

# IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID ANDREW COIL,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Electronically Filed  
Feb 04 2022 03:47 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No: C-16-318335-1  
*Related Case A-21-839320-W*  
Docket No: 84107

# RECORD ON APPEAL VOLUME 3

**ATTORNEY FOR APPELLANT**  
DAVID COIL # 1189948,  
PROPER PERSON  
P.O. BOX 650  
INDIAN SPRINGS, NV 89070

**ATTORNEY FOR RESPONDENT**  
STEVEN B. WOLFSON,  
DISTRICT ATTORNEY  
200 LEWIS AVE.  
LAS VEGAS, NV 89155-2212

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C-16-318335-1

State of Nevada

vs

DAVID COIL

I N D E X

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### Conclusion

The Defendant has been denied his Constitutional right to Due Process in the form of being time barred from filing his post conviction relief Writ of Habeas Corpus by no fault of his own. Due to gross negligence by his attorneys and the Corona Virus epidemic, the Defendant one year time from affirmation of conviction has been exhausted.

The Defendant lost nearly 10 months and is respectfully requesting this Honorable Court to Grant This extension for 9 months from the file date of This Motion.

Respectfully submitted this 7 day of July 2021

by David Coil

David Coil

1189948

### Certificate of Service Mailing

I David Coit, hereby certify, pursuant to NRCP 56 that on this 7 day of July 2021, I mailed a true and correct copy of Motion to Extend Time by first class mail addressed to

Clark County D.A.

200 Lewis Ave

Las Vegas NV 89155

Dated this 7 day of July 2021

David Coit

David Coit

1189948

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that  
the preceding Motion to Extend Time

Filed in District Court Case # C-16-318335-1

Does NOT Contain the Social Security Number  
of any Person

David Col

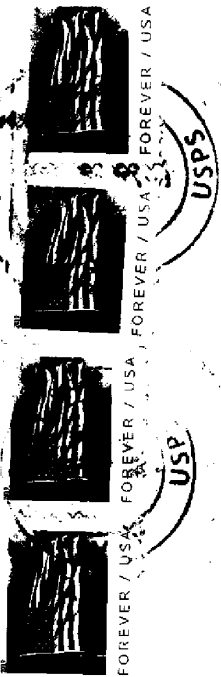
Dated 7.7.21

David Col

1189948

Defendant

Col David Hgaur  
P.O. Box 650 HDS  
Indian Springs NV  
89070



Clark County Clerk of Court  
200 Lewis Ave  
Las Vegas NV 89055

RECEIVED

JUL 12 2021

CLERK OF THE COURT

8910138300 0075



**ORDR**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**SELESTE WYSE**  
Deputy District Attorney  
Nevada Bar #014971  
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-

**DAVID COIL,**  
**#8323388**

Defendant.

CASE NO: **C-16-318335-1**

DEPT NO: **X**

**ORDER DENYING DEFENDANT'S MOTIONS TO WITHDRAW GUILTY PLEA**  
**AND MOTION TO EXTEND TIME TO FILE PETITION FOR WRIT**  
**OF HABEAS CORPUS**

DATE OF HEARING: **JUNE 28, 2021**  
TIME OF HEARING: **8:30 A.M.**

THIS MATTER having presented before the above entitled Court on the 28th day of  
JUNE, 2021; Defendant not present, IN PROPER PERSON; Plaintiff represented by  
STEVEN B. WOLFSON, District Attorney, through SELESTE WYSE, Deputy District  
Attorney; and without argument, based on the pleadings and good cause appearing,

//

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\\CLARKCOUNTYDA.NET\CRM\CASE2\2016\410\02\201641002C-ORDR-(COIL DAVID 06 28 2021)-001.DOCX

Statistically closed: N. USJR - CR - Other Manner of Disposition (USCO)

1 THE COURT FINDS:

2 1. “After sentence has been imposed, the statutory post-  
3 conviction habeas petition takes the place of a motion to withdraw a  
4 guilty plea.” Harris v. State, 130 Nev. 435, 329 P.3d 619 (2014).  
5 Pursuant to NRS 34.724(2)(b), habeas corpus is the exclusive remedy  
6 to challenging the validity of a guilty plea after sentencing.

7 2. It appears that Defendant is aware that he should file a  
8 post-conviction petition pursuant to NRS 34.810. In this case  
9 Defendant pled guilty, and a Judgment of Conviction was filed on  
10 December 13, 2017. Over one year has passed since the entry of the  
11 Judgment of Conviction, therefore any future petition that Defendant  
12 files should also demonstrate good cause to overcome the untimely  
13 filing.

14 3. As to his request for an extension of time to file a post-  
15 conviction petition, this Court need not grant his motion. The  
16 parameters and time frames for filing a petition are proscribed by  
17 statute. As described in Harris, this court should construe this motion  
18 as a post-conviction petition for a writ of habeas corpus, but it is  
19 incumbent upon the Defendant to cure any defects and to make his  
20 filing in compliance with NRS Chapter 34. Id., at 448-449, 628. In its  
21 current form, Defendant has not complied with the requirements of  
22 Chapter 34, both in substance and in form. Thus it would be  
23 appropriate to deny both of the Defendant’s current motions and allow  
24 him to file a correct petition if he so chooses.

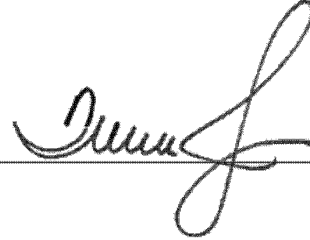
25 THEREFORE,

26 //

27 //

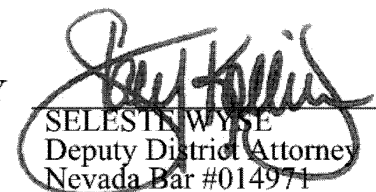
28 //

1           **IT IS HEREBY ORDERED** that DEFENDANT'S MOTIONS TO WITHDRAW  
2 GUILTY PLEA and MOTION TO EXTEND TIME TO FILE PETITION FOR WRIT OF  
3 HABEAS CORPUS, shall be and are DENIED.           Dated this 19th day of July, 2021

4  
5  
6  


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

1D8 7E4 7360 C092  
Tierra Jones  
District Court Judge

9  
10 BY  for  
11 SELESTINE WYSE  
12 Deputy District Attorney  
13 Nevada Bar #014971

14  
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27  
28 hjc/SVU

1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5  
6 State of Nevada

CASE NO: C-16-318335-1

7 vs

DEPT. NO. Department 10

8 DAVID COIL  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 7/19/2021

15 Victoria Boyd

boydv@clarkcountycourts.us

16 State Nevada

motions@clarkcountyda.com

17 Kelsey Bernstein

kbernstein.esq@gmail.com

18 Maritza Montes

maritza@defendingnevada.com  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



1 MOT

2 DAVID COIL # 1189948

3 P.O. Box 650 High Desert St. Prison

4 Indian Springs Nevada 89070

5

6

DISTRICT COURT

7

CLARK COUNTY NEVADA

8

9

State of Nevada

10

Plaintiff

Case Number C-16-318335-1

11

v

12

David Coil

13

Defendant

14

15

MOTION TO WITHDRAW GUILTY PLEA

16

17

Comes David Coil Pursuant to NRS 176.165 and

18

United States and Nevada Constitutions, moves this Honorable

19

Court to Withdraw Defendants guilty plea entered September

20

28, 2017 on the basis of coercion and not knowingly,

21

voluntarily or intelligently given.

22

This Motion is based upon prior pleadings.

23

Dated this 20 day of July 2021

24

by David Coil

25

David Coil 1189948

26

FILED

JUL 28 2021

CLERK OF COURT

August 18, 2021  
8:30 AM

## POINT AND AUTHORITIES

1 Attached Points and Authorities and other such facts  
2 that will come before this Honorable Court at an evidentiary  
3 hearing of this Motion. POINTS being raised but not limited to  
4 NRS. 47.250 Disputable Assumption. NRS 48.055 Methods  
5 of Proving Character. NRS 193.190 To constitute a crime there  
6 Must be Unity of Act and Intent. NRS 193.200 Intent: how  
7 manifested NRS. 194.010 Persons capable of committing  
8 crimes: exceptions NRS 193.017 Knowingly: defined  
9 NRS. 200.467 Trafficking in persons for financial gains.  
10 NRS. 200.468 Trafficking in person for Illegal purposes  
11 NRS 200.4685 Trafficking in children

12 NRS 47.250 Disputable assumption. All other  
13 presumptions are disputable. The following are of that kind  
14 1. That an unlawful act was done with an unlawful  
15 intent. That a person intends the ordinary consequences  
16 of that persons voluntary act. On August 23 2016  
17 defendant was arrested in a fast food restaurant as a  
18 sting operation. Defendant had possession of a Samsung  
19 flip Phone and a Droid mini phone. The flip phone was  
20 solely Defendants business phone. The droid mini was  
21 the "house" cell phone. One of the ladies in my house  
22 informed that a female wished an interview at about  
23 noon so she told defendant the phone number of the  
24 interviewee and defendant accepted the arrangement  
25 and made the plans for this meeting.

26

Continued

1 A "cold call" defendant was unaware any other  
2 info except desire to interview. Defendant noticed only  
3 one elderly couple in the restaurant besides a female  
4 in the N.E. corner booth. Defendant approached respectfully  
5 with introduction. Transcripts are Court records. At no  
6 time was age mentioned and by appearance female  
7 appeared to be over 21. No monies exchanged or  
8 discussed, no service arranged or discussed, only one  
9 comment was raised - "Whats in it for You?" (defendant)  
10 Defendants response "Nada, nothing, zero" Defendant is  
11 not made aware or was suggested this female being  
12 under 18. NRS 193.190 Must have Unity of Intent  
13 and actions to constitute a crime. Pleading guilty to  
14 a crime not committed. Renders plea Invalid. Trafficking  
15 is not implicated nor Attempt. On or about October 16, 2015  
16 Defendant received a phone call on house cell phone 523-8644  
17 from a female who saw a Craigslist ad. This female relates  
18 that she is 19 years old and inquiring about the job.  
19 Approximately a 10 minute conversation and this adult  
20 female requested an interview and arranged the time  
21 and place near a bus stop as she would take the bus  
22 Defendant was concluding another interview when  
23 the time approached. This female, Brigget age 23  
24 with a Sheriff's card to work strip clubs in Las Vegas  
25 agreed to accompany me to this interview.

26

Continued

1 Briggett was with defendant and witness to female  
2 known as I.P. exit the bus alone and walk across  
3 Richmar to the parking lot of said restaurant. These  
4 two females met, discussed what it is about, discussed  
5 ages and jointly agreed to get into car to return  
6 to defendant residence to continue interviews I.D. for  
7 I.P. confirms she is over 18. At the residence both  
8 females engage in female conversation and both pull  
9 out cigarettes and smoke. Parking lot meeting was  
10 approximately 1:35 pm At approximately 2 pm interview  
11 commences between defendant and I.P. Interview lasts  
12 30 minutes so I.P. makes a phone call and returns  
13 to join defendant and Brigette to say I.P. is not  
14 interested and not what she wants to do. Defendant  
15 properly suggests I.P. be taken back to bus stop  
16 and I.P. agrees. No force, no coercion, no sexual  
17 conduct but Defendant rewarded I.P. \$100 cash for  
18 her time and being naked. Approximately 2:45 pm  
19 Defendant left I.P. at bus stop and returned to  
20 residence. Approximately 4 days later (documents  
21 defendant was denied would confirm this fact)  
22 Miss I.P. called defendant on 523-8644 house  
23 cell phone saying her boyfriend wants her to  
24 do this job. He will bring her, Defendant reminds  
25 I.P. that no means no and that is what she implied

26

Continued

1 Miss I.P. arrived at 2 pm after that call and  
2 defendant has considerable discussion with I.P. about  
3 this self employ oportunity and I.P. understands  
4 responsibilities related and confirms she is freely  
5 choosing to be naked and solicit her own clients  
6 Brigitte is present and they commence. I.P. posts  
7 her ads on Craigslist as 18, edits her pictures  
8 as she wants them seen. No inducement, no recruitment  
9 no harboring, she comes and goes as she sees fit.  
10 NRS 193.017 Knowingly: defined imports a knowledge  
11 that the facts exist which constitutes the acts or omission of a  
12 crime and does not require knowledge of its unlawfulness  
13 Knowledge of any particular fact may be inferred from the  
14 knowledge of other facts as should an ordinary prudent  
15 person upon inquiry. Defendant has considerable  
16 knowledge of girls who work in/at strip clubs and has  
17 dated several. Being well aware strippers pay considerable  
18 "house fees" to be Independent Contractors" defendant  
19 using Logic that if no house fee, would assist ladies  
20 then my house was free. Several girls with Sheriff  
21 cards would work from Defendants residence to improve  
22 income. Defendant was totally unaware this could  
23 be unlawful. Defendant is a self employed building  
24 Contractor since 1981. No intent to profit or gain  
25 from these females.

26

## Conclusion.

1 NRS 194.010 Persons capable of committing crimes. All  
2 persons are liable to punishment - Except those belonging to the  
3 following classes 1. children under age of 8 years. 2. Child  
4 between age 8 and 10 years, unless is charged with murder or  
5 a sexual offense. 3. Children between 8 and 14 years in  
6 the absence of clear proof that at the time of committing  
7 the act charged against them they knew its wrongfulness.  
8 4. Persons who committed the act charged or made the  
9 omission charged in a state of insanity. 5. Persons who  
10 committed the act or made to omission charged under an  
11 ignorance or mistake of fact, which disproves any  
12 Criminal Intent, where a specific intent is required  
13 to constitute the offense. 6. Persons who committed  
14 the act charged without being conscious thereof.  
15 NRS 48.055 Methods of proving character. In all cases  
16 in which evidence of character or a trait of character of a person  
17 is admissible, proof may be made by testimony as to  
18 reputation or in the form of opinion. On cross examination,  
19 inquiry may be made into specific instances of conduct.  
20 2. In cases in which character or a trait of character of  
21 a person is an essential element of a charge, claim or  
22 defense, proof of specific instances of the persons  
23 conduct may be made on direct or cross-examination.

24 Defendant was denied character witnesses and  
25 support document by the Court and trial counsel.

26

27

Continued

1 Reverential Fear, a Psychological condition that was  
2 created by the Court and imposed trial Counsel Authority  
3 individuals who preside over an individual in a meaningful  
4 and controlling manner, where the person has little or no  
5 recourse, this imposing fear is and can be debilitating  
6 and controlling. Fear and shock are two conditions  
7 that in fact can invalidate a contract. Duress is an  
8 imposed fear. Coersion is an imposed fear. Defendant  
9 was in Fear and shock during September 28, 2017  
10 court appearing pleading guilty to crimes not committed  
11 Defendant was not made aware by Counsel or the Court  
12 that an option to guilty plea was a possibility. To with-  
13 draw!! Defendant made an attempt as is on record to  
14 deny the charge but it was waved of by the Judge  
15 "I dont Care" statement, further casting Fear upon  
16 Defendant to comply as instructed Manifest injustice  
17 Muscarriage of Justice and a Mockery of Justice  
18 could be inclusive if Judgement of Conviction is  
19 Affirmed with the cummulative facts made known.

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## Conclusion

1 To culminate defendants issues, denial of 60 day  
2 Speedy Trial by either Constitutions 6th Amendment from  
3 arrest, or NRS 60 day rule from Arraignment, both time lines  
4 were violated. Defendants claim of Ineffective Assistance of  
5 Counsel, and negative bias by the Court, ending in an  
6 accepted Naked confession to felony charges that had  
7 no evidence of defendant actually having committed. This  
8 Defendant is submitting this Motion to Withdraw Guilty Plea  
9 as the approved exception to NRS 176.165. To correct  
10 Manifest injustice, to end a true Miscarriage of Justice  
11 and to prevent what some may refer to a Mockery of  
12 Justice leading to unlawful incarceration. Defendant is Not  
13 a Lawyer and may have made or failed to make some legal  
14 challenges but with Corona virus precluding many legal  
15 avenues, Defendant assures this Court that Due Diligency has  
16 been the forefront of all efforts. Defendant now Pleads  
17 The Honorable Court to Grant this Motion to Withdraw  
18 Guilty Plea.

19  
20 Dated this 20 day of July in the year 2021

21  
22 by David Coil 1189948  
23 David Coil  
24  
25  
26



Call David 1184448  
PO Box 650 HD-8  
Indian Spring NV  
89070

Clark County Clerk of Court  
200 ~~W~~ Lewis Ave  
Las Vegas NV  
89153

3762



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JUL 22 2021

HIGH DESERT STATE PRISON

B22 2

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1 **OPPS**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JOHN NIMAN  
6 Deputy District Attorney  
7 Nevada Bar #14408  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 DAVID ANDREW COIL #8323388,  
13 Defendant.

CASE NO: C-16-318335-1

DEPT NO: X

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW GUILTY**  
16 **PLEA AND RESPONSE TO MOTION FOR EXTENSION OF TIME**

17 DATE OF HEARING: AUGUST 4, 2021  
18 TIME OF HEARING: 8:30 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
20 District Attorney, through JOHN NIMAN, Deputy District Attorney, and hereby submits the  
21 attached Points and Authorities in Opposition to Defendant's Motion to Withdraw Guilty Plea  
22 and Response to Motion for Extension of Time.

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

26 //

27 //

28 //

1 **POINTS AND AUTHORITIES**

2 Defendant pled guilty to multiple felony counts in this case. A Judgment of Conviction  
3 was filed on December 13, 2017. Defendant filed a Motion to Withdraw Guilty Plea Agreement  
4 and Motion for Extension of Time to File a Post-Conviction Writ of Habeas Corpus on June  
5 3, 2021. The State filed an Opposition and Response on June 10, 2021. On June 28, 2021, this  
6 Court denied both motions. A detailed order explaining that the Motion to Withdraw Guilty  
7 Plea must be filed as a Petition for Writ of Habeas Corpus, and explaining that an extension  
8 of time to file the Petition was unwarranted because the time to file the Petition is set by statute,  
9 was filed on July 19, 2021.

10 Meanwhile, on July 14, 2021, Defendant filed another Motion for Extension of Time,  
11 and on July 28, 2021, Defendant filed another Motion to Withdraw Plea. The State responds  
12 to both motions here.<sup>1</sup>

13 **A. THE MOTIONS SHOULD BE DENIED BECAUSE THEY ARE BARRED BY**  
14 **RES JUDICATA**

15 This Court has already explained, in a detailed Order, why a Motion to Withdraw Plea  
16 is an improper vehicle for challenging a Judgment of Conviction, and why a motion seeking  
17 to extend the time to file a Petition for Writ of Habeas Corpus cannot be granted. Order  
18 Denying Defendant's Motions to Withdraw Guilty Plea and Motion to Extend Time to File  
19 Petition for Writ of Habeas Corpus, filed July 19, 2021. The instant motions provide no reason  
20 to reconsider the decision already made by this Court. A Petition for Writ of Habeas Corpus  
21 *must* be filed as a Petition for Writ of Habeas Corpus after the sentence has been imposed.  
22 Harris v. State, 130 Nev. 435, 329 P.3d 619 (2014). Moreover, the time to file a Petition for  
23 Writ of Habeas Corpus is governed by NRS 34 *et seq.* This Court has already explained to  
24 Defendant that he must file a Petition in the proper form for his claims to be considered.

25 The Motion for Extension of Time should be denied for the reasons this Court already  
26 explained, and the Motion is barred by *res judicata*. See Mason v. State, 206 S.W.3d 869, 875

27  
28 

---

<sup>1</sup> The Motion for Extension of Time is set to be heard on August 4, 2021, and the Motion to Withdraw Plea is set to be  
heard on August 18, 2021. For the sake of judicial economy, the State responds to both motions in the instant response.

(Ark. 2005) (recognizing the doctrine’s applicability in the criminal context); see also York v. State, 342 S.W. 528, 553 (Tex. Crim. Appl. 2011).

## CONCLUSION

For the foregoing reasons, this Court should deny the Motion for Extension of Time and the Motion to Withdraw Guilty Plea.

DATED this 30th day of July, 2021.

Respectfully submitted,

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

BY

JOHN NIMAN  
Deputy District Attorney  
Nevada Bar #14408

#10539 for

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 30th day of July, 201, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

DAVID COLE, BAC#1189948  
P.O. BOX 650 (HDSP)  
INDIAN SPRINGS, NV, 89070

BY

Secretary for the District Attorney's Office

**ORDR**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**SELESTE WYSE**  
Deputy District Attorney  
Nevada Bar #014971  
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-

**DAVID COIL,**  
**#8323388**

Defendant.

CASE NO: **C-16-318335-1**

DEPT NO: **X**

**ORDER DENYING DEFENDANT'S MOTION TO WITHDRAW**  
**GUILTY PLEA AND MOTION FOR EXTENSION OF TIME**

DATE OF HEARING: **AUGUST 4, 2021**  
TIME OF HEARING: **8:30 A.M.**

THIS MATTER having presented before the above entitled Court on the 4th day of JUNE, 2021; Defendant not present, IN PROPER PERSON; Plaintiff represented by STEVEN B. WOLFSON, District Attorney, through SELESTE WYSE, Deputy District Attorney; and without argument, based on the pleadings and good cause appearing,

//

//

//

//

//

\\CLARKCOUNTYDA.NET\CRM\CASE2\2016\410\02\201641002C-ORDR-(COIL DAVID 07 29 2021)-001.DOCX

Statistically closed: N. USJR - CR - Other Manner of Disposition (USCO)

1 This Court has already explained, in a detailed Order, why a Motion to Withdraw Plea  
2 is an improper vehicle for challenging a Judgment of Conviction, and why a motion seeking  
3 to extend the time to file a Petition for Writ of Habeas Corpus cannot be granted. Order  
4 Denying Defendant's Motions to Withdraw Guilty Plea and Motion to Extend Time to File  
5 Petition for Writ of Habeas Corpus, filed July 19, 2021. The instant motions provide no reason  
6 to reconsider the decision already made by this Court. A Petition for Writ of Habeas Corpus  
7 *must* be filed as a Petition for Writ of Habeas Corpus after the sentence has been imposed.  
8 Harris v. State, 130 Nev. 435, 329 P.3d 619 (2014). Moreover, the time to file a Petition for  
9 Writ of Habeas Corpus is governed by NRS 34 *et seq.* This Court has already explained to  
10 Defendant that he must file a Petition in the proper form for his claims to be considered.

11 The Motion for Extension of Time should be denied for the reasons this Court already  
12 explained, and the Motion is barred by *res judicata*. See Mason v. State, 206 S.W.3d 869, 875  
13 (Ark. 2005) (recognizing the doctrine's applicability in the criminal context); see also York v.  
14 State, 342 S.W. 528, 553 (Tex. Crim. Appl. 2011).

15 THEREFORE,

16 **IT IS HEREBY ORDERED** that DEFENDANT'S MOTION FOR EXTENSION OF  
17 TIME and MOTION TO WITHDRAW GUILTY PLEA, shall be and are DENIED.  
18  
19  
20



21 STEVEN B. WOLFSON  
22 Clark County District Attorney  
Nevada Bar #001565

708 513 6FDF 45B8  
Tierra Jones  
District Court Judge

23  
24 BY



SELESTINE WYSE  
Deputy District Attorney  
Nevada Bar #014971

for

25  
26  
27 hjc/SVU  
28

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 State of Nevada

CASE NO: C-16-318335-1

7 vs

DEPT. NO. Department 10

8 DAVID COIL

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 8/10/2021

15 Victoria Boyd

boydv@clarkcountycourts.us

16 State Nevada

motions@clarkcountyda.com

17 Kelsey Bernstein

kbernstein.esq@gmail.com

18 Maritza Montes

maritza@defendingnevada.com

IN THE Eighth JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF Clark

David Coil  
Petitioner/Plaintiff,

v.

Tiera Jones  
Respondent/Defendant

Case No. C-16-318335-1

Dept. No. X

Docket No. \_\_\_\_\_

**PREEMPTORY CHALLENGE OF JUDGE**

COMES NOW, Petitioner/Plaintiff, David Coil, pro per,  
and in Forma Pauperis, pursuant to Supreme Court Rule 48.1, wishes to exercise the right to change Judge.

The current Judge in the above-entitled action is Tiera Jones.

DATED this 13 day of August, 2021

Respectfully submitted,

David Coil

Petitioner/Plaintiff

United States District Court  
District of Nevada

Case 2:21-cv-00666-APG-BNW Coil v. Jones

RECEIVED  
AUG 17 2021  
CLERK OF THE COURT



**AFFIRMATION PURSUANT TO NRS 239B.030**

I, David Coil, NDOC# 1189948,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE  
ATTACHED DOCUMENT ENTITLED Preemptory  
Challenge of Judge

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY  
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 13 DAY OF August, 2021.

SIGNATURE: David Coil

INMATE PRINTED NAME: David Coil

INMATE NDOC# 1189948

INMATE ADDRESS: ~~ELY STATE PRISON~~

~~P.O. BOX 1989~~

~~ELY, NV 89301~~

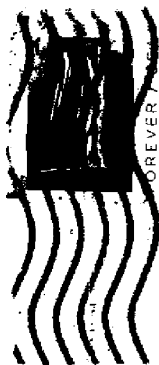
High Desert State Prison  
Po Box 650

Indian Springs NV

89070

1107448  
PO Box 650, HDSP  
Indian Spring NV  
89010

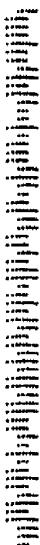
LAS VEGAS NV 890  
13 AUG 2021 PM 3 L



Clark County Court Clerk  
200 Lewis Ave  
Las Vegas NV  
89155

RECEIVED  
AUG 17 2021

CLERK OF THE COURT



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0001 100

12 2021

JOHN DESEPT STATE PRISON

Case No. C-16-318335-1

Dept. No. 10

**FILED**  
**AUG 30 2021**  
*[Signature]*  
CLERK OF COURT

IN THE Eighth JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF Clark

**September 20, 2021**  
**8:30 AM**

David Coil  
Petitioner,

**MOTION FOR THE APPOINTMENT**  
**OF COUNSEL**

-VS-

Warden Johnson  
State of Nevada et al  
Respondents.

**REQUEST FOR EVIDENTIARY HEARING**

COMES NOW, the Petitioner, David Coil, proceeding pro se, within the  
above entitled cause of action and respectfully requests this Court to consider the appointment of counsel  
for Petitioner for the prosecution of this action.

This motion is made and based upon the matters set forth here, N.R.S. 34.750(1)(2), affidavit of  
Petitioner, the attached Memorandum of Points and Authorities, as well as all other pleadings and  
documents on file within this case.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. STATEMENT OF THE CASE**

This action commenced by Petitioner David Coil, in state custody,  
pursuant to Chapter 34, et seq., petition for Writ of Habeas Corpus (Post-Conviction).

**II. STATEMENT OF THE FACTS**

To support the Petitioner's need for the appointment of counsel in this action, he states the  
following:

1. The merits of claims for relief in this action are of Constitutional dimension, and  
Petitioner is likely to succeed in this case.

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AUG 26 2021  
CLERK OF THE COURT

2. Petitioner is incarcerated at the ~~High Desert State Prison~~ Petitioner is unable to undertake the ability, as an attorney would or could, to investigate crucial facts involved within the Petition for Writ of Habeas Corpus.
3. The issues presented in the Petition involves a complexity that Petitioner is unable to argue effectively.
4. Petitioner does not have the current legal knowledge and abilities, as an attorney would have, to properly present the case to this Court coupled with the fact that appointed counsel would be of service to the Court, Petitioner, and the Respondents as well, by sharpening the issues in this case, shaping the examination of potential witnesses and ultimately shortening the time of the prosecution of this case.
5. Petitioner has made an effort to obtain counsel, but does not have the funds necessary or available to pay for the costs of counsel, see Declaration of Petitioner.
6. Petitioner would need to have an attorney appointed to assist in the determination of whether he should agree to sign consent for a psychological examination.
7. The prison severely limits the hours that Petitioner may have access to the Law Library, and as well, the facility has very limited legal research materials and sources. ~~CORONA VIRUS.~~
8. While the Petitioner does have the assistance of a prison law clerk, he is not an ~~not~~ attorney and not allowed to plead before the Courts and like Petitioner, the legal assistants have limited knowledge and expertise.
9. The Petitioner and his assisting law clerks, by reason of their imprisonment, have a severely limited ability to investigate, or take depositions, expand the record or otherwise litigate this action.
10. The ends of justice will be served in this case by the appointment of professional and competent counsel to represent Petitioner.

## II. ARGUMENT

Motions for the appointment of counsel are made pursuant to N.R.S. 34.750, and are addressed to the sound discretion of the Court. Under Chapter 34.750 the Court may request an attorney to represent any

such person unable to employ counsel. On a Motion for Appointment of Counsel pursuant to N.R.S. 34.750, the District Court should consider whether appointment of counsel would be of service to the indigent petitioner, the Court, and respondents as well, by sharpening the issues in the case, shaping examination of witnesses, and ultimately shortening trial and assisting in the just determination.

In order for the appointment of counsel to be granted, the Court must consider several factors to be met in order for the appointment of counsel to be granted; (1) The merits of the claim for relief; (2) The ability to investigate crucial factors; (3) whether evidence consists of conflicting testimony effectively treated only by counsel; (4) The ability to present the case; and (5) The complexity of the legal issues raised in the petition.

### **III. CONCLUSION**

Based upon the facts and law presented herein, Petitioner would respectfully request this Court to weigh the factors involved within this case, and appoint counsel for Petitioner to assist this Court in the just determination of this action

Dated this 23 day of August, 20 21.

David Coi  
Petitioner.

### **VERIFICATION**

I declare, affirm and swear under the penalty of perjury that all of the above facts, statements and assertions are true and correct of my own knowledge. As to any such matters stated upon information or belief, I swear that I believe them all to be true and correct.

Dated this 23 day of August, 20 21.

David Coi  
Petitioner, pro per.

CERTIFICATE OF SERVICE BY MAIL

I, David Coil, hereby certify pursuant to N.R.C.P.

5(b), that on this 23 day of August, of the year 20 21, I mailed a true and correct copy of the foregoing Motion for Leave to Proceed in Forma Pauperis; Affidavit in Support of Motion for Leave to Proceed in Forma Pauperis; Motion for the Appointment of Counsel; and Request for Evidentiary Hearing, addressed to:

Warden Johnson  
Name

Clark County  
District Attorney  
Name

Nevada Attorney  
General  
Name

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

200 Lewis Ave  
Las Vegas NV  
89155  
Address

555 E. Washington  
Las Vegas  
NV. 89001  
Address

David Coil  
Petitioner

**AFFIRMATION**  
Pursuant to NRS 239B.030

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

Motion for Appointment of Counsel/Request for Evidentiary  
Hearing  
(Title of Document)

filed in District Court Case No. C-16-318335-1

☒ 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.

David Col  
(Signature)

8-23-21  
(Date)

Coil, David 1189948  
P.O. Box 63044 DSF  
Indian Springs NV  
89070

LAS VEGA

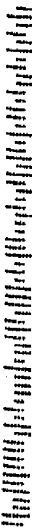
23 AUG 202

FOREVER 7 USA

FOREVER 7 USA FOREVER 7 USA

Clark County Clerk of Courts  
200 Lewis Ave  
Las Vegas NV  
89155

89101-630000



AUG 23 2021

B22 2



1 MOT

2 DAVID COIL 1189948

3 Po Box 650

4 Indian Spring NV

5 89070

October 11, 2021  
8:30 AM

FILED

SEP 16 2021

CLERK OF COURT

6 DISTRICT COURT COUNTY OF CLARK

7  
8 State of NEVADA

9 Plaintiff

10 v

11 DAVID COIL

12 Defendant

CASE C-16-318335-1

Dept X

MOTION TO COMPEL

CLERK OF COURT

13  
14 Comes now David Coil in this action

15 Defendant seeks This Honorable Court to Compel the District

16 Court Clerk to inform in writing, by means of U.S. Postal

17 Services, to Defendant, results of Hearings dated August 4,

18 and August 18 of 2021 or state the continuation established

19 An elongated time span has occurred to cause this action

20 There was no oral argument allotted for Defendant to

21 establish claims to the merits substantial merits present.

22 Respectfully submitted this 13 day of September

2021

X David Coil

David Coil

1189948 HDSP

CLERK OF THE COURT

SEP 16 2021

RECEIVED  
5  
26

David Cole 1189448  
Pc Box 650  
Indian Spring NV  
89070



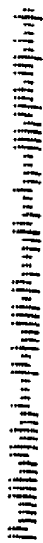
Thinking

LAS VEGAS NV 890

13 SEP 2021 PM 4 L

Clark County Court Clerk  
200 Lewis Ave  
Las Vegas NV  
89155

89101-630000



SEP 13 2021



1 **OPPS**

2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 ALEXANDER CHEN  
6 Chief Deputy District Attorney  
7 Nevada Bar #10539  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 DAVID ANDREW COIL, #8323388

13 Defendant.  
14

CASE NO: C-16-318335-1

DEPT NO: X

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION**  
16 **FOR APPOINTMENT OF COUNSEL**

17 DATE OF HEARING: SEPTEMBER 20, 2021  
18 TIME OF HEARING: 8:30 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
20 District Attorney, through ALEXANDER CHEN, Chief Deputy District Attorney, and hereby  
21 submits the attached Points and Authorities in Opposition to Defendant's Motion For  
22 Appointment Of Counsel.

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

26 //

27 //

28 //

//

\\CLARKCOUNTYDA.NET\CRM\CASE2\2016\410\02\201641002C-RSPN-(COIL, DAVID)-001.DOCX

1 POINTS AND AUTHORITIES

2 ARGUMENT

3 Defendant Coil previously filed a Motion to Withdraw Guilty Plea, and the State  
4 indicated that it was an improper response that should be filed as a petition. Now Defendant  
5 has filed a request asking for an attorney, but an attorney is not warranted absent a petition  
6 being filed. Moreover, Defendant's stock response makes no mention as to why he cannot  
7 file a petition without an attorney. Until a petition is filed that at least indicates whether the  
8 claims are difficult or not, or why he needs an attorney, this court should refrain from  
9 appointing him counsel. *See* NRS 34.750. Otherwise, Defendant is not entitled to have an  
10 attorney appointed at this stage of the proceedings.

11 CONCLUSION

12 Based upon the above reasons, the State respectfully requests that Defendant's Motion be  
13 denied.

14 DATED this 17<sup>th</sup> day of September, 2021.

15 Respectfully submitted,

16 STEVEN B. WOLFSON  
17 Clark County District Attorney  
Nevada Bar #1565

18 BY 

19 ALEXANDER CHEN  
20 Chief Deputy District Attorney  
Nevada Bar #10539

21 CERTIFICATE OF MAILING

22 I hereby certify that service of the above and foregoing was made this 17<sup>th</sup> day of  
23 September, 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

24 DAVID COIL, BAC#1189948  
25 P.O. BOX 650  
HIGH DESERT STATE PRISON  
INDIAN SPRINGS, NV, 89070

26 BY 

27 Secretary for the District Attorney's Office

28 AC/mlb/SVU

1 MOT  
2 DAVID COIL 1189948  
3 Po Box 650  
4 Indian Springs  
5 Nevada 89070

FILED

SEP 30 2021

CLERK OF COURT

DISTRICT COURT COUNTY OF CLARK

9 STATE OF NEVADA

CASE C-16 318335-1

10 Plaintiff

Dept X

11 v

12 DAVID COIL

October 25, 2021  
8:30 AM

13 Defendant

MOTION FOR ORDER SHORTENING TIME

17 Defendant David Coil, respectfully requests this  
18 Honorable Court to enlist Jurisprudence to instruct  
19 Clerk of Courts to expedite Register of Actions by first  
20 class US Postal mail of results of hearings of 2021  
21 including May, June, July, August, and September. Motions  
21 were filed and hearings set. Defendant is not receiving results  
23 of hearings.

Dated this 27 day of September 2021

by David Coil 1189948

David Coil

RECEIVED

SEP 30 2021

RECEIVED

SEP 30 2021

CLERK OF THE COURT

CO. L D. 1189448  
PO Box 650  
Indian Springs NV  
89073

LAS VEGAS NV 890

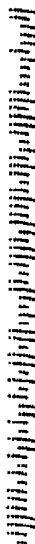
27 SEP 2021 PM 4 L

Thinking



District Court Clark County  
200 Lewis Ave  
Las Vegas NV 89155

89101-630000



SEP 28 2021

09:13

**ORDR**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**STACEY KOLLINS**  
Chief Deputy District Attorney  
Nevada Bar #005391  
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-

**DAVID ADNREW COIL,**  
**#8323388**

Defendant.

CASE NO: **C-16-318335-1**

DEPT NO: **X**

**ORDER DENYING DEFENDANT'S MOTION FOR APPOINTMENT OF**  
**ATTORNEY; REQUEST FOR EVIDENTIARY HEARING**

DATE OF HEARING: **SEPTEMBER 20, 2021**  
TIME OF HEARING: **8:30 A.M.**

THIS MATTER having presented before the above entitled Court on the 20th day of  
SEPTEMBER, 2021; Defendant not present, IN PROPER PERSON; Plaintiff represented by  
STEVEN B. WOLFSON, District Attorney, through ~~HETTY WONG~~ **JOHN JONES**, Chief Deputy District  
Attorney; and without argument, based on the pleadings and good cause appearing,

//

//

//

//

//

\\CLARKCOUNTYDA.NET\CRM\CASE2\2016\410\02\201641002C-ORDR-(DAVID ANDREW COIL)-001.DOCX

Statistically closed: N. USJR - CR - Other Manner of Disposition (USCO)

**IT IS HEREBY ORDERED** that DEFENDANT'S MOTION FOR APPOINTMENT  
Dated this 2nd day of November, 2021  
OF ATTORNEY; REQUEST FOR EVIDENTIARY HEARING shall be and is DENIED.

Dated this 2nd day of November, 2021

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

0CB 7FA C16D 9C3F  
Tierra Jones  
District Court Judge

BY

for

HETTY WONG  
Chief Deputy District Attorney  
Nevada Bar #011324

hjc/SVU



1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5  
6 State of Nevada

CASE NO: C-16-318335-1

7 vs

DEPT. NO. Department 10

8 DAVID COIL  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 11/2/2021

15 Victoria Boyd

boydv@clarkcountycourts.us

16 State Nevada

motions@clarkcountyda.com

17 Kelsey Bernstein

kbernstein.esq@gmail.com

18 Maritza Montes

maritza@defendingnevada.com  
19  
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27  
28

Case No C-16-318335-1

Nov 1, 2021

David Coil

PO BOX 0650

Indian Springs Nevada 89070-0650

High Desert State Prison

Inmate No 1189948

FILED

NOV 15 2021

CLERK OF COURT

IN THE Eighth JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Clark.

December 6, 2021  
8:30 AM

David Coil, plaintiff.

Motion For Enlargement

vs

of time, due to

State of Nevada et al

Copies not received both

defendant,

from High Desert Legal

Copy center.

Come Now, Petitioner/Plaintiff, Mr David Coil, pro per,

And respectfully moves this Honorable Court for a

30 day enlargement of time from Nov 8, 2021 to Dec 8 2021,

in which to file petitioners/plaintiff answer to States

response to Habeas Corpus case # C-16-318335-1

This motion is based on Rule 50(b) of the Nevada

rules of criminal procedure, the Supporting affidavit

as well as all papers, pleadings, and document on file

herein. Conclusion

Wherefore, all of the above stated reasons. It is respec-

tively requested the Court enlarge the time to file

by 30 day from Nov 8, 2021. \* David Coil date 11.2.21

print \* David Coil  
(1)

RECEIVED

NOV 28 2021

CLERK OF THE COURT

Co. L D 1189948  
Po Box 650  
Indian Springs  
89001

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OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

**CERTIFIED MAIL®**



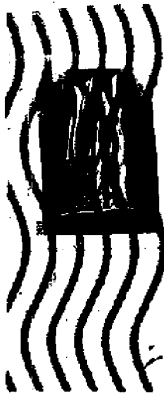
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376

Clark County Court Clerk  
200 Lewis Ave  
Las Vegas NV  
89155

LAS VEGAS NV 890

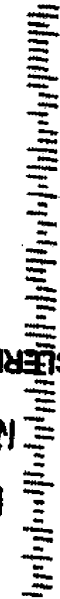
4 NOV 2021 PM 5 L



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CLERK OF THE COURT

89101-890000



**ORDR**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**STACEY KOLLINS**  
Chief Deputy District Attorney  
Nevada Bar #005391  
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-

**DAVID ADNREW COIL,**  
**#8323388**

Defendant.

CASE NO: **C-16-318335-1**

DEPT NO: **X**

**ORDER DENYING DEFENDANT'S MOTION TO**  
**COMPEL CLERK OF THE COURT**

DATE OF HEARING: **OCTOBER 11, 2021**  
TIME OF HEARING: **8:30 A.M.**

THIS MATTER having presented before the above entitled Court on the 11th day of  
OCTOBER, 2021; Defendant not present, IN PROPER PERSON; Plaintiff represented by  
STEVEN B. WOLFSON, District Attorney, through HETTY WONG, Chief Deputy District  
Attorney; and without argument, based on the pleadings and good cause appearing,

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\\CLARKCOUNTYDA.NET\CRM\CASE2\2016\410\02\201641002C-ORDR-(DAVID ANDREW COIL 10 11 2021)-001.DOCX

Statistically closed: N. USJR - CR - Other Manner of Disposition (USCO)

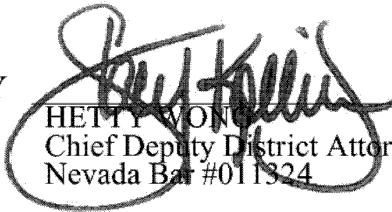
1           **IT IS HEREBY ORDERED** that DEFENDANT'S MOTION TO COMPEL CLERK  
2 OF THE COURT shall be and is DENIED.

Dated this 17th day of November, 2021

3  
4  
5 

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

C3B 7EB DC7B F8C8  
Tierra Jones  
District Court Judge

9 BY  for  
10 HETTY WONG  
11 Chief Deputy District Attorney  
12 Nevada Bar #011324  
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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 State of Nevada

CASE NO: C-16-318335-1

7 vs

DEPT. NO. Department 10

8 DAVID COIL

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 11/17/2021

15 Victoria Boyd

boydv@clarkcountycourts.us

16 State Nevada

motions@clarkcountyda.com

17 Kelsey Bernstein

kbernstein.esq@gmail.com

18 Maritza Montes

maritza@defendingnevada.com

1 **FFCO**  
2 **STEVEN B. WOLFSON**  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 **TALEEN PANDUKHT**  
6 Chief Deputy District Attorney  
7 Nevada Bar #005734  
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**

10 **DAVID COIL,**  
11 **#8323388**

12 Petitioner,

13 -vs-

14 **THE STATE OF NEVADA,**

15 Respondent.

CASE NO: **A-21-839320-W**  
**C-16-318335-1**

DEPT NO: **X**

16 **FINDINGS OF FACT, CONCLUSIONS**

17 **OF LAW AND ORDER**

18 **DATE OF HEARING: NOVEMBER 8, 2021**  
19 **TIME OF HEARING: 8:30 AM**

20 THIS CAUSE presenting before the Honorable TIERRA JONES, District Judge, on the  
21 8<sup>th</sup> day of November, 2021; Petitioner not present, IN PROPER PERSON; Respondent  
22 present, being represented by STEVEN B. WOLFSON, District Attorney, through LAURA  
23 GOODMAN, Chief Deputy District Attorney; and having considered the matter, including  
24 briefs, transcripts, and documents on file herein, the Court makes the following Findings of  
25 Fact and Conclusions of Law:

26 //

27 //

28 //

1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **PROCEDURAL HISTORY**

3 On September 27, 2016, David Coil (hereinafter "Petitioner") was charged by way of  
4 Information with one count of SEX TRAFFICKING OF A CHILD UNDER 18 YEARS OF  
5 AGE (Category A Felony – NRS 201.300.2a1- NOC 58004), four (4) counts of SOLICITING  
6 PROSTITUTION (Category E Felony – NRS 201.354 – NOC 55102), one count of  
7 PANDERING (Category C Felony – NRS 201.300.1 – NOC 51000) and one count of  
8 ATTEMPT SEX TRAFFICKING OF A CHILD UNDER 18 YEARS OF AGE (Category B  
9 Felony – NRS 200.300.2a, 193.330 – NOC 58005) for acts committed on or between October  
10 16, 2015 and August 23, 2016. On September 27, 2016, Petitioner waived his right to a  
11 preliminary hearing. On September 29, 2016, Petitioner pled not guilty and invoked his right  
12 to a speedy trial. A jury trial was set for November 28, 2016, but was continued due to the  
13 receipt of additional discovery, and Petitioner waived his right to a trial within sixty (60) days  
14 on November 30, 2016.

15 On January 18, 2017, Petitioner was referred for a competency evaluation and the Court  
16 found Petitioner competent on February 22, 2017. On June 20, 2017, Petitioner filed a Motion  
17 to Replace Public Defender for Cause and Defendant's Motion for Dismissal and Habeas  
18 Corpus for Untimely Trial Over 60 Days. The State did not respond. On July 2, 2017, the  
19 Court denied Petitioner's Pro Per Motion to Replace Public Defender for Cause and  
20 Defendant's Motion for Dismissal and Habeas Corpus for Untimely Trial Over 60 days.

21 On July 24, 2017, Petitioner expressed his desire to represent himself and the Court  
22 conducted a Faretta canvass to see if Petitioner was able to represent himself. Faretta v.  
23 California, 422 U.S. 806, 95 S.Ct. 2525, (1975). During the canvass, however, Petitioner  
24 decided to withdraw his request and move forward with counsel. Petitioner again requested to  
25 represent himself on September 18, 2017. On September 25, 2017, the Court conducted  
26 another Faretta canvass and Petitioner withdrew his request for a second time.

27 //

28 //



1 Trial commenced on September 26, 2017, and the State filed an Amended Information  
2 the same day.<sup>1</sup> On September 28, 2017 before the third day of trial began, Petitioner decided  
3 to plead guilty to all charges alleged in the Amended Information. No Guilty Plea Agreement  
4 was filed as Petitioner pled straight up to all of the charges.

5 On November 8, 2017, Petitioner was sentenced as follows:

- 6 • Count 1 [Sex Trafficking a Child Under 18]- LIFE with the eligibility for parole  
7 after serving a minimum of sixty (60) months in the Nevada Department of  
8 Corrections (hereinafter “NDC”);
- 9 • Count 2 [Soliciting Prostitution]- Maximum of thirty (30) months with a  
10 minimum parole eligibility of twelve (12) months concurrent with Count 1,  
11 suspended and placed on probation for an indeterminate period not to exceed  
12 three (3) years, with the only condition being to serve three-hundred sixty four  
13 (364) days in the Clark County Detention Center (hereinafter “CCDC”);
- 14 • Count 3 [Soliciting Prostitution] - Maximum of thirty (30) months with a  
15 minimum parole eligibility of twelve (12) months, concurrent with Count 2,  
16 suspended and placed on probation for an indeterminate period not to exceed  
17 three (3) years, with only condition being to serve three-hundred sixty four (364)  
18 days in CCDC;
- 19 • Count 4 [Soliciting Prostitution]- Maximum of thirty (30) months with a  
20 minimum parole eligibility of twelve (12) months concurrent with Count 3,  
21 suspended and placed on probation for an indeterminate period not to exceed  
22 three (3) years, with only condition being to serve three-hundred sixty four (364)  
23 days in CCDC;
- 24 • Count 5 [Soliciting Prostitution]- Maximum of thirty (30) months with a  
25 minimum parole eligibility of twelve (12) months concurrent with Count 4,  
26 suspended and placed on probation for an indeterminate period not to exceed  
27

28 <sup>1</sup> The Amended Information did not add additional charges. The State changed the language in the first count  
to reflect the statute and switched count 6 and 7 to make it clearer for the jury to understand.

1 three (3) years, with only condition being to serve three-hundred sixty four (364)  
2 days in CCDC; and

- 3 • Count 6 [Attempt Sex Trafficking of a Child Under 18]- Maximum of one  
4 hundred eighty (180) months with a minimum parole eligibility of seventy-two  
5 (72) months, consecutive to Count 5.

6 Count 7 [Pandering] was dismissed, and Petitioner was also required to register as a  
7 sex offender within 48 hours of release from custody. Petitioner was awarded four hundred  
8 forty-three (443) days credit for time served and the aggregate sentence was LIFE with parole  
9 eligibility after serving a minimum of one hundred thirty-two (132) months.

10 The Judgment of Conviction was filed on December 13, 2017.

11 On January 17, 2018, Petitioner filed a Notice of Appeal. On October 16, 2019, the  
12 Nevada Court of Appeals affirmed the Judgment of Conviction and Remittitur issued on  
13 November 12, 2019.

14 On February 25, 2019, the Court noted it received a letter from the Division of Parole  
15 and Probation requesting clarification of the Court's sentence. The Court ordered that the  
16 aggregate sentence is correct; however, Count 6 should be consecutive to Count 1 with an  
17 aggregate total of Life with parole eligibility after one hundred thirty-two (132) months has  
18 been served in the NDC. The Amended Judgment of Conviction was filed on March 4, 2019.

19 On June 3, 2021, Petitioner filed a Motion to Withdraw Guilty Plea Pursuant to NRS  
20 176.165 and Motion for Extension of Time to File a Post-Conviction Writ of Habeas Corpus.  
21 The State filed an Opposition on June 10, 2021. On June 28, 2021, this Court denied both  
22 motions. The Order Denying Defendant's Motions to Withdraw Guilty Plea and Motion to  
23 Extend Time to File Petition for Writ of Habeas Corpus was filed on July 19, 2021.

24 On July 14, 2021, Petitioner filed another Motion for Extension of Time, and on July  
25 28, 2021, Petitioner filed another Motion to Withdraw Plea. The State filed another Opposition  
26 on July 30, 2021. On August 4, 2021, the Court again denied both motions. The Order  
27 Denying Defendant's Motion to Withdraw Guilty Plea and Motion for Extension of Time was  
28 filed on August 10, 2021.

1 On August 11, 2021, Petitioner filed a Petition for Writ of Habeas Corpus (Post-  
2 Conviction). On August 30, 2021, Petitioner filed a Motion for the Appointment of Counsel  
3 and Request for Evidentiary Hearing. The State filed its Response on September 23, 2021.

4 On November 8, 2021, this Court denied the Petition. This Court's Findings of Fact,  
5 Conclusions of Law and Order now follows.

### 6 **STATEMENT OF FACTS**

7 This Court relied on the following facts in sentencing Petitioner:

8 On August 6, 2016, a teacher from a local school was contacted  
9 by a prior high school student, the victim (date of birth: July 30,  
10 1999) who needed help. The teacher believed that the victim was  
the victim of sex trafficking and he contacted the police to file a  
report.

11 A detective made contact with the victim at her home. She told the  
12 officers that in October, 2015, she was looking for employment on  
13 Craigslist.com, she was 16 years old at the time. She found a  
posting looking for "petit, young girls" and offered that they could  
14 make \$1,500 a day with "no sex involved." She responded to the  
ad and made contact with the defendant, David Andrew Coil.

15 The victim and Mr. Coil met at a fast food restaurant near the  
victim's home. After some discussion, Mr. Coil brought the victim  
16 back to his home. He provided the victim with alcohol and she  
became intoxicated. He explained to the victim that the job was  
17 performing "body rubs" at his residence. He had several girls who  
work at his residence and an established client base of men that  
18 came to his residence for body rubs. He also explained that while  
performing body rubs, the females working at Mr. Coil's residence  
19 were allowed to perform mutual masturbation on the clients by  
stimulating the male clients' penis with their hands. The females  
20 were also allowed to stimulate the clients' penis by straddling the  
naked males while they were lying on their backs and rubbing their  
21 bare vaginas against the males' penis as long as there was no full  
penetration.

22 The rules provided by Mr. Coil were that she would have to  
23 remove her clothes upon arrival at his home and remain naked  
while in the home. She would be required to show him the money  
24 that she earned while at the residence and to not lie to him about  
anything. They were required to keep the sheets and towels used  
25 in the body rub room clean and changed after each use. The  
females were also told not to have vaginal intercourse with any of  
26 the clients coming to the residence; however, the victim and the  
other females were allowed to perform oral sex on the clients if  
27 the females made that decision.

28 The victim told Mr. Coil that she did not believe the job was right  
for her and she apologized; she asked if there was anything she  
could do for wasting his time and he asked her to give him a body

1 rub. The victim complied; both she and Mr. Coil were naked and  
2 she followed his instructions for completing a body rub. He had  
the victim straddle his body and rub her bare vagina across his  
penis. Afterwards, Mr. Coil paid her \$200 including a gratuity.

3 After realizing how much money she could make, she agreed to  
4 work for Mr. Coil and she worked from October 2015 to August  
5 2016, working an average of four nights a week performing body  
6 rubs. She performed body rubs on Mr. Coil at least three additional  
7 times and she was paid the standard \$80 fee with an additional \$20  
8 gratuity. There were additional females working in the home to  
include the defendant's adult daughter. Mr. Coil did not take any  
of the proceeds from the body rubs; he would remain nude as well  
as the girls and when the male appointments would arrive he  
would go into a back living room and remain out of sight until the  
clients left.

9 After finding the most recent advertisement Mr. Coil had posted  
10 on Craigslist.com, the detective made contact with Mr. Coil  
pretending to be an interested 17 year old girl. Through the course  
11 of the text conversation, the two agreed to meet. On August 23,  
12 2016, Mr. Coil arrived at the agreed to location showing his intent  
to recruit what he believed to be a 17 year old female for the  
purpose of prostitution. Mr. Coil was arrested, transported to the  
Clark County Detention Center and booked accordingly.

14 Presentence Investigation Report (hereinafter "PSI") at pages 4-5.

## 15 ANALYSIS

### 16 **I. PETITIONER'S PETITION IS PROCEDURALLY BARRED**

#### 17 **A. Petitioner's Petition is Time-barred**

18 A petition challenging a judgment of conviction's validity must be filed within one year  
19 of the judgment or within one year of the remittitur, unless there is good cause to excuse delay.  
20 NRS 34.726(1). The Nevada Supreme Court has held that NRS 34.726 should be construed  
21 by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). The  
22 one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of  
23 conviction is filed or a remittitur from a timely direct appeal is issued. Dickerson v. State, 114  
24 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

25 The one-year time limit for preparing petitions for post-conviction relief under NRS  
26 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),  
27 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite  
28 evidence presented by the defendant that he purchased postage through the prison and mailed

1 the Notice within the one-year time limit.

2 Furthermore, the Nevada Supreme Court has held that the district court has a duty to  
3 consider whether a defendant's post-conviction petition claims are procedurally barred. State  
4 v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The  
5 Riker Court found that "[a]pplication of the statutory procedural default rules to post-  
6 conviction habeas petitions is mandatory," noting:

7 Habeas corpus petitions that are filed many years after conviction  
8 are an unreasonable burden on the criminal justice system. The  
9 necessity for a workable system dictates that there must exist a  
time when a criminal conviction is final.

10 Id. (quoting Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984)).  
11 Additionally, the Court noted that procedural bars "cannot be ignored [by the district court]  
12 when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court  
13 has granted no discretion to the district courts regarding whether to apply the statutory  
14 procedural bars; the rules must be applied.

15 In this case, Petitioner's Judgment of Conviction was filed on December 13, 2017. On  
16 October 16, 2019, the Nevada Court of Appeals affirmed the Judgment of Conviction and  
17 Remittitur issued on November 12, 2019. Thus, Petitioner had until November 12, 2020 to file  
18 his Petition. Petitioner did not file the instant Petition until August 11, 2021. As such, he was  
19 nine (9) months too late. This delay exceeds the two (2) day delay discussed in Gonzales.  
20 Therefore, the Petition is procedurally time barred and denied.

21 **B. Application of the Procedural Bars is Mandatory**

22 The Nevada Supreme Court has held that the district court has a *duty* to consider  
23 whether a defendant's post-conviction petition claims are procedurally barred. State v.  
24 Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The  
25 Riker Court found that "[a]pplication of the statutory procedural default rules to post-  
26 conviction habeas petitions is mandatory," noting:

27 Habeas corpus petitions that are filed many years after conviction are  
28 an unreasonable burden on the criminal justice system. The necessity  
for a workable system dictates that there must exist a time when a  
criminal conviction is final.

1 Id. Additionally, the Court noted that procedural bars “cannot be ignored [by the district court]  
2 when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court  
3 has granted no discretion to the district courts regarding whether to apply the statutory  
4 procedural bars; the rules must be applied.

5 This position was reaffirmed in State v. Greene, 129 Nev. 559, 307 P.3d 322 (2013).  
6 There the Court ruled that the defendant’s petition was “untimely, successive, and an abuse of  
7 the writ” and that the defendant failed to show good cause and actual prejudice. Id. at 324, 307  
8 P.3d at 326. Accordingly, the Court reversed the district court and ordered the defendant’s  
9 petition dismissed pursuant to the procedural bars. Id. at 324, 307 P.3d at 322–23. The  
10 procedural bars are so fundamental to the post-conviction process that they must be applied  
11 by this Court even if not raised by the State. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

12 Because Petitioner’s Petition is untimely and because he cannot show good cause or  
13 prejudice to overcome the mandatory procedural bar, it is denied.

14 **II. PETITIONER HAS NOT DEMONSTRATED GOOD CAUSE OR**  
15 **PREJUDICE TO OVERCOME THE PROCEDURAL BAR**

16 In his Pro Per Petition, Petitioner raised four (4) grounds. In Ground One, he claims  
17 that his counsel was ineffective for failing to notify the Court of an alleged conflict of interest  
18 causing the Court to fail to grant Petitioner a hearing pursuant to Young v. State, 120 Nev. 963  
19 (2004), and that counsel failed to execute unnamed motions. Petition at page 11. In Ground  
20 Two, Petitioner argues that defense counsel was ineffective for not filing a motion to dismiss  
21 the Information for violation of Petitioner’s right to a speedy trial based on the Prosecution’s  
22 alleged devious tactics concerning last minute discovery. Petition at page 13. In Ground  
23 Three, Petitioner asserts that his counsel failed to prepare a defense, failed to obtain certain  
24 phone records or attempt to contact Defendant’s unnamed witnesses. Petition at page 15. He  
25 also claims counsel did not spend enough time with him. Petition at 17. In Ground Four,  
26 Petitioner alleges that his counsel was ineffective for allowing Petitioner to plead guilty to a  
27 charge he was actually innocent of because he was improperly charged, and he did not  
28 understand the elements of the charges and the rights he was giving up by pleading guilty.

1 Petition at page 19.

2 To avoid procedural default, under NRS 34.726, a defendant has the burden of pleading  
3 and proving specific facts that demonstrate good cause for his failure to present his claim in  
4 earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will  
5 be unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a) (emphasis added); see  
6 Hogan v. Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada  
7 Dep’t of Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). “A court *must* dismiss a  
8 habeas petition if it presents claims that either were or could have been presented in an earlier  
9 proceeding, unless the court finds both cause for failing to present the claims earlier or for  
10 raising them again and actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646–  
11 47, 29 P.3d 498, 523 (2001) (emphasis added).

12 To show good cause for delay under NRS 34.726(1), a petitioner must demonstrate the  
13 following: (1) “[t]hat the delay is not the fault of the petitioner” and (2) that the petitioner will  
14 be “unduly prejudice[d]” if the petition is dismissed as untimely. NRS 34.726. To meet the  
15 first requirement, “a petitioner *must* show that an impediment external to the defense prevented  
16 him or her from complying with the state procedural default rules.” Hathaway v. State, 119  
17 Nev. 248, 252, 71 P.3d 503, 506 (2003) (emphasis added). “A qualifying impediment might  
18 be shown where the factual or legal basis for a claim was not reasonably available *at the time*  
19 *of default*.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The  
20 Court continued, “Petitioners cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d  
21 at 526. To find good cause there must be a “substantial reason; one that affords a legal excuse.”  
22 Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105  
23 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Examples of good cause include interference by  
24 State officials and the previous unavailability of a legal or factual basis. See State v. Huebler,  
25 128 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012). Clearly, any delay in the filing of the petition  
26 must not be the fault of the petitioner. NRS 34.726(1)(a).

27 //

28 //

1 Further, a petitioner raising good cause to excuse procedural bars must do so within a  
2 reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34  
3 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see  
4 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably  
5 available to the petitioner during the statutory time period did not constitute good cause to  
6 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good  
7 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,  
8 453 120 S. Ct. 1587, 1592 (2000).

9 In order to establish prejudice, the defendant must show “‘not merely that the errors of  
10 [the proceedings] created possibility of prejudice, but that they worked to his actual and  
11 substantial disadvantage, in affecting the state proceedings with error of constitutional  
12 dimensions.’” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United  
13 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)).

14 Here, Petitioner does not even attempt to address good cause or provide any reason in  
15 the body of his Petition for the filing of his untimely Petition. Because Petitioner has failed to  
16 attempt to demonstrate good cause or prejudice, and because any such attempt would be  
17 without merit, Petitioner did not meet his burden when trying to overcome his procedural  
18 defaults. Hogan, 109 Nev. at 959–60, 860 P.2d at 715–16. Therefore, Petitioner’s Petition is  
19 denied pursuant to the applicable procedural bars.

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

26 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove  
27 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of  
28 Strickland, 466 U.S. at 686–87, 104 S. Ct. at 2063–64. See also Love, 109 Nev. at 1138, 865



1 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's  
2 representation fell below an objective standard of reasonableness, and second, that but for  
3 counsel's errors, there is a reasonable probability that the result of the proceedings would have  
4 been different. 466 U.S. at 687–88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State  
5 Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-  
6 part test). “[T]here is no reason for a court deciding an ineffective assistance claim to approach  
7 the inquiry in the same order or even to address both components of the inquiry if the defendant  
8 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

9 The court begins with the presumption of effectiveness and then must determine  
10 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
11 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel  
12 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of  
13 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,  
14 537 P.2d 473, 474 (1975).

15 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
16 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the  
17 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
18 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
19 (2002).

20 Based on the above law, the role of a court in considering allegations of ineffective  
21 assistance of counsel is “not to pass upon the merits of the action not taken but to determine  
22 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
23 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
24 (1978). This analysis does not mean that the court should “second guess reasoned choices  
25 between trial tactics nor does it mean that defense counsel, to protect himself against  
26 allegations of inadequacy, must make every conceivable motion no matter how remote the  
27 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel  
28 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel

1 cannot create one and may disserve the interests of his client by attempting a useless charade.”  
2 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

3 “There are countless ways to provide effective assistance in any given case. Even the  
4 best criminal defense attorneys would not defend a particular client in the same way.”  
5 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after  
6 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
7 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
8 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's  
9 challenged conduct on the facts of the particular case, viewed as of the time of counsel's  
10 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

11 When a conviction is the result of a guilty plea, a defendant must show that there is a  
12 “reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and  
13 would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370  
14 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107  
15 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

16 Even if a defendant can demonstrate that his counsel’s representation fell below an  
17 objective standard of reasonableness, he must still demonstrate prejudice and show a  
18 reasonable probability that, but for counsel’s errors, the result of the trial would have been  
19 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
20 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability  
21 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,  
22 694, 104 S. Ct. at 2064–65, 2068).

23 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the  
24 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of  
25 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,  
26 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must  
27 be supported with specific factual allegations, which if true, would entitle the petitioner to  
28 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”

1 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS  
2 34.735(6) states in relevant part, “[Petitioner] must allege specific facts supporting the claims  
3 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your  
4 petition to be dismissed.” (emphasis added).

5 **A. Ground One: Petitioner’s Claim Regarding a Pre-Trial Motion to Dismiss**  
6 **Counsel is Insufficient to Warrant Relief**

7 Petitioner’s Ground One alleges that his counsel was ineffective for failing to notify the  
8 Court of an alleged conflict of interest causing the Court to fail to grant Petitioner a hearing  
9 pursuant to Young v. State, 120 Nev. 963 (2004), and that counsel failed to execute unnamed  
10 motions. Petition at page 11.

11 This assertion does not entitle Petitioner to relief, as the United States Supreme Court  
12 has previously found that criminal defendants are not entitled to any particular “relationship”  
13 with their attorney. Morris v. Slappy, 461 U.S. 1, 14, 103 S.Ct. 1610, 1617 (1983). Indeed, the  
14 Morris Court found that no specific amount of communication is required, so long as counsel  
15 is reasonably effective in his representation. Id.

16 Therefore, Petitioner improperly takes for granted the reasonable likelihood of the  
17 success of those complaints without setting forth any factual support. As such, Petitioner  
18 leaves his ineffective-assistance claims bare and naked, and insufficient to warrant relief.  
19 Hargrove, 100 Nev. at 502, 686 P.2d at 225. Because Petitioner fails to set forth any support  
20 for a cognizable ineffective-assistance claim, Petitioner’s Ground One is summarily denied.

21 Determining whether friction between a defendant and his attorney justifies substituting  
22 counsel is within the trial court’s sound discretion, and this Court will not disturb its decision  
23 on appeal absent a clear abuse of discretion. Thomas v. State, 94 Nev. 605, 607, 584 P.2d 674,  
24 676 (1978). Generally, a district court should not summarily reject a motion for new counsel  
25 where such motion is made considerably before trial without first conducting an “adequate  
26 inquiry” into the defendant’s complaints. Garcia v. State, 121 Nev. 327, 337, 113 P.3d 836,  
27 842 (2005) (quoting Young v. State, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004)). However,  
28 absent good cause shown, a defendant is not entitled to the substitution of court-appointed

1 counsel at public expense. Garcia, 121 Nev. at 337, 113 P.3d at 842; Young, 120 Nev. at 968,  
2 102 P.3d at 576.

3 This Court has defined good cause as “a conflict of interest, a complete breakdown of  
4 communication, or an irreconcilable conflict which [could] lead . . . to an apparently unjust  
5 verdict.” Gallego v. State, 117 Nev. 348, 363, 23 P.3d 227, 237 (2001), overruled on other  
6 grounds by Nunnery v. State, 127 Nev. 749, 263 P.3d 235 (2011). Good cause is not  
7 “determined solely according to the subjective standard of what the defendant perceives,” nor  
8 is “[t]he mere loss of confidence in appointed counsel . . . good cause.” Id. While a defendant’s  
9 lack of trust in counsel is a factor in the determination, a defendant must nonetheless provide  
10 the court with legitimate explanations for it. Id. (citing McKee v. Harris, 649 F.2d 927, 932  
11 (2nd Cir. 1981)).

12 Moreover, a defendant may not request substitute counsel based on his refusal to  
13 cooperate with present counsel because “[s]uch a doctrine would lead to absurd results.”  
14 Thomas, 94 Nev. at 608, P.2d 674 at 676 (quoting Shaw v. United States, 403 F.2d 528, 529  
15 (8th Cir. 1968)). Because counsel alone is responsible for tactical decisions regarding a  
16 defense, a mere disagreement between counsel and a defendant regarding tactics cannot give  
17 rise to an irreconcilable conflict. See Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002).  
18 In particular, where a defendant disagrees with counsel’s reasonable defense strategy and  
19 wishes instead to present his own ill-conceived strategy, no conflict arises. See Gallego, 117  
20 Nev. at 363, 23 P.3d at 237. Rather, attorney-client conflict warrants substitution “only when  
21 counsel and defendant are so at odds as to prevent presentation of an adequate defense.” Id.  
22 This Court has articulated three factors to consider when reviewing a district court’s denial of  
23 a motion to substitute counsel: (1) the extent of the conflict, (2) the motion’s timeliness and  
24 the extent of inconvenience or delay, and (3) the adequacy of the court’s inquiry into the  
25 defendant’s complaints. Young, 120 Nev. at 968–69, 102 P.3d at 576–78.

26 In the instant matter, Petitioner has not demonstrated that there was conflict of interest  
27 or that a Young hearing would have been granted. As to the three (3) Young factors, Petitioner  
28 fails to provide any specific facts in support of his bare and naked allegations, so this Court is

1 unable to meaningfully address any of the three (3) factors. Claims for relief devoid of specific  
2 factual allegations are “bare” and “naked,” and are insufficient to warrant relief, as are those  
3 claims belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 22,  
4 225 (1984). “[Petitioner] *must* allege specific facts supporting the claims in the  
5 petition[.]...Failure to allege specific facts rather than just conclusions may cause [the] petition  
6 to be dismissed.” NRS 34.725(6) (emphasis added).

7 Likewise, Petitioner’s claim that counsel failed to execute motions fails to name any  
8 specific motions counsel should have and failed to file, rendering this also a bare and naked  
9 allegation pursuant to Hargrove and is summarily denied. Petitioner offers only generalities  
10 and vague references, rather than the requisite “specific facts.” NRS 34.725(6). Because  
11 Petitioner offers only generalities, lacking specific factual bases, much less cogent argument,  
12 the instant Petition does not warrant review. Rowland, 107 Nev. at 479, 814 P.2d at 83.  
13 Therefore, the instant claim is summarily denied as a bare and naked allegation, and  
14 insufficiently pled.

15 **B. Ground Two: Petitioner’s Claim Regarding a Motion To Dismiss For a Speedy**  
16 **Trial Violation is Insufficient to Warrant Relief**

17 In Ground Two, Petitioner argues that defense counsel was ineffective for not filing a  
18 motion to dismiss the Information for violation of Petitioner’s right to a speedy trial based on  
19 the Prosecution’s alleged devious tactics concerning last minute discovery. Petition at page  
20 13.

21 The Sixth Amendment to the Constitution guarantees that “in all criminal prosecutions,  
22 the accused shall enjoy the right to a speedy and public trial.” U.S. Const. Amend. VI. The  
23 United States Supreme Court held in Smith v. Hooey, 393 U.S. 374, 89 S.Ct. 575 (1969) that  
24 a state is under an affirmative obligation by virtue of the Sixth Amendment, as interpreted in  
25 Klopfer v. North Carolina, 386 U.S. 213, 87 S.Ct. 988 (1967), to make every good faith effort  
26 to bring the accused to trial. The United States Supreme Court also held that both the accused  
27 and society have an interest in having a speedy trial. Barker v. Wingo, 407 U.S. 514, 519, 92  
28 S.Ct. 2182, 2186 (1972). The Court recognized that the three basic interests of an accused are

1 “(1) to prevent undue and oppressive incarceration prior to trial, (2) to minimize anxiety and  
2 concern accompanying public accusation and (3) to limit the possibilities that long delay will  
3 impair the ability of an accused to defend himself.” Smith, 393 U.S. at 378, 89 S.Ct. at 577;  
4 see also, United States v. Ewell, 383 U.S. 116, 120, 86 S.Ct. 773, 776 (1966); Klopfer, 386  
5 U.S. at 221-26, 87 S.Ct. at 993-95; Dickey v. Florida, 398 U.S. 30, 37-38, 90 S.Ct. 1564, 1568-  
6 69 (1970). Therefore, “one of the major purposes of the provision is to guard against *inordinate*  
7 *delay* between public charge and trial, which, wholly aside from possible prejudice to a  
8 defense on the merits, may seriously interfere with the defendant’s liberty, whether he is free  
9 on bail or not, and that may disrupt his employment, drain his financial resources, curtail his  
10 associations, subject him to public obloquy, and create anxiety in him, his family, and his  
11 friends.” Barker, 407 U.S. at 537, 92 S.Ct. at 2195 (White, J., concurring) (emphasis added).

12 Nevada law likewise recognizes a criminal defendant’s right to trial within sixty (60)  
13 days of arraignment or indictment. NRS 178.556. Application of NRS 178.556 is addressed to  
14 the sound discretion of the trial court. Meegan v. State, 114 Nev. 1150, 968 P.2d 292, 295,  
15 1153 (1998), abrogated on other grounds, Vanisi v. State, 117 Nev. 330, 22 P.3d 1164 (2001).  
16 The Nevada Supreme Court has “determined that the ‘60 day rule’ prescribed in our statute  
17 has flexibility.” Adams v. Sheriff, 91 Nev. 575, 575, 540 P.2d 118, 119 (1975). Indeed, “[i]f  
18 the defendant is responsible for the delay of trial beyond the 60 day limit, he may not  
19 complain.” Oberle v. Fogliani, 82 Nev. 428, 430, 420 P.2d 251, 252 (1966). The purpose  
20 behind NRS 178.556 is “to prevent arbitrary, willful, or oppressive delays.” In re Hansen, 79  
21 Nev. 492, 495, 387 P.2d 659, 660 (1963).

22 Indeed, despite criminal defendants’ various interests, the United States Supreme Court  
23 has recognized that pretrial delay is often “both inevitable and wholly justifiable.” Doggett v.  
24 United States, 505 U.S. 647, 656, 112 S.Ct. 2686, 2693 (1992). “The essential ingredient is  
25 orderly expedition and not mere speed.” Smith v. United States, 360 U.S. 1, 10, 79 S.Ct. 991,  
26 997 (1959). For instance, the government may need time to collect witnesses, oppose pretrial  
27 motions, or track down the accused. Doggett, 505 U.S. at 656, 112 S.Ct. at 2693. Thus, “in  
28 large measure because of many procedural safeguards provided an accused, the ordinary

1 procedures for criminal prosecution are designed to move at a deliberate pace. A requirement  
2 of unreasonable speed would have a deleterious effect both upon the rights of the accused and  
3 upon the ability of society to protect itself.” Ewell, 383 U.S. at 120, 86 S.Ct. at 776. A denial  
4 of the Sixth Amendment right to a speedy trial requires that the charges against an accused be  
5 dismissed. The United States Supreme Court has cautioned that because of the seriousness of  
6 the remedy involved, “where a defendant who may be guilty of a serious crime will go free,  
7 without having been tried, the right to a speedy trial should always be in balance, and not  
8 inconsistent, with the rights of public justice.” Barker, 407 U.S. at 522, 92 S.Ct. at 2188.

9 First and foremost, a defendant cannot enter a guilty plea then later raise independent  
10 claims alleging a deprivation of his rights before entry of the plea. State v. Eighth Judicial  
11 District Court, 121 Nev. 225, 112 P.3d 1070, n.24 (2005) (quoting Tollet v. Henderson, 411  
12 U.S. 258, 267 (1973). Generally, the entry of a guilty plea waives any right to appeal from  
13 events occurring prior to the entry of the plea. See Webb v. State, 91 Nev. 469, 538 P.2d 164  
14 (1975). “[A] guilty plea represents a break in the chain of events which has preceded it in the  
15 criminal process. . . . [A defendant] may not thereafter raise independent claims relating to the  
16 deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” Id.  
17 (quoting Tollett, 411 U.S. at 267).

18 Here, Petitioner claims that defense counsel was ineffective for not filing a motion to  
19 dismiss the Information for violation of Petitioner’s right to a speedy trial based on the  
20 Prosecution’s alleged devious tactics concerning last minute discovery. Petition at page 13.  
21 However, Petitioner’s guilty plea cures any earlier Constitutional defects because entering a  
22 guilty plea breaks the “chain of events.” Webb, 91 Nev. at 538. Petitioner is alleging a violation  
23 of his constitutional rights that occurred prior to his guilty plea. Therefore, Petitioner cannot  
24 raise this claim, and it is denied.

25 Additionally, as the Information was filed on September 27, 2016, and Defendant's  
26 Motion for Dismissal and Habeas Corpus for Untimely Trial Over 60 Days was filed on June  
27 20, 2017, there was only a delay of approximately nine (9) months between the filing of the  
28 Information and the filing of the Motion to Dismiss. The trial commenced on September 26,

1 2017. Thus, there was exactly one year between the filing of the Information and the start of  
2 the trial. Petitioner waived his right to a trial within sixty (60) days on November 30, 2016.  
3 Moreover, the delays Petitioner complains of were due to receiving additional discovery,  
4 which the State provided to counsel as soon as it was received. Petitioner's counsel needed  
5 additional time to prepare for trial based on the additional discovery and the request for a  
6 continuance was entirely reasonable under these circumstances. Petitioner already filed his  
7 own Motion for Dismissal and Habeas Corpus for Untimely Trial Over 60 Days on June 20,  
8 2017, after Petitioner waived his right to a trial within sixty (60) days on November 30, 2016.  
9 On July 2, 2017, the Court denied Petitioner's Pro Per Motion to Replace Public Defender for  
10 Cause and Defendant's Motion for Dismissal and Habeas Corpus for Untimely Trial Over 60  
11 days. Therefore, it was unnecessary for counsel to file the same futile motion which had  
12 already been denied. As such, this claim is likewise without merit and is denied.

### 13 **C. Ground Three: Counsel Was Not Ineffective for Failing to Investigate**

14 In Ground Three, Petitioner asserts that his counsel failed to prepare a defense, failed  
15 to obtain certain phone records or attempt to contact Defendant's unnamed witnesses. Petition  
16 at page 15. He also claims counsel did not spend enough time with him. Petition at 17.

17 A defendant who contends his attorney was ineffective because he did not adequately  
18 investigate must show how a better investigation would have changed the outcome of trial.  
19 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064. Such a defendant must allege with specificity  
20 what the investigation would have revealed and how it would have altered the outcome of the  
21 trial. See State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

22 "[D]efense counsel has a duty 'to make reasonable investigations or to make a  
23 reasonable decision that makes particular investigations unnecessary.'" State v. Love, 109 Nev.  
24 at 1138, 865 P.2d at 323 (quoting Strickland, 466 U.S. at 691, 104 S. Ct. at 2066). A decision  
25 "not to investigate must be directly assessed for reasonableness in all the circumstances,  
26 applying a heavy measure of deference to counsel's judgment.'" Id. Moreover, "[a] decision  
27 not to call a witness will not generally constitute ineffective assistance of counsel" Id. at 1145,  
28 865 P.2d at 328.



1           Moreover, a defendant is not entitled to a particular “relationship” with his attorney.  
2     Morris v. Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983). There is no requirement for  
3     any specific amount of communication as long as counsel is reasonably effective in his  
4     representation. See Id.

5           Indeed, to establish a claim of ineffective assistance of counsel for advice regarding a  
6     guilty plea, a defendant must show “gross error on the part of counsel.” Turner v. Calderon,  
7     281 F.3d 851, 880 (9th Cir. 2002). A plea of guilty is presumptively valid, particularly where  
8     it is entered into on the advice of counsel, and the burden is on a defendant to show that the  
9     plea was not voluntarily entered. Bryant, 102 Nev. at 272, 721 P.2d at 368 (citing Wingfield  
10    v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)); Jezierski v. State, 107 Nev. 395, 397,  
11    812 P.2d 355, 356 (1991). Ultimately, while it is counsel’s duty to candidly advise a defendant  
12    regarding a plea offer, the decision of whether or not to accept a plea offer is the defendant’s.  
13    Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 163 (2002).

14           Again, Petitioner’s claims are bare and naked assertions so devoid of meaning that the  
15    State cannot effectively respond. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Petitioner has  
16    offered no specific allegations to support his claims. Petitioner makes a general allegation of  
17    failure to investigate. He fails to specify whose phone records counsel should have obtained  
18    or which witnesses he should have contacted. If they were Petitioner’s phone records and  
19    Petitioner’s witnesses, then Petitioner would know exactly what was contained in the phone  
20    records as well as the names and contact information for his witnesses, which he should have  
21    provided to his counsel at the appropriate time. Regardless, Petitioner does not provide what  
22    any further investigation would have yielded. At no point does Petitioner argue that if an  
23    investigation was conducted, the outcome would have been different. Neither does Petitioner  
24    show what would have been obtained from interviewing his unnamed witnesses. Petitioner  
25    engages in sweeping conclusions with no specific facts to support such conclusions.  
26    Therefore, Petitioner’s claims are bare and naked allegations and are denied.

27    //

28    //

1 Further, Petitioner is not entitled to a particular relationship with counsel. It does not  
2 matter if Petitioner is not satisfied that counsel did not spend enough time with him as long as  
3 counsel keeps Petitioner abreast of his case and maintains sufficient communication lines to  
4 provide effective assistance of counsel. In any event, Petitioner does not allege that counsel  
5 completely refrained from communicating with Petitioner, only that he did not spend enough  
6 time with him. As such, Petitioner's claim is without merit and is denied.

7 **D. Ground Four: Petitioner Knowingly, Intelligently and Voluntarily Entered His**  
8 **Plea**

9 In Ground Four, Petitioner alleges that his counsel was ineffective for allowing  
10 Petitioner to plead guilty to a charge he was actually innocent of because he was improperly  
11 charged, and he did not understand the elements of the charges and the rights he was giving  
12 up by pleading guilty. Petition at page 19.

13 Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be  
14 withdrawn to correct "manifest injustice." See also Baal v. State, 106 Nev. 69, 72, 787 P.2d  
15 391, 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid,  
16 and the burden is on a defendant to show that the plea was not voluntarily entered. Bryant v.  
17 State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336,  
18 337, 535 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant entered  
19 his plea voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

20 To determine whether a guilty plea was voluntarily entered, the Court will review the  
21 totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721  
22 P.2d at 367. A proper plea canvass should reflect that:

23 [T]he defendant knowingly waived his privilege against self-  
24 incrimination, the right to trial by jury, and the right to confront his  
25 accusers; (2) the plea was voluntary, was not coerced, and was not the  
26 result of a promise of leniency; (3) the defendant understood the  
consequences of his plea and the range of punishments; and (4) the  
defendant understood the nature of the charge, i.e., the elements of the  
crime.

27 Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev.  
28 774, 476 P.2d 950 (1970)). The presence and advice of counsel is a significant factor in

1 determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d  
2 107, 107 (1975).

3 This standard requires the court accepting the plea to personally address the defendant  
4 at the time he enters his plea in order to determine whether he understands the nature of the  
5 charges to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not  
6 rely simply on a written plea agreement without some verbal interaction with a defendant. Id.  
7 Thus, a “colloquy” is constitutionally mandated and a “colloquy” is but a conversation in a  
8 formal setting, such as that occurring between an official sitting in judgment of an accused at  
9 plea. Id. However, the court need not conduct a ritualistic oral canvass. State v. Freese, 116  
10 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas “do not require  
11 the articulation of talismanic phrases,” but only that the record demonstrates a defendant  
12 entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev. 573, 575,  
13 516 P.2d 1403, 1404 (1973); see also Brady v. United States, 397 U.S. 742, 747-48, 90 S. Ct.  
14 1463, 1470 (1970).

15 In this case, Petitioner’s claim that his counsel was ineffective for allowing Petitioner  
16 to plead guilty to a charge he was actually innocent of because he was improperly charged,  
17 and he did not understand the elements of the charges and the rights he was giving up by  
18 pleading guilty, is belied by the answers he gave during his plea canvass. The Court’s canvass  
19 of Petitioner demonstrates that Petitioner understood the charges he was facing, that no one  
20 forced, threatened or made promises to induce his plea, and that his plea was voluntary:

21 THE COURT: Okay, we're going to go back on the record in C-  
22 318335, State of Nevada versus David Coil. Mr. Coil is present with  
23 his attorney, Mr. Matsuda. The Deputy District Attorneys are here on  
24 behalf of the State. For the record, we are outside the presence of the  
25 jury. Mr. Coil, it is my understanding that you wish to plead guilty in  
26 this case?

27 THE DEFENDANT: Yes, ma'am.

28 THE COURT: Is that what you would like to do today?

THE DEFENDANT: Yes, ma'am.

THE COURT: And you would like to stop this trial at this point and  
just --

1 THE DEFENDANT: Yes, ma'am.  
2 THE COURT: -- plead guilty?  
3 ....  
4 THE COURT: Sir, have you received a copy of the Amended  
5 Information in your case?  
6 THE DEFENDANT: Is that what it was?  
7 MR. MATSUDA: Yeah.  
8 THE DEFENDANT: Yes. Yes, I did.  
9 THE COURT: So do you know the charges that you're facing in  
10 this case?  
11 THE DEFENDANT: Yes, ma'am.  
12 THE COURT: And as to all of those charges, how do you plead?  
13 THE DEFENDANT: Guilty.  
14 THE COURT: And sir, are you making this plea freely and  
15 voluntarily?  
16 THE DEFENDANT: Yes.  
17 THE COURT: Has anyone forced you or threatened you or  
18 anyone closely associated with you to get you to enter this plea?  
19 THE DEFENDANT: In no way.  
20 THE COURT: Has anyone made you any promises to get you to  
21 enter this plea?  
22 THE DEFENDANT: No way.  
23 THE COURT: Okay. Sir, do you understand that by pleading guilty,  
24 you're giving up certain constitutional rights?  
25 THE DEFENDANT: Yes.  
26 THE COURT: Sir, do you understand by pleading guilty, you're  
27 giving up certain appellate rights?  
28 THE DEFENDANT: Yes.

//

1 THE COURT: I will also be the person making the decision about  
2 whether or not these counts will run concurrent or consecutive.

3 THE DEFENDANT: Yes.

4 Recorder's Transcript of Jury Trial – Day 3 dated September 28, 2017, pages 2-7.

5 Petitioner also disregards the fact that a defendant can show understanding by  
6 indicating that he committed the crimes charged, which is exactly what Petitioner did when  
7 entering his plea. Petitioner heard the Court recite all of the elements for each charge and  
8 proceeded to admit that he committed each of the crimes charged:

9 **THE COURT: Sir in regards to count 1, are you pleading guilty**  
10 **to because in truth and in fact on or between October 16th of 2015**  
11 **and August 23rd of 2016, here in Clark County, Nevada, you did**  
12 **willfully, unlawfully and feloniously induce, cause and/or recruit**  
13 **and/or obtain and/or maintain IP, a child under 18 years of age to**  
14 **engage in prostitution and/or to enter in any place within the state**  
15 **in which prostitution is practiced, encouraged or allowed for the**  
16 **purpose of sexual conduct or prostitution? Did you do that?**

17 THE DEFENDANT: Yes.

18 THE COURT: In regards to count 2, did you on or -- is it true and in  
19 fact on or between October 16th of 2015 and August 6th of 2016, here  
20 in Clark County, you willfully and up lawfully solicited IP, a minor,  
21 by word, gesture or any other means to engage in sexual conduct, to  
22 wit: By touching and/or rubbing your penis with her hands and her  
23 bare genital opening for a fee in the amount of \$200? Did you do that?

24 THE DEFENDANT: Yes.

25 THE COURT: Sir, in regards to count 3, here in Clark County, you  
26 did on or between October 15th, 2015 and August 6th of 2016  
27 willfully and unlawfully solicit IP, a minor, by word, gesture or any  
28 other means to engage in sexual conduct, that being touching and/or  
rubbing your penis for a fee of \$100?

THE DEFENDANT: Yes.

THE COURT: Are you pleading guilty to count 4 because in truth and  
in fact on or about October 15th of 2015 and between August 6th of  
2016, here in Clark County, you did willfully and unlawfully solicit  
IP, a minor, by word, gesture or any other means to engage in sexual  
conduct, that being touching and/or rubbing your penis for a fee of  
\$100?

THE DEFENDANT: Yes.

THE COURT: And in regards to count 5, are you pleading guilty  
because in truth and in fact on or between October 15th of 2015 and  
August 6th of 2016, you did willfully and unlawfully solicit IP, a

1 minor, in Clark County by word, gesture or any other means to engage  
2 in sexual conduct, that being touching and/or rubbing of your penis  
3 for a fee of \$100?

4 THE DEFENDANT: Yes.

5 THE COURT: And are you pleading guilty because -- to count 6  
6 because in truth and in fact, on or between August 22nd of 2016 and  
7 August 23rd of 2016, here in Clark County, you did willfully,  
8 unlawfully and feloniously attempt to induce, cause or recruit Tiff, a  
9 person you believed to be a child under the 18 of age [sic] while you  
10 having the specific intent that Tiff engage in prostitution?

11 THE DEFENDANT: Yes.

12 THE COURT: And in regards to count 7, are you pleading guilty  
13 because in truth and in fact on or between August 22nd of 2016 and  
14 August 23rd of 2016, here in Clark County, you did willfully,  
15 unlawfully and feloniously induce O. Deeds to unlawfully become a  
16 prostitute and/or to continue to engage in prostitution?

17 THE DEFENDANT: Yes.

18 THE COURT: Sir, do you have any questions you would like to  
19 ask me or your attorney before I accept these pleas?

20 THE DEFENDANT: No.

21 Recorder's Transcript of Jury Trial – Day 3 dated September 28, 2017, pages 7-9.

22 By admitting that he committed the crimes charged, Petitioner indicated that he  
23 understood the nature of the charges against him. Therefore, whether Petitioner was informed  
24 of the elements of these crimes is immaterial as to whether he knowingly and voluntarily  
25 entered his plea.

26 Further, Petitioner's claim that he was not advised of his rights until after accepting his  
27 guilty plea is incorrect. Before entering his guilty plea, the Court advised Petitioner of his  
28 many constitutional rights. Then, after accepting his plea, the Court advised Petitioner of  
several additional rights before finding that his plea was freely and voluntarily made.  
Petitioner cites to no authority or case law that says this method of canvassing is incorrect.  
Petitioner affirmed that he understood the rights he was forfeiting by pleading guilty and was  
entering his plea voluntarily:

THE COURT: And sir, do you understand by entering this plea, you  
are waiving your Constitutional privilege against self-incrimination,  
including the right to refuse to testify at trial? You're waiving the right  
to testify at trial if you plead guilty?

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THE DEFENDANT: Isn't -- isn't this my trial?

MR. MATSUDA: Yes. She's just asking you, do you understand that you're waiving your right because of your decision right now.

THE COURT: If you plead guilty, there's not going to be a trial.

THE DEFENDANT: Oh, yeah, that's fine.

THE COURT: So you won't be allowed to testify at trial; do you understand that?

THE DEFENDANT: Okay, the opposite, yes, yes.

THE COURT: Okay. And do you understand that at that trial the State would not have been allowed to comment on your refusal to testify? If you go -- went to trial, I would not allow the State to say anything if you chose not to testify.

MR. MATSUDA: In order to exercise your 5th amendment, they can't comment saying well, he didn't say anything.

THE DEFENDANT: Okay.

MR. MATSUDA: Do you understand?

THE DEFENDANT: Yes, I do.

THE COURT: Do you understand you're waiving your right to a trial that's free of excessive pretrial publicity prejudicial to your defense?

THE DEFENDANT: You went fast on me, I'm sorry.

**THE COURT: Do you understand if you enter this plea, you are waiving your constitutional rights to a trial by an impartial jury that's free of excessive pretrial publicity prejudicial to your defense?**

THE DEFENDANT: Yes.

**THE COURT: Do you understand you would be waiving your constitutional right to confront and cross-examine any witnesses that would testify against you?**

THE DEFENDANT: Yes.

**THE COURT: You would be waiving your constitutional right to subpoena witnesses to testify on your own behalf.**

THE DEFENDANT: Yes.

**THE COURT: You would be waiving your constitutional right to testify in your own defense?**

THE DEFENDANT: Yes.

1           **THE COURT:** You would be waiving your right to appeal this  
2 conviction with the assistance of an attorney, either appointed or  
3 retained, unless specifically reserved in writing and agreed upon?  
4           **THE DEFENDANT:** Oh, yes.  
5           **THE COURT:** You're waiving your right to a direct appeal of any  
6 challenge based upon -- hold on -- you're waiving your right to a  
7 direct appeal of this conviction, including any challenges based  
8 upon reasonable constitutional jurisdictional or other grounds  
9 that challenge the legality of these proceedings. Do you  
10 understand that? You're waiving your right to an appeal in this  
11 case.  
12           **THE DEFENDANT:** Yes.  
13           . . . .  
14           **THE COURT:** And is this plea voluntary?  
15           **THE DEFENDANT:** Yes.  
16           **THE COURT:** Is there anything else you need to add, State?  
17           **MR. MARTINEZ:** Only that this is without negotiations with the  
18 State.  
19           **THE COURT:** Okay. And just for the record, sir, do you understand  
20 that this plea is without any negotiation from State, so at sentencing  
21 the State will have the full right to argue for any legal sentence on  
22 each of these charges?  
23           **THE DEFENDANT:** Yes.  
24           **THE COURT:** And the State will have the full right to argue whether  
25 or not these charges run consecutive or concurrent?  
26           **THE DEFENDANT:** Yes.  
27           **THE COURT:** Do you have any questions you would like to ask  
28 myself or your attorney before I accept this plea?  
              **THE DEFENDANT:** No. I'd just like to make a statement when I  
              have a chance.  
              **THE COURT:** Okay, you can make a statement at sentencing.  
              **THE DEFENDANT:** Oh, okay, okay.  
              **THE COURT:** Anything else?  
              **THE DEFENDANT:** No.  
//  
//



1 THE COURT: Sir, the Court finds that this plea is free and voluntarily  
2 made, that you understand the nature of the offense and the  
3 consequences of your actions, and based upon that, the State will -- I  
mean, I'm sorry, the Court will refer this to the Division of Parole and  
Probation, set it over for sentencing on?

4 THE CLERK: November 8th at 8:30.

5 Recorder's Transcript of Jury Trial – Day 3 dated September 28, 2017, pages 11-15.

6 Thus, the record clearly demonstrates that Petitioner's plea was knowingly and  
7 voluntarily entered, that he admitted guilt to the charges to which he pled guilty, and that he  
8 understood the elements of the charges and the rights he was waiving by entering his plea.  
9 Therefore, this claim is denied.

10 **1. Petitioner was not factually innocent**

11 Actual innocence means factual innocence not mere legal insufficiency. Bousley v.  
12 United States, 523 U.S. 614, 623, 118 S.Ct. 1604, 1611 (1998); Sawyer v. Whitley, 505 U.S.  
13 333, 338-39, 112 S.Ct. 2514, 2518-19 (1992). To establish actual innocence of a crime, a  
14 petitioner "must show that it is more likely than not that no reasonable juror would have  
15 convicted him absent a constitutional violation." Calderon v. Thompson, 523 U.S. 538, 560,  
16 118 S. Ct. 1489, 1503 (1998) (emphasis added) (quoting Schlup v. Delo, 513 U.S. 298, 316,  
17 115 S. Ct. 851, 861 (1995)). Actual innocence is a stringent standard designed to be applied  
18 only in the most extraordinary situations. Pellegrini, 117 Nev. at 876, 34 P.3d at 530.

19 "Without any new evidence of innocence, even the existence of a concededly  
20 meritorious constitutional violation is not itself sufficient to establish a miscarriage of justice  
21 that would allow a habeas court to reach the merits of the barred claim." Schlup, 513 U.S. at  
22 316, 115 S. Ct. at 861. The Eighth Circuit Court of Appeals has "rejected free-standing claims  
23 of actual innocence as a basis for habeas review stating, '[c]laims of actual innocence based  
24 on newly discovered evidence have never been held to state a ground for federal habeas relief  
25 absent an independent constitutional violation occurring in the underlying state criminal  
26 proceeding.'" Meadows v. Delo, 99 F.3d 280, 283 (8<sup>th</sup> Cir. 1996) (citing Herrera v. Collins,  
27 506 U.S. 390, 400, 113 S. Ct. 853, 860 (1993)). Furthermore, the newly discovered evidence  
28 suggesting the defendant's innocence must be "so strong that a court cannot have confidence

1 in the outcome of the trial.” Schlup, 513 U.S. at 315, 115 S. Ct. at 861. Once a defendant has  
2 made a showing of actual innocence, he may then use the claim as a “gateway” to present his  
3 constitutional challenges to the court and require the court to decide them on the merits. Id.

4 In this case, Petitioner cannot establish that he is actually innocent because he is not  
5 alleging newly discovered facts. Actual innocence means factual innocence not mere legal  
6 insufficiency. Petitioner claims that he is not guilty of sex trafficking, but “facilitating” sex  
7 trafficking. Petitioner does not contest the other six (6) charges to which he plead guilty.  
8 Petition at page 20.

9 Petitioner was not charged with facilitating sex trafficking. Petitioner was charged with  
10 Sex Trafficking of a Child under 18 Years of Age (Category A Felony – NRS 201.300.2a1-  
11 NOC 58004) because he did willfully, unlawfully, and feloniously induce, cause, and/or  
12 recruit and/or obtain and/or maintain, IP, a child under eighteen (18) years of age, to engage  
13 in prostitution and/or to enter any place within this State in which prostitution is practiced,  
14 encouraged or allowed for the purpose of sexual conduct or prostitution. Petitioner does not  
15 get to choose what crimes to which he pleads guilty.

16 In Righetti, the Defendant was charged with murder under three theories, and plead  
17 guilty to murder, but only to two of the three theories alleged. Righetti v. Eighth Judicial Dist.  
18 Court, 388 P. 3d 643, 644 (2017). Defense did not notify the State of Defendant’s position,  
19 and the State was not aware that the Defendant was only pleading guilty to certain theories.  
20 Id. The Court initially accepted the plea, but once the miscommunication surfaced the court  
21 revoked its acceptance and set the matter for trial. Id. at 645. In response, Defendant sought a  
22 Writ of Prohibition or Mandamus to enforce his plea. Id. The Nevada Supreme Court held that  
23 the district court properly revoked its acceptance of Defendant’s guilty plea. Id. at 649. The  
24 Court reasoned that the State has an almost exclusive right to decide how to charge a criminal  
25 defendant, and while a criminal defendant has a statutory right to tender a guilty plea, he does  
26 not have a right to plead guilty a la carte to avoid the State’s charging decisions. Id. at 647  
27 citing Parsons v. Fifth Judicial Dist. Court, 110 Nev. 1239, 1244, 885 P.2d 1316, 1320 (1994),  
28 overruled on other grounds by Parsons v. State, 116 Nev. 928, 936, 10 P.3d 836. 841 (2000).

1 Like Righetti, Petitioner had the choice to either go to trial or plead guilty to the  
2 negotiated charges as alleged. Furthermore, if Petitioner wanted to be charged with facilitating  
3 sex trafficking, he could have offered it as an instruction at trial, yet he chose to plead guilty.  
4 “A guilty plea is more than a confession that the accused did various acts. It is an admission  
5 that he committed the crimes charged against him.” United States v. Broce, 488 U.S. 563, 570,  
6 109 S. CT. 757, 102 L. Ed. 2d. 927 (1989). A defendant who makes a counseled and voluntary  
7 guilty plea admits both the acts described in the indictment and the legal consequences of those  
8 acts. Righetti, 388 P. 3d at 648 quoting United States v. Allen, 24 F.3d 1180, 1183 (10th Cir.  
9 1994). Furthermore, Petitioner admitted to committing the act of sex trafficking during his  
10 plea canvass:

11 THE COURT: Sir in regards to count 1, are you pleading guilty  
12 to because in truth and in fact on or between October 16th of 2015  
13 and August 23rd of 2016, here in Clark County, Nevada, you did  
14 willfully, unlawfully and feloniously induce, cause and/or recruit  
15 and/or obtain and/or maintain IP, a child under 18 years of age to  
engage in prostitution and/or to enter in any place within the state in  
which prostitution is practiced, encouraged or allowed for the purpose  
of sexual conduct or prostitution? Did you do that?

16 DEFENDANT: Yes.

17 Therefore, it was proper to charge Petitioner with Sex Trafficking of a Child under 18 Years  
18 of Age and Petitioner is not actually innocent of this offense. This claim is without merit and  
19 is denied.

### 20 III. PETITIONER FAILS TO DEMONSTRATE HE IS ENTITLED TO 21 APPOINTMENT OF COUNSEL

22 Under the United States Constitution, the Sixth Amendment provides no right to  
23 counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S.Ct.  
24 2546, 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the  
25 Nevada Supreme Court similarly observed, “[t]he Nevada Constitution...does not guarantee a  
26 right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right  
27 to counsel provision as being coextensive with the Sixth Amendment to the United States  
28 Constitution.” McKague specifically held that, with the exception of NRS 34.820(1)(a)

1 (entitling appointed counsel when petitioner is under a sentence of death), one does not have  
2 “any constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at  
3 164, 912 P.2d at 258.

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

7 NRS 34.750 reads:

8 A petition may allege that the Defendant is unable to pay the costs of  
9 the proceedings or employ counsel. If the court is satisfied that the  
10 allegation of indigency is true and the petition is not dismissed  
11 summarily, the court may appoint counsel at the time the court orders  
12 the filing of an answer and a return. In making its determination, the  
13 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 More recently, the Nevada Supreme Court examined whether a district court  
18 appropriately denied a defendant’s request for appointment of counsel based upon the factors  
19 listed in NRS 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In Renteria-  
20 Novoa, the petitioner had been serving a prison term of eighty-five (85) years to life. Id. at 75,  
21 391 P.3d at 760. After his judgment of conviction was affirmed on direct appeal, the petitioner  
22 filed a pro se habeas corpus petition and requested counsel be appointed. Id. The district court  
23 ultimately denied both the petition and the request for appointment of counsel. Id. In reviewing  
24 the district court’s decision, the Renteria-Novoa Court examined the NRS 34.750 factors and  
25 concluded the district court’s decision should be reversed and remanded. Id. The Court  
26 explained the petitioner was indigent, his petition could not be summarily dismissed, and he  
27 had, in fact, satisfied the statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor,  
28 the Court concluded that because petitioner represented he had issues with understanding the  
English language—which was corroborated by his use of an interpreter at his trial—that was  
enough to indicate the petitioner could not comprehend the proceedings. Id. Moreover, the

1 petitioner had demonstrated that the consequences he faced—a minimum eighty-five (85) year  
2 sentence—were severe and his petition may have been the only vehicle for which he could  
3 raise his claims. *Id.* at 76-77, 391 P.3d at 761-62. Finally, the petitioner’s ineffective assistance  
4 of counsel claims may have required additional discovery and investigation beyond the record.  
5 Id.

6 A review of Petitioner’s instant Petition, and his request, demonstrate that Petitioner  
7 does not meet the NRS 34.750 factors. First, Petitioner includes four (4) separate Grounds,  
8 each of which are bare and naked allegations and lacking in specificity. Therefore, because  
9 the issues raised by Petitioner are not suitable for review, the instant Petition is summarily  
10 denied, and does not entitle Petitioner to discretionary appointment of counsel. NRS 34.750(a);  
11 Renteria-Novoa, 133 Nev. at 76, 391 P.3d at 760-61.

12 Second, Petitioner has formulated four (4) separate claims for relief. Petitioner has not,  
13 and does not now, argue that he has any difficulties with the English language. Therefore, it is  
14 clear that Petitioner, while unhappy with the results of his underlying case, comprehends the  
15 proceedings, thus not necessitating the discretionary appointment of counsel. NRS 34.750(b);  
16 Renteria-Novoa, 133 Nev. at 76, 391 P.3d at 760-61.

17 Finally, Petitioner has not alleged what specific further discovery is necessary in this  
18 matter. Instead, Petitioner’s request for counsel seems to be an assertion that the prison law  
19 library is insufficient, and/or that counsel would be helpful. However, neither of these  
20 assertions are statutory factors to be considered regarding the discretionary appointment of  
21 counsel. See NRS 34.750; see also Renteria-Novoa, 133 Nev. 75, 391 P.3d 760. Therefore,  
22 because Petitioner has not alleged what further discovery is necessary, and because his  
23 pleadings have shown his ability to formulate his claims, Petitioner does not show that counsel  
24 is necessary.

25 Because the statutory factors and the Renteria-Novoa analysis weigh against the  
26 discretionary appointment of counsel, Petitioner’s Motion for the Appointment of Counsel is  
27 denied.

28 //

1           **IV.     PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

2           NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

3                     1. The judge or justice, upon review of the return, answer and  
4                     all supporting documents which are filed, shall determine  
5                     whether an evidentiary hearing is required. A petitioner must not  
6                     be discharged or committed to the custody of a person other than  
7                     the respondent *unless an evidentiary hearing is held.*

8                     2. If the judge or justice determines that the petitioner is not  
9                     entitled to relief and an evidentiary hearing is not required, he  
10                    shall dismiss the petition without a hearing.

11                    3. If the judge or justice determines that an evidentiary hearing  
12                    is required, he shall grant the writ and shall set a date for the  
13                    hearing.

14           The Nevada Supreme Court has held that if a petition can be resolved without  
15           expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.  
16           1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A  
17           defendant is entitled to an evidentiary hearing if his petition is supported by specific factual  
18           allegations, which, if true, would entitle him to relief unless the factual allegations are repelled  
19           by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100  
20           Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking post-conviction  
21           relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the  
22           record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it  
23           existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

24           It is improper to hold an evidentiary hearing simply to make a complete record. See  
25           State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The  
26           district court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted  
27           ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary  
28           hearing.”). Further, the United States Supreme Court has held that an evidentiary hearing is  
not required simply because counsel’s actions are challenged as being unreasonable strategic  
decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge  
post hoc rationalization for counsel’s decision making that contradicts the available evidence  
of counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis

1 for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain  
2 issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (*citing*  
3 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the  
4 *objective* reasonableness of counsel’s performance, not counsel’s *subjective* state of mind. 466  
5 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

6 An evidentiary hearing is not warranted in this case. An expansion of the record is  
7 unnecessary because Petitioner has failed to assert any meritorious claims, counsel’s testimony  
8 would not aid Petitioner, and the Petition can be disposed of with the existing record. Marshall,  
9 110 Nev. at 1331, 885 P.2d at 605; Mann, 118 Nev. at 356, 46 P.3d at 1231. Petitioner does  
10 not explain why expansion of the record is necessary in this case, much less make any specific  
11 assertion of what additional information would need to be introduced at an evidentiary hearing  
12 to allow resolution of Petitioner’s claims. Each of Petitioner’s claims may be resolved without  
13 expanding the record. Therefore, Petitioner’s request for an evidentiary hearing is denied.

14 ORDER

15 THEREFORE, IT IS HEREBY ORDERED that this Petition for Writ of Habeas  
16 Corpus (Post-Conviction) shall be, and is, DENIED.  
17  
18  
19



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

F28 046 6948 36D9  
Tierra Jones  
District Court Judge

22 BY   
23 JALEEN PANDUKHT  
24 Chief Deputy District Attorney  
Nevada Bar #05734

25  
26  
27  
28 hje/SVU

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 David Coil, Plaintiff(s)

CASE NO: A-21-839320-W

7 vs.

DEPT. NO. Department 10

8 Calvin Johnson, 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  
case as listed below:

14 Service Date: 12/7/2021

15 Taleen Pandukht

taleen.pandukht@clarkcountyda.com





1 NEO

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4  
5 DAVID COIL,

6 Petitioner,

Case No: C-16-318335-1

Dept No: X

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

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

11 PLEASE TAKE NOTICE that on December 7, 2021, the court entered a decision or order in this matter,  
12 a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you  
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed  
to you. This notice was mailed on December 8, 2021.

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 8 day of December 2021, I served a copy of this Notice of Entry on the  
21 following:

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

24 ☒ The United States mail addressed as follows:  
25 David Coil # 1189948  
P.O. Box 650  
26 Indian Springs, NV 89070

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

1 **FFCO**  
2 **STEVEN B. WOLFSON**  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 **TALEEN PANDUKHT**  
6 Chief Deputy District Attorney  
7 Nevada Bar #005734  
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**

10 **DAVID COIL,**  
11 **#8323388**

12 Petitioner,

13 -vs-

14 **THE STATE OF NEVADA,**

15 Respondent.

CASE NO: **A-21-839320-W**  
**C-16-318335-1**

DEPT NO: **X**

16 **FINDINGS OF FACT, CONCLUSIONS**

17 **OF LAW AND ORDER**

18 **DATE OF HEARING: NOVEMBER 8, 2021**  
19 **TIME OF HEARING: 8:30 AM**

20 THIS CAUSE presenting before the Honorable TIERRA JONES, District Judge, on the  
21 8<sup>th</sup> day of November, 2021; Petitioner not present, IN PROPER PERSON; Respondent  
22 present, being represented by STEVEN B. WOLFSON, District Attorney, through LAURA  
23 GOODMAN, Chief Deputy District Attorney; and having considered the matter, including  
24 briefs, transcripts, and documents on file herein, the Court makes the following Findings of  
25 Fact and Conclusions of Law:

26 //

27 //

28 //

1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **PROCEDURAL HISTORY**

3 On September 27, 2016, David Coil (hereinafter "Petitioner") was charged by way of  
4 Information with one count of SEX TRAFFICKING OF A CHILD UNDER 18 YEARS OF  
5 AGE (Category A Felony – NRS 201.300.2a1- NOC 58004), four (4) counts of SOLICITING  
6 PROSTITUTION (Category E Felony – NRS 201.354 – NOC 55102), one count of  
7 PANDERING (Category C Felony – NRS 201.300.1 – NOC 51000) and one count of  
8 ATTEMPT SEX TRAFFICKING OF A CHILD UNDER 18 YEARS OF AGE (Category B  
9 Felony – NRS 200.300.2a, 193.330 – NOC 58005) for acts committed on or between October  
10 16, 2015 and August 23, 2016. On September 27, 2016, Petitioner waived his right to a  
11 preliminary hearing. On September 29, 2016, Petitioner pled not guilty and invoked his right  
12 to a speedy trial. A jury trial was set for November 28, 2016, but was continued due to the  
13 receipt of additional discovery, and Petitioner waived his right to a trial within sixty (60) days  
14 on November 30, 2016.

15 On January 18, 2017, Petitioner was referred for a competency evaluation and the Court  
16 found Petitioner competent on February 22, 2017. On June 20, 2017, Petitioner filed a Motion  
17 to Replace Public Defender for Cause and Defendant's Motion for Dismissal and Habeas  
18 Corpus for Untimely Trial Over 60 Days. The State did not respond. On July 2, 2017, the  
19 Court denied Petitioner's Pro Per Motion to Replace Public Defender for Cause and  
20 Defendant's Motion for Dismissal and Habeas Corpus for Untimely Trial Over 60 days.

21 On July 24, 2017, Petitioner expressed his desire to represent himself and the Court  
22 conducted a Faretta canvass to see if Petitioner was able to represent himself. Faretta v.  
23 California, 422 U.S. 806, 95 S.Ct. 2525, (1975). During the canvass, however, Petitioner  
24 decided to withdraw his request and move forward with counsel. Petitioner again requested to  
25 represent himself on September 18, 2017. On September 25, 2017, the Court conducted  
26 another Faretta canvass and Petitioner withdrew his request for a second time.

27 //

28 //

1 Trial commenced on September 26, 2017, and the State filed an Amended Information  
2 the same day.<sup>1</sup> On September 28, 2017 before the third day of trial began, Petitioner decided  
3 to plead guilty to all charges alleged in the Amended Information. No Guilty Plea Agreement  
4 was filed as Petitioner pled straight up to all of the charges.

5 On November 8, 2017, Petitioner was sentenced as follows:

- 6 • Count 1 [Sex Trafficking a Child Under 18]- LIFE with the eligibility for parole  
7 after serving a minimum of sixty (60) months in the Nevada Department of  
8 Corrections (hereinafter “NDC”);
- 9 • Count 2 [Soliciting Prostitution]- Maximum of thirty (30) months with a  
10 minimum parole eligibility of twelve (12) months concurrent with Count 1,  
11 suspended and placed on probation for an indeterminate period not to exceed  
12 three (3) years, with the only condition being to serve three-hundred sixty four  
13 (364) days in the Clark County Detention Center (hereinafter “CCDC”);
- 14 • Count 3 [Soliciting Prostitution] - Maximum of thirty (30) months with a  
15 minimum parole eligibility of twelve (12) months, concurrent with Count 2,  
16 suspended and placed on probation for an indeterminate period not to exceed  
17 three (3) years, with only condition being to serve three-hundred sixty four (364)  
18 days in CCDC;
- 19 • Count 4 [Soliciting Prostitution]- Maximum of thirty (30) months with a  
20 minimum parole eligibility of twelve (12) months concurrent with Count 3,  
21 suspended and placed on probation for an indeterminate period not to exceed  
22 three (3) years, with only condition being to serve three-hundred sixty four (364)  
23 days in CCDC;
- 24 • Count 5 [Soliciting Prostitution]- Maximum of thirty (30) months with a  
25 minimum parole eligibility of twelve (12) months concurrent with Count 4,  
26 suspended and placed on probation for an indeterminate period not to exceed  
27

28 <sup>1</sup> The Amended Information did not add additional charges. The State changed the language in the first count  
to reflect the statute and switched count 6 and 7 to make it clearer for the jury to understand.

three (3) years, with only condition being to serve three-hundred sixty four (364) days in CCDC; and

- Count 6 [Attempt Sex Trafficking of a Child Under 18]- Maximum of one hundred eighty (180) months with a minimum parole eligibility of seventy-two (72) months, consecutive to Count 5.

Count 7 [Pandering] was dismissed, and Petitioner was also required to register as a sex offender within 48 hours of release from custody. Petitioner was awarded four hundred forty-three (443) days credit for time served and the aggregate sentence was LIFE with parole eligibility after serving a minimum of one hundred thirty-two (132) months.

The Judgment of Conviction was filed on December 13, 2017.

On January 17, 2018, Petitioner filed a Notice of Appeal. On October 16, 2019, the Nevada Court of Appeals affirmed the Judgment of Conviction and Remittitur issued on November 12, 2019.

On February 25, 2019, the Court noted it received a letter from the Division of Parole and Probation requesting clarification of the Court's sentence. The Court ordered that the aggregate sentence is correct; however, Count 6 should be consecutive to Count 1 with an aggregate total of Life with parole eligibility after one hundred thirty-two (132) months has been served in the NDC. The Amended Judgment of Conviction was filed on March 4, 2019.

On June 3, 2021, Petitioner filed a Motion to Withdraw Guilty Plea Pursuant to NRS 176.165 and Motion for Extension of Time to File a Post-Conviction Writ of Habeas Corpus. The State filed an Opposition on June 10, 2021. On June 28, 2021, this Court denied both motions. The Order Denying Defendant's Motions to Withdraw Guilty Plea and Motion to Extend Time to File Petition for Writ of Habeas Corpus was filed on July 19, 2021.

On July 14, 2021, Petitioner filed another Motion for Extension of Time, and on July 28, 2021, Petitioner filed another Motion to Withdraw Plea. The State filed another Opposition on July 30, 2021. On August 4, 2021, the Court again denied both motions. The Order Denying Defendant's Motion to Withdraw Guilty Plea and Motion for Extension of Time was filed on August 10, 2021.

1 On August 11, 2021, Petitioner filed a Petition for Writ of Habeas Corpus (Post-  
2 Conviction). On August 30, 2021, Petitioner filed a Motion for the Appointment of Counsel  
3 and Request for Evidentiary Hearing. The State filed its Response on September 23, 2021.

4 On November 8, 2021, this Court denied the Petition. This Court's Findings of Fact,  
5 Conclusions of Law and Order now follows.

### 6 **STATEMENT OF FACTS**

7 This Court relied on the following facts in sentencing Petitioner:

8 On August 6, 2016, a teacher from a local school was contacted  
9 by a prior high school student, the victim (date of birth: July 30,  
10 1999) who needed help. The teacher believed that the victim was  
the victim of sex trafficking and he contacted the police to file a  
report.

11 A detective made contact with the victim at her home. She told the  
12 officers that in October, 2015, she was looking for employment on  
13 Craigslist.com, she was 16 years old at the time. She found a  
posting looking for "petit, young girls" and offered that they could  
14 make \$1,500 a day with "no sex involved." She responded to the  
ad and made contact with the defendant, David Andrew Coil.

15 The victim and Mr. Coil met at a fast food restaurant near the  
victim's home. After some discussion, Mr. Coil brought the victim  
16 back to his home. He provided the victim with alcohol and she  
became intoxicated. He explained to the victim that the job was  
17 performing "body rubs" at his residence. He had several girls who  
work at his residence and an established client base of men that  
18 came to his residence for body rubs. He also explained that while  
performing body rubs, the females working at Mr. Coil's residence  
19 were allowed to perform mutual masturbation on the clients by  
stimulating the male clients' penis with their hands. The females  
20 were also allowed to stimulate the clients' penis by straddling the  
naked males while they were lying on their backs and rubbing their  
21 bare vaginas against the males' penis as long as there was no full  
penetration.

22 The rules provided by Mr. Coil were that she would have to  
23 remove her clothes upon arrival at his home and remain naked  
while in the home. She would be required to show him the money  
24 that she earned while at the residence and to not lie to him about  
anything. They were required to keep the sheets and towels used  
25 in the body rub room clean and changed after each use. The  
females were also told not to have vaginal intercourse with any of  
26 the clients coming to the residence; however, the victim and the  
other females were allowed to perform oral sex on the clients if  
27 the females made that decision.

28 The victim told Mr. Coil that she did not believe the job was right  
for her and she apologized; she asked if there was anything she  
could do for wasting his time and he asked her to give him a body

1 rub. The victim complied; both she and Mr. Coil were naked and  
2 she followed his instructions for completing a body rub. He had  
the victim straddle his body and rub her bare vagina across his  
penis. Afterwards, Mr. Coil paid her \$200 including a gratuity.

3 After realizing how much money she could make, she agreed to  
4 work for Mr. Coil and she worked from October 2015 to August  
5 2016, working an average of four nights a week performing body  
6 rubs. She performed body rubs on Mr. Coil at least three additional  
7 times and she was paid the standard \$80 fee with an additional \$20  
8 gratuity. There were additional females working in the home to  
include the defendant's adult daughter. Mr. Coil did not take any  
of the proceeds from the body rubs; he would remain nude as well  
as the girls and when the male appointments would arrive he  
would go into a back living room and remain out of sight until the  
clients left.

9 After finding the most recent advertisement Mr. Coil had posted  
10 on Craigslist.com, the detective made contact with Mr. Coil  
11 pretending to be an interested 17 year old girl. Through the course  
12 of the text conversation, the two agreed to meet. On August 23,  
13 2016, Mr. Coil arrived at the agreed to location showing his intent  
to recruit what he believed to be a 17 year old female for the  
purpose of prostitution. Mr. Coil was arrested, transported to the  
Clark County Detention Center and booked accordingly.

14 Presentence Investigation Report (hereinafter "PSI") at pages 4-5.

## 15 ANALYSIS

### 16 **I. PETITIONER'S PETITION IS PROCEDURALLY BARRED**

#### 17 **A. Petitioner's Petition is Time-barred**

18 A petition challenging a judgment of conviction's validity must be filed within one year  
19 of the judgment or within one year of the remittitur, unless there is good cause to excuse delay.  
20 NRS 34.726(1). The Nevada Supreme Court has held that NRS 34.726 should be construed  
21 by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). The  
22 one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of  
23 conviction is filed or a remittitur from a timely direct appeal is issued. Dickerson v. State, 114  
24 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

25 The one-year time limit for preparing petitions for post-conviction relief under NRS  
26 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),  
27 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite  
28 evidence presented by the defendant that he purchased postage through the prison and mailed

1 the Notice within the one-year time limit.

2 Furthermore, the Nevada Supreme Court has held that the district court has a duty to  
3 consider whether a defendant's post-conviction petition claims are procedurally barred. State  
4 v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The  
5 Riker Court found that "[a]pplication of the statutory procedural default rules to post-  
6 conviction habeas petitions is mandatory," noting:

7 Habeas corpus petitions that are filed many years after conviction  
8 are an unreasonable burden on the criminal justice system. The  
9 necessity for a workable system dictates that there must exist a  
time when a criminal conviction is final.

10 Id. (quoting Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984)).  
11 Additionally, the Court noted that procedural bars "cannot be ignored [by the district court]  
12 when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court  
13 has granted no discretion to the district courts regarding whether to apply the statutory  
14 procedural bars; the rules must be applied.

15 In this case, Petitioner's Judgment of Conviction was filed on December 13, 2017. On  
16 October 16, 2019, the Nevada Court of Appeals affirmed the Judgment of Conviction and  
17 Remittitur issued on November 12, 2019. Thus, Petitioner had until November 12, 2020 to file  
18 his Petition. Petitioner did not file the instant Petition until August 11, 2021. As such, he was  
19 nine (9) months too late. This delay exceeds the two (2) day delay discussed in Gonzales.  
20 Therefore, the Petition is procedurally time barred and denied.

#### 21 **B. Application of the Procedural Bars is Mandatory**

22 The Nevada Supreme Court has held that the district court has a *duty* to consider  
23 whether a defendant's post-conviction petition claims are procedurally barred. State v.  
24 Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The  
25 Riker Court found that "[a]pplication of the statutory procedural default rules to post-  
26 conviction habeas petitions is mandatory," noting:

27 Habeas corpus petitions that are filed many years after conviction are  
28 an unreasonable burden on the criminal justice system. The necessity  
for a workable system dictates that there must exist a time when a  
criminal conviction is final.



1 Id. Additionally, the Court noted that procedural bars “cannot be ignored [by the district court]  
2 when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court  
3 has granted no discretion to the district courts regarding whether to apply the statutory  
4 procedural bars; the rules must be applied.

5 This position was reaffirmed in State v. Greene, 129 Nev. 559, 307 P.3d 322 (2013).  
6 There the Court ruled that the defendant’s petition was “untimely, successive, and an abuse of  
7 the writ” and that the defendant failed to show good cause and actual prejudice. Id. at 324, 307  
8 P.3d at 326. Accordingly, the Court reversed the district court and ordered the defendant’s  
9 petition dismissed pursuant to the procedural bars. Id. at 324, 307 P.3d at 322–23. The  
10 procedural bars are so fundamental to the post-conviction process that they must be applied  
11 by this Court even if not raised by the State. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

12 Because Petitioner’s Petition is untimely and because he cannot show good cause or  
13 prejudice to overcome the mandatory procedural bar, it is denied.

14 **II. PETITIONER HAS NOT DEMONSTRATED GOOD CAUSE OR**  
15 **PREJUDICE TO OVERCOME THE PROCEDURAL BAR**

16 In his Pro Per Petition, Petitioner raised four (4) grounds. In Ground One, he claims  
17 that his counsel was ineffective for failing to notify the Court of an alleged conflict of interest  
18 causing the Court to fail to grant Petitioner a hearing pursuant to Young v. State, 120 Nev. 963  
19 (2004), and that counsel failed to execute unnamed motions. Petition at page 11. In Ground  
20 Two, Petitioner argues that defense counsel was ineffective for not filing a motion to dismiss  
21 the Information for violation of Petitioner’s right to a speedy trial based on the Prosecution’s  
22 alleged devious tactics concerning last minute discovery. Petition at page 13. In Ground  
23 Three, Petitioner asserts that his counsel failed to prepare a defense, failed to obtain certain  
24 phone records or attempt to contact Defendant’s unnamed witnesses. Petition at page 15. He  
25 also claims counsel did not spend enough time with him. Petition at 17. In Ground Four,  
26 Petitioner alleges that his counsel was ineffective for allowing Petitioner to plead guilty to a  
27 charge he was actually innocent of because he was improperly charged, and he did not  
28 understand the elements of the charges and the rights he was giving up by pleading guilty.

1 Petition at page 19.

2 To avoid procedural default, under NRS 34.726, a defendant has the burden of pleading  
3 and proving specific facts that demonstrate good cause for his failure to present his claim in  
4 earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will  
5 be unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a) (emphasis added); see  
6 Hogan v. Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada  
7 Dep’t of Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). “A court *must* dismiss a  
8 habeas petition if it presents claims that either were or could have been presented in an earlier  
9 proceeding, unless the court finds both cause for failing to present the claims earlier or for  
10 raising them again and actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646–  
11 47, 29 P.3d 498, 523 (2001) (emphasis added).

12 To show good cause for delay under NRS 34.726(1), a petitioner must demonstrate the  
13 following: (1) “[t]hat the delay is not the fault of the petitioner” and (2) that the petitioner will  
14 be “unduly prejudice[d]” if the petition is dismissed as untimely. NRS 34.726. To meet the  
15 first requirement, “a petitioner *must* show that an impediment external to the defense prevented  
16 him or her from complying with the state procedural default rules.” Hathaway v. State, 119  
17 Nev. 248, 252, 71 P.3d 503, 506 (2003) (emphasis added). “A qualifying impediment might  
18 be shown where the factual or legal basis for a claim was not reasonably available *at the time*  
19 *of default*.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The  
20 Court continued, “Petitioners cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d  
21 at 526. To find good cause there must be a “substantial reason; one that affords a legal excuse.”  
22 Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105  
23 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Examples of good cause include interference by  
24 State officials and the previous unavailability of a legal or factual basis. See State v. Huebler,  
25 128 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012). Clearly, any delay in the filing of the petition  
26 must not be the fault of the petitioner. NRS 34.726(1)(a).

27 //

28 //

1 Further, a petitioner raising good cause to excuse procedural bars must do so within a  
2 reasonable time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34  
3 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see  
4 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably  
5 available to the petitioner during the statutory time period did not constitute good cause to  
6 excuse a delay in filing). A claim that is itself procedurally barred cannot constitute good  
7 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,  
8 453 120 S. Ct. 1587, 1592 (2000).

9 In order to establish prejudice, the defendant must show “‘not merely that the errors of  
10 [the proceedings] created possibility of prejudice, but that they worked to his actual and  
11 substantial disadvantage, in affecting the state proceedings with error of constitutional  
12 dimensions.’” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United  
13 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)).

14 Here, Petitioner does not even attempt to address good cause or provide any reason in  
15 the body of his Petition for the filing of his untimely Petition. Because Petitioner has failed to  
16 attempt to demonstrate good cause or prejudice, and because any such attempt would be  
17 without merit, Petitioner did not meet his burden when trying to overcome his procedural  
18 defaults. Hogan, 109 Nev. at 959–60, 860 P.2d at 715–16. Therefore, Petitioner’s Petition is  
19 denied pursuant to the applicable procedural bars.

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

26 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove  
27 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of  
28 Strickland, 466 U.S. at 686–87, 104 S. Ct. at 2063–64. See also Love, 109 Nev. at 1138, 865

1 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's  
2 representation fell below an objective standard of reasonableness, and second, that but for  
3 counsel's errors, there is a reasonable probability that the result of the proceedings would have  
4 been different. 466 U.S. at 687–88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State  
5 Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-  
6 part test). “[T]here is no reason for a court deciding an ineffective assistance claim to approach  
7 the inquiry in the same order or even to address both components of the inquiry if the defendant  
8 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

9 The court begins with the presumption of effectiveness and then must determine  
10 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
11 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel  
12 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of  
13 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,  
14 537 P.2d 473, 474 (1975).

15 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
16 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the  
17 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
18 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
19 (2002).

20 Based on the above law, the role of a court in considering allegations of ineffective  
21 assistance of counsel is “not to pass upon the merits of the action not taken but to determine  
22 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
23 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
24 (1978). This analysis does not mean that the court should “second guess reasoned choices  
25 between trial tactics nor does it mean that defense counsel, to protect himself against  
26 allegations of inadequacy, must make every conceivable motion no matter how remote the  
27 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel  
28 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel

1 cannot create one and may disserve the interests of his client by attempting a useless charade.”  
2 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

3 “There are countless ways to provide effective assistance in any given case. Even the  
4 best criminal defense attorneys would not defend a particular client in the same way.”  
5 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after  
6 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
7 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
8 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's  
9 challenged conduct on the facts of the particular case, viewed as of the time of counsel's  
10 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

11 When a conviction is the result of a guilty plea, a defendant must show that there is a  
12 “reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and  
13 would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370  
14 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107  
15 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

16 Even if a defendant can demonstrate that his counsel’s representation fell below an  
17 objective standard of reasonableness, he must still demonstrate prejudice and show a  
18 reasonable probability that, but for counsel’s errors, the result of the trial would have been  
19 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
20 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability  
21 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,  
22 694, 104 S. Ct. at 2064–65, 2068).

23 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the  
24 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of  
25 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,  
26 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must  
27 be supported with specific factual allegations, which if true, would entitle the petitioner to  
28 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”

1 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS  
2 34.735(6) states in relevant part, “[Petitioner] must allege specific facts supporting the claims  
3 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your  
4 petition to be dismissed.” (emphasis added).

5 **A. Ground One: Petitioner’s Claim Regarding a Pre-Trial Motion to Dismiss**  
6 **Counsel is Insufficient to Warrant Relief**

7 Petitioner’s Ground One alleges that his counsel was ineffective for failing to notify the  
8 Court of an alleged conflict of interest causing the Court to fail to grant Petitioner a hearing  
9 pursuant to Young v. State, 120 Nev. 963 (2004), and that counsel failed to execute unnamed  
10 motions. Petition at page 11.

11 This assertion does not entitle Petitioner to relief, as the United States Supreme Court  
12 has previously found that criminal defendants are not entitled to any particular “relationship”  
13 with their attorney. Morris v. Slappy, 461 U.S. 1, 14, 103 S.Ct. 1610, 1617 (1983). Indeed, the  
14 Morris Court found that no specific amount of communication is required, so long as counsel  
15 is reasonably effective in his representation. Id.

16 Therefore, Petitioner improperly takes for granted the reasonable likelihood of the  
17 success of those complaints without setting forth any factual support. As such, Petitioner  
18 leaves his ineffective-assistance claims bare and naked, and insufficient to warrant relief.  
19 Hargrove, 100 Nev. at 502, 686 P.2d at 225. Because Petitioner fails to set forth any support  
20 for a cognizable ineffective-assistance claim, Petitioner’s Ground One is summarily denied.

21 Determining whether friction between a defendant and his attorney justifies substituting  
22 counsel is within the trial court’s sound discretion, and this Court will not disturb its decision  
23 on appeal absent a clear abuse of discretion. Thomas v. State, 94 Nev. 605, 607, 584 P.2d 674,  
24 676 (1978). Generally, a district court should not summarily reject a motion for new counsel  
25 where such motion is made considerably before trial without first conducting an “adequate  
26 inquiry” into the defendant’s complaints. Garcia v. State, 121 Nev. 327, 337, 113 P.3d 836,  
27 842 (2005) (quoting Young v. State, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004)). However,  
28 absent good cause shown, a defendant is not entitled to the substitution of court-appointed

1 counsel at public expense. Garcia, 121 Nev. at 337, 113 P.3d at 842; Young, 120 Nev. at 968,  
2 102 P.3d at 576.

3 This Court has defined good cause as “a conflict of interest, a complete breakdown of  
4 communication, or an irreconcilable conflict which [could] lead . . . to an apparently unjust  
5 verdict.” Gallego v. State, 117 Nev. 348, 363, 23 P.3d 227, 237 (2001), overruled on other  
6 grounds by Nunnery v. State, 127 Nev. 749, 263 P.3d 235 (2011). Good cause is not  
7 “determined solely according to the subjective standard of what the defendant perceives,” nor  
8 is “[t]he mere loss of confidence in appointed counsel . . . good cause.” Id. While a defendant’s  
9 lack of trust in counsel is a factor in the determination, a defendant must nonetheless provide  
10 the court with legitimate explanations for it. Id. (citing McKee v. Harris, 649 F.2d 927, 932  
11 (2nd Cir. 1981)).

12 Moreover, a defendant may not request substitute counsel based on his refusal to  
13 cooperate with present counsel because “[s]uch a doctrine would lead to absurd results.”  
14 Thomas, 94 Nev. at 608, P.2d 674 at 676 (quoting Shaw v. United States, 403 F.2d 528, 529  
15 (8th Cir. 1968)). Because counsel alone is responsible for tactical decisions regarding a  
16 defense, a mere disagreement between counsel and a defendant regarding tactics cannot give  
17 rise to an irreconcilable conflict. See Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002).  
18 In particular, where a defendant disagrees with counsel’s reasonable defense strategy and  
19 wishes instead to present his own ill-conceived strategy, no conflict arises. See Gallego, 117  
20 Nev. at 363, 23 P.3d at 237. Rather, attorney-client conflict warrants substitution “only when  
21 counsel and defendant are so at odds as to prevent presentation of an adequate defense.” Id.  
22 This Court has articulated three factors to consider when reviewing a district court’s denial of  
23 a motion to substitute counsel: (1) the extent of the conflict, (2) the motion’s timeliness and  
24 the extent of inconvenience or delay, and (3) the adequacy of the court’s inquiry into the  
25 defendant’s complaints. Young, 120 Nev. at 968–69, 102 P.3d at 576–78.

26 In the instant matter, Petitioner has not demonstrated that there was conflict of interest  
27 or that a Young hearing would have been granted. As to the three (3) Young factors, Petitioner  
28 fails to provide any specific facts in support of his bare and naked allegations, so this Court is

1 unable to meaningfully address any of the three (3) factors. Claims for relief devoid of specific  
2 factual allegations are “bare” and “naked,” and are insufficient to warrant relief, as are those  
3 claims belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 22,  
4 225 (1984). “[Petitioner] *must* allege specific facts supporting the claims in the  
5 petition[.]...Failure to allege specific facts rather than just conclusions may cause [the] petition  
6 to be dismissed.” NRS 34.725(6) (emphasis added).

7 Likewise, Petitioner’s claim that counsel failed to execute motions fails to name any  
8 specific motions counsel should have and failed to file, rendering this also a bare and naked  
9 allegation pursuant to Hargrove and is summarily denied. Petitioner offers only generalities  
10 and vague references, rather than the requisite “specific facts.” NRS 34.725(6). Because  
11 Petitioner offers only generalities, lacking specific factual bases, much less cogent argument,  
12 the instant Petition does not warrant review. Rowland, 107 Nev. at 479, 814 P.2d at 83.  
13 Therefore, the instant claim is summarily denied as a bare and naked allegation, and  
14 insufficiently pled.

15 **B. Ground Two: Petitioner’s Claim Regarding a Motion To Dismiss For a Speedy**  
16 **Trial Violation is Insufficient to Warrant Relief**

17 In Ground Two, Petitioner argues that defense counsel was ineffective for not filing a  
18 motion to dismiss the Information for violation of Petitioner’s right to a speedy trial based on  
19 the Prosecution’s alleged devious tactics concerning last minute discovery. Petition at page  
20 13.

21 The Sixth Amendment to the Constitution guarantees that “in all criminal prosecutions,  
22 the accused shall enjoy the right to a speedy and public trial.” U.S. Const. Amend. VI. The  
23 United States Supreme Court held in Smith v. Hooey, 393 U.S. 374, 89 S.Ct. 575 (1969) that  
24 a state is under an affirmative obligation by virtue of the Sixth Amendment, as interpreted in  
25 Klopper v. North Carolina, 386 U.S. 213, 87 S.Ct. 988 (1967), to make every good faith effort  
26 to bring the accused to trial. The United States Supreme Court also held that both the accused  
27 and society have an interest in having a speedy trial. Barker v. Wingo, 407 U.S. 514, 519, 92  
28 S.Ct. 2182, 2186 (1972). The Court recognized that the three basic interests of an accused are



1 “(1) to prevent undue and oppressive incarceration prior to trial, (2) to minimize anxiety and  
2 concern accompanying public accusation and (3) to limit the possibilities that long delay will  
3 impair the ability of an accused to defend himself.” Smith, 393 U.S. at 378, 89 S.Ct. at 577;  
4 see also, United States v. Ewell, 383 U.S. 116, 120, 86 S.Ct. 773, 776 (1966); Klopfer, 386  
5 U.S. at 221-26, 87 S.Ct. at 993-95; Dickey v. Florida, 398 U.S. 30, 37-38, 90 S.Ct. 1564, 1568-  
6 69 (1970). Therefore, “one of the major purposes of the provision is to guard against *inordinate*  
7 *delay* between public charge and trial, which, wholly aside from possible prejudice to a  
8 defense on the merits, may seriously interfere with the defendant’s liberty, whether he is free  
9 on bail or not, and that may disrupt his employment, drain his financial resources, curtail his  
10 associations, subject him to public obloquy, and create anxiety in him, his family, and his  
11 friends.” Barker, 407 U.S. at 537, 92 S.Ct. at 2195 (White, J., concurring) (emphasis added).

12 Nevada law likewise recognizes a criminal defendant’s right to trial within sixty (60)  
13 days of arraignment or indictment. NRS 178.556. Application of NRS 178.556 is addressed to  
14 the sound discretion of the trial court. Meegan v. State, 114 Nev. 1150, 968 P.2d 292, 295,  
15 1153 (1998), abrogated on other grounds, Vanisi v. State, 117 Nev. 330, 22 P.3d 1164 (2001).  
16 The Nevada Supreme Court has “determined that the ‘60 day rule’ prescribed in our statute  
17 has flexibility.” Adams v. Sheriff, 91 Nev. 575, 575, 540 P.2d 118, 119 (1975). Indeed, “[i]f  
18 the defendant is responsible for the delay of trial beyond the 60 day limit, he may not  
19 complain.” Oberle v. Fogliani, 82 Nev. 428, 430, 420 P.2d 251, 252 (1966). The purpose  
20 behind NRS 178.556 is “to prevent arbitrary, willful, or oppressive delays.” In re Hansen, 79  
21 Nev. 492, 495, 387 P.2d 659, 660 (1963).

22 Indeed, despite criminal defendants’ various interests, the United States Supreme Court  
23 has recognized that pretrial delay is often “both inevitable and wholly justifiable.” Doggett v.  
24 United States, 505 U.S. 647, 656, 112 S.Ct. 2686, 2693 (1992). “The essential ingredient is  
25 orderly expedition and not mere speed.” Smith v. United States, 360 U.S. 1, 10, 79 S.Ct. 991,  
26 997 (1959). For instance, the government may need time to collect witnesses, oppose pretrial  
27 motions, or track down the accused. Doggett, 505 U.S. at 656, 112 S.Ct. at 2693. Thus, “in  
28 large measure because of many procedural safeguards provided an accused, the ordinary

1 procedures for criminal prosecution are designed to move at a deliberate pace. A requirement  
2 of unreasonable speed would have a deleterious effect both upon the rights of the accused and  
3 upon the ability of society to protect itself.” Ewell, 383 U.S. at 120, 86 S.Ct. at 776. A denial  
4 of the Sixth Amendment right to a speedy trial requires that the charges against an accused be  
5 dismissed. The United States Supreme Court has cautioned that because of the seriousness of  
6 the remedy involved, “where a defendant who may be guilty of a serious crime will go free,  
7 without having been tried, the right to a speedy trial should always be in balance, and not  
8 inconsistent, with the rights of public justice.” Barker, 407 U.S. at 522, 92 S.Ct. at 2188.

9 First and foremost, a defendant cannot enter a guilty plea then later raise independent  
10 claims alleging a deprivation of his rights before entry of the plea. State v. Eighth Judicial  
11 District Court, 121 Nev. 225, 112 P.3d 1070, n.24 (2005) (quoting Tollet v. Henderson, 411  
12 U.S. 258, 267 (1973). Generally, the entry of a guilty plea waives any right to appeal from  
13 events occurring prior to the entry of the plea. See Webb v. State, 91 Nev. 469, 538 P.2d 164  
14 (1975). “[A] guilty plea represents a break in the chain of events which has preceded it in the  
15 criminal process. . . . [A defendant] may not thereafter raise independent claims relating to the  
16 deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” Id.  
17 (quoting Tollett, 411 U.S. at 267).

18 Here, Petitioner claims that defense counsel was ineffective for not filing a motion to  
19 dismiss the Information for violation of Petitioner’s right to a speedy trial based on the  
20 Prosecution’s alleged devious tactics concerning last minute discovery. Petition at page 13.  
21 However, Petitioner’s guilty plea cures any earlier Constitutional defects because entering a  
22 guilty plea breaks the “chain of events.” Webb, 91 Nev. at 538. Petitioner is alleging a violation  
23 of his constitutional rights that occurred prior to his guilty plea. Therefore, Petitioner cannot  
24 raise this claim, and it is denied.

25 Additionally, as the Information was filed on September 27, 2016, and Defendant's  
26 Motion for Dismissal and Habeas Corpus for Untimely Trial Over 60 Days was filed on June  
27 20, 2017, there was only a delay of approximately nine (9) months between the filing of the  
28 Information and the filing of the Motion to Dismiss. The trial commenced on September 26,

1 2017. Thus, there was exactly one year between the filing of the Information and the start of  
2 the trial. Petitioner waived his right to a trial within sixty (60) days on November 30, 2016.  
3 Moreover, the delays Petitioner complains of were due to receiving additional discovery,  
4 which the State provided to counsel as soon as it was received. Petitioner's counsel needed  
5 additional time to prepare for trial based on the additional discovery and the request for a  
6 continuance was entirely reasonable under these circumstances. Petitioner already filed his  
7 own Motion for Dismissal and Habeas Corpus for Untimely Trial Over 60 Days on June 20,  
8 2017, after Petitioner waived his right to a trial within sixty (60) days on November 30, 2016.  
9 On July 2, 2017, the Court denied Petitioner's Pro Per Motion to Replace Public Defender for  
10 Cause and Defendant's Motion for Dismissal and Habeas Corpus for Untimely Trial Over 60  
11 days. Therefore, it was unnecessary for counsel to file the same futile motion which had  
12 already been denied. As such, this claim is likewise without merit and is denied.

13 **C. Ground Three: Counsel Was Not Ineffective for Failing to Investigate**

14 In Ground Three, Petitioner asserts that his counsel failed to prepare a defense, failed  
15 to obtain certain phone records or attempt to contact Defendant's unnamed witnesses. Petition  
16 at page 15. He also claims counsel did not spend enough time with him. Petition at 17.

17 A defendant who contends his attorney was ineffective because he did not adequately  
18 investigate must show how a better investigation would have changed the outcome of trial.  
19 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064. Such a defendant must allege with specificity  
20 what the investigation would have revealed and how it would have altered the outcome of the  
21 trial. See State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

22 "[D]efense counsel has a duty 'to make reasonable investigations or to make a  
23 reasonable decision that makes particular investigations unnecessary.'" State v. Love, 109 Nev.  
24 at 1138, 865 P.2d at 323 (quoting Strickland, 466 U.S. at 691, 104 S. Ct. at 2066). A decision  
25 "not to investigate must be directly assessed for reasonableness in all the circumstances,  
26 applying a heavy measure of deference to counsel's judgment.'" Id. Moreover, "[a] decision  
27 not to call a witness will not generally constitute ineffective assistance of counsel" Id. at 1145,  
28 865 P.2d at 328.

1           Moreover, a defendant is not entitled to a particular “relationship” with his attorney.  
2     Morris v. Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983). There is no requirement for  
3     any specific amount of communication as long as counsel is reasonably effective in his  
4     representation. See Id.

5           Indeed, to establish a claim of ineffective assistance of counsel for advice regarding a  
6     guilty plea, a defendant must show “gross error on the part of counsel.” Turner v. Calderon,  
7     281 F.3d 851, 880 (9th Cir. 2002). A plea of guilty is presumptively valid, particularly where  
8     it is entered into on the advice of counsel, and the burden is on a defendant to show that the  
9     plea was not voluntarily entered. Bryant, 102 Nev. at 272, 721 P.2d at 368 (citing Wingfield  
10    v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)); Jeziarski v. State, 107 Nev. 395, 397,  
11    812 P.2d 355, 356 (1991). Ultimately, while it is counsel’s duty to candidly advise a defendant  
12    regarding a plea offer, the decision of whether or not to accept a plea offer is the defendant’s.  
13    Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 163 (2002).

14           Again, Petitioner’s claims are bare and naked assertions so devoid of meaning that the  
15    State cannot effectively respond. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Petitioner has  
16    offered no specific allegations to support his claims. Petitioner makes a general allegation of  
17    failure to investigate. He fails to specify whose phone records counsel should have obtained  
18    or which witnesses he should have contacted. If they were Petitioner’s phone records and  
19    Petitioner’s witnesses, then Petitioner would know exactly what was contained in the phone  
20    records as well as the names and contact information for his witnesses, which he should have  
21    provided to his counsel at the appropriate time. Regardless, Petitioner does not provide what  
22    any further investigation would have yielded. At no point does Petitioner argue that if an  
23    investigation was conducted, the outcome would have been different. Neither does Petitioner  
24    show what would have been obtained from interviewing his unnamed witnesses. Petitioner  
25    engages in sweeping conclusions with no specific facts to support such conclusions.  
26    Therefore, Petitioner’s claims are bare and naked allegations and are denied.

27    //

28    //

1 Further, Petitioner is not entitled to a particular relationship with counsel. It does not  
2 matter if Petitioner is not satisfied that counsel did not spend enough time with him as long as  
3 counsel keeps Petitioner abreast of his case and maintains sufficient communication lines to  
4 provide effective assistance of counsel. In any event, Petitioner does not allege that counsel  
5 completely refrained from communicating with Petitioner, only that he did not spend enough  
6 time with him. As such, Petitioner's claim is without merit and is denied.

7 **D. Ground Four: Petitioner Knowingly, Intelligently and Voluntarily Entered His**  
8 **Plea**

9 In Ground Four, Petitioner alleges that his counsel was ineffective for allowing  
10 Petitioner to plead guilty to a charge he was actually innocent of because he was improperly  
11 charged, and he did not understand the elements of the charges and the rights he was giving  
12 up by pleading guilty. Petition at page 19.

13 Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be  
14 withdrawn to correct "manifest injustice." See also Baal v. State, 106 Nev. 69, 72, 787 P.2d  
15 391, 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid,  
16 and the burden is on a defendant to show that the plea was not voluntarily entered. Bryant v.  
17 State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336,  
18 337, 535 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant entered  
19 his plea voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

20 To determine whether a guilty plea was voluntarily entered, the Court will review the  
21 totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721  
22 P.2d at 367. A proper plea canvass should reflect that:

23 [T]he defendant knowingly waived his privilege against self-  
24 incrimination, the right to trial by jury, and the right to confront his  
25 accusers; (2) the plea was voluntary, was not coerced, and was not the  
26 result of a promise of leniency; (3) the defendant understood the  
consequences of his plea and the range of punishments; and (4) the  
defendant understood the nature of the charge, i.e., the elements of the  
crime.

27 Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev.  
28 774, 476 P.2d 950 (1970)). The presence and advice of counsel is a significant factor in

1 determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d  
2 107, 107 (1975).

3 This standard requires the court accepting the plea to personally address the defendant  
4 at the time he enters his plea in order to determine whether he understands the nature of the  
5 charges to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not  
6 rely simply on a written plea agreement without some verbal interaction with a defendant. Id.  
7 Thus, a “colloquy” is constitutionally mandated and a “colloquy” is but a conversation in a  
8 formal setting, such as that occurring between an official sitting in judgment of an accused at  
9 plea. Id. However, the court need not conduct a ritualistic oral canvass. State v. Freese, 116  
10 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas “do not require  
11 the articulation of talismanic phrases,” but only that the record demonstrates a defendant  
12 entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev. 573, 575,  
13 516 P.2d 1403, 1404 (1973); see also Brady v. United States, 397 U.S. 742, 747-48, 90 S. Ct.  
14 1463, 1470 (1970).

15 In this case, Petitioner’s claim that his counsel was ineffective for allowing Petitioner  
16 to plead guilty to a charge he was actually innocent of because he was improperly charged,  
17 and he did not understand the elements of the charges and the rights he was giving up by  
18 pleading guilty, is belied by the answers he gave during his plea canvass. The Court’s canvass  
19 of Petitioner demonstrates that Petitioner understood the charges he was facing, that no one  
20 forced, threatened or made promises to induce his plea, and that his plea was voluntary:

21 THE COURT: Okay, we're going to go back on the record in C-  
22 318335, State of Nevada versus David Coil. Mr. Coil is present with  
23 his attorney, Mr. Matsuda. The Deputy District Attorneys are here on  
24 behalf of the State. For the record, we are outside the presence of the  
25 jury. Mr. Coil, it is my understanding that you wish to plead guilty in  
26 this case?

27 THE DEFENDANT: Yes, ma'am.

28 THE COURT: Is that what you would like to do today?

THE DEFENDANT: Yes, ma'am.

THE COURT: And you would like to stop this trial at this point and  
just --

1 THE DEFENDANT: Yes, ma'am.  
2 THE COURT: -- plead guilty?  
3 ....  
4 THE COURT: Sir, have you received a copy of the Amended  
5 Information in your case?  
6 THE DEFENDANT: Is that what it was?  
7 MR. MATSUDA: Yeah.  
8 THE DEFENDANT: Yes. Yes, I did.  
9 THE COURT: So do you know the charges that you're facing in  
10 this case?  
11 THE DEFENDANT: Yes, ma'am.  
12 THE COURT: And as to all of those charges, how do you plead?  
13 THE DEFENDANT: Guilty.  
14 THE COURT: And sir, are you making this plea freely and  
15 voluntarily?  
16 THE DEFENDANT: Yes.  
17 THE COURT: Has anyone forced you or threatened you or  
18 anyone closely associated with you to get you to enter this plea?  
19 THE DEFENDANT: In no way.  
20 THE COURT: Has anyone made you any promises to get you to  
21 enter this plea?  
22 THE DEFENDANT: No way.  
23 THE COURT: Okay. Sir, do you understand that by pleading guilty,  
24 you're giving up certain constitutional rights?  
25 THE DEFENDANT: Yes.  
26 THE COURT: Sir, do you understand by pleading guilty, you're  
27 giving up certain appellate rights?  
28 THE DEFENDANT: Yes.  
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1 THE COURT: I will also be the person making the decision about  
2 whether or not these counts will run concurrent or consecutive.

3 THE DEFENDANT: Yes.

4 Recorder's Transcript of Jury Trial – Day 3 dated September 28, 2017, pages 2-7.

5 Petitioner also disregards the fact that a defendant can show understanding by  
6 indicating that he committed the crimes charged, which is exactly what Petitioner did when  
7 entering his plea. Petitioner heard the Court recite all of the elements for each charge and  
8 proceeded to admit that he committed each of the crimes charged:

9 **THE COURT: Sir in regards to count 1, are you pleading guilty**  
10 **to because in truth and in fact on or between October 16th of 2015**  
11 **and August 23rd of 2016, here in Clark County, Nevada, you did**  
12 **willfully, unlawfully and feloniously induce, cause and/or recruit**  
13 **and/or obtain and/or maintain IP, a child under 18 years of age to**  
14 **engage in prostitution and/or to enter in any place within the state**  
15 **in which prostitution is practiced, encouraged or allowed for the**  
16 **purpose of sexual conduct or prostitution? Did you do that?**

17 THE DEFENDANT: Yes.

18 THE COURT: In regards to count 2, did you on or -- is it true and in  
19 fact on or between October 16th of 2015 and August 6th of 2016, here  
20 in Clark County, you willfully and up lawfully solicited IP, a minor,  
21 by word, gesture or any other means to engage in sexual conduct, to  
22 wit: By touching and/or rubbing your penis with her hands and her  
23 bare genital opening for a fee in the amount of \$200? Did you do that?

24 THE DEFENDANT: Yes.

25 THE COURT: Sir, in regards to count 3, here in Clark County, you  
26 did on or between October 15th, 2015 and August 6th of 2016  
27 willfully and unlawfully solicit IP, a minor, by word, gesture or any  
28 other means to engage in sexual conduct, that being touching and/or  
rubbing your penis for a fee of \$100?

THE DEFENDANT: Yes.

THE COURT: Are you pleading guilty to count 4 because in truth and  
in fact on or about October 15th of 2015 and between August 6th of  
2016, here in Clark County, you did willfully and unlawfully solicit  
IP, a minor, by word, gesture or any other means to engage in sexual  
conduct, that being touching and/or rubbing your penis for a fee of  
\$100?

THE DEFENDANT: Yes.

THE COURT: And in regards to count 5, are you pleading guilty  
because in truth and in fact on or between October 15th of 2015 and  
August 6th of 2016, you did willfully and unlawfully solicit IP, a



1 minor, in Clark County by word, gesture or any other means to engage  
2 in sexual conduct, that being touching and/or rubbing of your penis  
3 for a fee of \$100?

4 THE DEFENDANT: Yes.

5 THE COURT: And are you pleading guilty because -- to count 6  
6 because in truth and in fact, on or between August 22nd of 2016 and  
7 August 23rd of 2016, here in Clark County, you did willfully,  
8 unlawfully and feloniously attempt to induce, cause or recruit Tiff, a  
9 person you believed to be a child under the 18 of age [sic] while you  
10 having the specific intent that Tiff engage in prostitution?

11 THE DEFENDANT: Yes.

12 THE COURT: And in regards to count 7, are you pleading guilty  
13 because in truth and in fact on or between August 22nd of 2016 and  
14 August 23rd of 2016, here in Clark County, you did willfully,  
15 unlawfully and feloniously induce O. Deeds to unlawfully become a  
16 prostitute and/or to continue to engage in prostitution?

17 THE DEFENDANT: Yes.

18 THE COURT: Sir, do you have any questions you would like to  
19 ask me or your attorney before I accept these pleas?

20 THE DEFENDANT: No.

21 Recorder's Transcript of Jury Trial – Day 3 dated September 28, 2017, pages 7-9.

22 By admitting that he committed the crimes charged, Petitioner indicated that he  
23 understood the nature of the charges against him. Therefore, whether Petitioner was informed  
24 of the elements of these crimes is immaterial as to whether he knowingly and voluntarily  
25 entered his plea.

26 Further, Petitioner's claim that he was not advised of his rights until after accepting his  
27 guilty plea is incorrect. Before entering his guilty plea, the Court advised Petitioner of his  
28 many constitutional rights. Then, after accepting his plea, the Court advised Petitioner of  
several additional rights before finding that his plea was freely and voluntarily made.  
Petitioner cites to no authority or case law that says this method of canvassing is incorrect.  
Petitioner affirmed that he understood the rights he was forfeiting by pleading guilty and was  
entering his plea voluntarily:

THE COURT: And sir, do you understand by entering this plea, you  
are waiving your Constitutional privilege against self-incrimination,  
including the right to refuse to testify at trial? You're waiving the right  
to testify at trial if you plead guilty?

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THE DEFENDANT: Isn't -- isn't this my trial?

MR. MATSUDA: Yes. She's just asking you, do you understand that you're waiving your right because of your decision right now.

THE COURT: If you plead guilty, there's not going to be a trial.

THE DEFENDANT: Oh, yeah, that's fine.

THE COURT: So you won't be allowed to testify at trial; do you understand that?

THE DEFENDANT: Okay, the opposite, yes, yes.

THE COURT: Okay. And do you understand that at that trial the State would not have been allowed to comment on your refusal to testify? If you go -- went to trial, I would not allow the State to say anything if you chose not to testify.

MR. MATSUDA: In order to exercise your 5th amendment, they can't comment saying well, he didn't say anything.

THE DEFENDANT: Okay.

MR. MATSUDA: Do you understand?

THE DEFENDANT: Yes, I do.

THE COURT: Do you understand you're waiving your right to a trial that's free of excessive pretrial publicity prejudicial to your defense?

THE DEFENDANT: You went fast on me, I'm sorry.

**THE COURT: Do you understand if you enter this plea, you are waiving your constitutional rights to a trial by an impartial jury that's free of excessive pretrial publicity prejudicial to your defense?**

THE DEFENDANT: Yes.

**THE COURT: Do you understand you would be waiving your constitutional right to confront and cross-examine any witnesses that would testify against you?**

THE DEFENDANT: Yes.

**THE COURT: You would be waiving your constitutional right to subpoena witnesses to testify on your own behalf.**

THE DEFENDANT: Yes.

**THE COURT: You would be waiving your constitutional right to testify in your own defense?**

THE DEFENDANT: Yes.

1           **THE COURT:** You would be waiving your right to appeal this  
2 conviction with the assistance of an attorney, either appointed or  
3 retained, unless specifically reserved in writing and agreed upon?  
4           **THE DEFENDANT:** Oh, yes.  
5           **THE COURT:** You're waiving your right to a direct appeal of any  
6 challenge based upon -- hold on -- you're waiving your right to a  
7 direct appeal of this conviction, including any challenges based  
8 upon reasonable constitutional jurisdictional or other grounds  
9 that challenge the legality of these proceedings. Do you  
10 understand that? You're waiving your right to an appeal in this  
11 case.  
12           **THE DEFENDANT:** Yes.  
13           . . . .  
14           **THE COURT:** And is this plea voluntary?  
15           **THE DEFENDANT:** Yes.  
16           **THE COURT:** Is there anything else you need to add, State?  
17           **MR. MARTINEZ:** Only that this is without negotiations with the  
18 State.  
19           **THE COURT:** Okay. And just for the record, sir, do you understand  
20 that this plea is without any negotiation from State, so at sentencing  
21 the State will have the full right to argue for any legal sentence on  
22 each of these charges?  
23           **THE DEFENDANT:** Yes.  
24           **THE COURT:** And the State will have the full right to argue whether  
25 or not these charges run consecutive or concurrent?  
26           **THE DEFENDANT:** Yes.  
27           **THE COURT:** Do you have any questions you would like to ask  
28 myself or your attorney before I accept this plea?  
              **THE DEFENDANT:** No. I'd just like to make a statement when I  
              have a chance.  
              **THE COURT:** Okay, you can make a statement at sentencing.  
              **THE DEFENDANT:** Oh, okay, okay.  
              **THE COURT:** Anything else?  
              **THE DEFENDANT:** No.  
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1 THE COURT: Sir, the Court finds that this plea is free and voluntarily  
2 made, that you understand the nature of the offense and the  
3 consequences of your actions, and based upon that, the State will -- I  
mean, I'm sorry, the Court will refer this to the Division of Parole and  
Probation, set it over for sentencing on?

4 THE CLERK: November 8th at 8:30.

5 Recorder's Transcript of Jury Trial – Day 3 dated September 28, 2017, pages 11-15.

6 Thus, the record clearly demonstrates that Petitioner's plea was knowingly and  
7 voluntarily entered, that he admitted guilt to the charges to which he pled guilty, and that he  
8 understood the elements of the charges and the rights he was waiving by entering his plea.  
9 Therefore, this claim is denied.

10 **1. Petitioner was not factually innocent**

11 Actual innocence means factual innocence not mere legal insufficiency. Bousley v.  
12 United States, 523 U.S. 614, 623, 118 S.Ct. 1604, 1611 (1998); Sawyer v. Whitley, 505 U.S.  
13 333, 338-39, 112 S.Ct. 2514, 2518-19 (1992). To establish actual innocence of a crime, a  
14 petitioner "must show that it is more likely than not that no reasonable juror would have  
15 convicted him absent a constitutional violation." Calderon v. Thompson, 523 U.S. 538, 560,  
16 118 S. Ct. 1489, 1503 (1998) (emphasis added) (quoting Schlup v. Delo, 513 U.S. 298, 316,  
17 115 S. Ct. 851, 861 (1995)). Actual innocence is a stringent standard designed to be applied  
18 only in the most extraordinary situations. Pellegrini, 117 Nev. at 876, 34 P.3d at 530.

19 "Without any new evidence of innocence, even the existence of a concededly  
20 meritorious constitutional violation is not itself sufficient to establish a miscarriage of justice  
21 that would allow a habeas court to reach the merits of the barred claim." Schlup, 513 U.S. at  
22 316, 115 S. Ct. at 861. The Eighth Circuit Court of Appeals has "rejected free-standing claims  
23 of actual innocence as a basis for habeas review stating, '[c]laims of actual innocence based  
24 on newly discovered evidence have never been held to state a ground for federal habeas relief  
25 absent an independent constitutional violation occurring in the underlying state criminal  
26 proceeding.'" Meadows v. Delo, 99 F.3d 280, 283 (8<sup>th</sup> Cir. 1996) (citing Herrera v. Collins,  
27 506 U.S. 390, 400, 113 S. Ct. 853, 860 (1993)). Furthermore, the newly discovered evidence  
28 suggesting the defendant's innocence must be "so strong that a court cannot have confidence

1 in the outcome of the trial.” Schlup, 513 U.S. at 315, 115 S. Ct. at 861. Once a defendant has  
2 made a showing of actual innocence, he may then use the claim as a “gateway” to present his  
3 constitutional challenges to the court and require the court to decide them on the merits. Id.

4 In this case, Petitioner cannot establish that he is actually innocent because he is not  
5 alleging newly discovered facts. Actual innocence means factual innocence not mere legal  
6 insufficiency. Petitioner claims that he is not guilty of sex trafficking, but “facilitating” sex  
7 trafficking. Petitioner does not contest the other six (6) charges to which he plead guilty.  
8 Petition at page 20.

9 Petitioner was not charged with facilitating sex trafficking. Petitioner was charged with  
10 Sex Trafficking of a Child under 18 Years of Age (Category A Felony – NRS 201.300.2a1-  
11 NOC 58004) because he did willfully, unlawfully, and feloniously induce, cause, and/or  
12 recruit and/or obtain and/or maintain, IP, a child under eighteen (18) years of age, to engage  
13 in prostitution and/or to enter any place within this State in which prostitution is practiced,  
14 encouraged or allowed for the purpose of sexual conduct or prostitution. Petitioner does not  
15 get to choose what crimes to which he pleads guilty.

16 In Righetti, the Defendant was charged with murder under three theories, and plead  
17 guilty to murder, but only to two of the three theories alleged. Righetti v. Eighth Judicial Dist.  
18 Court, 388 P. 3d 643, 644 (2017). Defense did not notify the State of Defendant’s position,  
19 and the State was not aware that the Defendant was only pleading guilty to certain theories.  
20 Id. The Court initially accepted the plea, but once the miscommunication surfaced the court  
21 revoked its acceptance and set the matter for trial. Id. at 645. In response, Defendant sought a  
22 Writ of Prohibition or Mandamus to enforce his plea. Id. The Nevada Supreme Court held that  
23 the district court properly revoked its acceptance of Defendant’s guilty plea. Id. at 649. The  
24 Court reasoned that the State has an almost exclusive right to decide how to charge a criminal  
25 defendant, and while a criminal defendant has a statutory right to tender a guilty plea, he does  
26 not have a right to plead guilty a la carte to avoid the State’s charging decisions. Id. at 647  
27 citing Parsons v. Fifth Judicial Dist. Court, 110 Nev. 1239, 1244, 885 P.2d 1316, 1320 (1994),  
28 overruled on other grounds by Parsons v. State, 116 Nev. 928, 936, 10 P.3d 836. 841 (2000).

1 Like Righetti, Petitioner had the choice to either go to trial or plead guilty to the  
2 negotiated charges as alleged. Furthermore, if Petitioner wanted to be charged with facilitating  
3 sex trafficking, he could have offered it as an instruction at trial, yet he chose to plead guilty.  
4 “A guilty plea is more than a confession that the accused did various acts. It is an admission  
5 that he committed the crimes charged against him.” United States v. Broce, 488 U.S. 563, 570,  
6 109 S. CT. 757, 102 L. Ed. 2d. 927 (1989). A defendant who makes a counseled and voluntary  
7 guilty plea admits both the acts described in the indictment and the legal consequences of those  
8 acts. Righetti, 388 P. 3d at 648 quoting United States v. Allen, 24 F.3d 1180, 1183 (10th Cir.  
9 1994). Furthermore, Petitioner admitted to committing the act of sex trafficking during his  
10 plea canvass:

11 THE COURT: Sir in regards to count 1, are you pleading guilty  
12 to because in truth and in fact on or between October 16th of 2015  
13 and August 23rd of 2016, here in Clark County, Nevada, you did  
14 willfully, unlawfully and feloniously induce, cause and/or recruit  
15 and/or obtain and/or maintain IP, a child under 18 years of age to  
engage in prostitution and/or to enter in any place within the state in  
which prostitution is practiced, encouraged or allowed for the purpose  
of sexual conduct or prostitution? Did you do that?

16 DEFENDANT: Yes.

17 Therefore, it was proper to charge Petitioner with Sex Trafficking of a Child under 18 Years  
18 of Age and Petitioner is not actually innocent of this offense. This claim is without merit and  
19 is denied.

### 20 III. PETITIONER FAILS TO DEMONSTRATE HE IS ENTITLED TO 21 APPOINTMENT OF COUNSEL

22 Under the United States Constitution, the Sixth Amendment provides no right to  
23 counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S.Ct.  
24 2546, 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the  
25 Nevada Supreme Court similarly observed, “[t]he Nevada Constitution...does not guarantee a  
26 right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right  
27 to counsel provision as being coextensive with the Sixth Amendment to the United States  
28 Constitution.” McKague specifically held that, with the exception of NRS 34.820(1)(a)

1 (entitling appointed counsel when petitioner is under a sentence of death), one does not have  
2 “any constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at  
3 164, 912 P.2d at 258.

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

7 NRS 34.750 reads:

8 A petition may allege that the Defendant is unable to pay the costs of  
9 the proceedings or employ counsel. If the court is satisfied that the  
10 allegation of indigency is true and the petition is not dismissed  
11 summarily, the court may appoint counsel at the time the court orders  
12 the filing of an answer and a return. In making its determination, the  
13 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 More recently, the Nevada Supreme Court examined whether a district court  
18 appropriately denied a defendant’s request for appointment of counsel based upon the factors  
19 listed in NRS 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In Renteria-  
20 Novoa, the petitioner had been serving a prison term of eighty-five (85) years to life. Id. at 75,  
21 391 P.3d at 760. After his judgment of conviction was affirmed on direct appeal, the petitioner  
22 filed a pro se habeas corpus petition and requested counsel be appointed. Id. The district court  
23 ultimately denied both the petition and the request for appointment of counsel. Id. In reviewing  
24 the district court’s decision, the Renteria-Novoa Court examined the NRS 34.750 factors and  
25 concluded the district court’s decision should be reversed and remanded. Id. The Court  
26 explained the petitioner was indigent, his petition could not be summarily dismissed, and he  
27 had, in fact, satisfied the statutory factors. Id. at 76, 391 P.3d 760-61. As for the first factor,  
28 the Court concluded that because petitioner represented he had issues with understanding the  
English language—which was corroborated by his use of an interpreter at his trial—that was  
enough to indicate the petitioner could not comprehend the proceedings. Id. Moreover, the

1 petitioner had demonstrated that the consequences he faced—a minimum eighty-five (85) year  
2 sentence—were severe and his petition may have been the only vehicle for which he could  
3 raise his claims. Id. at 76-77, 391 P.3d at 761-62. Finally, the petitioner’s ineffective assistance  
4 of counsel claims may have required additional discovery and investigation beyond the record.  
5 Id.

6 A review of Petitioner’s instant Petition, and his request, demonstrate that Petitioner  
7 does not meet the NRS 34.750 factors. First, Petitioner includes four (4) separate Grounds,  
8 each of which are bare and naked allegations and lacking in specificity. Therefore, because  
9 the issues raised by Petitioner are not suitable for review, the instant Petition is summarily  
10 denied, and does not entitle Petitioner to discretionary appointment of counsel. NRS 34.750(a);  
11 Renteria-Novoa, 133 Nev. at 76, 391 P.3d at 760-61.

12 Second, Petitioner has formulated four (4) separate claims for relief. Petitioner has not,  
13 and does not now, argue that he has any difficulties with the English language. Therefore, it is  
14 clear that Petitioner, while unhappy with the results of his underlying case, comprehends the  
15 proceedings, thus not necessitating the discretionary appointment of counsel. NRS 34.750(b);  
16 Renteria-Novoa, 133 Nev. at 76, 391 P.3d at 760-61.

17 Finally, Petitioner has not alleged what specific further discovery is necessary in this  
18 matter. Instead, Petitioner’s request for counsel seems to be an assertion that the prison law  
19 library is insufficient, and/or that counsel would be helpful. However, neither of these  
20 assertions are statutory factors to be considered regarding the discretionary appointment of  
21 counsel. See NRS 34.750; see also Renteria-Novoa, 133 Nev. 75, 391 P.3d 760. Therefore,  
22 because Petitioner has not alleged what further discovery is necessary, and because his  
23 pleadings have shown his ability to formulate his claims, Petitioner does not show that counsel  
24 is necessary.

25 Because the statutory factors and the Renteria-Novoa analysis weigh against the  
26 discretionary appointment of counsel, Petitioner’s Motion for the Appointment of Counsel is  
27 denied.

28 //



1           **IV.     PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

2           NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

3                     1. The judge or justice, upon review of the return, answer and  
4                     all supporting documents which are filed, shall determine  
5                     whether an evidentiary hearing is required. A petitioner must not  
6                     be discharged or committed to the custody of a person other than  
7                     the respondent *unless an evidentiary hearing is held.*

8                     2. If the judge or justice determines that the petitioner is not  
9                     entitled to relief and an evidentiary hearing is not required, he  
10                    shall dismiss the petition without a hearing.

11                    3. If the judge or justice determines that an evidentiary hearing  
12                    is required, he shall grant the writ and shall set a date for the  
13                    hearing.

14           The Nevada Supreme Court has held that if a petition can be resolved without  
15           expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.  
16           1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A  
17           defendant is entitled to an evidentiary hearing if his petition is supported by specific factual  
18           allegations, which, if true, would entitle him to relief unless the factual allegations are repelled  
19           by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100  
20           Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking post-conviction  
21           relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the  
22           record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it  
23           existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

24           It is improper to hold an evidentiary hearing simply to make a complete record. See  
25           State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The  
26           district court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted  
27           ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary  
28           hearing.”). Further, the United States Supreme Court has held that an evidentiary hearing is  
not required simply because counsel’s actions are challenged as being unreasonable strategic  
decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge  
post hoc rationalization for counsel’s decision making that contradicts the available evidence  
of counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis

1 for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain  
2 issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (*citing*  
3 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the  
4 *objective* reasonableness of counsel’s performance, not counsel’s *subjective* state of mind. 466  
5 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

6 An evidentiary hearing is not warranted in this case. An expansion of the record is  
7 unnecessary because Petitioner has failed to assert any meritorious claims, counsel’s testimony  
8 would not aid Petitioner, and the Petition can be disposed of with the existing record. Marshall,  
9 110 Nev. at 1331, 885 P.2d at 605; Mann, 118 Nev. at 356, 46 P.3d at 1231. Petitioner does  
10 not explain why expansion of the record is necessary in this case, much less make any specific  
11 assertion of what additional information would need to be introduced at an evidentiary hearing  
12 to allow resolution of Petitioner’s claims. Each of Petitioner’s claims may be resolved without  
13 expanding the record. Therefore, Petitioner’s request for an evidentiary hearing is denied.

14 ORDER

15 THEREFORE, IT IS HEREBY ORDERED that this Petition for Writ of Habeas  
16 Corpus (Post-Conviction) shall be, and is, DENIED.  
17



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

F28 046 6948 36D9  
Tierra Jones  
District Court Judge

22 BY   
23 JALEEN PANDUKHT  
24 Chief Deputy District Attorney  
Nevada Bar #05734

25  
26  
27  
28 hje/SVU

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 David Coil, Plaintiff(s)

CASE NO: A-21-839320-W

7 vs.

DEPT. NO. Department 10

8 Calvin Johnson, 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  
case as listed below:

14 Service Date: 12/7/2021

15 Taleen Pandukht

taleen.pandukht@clarkcountyda.com

**ORDR**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**STACEY KOLLINS**  
Chief Deputy District Attorney  
Nevada Bar #005391  
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-

**DAVID ADNREW COIL,**  
**#8323388**

Defendant.

CASE NO: **C-16-318335-1**

DEPT NO: **X**

**ORDER DENYING DEFENDANT'S MOTION FOR ENLARGEMENT OF**  
**TIME DUE TO COPIES NOT RECEIVED BACK FROM HDSP**

DATE OF HEARING: **DECEMBER 6, 2021**  
TIME OF HEARING: **8:30 A.M.**

THIS MATTER having presented before the above entitled Court on the 6th day of  
DECEMBER, 2021; Defendant not present, IN PROPER PERSON; Plaintiff represented by  
STEVEN B. WOLFSON, District Attorney, through LAURA GOODMAN, Deputy District  
Attorney; and without argument, based on the pleadings and good cause appearing,

//

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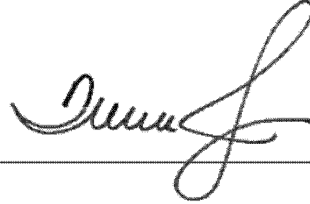
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\\CLARKCOUNTYDA.NET\CRM\CASE2\2016\410\02\201641002C-ORDR-(DAVID ANDREW COIL 12 06 2021)-001.DOCX

Statistically closed: N. USJR - CR - Other Manner of Disposition (USCO)

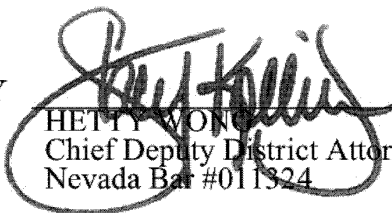
1           **IT IS HEREBY ORDERED** that DEFENDANT'S MOTION FOR  
2 ENLARGEMENT OF TIME DUE TO COPIES NOT RECEIVED BACK FROM HDSP  
3 shall be and is DENIED as MOOT.

Dated this 30th day of December, 2021

4  
5  
6 

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

7DB 427 9BF7 A17A  
Tierra Jones  
District Court Judge

9  
10 BY  for  
11 HETTY WONG  
12 Chief Deputy District Attorney  
Nevada Bar #011324

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1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5  
6 State of Nevada

CASE NO: C-16-318335-1

7 vs

DEPT. NO. Department 10

8 DAVID COIL  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 12/30/2021

15 Victoria Boyd

boydv@clarkcountycourts.us

16 State Nevada

motions@clarkcountyda.com

17 Kelsey Bernstein

kbernstein.esq@gmail.com

18 Maritza Montes

maritza@defendingnevada.com  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*Steven D. Grierson*

Jan 3 2022

APP A-21-839320-W

1 David Coil

2 Po Box 650 HDSR

3 Indian Springs

4 NV 89070

5

6 Clark County District Court

7

8 David Coil

9 Petitioner

10 vs

11 State of Nevada

12 Calvin Johnson

13 Respondent

14

Case A-21-839320-W

C-16-318335-1

Dept X

Appeal

15 Comes now Petitioner in prose David Coil responding to this Court  
16 decision. Due Process would require this District Court to respond to  
17 Petitioners Amended Writ of Habeas Corpus received Dec 4, 2022  
18 as Registered mail indicates. Petitioner fully intends to immediately  
19 commence Appeal process in Nevada Supreme Court as instructed in  
20 Courts filed decision. Nevada Attorney General, High Desert State  
21 Prison Warden, and Clark County District Attorney office also have copies  
22 as required

23 Dated this 3 day of January 2022

24 *David Coil*

25 David Coil 1189948

RECEIVED

26 JAN 10 2022

CLERK OF THE COURT

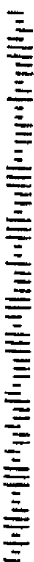
Col D 118448  
P.O. Box 650  
Indian Springs NV  
89070

Clark County Clerk of Courts  
200 Lewis Avenue  
Las Vegas Nevada  
89155

LAS VEGAS NV 890  
6 JAN 2022 PM 5 L



89101-630000







1 ASTA

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10 STATE OF NEVADA,

11 Plaintiff(s),

12 vs.

13 DAVID ANDREW COIL,

14 Defendant(s),

Case No: C-16-318335-1

Dept No: X

16

17

## CASE APPEAL STATEMENT

18

1. Appellant(s): David Coil

19

2. Judge: Tierra Jones

20

3. Appellant(s): David Coil

21

Counsel:

22

David Coil #1189948

23

P.O. Box 650

24

Indian Springs, NV 89070

25

4. Respondent: The State of Nevada

26

Counsel:

27

Steven B. Wolfson, District Attorney

28

200 Lewis Ave.

Las Vegas, NV 89101

(702) 671-2700

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: Yes

7. Appellant Represented by Appointed Counsel On Appeal: Yes

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

9. Date Commenced in District Court: September 27, 2016

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

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

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 74949

12. Child Custody or Visitation: N/A

Dated This 14 day of January 2022.

Steven D. Grierson, Clerk of the Court

/s/ Amanda Hampton

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

cc: David Coil

1 IMP  
2 David Coil 1189948  
3 P.O. Box 650  
4 Indian Springs NV 89010

FILED  
JAN 26 2022  
*Ally L. Blum*  
CLERK OF COURT

5  
6 Clark County District Court

7  
8 David Coil  
9 Petitioner

Case No. A-21-839320-W

C-16 3183351

10 vs.

Dept. X

11 State of Nevada

12 Calvin Johnson

IMPROMPTU

13 Respondant

14  
15 Comes David Coil Inmate in High Desert State Prison  
16 to inform this District Court, Petitioner received on Dec 13/21  
17 both Originals and copies of Exhibits intended to accompany  
18 First Amended Petition for Writ of Habeas Corpus and is dated  
19 received Dec 6/21. December 17/21 These Exhibits had the  
20 corrections noted by Clerk and were ready to return. However  
21 the Mail Situation at HDSPP is not amenable for parcels  
22 to be mailed. Petitioner has verbally addressed every available  
23 officer for assistance. It appears only one special officer can  
24 handle parcels to be mailed. That officer is elusive. It remains  
25 ready

26 Dated this 16 day of December 2021

David Coil 1189948

CLERK OF THE COURT

DEC 27 2021

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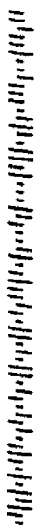
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P.O. 650  
Indian Springs NV  
89070

LAS VEGAS NV 890  
22 DEC 2021 PM 5 L



Clark County Clerk of Court  
200 Lewis Ave  
Las Vegas NV  
89155

89101-630000



1 MOT

Jan 25 2022

2 David Coil 1189948

3 Po Box 650

4 Indian Springs NV

5 89010

**FILED**  
**FEB 03 2022**

*[Signature]*  
CLERK OF COURT

*PP*  
*2A*

7 CLARK COUNTY DISTRICT COURT

8

9 David Coil

Case No C-16 318335-1

**February 28, 2022**  
**1:30 PM**

10 Petitioner

Dept. X

11 v

12 STATE of Nevada

MOTION TO COMPELL

13 Respondent

14

15 COMES now David Coil, Petitioner of First Amended Writ of

16 Habeas Corpus, to request of This Honored Court to Compel this District

17 Court Clerk, to release and forward to Petitioner the filed and stamped

18 Exhibits portion of this Writ of Habeas Corpus. Brass slip 2518385 postage

19 for First Amended Petition 12/11/21. Registered mail Brass slip 2518390

20 postage for Exhibit 1 through 20 Registered mail. Brass slip 2518391

21 for postage Exhibits and corrections 12/14/21. Petitioner has stamped

22 filed copy of First Amended Petition of Writ of Habeas Corpus, but does Not

23 have filed copy of Exhibits as they have not been sent, This District

24 Court Clerk non action is now an impediment to filing Appeal

25 with Nevada Supreme Court,

26 ~~RECEIVED~~ed this 25th day January 2022

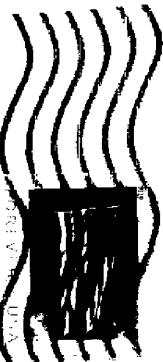
27 **JAN 31 2022** *David Coil*

CLERK OF THE COURT *David Coil 1189948*

COUL David 1184178  
P.O. Box 650  
Indian Springs NV  
89028  
12522

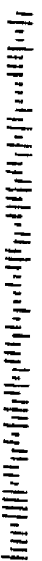
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JAN 31 2022  
CLERK OF THE COURT

LAS VEGAS NV 890  
26 JAN 2022 PM 5 L



Clark County District Clerk of Court  
200 Lewis Avenue  
Las Vegas NV  
89155

89101-630000



# DOCUMENTARY EXHIBITS

CASE NO. C318335

State of Nevada vs David Coil  
(Plaintiff) (Defendant)

Counsel for the Pltf: Samuel Martinez, Chris Hammer

Counsel for the Deft: Jess Matsuda

PEREMPTORY CHALLENGES:

PLTF

1. 255
2. 305
3. 266
4. 407
5. 280
6. 299
7. 287
8. 346

DEFT

1. 308
2. 391
3. 257
4. 422
5. 304
6. 316
7. 341
8. 271

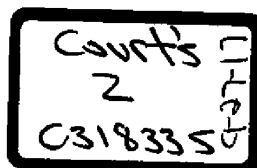
ALTERNATES:

PLTF

1. 376
2. \_\_\_\_\_

DEFT

1. 379
2. \_\_\_\_\_







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DOCUMENT,  
NUMBERED PAGE(S)  
610 - 635  
WILL FOLLOW VIA  
U.S. MAIL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**September 29, 2016**

C-16-318335-1      State of Nevada  
                                 vs  
                                 DAVID COIL

**September 29, 2016      10:00 AM      Initial Arraignment**

**HEARD BY:** De La Garza, Melisa

**COURTROOM:** RJC Lower Level Arraignment

**COURT CLERK:** Kristen Brown

**RECORDER:** Kiara Schmidt

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	COIL, DAVID ANDREW	Defendant
	Matsuda, Jess	Attorney
	Mishler, Karen	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- DEFT. COIL ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial. COURT ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs; if the Preliminary Hearing Transcript has not been filed as of today, Counsel has 21 days from the filing of the Transcript.

**CUSTODY**

11/21/16 8:30 AM CALENDAR CALL (DEPT. 10)

11/28/16 1:00 PM JURY TRIAL (DEPT. 10)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**November 28, 2016**

---

C-16-318335-1      State of Nevada  
                                 vs  
                                 DAVID COIL

---

**November 28, 2016      8:30 AM      Calendar Call**

**HEARD BY:** Senior, Judge      **COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Teri Berkshire

**RECORDER:** Victoria Boyd

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	COIL, DAVID ANDREW	Defendant
	Martinez, Samuel	Attorney
	Matsuda, Jess	Attorney

**JOURNAL ENTRIES**

- Mr. Matsuda requested to pass the calendar call as there is some outstanding discovery. Further, counsel requested the week of 12-05-16 or 12-12-16. Court directed counsel to get discovery by next week. COURT ORDERED, Calendar Call CONTINUED to the date given. Trial VACATED.

CUSTODY

11/30/16 8:30 A.M. CONTINUED CALENDAR CALL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**November 30, 2016**

---

C-16-318335-1      State of Nevada  
                                 vs  
                                 DAVID COIL

---

**November 30, 2016      8:30 AM      Calendar Call**

**HEARD BY:** Bixler, James

**COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Teri Berkshire

**RECORDER:** Victoria Boyd

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	COIL, DAVID ANDREW	Defendant
	Hamner, Christopher	Attorney
	Martinez, Samuel	Attorney
	Matsuda, Jess	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Mr. Martinez advised the State is ready. However, deft. is wanting to maintain his invoked status. Mr. Matsuda advised he just got four interviews and some discs to review. Further counsel advised they talked about a possible 12-12-16 start date. Upon Court's inquiry, counsel will need 4-5 days. Statements by deft. Upon Court's inquiry as to any offers made, counsel advised there was an offer made. Matter trailed. Later matter recalled. Mr. Matsuda advised he spoke with deft. and deft. will waive his right to a speedy trial. Mr. Hamner advised as to the discovery obtained and that the State will serve Marcum Notice to Indict deft. Further counsel recited the offer that it will be revoked after it goes to the Grand Jury. Colloquy regarding the discovery. COURT ORDERED, Trial date SET on the date given. Court directed counsel to put the case back on calendar if deft. decides to accept the offer.

**C-16-318335-1**

CUSTODY

02/13/17 8:30 A.M. CALENDAR CALL

02/21/17 1:00 P.M. JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 18, 2017**

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C-16-318335-1      State of Nevada  
                                 vs  
                                 DAVID COIL

---

**January 18, 2017      8:30 AM      Motion**

**HEARD BY:** Bonaventure, Joseph T.

**COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Teri Berkshire

**RECORDER:** Victoria Boyd

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	COIL, DAVID ANDREW	Defendant
	Matsuda, Jess	Attorney
	Merback, William J.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Following conference at the bench, COURT ORDERED, matter to competency court for further proceedings on the date given. Trial date VACATED.

CUSTODY

02/17/17    9:00 A.M.    FURTHER PROCEEDINGS: COMPETENCY (DEPT 9)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**February 17, 2017**

C-16-318335-1      State of Nevada  
                                 vs  
                                 DAVID COIL

**February 17, 2017      9:00 AM      Further Proceedings:  
Competency**

**HEARD BY:** Barker, David

**COURTROOM:** RJC Courtroom 10C

**COURT CLERK:** Athena Trujillo

**RECORDER:** Yvette G. Sison

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Anderlik, Elizabeth J.	Attorney
	COIL, DAVID ANDREW	Defendant
	Pace, Barter G	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Also present: Christina Greene of the Specialty Courts.

There being no challenge by Defense Counsel, COURT FINDS Defendant COMPETENT pursuant to the Dusky Standard as Defendant is capable of understanding the nature of the charges against him / her and is able to assist counsel in his / her defense and ORDERED, pursuant to 178.420, matter TRANSFERRED back to the originating court for further proceedings. CASE CLOSED.  
CUSTODY

2/22/17 8:30 AM FURTHER PROCEEDINGS: RETURN FROM COMPETENCY COURT - DC 10



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**February 22, 2017**

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C-16-318335-1      State of Nevada  
                                 vs  
                                 DAVID COIL

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**February 22, 2017      8:30 AM      Further Proceedings**

**HEARD BY:** Barker, David

**COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Teri Berkshire

**RECORDER:** Patti Slattery

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	COIL, DAVID ANDREW	Defendant
	Matsuda, Jess	Attorney
	State of Nevada	Plaintiff
	Wong, Hetty O.	Attorney

**JOURNAL ENTRIES**

- Court noted findings of competency made. Counsel requested trial date set. COURT ORDERED, trial date set on the date given.

**CUSTODY**

07/24/17    8:30 A.M.    CALENDAR CALL

07/31/17    1:00 P.M.    JURY TRIAL

**July 12, 2017**

643

counsel had a file review with Mr. Hamner. Further statements by deft. regarding video visits at the jail. Following statements by deft. and counsel, Court FINDS there's no cause to remove counsel and ORDERED, motion DENIED. COURT ORDERED, motion to dismiss, DENIED as MOOT as it is a fugitive document. COURT FURTHER ORDERED, Calendar Call date, STANDS. Mr. Matsuda to visit deft. at the jail.

CUSTODY

**July 24, 2017**

645

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

### Felony/Gross Misdemeanor

# COURT MINUTES

July 31, 2017

C-16-318335-1                      State of Nevada  
vs  
DAVID COIL

**July 31, 2017                      8:30 AM                      At Request of Court**

**HEARD BY:** Jones, Tierra                      **COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Teri Berkshire

**RECORDER:** Victoria Boyd

**REPORTER:**

## PARTIES

<b>PRESENT:</b>	COIL, DAVID ANDREW	Defendant
	Martinez, Samuel	Attorney
	Matsuda, Jess	Attorney

## JOURNAL ENTRIES

- Court noted this case was supposed to begin a Jury trial this morning, however, it was brought to the Court's attention last week, that this trial was going to be continued as there was some discovery that came to light during the pretrials. Upon Court's inquiry, deft. understands. COURT ORDERED, Motion to Continue trial GRANTED. COURT FURTHER ORDERED, trial date VACATED and RE-SET to the date given.

## CUSTODY

09/18/17 8:30 A.M. CALENDAR CALL

09/25/17 10:30 A.M. JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**September 18, 2017**

C-16-318335-1      State of Nevada  
                                 vs  
                                 DAVID COIL

**September 18, 2017      8:30 AM      Calendar Call**

**HEARD BY:** Jones, Tierra

**COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Teri Berkshire

**RECORDER:** Victoria Boyd

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	COIL, DAVID ANDREW	Defendant
	Hamner, Christopher	Attorney
	Martinez, Samuel	Attorney
	Matsuda, Jess	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Mr. Martinez advised the State has extended a new offer and they're waiting to hear if that's even a possibility. Mr. Matsuda advised he's currently discussing this with deft., however, counsel for the State is in trial. Matter trailed for Mr. Matsuda to speak with deft. Later matter recalled. Conference at the bench. Statements by deft., advising he has a motion to dismiss counsel, and represent himself. Counsel advised there was a previous Faretta hearing and deft. failed that. COURT ORDERED, trial starts Tuesday. COURT FURTHER ORDERED, Faretta hearing set on the date given.

**CUSTODY**

09/26/17    8:30 A.M.    HEARING: FARETTA

09/26/17    1:30 P.M.    JURY TRIAL

PRINT DATE:    02/03/2022

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Minutes Date:    September 29, 2016

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**September 25, 2017**

---

C-16-318335-1      State of Nevada  
                                 vs  
                                 DAVID COIL

---

**September 25, 2017      8:30 AM      Hearing**

**HEARD BY:** Jones, Tierra      **COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Teri Berkshire

**RECORDER:** Victoria Boyd

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	COIL, DAVID ANDREW	Defendant
	Hamner, Christopher	Attorney
	Martinez, Samuel	Attorney
	Matsuda, Jess	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- During Court's Faretta Canvass, deft. advised he would like to withdraw his motion to represent himself. Court so noted and ORDERED, trial date STANDS.

CUSTODY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**September 26, 2017**

C-16-318335-1      State of Nevada  
                                 vs  
                                 DAVID COIL

**September 26, 2017      1:30 PM      Jury Trial**

**HEARD BY:** Jones, Tierra      **COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Teri Berkshire

**RECORDER:** Victoria Boyd

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	COIL, DAVID ANDREW	Defendant
	Hamner, Christopher	Attorney
	Martinez, Samuel	Attorney
	Matsuda, Jess	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Counsel submitted AMENDED INFORMATION and FILED IN OPEN COURT. Mr. Martinez stated the offer the was rejected. Colloquy regarding Jury selection and trial schedule.

INSIDE THE PRESENCE OF THE PROSPECTIVE: Following brief introduction by the Court, Voir dire oath given. Voir dire proceeded.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Voir dire of named Juror outside the presence of the panel.

INSIDE THE PRESENCE OF THE PROSPECTIVE:.. Voir dire continues. Court admonished the panel and instructed them to return tomorrow at the given time. Court adjourned.

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**September 27, 2017**

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C-16-318335-1      State of Nevada  
                                 vs  
                                 DAVID COIL

---

**September 27, 2017    11:00 AM      Jury Trial**

**HEARD BY:** Jones, Tierra

**COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Teri Berkshire

**RECORDER:** Victoria Boyd

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	COIL, DAVID ANDREW	Defendant
	Hamner, Christopher	Attorney
	Martinez, Samuel	Attorney
	Matsuda, Jess	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Court excused named Juror.

INSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Voir dire continues. Following Voir dire, 12 Jurors and 2 Alternates Sworn. Court thanked and excused the remaining panel.

INSIDE THE PRESENCE OF THE JURY: Opening statements by Mr. Martinez and Mr. Matsuda. State proceeded with its case in chief. Testimony and exhibits presented. (See worksheets). Following testimony, Court admonished the Jury and instructed them to return tomorrow at the given time. Court adjourned.

September 28, 2017

651

CUSTODY

11/08/17 8:30 A.M. SENTENCING

Clerk's Note: On 11-29-17, minutes amended to include clerk's note that no Guilty Plea Agreement was submitted in this case during trial, as deft. pled straight up to all counts as charged in the Amended Information filed on 9-26-17, and the Court canvassed deft. on 9-28-17 as recorded on file herein/ tb

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****November 08, 2017**

C-16-318335-1      State of Nevada  
vs  
DAVID COIL

**November 08, 2017      8:30 AM      Sentencing**

**HEARD BY:** Jones, Tierra      **COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Teri Berkshire

**RECORDER:** Victoria Boyd

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	COIL, DAVID ANDREW	Defendant
	Martinez, Samuel	Attorney
	Matsuda, Jess	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Upon Court's inquiry, Mr. Martinez advised the victim speaker is present, however, she does not wish to give a statement. DEFT. COIL ADJUDGED GUILTY of COUNT - 1 SEX TRAFFICKING OF A CHILD UNDER 18 YEARS OF AGE (F). COUNT - 2 SOLICITING PROSTITUTION (F); COUNT - 3 SOLICITING PROSTITUTION (F); COUNT - 4 SOLICITING PROSTITUTION (F); COUNT - 5 SOLICITING PROSTITUTION (F); COUNT - 6 ATTEMPT SEX TRAFFICKING OF A CHILD UNDER 18 YEARS OF AGE (F); COUNT - 7 is going to be dismissed by the State today. Arguments by counsel. Statements by deft. Matter submitted. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$250.00 Indigent Defense Civil Assessment fee, a \$150.00 DNA Analysis fee including testing to determine genetic markers, and \$3.00 DNA Collection fee, Deft. SENTENCED As to COUNT - 1 to LIFE with the possibility of parole after SIXTY (60) MONTHS in the Nevada Department of Corrections; As to COUNT - 2 to a MINIMUM of TWELVE (12) MONTHS and a MAXIMUM of THIRTY (30) MONTHS in the Nevada Department of Corrections (NDC); SUSPENDED; with the ONLY CONDITION of PROBATION being serve THREE HUNDRED SIXTY-

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FOUR (364) DAYS in the Clark County Detention Center; CONCURRENT with COUNT - 1; As to COUNT - 3 to a MINIMUM of TWELVE (12) MONTHS and a MAXIMUM of THIRTY (30) MONTHS in the Nevada Department of Corrections (NDC); SUSPENDED; with the ONLY CONDITION of PROBATION being serve THREE HUNDRED SIXTY-FOUR (364) DAYS in the Clark County Detention Center; CONCURRENT with COUNT - 2; As to COUNT - 4 to a MINIMUM of TWELVE (12) MONTHS and a MAXIMUM of THIRTY (30) MONTHS in the Nevada Department of Corrections (NDC); SUSPENDED; with the ONLY CONDITION of PROBATION being serve THREE HUNDRED SIXTY-FOUR (364) DAYS in the Clark County Detention Center; CONCURRENT with COUNT - 3; As to COUNT - 5 to a MINIMUM of TWELVE (12) MONTHS and a MAXIMUM of THIRTY (30) MONTHS in the Nevada Department of Corrections (NDC); SUSPENDED; with the ONLY CONDITION of PROBATION being serve THREE HUNDRED SIXTY-FOUR (364) DAYS in the Clark County Detention Center; CONCURRENT with COUNT - 4; As to COUNT - 6 to a MINIMUM of SEVENTY-TWO (72) MONTHS and a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS in the Nevada Department of Corrections (NDC); CONSECUTIVE to COUNT 5; As to COUNT 7, DISMISSED; with 443 DAYS credit for time served. AGGREGATE total of LIFE with the possibility of Parole after ONE HUNDRED THIRTY (132) MONTHS in the Nevada Department of Corrections (NDC). COURT FURTHER ORDERED, Deft. to Register as a sex offender in accordance with NRS 179D.460 within 48 hours after sentencing or release from custody. CASE CLOSED.

BOND if any, EXONERATED.

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

### Felony/Gross Misdemeanor

# COURT MINUTES

February 26, 2018

C-16-318335-1                      State of Nevada  
vs  
DAVID COIL

**February 26, 2018      8:30 AM      Motion**

**HEARD BY:** Jones, Tierra **COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Teri Berkshire

**RECORDER:** Victoria Boyd

**REPORTER:**

## PARTIES

<b>PRESENT:</b>	Bernstein, Kelsey L.	Attorney
	Lexis, Chad N.	Attorney
	State of Nevada	Plaintiff

## JOURNAL ENTRIES

- Deft. not present and in the Nevada Department of Corrections. COURT ORDERED, Kelsey Bernstein APPOINTED for the Appeal. FURTHER COURT ORDERED, matter set for status check on file on the date given.

NDC

03/26/18 8:30 A.M. STATUS CHECK: FILE

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**March 26, 2018**

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C-16-318335-1      State of Nevada  
                                 vs  
                                 DAVID COIL

---

**March 26, 2018      8:30 AM      Status Check**

**HEARD BY:** Jones, Tierra      **COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Teri Berkshire

**RECORDER:** Victoria Boyd

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Bernstein, Kelsey L.	Attorney
	Lexis, Chad N.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Deft, not present and in the Nevada Department of Corrections. Counsel advised she received the file and the Appeal is underway. Court so Noted and ORDERED, matter OFF CALENDAR.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**February 25, 2019**

---

C-16-318335-1      State of Nevada  
                                 vs  
                                 DAVID COIL

---

**February 25, 2019      8:30 AM      Hearing**

**HEARD BY:** Jones, Tierra

**COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Teri Berkshire

**RECORDER:** Victoria Boyd

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Bernstein, Kelsey L.	Attorney
	State of Nevada	Plaintiff
	Wong, Hetty O.	Attorney

**JOURNAL ENTRIES**

- Deft. not present and in the Nevada Department of Corrections. Court noted it received a letter from P&P requesting clarification of sentence. COURT ORDERED, the aggregate sentence is correct, however, COUNT - 6 should be CONSECUTIVE to COUNT - 1, with an AGGREGATE total of, LIFE with Parole eligibility after ONE HUNDRED THIRTY (132) MONTHS has been served. Ms. Bernstein advised she's been substituted out by the Supreme Court in this case and Mr. Leventhal is attorney of record. Further, counsel will advise him of these proceedings. Court so noted.

NDC



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**October 26, 2020**

---

C-16-318335-1      State of Nevada  
                                 vs  
                                 DAVID COIL

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<b>October 26, 2020</b>	<b>8:30 AM</b>	<b>Motion</b>	<b>Defendant's Pro Per Motion for Production of Documents, Papers and Tangible Property of Defendant</b>
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**HEARD BY:** Adair, Valerie

**COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** April Watkins

**RECORDER:** Robin Page

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Merback, William J.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- COURT ORDERED, motion GRANTED and matter SET for status check. Written acknowledgment of file being sent to be filed by counsel.

NDC

CLERK'S NOTE: The above minute order has been distributed to: Kelsey Bernstein, Esq., and Deft. David Coil #1189948, HDSP, P.O. Box 650, Indian Springs, NV 89070. aw

PRINT DATE: 02/03/2022

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Minutes Date: September 29, 2016

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**November 16, 2020**

---

C-16-318335-1      State of Nevada  
                                 vs  
                                 DAVID COIL

---

**November 16, 2020      8:30 AM      Status Check**

**HEARD BY:** Jones, Tierra      **COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Ro'Shell Hurtado

**RECORDER:** Victoria Boyd

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Deft. not present. Due to time constraints by the Court, COURT ORDERED, matter CONTINUED.

NDC

CONTINUED TO 12/07/2020 8:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**December 07, 2020**

---

C-16-318335-1      State of Nevada  
                                 vs  
                                 DAVID COIL

---

**December 07, 2020      8:30 AM      Status Check**

**HEARD BY:** Jones, Tierra      **COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Carolyn Jackson

**RECORDER:** Victoria Boyd

**REPORTER:**

**PARTIES**

**PRESENT:** Goodman, Laura      Attorney  
                                 State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- Defendant not present. Court stated Defendant's counsel was not present and ORDERED, matter CONTINUED.

NDC

CONTINUED TO 12/14/20 8:30 AM

CLERK'S NOTE: The above minute order has been distributed to: Kelsey L. Bernstein (kbernstein@defendingnevada.com) and by placing a copy in the attorney folder. /cj 12/07/2020.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**December 14, 2020**

---

C-16-318335-1      State of Nevada  
                                 vs  
                                 DAVID COIL

---

**December 14, 2020      8:30 AM      Status Check**

**HEARD BY:** Jones, Tierra      **COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Dara Yorke

**RECORDER:** Victoria Boyd

**REPORTER:**

**PARTIES**

**PRESENT:**      Lexis, Chad N.      Attorney  
                                 State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- Ms. Bernstein and Deft. not present. Court noted the instant matter was on for a status check as to a written acknowledgment being filed. Additionally, Court indicated Ms. Bernstein needed to be notified and informed that if she wasn't present on January 11, 2021, the Court would issue an Order to show cause on her. COURT ORDERED, matter CONTINUED.

NDC

1/11/21 8:30 AM CONTINUED: STATUS CHECK: RE: WRITTEN ACKNOWLEDGMENT OF FILE BEING SENT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 11, 2021**

---

C-16-318335-1      State of Nevada  
                                 vs  
                                 DAVID COIL

---

**January 11, 2021      8:30 AM      Status Check**

**HEARD BY:** Jones, Tierra      **COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Natalie Ortega

**RECORDER:** Victoria Boyd

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Bernstein, Kelsey L.	Attorney
	Lexis, Chad N.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Defendant not present, incarcerated in the Nevada Department of Corrections (NDC).

COURT ORDERED, matter CONTINUED. COURT DIRECTED Ms. Bernstein to file a written acknowledgment that she sent the file to the Defendant.

NDC

CONTINUED TO: 01/25/21 8:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 25, 2021**

---

C-16-318335-1      State of Nevada  
                                 vs  
                                 DAVID COIL

---

**January 25, 2021      8:30 AM      Status Check**

**HEARD BY:** Jones, Tierra      **COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Michaela Tapia

**RECORDER:** Victoria Boyd

**REPORTER:**

**PARTIES**

**PRESENT:**      Bernstein, Kelsey L.      Attorney  
                                 State of Nevada      Plaintiff  
                                 Wong, Hetty O.      Attorney

**JOURNAL ENTRIES**

- Deft. not present.

Court noted the written acknowledgment was sent and filed 1/21/21 and ORDERED, matter OFF CALENDAR.

NDC

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

### Felony/Gross Misdemeanor

## COURT MINUTES

May 10, 2021

C-16-318335-1                      State of Nevada  
vs  
DAVID COIL

May 10, 2021	8:30 AM	Motion to Withdraw as Counsel
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**HEARD BY:** Jones, Tierra **COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Christopher Darling

**RECORDER:** Victoria Boyd

**REPORTER:**

## PARTIES

**PRESENT:** Bernstein, Kelsey L. Attorney  
Lexis, Chad N. Plaintiff  
State of Nevada

## JOURNAL ENTRIES

- Hearing held live and by BlueJeans remote conferencing.

Deft. not present. Court noted Deft. located in the Nevada Department of Corrections. COURT ORDERED, Motion to Withdraw GRANTED; 5/19/21 Hearing VACATED.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**June 28, 2021**

---

C-16-318335-1      State of Nevada  
                                 vs  
                                 DAVID COIL

---

**June 28, 2021      8:30 AM      All Pending Motions**

**HEARD BY:** Jones, Tierra      **COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Haly Pannullo

**RECORDER:** Victoria Boyd

**REPORTER:**

**PARTIES**

**PRESENT:**      State of Nevada      Plaintiff  
                         Wyse, Seleste A      Attorney

**JOURNAL ENTRIES**

- MOTION FOR EXTENSION OF TIME TO FILE POST CONVICTION WRIT OF HABEAS CORPUS  
MOTION TO WITHDRAW GUILTY PLEA

Defendant not present. COURT ORDERED, Motions DENIED; State to prepare the Order consistent with the opposition.

NDC



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**August 04, 2021**

---

C-16-318335-1      State of Nevada  
                                 vs  
                                 DAVID COIL

---

**August 04, 2021      8:30 AM      Motion**

**HEARD BY:** Jones, Tierra      **COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Teri Berkshire

**RECORDER:** Victoria Boyd

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Deft. not present and in the Nevada Department of Corrections. COURT ORDERD, Motion for Extension of Time, DENIED. FURTHER COURT ORDERED, Deft's Motion to Withdraw Plea, DENIED. State to prepare the order consistent with their opposition. COURT FURTHER ORDERED, 8-18-21 date VACATED.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**September 20, 2021**

---

C-16-318335-1      State of Nevada  
                                 vs  
                                 DAVID COIL

---

**September 20, 2021      8:30 AM      Motion for Appointment of  
Attorney**

**HEARD BY:** Jones, Tierra      **COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Teri Berkshire

**RECORDER:** Victoria Boyd

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	COIL, DAVID ANDREW	Defendant
	Jones, Jr., John T.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Deft. not present and in the Nevada Department of Corrections. COURT ORDERED, Motion for Appointment of Attorney; Request for Evidentiary Hearing, DENIED. State to prepare the order consistent with their opposition.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**October 11, 2021**

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C-16-318335-1      State of Nevada  
                                 vs  
                                 DAVID COIL

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**October 11, 2021      8:30 AM      Motion to Compel**

**HEARD BY:** Jones, Tierra      **COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Teri Berkshire

**RECORDER:** Victoria Boyd

**REPORTER:**

**PARTIES**

**PRESENT:**      State of Nevada      Plaintiff  
                                 Wong, Hetty O.      Attorney

**JOURNAL ENTRIES**

- Defendanto not present; incarcerated in the Nevada Department of Corrections (NDC).

COURT NOTED it read the motion and the State's opposition. COURT ORDERED, Motion to Compel the Clerk of the Court DENIED. COURT DIRECTED Ms. Wong to prepare the Order consistent with their response.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**October 25, 2021**

C-16-318335-1      State of Nevada  
                                 vs  
                                 DAVID COIL

**October 25, 2021      8:30 AM      Motion**

**HEARD BY:** Becker, Nancy

**COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Teri Berkshire

**RECORDER:** Victoria Boyd

**REPORTER:**

**PARTIES**

**PRESENT:**      Merback, William J.      Attorney  
                                 State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- Deft. not present and in the Nevada Department of Corrections. Court noted deft. has not been receiving the minutes and the Orders from this case for the months of May through September. COURT ORDERED, Motion GRANTED to the extent that the state is to send the orders to Deft. and the Clerk to send the minutes to deft. for the months requested.

NDC

CLERK'S NOTE: The above minute order has been distributed to: David Coil #1189948, HDSP, P.O. Box 650, Indian Springs, NV 89070. tb

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**December 06, 2021**

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C-16-318335-1      State of Nevada  
                                 vs  
                                 DAVID COIL

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**December 06, 2021      8:30 AM      Motion**

**HEARD BY:** Jones, Tierra      **COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Michaela Tapia

**RECORDER:** Victoria Boyd

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Goodman, Laura	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Deft. not present.

COURT ORDERED, the petition was denied on 11/8/21, therefore, motion DENIED as MOOT.

NDC

# Certification of Copy and Transmittal of Record

State of Nevada }  
County of Clark } SS:

Pursuant to the Supreme Court order dated January 26, 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 three volumes with pages numbered 1 through 670.

STATE OF NEVADA,

Plaintiff(s),

vs.

STATE OF NEVADA vs. DAVID ANDERSON  
COIL,

Defendant(s),

Case No: C-16-318335-1

*Related Case A-21-839320-W*

Dept. No: XI

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 4 day of February 2022.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk