

IN THE SUPREME COURT OF THE STATE OF NEVADA

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JESSE NOBLE, JR.,

Appellant,

vs.

THE STATE OF NEVADA,

Appellee.

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Case No. 83024  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT'S REPLY BRIEF**

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## I. TABLE OF AUTHORITIES

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## **II. STATEMENT OF ISSUES**

### **A. THE DISTRICT COURT ERRED WHEN IT DENIED APPELLANT'S PETITION FOR WRIT OF HABEAS CORPUS FOR AN ALLEGED LACK OF SPECIFICITY IN HIS PLEADING.**

## **III. ARGUMENT**

### **STANDARD OF REVIEW**

The appellate courts review questions of law under a de novo standard. SIIS v. United Exposition Servs. Co., 109 Nev. 28, 30, 846 P.2d 294, 295 (1993). Under de novo review, the appellate court uses the district court's record but reviews the evidence and law without deference to the district court's legal conclusions. Lioce v. Cohen, 124 Nev. 1, 20, 174 P.3d 970, 982 (2008).

### **A. THE DISTRICT COURT ERRED WHEN IT DENIED APPELLANT'S PETITION FOR WRIT OF HABEAS CORPUS FOR AN ALLEGED LACK SPECIFICITY IN HIS PLEADING.**

The District Court erred when it denied Appellant's petition for Writ of Habeas Corpus for an alleged lack specificity in his pleading. The District Court denied Appellant's Writ for failing to plead with specificity facts that would entitle him to relief. AA0090. Appellant made specific factual allegations regarding witnesses in his Writ Petition that would

entitle him to relief. In his Petition, Appellant noted,

Here, Mr. Noble's counsel failed to investigate, interview, and/or introduce evidence of four witnesses. These witnesses Dario Paccone, Joseph Dugan, Kerry Hunter, and a Newman made statements that were either conflicting or contradictory to the State's narrative.

...

In this case the investigation and introduction of these individual's statements would have been critical in Petitioner's defense yet were completely ignored by trial counsel. The introduction of these witness statements would have led to a reasonable probability of a different outcome, showing both good cause and actual prejudice.

AA0053 lns 12 - 24. Further, Appellant alleged the following in his pleadings:

Mr. Noble's counsel failed to introduce conflicting evidence from the State's key witness Officer Brown.

...

In this case the introduction of Brown's conflicting statements, that he changed his story regarding which hand he grabbed during the incident, and the testimony that he blacked out and when he awoke the incident was over, contradicts his institutional statement. The introduction of these contradictory statements would have led to a reasonable probability of a different outcome, showing both good cause and actual prejudice.

AA0055 lns 13 – 21.

Appellant also made specific factual allegations in his Writ Petition regarding a video that would entitle him to relief. In his Petition,

Appellant noted,

[P]rior counsel's performance fell below an objective standard of reasonableness as is mandated by Strickland, 466 U.S. 668, 104 S. Ct. 2052 (1984), by failing to introduce the video of the alleged incident which show no instances of the Petitioner involved in any aspect of the alleged disturbance.

...

In this case the introduction of the State's video showing at no time was Petitioner involved in the acts which were the subject matter of this case, contradicts the statements prior witnesses. The introduction of the video in light of these contradictory statements would have led to a reasonable probability of a different outcome, showing both good cause and actual prejudice.

AA0056 lns 12 – 16, and AA0057 lns 17 - 24.

An evidentiary hearing is required if, the claims are supported by specific factual allegations, the factual allegations are not belied by the record, and the factual allegations, if true, would entitle the petitioner to relief. Berry v. State, 131 Nev. 957, 967, 363 P.3d 1148, 1154-57 (2015) (actual-innocence gateway claim); Hathaway v. State, 119 Nev. 248, 255, 71 P.3d 503, 508 (2003) (good cause); Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002) (substantive claims); Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (substantive claims). As a general matter, the district court should not make credibility determinations without an evidentiary hearing. See Mann at 356, 46

P.3d at 1231 (*rejecting* suggestion that district court can resolve factual dispute without an evidentiary hearing and noting that “by observing the witnesses’ demeanors during an evidentiary hearing, the district court will be better able to judge credibility”). The last requirement - that the factual allegations, if true, would entitle the petitioner to relief - goes to the legal underpinnings of the claims. For purposes of this requirement, the district court must accept as true the factual allegations in the petition. See Berry v. State, 131 Nev. 957, 968, 363 P.3d 1148, 1155 (2015) (*explaining* that when deciding whether to conduct an evidentiary hearing on an actual-innocence gateway claim, “the district court must assume the new evidence is true”).

Thus, because Appellant made specific factual allegations in his Writ Petition that would entitle him to relief, and said allegations were not belied by the record, the District Court erred in failing to grant an evidentiary hearing.<sup>1</sup>

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<sup>1</sup> As well, Appellant’s counsel failed to introduce a video which shows no instances of the Petitioner involved in any aspect of the alleged disturbance. The introduction of the State’s video showing at no time was Petitioner involved in the acts which were the subject matter of this case, contradicts the statements of prior witnesses. The introduction of the video in light of these contradictory statements would have led to a reasonable probability of a different outcome, was not belied by the

As a result, the District Court erred in failing to grant an evidentiary hearing. This error is likely not to be considered harmless by a reviewing court, see Mann, 118 Nev. at 356, 46 P.3d at 1231 (*requiring* the district court to conduct further proceedings on remand).

### **CONCLUSION**

WHEREFORE, this Petitioner prays that this Court grant his Appeal, and issue an Order directing the District Court to reinstate his case so that his Petition for Writ of Habeas Corpus may be heard.

Dated this 18<sup>th</sup> day of April 2022.

  
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record, and showed both good cause and actual prejudice by failing to introduce the government video of the incident.



#### **IV. ATTORNEY'S CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Word 365, Century Schoolbook.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

Proportionately spaced, has a typeface of 14 points or more, and contains **1599** words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 18<sup>th</sup> day of April 2022.

  
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## **V. CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing **APPELANT'S REPLY BRIEF** with the Clerk of the Court by using the electronic filing system on the 18<sup>th</sup> day of April 2022.

The following participants in this case are registered electronic filing system users and will be served electronically:

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