

FILED

AUG - 4 2021

Elizabeth A. Brown
CLERK OF COURT

Richard L. Mitchell #1209011
In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018

Electronically Filed
Aug 18 2021 02:41 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE Eighth JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Clark

Richard L. Mitchell
Plaintiff,
vs.
State of Nevada ET AL
William Hukings Warden
Defendant.

Case No. A-21-830001-W

Dept. No. XXIII

Docket _____

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN, That the Petitioner/Defendant,
Richard L. Mitchell, in and through his proper person, hereby
appeals to the Supreme Court of Nevada from the ORDER denying and/or
dismissing the

Facts findings and conclusions

ruled on the 23 day of July, 2021.

A-21-830001-W
NOAS
Notice of Appeal
4964327



Dated this 3 day of Aug, 2021.

RECEIVED

AUG 04 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

RECEIVED
APPEALS

AUG 18 2021

CLERK OF THE COURT

Respectfully Submitted,

Richard L. Mitchell #1209011

CERTIFICATE OF SERVICE BY MAILING

I, Richard L. Mitchell, hereby certify, pursuant to NRCP 5(b), that on this 3
day of Aug, 2021, 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:

Clerk of Courts
200 Lewis Ave
3rd Floor
Las Vegas NV 89155

Clerk of the Supreme
State of Nevada
201 S Carson St
Suite 201
Carson City NV 89201

CC:FILE

DATED: this 3 day of Aug, 2021.

Richard L. Mitchell
Richard L. Mitchell #1209011
/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 A-21-830001-W

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

-OR-

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

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

(State specific law)

-or-

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

Richard L. Mitchell
Signature

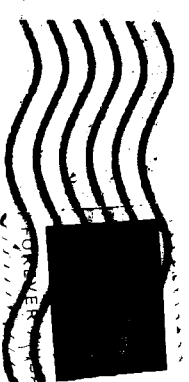
Aug 3, 2021
Date

Richard L. Mitchell
Print Name

Title

Richard L. Mitchell #7209011
Anthony Robert Cunningham Butler
P.O. Box 288
Indian Springs, Nevada 89070

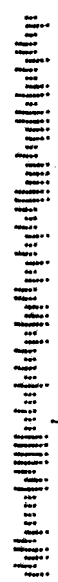
LAS VEGAS NV 890
2 AUG 2021 PM 3 L



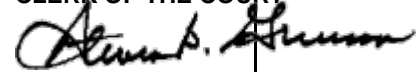
10551 m31

Clerk of Supreme Court
For State of Nevada
281 West Carson St.
Carson City, Nevada 89701

89701-473133



10551 m31



1 ASTA

2
3
4
5
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**
9

10 RICHARD L. MITCHELL,

11 Plaintiff(s),

12 vs.

13 STATE OF NEVADA; WARDEN WILLIAM
14 HUTCHINGS,

15 Defendant(s),
16

Case No: A-21-830001-W

Dept No: XXIII

17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Richard L. Mitchell

20 2. Judge: Jasmin Lilly-Spells

21 3. Appellant(s): Richard L. Mitchell

22 Counsel:

23 Richard L. Mitchell #1209011
24 P.O. Box 208
25 Indian Springs, NV 89070

26 4. Respondent (s): State of Nevada; Warden William Hutchings

27 Counsel:

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

Las Vegas, NV 89155-2212

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

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

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No

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

8. Appellant Granted Leave to Proceed in Forma Pauperis**: Yes, March 5, 2021
***Expires 1 year from date filed*

Appellant Filed Application to Proceed in Forma Pauperis: N/A
Date Application(s) filed: N/A

9. Date Commenced in District Court: February 24, 2021

10. Brief Description of the Nature of the Action: Civil Writ

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

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 18 day of August 2021.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann

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

cc: Richard L. Mitchell

FILED

AUG - 4 2021

Sharon A. Blinn
CLERK OF COURT

Richard L. Mitchell, 1209011
Petitioner/In Propria Persona
Post Office Box 208, SDCC
Indian Springs, Nevada 89070-0208

IN THE Sixth JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Clark

Richard L. Mitchell

Plaintiff,

vs.

State of Nevada

William Hatchings Lucha

Defendant.

CASE No. A-21-830001-W

DEPT. No. XXIII

DESIGNATION OF RECORD ON APPEAL

TO: Clerk of Supreme Court
State of Nevada
201 S Carson St
Suite 201
Carson City NV 89701

A-21-830001-W
DROA
Designation of Record on Appeal
4964328



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 3rd day of Aug, 20 21.

RESPECTFULLY SUBMITTED BY:

Richard L. Mitchell

Richard L. Mitchell #1209011

Plaintiff/In Propria Persona

RECEIVED
APPEALS

AUG 18 2021

CLERK OF THE COURT

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-21-830001-W

Richard Mitchell, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

§
§
§
§
§
§

Location: **Department 23**
 Judicial Officer: **Lilly-Spells, Jasmin**
 Filed on: **02/24/2021**
 Cross-Reference Case Number: **A830001**
 Defendant's Scope ID #: **7763112**

CASE INFORMATION

Related Cases

C-18-332717-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

Statistical Closures

07/23/2021 Other Manner of Disposition

Case Status: **07/23/2021 Closed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-21-830001-W
 Court Department 23
 Date Assigned 02/24/2021
 Judicial Officer Lilly-Spells, Jasmin

PARTY INFORMATION

Lead Attorneys

Plaintiff Mitchell, Richard Lee

Pro Se

Defendant Nevada State of

Wolfson, Steven B
Retained
 702-671-2700(W)


Warden William Hutchings
 Removed: 07/23/2021
 Dismissed


DATE


EVENTS & ORDERS OF THE COURT


INDEX


EVENTS

02/24/2021  Inmate Filed - Petition for Writ of Habeas Corpus
 Party: Plaintiff Mitchell, Richard Lee
[1] Inmate Filed - Petition for Writ of Habeas Corpus (Post-Conviction)

02/24/2021  Notice of Motion
 Filed By: Plaintiff Mitchell, Richard Lee
[2] Notice of Motion


02/24/2021  Application to Proceed in Forma Pauperis
 Filed By: Plaintiff Mitchell, Richard Lee
[3] Application to Proceed in Forma Pauperis

02/24/2021  Application to Proceed in Forma Pauperis
 Filed By: Plaintiff Mitchell, Richard Lee
[4] Financial Certificate


02/24/2021  Ex Parte Motion


CASE SUMMARY
CASE NO. A-21-830001-W


Filed By: Plaintiff Mitchell, Richard Lee
[5] Ex Parte Motion to Appoint Counsel

03/04/2021  Order for Petition for Writ of Habeas Corpus
[6] Order for Petition for Writ of Habeas Corpus


03/04/2021  Clerk's Notice of Hearing
[7] Notice of Hearing


03/05/2021  Order to Proceed In Forma Pauperis
Granted for: Plaintiff Mitchell, Richard Lee
[8] Order to Proceed In Forma Pauperis


03/20/2021  Response
Filed by: Defendant Nevada State of
[9] State's Return to Petition for Writ of Habeas Corpus


03/31/2021  Notice of Motion
Filed By: Plaintiff Mitchell, Richard Lee
[10] Notice of Motion to Join


03/31/2021  Clerk's Notice of Hearing
[11] Notice of Hearing

04/22/2021  Motion
Filed By: Plaintiff Mitchell, Richard Lee
[12] Motion and Order for Transportation of Inmate to Court Appearance of in the Alternative for Appearance by Telephone or Video Conference


05/11/2021  Response
Filed by: Defendant Nevada State of
[13] State's Response to Motion to Join

07/23/2021  Findings of Fact, Conclusions of Law and Order
[14] Findings of Fact, Conclusions of Law and Order

07/26/2021  Notice of Entry of Findings of Fact, Conclusions of Law
Filed By: Defendant Nevada State of
[15] Notice of Entry of Findings of Fact, Conclusions of Law and Order

08/04/2021  Notice of Appeal
[16] Notice of Appeal

08/04/2021  Designation of Record on Appeal
[17] Designation of Record on Appeal

08/18/2021  Case Appeal Statement
Filed By: Plaintiff Mitchell, Richard Lee
Case Appeal Statement

DISPOSITIONS

07/23/2021 **Order of Dismissal** (Judicial Officer: Lilly-Spells, Jasmin)
Debtors: Richard Lee Mitchell (Plaintiff)
Creditors: Nevada State of (Defendant), Warden William Hutchings (Defendant)

CASE SUMMARY
CASE NO. A-21-830001-W

Judgment: 07/23/2021, Docketed: 07/26/2021

HEARINGS

05/03/2021



Motion (11:00 AM) (Judicial Officer: Lilly-Spells, Jasmin)

05/03/2021, 05/12/2021

Plaintiff's Notice of Motion to Join

Matter Continued;

Denied;

Matter Continued;

Denied;

Journal Entry Details:

Upon Court's inquiry, Mr. Raman advised the State's Opposition to the Return was filed on March 20, 2021; however, no Opposition to the Motion to Join was filed since the State was not aware of the Motion. COURT ORDERED, matter CONTINUED. CONTINUED TO: 05/12/21;

05/12/2021

Petition for Writ of Habeas Corpus (11:00 AM) (Judicial Officer: Lilly-Spells, Jasmin)

Denied;

05/12/2021

Motion for Appointment of Attorney (11:00 AM) (Judicial Officer: Lilly-Spells, Jasmin)

Sent request to DA to do Transport Order.

Denied;

05/12/2021



All Pending Motions (11:00 AM) (Judicial Officer: Lilly-Spells, Jasmin)

Matter Heard;

Journal Entry Details:

Plaintiff not present, in Nevada Department of Corrections. Joseph Gersten, Esq. also present. MOTION FOR APPOINTMENT OF ATTORNEY . . . PLAINTIFF'S NOTICE OF MOTION TO JOIN . . . PETITION FOR WRIT OF HABEAS CORPUS Mr. Gersten advised he represents the Plaintiff on case A829992; the Plaintiff filed a Motion to Join case A829992 and this case and a Motion For Appointment of Attorney. Mr. Gersten stated if the Court was inclined to appoint an attorney he was willing to be appointed. Colloquy. As to appointment of attorney COURT FINDS, Plaintiff is indigent however the issues raised do not need additional investigation and ORDERED, Motion for Appointment of Attorney DENIED. Court noted, the Plaintiff not being present and stated the motions were decided on the pleadings. As to Plaintiff's Motion to Join COURT FINDS joinder is not appropriate for post-conviction writs pursuant to NRS 34.730 and 34.720 and FURTHER ORDERED Motion to Join DENIED; and as to Petition for Writ of Habeas Corpus COURT FINDS pursuant to NRS 34.726 the Petition was filed untimely and is time-barred, not filed within a year and ADDITIONALLY ORDERED Petition for Writ of Habeas Corpus DENIED. State to prepare the order and submit it to Chambers. CLERK'S NOTE: The above minute order has been distributed to: Richard Mitchell #1209011, Southern Desert Correctional Center, PO Box 208, Indian Springs, NV 89070. 5/14/21km;

DISTRICT COURT CIVIL COVER SHEET

A-21-830001-W
Dept. 23

County, Nevada

Case No. _____
(Assigned by Clerk's Office)**I. Party Information** (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): Richard Mitchell	Defendant(s) (name/address/phone): State of Nevada
Attorney (name/address/phone):	Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

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

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

2-24-2021

Date

PREPARED BY CLERK

Signature of initiating party or representative

See other side for family-related case filings.

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #10539
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

RICHARD MITCHELL,

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-21-830001-W
DEPT NO: XXIII

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

DATE OF HEARING: May 12, 2021
TIME OF HEARING: 11:00 AM

THIS CAUSE having come before the Honorable JASMIN LILLY-SPELLS, District Court Judge, on the 12th day of May, 2021, Petitioner not being present, not being represented by counsel, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through AUSTIN BEAUMONT, Deputy District Attorney, and the Court having reviewed the matter, including briefs, transcripts, and documents on file herein; now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

STATEMENT OF THE CASE

On January 10, 2019, Richard Mitchell (hereinafter "Petitioner") pled guilty pursuant to a Guilty Plea Agreement to one count of Robbery in case C-18-332717-1, which also happens to be the companion case to this Petition. As part of the negotiations, the State agreed

1 to make no recommendation at the time of his sentence, it agreed not to seek criminal habitual
2 treatment in this case only, and this case would run concurrently with C328865.

3 Petitioner's sentencing took place on the same day that he entered his plea, by using the
4 Pre-Sentence Investigation Report from C328865. Petitioner was sentenced to a minimum of
5 48 months and a maximum of 120 months in the Nevada Department of Corrections concurrent
6 with C328865. Petitioner was also ordered to pay \$108 in restitution to CVS pharmacy.

7 Before Petitioner had entered his plea in this case, he had already been sentenced in
8 C328865 to one count of Attempt Robbery and one count of Resisting a Public Officer with
9 Use of a Dangerous Weapon on December 5, 2018. He was sentenced under the small habitual
10 statute and ordered to serve a minimum of 84 months and a maximum of 240 months on each
11 count to run concurrently between the two cases.

12 A Judgment of Conviction in this case was filed on January 17, 2019. There was no
13 appeal from his Judgment of Conviction. Petitioner then filed his Petition in this case on
14 February 24, 2021. The State filed its Response to that Petition on March 20, 2021.

15 Also on February 24, 2021, Petitioner filed a postconviction Petition in case no.
16 A829992, regarding his Judgment of Conviction in C328865. The State filed its Response to
17 Petitioner's other Petition on March 29, 2021.

18 On March 31, 2021, Petitioner filed the instant Notice of Motion to Join ("Joinder"),
19 seeking to have the instant Petition (or, at least the hearing therefore) joined with his other
20 Petition. The State filed its Response to that Joinder on May 11, 2021.

21 The matter came before this Court on May 12, 2021, at which time this Court made the
22 following findings and conclusions:

23 ARGUMENT

24 **I. THE INSTANT PETITION IS TIME-BARRED**

25 Pursuant to the mandatory provision of NRS 34.726(1):

26 Unless there is good cause shown for delay, a petition that challenges the validity
27 of a judgment or sentence must be filed *within 1 year after entry of the judgment*
28 *of conviction* or, if an appeal has been taken from the judgment, *within 1 year*
after the Supreme Court issues its remittitur.

1 (Emphasis added). The Nevada Supreme Court has explained, “the statutory rules regarding
2 procedural default are mandatory and cannot be ignored when properly raised by the State.”
3 State v. Eighth Judicial Dist. Court (“Riker”), 121 Nev. 225, 233, 112 P.3d 1070, 1075 (2005).

4 Accordingly, the one-year time bar of NRS 34.726 begins to run from the date the
5 judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson
6 v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998); see Pellegrini v. State, 117
7 Nev. 860, 873, 34 P.3d 519, 528 (2001) (holding NRS 34.726 should be construed by its “plain
8 meaning”).

9 In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada Supreme
10 Court affirmed the rejection of a habeas petition that was filed two days late, pursuant to the
11 “clear and unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the
12 importance of filing the petition with the district court within the one-year mandate, absent a
13 showing of “good cause” for the delay in filing. Gonzales, 118 Nev. at 593, 590 P.3d at 902.
14 The one-year time bar is therefore strictly construed. In contrast with the short amount of time
15 to file a notice of appeal, a prisoner has an ample full year to file a post-conviction habeas
16 petition, so there is no injustice in a strict application of NRS 34.726(1). Id. at 593, 53 P.3d at
17 903.

18 The Nevada Supreme Court has specifically found that the district court has a *duty* to
19 consider whether the procedural bars apply to a post-conviction petition and not arbitrarily
20 disregard them. In Riker, the Court reversed the district court’s decision not to bar the
21 petitioner’s untimely and successive petition:

22 Given the untimely and successive nature of [petitioner’s] petition, the district
23 court had a duty imposed by law to consider whether any or all of [petitioner’s]
24 claims were barred under NRS 34.726, NRS 34.810, NRS 34.800, or by the law
25 of the case . . . [and] the court’s failure to make this determination here
26 constituted an arbitrary and unreasonable exercise of discretion.

26 121 Nev. at 234, 112 P.3d at 1076. That Court noted: “[t]he necessity for a workable system
27 dictates that there must exist a time when a criminal conviction is final.” Id. at 231, 112 P.3d
28 1074 (citation omitted); see also State v. Haberstroh, 119 Nev. 173, 180–81, 69 P.3d 676, 681–

82 (2003) (holding that parties cannot stipulate to waive, ignore or disregard the mandatory procedural default rules nor can they empower a court to disregard them).

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

Here, Petitioner's Judgment of Conviction was filed on January 17, 2019. Petitioner filed no direct appeal from the guilty plea or the sentence. Therefore, this Court finds that Petitioner had until January 17, 2020, to file a timely petition. Petitioner did not file the instant petition until February 24, 2021 – almost two years after his Judgment of Conviction was filed. As such, this Court concludes that, as a matter of law, the instant Petition is procedurally defaulted and subject to dismissal absent a showing of good cause and prejudice. NRS 34.726.

This Court further concludes that Petitioner does not set forth any good cause for his failure to comply with the procedural rules. Petitioner's only claim is that the terms of the restitution ordered are somewhat unclear, which he argues should toll the one-year time limit. This Court finds that, contrary to Petitioner's assertions, Petitioner's Judgment of Conviction clearly states that Petitioner owes \$108.00 in restitution to CVS. Because Petitioner's sole argument to overcome the procedural bar is patently incorrect, Petitioner fails to make the requisite showing to survive dismissal.

II. APPOINTMENT OF COUNSEL IS NOT NECESSARY

Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada Supreme Court similarly observed that “[t]he Nevada Constitution...does not guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution's right to

1 counsel provision as being coextensive with the Sixth Amendment to the United States
2 Constitution.” McKague specifically held that with the exception of NRS 34.820(1)(a)
3 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
4 “any constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at
5 164, 912 P.2d at 258.

6 The Nevada Legislature has, however, given courts the discretion to appoint post-
7 conviction counsel so long as “the court is satisfied that the allegation of indigency is true and
8 the petition is not dismissed summarily.” NRS 34.750. NRS 34.750 reads:

9 A petition may allege that the Defendant is unable to pay the costs of the
10 proceedings or employ counsel. If the court is satisfied that the allegation of
11 indigency is true and the petition *is not dismissed summarily*, the court may
12 appoint counsel at the time the court orders the filing of an answer and a return.
13 In making its determination, the court may consider whether:

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

17 (emphasis added). Accordingly, under NRS 34.750, the Court has discretion in determining
18 whether to appoint counsel.

19 More recently, the Nevada Supreme Court examined whether a district court
20 appropriately denied a defendant’s request for appointment of counsel based upon the factors
21 listed in NRS 34.750. See Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In
22 Renteria-Novoa, the petitioner had been serving a prison term of eighty-five (85) years to life.
23 Id. at 75, 391 P.3d at 760. After his judgment of conviction was affirmed on direct appeal, the
24 defendant filed a pro se postconviction petition for writ of habeas corpus and requested counsel
25 be appointed. Id. The district court ultimately denied the petitioner’s petition and his
26 appointment of counsel request. Id. In reviewing the district court’s decision, the Nevada
27 Supreme Court examined the statutory factors listed under NRS 34.750 and concluded that the
28 district court’s decision should be reversed and remanded. Id. The Court explained that the
petitioner was indigent, his petition could not be summarily dismissed, and he had in fact
satisfied the statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor, the Court
concluded that because petitioner had represented he had issues with understanding the

1 English language which was corroborated by his use of an interpreter at his trial, that was
2 enough to indicate that the petitioner could not comprehend the proceedings. Id. Moreover,
3 the petitioner had demonstrated that the consequences he faced—a minimum eighty-five (85)
4 year sentence—were severe and his petition may have been the only vehicle for which he could
5 raise his claims. Id. at 76-77, 391 P.3d at 761-62. Finally, his ineffective assistance of counsel
6 claims may have required additional discovery and investigation beyond the record. Id.

7 Pursuant to NRS 34.750, this Court concludes that Petitioner has not demonstrated that
8 counsel should be appointed. As a preliminary matter, this Court finds that Petitioner's request
9 is suitable only for summary denial as he has failed to provide any specific facts to support his
10 bare and naked request. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).
11 Moreover, unlike Renteria-Novoa, this Court has found that Petitioner's Sixth Petition is
12 subject to dismissal pursuant to the procedural time-bar.

13 Notwithstanding the petition's summary dismissal, this Court finds that Petitioner has
14 failed to meet any of the additional statutory factors under NRS 34.750. Petitioner's claim is
15 based from a guilty plea, to which he received a 4 to 10 year sentence. The issues are not
16 difficult and, as stated above, Petitioner has failed to put forth any information to support his
17 claim. Thus, given that this is not a difficult case, this Court concludes that Petitioner is not
18 entitled to the appointment of attorney.

19 **III. JOINDER IS NOT CONTEMPLATED BY APPLICABLE HABEAS** 20 **STATUTES**

21 The Nevada Legislature has enacted detailed statutory guidelines for Petitions for
22 Postconviction Relief. See NRS 34.720 *et seq.* Consistent throughout those guidelines is the
23 *singular* reference to “*a* judgment of conviction.” See, e.g., NRS 34.720(1), 34.730(2)(b),
24 34.738(3). Indeed, in the prescribed “form” for postconviction petitions, the Nevada
25 Legislature requires that petitioners give specific information regarding that singular judgment
26 of conviction which the petitioner seeks to challenge. NRS 34.735. Thereafter, petitioners are
27 directed to provide *separate* information regarding “conviction[(s)] other than the conviction
28 under attack” in the specific postconviction petition. Id. There is no prescribed “joinder” for

1 postconviction petitions challenging separate judgments of conviction. See generally NRS
2 34.720 *et seq.*

3 The Nevada Supreme Court has been clear: statutes should be interpreted according to
4 their plain meaning, and when the legislative intent of a statute is clear, courts must endeavor
5 to effectuate that intent. Sheriff v. Luqman, 101 Nev. 149, 155, 697 P.2d 107, 111 (1985).

6 In this instance, Nevada's postconviction statutes are clear: petitioners may challenge
7 *a* judgment of conviction via a postconviction petition for writ of habeas corpus. NRS 34.720
8 *et seq.* However, where multiple judgments of conviction are challenged, those challenges
9 must occur in *separate* actions. See NRS 34.730(3) (directing the clerk of the court to file each
10 petition as a "new action separate and distinct" and "[w]henever possible, assigned to the
11 original judge or court." The legislative intent is readily apparent: the judge or court which
12 entered the judgment of conviction is presumably the best-equipped to handle a review of the
13 challenge to that judgment of conviction.

14 This Court finds that Petitioner not only seeks to join two (2) separate judgments of
15 conviction in his challenge, but those separate judgments of conviction were entered by
16 separate judges. Further, Petitioner does not provide any relevant legal authority, or cogent
17 argument, supporting his request. Instead, this Court finds that the plain language of the
18 governing statutes undermines Petitioner's request. Therefore, not only is Petitioner's
19 requested joinder completely devoid of any statutory basis, but this Court concludes that such
20 an action would seem to violate the provisions of NRS 34.730(3)(b).

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1 CONCLUSION

2 THEREFORE, IT IS HEREBY ORDERED, Petitioner Richard Mitchell's Petition for
3 Writ of Habeas Corpus shall be, and is, DISMISSED, pursuant to the mandatory time-bar of
4 NRS 34.726.

5 IT IS FURTHER ORDERED that Petitioner's Motion for Appointment of Counsel
6 shall be, and is, DENIED.

7 IT IS FURTHER ORDERED that Petitioner's Motion to Join shall be, and is, DENIED.

8 DATED this _____ day of June, 2021.

Dated this 23rd day of July, 2021

9
10 
11 _____
DISTRICT COURT JUDGE

12 Respectfully submitted,

13 STEVEN B. WOLFSON
14 Clark County District Attorney
Nevada Bar #1565

9E9 E35 B45F 2819
Jasmin Lilly-Spells
District Court Judge

15 BY /s/Alexander Chen
16 ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar # 10539

17 CERTIFICATE OF MAILING FILING

18 I hereby certify that service of Findings of Fact, Conclusions of
19 Law, And Order, was made this 17th day of June, 2021, by Mailing to:

20 Richard Mitchell #1209011
21 P.O. BOX 208, SDCC
22 Indian Springs NV 89070

23
24 
25 _____
Secretary for the District Attorney's Office

26
27
28 17F21808X/mcb

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Richard Mitchell, Plaintiff(s)

CASE NO: A-21-830001-W

7 vs.

DEPT. NO. Department 23

8 Nevada State of, 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 Judgment was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

14 Service Date: 7/23/2021

15 Steven Wolfson

Steven.wolfson@clarkcountyda.com



1 NEFF

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

4
5 RICHARD MITHCELL,

6 Petitioner,

7 vs.

8 STATE OF NEVADA; ET.AL.,

9 Respondent,

Case No: A-21-830001-W

Dept No: XXIII

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

11 **PLEASE TAKE NOTICE** that on July 23, 2021, the court entered a decision or order in this matter, a true
12 and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed
to you. This notice was mailed on July 26, 2021.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

17 Amanda Hampton, Deputy Clerk

18
19 **CERTIFICATE OF E-SERVICE / MAILING**

20 I hereby certify that on this 26 day of July 2021, 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 Richard Mitchell # 1209011
26 P.O. Box 208
Indian Springs, NV 89070

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #10539
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

RICHARD MITCHELL,

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-21-830001-W
DEPT NO: XXIII

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

DATE OF HEARING: May 12, 2021
TIME OF HEARING: 11:00 AM

THIS CAUSE having come before the Honorable JASMIN LILLY-SPELLS, District Court Judge, on the 12th day of May, 2021, Petitioner not being present, not being represented by counsel, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through AUSTIN BEAUMONT, Deputy District Attorney, and the Court having reviewed the matter, including briefs, transcripts, and documents on file herein; now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

STATEMENT OF THE CASE

On January 10, 2019, Richard Mitchell (hereinafter "Petitioner") pled guilty pursuant to a Guilty Plea Agreement to one count of Robbery in case C-18-332717-1, which also happens to be the companion case to this Petition. As part of the negotiations, the State agreed

1 to make no recommendation at the time of his sentence, it agreed not to seek criminal habitual
2 treatment in this case only, and this case would run concurrently with C328865.

3 Petitioner's sentencing took place on the same day that he entered his plea, by using the
4 Pre-Sentence Investigation Report from C328865. Petitioner was sentenced to a minimum of
5 48 months and a maximum of 120 months in the Nevada Department of Corrections concurrent
6 with C328865. Petitioner was also ordered to pay \$108 in restitution to CVS pharmacy.

7 Before Petitioner had entered his plea in this case, he had already been sentenced in
8 C328865 to one count of Attempt Robbery and one count of Resisting a Public Officer with
9 Use of a Dangerous Weapon on December 5, 2018. He was sentenced under the small habitual
10 statute and ordered to serve a minimum of 84 months and a maximum of 240 months on each
11 count to run concurrently between the two cases.

12 A Judgment of Conviction in this case was filed on January 17, 2019. There was no
13 appeal from his Judgment of Conviction. Petitioner then filed his Petition in this case on
14 February 24, 2021. The State filed its Response to that Petition on March 20, 2021.

15 Also on February 24, 2021, Petitioner filed a postconviction Petition in case no.
16 A829992, regarding his Judgment of Conviction in C328865. The State filed its Response to
17 Petitioner's other Petition on March 29, 2021.

18 On March 31, 2021, Petitioner filed the instant Notice of Motion to Join ("Joinder"),
19 seeking to have the instant Petition (or, at least the hearing therefore) joined with his other
20 Petition. The State filed its Response to that Joinder on May 11, 2021.

21 The matter came before this Court on May 12, 2021, at which time this Court made the
22 following findings and conclusions:

23 ARGUMENT

24 **I. THE INSTANT PETITION IS TIME-BARRED**

25 Pursuant to the mandatory provision of NRS 34.726(1):

26 Unless there is good cause shown for delay, a petition that challenges the validity
27 of a judgment or sentence must be filed *within 1 year after entry of the judgment*
28 *of conviction* or, if an appeal has been taken from the judgment, *within 1 year*
after the Supreme Court issues its remittitur.

1 (Emphasis added). The Nevada Supreme Court has explained, “the statutory rules regarding
2 procedural default are mandatory and cannot be ignored when properly raised by the State.”
3 State v. Eighth Judicial Dist. Court (“Riker”), 121 Nev. 225, 233, 112 P.3d 1070, 1075 (2005).

4 Accordingly, the one-year time bar of NRS 34.726 begins to run from the date the
5 judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson
6 v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998); see Pellegrini v. State, 117
7 Nev. 860, 873, 34 P.3d 519, 528 (2001) (holding NRS 34.726 should be construed by its “plain
8 meaning”).

9 In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada Supreme
10 Court affirmed the rejection of a habeas petition that was filed two days late, pursuant to the
11 “clear and unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the
12 importance of filing the petition with the district court within the one-year mandate, absent a
13 showing of “good cause” for the delay in filing. Gonzales, 118 Nev. at 593, 590 P.3d at 902.
14 The one-year time bar is therefore strictly construed. In contrast with the short amount of time
15 to file a notice of appeal, a prisoner has an ample full year to file a post-conviction habeas
16 petition, so there is no injustice in a strict application of NRS 34.726(1). Id. at 593, 53 P.3d at
17 903.

18 The Nevada Supreme Court has specifically found that the district court has a *duty* to
19 consider whether the procedural bars apply to a post-conviction petition and not arbitrarily
20 disregard them. In Riker, the Court reversed the district court’s decision not to bar the
21 petitioner’s untimely and successive petition:

22 Given the untimely and successive nature of [petitioner’s] petition, the district
23 court had a duty imposed by law to consider whether any or all of [petitioner’s]
24 claims were barred under NRS 34.726, NRS 34.810, NRS 34.800, or by the law
25 of the case . . . [and] the court’s failure to make this determination here
26 constituted an arbitrary and unreasonable exercise of discretion.

26 121 Nev. at 234, 112 P.3d at 1076. That Court noted: “[t]he necessity for a workable system
27 dictates that there must exist a time when a criminal conviction is final.” Id. at 231, 112 P.3d
28 1074 (citation omitted); see also State v. Haberstroh, 119 Nev. 173, 180–81, 69 P.3d 676, 681–

82 (2003) (holding that parties cannot stipulate to waive, ignore or disregard the mandatory procedural default rules nor can they empower a court to disregard them).

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

Here, Petitioner's Judgment of Conviction was filed on January 17, 2019. Petitioner filed no direct appeal from the guilty plea or the sentence. Therefore, this Court finds that Petitioner had until January 17, 2020, to file a timely petition. Petitioner did not file the instant petition until February 24, 2021 – almost two years after his Judgment of Conviction was filed. As such, this Court concludes that, as a matter of law, the instant Petition is procedurally defaulted and subject to dismissal absent a showing of good cause and prejudice. NRS 34.726.

This Court further concludes that Petitioner does not set forth any good cause for his failure to comply with the procedural rules. Petitioner's only claim is that the terms of the restitution ordered are somewhat unclear, which he argues should toll the one-year time limit. This Court finds that, contrary to Petitioner's assertions, Petitioner's Judgment of Conviction clearly states that Petitioner owes \$108.00 in restitution to CVS. Because Petitioner's sole argument to overcome the procedural bar is patently incorrect, Petitioner fails to make the requisite showing to survive dismissal.

II. APPOINTMENT OF COUNSEL IS NOT NECESSARY

Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada Supreme Court similarly observed that “[t]he Nevada Constitution...does not guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution's right to

1 counsel provision as being coextensive with the Sixth Amendment to the United States
2 Constitution.” McKague specifically held that with the exception of NRS 34.820(1)(a)
3 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
4 “any constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at
5 164, 912 P.2d at 258.

6 The Nevada Legislature has, however, given courts the discretion to appoint post-
7 conviction counsel so long as “the court is satisfied that the allegation of indigency is true and
8 the petition is not dismissed summarily.” NRS 34.750. NRS 34.750 reads:

9 A petition may allege that the Defendant is unable to pay the costs of the
10 proceedings or employ counsel. If the court is satisfied that the allegation of
11 indigency is true and the petition *is not dismissed summarily*, the court may
12 appoint counsel at the time the court orders the filing of an answer and a return.
13 In making its determination, the court may consider whether:

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

17 (emphasis added). Accordingly, under NRS 34.750, the Court has discretion in determining
18 whether to appoint counsel.

19 More recently, the Nevada Supreme Court examined whether a district court
20 appropriately denied a defendant’s request for appointment of counsel based upon the factors
21 listed in NRS 34.750. See Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In
22 Renteria-Novoa, the petitioner had been serving a prison term of eighty-five (85) years to life.
23 Id. at 75, 391 P.3d at 760. After his judgment of conviction was affirmed on direct appeal, the
24 defendant filed a pro se postconviction petition for writ of habeas corpus and requested counsel
25 be appointed. Id. The district court ultimately denied the petitioner’s petition and his
26 appointment of counsel request. Id. In reviewing the district court’s decision, the Nevada
27 Supreme Court examined the statutory factors listed under NRS 34.750 and concluded that the
28 district court’s decision should be reversed and remanded. Id. The Court explained that the
petitioner was indigent, his petition could not be summarily dismissed, and he had in fact
satisfied the statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor, the Court
concluded that because petitioner had represented he had issues with understanding the

1 English language which was corroborated by his use of an interpreter at his trial, that was
2 enough to indicate that the petitioner could not comprehend the proceedings. Id. Moreover,
3 the petitioner had demonstrated that the consequences he faced—a minimum eighty-five (85)
4 year sentence—were severe and his petition may have been the only vehicle for which he could
5 raise his claims. Id. at 76-77, 391 P.3d at 761-62. Finally, his ineffective assistance of counsel
6 claims may have required additional discovery and investigation beyond the record. Id.

7 Pursuant to NRS 34.750, this Court concludes that Petitioner has not demonstrated that
8 counsel should be appointed. As a preliminary matter, this Court finds that Petitioner's request
9 is suitable only for summary denial as he has failed to provide any specific facts to support his
10 bare and naked request. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).
11 Moreover, unlike Renteria-Novoa, this Court has found that Petitioner's Sixth Petition is
12 subject to dismissal pursuant to the procedural time-bar.

13 Notwithstanding the petition's summary dismissal, this Court finds that Petitioner has
14 failed to meet any of the additional statutory factors under NRS 34.750. Petitioner's claim is
15 based from a guilty plea, to which he received a 4 to 10 year sentence. The issues are not
16 difficult and, as stated above, Petitioner has failed to put forth any information to support his
17 claim. Thus, given that this is not a difficult case, this Court concludes that Petitioner is not
18 entitled to the appointment of attorney.

19 **III. JOINDER IS NOT CONTEMPLATED BY APPLICABLE HABEAS** 20 **STATUTES**

21 The Nevada Legislature has enacted detailed statutory guidelines for Petitions for
22 Postconviction Relief. See NRS 34.720 *et seq.* Consistent throughout those guidelines is the
23 *singular* reference to “*a* judgment of conviction.” See, e.g., NRS 34.720(1), 34.730(2)(b),
24 34.738(3). Indeed, in the prescribed “form” for postconviction petitions, the Nevada
25 Legislature requires that petitioners give specific information regarding that singular judgment
26 of conviction which the petitioner seeks to challenge. NRS 34.735. Thereafter, petitioners are
27 directed to provide *separate* information regarding “conviction[(s)] other than the conviction
28 under attack” in the specific postconviction petition. Id. There is no prescribed “joinder” for

1 postconviction petitions challenging separate judgments of conviction. See generally NRS
2 34.720 *et seq.*

3 The Nevada Supreme Court has been clear: statutes should be interpreted according to
4 their plain meaning, and when the legislative intent of a statute is clear, courts must endeavor
5 to effectuate that intent. Sheriff v. Luqman, 101 Nev. 149, 155, 697 P.2d 107, 111 (1985).

6 In this instance, Nevada's postconviction statutes are clear: petitioners may challenge
7 *a* judgment of conviction via a postconviction petition for writ of habeas corpus. NRS 34.720
8 *et seq.* However, where multiple judgments of conviction are challenged, those challenges
9 must occur in *separate* actions. See NRS 34.730(3) (directing the clerk of the court to file each
10 petition as a "new action separate and distinct" and "[w]henever possible, assigned to the
11 original judge or court." The legislative intent is readily apparent: the judge or court which
12 entered the judgment of conviction is presumably the best-equipped to handle a review of the
13 challenge to that judgment of conviction.

14 This Court finds that Petitioner not only seeks to join two (2) separate judgments of
15 conviction in his challenge, but those separate judgments of conviction were entered by
16 separate judges. Further, Petitioner does not provide any relevant legal authority, or cogent
17 argument, supporting his request. Instead, this Court finds that the plain language of the
18 governing statutes undermines Petitioner's request. Therefore, not only is Petitioner's
19 requested joinder completely devoid of any statutory basis, but this Court concludes that such
20 an action would seem to violate the provisions of NRS 34.730(3)(b).

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1 CONCLUSION

2 THEREFORE, IT IS HEREBY ORDERED, Petitioner Richard Mitchell's Petition for
3 Writ of Habeas Corpus shall be, and is, DISMISSED, pursuant to the mandatory time-bar of
4 NRS 34.726.

5 IT IS FURTHER ORDERED that Petitioner's Motion for Appointment of Counsel
6 shall be, and is, DENIED.

7 IT IS FURTHER ORDERED that Petitioner's Motion to Join shall be, and is, DENIED.

8 DATED this _____ day of June, 2021.

Dated this 23rd day of July, 2021

9
10 
11 _____
DISTRICT COURT JUDGE

12 Respectfully submitted,

13 STEVEN B. WOLFSON
14 Clark County District Attorney
Nevada Bar #1565

9E9 E35 B45F 2819
Jasmin Lilly-Spells
District Court Judge

15 BY /s/Alexander Chen
16 ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar # 10539

17 CERTIFICATE OF MAILING FILING

18 I hereby certify that service of Findings of Fact, Conclusions of
19 Law, And Order, was made this 17th day of June, 2021, by Mailing to:

20 Richard Mitchell #1209011
21 P.O. BOX 208, SDCC
22 Indian Springs NV 89070

23
24 
25 _____
Secretary for the District Attorney's Office

26
27
28 17F21808X/mcb

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Richard Mitchell, Plaintiff(s)

CASE NO: A-21-830001-W

7 vs.

DEPT. NO. Department 23

8 Nevada State of, 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 Judgment was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

14 Service Date: 7/23/2021

15 Steven Wolfson

Steven.wolfson@clarkcountyda.com

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

May 03, 2021

A-21-830001-W Richard Mitchell, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

May 03, 2021

11:00 AM

Motion

HEARD BY: Lilly-Spells, Jasmin

COURTROOM: RJC Courtroom 12D

COURT CLERK:

Carolyn Jackson

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:

Nevada State of
Raman, Jay

Defendant
Attorney

JOURNAL ENTRIES

- Upon Court's inquiry, Mr. Raman advised the State's Opposition to the Return was filed on March 20, 2021; however, no Opposition to the Motion to Join was filed since the State was not aware of the Motion. COURT ORDERED, matter CONTINUED.

CONTINUED TO: 05/12/21

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

May 12, 2021

A-21-830001-W Richard Mitchell, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

May 12, 2021 11:00 AM All Pending Motions

HEARD BY: Lilly-Spells, Jasmin **COURTROOM:** RJC Courtroom 12D

COURT CLERK:
Kathryn Hansen-McDowell

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT: Beaumont, Austin C. Attorney

JOURNAL ENTRIES

- Plaintiff not present, in Nevada Department of Corrections. Joseph Gersten, Esq. also present.

MOTION FOR APPOINTMENT OF ATTORNEY . . . PLAINTIFF'S NOTICE OF MOTION TO JOIN . .
. PETITION FOR WRIT OF HABEAS CORPUS

Mr. Gersten advised he represents the Plaintiff on case A829992; the Plaintiff filed a Motion to Join case A829992 and this case and a Motion For Appointment of Attorney. Mr. Gersten stated if the Court was inclined to appoint an attorney he was willing to be appointed. Colloquy. As to appointment of attorney COURT FINDS, Plaintiff is indigent however the issues raised do not need additional investigation and ORDERED, Motion for Appointment of Attorney DENIED. Court noted, the Plaintiff not being present and stated the motions were decided on the pleadings. As to Plaintiff's Motion to Join COURT FINDS joinder is not appropriate for post-conviction writs pursuant to NRS 34.730 and 34.720 and FURTHER ORDERED Motion to Join DENIED; and as to Petition for Writ of Habeas Corpus COURT FINDS pursuant to NRS 34.726 the Petition was filed untimely and is time-barred, not filed within a year and ADDITIONALLY ORDERED Petition for Writ of Habeas Corpus DENIED. State to prepare the order and submit it to Chambers.

CLERK'S NOTE: The above minute order has been distributed to: Richard Mitchell #1209011, Southern Desert Correctional Center, PO Box 208, Indian Springs, NV 89070. 5/14/21km

Certification of Copy

State of Nevada }
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DESIGNATION OF RECORD ON APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT MINUTES

RICHARD L. MITCHELL,

Plaintiff(s),

vs.

STATE OF NEVADA; WARDEN WILLIAM HUTCHINGS,

Defendant(s),

Case No: A-21-830001-W

Dept No: XIII

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 18 day of August 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk