

# IN THE SUPREME COURT OF THE STATE OF NEVADA

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CEDRIC LEROB JACKSON,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Case No: 10C265339-1  
*Related Case A-22-849718-W*  
Docket No: 84790

# RECORD ON APPEAL VOLUME 4

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1 that the facts required for imposing the enhancement must be determined by a jury because  
2 “the trier of facts will have to determine if the weapon was a necessary element.” *Id.* at 26.  
3 The District Court, however, did not agree and denied the Motion to Modify. Order Denying  
4 Defendant’s Pro Per Motion to Appoint Counsel and Order Denying Defendant’s Pro Per  
5 Motion to Modify and/or Correct by Setting Aside Illegal Sentence Based Upon Lack of  
6 Subject Matter Jurisdiction at 2.

7 Because Defendant reiterates the same arguments here, using the exact same language  
8 from the Motion to Modify – see Petition Memorandum at 2-3 – the District Court previously  
9 ruled on the issue on the merits, and Defendant was a party in that case, the doctrine of *res*  
10 *judicata* applies here. Accordingly, this claim should be denied.

11 **C. Defendant Had No Right to a Determination on the Facts by a Jury.**

12 Defendant’s claim regarding a factual determination that should have been made by a  
13 jury is completely without merit. He essentially brings an Apprendi claim by another name.  
14 In Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348 (2000), the United States Supreme  
15 Court announced that “[o]ther than the fact of a prior conviction, any fact that increases the  
16 penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and  
17 proved beyond a reasonable doubt.” *Id.* 530 U.S. at 490, 120 S.Ct. 2362-63. However, the  
18 Supreme Court has also held that “the valid entry of a guilty plea in a state criminal court  
19 involves the waiver of several federal constitutional rights. Among these ‘is the right to trial  
20 by jury.’” Colwell v. State, 118 Nev. 807, 823, 59 P.3d 463, 474 (2002) (citing Boykin v.  
21 Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969)). The Nevada Supreme Court has ruled held  
22 that when a defendant pleads guilty, he waives the right guaranteed by Apprendi to have  
23 enhancing or aggravating facts determined by a jury and provide beyond a reasonable doubt.  
24 *Id.* 118 Nev. at 822-23, 59 P.3d 473-74.

25 Defendant pleaded guilty and knowingly waived all rights to trial by jury. See GPA at  
26 4 (“I understand that I am waiving . . . [t]he constitutional right to a speedy and public trial by  
27 an impartial jury[.] . . . At trial the State would bear the burden of proving beyond a reasonable  
28 doubt each element of the offense(s) charged.”). Defendant’s guilty plea and waiver of his

1 right to trial by jury also served to waive his right to have any enhancing or aggravating facts  
2 determined by a jury and proved beyond a reasonable doubt. Therefore, this claim, being  
3 completely without merit, should be denied.

4 **D. Defendant's Claim Regarding the Plea Canvass and His Knowledge Is Belied**  
5 **by the Record.**

6 Defendant's claim regarding the plea canvass, there being no admission as to the facts  
7 required for the enhancement, and his knowledge regarding these issues is belied by the record.  
8 "Bare" and "naked" allegations are not sufficient to warrant post-conviction relief, nor are  
9 those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222,  
10 225 (1984). "A claim is 'belied' when it is contradicted or proven to be false by the record as  
11 it existed at the time the claim was made." Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228,  
12 1230 (2002). NRS 34.735(6) states in relevant part that a Defendant "*must* allege specific facts  
13 supporting the claims in the petition," and that "[f]ailure to allege specific facts rather than just  
14 conclusions may cause your petition to be dismissed." (emphasis added).

15 Defendant's claim is belied by the Guilty Plea Agreement (GPA) entered on September  
16 17, 2014. Through the GPA, Defendant has specifically stated:

17 As to COUNT 1 – I understand that as a consequence of my plea  
18 of guilty the Court must sentence me to life in the Nevada  
19 Department of Corrections with the possibility of parole with  
20 parole eligibility beginning at ten (10) years or definite term of  
21 twenty-five (25) years with parole eligibility beginning at ten (10)  
22 years, plus a consecutive one (1) to twenty (20) years for the use  
23 of a deadly weapon.

21 As to COUNT 2 – I understand that as a consequence of my plea  
22 of guilty the Court must sentence me to imprisonment in the  
23 Nevada Department of Corrections for a minimum term of not less  
24 than two (2) years and a maximum term of not more than twenty  
25 (2) years, plus a consecutive one (1) to twenty (2) years for the use  
26 of a deadly weapon. The minimum term of imprisonment may not  
27 exceed forty percent (40%) of the maximum term of  
28 imprisonment.

26 GPA at 2. Therefore, Defendant's claim about being unaware of the consecutive sentence and  
27 being improperly canvassed is belied by the record.

28 //

1 Further, though Defendant has failed to order the transcript from the September 17,  
2 2014, guilty plea, and provide this Court with a reviewable record, presumably, as with every  
3 non-*Alford* guilty plea, he admitted to the information contained in the information. In that  
4 Amended Information, COUNT 1 alleged that the act used to murder the victim was “actually  
5 shooting at and into the body of said” victim “with a deadly weapon, to-wit: a firearm.”  
6 Amended Information at 2. COUNT 2 alleged that Defendant attempted to kill another victim  
7 “by shooting at and into the body of” said victim “with a deadly weapon, to-wit: a firearm.”  
8 Id. Presuming that Defendant admitted to these allegations (which can reasonably be  
9 presumed based on the fact that the District Court accepted his plea), there was a sufficient  
10 factual finding to determine that the enhancement sentence was appropriate.

11 For these reasons, the sentence was appropriate and legal. The District Court did not  
12 err in rendering such a sentence. Therefore, this claim should be denied.

#### 13 **IV. DEFENDANT’S COUNSEL WAS NOT INEFFETIVE.**

14 Defendant also raises two claims of ineffective assistance of counsel. First, he claims  
15 that counsel was for ineffective for failing to object to the District Court imposing the  
16 consecutive term of imprisonment for use of a deadly weapon. Second, he claims that counsel  
17 was ineffective for failing to inform Defendant that he only had one year to file a post-  
18 conviction petition. As for his first claim, Defendant cannot demonstrate either deficient  
19 performance or prejudice for the reasons provided *supra* demonstrating that he had no right to  
20 a jury making a factual determination. His second claim also fails as counsel has no obligation  
21 to provide such information.

22 Ineffective assistance of counsel claims are analyzed under a two-prong test set forth in  
23 Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984), wherein the  
24 petitioner must show: (1) that counsel’s performance was deficient, and (2) that the deficient  
25 performance prejudiced the defense.

26 “Surmounting *Strickland*’s high bar is never an easy task.” Padilla v. Kentucky, 559  
27 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010), because the issue is whether the attorney’s  
28 representation amounted to incompetence under prevailing professional norms, “not whether

1 it deviated from best practices or most common custom.” Harrington v. Richter, 562 U.S. 86,  
2 88, 131 S. Ct. 770, 778 (2011). Further, “[e]ffective counsel does not mean errorless counsel,  
3 but rather counsel whose assistance is “[w]ithin the range of competence demanded of  
4 attorneys in criminal cases.” Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432, 537  
5 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441,  
6 1449 (1970)).

7 A Court begins with a presumption of effectiveness and then must determine whether  
8 the petitioner has demonstrated by a preponderance of the evidence that counsel was  
9 ineffective. Means v. State, 120 Nev. 1001, 1011-12, 103 P.3d 25, 32-33 (2004). The role of  
10 a court in considering alleged ineffective assistance of counsel is “not to pass upon the merits  
11 of the action not taken but to determine whether, under the particular facts and circumstances  
12 of the case, trial counsel failed to render reasonably effective assistance.” Donovan v. State,  
13 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (citing Cooper v. Fitzharris, 551 F.2d 1162, 1166  
14 (9th Cir. 1977)).

15 In considering whether trial counsel was effective, this Court must determine whether  
16 counsel made a “sufficient inquiry into the information that is pertinent to his client’s case,”  
17 and then whether counsel made “a reasonable strategy decision on how to proceed with his  
18 client’s case.” Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996) (citing  
19 Strickland, 466 U.S. at 690-91, 104 S. Ct. at 2066).

20 Counsel cannot be deemed ineffective for failing to make futile objections. Ennis v.  
21 State, 122 Nev. 694, 137 P.3d 1095 (2006). Additionally, strategic and tactical decisions are  
22 “virtually unchallengeable absent extraordinary circumstances.” Doleman, 112 Nev. at 846,  
23 921 P.2d at 280. Trial counsel “has the immediate and ultimate responsibility of deciding if  
24 and when to object, which witnesses, if any, to call, and what defenses to develop.”  
25 Wainwright v. Sykes, 433 U.S. 72, 93, 97 S. Ct. 2497, 2510 (1977); accord Rhyne v. State,  
26 118 Nev. 1, 8, 38 P.3d 163, 167 (2002).

27 In order to meet the “prejudice” prong of the test, the petitioner must show a reasonable  
28 probability that, but for counsel’s errors, the result of the proceedings would have been

1 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999). “A reasonable  
2 probability is a probability sufficient to undermine confidence in the outcome.” Strickland,  
3 466 U.S. at 694, 104 S. Ct. at 2068. Indeed, “it is not enough to show that the errors had some  
4 conceivable effect on the outcome of the proceeding.” Harrington, 562 U.S. at 104, 131 S. Ct.  
5 at 787 (quotation and citation omitted). Instead, the defendant must demonstrate that but for  
6 counsel’s incompetence the results of the proceeding would have been different:

7           In assessing prejudice under Strickland, the question is not  
8 whether a court can be certain counsel’s performance had no effect  
9 on the outcome or whether it is possible a reasonable doubt might  
10 have been established if counsel acted differently. Instead,  
11 Strickland asks whether it is reasonably likely the results would  
12 have been different. This does not require a showing that  
13 counsel’s actions more likely than not altered the outcome, but the  
14 difference between Strickland’s prejudice standard and a more-  
15 probable-than-not standard is slight and matters only in the rarest  
16 case. The likelihood of a different result must be substantial, not  
17 just conceivable.

18 Id. at 111-12, 131 S. Ct. at 791-92 (internal quotation marks and citations omitted).

19           A.     Counsel Was Not Ineffective For Failing to Object to the Consecutive  
20                 Sentence.

21           As the State noted *supra*, Defendant had no right to have a factual determination on the  
22 deadly weapon enhancement be made by a jury. The District Court’s finding and the  
23 subsequent imposition of the consecutive sentence was legal and valid. Thus, any objection  
24 made by counsel regarding the imposition of that sentence would have been futile. Because  
25 counsel cannot be deemed ineffective for failing to make futile objections, his performance  
26 was not deficient. See Ennis, 122 Nev. 694, 137 P.3d 1095.

27           Likewise, because such an objection would have been futile, Defendant cannot  
28 demonstrate prejudice. The District Court was correct in imposing the sentence and therefore  
any objection would have been overruled. Defendant cannot show, then, that the result of the  
proceedings, or his sentence, would have been any different had counsel objected.

For each of these reasons, Defendant has failed to demonstrate that counsel was  
ineffective. Therefore, this claim should be denied.

//

1           **B. Counsel Was Not Ineffective For Failing to Inform Defendant About the**  
2           **Procedural Bars to Post-Conviction Petitions.**

3           Defendant's final claim is that counsel was ineffective for failing to inform him of the  
4 one-year time bar that applies to post-conviction petitions for writs of habeas corpus. To the  
5 extent that Defendant's final claim is brought as a freestanding claim and not an attempt to  
6 demonstrate good cause to the procedural bars, he has failed to demonstrate that counsel had  
7 any obligation to provide him with such information or that he was prejudiced by any deficient  
8 performance.

9           First, the State notes that Defendant cites no relevant authority. He cites to Hill v.  
10 Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985), wherein the United States Supreme Court  
11 addressed a defendant's allegation that his guilty plea was entered involuntarily because his  
12 counsel was ineffective for incorrectly advising him about parole eligibility, and to Padilla v.  
13 Kentucky, 559 U.S. 356, 130 S.Ct. 1473 (2010), wherein the Court addressed a defendant's  
14 allegation that his guilty plea was entered involuntarily because his counsel was ineffective  
15 for failing to correctly advise him of clear immigration consequences that would result from  
16 his conviction. Petition Memorandum at 5. Defendant's claim involves post-guilty plea  
17 advice that he claims he should have been given. There is no imaginable circumstance where  
18 Defendant would not have pleaded guilty if, after having pleaded guilty, counsel had informed  
19 him that he only had one-year from the date of the Judgment of Conviction to file a post-  
20 conviction petition. Thus, the cited authority is irrelevant and Defendant's subsequent  
21 argument is not cogent. By providing no relevant authority and no cogent argument, he has  
22 failed to meet his burden in demonstrating ineffective assistance. See Browning v. State, 120  
23 Nev. 347, 365, 91 P.3d 39, 52 (2004); Lader v. Warden, 121 Nev. 682, 120 P.3d 1164 (2005);  
24 Colwell, 118 Nev. at 813, 59 P.3d at 467; Evans v. State, 117 Nev. 609, 646, 28 P.3d 498, 523  
25 (2001). Therefore, this claim should be denied.

26           Second, even if Defendant has presented relevant authority and cogent argument, he  
27 cannot demonstrate deficient performance or prejudice. Generally, counsel is not  
28 constitutionally required to advise a defendant who has pleaded guilty of his right to appeal.

1 Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999). Further, there is no entitlement  
2 to counsel on post-conviction. Under the U.S. Constitution, the Sixth Amendment provides  
3 no right to counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752,  
4 111 S. Ct. 2546, 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258  
5 (1996), the Nevada Supreme Court similarly observed that “[t]he Nevada Constitution...does  
6 not guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada  
7 Constitution’s right to counsel provision as being coextensive with the Sixth Amendment to  
8 the United States Constitution.” McKague specifically held that with the exception of NRS  
9 34.820(1)(a) (entitling appointed counsel when petitioner is under a sentence of death), one  
10 does not have “any constitutional or statutory right to counsel at all” in post-conviction  
11 proceedings. Id. at 164, 912 P.2d at 258.

12         It can be inferred from these two facts – that there is no right to post-conviction counsel  
13 and that, even regarding proceedings where a defendant is entitled to counsel, there is no  
14 obligation for trial counsel to inform the defendant about those proceedings – that there was  
15 no obligation for counsel to inform Defendant of the one-year time bar that applies to post-  
16 conviction petitions. Thus, counsel cannot be found to have been deficient in his performance.  
17 Finally, *in arguendo*, even if counsel was deficient in his performance, Defendant cannot  
18 demonstrate prejudice on this claim. By and through the GPA, Defendant stated that he  
19 understood he was waiving his right to appeal and also that he understood that he remained  
20 “free to challenge [his] conviction through other post-conviction remedies including a habeas  
21 corpus petition pursuant to NRS Chapter 34.” GPA at 5. Because Defendant was already  
22 aware of his right to challenge his conviction and the GPA directed him to the relevant  
23 statutory chapter that enumerates the procedural rules governing the process by which he could  
24 challenge his conviction, he could not have been prejudiced by counsel’s failure to inform him  
25 of the time bar as he already had been informed of his rights and where he could find all  
26 relevant information.

27         For these reasons, this claim should be denied.

28 //

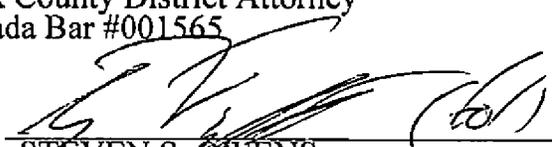
1 CONCLUSION

2 For the foregoing reasons, the State respectfully requests that this Court deny  
3 Defendant's Petition as procedurally barred. If, however, this Court considers the Petition on  
4 the merits, the State requests each claim, and the Petition as a whole, be denied.

5 DATED this 20th day of January, 2017.

6 Respectfully submitted,

7 STEVEN B. WOLFSON  
8 Clark County District Attorney  
9 Nevada Bar #001565

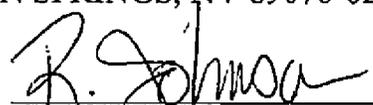
10 BY 

11 STEVEN S. OWENS  
12 Chief Deputy District Attorney  
13 Nevada Bar #004352

14 CERTIFICATE OF MAILING

15 I hereby certify that service of the above and foregoing was made this 20th day of  
16 January, 2017, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

17 CEDRIC LEROB JACKSON #1130512  
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19 P.O. BOX 208  
20 INDIAN SPRINGS, NV 89070-0208

21 BY 

22 R. JOHNSON  
23 Secretary for the District Attorney's Office  
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28 AR/SSO/rj/M-1

1 CEDRIC L. JACKSON  
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2 Post Office Box 208, S.D.C.C.  
3 Indian Springs, Nevada 89018

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Alan J. Quinn  
CLERK OF THE COURT

IN AND FOR THE COUNTY OF CLARK

9 THE STATE OF NEVADA  
10 Plaintiff,

11 vs.

12 CEDRICK L. JACKSON  
13 Defendant.

Case No. C265339

Dept. No. X

Docket \_\_\_\_\_

16 **NOTICE OF APPEAL**

17 NOTICE IS HEREBY GIVEN, That the Petitioner/Defendant,  
18 CEDRICK L. JACKSON, in and through his proper person, hereby  
19 appeals to the Supreme Court of Nevada from the ORDER denying and/or  
20 dismissing the

21 PETITION FOR WRIT OF HABEAS CORPUS w/ MEMORANDUM

22 \_\_\_\_\_  
23 ruled on the 25<sup>TH</sup> day of JANUARY, 2017.

24  
25 Dated this 7<sup>TH</sup> day of FEBRUARY, 2017.

26 Respectfully Submitted.

27 x Cedric Jackson  
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RECEIVED

FEB. 13, 2017

CLERK OF THE COURT

**CERTIFICATE OF SERVICE BY MAILING**

I, CEDRICK L. JACKSON, hereby certify, pursuant to NRCP 5(b), that on this 7<sup>TH</sup> day of FEBRUARY, 2017, I mailed a true and correct copy of the foregoing, "

NOTICE OF APPEAL"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

STEVEN GRIFFINSON  
CLERK OF THE COURT  
200 LEWIS AVE, 3RD FLOOR  
LAS VEGAS, NV  
89155-1160

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\_\_\_\_\_  
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\_\_\_\_\_

CC:FILE

DATED: this 7<sup>TH</sup> day of FEBRUARY, 2017.

x Cedric Jackson 1130512

In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

NOTICE OF APPEAL

(Title of Document)

filed in District Court Case number C269339

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.

x CS  
Signature

2-7-17  
Date

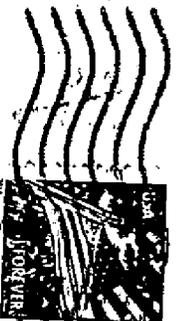
x Cedric Jackson  
Print Name

PETITIONER/APPELLANT  
Title

Cedric Jackson #1130812  
P.O. Box 208/Syc  
Indian Springs, NV 89476

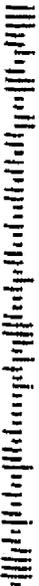
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STEVEN GRIERSON  
CLERK OF THE COURT  
200 LEWIS AVE., 204 FLOOR  
LAS VEGAS, NV 89155-1166

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Southern Nevada  
Correctional Center

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Outgoing Mail

Cedrick L. Jackson # 1130512  
Petitioner/In Propria Persona  
Post Office Box 208, SDCC  
Indian Springs, Nevada 89070-0208

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Steven D. Gulerson  
CLERK OF THE COURT

IN THE 8<sup>TH</sup> JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA  
Plaintiff,  
vs.  
CEDRICK L. JACKSON  
Defendant.

CASE No. C265339  
DEPT. No. X

DESIGNATION OF RECORD ON APPEAL

TO: STEVEN GULERSON  
CLERK OF THE COURT  
200 LEWIS AVE. 3RD FLOOR  
LAS VEGAS, NV  
89155-1160

The above-named Plaintiff hereby designates the entire record of the above-entitled case, to include all the papers, documents, pleadings, and transcripts thereof, as and for the Record on Appeal.

DATED this 7<sup>TH</sup> day of February, 2017.

RESPECTFULLY SUBMITTED BY:  
x Cedrick Jackson  
# 1130512  
Plaintiff/In Propria Persona

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CLERK OF THE COURT

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*Heather A. Hemin*  
CLERK OF THE COURT

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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 STATE OF NEVADA,

10 Plaintiff(s),

11 vs.

12  
13 CEDRIC L. JACKSON  
14 aka CEDRIC JACKSON,

15 Defendant(s),

Case No: 10C265339-1

Dept No: X

16  
17 **CASE APPEAL STATEMENT**

- 18  
19 1. Appellant(s): Cedric Jackson  
20 2. Judge: Jessie Walsh  
21 3. Appellant(s): Cedric Jackson

22 Counsel:

23 Cedric Jackson #1130512  
24 P.O. Box 208  
Indian Springs, NV 89070

- 25 4. Respondent: The State of Nevada

26 Counsel:

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

1 Las Vegas, NV 89101  
2 (702) 671-2700

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

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

7 6. Appellant Represented by Appointed Counsel In District Court: Yes

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

9 8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

10 9. Date Commenced in District Court: June 14, 2010

11 10. Brief Description of the Nature of the Action: Criminal

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

13 11. Previous Appeal: Yes

14 Supreme Court Docket Number(s): 71752

15 12. Child Custody or Visitation: N/A

16 Dated This 14 day of February 2017.

17 Steven D. Grierson, Clerk of the Court

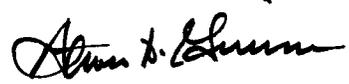
18  
19 /s/ Amanda Hampton

20 Amanda Hampton, Deputy Clerk  
21 200 Lewis Ave  
22 PO Box 551601  
23 Las Vegas, Nevada 89155-1601  
24 (702) 671-0512

25 cc: Cedric Jackson  
26  
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1 **FCL**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 STEVEN S. OWENS  
6 Chief Deputy District Attorney  
7 Nevada Bar #004352  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

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CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 CEDRIC LEROB JACKSON,  
13 #1581340  
14 Defendant.

CASE NO: 10C265339-1  
DEPT NO: X

FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND ORDER

DATE OF HEARING: JANUARY 25, 2017  
TIME OF HEARING: 8:30 A.M.

18 THIS CAUSE having come on for hearing before the Honorable JOSEPH T.  
19 BONAVENTURE, District Judge, on the 25th day of January, 2017, the Petitioner not being  
20 present, proceeding in forma pauperis, the Respondent being represented by STEVEN B.  
21 WOLFSON, Clark County District Attorney, by and through HETTY WONG, Chief Deputy  
22 District Attorney, and the Court having considered the matter, including briefs, transcripts,  
23 and documents on file herein, now therefore, the Court makes the following findings of fact  
24 and conclusions of law:

**FINDINGS OF FACT, CONCLUSIONS OF LAW**

26 On June 16, 2010, the State of Nevada charged CEDRIC LEROB JACKSON  
27 (hereinafter "Defendant") by way of Information as follows: COUNT 1 – Murder with Use  
28 of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165), COUNT 2 – Attempt Murder

1 with Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.330, 193.165), COUNT  
2 3 – Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm (Felony –  
3 NRS 200.481.2c), COUNT 4 – Attempt Murder with Use of a Deadly Weapon (Felony – NRS  
4 200.010, 200.030, 193.330, 193.165), COUNT 5 – Assault with a Deadly Weapon (Felony –  
5 NRS 200.471), COUNT 6 – Attempt Murder with Use of a Deadly Weapon (Felony – NRS  
6 200.010, 200.030, 193.330, 193.165), COUNT 7 – Assault with a Deadly Weapon (Felony –  
7 NRS 200.471), COUNT 8 – Conspiracy to Commit Murder (Felony – NRS 199.480, 200.100,  
8 200.030), COUNT 9 – Discharging Firearm at or into Structure, Vehicle, Aircraft, or  
9 Watercraft (Felony – NRS 202.285), and COUNT 10 – Discharging Firearm Out of Motor  
10 Vehicle (Felony – NRS 202.287).

11 On September 17, 2014, pursuant to negotiations, the State filed an Amended  
12 Information charging Defendant as follows: COUNT 1 – Second Degree Murder with Use of  
13 a Deadly Weapon (Category A Felony – NRS 200.010, 200.030, 193.165 – NOC 50011) and  
14 COUNT 2 – Attempt Murder with Use of a Deadly Weapon (Category B Felony – NRS  
15 200.010, 200.030, 193.330, 193.165 – NOC 50031). That same day, Defendant pleaded guilty  
16 to both counts in the Amended Information.

17 Defendant appeared before the District Court on November 14, 2014, and was  
18 sentenced on COUNT 1 to a maximum of 25 years with a minimum parole eligibility of 10  
19 years, plus a consecutive term of 12 years with a minimum parole eligibility of four years for  
20 the Use of a Deadly Weapon, and on COUNT 2 to a maximum of 60 months with a minimum  
21 parole eligibility of 24 months, plus a consecutive term of 30 months with a minimum parole  
22 eligibility of 12 months for the Use of a Deadly Weapon, COUNT 2 to run concurrent with  
23 COUNT 1. Defendant received 1,748 days credit for time served. The Judgment of  
24 Conviction was entered on November 21, 2014.

25 On June 22, 2016, Defendant filed a Motion to Modify and/or Correct by Setting Aside  
26 Illegal Sentence Based Upon Lack of Subject Matter Jurisdiction (“Motion to Modify”). The  
27 State filed its response to that motion on July 12, 2016. The District Court denied the motion  
28

1 July 13, 2016. On November 14, 2016, Defendant filed an untimely Notice of Appeal from  
2 that denial. The matter is still pending before the Nevada Supreme Court.

3 On January 1, 2017, Defendant filed the instant Petition for Writ of Habeas Corpus  
4 (“Petition”). The State responded on January 20, 2017. The Court now orders the Petition  
5 denied.

6 **I. DEFENDANT’S PETITION IS PROCEDURALLY BARRED AND MUST BE**  
7 **DENIED.**

8 Defendant’s Petition for Writ of Habeas Corpus is time barred with no good cause  
9 shown for delay. Pursuant to NRS 34.726(1):

10 Unless there is good cause shown for delay, a petition that  
11 challenges the validity of a judgment or sentence must be filed  
12 within 1 year of the entry of the judgment of conviction or, if an  
13 appeal has been taken from the judgment, within 1 year after the  
14 Supreme Court issues its remittitur. For the purposes of this  
15 subsection, good cause for delay exists if the petitioner  
demonstrates to the satisfaction of the court:

- 16 (a) That the delay is not the fault of the petitioner; and  
17 (b) That dismissal of the petition as untimely will  
18 unduly prejudice the petitioner.

19 A showing of good cause and prejudice may overcome procedural bars. “To establish  
20 good cause, appellants *must* show that an impediment external to the defense prevented their  
21 compliance with the applicable procedural rule. A qualifying impediment might be shown  
22 where the factual or legal basis for a claim was not reasonably available at the time of default.”  
23 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added).

24 In the instant case, the Judgment of Conviction was filed on November 21, 2014, and  
25 Defendant did not file a direct appeal. Thus, the one-year time bar began to run from this date.  
26 The instant Petition was not filed until January 6, 2017, more than two years after the Judgment  
27 of Conviction was entered and in excess of the one-year time frame. Absent a showing of  
28 good cause for this delay and undue prejudice, Defendant’s claim must be dismissed because  
of its tardy filing.

Additionally, Defendant has not even alleged good cause, and certainly has not  
demonstrated that an external impediment prevented his compliance with NRS 34.726(1).

1 Accordingly, because his Petition was not filed within the one-year timeframe and he has not  
2 shown good cause, the Petition is denied.

3 **II. DEFENDANT'S PETITION DOES NOT COMPLY WITH NRS 34.735 AND**  
4 **MUST BE DENIED.**

5 NRS 34.735 requires that a defendant filing a post-conviction Petition for Writ of  
6 Habeas Corpus answer 23 questions set forth within the statute. In the present case, Defendant  
7 has not met the relevant statutory requirement to file his petition in the proper form because  
8 he has failed to answer all 23 questions. Therefore, his Petition is denied for failing to meet  
9 the standard set forth by NRS 34.735.

10 **III. THE DISTRICT COURT DID NOT ERR IN IMPOSING A SENTENCE FOR**  
11 **USE OF A DEADLY WEAPON.**

12  
13 Defendant's first claim is that the District Court erred by imposing a consecutive  
14 sentence on each of the two counts for use of a deadly weapon. Specifically, he argues that  
15 such an enhancement sentence should not have been imposed without factual findings being  
16 made by a jury or Defendant admitting to using a deadly weapon. Petition Memorandum at  
17 1-3. He claims that neither happened and thus the sentence is illegal. *Id.* However, this issue  
18 has already been adjudicated by this Court and *res judicata* prevents further review.  
19 Additionally, this case involved a guilty plea and the right to trial by jury was waived, thus  
20 Defendant's claim has no merit.

21 Moreover, in conjunction with claiming that there was no factual finding at the time of  
22 the guilty plea (that he did not admit) Defendant claims that he was not properly canvassed as  
23 to the enhancement portion of the sentence. Petition Memorandum at 2. This claim, though,  
24 is belied by the record.

25 **A. This Claim Is Waived.**

26 In challenging the imposition of the consecutive sentence, Defendant has brought forth  
27 a claim that should have been raised on direct appeal. As the claim was not raised in such a  
28 proceeding, it is waived on post-conviction review.

1 NRS 34.810(1) reads:

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

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

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

9 (2) Raised in a direct appeal or a prior petition  
10 for a writ of habeas corpus or post-conviction relief.

11 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and  
12 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-  
13 conviction proceedings.... [A]ll other claims that are appropriate for a direct appeal must be  
14 pursued on direct appeal, or they will be *considered waived in subsequent proceedings.*"  
15 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)  
16 (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)).

17 Since this claim does not challenge the validity of Defendant's guilty plea, nor does it  
18 allege ineffective assistance of counsel, and Defendant did not raise it on a direct appeal from  
19 the Judgment of Conviction, it must be deemed waived and is denied.

20 **B. This Court Has Already Adjudicated This Matter.**

21 Even if this Court were to entertain this claim, it falls under the doctrine of *res judicata*.  
22 For an issue to fall under *res judicata*, it must have already been decided in a prior proceeding.  
23 The following three conditions must be met: (1) the issue decided in the prior litigation must  
24 be identical to the issue presented in the current action, (2) the initial ruling must have been  
25 on the merits and have become final, and (3) the party against whom the judgment is asserted  
26 must have been a party or in privity with a party to the prior litigation. Pulley v. Preferred  
27 Risk Mutual Insurance, 111 Nev. 856, 858, 897 P.2d 1101, 1102-03 (1995).

28 When Defendant filed his Motion to Modify, he made the exact same claim that he  
brings here. This Court denied that motion. See Order Denying Defendant's Pro Per Motion  
to Appoint Counsel and Order Denying Defendant's Pro Per Motion to Modify and/or Correct  
by Setting Aside Illegal Sentence Based Upon Lack of Subject Matter Jurisdiction at 2.

1 Because Defendant reiterates the same arguments here, using the exact same language from  
2 the Motion to Modify – see Petition Memorandum at 2-3 – the District Court previously ruled  
3 on the issue on the merits, and Defendant was a party in that case, the doctrine of *res judicata*  
4 applies here. Accordingly, this claim is denied.

5 **C. Defendant Had No Right to a Determination on the Facts by a Jury.**

6 Defendant’s claim regarding a factual determination that should have been made by a  
7 jury is completely without merit. In Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348  
8 (2000), the United States Supreme Court announced that “[o]ther than the fact of a prior  
9 conviction, any fact that increases the penalty for a crime beyond the prescribed statutory  
10 maximum must be submitted to a jury, and proved beyond a reasonable doubt.” Id. 530 U.S.  
11 at 490, 120 S.Ct. 2362-63. However, the Supreme Court has also held that “the valid entry of  
12 a guilty plea in a state criminal court involves the waiver of several federal constitutional  
13 rights. Among these ‘is the right to trial by jury.’” Colwell v. State, 118 Nev. 807, 823, 59  
14 P.3d 463, 474 (2002) (citing Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969)). The  
15 Nevada Supreme Court has ruled held that when a defendant pleads guilty, he waives the right  
16 guaranteed by Apprendi to have enhancing or aggravating facts determined by a jury and  
17 provide beyond a reasonable doubt. Id. 118 Nev. at 822-23, 59 P.3d 473-74.

18 Defendant pleaded guilty and knowingly waived all rights to trial by jury. Defendant’s  
19 guilty plea and waiver of his right to trial by jury also served to waive his right to have any  
20 enhancing or aggravating facts determined by a jury and proved beyond a reasonable doubt.  
21 Therefore, this claim, being completely without merit, is denied.

22 **D. Defendant’s Claim Regarding the Plea Canvass and His Knowledge Is**  
23 **Belied by the Record.**

24 Defendant’s claim regarding the plea canvass, there being no admission as to the facts  
25 required for the enhancement, and his knowledge regarding these issues is belied by the record.  
26 “Bare” and “naked” allegations are not sufficient to warrant post-conviction relief, nor are  
27 those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222,  
28 225 (1984). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as

1 it existed at the time the claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228,  
2 1230 (2002). NRS 34.735(6) states in relevant part that a Defendant “*must* allege specific facts  
3 supporting the claims in the petition,” and that “[f]ailure to allege specific facts rather than just  
4 conclusions may cause your petition to be dismissed.” (emphasis added).

5 Defendant’s claim is belied by the Guilty Plea Agreement (GPA) entered on September  
6 17, 2014, wherein he acknowledged the offenses with which he was charged and the possible  
7 sentences they carried. Therefore, Defendant’s claim about being unaware of the consecutive  
8 sentence and being improperly canvassed is belied by the record.

9 For these reasons, the sentence was appropriate and legal. The District Court did not  
10 err in rendering such a sentence. Therefore, this claim is denied.

#### 11 **IV. DEFENDANT’S COUNSEL WAS NOT INEFFETIVE.**

12 Defendant also raises two claims of ineffective assistance of counsel. First, he claims  
13 that counsel was for ineffective for failing to object to the District Court imposing the  
14 consecutive term of imprisonment for use of a deadly weapon. Second, he claims that counsel  
15 was ineffective for failing to inform Defendant that he only had one year to file a post-  
16 conviction petition. As for his first claim, Defendant cannot demonstrate either deficient  
17 performance or prejudice for the reasons provided *supra* demonstrating that he had no right to  
18 a jury making a factual determination. His second claim also fails as counsel has no obligation  
19 to provide such information.

20 Ineffective assistance of counsel claims are analyzed under a two-prong test set forth in  
21 Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984), wherein the  
22 petitioner must show: (1) that counsel’s performance was deficient, and (2) that the deficient  
23 performance prejudiced the defense.

##### 24 **A. Counsel Was Not Ineffective For Failing to Object to the Consecutive** 25 **Sentence.**

26 As this Court stated *supra*, Defendant had no right to have a factual determination on  
27 the deadly weapon enhancement be made by a jury. The District Court’s finding and the  
28 subsequent imposition of the consecutive sentence was legal and valid. Thus, any objection

1 made by counsel regarding the imposition of that sentence would have been futile. Because  
2 counsel cannot be deemed ineffective for failing to make futile objections, his performance  
3 was not deficient. Likewise, because such an objection would have been futile, Defendant  
4 cannot demonstrate prejudice.

5 For each of these reasons, Defendant has failed to demonstrate that counsel was  
6 ineffective. Therefore, this claim is denied.

7 **B. Counsel Was Not Ineffective For Failing to Inform Defendant About the**  
8 **Procedural Bars to Post-Conviction Petitions.**

9 Defendant's final claim is that counsel was ineffective for failing to inform him of the  
10 one-year time bar that applies to post-conviction petitions for writs of habeas corpus. He has  
11 failed to demonstrate that counsel had any obligation to provide him with such information or  
12 that he was prejudiced by any deficient performance.

13 Defendant has cited no relevant authority. Thus, his subsequent argument is not cogent.  
14 By providing no relevant authority and no cogent argument, he has failed to meet his burden  
15 in demonstrating ineffective assistance. See Browning v. State, 120 Nev. 347, 365, 91 P.3d  
16 39, 52 (2004); Lader v. Warden, 121 Nev. 682, 120 P.3d 1164 (2005); Colwell, 118 Nev. at  
17 813, 59 P.3d at 467; Evans v. State, 117 Nev. 609, 646, 28 P.3d 498, 523 (2001). Therefore,  
18 this claim is denied.

19 Second, even if Defendant has presented relevant authority and cogent argument, he  
20 cannot demonstrate deficient performance or prejudice. Generally, counsel is not  
21 constitutionally required to advise a defendant who has pleaded guilty of his right to appeal.  
22 Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999). Further, there is no entitlement  
23 to counsel on post-conviction. It can be inferred from these two facts – that there is no right  
24 to post-conviction counsel and that, even regarding proceedings where a defendant is entitled  
25 to counsel, there is no obligation for trial counsel to inform the defendant about those  
26 proceedings – that there was no obligation for counsel to inform Defendant of the one-year  
27 time bar that applies to post-conviction petitions. Thus, counsel cannot be found to have been  
28 deficient in his performance.

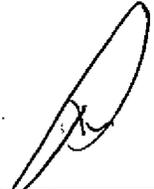
1 Finally, *in arguendo*, even if counsel was deficient in his performance, Defendant  
2 cannot demonstrate prejudice on this claim. Through the GPA, Defendant stated that he  
3 understood he was waiving his right to appeal and also that he understood that he remained  
4 "free to challenge [his] conviction through other post-conviction remedies including a habeas  
5 corpus petition pursuant to NRS Chapter 34." Because Defendant was already aware of his  
6 right to challenge his conviction and the GPA directed him to the relevant statutory chapter  
7 that enumerates the procedural rules governing the process by which he could challenge his  
8 conviction, he could not have been prejudiced by counsel's failure to inform him of the time  
9 bar as he already had been informed of his rights and where he could find all relevant  
10 information.

11 For these reasons, this claim is denied.

12 **ORDER**

13 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief  
14 shall be, and it is, hereby denied.

15 DATED this 21<sup>st</sup> day of February, 2017.

16  
17   
\_\_\_\_\_  
DISTRICT JUDGE 

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

20 BY   
\_\_\_\_\_  
21

STEVEN S. OWENS  
22 Deputy District Attorney  
Nevada Bar #004352  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I certify that on the 15th day of February, 2017, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

CEDRIC LEROB JACKSON #1130512  
SOUTHERN DESERT CORRECTIONAL CENTER  
P.O. BOX 208  
INDIAN SPRINGS, NV 89070-0208

BY



R. JOHNSON  
Secretary for the District Attorney's Office

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*Amanda Hampton*  
CLERK OF THE COURT

1 NEO

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

4 CEDRIC JACKSON,

5  
6 Petitioner,

Case No: 10C265339-1

Dept No: X

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

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

10  
11 **PLEASE TAKE NOTICE** that on March 7, 2017, 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  
15 mailed to you. This notice was mailed on March 15, 2017.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

*/s/ Amanda Hampton*

\_\_\_\_\_  
Amanda Hampton, Deputy Clerk

17  
18  
19 CERTIFICATE OF MAILING

20 I hereby certify that on this 15 day of March 2017, I placed a copy of this Notice of Entry in:

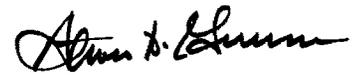
- 21  The bin(s) located in the Regional Justice Center of:  
22 Clark County District Attorney's Office  
Attorney General's Office – Appellate Division-
- 23  The United States mail addressed as follows:  
24 Cedric Jackson # 1130512  
25 P.O. Box 208  
Indian Springs, NV 89070

26 */s/ Amanda Hampton*

\_\_\_\_\_  
27 Amanda Hampton, Deputy Clerk

1 **FCL**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 STEVEN S. OWENS  
6 Chief Deputy District Attorney  
7 Nevada Bar #004352  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

Electronically Filed  
03/07/2017 03:57:53 PM



CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10  
11 Plaintiff,

11 -vs-

12 CEDRIC LEROB JACKSON,  
13 #1581340

14 Defendant.

CASE NO: 10C265339-1

DEPT NO: X

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

17 DATE OF HEARING: JANUARY 25, 2017  
18 TIME OF HEARING: 8:30 A.M.

19 THIS CAUSE having come on for hearing before the Honorable JOSEPH T.  
20 BONAVENTURE, District Judge, on the 25th day of January, 2017, the Petitioner not being  
21 present, proceeding in forma pauperis, the Respondent being represented by STEVEN B.  
22 WOLFSON, Clark County District Attorney, by and through HETTY WONG, Chief Deputy  
23 District Attorney, and the Court having considered the matter, including briefs, transcripts,  
24 and documents on file herein, now therefore, the Court makes the following findings of fact  
25 and conclusions of law:

26 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

27 On June 16, 2010, the State of Nevada charged CEDRIC LEROB JACKSON  
28 (hereinafter "Defendant") by way of Information as follows: COUNT 1 – Murder with Use  
of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165), COUNT 2 – Attempt Murder

1 with Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.330, 193.165), COUNT  
2 3 – Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm (Felony –  
3 NRS 200.481.2c), COUNT 4 – Attempt Murder with Use of a Deadly Weapon (Felony – NRS  
4 200.010, 200.030, 193.330, 193.165), COUNT 5 – Assault with a Deadly Weapon (Felony –  
5 NRS 200.471), COUNT 6 – Attempt Murder with Use of a Deadly Weapon (Felony – NRS  
6 200.010, 200.030, 193.330, 193.165), COUNT 7 – Assault with a Deadly Weapon (Felony –  
7 NRS 200.471), COUNT 8 – Conspiracy to Commit Murder (Felony – NRS 199.480, 200.100,  
8 200.030), COUNT 9 – Discharging Firearm at or into Structure, Vehicle, Aircraft, or  
9 Watercraft (Felony – NRS 202.285), and COUNT 10 – Discharging Firearm Out of Motor  
10 Vehicle (Felony – NRS 202.287).

11 On September 17, 2014, pursuant to negotiations, the State filed an Amended  
12 Information charging Defendant as follows: COUNT 1 – Second Degree Murder with Use of  
13 a Deadly Weapon (Category A Felony – NRS 200.010, 200.030, 193.165 – NOC 50011) and  
14 COUNT 2 – Attempt Murder with Use of a Deadly Weapon (Category B Felony – NRS  
15 200.010, 200.030, 193.330, 193.165 – NOC 50031). That same day, Defendant pleaded guilty  
16 to both counts in the Amended Information.

17 Defendant appeared before the District Court on November 14, 2014, and was  
18 sentenced on COUNT 1 to a maximum of 25 years with a minimum parole eligibility of 10  
19 years, plus a consecutive term of 12 years with a minimum parole eligibility of four years for  
20 the Use of a Deadly Weapon, and on COUNT 2 to a maximum of 60 months with a minimum  
21 parole eligibility of 24 months, plus a consecutive term of 30 months with a minimum parole  
22 eligibility of 12 months for the Use of a Deadly Weapon, COUNT 2 to run concurrent with  
23 COUNT 1. Defendant received 1,748 days credit for time served. The Judgment of  
24 Conviction was entered on November 21, 2014.

25 On June 22, 2016, Defendant filed a Motion to Modify and/or Correct by Setting Aside  
26 Illegal Sentence Based Upon Lack of Subject Matter Jurisdiction (“Motion to Modify”). The  
27 State filed its response to that motion on July 12, 2016. The District Court denied the motion  
28

1 July 13, 2016. On November 14, 2016, Defendant filed an untimely Notice of Appeal from  
2 that denial. The matter is still pending before the Nevada Supreme Court.

3 On January 1, 2017, Defendant filed the instant Petition for Writ of Habeas Corpus  
4 (“Petition”). The State responded on January 20, 2017. The Court now orders the Petition  
5 denied.

6 **I. DEFENDANT’S PETITION IS PROCEDURALLY BARRED AND MUST BE**  
7 **DENIED.**

8 Defendant’s Petition for Writ of Habeas Corpus is time barred with no good cause  
9 shown for delay. Pursuant to NRS 34.726(1):

10 Unless there is good cause shown for delay, a petition that  
11 challenges the validity of a judgment or sentence must be filed  
12 within 1 year of the entry of the judgment of conviction or, if an  
13 appeal has been taken from the judgment, within 1 year after the  
14 Supreme Court issues its remittitur. For the purposes of this  
15 subsection, good cause for delay exists if the petitioner  
16 demonstrates to the satisfaction of the court:

- 17 (a) That the delay is not the fault of the petitioner; and  
18 (b) That dismissal of the petition as untimely will  
19 unduly prejudice the petitioner.

20 A showing of good cause and prejudice may overcome procedural bars. “To establish  
21 good cause, appellants *must* show that an impediment external to the defense prevented their  
22 compliance with the applicable procedural rule. A qualifying impediment might be shown  
23 where the factual or legal basis for a claim was not reasonably available at the time of default.”  
24 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added).

25 In the instant case, the Judgment of Conviction was filed on November 21, 2014, and  
26 Defendant did not file a direct appeal. Thus, the one-year time bar began to run from this date.  
27 The instant Petition was not filed until January 6, 2017, more than two years after the Judgment  
28 of Conviction was entered and in excess of the one-year time frame. Absent a showing of  
good cause for this delay and undue prejudice, Defendant’s claim must be dismissed because  
of its tardy filing.

Additionally, Defendant has not even alleged good cause, and certainly has not  
demonstrated that an external impediment prevented his compliance with NRS 34.726(1).

1 Accordingly, because his Petition was not filed within the one-year timeframe and he has not  
2 shown good cause, the Petition is denied.

3 **II. DEFENDANT'S PETITION DOES NOT COMPLY WITH NRS 34.735 AND**  
4 **MUST BE DENIED.**

5 NRS 34.735 requires that a defendant filing a post-conviction Petition for Writ of  
6 Habeas Corpus answer 23 questions set forth within the statute. In the present case, Defendant  
7 has not met the relevant statutory requirement to file his petition in the proper form because  
8 he has failed to answer all 23 questions. Therefore, his Petition is denied for failing to meet  
9 the standard set forth by NRS 34.735.

10 **III. THE DISTRICT COURT DID NOT ERR IN IMPOSING A SENTENCE FOR**  
11 **USE OF A DEADLY WEAPON.**

12  
13 Defendant's first claim is that the District Court erred by imposing a consecutive  
14 sentence on each of the two counts for use of a deadly weapon. Specifically, he argues that  
15 such an enhancement sentence should not have been imposed without factual findings being  
16 made by a jury or Defendant admitting to using a deadly weapon. Petition Memorandum at  
17 1-3. He claims that neither happened and thus the sentence is illegal. *Id.* However, this issue  
18 has already been adjudicated by this Court and *res judicata* prevents further review.  
19 Additionally, this case involved a guilty plea and the right to trial by jury was waived, thus  
20 Defendant's claim has no merit.

21 Moreover, in conjunction with claiming that there was no factual finding at the time of  
22 the guilty plea (that he did not admit) Defendant claims that he was not properly canvassed as  
23 to the enhancement portion of the sentence. Petition Memorandum at 2. This claim, though,  
24 is belied by the record.

25 **A. This Claim Is Waived.**

26 In challenging the imposition of the consecutive sentence, Defendant has brought forth  
27 a claim that should have been raised on direct appeal. As the claim was not raised in such a  
28 proceeding, it is waived on post-conviction review.

1 NRS 34.810(1) reads:

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

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

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

9 (2) Raised in a direct appeal or a prior petition  
10 for a writ of habeas corpus or post-conviction relief.

11 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and  
12 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-  
13 conviction proceedings.... [A]ll other claims that are appropriate for a direct appeal must be  
14 pursued on direct appeal, or they will be *considered waived in subsequent proceedings.*"  
15 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)  
16 (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)).

17 Since this claim does not challenge the validity of Defendant's guilty plea, nor does it  
18 allege ineffective assistance of counsel, and Defendant did not raise it on a direct appeal from  
19 the Judgment of Conviction, it must be deemed waived and is denied.

20 **B. This Court Has Already Adjudicated This Matter.**

21 Even if this Court were to entertain this claim, it falls under the doctrine of *res judicata*.  
22 For an issue to fall under *res judicata*, it must have already been decided in a prior proceeding.  
23 The following three conditions must be met: (1) the issue decided in the prior litigation must  
24 be identical to the issue presented in the current action, (2) the initial ruling must have been  
25 on the merits and have become final, and (3) the party against whom the judgment is asserted  
26 must have been a party or in privity with a party to the prior litigation. Pulley v. Preferred  
27 Risk Mutual Insurance, 111 Nev. 856, 858, 897 P.2d 1101, 1102-03 (1995).

28 When Defendant filed his Motion to Modify, he made the exact same claim that he  
brings here. This Court denied that motion. See Order Denying Defendant's Pro Per Motion  
to Appoint Counsel and Order Denying Defendant's Pro Per Motion to Modify and/or Correct  
by Setting Aside Illegal Sentence Based Upon Lack of Subject Matter Jurisdiction at 2.

1 Because Defendant reiterates the same arguments here, using the exact same language from  
2 the Motion to Modify – see Petition Memorandum at 2-3 – the District Court previously ruled  
3 on the issue on the merits, and Defendant was a party in that case, the doctrine of *res judicata*  
4 applies here. Accordingly, this claim is denied.

5 **C. Defendant Had No Right to a Determination on the Facts by a Jury.**

6 Defendant’s claim regarding a factual determination that should have been made by a  
7 jury is completely without merit. In Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348  
8 (2000), the United States Supreme Court announced that “[o]ther than the fact of a prior  
9 conviction, any fact that increases the penalty for a crime beyond the prescribed statutory  
10 maximum must be submitted to a jury, and proved beyond a reasonable doubt.” Id. 530 U.S.  
11 at 490, 120 S.Ct. 2362-63. However, the Supreme Court has also held that “the valid entry of  
12 a guilty plea in a state criminal court involves the waiver of several federal constitutional  
13 rights. Among these ‘is the right to trial by jury.’” Colwell v. State, 118 Nev. 807, 823, 59  
14 P.3d 463, 474 (2002) (citing Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969)). The  
15 Nevada Supreme Court has ruled held that when a defendant pleads guilty, he waives the right  
16 guaranteed by Apprendi to have enhancing or aggravating facts determined by a jury and  
17 provide beyond a reasonable doubt. Id. 118 Nev. at 822-23, 59 P.3d 473-74.

18 Defendant pleaded guilty and knowingly waived all rights to trial by jury. Defendant’s  
19 guilty plea and waiver of his right to trial by jury also served to waive his right to have any  
20 enhancing or aggravating facts determined by a jury and proved beyond a reasonable doubt.  
21 Therefore, this claim, being completely without merit, is denied.

22 **D. Defendant’s Claim Regarding the Plea Canvass and His Knowledge Is**  
23 **Belied by the Record.**

24 Defendant’s claim regarding the plea canvass, there being no admission as to the facts  
25 required for the enhancement, and his knowledge regarding these issues is belied by the record.  
26 “Bare” and “naked” allegations are not sufficient to warrant post-conviction relief, nor are  
27 those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222,  
28 225 (1984). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as

1 it existed at the time the claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228,  
2 1230 (2002). NRS 34.735(6) states in relevant part that a Defendant “*must* allege specific facts  
3 supporting the claims in the petition,” and that “[f]ailure to allege specific facts rather than just  
4 conclusions may cause your petition to be dismissed.” (emphasis added).

5 Defendant’s claim is belied by the Guilty Plea Agreement (GPA) entered on September  
6 17, 2014, wherein he acknowledged the offenses with which he was charged and the possible  
7 sentences they carried. Therefore, Defendant’s claim about being unaware of the consecutive  
8 sentence and being improperly canvassed is belied by the record.

9 For these reasons, the sentence was appropriate and legal. The District Court did not  
10 err in rendering such a sentence. Therefore, this claim is denied.

#### 11 **IV. DEFENDANT’S COUNSEL WAS NOT INEFFETIVE.**

12 Defendant also raises two claims of ineffective assistance of counsel. First, he claims  
13 that counsel was for ineffective for failing to object to the District Court imposing the  
14 consecutive term of imprisonment for use of a deadly weapon. Second, he claims that counsel  
15 was ineffective for failing to inform Defendant that he only had one year to file a post-  
16 conviction petition. As for his first claim, Defendant cannot demonstrate either deficient  
17 performance or prejudice for the reasons provided *supra* demonstrating that he had no right to  
18 a jury making a factual determination. His second claim also fails as counsel has no obligation  
19 to provide such information.

20 Ineffective assistance of counsel claims are analyzed under a two-prong test set forth in  
21 Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984), wherein the  
22 petitioner must show: (1) that counsel’s performance was deficient, and (2) that the deficient  
23 performance prejudiced the defense.

##### 24 **A. Counsel Was Not Ineffective For Failing to Object to the Consecutive** 25 **Sentence.**

26 As this Court stated *supra*, Defendant had no right to have a factual determination on  
27 the deadly weapon enhancement be made by a jury. The District Court’s finding and the  
28 subsequent imposition of the consecutive sentence was legal and valid. Thus, any objection

1 made by counsel regarding the imposition of that sentence would have been futile. Because  
2 counsel cannot be deemed ineffective for failing to make futile objections, his performance  
3 was not deficient. Likewise, because such an objection would have been futile, Defendant  
4 cannot demonstrate prejudice.

5 For each of these reasons, Defendant has failed to demonstrate that counsel was  
6 ineffective. Therefore, this claim is denied.

7 **B. Counsel Was Not Ineffective For Failing to Inform Defendant About the**  
8 **Procedural Bars to Post-Conviction Petitions.**

9 Defendant's final claim is that counsel was ineffective for failing to inform him of the  
10 one-year time bar that applies to post-conviction petitions for writs of habeas corpus. He has  
11 failed to demonstrate that counsel had any obligation to provide him with such information or  
12 that he was prejudiced by any deficient performance.

13 Defendant has cited no relevant authority. Thus, his subsequent argument is not cogent.  
14 By providing no relevant authority and no cogent argument, he has failed to meet his burden  
15 in demonstrating ineffective assistance. See Browning v. State, 120 Nev. 347, 365, 91 P.3d  
16 39, 52 (2004); Lader v. Warden, 121 Nev. 682, 120 P.3d 1164 (2005); Colwell, 118 Nev. at  
17 813, 59 P.3d at 467; Evans v. State, 117 Nev. 609, 646, 28 P.3d 498, 523 (2001). Therefore,  
18 this claim is denied.

19 Second, even if Defendant has presented relevant authority and cogent argument, he  
20 cannot demonstrate deficient performance or prejudice. Generally, counsel is not  
21 constitutionally required to advise a defendant who has pleaded guilty of his right to appeal.  
22 Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999). Further, there is no entitlement  
23 to counsel on post-conviction. It can be inferred from these two facts – that there is no right  
24 to post-conviction counsel and that, even regarding proceedings where a defendant is entitled  
25 to counsel, there is no obligation for trial counsel to inform the defendant about those  
26 proceedings – that there was no obligation for counsel to inform Defendant of the one-year  
27 time bar that applies to post-conviction petitions. Thus, counsel cannot be found to have been  
28 deficient in his performance.

1 Finally, *in arguendo*, even if counsel was deficient in his performance, Defendant  
2 cannot demonstrate prejudice on this claim. Through the GPA, Defendant stated that he  
3 understood he was waiving his right to appeal and also that he understood that he remained  
4 “free to challenge [his] conviction through other post-conviction remedies including a habeas  
5 corpus petition pursuant to NRS Chapter 34.” Because Defendant was already aware of his  
6 right to challenge his conviction and the GPA directed him to the relevant statutory chapter  
7 that enumerates the procedural rules governing the process by which he could challenge his  
8 conviction, he could not have been prejudiced by counsel’s failure to inform him of the time  
9 bar as he already had been informed of his rights and where he could find all relevant  
10 information.

11 For these reasons, this claim is denied.

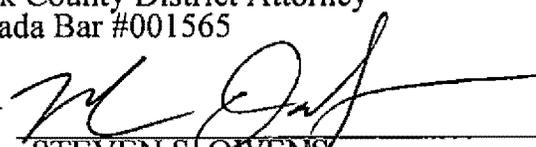
12 **ORDER**

13 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief  
14 shall be, and it is, hereby denied.

15 DATED this 21<sup>st</sup> day of February, 2017.

16  
17   
\_\_\_\_\_  
DISTRICT JUDGE 

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

20  
21 BY   
\_\_\_\_\_  
22 STEVEN S. OWENS  
23 Deputy District Attorney  
24 Nevada Bar #004352  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I certify that on the 15th day of February, 2017, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

CEDRIC LEROB JACKSON #1130512  
SOUTHERN DESERT CORRECTIONAL CENTER  
P.O. BOX 208  
INDIAN SPRINGS, NV 89070-0208

BY



R. JOHNSON  
Secretary for the District Attorney's Office

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AR/SSO/rj/M-1

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

CEDRIC LEROB JACKSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 71752**  
District Court Case No. C265339

**FILED**

**MAR 30 2017**

*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 this appeal DISMISSED.”

Judgment, as quoted above, entered this 28th day of February, 2017.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this March 27, 2017.

Elizabeth A. Brown, Supreme Court Clerk

By: Jessica Rodriguez  
Deputy Clerk



10C265339 - 1  
CCJD  
NV Supreme Court Clerks Certificate/Judgn  
4636406



IN THE SUPREME COURT OF THE STATE OF NEVADA

CEDRIC LEROB JACKSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 71752

**FILED**

FEB 28 2017

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

*ORDER DISMISSING APPEAL*

This is a pro se appeal from a district court order denying a motion to modify and/or correct an illegal sentence. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

The notice of appeal was untimely filed. NRAP 4(b); NRAP 26(a); NRAP 26(c). Because an untimely notice of appeal fails to vest jurisdiction in this court, *Lozada v. State*, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994), we conclude that we lack jurisdiction to consider this appeal, and we

ORDER this appeal DISMISSED.

*[Signature]*, J.  
Hardesty

*[Signature]*, J.  
Parraguirre

*[Signature]*, J.  
Stiglich

cc: Hon. Jessie Elizabeth Walsh, District Judge  
Cedric Lerob Jackson  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk



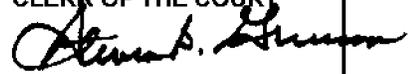
**GERTIFIED COPY**

This document is a full, true and correct copy of the original on file and of record in my office.

DATE: 03/27/2013  
Supreme Court Clerk, State of Nevada

By *[Signature]* Deputy





1 **FCL**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 STEVEN S. OWENS  
6 Chief Deputy District Attorney  
7 Nevada Bar #004352  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 CEDRIC JACKSON,  
13 #1581340

14 Defendant.

CASE NO: 10C265339-1

DEPT NO: X

15 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

16 DATE OF HEARING: January 25, 2017  
17 TIME OF HEARING: 8:30 A.M.

18 THIS CAUSE having come on for hearing before the Honorable JOSEPH T.  
19 BONAVENTURE, District Judge, on the 25th day of January, 2017, the Petitioner not being  
20 present, proceeding *in forma pauperis*, the Respondent being represented by STEVEN B.  
21 WOLFSON, Clark County District Attorney, by and through HETTY WONG, Chief Deputy  
22 District Attorney, and the Court having considered the matter, including briefs, transcripts,  
23 and documents on file herein, now therefore, the Court makes the following findings of fact  
24 and conclusions of law:

25 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

26 On June 16, 2010, the State of Nevada charged Defendant Cedric Jackson by way of  
27 Information as follows: Count 1 -- Murder With Use of a Deadly Weapon (Felony -- NRS  
28 200.010, 200.030, 193.165), Count 2 -- Attempt Murder With Use of a Deadly Weapon (Felony

1 –NRS 200.010, 200.030, 193.330, 193.165), Count 3 – Battery With Use of a Deadly Weapon  
2 Resulting in Substantial Bodily Harm (Felony – NRS 200.481.2c), Count 4 – Attempt Murder  
3 With Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.330, 193.165), Count 5  
4 – Assault With a Deadly Weapon (Felony – NRS 200.471), Count 6 – Attempt Murder With  
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10 On September 17, 2014, pursuant to negotiations, the State filed an Amended  
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16 Defendant appeared before the District Court on November 14, 2014, and was  
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22 1. Defendant received 1,748 days credit for time served. The Judgment of Conviction was  
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26 State filed its response to that motion on July 12, 2016. The District Court denied the motion  
27 July 13, 2016. On November 14, 2016, Defendant filed an untimely Notice of Appeal from  
28 that denial. The matter is still pending before the Nevada Supreme Court.

1 On January 1, 2017, Defendant filed the instant Petition for Writ of Habeas Corpus  
2 (“Petition”). The State responded on January 20, 2017. The Court now orders the Petition  
3 denied.

4  
5 **I. DEFENDANT’S PETITION IS PROCEDURALLY BARRED AND MUST  
6 BE DENIED.**

7 Defendant’s Petition for Writ of Habeas Corpus is time barred with no good cause  
8 shown for delay. Pursuant to NRS 34.726(1):

9 Unless there is good cause shown for delay, a petition that  
10 challenges the validity of a judgment or sentence must be filed  
11 within 1 year of the entry of the judgment of conviction or, if an  
12 appeal has been taken from the judgment, within 1 year after the  
13 Supreme Court issues its remittitur. For the purposes of this  
14 subsection, good cause for delay exists if the petitioner  
15 demonstrates to the satisfaction of the court:

- 16 (a) That the delay is not the fault of the petitioner; and  
17 (b) That dismissal of the petition as untimely will unduly prejudice  
18 the petitioner.

19 A showing of good cause and prejudice may overcome procedural bars. “To establish  
20 good cause, appellants *must* show that an impediment external to the defense prevented their  
21 compliance with the applicable procedural rule. A qualifying impediment might be shown  
22 where the factual or legal basis for a claim was not reasonably available at the time of default.”  
23 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added).

24 In the instant case, the Judgment of Conviction was filed on November 21, 2014, and  
25 Defendant did not file a direct appeal. Thus, the one-year time bar began to run from this date.  
26 The instant Petition was not filed until January 6, 2017, more than two years after the Judgment  
27 of Conviction was entered and in excess of the one-year time frame. Absent a showing of  
28 good cause for this delay and undue prejudice, Defendant’s claim must be dismissed because  
of its tardy filing.

Additionally, Defendant has not even alleged good cause, and certainly has not  
demonstrated that an external impediment prevented his compliance with NRS 34.726(1).

1 Accordingly, because his Petition was not filed within the one-year timeframe and he has not  
2 shown good cause, the Petition is denied.

3 **II. DEFENDANT'S PETITION DOES NOT COMPLY WITH NRS 34.735**  
4 **AND MUST BE DENIED.**

5 NRS 34.735 requires that a defendant filing a post-conviction Petition for Writ of  
6 Habeas Corpus answer 23 questions set forth within the statute. In the present case, Defendant  
7 has not met the relevant statutory requirement to file his petition in the proper form because  
8 he has failed to answer all 23 questions. Therefore, his Petition is denied for failing to meet  
9 the standard set forth by NRS 34.735.

10 **III. THE DISTRICT COURT DID NOT ERR IN IMPOSING A SENTENCE**  
11 **FOR USE OF A DEADLY WEAPON.**

12 Defendant's first claim is that the District Court erred by imposing a consecutive  
13 sentence on each of the two counts for use of a deadly weapon. Specifically, he argues that  
14 such an enhancement sentence should not have been imposed without factual findings being  
15 made by a jury or Defendant admitting to using a deadly weapon. Petition Memorandum at  
16 1-3. He claims that neither happened and thus the sentence is illegal. *Id.* However, this issue  
17 has already been adjudicated by this Court and *res judicata* prevents further review.  
18 Additionally, this case involved a guilty plea and the right to trial by jury was waived, thus  
19 Defendant's claim has no merit.

20 Moreover, in conjunction with claiming that there was no factual finding at the time of  
21 the guilty plea (that he did not admit) Defendant claims that he was not properly canvassed as  
22 to the enhancement portion of the sentence. Petition Memorandum at 2. This claim, though,  
23 is belied by the record.

24 **A. This Claim Is Waived.**

25 In challenging the imposition of the consecutive sentence, Defendant has brought forth  
26 a claim that should have been raised on direct appeal. As the claim was not raised in such a  
27 proceeding, it is waived on post-conviction review.

28 NRS 34.810(1) reads:

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

1 (a) The petitioner's conviction was upon a plea of guilty or guilty  
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3 that the plea was involuntarily or unknowingly or that the plea was  
4 entered without effective assistance of counsel.

5 (b) The petitioner's conviction was the result of a trial and the  
6 grounds for the petition could have been:

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8 (2) Raised in a direct appeal or a prior petition for a writ of habeas  
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10 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and  
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12 conviction proceedings.... [A]ll other claims that are appropriate for a direct appeal must be  
13 pursued on direct appeal, or they will be *considered waived in subsequent proceedings.*"  
14 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)  
15 (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)).

16 Since this claim does not challenge the validity of Defendant's guilty plea, nor does it  
17 allege ineffective assistance of counsel, and Defendant did not raise it on a direct appeal from  
18 the Judgment of Conviction, it must be deemed waived and is denied.

19 **B. This Court Has Already Adjudicated This Matter.**

20 Even if this Court were to entertain this claim, it falls under the doctrine of *res judicata*.  
21 For an issue to fall under *res judicata*, it must have already been decided in a prior proceeding.  
22 The following three conditions must be met: (1) the issue decided in the prior litigation must  
23 be identical to the issue presented in the current action, (2) the initial ruling must have been  
24 on the merits and have become final, and (3) the party against whom the judgment is asserted  
25 must have been a party or in privity with a party to the prior litigation. Pulley v. Preferred  
26 Risk Mutual Insurance, 111 Nev. 856, 858, 897 P.2d 1101, 1102-03 (1995).

27 When Defendant filed his Motion to Modify, he made the exact same claim that he  
28 brings here. This Court denied that motion. See Order Denying Defendant's Pro Per Motion  
to Appoint Counsel and Order Denying Defendant's Pro Per Motion to Modify and/or Correct  
by Setting Aside Illegal Sentence Based Upon Lack of Subject Matter Jurisdiction at 2.

1 Because Defendant reiterates the same arguments here, using the exact same language from  
2 the Motion to Modify – see Petition Memorandum at 2-3 – the District Court previously ruled  
3 on the issue on the merits, and Defendant was a party in that case, the doctrine of *res judicata*  
4 applies here. Accordingly, this claim is denied.

5 C. Defendant Had No Right to a Determination on the Facts by a Jury.

6 Defendant’s claim regarding a factual determination that should have been made by a  
7 jury is completely without merit. In Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348  
8 (2000), the United States Supreme Court announced that “[o]ther than the fact of a prior  
9 conviction, any fact that increases the penalty for a crime beyond the prescribed statutory  
10 maximum must be submitted to a jury, and proved beyond a reasonable doubt.” Id. 530 U.S.  
11 at 490, 120 S.Ct. 2362-63. However, the Supreme Court has also held that “the valid entry of  
12 a guilty plea in a state criminal court involves the waiver of several federal constitutional  
13 rights. Among these ‘is the right to trial by jury.’” Colwell v. State, 118 Nev. 807, 823, 59  
14 P.3d 463, 474 (2002) (citing Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969)). The  
15 Nevada Supreme Court has ruled held that when a defendant pleads guilty, he waives the right  
16 guaranteed by Apprendi to have enhancing or aggravating facts determined by a jury and  
17 provide beyond a reasonable doubt. Id. 118 Nev. at 822-23, 59 P.3d 473-74.

18 Defendant pleaded guilty and knowingly waived all rights to trial by jury. Defendant’s  
19 guilty plea and waiver of his right to trial by jury also served to waive his right to have any  
20 enhancing or aggravating facts determined by a jury and proved beyond a reasonable doubt.  
21 Therefore, this claim, being completely without merit, is denied.

22 D. Defendant’s Claim Regarding the Plea Canvass and His Knowledge Is Belied by  
23 the Record.

24 Defendant’s claim regarding the plea canvass, there being no admission as to the facts  
25 required for the enhancement, and his knowledge regarding these issues is belied by the record.  
26 “Bare” and “naked” allegations are not sufficient to warrant post-conviction relief, nor are  
27 those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222,  
28 225 (1984). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as

1 it existed at the time the claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228,  
2 1230 (2002). NRS 34.735(6) states in relevant part that a Defendant “*must* allege specific facts  
3 supporting the claims in the petition,” and that “[f]ailure to allege specific facts rather than just  
4 conclusions may cause your petition to be dismissed.” (emphasis added).

5 Defendant’s claim is belied by the Guilty Plea Agreement (GPA) entered on September  
6 17, 2014, wherein he acknowledged the offenses with which he was charged and the possible  
7 sentences they carried. Therefore, Defendant’s claim about being unaware of the consecutive  
8 sentence and being improperly canvassed is belied by the record.

9 For these reasons, the sentence was appropriate and legal. The District Court did not  
10 err in rendering such a sentence. Therefore, this claim is denied.

#### 11 **IV. DEFENDANT’S COUNSEL WAS NOT INEFFETIVE.**

12 Defendant also raises two claims of ineffective assistance of counsel. First, he claims  
13 that counsel was for ineffective for failing to object to the District Court imposing the  
14 consecutive term of imprisonment for use of a deadly weapon. Second, he claims that counsel  
15 was ineffective for failing to inform Defendant that he only had one year to file a post-  
16 conviction petition. As for his first claim, Defendant cannot demonstrate either deficient  
17 performance or prejudice for the reasons provided *supra* demonstrating that he had no right to  
18 a jury making a factual determination. His second claim also fails as counsel has no obligation  
19 to provide such information.

20 Ineffective assistance of counsel claims are analyzed under a two-prong test set forth in  
21 Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984), wherein the  
22 petitioner must show: (1) that counsel’s performance was deficient, and (2) that the deficient  
23 performance prejudiced the defense.

##### 24 **A. Counsel Was Not Ineffective For Failing to Object to the Consecutive Sentence.**

25 As this Court stated *supra*, Defendant had no right to have a factual determination on  
26 the deadly weapon enhancement be made by a jury. The District Court’s finding and the  
27 subsequent imposition of the consecutive sentence was legal and valid. Thus, any objection  
28

1 made by counsel regarding the imposition of that sentence would have been futile. Because  
2 counsel cannot be deemed ineffective for failing to make futile objections, his performance  
3 was not deficient. Likewise, because such an objection would have been futile, Defendant  
4 cannot demonstrate prejudice.

5 For each of these reasons, Defendant has failed to demonstrate that counsel was  
6 ineffective. Therefore, this claim is denied.

7 **B. Counsel Was Not Ineffective For Failing to Inform Defendant About the Procedural**  
8 **Bars to Post-Conviction Petitions.**

9 Defendant's final claim is that counsel was ineffective for failing to inform him of the  
10 one-year time bar that applies to post-conviction petitions for writs of habeas corpus. He has  
11 failed to demonstrate that counsel had any obligation to provide him with such information or  
12 that he was prejudiced by any deficient performance.

13 Defendant has cited no relevant authority. Thus, his subsequent argument is not cogent.  
14 By providing no relevant authority and no cogent argument, he has failed to meet his burden  
15 in demonstrating ineffective assistance. See Browning v. State, 120 Nev. 347, 365, 91 P.3d  
16 39, 52 (2004); Lader v. Warden, 121 Nev. 682, 120 P.3d 1164 (2005); Colwell, 118 Nev. at  
17 813, 59 P.3d at 467; Evans v. State, 117 Nev. 609, 646, 28 P.3d 498, 523 (2001). Therefore,  
18 this claim is denied.

19 Second, even if Defendant has presented relevant authority and cogent argument, he  
20 cannot demonstrate deficient performance or prejudice. Generally, counsel is not  
21 constitutionally required to advise a defendant who has pleaded guilty of his right to appeal.  
22 Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999). Further, there is no entitlement  
23 to counsel on post-conviction. It can be inferred from these two facts – that there is no right  
24 to post-conviction counsel and that, even regarding proceedings where a defendant is entitled  
25 to counsel, there is no obligation for trial counsel to inform the defendant about those  
26 proceedings – that there was no obligation for counsel to inform Defendant of the one-year  
27 time bar that applies to post-conviction petitions. Thus, counsel cannot be found to have been  
28 deficient in his performance.

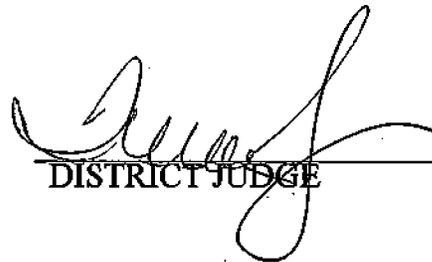
1 Finally, *in arguendo*, even if counsel was deficient in his performance, Defendant  
2 cannot demonstrate prejudice on this claim. Through the GPA, Defendant stated that he  
3 understood he was waiving his right to appeal and also that he understood that he remained  
4 “free to challenge [his] conviction through other post-conviction remedies including a habeas  
5 corpus petition pursuant to NRS Chapter 34.” Because Defendant was already aware of his  
6 right to challenge his conviction and the GPA directed him to the relevant statutory chapter  
7 that enumerates the procedural rules governing the process by which he could challenge his  
8 conviction, he could not have been prejudiced by counsel’s failure to inform him of the time  
9 bar as he already had been informed of his rights and where he could find all relevant  
10 information.

11 For these reasons, this claim is denied.

12 **ORDER**

13 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief  
14 shall be, and it is, hereby denied.

15 DATED this 19th day of July, 2017.

16  
17   
18 \_\_\_\_\_  
DISTRICT JUDGE 

19 STEVEN B. WOLFSON  
20 Clark County District Attorney  
Nevada Bar #001565

21 BY 

22 \_\_\_\_\_  
23 STEVEN S. OWENS  
Deputy District Attorney  
Nevada Bar #004352

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 24<sup>th</sup> day of July, 2017, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

CEDRICK JACKSON, #1130512  
S.D.C.C.  
PO BOX 208  
INDIAN SPRINGS, NV 89070

BY Estee Del Padre  
ESTEE DEL PADRE  
Secretary for the District Attorney's Office

awr/GCU



1 NEO

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

4 CEDRIC JACKSON,

5  
6 Petitioner,

Case No: 10C265339-1

Dept No: X

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

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

10  
11 **PLEASE TAKE NOTICE** that on July 21, 2017, 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 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on July 25, 2017.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

17  
18  
19 CERTIFICATE OF E-SERVICE / MAILING

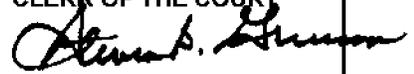
20 I hereby certify that on this 25 day of July 2017, I served a copy of this Notice of Entry on the following:

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

22  
23  The United States mail addressed as follows:  
24 Cedric Jackson # 1130512  
25 P.O. Box 208  
Indian Springs, NV 89070

26 /s/ Amanda Hampton

27 Amanda Hampton, Deputy Clerk



1 **FCL**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 STEVEN S. OWENS  
6 Chief Deputy District Attorney  
7 Nevada Bar #004352  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 CEDRIC JACKSON,  
13 #1581340

14 Defendant.

CASE NO: 10C265339-1

DEPT NO: X

15 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

16 DATE OF HEARING: January 25, 2017  
17 TIME OF HEARING: 8:30 A.M.

18 THIS CAUSE having come on for hearing before the Honorable JOSEPH T.  
19 BONAVENTURE, District Judge, on the 25th day of January, 2017, the Petitioner not being  
20 present, proceeding *in forma pauperis*, the Respondent being represented by STEVEN B.  
21 WOLFSON, Clark County District Attorney, by and through HETTY WONG, Chief Deputy  
22 District Attorney, and the Court having considered the matter, including briefs, transcripts,  
23 and documents on file herein, now therefore, the Court makes the following findings of fact  
24 and conclusions of law:

25 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

26 On June 16, 2010, the State of Nevada charged Defendant Cedric Jackson by way of  
27 Information as follows: Count 1 -- Murder With Use of a Deadly Weapon (Felony -- NRS  
28 200.010, 200.030, 193.165), Count 2 -- Attempt Murder With Use of a Deadly Weapon (Felony

1 -NRS 200.010, 200.030, 193.330, 193.165), Count 3 - Battery With Use of a Deadly Weapon  
2 Resulting in Substantial Bodily Harm (Felony - NRS 200.481.2c), Count 4 - Attempt Murder  
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1 On January 1, 2017, Defendant filed the instant Petition for Writ of Habeas Corpus  
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24 In the instant case, the Judgment of Conviction was filed on November 21, 2014, and  
25 Defendant did not file a direct appeal. Thus, the one-year time bar began to run from this date.  
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28 good cause for this delay and undue prejudice, Defendant’s claim must be dismissed because  
of its tardy filing.

Additionally, Defendant has not even alleged good cause, and certainly has not  
demonstrated that an external impediment prevented his compliance with NRS 34.726(1).

1 Accordingly, because his Petition was not filed within the one-year timeframe and he has not  
2 shown good cause, the Petition is denied.

3 **II. DEFENDANT'S PETITION DOES NOT COMPLY WITH NRS 34.735**  
4 **AND MUST BE DENIED.**

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2 the Motion to Modify – see Petition Memorandum at 2-3 – the District Court previously ruled  
3 on the issue on the merits, and Defendant was a party in that case, the doctrine of *res judicata*  
4 applies here. Accordingly, this claim is denied.

5 C. Defendant Had No Right to a Determination on the Facts by a Jury.

6 Defendant’s claim regarding a factual determination that should have been made by a  
7 jury is completely without merit. In Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348  
8 (2000), the United States Supreme Court announced that “[o]ther than the fact of a prior  
9 conviction, any fact that increases the penalty for a crime beyond the prescribed statutory  
10 maximum must be submitted to a jury, and proved beyond a reasonable doubt.” Id. 530 U.S.  
11 at 490, 120 S.Ct. 2362-63. However, the Supreme Court has also held that “the valid entry of  
12 a guilty plea in a state criminal court involves the waiver of several federal constitutional  
13 rights. Among these ‘is the right to trial by jury.’” Colwell v. State, 118 Nev. 807, 823, 59  
14 P.3d 463, 474 (2002) (citing Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969)). The  
15 Nevada Supreme Court has ruled held that when a defendant pleads guilty, he waives the right  
16 guaranteed by Apprendi to have enhancing or aggravating facts determined by a jury and  
17 provide beyond a reasonable doubt. Id. 118 Nev. at 822-23, 59 P.3d 473-74.

18 Defendant pleaded guilty and knowingly waived all rights to trial by jury. Defendant’s  
19 guilty plea and waiver of his right to trial by jury also served to waive his right to have any  
20 enhancing or aggravating facts determined by a jury and proved beyond a reasonable doubt.  
21 Therefore, this claim, being completely without merit, is denied.

22 D. Defendant’s Claim Regarding the Plea Canvass and His Knowledge Is Belied by  
23 the Record.

24 Defendant’s claim regarding the plea canvass, there being no admission as to the facts  
25 required for the enhancement, and his knowledge regarding these issues is belied by the record.  
26 “Bare” and “naked” allegations are not sufficient to warrant post-conviction relief, nor are  
27 those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222,  
28 225 (1984). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as

1 it existed at the time the claim was made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228,  
2 1230 (2002). NRS 34.735(6) states in relevant part that a Defendant “*must* allege specific facts  
3 supporting the claims in the petition,” and that “[f]ailure to allege specific facts rather than just  
4 conclusions may cause your petition to be dismissed.” (emphasis added).

5 Defendant’s claim is belied by the Guilty Plea Agreement (GPA) entered on September  
6 17, 2014, wherein he acknowledged the offenses with which he was charged and the possible  
7 sentences they carried. Therefore, Defendant’s claim about being unaware of the consecutive  
8 sentence and being improperly canvassed is belied by the record.

9 For these reasons, the sentence was appropriate and legal. The District Court did not  
10 err in rendering such a sentence. Therefore, this claim is denied.

#### 11 **IV. DEFENDANT’S COUNSEL WAS NOT INEFFETIVE.**

12 Defendant also raises two claims of ineffective assistance of counsel. First, he claims  
13 that counsel was for ineffective for failing to object to the District Court imposing the  
14 consecutive term of imprisonment for use of a deadly weapon. Second, he claims that counsel  
15 was ineffective for failing to inform Defendant that he only had one year to file a post-  
16 conviction petition. As for his first claim, Defendant cannot demonstrate either deficient  
17 performance or prejudice for the reasons provided *supra* demonstrating that he had no right to  
18 a jury making a factual determination. His second claim also fails as counsel has no obligation  
19 to provide such information.

20 Ineffective assistance of counsel claims are analyzed under a two-prong test set forth in  
21 Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984), wherein the  
22 petitioner must show: (1) that counsel’s performance was deficient, and (2) that the deficient  
23 performance prejudiced the defense.

##### 24 **A. Counsel Was Not Ineffective For Failing to Object to the Consecutive Sentence.**

25 As this Court stated *supra*, Defendant had no right to have a factual determination on  
26 the deadly weapon enhancement be made by a jury. The District Court’s finding and the  
27 subsequent imposition of the consecutive sentence was legal and valid. Thus, any objection  
28

1 made by counsel regarding the imposition of that sentence would have been futile. Because  
2 counsel cannot be deemed ineffective for failing to make futile objections, his performance  
3 was not deficient. Likewise, because such an objection would have been futile, Defendant  
4 cannot demonstrate prejudice.

5 For each of these reasons, Defendant has failed to demonstrate that counsel was  
6 ineffective. Therefore, this claim is denied.

7 B. Counsel Was Not Ineffective For Failing to Inform Defendant About the Procedural  
8 Bars to Post-Conviction Petitions.

9 Defendant's final claim is that counsel was ineffective for failing to inform him of the  
10 one-year time bar that applies to post-conviction petitions for writs of habeas corpus. He has  
11 failed to demonstrate that counsel had any obligation to provide him with such information or  
12 that he was prejudiced by any deficient performance.

13 Defendant has cited no relevant authority. Thus, his subsequent argument is not cogent.  
14 By providing no relevant authority and no cogent argument, he has failed to meet his burden  
15 in demonstrating ineffective assistance. See Browning v. State, 120 Nev. 347, 365, 91 P.3d  
16 39, 52 (2004); Lader v. Warden, 121 Nev. 682, 120 P.3d 1164 (2005); Colwell, 118 Nev. at  
17 813, 59 P.3d at 467; Evans v. State, 117 Nev. 609, 646, 28 P.3d 498, 523 (2001). Therefore,  
18 this claim is denied.

19 Second, even if Defendant has presented relevant authority and cogent argument, he  
20 cannot demonstrate deficient performance or prejudice. Generally, counsel is not  
21 constitutionally required to advise a defendant who has pleaded guilty of his right to appeal.  
22 Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999). Further, there is no entitlement  
23 to counsel on post-conviction. It can be inferred from these two facts – that there is no right  
24 to post-conviction counsel and that, even regarding proceedings where a defendant is entitled  
25 to counsel, there is no obligation for trial counsel to inform the defendant about those  
26 proceedings – that there was no obligation for counsel to inform Defendant of the one-year  
27 time bar that applies to post-conviction petitions. Thus, counsel cannot be found to have been  
28 deficient in his performance.

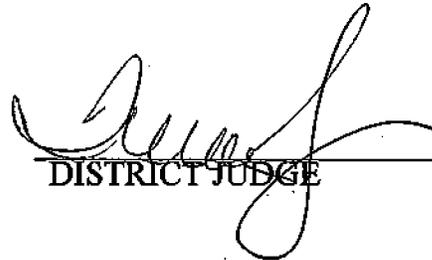
1 Finally, *in arguendo*, even if counsel was deficient in his performance, Defendant  
2 cannot demonstrate prejudice on this claim. Through the GPA, Defendant stated that he  
3 understood he was waiving his right to appeal and also that he understood that he remained  
4 “free to challenge [his] conviction through other post-conviction remedies including a habeas  
5 corpus petition pursuant to NRS Chapter 34.” Because Defendant was already aware of his  
6 right to challenge his conviction and the GPA directed him to the relevant statutory chapter  
7 that enumerates the procedural rules governing the process by which he could challenge his  
8 conviction, he could not have been prejudiced by counsel’s failure to inform him of the time  
9 bar as he already had been informed of his rights and where he could find all relevant  
10 information.

11 For these reasons, this claim is denied.

12 **ORDER**

13 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief  
14 shall be, and it is, hereby denied.

15 DATED this 19th day of July, 2017.

16  
17   
18 \_\_\_\_\_  
DISTRICT JUDGE 

19 STEVEN B. WOLFSON  
20 Clark County District Attorney  
Nevada Bar #001565

21 BY 

22 \_\_\_\_\_  
23 STEVEN S. OWENS  
24 Deputy District Attorney  
25 Nevada Bar #004352  
26  
27  
28

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 24<sup>th</sup> day of July, 2017, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

CEDRICK JACKSON, #1130512  
S.D.C.C.  
PO BOX 208  
INDIAN SPRINGS, NV 89070

BY Estee Del Padre  
ESTEE DEL PADRE  
Secretary for the District Attorney's Office

awr/GCU

IN THE SUPREME COURT OF THE STATE OF NEVADA

CEDRIC LEROB JACKSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 72409  
District Court Case No. C265339

FILED

FEB 12 2018

*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 9th day of January, 2018.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this February 05, 2018.

Elizabeth A. Brown, Supreme Court Clerk

By: Amanda Ingersoll  
Chief Deputy Clerk

10C265339-1  
CCJA  
NV Supreme Court Clerks Certificate/Judgn  
4719715



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CEDRIC LEROB JACKSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 72409

FILED

JAN 09 2018

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

ORDER OF AFFIRMANCE

Cedric Lerob Jackson appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Senior Judge.

Jackson filed his petition on January 6, 2017, more than two years after entry of the judgment of conviction on November 21, 2014.<sup>2</sup> Thus, Jackson's petition was untimely filed. *See* NRS 34.726(1). Jackson's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

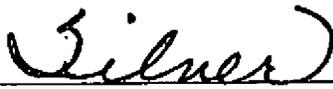
Jackson claimed he had cause for his delay because his counsel failed to inform him of the postconviction procedures. This claim failed to demonstrate an impediment external to the defense prevented Jackson from filing a petition in a timely manner. *See Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). This was a claim of ineffective

<sup>1</sup>This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

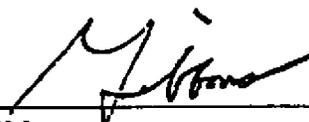
<sup>2</sup>Jackson did not pursue a direct appeal.

assistance of counsel and was procedurally barred because it was reasonably available to be raised at an earlier time, and therefore, cannot constitute cause for raising additional procedurally barred claims. *See id.* at 252, 71 P.3d at 506 (“[I]n order to constitute adequate cause, the ineffective assistance of counsel claim itself must not be procedurally defaulted.”). Accordingly, we conclude the district court did not err in denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.

, C.J.  
Silver

, J.  
Tao

, J.  
Gibbons

cc: Joseph T. Bonaventure, Senior Judge  
Cedric Lerob Jackson  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

**CERTIFIED COPY**

This document is a full, true and correct copy of the original on file and of record in my office.

DATE: Feb. 5, 2018  
Supreme Court Clerk, State of Nevada

By Angela Deputy

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

CEDRIC LEROB JACKSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 72409**  
District Court Case No. C265339

**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: February 05, 2018

Elizabeth A. Brown, Clerk of Court

By: Amanda Ingersoll  
Chief Deputy Clerk

cc (without enclosures):  
Hon. Joseph T. Bonaventure, Senior Judge  
Cedric Lerob Jackson  
Clark County District Attorney  
Attorney General/Carson City

**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 FEB 12 2018.

HEATHER UNGERMANN   
Deputy District Court Clerk

RECEIVED  
APPEALS

FEB 08 2018

CLERK OF THE COURT

*[Signature]*

CEDRIC JACKSON ID NO. 1130512

SOUTHERN DESERT CORRECTIONAL CTN.  
20825 COLD CREEK RD.  
P.O. BOX 208  
INDIAN SPRINGS, NV 89070

EIGHTH JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA

v.

CEDRIC JACKSON

CASE NO.: 2165339-1

DEPT. NO.: X

DOCKET: \_\_\_\_\_

Date: 06/27/18 Time: 8:30 AM

MOTION FOR THE APPOINTMENT OF COUNSEL  
(APPELLATE) TO FILE STATE HABEAS PETITION FOR  
WRIT OF HABEAS CORPUS (FOR POST-CONVICTION)

COMES NOW, \_\_\_\_\_, CEDRIC JACKSON, herein above respectfully  
moves this Honorable Court for an ORDER GRANTING THE APPOINTMENT  
OF APPELLATE COUNSEL.

This Motion is made and based upon the accompanying Memorandum of Points and  
Authorities,

DATED: this 23<sup>rd</sup> day of MAY, 2018

BY: Cedric Jackson  
C. Jackson # 1130512  
Defendant In Proper Personam

MC  
DA  
PP

CLERK OF THE COURT

RECEIVED  
JUN 05 2018  
JUN 27 2018

INDICATED BY STAMP

ADDITIONAL FACTS OF THE CASE:

1 I AM IN NEED OF APPELLATE COUNSEL TO REPRESENT ME IN THE  
2 FILING OF A POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS IN  
3 MY CASE NUMBER ABOVE.

4 I HAVE ASKED MY FORMER COUNSEL, DAN WINDER, IF HE WOULD  
5 FILE THE MOTION TO APPOINT APPELLATE COUNSEL NEARLY TWO (2) MONTHS AGO,  
6 ON APRIL 4, 2018. HOWEVER, MR. WINDER HAS NOT RESPONDED TO ME  
7 IN ANY WAY REGARDING THIS REQUEST.

8 I WANT TO RE-OPEN MY STATE COURT PROCEEDINGS FOR TO  
9 HIGHLY RELEVANT FACTUAL ISSUES THAT WERE NEVER INVESTIGATED IN  
10 MY CASE AND SOME OF WHICH ARE NOW, NEWLY DISCOVERED EVIDENCE,  
11 THAT CAN BENEFIT MY DEFENSE.

12 WITH THE APPOINTMENT OF APPELLATE COUNSEL IN THIS CASE, MY  
13 CHANCES TO HAVE THESE ISSUES PROPERLY PRESENTED TO THE COURT IN  
14 A PETITION FOR WRIT OF HABEAS CORPUS WOULD BE A MAJOR OPPORTUNITY  
15 TO GET A FULL AND FAIR REVIEW FOR HABEAS RELIEF IN THIS MATTER.

16 I BELIEVE THAT I'M ENTITLED TO SHOW GOOD CAUSE AND PREJUDICE  
17 TO EXCUSE THE PROCEDURAL RULES OF MRS 34.726 THROUGH THE APPLICATION  
18 OF THE MOST RECENTLY AVAILABLE FACTUAL AND LEGAL AUTHORITIES ON  
19 THE RETROACTIVITY RULES ADDRESSED IN THE UNITED STATES SUPREME  
20 COURT DECISIONS IN WALSH V. UNITED STATES, 136 S. CT. 1257 (2016)  
21 AND MONTGOMERY V. LOUISIANA, 136 S. CT. 718 (2016), WHICH ARE MATTER  
22 OF CONSTITUTIONAL LAW IN THAT STATE COURTS ARE REQUIRED TO APPLY  
23 THESE RETROACTIVITY RULES TO CASES ON COLLATERAL REVIEW.

24 I ASK THIS COURT TO GRANT MY MOTION TO APPOINT COUNSEL DUE TO  
25 THE FACTS ABOVE.

26 Respectfully Submitted,

27 ON THIS 23<sup>RD</sup> DAY OF MAY, 2018 BY *C. [Signature]*

#1130512

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**CERTIFICATE OF SERVICE BY MAILING**

I, Cedric Jackson, hereby certify, pursuant to NRCP 5(b), that on this 23<sup>rd</sup> day of MAY, 2018, I mailed a true and correct copy of the foregoing, "MOTION TO APPOINT APPELLATE COUNSEL"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

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

CC:FILE

DATED: this 23 day of MAY, 2018.

Cedric Jackson  
C. Jackson # 1130512  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
**IN FORMA PAUPERIS:**

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

MOTION TO APPOINT APPELLATE COUNSEL  
(Title of Document)

filed in District Court Case number \_\_\_\_\_

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.

C. Jackson  
Signature

8.23.18  
Date

Cedric Jackson  
Print Name

PRO SE DEFENDANT  
Title

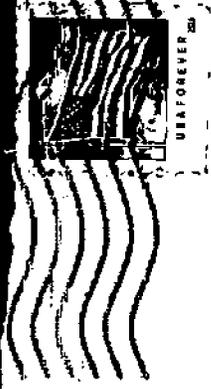
Mr. C. Jackson #1130512

P.O. Box 208

Indian Springs NV 89070

LAS VEGAS NV 890

24 MAY 2018 PM 3 L

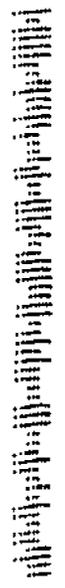


Steven Grierson Chd. of the Court

200 Lewis Ave, 3rd floor

Las Vegas NV 89155-1160

6910136300 0075



SOUTHERN DESERT  
CORRECTIONAL CENTER

MAY 24 2018

OUTGOING MAIL



1 **RSPN**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 STEVEN S. OWENS  
6 Chief Deputy District Attorney  
7 Nevada Bar #4352  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

12 DISTRICT COURT  
13 CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,  
15  
16 Plaintiff,

17 -vs-

18 CEDRIC L. JACKSON,  
19 #1130512  
20 Defendant.

CASE NO: 10C265339-1

DEPT NO: X

21 STATE'S RESPONSE TO DEFENDANT'S MOTION TO APPOINT COUNSEL

22 DATE OF HEARING: June 27, 2018  
23 TIME OF HEARING: 8:30 a.m.

24 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
25 District Attorney, through STEVEN S. OWENS, Chief Deputy District Attorney, and hereby  
26 submits the attached Points and Authorities in Response to Defendant's Motion to Appoint  
27 Counsel.

28 This Response is made and based upon all the papers and pleadings on file herein, the  
attached points and authorities in support hereof, and oral argument at the time of hearing, if  
deemed necessary by this Honorable Court.

//

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On September 17, 2014, the State filed an Amended Information charging Defendant  
4 Cedric L. Jackson with: Count 1 – Second Degree Murder with Use of a Deadly Weapon  
5 (Category A Felony – NRS 200.010, 200.030, 193.165 – NOC 50011), and Count 2 – Attempt  
6 Murder with Use of a Deadly Weapon (Category B Felony – NRS 200.010, 200.030, 193.330,  
7 193.165 – NOC 50031). That day, Defendant also pleaded guilty to the charges contained in  
8 the Amended Information.

9 On November 19, 2014, Defendant was sentenced to the Nevada Department of  
10 Corrections as follows: Count 1 – a maximum of 25 years and a minimum of 10 years plus a  
11 consecutive term of a minimum of 4 years and a maximum of 12 years for the use of a deadly  
12 weapon, and Count 2 – a maximum of 60 months and a minimum of 24 months plus a  
13 consecutive term of a minimum of 12 months and a maximum of 30 months for the use of a  
14 deadly weapon, to run concurrent with Count 1. Defendant received 1748 days credit for time  
15 already served. The Judgement of conviction was entered on November 21, 2014. Defendant  
16 did not file a direct appeal.

17 On January 6, 2017, Defendant filed a Petition for Writ of Habeas Corpus. The State  
18 filed its Response on January 20, 2017. On January 25, 2017, this Court denied Defendant's  
19 Petition for Writ of Habeas Corpus. On February 13, 2017, defendant filed a Notice of Appeal.  
20 The Findings of Fact, Conclusions of Law and Order reflecting the Court's denial of the  
21 Petition was filed on March 7, 2017. On January 9, 2018, the Nevada Supreme Court affirmed  
22 this Court's denial of Defendant's Petition. Remittitur was issued on February 5, 2018.

23 On June 5, 2018, Defendant filed a Motion to appoint Counsel. The State responds as  
24 follows.  
25

26 **ARGUMENT**

27 The Sixth Amendment of the United States Constitution provides no right to counsel in  
28 post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546 (1991).  
Similarly, "[t]he Nevada Constitution...does not guarantee a right to counsel in post-

1 conviction proceedings, as we interpret the Nevada Constitution's right to counsel provision  
2 as being coextensive with the Sixth Amendment to the United States Constitution." McKague  
3 v. Warden, 112 Nev. 159, 912 P.2d 255 (1996).

4 NRS 34.750 provides, in pertinent part:

5 [a] petition may allege that the Defendant is unable to pay the costs  
6 of the proceedings or employ counsel. If the court is satisfied that  
7 the allegation of indigency is true and the petition is not dismissed  
8 summarily, the court may appoint counsel at the time the court  
orders the filing of an answer and a return. In making its  
determination, the court may consider whether:

- 9 (a) The issues are difficult;  
10 (b) The Defendant is unable to comprehend the  
proceedings; or  
11 (c) Counsel is necessary to proceed with discovery.

12 Under NRS 34.750, so long as the petition is not "dismissed summarily," a court has  
13 discretion in determining whether to appoint counsel. However, with the exception of NRS  
14 34.820(a)(a) [entitling appointed counsel when petition is under a sentence of death], one does  
15 not have "[a]ny constitutional or statutory right to counsel at all" in post-conviction  
16 proceedings. McKague, 112 Nev. at 164, 912 P.2d at 258.

17 Here, Defendant does not have a pending Petition for Writ of Habeas Corpus.  
18 Consequently, Defendant's Motion is premature and must be denied. Further, even if  
19 Defendant did have a pending Petition, it would be time-bared and successive, absent a  
20 showing of good cause. Therefore, Defendant's Motion should be denied.

### 21 CONCLUSION

22 Based on the foregoing, the State respectfully requests that this Court order Defendant's  
23 Motion to Appoint Counsel be DENIED.

24 DATED this 26th day of June, 2018.

25 Respectfully submitted,

26 STEVEN B. WOLFSON  
27 Clark County District Attorney  
Nevada Bar #001565

28 BY /s// STEVEN S. OWENS  
STEVEN S. OWENS  
Chief Deputy District Attorney  
Nevada Bar #4352

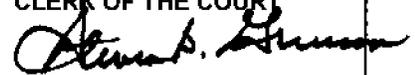
1 CERTIFICATE OF MAILING

2 I hereby certify that service of the above and foregoing was made this 26th day of June, 2018,  
3 by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:  
4

5 CEDRIC JACKSON, #1130512  
6 SOUTHERN DESERT CORRECTIONAL CTN  
7 PO BOX 208  
8 INDIAN SPRINGS, NV 89070  
9

10  
11  
12 BY /s/ E. DEL PADRE  
13 E. DEL PADRE  
14 Secretary for the District Attorney's Office  
15  
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28 SO/ed/GCU



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**ORDR**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
LAURA JEAN ROSE  
Deputy District Attorney  
Nevada Bar #13390  
200 Lewis Avenue  
Las Vegas, NV 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CEDRIC L. JACKSON,  
#1130512

Defendant.

CASE NO: 10C265339-1

DEPT NO: X

**ORDER DENYING DEFENDANT'S PRO PER MOTION FOR THE  
APPOINTMENT OF COUNSEL (APPELLATE) TO FILE STATE HABEAS  
PETITION FOR WRIT OF HABEAS CORPUS (FOR POST-CONVICTION)**

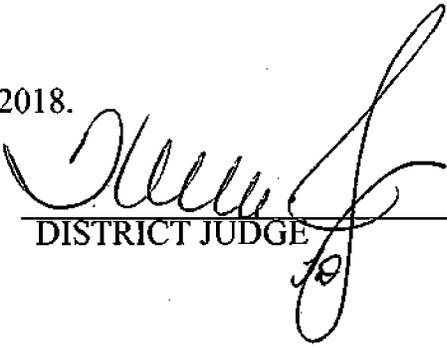
DATE OF HEARING: June 27, 2018  
TIME OF HEARING: 8:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 27th day of June, 2018, the Defendant not being present, IN PROPER PERSON, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through LAURA JEAN ROSE, Deputy District Attorney, and the Court, based on the pleadings and good cause appearing therefor,

///  
///  
///  
///

1 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion for the Appointment  
2 of Counsel (Appellate) to File State Habeas Petition for Writ of Habeas Corpus (for Post-  
3 Conviction, shall be, and it is DENIED.

4 DATED this 11 day of July, 2018.

5  
6   
DISTRICT JUDGE

7 STEVEN B. WOLFSON  
8 Clark County District Attorney  
9 Nevada Bar #001565

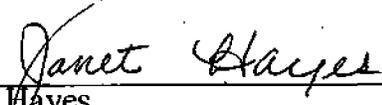
10 BY   
for

LAURA JEAN ROSE  
11 Deputy District Attorney  
12 Nevada Bar #13390

13  
14 CERTIFICATE OF SERVICE

15 I certify that on the 2nd day of July, 2018, I mailed a copy of the foregoing Order to:

16 CEDRIC JACKSON, #1130512  
17 SOUTHERN DESERT CORRECTIONAL CENTER  
18 P. O. BOX 208  
INDIAN SPRINGS, NEVADA 89070

19  
20 BY   
Janet Hayes

Secretary for the District Attorney's Office

21  
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28 10FN0329A/jlh/GCU

FILED

MAY 28 2020

*Ann. S. Johnson*  
CLERK OF COURT

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District Court  
Clark County Nevada

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Cedric L. Jackson  
(Petitioner)

vs.

Charles Daniels (Director);  
Jerry Howell (Warden);  
Nevada Dept. of Corrections;  
And The State of Nevada  
(Respondents)

Case No: C205339-1  
Dept No: X

June 15, 2020  
@8:30 AM

First Amendment Petition for Writ of Mandamus

Pursuant to NRS 34.185

Comes now, Cedric Jackson, petitioner in Proper person and petitions the above-entitled court to issue fourth with a writ of Mandamus directing the respondents to comply with NRS 209.4465(7)(b) and relieve him of the Ex Post Facto application of NRS 209.4465(8) as this section does not apply to his case, also the Nevada Supreme Court holding in Williams v. State Dept. of Corr. 133 Nev. op 75, 402 P.3d 1260 (2017) and Van Seydewitz v. LeGrand case No. 61591 (NSC 2015) and immediately apply (20) days a month to both the minimum and maximum of petitioner sentence.

Despite the clear unequivocal rulings, the respondents have not applied these credits.

(1)

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APR 23 2020

CLERK OF THE COURT

1. The failure results in a clear Due Process
2. violation as effects the petitioner's overall sentence.
3. The petition is fashioned in accordance with N.R.A.P. Rule 21.

4.  
5.

### 1. Statement of Facts

6. On January 31, 2010 petitioner committed his offence.  
7. petitioner was sentenced November 20, 2014 to Maximum  
8. Term of Twenty-Five (25) years with a Minimum Parole  
9. Eligibility of Ten (10) years, plus a consecutive term of Twelve (12)  
10. years with a minimum parole eligibility of Four (4) years for  
11. the use of a Deadly Weapon; as of count one (1). As to count 2,  
12. A Maximum of Sixty (60) Months with a Minimum parole  
13. eligibility of Twenty-Four (24) months, plus a consecutive term  
14. of Thirty (30) Months with a Minimum parole eligibility of  
15. Twelve (12) Months for the use of a Deadly, Count 2 to run  
16. Concurrent with count 1 with one Thousand Seven Hundred  
17. Forty-Eight (1,748) days credit for time served. This  
18. petition should not be construed as a writ of Habeas Corpus  
19. as it deals directly with already established law of the case  
20. which the respondents have blatantly refused to comply with  
21. the Supreme Court Ruling as such the writ must issue.  
22. Petitioner meets all standards set fourth by the Nevada Supreme  
23. Court Ruling in Williams and VanSeydewitz and therefore  
24. demands issuance of the Writ of Mandamus within (30) days  
25. as required by NRS 34.185. Petitioner is being subjected to  
26. the ex post facto application of NRS 209.446(5)(b) which did  
27. not exist prior to 2007 and does not allow for retroactive  
28. application of the exemptions. (2)

1... This violation of the petitioner's rights  
2... must cease immediately.

3...

4...

## 2. Issues Presented

5... The petitioner presents the following issues in court:

6... A) Petitioner is being deprived of statutory credits which  
7... will substantially lessen the time spent on the prison sentence

8...

9... B) This deprivation is preventing the petitioner from  
10... the opportunity for a early parole possibility, and  
11... programs that would further lessen time spent;

12...

13... C) Petitioner has been subjected unlawfully to the Ex Post  
14... Facto application of NRS 209.4465(8) by the respondents; and

15...

16... D) Due to the Constitutional deprivations Petitioner is  
17... entitled to fair and just compensation.

18...

19...

## 3. Relief Sought

20... The petitioner seeks relief as follows:

21... 1) That this court immediately issue a Writ of Mandamus  
22... ordering the respondents to properly apply and calculate  
23... (20) days per month to Both the minimum and maximum  
24... of the petitioners sentence as intended in NRS 209.4465(7)(A & B)

25...

26...

(3)

1... 2) Order appropriate Compensation to be paid for the  
2... constitutional deprivations suffered in accordance  
3... with NRS 34.270;

4...

5... 3) Order respondents to show proof of the calculation  
6... and application of statutory credits within (30) days  
7... as prescribed by NRS 34.185.

8...

9... (4) Petitioner is entitled to the issuance of this  
10... Writ of Mandamus to compel the respondents to  
11... perform an act which the law especially enjoins as  
12... a duty. Any other remedy is insufficient or unable to  
13... address this issue.

14... The respondents Ex Post Facto application of  
15... NRS 209.4465(8) and failure to properly apply these  
16... credits as outlined in NRS 209.4465(7) violates the  
17... petitioners Constitutional Rights to be free from Ex Post Facto  
18... law under article 1, sec 10 U.S. Const. and his 14<sup>th</sup>  
19... Amendment Rights to Due process.

20... As such, in order to protect the petitioner from  
21... further deprivation and to fairly compensate the petitioner  
22... for the deprivation suffered this Mandamus must issue.

23...

24...

(4)

25...

26...

5. Conclusion

In conclusion, the petitioner has shown that the extraordinary relief of Mandamus is necessary and warranted in this case.

Respectfully submitted this 20<sup>th</sup> day of  
April 2020

x Cedric Jackson  
x C. # 1130512  
petitioner in proper person

Mr. Curtis Jackson #130512  
P.O. Box 208  
Indian Springs NV 89070



Chief of the Court 3rd Fl  
210 Lewis Ave, Reynolds Justice Center  
Las Vegas NV 89155



1 **RSPN**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 ELIZABETH MERCER  
6 Chief Deputy District Attorney  
7 Nevada Bar #10681  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,  
13  
14 Plaintiff,

15 -vs-

16 CEDRIC JACKSON,  
17 #1581340  
18 Defendant.

CASE NO: 10C265339-1

DEPT NO: X

19 **STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF MANDAMUS**

20 DATE OF HEARING: 06/15/20  
21 TIME OF HEARING: 8:30 A.M.

22 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
23 District Attorney, through ELIZABETH MERCER, Chief Deputy District Attorney, and  
24 hereby submits the attached Points and Authorities in Response to Defendant's Petition for  
25 Writ of Mandamus.

26 This Response is made and based upon all the papers and pleadings on file herein, the  
27 attached points and authorities in support hereof, and oral argument at the time of hearing, if  
28 deemed necessary by this Honorable Court.

29 //  
30 //  
31 //  
32 //

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On September 17, 2014, the State filed an Amended Information charging Defendant  
4 Cedric L. Jackson with: Count 1 – Second Degree Murder with Use of a Deadly Weapon  
5 (Category A Felony – NRS 200.010, 200.030, 193.165 – NOC 50011), and Count 2 – Attempt  
6 Murder with Use of a Deadly Weapon (Category B Felony – NRS 200.010, 200.030, 193.330,  
7 193.165 – NOC 50031). That day, Defendant also pleaded guilty to the charges contained in  
8 the Amended Information.

9 On November 19, 2014, Defendant was sentenced to the Nevada Department of  
10 Corrections as follows: Count 1 – a maximum of 25 years and a minimum of 10 years plus a  
11 consecutive term of a minimum of 4 years and a maximum of 12 years for the use of a deadly  
12 weapon, and Count 2 – a maximum of 60 months and a minimum of 24 months plus a  
13 consecutive term of a minimum of 12 months and a maximum of 30 months for the use of a  
14 deadly weapon, to run concurrent with Count 1. Defendant received 1748 days credit for time  
15 already served. The Judgement of conviction was entered on November 21, 2014. Defendant  
16 did not file a direct appeal.

17 On January 6, 2017, Defendant filed a Petition for Writ of Habeas Corpus. The State  
18 filed its Response on January 20, 2017. On January 25, 2017, this Court denied Defendant’s  
19 Petition for Writ of Habeas Corpus. On February 13, 2017, defendant filed a Notice of Appeal.  
20 The Findings of Fact, Conclusions of Law and Order reflecting the Court’s denial of the  
21 Petition was filed on March 7, 2017. On January 9, 2018, the Nevada Supreme Court affirmed  
22 this Court’s denial of Defendant’s Petition. Remittitur was issued on February 5, 2018.

23 On June 5, 2018, Defendant filed a Motion to appoint Counsel. The State filed an  
24 Opposition on June 26, 2018. The Motion was denied on June 27, 2018. On May 28, 2020,  
25 Defendant filed the instant Petition for Writ of Mandamus. The State’s Opposition is set forth  
26 herein.

27 //

28 //

1 **ARGUMENT**

2 Defendant's Petition must be denied. Pursuant to NRS 34.724(2)(c), a Petition for Writ  
3 of Habeas Corpus is the sole remedy for challenging time computation.

4 The State respectfully requests that Defendant's Petition be denied without prejudice  
5 and direct Defendant to file a Petition for Writ of Habeas Corpus and serve it upon the Attorney  
6 General's office, not the Clark County District Attorney's Office; or, deem the instant Petition  
7 for Writ of Mandamus to constitute a Petition for Writ of Habeas Corpus and have Master  
8 Calendar assign the matter an "A" case number and send the matter to Department 15 so that  
9 the appropriate party, the Attorney General, may respond on behalf of the Warren.

10 **CONCLUSION**

11 In light of the foregoing, the State respectfully request that Defendant's Petition be  
12 DENIED without Prejudice; or converted into an A Case, to which the Attorney General's  
13 Office will respond.

14 DATED this 4th day of June, 2020.

15 Respectfully submitted,

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

19 BY /s// ELIZABETH MERCER  
20 ELIZABETH MERCER  
21 Chief Deputy District Attorney  
22 Nevada Bar #10681  
23  
24  
25  
26  
27  
28

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 4th day of June, 2020, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

CEDRIC JACKSON, #1130512  
HIGH DESERT STATE PRISON  
PO BOX 208  
INDIAN SPRINGS, NV 89070

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

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DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*

|  |   |
|--|---|
| CEDRIC JACKSON, PLAINTIFF(S)<br><br>VS.<br><br>NEVADA STATE OF, DEFENDANT(S) | Case No.: A-20-817120-W<br><br>10C265339-1<br><br>DEPARTMENT 15 |
|--|---|

**NOTICE OF CHANGE OF CASE NUMBER  
AND DEPARTMENT REASSIGNMENT**

NOTICE IS HEREBY GIVEN that pursuant to minute order dated June 18, 2020 the Petition for Writ of Mandamus filed into 10C265339-1 has been filed as case number A-20-817120-W and assigned to Judge Hardy. PLEASE INCLUDE THE NEW CASE NUMBER ON ALL FUTURE FILINGS.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Heather Kordenbrock

Heather Kordenbrock, Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

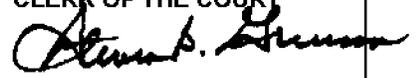
I hereby certify that this 25th day of June, 2020

I mailed, via first-class, postage fully prepaid, the foregoing Clerk of the Court, Notice of Change of Case Number and Department Reassignment to:

**Cedric Jackson #1130512  
PO Box 208  
Indian Springs NV 89070**

/s/ Heather Kordenbrock

Heather Kordenbrock, Deputy Clerk of the Court



1 **APET**  
2 TERRENCE M. JACKSON, ESQ.  
3 Nevada Bar No. 00854  
4 Law Office of Terrence M. Jackson  
5 624 South Ninth Street  
6 Las Vegas, NV 89101  
7 T: 702-386-0001 / F: 702-386-0085  
8 terry.jackson.esq@gmail.com

9 *Counsel for Defendant Cedric L. Jackson*

10  
11 IN THE EIGHTH JUDICIAL DISTRICT COURT  
12 CLARK COUNTY, NEVADA  
13

14 STATE OF NEVADA, )  
15 ) CASE NO.: **10-C-265339-1**  
16 Plaintiff/ Respondent, ) CASE NO.: A-20-817120-W  
17 v. )  
18 ) DEPT. NO.: X  
19 CEDRIC L. JACKSON, )  
20 ID# 1130512 )  
21 Defendant/ Petitioner. )  
22 )

23 **AMENDED PETITION FOR WRIT OF HABEAS CORPUS**

24 COMES NOW the Defendant/Petitioner, CEDRIC L. JACKSON, by and through counsel,  
25 Terrence M. Jackson, Esq., and moves the Court to enter an Order granting his AMENDED Petition  
26 and Supplemental Points and Authorities in support of Defendant's Petition for Writ of Post  
27 Conviction on the grounds that his sentence was wrongly enhanced.

28 Because the Court wrongly misapplied NRS 193.165, the Defendant received consecutive  
sentences totaling twelve (12) additional years for the weapons enhancement. This increased his total  
aggregate sentence in this case to a maximum of thirty-seven (37) years with a minimum sentence  
of 14 years. This sentence was an excessive and unjust sentence and should be set aside because it  
violated NRS 103.165 and the Eighth Amendment's cruel and unusual punishment clause.

1 This Petition is based upon the accompanying Points and Authorities and such further facts  
2 as will come before this Court on a hearing of this Petition.

3  
4 DATED this 26th day of July, 2021.

5 Respectfully submitted,

6 /s/ Terrence M. Jackson

7 TERRENCE M. JACKSON, ESQUIRE

8 Nevada State Bar 000854

9 Terry.jackson.esq@gmail.com

10 Counsel for Petitioner, *Cedric L. Jackson*

11  
12 **INTRODUCTION**

13 **PROCEDURAL HISTORY**

14 On June 16, 2010, the State of Nevada charged Defendant Cedric Jackson by way of  
15 Information with ten counts: Count 1 - Murder With Use of a Deadly Weapon (Felony - NRS  
16 200.010, 200.030, 193.165), Count 2 - Attempt Murder With Use of a Deadly Weapon (Felony -  
17 NRS 200.010, 200.030, 193.330, 193.165), Count 3 - Battery With Use of a Deadly Weapon  
18 Resulting in Substantial Bodily Harm (Felony - NRS 200.481.2c), Count 4 - Attempt Murder With  
19 Use of a Deadly Weapon (Felony - NRS 200.010, 200.030, 193.330, 193.165), Count 5 - Assault  
20 With a Deadly Weapon (Felony - NRS 200.471), Count 6 - Attempt Murder With Use of a Deadly  
21 Weapon (Felony - NRS 200.010, 200.030, 193.330, 193.165), Count 7 - Assault With a Deadly  
22 Weapon (Felony - NRS 200.471), Count 8 - Conspiracy to Commit Murder (Felony - NRS 199.480,  
23 200.100, 200.030), Count 9 - Discharging Firearm At or Into Structure, Vehicle, Aircraft, or  
24 Watercraft (Felony - NRS 202.285), and Count 10 - Discharging Firearm Out of Motor Vehicle  
25 (Felony - NRS 202.287).  
26  
27  
28

1           On September 17, 2014, pursuant to negotiations, the State filed an Amended Information  
2 charging Defendant as follows: Count 1 - Second Degree Murder With Use of a Deadly Weapon  
3 (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50011) and Count 2 - Attempt Murder  
4 With Use of a Deadly Weapon (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165 -  
5 NOC 50031). That same day, Defendant pled guilty to both counts in the Amended Information.  
6

7           Defendant appeared before the District Court on November 14, 2014, and was sentenced on  
8 Count 1 to a maximum of twenty-five (25) years with a minimum parole eligibility of ten (10) years,  
9 plus a consecutive term of twelve (12) years with a minimum parole eligibility of four (4) years for  
10 the Use of a Deadly Weapon, and on Count 2 to a maximum of sixty (60) months with a minimum  
11 parole eligibility of 24 (twenty-four) months, he was sentenced also to a consecutive term of thirty  
12 (30) months with a minimum parole eligibility of twelve (12) months for the Use of a Deadly  
13 Weapon, Count 2 to run concurrent with Count 1. Defendant received 1,748 days credit for time  
14 served. The Judgment of Conviction was entered on November 21, 2014.  
15  
16

17           Defendant acknowledges he has previously unsuccessfully challenged the enhancement given  
18 pursuant to NRS 193.165. On June 22, 2016, Defendant filed a Motion to Modify and/or Correct  
19 His Sentence by filing a Motion to Set Aside an Illegal Sentence based upon Lack of Subject Matter  
20 Jurisdiction (“Motion to Modify”) on June 22, 2016. The State filed its response to that motion on  
21 July 12, 2016. The District Court denied the motion July 13, 2016.  
22  
23

24           The Defendant also filed an original Petition for Writ of Habeas Corpus on January 6, 2017.  
25 That Writ was decided against the Defendant on January 25, 2017. The District Court, in its original  
26 Finding of Facts dated March 7, 2017, ruled that the Defendant’s Writ was procedurally barred,  
27 citing NRS 34.726(1), claiming Defendant had alleged no good cause for any delay of that Petition.  
28



1 Prior to 2007, the sentencing enhancement under NRS 193.165, for use of a deadly weapon  
2 was a consecutive statutory enhancement that was applied automatically. The law was however  
3 changed by the legislature in 2007, when the new law, AB 510, specifically removed the automatic  
4 consecutive enhancement required by NRS 196.165.  
5

6 The legislative history of AB 510 made clear that this was done in part to reduce prisoner  
7 population. The question of whether any enhancement was appropriate was to be left to the  
8 reasonable discretion of the District Court Judge.  
9

10 It is respectfully submitted that the District Court erred in sentencing the Defendant to an  
11 aggregate sentence of thirty-seven (37) years, which included twelve (12) years for the enhancement  
12 for the Use of a Deadly Weapon. Defendant's guilty plea had been accepted on September 17, 2014,  
13 and Cedric Jackson was adjudged guilty on November 19, 2014, of second degree murder with use  
14 of a weapon, NRS 200.010, 200.030, 193.330, 193.165. He was sentenced under the old law and  
15 received a ten (10) to twenty-five (25) year sentence plus an additional consecutive sentence of four  
16 (4) to twelve (12) years for the deadly weapon enhancement, resulting in a total aggregate sentence  
17 of thirty-seven (37) years. The District Court gave a concurrent sentence of two (2) to five (5) years  
18 plus an enhancement of twelve (12) to thirty (30) months for the deadly weapon enhancement on  
19 count 2.  
20  
21

22 The changes in NRS 193.165 establish that the District Court abused its discretion by  
23 automatically granting the enhancement for the use of a deadly weapon under NRS 193.165. The  
24 Court's automatic decision on the weapon enhancement did not properly consider all the necessary  
25 factors at sentencing in granting the enhancement. Because of this major error in sentencing  
26 Defendant was substantially prejudiced. Defendant received an excessive and unjust sentence which  
27  
28

1 violated the Eighth Amendment.

2 **II.**

3 THE APPLICATION OF AMENDMENTS TO NRS 193.165 MUST BE HELD TO BE  
4 RETROACTIVE BECAUSE OF UNITED STATES SUPREME COURT DECISIONS OF  
5 *WELCH V. UNITED STATES*, \_\_\_ U.S. \_\_\_, 136 S.CT. 1257, 194 L.ED.2D 387 (2016)  
6 AND *MONTGOMERY V. LOUISIANA*, 577 U.S. \_\_\_, 136 S.CT. 718 (2016).  
7

8  
9 In 2007 the Nevada State legislature enacted AB 510, which made a substantial change to  
10 Nevada criminal law regarding sentencing of any individual charged with offenses involving the use  
11 of deadly weapons. The effect of AB 510 was to change the previous automatic sentencing  
12 enhancement for offenses involving a weapon to a discretionary enhancement. AB 510 also required  
13 the Court to specifically enumerate the factors considered before giving an enhancement to a  
14 sentence. *See, Mendoza-Lopez v. State*, 125 Nev. 634, 218 P.3d 501 (2009).  
15

16 The Nevada Supreme Court in *State v. Second Judicial District Court*, 124 Nev. 564, 188  
17 P.3d 1078 (2008) (*Pullin*) initially held that the 2007 amendments to NRS 193.165 would not be  
18 applied retroactively, saying the statutory change was not of constitutional dimensions. *Id.* 571 The  
19 Nevada Supreme Court concluded that because the legislature had not expressly stated its intent to  
20 make the statutory amendment retroactive, it ordered the District Court to resentence the defendant  
21 consistent with the old law which required an automatic enhancement of the sentence.  
22

23  
24 It is respectfully submitted that the United States Supreme Court's recent decisions on  
25 retroactivity in *Welch v. United States*, \_\_\_ U.S. \_\_\_, 136 S.Ct. 1257, 194 L.Ed.2d 387 (2016), and  
26 *Montgomery v. Louisiana*, 577 U.S. \_\_\_, 136 S.Ct. 718 (2016), created a constitutional requirement  
27 that such a major substantive statutory change must be given a retroactive effect. It is clear the ruling  
28

1 in *Welch v. United States* requires the Nevada Supreme Court’s *Pullin* decision of non-retroactivity  
2 be reversed. In *Welch, supra*, the Supreme Court in discussing the retroactivity of *Johnson v. United*  
3 *States*, 576 U.S. \_\_\_\_ (2015), a case which held the residual clause of the Armed Career Criminal Act  
4 was void for vagueness, stated:  
5

6 “The normal framework for determining whether a new rule  
7 applies to cases on collateral review stems from the plurality opinion  
8 in *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334  
9 (1989). That opinion in turn drew on the approach outlined by the  
10 second Justice Harlan in his separate opinions in *Mackey v. United*  
11 *States*, 401 U.S. 667, 91 S.Ct. 1160, 28 L.Ed.2d 404 (1971), and  
12 *Desist v. United States*, 394 U.S. 244, 89 S.Ct. 1030, 22 L.Ed.2d 248  
13 (1969). The parties here assume that the *Teague* framework applies  
14 in a federal collateral challenge to a federal conviction as it does in a  
15 federal collateral challenge to a state conviction, and we proceed on  
16 that assumption. See *Chaidez v. United States*, 568 U.S. \_\_\_\_ , \_\_\_\_ ,  
17 n. 16, 133 S.Ct. 1103, 1113, n. 16, 185 L.Ed.2d 149 (2013); *Danforth*  
18 *v. Minnesota*, 552 U.S. 264, 269, n. 4, 128 S.Ct. 1029, 169 L.Ed.2d  
19 859 (2008).

20 Under *Teague*, as a general matter, “new constitutional rules  
21 of criminal procedure will not be applicable to those cases which  
22 have become final before the new rules are announced.” 489 U.S., at  
23 310, 109 S.Ct. 1060. *Teague* and its progeny recognize two categories  
24 of decisions that fall outside this general bar on retroactivity for  
25 procedural rules. First, “[n]ew *substantive* rules generally apply  
26 retroactively.” *Schriro v. Summerlin*, 542 U.S. 348, 351, 124 S.Ct.  
27 2519, 159 L.Ed.2d 442 (2004); see *Montgomery v. Louisiana*, 577  
28 U.S. \_\_\_\_ , \_\_\_\_ , 136 S.Ct. 718, 728, 193 L.Ed.2d 599 (2016); *Teague*,  
*supra*, at 307, 311, 109 S.Ct. 1060. Second, new “watershed rules of

1 criminal procedure,” which are procedural rules “implicating the  
2 fundamental fairness and accuracy of the criminal proceeding,” will  
3 also have retroactive effect. *Saffle v. Parks*, 494 U.S. 484, 495, 110  
4 S.Ct. 1257, 108 L.Ed.2d415 (1990); see *Teague, supra*, at 311-313,  
5 109 S.Ct. 1060. (Emphasis added)

6 It is undisputed that *Johnson* announced a new rule. See  
7 *Teague, supra*, at 301, 109 S.Ct. 1060 (“[A] case announces a new  
8 rule if the result was not dictated by precedent existing at the time the  
9 defendant’s conviction became final”). The question here is whether  
10 that new rule falls within one of the two categories that have  
11 retroactive effect under *Teague*. The parties agree that *Johnson* does  
12 not fall into the limited second category for watershed procedural  
13 rules. *Welch* and the United States contend instead that *Johnson* falls  
14 into the first category because it announced a substantive rule.

15 “A rule is substantive rather than procedural if it alters the  
16 range of conduct or the class of persons that the law punishes.”  
17 *Schriro*, 542 U.S., at 353, 124 S.Ct. 2519 [136 S.Ct. 1265] (Emphasis  
18 added) “This includes decisions that narrow the scope of a criminal  
19 statute by interpreting its terms, as well as constitutional  
20 determinations that place particular conduct or persons covered by  
21 statute beyond the State’s power to punish.” *Id.*, at 351-352, 124 S.Ct.  
22 2519 (citation omitted); see *Montgomery, supra*, at \_\_\_, 136 S.Ct. at  
23 728. Procedural rules, by contrast, “regulate only the *manner of*  
24 *determining the defendant’s culpability.*” *Schriro*, 542 U.S. at 353,  
25 124 S.Ct. 2519. Such rules alter “the range of permissible methods  
26 for determining whether a defendant’s conduct is punishable.” *Ibid.*  
27 “They do not produce a class of persons convicted of conduct the law  
28 does not make criminal, but merely raise the possibility that someone  
convicted with use of the invalidated procedure might have been

1 acquitted otherwise.” *Id.* at 352, 124 S.Ct. 2519 (Emphasis added)

2 ...  
3 Defendant respectfully submits the changes enacted in NRS 193.165 by AB 510 were clearly  
4 “substantive” changes in criminal sentencing which directly altered the actual punishment the  
5 defendant would likely receive in this case and that therefore the statutory changes of NRS 193.165  
6 must be applied retroactively to Defendant’s sentence.  
7

8 **III.**

9 THE AGGREGATE SENTENCE OF THIRTY-SEVEN (37) YEARS WAS EXCESSIVE  
10 AND VIOLATED THE EIGHTH AMENDMENT’S CRUEL AND UNUSUAL  
11 PUNISHMENT CLAUSE.  
12

13 Defense counsel was ineffective in not effectively advocating for a fairer and more just  
14 sentence. *Strickland v. Washington*, 466 U.S. 668 (1984) requires effective advocacy at every critical  
15 stage of a criminal proceeding. *See, Sanborn v. State*, 107 Nev. 399 (1991)  
16

17 It is respectfully submitted defense counsel failed in providing effective assistance at  
18 sentencing. Defense counsel did not argue that the court exercise its discretion to sentence the  
19 Defendant concurrently. He did not apparently advise the defendant when AB 510 changed the law  
20 so that he could take steps to properly challenge his disproportionate sentence, *see Mendoza-Lopez*  
21 *v. State*, 125 Nev. 634, 218 P.3d 501 (2009).  
22

23 A defense counsel must be an aggressive, not a passive advocate at sentencing. He must  
24 argue all reasonable factual or legal arguments to minimize his client’s sentence and to ensure a just  
25 sentence. In this case, pursuant to negotiation, defense counsel stipulated to a particular sentence of  
26 lengthy imprisonment.  
27  
28

1           Although Cedric L. Jackson has been convicted of multiple serious charges, it should not be  
2 presumed that his aggregate sentence of thirty-seven (37) years was consistent with the Eighth  
3 Amendment. Even though this sentence was within statutory guidelines, Defendant respectfully  
4 submits that this sentence was unnecessarily long and unnecessarily harsh because it removed any  
5 meaningful possibility of rehabilitation.  
6

7           It is respectfully submitted that the sentence imposed by this Court was improper because the  
8 Court gave no consideration whatever to any mitigating circumstances in Defendant's background.  
9  
10 *See, Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455 (2012) Mitigating circumstances in the  
11 Defendant's background were not given appropriate weight in determining a just punishment.

12           "[T]he Eighth Amendment's protection against excessive or cruel and unusual punishments  
13 follows from the basic 'precept of justice that punishment for [a] crime should be graduated and  
14 proportional to [the] offense.'" *Kennedy v. Louisiana*, 128 S.Ct. 2541, 2649 (2008) (quoting *Weems*  
15 *v. United States*, 217 U.S. 349, 367 (1910)). (Emphasis added) In analyzing whether a sentence is  
16 cruel and unusual punishment, a court must first make: "a threshold determination whether the  
17 sentence imposed is grossly disproportionate to the offense committed." The court then considers  
18 "the gravity of the offense and the harshness of the penalty." *Solem v. Helm*, 463 U.S. 277, 290-91  
19 (1983) It is respectfully submitted Defendant's excessive sentence was the result of Defendant's  
20 counsel's ineffectiveness at sentencing. The case should therefore be reversed because of this clear  
21 violation of *Strickland v. Washington*.  
22  
23  
24

25           Defendant acknowledges that any sentence within statutory limits is generally considered  
26 neither excessive or cruel and unusual. *Glegola v. State*, 110 Nev. 344, 348 (1994), *see United States*  
27 *v. Moriarty*, 429 F.3d 1012, 1024 (11th Cir.2005). Defendant however submits that a punishment  
28

1 within statutory guidelines may nevertheless, in rare cases, be so harsh it exceeds the limits of the  
2 Constitution. Consider *Weems, supra*, where the Court stated: . . . “[E]ven if the minimum penalty  
3 . . . had been imposed, it would have been repugnant to the [constitutional prohibition against cruel  
4 and unusual punishments]. *Id.* 382 (Emphasis added) *See also, Chavez v. State*, 125 Nev. 328, 348  
5 (2009), which held a punishment may be unconstitutional or a sentence be considered so  
6 unreasonably disproportionate as to ‘shock the conscience.’  
7

8  
9 Defendant submits the punishment he received in this case was far in excess of a fair or  
10 reasonable sentence. This sentence was a direct result of counsel’s ineffectiveness and his lack of  
11 zealous advocacy at sentencing and post sentencing. Because the sentence in this case was ‘shocking  
12 to the conscience,’ it was unconstitutional and in violation of the Eighth Amendment’s cruel and  
13 unusual punishment clause.  
14

#### 15 IV.

#### 16 DEFENDANT’S POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS 17 SHOULD NOT BE PROCEDURALLY BARRED.

##### 18 A. Defendant can Demonstrate Good Cause and Prejudice for any Delay.

19  
20 Defendant submits his claim, although beyond statutory time bar of NRS 34.726, was filed  
21 within a ‘reasonable time’ after the basis for the claim became evident. In *Rippo v. State*, 122 Nev.  
22 1086, 368 P.3d 729 (2016), the Nevada Supreme Court discussed procedural bars and the need for  
23 finality in criminal cases. In *Rippo, supra*, the Nevada Supreme Court explained the circumstances  
24 of when procedural default would be excused, stating:  
25

26 *Rippo’s* petition was not filed within that time period. To  
27 excuse the delay in filing the petition, *Rippo* had to demonstrate good  
28

1           cause for the delay. NRS 34.726(1). A showing of good cause for the  
2           delay has two (2) components: (1) that the delay was not the  
3           petitioner’s fault and (2) that “dismissal of the petition as untimely  
4           will unduly prejudice the petitioner.” *Id.*

5           The first component of the cause standard under NRS  
6           34.726(1) requires a showing that “an impediment external to the  
7           defense” prevented the petitioner from filing the petition within the  
8           time constraints provided by the statute. *Clem*, 119 Nev. at 621, 81  
9           P.3d at 525; *Hathaway*, 119 Nev. at 252, 71 P.3d at 506. “A  
10           qualifying impediment might be shown where the factual or legal  
11           basis for a claim was not reasonably available at the time of any  
12           default.” *Clem*, 119 Nev. at 621, 81 P.3d at 525; *see also Hathaway*,  
13           119 Nev. at 252, 71 P.3d at 506. (Emphasis added)

14           ...  
15           Defendant respectfully submits that in this case as opposed to *Rippo*, he can demonstrate  
16           good cause for the delay in this case. First, Defendant’s delay in this case was not intentional. The  
17           delay resulted principally because of the major change of case law regarding application of NRS  
18           193.165 and its retroactive application.

19           The change in law from the Supreme Court opinion in *Montgomery* and *Welch* provided  
20           Defendant Supreme Court opinions directly supporting new constitutional law which the State of  
21           Nevada must apply. This case law was not reasonably available at the time of Defendant’s default.  
22           These new United States Supreme Court decisions clearly provide good cause for overcoming the  
23           procedural bars of NRS 34.726, NRS 34.810. *See, Rogers v. State*, 267 P.3d 802, 803 (Nev. 2011).  
24           These United States Supreme Court cases cited held that under similar circumstances, the law must  
25           be applied retroactively. Therefore, it is respectfully submitted, this Honorable Court must consider  
26             
27             
28

1 this Petition and its underlying claims on the merits.

2           There are other equitable factors in this case clearly outweigh the State's interests in finality  
3 and the protection against "stale" claims. In this case, because the Defendant's sentence is  
4 fundamentally unfair and 'manifestly unjust' it must be set aside.  
5

6           An evidentiary hearing will also establish there existed numerous impediments which  
7 prevented Defendant from completing a timely habeas corpus petition. An evidentiary hearing will  
8 show the prison Law Library is less than adequate for extensive legal research and provides minimal  
9 training for prisoners. *See, Easterwood v. Champion*, 213 F.3d 1321 (10th Cir.2000), *Ray v.*  
10 *Lamport*, 465 F.3d 964 (9th Cir.2006), *Williamson v. Word*, 110 F.3d 1508 (10th Cir.1997).  
11 Considering the totality of these factors, the equitable grounds to allow Defendant to proceed with  
12 this Petition supercede any procedural bars.  
13  
14

15 B. Applying Procedural Bars to Prohibit the Habeas Petition in this Case Would Result in a  
16 Fundamental Miscarriage of Justice.

17           Although the statutory provisions of the Nevada Revised Statutes appear at first glance to  
18 restrict the application of habeas corpus relief in this case because it may be untimely, there have  
19 always been important exceptions to this procedural bar.  
20

21                           NRS 34.726(1) provides that a post-conviction habeas petition  
22 challenging the validity of a judgment of conviction must be filed  
23 within one year after this court issues the remittitur from a timely  
24 direct appeal. NRS 34.810(1)(b) provides that a post-conviction  
25 habeas petition must be dismissed where the defendant's conviction  
26 was the result of a trial and his claims could have been raised either  
27 before the trial court, on direct appeal in a previous petition, or in any  
28 other proceeding. And NRS 34.810(2) provides that a *second* or

1 successive petition must be dismissed if the defendant fails to allege  
2 new or different grounds and the prior petition was decided on its  
3 merits or if the defendant’s failure to assert those grounds in the prior  
4 petition constituted an “abuse of the writ.”

5 However, procedure default will be excused if the petitioner  
6 established both good cause for the default and prejudice. NRS  
7 34.726(1), NRS 38.810(3). Good cause for failing to file a timely  
8 petition or raise a claim in a previous proceeding may be established  
9 where the factual or legal basis for the claim was not necessarily  
10 available. *Harris v. Warden*, 114 Nev. 956, 959, 964 P.2d 785, 787.

11 Even absent a showing of good cause, this court will consider  
12 a claim if the petitioner can demonstrate that applying procedural bars  
13 would result in a fundamental miscarriage of justice. *Bejarano v.*  
14 *State*, 131 Nev. \_\_\_, 146 P.3d 265, 270 (Nev. 2006). *See, State v.*  
15 *Bennett*, 119 Nev. 589, 597-98, 81 P.2d 1, 7 (2003), *Leslie v. Warden*,  
118 Nev. 773, 780, 59 P.3d 440, 445 (2002). (Emphasis added)

16 Defendant respectfully submits considering the facts and law, any procedural default should be  
17 excused because it would deny him the opportunity to raise the issue of his wrongful extended  
18 incarceration based upon improper sentencing to a consecutive sentence for use of a deadly weapon  
19 which was unjust under the facts and law.

21 **V.**

22 DEFENDANT IS ENTITLED TO AN EVIDENTIARY HEARING TO SHOW  
23 INEFFECTIVE ASSISTANCE OF COUNSEL UNDER *STRICKLAND* AND TO PROVE  
24 HIS PETITION IS NOT PROCEDURALLY BARRED.

25 An evidentiary hearing will establish Defendant’s counsel was ineffective under *Strickland*  
26 in numerous ways. An evidentiary hearing will establish the Defendant filed his *Pro Per* Mandamus  
27  
28

1 Petition for appointment of counsel as soon as he became aware of the Supreme Court's cases of  
2 *Montgomery v. Louisiana, supra*, and *Welch v. United States, supra*, which changed the law  
3 regarding the retroactivity of AB 510.  
4

5 An evidentiary hearing is necessary to show that counsel did not assist Defendant ever in  
6 challenging his wrongful sentence, despite the fundamental change in constitutional law which the  
7 Supreme Court enacted.

8  
9 In *Marshall v. State*, 110 Nev. 1328, 885 P.2d 603 (1994), the Nevada Supreme Court  
10 reversed *Marshall's* conviction because he was denied an evidentiary hearing on post-conviction.  
11 The Court there stated:

12 "When a petition for post-conviction relief raises claims  
13 supported by specific factual allegations which, if true, would entitle  
14 the petitioner to relief, the petitioner is entitled to an evidentiary  
15 hearing unless those claims are repelled by the record." *Hargrove v.*  
16 *State*, 100 Nev. 498, 686 P.2d 222 (1984). *Id.* 1331

17 ...

18 Although the court rejected many of *Marshall's* claims as meritless, it found the issue of  
19 insufficiency of the evidence presented to the grand jury supporting the possession or controlled  
20 substance charge to have merit and reversed those counts stating:  
21

22 "At most, the state presented evidence that appellant  
23 frequented an apartment that was rented to his brother and that  
24 appellant stored some of his personal belongings in the apartment.  
25 This evidence is not sufficient to establish that appellant, rather than  
26 one of the numerous other persons who frequented the apartment,  
27 possessed the cocaine and the marijuana the police found. Appellate  
28 counsel was ineffective for failing to raise this issue on appeal and





1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an assistant to Terrence M. Jackson, Esq., and on the 26th day of  
3 July, I e-filed and served copy of the foregoing: Defendant/Petitioner's, Cedric L. Jackson's,  
4 AMENDED PETITION FOR WRIT OF HABEAS CORPUS as follows:

5 [X] Via Electronic Service (CM/ECF) to the Eighth Judicial District Court and by United States  
6 first class mail to the Nevada Attorney General and Defendant/Petitioner as follows:

7 STEVEN B. WOLFSON  
8 Clark County District Attorney  
9 steven.wolfson@clarkcountyda.com

CHAD N. LEXIS  
Chief Deputy D. A. - Criminal  
chad.lexis@clarkcountyda.com

10 Cedric L. Jackson  
11 ID# 1130512  
12 Southern Desert Correctional Ctr.  
13 Post Office Box 208  
14 Indian Springs, NV 89070-0208

AARON D. FORD  
Nevada Attorney General  
100 North Carson Street  
Carson City, Nevada 89701

14 By: /s/ Ila C. Wills  
Assistant to T. M. Jackson, Esq.

1 **FCL**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #1565  
5 TALEEN PANDUKHT  
6 Chief Deputy District Attorney  
7 Nevada Bar #5734  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Respondent

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 CEDRIC JACKSON  
10 ID#1581340,

Petitioner,

CASE NO: A-22-849718-W

-vs-

C-10-265339-1

12 THE STATE OF NEVADA,

DEPT NO: X

13 Respondent.  
14

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

16  
17 DATE OF HEARING: May 6, 2022  
18 TIME OF HEARING: 10:45 a.m.

19 THIS CAUSE having been decided by the Honorable TIERRA JONES, District Judge,  
20 pursuant to a Minute Order issued on the 6th day of May 2022, both parties not being present,  
21 and the Court having considered the matter, including briefs, transcripts, and documents on  
22 file herein, now therefore, the Court makes the following findings of fact, conclusions of law  
23 and order.

24 //

25 //

26 //

27 //

28 //

1 **PROCEDURAL HISTORY**

2 On June 16, 2010, the State of Nevada charged CEDRIC JACKSON (hereinafter  
3 “Petitioner”) by way of Information as follows: COUNT 1 – Murder with Use of a Deadly  
4 Weapon (Felony – NRS 200.010, 200.030, 193.165); COUNT 2 – Attempt Murder with Use  
5 of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.330, 193.165); COUNT 3 –  
6 Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm (Felony – NRS  
7 200.481.2c); COUNT 4 – Attempt Murder with Use of a Deadly Weapon (Felony – NRS  
8 200.010, 200.030, 193.330, 193.165); COUNT 5 – Assault with a Deadly Weapon (Felony –  
9 NRS 200.471); COUNT 6 – Attempt Murder with Use of a Deadly Weapon (Felony – NRS  
10 200.010, 200.030, 193.330, 193.165); COUNT 7 – Assault with a Deadly Weapon (Felony –  
11 NRS 200.471); COUNT 8 – Conspiracy to Commit Murder (Felony – NRS 199.480, 200.100,  
12 200.030); COUNT 9 – Discharging Firearm at or into Structure, Vehicle, Aircraft, or  
13 Watercraft (Felony – NRS 202.285); and COUNT 10 – Discharging Firearm Out of Motor  
14 Vehicle (Felony – NRS 202.287).

15 On September 17, 2014, pursuant to negotiations, the State filed an Amended  
16 Information charging Petitioner as follows: COUNT 1 – Second Degree Murder with Use of  
17 a Deadly Weapon (Category A Felony – NRS 200.010, 200.030, 193.165 – NOC 50011) and  
18 COUNT 2 – Attempt Murder with Use of a Deadly Weapon (Category B Felony – NRS  
19 200.010, 200.030, 193.330, 193.165 – NOC 50031). That same day, Petitioner pled guilty to  
20 both counts in the Amended Information. The terms of the Guilty Plea Agreement (hereinafter  
21 “GPA”) were as follows: “The Defendant's plea is conditional upon him receiving the  
22 following stipulated sentence. The parties jointly recommend a sentence of ten (10) to twenty-  
23 five (25) years as to Count 1 with a consecutive four (4) to twelve (12) years as to the deadly  
24 weapon enhancement. In addition, the parties stipulate to two (2) to five (5) years as to Count  
25 2 with a consecutive twelve (12) to thirty (30) months sentence as to the deadly weapon  
26 enhancement. The parties stipulate that the sentences on each count will run concurrently to  
27 one another.”

28 //

1           On November 19, 2014, Petitioner was sentenced to COUNT 1 - a maximum of twenty-  
2 five (25) years and a minimum of ten (10) years in the Nevada Department of Corrections  
3 (hereinafter “NDOC”), plus a consecutive term of a minimum of four (4) years and a maximum  
4 of twelve (12) years for the use of a deadly weapon; and COUNT 2 - a maximum of sixty (60)  
5 months and a minimum of twenty-four (24) months in the NDOC, plus a consecutive term of  
6 a minimum of twelve (12) months and a maximum of thirty (30) months for the use of a deadly  
7 weapon, concurrent with COUNT 1, with one thousand seven hundred forty-eight (1,748) days  
8 credit for time served.

9           The Judgment of Conviction was filed on November 21, 2014.

10           On June 22, 2016, Petitioner filed a Motion to Modify and/or Correct by Setting Aside  
11 Illegal Sentence Based Upon Lack of Subject Matter Jurisdiction. The State filed its Response  
12 on July 12, 2016. The District Court denied the Motion on July 13, 2016.

13           On January 6, 2017, Petitioner filed a Petition for Writ of Habeas Corpus (Post-  
14 Conviction) (hereinafter “PWHC”). The State filed its Response on January 20, 2017. On  
15 January 25, 2017, the PWHC was denied. On February 13, 2017, Petitioner filed a Notice of  
16 Appeal. The Findings of Fact, Conclusions of Law and Order reflecting the Court’s denial of  
17 the Petition was filed on March 7, 2017. On January 9, 2018, the Nevada Court of Appeals  
18 affirmed the District Court’s denial of Petitioner’s PWHC. Remittitur issued on February 5,  
19 2018.

20           On June 5, 2018, Petitioner filed a Motion for the Appointment of Counsel. The State  
21 filed a Response on June 26, 2018. The Motion was denied on June 27, 2018.

22           On May 28, 2020, Petitioner filed a Petition for Writ of Mandamus. The State’s  
23 Response was filed on June 4, 2020. On August 3, 2020, the Attorney General’s Office filed  
24 a Motion to Dismiss the Petition for Writ of Mandamus, which was granted by the District  
25 Court on September 4, 2020. The Decision and Order was filed on September 28, 2020.

26           On December 9, 2021, Petitioner filed an Amended Petition for Writ of Habeas Corpus  
27 (hereinafter “APWHC”) through retained counsel Terrence Jackson, Esq. According to the  
28 Petition, Mr. Jackson was retained on June 15, 2020. APWHC 4.

1 On March 7, 2022, Petitioner filed a Second Amended Petition for Writ of Habeas  
2 Corpus or alternatively Motion to Modify Sentence Based Upon Changes in Supreme Court  
3 Law and Changes in Nevada Revised Statute 193.165 (“SAPWHC”). Petitioner asserts that  
4 the SAPWHC was filed because the APWHC was never set for argument. SAPWHC 4.  
5 Petitioner’s SAPWHC is identical to the APWHC except for a paragraph explaining the  
6 reasoning for filing the SAPWHC.

7 On March 15, 2022, a Notice of Change of Case Number and Department  
8 Reassignment issued transferring this case from Department 24 to Department 10.

9 The State’s Motion to Strike and Response to both Petitions was filed on March 21,  
10 2022. On May 6, 2022, the Court issued a Minute Order denying the Amended and Second  
11 Amended Petition for Writ of Habeas Corpus and Request for Evidentiary Hearing.

#### 12 **FACTUAL BACKGROUND**

13 The District Court relied on the following facts at sentencing:

14 On January 31, 2010, officers of the Las Vegas Metropolitan Police  
15 Department responded to a report of a homicide. The first victim was found  
16 in front of a residence and it appeared he had been shot. Further examination  
17 of the body revealed he had been shot nine times. A second victim was also  
18 located who had been shot in the leg. This victim was uncooperative and  
19 refused to identify the suspects. Officers learned that both victims had been  
20 involved in an altercation at a local bar with two male subjects earlier.  
21 Witnesses told the officers that the victims had gotten into a fight with the  
22 two male subjects, later identified as Cedric Jackson and Prentice Coleman.

23 One witness that was with the victims and was also shot at, told the  
24 officers that after the fight at the bar, Coleman and Jackson followed them  
25 and he observed Jackson and the deceased victim confront each other. Shortly  
26 thereafter the suspects began shooting at the victims and him. He stated he  
27 ran and hid behind a vehicle which the officers inspected and the rear window  
28 had been struck by gunfire. Witnesses positively identified the shooters as  
Cedric Jackson and Prentice Coleman.

It was discovered that Cedric Jackson and Prentice Coleman were both  
on federal parole. After further investigation, officer located Cedric Jackson  
at the U.S. Parole and Probation office on February 5, 2010, where he was  
arrested and transported to the Clark County Detention Center and booked  
accordingly.

Presentence Investigation Report (“PSI”) 5-6.

1 **ANALYSIS**

2 As an initial matter, Petitioners APWHC and SAPWHC are identical in substance, the  
3 only difference being a paragraph explaining the reasoning behind filing the SAPWHC after  
4 the APWHC, which is that no argument was set after the APWHC was filed. In both the  
5 APWHC and SAPWHC, Petitioner asserts six (6) grounds for relief:

- 6 1. The District Court erred when it sentenced Petitioner to a consecutive sentence of  
7 twelve (12) years for the deadly weapon enhancement. APWHC 4, SAPWHC 4.
- 8 2. The application of amendments in NRS 193.165 must be held to be retroactive  
9 based on two (2) 2016 US Supreme Court cases: Welch v. United States, 136 S.Ct.  
10 1257 (2016) and Montgomery v. Louisiana, 136 S.Ct. 718 (2016). APWHC 5,  
11 SAPWHC 5.
- 12 3. The aggregate sentence of thirty-seven (37) years was excessive and cruel and  
13 unusual punishment and Defense counsel was ineffective in not effectively  
14 advocating for a fairer and more just sentence. APWHC 7, SAPWHC 8.
- 15 4. Petitioner’s Post-Conviction Petition for Writ of Habeas Corpus should not be  
16 procedurally barred based on Welch v. United States, 136 S.Ct. 1257 (2016) and  
17 Montgomery v. Louisiana, 136 S.Ct. 718 (2016) as these two (2) cases are new  
18 constitutional law and were not reasonably available at the time of Petitioner’s  
19 default, therefore this constitutes good cause to overcome the procedural bar.  
20 APWHC 9, SAPWHC 9.
- 21 5. Petitioner is entitled to an evidentiary hearing to show ineffective assistance of  
22 counsel and to prove his Petition is not procedurally barred. APWHC 12, SAPWHC  
23 12.
- 24 6. Petitioner requests that the case be remanded to District Court for re-sentencing to  
25 eliminate the consecutive deadly weapon enhancement or for the District Court to  
26 state in writing the reasons why any consecutive sentence is appropriate. APWHC  
27 13-14, SAPWHC 14.
- 28

1           **I.    PETITIONER’S PETITION IS PROCEDURALLY BARRED**

2                           **A.   Petitioner’s Petition is Time Barred.**

3           The mandatory provision of NRS 34.726(1) states:

4                           Unless there is good cause shown for delay, a petition that  
5                           challenges the validity of a judgment or sentence must be filed  
6                           *within 1 year after entry of the judgment of conviction* or, if an  
7                           appeal has been taken from the judgment, *within 1 year after the*  
8                           *Supreme Court issues its remittitur*. For the purposes of this  
9                           subsection, good cause for delay exists if the petitioner  
10                           demonstrates to the satisfaction of the court:

- 11                           A. The delay is not the fault of the Petitioner; and  
12                           B. The dismissal of the petition as untimely will unduly  
13                           prejudice the Petitioner

14           Id. (Emphasis added).

15           The Nevada Supreme Court has held that NRS 34.726 should be construed by its plain  
16           meaning. Pellegrini v. State, 117 Nev. 860, 873–74, 34 P.3d 519, 528 (2001). As per the  
17           language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from  
18           the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.  
19           Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998).

20           The one-year time limit for preparing petitions for post-conviction relief under NRS  
21           34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),  
22           the Nevada Supreme Court rejected a habeas petition that was filed two (2) days late despite  
23           evidence presented by the defendant that he purchased postage through the prison and mailed  
24           the petition within the one-year time limit.

25           This is not a case wherein the Judgment of Conviction was, for example, not final. See,  
26           e.g., Johnson v. State, 133 Nev. 571, 402 P.3d 1266 (2017) (holding that the defendant’s  
27           judgment of conviction was not final until the district court entered a new judgment of  
28           conviction on counts that the district court had vacated); Whitehead v. State, 128 Nev. 259,  
29           285 P.3d 1053 (2012) (holding that a judgment of conviction that imposes restitution in an  
30           unspecified amount is not final and therefore does not trigger the one-year period for filing a  
31           habeas petition). Nor is there any other legal basis for running the one-year time-limit from  
32           the filing of the Amended Judgment of Conviction.

1 Here, Petitioner’s Judgment of Conviction was filed on November 21, 2014. Petitioner  
2 therefore had until November 21, 2015 to file a post-conviction habeas petition. Petitioner did  
3 not file his APWHC until December 9, 2021 and did not file his SAPWHC until March 7,  
4 2022. As such, in filing his APWHC, Petitioner missed the clear and unambiguous mandatory  
5 filing deadline by seven (7) years and eighteen (18) days, or 2,575 total days. The Court in  
6 Gonzales found a two (2) day delay to be impermissible, and therefore a 2,575-day delay is  
7 obviously also impermissible. It should be noted that the District Court has *already* found that  
8 Petitioner’s previous PWHC filed on January 6, 2017 was determined to be time barred. See  
9 Findings of Fact, Conclusions of Law, and Order, filed March 7, 2017, 3. Obviously, that  
10 determination would not change with a Petition that was filed nearly five (5) years later.

11 Thus, absent a showing of good cause to excuse this delay, Petitioner’s APWHC and  
12 SAPWHC are denied.

13 **B. Petitioner’s Petition is Barred as Successive.**

14 The controlling law regarding successive petitions, NRS 34.810(2), reads:

15 A second or successive petition *must be dismissed* if the judge or  
16 justice determines that it fails to allege new or different grounds  
17 for relief and that the prior determination was on the merits or, if  
18 new and different grounds are alleged, the judge or justice finds  
19 that the failure of the petitioner to assert those grounds in a prior  
20 petition constituted an abuse of the writ.

19 Id. (emphasis added).

20 Second or successive petitions are petitions that either fail to allege new or different  
21 grounds for relief and the grounds have already been decided on the merits or that allege new  
22 or different grounds but a judge or justice finds that the petitioner’s failure to assert those  
23 grounds in a prior petition would constitute an abuse of the writ. Second or successive petitions  
24 will only be decided on the merits if the petitioner can show good cause and prejudice. NRS  
25 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994); see also Hart v.  
26 State, 116 Nev. 558, 563–64, 1 P.3d 969, 972 (2000) (holding that “where a defendant  
27 previously has sought relief from the judgment, the defendant’s failure to identify all grounds  
28 for relief in the first instance should weigh against consideration of the successive motion.”)

1           The Nevada Supreme Court has stated: “Without such limitations on the availability of  
2 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-  
3 conviction remedies. In addition, meritless, successive and untimely petitions clog the court  
4 system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d at 950.  
5 The Nevada Supreme Court recognizes that “[u]nlike initial petitions which certainly require  
6 a careful review of the record, successive petitions may be dismissed based solely on the face  
7 of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words,  
8 if the claim or allegation was previously available with reasonable diligence, it is an abuse of  
9 the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497–98 (1991).  
10 Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

11           Here, Petitioner raises the exact same issues that he previously raised in both his Motion  
12 to Modify/Correct Illegal Sentence filed on June 22, 2016, and his PWHC filed on January 6,  
13 2017. In both the Motion and Petition, Petitioner alleges that the District Court erred in  
14 improperly applying NRS 193.165 in imposing Petitioner’s sentence for the Deadly Weapon  
15 enhancement. In response to the PWHC, the District Court specifically found that the same  
16 claims Petitioner raises here were already decided on the merits when Petitioner’s Motion to  
17 Modify was denied. Findings of Fact, Conclusions of Law, and Order filed March 7, 2017, 5-  
18 6. NRS 34.810(3); Lozada.

19           As such, Petitioner’s APWHC and SAPWHC are successive and therefore are denied.

20           **C. Application of the Procedural Bars are Mandatory.**

21           The Nevada Supreme Court has specifically found that the District Court has a duty to  
22 consider whether the procedural bars apply to a post-conviction petition and not arbitrarily  
23 disregard them. In Riker, the Court held that “[a]pplication of the statutory procedural default  
24 rules to post-conviction habeas petitions is mandatory,” and “cannot be ignored when properly  
25 raised by the State.” 121 Nev. at 231–33, 112 P.3d at 1074–75. There, the Court reversed the  
26 District Court’s decision not to bar the petitioner’s untimely and successive petition:

27                           Given the untimely and successive nature of [petitioner’s] petition,  
28                           the district court had a duty imposed by law to consider whether  
                              any or all of [petitioner’s] claims were barred under NRS 34.726,

1 NRS 34.810, NRS 34.800, or by the law of the case . . . [and] the  
2 court's failure to make this determination here constituted an  
arbitrary and unreasonable exercise of discretion.

3 Id. at 234, 112 P.3d at 1076. The Court justified this holding by noting that “[t]he necessity  
4 for a workable system dictates that there must exist a time when a criminal conviction is final.”  
5 Id. at 231, 112 P.3d 1074 (citation omitted); see also State v. Haberstroh, 119 Nev. 173, 180–  
6 81, 69 P.3d 676, 681–82 (2003) (holding that parties cannot stipulate to waive, ignore, or  
7 disregard the mandatory procedural default rules nor can they empower a court to disregard  
8 them).

9 In State v. Greene, the Nevada Supreme Court reaffirmed its prior holdings that the  
10 procedural default rules are mandatory when it reversed the District Court's grant of a post-  
11 conviction petition for writ of habeas corpus. See State v. Greene, 129 Nev. 559, 565–66, 307  
12 P.3d 322, 326 (2013). There, the Court ruled that the petitioner's petition was untimely and  
13 successive, and that the petitioner failed to show good cause and actual prejudice. Id.  
14 Accordingly, the Court reversed the District Court and ordered the petitioner's petition  
15 dismissed pursuant to the procedural bars. Id. at 567, 307 P.3d at 327.

16 Accordingly, this Court denies Petitioner's APWHC and SAPWHC due to the  
17 procedural bars discussed above, absent a showing of both good cause and prejudice.

18 **II. PETITIONER FAILS TO ESTABLISH GOOD CAUSE TO OVERCOME THE**  
19 **PROCEDURAL BARS**

20 To avoid procedural default, under NRS 34.726, a defendant has the burden of pleading  
21 and proving specific facts that demonstrate good cause for his failure to present her claim in  
22 earlier proceedings or to otherwise comply with the statutory requirements, and that she will  
23 be unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a); see Hogan v. Warden,  
24 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep't of Prisons, 104  
25 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). “A court *must* dismiss a habeas petition if it  
26 presents claims that either were or could have been presented in an earlier proceeding, unless  
27 the court finds *both* cause for failing to present the claims earlier or for raising them again and  
28

1 actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646–47, 29 P.3d 498, 523  
2 (2001) (emphasis added).

3 “To establish good cause, petitioners must show that an impediment external to the  
4 defense prevented their compliance with the applicable procedural rule.” Clem v. State, 119  
5 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev.  
6 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. “A qualifying  
7 impediment might be shown where the factual or legal basis for a claim was not reasonably  
8 available at the time of default.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003).  
9 The Court continued, “petitioners cannot attempt to manufacture good cause[.]” Id. at 621, 81  
10 P.3d at 526. Examples of good cause include interference by State officials and the previous  
11 unavailability of a legal or factual basis. See State v. Huebler, 128 Nev. Adv. Op. 19, 275 P.3d  
12 91, 95 (2012). Clearly, any delay in the filing of the petition must not be the fault of the  
13 petitioner. NRS 34.726(1)(a).

14 Additionally, “bare” and “naked” allegations are not sufficient to warrant post-  
15 conviction relief, nor are those belied and repelled by the record. Hargrove v. State, 100 Nev.  
16 498, 502, 686 P.2d 222, 225 (1984). A petitioner for post-conviction relief cannot rely on  
17 conclusory claims for relief but must make specific factual allegations that if true would entitle  
18 him to relief. Colwell v. State, 118 Nev. 807, 59 P.3d 463 (2002)(citing Evans v. State, 117  
19 Nev. 609, 621, 28 P.3d 498, 507 (2001)).

20 **A. The decisions in Welch v. United States, 136 S.Ct. 1257 (2016) and Montgomery**  
21 **v. Louisiana, 136 S.Ct. 718 (2016) do not constitute good cause to overcome the**  
22 **procedural bars.**

23 Petitioner claims that the United States Supreme Court decisions in Welch and  
24 Montgomery create good cause for a delay in filing because these Supreme Court decisions  
25 were unavailable to Petitioner at the time of default. APWHC 5, 9; SAPWHC 6, 11.  
26 Petitioner’s argument fails. Even if this Court were to find good cause because of these  
27 decisions, both cases were decided in 2016, and therefore they were absolutely available when  
28 Petitioner filed his original PWHC on January 6, 2017. *Petitioner even cited Montgomery in*

1 *his original PWHC*, showing he was aware of the law of retroactivity, was able to research  
2 this case law, these decisions were reasonably available to Petitioner when he filed his original  
3 PWHC, and the failure to raise those claims was not an impediment external to the defense.  
4 PWHC 2. Additionally, as discussed in more detail below, Welch and Montgomery do not  
5 apply here, as there is no cogent argument for retroactively applying NRS 193.165 as changes  
6 in the law are not constitutional by nature.

7 Furthermore, even if this Court were to find good cause due to the decisions in Welch  
8 and Montgomery, and even if this Court were to overlook the fact that they were available to  
9 Petitioner when he filed his first PWHC, this still does not explain why Petitioner waited five  
10 (5) years after Welch and Montgomery were decided and four (4) years after Petitioner's  
11 original PWHC was denied to file an APWHC to raise these issues. Petitioner now attempts  
12 to manufacture good cause and cannot show that the delay in raising these claims is not his  
13 fault.

14 As such, the decisions in Welch and Montgomery do not constitute good cause for  
15 Petitioner's failure to comply with procedural requirements.

16 **B. Petitioner's access to a law library does not constitute good cause to overcome**  
17 **procedural bars.**

18 Petitioner claims that there is good cause to overcome procedural bars because the  
19 prison's "Law Library is less than adequate for extensive legal research and provides minimal  
20 training for prisoners." APWHC 10, SAPWHC 11. Petitioner's claims are bare and naked,  
21 belied by controlling case law, meritless, and therefore fail.

22 First, Petitioner's claims allege no specific facts that would constitute good cause, and  
23 thus this claim should be disregarded. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Petitioner  
24 fails to specifically allege how the prison's law library is inadequate and how a more adequate  
25 law library would have resulted in Petitioner adhering to the procedural bars.

26 Second, the United States Supreme Court has expressly rejected the argument that lack  
27 of access to a law library constitutes "actual injury" to an inmate. Lewis v. Casey, 518 U.S.  
28 343, 348, 116 S.Ct. 2174, 2178 (1996) (defining "actual injury" to include "inability to meet

1 a filing deadline or to present a claim.”). The Lewis Court went on to explain that inmates do  
2 not have any “freestanding right to a law library or legal assistance” and concluded that “an  
3 inmate cannot establish relevant actual injury simply by establishing that his prison’s law  
4 library or legal assistance program is subpar in some theoretical sense.” Id. at 351, 116 S.Ct.  
5 at 2180. Furthermore, the Nevada Supreme Court has rejected the argument that special  
6 arrangements should be made to permit the use of law library materials when an inmate’s  
7 custodial status limits access to the law library. See Wilkie v. State, 98 Nev. 192, 194, 644  
8 P.2d 508, 509 (1982).

9 Therefore, on its face, Petitioner’s claim of limited access to the law library cannot  
10 constitute good cause sufficient to overcome the time-bar to the instant Petition. Lewis, 518  
11 U.S. at 348, 116 S.Ct. at 2178; Wilkie, 98 Nev. at 194, 644 P.2d at 509. Moreover, to the  
12 extent Petitioner is claiming that his lack of access to the law library somehow precluded his  
13 compliance with the filing deadline, that claim is belied by the fact that Petitioner was able to  
14 file his original PWHC in which he cites case law and performs legal analysis. Hargrove v.  
15 State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (habeas petitioners are not entitled to relief  
16 on “bare” and “naked” claims or those “belied or repelled by the record”). Therefore,  
17 Petitioner demonstrably cannot show an “inability to meet [the] filing deadline” sufficient to  
18 overcome his procedural bar. Lewis, 518 U.S. at 348, 116 S.Ct. at 2178.

19 Ultimately, as stated *supra*, under Lewis, Petitioner bears the burden of demonstrating  
20 that his access to the law library somehow interfered with Petitioner’s meeting the filing  
21 deadline. 518 U.S. at 348, 116 S.Ct. at 2178. Petitioner does not make such a showing; as such,  
22 Petitioner cannot demonstrate good cause sufficient to overcome his procedural default.

23 Because both the United States Supreme Court and the Nevada Supreme Court have  
24 precluded relief on Petitioner’s law library claim, Petitioner cannot show that access to a law  
25 library constitutes good cause to overcome the procedural bars.

26 Accordingly, Petitioner failed to show good cause to overcome the procedural bars.

27 //

28 //

1           **III.    PETITIONER FAILS TO ESTABLISH PREJUDICE TO OVERCOME**  
2           **THE PROCEDURAL BARS**

3           Petitioner cannot demonstrate the requisite prejudice necessary to ignore his  
4 procedural default because his underlying claims are bare, naked, belied by controlling case  
5 law and meritless.

6           In order to establish prejudice, the defendant must show ““not merely that the errors of  
7 [the proceedings] created possibility of prejudice, but that they worked to his actual and  
8 substantial disadvantage, in affecting the state proceedings with error of constitutional  
9 dimensions.”” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United  
10 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there  
11 must be a “substantial reason; one that affords a legal excuse.” Hathaway v. State, 119 Nev.  
12 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229,  
13 1230 (1989)). Clearly, any delay in the filing of the petition must not be the fault of the  
14 petitioner. NRS 34.726(1)(a).

15           **A.    Petitioner’s Claims are barred by the law of the case and res judicata.**

16           Petitioner argues that the District Court erred in imposing a consecutive sentence of  
17 four (4) to twelve (12) years for the deadly weapon enhancement. APWHC 4, SAPWHC 4.  
18 Petitioner is incorrect, as discussed in detail below, however this issue has already been denied  
19 by the District Court and therefore it is precluded by the law of the case and res judicata.

20           “The law of a first appeal is law of the case on all subsequent appeals in which the facts  
21 are substantially the same.” Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting  
22 Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). “The doctrine of the law of the  
23 case cannot be avoided by a more detailed and precisely focused argument subsequently made  
24 after reflection upon the previous proceedings.” Id. at 316, 535 P.2d at 799. Under the law of  
25 the case doctrine, issues previously decided on direct appeal may not be reargued in a habeas  
26 petition. Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing McNelton v.  
27 State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this Court cannot  
28 overrule the Nevada Supreme Court. Nev. Const. Art. VI § 6. See Mason v. State, 206 S.W.3d

1 869, 875 (Ark. 2005) (recognizing the doctrine's applicability in the criminal context); see  
2 also York v. State, 342 S.W. 528, 553 (Tex. Crim. Appl. 2011). Accordingly, by simply  
3 continuing to file motions with the same arguments, his motion is barred by the doctrines of  
4 the law of the case and res judicata. Id.; Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799  
5 (1975).

6 In Petitioner's Motion to Modify and/or Correct by Setting Aside Illegal Sentence  
7 Based Upon Lack of Subject Matter Jurisdiction filed on June 22, 2016, Petitioner argued:

8 Pursuant to AB 300; NRS 195.165, the Defendant could not have received a  
9 sentence greater than, not less than 1-year and not more than 5 years [sic].  
10 Therefore a 4-12 year enhanced would also be facially illegal upon that basis  
and must be vacated as a matter of law.

11 Motion to Modify and/or Correct by Setting Aside Illegal Sentence Based Upon Lack of  
12 Subject Matter Jurisdiction filed June 22, 2016, 24.

13 The District Court considered Petitioner's argument and issued an Order denying  
14 Petitioner's Motion on August 8, 2016:

15 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion to Modify  
16 and/or Correct by Setting Aside Illegal Sentence Based Upon Lack of Subject  
17 Matter Jurisdiction, shall be, and is DENIED.

18 Order Denying Defendant's Pro Per Motion to Modify and/or Correct by Setting Aside Illegal  
19 Sentence Based Upon Lack of Subject Matter Jurisdiction, filed August 8, 2016, 2.

20 Petitioner again raised this claim in his original PWHC (see Memorandum in Support  
21 of Petition for Writ of Habeas Corpus, filed January 6, 2017, 2-3), and the District Court held  
22 that these issues were barred:

23 **This Court Has Already Adjudicated This Matter.**

24 Even if this Court were to entertain this claim, it falls under the doctrine of  
25 *res judicata*. For an issue to fall under *res judicata*, it must have already been  
decided in a prior proceeding.

26 ...

27 When Defendant filed his Motion to Modify, he made the exact same claim  
28 that he brings here. This Court denied that motion. See Order Denying  
Defendant's Pro Per Motion to Appoint Counsel and Order Denying  
Defendant's Pro Per Motion to Modify and/or Correct by Setting Aside Illegal  
Sentence Based Upon Lack of Subject Matter Jurisdiction at 2. Because

1 Defendant reiterates the same arguments here, using the exact same language  
2 from the Motion to Modify - see Petition Memorandum at 2-3 - the District  
3 Court previously ruled on the issue on the merits, and Defendant was a party  
4 in that case, the doctrine of res judicata applies here. Accordingly, this claim  
5 is denied.

6 Findings of Fact, Conclusions of Law, and Order filed July 21, 2017, 5-6.

7 As such, the issue of whether the District Court correctly applied NRS 193.165 in  
8 sentencing Petitioner to a consecutive four (4) to twelve (12) years for a deadly weapon  
9 enhancement has already been adjudicated by this Court and thus this issue is barred by the  
10 law of the case and res judicata.

11 **B. The District Court did not err in sentencing Petitioner to four (4) to twelve (12)**  
12 **years for a deadly weapon enhancement.**

13 Petitioner argues that the District Court erred in its application of NRS 193.165 by  
14 imposing “a consecutive sentence of twelve (12) years for the weapon enhancement.”  
15 APWHC 4, SAPWHC 4. Petitioner’s argument is incorrect and fails.

16 As an initial matter, Petitioner continuously refers only to maximum sentences  
17 throughout his Petition, which is a misrepresentation of the actual sentence imposed on  
18 Petitioner. As noted in the Procedural History above, Petitioner was sentenced to COUNT 1 -  
19 a maximum of twenty-five (25) years and a minimum of ten (10) years in the Nevada  
20 Department of Corrections (hereinafter “NDOC”), plus a consecutive term of a minimum of  
21 four (4) years and a maximum of twelve (12) years for the use of a deadly weapon; and  
22 COUNT 2 - a maximum of sixty (60) months and a minimum of twenty-four (24) months in  
23 the NDOC, plus a consecutive term of a minimum of twelve (12) months and a maximum of  
24 thirty (30) months for the use of a deadly weapon, concurrent with COUNT 1, with one  
25 thousand seven hundred forty-eight (1,748) days credit for time served. As such, Petitioner  
26 was sentenced to a consecutive four (4) to twelve (12) years for the deadly weapon  
27 enhancement, not simply twelve (12) years as argued by Petitioner.

28 It should also be noted that this sentence was identical to the parties’ joint  
recommendation to the Court at sentencing. GPA 1. In addition to Petitioner explicitly  
agreeing to the unambiguous term that he would be sentenced to a consecutive four (4) to

1 twelve (12) years for the deadly weapon enhancement, the plea agreement was also  
2 conditional, meaning the Petitioner consented to the terms of the agreement in such a way that  
3 if any of the terms of the agreement were not followed, Petitioner could have withdrawn from  
4 the agreement. Petitioner is now arguing that the District Court erred by both imposing the  
5 exact sentence the Petitioner agreed to and completely adhering to an agreement that Petitioner  
6 could have withdrawn from if the District Court had deviated in any way.

7         Aside from Petitioner's misrepresentation of the sentence imposed and failure to stand  
8 by his own negotiations, Petitioner's argument is also meritless and fails. As cited by  
9 Petitioner, the current version of NRS 193.165 went into effect on July 1, 2007. The date of  
10 Petitioner's offense was January 31, 2010, and thus the current version of NRS 193.165  
11 applied. NRS 193.165 reads as follows:

12             1. Except as otherwise provided in NRS 193.169, any person who uses a  
13 firearm or other deadly weapon or a weapon containing or capable of emitting  
14 tear gas, whether or not its possession is permitted by NRS 202.375, in the  
15 commission of a crime *shall, in addition to the term of imprisonment*  
16 *prescribed by statute for the crime, be punished by imprisonment in the state*  
17 *prison for a minimum term of not less than 1 year and a maximum term of not*

- 18             (a) The facts and circumstances of the crime;  
19             (b) The criminal history of the person;  
20             (c) The impact of the crime on any victim;  
21             (d) Any mitigating factors presented by the person; and  
22             (e) Any other relevant information.

23             The court shall state on the record that it has considered the  
24 information described in paragraphs (a) to (e), inclusive, in  
25 determining the length of the additional penalty imposed.

26             2. *The sentence prescribed by this section:*

- 27             (a) *Must not exceed the sentence imposed for the crime; and*  
28             (b) *Runs consecutively with the sentence prescribed by statute for the*  
              *crime.*

NRS 193.165. (Emphasis added).

1           Accordingly, despite Petitioner’s argument that “the question of whether any  
2 enhancement was appropriate was to be left to the reasonable discretion of the District Court  
3 Judge,” the District Court was *required* to impose a consecutive sentence for a deadly weapon  
4 enhancement because Petitioner pled guilty to two (2) crimes with use of a deadly weapon.  
5 APWHC 4; SAPWHC 4; GPA 1. The Court then properly imposed a consecutive four (4) to  
6 twelve (12) year consecutive sentence for the deadly weapon enhancement. This sentence was  
7 proper as it was between one (1) and twenty (20) years, it did not exceed the sentence imposed  
8 for the crime, and it ran consecutive to the sentence prescribed by statute for the crime.  
9 Therefore, the District Court properly adhered to the plain language of NRS 193.165.

10           Thus, the District Court did not err in sentencing Petitioner to a consecutive term of  
11 four (4) to twelve (12) years for the deadly weapon enhancement.

12           **C. NRS 193.165 was properly applied to Petitioner’s sentence as Welch and**  
13           **Montgomery do not apply.**

14           Petitioner argues that “NRS 193.165 must be held to be retroactive because of United  
15 States Supreme Court Decisions of Welch v. United States, 136 S.Ct. 1257 (2016) and  
16 Montgomery v. Louisiana, 136 S.Ct. 718 (2016).” APWHC 5, SAPWHC 5. Petitioner’s  
17 argument is belied by controlling case law and statute, and therefore fails.

18           The Nevada Supreme Court has held that statutes are otherwise presumed to operate  
19 prospectively “unless they are so strong, clear, and imperative that they can have no other  
20 meaning or unless the intent of the [L]egislature cannot be otherwise satisfied.” Holloway v.  
21 Barrett, 87 Nev. 385, 390, 487 P.2d 501, 504 (1971). Further, “Courts will not apply statutes  
22 retrospectively unless the statute clearly expresses a legislative intent that they do so.” Allstate  
23 Ins. Co. v. Furgerson, 104 Nev. 772, 776, 766 P.2d 904, 907 (1988).

24           It is well established that, under Nevada law, the proper penalty for a criminal  
25 conviction is the penalty in effect at the time of the commission of the offense and not the  
26 penalty in effect at the time of sentencing. State v. Second Judicial Dist. Ct. (“Pullin”), 124  
27 Nev. 564, 567, 188 P.3d 1079, 1081 (2008). Unless the Legislature clearly expresses its intent  
28 to apply a law retroactively, Nevada law requires the application of the law in effect at the

1 time of the commission of the crime. Id. “[A] change of law does not invalidate a conviction  
2 obtained under an earlier law.” Clem v. State, 119 Nev. 615, 623, 81 P.3d 521, 527 (2003)  
3 (quoting Kleve v. Hill, 243 F.3d 1149, 1151 (9th Cir. 2011)).

4 Additionally, Petitioner misrepresents the holding in Pullin, which he relies on for the  
5 contention that NRS 193.165 should be applied retroactively. In that case, The Nevada  
6 Supreme Court ordered the District Court to resentence the Defendant because the date of the  
7 offense (September 2, 2006) was prior to the enactment of the new version of NRS 193.165  
8 in July of 2007. The facts in this case are entirely different. Here, the date of offense was  
9 January 31, 2010, which was nearly three (3) years after the current version of NRS 195.163  
10 went into effect. As cited above, NRS 193.165 contains no language that “clearly expresses  
11 the legislative intent” to apply it retroactively. In fact, in Pullin, the Nevada Supreme Court  
12 specifically held that NRS 193.165 should not be applied retroactively:

13 Further, we reject Pullin's contention that the retroactive  
14 application of the amendments to NRS 193.165 is appropriate here  
15 because NRS 193.165 is a procedural or remedial statute.

16  
17 Id. at 1080.

18 Petitioner also argues that pursuant to Welch and Montgomery, which both create rules  
19 for retroactive application of some laws due to substantive constitutional changes, Pullin  
20 should be reversed. Again, Petitioner is incorrect. Pullin specifically addresses whether the  
21 changes made to NRS 193.165 were constitutional in nature:

22 Here, the amendments made to NRS 193.165 were not of  
23 constitutional dimension. The amendments did not alter any of the  
24 constitutional aspects of NRS 193.165, such as the requirement  
25 that a jury must find, or a defendant must admit to the fact that a  
26 deadly weapon was used in the commission of a crime. Instead,  
the amendments merely give the district court more discretion in  
determining the sentence. Thus, we decline to apply these  
amendments retroactively.

27 Id. at 1084.  
28

1 As such, Welch and Montgomery do not apply, and NRS 193.165 is not applied  
2 retroactively. The date of the instant offense was January 31, 2010. The applicable version of  
3 NRS 193.165 which went into effect on July 1, 2007 controlled the District Court's  
4 requirement to impose a consecutive sentence for deadly weapon enhancement within the  
5 statutory limits, which is exactly what the District Court did.

6 Thus, the District Court did not err in sentencing Petitioner to four (4) to twelve (12)  
7 years for the deadly weapon enhancement.

#### 8 **IV. PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL**

9 Petitioner argues that "counsel was ineffective in not effectively advocating for a fairer  
10 and more just sentence." APWHC 7, SAPWHC 9. Petitioner's claim is bare, naked, meritless,  
11 and fails.

12 The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal  
13 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his  
14 defense." The United States Supreme Court has long recognized that "the right to counsel is  
15 the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686,  
16 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323  
17 (1993).

18 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove  
19 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of  
20 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865  
21 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's  
22 representation fell below an objective standard of reasonableness, and second, that but for  
23 counsel's errors, there is a reasonable probability that the result of the proceedings would have  
24 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State  
25 Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-  
26 part test). "[T]here is no reason for a court deciding an ineffective assistance claim to approach  
27 the inquiry in the same order or even to address both components of the inquiry if the defendant  
28 makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

1           The court begins with the presumption of effectiveness and then must determine  
2 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
3 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel  
4 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of  
5 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,  
6 537 P.2d 473, 474 (1975).

7           Counsel cannot be ineffective for failing to make futile objections or arguments. See  
8 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the  
9 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
10 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
11 (2002).

12           Based on the above law, the role of a court in considering allegations of ineffective  
13 assistance of counsel is “not to pass upon the merits of the action not taken but to determine  
14 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
15 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
16 (1978). This analysis does not mean that the court should “second guess reasoned choices  
17 between trial tactics nor does it mean that defense counsel, to protect himself against  
18 allegations of inadequacy, must make every conceivable motion no matter how remote the  
19 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel  
20 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel  
21 cannot create one and may disserve the interests of his client by attempting a useless charade.”  
22 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

23           “There are countless ways to provide effective assistance in any given case. Even the  
24 best criminal defense attorneys would not defend a particular client in the same way.”  
25 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after  
26 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
27 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
28 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's

1 challenged conduct on the facts of the particular case, viewed as of the time of counsel's  
2 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

3 When a conviction is the result of a guilty plea, a defendant must show that there is a  
4 “reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and  
5 would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370  
6 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107  
7 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

8 Even if a defendant can demonstrate that his counsel's representation fell below an  
9 objective standard of reasonableness, he must still demonstrate prejudice and show a  
10 reasonable probability that, but for counsel’s errors, the result of the trial would have been  
11 different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
12 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability  
13 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,  
14 694, 104 S. Ct. at 2064–65, 2068).

15 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the  
16 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of  
17 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,  
18 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must  
19 be supported with specific factual allegations, which if true, would entitle the petitioner to  
20 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”  
21 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS  
22 34.735(6) states in relevant part, “[Petitioner] must allege specific facts supporting the claims  
23 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your  
24 petition to be dismissed.” (emphasis added).

25 Additionally, Petitioner’s claims are not sufficiently pled pursuant to Hargrove v. State,  
26 100 Nev. 498, 502, 686 P.2d 222, 225 (1984), and Maresca v. State, 103 Nev. 669, 673, 748  
27 P.2d 3, 6 (1987). Indeed, a party seeking review bears the responsibility “to cogently argue,  
28 and present relevant authority” to support his assertions. Edwards v. Emperor’s Garden

1 Restaurant, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006); Dept. of Motor Vehicles  
2 and Public Safety v. Rowland, 107 Nev. 475, 479, 814 P.2d 80, 83 (1991) (defendant's failure  
3 to present legal authority resulted in no reason for the district court to consider defendant's  
4 claim); Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (an arguing party must  
5 support his arguments with relevant authority and cogent argument; "issues not so presented  
6 need not be addressed"); Randall v. Salvation Army, 100 Nev. 466, 470-71, 686 P.2d 241, 244  
7 (1984) (court may decline consideration of issues lacking citation to relevant legal authority);  
8 Holland Livestock v. B & C Enterprises, 92 Nev. 473, 533 P.2d 950 (1976) (issues lacking  
9 citation to relevant legal authority do not warrant review on the merits). Claims for relief  
10 devoid of specific factual allegations are "bare" and "naked," and are insufficient to warrant  
11 relief, as are those claims belied and repelled by the record. Hargrove v. State, 100 Nev. 498,  
12 502, 686 P.2d 222, 225 (1984). "[Petitioner] *must* allege specific facts supporting the claims  
13 in the petition[.]...Failure to allege specific facts rather than just conclusions may cause [the]  
14 petition to be dismissed." NRS 34.735(6) (emphasis added).

15 **A. Petitioner's claims are bare, naked, and unsupported by specific facts.**

16 Petitioner argues, "defense counsel failed in providing effective assistance at  
17 sentencing. Defense counsel did not argue that the court exercise its discretion to sentence the  
18 Defendant concurrently. He did not apparently advise the defendant when AB 510 changed  
19 the law so that he could take steps to properly challenge his disproportionate sentence, see  
20 Mendoza-Lopez v. State, 125 Nev. 634, 218 P.3d 501 (2009). A defense counsel must be an  
21 aggressive, not a passive advocate at sentencing. He must argue all reasonable factual or legal  
22 arguments to minimize his client's sentence and to ensure a just sentence. In this case, pursuant  
23 to negotiation, defense counsel stipulated to a particular sentence of lengthy imprisonment."  
24 APWHC 8, SAPWHC 9. Petitioner's argument is bare and naked, meritless, and fails.

25 Not only are Petitioner's claims meritless, but they are also not sufficiently pled  
26 pursuant to Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984), and Maresca v.  
27 State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). Indeed, a party seeking review bears the  
28 responsibility "to cogently argue, and present relevant authority" to support his assertions.

1 Edwards v. Emperor's Garden Restaurant, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38  
2 (2006); Dept. of Motor Vehicles and Public Safety v. Rowland, 107 Nev. 475, 479, 814 P.2d  
3 80, 83 (1991) (defendant's failure to present legal authority resulted in no reason for the district  
4 court to consider defendant's claim); Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987)  
5 (an arguing party must support his arguments with relevant authority and cogent argument;  
6 "issues not so presented need not be addressed"); Randall v. Salvation Army, 100 Nev. 466,  
7 470-71, 686 P.2d 241, 244 (1984) (court may decline consideration of issues lacking citation  
8 to relevant legal authority); Holland Livestock v. B & C Enterprises, 92 Nev. 473, 533 P.2d  
9 950 (1976) (issues lacking citation to relevant legal authority do not warrant review on the  
10 merits). Claims for relief devoid of specific factual allegations are "bare" and "naked," and  
11 are insufficient to warrant relief, as are those claims belied and repelled by the record.  
12 Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "[Petitioner] *must* allege  
13 specific facts supporting the claims in the petition[.]...Failure to allege specific facts rather  
14 than just conclusions may cause [the] petition to be dismissed." NRS 34.735(6) (emphasis  
15 added).

16 Here, Petitioner does not cite to a sentencing transcript or any other specific facts that  
17 provide any evidence whatsoever to support his assertions. Petitioner provides no evidence  
18 that counsel at sentencing failed to make arguments in favor of a lower sentence. Additionally,  
19 as explained above, the District Court was *required* to impose a consecutive sentence for the  
20 use of a deadly weapon. Therefore, an "aggressive" argument against a consecutive sentence  
21 would have been futile and belied by statute. Ennis. Counsel would have been entirely  
22 incorrect in advising his client that the change in NRS 193.165 that allowed Petitioner to  
23 challenge consecutive sentences.

24 Thus, Petitioner provides no specific facts that would warrant relief, and instead offers  
25 unsupported conclusory statements that even if true are belied by statute, and therefore his  
26 argument fails.

27 //

28 //

1           **B. Petitioner’s aggregate sentence is not excessive, cruel, or unusual, and it is**  
2           **therefore not a violation of the Eight Amendment of the Constitution.**

3           Petitioner claims that counsel was ineffective at sentencing and therefore, “it should  
4 not be presumed that his aggregate sentence of thirty-seven (37) years was consistent with the  
5 Eighth Amendment. Even though this sentence was within statutory guidelines, Defendant  
6 respectfully submits that this sentence was unnecessarily long and unnecessarily harsh because  
7 it removed any meaningful possibility of rehabilitation.” APWHC 8, SAPWHC 10.  
8 Petitioner’s argument is meritless and fails.

9           The Eighth Amendment to the United States Constitution as well as Article 1, Section  
10 6 of the Nevada Constitution prohibit the imposition of cruel and unusual punishment. The  
11 Nevada Supreme Court has stated that “[a] sentence within the statutory limits is not ‘cruel  
12 and unusual punishment unless the statute fixing punishment is unconstitutional or the  
13 sentence is so unreasonably disproportionate to the offense as to shock the conscience.’”  
14 Allred v. State, 120 Nev. 410, 92 P.2d 1246, 1253 (2004) (quoting Blume v. State, 112 Nev.  
15 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 95 Nev. 433, 435,  
16 596 P.2d 220, 221-22 (1979).

17           Additionally, the Nevada Supreme Court has granted district courts “wide discretion”  
18 in sentencing decisions, and these are not to be disturbed “[s]o long as the record does not  
19 demonstrate prejudice resulting from consideration of information or accusations founded on  
20 facts supported only by impalpable or highly suspect evidence.” Allred, 120 Nev. at 410, 92  
21 P.2d at 1253 (quoting Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976)). A  
22 sentencing judge is permitted broad discretion in imposing a sentence and absent an abuse of  
23 discretion, the district court’s determination will not be disturbed on appeal. Randell v. State,  
24 109 Nev. 5, 846 P.2d 278 (1993) (citing Deveroux v. State, 96 Nev. 388, 610 P.2d 722 (1980)).  
25 As long as the sentence is within the limits set by the legislature, a sentence will normally not  
26 be considered cruel and unusual. Glegola v. State, 110 Nev. 344, 871 P.2d 950 (1994).

27           First, as discussed above, Petitioner misrepresents the sentence imposed by the Court  
28 by stating that he was sentenced to thirty-seven (37) years. Petitioner was sentenced to an

1 aggregate of fourteen (14) to thirty-seven (37) years for Second Degree Murder with Use of a  
2 Deadly Weapon and Attempt Murder with Use of a Deadly Weapon. Second, as Petitioner  
3 acknowledges multiple times in his Petition, the sentence imposed by the District Court was  
4 within the statutory limits, and therefore is not considered to be cruel and unusual. Allred.  
5 Finally, Petitioner argues that his sentence “shocks the conscience” and is not fair or  
6 reasonable. APWHC 9, SAPWHC 11. Petitioner is incorrect. An aggregate sentence within  
7 the statutory limits of fourteen (14) to thirty-seven (37) years does not shock the conscience  
8 for Petitioner’s crime of shooting and killing a man after an argument while he was on federal  
9 parole.

10 As such, Petitioner has not been subjected to cruel and unusual punishment as a result  
11 of ineffective assistance of counsel, and therefore his claim fails.

#### 12 **V. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

13 Petitioner requests an evidentiary hearing “to establish Defendant’s counsel was  
14 ineffective under Strickland in numerous ways. An evidentiary hearing will establish the  
15 Defendant filed his Pro Per Mandamus Petitioner for appointment of counsel as soon as he  
16 became aware of the Supreme Court’s cases of Montgomery v. Louisiana, and Welch v. United  
17 States, which changed the law regarding the retroactivity of AB 510. An evidentiary hearing  
18 is necessary to show that counsel did not assist Defendant ever in challenging his wrongful  
19 sentence, despite the fundamental change in constitutional law which the Supreme Court  
20 enacted.” APWHC 12, SAPWHC 14-15. Petitioner is not entitled to an evidentiary hearing.  
21 Petitioner’s claims are bare, naked, meritless, and therefore fail.

22 Under NRS 34.770, a petitioner is entitled to an evidentiary hearing when a judge  
23 reviews all supporting documents filed and determines that a hearing is necessary to explore  
24 the specific facts alleged in the petition. An evidentiary hearing is unnecessary if a petition  
25 can be resolved without expanding the record. *See* Marshall v. State, 110 Nev. 1328, 885 P.2d  
26 603 (1994); *See also* Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A  
27 petitioner is entitled to an evidentiary hearing if his petition is supported by specific factual  
28 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled

1 by the record. *See* Marshall, 110 Nev. at 1331, 885 P.2d at 605; *See also* Hargrove, 100 Nev.  
2 at 503, 686 P.2d at 225 (holding that “[a] defendant seeking post-conviction relief is not  
3 entitled to an evidentiary hearing on factual allegations belied or repelled by the record”). It is  
4 improper to hold an evidentiary hearing simply to make a complete record. *See* State v. Eighth  
5 Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court  
6 considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as  
7 complete a record as possible.’ This is an incorrect basis for an evidentiary hearing.”).

8 Further, the United States Supreme Court has held that an evidentiary hearing is not  
9 required simply because counsel’s actions are challenged as being unreasonable strategic  
10 decisions. *See* Harrington v. Richter, 562, U.S. 86, 105, 131 S. Ct. 770, 788 (2011). Although  
11 courts may not indulge post hoc rationalization for counsel’s decision-making that contradicts  
12 the available evidence of counsel’s actions, neither may they insist counsel confirm every  
13 aspect of the strategic basis for his or her actions. *Id.* There is a “strong presumption” that  
14 counsel’s attention to specific issues to the exclusion of others reflects trial tactics rather than  
15 “sheer neglect.” *Id.* (citing Yarborough, 540 U.S. 1, 124 S. Ct. 1). Strickland calls for an  
16 inquiry into the objective reasonableness of counsel’s performance, not counsel’s subjective  
17 State of mind. 466 U.S. at 688, 104 S. Ct. at 2065.

18 Here, Petitioner’s claims are suitable only for summary denial as Petitioner’s claims  
19 are time-barred, barred as successive, barred by the law of the case and res judicata, and  
20 meritless. The record as it stands is more than sufficient to resolve the Petitioner’s allegations  
21 on procedural grounds and on the merits. Additionally, Petitioner provides only conclusory  
22 statements unsupported by facts or the record and is not entitled to relief. Hargrove, 100 Nev.  
23 at 503, 686 P.2d at 225. As such, Petitioner’s request for an evidentiary hearing is denied.

24 **VI. PETITIONER IS NOT ENTITLED TO A HEARING TO BE RE-**  
25 **SENTENCED**

26 Petitioner argues that his “sentence and Judgment of Conviction should be reversed,  
27 and the case should be remanded to District Court for re-sentencing. The District Court should  
28 be ordered to re-sentence the Defendant and eliminate the consecutive enhancement given for

1 use of a deadly weapon, or alternatively remand the case to District Court for the District Court  
2 to state in writing the reasons why any consecutive sentence for the weapons enhancement.”  
3 APWHC 13-14, SAPWHC 16. Petitioner is not entitled to be resentenced.

4 First, the case would not need to be “remanded” to District Court. This case is currently  
5 in District Court. Second, the District Court is not required to state their findings as to a deadly  
6 weapon enhancement in writing. NRS 193.165(1)(e) states:

7 1. In determining the length of the additional penalty imposed, the  
8 court shall consider the following information:

- 9 (a) The facts and circumstances of the crime;  
10 (b) The criminal history of the person;  
11 (c) The impact of the crime on any victim;  
12 (d) Any mitigating factors presented by the person; and  
13 (e) Any other relevant information.

14 The court shall state on the record that it has considered the  
15 information described in paragraphs (a) to (e), inclusive, in  
determining the length of the additional penalty imposed.

16 Petitioner provides no evidence in the form of transcripts or any other specific facts that  
17 show the District Court failed to adhere to the statute and state the reasons for the length of  
18 the sentence for the deadly weapon enhancement on the record or that counsel failed to argue  
19 any mitigating factors. Petitioner also does not provide specific facts as to what mitigating  
20 factors existed that should have been argued, or how those mitigating factors would have  
21 changed the outcome of the case in any way. Instead, Petitioner provides unsupported  
22 conclusory statements. Hargrove, 100 Nev. at 503, 686 P.2d at 225. As acknowledged by  
23 Petitioner, his sentence was within the statutory limits and the discretion of the Court, and  
24 therefore there is no cogent argument that would support a hearing to re-sentence Petitioner.  
25 As such, Petitioner is not entitled to a hearing to be resentenced.

26 //

27 //

28 //

**ORDER**

Based on the foregoing, IT IS HEREBY ORDERED that the Amended and Second Amended Petition for Writ of Habeas Corpus (Post-Conviction) and Request for Evidentiary Hearing shall be, and are, hereby denied.

Dated this 17th day of June, 2022



STEVEN WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

47B 0E4 DA19 DCBB  
Tierra Jones  
District Court Judge

BY /s/ Taleen Pandukht  
TALEEN PANDUKHT  
Chief Deputy District Attorney  
Nevada Bar #005734

**CERTIFICATE OF ELECTRONIC TRANSMISSION**

I hereby certify that service of the above and foregoing was made this \_\_\_\_ day of \_\_\_\_\_, 2022, by electronic transmission to:

TERRANCE M. JACKSON  
Terry.jackson.esq@gmail.com

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

1 **CSERV**

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

5  
6 Cedric Jackson, Plaintiff(s)

CASE NO: A-22-849718-W

7 vs.

DEPT. NO. Department 10

8 State of Nevada, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

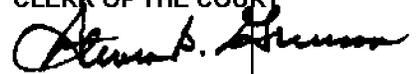
14 Service Date: 6/17/2022

15 Terrence Jackson

terry.jackson.esq@gmail.com

16 Dept 10 LC

dept10lc@clarkcountycourts.us



1 NEO

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

4  
5 CEDRIC JACKSON,

6 Petitioner,

Case No: 10C265339-1

Dept No: X

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

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

10  
11 **PLEASE TAKE NOTICE** that on June 17, 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 June 20, 2022.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

17  
18  
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 20 day of June 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 Cedric Jackson # 1130512 Terrence M. Jackson, Esq.  
26 P.O. Box 208 624 S. Ninth St.  
27 Indian Springs, NV 89070 Las Vegas, NV 89101

28 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

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**FCL**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #1565  
TALEEN PANDUKHT  
Chief Deputy District Attorney  
Nevada Bar #5734  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Respondent

DISTRICT COURT  
CLARK COUNTY, NEVADA

CEDRIC JACKSON  
ID#1581340,  
  
Petitioner,  
  
-vs-  
  
THE STATE OF NEVADA,  
  
Respondent.

CASE NO: A-22-849718-W  
C-10-265339-1  
  
DEPT NO: X

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

DATE OF HEARING: May 6, 2022  
TIME OF HEARING: 10:45 a.m.

THIS CAUSE having been decided by the Honorable TIERRA JONES, District Judge, pursuant to a Minute Order issued on the 6th day of May 2022, both parties not being present, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact, conclusions of law and order.

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1 **PROCEDURAL HISTORY**

2 On June 16, 2010, the State of Nevada charged CEDRIC JACKSON (hereinafter  
3 “Petitioner”) by way of Information as follows: COUNT 1 – Murder with Use of a Deadly  
4 Weapon (Felony – NRS 200.010, 200.030, 193.165); COUNT 2 – Attempt Murder with Use  
5 of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.330, 193.165); COUNT 3 –  
6 Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm (Felony – NRS  
7 200.481.2c); COUNT 4 – Attempt Murder with Use of a Deadly Weapon (Felony – NRS  
8 200.010, 200.030, 193.330, 193.165); COUNT 5 – Assault with a Deadly Weapon (Felony –  
9 NRS 200.471); COUNT 6 – Attempt Murder with Use of a Deadly Weapon (Felony – NRS  
10 200.010, 200.030, 193.330, 193.165); COUNT 7 – Assault with a Deadly Weapon (Felony –  
11 NRS 200.471); COUNT 8 – Conspiracy to Commit Murder (Felony – NRS 199.480, 200.100,  
12 200.030); COUNT 9 – Discharging Firearm at or into Structure, Vehicle, Aircraft, or  
13 Watercraft (Felony – NRS 202.285); and COUNT 10 – Discharging Firearm Out of Motor  
14 Vehicle (Felony – NRS 202.287).

15 On September 17, 2014, pursuant to negotiations, the State filed an Amended  
16 Information charging Petitioner as follows: COUNT 1 – Second Degree Murder with Use of  
17 a Deadly Weapon (Category A Felony – NRS 200.010, 200.030, 193.165 – NOC 50011) and  
18 COUNT 2 – Attempt Murder with Use of a Deadly Weapon (Category B Felony – NRS  
19 200.010, 200.030, 193.330, 193.165 – NOC 50031). That same day, Petitioner pled guilty to  
20 both counts in the Amended Information. The terms of the Guilty Plea Agreement (hereinafter  
21 “GPA”) were as follows: “The Defendant's plea is conditional upon him receiving the  
22 following stipulated sentence. The parties jointly recommend a sentence of ten (10) to twenty-  
23 five (25) years as to Count 1 with a consecutive four (4) to twelve (12) years as to the deadly  
24 weapon enhancement. In addition, the parties stipulate to two (2) to five (5) years as to Count  
25 2 with a consecutive twelve (12) to thirty (30) months sentence as to the deadly weapon  
26 enhancement. The parties stipulate that the sentences on each count will run concurrently to  
27 one another.”

28 //

1           On November 19, 2014, Petitioner was sentenced to COUNT 1 - a maximum of twenty-  
2 five (25) years and a minimum of ten (10) years in the Nevada Department of Corrections  
3 (hereinafter “NDOC”), plus a consecutive term of a minimum of four (4) years and a maximum  
4 of twelve (12) years for the use of a deadly weapon; and COUNT 2 - a maximum of sixty (60)  
5 months and a minimum of twenty-four (24) months in the NDOC, plus a consecutive term of  
6 a minimum of twelve (12) months and a maximum of thirty (30) months for the use of a deadly  
7 weapon, concurrent with COUNT 1, with one thousand seven hundred forty-eight (1,748) days  
8 credit for time served.

9           The Judgment of Conviction was filed on November 21, 2014.

10           On June 22, 2016, Petitioner filed a Motion to Modify and/or Correct by Setting Aside  
11 Illegal Sentence Based Upon Lack of Subject Matter Jurisdiction. The State filed its Response  
12 on July 12, 2016. The District Court denied the Motion on July 13, 2016.

13           On January 6, 2017, Petitioner filed a Petition for Writ of Habeas Corpus (Post-  
14 Conviction) (hereinafter “PWHC”). The State filed its Response on January 20, 2017. On  
15 January 25, 2017, the PWHC was denied. On February 13, 2017, Petitioner filed a Notice of  
16 Appeal. The Findings of Fact, Conclusions of Law and Order reflecting the Court’s denial of  
17 the Petition was filed on March 7, 2017. On January 9, 2018, the Nevada Court of Appeals  
18 affirmed the District Court’s denial of Petitioner’s PWHC. Remittitur issued on February 5,  
19 2018.

20           On June 5, 2018, Petitioner filed a Motion for the Appointment of Counsel. The State  
21 filed a Response on June 26, 2018. The Motion was denied on June 27, 2018.

22           On May 28, 2020, Petitioner filed a Petition for Writ of Mandamus. The State’s  
23 Response was filed on June 4, 2020. On August 3, 2020, the Attorney General’s Office filed  
24 a Motion to Dismiss the Petition for Writ of Mandamus, which was granted by the District  
25 Court on September 4, 2020. The Decision and Order was filed on September 28, 2020.

26           On December 9, 2021, Petitioner filed an Amended Petition for Writ of Habeas Corpus  
27 (hereinafter “APWHC”) through retained counsel Terrence Jackson, Esq. According to the  
28 Petition, Mr. Jackson was retained on June 15, 2020. APWHC 4.

1 On March 7, 2022, Petitioner filed a Second Amended Petition for Writ of Habeas  
2 Corpus or alternatively Motion to Modify Sentence Based Upon Changes in Supreme Court  
3 Law and Changes in Nevada Revised Statute 193.165 (“SAPWHC”). Petitioner asserts that  
4 the SAPWHC was filed because the APWHC was never set for argument. SAPWHC 4.  
5 Petitioner’s SAPWHC is identical to the APWHC except for a paragraph explaining the  
6 reasoning for filing the SAPWHC.

7 On March 15, 2022, a Notice of Change of Case Number and Department  
8 Reassignment issued transferring this case from Department 24 to Department 10.

9 The State’s Motion to Strike and Response to both Petitions was filed on March 21,  
10 2022. On May 6, 2022, the Court issued a Minute Order denying the Amended and Second  
11 Amended Petition for Writ of Habeas Corpus and Request for Evidentiary Hearing.

#### 12 **FACTUAL BACKGROUND**

13 The District Court relied on the following facts at sentencing:

14 On January 31, 2010, officers of the Las Vegas Metropolitan Police  
15 Department responded to a report of a homicide. The first victim was found  
16 in front of a residence and it appeared he had been shot. Further examination  
17 of the body revealed he had been shot nine times. A second victim was also  
18 located who had been shot in the leg. This victim was uncooperative and  
19 refused to identify the suspects. Officers learned that both victims had been  
20 involved in an altercation at a local bar with two male subjects earlier.  
21 Witnesses told the officers that the victims had gotten into a fight with the  
22 two male subjects, later identified as Cedric Jackson and Prentice Coleman.

23 One witness that was with the victims and was also shot at, told the  
24 officers that after the fight at the bar, Coleman and Jackson followed them  
25 and he observed Jackson and the deceased victim confront each other. Shortly  
26 thereafter the suspects began shooting at the victims and him. He stated he  
27 ran and hid behind a vehicle which the officers inspected and the rear window  
28 had been struck by gunfire. Witnesses positively identified the shooters as  
Cedric Jackson and Prentice Coleman.

It was discovered that Cedric Jackson and Prentice Coleman were both  
on federal parole. After further investigation, officer located Cedric Jackson  
at the U.S. Parole and Probation office on February 5, 2010, where he was  
arrested and transported to the Clark County Detention Center and booked  
accordingly.

Presentence Investigation Report (“PSI”) 5-6.

1 **ANALYSIS**

2 As an initial matter, Petitioners APWHC and SAPWHC are identical in substance, the  
3 only difference being a paragraph explaining the reasoning behind filing the SAPWHC after  
4 the APWHC, which is that no argument was set after the APWHC was filed. In both the  
5 APWHC and SAPWHC, Petitioner asserts six (6) grounds for relief:

- 6 1. The District Court erred when it sentenced Petitioner to a consecutive sentence of  
7 twelve (12) years for the deadly weapon enhancement. APWHC 4, SAPWHC 4.
  - 8 2. The application of amendments in NRS 193.165 must be held to be retroactive  
9 based on two (2) 2016 US Supreme Court cases: Welch v. United States, 136 S.Ct.  
10 1257 (2016) and Montgomery v. Louisiana, 136 S.Ct. 718 (2016). APWHC 5,  
11 SAPWHC 5.
  - 12 3. The aggregate sentence of thirty-seven (37) years was excessive and cruel and  
13 unusual punishment and Defense counsel was ineffective in not effectively  
14 advocating for a fairer and more just sentence. APWHC 7, SAPWHC 8.
  - 15 4. Petitioner’s Post-Conviction Petition for Writ of Habeas Corpus should not be  
16 procedurally barred based on Welch v. United States, 136 S.Ct. 1257 (2016) and  
17 Montgomery v. Louisiana, 136 S.Ct. 718 (2016) as these two (2) cases are new  
18 constitutional law and were not reasonably available at the time of Petitioner’s  
19 default, therefore this constitutes good cause to overcome the procedural bar.  
20 APWHC 9, SAPWHC 9.
  - 21 5. Petitioner is entitled to an evidentiary hearing to show ineffective assistance of  
22 counsel and to prove his Petition is not procedurally barred. APWHC 12, SAPWHC  
23 12.
  - 24 6. Petitioner requests that the case be remanded to District Court for re-sentencing to  
25 eliminate the consecutive deadly weapon enhancement or for the District Court to  
26 state in writing the reasons why any consecutive sentence is appropriate. APWHC  
27 13-14, SAPWHC 14.
- 28

1       **I.    PETITIONER’S PETITION IS PROCEDURALLY BARRED**

2                       **A.   Petitioner’s Petition is Time Barred.**

3       The mandatory provision of NRS 34.726(1) states:

4                       Unless there is good cause shown for delay, a petition that  
5                       challenges the validity of a judgment or sentence must be filed  
6                       *within 1 year after entry of the judgment of conviction* or, if an  
7                       appeal has been taken from the judgment, *within 1 year after the  
8                       Supreme Court issues its remittitur*. For the purposes of this  
9                       subsection, good cause for delay exists if the petitioner  
10                      demonstrates to the satisfaction of the court:

- 11                      A. The delay is not the fault of the Petitioner; and  
12                      B. The dismissal of the petition as untimely will unduly  
13                      prejudice the Petitioner

14       Id. (Emphasis added).

15                      The Nevada Supreme Court has held that NRS 34.726 should be construed by its plain  
16                      meaning. Pellegrini v. State, 117 Nev. 860, 873–74, 34 P.3d 519, 528 (2001). As per the  
17                      language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from  
18                      the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.  
19                      Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998).

20                      The one-year time limit for preparing petitions for post-conviction relief under NRS  
21                      34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),  
22                      the Nevada Supreme Court rejected a habeas petition that was filed two (2) days late despite  
23                      evidence presented by the defendant that he purchased postage through the prison and mailed  
24                      the petition within the one-year time limit.

25                      This is not a case wherein the Judgment of Conviction was, for example, not final. See,  
26                      e.g., Johnson v. State, 133 Nev. 571, 402 P.3d 1266 (2017) (holding that the defendant’s  
27                      judgment of conviction was not final until the district court entered a new judgment of  
28                      conviction on counts that the district court had vacated); Whitehead v. State, 128 Nev. 259,  
29                      285 P.3d 1053 (2012) (holding that a judgment of conviction that imposes restitution in an  
30                      unspecified amount is not final and therefore does not trigger the one-year period for filing a  
31                      habeas petition). Nor is there any other legal basis for running the one-year time-limit from  
32                      the filing of the Amended Judgment of Conviction.

1 Here, Petitioner’s Judgment of Conviction was filed on November 21, 2014. Petitioner  
2 therefore had until November 21, 2015 to file a post-conviction habeas petition. Petitioner did  
3 not file his APWHC until December 9, 2021 and did not file his SAPWHC until March 7,  
4 2022. As such, in filing his APWHC, Petitioner missed the clear and unambiguous mandatory  
5 filing deadline by seven (7) years and eighteen (18) days, or 2,575 total days. The Court in  
6 Gonzales found a two (2) day delay to be impermissible, and therefore a 2,575-day delay is  
7 obviously also impermissible. It should be noted that the District Court has *already* found that  
8 Petitioner’s previous PWHC filed on January 6, 2017 was determined to be time barred. See  
9 Findings of Fact, Conclusions of Law, and Order, filed March 7, 2017, 3. Obviously, that  
10 determination would not change with a Petition that was filed nearly five (5) years later.

11 Thus, absent a showing of good cause to excuse this delay, Petitioner’s APWHC and  
12 SAPWHC are denied.

13 **B. Petitioner’s Petition is Barred as Successive.**

14 The controlling law regarding successive petitions, NRS 34.810(2), reads:

15 A second or successive petition *must be dismissed* if the judge or  
16 justice determines that it fails to allege new or different grounds  
17 for relief and that the prior determination was on the merits or, if  
18 new and different grounds are alleged, the judge or justice finds  
that the failure of the petitioner to assert those grounds in a prior  
petition constituted an abuse of the writ.

19 Id. (emphasis added).

20 Second or successive petitions are petitions that either fail to allege new or different  
21 grounds for relief and the grounds have already been decided on the merits or that allege new  
22 or different grounds but a judge or justice finds that the petitioner’s failure to assert those  
23 grounds in a prior petition would constitute an abuse of the writ. Second or successive petitions  
24 will only be decided on the merits if the petitioner can show good cause and prejudice. NRS  
25 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994); see also Hart v.  
26 State, 116 Nev. 558, 563–64, 1 P.3d 969, 972 (2000) (holding that “where a defendant  
27 previously has sought relief from the judgment, the defendant’s failure to identify all grounds  
28 for relief in the first instance should weigh against consideration of the successive motion.”)

1           The Nevada Supreme Court has stated: “Without such limitations on the availability of  
2 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-  
3 conviction remedies. In addition, meritless, successive and untimely petitions clog the court  
4 system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d at 950.  
5 The Nevada Supreme Court recognizes that “[u]nlike initial petitions which certainly require  
6 a careful review of the record, successive petitions may be dismissed based solely on the face  
7 of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words,  
8 if the claim or allegation was previously available with reasonable diligence, it is an abuse of  
9 the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497–98 (1991).  
10 Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

11           Here, Petitioner raises the exact same issues that he previously raised in both his Motion  
12 to Modify/Correct Illegal Sentence filed on June 22, 2016, and his PWHC filed on January 6,  
13 2017. In both the Motion and Petition, Petitioner alleges that the District Court erred in  
14 improperly applying NRS 193.165 in imposing Petitioner’s sentence for the Deadly Weapon  
15 enhancement. In response to the PWHC, the District Court specifically found that the same  
16 claims Petitioner raises here were already decided on the merits when Petitioner’s Motion to  
17 Modify was denied. Findings of Fact, Conclusions of Law, and Order filed March 7, 2017, 5-  
18 6. NRS 34.810(3); Lozada.

19           As such, Petitioner’s APWHC and SAPWHC are successive and therefore are denied.

20           **C. Application of the Procedural Bars are Mandatory.**

21           The Nevada Supreme Court has specifically found that the District Court has a duty to  
22 consider whether the procedural bars apply to a post-conviction petition and not arbitrarily  
23 disregard them. In Riker, the Court held that “[a]pplication of the statutory procedural default  
24 rules to post-conviction habeas petitions is mandatory,” and “cannot be ignored when properly  
25 raised by the State.” 121 Nev. at 231–33, 112 P.3d at 1074–75. There, the Court reversed the  
26 District Court’s decision not to bar the petitioner’s untimely and successive petition:

27                           Given the untimely and successive nature of [petitioner’s] petition,  
28                           the district court had a duty imposed by law to consider whether  
                              any or all of [petitioner’s] claims were barred under NRS 34.726,

1 NRS 34.810, NRS 34.800, or by the law of the case . . . [and] the  
2 court's failure to make this determination here constituted an  
arbitrary and unreasonable exercise of discretion.

3 Id. at 234, 112 P.3d at 1076. The Court justified this holding by noting that “[t]he necessity  
4 for a workable system dictates that there must exist a time when a criminal conviction is final.”  
5 Id. at 231, 112 P.3d 1074 (citation omitted); see also State v. Haberstroh, 119 Nev. 173, 180–  
6 81, 69 P.3d 676, 681–82 (2003) (holding that parties cannot stipulate to waive, ignore, or  
7 disregard the mandatory procedural default rules nor can they empower a court to disregard  
8 them).

9 In State v. Greene, the Nevada Supreme Court reaffirmed its prior holdings that the  
10 procedural default rules are mandatory when it reversed the District Court's grant of a post-  
11 conviction petition for writ of habeas corpus. See State v. Greene, 129 Nev. 559, 565–66, 307  
12 P.3d 322, 326 (2013). There, the Court ruled that the petitioner's petition was untimely and  
13 successive, and that the petitioner failed to show good cause and actual prejudice. Id.  
14 Accordingly, the Court reversed the District Court and ordered the petitioner's petition  
15 dismissed pursuant to the procedural bars. Id. at 567, 307 P.3d at 327.

16 Accordingly, this Court denies Petitioner's APWHC and SAPWHC due to the  
17 procedural bars discussed above, absent a showing of both good cause and prejudice.

18 **II. PETITIONER FAILS TO ESTABLISH GOOD CAUSE TO OVERCOME THE**  
19 **PROCEDURAL BARS**

20 To avoid procedural default, under NRS 34.726, a defendant has the burden of pleading  
21 and proving specific facts that demonstrate good cause for his failure to present her claim in  
22 earlier proceedings or to otherwise comply with the statutory requirements, and that she will  
23 be unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a); see Hogan v. Warden,  
24 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep't of Prisons, 104  
25 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). “A court *must* dismiss a habeas petition if it  
26 presents claims that either were or could have been presented in an earlier proceeding, unless  
27 the court finds *both* cause for failing to present the claims earlier or for raising them again and  
28

1 actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646–47, 29 P.3d 498, 523  
2 (2001) (emphasis added).

3 “To establish good cause, petitioners must show that an impediment external to the  
4 defense prevented their compliance with the applicable procedural rule.” Clem v. State, 119  
5 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev.  
6 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. “A qualifying  
7 impediment might be shown where the factual or legal basis for a claim was not reasonably  
8 available at the time of default.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003).  
9 The Court continued, “petitioners cannot attempt to manufacture good cause[.]” Id. at 621, 81  
10 P.3d at 526. Examples of good cause include interference by State officials and the previous  
11 unavailability of a legal or factual basis. See State v. Huebler, 128 Nev. Adv. Op. 19, 275 P.3d  
12 91, 95 (2012). Clearly, any delay in the filing of the petition must not be the fault of the  
13 petitioner. NRS 34.726(1)(a).

14 Additionally, “bare” and “naked” allegations are not sufficient to warrant post-  
15 conviction relief, nor are those belied and repelled by the record. Hargrove v. State, 100 Nev.  
16 498, 502, 686 P.2d 222, 225 (1984). A petitioner for post-conviction relief cannot rely on  
17 conclusory claims for relief but must make specific factual allegations that if true would entitle  
18 him to relief. Colwell v. State, 118 Nev. 807, 59 P.3d 463 (2002)(citing Evans v. State, 117  
19 Nev. 609, 621, 28 P.3d 498, 507 (2001)).

20 **A. The decisions in Welch v. United States, 136 S.Ct. 1257 (2016) and Montgomery**  
21 **v. Louisiana, 136 S.Ct. 718 (2016) do not constitute good cause to overcome the**  
22 **procedural bars.**

23 Petitioner claims that the United States Supreme Court decisions in Welch and  
24 Montgomery create good cause for a delay in filing because these Supreme Court decisions  
25 were unavailable to Petitioner at the time of default. APWHC 5, 9; SAPWHC 6, 11.  
26 Petitioner’s argument fails. Even if this Court were to find good cause because of these  
27 decisions, both cases were decided in 2016, and therefore they were absolutely available when  
28 Petitioner filed his original PWHC on January 6, 2017. *Petitioner even cited Montgomery in*

1 *his original PWHC*, showing he was aware of the law of retroactivity, was able to research  
2 this case law, these decisions were reasonably available to Petitioner when he filed his original  
3 PWHC, and the failure to raise those claims was not an impediment external to the defense.  
4 PWHC 2. Additionally, as discussed in more detail below, Welch and Montgomery do not  
5 apply here, as there is no cogent argument for retroactively applying NRS 193.165 as changes  
6 in the law are not constitutional by nature.

7 Furthermore, even if this Court were to find good cause due to the decisions in Welch  
8 and Montgomery, and even if this Court were to overlook the fact that they were available to  
9 Petitioner when he filed his first PWHC, this still does not explain why Petitioner waited five  
10 (5) years after Welch and Montgomery were decided and four (4) years after Petitioner's  
11 original PWHC was denied to file an APWHC to raise these issues. Petitioner now attempts  
12 to manufacture good cause and cannot show that the delay in raising these claims is not his  
13 fault.

14 As such, the decisions in Welch and Montgomery do not constitute good cause for  
15 Petitioner's failure to comply with procedural requirements.

16 **B. Petitioner's access to a law library does not constitute good cause to overcome**  
17 **procedural bars.**

18 Petitioner claims that there is good cause to overcome procedural bars because the  
19 prison's "Law Library is less than adequate for extensive legal research and provides minimal  
20 training for prisoners." APWHC 10, SAPWHC 11. Petitioner's claims are bare and naked,  
21 belied by controlling case law, meritless, and therefore fail.

22 First, Petitioner's claims allege no specific facts that would constitute good cause, and  
23 thus this claim should be disregarded. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Petitioner  
24 fails to specifically allege how the prison's law library is inadequate and how a more adequate  
25 law library would have resulted in Petitioner adhering to the procedural bars.

26 Second, the United States Supreme Court has expressly rejected the argument that lack  
27 of access to a law library constitutes "actual injury" to an inmate. Lewis v. Casey, 518 U.S.  
28 343, 348, 116 S.Ct. 2174, 2178 (1996) (defining "actual injury" to include "inability to meet

1 a filing deadline or to present a claim.”). The Lewis Court went on to explain that inmates do  
2 not have any “freestanding right to a law library or legal assistance” and concluded that “an  
3 inmate cannot establish relevant actual injury simply by establishing that his prison’s law  
4 library or legal assistance program is subpar in some theoretical sense.” Id. at 351, 116 S.Ct.  
5 at 2180. Furthermore, the Nevada Supreme Court has rejected the argument that special  
6 arrangements should be made to permit the use of law library materials when an inmate’s  
7 custodial status limits access to the law library. See Wilkie v. State, 98 Nev. 192, 194, 644  
8 P.2d 508, 509 (1982).

9 Therefore, on its face, Petitioner’s claim of limited access to the law library cannot  
10 constitute good cause sufficient to overcome the time-bar to the instant Petition. Lewis, 518  
11 U.S. at 348, 116 S.Ct. at 2178; Wilkie, 98 Nev. at 194, 644 P.2d at 509. Moreover, to the  
12 extent Petitioner is claiming that his lack of access to the law library somehow precluded his  
13 compliance with the filing deadline, that claim is belied by the fact that Petitioner was able to  
14 file his original PWHC in which he cites case law and performs legal analysis. Hargrove v.  
15 State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (habeas petitioners are not entitled to relief  
16 on “bare” and “naked” claims or those “belied or repelled by the record”). Therefore,  
17 Petitioner demonstrably cannot show an “inability to meet [the] filing deadline” sufficient to  
18 overcome his procedural bar. Lewis, 518 U.S. at 348, 116 S.Ct. at 2178.

19 Ultimately, as stated *supra*, under Lewis, Petitioner bears the burden of demonstrating  
20 that his access to the law library somehow interfered with Petitioner’s meeting the filing  
21 deadline. 518 U.S. at 348, 116 S.Ct. at 2178. Petitioner does not make such a showing; as such,  
22 Petitioner cannot demonstrate good cause sufficient to overcome his procedural default.

23 Because both the United States Supreme Court and the Nevada Supreme Court have  
24 precluded relief on Petitioner’s law library claim, Petitioner cannot show that access to a law  
25 library constitutes good cause to overcome the procedural bars.

26 Accordingly, Petitioner failed to show good cause to overcome the procedural bars.

27 //

28 //

1           **III. PETITIONER FAILS TO ESTABLISH PREJUDICE TO OVERCOME**  
2           **THE PROCEDURAL BARS**

3           Petitioner cannot demonstrate the requisite prejudice necessary to ignore his  
4 procedural default because his underlying claims are bare, naked, belied by controlling case  
5 law and meritless.

6           In order to establish prejudice, the defendant must show ““not merely that the errors of  
7 [the proceedings] created possibility of prejudice, but that they worked to his actual and  
8 substantial disadvantage, in affecting the state proceedings with error of constitutional  
9 dimensions.”” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United  
10 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there  
11 must be a “substantial reason; one that affords a legal excuse.” Hathaway v. State, 119 Nev.  
12 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229,  
13 1230 (1989)). Clearly, any delay in the filing of the petition must not be the fault of the  
14 petitioner. NRS 34.726(1)(a).

15           **A. Petitioner’s Claims are barred by the law of the case and res judicata.**

16           Petitioner argues that the District Court erred in imposing a consecutive sentence of  
17 four (4) to twelve (12) years for the deadly weapon enhancement. APWHC 4, SAPWHC 4.  
18 Petitioner is incorrect, as discussed in detail below, however this issue has already been denied  
19 by the District Court and therefore it is precluded by the law of the case and res judicata.

20           “The law of a first appeal is law of the case on all subsequent appeals in which the facts  
21 are substantially the same.” Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting  
22 Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). “The doctrine of the law of the  
23 case cannot be avoided by a more detailed and precisely focused argument subsequently made  
24 after reflection upon the previous proceedings.” Id. at 316, 535 P.2d at 799. Under the law of  
25 the case doctrine, issues previously decided on direct appeal may not be reargued in a habeas  
26 petition. Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing McNelton v.  
27 State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this Court cannot  
28 overrule the Nevada Supreme Court. Nev. Const. Art. VI § 6. See Mason v. State, 206 S.W.3d

1 869, 875 (Ark. 2005) (recognizing the doctrine's applicability in the criminal context); see  
2 also York v. State, 342 S.W. 528, 553 (Tex. Crim. Appl. 2011). Accordingly, by simply  
3 continuing to file motions with the same arguments, his motion is barred by the doctrines of  
4 the law of the case and res judicata. Id.; Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799  
5 (1975).

6 In Petitioner's Motion to Modify and/or Correct by Setting Aside Illegal Sentence  
7 Based Upon Lack of Subject Matter Jurisdiction filed on June 22, 2016, Petitioner argued:

8 Pursuant to AB 300; NRS 195.165, the Defendant could not have received a  
9 sentence greater than, not less than 1-year and not more than 5 years [sic].  
10 Therefore a 4-12 year enhanced would also be facially illegal upon that basis  
and must be vacated as a matter of law.

11 Motion to Modify and/or Correct by Setting Aside Illegal Sentence Based Upon Lack of  
12 Subject Matter Jurisdiction filed June 22, 2016, 24.

13 The District Court considered Petitioner's argument and issued an Order denying  
14 Petitioner's Motion on August 8, 2016:

15 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion to Modify  
16 and/or Correct by Setting Aside Illegal Sentence Based Upon Lack of Subject  
17 Matter Jurisdiction, shall be, and is DENIED.

18 Order Denying Defendant's Pro Per Motion to Modify and/or Correct by Setting Aside Illegal  
19 Sentence Based Upon Lack of Subject Matter Jurisdiction, filed August 8, 2016, 2.

20 Petitioner again raised this claim in his original PWHC (see Memorandum in Support  
21 of Petition for Writ of Habeas Corpus, filed January 6, 2017, 2-3), and the District Court held  
22 that these issues were barred:

23 **This Court Has Already Adjudicated This Matter.**

24 Even if this Court were to entertain this claim, it falls under the doctrine of  
25 *res judicata*. For an issue to fall under *res judicata*, it must have already been  
decided in a prior proceeding.

26 ...

27 When Defendant filed his Motion to Modify, he made the exact same claim  
28 that he brings here. This Court denied that motion. See Order Denying  
Defendant's Pro Per Motion to Appoint Counsel and Order Denying  
Defendant's Pro Per Motion to Modify and/or Correct by Setting Aside Illegal  
Sentence Based Upon Lack of Subject Matter Jurisdiction at 2. Because

1 Defendant reiterates the same arguments here, using the exact same language  
2 from the Motion to Modify - see Petition Memorandum at 2-3 - the District  
3 Court previously ruled on the issue on the merits, and Defendant was a party  
4 in that case, the doctrine of res judicata applies here. Accordingly, this claim  
5 is denied.

6 Findings of Fact, Conclusions of Law, and Order filed July 21, 2017, 5-6.

7 As such, the issue of whether the District Court correctly applied NRS 193.165 in  
8 sentencing Petitioner to a consecutive four (4) to twelve (12) years for a deadly weapon  
9 enhancement has already been adjudicated by this Court and thus this issue is barred by the  
10 law of the case and res judicata.

11 **B. The District Court did not err in sentencing Petitioner to four (4) to twelve (12)**  
12 **years for a deadly weapon enhancement.**

13 Petitioner argues that the District Court erred in its application of NRS 193.165 by  
14 imposing “a consecutive sentence of twelve (12) years for the weapon enhancement.”  
15 APWHC 4, SAPWHC 4. Petitioner’s argument is incorrect and fails.

16 As an initial matter, Petitioner continuously refers only to maximum sentences  
17 throughout his Petition, which is a misrepresentation of the actual sentence imposed on  
18 Petitioner. As noted in the Procedural History above, Petitioner was sentenced to COUNT 1 -  
19 a maximum of twenty-five (25) years and a minimum of ten (10) years in the Nevada  
20 Department of Corrections (hereinafter “NDOC”), plus a consecutive term of a minimum of  
21 four (4) years and a maximum of twelve (12) years for the use of a deadly weapon; and  
22 COUNT 2 - a maximum of sixty (60) months and a minimum of twenty-four (24) months in  
23 the NDOC, plus a consecutive term of a minimum of twelve (12) months and a maximum of  
24 thirty (30) months for the use of a deadly weapon, concurrent with COUNT 1, with one  
25 thousand seven hundred forty-eight (1,748) days credit for time served. As such, Petitioner  
26 was sentenced to a consecutive four (4) to twelve (12) years for the deadly weapon  
27 enhancement, not simply twelve (12) years as argued by Petitioner.

28 It should also be noted that this sentence was identical to the parties’ joint  
recommendation to the Court at sentencing. GPA 1. In addition to Petitioner explicitly  
agreeing to the unambiguous term that he would be sentenced to a consecutive four (4) to

1 twelve (12) years for the deadly weapon enhancement, the plea agreement was also  
2 conditional, meaning the Petitioner consented to the terms of the agreement in such a way that  
3 if any of the terms of the agreement were not followed, Petitioner could have withdrawn from  
4 the agreement. Petitioner is now arguing that the District Court erred by both imposing the  
5 exact sentence the Petitioner agreed to and completely adhering to an agreement that Petitioner  
6 could have withdrawn from if the District Court had deviated in any way.

7       Aside from Petitioner's misrepresentation of the sentence imposed and failure to stand  
8 by his own negotiations, Petitioner's argument is also meritless and fails. As cited by  
9 Petitioner, the current version of NRS 193.165 went into effect on July 1, 2007. The date of  
10 Petitioner's offense was January 31, 2010, and thus the current version of NRS 193.165  
11 applied. NRS 193.165 reads as follows:

12       1. Except as otherwise provided in NRS 193.169, any person who uses a  
13 firearm or other deadly weapon or a weapon containing or capable of emitting  
14 tear gas, whether or not its possession is permitted by NRS 202.375, in the  
15 commission of a crime *shall, in addition to the term of imprisonment*  
16 *prescribed by statute for the crime, be punished by imprisonment in the state*  
17 *prison for a minimum term of not less than 1 year and a maximum term of not*

- 18       (a) The facts and circumstances of the crime;  
19       (b) The criminal history of the person;  
20       (c) The impact of the crime on any victim;  
21       (d) Any mitigating factors presented by the person; and  
22       (e) Any other relevant information.

23       The court shall state on the record that it has considered the  
24 information described in paragraphs (a) to (e), inclusive, in  
25 determining the length of the additional penalty imposed.

26       2. *The sentence prescribed by this section:*

- 27       (a) *Must not exceed the sentence imposed for the crime; and*  
28       (b) *Runs consecutively with the sentence prescribed by statute for the*  
      *crime.*

NRS 193.165. (Emphasis added).

1           Accordingly, despite Petitioner’s argument that “the question of whether any  
2 enhancement was appropriate was to be left to the reasonable discretion of the District Court  
3 Judge,” the District Court was *required* to impose a consecutive sentence for a deadly weapon  
4 enhancement because Petitioner pled guilty to two (2) crimes with use of a deadly weapon.  
5 APWHC 4; SAPWHC 4; GPA 1. The Court then properly imposed a consecutive four (4) to  
6 twelve (12) year consecutive sentence for the deadly weapon enhancement. This sentence was  
7 proper as it was between one (1) and twenty (20) years, it did not exceed the sentence imposed  
8 for the crime, and it ran consecutive to the sentence prescribed by statute for the crime.  
9 Therefore, the District Court properly adhered to the plain language of NRS 193.165.

10           Thus, the District Court did not err in sentencing Petitioner to a consecutive term of  
11 four (4) to twelve (12) years for the deadly weapon enhancement.

12           **C. NRS 193.165 was properly applied to Petitioner’s sentence as Welch and**  
13           **Montgomery do not apply.**

14           Petitioner argues that “NRS 193.165 must be held to be retroactive because of United  
15 States Supreme Court Decisions of Welch v. United States, 136 S.Ct. 1257 (2016) and  
16 Montgomery v. Louisiana, 136 S.Ct. 718 (2016).” APWHC 5, SAPWHC 5. Petitioner’s  
17 argument is belied by controlling case law and statute, and therefore fails.

18           The Nevada Supreme Court has held that statutes are otherwise presumed to operate  
19 prospectively “unless they are so strong, clear, and imperative that they can have no other  
20 meaning or unless the intent of the [L]egislature cannot be otherwise satisfied.” Holloway v.  
21 Barrett, 87 Nev. 385, 390, 487 P.2d 501, 504 (1971). Further, “Courts will not apply statutes  
22 retrospectively unless the statute clearly expresses a legislative intent that they do so.” Allstate  
23 Ins. Co. v. Furgerson, 104 Nev. 772, 776, 766 P.2d 904, 907 (1988).

24           It is well established that, under Nevada law, the proper penalty for a criminal  
25 conviction is the penalty in effect at the time of the commission of the offense and not the  
26 penalty in effect at the time of sentencing. State v. Second Judicial Dist. Ct. (“Pullin”), 124  
27 Nev. 564, 567, 188 P.3d 1079, 1081 (2008). Unless the Legislature clearly expresses its intent  
28 to apply a law retroactively, Nevada law requires the application of the law in effect at the

1 time of the commission of the crime. Id. “[A] change of law does not invalidate a conviction  
2 obtained under an earlier law.” Clem v. State, 119 Nev. 615, 623, 81 P.3d 521, 527 (2003)  
3 (quoting Kleve v. Hill, 243 F.3d 1149, 1151 (9th Cir. 2011)).

4 Additionally, Petitioner misrepresents the holding in Pullin, which he relies on for the  
5 contention that NRS 193.165 should be applied retroactively. In that case, The Nevada  
6 Supreme Court ordered the District Court to resentence the Defendant because the date of the  
7 offense (September 2, 2006) was prior to the enactment of the new version of NRS 193.165  
8 in July of 2007. The facts in this case are entirely different. Here, the date of offense was  
9 January 31, 2010, which was nearly three (3) years after the current version of NRS 195.163  
10 went into effect. As cited above, NRS 193.165 contains no language that “clearly expresses  
11 the legislative intent” to apply it retroactively. In fact, in Pullin, the Nevada Supreme Court  
12 specifically held that NRS 193.165 should not be applied retroactively:

13 Further, we reject Pullin's contention that the retroactive  
14 application of the amendments to NRS 193.165 is appropriate here  
15 because NRS 193.165 is a procedural or remedial statute.

16  
17 Id. at 1080.

18 Petitioner also argues that pursuant to Welch and Montgomery, which both create rules  
19 for retroactive application of some laws due to substantive constitutional changes, Pullin  
20 should be reversed. Again, Petitioner is incorrect. Pullin specifically addresses whether the  
21 changes made to NRS 193.165 were constitutional in nature:

22 Here, the amendments made to NRS 193.165 were not of  
23 constitutional dimension. The amendments did not alter any of the  
24 constitutional aspects of NRS 193.165, such as the requirement  
25 that a jury must find, or a defendant must admit to the fact that a  
26 deadly weapon was used in the commission of a crime. Instead,  
the amendments merely give the district court more discretion in  
determining the sentence. Thus, we decline to apply these  
amendments retroactively.

27 Id. at 1084.  
28

1 As such, Welch and Montgomery do not apply, and NRS 193.165 is not applied  
2 retroactively. The date of the instant offense was January 31, 2010. The applicable version of  
3 NRS 193.165 which went into effect on July 1, 2007 controlled the District Court's  
4 requirement to impose a consecutive sentence for deadly weapon enhancement within the  
5 statutory limits, which is exactly what the District Court did.

6 Thus, the District Court did not err in sentencing Petitioner to four (4) to twelve (12)  
7 years for the deadly weapon enhancement.

#### 8 **IV. PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL**

9 Petitioner argues that "counsel was ineffective in not effectively advocating for a fairer  
10 and more just sentence." APWHC 7, SAPWHC 9. Petitioner's claim is bare, naked, meritless,  
11 and fails.

12 The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal  
13 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his  
14 defense." The United States Supreme Court has long recognized that "the right to counsel is  
15 the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686,  
16 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323  
17 (1993).

18 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove  
19 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of  
20 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865  
21 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's  
22 representation fell below an objective standard of reasonableness, and second, that but for  
23 counsel's errors, there is a reasonable probability that the result of the proceedings would have  
24 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State  
25 Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-  
26 part test). "[T]here is no reason for a court deciding an ineffective assistance claim to approach  
27 the inquiry in the same order or even to address both components of the inquiry if the defendant  
28 makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

1           The court begins with the presumption of effectiveness and then must determine  
2 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
3 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel  
4 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of  
5 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,  
6 537 P.2d 473, 474 (1975).

7           Counsel cannot be ineffective for failing to make futile objections or arguments. See  
8 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the  
9 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
10 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
11 (2002).

12           Based on the above law, the role of a court in considering allegations of ineffective  
13 assistance of counsel is “not to pass upon the merits of the action not taken but to determine  
14 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
15 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
16 (1978). This analysis does not mean that the court should “second guess reasoned choices  
17 between trial tactics nor does it mean that defense counsel, to protect himself against  
18 allegations of inadequacy, must make every conceivable motion no matter how remote the  
19 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel  
20 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel  
21 cannot create one and may disserve the interests of his client by attempting a useless charade.”  
22 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

23           “There are countless ways to provide effective assistance in any given case. Even the  
24 best criminal defense attorneys would not defend a particular client in the same way.”  
25 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after  
26 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
27 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
28 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's

1 challenged conduct on the facts of the particular case, viewed as of the time of counsel's  
2 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

3 When a conviction is the result of a guilty plea, a defendant must show that there is a  
4 “reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and  
5 would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370  
6 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107  
7 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

8 Even if a defendant can demonstrate that his counsel's representation fell below an  
9 objective standard of reasonableness, he must still demonstrate prejudice and show a  
10 reasonable probability that, but for counsel’s errors, the result of the trial would have been  
11 different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
12 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability  
13 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,  
14 694, 104 S. Ct. at 2064–65, 2068).

15 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the  
16 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of  
17 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,  
18 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must  
19 be supported with specific factual allegations, which if true, would entitle the petitioner to  
20 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”  
21 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS  
22 34.735(6) states in relevant part, “[Petitioner] must allege specific facts supporting the claims  
23 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your  
24 petition to be dismissed.” (emphasis added).

25 Additionally, Petitioner’s claims are not sufficiently pled pursuant to Hargrove v. State,  
26 100 Nev. 498, 502, 686 P.2d 222, 225 (1984), and Maresca v. State, 103 Nev. 669, 673, 748  
27 P.2d 3, 6 (1987). Indeed, a party seeking review bears the responsibility “to cogently argue,  
28 and present relevant authority” to support his assertions. Edwards v. Emperor’s Garden

1 Restaurant, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006); Dept. of Motor Vehicles  
2 and Public Safety v. Rowland, 107 Nev. 475, 479, 814 P.2d 80, 83 (1991) (defendant’s failure  
3 to present legal authority resulted in no reason for the district court to consider defendant’s  
4 claim); Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (an arguing party must  
5 support his arguments with relevant authority and cogent argument; “issues not so presented  
6 need not be addressed”); Randall v. Salvation Army, 100 Nev. 466, 470-71, 686 P.2d 241, 244  
7 (1984) (court may decline consideration of issues lacking citation to relevant legal authority);  
8 Holland Livestock v. B & C Enterprises, 92 Nev. 473, 533 P.2d 950 (1976) (issues lacking  
9 citation to relevant legal authority do not warrant review on the merits). Claims for relief  
10 devoid of specific factual allegations are “bare” and “naked,” and are insufficient to warrant  
11 relief, as are those claims belied and repelled by the record. Hargrove v. State, 100 Nev. 498,  
12 502, 686 P.2d 222, 225 (1984). “[Petitioner] *must* allege specific facts supporting the claims  
13 in the petition[.]...Failure to allege specific facts rather than just conclusions may cause [the]  
14 petition to be dismissed.” NRS 34.735(6) (emphasis added).

15 **A. Petitioner’s claims are bare, naked, and unsupported by specific facts.**

16 Petitioner argues, “defense counsel failed in providing effective assistance at  
17 sentencing. Defense counsel did not argue that the court exercise its discretion to sentence the  
18 Defendant concurrently. He did not apparently advise the defendant when AB 510 changed  
19 the law so that he could take steps to properly challenge his disproportionate sentence, see  
20 Mendoza-Lopez v. State, 125 Nev. 634, 218 P.3d 501 (2009). A defense counsel must be an  
21 aggressive, not a passive advocate at sentencing. He must argue all reasonable factual or legal  
22 arguments to minimize his client's sentence and to ensure a just sentence. In this case, pursuant  
23 to negotiation, defense counsel stipulated to a particular sentence of lengthy imprisonment.”  
24 APWHC 8, SAPWHC 9. Petitioner’s argument is bare and naked, meritless, and fails.

25 Not only are Petitioner’s claims meritless, but they are also not sufficiently pled  
26 pursuant to Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984), and Maresca v.  
27 State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). Indeed, a party seeking review bears the  
28 responsibility “to cogently argue, and present relevant authority” to support his assertions.

1 Edwards v. Emperor's Garden Restaurant, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38  
2 (2006); Dept. of Motor Vehicles and Public Safety v. Rowland, 107 Nev. 475, 479, 814 P.2d  
3 80, 83 (1991) (defendant's failure to present legal authority resulted in no reason for the district  
4 court to consider defendant's claim); Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987)  
5 (an arguing party must support his arguments with relevant authority and cogent argument;  
6 "issues not so presented need not be addressed"); Randall v. Salvation Army, 100 Nev. 466,  
7 470-71, 686 P.2d 241, 244 (1984) (court may decline consideration of issues lacking citation  
8 to relevant legal authority); Holland Livestock v. B & C Enterprises, 92 Nev. 473, 533 P.2d  
9 950 (1976) (issues lacking citation to relevant legal authority do not warrant review on the  
10 merits). Claims for relief devoid of specific factual allegations are "bare" and "naked," and  
11 are insufficient to warrant relief, as are those claims belied and repelled by the record.  
12 Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "[Petitioner] *must* allege  
13 specific facts supporting the claims in the petition[.]...Failure to allege specific facts rather  
14 than just conclusions may cause [the] petition to be dismissed." NRS 34.735(6) (emphasis  
15 added).

16 Here, Petitioner does not cite to a sentencing transcript or any other specific facts that  
17 provide any evidence whatsoever to support his assertions. Petitioner provides no evidence  
18 that counsel at sentencing failed to make arguments in favor of a lower sentence. Additionally,  
19 as explained above, the District Court was *required* to impose a consecutive sentence for the  
20 use of a deadly weapon. Therefore, an "aggressive" argument against a consecutive sentence  
21 would have been futile and belied by statute. Ennis. Counsel would have been entirely  
22 incorrect in advising his client that the change in NRS 193.165 that allowed Petitioner to  
23 challenge consecutive sentences.

24 Thus, Petitioner provides no specific facts that would warrant relief, and instead offers  
25 unsupported conclusory statements that even if true are belied by statute, and therefore his  
26 argument fails.

27 //

28 //

1           **B. Petitioner’s aggregate sentence is not excessive, cruel, or unusual, and it is**  
2           **therefore not a violation of the Eight Amendment of the Constitution.**

3           Petitioner claims that counsel was ineffective at sentencing and therefore, “it should  
4 not be presumed that his aggregate sentence of thirty-seven (37) years was consistent with the  
5 Eighth Amendment. Even though this sentence was within statutory guidelines, Defendant  
6 respectfully submits that this sentence was unnecessarily long and unnecessarily harsh because  
7 it removed any meaningful possibility of rehabilitation.” APWHC 8, SAPWHC 10.  
8 Petitioner’s argument is meritless and fails.

9           The Eighth Amendment to the United States Constitution as well as Article 1, Section  
10 6 of the Nevada Constitution prohibit the imposition of cruel and unusual punishment. The  
11 Nevada Supreme Court has stated that “[a] sentence within the statutory limits is not ‘cruel  
12 and unusual punishment unless the statute fixing punishment is unconstitutional or the  
13 sentence is so unreasonably disproportionate to the offense as to shock the conscience.’”  
14 Allred v. State, 120 Nev. 410, 92 P.2d 1246, 1253 (2004) (quoting Blume v. State, 112 Nev.  
15 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 95 Nev. 433, 435,  
16 596 P.2d 220, 221-22 (1979).

17           Additionally, the Nevada Supreme Court has granted district courts “wide discretion”  
18 in sentencing decisions, and these are not to be disturbed “[s]o long as the record does not  
19 demonstrate prejudice resulting from consideration of information or accusations founded on  
20 facts supported only by impalpable or highly suspect evidence.” Allred, 120 Nev. at 410, 92  
21 P.2d at 1253 (quoting Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976)). A  
22 sentencing judge is permitted broad discretion in imposing a sentence and absent an abuse of  
23 discretion, the district court’s determination will not be disturbed on appeal. Randell v. State,  
24 109 Nev. 5, 846 P.2d 278 (1993) (citing Deveroux v. State, 96 Nev. 388, 610 P.2d 722 (1980)).  
25 As long as the sentence is within the limits set by the legislature, a sentence will normally not  
26 be considered cruel and unusual. Glegola v. State, 110 Nev. 344, 871 P.2d 950 (1994).

27           First, as discussed above, Petitioner misrepresents the sentence imposed by the Court  
28 by stating that he was sentenced to thirty-seven (37) years. Petitioner was sentenced to an

1 aggregate of fourteen (14) to thirty-seven (37) years for Second Degree Murder with Use of a  
2 Deadly Weapon and Attempt Murder with Use of a Deadly Weapon. Second, as Petitioner  
3 acknowledges multiple times in his Petition, the sentence imposed by the District Court was  
4 within the statutory limits, and therefore is not considered to be cruel and unusual. Allred.  
5 Finally, Petitioner argues that his sentence “shocks the conscience” and is not fair or  
6 reasonable. APWHC 9, SAPWHC 11. Petitioner is incorrect. An aggregate sentence within  
7 the statutory limits of fourteen (14) to thirty-seven (37) years does not shock the conscience  
8 for Petitioner’s crime of shooting and killing a man after an argument while he was on federal  
9 parole.

10 As such, Petitioner has not been subjected to cruel and unusual punishment as a result  
11 of ineffective assistance of counsel, and therefore his claim fails.

12 **V. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

13 Petitioner requests an evidentiary hearing “to establish Defendant’s counsel was  
14 ineffective under Strickland in numerous ways. An evidentiary hearing will establish the  
15 Defendant filed his Pro Per Mandamus Petitioner for appointment of counsel as soon as he  
16 became aware of the Supreme Court’s cases of Montgomery v. Louisiana, and Welch v. United  
17 States, which changed the law regarding the retroactivity of AB 510. An evidentiary hearing  
18 is necessary to show that counsel did not assist Defendant ever in challenging his wrongful  
19 sentence, despite the fundamental change in constitutional law which the Supreme Court  
20 enacted.” APWHC 12, SAPWHC 14-15. Petitioner is not entitled to an evidentiary hearing.  
21 Petitioner’s claims are bare, naked, meritless, and therefore fail.

22 Under NRS 34.770, a petitioner is entitled to an evidentiary hearing when a judge  
23 reviews all supporting documents filed and determines that a hearing is necessary to explore  
24 the specific facts alleged in the petition. An evidentiary hearing is unnecessary if a petition  
25 can be resolved without expanding the record. *See* Marshall v. State, 110 Nev. 1328, 885 P.2d  
26 603 (1994); *See also* Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A  
27 petitioner is entitled to an evidentiary hearing if his petition is supported by specific factual  
28 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled

1 by the record. *See Marshall*, 110 Nev. at 1331, 885 P.2d at 605; *See also Hargrove*, 100 Nev.  
2 at 503, 686 P.2d at 225 (holding that “[a] defendant seeking post-conviction relief is not  
3 entitled to an evidentiary hearing on factual allegations belied or repelled by the record”). It is  
4 improper to hold an evidentiary hearing simply to make a complete record. *See State v. Eighth*  
5 *Judicial Dist. Court*, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court  
6 considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as  
7 complete a record as possible.’ This is an incorrect basis for an evidentiary hearing.”).

8 Further, the United States Supreme Court has held that an evidentiary hearing is not  
9 required simply because counsel’s actions are challenged as being unreasonable strategic  
10 decisions. *See Harrington v. Richter*, 562, U.S. 86, 105, 131 S. Ct. 770, 788 (2011). Although  
11 courts may not indulge post hoc rationalization for counsel’s decision-making that contradicts  
12 the available evidence of counsel’s actions, neither may they insist counsel confirm every  
13 aspect of the strategic basis for his or her actions. *Id.* There is a “strong presumption” that  
14 counsel’s attention to specific issues to the exclusion of others reflects trial tactics rather than  
15 “sheer neglect.” *Id.* (citing *Yarborough*, 540 U.S. 1, 124 S. Ct. 1). *Strickland* calls for an  
16 inquiry into the objective reasonableness of counsel’s performance, not counsel’s subjective  
17 State of mind. 466 U.S. at 688, 104 S. Ct. at 2065.

18 Here, Petitioner’s claims are suitable only for summary denial as Petitioner’s claims  
19 are time-barred, barred as successive, barred by the law of the case and res judicata, and  
20 meritless. The record as it stands is more than sufficient to resolve the Petitioner’s allegations  
21 on procedural grounds and on the merits. Additionally, Petitioner provides only conclusory  
22 statements unsupported by facts or the record and is not entitled to relief. *Hargrove*, 100 Nev.  
23 at 503, 686 P.2d at 225. As such, Petitioner’s request for an evidentiary hearing is denied.

24 **VI. PETITIONER IS NOT ENTITLED TO A HEARING TO BE RE-**  
25 **SENTENCED**

26 Petitioner argues that his “sentence and Judgment of Conviction should be reversed,  
27 and the case should be remanded to District Court for re-sentencing. The District Court should  
28 be ordered to re-sentence the Defendant and eliminate the consecutive enhancement given for

1 use of a deadly weapon, or alternatively remand the case to District Court for the District Court  
2 to state in writing the reasons why any consecutive sentence for the weapons enhancement.”  
3 APWHC 13-14, SAPWHC 16. Petitioner is not entitled to be resentenced.

4 First, the case would not need to be “remanded” to District Court. This case is currently  
5 in District Court. Second, the District Court is not required to state their findings as to a deadly  
6 weapon enhancement in writing. NRS 193.165(1)(e) states:

7 1. In determining the length of the additional penalty imposed, the  
8 court shall consider the following information:

- 9 (a) The facts and circumstances of the crime;  
10 (b) The criminal history of the person;  
11 (c) The impact of the crime on any victim;  
12 (d) Any mitigating factors presented by the person; and  
13 (e) Any other relevant information.

14 The court shall state on the record that it has considered the  
15 information described in paragraphs (a) to (e), inclusive, in  
determining the length of the additional penalty imposed.

16 Petitioner provides no evidence in the form of transcripts or any other specific facts that  
17 show the District Court failed to adhere to the statute and state the reasons for the length of  
18 the sentence for the deadly weapon enhancement on the record or that counsel failed to argue  
19 any mitigating factors. Petitioner also does not provide specific facts as to what mitigating  
20 factors existed that should have been argued, or how those mitigating factors would have  
21 changed the outcome of the case in any way. Instead, Petitioner provides unsupported  
22 conclusory statements. Hargrove, 100 Nev. at 503, 686 P.2d at 225. As acknowledged by  
23 Petitioner, his sentence was within the statutory limits and the discretion of the Court, and  
24 therefore there is no cogent argument that would support a hearing to re-sentence Petitioner.  
25 As such, Petitioner is not entitled to a hearing to be resentenced.

26 //

27 //

28 //

**ORDER**

Based on the foregoing, IT IS HEREBY ORDERED that the Amended and Second Amended Petition for Writ of Habeas Corpus (Post-Conviction) and Request for Evidentiary Hearing shall be, and are, hereby denied.

Dated this 17th day of June, 2022



STEVEN WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

47B 0E4 DA19 DCBB  
Tierra Jones  
District Court Judge

BY /s/ Taleen Pandukht  
TALEEN PANDUKHT  
Chief Deputy District Attorney  
Nevada Bar #005734

**CERTIFICATE OF ELECTRONIC TRANSMISSION**

I hereby certify that service of the above and foregoing was made this \_\_\_\_ day of \_\_\_\_\_, 2022, by electronic transmission to:

TERRANCE M. JACKSON  
Terry.jackson.esq@gmail.com

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

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Cedric Jackson, Plaintiff(s)

CASE NO: A-22-849718-W

7 vs.

DEPT. NO. Department 10

8 State of Nevada, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 6/17/2022

15 Terrence Jackson

terry.jackson.esq@gmail.com

16 Dept 10 LC

dept10lc@clarkcountycourts.us

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**June 23, 2010**

10C265339-1

State of Nevada  
vs  
Cedric Jackson

**June 23, 2010**

**9:00 AM**

**Initial Arraignment**

**INITIAL  
ARRAIGNMENT  
Court Clerk: Kristen  
Brown  
Reporter/Recorder:  
Kiara Schmidt Heard  
By: EUGENE  
MARTIN**

**HEARD BY:**

**COURTROOM:** No Location

**COURT CLERK:**

**RECORDER:**

**REPORTER:**

**PARTIES**

|                 |                         |           |
|-----------------|-------------------------|-----------|
| <b>PRESENT:</b> | Jackson, Cedric L       | Defendant |
|                 | Keenan, Nell            | Attorney  |
|                 | Laurent, Christopher J. | Attorney  |
|                 | Winder, Dan M.          | Attorney  |

**JOURNAL ENTRIES**

- Mr. Bindrup requested matter be CONTINUED to tomorrow and will notify Ms. Keenan of the continuance, COURT SO ORDERED.

RECALLED: Ms. Keenan and Mr. Winder present and requested matter be heard at 10:30 am instead of 1:30 pm tomorrow, COURT SO ORDERED. Ms. Keenan stated that she will notify Mr. Bindrup of the new time.

CUSTODY (BOTH)

6/24/10 10:30 AM ARRAIGNMENT CONTINUED (BOTH)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**June 24, 2010**

10C265339-1            State of Nevada  
                                 vs  
                                 Cedric Jackson

|                      |                 |                              |   |
|----------------------|-----------------|------------------------------|---|
| <b>June 24, 2010</b> | <b>10:30 AM</b> | <b>Arraignment Continued</b> | <b>ARRAIGNMENT<br/>CONTINUED Relief<br/>Clerk: Roshonda<br/>Mayfied<br/>Reporter/Recorder:<br/>Kiara Schmidt Heard<br/>By: Randall Weed</b> |
|----------------------|-----------------|------------------------------|---|

**HEARD BY:**

**COURTROOM:** No Location

**COURT CLERK:**

**RECORDER:**

**REPORTER:**

**PARTIES**

|                 |                   |           |
|-----------------|-------------------|-----------|
| <b>PRESENT:</b> | Jackson, Cedric L | Defendant |
|                 | Keenan, Nell      | Attorney  |
|                 | Winder, Dan M.    | Attorney  |

**JOURNAL ENTRIES**

- DEFT'S JACKSON and COLEMAN ARRAIGNED, PLED NOT GUILTY and WAIVED THE 60-DAY RULE. COURT ORDERED, matter set for trial. COURT ORDERED, matter set for status check regarding trial setting before Department 20 as requested by counsel.

CUSTODY (BOTH)

7/7/10 8:30 A.M. STATUS CHECK: TRIAL SETTING (DEPT. 20)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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**Felony/Gross Misdemeanor**
**COURT MINUTES**
**July 07, 2010**


---

10C265339-1      State of Nevada  
vs  
Cedric Jackson

---

**July 07, 2010**
**8:30 AM**
**All Pending Motions**

**ALL PENDING  
MOTIONS 7/7/10  
Relief Clerk: Carole  
D'Aloia  
Reporter/Recorder:  
Julie Lever Heard  
By: LEE GATES**

**HEARD BY:**
**COURTROOM:** No Location

**COURT CLERK:**
**RECORDER:**
**REPORTER:**
**PARTIES**

**PRESENT:**      Jackson, Cedric L                      Defendant  
                         Jimenez, Sonia V.                      Attorney  
                         Weinstock, Arnold                      Attorney

**JOURNAL ENTRIES**

- STATUS CHECK: TRIAL SETTING (BOTH)...DEFENDANT'S MOTION FOR DISCOVERY (JACKSON)

Mr. Weinstock appeared for Mr. Winder and advised Defendant's motion for discovery is being worked out with the D.A.'s Office. COURT ORDERED, all discovery required by statute and case law be provided to the defense. As to trial setting, parties requested a 5/2/11 date and, COURT SO ORDERED.

CUSTODY (BOTH)

4/27/11 9:00 AM CALENDAR CALL

5/2/11 1:00 PM JURY TRIAL

DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

November 15, 2010

10C265339-1            State of Nevada  
                                 vs  
                                 Cedric Jackson

November 15, 2010    9:00 AM            Motion to Withdraw as  
   Counsel

HEARD BY: Bonaventure, Joseph T.            COURTROOM: RJC Courtroom 11D

COURT CLERK: Carol Foley  
                         Linda Denman

RECORDER:

REPORTER: Kim Tuchman

**PARTIES**

PRESENT: Jackson, Cedric L                            Defendant  
                 Jimenez, Sonia V.                            Attorney  
                 State of Nevada                                    Plaintiff  
                 Winder, Dan M.

**JOURNAL ENTRIES**

- Mr. Winder advised he is moving to withdraw as Defendant Jackson can no longer pay his fee, and since co-defendant is presently being represented by the Special Public Defender's Office he would like to go through the procedure to see if he is appointed to represent Defendant through Drew Christensen. Ms. Jimenez noted the Public Defender's office has a conflict. Court noted he has no objection to Mr. Winder being appointed. COURT ORDERED motion GRANTED and matter set for confirmation of counsel.

**CUSTODY**

11/22/2010 9:00 AM CONFIRMATION OF COUNSEL

DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

November 22, 2010

10C265339-1            State of Nevada  
                                 vs  
                                 Cedric Jackson

November 22, 2010    9:00 AM            Confirmation of Counsel

HEARD BY: Bonaventure, Joseph T.            COURTROOM: RJC Courtroom 11D

COURT CLERK: Carol Foley  
                         Linda Denman

RECORDER:

REPORTER: Gina Shrader

**PARTIES**

PRESENT: Jackson, Cedric L                            Defendant  
                 Jimenez, Sonia V.                            Attorney  
                 Samples, Peg    Attorney  
                 State of Nevada                                    Plaintiff

**JOURNAL ENTRIES**

- Court ORDERED Mr. Winder, who was not present, CONFIRMED as counsel for Defendant Jackson. Court FURTHER ORDERED a status check to confirm a second attorney who will be appointed as well. Court further directed that Mr. Winder be apprised of his appointment.

CUSTODY

1/10/2011 9:00 AM STATUS CHECK: CONFIRMATION OF CO-COUNSEL

CLERK'S NOTE: Mr. Winder appeared in court after this matter had been handled and was advised of his confirmation and the next court date./ld

DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

January 10, 2011

10C265339-1      State of Nevada  
                                 vs  
                                 Cedric Jackson

January 10, 2011      8:30 AM      Status Check

HEARD BY: Walsh, Jessie      COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

**PARTIES**

|                 |                      |           |
|-----------------|----------------------|-----------|
| <b>PRESENT:</b> | Christensen, Nell E. | Attorney  |
|                 | Jackson, Cedric L    | Defendant |
|                 | Jimenez, Sonia V.    | Attorney  |
|                 | Palm, Patricia A.    | Attorney  |
|                 | State of Nevada      | Plaintiff |
|                 | Winder, Dan M.       | Attorney  |

**JOURNAL ENTRIES**

- Mr. Winder advised this is on for status check to confirm appointment of counsel. Further, counsel advised Ms. Palm is co-counsel. COURT SO ORDERED. Colloquy regarding trial date. Counsel to place matter on calendar for status check, if trial date needs to be moved.

04/27/11 8:30 AM CALENDAR CALL

05/02/11 1:30 PM JURY TRIAL

CUSTODY





DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

May 21, 2012

10C265339-1            State of Nevada  
                                 vs  
                                 Cedric Jackson

May 21, 2012            8:30 AM            Motion to Continue Trial

HEARD BY: Gates, Lee A.            COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

**PARTIES**

|                 |                      |           |
|-----------------|----------------------|-----------|
| <b>PRESENT:</b> | Christensen, Nell E. | Attorney  |
|                 | Jackson, Cedric L    | Defendant |
|                 | Jimenez, Sonia V.    | Attorney  |
|                 | Palm, Patricia A.    | Attorney  |
|                 | State of Nevada      | Plaintiff |
|                 | Winder, Dan M.       | Attorney  |

**JOURNAL ENTRIES**

- APPEARANCES CONTINUED: Ms. Maningo and Mr. Bindrup present for co-deft. Coleman.

Counsel advised the co-deft. was not transported. COURT ORDERED, matter CONTINUED for co-deft. to be transported.

**CUSTODY**

05/30/12 8:30 AM DEFT'S MOTION BY DEFT. JACKSON TO CONTINUE TRIAL

DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

May 30, 2012

10C265339-1            State of Nevada  
                                 vs  
                                 Cedric Jackson

May 30, 2012            8:30 AM            Motion to Continue Trial

HEARD BY: Walsh, Jessie            COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

**PARTIES**

|                 |                      |           |
|-----------------|----------------------|-----------|
| <b>PRESENT:</b> | Christensen, Nell E. | Attorney  |
|                 | Jackson, Cedric L    | Defendant |
|                 | Jimenez, Sonia V.    | Attorney  |
|                 | Palm, Patricia A.    | Attorney  |
|                 | State of Nevada      | Plaintiff |
|                 | Winder, Dan M.       | Attorney  |

**JOURNAL ENTRIES**

- APPEARANCES CONTINUED: Scott Bindrup and Ivette Maningo for co-deft. Coleman

Following arguments by counsel, COURT ORDERED, Defendant s Motion to Continue Trial, GRANTED. FURTHER COURT ORDERED, trial date VACATED and RE-SET.

CUSTODY (BOTH)

06/19/13 8:30 AM CALENDAR CALL (BOTH)

06/24/13 1:00 PM JURY TRIAL (BOTH)





**10C265339-1**

Inquiry by Ms. Palm as to the pretrial transcripts and that they should be getting them. Court so noted.

CUSTODY (BOTH)

06/18/14 8:30 AM CALENDAR CALL

06/23/14 1:00 PM JURY TRIAL



**10C265339-1**

02/23/15 1:00 PM JURY TRIAL

Clerk's note: On 08/22/14, Minutes amended to reflect correct parties present. tb



**10C265339-1**

DEADLY WEAPON (F). Court ACCEPTED plea, and, ORDERED, matter referred to the Division of Parole and Probation (P & P) and SET for sentencing. COURT FURTHER ORDERED, calendar call and trial dates VACATED.

CUSTODY

11/19/2014      8:30 am      Sentencing

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**November 19, 2014**

10C265339-1            State of Nevada  
                                 vs  
                                 Cedric Jackson

**November 19, 2014    8:30 AM            Sentencing**

**HEARD BY:** Walsh, Jessie

**COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Teri Berkshire

**RECORDER:** Victoria Boyd

**REPORTER:**

**PARTIES**

|                 |                      |           |
|-----------------|----------------------|-----------|
| <b>PRESENT:</b> | Demonte, Noreen      | Attorney  |
|                 | Jackson, Cedric L    | Defendant |
|                 | Mercer, Elizabeth A. | Attorney  |
|                 | Palm, Patricia A.    | Attorney  |
|                 | State of Nevada      | Plaintiff |
|                 | Winder, Dan M.       | Attorney  |

**JOURNAL ENTRIES**

- DEFT. JACKSON ADJUDGED GUILTY of COUNT - 1 SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON (F) and COUNT 2 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F). Arguments by counsel. Statement by deft. Victim speaker, Sworn statements given. Matter submitted. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$3.00 DNA Administrative Assessment fee and a \$150.00 DNA Analysis fee including testing to determine genetic markers, Deft. SENTENCED to a MAXIMUM of TWENTY-FIVE (25) YEARS and a MINIMUM of TEN (10) YEARS in the Nevada Department of Corrections (NDC); Plus a CONSECUTIVE TERM of a MINIMUM of FOUR (4) YEARS and a MAXIMUM of TWELVE (12) YEARS for USE OF DEADLY WEAPON. As to COUNT 2 - Deft. SENTENCED to a MAXIMUM of SIXTY (60) MONTHS and a MINIMUM of TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections (NDC); Plus a CONSECUTIVE TERM of a MINIMUM of TWELVE (12) MONTHS and a MAXIMUM of THIRTY (30) MONTHS for USE OF DEADLY WEAPON; CONCURRENT with COUNT 1; with 1748 DAYS credit for time served. CASE CLOSED.

PRINT DATE: 06/29/2022

Page 18 of 27

Minutes Date: June 23, 2010

**10C265339-1**

BOND EXONERATED.

DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

August 24, 2015

10C265339-1      State of Nevada  
vs  
Cedric Jackson

August 24, 2015      8:30 AM      Motion to Withdraw as  
Counsel

HEARD BY: Thompson, Charles      COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Berkshire  
Cynthia Molerres

RECORDER: Victoria Boyd

REPORTER:

**PARTIES**

PRESENT: Jones, Jr., John T.      Attorney  
State of Nevada      Plaintiff  
Weinstock, Arnold, ESQ      Attorney

**JOURNAL ENTRIES**

- Deft. not present and in the Nevada Department of corrections. There being no opposition, COURT ORDERED motion GRANTED. Court directed counsel to notify deft. and send the file.

NDC

DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

January 04, 2016

10C265339-1            State of Nevada  
                                 vs  
                                 Cedric Jackson

January 04, 2016        8:30 AM            Motion

HEARD BY: Bonaventure, Joseph T.            COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

**PARTIES**

**PRESENT:**        Burns, J Patrick                            Attorney  
                                 State of Nevada                            Plaintiff  
                                 Winder, Dan M.                            Attorney

**JOURNAL ENTRIES**

- Deft. not present and in the Nevada Department of Corrections. Matter submitted. Court Stated its Findings and ORDERED, motion DENIED. State to prepare the order.

NDC

DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

July 13, 2016

10C265339-1            State of Nevada  
                                 vs  
                                 Cedric Jackson

July 13, 2016            8:30 AM            All Pending Motions

HEARD BY: Walsh, Jessie            COURTROOM: RJC Courtroom 14B

COURT CLERK: Kathy Thomas  
                                 Katrina Hernandez

RECORDER: Victoria Boyd

REPORTER:

**PARTIES**

PRESENT:            State of Nevada            Plaintiff  
                                 Thomson, Megan            Attorney

**JOURNAL ENTRIES**

- Ms. Thomson submitted on the pleadings. Court stated its findings and ORDERED as follows:  
As to DEFENDANT'S PRO PER MOTION TO WITHDRAW COUNSEL, Counsel is no longer on the case, MOOT;  
as to DEFENDANT'S PRO PER MOTION TO MODIFY AND/OR CORRECT BY SETTING ASIDE ILLEGAL SENTENCE BASE UPON LACK OF SUBJECT MATTER JURISDICTION, DENIED;  
and as to DEFENDANT'S PRO PER MOTION TO APPOINT COUNSEL, DENIED. State to prepare the order.

NDC

\*CLERK'S NOTE: The above Minute Order was distributed via electronic mail to: CEDRIC JACKSON #1130512, SOUTHERN DESERT CORRECTIONAL CENTER, P.O. BOX 208, INDIAN SPRINGS, NEVADA 89070-0208./KH 7-20-16

DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

July 27, 2016

10C265339-1            State of Nevada  
                                 vs  
                                 Cedric Jackson

July 27, 2016            8:30 AM            Motion

HEARD BY: Walsh, Jessie            COURTROOM: RJC Courtroom 14B

COURT CLERK: Louisa Garcia

RECORDER: Victoria Boyd

REPORTER:

**PARTIES**

PRESENT:            State of Nevada            Plaintiff  
                                 Thomson, Megan            Attorney

**JOURNAL ENTRIES**

- Defendant not present, in the Nevada Department of Corrections.

Court advised it previously denied all of Defendant's motions. COURT ORDERED, said motion also DENIED, as being MOOT. State to prepare Order.

NDC

CLERK'S NOTE: The above Minute Order was distributed to: CEDRIC JACKSON #1130512, SOUTHERN DESERT CORRECTIONAL CENTER, P.O. BOX 208, INDIAN SPRINGS, NEVADA 89070-0208. /lg 8-11-16.



DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

June 27, 2018

10C265339-1      State of Nevada  
                         vs  
                         Cedric Jackson

June 27, 2018      8:30 AM      Motion for Appointment of Attorney      Defendant's Pro Per Motion for the Appointment of Counsel (Appellate) to File State Habeas Petition for Writ of Habeas Corpus (for Post-Conviction)

HEARD BY: Jones, Tierra

COURTROOM: RJC Courtroom 14B

COURT CLERK: April Watkins

RECORDER: Victoria Boyd

REPORTER:

**PARTIES**

PRESENT:      Rose, Laura Jean      Attorney  
                         State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- Court FINDS no pending Petition for Writ of Habeas Corpus, no showing as to why Deft. needs counsel and ORDERED, motion DENIED. State to prepare findings of fact and conclusions of law.

NDC

CLERK'S NOTE: The above minute order has been distributed to: Cedric Jackson, #1130512, Southern Desert Correctional Center, P.O. Box 208, Indian Springs, NV 89070. aw

DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

June 15, 2020

10C265339-1      State of Nevada  
vs  
Cedric Jackson

June 15, 2020      8:30 AM      Petition for Writ of  
Mandamus

HEARD BY: Jones, Tierra      COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

**PARTIES**

PRESENT: Lexis, Chad N.      Attorney  
State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- Deft. not present and in the Nevada Department of Corrections. Court noted this is a time comp issue and ORDERED, matter TRANSFERRED to Dept .15, and Set on the date given.

NDC

07/02/20 8:30 A.M. PETITION FOR WRIT OF MANDAMUS

CLERK'S NOTE: The above minute order has been distributed to: Allison Herr, DAG [aherr@ag.nv.gov] and Rikki Garate, DAG [rgarate@ag.nv.gov] and Cedric Jackson, #1130512, Southern Desert Correctional Center, P.O. Box 208, Indian Springs, NV 89070. /tb



# Certification of Copy and Transmittal of Record

State of Nevada }  
County of Clark } SS:

Pursuant to the Supreme Court order dated June 23, 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 four volumes with pages numbered 1 through 910.

STATE OF NEVADA,

Plaintiff(s),

vs.

CEDRIC JACKSON,

Defendant(s),

Case No: 10C265339-1

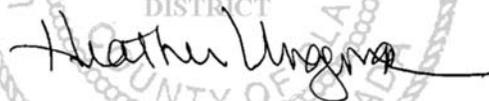
*Related Case A-22-849718-W*

Dept. No: X

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 30 day of June 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

