NRS. 34-726
(1)(A)(B).

(I.A.C.) FAILURE TO SUPPRESS AND INVESTIGATE
TO SUBSTANTIATE, MERITABLE
GOOD CAUSE FOR FAILURE TO PRESENT CLAIMS
BEFORE AND PREJUDICE. APPELLANT ASSERTS
THAT HE SUBMITTED PRO SE CLAIMS TO BE
RAISED IN APPELLANT'S FIRST HABEAS CORPUS
VIA HIS "MOTIONS TO ADD ADDITIONAL
GROUNDS 2-5. EXH. (COURT'S MINUTES, 8/25/16,
9/8/16); (9/15); (10/4); (10/18); (11/15/16); (11/17/17); AMENDED PETITION*"

(1) APPELLANT HAS BEEN PURSUING HIS
RIGHTS DILIGENTLY, AND

(2) THE "EXTRAORDINARY CIRCUMSTANCE",
FOR COUNSEL TO FORFEIT CLAIMS THAT
APPELLANT WERE ACTUALLY SENTENCED
TO IS AN ABSURDITY OR RIDICULOUS, STOOD
IN APPELLANT'S WAY AND PREVENTED TIMELY
FILING. ANY COURT THAT RENDERS AN
ADVERSE DECISION WILL BE ILLOGICAL.

STATE V. DISTRICT COURT (RIKER), 112 P.3d
1070, 1074 (2005); 1d AT HOLLAND, 560
U.S. 63 (2010); MARTINEZ V. RYAN, 566 U.S.
1, 132 S. CT. 1309, 182 L. ED. 2d. 272 (2012).
STATUTORY INTERPRETATION CASES ALWAYS APPLY
RETROACTIVELY. UNITED STATES V. PETER, 310 F.3d 109 (2002).

IMPEDIMENT EXTERNAL TO THE DEFENSE WAS ENGAGED BY WAY OF PRECEDING OBJECTIONS AND ARGUMENTS AT THE TRIAL PHASE. BY TRIAL ATTORNEYS APPOINTED BY THE STATE. DIRECT APPEAL AND PCR COUNSEL FOLLOWED WITH THE PRECEDENT ESTABLISHED ON RECORD DURING THE TRIAL PROCEEDINGS. HATHAWAY, 119 NEV. AT 252, 71 P.3d 503, 506 (QUOTING MURRAY V. CARRER, 477 U.S. 478, 488 (1986)).

APPELLANT ASKS FOR THE MERCY OF THIS COURT. TO PROCEED WITH THE FOREMENTIONED CLAIMS, OF THE IMPERMISSIBLE USES OF ENHANCEMENTS OF A DEADLY WEAPON AND HABITUAL VIOLATOR. WHERE THE PREJUDICE FROM A FAILURE TO CONSIDER THE CLAIMS AMOUNTS TO A FUNDAMENTAL MISARRANGE OF JUSTICE.

PELLEGRINI V. STATE, 117 NEV. 866, 887, 34 P.3d 519, 537 (2001). (ACCUSED/ALLEGED "CONDUCT")

NRS. 34.724

NRS 34.810(2): BECAUSE THE DISTRICT COURT COMMITTED AN ERROR IN APPELLANT'S JUDGMENT OF CONVICTION, BY CREATING A SEPARATE SUBSTANTIVE OFFENSE. UNDER THE SENTENCE IN COUNT THREE (3). APPELLANT HAS EXHAUSTED HIS REMEDIES VIA THE

N.D.O.C GRIEVANCE PROCESS "CHALLENGING THE COMPUTATION OF TIME", BECAUSE OF THE WAY THE N.D.O.C IS CALCULATING HIS SENTENCE, IS CAUSING APPELLANT TO DO MORE TIME AND REMAIN IN CUSTODY LONGER THAN HE SHOULD. IN VIOLATION OF THE FIFTH 5TH AND FOURTEENTH 14TH AMENDMENTS TO DOUBLE JEOPARDY AND DUE PROCESS CLAUSES, OF THE UNITED STATES CONSTITUTION, EQ. PR.; FEDERAL AND STATE AND ARTICLES 1, § 6 AND ARTICLES 1, § 8 OF THE NEVADA CONSTITUTION, AND THE SUPREMACY CLAUSE OF THE FEDERAL CONSTITUTION. (ART. 6, CLCS. 1, 2 AND 3, U.S. CONSTITUTION); SEE ART. 15 § 2 AND 1, § 2, NEV. CONST.). NRS 34.010(3); NRS 34.500(1)(b)(8)(9).

4) ENHANCEMENT OF PENALTY UNDER BOTH THE HABITUAL CRIMINAL SECTION AND NRS 193.165 NOT AUTHORIZED. ODOMS, 83 NEV. 53, 422 P.2d 548 (1967).

3) ALTHOUGH AN ALLEGATION THAT A DEFENDANT FALLS WITHIN THE PURVIEW OF THE HABITUAL CRIMINAL STATUTE, IS TYPICALLY INCLUDED IN THE CHARGING DOCUMENT, SUCH AN ALLEGATION DOES NOT CHARGE A SEPARATE, SUBSTANTIVE CRIMINAL OFFENSE. SEE ALSO STATE V. HABERSTROTH, 119 NEV. 173, 181, 69 P3d 676, 689 (2003); PARKERSON, 100 NEV. 222, 678

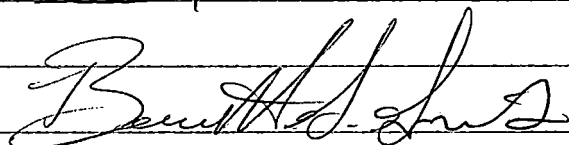
P.2d 1155 (1984).

ACTUAL PREJUDICE: TO THE PETITIONER HAS OCCURRED, AS STATED IN DIRECT AUTHORITY OF, DICKON V. STATE, 83 NEV. 120. THERE CAN BE ONLY ONE ASSIGNMENT OF PUNISHMENT WHEN A DEFENDANT IS CHARGED AS AN HABITUAL CRIMINAL. HELLANDER V. STATE, 82 NEV. 345, 418 P.2d 802 (1966). SEE ALSO EVANS V. STATE, 117 NEV. 609, 621-622 28 P.3d 498, 507 (2001). EXH. COUNT 3: ADJUDGED UNDER THE SMALL HABITUAL CRIMINAL STATUTE. (J.O.C.). (CONSECUTIVE). (VIOLATED STATUTE OF PENAL CODE).

THUS, NEVADA DEPT. OF CORRECTIONS (N.D.O.C.) IS HOLDING PETITIONER/DEFENDANT TO AN UNCONSTITUTIONALLY IMPOSED SENTENCE. PER SUBJECT MATTER JURISDICTION. NRS. 34.500 (1), (3), (8), (9).

WHEREFORE, BENNETT G. GRIMES, PRAYS THAT THE COURT GRANT DEFENDANT RELIEF TO WHICH HE MAY BE ENTITLED IN THIS PROCEEDING.

EXECUTED AT HIGH DESERT STATE PRISON ON THE 3RD DAY OF MAY, 2022.

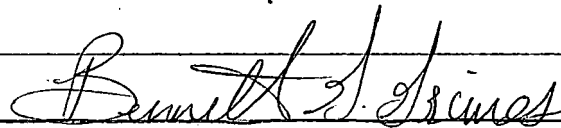


CERTIFICATE OF SERVICE BY MAILING

I, BENNETT G. GRIMES, HEREBY CERTIFY,
PURSUANT TO NRCB 5(1), THAT ON THIS
3RD DAY OF MAY, 2022, I MAILED A
TRUE AND CORRECT COPY OF THE FOREGOING
"HABEAS CORPUS CHALLENGING THE COMPUTATION
OF TIME IN THE N.D.O.C." BY DEPOSITING
IT IN THE HIGH DESERT STATE PRISON, LEGAL
LIBRARY, FIRST-CLASS POSTAGE, FULLY PREPAID,
ADDRESSED AS FOLLOWS:

SUPREME COURT OF NEVADA
CLERK OF THE COURT
261 SOUTH CARSON STREET
CARSON CITY, NEVADA 89701.

DATED: THIS 3RD DAY OF MAY, 2022.



BENNETT G. GRIMES, 1098810

IN PROPRIA PERSONAM

POST OFFICE BOX 650 [H.D.S.P.]

INDIAN SPRINGS, NEVADA 89070.

IN FORMA PAUPERIS:

C-11-276163-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 15, 2016

C-11-276163-1 State of Nevada
 vs
 Bennett Grimes

September 15, 2016 8:30 AM All Pending Motions

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Susan Botzenhart

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT: Scow, Richard H. Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- PETITIONER'S PRO PER MOTION TO REQUEST EVIDENTIARY HEARING...PETITIONER'S PRO PER MOTION TO ADD AN ADDITIONAL GROUND, I.E. GROUND FIVE COUNSEL STIPULATED TO USE OF DEADLY WEAPON AND FAILED TO OBJECT TO DEADLY WEAPON INSTRUCTIONS...PETITIONER'S PRO PER MOTION TO ADD AN ADDITIONAL GROUND, I.E. GROUND FOUR

Deft. not present; incarcerated in Nevada Department of Corrections (NDC). Court stated these Motions are fugitive documents, counsel has been appointed to represent Deft. in this matter, and all of these motions were forwarded to Deft's attorney for review. COURT ORDERED, Matter OFF CALENDAR.

NDC

PRINT DATE:

09/15/2020

Page 49 of 60

Minutes Date:

September 20, 2011

C-11-276163-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 04, 2016

C-11-276163-1 State of Nevada
 vs
 Bennett Grimes

October 04, 2016 8:30 AM Motion

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Susan Botzenhart

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT: Rogan, Jeffrey Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Deft. not present; incarcerated in Nevada Department of Corrections (NDC). Mr. Gamage not present. Court noted Deft. has an attorney in this matter, and Deft. keeps filing motions in proper person. Court stated it will forward the Motion to Deft's attorney, for review. COURT ORDERED, matter OFF CALENDAR.

NDC

PRINT DATE: 09/15/2020

Page 50 of 60

Minutes Date: September 20, 2011

C-11-276163-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 18, 2016

C-11-276163-1 State of Nevada
 vs
 Bennett Grimes

October 18, 2016 8:30 AM Motion

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Susan Botzenhart

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT: Demonte, Noreen Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Deft. not present; incarcerated in Nevada Department of Corrections (NDC). Mr. Gamage not present. COURT ORDERED, Deft's Motion DENIED, as Deft. has a court appointed lawyer. State to prepare order.

NDC

CLERK'S NOTE: A copy of above minute order was delivered by e-mail to Attorney William Gamage. /// sj

PRINT DATE: 09/15/2020

Page 51 of 60

Minutes Date: September 20, 2011

C-11-276163-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 15, 2016

C-11-276163-1 State of Nevada
 vs
 Bennett Grimes

**November 15, 2016 8:30 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Susan Botzenhart

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT: Gamage, William H. Attorney
 Mendoza, Erika Attorney
 Resch, Jamie J. Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Deft. not present; incarcerated in Nevada Department of Corrections (NDC). Attorney Jamie Resch, Esq., is present; and accepted the appointment as new counsel for Deft. CONFERENCE AT BENCH. COURT ORDERED, Mr. Gamage WITHDRAWN from the case; matter SET for status check for a briefing schedule, and for new counsel to do a file review and notify Deft.

NDC

1/17/17 8:30 A.M. STATUS CHECK: FILE REVIEW / SET BRIEFING SCHEDULE

PRINT DATE: 09/15/2020

Page 52 of 60

Minutes Date: September 20, 2011

C-11-276163-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 17, 2017

C-11-276163-1 State of Nevada
 vs
 Bennett Grimes

January 17, 2017 8:30 AM Status Check

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Susan Botzenhart

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT:	Resch, Jamie J.	Attorney
	Scow, Richard H.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Deft. not present; incarcerated in Nevada Department of Corrections (NDC). Upon Court's inquiry, Ms. Resch confirmed he reviewed the case, and he got to go see Deft. at the prison. Mr. Resch requested a briefing schedule and a hearing for the Petition. COURT SO ORDERED; briefing schedule SET as follows: Deft's supplemental Petition due May 16, 2017; State's response to Petition due July 18, 2017, and Deft's reply due August 17, 2017.

NDC

8/24/17 8:30 A.M. DEFT'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

PRINT DATE: 09/15/2020

Page 53 of 60

Minutes Date: September 20, 2011

BENNETT G. GRIMES #1095810
Case 2:16-cv-00662-GRN-FIL Document 23-39 Filed 01/30/20 Page 2 of 25
P.O. BOX 650
INDIAN SPRINGS, WY. 82010

Electronically Filed
09/13/2016 01:04:40 PM

Alvin L. Johnson
CLERK OF THE COURT

IN THE DISTRICT COURT
CLARK COUNTY NEVADA

BENNETT G. GRIMES
PETITIONER

CASE NO. C-1(276)63-1

DEPT NO. XII

VS.

THE STATE OF NEVADA
RESPONDENT

10-04-16

8:30A

MOTION FOR LEAVE OF COURT TO FILE AMENDED PETITION

COMES NOW, BENNETT G. GRIMES,

PETITIONER IN PROSE, WITH THIS MOTION FOR LEAVE OF

COURT TO FILE AMENDED PETITION, REQUESTING THE COURT

ALLOW PETITIONER TO FILE HIS AMENDED PETITION

SUBMITTED HEREWITH.

THIS MOTION IS MADE AND BASED ON

N.R.C.P. RULE 15, THE PETITION SUBMITTED HEREWITH, ALL

PAPERS AND DOCUMENTS OF FILE HEREIN, AS WELL AS THE

POINTS AND AUTHORITIES BELOW.

POINTS AND AUTHORITIES

N.R.C.P. RULE 15 READS, IN PERTINENT PART: "A

PARTY MAY AMEND THE PARTIES PLEADING AS A MATTER

OF COURSE AT ANYTIME BEFORE A RESPONSIVE PLEADING IS

SERVED"

STEPHENS V. SOUTHERN NEW MUSIC CO, 89 NEV

104,507 P2d 138 (1973) (IN THE ABSENCE OF ANY

RECEIVED

SEP 13 2016

CLERK OF THE COURT

1. APPARENT OR DECLARED REASON - SUCH AS UNDUE DELAY,
2. BAD FAITH OR DILATORY MOTIVE ON THE PART OF THE
3. MOVANT - THE LEAVE TO AMEND SHOULD BE FREELY GIVEN.)
4. PETITIONER REQUEST LEAVE OF THE COURT TO FILE
5. THE AMENDED PETITION SUBMITTED HEREWITH FOR THE
6. FOLLOWING REASONS:
7. 1) I HAVE FILED AS OF FEBRUARY 20, 2015, A PETITION
8. FOR WRIT OF HABEAS CORPUS (POST-CONVICTION). AND SINCE
9. THEN HAVE FILED SEPERATE MOTIONS TO ADD ADDITIONAL
10. GROUNDS 1, 3, 4 AND 5.
11. 2) AS I HAVE UNSUCCESSFULLY BEEN ABLE TO CONTACT
12. MY ATTORNEY, SO I AM FILING THIS AMENDED
13. PETITION FOR THE RECORD.

CONCLUSION

16. WHEREFORE, PETITIONER RESPECTFULLY REQUEST
17. LEAVE OF THE COURT TO FILE THE AMENDED
18. PETITION SUBMITTED HEREWITH.

20. RESPECTFULLY SUBMITTED,

21. DATED THIS 8TH DAY OF SEP, 2016 BY: Bennett G. Grimes

22. BENNETT G. GRIMES #1098810
PETITIONER IN PROSE

23.

24.

25.

26.

27.

28.

CERTIFICATE OF SERVICE
OF AFFIRMATION
PURSUANT TO
NRS. 239 B.030

1. THE STATE OF NEVADA

2. COUNTY OF CLARK

3.

4. I, BENNETT B. GRIMES, AFFIANT

5. DEPOSES AND SAYS THAT I MAILED A TRUE AND

6. CORRECT COPY OF THE ATTACHED MOTION FOR

7. REQUEST OF EVIDENTIARY HEARINGS TO EACH OF

8. THE FOLLOWING INTERESTED PARTIES:

9.

10. STEVE WOLFSON, DISTRICT ATTORNEY

11. 200 LEWIS AVE.

12. P.O. BOX 552212

13. LAS VEGAS, NEVADA 89155-2212.

14.

15. ADAM LEXALT, ATTORNEY GENERAL

16. 100 NO. CARSON STREET

17. CARSON CITY, NEVADA 89701-4717.

18.

19. THAT THERE IS NO SOCIAL SECURITY

20. NUMBER WITHIN THIS DOCUMENT THAT THE ABOVE

21. STATED PURSUANT TO NRS. 208.165

22. CASE NO. C-11276163-1

23. DATED THIS 8th DAY OF SEPTEMBER, 2016.

24.

25.

Bennett B. Grimes 1098810
PETITIONER

26.

27.

28.

Case No. C-11276163-1
 Dept. No. XII

IN THE B+H JUDICIAL DISTRICT COURT OF THE
 STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

BENNETT G. GRIMES
 Petitioner,

THE STATE OF NEVADA
BRIAN WILLIAMS SR.
WARDEN
 Respondent.

PETITION FOR WRIT
 OF HABEAS CORPUS (AMENDED)
 (POSTCONVICTION) 9-8-16

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: SOUTHERN DESERT CORRECTIONAL CENTER
2. Name and location of court which entered the judgment of conviction under attack: EIGHTH
JUDICIAL DISTRICT COURT
3. Date of judgment of conviction: FEBRUARY 12, 2013.
4. Case number: C-11276163-1
5. (a) Length of sentence: MINIMUM 21 YEARS TO MAXIMUM 75

RECEIVED

SEP 13 2016

CLERK OF THE COURT

(b) If sentence is death, state any date upon which execution is scheduled:....

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion?

Yes No ☒

If "yes," list crime, case number and sentence being served at this time:

N/A

7. Nature of offense involved in conviction being challenged:

ATTEMPT MURDER w/USE IN VIO.,
OF T.P.O. BURGLARY w/USE IN VIO., OF T.P.O. BATTERY w/USE CONSTITU-
T.I.N.B. DOMESTIC VIOLENCE IN VIO. OF T.P.O. TEMPORARY PROTECTIVE ORDER (T.P.O.)

8. What was your plea? (check one)

(a) Not guilty ☒

(b) Guilty

(c) Guilty but mentally ill

(d) Nolo contendere

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details:

N/A

10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)

(a) Jury ☒

(b) Judge without a jury

11. Did you testify at the trial? Yes No ☒

12. Did you appeal from the judgment of conviction? Yes ☒ No

13. If you did appeal, answer the following:

(a) Name of court:

IN THE SUPREME COURT OF THE
STATE OF NEVADA

(b) Case number or citation:

62835

(c) Result:

AFFIRMED

(d) Date of result:

NOTICE OF APPEAL FILED
MARCH 18, 2013

(Attach copy of order or decision, if available.)

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

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? Yes ☒ No ☐

16. If your answer to No. 15 was "yes," give the following information:

(a) (1) Name of court: EIGHTH JUDICIAL DISTRICT COURT

(2) Nature of proceeding: MOTION FOR A NEW TRIAL; MOTION TO CORRECT ILLEGAL SENTENCE

(3) Grounds raised: THE COURT FAILED TO NOTIFY THE DEFENSE THAT THE JURY HAD A QUESTION REGARDING THE LAW ON BURGLARY INSTRUCTION; ILLEGAL SENTENCE

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

(5) Result: MOTION FOR NEW TRIAL (DENIED)

(6) Date of result: _____

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

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: SAME

(2) Nature of proceeding: MOTION HEARING

(3) Grounds raised: ILLEGAL SENTENCE

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

(5) Result: ILLEGAL SENTENCE MOTION - PENDING

(6) Date of result: _____

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: cf. Motion

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

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

(1) First petition, application or motion? Yes No ✓

Citation or date of decision: NA

(2) Second petition, application or motion? Yes No NA

Citation or date of decision:

(3) Third or subsequent petitions, applications or motions? Yes No

Citation or date of decision:

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) PENDING

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same: PETITIONER'S SENTENCE IS ILLEGAL

(b) The proceedings in which these grounds were raised: MOTION

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) FURTHER RECORD THIS PETITIONER IS ARGUING THAT HIS TRIAL COURT COUNSEL WAS INEFFECTIVE DURING TRIAL COURT PROCEEDINGS DURING SENTENCING.

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) N.A.

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes No ☒

If yes, state what court and the case number: NA

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: APPELATE ATTORNEY DEBRAH L. WESTBROOK;
TRIAL COURT ATTORNEY R. ROGER HILLMAN

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes No ☒

If yes, specify where and when it is to be served, if you know: NA

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

1 (a) Ground ONE: 6th AMENDMENT RIGHTS TO EFFECTIVE ASSISTANCE
2 OF COUNSEL. 5th AMENDMENT RIGHT UNDER THE DOUBLE
3 JEOPARDY CLAUSE. U.S. CONST. VIO. 2^d SEG. ART 1 § 8 OF
4 NEVADA CONST. VIO. ALSO 5th AMEND. DUE PROCESS VIO U.S. CONST.

5 Supporting FACTS (Tell your story briefly without citing cases or law.): TRIAL COURT
6 COUNSEL FAILED TO PREPARE ADEQUATELY FOR PETITIONER'S
7 SENTENCING ON FEBRUARY 12, 2013.

8 TRIAL COURT COUNSEL RELIED ON OUT-DATED
9 CASE LAW AND AUTHORITIES IN PREPARATION FOR THE
10 PETITIONER'S TRIAL WHICH CAUSED HIM TO BE SENTENCED
11 TO AN ADDITIONAL 8 to 20 YEARS.

12 SPECIFICALLY AFTER THE DEFENSE COUNSEL'S RELIANCE ON
13 OUT-DATED CASE AUTHORITY THE COURT PROCEEDED TO SENTENCE
14 THE PETITIONER ON BOTH COUNTS 1 AND 3.

15 AS TO COUNT 1 (ATTEMPT MURDER), THE COURT SENTENCED
16 THE PETITIONER TO A TERM OF 8 to 20 YEARS PLUS A
17 CONSECUTIVE TERM OF 5 to 15 YEARS FOR THE WEAPON'S
18 ENHANCEMENT.

19 AS TO COUNTS 2 AND 3, THE COURT SENTENCED THE
20 PETITIONER PURSUANT TO THE SMALL HABITUAL CRIMINAL
21 STATUTE. I.E., FOR COUNT 2, THE COURT SENTENCED
22 THE PETITIONER TO A TERM OF 8 to 20 YEARS CONCURRENT
23 TO COUNT 1. HOWEVER FOR COUNT 3, THE COURT
24 SENTENCED THE PETITIONER TO A TERM OF 8 to 20 YEARS
25 CONSECUTIVE TO COUNTS 1, AND 2.

26 FOR THE RECORDS DEFENSE COUNSEL ADVISED THE PETITIONER
27 DURING TRIAL AND PRIOR TO TRIAL THAT HE COULD NOT AND
28 WOULD NOT BE CONVICTED AND SENTENCED ON BOTH COUNTS

(a) Ground ONE: CONTINUED

Supporting FACTS (Tell your story briefly without citing cases or law.): 1 AND 3
BASED ON THE EXISTING AND CONTROLLING LAW.
FURTHERMORE DURING TRIAL DEFENSE COUNSEL WAS IN -
EFFECTIVE FOR NOT OBJECTING TO THE VERDICT FORM AND
THEREBY REQUESTING THAT COUNT 3 BE LISTED AS A
LESSER INCLUDED OFFENSE OF COUNT 1.
HAD DEFENSE COUNSEL OBJECTED FOR THE RECORD TO THE
VERDICT FORM THE COURT WOULD HAVE BEEN BOUND TO
GRANTING SUCH A REQUEST WHICH WOULD HAVE PRE-
VENTED THE PETITIONER FROM BEING CONVICTED AND SENTENCED
ON BOTH COUNTS 1 AND 3 BASED ON THEN EXISTING LAW,
I.E., SALAZAR V. STATE, 70 P.2D 749 AT 751 (NEV. 2013),
CITING STATE OF NEVADA V. DISTRICT COURT, 116 NEV. 127, 994
P.2d 692 (2000), CITING SKIBA V. STATE, 114 NEV. 612, 616,
FOOTNOTE 4, 959 P.2d 959, 961 n.4 (1998)
A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL PRESENTS
A MIXED QUESTION OF LAW AND FACT, SUBJECT TO INDE-
PENDENT REVIEW. KIRKSEY V. STATE, 112 NEV. 980, 987,
923 P.2d 1102, 1107 (1996). TO ESTABLISH INEFFECT-
TIVE ASSISTANCE OF COUNSEL, A CLAIMANT MUST SHOW
BOTH THAT COUNSEL'S PERFORMANCE WAS DEFICIENT AND
THAT THE DEFICIENT PERFORMANCE PRESUDICED THE DEFENSE.
STRICKLAND V. WASHINGTON, 466 U.S. 668, 687, 104 S. CT.
2052, 80 L. ED. 2d 674 (1984).

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

GROUND 1 CONTINUED

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my

6th, 14th

Amendment right to EFFECTIVE ASST. OF COUNSEL AND DUE PROCESS

based on these facts:

TO SHOW PREJUDICE, THE CLAIMANT MUST SHOW A REASONABLE PROBABILITY THAT BUT FOR COUNSEL'S ERRORS THE RESULT OF THE TRIAL WOULD HAVE BEEN DIFFERENT i.e., AT 988, 923 P.2d AT 1187.

THE RECORD REFLECTS THAT THE PETITIONER WAS CHARGED UNDER COUNT 1 WITH ATTEMPTED MURDER WITH USE OF A DEADLY WEAPON IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER; AND COUNT 3 WITH BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL BODILY HARM IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER. THE PETITIONER ARGUES AND SAYS THAT BOTH COUNTS 1 AND 3

ARE REDUNDANT BECAUSE THEY PUNISHED THE SAME EXACT CRIMINAL ACT i.e., THE ACT OF STABBING AT AND INTO THE BODY OF THE SAID VICTIM ANEKA GRIMES. THE APPLICABLE RULE IS THAT WHERE THE SAME ACT OR TRANSACTION CONSTITUTES A VIOLATION OF TWO DISTINCT STATUTORY PROVISIONS. THE TEST TO BE APPLIED TO DETERMINE WHETHER THERE ARE TWO OFFENSES OR ONLY ONE IS WHETHER EACH PROVISION REQUIRES PROOF OF A FACT WHICH THE OTHER DOES NOT... see BLOCKBURGER V. UNITED STATES, 284 U.S. 299 (1932).

(b) Ground TWO: THE PETITIONER CONTENTS AND SAYS THAT HIS 6TH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AND HIS 14TH AMENDMENT RIGHT TO DUE PROCESS OF THE LAW WAS VIOLATED. U.S. CONST. VIO. NEVADA ART. I, § 8

Supporting FACTS (Tell your story briefly without citing cases or law.):

THE TRIAL COURT PERMITTED THE PETITIONER'S CRIMINAL COMPLAINT / INFORMATION TO BE AMENDED TO INCLUDE NOTICE OF HABITUAL CRIMINALITY TREATMENT AFTER THE JURY REACHED ITS VERDICT IN VIOLATION OF NRS. 123.095:

1. THE COURT MAY PERMIT AN INDICTMENT OR INFORMATION TO BE AMENDED AT ANYTIME BEFORE VERDICT OF FINDING IF NO ADDITIONAL OR DIFFERENT OFFENSE IS CHARGED AND IF SUBSTANTIAL RIGHTS OF THE DEFENDANT ARE NOT PRESUDICED.

FOR THE RECORD THE PETITIONER SAYS THAT HE HAS A LIBERTY INTEREST THAT WAS LOST TO HIM WHERE HAD HE KNOWN THAT HE WAS FACING HABITUAL CRIMINALITY TREATMENT HE WOULD HAVE TAKEN THE STAND AND TESTIFIED IN HIS OWN DEFENSE AND / OR PLEA NEGOTIATED A POSSIBLE DEAL INSTEAD OF GOING TO TRIAL.

THIS TRIAL COURT COUNSEL WAS INEFFECTIVE FOR NOT LODGING AN OBJECTION TO THE STATES INTENT TO INCLUDE HABITUAL CRIMINALITY TREATMENT AND FURTHER FAILED TO SUBMIT THIS ISSUE ON THE PETITIONER'S DIRECT APPEAL THROUGH APPELLATE COUNSEL. SEE STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S. CT. 2052. 80 L. ED 2d 674 (1984).

1 (c) Ground THREE: THE PETITIONER'S RIGHT TO DUE PROCESS
2 OF THE 14th AMENDMENT WAS VIOLATED UNDER
3 ZOBOMBIC, U.S. CONST. VIO NEVADA ART. § 8
4

5 Supporting FACTS (Tell your story briefly without citing cases or law.):

6 FOR THE RECORD THE PETITIONER'S
7 AVERMENT IS THAT HIS RIGHT TO DUE PROCESS
8 WAS/IS VIOLATED UNDER ZBOUBIC, IT IS THE
9 DISTRICT COURT'S DUTY TO DETERMINE WHETHER
10 THE INSTRUMENT IS AN INHERENTLY DANGEROUS
11 WEAPON. 106 NEV. 571, 577, 798 P.2D 548,
12 551-52 (1990) id.
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(d) Ground FOUR: THE DISTRICT COURT UNCONSTITUTIONALLY APPLIED NEVADA REVISED STATUTE 193.165. WHEN IT IMPOSED A DISTINCT AND SEPERATE SENTENCE FOR "USE OF A DEADLY WEAPON!!" PETITIONER'S 5TH, 6TH AND 14TH (DUE PROCESS) AMENDMENT RIGHTS TO THE U.S. CONST. WERE/IS VIOLATED.

Supporting FACTS (Tell your story briefly without citing cases or law.): 1). NEVADA REVISED STATUTE 193.165(1)(3) PROVIDES AN [ADDITIONAL PENALTY] WHEN A PERSON USES A DEADLY WEAPON IN THE COMMISSION OF A CRIME; IT DOES NOT CREATE ANY SEPERATE OFFENSE, BUT PROVIDES AN ADDITIONAL PENALTY FOR THE PRIMARY OFFENSE.

2). ON OCTOBER 15, 2012, THE PETITIONER WAS ADJUDICATED GUILTY OF: COUNT 1 - ATT. MUR. W/ USE OF A DEAD. WEAP. IN VIOL. OF A TEMP. PROTECTIVE ORDER (F); COUNT 2 - BURG. LARY WHILE IN POSS. IF A DEAD. WEAP. IN VIOL. OF A TEMP. PROTECTIVE ORDER (F); COUNT 3 - BATT. W/ DEAD. WEAP. CONSTITUTING DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL BODILY HARM IN VIOL. OF A TEMP. PROT. ORDER (F)

3). ON FEBRUARY 12, 2013, THE PETITIONER WAS SENTENCED TO COUNTS * 2 AND 3 UNDER THE SMALL HABITUAL: * COUNT 1 MAX. OF 20 YEARS W/ MIN. OF 8 YEARS PLUS A CONSECUTIVE MAX. OF 15 YEARS W/ MIN. OF 5 YEARS FOR USE OF A DEAD WEAP.; COUNT 2 MAX. OF 20 YEARS W/ MIN. 8 YEARS COUNT 2 TO RUN CONCURRENT W/ COUNT 1; COUNT 3 MAX. OF 20 YEARS W/ MIN. OF 8 YEARS, COUNT 3 TO RUN CONSECUTIVE TO COUNTS 1 AND 2 W/ (58) PRIME CREDIT FOR

4). PETITIONER AGREES THAT NRS 193.165 IMPOSES A SENTENCE WHICH ENHANCES THE PRIMARY OFFENSE SENTENCE. HOWEVER, PETITIONER'S PRIMARY OFFENSE (8-20 YRS) SENTENCE FOR COUNT 1 -

ATT. MUR. W/ USE OF A DEAD. WEAP. IN VIOL. OF A T.P.O., WAS NOT ENHANCED, ALTERED OR CHANGED IN ANY SHAPE OR FORM, TO REFLECT AN ENHANCED SENTENCE OF 13-20 FOR COUNT 1 - ATT. MUR. W/ USE OF A DEAD. WEAP.

SUBSEQUENTLY, THE COURT IMPOSED A SENTENCE, SEPERATE AND DISTINCT FOR "USE OF A DEAD WEAPON!!" CONTRARY TO THE MANDATORY LANGUAGE IN NRS 193.165(3) * WHICH STATES: THIS DOES NOT CREATE A SEPERATE OFFENSE, BUT PROVIDES AN ADD-

(d) Ground FOUR: CONTINUED

Supporting FACTS (Tell your story briefly without citing cases or law.): ADDITIONAL PENALTY FOR THE PRIMARY OFFENSE.

5). IT IS THE DISTRICT'S COURT COMMON PRACTICE OF TOTALLY IGNORING AND BLATANTLY OMITTING THE PHRASE "IN ADDITION TO" AND THE PREPOSITION "WITH" IN THE PHRASE "CONSECUTIVE WITH" IN REGARDS TO NRS 193.165; THE COURT HAS DISREGARDED THE LEGISLATURE'S CLEAR INTENT FOR A DEFENDANT'S [ADDITIONAL PENALTY] WEAPON ENHANCED SENTENCE TO BE ADDED TO HIS PRIMARY OFFENSE. FURTHERMORE, THE LEGISLATURE'S CLEAR INTENT CAN BE DETERMINED BY OTHER ENHANCEMENT NEVADA REVISED STATUTES; SUCH AS, THE CRIME OF "BATTERY" ENCOMPASSES ITS OWN WEAPON ENHANCED PENALTY "USE OF A DEADLY WEAPON" WHICH RENDERS ONE SINGLE SENTENCE - NOT A SEPERATE SENTENCE FOR "USE OF A DEADLY WEAPON" AS NRS 193.165 DOES.

THE DUE PROCESS CLAUSE PROTECTS A PERSON FROM BEING INCARCERATED FOR AN ACT THAT IS NOT DECLARED CRIMINAL BY THE LEGISLATOR'S. ACCORDING TO NEVADA LAW, NRS 193.165(2) IS NOT AN OFFENSE. HERE, ONCE THE PETITIONER HAS RAPIDED AND/OR EXPIRED THE SENTENCE(S) FOR THE PRIMARY OFFENSE(S) SENTENCES, THEN HE WILL BE SOLELY IN NEVADA DEPARTMENT OF CORRECTIONS SERVING A SENTENCE FOR AN ACT ["USE OF A DEADLY WEAPON"], THAT IS NOT DECLARED CRIMINAL BY THE NEVADA LEGISLATURE'S PURSUANT TO NRS

(b) Ground 4 CONTINUED

Supporting FACTS (Tell your story briefly without citing cases or law.): 193.165(3),
WHILE AWAITING A NON-MANDATORY PAROLE BOARD
HEARING TO BE RELEASED FROM INCARCERATION FOR AN
ACT THAT IS NOT CRIMINAL.
6). NRS 193.165 [ADDITIONAL PENALTY STATUTE] DOES
NOT INCLUDE ANY LANGUAGE AND/OR CRITERIA THAT
GOVERNS A PAROLE ELIGIBILITY SEPERATE FROM THE
PAROLE ELIGIBILITY INCLUDED IN THE MANDATORY
PROVISIONS OF COUNT 1; COUNT 2; AND COUNT 3 THE
PRIMARY OFFENSE(S) THAT THE PETITIONER WAS ABSO-
LUTELY GUILTY. THE PETITIONER IS SUBJECTED TO A
PAROLE BOARD HEARING TO BE RELEASED FROM THE NDOC
FOR A NON-CRIMINAL ACT SENTENCE THAT IS NOT REQUIRED
BY NEVADA LAW, PURSUANT TO NRS 193.165. MOREOVER,
THESE NON-MANDATORY PAROLE BOARD HEARINGS FOR A
NON-CRIMINAL ACT HAS CRIPPLED THE STATE OF NEVADA
ECONOMICALLY BECAUSE OF THE INCOME THAT IS SPENT
SPENT FOR THE PAROLE HEARING AS WELL AS THE MASSIVE
OVERCROWDING OF DETENTION CENTERS AND DEPARTMENT OF
CORRECTIONS. 7). THE CLEAR LANGUAGE OF THE STATUTE IS TITLED:
"ADDITIONAL PENALTY" - NOT "SEPERATE PENALTY"! THE STATUTE
DOES NOT CREATE A SEPERATE OFFENSE, THEREFORE, IT IS LEGALLY
IMPOSSIBLE FOR ANY DISTRICT COURT IN THE STATE OF NEVADA TO IM-
POSE A SEPERATE [PENALTY] SENTENCE FOR THE "USE OF A DEADLY WEAPON".

(c) Ground

4

CONTINUED

Supporting FACTS (Tell your story briefly without citing cases or law.): THE PETITIONER WOULD LIKE TO GIVE THE COURT AN ANALOGY TO FURTHER SUPPORT HIS ARGUMENT HEREIN:

IF YOU HAD ONE GLASS OF WATER AND YOU WANTED TO ADD OR ENHANCE THE WATER IN THAT ONE GLASS OF WATER, ALL YOU WOULD DO IS POUR MORE WATER IN THAT ONE GLASS. YOU WOULD NOT GET A SEPERATE GLASS OF WATER AND PLACE IT NEXT TO THE FIRST GLASS OF WATER AND SAY THAT THE FIRST GLASS OF WATER IS ENHANCED BECAUSE IT IS NOT ALL THAT HAS HAPPENED IS YOU ADDED A SEPERATE AND DISTINCT GLASS OF WATER, THAT HAS NOTHING TO DO WITH THE FIRST GLASS OF WATER.] SO IT IS WITH THE COURTS UNCONSTITUTIONAL APPLICATION OF NRS 193.165, INSTEAD OF ADDING THE WEAPON ENHANCED SENTENCE FOR THE PRIMARY OFFENSE [ATT. MUR.] OFFENSE, IT SENTENCED THE PETITIONER TO A SEPERATE SENTENCE FOR "USE OF A DEADLY WEAPON" WHICH DOES NOTHING TO THE SENTENCE FOR THE PRIMARY OFFENSE IN ACCORDANCE WITH THE MANDATORY LANGUAGE OF NRS 193.165(3).

8). THE PETITIONER CONTENTS THAT THE COURT UNCONSTITUTIONALLY IMPOSED A SENTENCE FOR AN ACT THAT THE NEVADA LAW DOES NOT AS CRIMINAL, MAKING IT ILLEGAL.

23. (c) GROUND 5 - 6th AMENDMENT TO EFFECTIVE ASSISTANCE OF COUNSEL AND 14th AMENDMENT DUE PROCESS WERE VIOLATED WHEN COUNSEL STIPULATED TO USE OF DEADLY WEAPON AND FAILED TO OBJECT TO DEADLY WEAPON INSTRUCTION.

23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law):
FOR THE RECORD THE PETITIONER'S ALLEGMENT IS THAT TRIAL COUNSEL STIPULATED TO USE OF A DEADLY WEAPON AND FAILED TO OBJECT TO DEADLY WEAPON INSTRUCTION, WHICH WAS PLAIN ERROR AFFECTING HIS SUBSTANTIAL RIGHTS. GREEN V. STATE, 119 N.E. 542, 545, 80 P.3d 93, 95 (2003). NRS 193.165(6), IN THE LAST SENTENCE ERRONEOUSLY INFORMS THE JURY THAT A KNIFE IS A DEADLY WEAPON AS A MATTER OF LAW. NEITHER THE DEADLY WEAPON ENHANCEMENT STATUTE, NOR THE STATUTES REFERENCED THEREIN, DESCRIBES KNIVES IN GENERAL AS DEADLY WEAPONS. See NRS 193.165, 202.265, 202.320, 202.350. THIS INSTRUCTION IS AN INCORRECT STATEMENT OF THE LAW. APPENDY V. NEW JERSEY, 530 U.S. 466, 490 (2000); IN ACCORD, ABREGO V. STATE, 118 N.E. 54, 60, 38 P.3d 868, 871 (2002). (APPLYING APPENDY TO A SENTENCING ENHANCEMENT). BECAUSE THE USE OF A DEADLY WEAPON IS A REQUIRED FACTUAL FINDING FOR THE DEADLY WEAPON ENHANCEMENT TO THE ATTEMPT MURDER CHARGE, See NRS 193.165(1), THE DETERMINATION AS TO WHETHER THE KNIFE WAS A DEADLY WEAPON SHOULD HAVE BEEN SUBMITTED TO THE JURY.

23. (d) GROUND 5 CONTINUED

23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law):

1). OUR CASES ALLOWING THIS ISSUE TO BE DECIDED BY THE DISTRICT COURT AS A MATTER OF LAW PRE-DATED APPEND. See: STEESE V. STATE, 114 NEV. 479, 499, 960 P.2d 321, 334 (1998); THOMAS V. STATE, 114 NEV. 1127, 1146, 967 P.2d 1111, 1124 (1998); ZBOMBIC V. STATE, 106 NEV. 571, 577, 798 P.2d 548, 551-52 (1990).

IT WAS PLAIN ERROR FOR THE DISTRICT COURT TO INSTRUCT THE JURY THAT TO WIT: A "KNIFE" IS A DEADLY WEAPON AS A MATTER OF LAW, WHICH AFFECTED GRIMES' SUBSTANTIAL RIGHTS, AS IT IS NOT CLEAR THAT THE KNIFE - STEAK KNIFE - MEETS THE DEFINITION OF A DEADLY WEAPON UNDER NRS 193.165(1). BASED ON THE FOREGOING, PETITIONER'S REQUEST WOULD BE TO REMAND THIS CASE FOR A NEW TRIAL ON THE DEADLY WEAPON ISSUE.

GRIMES CONTENTS THAT THE DISTRICT COURT ERRED IN WRONGLY AND IMPROPERLY INSTRUCTING THE JURY ON THE "USE" OF A DEADLY WEAPON. (JURY INST. NO. 16.)

GRIMES ARGUES THAT THE DISTRICT COURT SHOULD HAVE ADDITIONALLY INSTRUCTED THE JURY IN ACCORDANCE WITH BUSCHAUER V. STATE, 106 NEV. 890, 895, 804 P.2d

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

GROUND~~5~~ CONTINUED

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my
6th, 14th Amendment right to EFFECTIVE ASST. OF COUNSEL AND DUE PROCESS
 based on these facts:

1046, 1049 (1990), THAT IN ORDER TO USE A DEADLY WEAPON IN THE COMMISSION OF A CRIME, THE WEAPON "MUST BE USED IN CONSCIOUS FURTHERANCE OF A CRIMINAL OBJECTIVE." GRIMES' COUNSEL DID NOT REQUEST THIS INSTRUCTION OR OBJECT TO ITS OMISSION. GRIMES' COUNSEL HAS FAILED TO DEMONSTRATE THAT THE DISTRICT'S COURT FAILURE TO PROVIDE THIS INSTRUCTION SUA SPONTE WAS PATENTLY PREJUDICIAL, SEE FLANAGAN V. STATE, 112 NEV. 1409, 1423, 930 P.2d 691, 700. (1996), OR WAS PLAIN ERROR AFFECTING HIS SUBSTANTIAL RIGHTS, TAVARES V. STATE, 117 NEV. 725, 729, 30 P.3d 1128, 1130-31 (2001). d.

1. UNITED STATES V. YOUNG, 470 U.S. 1, 15 (1985).

LORD V. STATE, 107 NEV. 28, 39 (1991).

APPENDI V. NEW JERSEY, 530 U.S. 466, 490 (2000).

VALDEZ V. STATE, 124 NEV. 1172, 1190 (2008).

ROSANNA V. STATE, 113 NEV. 375, 382 (1997).

"[A]N ACCURATE INSTRUCTION UPON THE BASIC ELEMENTS OF THE OFFENSE CHARGED IS ESSENTIAL, AND THE FAILURE TO SO INSTRUCT

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

GROUND 5-CONTINUED

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my

6th, 14th Amendment right to EFFECTIVE ASSIST OF COUNSEL AND DUE PROCESS

based on these facts:

CONTINUED... CONSTITUTES REVERSIBLE [PLAIN]
ERROR 11).

BUFF V. STATE, 114 NEU. 1237, 1244 N.3 (1998).

STEESE V. STATE, 114 NEU. 479, 498 (1998)

NRS 193.165(6)(a)

APPENDI, 530 U.S. AT 490; U.S.C.A. V, VI, XIV.

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

EXECUTED at High Desert State Prison on the 8 day of the month of SEPTEMBER, 2016.

BENNETT G. GRIMES 1098310

Bennett G. Grimes

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

BENNETT G. GRIMES 1098310

Bennett G. Grimes

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

AFFIRMATION (Pursuant to NRS 239B.030)

High Desert State Prison

Post Office Box 650

The undersigned does hereby affirm that the preceeding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number C-11276163-1 Does not contain the social security number of any person.

BENNETT G. GRIMES 1098810

Bennett G. Grimes

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

CERTIFICATE OF SERVICE BY MAIL

BENNETT G. GRIMES, hereby certify pursuant to N.R.C.P. 5(b), that on this 8 day of the month of SEPTEMBER, 2016, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

D.W. Neven, Warden High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070

Attorney General of Nevada
100 North Carson Street
Carson City, Nevada 89701

Clark County District Attorney's Office
200 Lewis Avenue

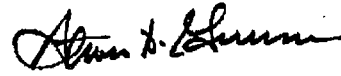
Las Vegas, Nevada 89155

BENNETT G. GRIMES 1098810

Bennett G. Grimes

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

Print your name and NDOC back number and sign


CLERK OF THE COURT

JOC

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

BENNETT GRIMES
#2762267

Defendant.

CASE NO C276163-1

DEPT. NO. XII

JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of
COUNT 1 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON IN VIOLATION
OF A TEMPORARY PROTECTIVE ORDER (Category B Felony) in violation of NRS
200.010, 200.030, 193.330, 193.165, 193.166, COUNT 2 – BURGLARY WHILE IN
POSSESSION OF A DEADLY WEAPON IN VIOLATION OF A TEMPORARY
PROTECTIVE ORDER (Category B Felony) in violation of NRS 205.060, 193.166,
COUNT 3 – BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING
DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL BODILY HARM IN
VIOLATION OF A TEMPORARY PROTECTIVE ORDER (Category B Felony) in
violation of NRS 200.481.2e, 193.166; and the matter having been tried before a jury


//

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DEPARTMENT 12

1 and the Defendant having been found guilty of said crimes; thereafter, on the 12th day
2 of, February, 2013, the Defendant was present in court for sentencing with his counsel,
3 ROGER HILLMAN, Deputy Public Defender, and good cause appearing,
4

5 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses. AS TO
6 COUNTS 2 and 3 – Defendant is ADJUDGED guilty under the SMALL HABITUAL
7 Criminal Statute and, in addition to the \$25.00 Administrative Assessment Fee, and
8 \$150.00 DNA Analysis Fee including testing to determine genetic markers, the
9 Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows:
10 AS TO COUNT 1 - to a MAXIMUM of TWENTY (20) YEARS with a MINIMUM parole
11 eligibility of EIGHT (8) YEARS PLUS a CONSECUTIVE term of a MAXIMUM of
12 FIFTEEN (15) YEARS with a MINIMUM parole eligibility of FIVE (5) YEARS in the
13 Nevada Department of Corrections (NDC) for use of a deadly weapon; COURT
14 considered factors outlined in NRS 193.165 subsection 1; AS TO COUNT 2 - to a
15 MAXIMUM of TWENTY (20) YEARS with a MINIMUM parole eligibility of EIGHT (8)
16 YEARS, Count 2 to run CONCURRENT with COUNT 1; AND AS TO COUNT 3 - to a
17 MAXIMUM of TWENTY (20) YEARS with a MINIMUM parole eligibility of EIGHT (8)
18 YEARS, Count 3 to run CONSECUTIVE to Counts 1 and 2 with FIVE HUNDRED
19 EIGHTY-ONE (581) DAYS credit for time served.
20
21
22

23
24 DATED this 19 day of February, 2013.

25
26
27
28

MICHELLE LEAVITT
DISTRICT JUDGE

BEAMZT, GILBERT, 1098810
(H.D.S.P.) HIGH DESERT PRISON STATE
POST OFFICE BOX 650
INDIAN SPRINGS, NV. 89070.

HIGH DESERT STATE PRISON

MAY 05 2022

UNIT 12

THE CLERK OF THE
SUPREME COURT OF NEVADA
201 SOUTH GARDEN STREET
GARDEN CITY, NEVADA 89701.

quadrant

FC PKG RTL

05/12/2022

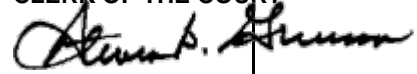
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6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**
9

10 BENNETT GRIMES,

11 Plaintiff(s),

12 vs.

13 STATE OF NEVADA; BRIAN WILLIAMS
14 WARDEN,

15 Defendant(s),

Case No: A-20-815590-W

Dept No: XII

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Bennett G. Grimes

20 2. Judge: Michelle Leavitt

21 3. Appellant(s): Bennett G. Grimes

22 Counsel:

23 Bennett G. Grimes #1098810
24 P.O. Box 650
Indian Springs, NV 89070

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

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.

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)

Statistical Closures
 08/10/2020 Other Manner of Disposition

Case Type: **Writ of Habeas Corpus**

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

07/21/2020  Findings of Fact, Conclusions of Law and Order
[2] Findings of Fact, Conclusions of Law, and Order

07/23/2020  Notice of Entry of Findings of Fact, Conclusions of Law
 Filed By: Defendant State of Nevada
[3] Notice of Entry of Findings of Fact, Conclusions of Law and Order

08/10/2020  Order to Statistically Close Case
[4] Civil Order to Statistically Close Case

08/21/2020  Notice of Appeal
 Filed By: Plaintiff Grimes, Bennett
[5] Notice of Appeal

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): <div style="text-align: center;">Bennett Grimes</div>	Defendant(s) (name/address/phone): <div style="text-align: center;">State of Nevada</div>
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

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <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
Probate <i>Probate (select case type and estate value)</i> <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 Estate Value <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	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <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	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input checked="" type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <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 coversheet.

May 27, 2020

Date

PREPARED BY CLERK

Signature of initiating party or representative

See other side for family-related case filings.

Heather S. Smith
CLERK OF THE COURT

1
2 ORDER

3 EIGHTH JUDICIAL DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 BENNETT GRIMES,

6 Petitioner,

7 vs.

8 CALVIN JOHNSON, WARDEN ,

9 Respondent.

) Case No.: A-20-815590-W

) DEPT. No.: XII
) (Third Petition)

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

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13 **FINDINGS OF FACT**

14 1. On September 14, 2011, the Petitioner was charged by way of Information as
15 follows: Count 1: ATTEMPT MURDER WITH USE OF A DEADLY
16 WEAPON IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (NRS 200.010,
17 200.030, 193.330, 193.165, 193.166), Count 2: BURGLARY WHILE IN POSSESSION OF
18 A FIREARM IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (NRS
19 205.060, 193.166), and Count 3: BATTERY WITH USE OF A DEADLY WEAPON
20 CONSTITUTING DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL BODILY
21 HARM IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (NRS 200.481.2e;
22 193.166).

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

26 3. On October 15, 2012, Petitioner was found guilty, as to all three counts, by
27 way of jury verdict.
28

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

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

10 6. On March 18, 2013, Petitioner filed a Notice of Appeal. On February 27,
11 2014, the Nevada Supreme Court affirmed Petitioner's conviction.

12 7. Remittitur issued on March 24, 2014.

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

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

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

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

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

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

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

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

1
2 16. On June 17, 2021, the Supreme Court of Nevada affirmed the judgment of
3 the District Court denying Petitioner's second Petition for Writ of Habeas Corpus (Post-
4 Conviction).

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

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

9
10 **CONCLUSIONS OF LAW**

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

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

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

25 4. An impediment external to the defense may be demonstrated by a showing
26 "that the factual or legal basis for a claim was not reasonably available to counsel, or that
27 'some interference by officials,' made compliance impracticable." *Hathaway*, 119 Nev. at
28 252, 71 P.3d at 506 (quoting *Murray v. Carrier*, 477 U.S. 478, 488 (1986)).

1
2 5. The Court may excuse the failure to show good cause where the prejudice
3 from a failure to consider the claim amounts to a fundamental miscarriage of justice.
4 *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

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

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

15 8. A court must dismiss a habeas petition if it presents claims that either were
16 presented in an earlier proceeding or could have been presented in an earlier proceeding,
17 unless the court finds both cause for failing to present the claims earlier or for raising them
18 again and actual prejudice to the petitioner. *Evans v. State*, 117 Nev. 609, 621-622, 28 P.3d
19 498, 507 (2001).

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

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

25 11. Meritless, successive, and untimely petitions clog the court system and
26 undermine the finality of convictions. *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d 944, 950
27 (1994).
28

1
2 12. NRS 34.745 (4), governing "Summary dismissal of successive petitions,"
3 requires that "if the petition is a second or successive petition challenging the validity of a
4 judgment of conviction or sentence and if it plainly appears from the face of the petition or
5 an amended petition and documents and exhibits that are annexed to it, or from records of
6 the court that the petitioner is not entitled to relief based on any of the grounds set forth in
7 subsection 2 of NRS 34.810, the judge or justice shall enter an order for its summary
8 dismissal and cause the petitioner to be notified of the entry of the order." *See* NRS
9 34.745(4).

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

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

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

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

22 17. Accordingly, the petition is time barred. The petition is also a successive
23 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**

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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.

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Bennett Grimes, Plaintiff(s)

CASE NO: A-20-815590-W

7 vs.

DEPT. NO. Department 12

8 State of Nevada, Defendant(s)

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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.

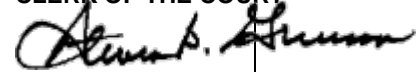
13
14 If indicated below, a copy of the above mentioned filings were also served by mail
15 via United States Postal Service, postage prepaid, to the parties listed below at their last
known addresses on 4/28/2022

16 Bennett Grimes

#1098810

P.O. Box 650

Indian Springs, NV, 89070



1 NEFF

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

4
5 BENNETT GRIMES,

6 Petitioner,

7 vs.

8 STATE OF NEVADA; ET AL.,

9 Respondent,

Case No: A-20-815590-W

Dept No: XII

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

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
to you. This notice was mailed on May 5, 2022.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Heather Ungermann

17 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
P.O. Box 650
Indian Springs, NV 89070

26
27 /s/ Heather Ungermann

28 Heather Ungermann, Deputy Clerk

Heather S. Smith
CLERK OF THE COURT

1
2 ORDER

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

22 17. Accordingly, the petition is time barred. The petition is also a successive
23 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**

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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.

1 **CSERV**

2
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

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 IN THE N.D.O.C. NRS 34.500(1),(3),(8),(9).; 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),

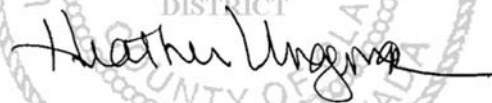
Case No: A-20-815590-W

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