

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENNETT GRIMES,
Appellant(s),

vs.

CALVIN JOHNSON, WARDEN,
Respondent(s),

Electronically Filed
Jun 09 2022 09:19 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-20-815590-W

Docket No: 84776

RECORD ON APPEAL

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PROPER PERSON
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INDIAN SPRINGS, NV 89070

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A-20-815590-W Bennett Grimes, Plaintiff(s) vs. State of Nevada, Defendant(s)

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FILED

MAY 27 2020

John L. Blum
CLERK OF COURT

Case No. C-11276163-1
Dept. No. X.11

IN THE JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF.....

BENNETT GRIMES
Petitioner,

^{v.}
THE STATE OF NEVADA
BRIAN WILLIAMS SR.
WARDEN
Respondent.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

A-20-815590-W
Dept. 12

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: HIGH DESERT STATE PRISON
2. Name and location of court which entered the judgment of conviction under attack: THE EIGHTH JUDICIAL DISTRICT COURT CLARK COUNTY, NEVADA, 200 LEWIS AVENUE LAS VEGAS
3. Date of judgment of conviction: FEBRUARY 21, 2013.
4. Case number: C-11276163-1
5. (a) Length of sentence: MINIMUM 21 YEARS TO MAXIMUM 55 YEARS

RECEIVED

MAY - 4 2020

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;

3URGLARY; BATTERY WITH USE OF A DEADLY WEAPON

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 / 67598 / 67741 / 24419

(c) Result: AFFIRMED | AFFIRMED | ORDER | AFFIRMED

(d) Date of result: 03/24/14 | 03/22/16 | 04/12/15 | 04/30/19

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

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

N/A

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:

(1) Name of court: 8th SUD. DIST. CRT. / NEV. SUP. CRT.

(2) Nature of proceeding: MOTION FOR A NEW TRIAL; MOTION TO CORRECT AN ILLEGAL SENT. PROPER WRIT OF HABEAS CORPUS FILED 02/20/15. MOTION TO CORRECT AN ILLEGAL SENT. 09/13 AFF. DEN. 02/26/16. THE COURT FAILED TO NOTIFY THE DEFENSE THAT THE JURY

(3) Grounds raised: 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 A NEW TRIAL (DENIED); EVIDENTIARY HEARING (DENIED)

(6) Date of result: 4/20/12; 10/05/17 AND 11/20/2017

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

EXD. HEARING: PRESENTATION FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER. THE DIST. CRT. DID NOT PRESENT IT OWN FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER AND MAKE A FINAL DETERMINATION. RESULTS: ZERO FINDINGS OF LAW OR FACT FOLLOWING EXD. HR. GRANTING

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

(1) Name of court: SAME

(2) Nature of proceeding: MOTION HEARINGS

(3) Grounds raised: ILLEGAL SENTENCE

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

(5) Result: ILLEGAL SENT. MOTION (DENIED)

(6) Date of result: 03/31/20

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

PENDING OF 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: PENDING

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

Citation or date of decision: N/A

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

Citation or date of decision: N/A

(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 AND CONVICTION IS ILLEGAL

(b) The proceedings in which these grounds were raised: MOTION AND HAB. CORP. IN SUP. CT.

(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.) FOR THE RECORD THIS PETITIONER IS ALLEGING THAT HIS TRIAL COURT COUNSEL WAS INEFFECTIVE DURING TRIAL COURT PROCEEDINGS AND 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.) INSTRUCTIONAL ERROR, NEWLY

1 DISCOVERED; COMPETENT TO PROCEED TO TRIAL, UNDERSTANDING THE ELEMENTS OF
2 EACH CRIME CHARGED; POSSIBLE PENALTIES OR PUNISHMENTS; TOTAL POSSIBLE SENT

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

7 DISCOVERED

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

10 If yes, state what court and the case number: 8th JUD. DIST. CRT. / SUP. CRT. / U.S. DIST. CRT.
11 C-11276163-1 ; 2:19-CV-00663-GUN-EJY

12 21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on
13 direct appeal: TRIAL CRT. ATTY R. ROGER HILMAN, NADIA HOSSAT ; APPELLATE ATTY.
14 DEBORAH AND P. DAVID WESTBROOK ; EVD. AND BRIETS: SAIME J. RESCH

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

17 If yes, specify where and when it is to be served, if you know: N/A

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

21 THE PRIVILEGE OF THE HABEAS CORPUS SHALL NOT
22 BE SUSPENDED.

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

GROUND 1

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my
 14th Amendment right to U.S. CONST.

based on these facts:

WHETHER THIS COURT SHOULD ENTIRELY DISREGARD
 THE ALLEGED FINDINGS OF FACT AND CONCLUSIONS
 OF LAW ENTERED BELOW WHERE THE TRIAL COURT
 DECIDED TO MAKE A SERIOUS FINDING FOLLOWING
 AN EVIDENTIARY HEARING OTHER THAN TO DENY
 THE PETITION. SEE (PAGE: ii) APPELLANT'S
 OPENING BRIEF IN SUPPORT INCORPORATED
 HEREIN). (THE PRIVILEGE OF HABEAS CORPUS)
 SHOULD NOT BE SUSPENDED

Argument:

A. THIS COURT SHOULD NOT GIVE THE
 DISTRICT COURT'S ORDER ANY DEFERENCE
 BECAUSE THE ORDER WAS PREPARED BY THE
 STATE WITH NO DIRECTION FROM THE DISTRICT
 COURT AND WAS SUBMITTED TO THE DISTRICT
 COURT EX PARTE

THE DISTRICT COURT DID NOT DRAFT ITS OWN
 FINDINGS OF FACT, CONCLUSIONS OF LAW OR ORDER, BUT
 INSTEAD SIGNED A DOCUMENT THAT WAS SUBMITTED BY
 THE STATE WITH NO DIRECTION OR GUIDANCE. THE DISTRICT
 COURT MADE ABSOLUTELY ZERO FINDINGS OF FACT OR
 FACT FOLLOWING THE EVIDENTIARY HEARING. 64A 1259

Under these circumstances, the findings and conclusions are not entitled to any deference.

"Findings of fact prepared by counsel and adopted by the trial court are subject to greater scrutiny than those authored by the trial judge."

Alcock v. SBA, 50 F.3d 1456, 1459, n. 2 (9th Cir. 1995). Moreover, the district court's wholesale adoption of the State's proposed order, without any identifiable input by the district court, had long been held inappropriate.

See Anderson v. Bessemer City, 470 U.S. 564, 572 (1985) ("We...have criticized courts for their verbatim adoption of findings of fact prepared by prevailing parties, particularly when those findings have taken the form of conclusory statements unsupported by citation to the record."); United

States v. Marine Bancorporation, Inc., 418 U.S. 602, 615 at n. 13 (1974);

United States v. El Paso Natural Gas Co., 376 U.S. 651, 656-57 at n. 4 (1964).

Although verbatim adoption is not necessarily fatal to appellate review where the record reveals the basis for the court's findings, the practice of "simply decid[ing] the case in favor of the plaintiff or the defendant, hav[ing] him prepare the findings of fact and conclusions of law and

findings of fact and conclusions of law or announced them to the parties with sufficient specificity to provide guidance to the prevailing party in drafting a proposed order").

There is no question here that the lower court provided no rationale for its ruling, and that the State took it upon itself to write a decision completely favorable to itself with no input from Grimes or the court. This is evident from the fact substantial parts of the "order" are simply cut-and-pasted from the State's answer and are posed as arguments, not as findings. See, footnotes: 6 AA 1268-1269. In any event, the trial court did not actually make any of the findings presented in the order submitted by the State.

The most basic requirement of due process of law under the State and Federal Constitutions is notice of an intended action and "an opportunity to be heard at a meaningful time and in a meaningful manner." Kelch v. Director, 107 Nev. 827, 831, 822 P.3d 1094 (1991) (quoting Matthews v. Eldridge, 424 U.S. 319, 333 (1976)). The actions of the State and district court in this case deprived Grimes of any semblance of due

GROUND 2

MY STATE COURT CONVICTION AND OR SENTENCE ARE UNCONSTITUTIONAL, IN VIOLATION OF ALL VI AMENDMENT TO BE INFORMED OF THE NATURE (ASSISTANCE OF COUNSEL) AND CAUSE OF THE ACCUSATION; VIII AMENDMENT THAT CRUEL AND UNUSUAL PUNISHMENT SHALL NOT BE INFLICTED; XIV ^{§1} AMENDMENT NO STATE SHALL (DUE PROCESS) MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS. ARTICLE I §9. 132. (THE PRIVILEGE OF THE HABEAS CORPUS SHOULD NOT BE SUSPENDED.)

BASED ON THESE FACTS:

APPELLANT DID NOT KNOWINGLY AND INTELLIGENTLY WAIVE HIS RIGHT TO COUNSEL, NOR WAIVE HIS RIGHT TO A SPEEDY TRIAL, EXCEPT BY COERCION TO PROCEED TO TRIAL BECAUSE NEITHER THE JUSTICE COURT NOR THE DISTRICT COURT INFORMED HIM OF THE POTENTIAL PENALTIES HE COULD FACE IF HE WERE ADJUDICATED A HABITUAL CRIMINAL.

ARGUMENT:

- A. THE DISTRICT COURT MUST ENSURE THAT THE DEFENDANT IS COMPETENT TO STAND TRIAL

AND HIS DECISION TO PROCEED TO TRIAL WAS KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY MADE (EMPHASIS ADDED), WATSON V. STATE, 130 NEU. 764, 782, 335 P.3d 157, 170 (2014); HOOKS V. STATE, 124 NEU. 48, 53-54, 176 P.3d 1081, 1084 (2008). A WAIVER IS KNOWING, INTELLIGENT AND VOLUNTARY WHEN THE DEFENDANT IS "MADE AWARE OF THE DANGERS AND DISADVANTAGES OF PROCEEDING TO TRIAL, SO THAT THE RECORD WILL ESTABLISH THAT HE KNOWS WHAT HE IS DOING, AND HIS CHOICE IS MADE WITH EYES OPEN!" (EMPHASIS ADDED) HOOKS 124 NEU. AT 54, 176 P.3d AT 1084 (QUOTING FARETTA V. CALIFORNIA, 422 U.S. 806, 835, 95 S. CT. 2525, 45 L. ED. 2d 562 (1975)). THE DEFENDANT SHOULD UNDERSTAND "THE ELEMENTS OF EACH CRIME" CHARGED, INCLUDING "THE POSSIBLE PENALTIES OR PUNISHMENTS, AND TOTAL POSSIBLE SENTENCE THE DEFENDANT COULD RECEIVE" IF CONVICTED. SCR 253(3)(f), (g); SEE ALSO HOOKS, 124 NEU. AT 54, 176 P.3d AT 1084. BECAUSE THERE IS NO REQUIREMENT FOR A MECHANICAL APPLICATION OF A FARETTA CANVASS, ONE MUST LOOK AT THE RECORD AS A WHOLE TO DETERMINE WHETHER "THE DEFENDANT KNEW HIS RIGHTS AND INSISTED UPON PROCEEDING TO TRIAL!" (EMPHASIS ADDED) HYMON V. STATE, 121 NEU. 200, 212-213, 111 P.3d 1092, 1101 (2005) (INTERNAL QUOTATION MARKS OMITTED).

THE RECORD BEFORE THIS COURT REVEALS THAT GRIMES INVOKED HIS RIGHTS TO A SPEEDY TRIAL DURING HIS INITIAL APPEARANCE IN THE JUSTICE COURT. GRIMES WAS BOUND OVER TO DISTRICT COURT AND AFTER A PLETHORA OF DERELICT AND LACKADYSICAL SHOWINGS ON THE PART OF COUNSEL, EVENTUALLY GRIMES INVOKED THE 60 DAY RULE. LET THE RECORD BEFORE THIS COURT ALSO SHOW THAT NEITHER THE JUSTICE COURT NOR THE DISTRICT COURT INFORMED GRIMES OF THE POTENTIAL PENALTIES HE COULD FACE IF HE WERE ADJUDICATED A HABITUAL CRIMINAL. THE COURT DID INFORM GRIMES THAT HE FACED "VERY SERIOUS CHARGES," WHEN THE JUDGE TOOK PART TO INTERVENE IN COUNCILS WITH COUNSEL TO CONVINCE GRIMES TO WAIVE HIS RIGHT TO A SPEEDY TRIAL. EXH. A (MINUTES FROM JUNE 12, 2012.) APPROXIMATELY ONE YEAR LATER, AND THREE MONTHS [AFTER] THE JURY RETURNED ITS VERDICT, (VIOLATION OF NRS. 173.095). POST TRIAL, THE STATE FILED ITS NOTICE OF INTENT TO SEEK PUNISHMENT AS HABITUAL CRIMINAL. THE DISTRICT COURT PROCEEDED TO TRIAL WITHOUT GRIMES BEING INFORMED OF THE POTENTIAL PENALTIES HE COULD FACE IF HE WERE ADJUDICATED A HABITUAL CRIMINAL.

THE RECORD AS A WHOLE DOES NOT DEMONSTRATE THAT GRIMES KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY PROCEEDED TO TRIAL NOR WAIVED HIS RIGHTS TO COUNSEL - PARTICULARLY GIVEN "WE INDULGE IN EVERY REASONABLE PRESUMPTION AGAINST WAIVER OF RIGHT TO COUNSEL." HOOKS, 124 NEV. AT 57, 176 P.3d AT 1086 (QUOTING BREWER V. WILLIAMS, 430 U.S. 387, 404, 97 S. CT. 1232, 51 L. ED. 2d 424 (1977); SEE ALSO SCOTT V. STATE, 110 NEV. 622, 626, 877 P.2d 503 (1994) (PROVIDING THAT BECAUSE THE DEFENDANT WAS NOT "INFORMED THAT HE MIGHT BE FACING AN ADDITIONAL CHARGE WITH A GREATER PENALTY" IF FOUND GUILTY AT THE CONCLUSION OF TRIAL, HIS PROCEEDING TO TRIAL AND WAIVER OF THE RIGHT TO COUNSEL [WAS] UNKNOWING AND UNINTELLIGENT, AND THUS INVALID UNDER FARETTA"). BECAUSE HARMLESS ERROR ANALYSIS DOES NOT APPLY TO AN INVALID WAIVER OF THE RIGHT TO COUNSEL, AND PROCEEDING TO TRIAL, THIS COURT MUST REVERSE GRIMES' JUDGMENT OF CONVICTION AND REMAND FOR A NEW TRIAL. HOOKS, 124 NEV. AT 57-58, 176 P-3d AT 1086-87.

GROUND 3

MY STATE COURT CONVICTION AND OR SENTENCE ARE UNCONSTITUTIONAL, IN VIOLATION OF MY VI AMENDMENT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION, ASSISTANCE OF COUNSEL; VIII AMENDMENT THAT CRUEL AND UNUSUAL PUNISHMENT SHALL NOT BE INFLICTED; XIV § 1 AMENDMENT NO STATE SHALL MAKE (DUE PROCESS) OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS. ARTICLE 1 § 9. 1 § 8.

(THE PRIVILEGE OF THE HABEAS CORPUS SHOULD NOT BE SUSPENDED.)

BASED ON THESE FACTS:

APPELLANT'S CONVICTION AND SENTENCE FOR ATTEMPTED MURDER WAS IMPROPER BECAUSE IT WAS ERROR TO NOT INSTRUCT THE JURY THAT A SPECIFIC INTENT TO KILL WAS AN ESSENTIAL ELEMENT OF THE CRIME¹. ALSO THAT AN INSTRUCTION ON IMPLIED MALICE IN RELATION TO THE CRIME OF ATTEMPTED MURDER WAS MISLEADING TO THE JURY.

1. PROPOSED JURY INSTRUCTION #5; 930RTS EXHIBIT #10; SPECIFIC INTENT TO KILL (DENIED)
P.199:18-P.200:13 13 P.199:10

ARGUMENT:

B. FURTHER GRIMES' CLAIM OF INSTRUCTIONAL ERROR LIKEWISE WARRANTS REVERSAL AND REMAND FOR A NEW TRIAL.

GRIMES CONTENTS THAT THE DISTRICT COURT ERRED WHEN INSTRUCTING THE JURY ON ATTEMPTED MURDER BECAUSE JURY INSTRUCTION NO. 13 (DEFINING MALICE AFORETHOUGHT SPECIFICALLY RECITED THE STANDARD FOR IMPLIED MALICE WHICH IS INAPPLICABLE TO ATTEMPTED MURDER, THE STATE MAY RESPOND THAT THE JURY WAS PROPERLY INSTRUCTED ON THE RELEVANT STANDARD IN A SEPERATE INSTRUCTION, JURY INSTRUCTION NO. ~~14~~ (DEFINING ATTEMPTED MURDER), AND IT WAS NOT ERROR FOR THE DISTRICT COURT TO GIVE THE EXPRESS MALICE AND IMPLIED MALICE ON THE SAME INSTRUCTION NO. ~~D~~ AS WELL AS AN INCOMPLETE DEFINITION OF MALICE AFORETHOUGHT INSTRUCTION AS SPECIFICALLY THE IMPLIED MALICE STANDARD. BECAUSE THE DISTRICT COURT DID NOT SPECIFICALLY INSTRUCT THE JURY ON IMPLIED MALICE. EXH B (JURY INS. NO. 13).

IT IS REVERSIBLE ERROR TO INSTRUCT THE JURY THAT ATTEMPTED MURDER CAN BE ACCOMPLISHED WITHOUT SPECIFIC INTENT TO KILL. SEE RANDS V. STATE, 95 NEV. 251, 252-53, 592 P.2d 950, 951 (1979).

"ATTEMPTED MURDER IS THE PERFORMANCE OF AN ACT OR ACTS WHICH TEND, BUT FAIL, TO KILL A HUMAN BEING, WHEN SUCH ACTS ARE DONE WITH EXPRESS MALICE, NAMELY, WITH THE DELIBERATE INTENTION UNLAWFULLY TO KILL" KEYS U. STATE, 104 NEV. 736, 740, 766 P.2d 270, 273 (1988); SEE ALSO NRS 193.330(1); NRS. 200.010. "EXPRESS MALICE IS THAT DELIBERATE INTENTION UNLAWFULLY TO TAKE AWAY THE LIFE OF A FELLOW CREATURE, WHICH IS MANIFESTED BY EXTERNAL CIRCUMSTANCES CAPABLE OF PROOF." NRS. 200.020(1). BY CONTRAST, IMPLIED MALICE OCCURS "WHEN NO CONSIDERABLE PROVOCATION APPEARS, OR WHEN ALL THE CIRCUMSTANCES OF THE KILLING SHOW AN ABANDONED AND MALIGANT HEART." NRS. 200.020(2). "ONE CANNOT BE GUILTY OF ATTEMPTED MURDER BY IMPLIED MALICE BECAUSE IMPLIED MALICE DOES NOT ENCOMPASS THE ESSENTIAL SPECIFIC INTENT TO KILL." KEYS, 104 NEV. AT 740, 766 P.2d AT 273.

HERE JURY INSTRUCTION NO 11 DEFINED ATTEMPTED MURDER AND EXPRESS MALICE AS FOLLOWS: ATTEMPTED MURDER IS THE PERFORMANCE OF AN ACT OR ACTS WHICH TEND, BUT FAIL, TO KILL A HUMAN BEING, WHEN SUCH ACTS ARE DONE WITH EXPRESS MALICE, NAMELY,

WITH THE DELIBERATE INTENTION TO UNLAW-
FULLY KILL. JURY INSTRUCTION NO. 12
INSTRUCTED THE JURY THAT: EXPRESS
MALICE IS THAT DELIBERATE INTENTION
UNLAWFULLY TO TAKE AWAY THE LIFE OF A
HUMAN, WHICH IS MANIFESTED BY EXTERNAL
CIRCUMSTANCES CAPABLE OF PROOF.

MALICE SHALL BE IMPLIED WHEN NO
CONSIDERABLE PROVOCATION APPEARS, OR
WHEN ALL THE CIRCUMSTANCES OF THE
KILLING SHOW AN ABANDONED AND
MALIGNANT HEART. (THIS CONCLUDES NO. 12)

JURY INSTRUCTION NO. 13 INSTRUCTED THE
JURY THAT: MALICE AFORETHOUGHT DOES NOT
IMPLY DELIBERATION OR THE LAPSE OF ANY
CONSIDERABLE TIME BETWEEN THE MALICIOUS
INTENTION, BUT DENOTES AN UNLAWFUL PURPOSE
AND DESIGN IN CONTRADISTINCTION TO ACCIDENT
AND MISCHANCE. ALTHOUGH THIS INSTRUCTION
TRACKS NRS. 200.020(2)'S DEFINITION OF
IMPLIED MALICE, IT MAKES NO MENTION OF
ATTEMPTED MURDER OR EXPRESS MALICE AND
WAS THUS A MISSTATEMENT OF THE APPLICABLE
LAW AND MISLEADING TO THE JURY. SEE
KEYS, 104 NEV. AT 741, 766 P.2d AT 273
C DETERMINING THAT THE DISTRICT COURTS
* REFUSAL TO INSTRUCT THE JURY THAT SPECIFIC
INTENT WAS AN ESSENTIAL ELEMENT OF

ATTEMPTED MURDER WAS REVERSIBLE ERROR,
AND THIS ERROR WAS ENHANCED BECAUSE THE
IMPLIED MALICE INSTRUCTION "WAS NECESSARILY
MISLEADING TO THE JURY".² THE DISTRICT'S
COURT'S ERROR [IN REFUSING] TO SEPARATELY
INSTRUCT THE JURY ON EXPRESS MALICE

(FROM IMPLIED MALICE) WAS COMPOUNDED BY THE
SUPPL. INSTR. NO. 12

STATE WHEN IT ARGUED IN CLOSING ELEMENTS
FOR IMPLIED MALICE. (YOU DON'T HAVE TO HAVE SPECIFIC
INTENT TO DO ANYTHING) 32:10-11; (WHAT DID THE DEFENDANT
INTEND TO DO) 32:19; (IT'S NOT THAT HE HAD TO HAVE
INTENDED TO KILL HER WHEN HE WALKED IN ITS WITH THE
INTENT TO COMMIT ASSAULT, BATTERY OR A FELONY, SUCH AS
ATTEMPTED MURDER) 30:2-5; (TO DO SOMETHING PHYSICAL
TO COMMIT VIOLENCE) 16:8-9; (IF HE SO MUCH HAD THE
INTENT TO ESCAPE) 24:25.

ON THIS RECORD, THIS COURT CANNOT SAY THAT THE ERROR WAS HARMLESS. SEE CRAWFORD V. STATE, 121 N.E. 2d 746, 756, 121 P.3d 582, 590 (2005) (PROVIDING THAT AN ERROR IS HARMLESS IF THE REVIEWING COURT IS CONVINCED BEYOND A REASONABLE DOUBT THAT THE JURY'S VERDICT WAS NOT ATTRIBUTABLE TO THE ERROR AND THAT THE ERROR WAS HARMLESS UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE.). BECAUSE "IT WAS... NOT MADE CLEAR TO THE JURY THAT NOTHING LESS THAN A SPECIFIC CRIMINAL INTENT TO KILL MUST BE SHOWN IN ORDER TO ESTABLISH THE CRIME OF ATTEMPTED MURDER," THIS COURT MUST REVERSE GRIMES' JUDGMENT OF CONVICTION AND REMAND FOR A NEW TRIAL. AT KEYS, 104 N.E. 2d 766 P.2d AT 273-74; SEE ALSO PEOPLE V. KRAFT, 133 111.

APP. 3d 294, 478 N.E. 2d 1154, 1157, 88
111. DEC. 546 (111. APP. CT. 1985).

THE JURY WAS NOT INSTRUCTED THAT ONE COULD NOT BE CONVICTED OF ATTEMPTED MURDER UNLESS IT WERE PROVEN THAT HE HAD THE "INTENT SPECIFICALLY TO KILL" ANOTHER PERSON. IT WAS ERROR FOR THE TRIAL COURT NOT TO INSTRUCT THE JURY THAT THE SPECIFIC INTENT TO KILL IS AN ESSENTIAL ELEMENT OF THE CRIME OF ATTEMPTED MURDER. SEE RAMOS V. STATE, 95 NEV. 251, 592 P.2d 950 (1979) (REVERSIBLE ERROR TO INSTRUCT JURY THAT DEFENDANT CAN BE FOUND GUILTY OF ATTEMPTED MURDER ABSENT PROOF OF A SPECIFIC INTENT TO KILL). THE ERROR WAS COMPOUNDED BY THE DISTRICT COURT'S INSTRUCTIONS TO THE JURY ON IMPLIED MALICE. IMPLIED MALICE IS MALICE INFERRED IN LAW FROM THE DEFENDANT'S CONDUCT RATHER THAN BY PROOF OF AN ACTUAL INTENTION TO KILL. THE MENS REA ENCOMPASSED BY IMPLIED MALICE HAS NO APPLICATION IN A PROSECUTION IN WHICH A SPECIFIC INTENT TO KILL IS A REQUIRED ELEMENT OF THE ACCUSED OFFENSE. AN INSTRUCTION ON IMPLIED MALICE IN RELATION TO THE CRIME OF ATTEMPTED MURDER IS MISLEADING TO A JURY.

ALL AUTHORITIES AGREE THAT THE CRIME OF ATTEMPT IS A SPECIFIC INTENT CRIME AND "AN INSTRUCTION MUST MAKE IT CLEAR THAT TO

CONVICT FOR ATTEMPTED MURDER NOTHING LESS THAN A CRIMINAL INTENT TO KILL MUST BE SHOWN." (CITATIONS OMITTED.)

GRIMES WAS CHARGED WITH ATTEMPTED MURDER, THAT IS, AN ACT DONE WITH THE INTENT TO COMMIT MURDER, SUCH ACT TENDING BUT FAILING TO ACCOMPLISH THE CRIME OF MURDER. INTENT TO COMMIT MURDER MEANS THE INTENT TO KILL SOMEONE WITH MALICE AFORETHOUGHT.

THE MENS REA REQUIREMENT DENOTED BY THE TERM EXPRESS MALICE IS DIFFERENT FROM THAT OF IMPLIED MALICE. EXPRESS MALICE, CALLED MALICE IN FACT IS THE DELIBERATE INTENTION TO KILL; IMPLIED MALICE, CALLED MALICE IN LAW, DOES NOT RELATE TO A DELIBERATE, INTENTIONAL KILLING BUT IS RATHER A MENS REA INFERRED IN LAW FROM THE "CIRCUMSTANCES OF THE KILLING." NRS. 200.020.

PROVING EXPRESS MALICE MEANS PROVING A DELIBERATE INTENTION TO KILL; WHILE PROVING IMPLIED MALICE MEANS PROVING ONLY THE COMMISSION OF WRONGFUL ACTS FROM WHICH, ABSENT ANY PROOF OF AN ACTUAL INTENT TO HARM, THE ARCHaic BUT ESSENTIAL "ABANDONED AND MALIGNANT HEART" CAN BE INFERRED IN LAW.

ATTEMPTED MURDER CAN BE COMMITTED ONLY WHEN THE ACCUSED'S ^{ACTS} ARE ACCOMPANIED BY EXPRESS MALICE, MALICE IN FACT. ONE CANNOT ATTEMPT TO

KILL ANOTHER WITH IMPLIED MALICE BECAUSE THERE "IS NO SUCH CRIMINAL OFFENSE AS AN ATTEMPT TO ACHIEVE AN UNINTENDED RESULT." RAMOS, 95 NEU AT 253, 592 P.2d AT 951 (QUOTING, PEOPLE V. VUSER, 343 N.E. 2d 903, 910 (ILL. 1975)). AN ATTEMPT, BY NATURE, IS A FAILURE TO ACCOMPLISH WHAT ONE INTENDED TO DO.

ATTEMPT MEANS TO TRY; IT MEANS AN EFFORT TO BRING ABOUT A DESIRED RESULT. THUS ONE CANNOT ATTEMPT TO BE NEGLIGENT OR ATTEMPT TO HAVE THE GENERAL MALICIOUS RECKLESSNESS CONTEMPLATED BY THE LEGAL CONCEPT, "IMPLIED MALICE." ONE CANNOT BE GUILTY OF ATTEMPTED MURDER BY IMPLIED MALICE BECAUSE IMPLIED MALICE DOES NOT ENCOMPASS THE ESSENTIAL SPECIFIC INTENT TO KILL.

AN ATTEMPT TO KILL WITH EXPRESS MALICE IS, ON THE OTHER HAND, COMPLETELY CONSISTENT WITH THE SPECIFIC INTENT REQUIREMENT OF THE CRIME OF ATTEMPT. EXPRESS MALICE IS THE "DELIBERATE INTENTION UNLAWFULLY" TO KILL A HUMAN. NRS 200.02d(1) ATTEMPTED MURDER, THEN, IS THE ATTEMPT TO KILL A PERSON WITH EXPRESS MALICE, OR MORE COMPLETELY DEFINED: ATTEMPTED MURDER IS THE PERFORMANCE OF AN ACT OR ACTS WHICH TEND, BUT FAIL, TO KILL A HUMAN BEING, WHEN SUCH ACTS ARE DONE WITH EXPRESS MALICE, NAMELY, WITH THE DELIBERATE INTENTION UNLAWFULLY TO KILL. THIS IS ALL THERE IS TO IT.

FURTHER, THE GIVEN INSTRUCTION ON IMPLIED MALICE, PARTICULARLY AS IT RELATES TO UNINTENTIONAL "RECKLESS DISREGARD OF CONSEQUENCES AND SOCIAL DUTY," ALTHOUGH APPLICABLE TO A MURDER CHARGE, WAS NECESSARILY MISLEADING TO THE JURY WHEN IT WAS CONSIDERING GRIMES' ATTEMPTED MURDER CHARGE. AS STATED IN THE KRAFT CASE, THE COURT'S INSTRUCTIONS "MUST MAKE IT CLEAR THAT TO CONVICT FOR ATTEMPTED MURDER NOTHING LESS THAN A CRIMINAL INTENT TO KILL MUST BE SHOWN" KRAFT, 428 N.E. 2D AT 1157. GIVEN THE TRIAL COURT'S REFUSAL OF GRIMES' PROFFERED INSTRUCTION ON SPECIFIC INTENT AND THE MISLEADING EFFECT OF THE IMPLIED MALICE INSTRUCTIONS GIVEN BY THE COURT, IT WAS CERTAINLY NOT MADE CLEAR TO THE JURY THAT NOTHING LESS THAN A SPECIFIC CRIMINAL INTENT TO KILL MUST BE SHOWN IN ORDER TO ESTABLISH THE CRIME OF ATTEMPTED MURDER.

THEREFORE, AND UNDER THE DIRECT AUTHORITY OF RAMOS, THIS COURT MUST REVERSE THE ATTEMPTED MURDER CONVICTION.

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

EXECUTED AT HIGH DESERT STATE PRISON
ON THE 24 DAY OF APRIL, 2020.

Bennett A. Grimes
SIGNATURE OF PETITIONER

VERIFICATION

UNDER PENALTY OF PERJURY, PURSUANT TO N.R.S.
208.165 ET SEQ., THE UNDERSIGNED DECLARES
THAT HE IS THE PETITIONER NAMED IN THE FOREGOING
PETITION AND KNOWS THE CONTENTS THEREOF; THAT THE
PLEADING IS TRUE AND CORRECT OF HIS OWN PERSONAL
KNOWLEDGE, EXCEPT AS TO THOSE MATTERS BASED ON
INFORMATION AND BELIEF, AND TO THOSE MATTERS,
HE BELIEVES THEM TO BE TRUE

Bennett A. Grimes
SIGNATURE OF PETITIONER.

N/A; PRO PER
ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE BY MAILING

I, BENNETT G. GRIMES, HEREBY CERTIFY, PURSUANT TO NRCPS(B),
THAT ON THIS 24 DAY OF APRIL, 2020, I MAILED
A TRUE AND CORRECT COPY OF THE FOREGOING, "PETITION
FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)"
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 FLR.
LAS VEGAS, NEVADA
89155-1160.

OFFICE OF ATTORNEY GENERAL
100 NORTH CARSON STREET
CARSON CITY, NEVADA
89201-4717.

CC: FILE

DATED: THIS 24 DAY OF APRIL, 2020.

Bennett G. Grimes
BENNETT G. GRIMES 109880
[IN PROPER PERSONAL]
P.O. BOX 654 [HOSP]
INDIAN SPRINGS, NEVADA 89070.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Petition

FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

(Title of Document)

filed in District Court Case number 0072163

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application for a federal or state grant.

Bennett H. Jones
Signature

4/24/2020
Date

BENNETT JONES
Print Name

WIT
Title

Bennett J. James #1098810
~~HIGH STREET~~ STATE PRISON
P.O. Box 650
INDIAN SPRINGS, NEVADA 89070.

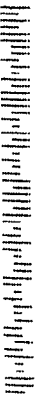
LEGAL
MAIL

3762

STEVEN D. GREER
CLERK OF COURT
DIST. COURT.

200 Lewis Avenue 3rd floor
Las Vegas, Nevada 89155-1160

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1
2 ORDR

3 EIGHTH JUDICIAL DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 BENNETT GRIMES,) Case No.: A-20-815590-W
6)
7 Petitioner,) DEPT. No.: XII
8 vs.) (Second Petition)
9)
10 BRIAN WILLIAMS, WARDEN,)
11)
12 Respondent.)
13

14
15 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

16 **FINDINGS OF FACT**

17
18 1. On September 14, 2011, the Petitioner was charged by way of Information as
19 follows: count 1: ATTEMPTED MURDER WITH USE OF A DEADLY
20 WEAPON IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (NRS 200.010,
21 200.030, 193.330, 193.165, 193.166), count 2: BURGLARY WHILE IN POSSESSION OF
22 A DEADLY WEAPON IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER
23 (NRS 205.060, 193.166), and count 3: BATTERY WITH USE OF A DEADLY WEAPON
24 CONSTITUTING DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL BODILY
25 HARM IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (NRS 200.481.2c;
26 193.166).

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

3 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 the deadly weapon enhancement; on count 2 to eight (8) to twenty (20)
years in the Nevada Department of Corrections to run concurrent with count 1; on count 3 to

MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

1 eight (8) to twenty (20) years in the Nevada Department of Corrections, to run consecutive
2 to counts 1 and 2.

3 4. The court entered its Judgment of Conviction on February 21, 2013.

4 5. On March 18, 2013, Petitioner filed a Notice of Appeal. On February 27,
5 2014, the Nevada Supreme Court affirmed Petitioner's conviction.

6 6. Remittitur issued on March 24, 2014.

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

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

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

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

14 11. On May 3, 2019, the Supreme Court of Nevada affirmed the judgment of the
15 District Court denying Petitioner's first Petition for Writ of Habeas Corpus (Post-
16 Conviction).

17 12. On May 27, 2020, Petitioner filed the instant (second) Petition for Writ of
18 Habeas Corpus (Post-Conviction).

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

21 CONCLUSIONS OF LAW

22 1. NRS 34.726(1), governing "Limitations on time to file....," requires that a
23 petition for a writ of habeas corpus "must be filed within 1 year after entry of the judgment
24 of conviction or, if an appeal has been taken from the judgment, within 1 year after the
25 Supreme Court issues its remittitur." Late-filing of a petition may be excused from
26 procedural default if the petitioner can establish good cause for delay in bringing the claim.
27

1 *Id.* Good cause for late-filing consists of a showing that: (1) “delay is not the fault of the
2 petitioner”; and (2) “dismissal of the petition as untimely will unduly prejudice the
3 petitioner.” *Id.* at (1)(a)-(b).
4

5 2. To avoid dismissal the petitioner must plead and prove specific facts that
6 demonstrate good cause for his failure to present claims before and prejudice. *See State v.*
7 *District Court (Riker)*, 121 Nev. 225, 232, 112 P.3d 1070, 1074 (2005).
8

9 3. In order to demonstrate good cause, a petitioner must show that an
10 impediment external to the defense prevented him or her from complying with the state
11 procedural default rules. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).
12

13 4. An impediment external to the defense may be demonstrated by a showing
14 “that the factual or legal basis for a claim was not reasonably available to counsel, or that
15 ‘some interference by officials,’ made compliance impracticable.” *Hathaway*, 119 Nev. at
16 252, 71 P.3d at 506 (quoting *Murray v. Carrier*, 477 U.S. 478, 488 (1986)).
17

18 5. The Court may excuse the failure to show good cause where the prejudice
19 from a failure to consider the claim amounts to a fundamental miscarriage of justice.
20 *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).
21

22 6. NRS 34.810 (2), governing “Additional reasons for dismissal of petition,”
23 requires that “[a] second or successive petition must be dismissed if the judge or justice
24 determines that it fails to allege new or different grounds for relief and that the prior
25 determination was on the merits or, if new and different grounds are alleged, the judge or
26 justice finds that the failure of the petitioner to assert those grounds in a prior petition
27 constituted an abuse of the writ.”
28

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).

1
2 8. A court must dismiss a habeas petition if it presents claims that either were
3 presented in an earlier proceeding or could have been presented in an earlier proceeding,
4 unless the court finds both cause for failing to present the claims earlier or for raising them
5 again and actual prejudice to the petitioner. *Evans v. State*, 117 Nev. 609, 621-622, 28 P.3d
6 498, 507 (2001).

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

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

12 11. Meritless, successive, and untimely petitions clog the court system and
13 undermine the finality of convictions. *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d 944, 950
14 (1994).

15 12. NRS 34.745 (4), governing "Summary dismissal of successive petitions,"
16 requires that "if the petition is a second or successive petition challenging the validity of a
17 judgment of conviction or sentence and if it plainly appears from the face of the petition or
18 an amended petition and documents and exhibits that are annexed to it, or from records of
19 the court that the petitioner is not entitled to relief based on any of the grounds set forth in
20 subsection 2 of NRS 34.810, the judge or justice shall enter an order for its summary
21 dismissal and cause the petitioner to be notified of the entry of the order." *See* NRS
22 34.745(4).

23 13. Petitioner filed his second petition on May 27, 2020, more than six years after
24 the Nevada Supreme Court issued remittitur on March 24, 2014. Therefore, the instant
25 petition is untimely. NRS 34.726 (1).

26 14. Moreover, the instant petition is a successive petition and may constitute an
27 abuse of the writ. NRS 34.810 (1)(b)(2). Therefore, the instant petition is also subject to
28 dismissal pursuant to NRS 34.745 (4); *Evans*, 117 Nev. at 621-22, 28 P.3d at 507. Absent

1
2 good cause for the failure to present the claim in a prior petition or for presenting the claim
3 again, and actual prejudice, the petition must be dismissed.

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


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

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

10 **ORDER**

11
12 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas
13 Corpus (post-conviction) shall be, and it is, hereby DENIED.

14
15 Dated this 21 day of July, 2020.

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19 MICHELLE LEAVITT
20 DISTRICT COURT JUDGE
21 DEPARTMENT XII
22 EIGHTH JUDICIAL DISTRICT COURT
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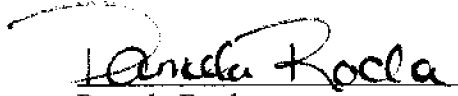
CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of July, 2020, 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 Rocha
Judicial Executive Assistant
Department XII
Eighth Judicial District Court

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



1 NEFF

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 BENNETT GRIMES,

5
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 July 21, 2020, the court entered a decision or order in this matter, a
true and correct copy of which is attached to this notice.

12 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
13 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
14 mailed to you. This notice was mailed on July 23, 2020.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

17
18
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 23 day of July 2020, I served a copy of this Notice of Entry on the following:

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

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

26
27 /s/ Amanda Hampton

Amanda Hampton, 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.)	(Second Petition)
)	
BRIAN WILLIAMS, 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: ATTEMPTED 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 DEADLY WEAPON 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 200.481.2c; 193.166).

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

3. 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 the deadly weapon enhancement; on count 2 to eight (8) to twenty (20) years in the Nevada Department of Corrections to run concurrent with count 1; on count 3 to

MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

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

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13. 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.

1 *Id.* Good cause for late-filing consists of a showing that: (1) “delay is not the fault of the
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3 petitioner.” *Id.* at (1)(a)-(b).
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5 2. To avoid dismissal the petitioner must plead and prove specific facts that
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25 determination was on the merits or, if new and different grounds are alleged, the judge or
26 justice finds that the failure of the petitioner to assert those grounds in a prior petition
27 constituted an abuse of the writ.”
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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
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5 again and actual prejudice to the petitioner. *Evans v. State*, 117 Nev. 609, 621-622, 28 P.3d
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7 9. Unlike initial petitions which certainly require a careful review of the record,
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10 10. Application of the statutory procedural default rules to post-conviction
11 habeas petitions is mandatory. *Riker*, 121 Nev. at 231, 112 P.3d at 1074.

12 11. Meritless, successive, and untimely petitions clog the court system and
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21 dismissal and cause the petitioner to be notified of the entry of the order." *See* NRS
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23 13. Petitioner filed his second petition on May 27, 2020, more than six years after
24 the Nevada Supreme Court issued remittitur on March 24, 2014. Therefore, the instant
25 petition is untimely. NRS 34.726 (1).

26 14. Moreover, the instant petition is a successive petition and may constitute an
27 abuse of the writ. NRS 34.810 (1)(b)(2). Therefore, the instant petition is also subject to
28 dismissal pursuant to NRS 34.745 (4); *Evans*, 117 Nev. at 621-22, 28 P.3d at 507. Absent

1
2 good cause for the failure to present the claim in a prior petition or for presenting the claim
3 again, and actual prejudice, the petition must be dismissed.

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


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

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

10
11 **ORDER**

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

14
15 Dated this 21 day of July, 2020.

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19 MICHELLE LEAVITT
20 DISTRICT COURT JUDGE
21 DEPARTMENT XII
22 EIGHTH JUDICIAL DISTRICT COURT
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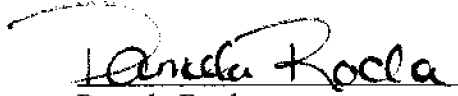
CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of July, 2020, 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 Rocha
Judicial Executive Assistant
Department XII
Eighth Judicial District Court

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

Heather L. Lavin

CLERK OF THE COURT

OSCC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

BENNETT GRIMES, PLAINTIFF(S) | CASE NO.: A-20-815590-W
VS. |
STATE OF NEVADA, DEFENDANT(S) | DEPARTMENT 12

CIVIL ORDER TO STATISTICALLY CLOSE CASE

Upon review of this matter and good cause appearing,
IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
statistically close this case for the following reason:

DISPOSITIONS:

- ☐ Default Judgment
- ☐ Judgment on Arbitration
- ☐ Stipulated Judgment
- ☐ Summary Judgment
- ☐ Involuntary Dismissal
- ☐ Motion to Dismiss by Defendant(s)
- ☐ Stipulated Dismissal
- ☐ Voluntary Dismissal
- ☐ Transferred (before trial)
- ☐ Non-Jury – Disposed After Trial Starts
- ☐ Non-Jury – Judgment Reached
- ☐ Jury – Disposed After Trial Starts
- ☐ Jury – Verdict Reached
- ☒ Other Manner of Disposition

DATED this day of August, 2020.

Dated this 10th day of August, 2020

Michelle Leavitt

EEA 8DF 35EA EE8B
Michelle Leavitt
District Court Judge

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
known addresses on 8/11/2020

16 **Bennett Grimes**

HDSP

P.O. Box 650

Indian Springs, NV, 89070

BENNETT G. GRIMES # 1098810
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89070.
IN PROPER PERSON

Electronically Filed
8/21/2020 2:23 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

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

BENNETT G. GRIMES,
PETITIONER,

CASE NO. A-20-815590-W

DEPT. NO. XII

V.

THE STATE OF NEVADA,
RESPONDENT,

Notice of Appeal

Comes Now, Petitioner
BENNETT G. GRIMES, IN HIS PROPER PERSON,
AND FILES THE INSTANT: NOTICE OF APPEAL,
FROM THE DISTRICT'S 8th JUDICIAL COURT'S
ORDER OF DENIAL OF PETITIONER'S
NRS CHAPTER 34 PETITION FOR WRIT OF
HABEAS CORPUS (POST-CONVICTION).
WITH FINDINGS OF FACTS AND CONCLUSIONS
OF LAW DATED: 07/23/2020.

THIS APPEAL IS MADE IN GOOD FAITH.

DATED: THIS 10th DAY OF AUGUST, 2020.

RESPECTFULLY SUBMITTED:

Bennett G. Grimes

BENNETT G. GRIMES # 1098810

HIGH DESERT STATE PRISON

P.O. BOX 650

IN PROPER PERSON / INDIAN SPRINGS, NEVADA 89070.

CLERK OF THE COURT

AUG 17 2020

RECEIVED

CERTIFICATE OF SERVICE BY MAILING

I, BENNETT G. GRIMES, HEREBY CERTIFY,
PURSUANT TO NRCP 5(B), THAT ON THIS
10th DAY OF AUGUST, 2020, I MAILED A
TRUE AND CORRECT COPY OF THE FOREGOING,
"NOTICE OF APPEAL" IN CASE NO. A-20-815590.W.

BY DEPOSITING IT IN THE HIGH DESERT STATE
PRISON, LEGAL LIBRARY, FIRST CLASS POSTAGE,
FULLY PREPAID, ADDRESSED AS FOLLOWS:

SHARON D. GRIERSON
DISTRICT COURT CLERK

200 LEWIS AVENUE 3RD FLOOR
LAS VEGAS, NEVADA 89155-1160.

NEVADA SUPERIOR COURT

201 SOUTH CARSON ST. #201
CARSON CITY, NEVADA 89701-4703

STEVEN B. WOLFSON

DISTRICT ATTORNEY

200 LEWIS AVENUE
LAS VEGAS, NEVADA 89155.

NEVADA ATTORNEY GENERAL'S OFFICE

100 NORTH CARSON ST.
CARSON CITY, NEVADA 89701.

CC: FILE

DATED: THIS 10th DAY OF AUGUST, 2020.

RESPECTFULLY SUBMITTED:

Bennett G. Grimes
BENNETT G. GRIMES #1040810

HIGH DESERT STATE PRISON

P.O. BOX 650

INDIAN SPRINGS, NEVADA 89070.

43 / A PROPER PERSON

AFFIRMATION

Pursuant to NPS. 239 B.036

THE UNDERSIGNED DOES HEREBY AFFIRM
THAT THE PRECEDING "NOTICE OF APPEAL", FILED
IN DISTRICT COURT CASE NO. A-20-815590-W

☒ DOES NOT CONTAIN THE SOCIAL SECURITY
NUMBER OF ANY PERSON.

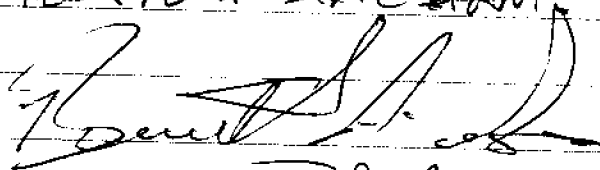
OR

☐ CONTAINS THE SOCIAL SECURITY NUMBER OF
A PERSON AS REQUIRED BY:

A. A SPECIFIC STATE OR FEDERAL LAW,
TO WIT:

OR

B. FOR THE ADMINISTRATION OF A PUBLIC
PROGRAM OR FOR AN APPLICATION FOR A
FEDERAL OR STATE GRANT.



KENNETH B. GRIMES

1 IN PROPER PERSON 08/10/2020.

Remedy f. Brunes #1098810
HIGH DEPT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89170.

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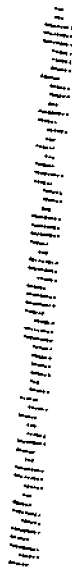


ZIP 89170
INDIAN SPRINGS, NEV

3762

89101-630000

STEVEN B. BRUNSON
DISTRICT CLERK
200 LEAS AVENUE
LAS VEGAS, NEVADA 89155-1160



UNIT 7 C/D

HIGH DEPT STATE PRISON



1 ASTA

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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 SP
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 31098810
24 P.O. Box 650
Indian Springs, NV 89070

25 4. Respondent (s): State of Nevada; Brian Williams SP 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: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 24 day of August 2020.

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENNETT GRIMES,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

Supreme Court No. 81697
District Court Case No. A815590; ~~C276463~~

FILED

JUL 21 2021

Elizabeth A. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 17th day of June, 2021.

JUDGMENT

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

"Review denied."

Judgment, as quoted above, entered this 20th day of July, 2021.

A-20-815590-W
CCJA
NV Supreme Court Clerks Certificate/Judgn
4961241



IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
July 20, 2021.

Elizabeth A. Brown, Supreme Court Clerk

By: Andrew Lococo
Deputy Clerk

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BENNETT GRIMES,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

No. 81697-COA

FILED

JUN 17 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Bennett Grimes appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Grimes argues the district court erred by denying his petition as procedurally barred without first conducting an evidentiary hearing. Grimes filed his petition on May 27, 2020, more than six years after issuance of the remittitur on direct appeal on March 24, 2014. *See Grimes v. State*, Docket No. 62835 (Order of Affirmance, February 27, 2014). Thus, Grimes' petition was untimely filed. *See* NRS 34.726(1). Moreover, Grimes' petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.¹ *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Grimes' petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true,


¹*Grimes v. State*, Docket No. 74419-COA (Order of Affirmance, December 19, 2008).


would entitle him to relief. *See Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008).

In his petition, Grimes appeared to argue he had good cause because trial counsel was ineffective during the trial court proceedings and he recently discovered the errors committed by counsel. The underlying claims of ineffective assistance of counsel were reasonably available to have been raised during the timely filing period for a postconviction petition, and Grimes did not demonstrate an impediment external to the defense prevented him from raising them in a timely manner. *See Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Accordingly, we conclude the district court did not err by denying this good-cause claim without conducting an evidentiary hearing.

Next, Grimes argues on appeal that procedural default rules do not bar review of a federal claim, he has good cause due to ineffective assistance of postconviction counsel, and his underlying claims should be reviewed on the merits because he is actually innocent. Grimes did not raise these claims in his petition, and he does not explain why he did not do so. Accordingly, we decline to consider these claims in the first instance. *See McNelton State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
Bennett Grimes
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENNETT GRIMES,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

No. 81697

FILED

JUL 20 2021

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

ORDER DENYING PETITION FOR REVIEW

Review denied. NRAP 40B.

It is so ORDERED.

[Signature], C.J.
Hardesty

[Signature]
Parraguirre

[Signature], J.
Stiglich

[Signature], J.
Cadish

[Signature], J.
Silver

[Signature], J.
Pickering

[Signature], J.
Herndon

cc: Hon. Michelle Leavitt, District Judge
Bennett Grimes
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENNETT GRIMES,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

Supreme Court No. 81697
District Court Case No. A815590; ~~0276103~~

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

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

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

DATE: July 20, 2021

Elizabeth A. Brown, Clerk of Court

By: Andrew Lococo
Deputy Clerk

cc (without enclosures):

Bennett Grimes
Clark County District Attorney \ Alexander G. Chen
Attorney General/Carson City \ Aaron D. Ford, Attorney General
Hon. Michelle Leavitt, District Judge

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUL 21 2021.

HEATHER UNGERMANN

Deputy District Court Clerk

**RECEIVED
APPEALS**

JUL 21 2021

CLERK OF THE COURT

ST.
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A-20-815590-W
Dept. 12

FILED
JAN 10 2022
CLERK OF COURT

Case No.
Dept. No.

IN THE 8TH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

BENNETT G. GRUES
Petitioner,

v.
H.D.S.P.
WILLIAMS, JOHNSON, WARDEN
Respondent.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

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: HIGH DESERT STATE PRISON
2. Name and location of court which entered the judgment of conviction under attack: 8TH JUDICIAL DISTRICT COURT; 200 HAWKS AVENUE, CLARK COUNTY, NEVADA -- LAS VEGAS
3. Date of judgment of conviction: 2/21/13
4. Case number: C-11276163-1
5. (a) Length of sentence: I - 8 TO 20 / II - 5 TO 15 / III 8 TO 20 -- 21-55 YRS.

RECEIVED
DEC 27 2021

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: ~~ATTEMPTED MURDER w/CC~~ (CONSEC)
~~BURGLARY (HABITUAL OFFENDER)~~ (CONSEC)
~~BATTERY w/CC (HABITUAL OFFENDER)~~ (CONSEC)

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: 8TH SUP. CT. COA.

(b) Case number or citation: 0276163, 62835, 67741, 67598
74419, PROPER 9/18/16 ADD'L GRDS.

(c) Result: DENIED / HAB AND D/W NOT PURSUED

(d) Date of result: 2019 - PROPER HAB / D/W 2016

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

14. If you did not appeal, explain briefly why you did not: N/A

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: NEW SUP CT. / COA-NEW / US DIST CT.

(2) Nature of proceeding: DENIED / PENDING / PENDING

(3) Grounds raised: CONSECUTIVE HAB/DW PURSUANT TO PRIMARY OFFENSE NOT AUTHORIZED, CONSECUTIVE SENTENCE FOR HABITUAL, IMPERMISSIBLE

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

(5) Result: DENIED

(6) Date of result: 10/5/17

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

NO REASON FOR DENIAL WAS GIVEN

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

(1) Name of court: 8TH SUP DIST CT.

(2) Nature of proceeding: DENIED

(3) Grounds raised: JURY INSTRUCTIONS ERROR (IMPLIED NOTICE) FOR AT. MURDER

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

(5) Result: N/A

(6) Date of result: N/A

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

N/A

(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: PENDING -- NEV. C.O.A.

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

Citation or date of decision: PENDING -- U.S. DIST. CT.

(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.) N/A

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: IDENTICAL CRIMINAL AND DEADLY WEAPON -- PROPER MOTION TO ADD GROUNDS; NOT PURSUED

(b) The proceedings in which these grounds were raised: HABEAS CORPUS - PROPER

(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.) THE GROUNDS WERE NOT PURSUED BY APPELATE COUNSEL

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.) CLAIMS WERE NOT PURSUED BY APPELLATE COUNSEL

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: NEV. CO. A. # 03088 / U.S. DIST. CT. # 2:19-cv-00663 - GINN-ETI.

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: RALPH ROGER HILLMAN, NADIA HASAN, DEBRA WESTBROOK, DAVID WESTBROOK, WILLIAM H. GALLAGHER, JAMIE RESCH

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: N/A

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) THE IMPLIED MALICE JURY INSTRUCTION IN RELATION TO A SPECIFIC INTENT CRIME OF ATTEMPT MURDER, IS A MISSTATEMENT AND MISLEADING TO A JURY. KRAET, RAMOS, KEYS, BANKS (2019 UNPUB).

2) THE DEADLY WEAPON PER. 193.165⁽⁴⁾ IS AN ESSENTIAL ELEMENT AND WELCH (2016), DAVIS (2019), FRATES (2018), SHEA (2020) AMENDMENT 579. -- DECLARED UNCONSTITUTIONALLY VAGUE

3) THE HABITUAL AND D/W CANNOT BOTH APPLY TO A PRIMARY OFFENSE; THE HABITUAL IS AN ADJUDICATED STATUS - IT DOES NOT CREATE A SEPARATE OFFENSE, HABITUAL FIXED AT 5 YEARS. BECAUSE OF A CONSTITUTIONALLY INFIRM CONVICTION, HABITUAL INVALID.

(a) Ground ONE: I ALLEGE THAT MY STATE COURT CONVICTION AND OR SENTENCE ARE UNCONSTITUTIONAL, IN VIOLATION OF MY 1ST, 5TH, 6TH, 8TH, 9TH, 11TH ART. 3 § 2, 13TH, 14TH AND UNIVERSAL HUMAN RIGHTS ART. 11 OF THE UNITED STATES CONSTITUTION, AND

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

WHETHER BECAUSE OF THE PUBLIC DEFENDERS OFFICE INEFFECTIVE ASSISTANCE OF TRIAL AND/OR APPELLATE COUNSELS, FAILED TO OBJECT AND APPEAL CONSECUTIVE SENTENCES BEING IMPOSED PURSUANT TO STATUTE; THE CAUSE OF THE DISTRICT COURT ERRED IN THE IMPOSITION OF CONSECUTIVE SENTENCES, THE N.D.O.C. CALCULATION AND GRIMES' CUSTODY, IN CONFLICT WITH STATUTE

A. ARGUMENT:

GROSSLY DISPROPORTIONATE SENTENCES

AS IN SOLEMN V. HELM, 463 U.S. 277 103 S. CT. 3001, 77 L. Ed 2d 637 (1983); MISSOURI V. FRAE, 132 S. CT. 899 (2012).

1. LIKE EIGHTH JUDICIAL DISTRICT COURT ADJUDICATED GRIMES GUILTY OF ATTEMPTED MURDER AND ADJUDICATED HIM AS A HABITUAL CRIMINAL ON THE REMAINING COUNTS. GRIMES WAS SENTENCED ON COUNT 1 TO A TERM OF EIGHT TO TWENTY YEARS FOR THE ATTEMPTED MURDER FOLLOWED BY A (CONSECUTIVE) TERM OF FIVE TO FIFTEEN YEARS FOR USE OF A (DANGEROUS WEAPON). GRIMES WAS ALSO SENTENCED TO A TERM OF EIGHT TO TWENTY YEARS FOR COUNT 2 (HAB. CRIM.) TO BE SERVED (CONCURRENT) TO COUNT 1, AND A TERM OF EIGHT TO TWENTY YEARS FOR COUNT 3 (HAB. CRIM.) TO RUN

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 CONST. 'D

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my 1, 5, 6, 8, 9, 11 ARTS 2, 13, 14, 11^{ART} Amendment right to U.S. CONST. based on these facts:

(CONSECUTIVE) TO COUNTS 1 (AT. MUR); (D/W) (CONSC.)
AND COUNT 2 (HAB. CRIM. (CONSC.)).

2- NEVADA REVISED STATUTE 193.165(4) READS:
THE PROVISIONS OF SECTIONS 1, 2 AND 3 DO NOT
APPLY WHERE THE USE OF A FIREARM, OTHER DEADLY
WEAPON OR TEARGAS IS A NECESSARY ELEMENT OF
SUCH CRIME.

3. NEVADA REVISED STATUTE 207.010 ADOPTS PER:
HOLLANDER V. STATE, 82 NEV. 345, 418 P.2d 802
(1966), THERE CAN BE ONLY ONE ASSIGNMENT OF
PENITENTIARY WHEN A DEFENDANT IS CHARGED AS AN
HABITUAL CRIMINAL.

B. AMBIGUITIES IN THE SENTENCE PRONOUNCEMENTS
ARE TO BE CONSIDERED IN FAVOR OF THE DEFENDANT.
U.S. V. THOMAS, 757 F.3d 806 (8th CIR 2014).

1. A COURT GRANTED RELIEF ON THE BASIS OF
PROCEDURAL INNOCENCE IN EX PARTE MILLER, 394 S.W.3d
502 (TEX. CRIM. APP. 2013).

THE FIFTH CIRCUIT SET ASIDE HIS MURDER.

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 CONT'D

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my 1, 5, 6, 8, 9, 11, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 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1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 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1836, 1837, 1838, 1839, 1840, 1841, 1842, 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857, 1858, 1859, 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219,

D. IN THE CASE PRESENTLY BEFORE THE DISTRICT COURT JUDGE, THE HONORABLE LINDA MARKO BELL, GRUBBS IS CHALLENGING THE WAY HIS SENTENCE IS BEING CALCULATED BY THE N.D.O.C. PER N.P.S. 34.724

1. GRUBBS HAS EXHAUSTED ALL ADMINISTRATIVE REMEDIES THROUGH THE INTERNAL, FIRST AND SECOND LEVEL GRIEVANCE PROCESS.

2. GRUBBS' SENTENCE STRUCTURE AS OF THE JUDGMENT OF CONVICTION READS, CONSECUTIVE SENTENCES, WHICH ARE CAUSING HIM TO SERVE MORE TIME THAN ALLOWED PER STATUTE.

E. IN ACCORDANCE, CONSECUTIVE SENTENCE ENHANCEMENT MUST BE PART OF TOTAL PENALTY, NOT MERELY A STACKED SENTENCE, AS PART OF THE TOTAL GUIDELINES SENTENCING RANGE (GSR).

1. THE FIFTH CIRCUIT AGREED, REITERATING THAT A COURT COMMITS "SIGNIFICANT PROCEDURAL ERROR" WHEN IT IMPROPERLY CALCULATES THE GSR. GALT V. U.S., 552 U.S. 38 (2007).

2. ONCE THE GSR IS ESTABLISHED FOR PROCEEDING OFFENSES, THEN THE ENHANCEMENT SENTENCE IS ADDED AND IMPROPER CONSECUTIVE TO THE MAIN SENTENCE BUT STILL WITHIN THE

ASR.

F. THIS "TOTAL PUNISHMENT" ALIGNS WITH AMENDMENT 579 TO THE U.S.B. IN 1998, WHEN IT OVERTURNED, UNITED STATES V. PECKER, 70 F.3d 357 (5TH CIR 1995), THAT AN ENHANCEMENT SENTENCE IS A "SEPARATE AND DISTINCT" PUNISHMENT; AFTER AMENDMENT 579, ITS CLEARLY NOT. SEE: U.S. V. FRANKS, 896 F.3d 93, (1ST CIR 2018); DECLARED UNCONSTITUTIONALLY VALUE; SEE ALSO U.S. V. DAVIS, 139 S. CT 2319, (2019); MADE CLEAR A DEADLY WEAPON IS AN ESSENTIAL ELEMENT AND CANNOT BE CONSECUTIVE. SEE: SHERA V. UNITED STATES, 976 F.3d 63, (1ST CIR 2020).

1. NEW. REV. STAT. 34.500(1): WHEN THE JURISDICTION OF THE COURT OR OFFICE HAS BEEN EXCEEDED - NEW. CONST.

6 SECTION 6 -

- NEW. CONST. ART. 6 SECTION 13
STYLE OF PROCESS -

2. NEW. REV. STAT. 34.500(3): WHEN THE PROCESS IS DEFECTIVE IN SOME MATTER OF SUBSTANCE REQUIRED BY LAW RENDERING IT VOID.

3. NEV. REV. STAT. 34.500(8): WHERE THE PETITIONER HAS BEEN COMMITTED OR INDICTED ON ANY CRIMINAL CHARGE UNDER A STATUTE OR ORDINANCE THAT IS UNCONSTITUTIONAL, OR IF CONSTITUTIONAL ON ITS FACE IS UNCONSTITUTIONAL IN ITS APPLICATION.

4. NEV. REV. STAT. 34.500(9): WHERE THE COURT FINDS THERE HAS BEEN A SPECIFIC DENIAL OF THE PETITIONER'S CONSTITUTIONAL RIGHTS WITH RESPECT TO THE PETITIONER'S CONVICTION OR SENTENCE IN A CRIMINAL CASE.

CRIMINAL DEFENSES ARE ENTITLED TO AN IMMEDIATE RULE OUT.
FAY V. NOIA

(b) Ground TWO: I ALLEGE THAT MY STATE COURT CONVICTION AND/OR SENTENCE IS UNCONSTITUTIONAL, IN VIOLATION OF MY 5TH AND 14TH AMENDS. OF THE UNITED STATES CONSTITUTION, V. CONST. ART. 1 § 8 AND SIXTH AMEND.

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

WHETHER THE UNDERLYING STATUTE IN A CONVICTION IS UNCONSTITUTIONALLY VAGUE ON ITS FACE DEFENDANT IS ACTUALLY INNOCENT AND WARRANT REVERSAL OF HIS CONVICTION AND/OR SENTENCE.

G. ARGUMENT:

UNCONSTITUTIONALLY VAGUE STATUTE;
ACTUAL INNOCENCE OR BARE INNOCENCE,
AS IN *HERREERA V COLLINS*, 506 U.S.
390 (1993), *MISSOURI V FRYE*, 132 S.Ct. 1319 (2012).

1- A COURT VACATED A CONVICTION ON THE BASIS THAT THE UNDERLYING STATUTE IN A CONVICTION IS UNCONSTITUTIONAL, AS IN *EX PARTE CHANCE*, 439 S.W. 3d 918 (TEX. CRIM. APP. 2014), GRANTED RELIEF ON THE BASIS OF THE COURT'S HOLDING IN *EX PARTE LO*, 424 S.W. 3d 10 (TEX. CRIM. APP. 2013), WHICH THE CONCURRENT OPINED THAT THE CONVICTION WAS VOID AB INITIO (FROM THE BEGINNING) BECAUSE IT HELD THAT THE STATUTE WAS ON ITS FACE UNCONSTITUTIONAL (IN LAYMAN'S TERMS, THIS MEANS THAT IF CONVICTION STEMMED FROM A STATUTE OR LAW THAT WAS LATER DETERMINED TO BE UNCONSTITUTIONAL, DEFENDANT IS

DETERMINED TO BE ACTUALLY INNOCENT

2. VAQUENESS CHALLENGES MAY
BE MADE TO STATUTES AND RULES
THAT CARRY THE FORCE OF LAW ONLY
WHEN THOSE STATUTES AND RULES
DEFINE ELEMENTS OF CRIMES, (INCLUDE
- NRS 193.165(4)), OR FIXED SENTENCES,
(NRS. 207.010, FIXED AT 5 YRS. TO 20
YRS. PER HABITUAL (LESSER)), AND
DOES NOT CREATE A SEPRATE
SUBSTANTIVE CRIMINAL OFFENSE.

924(C): FEDERAL, ARMED
CRIMINAL CAREER ACT (A.C.C.A), OR
NRS. 193.165: DEADLY WEAPON
ENHANCEMENT (D.W.); AND

U.S.S.G. § 4B1.2 (a)(2):
FEDERAL CAREER OFFENDER, OR
NRS. 207.010: HABITUAL
CRIMINAL STATUTE.

3. BECAUSE THEIR RESIDUAL CLAUSES ARE
IDENTICAL, ARE UNCONSTITUTIONALLY VAGUE,
AND WERE UNLAWFUL, BECAUSE THESE
CLAUSES ARE, UNCONSTITUTIONALLY
VAGUE BASED ON THE REASONING IN
JOHNSON V. UNITED STATES, 576 U.S.

591, (2015). ARMED CRIMINAL CAREER ACT (A.C.C.A.), WAS MADE RETROACTIVE, IN WELCH V. UNITED STATES, 136 S. CT. 1257, (2016).

4. THE DEADLY WEAPON ENHANCEMENT (D.W.) NRS. 193.165, WAS REVISED IN (2017) TO ADD SUBSECTION (4): THE PROVISIONS OF SUBSECTIONS 1, 2 AND 3 DO NOT APPLY WHERE THE USE OF A FIREARM, OTHER DEADLY WEAPON OR TEAR GAS IS A NECESSARY ELEMENT OF SUCH CRIME.

5. A.B. 236 SECTION 86, (2019), AMENDED THE HABITUAL CRIMINAL STATUTE FROM TWO PRIOR FELONY TO FIVE TO QUALIFY, AS A SMALL HABITUAL CRIMINAL, AND FROM THREE TRIALS TO SEVEN PRIOR FELONY TO QUALIFY AS A LARGE HABITUAL CRIMINAL.

(c) Ground THREE: I ALLEGED THAT MY STATE COURT CONVICTION AND/OR SENTENCE ARE UNCONSTITUTIONAL, IN VIOLATION OF MY 6TH AMEND. RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL TO THE U.S. CONST. AND NEW CONST. ART. I § 8.

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

WHETHER TRIAL AND/OR APPELLATE COUNSEL WERE INEFFECTIVE, WHEN THEY FAILED TO OBJECT TO AND APPEAL THE IMPOSITION OF CONSECUTIVE SENTENCES OF THE HABITUAL CRIMINAL, AND FAILED TO INVESTIGATE DEFENDANT'S PRIOR CONVICTIONS

H. ARGUMENT:

TRIAL COUNSEL DID NOT OBJECT TO THE HABITUAL CRIMINAL PENALTY IMPOSED AS A CONSECUTIVE SENTENCE. COUNSEL FAILED TO ADEQUATELY ARGUE FOR ONLY ONE HABITUAL CRIMINAL SENTENCE TO BE IMPOSED. COUNSEL FAILED TO SUCCESSFULLY MOVE TO VACATE THE HABITUAL CRIMINAL AS A CONSECUTIVE SENTENCE BECAUSE THAT REMOVAL OF A CONSECUTIVE ASSIGNMENT OF THE HABITUAL CRIMINAL WOULD HAVE HAD AN EFFECT ON THE OUTCOME OF GRIMES' CASE. COUNSEL'S INEFFECTIVE ASSISTANCE OF COUNSEL CONSTITUTES CAUSE AND THE FAILURE TO OBJECT TO AN UNCONSTITUTIONAL STATUTE AND ERRORS WERE PREJUDICIAL AND SERIOUS ENOUGH TO DEPRIVE GRIMES OF A FAIR SENTENCE. COLEMAN V. THOMPSON, 501 U.S. 722, 750 (1991).

1. GRIMES SHOULD BE ONLY SERVING ONE SENTENCE FOR THE PRIMARY OFFENSE. COUNT 1 ATTEMPTED MURDER, (2-20 YRS. NOT TO EXCEED 40% OF 8 YRS)

STICKLAND V. WASHINGTON, 466 U.S. 668, 687 (1984).

WHETHER PETITIONERS IS CHARGED WITH A SINGLE CRIME IN MULTIPLE COUNTS, THOSE COUNTS ARE MULTIPLEXIONS, AND SUBJECTING THE PETITIONER TO MULTIPLE PUNISHMENTS VIOLATES THE DOUBLE JEOPARDY CLAUSE. U.S. V. GURVES, 702 F.3d 460 (8th CIR 2012), MISSOURI V. FRYE, BJS-7-1399 (2012).

II. (i) ARGUMENT:

1. WHEN A DEFENDANT IS CONVICTED OF A PRINCIPAL OFFENSE (CRIME) WITH THE USE OF A DEADLY WEAPON AND IS ASSIGNED AN HABITUAL CRIMINAL THE SENTENCING COURT MAY EITHER ENHANCE THE SENTENCE FOR THE PRIMARY OFFENSE PURSUANT TO NRS. 193.165 FOR THE USE OF A DEADLY WEAPON, OR

2. ALTERNATIVELY, THE COURT MAY ENHANCE THE SENTENCE UNDER THE HABITUAL CRIMINAL STATUTE, BUT A DISTRICT COURT MAY NOT ENHANCE A PRIMARY OFFENSE UNDER BOTH NRS. 193.165 AND NRS. 207.010. ODOMS V. STATE, 102 NEV. 27, 714 P.2d 568, 1966 (NEV. 1986).

3. THERE CAN BE ONLY ONE ASSIGNMENT OF PUNISHMENT WHEN A DEFENDANT IS CHARGED AS AN HABITUAL CRIMINAL. HOLLANDER V. STATE, 82 NEV. 345, 418 P.2d 802 (1966).

4. Count 3, HABITUAL CRIMINAL (CONSECUTIVE), AS PRESENTLY WRITTEN AS A CONSECUTIVE SENTENCE

AS A HABITUAL CRIMINAL IS IMPERMISSIBLE.

McCALL V. STATE, 97 NEV 514, 634 P.2d 1210, (1980); STATE V. BARDNESS, 54 NEV. 84 T P.2d 807, (1932).

5. IMPOSITION OF CONSECUTIVE SENTENCES PURSUANT TO NRS 207.010 AND NRS 193.165 IS PROHIBITED UNDER NEVADA LAW. MURRAY V. STATE, 106 NEV. 907, 803 P.2d 225, 106 NEV. ADV. REP. 157, 1990 NEV. LEXIS 106 (NEV. 1990).

6. ONLY ONE OR THE OTHER, BUT NOT BOTH, MAY APPLY TO ANY PRIMARY OFFENSE. BURKEY V. DEES, 824 F. Supp. 190, 1993 U.S. DIST LEXIS 8012 (D. NEV. 1993).

1 (d) Ground FOUR: I ALLEGED THAT MY STATE COURT CONVICTION AND/
2 OR SENTENCE ARE UNCONSTITUTIONAL, IN VIOLATION OF MY 6TH
3 AMEND. RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL TO THE
4 U.S. CONST.

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

6 WHETHER PETITIONER HAS A TRUE PROCESS
7 RIGHT NOT TO BE SENTENCED BASED ON FALSE
8 OR UNRELIABLE INFORMATION, U.S. V. GERTLER, 605
9 F.3d 1256 (11th CIR 2010).

10 WHETHER THE DISTRICT COURT ABUSES ITS
11 DISCRETION WHEN IT RELIES ON CLEARLY ERRONEOUS
12 FINDING OF FACT, USES AN ERRONEOUS LEGAL STANDARD,
13 OR IMPROPERLY APPLIES THE LAW. U.S. V. SOTO, 794 F.3d
14 635 (6th CIR 2010), MISSOURI V. FRYE, 132 S. CT. 1399 (2012).

15 J. ARGUMENT:

16 1. TRIAL COUNSEL FAILED TO INVESTIGATE PRIMER
17 PRIOR CONVICTIONS. A RECORD FOR CORPORAL INJURY ON A
18 STRIKE WITH SLIGHT TO NO HARM OR INJURY REPORTED
19 "THOUGH REPREHENSIBLE, SIMPLY DOES NOT WARRANT
20 THE HARSH SANCTION AVAILABLE UNDER THE HABITUAL
21 CRIMINALITY STATUTE." JESSONS V. STATE, 106 NEV.
22 196, 789 P.2d 1242, 1245 (NEV. 1990).

23 2. AND MAY BE IN ABUSE OF DISCRETION, DETERMINED
24 BY THE NEVADA SUPREME COURT TO ADJUDGE A
25 DEFENDANT A HABITUAL CRIMINAL IF HIS PRIORS)
26 FELONIES ARE ACTUALLY MISDEMEANORS AND REMOTE IN
27 TIME, AS SUCH A RULING "SERVES NEITHER THE PURPOSES
28 OF THE STATUTE NOR THE INTERESTS OF JUSTICE."

CLARK, 851 P.2d AT 428.

3. THE PROFS USED TO ADJUDGE THE HABITUAL CRIMINAL WOULD HAVE BEEN A MIDDLE-LEVEL OR GROSS MISDEMEANOR UNDER NRS. 200.485 OR NRS. 200.481, HAD IT HAPPENED IN THIS STATE, AND NOT A FELONY CHARGE, AND THUS DEFENDANT'S CALIFORNIA CONVICTIONS COULD NOT BE USED TO ESTABLISH HIS STATUS AS A HABITUAL CRIMINAL UNDER THIS SECTION. *CARTER V. STATE*, 79 NEV. 89, 378 P.2d 876, 1963 NEV LEXIS 88 (NEV. 1963).

K- COUNSEL FAILED TO INVESTIGATE THE STATUS OF PRIOR CONVICTIONS

ARGUMENT:

L- THE COURT HELD THAT IT IS FUNDAMENTAL THAT ATTORNEY WHO IS REPRESENTING A DEFENDANT MUST ACQUAINT HIMSELF NOT ONLY WITH THE FACTS OF LAW, BUT ALSO THE FACTS OF THE CASE BEFORE HE CAN RENDER REASONABLY EFFECTIVE ASSISTANCE OF COUNSEL, AND THAT RELYING UPON THE FACTS OF THE CASE AS REPRESENTED BY A PROSECUTING ATTORNEY IS NOT SUFFICIENT IN *BUTLER V. STATE*, 716 S.W.2d 48 (TEX. CRIM. APP. 1987). FOR EXAMPLE, IN *EX PARTE POOL*, 738 S.W.2d 285 (TEX. CRIM. APP. 1987), THE COURT GRANTED RELIEF WHERE COUNSEL SUBMITTED AN

AFFIDAVIT IN WHICH HE ADMITTED THAT HE RELIED UPON INFORMATION PRESENTED TO HIM BY THE PROSECUTOR AND CONDUCTED NO INDEPENDENT INVESTIGATION REGARDING THE STATUS OF APPLICANT'S PRIOR CONVICTIONS, AND THE PROSECUTOR SUBMITTED AN AFFIDAVIT ADMITTING THAT HE UNINTENTIONALLY GAVE DEFENSE COUNSEL ERRONEOUS INFORMATION.

STICKLAND V. WASHINGTON, 466 U.S. 668 (1984);
BUFFALO V. STATE, 111 N.E. 1139, 90 (P.2d 647);
WARNER V. STATE, 102 N.E. 635, 729 P.2d 1359 (1986).

2. THERE IS "A REASONABLE PROBABILITY THAT, BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS, THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT. COBLE, 496 F.3d AT 435. AND THAT THERE IS A REASONABLE PROBABILITY SUFFICIENT TO UNDERMINE CONFIDENCE IN THE OUTCOME," *id.* WASHINGTON, 466 U.S. AT 694.

GROUND FIVE: I ALLEGED THAT MY STATE COURT CONVICTION AND/OR SENTENCE ARE UNCONSTITUTIONAL, IN VIOLATION OF MY 6TH, 8TH, 14TH AMEND RIGHT TO THE U.S. CONSTITUTION.

BASED ON THESE FACTS:

WHETHER THE EIGHTH AMENDMENT TO THE CONSTITUTION PROHIBITS THE IMPOSITION OF "CRUEL AND UNUSUAL PUNISHMENTS". LOPEZ V. BREWER, 680 F.3d 1068 (9TH CIR 2012).

WHETHER THE EIGHTH AMENDMENT PROHIBITS SENTENCES THAT ARE DISPROPORTIONATE TO THE CRIME COMMITTED. U.S. V. UNDER SEAL, 709 F.3d 257 (4TH CIR 2013), MISSOURI V. FRYE, 132 S. CT 1399 (2012).

L. THE PRACTICAL EFFECT OF THE GENERAL RULE IS THAT A TRIAL JUDGE'S SENTENCING DECISION HAS TRADITIONALLY BEEN TREATED AS UNREVIEWABLE SO LONG AS THE SENTENCE WAS WITHIN THE STATUTORY LIMITS.

1. THE SUPREME COURT HAS ESTABLISHED A BALANCING TEST FOR EVALUATING THE PROPORTIONALITY OF SENTENCES UNDER THE EIGHTH AMENDMENT. SEE SOLEM V. HELM, 463 U.S. 277, 103 S. CT. 3001, 77 L. ED. 2d 687, (1983).

2. RELIEF MAY BE REQUIRED WHERE PETITIONER IS ABLE TO SHOW THAT THE SENTENCE IMPOSED EXCEEDS OR IS OUTSIDE THE STATUTORY LIMITS.

3. THE TRIAL COURT IN GRIMES' CASE WENT BEYOND THE STATUTORY MAXIMUM OF 20 YEARS FOR ATTEMPTED MURDER, WHEN IT IMPOSED 21 - 55 YEARS VIA COUNTS 1, 2 AND 3.

4. HAD COUNSEL NOT FAILED TO OBJECT AND APPEAL THE CONSECUTIVE HABITUAL CRIMINAL SENTENCE BEING IMPOSED UNDER COUNT 3 AS EXCESSIVE, GRIMES WOULD HAVE BEEN SENTENCED AT MOST TO ONE 9-20 YR. SENTENCE.

5. THERE IS NO PRESUMPTION UNDER STRICKLAND THAT COUNSEL EXERCISED REASONABLE PROFESSIONAL CONDUCT, THAT COULD BE WARRANTED WHEN A LAWYER ALLOWS IMPOSITION OF THE HABITUAL CRIMINAL WITHOUT INVESTIGATING THE PRIORS BEING ALLEGED. SUCH CONDUCT IS ALWAYS UNREASONABLE. STRICKLAND, *id.* AT 690.

6. GRIMES SUFFERED PREJUDICE, "THAT BUT FOR COUNSEL'S ERRORS", HE WOULD NOT HAVE BEEN ADJUDICATED AS A HABITUAL CRIMINAL.

THAT BUT FOR COUNSEL'S DEFICIENT PERFORMANCE, THERE WAS NO REASONABLE

PROBABILITY THAT THE RESULT OF HIS SENTENCING WOULD HAVE BEEN DIFFERENT.

7. GRIMES WAS PREJUDICED FROM COUNSEL'S FAILURE TO OBJECT TO THE IMPOSITION OF THE HABITUAL CRIMINAL AND FAILURE TO ARGUE ON APPEAL, THAT THE HABITUAL DOES NOT CREATE A SEPARATE SUBSTANTIVE OFFENSE.

8. PROPER INVESTIGATION WOULD HAVE REVEALED THAT GRIMES' PRIORS WOULD HAVE DISQUALIFIED HIM AS A HABITUAL CRIMINAL BECAUSE OF AN UNCONSTITUTIONALLY INFIRM CONVICTION, THAT WERE PART OF A PLEA NEGOTIATION, THAT HE DID NOT VOLUNTARILY AND INTELLIGENTLY WAIVE HIS RIGHTS BEFORE PLEADING GUILTY TO HIS PRIORS, AND THAT DEFENDANT DID NOT HAVE A CORRECT COMPREHENSION OF THE LAW, AND THE PRIORS USED TO ADJUDGE GRIMES AS A HABITUAL CRIMINAL WERE ACTUALLY MISDEMEANORS, REMOTE IN TIME, AS SUCH RULING SERVES NEITHER THE PURPOSES OF THE STATUTE, NOR IN THE INTERESTS OF JUSTICE. MILLER V. DRETKE, 420 F.3d 356, 361, (8th CIR 2005)

CONCLUSION

M. GRIMES HAS SERVED 10.5 YEARS AND SHOULD BE ON THE Cusp OF EXPIRING THE 8-20 YR. SENTENCE FOR THE PRIMARY OFFENSE OF COUNT 1, MAKING HIM ELIGIBLE FOR RELEASE AND ASKS THAT THE N.D.O.C. COMPUTATION OF HIS SENTENCE BE ADJUSTED AND AWARDED TIME SERVED OR COMMUTED TO REFLECT THAT ONE 8-20 YR. SENTENCE IS ONLY PERMISSIBLE.

1. THIS COURT SHOULD GRANT GRIMES' PETITION FOR WRIT OF HABEAS CORPUS AS N.D.O.C. IS MISCALCULATING HIS SENTENCE, AND HIS REQUEST FOR PROPER CALCULATION OF HIS SENTENCE IS WARRANTED BY LAW. THIS COURT SHOULD INCLUDE FINDINGS IN ITS ORDER THAT GRIMES' PETITION HAS LEGAL MERIT AND THAT GRIMES' CLAIMS ARE WARRANTED UNDER EXISTING LAW OR A STATUTORY CHANGE IN PENALTY FOR THE CRIME WHICH WOULD APPEAR TO MAKE THE ORIGINAL PENALTY EXCESSIVE.

RESPECTFULLY SUBMITTED,

ON THIS 22ND DAY OF DECEMBER, 2021.

Bonett Williams

PETITIONER/ BENNETT G. GRIMES #68850
24 77

BEFORE, 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 22ND day of the month of December, 2021.

Bennett G. Grimes
BENNETT G. GRIMES #1098810

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
BENNETT G. GRIMES #1098810

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

AFFIRMATION (Pursuant to NRS 239B.030)

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

Bennett G. Grimes
BENNETT G. GRIMES #1098810

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

CERTIFICATE OF SERVICE BY MAIL

I, BENNETT G. GRIMES, hereby certify pursuant to N.R.C.P. 5(b), that on this 22ND day of the month of December, 2021, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

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
BENNETT G. GRIMES #1098810

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

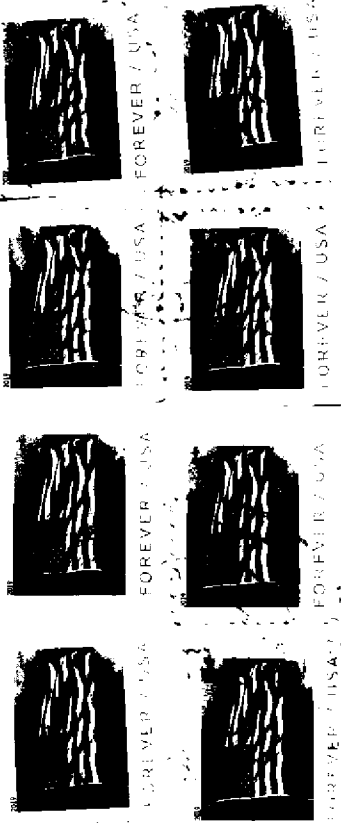
* Print your name and NDOC back number and sign

BENNETT G. GRIMES
#10000010

U.S.P.

P.O. Box 650

INDIAN SPRINGS, NV 89070.



ATTN: CLERK OF THE
COURT
RE: STEVEN D. BRIDEN
LINDA MARK BELL
200 LEWIS AVE. 3RD FL.
LAS VEGAS, NV. 89155-1160.

IN THE 8TH JUDICIAL DISTRICT
COURT, STATE OF NEVADA, COUNTY
OF CLARK

GRIMES CASE NO.: A-20-815590-W
PETITIONER HABEAS CORPUS
DEPT. NO.: 7/12

✓

MEMORANDUM TO 1ST
WILLIAMS, JOHNSON, WARDEN(S) AMENDED PETITION
RESPONDENT(S)

NOW COMES PETITIONER,
BENNETT G. GRIMES, NAMED IN THE
ABOVE-STYLED CAUSE, WITH THIS
HIS "MEMORANDUM" TO HIS "1ST
AMENDED PETITION" AS SHOWN IN
THE FOLLOWING. PETITIONER, A
LEGALLY UNTRAINED LITIGANT
PRAYS THE COURT DOES NOT HOLD
HIM TO THE STANDARD(S) OF A
TRAINED PRACTITIONER.

RECEIVED

MAR - 3 2022

HISTORY OF THE CASE

DATE: 8/25/11 DOCUMENT: TRANSCRIPT: PRELIMINARY HEARING
COURT: LAS VEGAS JUSTICE
COURT, 11F13012X

9/13/11 CRIMINAL BINDER
COURT: LAS VEGAS JUSTICE
COURT, 11F13012X

9/14/11 INFORMATION COURT:
EIGHTH JUDICIAL
DISTRICT, C276163

9/20/11 TRANSCRIPT: ARRAIGNMENT
COURT: . . .

9/21/11 ADDENDUM . . .

9/21/11 AMENDED INFORMATION . . .

10/12/11 PETITION FOR WRIT OF
HABEAS CORPUS . . .

10/25/11 SECOND AMENDED INFORMATION . . .

10/26/11 RETURN TO WRIT OF HABEAS
CORPUS . . .

DATE:

DOCUMENT:

6/5/12

DEFENDANT'S MOTION TO
DISMISS FOR FAILURE TO
GATHER EVIDENCE ...
COURT ...

10/10/12

THIRD AMENDED INFORMATION...

10/15/12

VERDICT ...

10/23/12

NOTICE OF INTENT TO
SEEK PUNISHMENT AS A
HABITUAL CRIMINAL

12/18/12

TRANSCRIPT: SENTENCING...

2/7/13

AMENDED TRANSCRIPT: SENTENCING...

2/7/13

TRANSCRIPT: SENTENCING ...

2/12/13

TRANSCRIPT: SENTENCING ...

2/21/13

JUDGMENT OF CONVICTION...

8/19/13

FAST TRACK STATEMENT

COURT:

NEVADA SUPREME COURT,
62835

9/9/13

DEFENDANT'S MOTION TO
CORRECT ILLEGAL SENTENCE

COURT:

EIGHTH JUDICIAL
DISTRICT COURT,

C 276163

9/24/13

DEFENDANT'S MOTION TO STRIKE
AS UNTIMELY TO STATES

OPPOSITION TO DEFENDANT'S
MOTION TO CORRECT ILLEGAL
SENTENCE . . .

10/3/13 DEFENDANT'S REPLY IN
SUPPORT OF MOTION TO
CORRECT ILLEGAL SENTENCE...

10/3/13 STATE'S SUPPLY IN SUPPORT
OF OPPOSITION TO DEFENDANT'S
MOTION TO CORRECT ILLEGAL
SENTENCE . . .

10/3/13 TRANSCRIPT: DEFENDANT'S
MOTION TO CORRECT ILLEGAL
SENTENCE AND MOTION TO
STRIKE AS UNTIMELY . . .

2/20/15 PETITION FOR WRIT OF
(PRO. PER.) HABEAS CORPUS . . .

5/1/15 ORDER DENYING DEFENDANT'S
MOTION TO CORRECT ILLEGAL
SENTENCE . . .

7/2/15 FAST TRACK STATEMENT
COURT:

NEVADA SUPREME COURT,
62598

8/25/16 MOTION'S TO ADD GROUNDS
(PRO. PER.) 4 AND 5

COURT:
EIGHTH JUDICIAL DISTRICT

COURT, C276163

8/25/16 MOTION TO REQUEST
(PRO. PER.) EVIDENTIARY HEARING ...

9/8/16 STATES OPPOSITION TO
(PRO. PER.) DEFENDANT'S MOTION TO ADD
ADDITIONAL GROUNDS AND
MOTION TO REQUEST
EVIDENTIARY HEARING ...

9/13/16 MOTION TO LEAVE OF
(PRO. PER.) COURT TO FILE AMENDED
PETITION ...

5/16/17 SUPPLEMENT TO PETITION
FOR WRIT OF HABEAS
CORPUS ...

8/7/17 REPLY TO STATE'S RESPONSE
TO SUPPORT TO PETITION
FOR WRIT OF HABEAS CORPUS...

8/24/17 TRANSCRIPT: PETITION FOR
WRIT OF HABEAS CORPUS ...

9/6/17 ERRATA ...

10/5/17 TRANSCRIPT: EVIDENTIARY
HEARING ...

11/2/17 MOTION TO APPEAL DENIAL
(PRO. PER.) OF HABEAS CORPUS ...

11/20/17 FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER / NOTICE OF
ENTRY OF ORDER ...

3/13/18 APPELLANT'S OPENING BRIEF
COURT:

NEVADA SUPREME COURT,
74419

5/3/18 APPELLANT'S REPLY BRIEF...

12/19/18 ORDER OF AFFIRMANCE

NEVADA COURT OF APPEALS,
74419

1/2/19 PETITION FOR REVIEW BY THE
NEVADA SUPREME COURT, 74419

4/5/19 ORDER DENYING PETITION
FOR REVIEW...

4/30/19 REMITTITUR...

PROPER PERSON NEVADA SUPREME COURT

CASE NO. : 81697

81335

81531

81042 / C.O.A.

83088

84023 ... PENDING

1/10/22 PETITION FOR HABEAS

(PRO. PER.) CORPUS FOR MISCALCULATION
OF SENTENCE BY THE N.D.O.C.

COURT:

EIGHTH JUDICIAL DISTRICT

COURT, A-20-815590-W

(6)⁸⁵

6. GROUNDS FOR "1ST" AMENDED PETITION"

1). PETITIONER WAS DENIED DUE PROCESS OF LAW PURSUANT TO THE 5TH AND 14TH AMENDMENTS OF THE U.S. CONST.

2). PETITIONER WAS ARBITRARILY DENIED EQUAL PROTECTION OF LAW PURSUANT TO THE 5TH AND 14TH AMENDMENTS OF THE U.S. CONST.

3). PETITIONER WAS ARBITRARILY DENIED HIS RIGHT TO A FAIR TRIAL PURSUANT TO THE 6TH AND 14TH AMENDMENTS OF THE U.S. CONST.

4). PETITIONER WAS DENIED "EFFECTIVE" ASSISTANCE OF TRIAL AND APPELLATE COUNSEL PURSUANT TO THE 6TH AMENDMENT OF THE U.S. CONST.

POINTS AND AUTHORITIES

1). PETITIONER ASSERTS "DUE PROCESS OF LAW" WAS VIOLATED, AS WELL AS "EQUAL PROTECTION OF LAW," WHEN THE TRIAL COURT IMPOSED A SENTENCE, ARBITRARILY, IN OPPOSITION TO THE LAW GOVERNING SAME. THIS ACTION AND/OR OMISSION EXCEEDED THE TRIAL COURT'S JURISDICTION AND IS CONTENDED TO BE AN ABUSE OF DISCRETION FROM WHICH PETITIONER SUFFERED A SENTENCE UNAUTHORIZED BY THE LAW AND RULES/ AUTHORITY GOVERNING SAME. EVEN AFTER DISCREPANCY WAS - OFF THE RECORD - BROUGHT TO THE TRIAL COURT'S ATTENTION, THE COURT ACKNOWLEDGED ITS NOTES FOR SENTENCING; HOWEVER IT OPTED TO GO WITH THE ERRONEOUS SENTENCE IN THE "JUDGMENT OF CONVICTION" (J.O.C.), IN LIEU OF RULES PROMULGATED BY IT'S STATE SUPREME COURT REFERENCING THE RELEVANT LAW AND PETITIONER'S CIRCUMSTANCES. THUS, NEVADA DEPT. OF CORRECTIONS (N.D.O.C.) IS HOLDING PETITIONER TO AN UNCONSTITUTIONALLY IMPOSED

SENTENCE (SEE NRS. 34.500 ON GROUNDS FOR RELIEF ON HABEAS CORPUS).

2). PETITIONER'S SENTENCING WAS IMPOSED PURSUANT TO THE HABITUAL VIOLATOR LAW, NRS. 207.010⁽¹⁾ AND THE ENHANCEMENT STATUTE(S) N.R.S. 193.165⁽¹⁾ HOWEVER, THE PROVISIONS OF N.R.S. 193.165, 1., 2., AND 3., DO NOT APPLY WHERE THE USE OF A "FIREARM", OR OTHER "DEADLY WEAPON" OR "TEARGAS" IS A NECESSARY ELEMENT OF SUCH CRIME.

IN HOLLANDER V. STATE, 82 NEV. 345 (1966), IT WAS HELD THAT; "THERE CAN BE ONLY ONE ASSIGNMENT OF PUNISHMENT WHEN A DEFENDANT IS CHARGED AS A HABITUAL CRIMINAL."

3). PETITIONER CONTENDED THE FOREGOING SENTENCING PRESENTED AN "AMBIGUITY" IN SENTENCING WHICH SHOULD HAVE BEEN CORRECTED BY THE TRIAL COURT UPON "JUDICIAL NOTICE", DUE TO "THE RULE OF LENITY" BEING APPLICABLE. "AMBIGUITIES IN THE SENTENCE PRONOUNCEMENTS ARE TO

BE CONSTRUED IN FAVOR OF THE
DEFENDANT." U.S. V. THOMAS, 757
F.3d 806 (8TH CIR. 2014).

4). PETITIONER CONTENDS THAT
DOUBLE JEOPARDY IS ALSO IN ISSUE
DUE TO THE FOREGOING LISTED
"ENHANCEMENTS", AS THE LANGUAGE OF
THE STATUTE, N.R.S. 193.165, CLEARLY
STATES IT HAS BEEN IMPLEMENTED
AS "ADDITIONAL PUNISHMENT". IT IS
FURTHER CONTENDED SUCH IMPLEMENTATION
IS IN CONTRAVENTION OF THE LETTER AND
VERY SPIRIT OF THE 5TH AMENDMENT
OF THE U.S. CONSTITUTION, AND ARTICLE
6, CLAUSES 2 AND 3 OF SAME.

PETITIONER ASSEPTS, AND THE RULE OF
LAW SUPPORTS HIS POSITION THAT IN
RULING ON "CONSTITUTIONAL PRINCIPLES,"
MORE LANGUAGE SHOULD BE PROFFERED TO
GIVE MORE MEANING TO THE CONSTITUTION
AND ITS PRECEPTS, INSTEAD OF
DIMINISHING THE POWER OF THE
CONSTITUTION. HABEAS RELIEF REQUESTED
SHOULD BE GRANTED. (SEE N.R.S. 34.500
(1), (3), (8), (9).

5). PETITIONER CONTENTS THE FOREGOING IS A CLEAR SHOWING HE WAS DENIED FAIR PROCEEDING(S)/ TRIAL PURSUANT TO THE 6TH AMENDMENT, AS WELL AS I.A.C. DUE TO COUNSEL FAILING TO ADEQUATELY OBJECT "ON THE RECORD" FOR PURPOSES OF APPEAL, OR RAISING PERTINENT ISSUES FOR APPEAL, E.G. THE REVISIONMENT OF N.R.S. 193.165 ADDING SECTION (4) IN 2012, NOR A.B. (ASSEMBLY BILL) 236, (2019) MAKING HABITUAL FELONIES QUALIFYING FOR 5 INSTEAD OF 2. THUS, COUNSEL DID NOT REPRESENT HIS CLIENT IN ALL OF HIS CLIENT'S "BEST INTERESTS", NOR "ZEALOUSLY" (SEE STRICKLAND V. WASHINGTON, 466 U.S. 668, 687 (1984)). PETITIONER SHOULD BE GRANTED HABEAS CORPUS RELIEF.

CONCLUSION

WHEREFORE, PETITIONER PRAYS HABEAS CORPUS REQUESTED BE GRANTED, AND ANY OTHER RELIEF THE COURT DEEMS JUST AND PROPER ACCORDING TO LAW.

PURSUANT TO N.R.S. 208.165 et seq.,
I SWEAR TO MY BEST KNOWLEDGE
THE FOREGOING IS TRUE AND CORRECT.

THIS 27TH DAY OF FEBRUARY, 2022.

Bennett G. Grimes

RESPECTFULLY SUBMITTED,

Bennett G. Grimes

BENNETT G. GRIMES, NO. #1698810

2762267

HIGH DEPT STATE PRISON

POST OFFICE BOX 650

INDIAN SPRINGS, NEVADA 89070.

/IN PROPER PERSONAM

CERTIFICATE OF SERVICE BY MAILING
I, BENNETT G. GRIMES, HEREBY
CERTIFY, PURSUANT TO NRCP 5(b),
THAT ON THIS 27TH DAY OF FEBRUARY,
2022, I MAILED A TRUE AND CORRECT
COPY OF THE FOREGOING, "MEMORANDUM
TO 1ST AMENDED PETITION" BY
DEPOSITING IT IN THE HIGH DESERT
STATE PRISON, LEGAL LIBRARY, FIRST-
CLASS POSTAGE, FULLY PREPAID, ADDRESSED
AS FOLLOWS:

STEVE B. WOLFSON

DISTRICT ATTORNEY

200 LEWIS AVE.

P.O. BOX 552212

LAS VEGAS, NEVADA 89155

CLERK OF THE COURT

200 LEWIS AVE 3RD FLR.

LAS VEGAS, NEVADA,

89155-1160

OFFICE OF ATTORNEY GENERAL

100 NORTH CARSON STREET

CARSON CITY, NEVADA

89701-4717

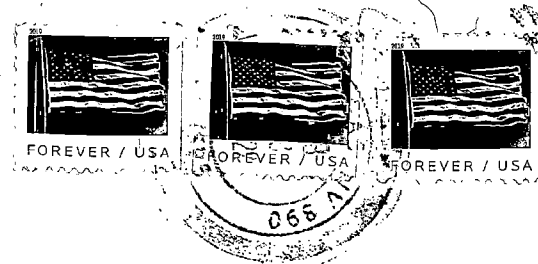
CC - FILE

DATED: THIS 27TH DAY OF FEBRUARY, 2022.

Bennett & Grimes
BENNETT & GRIMES #1098810
#2762267

1 IN PRORIA PERSONAM
POST OFFICE BOX 650 [HDSP]
INDIAN SPRINGS, NEVADA 89070.
IN FORMA PAUPERIS:

BENNETT G. GRILLES #1098810
H.D.S.P.
P.O. BOX 650
INDIAN SPRINGS, NV.
89070.



CLERK OF THE COURT
STEVEN D. GRIERSON
200 LEWIS AVE. 3RD FLR.
LAS VEGAS, NEVADA.

9910135300 SCOT 1160

Alana S. Smith
CLERK OF THE COURT

ORDR

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

BENNETT GRIMES,

Petitioner,

vs.

CALVIN JOHNSON, WARDEN ,

Respondent.

) Case No.: A-20-815590-W
)
)
) DEPT. No.: XII
) (Third Petition)
)
)
)
)

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.

1
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, Petition 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

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 DISTRICT COURT
3 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)
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
17
18
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28



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,
10

Case No: A-20-815590-W

Dept No: XII

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

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Heather Ungermann

18 Heather Ungermann, Deputy Clerk

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:

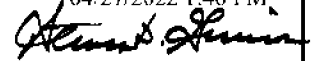
22 Clark County District Attorney's Office
23 Attorney General's Office – Appellate Division-

24 ☒ The United States mail addressed as follows:

25 Bennett Grimes # 1098810
26 P.O. Box 650
27 Indian Springs, NV 89070

28 /s/ Heather Ungermann

Heather Ungermann, Deputy Clerk


CLERK OF THE COURT

1
2 ORDR

3 EIGHTH JUDICIAL DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 BENNETT GRIMES,) Case No.: A-20-815590-W
6)
6 Petitioner,)
7 vs.) DEPT. No.: XII
7) (Third Petition)
8)
8 CALVIN JOHNSON, WARDEN,)
9)
9 Respondent.)

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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
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15 8. A court must dismiss a habeas petition if it presents claims that either were
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19 498, 507 (2001).

20 9. Unlike initial petitions which certainly require a careful review of the record,
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23 10. Application of the statutory procedural default rules to post-conviction
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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
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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.

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)
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

BENNETT G. GRIMES, 1098810
HIGH DESERT STATE PRISON
POST OFFICE BOX 650
INDIAN SPRINGS, NEVADA 89070.

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

FILED

MAY - 9 2022

Elizabeth A. Brown
CLERK OF COURT

EIGHTH JUDICIAL
DISTRICT COURT
CLARK COUNTY, NEVADA

BENNETT G. GRIMES,
PETITIONER,

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

~~X~~IT (12)

VS.

CALVIN JOHNSON, WARDEN,
RESPONDENT,

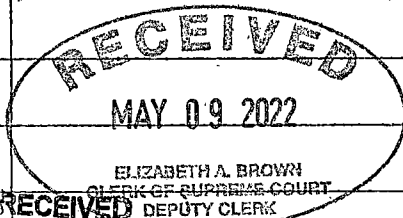
NOTICE OF APPEAL
FROM A DENIAL
CHALLENGING THE
COMPUTATION OF
TIME (N.D.O.C.)

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



RECEIVED
APPEALS

MAY 24 2022

CLERK OF THE COURT

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

POST OFFICE BOX 650

INDIAN SPRINGS, NEVADA
89070.

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



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 DESEPT 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 PROPER PERSON

Bennett G. Grubbs
Residence 1135, Independence Street, Las Vegas, NV 89102
NEVADA 89102.

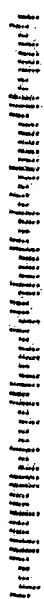
Reynold G. GRIMES, 1092810
HIGH DESERT STATE PRISON
P.O. OFFICE BOX 650
INDIAN SPRINGS, NEVADA
89070-

HIGH DESERT STATE PRISON

MAY 04 2022

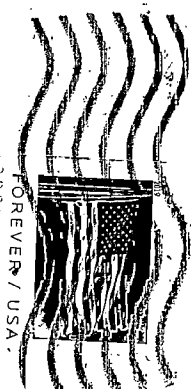
UNIT 12

93701-475725



CLERK of the Court
Supreme Court of Nevada
201 South Carson Street
CARSON CITY, NEVADA 89701.

LAS VEGAS NV 890
5 MAY 2022 PM 4 L



FOREVER / USA

FILED

IN AND FOR THE SUPREME
COURT OF NEVADA

MAY 16 2022

Elizabeth A. Brown
CLERK OF COURT

BENNETT G. GRIMES
DEFENDANT,

VS.

CALVIN JOHNSON, WARDEN,
RESPONDENT.

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

NOTICE OF APPEAL FROM A DENIAL
CHALLENGING THE COMPUTATION OF
TIME IN THE U.D.O.C.

NRS 34.500(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.

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 UNDOLY 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); 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 709 (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 miscarriage 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 COURT 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. HABERSTROFF, 119 NEV. 173, 181, 69 P3d 676, 681 (2003); PARKERSON, 100 NEV. 222, 678

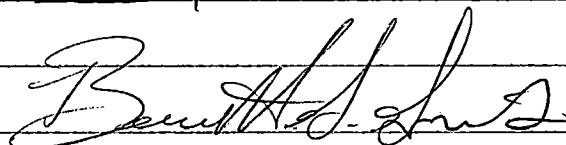
P.2d 1155 (1984).

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.

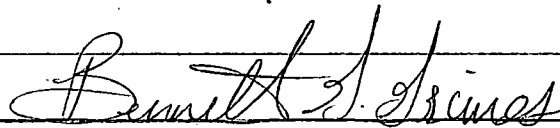


CERTIFICATE OF SERVICE BY MAILING

I, BENNETT G. GRIVES, HEREBY CERTIFY,
PURSUANT TO NRCR 510, 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. GRIVES, 1098810

IN PROPRIA PERSONA

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.
 State of Nevada

Attorney
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-GMF Document 23-39 Filed 01/30/20 Page 2 of 25
P.O. BOX 650
INDIAN SPRINGS, W. 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-11276163-1

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"

STEPHEN S. 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 JUDGE 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 #1095810
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 SS:

2. COUNTY OF CLARK

3.

4. I, BENNETT B. GRIMES, AFFICANT

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

(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.S. 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: APPELLATE 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 THE EXISTING LAW,
 I.E., SALAZAR V. STATE, 70 P.3D 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.Y. (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 INEFFECTIVE
 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).

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

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

FOR THE RECORD THE PETITIONER'S
AVERTMENT IS THAT HIS RIGHT TO DUE PROCESS
WAS/IS VIOLATED UNDER ZBOURIC, IT IS THE
DISTRICT COURT'S DUTY TO DETERMINE WHETHER
THE INSTRUMENT IS AN INHERENTLY DANGEROUS
WEAPON. 106 NEV. 571, 577, 798 P.2D 548,
551-52 (1990) id.

(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/VIS 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/ (581) PAROLE CREDIT FOR TIME SERVED.

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 SAVED 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.): 123.165(3),
 WHILE AWAITING A NON-MANDATORY PAROLE BOARD
 HEARING TO BE RELEASED FROM INCARCERATION FOR AN
 ACT THAT IS NOT CRIMINAL.
 6). NRS 123.165 [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 ABSU-
 DICATED 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 123.165. 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 BOSCHAUER V. STATE, 106 NEV. 890, 895, 804 P.2d

10 A

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~~S~~ 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).¹

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!!

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 R. GRIMES 1098810~~

~~Bennett R. 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 R. GRIMES 1098810~~

~~Bennett R. 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 R. GRIMES 1098810~~

~~Bennett R. Grimes~~

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

CERTIFICATE OF SERVICE BY MAIL

BENNETT R. 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

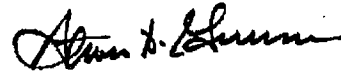
Las Vegas, Nevada 89155

~~BENNETT R. GRIMES 1098810~~

~~Bennett R. 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, ~~Edwin~~ 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

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SUPREME COURT OF NEVADA
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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



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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.

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14 WARDEN,

15 Defendant(s),

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Permission Granted: N/A

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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

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

cc: Bennett G. Grimes

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated June 8, 2022, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 155.

BENNETT GRIMES,

Plaintiff(s),

vs.

STATE OF NEVADA; BRIAN WILLIAMS SP
WARDEN,

Defendant(s),

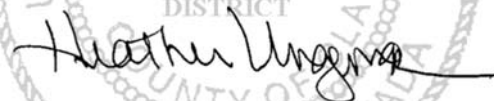
Case No: A-20-815590-W

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 9 day of June 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk